

COURT RESUMES ON THE 15TH FEBRUARY, 1961.

APPEARANCES AS BEFORE.

MR. TRENGOVE :

My Lords, at the adjournment yesterday I was dealing with this meeting of the 6th February, 1955, which on this Annexure starts on page 16, it was the speech of Mqotha. My Lord, I referred to that passage :
..... dark clouds are gathering on the horizon, and stated that the witness explained - the Accused Ntsangani explained that that referred to the Western Areas Removal Scheme, and he says Mqotha successfully conveyed to the public that they were going to resist that. I also referred, My Lords, on that page to the paragraph "I am afraid the oppressor has promised that the river is going to be full of blood before freedom is achieved". That, My Lords, refers to the statement alleged to have been made by the Minister of Justice at some stage or another.

Then My Lords, I refer to page 18, where he deals My Lords with the Bantu Education Act, and in the middle of that page he says "The authorities have told us clearly we have two campaigns which are the Bantu Education and the Removal Scheme". Your Lordship will remember that was the decision taken at the National Conference, confirmed by Exhibit A.37. Then My Lords he refers to the fact that their policy and programme is non-violent, but if man is so drunk with the wine of oppression, if he thinks he sees an African man he is so drunk with the wine of oppression, he thinks

he can hit one blow will be delivered - will be answered by two. He says the temper of the people is rising, and then he refers to their traditional heroes of the past, Hintsa and and so on. Then on page 19, My Lord, it is quite clear that he refers, in the middle of that page, to the Congress of the People which was to be held that year, where the oppressors would be given the final choice, if they want to stay with us in peace they must come and sign their names in the Freedom Charter, we are non-violent but they always think of force, all Africans are taught not to fear, which means, My Lord, that they will not be daunted or balked by any force that the government may use to suppress them. Then he calls for the volunteers to be doubled and he refers again, at the top of page 20, to the decision not to send children to school. He says they must rather thrash their children than send them to school. He says the A.N.C.Y.L. doesn't say that we must thrash, it is only my personal belief, if I see a traitor's child going to school.

My Lords, I respectfully submit that the extraneous facts the Court has show clearly that on these topics this is what Mqotha would have said, and that Your Lordship will accept this as a reliable report of his speech. Then My Lord, we get to the bottom of page 20, to Ntsangani's speech, and Ntsangani's was chairman at this meeting, My Lords. At the top of page 21, he is reported to have said "A traitor commits suicide. Judas Iscariot did the same. The detectives taking notes are the same as Judas Iscariot. When

Jomo Kenyatta decided children must go to school - must not go to school, when the detectives came to investigate this decision was taken. But the people only told them that it was Mau-Mau." My Lord, could I just read that : "The British Government started shooting, and everytime an African died three Whites died. The time is coming when these detectives will be going about trying to find out where the Executive will be held, but they will reap it with bitter experience". My Lords, ^{before} dealing with that passage, could I refer Your Lordships to the record at page 16244, at the top of the page, there the Accused was asked by His Lordship Mr. Justice Bekker : "Well, now this meeting we are busy with, page 9687, the following words are attributed to you. 'The traitor commits suicide. Judas Iscariot did the same. The detectives taking notes are the same as Judas Iscariot. When Jomo Kenyatta decided children must go to school - and when the detectives came to investigate...' - that was the passage in the record. Now His Lordship put this question to him : "Did you refer to the detectives taking notes as being Judas Iscariots? --- Yes, I did".

"Why? --- It has been my belief that the detectives, that is the African detectives who were taking notes, are part and parcel of the oppressed people, more particularly the African people, and I regarded them as people who were doing exactly what Judas Iscariot did".

"Even though they may have been instructed to do so in the course of their duties? --- Yes, My Lord, that is my belief and I conveyed that several times to the people

that they must not worry about the detectives, they themselves would hang, they would hang themselves like Judas Iscariot did."

"And at line 10 it is said that you said 'The time is coming when these detectives will be going about trying to find out where the Executive Committee will be held, but they will reap it with bitter experience'. Did you say that? --- I doubt if I could have said it in those words, My Lord. I may have said something like that, but not in those words. I think it is one of those wrong interpretations."

