

ON THE COURT RESUMING:

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MR. VAN NIEKERK: My lords, I come now to the accused Masina, accused No.7. I ask leave to hand in the Argument, my lord. Your lordships will see there is an index and then on the second page is the index to documents, where the contents of certain documents are to be found. I had that prepared, my lords, because these documents were not dealt with in serial order.

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Then on page 1, my lords, under 'A', the Overt Acts charged against the accused. There are five of them set out, my lords. The first is conspiracy, the second refers to the Congress of the People, and then the meetings, my lords.

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Then on page 2 there is the Membership, firstly in the African National Congress - he was active in the African National Congress during the period of the

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Indictment (witness Sharp). 2) He was active in the African National Congress; Conco said he was a prominent member of the African National Congress during the period of the Indictment and according to Resha he attended the African National Congress meetings . . . .

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KENNEDY J: You have set out the various memberships

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MR. VAN NIEKERK: Yes, my lords and that takes me to page 5. Now, my lords, the accused, page 6 - I refer to searches. He was searched on the 27th September, 1955 by Sgt. White . . . .

BEKKER J: Is there anything specially you want to draw our attention to?

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MR. VAN NIEKERK: There is nothing special, my lords; I refer to these documents and by way of submissions on page 33 and 34 of the Argument.

Now, with respect, there were many more documents taken from the accused but I am only referring to those that I have listed on the index to documents page, my lords.

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RUMPF J: And you give extracts from some of the documents.

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MR. VAN NIEKERK: As your lordship pleases, I give extracts from the documents.

RUMPF J: Where does that end?

MR. VAN NIEKERK: That ends at page 32, my lords. From page 6 to page 32, my lords. Then on page 33, my lords . .

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RUMPF J: You've made a number of submissions in regard to the contents.

MR. VAN NIEKERK: I've made submissions, my lords,

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on the contents of these documents. I give the document  
and I give the page where these submissions are to be found,  
my lords. If your lordships want me to go through them.....

RUMPF J: No.

MR. VAN NIEKERK: Only on page 34 your lordship will  
see that I have framed a couple of submissions, 1 to 6 on  
one document only - that is under heading 'm', that is the  
document LLM.81 which is the report of the African National  
Congress Youth League Conference in 1955.

Then, my lords, Authorship, the document AL.79  
was signed by the accused. The signature was admitted, my  
lords.

On 30th December, 1955, he signed a SACTU  
circular, AM.104, and his signature was admitted at page  
10818, my lords.

KENNEDY J:  
You list three documents, the signatures on which  
have all been admitted.

MR. VAN NIEKERK: That is so, my lord. Then  
I refer to the meetings, my lords, from page 37 . . .

BEKKER J: Well, that's on the same basis as  
the last; where do we start on your submissions?

MR. VAN NIEKERK: My lords, I start on my sub-  
missions on page 50.

BEKKER J: On the meetings?

MR. VAN NIEKERK: On the meetings, my lords,  
I start with my submissions on page 57. I ask leave to  
start from page 50, my lord.

RUMPF J: Yes.

MR. VAN NIEKERK: My lords, it is respectfully  
submitted that the first overt act, i.e. the conspiracy,

alleged against the accused . . .

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RUMPF J: Well, the first one is the conspiracy.

MR. VAN NIEKERK: Yes, my lord, the first one is the conspiracy . . .

RUMPF J: And you say the hostile intent should be inferred, from the activities and you set out the activities.

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MR. VAN NIEKERK: Then I set out the activities, my lord.

RUMPF J: And the references.

MR. VAN NIEKERK: And the references, my lords, as to his positions and activities. Then I come to page 51, my lords, paragraph (7) where I refer to his membership of the World Federation of Trade Unions.

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Then I come to paragraph 8, my lords . . .

RUMPF J: Where do we get that now . . .

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MR. VAN NIEKERK: Page 51, my lord.

RUMPF J: I just want information: If you look at page 50, at the bottom, (4) He was an executive member of the S.A. Peace Council. Now where do we find that?

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MR. VAN NIEKERK: That is on page 4 . . .

RUMPF J: Yes, you have given us the reference in respect of each of the sub-paragraphs. Now what do you want to say on page 51 about (8)?

MR. VAN NIEKERK: In (8) my lord, I refer to a meeting of the National Executive Committee of the South African Congress of Trade Unions held on the 27th June, 1955, at which the accused was present, and it was decided that the South African Congress of Trade Unions affiliate with the World Federation of Trade Unions. This is according

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to the Minute, my lords.

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RUMPF J: That goes on then, and you set out all the alleged activities.

MR. VAN NIEKERK: Then I set out . . .

RUMPF J: At what page do you end?

MR. VAN NIEKERK: I end at page 56, my lord.

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RUMPF J: Well, then start at page 57. What is that?

MR. VAN NIEKERK: Page 57, my lord, starts with the meetings.

RUMPF J: Very well.

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MR. VAN NIEKERK: It is submitted, my lords, - - I start off with the meeting of the 10th October, 1954, African National Congress meeting at Sophiatown. I am only dealing with those meetings, my lords, at which accused was present and where there was evidence that he was present when speeches were made.

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If your lordships will turn to page 42, your lordships will see that I have a note there regarding the meeting of the 21st to 23rd August, 1953, Transvaal Peace Council, Johannesburg. Of the speeches delivered at that meeting, my lords, there is no evidence that Masina was present.

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BEKKER J: Well, then you don't worry about it.

MR. VAN NIEKERK: I thought I'd just draw your lordships' attention to it.

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RUMPF J: Why did you put it in here?

MR. VAN NIEKERK: Just to draw your lordships attention to it.

RUMPF J: But if there is no evidence, or if he wasn't present.

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MR. VAN NIEKERK: No, my lords, there was evidence 1  
that he was present at this Peace Conference. It was a  
conference lasting for three days, my lords, but there was  
no evidence on the . . . .

RUMPF J: Oh, this is on the 22nd only - this 5  
refers to the 22nd?

MR. VAN NIEKERK: As your lordship pleases.

RUMPF J: Is there evidence that he was present  
on the 21st?

MR. VAN NIEKERK: There is only evidence that he 10  
was present on the 22nd. According to the evidence the  
speeches that were delivered on the 21st . .

RUMPF J: On the 21st? Well, then this is just  
evidence that he was present at this Conference on the 22nd;  
that is all.