Then My Lord, at the next page it deals with the meeting of the 20th March, where the same thing comes. Now My Lords, it is quite clear that this man in his speeches from public platforms, to the illiterate masses, held out that the detectives doing their duty - held out that they were Judas Iscariots, and that they would at some stage or another hang themselves as Judas Iscariot did.

MR. JUSTICE BEKKER :

That I understand, but what is this centre passage on page 21 of the Annexure? What does that mean?

MR. TRENGOVE :

My Lords, when Jomo Kenyatta decided the children must not go to school, and when the detectives came to investigate where this decision was taken, the people only told them it was Mau-Mau.

MR. JUSTICE BEKKER :

What does that mean?

MR. TRENGOVE :

My Lords, I could give Your Lordships an explanation of what I think it means, but as it stands here Your Lordships without some speculation can't arrive at that. My Lords, that is not the passage that I am relying on. I am relying on the fact that the passage put to this witness by Your Lordship Mr. Justice Bekker, ...

MR. JUSTICE BEKKER :

Yes, you have made that point.

MR. TRENGOVE :

Yes, but the point that I want to make, My Lords, is that that type of attack on the police, undermining the authority, and holding out the police as traitors, My Lords, that is the state of mind - the state of mind of a man who does that, is the state of mind of a man whose is undermining the state. It is the state of mind of a man who promises that these people who are doing their duty towards the state, they will at some stage or another meet with retribution and reprisal. My Lords, it is not the state of mind of a man who is trying to persuade White people or the government to change their hearts. That is the point. My Lords, it is a point which in Leibbrandt's case was emphasised by the Court of Appeal, though the circumstances were slightly different, that was a time of war, where speeches are being made to undermine the loyalty of the people who are entrusted with the preservation of the safety and security of the state. And this, My Lords, is on the one hand instilling into the minds

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of the illiterate masses, and he himself said, - these are not my words, My Lord, he calls them that, My Lord - instilling in their minds the idea that the police who carry out their duty are traitors and on the other hand, My Lords, it is a threat to police officers there that they will meet with some form of retribution if they continue carrying out their duty towards the state. My Lords, I say it is a sad day when that type of statement is being made from public platforms in respect of police who are trying - who are charged with carrying out their duties. Because, My Lord, it can have no other effect than to undermine the state, and that, My Lord, can only be done - it is entirely consistent with the unconstitutional path that these people were following as submitted by the Crown. They had no other thing in mind but ultimately resorting to force to achieve their aims.

My Lords, the next speech on this schedule, chronologically is the 10th of February, 1954. Your Lordship will remember that that was the day of the removal. It is a speech of Mgotha again. He refers to Bantu Education and Western Areas. He says we have come to the stage of leaving wives and children behind, and he says in Kenya there was a man advising the people, Jomo Kenyatta decided to put their own teachers, and then schools were closed. As a result of that the Europeans started shooting. The Africans then went to the forest, and some Africans remained behind. Now My Lords, I will be referring to Nkalipi's speech this morning, where he also referred to the people going

to the forest., Then in his speech he refers to Mr. Swart and the ban on the Communist Act and the Public Safety Act. Then he refers to the resolution on Bantu Education, and he refers to the Congress of the People which was to be held that year. After June we want freedom in our lifetime, we

He makes the same statement that was attributed to him in the previous speech, about Sandile (?) and his people not knowing where he was buried. And then My Lords, at the bottom of that page there is a reference to the , we are now marching towards freedom, and the time of darkness has come, you must come and join the Freedom Volunteers. Now My Lords, then there is that comment, On Saturday we are going to the mountain. Now in evidence in chief, My Lords, he explained that that phrase going to the mountain, meant that they were going to pray. That was the only comment in chief on the speech of Mqotha. And then Your Lordship will find at page 22 there are two resolutions, in the middle of page 22, where the A.N.C.Y.L. of New Brighton pledges its solidarity with the Africans in the Western Areas, and associates - and dissociates itself with the traitors who betray their people in Johannesburg. And it warns the government that the police patrolling Sophiatown should be withdrawn immediately. It states that in view of the fact that the police - that the people are frightened, this is a police state. Then My Lords, Ntsangani's speech says that nobody is allowed at our meeting to