MR. VAN NIEKERK: That is so, my lord. Then my 15  
next paragraph shows that speeches were delivered on the  
21st but there is no evidence that Masina was present then.

RUMPF J: Yes.

MR. VAN NIEKERK: Then, my lords, the first meeting 20  
I'm dealing with is the meeting of the 10th October, 1954,  
an A.N.C. meeting Sophiatown, . . . .

RUMPF J: Where is that to be found?

MR. VAN NIEKERK: Page 43, my lord. The witness  
was Ngcai . . . .

RUMPF J: What is the relevance of this meeting? 25  
What is the inference to be drawn?

MR. VAN NIEKERK: On page 58, my lord, it is res-  
pectfully submitted that this can only mean a determination  
to resist the Government by violence.

BEKKER J: I beg your pardon? There is another 30

submission at the bottom of page 57. . .

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MR. VAN NIEKERK: I'm sorry, my lords, it is submitted that this suggests a violent clash between the forces of the Congress and the Government forces, where the Congress forces may lose 9 million out of 10 million. If the government is determined to use guns rather than reason, we are ready to meet them.

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My lords, your lordship asked me to refer your lordships to Resha's evidence on this meeting. The matter was dealt with by Mr. Trengove at page 78 and 79 to 80 of his Argument on Resha, and on page 79 the argument goes: 'Resha does not -- he says he does not remember making the remarks attributed to him at this meeting. He says he might have referred to the Government trying to provoke violence. He also admits he might have said 'Let me warn the Dutchmen that their guns will fail as they have failed in other countries'. He says he said this because he does not believe in violence. Even in countries where there was violence there was a stage when guns had to be put aside and where the people had to negotiate. ...."

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RUMPF J: Well, what is the submission of the Crown on that? Don't read the whole argument?

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MR. VAN NIEKERK: My lords, the submission of the Crown is that the evidence as recorded by Ngcai can be accepted as a valid report of what happened at that meeting.

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RUMPF J: You adopt that argument?

MR. VAN NIEKERK: Yes, my lord. My Lord, then the second meeting is that of the 23rd May, 1954, African National Congress Youth League Conference, Johannesburg.

RUMPF J: Where is that to be found?

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MR. VAN NIEKERK: Page 42 to page 43 of the  
summary, my lords. These are the resolutions, my lords,  
found in the offices of the African National Congress -  
I am referring to the African National Congress Youth  
League Conference.

It is submitted, my lords, that the conference  
decided to seek methods to rally the youth on the basis  
of a powerful Mass Youth Movement to fight Fascism.

And it condemned the Bantu Education Act and  
it identified itself with the struggle of colonial people  
in their fight to throw off foreign domination and en-  
slavement, and expressed solidarity with the peoples of  
Kenya, Indo-China, North Korea, Malaya and British Guana.

Then the next, my lords, is the meeting of the  
10th April, 1955, A.N.C. Dube, witness Makoena. We have  
dealt with that meeting, my lords. The witness was cross  
examined at page 9596 and in this cross examination it was  
put to him that a great deal of material does not make any  
sense at all, and he was asked to look at his report  
during the lunch interval, and after the lunch interval  
the matter was not pursued.

It is respectfully submitted, my lords, that his  
evidence can be accepted as being reliable.

Now at this meeting, my lords, Selepe condemned  
the Bantu Education Act and referred to the Government  
as enemies, and that they will stop Verwoerd. He further  
suggests violence to be committed against persons who  
support Bantu Education. My lords, this aspect of Selepe  
your lordships will remember, when dealing with Selepe,  
this was deleted.



RUMPF J: Yes. 1

MR. VAN NIEKERK: Will your lordships delete that passage too.

RUMPF J: Yes.

MR. VAN NIEKERK: At this meeting Masina spoke against the Bantu Education and called for volunteers, and Lengane praised the Mau Mau as heroes who are fighting for their country. 5

My lords, it is submitted that the trend of this meeting was to . . . no, my lords, will your lordships please delete that submission . . . 10

BEKKER J: Which one?

MR. VAN NIEKERK: At the bottom of page 58, my lords, and the first three lines on page 59, my lords.

The submission there is that there was a call for volunteers. That is all. 15

RUMPF J: A call for volunteers?

MR. VAN NIEKERK: A call for volunteers, my lord, by the accused.

The next meeting, my lords, is that of the 19th June, 1955, African National Congress, Dube, witness Maselele, found on page 45 to 46 of the summary. 20

RUMPF J: What is your submission on that meeting?

MR. VAN NIEKERK: My lords, it is submitted that at this meeting there was a call by the secretary suggesting violent action against the Government when he said 'We shall have a true record of people who don't want..... we will form a .....which will fight Verwoerd and.....him...' 25

RUMPF J: I want your final submission at the end.

MR. VAN NIEKERK: My submission, my lord, at page 30

60 is that violence was advocated against the Government,  
my lords. 1

KENNEDY J: According to your notes you've got  
at page 59 a submission, at the bottom of the page.

MR. VAN NIEKERK: I'm sorry, my lords. Masina  
spoke, my lords, and he did not disagree with the state- 5  
ments of Sekoba and Selepe, and it is submitted that at  
this meeting the State is condemned as non-democratic  
and a Police state, where the people are exploited by  
the Europeans and by the laws. 10

The holding of the Congress of the People is sup-  
ported as a conference where the people could say what  
constitution they wanted.

RUMPF J: Well, your submission then really is  
that violence is advocated against the Government. 15

MR. VAN NIEKERK: Yes, my lord. I ask the  
Court to infer that from the reference to fighting Ver-  
woerd and kicking him . . .

RUMPF J: Just a minute. Which speech are you  
now referring us to? 20

MR. VAN NIEKERK: I'm referring, my lords, to  
the . . .

RUMPF J: You're now busy referring to the  
quotation at page 45.

MR. VAN NIEKERK: The bottom of page 45, my lords, 25

RUMPF J: Is this Sekobo?

MR. VAN NIEKERK: This is Sekobo, my lord.

RUMPF J: Yes.

MR. VAN NIEKERK: And then, my lord, . . .

RUMPF J: We shall fight Verwoerd and we shall  
kick him. . . 30

MR. VAN NIEKERK: We shall do this. . . . 1

RUMPF J: We will form a big parliament and then we shall have a true record of people who don't want passes, and we shall form a strong force which will fight Verwoerd and we shall kick him." Is that it? 5

MR. VAN NIEKERK: That is the one portion, my lords, and then there is a reference on page 46 to Selepe's statement where he said to the people 'You know about the Freedom Revolution and how China got its freedom in 1949.'" That is in the middle of page 46, my lord. 10

BEKKER J: Is that what you rely on, "You know about the Freedom Revolution and how China got its freedom in 1949"?

MR. VAN NIEKERK: As your lordship pleases.

RUMPF J: Is that all he said? I thought that was Masina? That's not Selepe, is it? 15

MR. VAN NIEKERK: That is Masina who said that my lord.

BEKKER J: Well, now how does that suggest violent action against the Government? The statement: 'You know about the Freedom revolution and how China got its freedom. ." If That is all that you quote; it means nothing, because if he did say words to that effect it depends entirely upon the context, the context in which those words were said. 20

MR. VAN NIEKERK: As your lordship pleases.

RUMPF J: And a mere repetition of that phrase means nothing. It says here 'He criticised the Bantu Education Act, and stated 'You know about the Freedom Revolution and how China got its freedom in 1949.'" 25

I don't know what went after that . . .

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MR. VAN NIEKERK: My lord, the record reads:  
("Q) And did he say why are they afraid of history and  
geography; why don't they want that? And you know about  
the Freedom Revolution and how China got its freedom in  
1949".

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RUMPF J: The French revolution, not the  
Freedom Revolution.

MR. VAN NIEKERK: I'm sorry, yes, my lord.

RUMPF J: What else did he say about it?

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MR. VAN NIEKERK: That is all that the record  
says, my lord.

RUMPF J: Don't look at me like that, I did  
not complete the record, or try to complete it.....

MR. VAN NIEKERK: I'm sorry, my lord, I'm only  
saying what my extract here says, which is identical  
to the record.

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BEKKER J: Well, let's assume it is so; we  
accept that it is so. Even if it is so, how does that  
support your submission that violence is advocated against  
the Government when a man says 'You know about the French  
Revolution and how China got its freedom in 1949'?

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MR. VAN NIEKERK: With respect, my lords.....

BEKKER J: He may have gone on to say - for  
argument's sake - 'But we are not going to do it that  
way; on the contrary, we are going to do it a different  
way', or he may have said 'You know how they got it, now  
let's do the same'.

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MR. VAN NIEKERK: With respect, my lords, my  
submission is that Masina starts off, my lords, by saying

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that the country is theirs, and that the white people must  
 have fear when they meet, and they want to get rich without  
 sweat." Then he criticises the Bantu Education Act.  
 Then he says, my lords, "Now you know how the French got  
 their freedom? - by revolution?"

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RUMPF J: Are you quoting him now?

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MR. VAN NIEKERK: He says, my lord, 'Do you know  
 about the French revolution - - - -"

RUMPF J: About the French revolution, and how  
 China got its freedom in 1949. And what did he say imme-  
 diately thereafter?

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BEKKER J: The record doesn't say.

MR. VAN NIEKERK: The record doesn't say.

RUMPF J: Then we don't know either.

KENNEDY J: So on what do you now rely for violence?  
 Violence advocated against the Government?

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MR. VAN NIEKERK: My lords, the only reference  
 to violence now is . . .

RUMPF J: We shall fight against Verwoerd and  
 kick him.

MR. VAN NIEKERK: As your Worship pleases.

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RUMPF J: What is your next meeting?

MR. VAN NIEKERK: My lords, the next meeting that  
 I refer to is the meeting of the 11th September, 1955 -  
 it's just an activity, my lords. Masina acted as chairman  
 after Rev. D.C. Thompson left. That's at page 60, my lords,  
 and then the next meeting that I rely on is the meeting  
 of the 8th October, 1955 . . .

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RUMPF J: Where is that?

MR. VAN NIEKERK: A.N.C. Conference, Orlando, my  
 lords, page 60, paragraph 6, and this is found on page 46.

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It says . . .

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KENNEDY J: One is Orlando and one is Moroka; is there a mistake?

MR. VAN NIEKERK: My lords, it is the same conference, my lords.

RUMPF J: The one says Orlando and the other says Moroka. One is wrong; either Moroka or Orlando. Which is it?

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MR. VAN NIEKERK: My lords, I'll check up on that. Your lordships will remember that I dealt with this this morning; the witness was Masilele, my lords, and he was cross examined at page 8923 to 8924 of the record and he was asked to read in portion of a speech in the record.

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RUMPF J: What is the submission here?

MR. VAN NIEKERK: My lord, my submission is that Masina opened the conference . . .

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RUMPF J: No, I want your submission on the meeting, Mr. van Niekerk; what must we infer from this? We know that Masina opened the conference; it says so.

MR. VAN NIEKERK: He opened this conference, my lords, and at this conference it is submitted, my lords, that Moretsele read a message from the Indian Congress. . .

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BEKKER J: Well, I think your submission is in the next paragraph commencing with Moretsele. . .

MR. VAN NIEKERK: Moretsele supported the Freedom Charter where the people shall rule and advocated illegal and violent action against the Government, because he said, 'We of the A.N.C. are determined that we shall go to gaol willingly for freedom. If we die, then for freedom'.

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RUMPF J: Now you say that's violent action

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against the Government? He'll go to gaol . . .

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MR. VAN NIEKERK: Might I put it this way, my lords, that he advocates illegal action firstly, and secondly . . .

BEKKER J: Advocates illegal action?

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MR. VAN NIEKERK: Illegal action, my lords.

RUMPF J: Because he supports the Freedom Charter?

BEKKER J: Or because of something else?

MR. VAN NIEKERK: My lords, there is a reference that they are determined that they shall go to gaol; now a reference, my lords, with respect, to go to gaol - - my submission is that the inference to be drawn from that is that it refers to illegal action . . .

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BEKKER J: Advocates illegal action?

MR. VAN NIEKERK: He says we - 'we' of the African National Congress - we are determined to do this, my lord, so my submission is that that is advocating - - and then he says 'If we die then for freedom'.

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RUMPF J: Then he impliedly says "We may be killed in our action", by the State.