use abusive language, no matter to whom is referred, even the police, more especially at this hour when we expect the police to raid New Brighton, and we may perhaps have blood flowing the same as 1952. My Lords, in that regard I refer Your Lordships to page 16248, where Ntsangani said that he remembered this meeting, he remembered that he was chairman, he remembered that it was on the day that the people of Sophiatown were being removed. Then My Lords, on the next page, he refers to his own speech, the statement made by him that nobody is allowed at our meetings to use abusive language, and he says yes, this brings back to my mind what I said at this meeting, this speech of his, but not in this way. Then My Lords, he refers to the fact that he told the people not to use abusive language, but My Lords, at that passage Your Lordship Mr. Justice Bekker puts it to him, "If you say people mustn't use abusive language, you have already admitted that you used to refer to the police as Judas Iscariots? --- Well. My Lords, that wasn't abusive language". As far as the rest of the statement is concerned, My Lords, he confirms that he could have made that reference. At page 16250 he deals with the sentence "blood may be flowing the same as happened in 1952", and his explanation is that referred to the fact that the police - we had information that the police would be raiding New Brighton, looking for dangerous weapons, and that they are armed. So the people must be careful of the language they use, because the police would use that as an excuse for shooting. That is his explanation of

that speech.

Then My Lords, the next speech is the 20th of March, 1955, where the Accused speaks. My Lords, he is alleged to have said, after referring to Bantu Education, he is alleged to have said "The leaders of the A.N.C. are leading us day and night. We don't pay them anything. The capitalists do down our nation. Judas Iscariot hanged himself. In the new Africa we don't promise people happiness, before we have achieved freedom blood will be shed. The mothers and fathers and sons of traitors need not worry about mourning dress. The African nation in South Africa is going to act as the Kenya people did to achieve freedom." Now My Lords, he deals with that speech at page 16245 to 16247. That passage that I have just quoted to Your Lordship is put to him, and My Lords also the next passage on page 24 of that Summary - "Mr. Swart before he went overseas said that before Africans could achieve freedom there would be bloodshed". Now in his evidence in chief, My Lords, at 16245, he says - this statement is put to him : "Can you remember if those were your exact words, or do you think they are? --- No, although I can't remember what I said specifically at this meeting, those can't be my exact words". And then he deals with the question of interpretation. Then it is put to him : "You said the African nation was going to act as the Kenya people did and achieve freedom. Do you think those could be your words? --- No, they cannot be my words".

"Why not? --- Because of what I believe happened in

Kenya and I wouldn't advise and encourage people to adopt those methods. Those are the methods in fact which Congress is fighting against." Now My Lords, Your Lordship heard his evidence yesterday, where he said that he believed that the struggle in Kenya was purely a struggle on a political basis, it was purely a political struggle carried on by the K.A.U. And he said that the people were struggling for freedom. Now, My Lord, he apparently at this point said that he would not have told his people to adopt those methods, because he realises that the speech - that speech could have implications of violence. But I respectfully submit, My Lords, that the whole attitude of this witness to the situation in Kenya was so inconsistent that Your Lordships will reject the evidence of that - on that score.

MR. JUSTICE BEKKER :

Just a minute. This was a meeting and there was cross-examination, and the witness agreed that he might not have heard the word "not", - that is Segoni. Well now, if he admits that the word "not" might have been used and he didn't hear it, then what happens?

MR. TERBLANCHE :

I say, My Lords, that Ntsangani wouldn't have said we are not going to do what the Kenya people do.

MR. JUSTICE KENNEDY :

Why didn't the witness say that he did not say it?

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MR. TRENGOVE :

The witness can't remember, My Lords. The only record he had - he said that is why he was allowed to use his notes...

MR. JUSTICE BEKKER :

That makes the position worse.

MR. JUSTICE KENNEDY :

If he just said that, it may have been different. But he went further, he said I won't deny ~~that~~ that is the case.

MR. TRENGOVE :

He can't deny it, My Lords, he has got no recollection.

MR. JUSTICE BEKKER :

Yes, but now my difficulty is this, Mr. Trengove. He records, he takes down notes, and let us assume that he takes it down accurately, and he says we are going to do the same as in Kenya. I would expect the witness to say well, that is what the person said, he did not use the word "not". But having made the point that the speaker said we are going to do the same as in Kenya, and he says well, he wouldn't argue with the possibility that the speaker might have said we are not going to do the same as in Kenya, can you rely on that witness at all?

MR. TRENGOVE :

My Lords, how can he ever say - he can't exclude the possibility of human error. He can't exclude...

MR. JUSTICE BEKKER :

If he takes down a sentence and he hears the sentence, we are going to do the same as in Kenya, and he writes that down, and he refreshes his memory, years later, I would expect the witness to say well, he did not say "not".

MR. TRENGOVE :

If that was said. Now I say, My Lords, that Ntsangani goes into the box and says that was said. I ask Your Lordships to find that Ntsangani didn't say "not", My Lords, because his attitude was that their struggle was exactly the same as the struggle of the people in Kenya . His attitude was th t the people in Kenya were struggling a political struggle, in order to achieve their liberation. So, why would Ntsangani say we are not going to do what the people in Kenya did? We are not going to use the same methods. Throughout, in the African National Congress bulletins their attitude has been all along that they are using exactly the same methods as did the people in Kenya. Their attitude has all along been that the Kenya people are not resorting to violence, and where violence has occurred, it has occurred on the part of so-called Mau-Mau which are government agents. So My Lords, their attitude has not been ...

MR. JUSTICE BEKKER :

Isn't there some witness who drew a distinction or some speaker? The one who said here we still

gather at a meeting, but in Kenya they don't?

MR. TRENGOVE :

My Lords, they say that on these grounds, they say we are also about to lose our right to assemble, just as the people in Kenya lost their right to assemble. But My Lords, their methods - take that article by Makgothi, and it was put to a number of witnesses - boycotts, strikes, retaliation. That article by Makgothi, Facing Kenya, which was in A.M.K. 66, which said said to be consistent with the African National Congress policy, is that in the age of imperialism - the lesson they learn from Kenya is that in the age of imperialism, murder and violence become the order of the day. Not because they say they resort to murder and violence, but because the imperialist oppressor, either engineering it through its agents, or by itself resorting to violent means to crush the people. And My Lords, the witness who said that - dealt with the question of the meetings, he said they would be forced into a position of having to use underground methods even illegal methods to promote their struggle, because openly....

MR. JUSTICE BEKKER :

I agree that those are probabilities that one can consider. But the fact of the matter is the Crown witness said, or conceded that the speaker might have used the word "not". How do you deal with that? You say that despite that concession....?

MR. TRENGOVE :

No, My Lords, I respectfully submit that

Your Lordship can't deal with it in that matter and say despite that concession we still...

MR. JUSTICE BEKKER :

The probabilities are these...

MR. TRENGOVE :

Your Lordships will have to satisfy Your Lordships, is Ntsangani speaking the truth when he says, when he made that reference to Kenya, he says we are not going to use the same methods. If Ntsangani spoke the truth, if Your Lordships are satisfied, then of course that note cannot be accepted. If Your Lordships are not satisfied that he spoke the truth, Your Lordships will accept what the witness said. And that is why, My Lord, I have been dealing up to a certain point with the credibility of this man Ntsangani and what he said at these meetings, what his attitude was. If Ntsangani didn't go into the box, and if this witness had conceded that he could have said "not", and Your Lordships were not able to judge the credibility of Ntsangani, that would have been left in the air. But now Your Lordships are faced with the statement ...

MR. JUSTICE BEKKER :

Is it a question of credibility or reliability?

MR. TRENGOVE :

Well, his credibility and Segoni's reliability. It is not, My Lord, as though the matter has been left in the air. Segoni goes into the box, and says that is what I said. I say My Lords, in the light of his attitude towards the struggle in Kenya, that is

not what he would have said. What he would have said is what Segoni reported. My Lords, but apart from that, apart now from that statement about Kenya, Your Lordships have here again this reference to the Judas Iscariot who hanged himself, and in the new Africa we don't promise happiness before we achieve freedom blood will be shed. The mothers and fathers and sons of traitors need not worry about wearing mourning dress. Is it - it is another reference, My Lords, to an attack on traitors, on people who don't agree with them as being traitors. My Lords, that position that Your Lordships find on the 21st March, that warning to traitors is repeated in the meeting of the 1st of May, which Your Lordship finds on page 24. Before I deal with that, My Lords, the other references in the speech, Mr. Swart before he went overseas said before Africans achieve freedom there will be bloodshed - that Your Lordships can accept as a correct reporting, he said he repeated that theme in a number of speeches and that was also said at this meeting.