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MR. VAN NIEKERK: As your lordship pleases. Then, my lords, a person by the name of Molife incited persons to set fire to the houses of persons who agree to carry passes, and that something must be done about those detectives who are selling them. This was said under the chairmanship of Masina, and it is submitted that at this conference, with his concurrence, the present state is condemned; the Freedom Charter is stated to be accepted by the people, and that illegal and violent acts against the Government and people disagreeing with

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the movement is suggested." 1

RUMPF J: Well, here you mean illegal acts against the Government and violent acts against people disagreeing with the Movement.

MR. VAN NIEKERK: Yes, I ask the Court to amend that, 5

RUMPF J: Yes.

MR. VAN NIEKERK: To read, 'Illegal acts against the Government and violent acts against the persons agreeing to carry passes.

RUMPF J: Yes, your next meeting? 10

MR. VAN NIEKERK: The next meeting, my lords, is to be found on page 47 and it refers to the meeting at Durban of the 12th February, 1956. Now, my lords, I draw your lordships' attention to the fact that Masina, the accused, was not identified at that meeting, but he was introduced as secretary of the S.A. Congress of the Trade Unions and he stated that the S.A.C.T.U. was co-operating with other organisations . . . 15

RUMPF J: I don't follow this, Mr. van Niekerk. You say Masina was not identified as being at this meeting? 20

MR. VAN NIEKERK: He was not identified as being at that meeting, my lords.

RUMPF J: How was he then introduced as the secretary?

MR. VAN NIEKERK: My lord, he was not identified - there was no evidence of identification of accused Masina as being at that meeting, but he was announced. . . . 25

BEKKER J: What you mean is that Masina was not introduced - a person was introduced?

MR. VAN NIEKERK: Yes, a person was introduced, 30



as the secretary of the South African Congress of Trade Unions. 1

RUMPF J: A person with the name of Masina?

MR. VAN NIEKERK: As your lordship pleases.

RUMPF J: Was introduced, or not?

BEKKER J: With the name of Masina? Wasn't it 5  
'The secretary of the South African Congress of Trade Unions will now speak'.

MR. VAN NIEKERK: My lords,

RUMPF J: Is your point here that the secretary of S.A.C.T.U. was introduced to the meeting, and from other 10  
evidence you say that Masina was the secretary? At the time when the meeting was held.

MR. VAN NIEKERK: As your lordship pleases.

KENNEDY J: I'm sorry, I haven't quite got this. Was a person introduced as Mr. Masina who is the secretary 15  
of the South African Congress of Trade Unions?

MR. VAN NIEKERK: No, my lord. The record reads, my lord, "On my right is Mr. Masina, the secretary of the S.A.C.T.U", and then Mr. Masina spoke.

RUMPF J: Yes., very well. And at this meet- 20  
ing the Freedom Charter was supported. Is that the point?

MR. VAN NIEKERK: My lords, not only that; Masina also stated that the S.A.C.T.U was co-operating with the other organisations such as the A.N.C. Then, my lords, the next meeting is the Advisory Board, Dube, 25  
of the 17th June, 1956, witness Makoena. There was no cross examination of the witness on his reporting of this meeting, and this meeting supporters of the Bantu Education Act is condemned, and co-operation with the A.N.C. in the fight for freedom is advocated. Masina further stated 30

that they are sure to get freedom, we don't care whether  
 we can be arrested. Byt this I submit, my lords, that he  
 means they are prepared to do illegal acts. He states  
 that in China people are free because they had to fight for  
 their rights, and that they should go forward to freedom.  
 It is submitted that by using the example of the fight in  
 China to obtain freedom, he incites the audience to violent  
 acts against the Government.

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BEKKER J: What is the reference to China?

KENNEDY J: He states that in China the people  
 are free because they had to fight for their rights. Do  
 you say a reference in those terms is incitement to violence  
 against the Government?

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MR. VAN NIEKERK: My lord, the record reads . .

RUMPF J: We've got the record; My brother  
 Kennedy just quoted you the record. That is at the top  
 of page 48 of your Argument.

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MR. VAN NIEKERK: As your lordship pleases.

RUMPF J: Well, that's your submission?

MR. VAN NIEKERK: My submission is that by using  
 the example of the fight in China. . . .

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RUMPF J: Is that your only submission? By  
 using that example you say it advocated violence?

MR. VAN NIEKERK: As your lordship pleases.

RUMPF J: Yes.

MR. VAN NIEKERK: Now, my lords, the next meet-  
 ing is on the 22nd July, 1956, a S.A.C.T.U meeting at Benoni,  
 and the witness is Sgt. Mkh. The witness is cross examined  
 at page 9123 to 29, my lords, and he was asked to compare  
 his notes with those of one Luttig who had not been called  
 by the Crown or the Defence. The witness admitted there

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were words in Luttig's report that are not in the report of the witness, but the Defence conceded (Page 9127) that the differences are not important, one can clearly identify it as being the same speech. 1

RUMPF J: To whom did the Defence concede this? 5

MR. VAN NIEKERK: To the witness, my lord.

RUMPF J: Just quote that please. What is your submission on this meeting? Is Russia lauded at this meeting?

MR. VAN NIEKERK: It was held out as the ideal state which should be followed. 10

KENNEDY J: We had the same sort of submission made by you in regard to another accused, and I think all members of the Bench interjected because they said "Where do you get it set out that Russia should be followed". Is that right? 15

MR. VAN NIEKERK: That is so, my lord.

KENNEDY J: Does this then - should this be restricted to praise of Russia?

MR. VAN NIEKERK: It should be restricted to praise of Russia, my lord. 20

KENNEDY J: Yes.

MR. VAN NIEKERK: Does your lordship want the reference - page 9127 . . .

RUMPF J: No, it's not necessary.

MR. VAN NIEKERK: Then, my lords, the last meeting . . . 25

BEKKER J: Before you go on, Mr. van Niekerk, I want to consider this submission of yours. This praising of Russia it is submitted is holding out Russia as an ideal State. Are you abandoning that? 30

MR. VAN NIEKERK: No, my lord, with respect not. 1

RUMPF J: I thought you said in answer to my brother Kennedy that your submission here was 'praise of Russia only'; that's what you said.

KENNEDY J: Restricted to that.

MR. VAN NIEKERK: Well, I meant that as an ideal State. 5

BEKKER J: I want to know from you: why do you submit that this praising of Russia is the holding out of Russia as the ideal State, because that is really the .... of your contention? 10

KENNEDY J: I thought you abandoned this in regard to another one of the accused.

MR. VAN NIEKERK: I did, my lord, and I am not pressing it here.

KENNEDY J: Yes. 15

MR. VAN NIEKERK: Then, my lords, my final meeting is that of the South African Congress of Trade Unions, a meeting at Kliptown, referred to on pages 48 and 49 of my notes, and Sgt. Schoeman and Hattingh reported this meeting. Schoeman reported and speeches were identified by Sgt. Hattingh. 20

Masina was chairman at this meeting . . .

RUMPF J: Well, we know the particulars of this meeting. A song was sung 'Burn the passes' and the other speeches we know. We've been referred to that more than once. 25

MR. VAN NIEKERK: As your lordship pleases.

RUMPF J: What is your submission there?

MR. VAN NIEKERK: My submission is that this meeting supports the Anti-Pass campaign - it is an attack 30

on the Government, with a suggestion that freedom will not 1  
be asked for but obtained by violence if necessary. It  
further supports the Liberatory Movement . . .

KENNEDY J: If you'll just take us through a bit  
slower, Mr. van Niekerk - this submission about freedom  
will not be asked for but obtained by violence if neces- 5  
sary. Could you refer us to the relevant part?

MR. VAN NIEKERK: My lord . . .

KENNEDY J: I know we've dealt with it before but I  
just want to deal with it in relation to this submission.

MR. VAN NIEKERK: At page 49, my lord, it refers 10  
to: "We have gathered here this morning because of that  
urge for freedom. Every sitting of Parliament we have seen  
these low bastards in Parliament coming out with new Acts,  
to stop this upsurge of the people for freedom. I say,  
whether you pass laws in Parliament or not, when you passed 15  
the Suppression of Freedom Act, the people who are here  
are the people who are going to get freedom." "Why do they  
pass all those kinds of laws to stop them?....."

RUMPF J: Don't read the whole thing; just what  
do you want us to look at? Is it at the bottom, at the end? 20  
"Anybody who stands in front of us, we shall push him..."

MR. VAN NIEKERK: Slightly higher up, my lord;  
"We say you can do what you like, man, but freedom shall  
come. We are not going to ask you for it. Anybody who  
stands in front of us, we shall push him aside. We demand 25  
it. To freedom we shall go. In the name of the Liberation  
Movement of the People of South Africa." I rely on that,  
my lords.

It further supports the Liberatory Movement,  
my lords, and it is respectfully submitted that these 30  
activities prove the adherence of the accused to the

conspiracy and his hostile intent." 1

I now come to the Overt Act No.2, page 64; The accused Masina attended the Conference of the Congress of the People . . . ."

RUMPF J: You have set out the identification; you say that he addressed the conference. 5

MR. VAN NIEKERK: Lollen was also there, my lord, and he addressed the Conference.

RUMPF J: He moved one of the items according to page 65.

MR. VAN NIEKERK: That is correct, my lord. And the next Overt Act, my lords,, page 66, is the overt act of the Freedom Charter Committee on the 18th day of September . . . . 10

RUMPF J: Same as before.

MR. VAN NIEKERK: Yes, my lord, the same as before. 15

KENNEDY J: Did this accused speak at this meeting?

MR. VAN NIEKERK: He spoke at page 73, after Sejake, my lord.

KENNEDY J: And you follow the same argument as you submitted in regard to the last accused? 20

MR. VAN NIEKERK: I follow the same argument, my lord.

KENNEDY J: Because he attended, and because he spoke and because he did not disassociate himself with what was said, therefore he is deemed to have associated with it. Is that what you say? Because you say he associated himself with what was said. I take it it is the same as with Levy. 25

MR. VAN NIEKERK: As your lordship pleases.

KENNEDY J: Is it the same with regard to Masina? 30

MR. VAN NIEKERK: It is the same, my lord, that he 1  
did not associate himself with these speeches, but  
that he expressed a view as to what is described as a  
change from the system of exploitation existing in South  
Africa to a system where there is no exploitation. . . .

My lords, Overt Act No. 4: This is the meeting 5  
of the Freedom Charter Committee - the Congress of the  
People Anniversary.

RUMPF J: According to page 85 he addressed the  
meeting.

MR. VAN NIEKERK: He addressed this meeting, my 10  
lords.

RUMPF J: He was also the chairman, wasn't he?

MR. VAN NIEKERK: He was, my lord. My lords, I am  
going to deal with this meeting again, and if I may do so  
tomorrow morning? 15

RUMPF J: What do you want to do?

MR. VAN NIEKERK: Your lordship has asked me in  
the case of Levy to reconsider my submissions on this  
meeting.

KENNEDY J: Only in regard to one, (c) or (d)... 20  
Where are your submissions on this meeting?

MR. VAN NIEKERK: Page 92, my lord. "At this  
meeting under the presidency of the accused, L. Ngoyi  
denounced the pass system and combines the passes with....."

RUMPF J: Your submission is on page 93. 25  
It is submitted that at this meeting a change of state to  
be obtained by violence was propagated....."

MR. VAN NIEKERK: As your lordship pleases.

KENNEDY J: And is that what you are going to  
re-consider also in conjunction with . . . . . 30

- MR. VAN NIEKERK: Well, its the same point that  
your lordship asked me to re-consider in the other case. 1
- KENNEDY J: With regard to Levy.
- MR. VAN NIEKERK: It will be in regard to Levy and  
Masina, my lord.
- KENNEDY J: We can leave that over until you have 5  
re-considered it.
- MR. VAN NIEKERK: As your lordship pleases.  
My lords, then Overt Act No.5, is the West Street meeting  
of the African National Congress on the 22nd November,1956,  
And my submission - - my lords, this meeting has been re- 10  
ferred to over and over again . . .
- RUMPF J: Does your identification appear at page  
95?
- MR. VAN NIEKERK: My identification appears at  
page 95, my lord..... 15
- RUMPF J: Just a moment; what does this mean,  
Ngcai, page 8184, gives readings of Masina's speech?
- MR. VAN NIEKERK: My lord, this was a voice iden-  
tification.
- RUMPF J: Well, did Ngcai say he knew the voice 20  
of accused?
- MR. VAN NIEKERK: Ngcai said he knew the voice and  
he identified that voice, my lord.
- RUMPF J: On the tape?
- MR. VAN NIEKERK: On the tape recording, my lord. 25
- RUMPF J: And Diedericks?
- MR. VAN NIEKERK: There seems to be an omission  
there, my lords.
- RUMPF J: Just before you go on, Diedericks,  
page 8197 gives . . . words. 30



MR. VAN NIEKERK: It's Q words . . . your lordships 1  
will remember when the witness gave evidence he used  
some Q words; that was given and then he said 'From then  
on to that part this is the voice of Masina'.