MR. JUSTICE BENKER :

As referring to shoot and talk afterwards?

MR. TRENGOVE :

No, there were two statements that the Minister of Justice made. The first is that the police were instructed to shoot first and talk afterwards. The other statement the Minister of Justice is alleged to have made is before the Africans achieve freedom, the rivers will be full of blood. And those two statements were referred to from time to time.

MR. JUSTICE BEKKER :

What I want to know is, where this witness says 'I said that before the Africans could achieve freedom there will be bloodshed, that refers to the alleged statements made.....'

MR. TRENGOVE :

I am referring, My Lords, to the top of page 4, where he said 'Mr. Swart, before he went overseas, said that before Africans could achieve freedom there will be bloodshed'. That is the statement that I am referring to.

MR. JUSTICE KENNEDY :

Yes, but as my Brother Bekker points out, I think this witness or one of the witnesses says this phrase was used by the African National Congress because of the professed views by the Minister.

MR. TRENGOVE :

Yes, My Lords, I don't deny that. I don't deny that that is their explanation, except - I don't accept that the Minister of Justice said it.

MR. JUSTICE KENNEDY :

Was it this witness, do you know?

MR. TRENGOVE :

This witness, My Lord, said that these two statements were according to his knowledge - are reported to have been made and that is why on a number of occasions at public meetings he repeated that statement. My Lords, I respectfully submit that the effect of that statement is that they knew very well that the struggle that they were going to be involved in as far

the government is concerned, there was not even at this stage, in 1955, a change of heart, that the attitude of the government was hardening, but that notwithstanding that they were proceeding with their mass campaigns for illegal action.

MR. JUSTICE RUMPF :

Mr. Trengove, what did he say he thought the Minister had said about the rivers full of blood?

MR. TRENGOVE :

My Lords, there are two statements.

MR. JUSTICE RUMPF :

Yes, the one about the police shooting first and talking afterwards I am not concerned with at the moment, I am concerned with the other one.

MR. TRENGOVE :

The other one, My Lords, - I will give Your Lordships the reference now when I deal with the meeting of the 1st of May, where he explains that he would have been referring to statements alleged to have been made by the Minister of Justice, at page 16246/247 of the record. My Lords, this meeting of the 1st May, 1955, where he refers to the government - Bantu Education, and then said, The government wants to make us believe that capitalists are the only people to lead nations, and he says that they see the present government is capitalist. Then he refers to the Bantu Education, and the boycott, and then he refers, at the top of page 25, to "today those men are standing across the streets away from the meeting". Then you have a note, "He then quoted from the Bible, Judas Iscariot. Judas Iscariot found that he

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was a traitor and committed suicide. We must not worry ourselves about traitors. The A.N.C. plainly tells you that no violence will be used. As from today no man will again come out and challenge the decision of the A.N.C. In the A.N.C. we have not been taught to use abusive language. As from today, we as members of the A.N.C. will never abusive Mayekiso's name. This Bantu Education worries us a lot". Then he refers to Bantu Education and the Congress of the People, and he says "There are only two armies in this country, on the righthand side is the A.N.C. led by Chief Luthuli. On the left hand side, led by Strijdon, Nat. army.