RUMPF J: Yes, and page 8147, gives speech?

MR. VAN NIEKERK: Didericks gives the full speech, 10  
my lord, at page 8147 of the record.

RUMPF J: Yes. Is the name Masina mentioned  
on this tape recording of this meeting?

MR. VAN NIEKERK: My lords, I'll just check . . .

RUMPF J: Is the only evidence of the identifica- 15  
tion the evidence of Ngcai who identified the voice on  
the tape?

KENNEDY J: In other words there is nobody who  
says, who makes a reference to Masina?

MR. VAN NIEKERK: No, my lord. 20

RUMPF J: There is no mention of the name Masina  
in any of the speeches?

MR. VAN NIEKERK: If your lordship will just bear  
with me.

RUMPF J: Well, in one case the speaker, accord- 25  
ing to the tape, said Mr. Nokwe said . . . the name Nokwe  
was mentioned. That's what I want to know; is there  
no speaker who referred to the name of Masina?

KENNEDY J: Just look through the evidence.

MR. VAN NIEKERK: My lords, the record page is 30  
8143.

RUMPF J: Anyway, will you look that up at a  
later stage.

MR. VAN NIEKERK: There are two points, my lord;  
the one is - I am under the impression that Masina was 35

mentioned by name, and the other is that Resha, at page 17061 of the record, stated that Masina attended that meeting as a top executive.

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RUMPF J: Where is the reference to that meeting? To that speech?

MR. VAN NIEKERK: Page 17061, my lord. . . . that Masina was mentioned by name and the other is that Resha at page 17061 of the record stated Masina attended that meeting as a top executive, my lord.

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RUMPF J: Where is that mentioned in your heads of Argument, if it is mentioned?

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MR. VAN NIEKERK: Page 2, my lord, under membership. I thought I had included it, my lord, in this identify on page 95, but . . .

BEKKER J: What does 17061 say? Your Head of Argument D.

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BEKKER J: Does Resha say he is a top executive or that he attended the meeting as a top executive?

MR. VAN NIEKERK: I'll just check, my lord. I read from 17061: ("Q) Now can you give me the names of the people who went there....."

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RUMPF J: Who went there?

MR. VAN NIEKERK: This is referring to the meet page 17058, my lords. ("Q) I want to ask you about your evidence on this meeting of the 22nd November, 1956, at West Street", and then, my lords there are certain questions put to him on page 17060; he refers to executives from Moroka West, Moroka East, Moroka Central, and then on page 17061 he is asked ("Q) Who were the officials?-- (A) Mr. Moretsele was there; Nkademing was there, Mr. Mathole was there, Mr. Mhlela, Mr. Nokwe, Mr. Masina and

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maybe others, I cannot remember now." 1

("Q) Are they members of the Transvaal Executive?-- (A)  
Some of them are, yes."

("Q) Now, Mr. Shope, do you remember him?-- (A) I know Mr.  
Shope; I think he was there...." And then he goes on  
and he says . . . 5

RUMPF J: Yes, that deals with that. Where do  
you get this from in (d) at page 2, he is a top executive,  
he attended as top executive? Resha, page 17061.

MR. VAN NIEKERK: My lord, . . .

RUMPF J: For purposes of this particular point 10  
do we delete that or not?

MR. VAN NIEKERK: Will your lordships allow me to  
give your lordships the correct reference because it is  
not on page 17061, but it is in the record.

RUMPF J: Very well, give it to us tomorrow morning. 15

MR. VAN NIEKERK: As your lordship pleases.

RUMPF J: Well, subject then to the one overt act  
that you'll still deal with, is this your argument on this  
accused?

MR. VAN NIEKERK: That concludes my argument on 20  
this accused, my lord, subject to these two points that  
I ask leave to clear up tomorrow morning.

RUMPF J: Yes.

MR. VAN NIEKERK: On the witness Masina there is 25  
further argument, my lords, by Mr. de Vos.

MR. DE VOS: May it please your lordships, I submit  
that in the case of this accused your lordships may also  
further take into consideration the Communist aspect of  
his activities and on this particular point I have pre- 30

pared a summary of Argument, copy of which I now hand to your lordships.

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My lords, I have appended the submissions about this particular accused to the Summary of Argument. First of all I submit, my lords, that this accused concentrated on organising the Trade Unions as a form of mass organisation of great importance for the implementation of the Communist doctrine of revolution.

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(b) That this form of mass organisation is submitted to be a complement for the mass action as propagated by the National Organisations, for instance the A.N.C., with the emphasis in accordance with the Communist doctrine placed on organising the oppressed National groups against the imperialist-capitalist oppressors, and their State.

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(c) That in the case of Masina he was not only prominent in the A.N.C. but more especially as general-secretary of SACTU where the emphasis fell on the worker and employer contradictions, leading to the inevitable overthrow of the Capitalist State.

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My lords, I do not wish to separate these two forms of mass action and mass organisation into separate compartments. In fact Masina's case itself illustrates to what extent they coincide, but I merely show the emphasis was more in the one case, in the case of the organisations constituting the National group - it fell more on the one aspect of incitement of the masses, and in the case of Trade Unions which Masina dealt with the other aspect is more particularly, not exclusively emphasised.

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My lords, it is therefore submitted in section 2

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of my submissions that this accused, acting as general secretary of S.A.C.T.U propagated the Communist doctrine especially by propagating the Communist concept of class struggle, particularly in relation to conditions in the Union; (b) That he propagated the Communist method, especially in relation to the mobilisation of the workers in anti-reformist trade unions, which were intended ultimately to clash with the State, and (c) he aimed at the achievement of a Communist State in the Union, and (d) he propagated the idea of a violent revolution as an inevitable pre-requisite for the establishment of a Communist State.