Lefthand side army has taken some of our people to its side. It is obvious that in the future Africans are going to rule this country. The army led by Luthuli is passive. I want to tell the traitors that there are a few days left before the 25th and 26th June, 1955, and I call upon them to come to our side before the river is in flood. Mr. Swart is giving instructions to the police to shoot first and ask afterwards, and also said that before the Black people get their freedom, all the rivers of this country will be full of blood, and in our reply we say, if it is necessary for hundreds of people to die before freedom is achieved, it is alright. You must know that the chairman who has held this meeting is going to be arrested for holding this meeting, and I call upon you to give your shillings. In Kenya the Mau-Maus have listened to Stevenson of America who tours about the country. In Kenya there are no more public meetings attended by detectives. The time is

coming in this country when nobody will know where we hold our meetings. In a letter the Mau-Mau say that they are not up for war but they are defending themselves, and if on their defence one falls on his back and dies, they are not responsible. The British and Nat. government have been threatening to destroy the Mau-Mau in Kenya, but in vain. We must remember we are going to attend the Congress of the People which will decide, and we must also remember Masabala, Dingaan and others." My Lords, that was referred to firstly in the evidence in chief at page 246, where that statement - I am sorry, My Lords, page 16246, where that statement 'I want to tell the traitors there are a few days left, and Mr. Swarthas given instructions..' that is put to him. At 16247 he is asked, "Can you remember this speech at all? --- Yes, this record brings back to my mind some of the things I said at this meeting." Then he is asked, "What would your reference in the passage I have read been to? To what would you have been referring? --- I would be referring to the two statements which were made by the Minister of Justice, Mr. Swart, instructions to the police to shoot first and ask afterwards".

And then His Lordship Mr. Justice Kennedy says :

"The same as that to which you already referred previously? --- Yes, My Lords, two of them in fact".

Then My Lords, at page 16270, dealing with his speech, His Lordship Mr. Justice Kennedy refers this witness to the line "I want to tell the traitors there are a

few days left before the 25th and 26th of June, 1955, and I call them to our side before the river is in flood". His Lordship says, "Does not that suggest that the other passages already referred to mean that you regard traitors as in existence when those speeches were made, and not in the future". That, My Lords, refers to the other speeches at the same meeting. Then the witness says : "My Lord, confining myself to this portion alone appearing in this speech, that is, I want to tell the traitors there are a few days left before the 25th and 26th June, 1955, and I call upon them to come to our side before the river is in flood, here again, My Lords, this portion does not suggest to me anything other than saying those of us who would betray the cause for which we stand, must come to our side before it is too late. In other words, they must return". And then he says, "And here I must say again I was speaking in Xosa. I think that is what I said at this meeting. I am not sure. Yet as I was speaking in Xosa, I think I used here again a language which probably the gentleman who was reporting this meeting, could not understand".

And then His Lordship puts it to him "Do you suggest that you didn't use the word 'traitor'? --- No, I used the word traitor. In fact I often used it".

The Crown asks him : "Did you tell the traitors to come across before the river was in flood? --- Yes, I was conveying this in Xosa, that they must repent and come to our side, they must follow us." "They will be tried in the new Africa? --- No, no, I didn't suggest that." "Why this warning to traitors? --- Yes, it is written as

a warning, whereas when I conveyed this in Xosa, it is not a warning at all".

Then it is put to him well, does he suggest that it is a friendly invitation? "Yes,", he says, "It is a friendly invitation. Those who are betraying us must repent".

Then My Lords, he is referred to the article in Isizwe, and then at 16272.....

MR. JUSTICE BEKKER :

Is it that article, Murder will Out?

MR. TRENGOVLE :

Yes, My Lord. Then after having been referred to that, with which he says he didn't agree, it is put to him "I say it is the same type of thing that Mayekiso and Mkwai were propagating from that platform? --- I don't agree".

"Why not? --- Because Mayekiso, Kwayi, myself and others spoke clearly on this subject, because we knew for a fact that the A.N.C. never discussed such things, the trying of certain people. We were inviting them to repent and come to our side." His Lordship Mr. Justice Bekker : "Repent from what? --- From their wrongdoings, My Lord". "What wrongdoings? --- Spying activities on the African National Congress, My Lords". His Lordship continues : "Well, now as I understand the position, you all knew the people were there. They were **members** of the security branch taking notes? --- No, My Lord, this was a reference to people we did not know who were planted within Congress, apart from the C.I.D. and so on". "But you referred to the C.I.D. as traitors?"

--- Yes, I referred to them as being Judas Iscariots".

"Yes, well, that is a traitor. He was a traitor, wasn't he? --- I was specifically referring to the C.I.D. My Lords".

"You regarded the C.I.D. as traitors? --- Yes".

Then the question is put to him :

"Now I am trying to find out why you regarded the C.I.D. as traitors. As I understand the position you knew they were members of the Security Branch, you knew they were taking notes. You knew they were doing it in the course of their duties, whether they like it or not they had to do it. You had nothing to hide, well now, why are they traitors? --- In my opinion they were traitors because they were part and parcel of the oppressed nations. In other words, they did not differ from me or the next man, so therefore they could be of great use to us if they would join our cause, if they would come out and fight with us rather than the job they are doing".

Then he is asked about that again, and he repeats that he regards them as traitors. He rejects the suggestion that they were being threatened with reprisals.

Now My Lords, I respectfully submit that his explanation of what he meant when he attacked people as traitors, when he attacked them as Judas Iscariots, when he made the statement that they would commit suicide, when he told them that there were a few days left to come to their side before the river is in flood, where he couples that with Mr. Swart's instruction that before freedom is achieved the country will be full of

blood, My Lords if he admits that he said those things, I say, My Lords, in the context, the speech has been properly reported, and Your Lordship will accept that that is nothing else than a threat of reprisals to people who did not agree with them, and entirely inconsistent with the alleged policy of non-violence and ultimate constitutional reforms.

Now My Lords, at that same meeting, every other speaker that spoke followed the same theme. Your Lordship finds Mayekiso is reported to have spoken, page 26, and then My Lords at page 27 after referring to the fact that people must be determined, and they must be ready to die for freedom, and we won't force matters, but we are going to fight together with Europeans, Indians and Coloureds, and so on, he goes on to say at the bottom of that page : "In the new Africa spies will be dealt with accordingly. Among Europeans during war-time any spy was charged and sentenced to death. We are not going to do that now, but in the new Africa. Let us build anew Africa which will be governed by the people!" And then he concludes his speech, My Lord, page 28, with the statement, after referring to Mahlaba and the Defiance Campaign, he says "If it is necessary to die, in order to achieve freedom, I shall be satisfied. All people present here are determined to die and those who are scared of death must go and keep themselves in their houses." Then Mkwai, My Lords, also talks of the march to the new Africa, he talks of the Congress of the People, people on school committees being traitors, and then he says, My Lords, at page 30, at the

bottom of page 30, he says "We are going to fight the government without fighting. We are going to demand things. I want to say a few words as regards the boycott of schools". And then he talks of the boycott of schools, and the Suppression of Communism Act. And then at the top of page 31, he says, My Lords, the only hope of the government is the gun. But we are unarmed and we are marching towards freedom. The time is coming when we shall march towards freedom and answer or face anything that comes in front of us. Freedom will never come by itself, but we shall fetch it. I want freedom volunteers who will obey their orders. Chaka, the Zulu King, foresaw the arrival of Europeans in this country through the vision, God is above. The traitors will face a trial in the new Africa. The A.N.C. will deal with them. You must see that we organise people all along the streets for the Congress of the People, and the A.N.C., and it is your duty to come back and report". Then he talks of volunteers. My Lords, I respectfully ask Your Lordships to find that that report, in view of the concessions made by this witness, is reliable and Your Lordships will accept it.

My Lords, having dealt with the meetings, could I ask Your Lordships now to refer to the analysis of the evidence of this witness at page 9, where the meetings are dealt with in the order in which they appear in the record, and My Lords, where we have summarised the admissions made by this witness in regard to the meetings, with which I have dealt. My Lords, I respectfully submit that although it is the

Crown's attitude that by extraneous evidence Your Lordships can accept the reports of Segoni so far as they concern this witness, whatever Your Lordships may find about that reporting, the facts recorded here are admissions that he made in respect of these meetings and stand, My Lords, as facts admitted by him and are not effected, My Lord, by any other consideration. I say, My Lords, that Your Lordships will have regard to these facts not only in assessing his state of mind, but also his adherence to the conspiracy. I say, My Lords, this repeated reference to the tin of paint, blood will be shed, Judas Iscariots, traitors, the river being full of blood, all that type of thing, My Lord, is entirely inconsistent with a man who had any thought of ultimate constitutional reform.