My lords, I refer first of all to page 1 of the Summary of Argument, to what is self said - the speech is already quoted, my lords . .

KENNEDY J: Is that the complete reference? Dealt with by Mr. van Nijkerk a few minutes ago?

MR. DE VOS: My lords, I did not purport to give here the complete reference in my summary; it's a reference to what has been dealt with by Mr. van Nijkerk; this particular speech was more fully dealt with by Mr. van Nijkerk.

KENNEDY J: Well, what Mr. van Nijkerk said, is that all that was quoted?

MR. DE VOS: My lords, that's all . . .

KENNEDY J: Because we didn't know what it meant.

MR. DE VOS: My lords, from my point of view, from the point of view of the argument on Communism it's a favourable reference to the revolution in China. . .

KENNEDY J: Why?

MR. DE VOS: He, as a man - as appears from the rest

of the record very fully - who was active in the Liberatory 1  
struggle in the Union - very active indeed - - -

KENNEDY J: I don't understand this, 'is a favour-  
able reference to the revolution in China' if this repre-  
sents the complete reference.

MR. DE VOS: My lords. . . . 5

KENNEDY J: As Mr. van Niekerk said it was.

MR. DE VOS: My own recollection of it is not that  
it is a complete extract, but it's just a part - one part  
of the speech which has been extracted here, but I'll find  
your lordships the correct, the full speech, in a minute. 10

RUMPF J: Does it matter . . .

MR. DE VOS: That is so, my lord; that is all -  
the only point I wish to make there.

RUMPF J: Just go over to B.

MR. DE VOS: There is a further speech here, 'In 15  
a place like China the people are free because they had to  
fight for their freedom. I say we must go forward to our  
freedom'. That was a further reference . . .

KENNEDY J: Is that a favourable reference?

MR. DE VOS: Yes, my lord, in my submission it is. 20  
He says first of all 'In places like China the people are  
free because they had to fight there for their freedom; I  
say we must go forward to our freedom'. My lords, it's a  
clear link in my submission of the liberatory struggle in  
the Union with the liberatory struggle in China. I don't 25  
put this particular submission higher than just favourable  
reference to the revolution in China, my lords.

Then, my lords, I submit that he accepted the  
Communist concept of class struggle and class division and  
denounced Capitalism, emphasised the role of the working class 30

struggle against Capitalism and Imperialism, and the need  
for working class rule. I refer very briefly here, my  
lords, to the Freedom Charter Committee meeting where he  
spoke. he referred to the duty of SACTU to educate the  
exploited people; he said the future belonged to the work-  
ing class; he said "We should fight to do away with the  
exploitation of man by man; where workers govern there is  
no exploitation", and then he embraces the population and  
says they all belong to the working class - - I think in  
fact he referred to the police in the speech itself, and  
he also added "As long as the workers are unorganised there  
is no freedom", so he puts the organisation of the workers  
as a pre-requisite for the achievement of freedom.

Then, my lords, on the 22nd November, 1956, he  
referred again . . .

KENNEDY J: By saying that you submit he accepted  
the Communist concept?

MR. DE VOS: My lord, certainly I submit that all  
this has to be taken in consideration as part of the total  
picture, which will be further elaborated when I come to  
the lectures for which I will submit he was personally also  
responsible, and with which he was very personally inti-  
mately connected. This is just building up bit by bit  
the whole Communist background of this particular accused,  
my lords.

He said in the second speech, "All countries  
that happen to be free to-day were freed by the workers",  
a very dogmatic statement, my lords;"people like you;  
even if the Imperialists are fighting wars they are using  
you, the workers, to go and fight those wars; we should  
not allow ourselves to go and fight for the Imperialists,

we are still being exploited by Capitalists in this  
country". My lords, typical extreme Leftist attitude  
- the anti-reformist attitude of the trade unions which  
do not accept loyalty to their own country but consider  
their own country as an opponent, as an antagonist.

My lords, the third lecture refers to May Day -  
it says 'It is wrong and even more it is surrender to  
the Capitalist class and for so long the hated May Day  
- we must strive to take it away from those who have  
won it - forward to May Day 1957". It shows further  
emphasis on opposition to the Capitalist class, my lords.

Then paragraph 3, it is submitted that apart  
from the fact that he was general-secretary of SACTU  
which was responsible for the issue and distribution  
of the ten SACTU lectures in D.37, he had all ten of  
them in his possession, LL.36 to 45, my lords, and I  
refer here to certain ones,, D.31, D.32, D.34 and D.35,  
which were dealt with as SACTU documents Nos. 2, 3, 4 and  
5 respectively.

My lords, on the SACTU lectures furthermore  
I ask the Court to turn to page 7 of the Summary of  
Argument, paragraph 6 where further stress is laid on  
the connection between Masina as secretary of SACTU and  
his activities in connection with the training of people  
and issuing of lectures.

First of all, my lords, there is reference to  
C.1005, Minutes of the 1956 SACTU Conference which says  
'Besides training classes for active Trade Unionists,  
workers must be educated, must be taught that their fight  
is not only for higher wages and better conditions, but for



freedom. The training classes is really the point I refer to there, and according to page 2147, line 14, Masina was present at that particular conference; he there proposed a certain motion on Peace.

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Point 'B', my lords, is the general secretary's report -- my lords, we know who the general secretary was of SACTU - which says, inter alia, "In order to facilitate direction of activities the Management Committee, a sub-committee of four members, was elected to draft, inter alia, a draft syllabus for training of individuals, along the lines of Trade Unionism." My lords, this is in Masina's own report in my submission and then one finds in (D) - skipping for the moment the one (C) - - AM.49, the syllabus itself for the local committee training schools which refers to the lectures, to the ten lectures.

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There is also AM.81, the Minutes of SACTU Local Committee which refers to the SACTU report of the National Training Campaign as being re-read and accepted. There is finally, my lord, the reference TAM.108 - a document found in the possession of Mahlangu who was also a member of SACTU. All these AM. documents were found in his possession. It's the Minutes of a Management Committee of SACTU; there was present L. Masina as general secretary. My lords, that point is not mentioned in the note, but he in fact was present himself at that particular meeting according to the record at that page, and then there is a reference which says "There is a further paragraph on training of new leaders". My lords, that quotation at the bottom of page 7 of my Summary of Argument is not a full one. I ask your lordships to insert behind the word 'training' - training of new leaders." There is a further paragraph

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'Training of new leaders' and then before the word 'lectures' comes in, 'the secretary reported that lectures had been sent to all local committees'. That is in fact a verbatim quotation taken from these Minutes and as contained in the record.

My lords, on page 8 I submit therefore that the inference is inescapable that Masina as secretary and Executive member of SACTU knew and approved of the policy of the organisation to prepare the ten lectures and arrange for the propagation of their contents. (b) That he also knew the Communist orientation and that lecture No. LLM.36 especially propagated the Communist theory of violent revolution, and thirdly that he also set about organising the industrial workers for a determined struggle to overthrow the Capitalist class.

My lords, here I am dealing with the contents of the lectures - of these ten lectures - and I have not in fact dealt with them in any great detail. I ask . . .

RUMPF J: In paragraph 4 you set out some further extracts from the lectures.

MR. DE VOS: Yes, my lord, illustrating in particular, if I may say so, the violent implications of forcible -- the implications of the whole struggle in which Masina was involved.

RUMPF J: Well, we'll go through that in due course.

MR. DE VOS: Yes, my lords; I ask your lordships to note in particular point 'C' on page 3. It refers to forcible overthrow of the old class . . . and reiteration throughout the documents of the violent aspects

of the struggle of labour against capital and against the  
order of society. 1

RUMPF J: Yes, well, we'll go through that.

Where is your next submission, Mr. de Vos?

MR. DE VOS: Page 5, my lords, it proceeds also  
to deal with another lecture, a short history of the Trade  
Union Movement. This one has been dealt with before under  
SACTU documents, my lords. 5

RUMPF J: So is C and D.

MR. DE VOS: Yes, C and D, similarly, my lord. 10

RUMPF J: And page 6.

MR. DE VOS: Page 6, my lords, there is a further  
lecture, D.30, which was not dealt with before. Here is what  
I submit is a fair summary of what is contained in that  
particular lecture. It is also my submission, my lords,  
an emphasis on the anti-reformist attitude of the African  
Trade Union Movement, and the clash between workers and  
capitalists. 15

RUMPF J: And in page 8 you come to 'F'.

MR. DE VOS: These were the submissions, my lords,  
I have shortly dealt with, after dealing with the factual  
link. 20

RUMPF J: And then you deal with the Association

MR. DE VOS: Yes, the South African Society for  
Peace and Friendship, my lords. . . 25

RUMPF J: And you set that out.

MR. DE VOS: It's fully set out here, my lords,  
giving messages, speakers attending meetings and so forth.  
Paragraph 8 refers to some books in his possession, paragraph  
9 shows association with the WFDU and (b) of that particular 30

paragraph refers to his awareness of SACTU's understanding of WFDU in terms of the documents that are quoted there, which interprets the WFDU in the sense of an organisation standing on the other side - - well, on the Eastern side of the two blocs which divide the world.

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RUMPF J: And paragraph 10 deals with LLM. 137

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MR. DE VOS: That is so, my lords - "What Every Congress Member should know" - that is a document that has been dealt with before very often, and paragraph 11, my lords, refers to the possession of SACTU documents - it's really a summary of the SACTU documents found in his possession, which are dealt with more fully previously.

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And, my lords, there are a few other matters I wanted to clear up but if your lordships are adjourning now I could leave those over for tomorrow.

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RUMPF J: What matters?

MR. DE VOS: First of all I wanted to submit a very short summary of argument on Dr. Conco and his evidence dealing with that evidence merely in support of the submission on A.N.C. policy, my lord. Then, my lords, I . . .

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RUMPF J: Was that still outstanding?

MR. DE VOS: Yes, my lord, that was left outstanding; your lordship may remember that this particular procedure . . . .

RUMPF J: If it's outstanding then it's outstanding. So what else did you want to do?

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MR. DE VOS: My lord, I had intended dealing very shortly on the same basis with the evidence of Yengwe and Luthuli; that is to say, on the basis of a reflection of A.N.C. policy in their evidence, to be submitted as to

the Communist policy of the A.N.C; also I wanted to mention very shortly, my lords, certain outstanding points - certain schedules I have to give to the Court; I wanted to hand them in.

RUMPF J: Well, we'll just allow Mr. van Niekerk tomorrow morning an opportunity to argue on those few matters that are still outstanding, and then you can continue.

MR. DE VOS: As your lordship pleases.

(COURT ADJOURNED).

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My Lords, in the case against Masina, I also ask leave to hand in the same argument that I handed in in the case of Levy, and I ask for the substitution of page 92 and 93 of the argument.

MR. JUSTICE KENNEDY :

That is in regard to overt act No. 4.

MR. VAN NIEKERK :

Regarding overt act No. 4, My Lord. My Lord, that is the same argument that I presented in the case of Levy. My Lord, then Your Lordship asked me in Masina's case too, there was a reference on page 2 to "top executive". Your - Will Your Lordship kindly delete the word "~~as top~~executive".

MR. JUSTICE RUMPF :

Are you going back to page 81 now? Overt Act No. 4?

MR. VAN NIEKERK :

The same applies to page 81, My Lord. My Lord the only other question that I can remember that was asked by the Court was how were the volunteers to be used, 50,000 volunteers for immediate service in the Western Areas. My Lord, I thought that this argument - that this matter had been dealt with in argument before, and I was trying to refer Your Lordship to the places in the argument where this had been referred to, but up to the moment I could not ...

MR. JUSTICE BEKKER :

The question was, I think, what does the evidence show, why were they required for immediate service, and was it investigated with Luthuli.

MR. JUSTICE RUMPF :

Didn't Luthuli say that not fifty thousand were wanted for Western Areas, only a portion.

MR. VAN NIEKERK :

He said only a portion were required, but I don't think Luthuli said for immediate...

MR. JUSTICE RUMPF :

Well, the question put to you yesterday was this. Part of the speech, I think, to which you referred, states that fifty thousand are required for use in the Western Areas. The question to you was whether that was followed up, whether the witness was asked, any witness was asked why that would be necessary, fifty thousand in Western Areas.

MR. VAN NIEKERK :

I don't know about that, My Lord. My Lord, then at the present stage I ask leave to refer to the cross-examination on that handwriting of Levy, My Lord, if Your Lordship will allow me I will return to this question later. That concludes my argument for the moment, My Lord.

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