Then My Lords, at page 15 of the Summary, we have set forth a number of meetings that were not referred to by the witness in his evidence. My Lords, I don't want to take up Your Lordships' time with those meetings. The first is the 7th February, 1954, where he acted as an interpreter, the only fact that we rely on there My Lords is the question of volunteers was discussed at that meeting, By Nyere (?) and Njongwe.

My Lords, the next meeting on the 20th March, 1954, we have no comment to make on the meeting at all, just to point out that again he acted as an interpreter. The meeting of the 10th April, 1954, it is Mredlane's meeting, no comment except that according to Mredlane, he referred to the 1952 riots which arose out of the stealing of a tin of paint, a matter which

he himself admits he referred to on a number of occasions. Then My Lords, the 26th and 27th of June, 1954, the point that we rely on there, My Lords, that Conference has been dealt with fully, but at the second session of the Conference Ntsangani acted as Chairman, at that A.N.C.Y.L. Conference, Your Lordships will remember that that was a Conference where Resha was elected in the place of Matthews as Deputy President of the A.N.C.Y.L. We have referred to his speech already, that is a meeting at which Mkwai said when Jomo Kenyatta comes out of gaol we will have our freedom by 1957, and My Lords, there are a number of resolutions there, page 9649, at that Conference dealing with matters such as the Western Areas, the fight against fascism and Bantu Education and so on. My Lords, the fact that we rely on is that at that Conference this man played a prominent part, and it was a National Conference of the A.N.C.Y.L. where he was elected.

The next meeting, My Lord, is the 28th of November, 1954, where we quote a passage from his speech, My Lord, and Your Lordships will see he refers to the Volunteers, the Congress of the People Campaign, and Bantu Education, and the report also states that he actually recruited volunteers at that meeting. We say My Lords, at that meeting, there was a resolution on Bantu Education and the Removal Scheme.

The next meeting, My Lord, is the 23rd of January, 1955, where he was again Chairman, and we rely on - he spoke on Bantu Education, he dealt with the freedom struggle, My Lords, and being 1955 he referred to

the fact that this is the last year of the Nationalist Party to strengthen the fascist government, and he would probably have said this brutal, vicious government, he wouldn't have used that word unless he perhaps interpreted the speech himself. Then My Lords, Mahluhlu spoke under his chairmanship about the Western Areas Removal Scheme, and refers specifically to the date, Saturday the 12th.

My Lords, the next meeting is the 27th of March, 1955, where we have the speech of the Accused on the capitalist government, he deals with Bantu Education, he deals with the Congress of the People, and that the Congress of Democrats are working with them. Then My Lords, the 17th of April, 1955, Your Lordships find that he was again chairman, he referred to Bantu Education, he referred to the Congress of the people. Then My Lords, the second half of that page, after a speaker Kepe, the chairman made a comment, and his comment was, referring again to this statement, "Mr. Swart and Rademeyer, the Commissioner of Police threatened the leaders, and Mr. Swart said in his speech that before Africans get freedom all the rivers in this country will be full of blood". Your Lordships can accept that that is a reliable report, and to that extent he said that it is a matter to which he referred. And then he refers, My Lords, finally to the Congress of the People, in reply to all these things, at the bottom of that page, the people will get it on the 25th and 26th June - the government will

get it on the 25th and 26th of June, that is My Lords of course referring to the Congress of the People. Then there is a meeting of the 15th of May, ^{1955?} 1954, where we rely on a speech by Mini, page 9725, where Mini referred, My Lords, in his speech - he is reported to have said there is no nation that achieves freedom without youth and therefore it is our duty to carry out our duties, Mr. Swart said that if the Africans want freedom the rivers of this country will all flow blood. I, Mini's son, volunteer to be the first sacrifice to have my blood flow in these rivers in South Africa. Then he also refers - I want those taking notes - to the cowards, I want those taking notes to be cowards no more. The reference to cowards. Then he refers once again to the statement attributed to the Minister of Justice.

And then, My Lords, the 10th July, 1955, Accused spoke against Bantu Education, and then My Lords we have a list of meetings where we merely rely on the fact that the Accused spoke at them. That evidence was led, the evidence for the Crown, and subsequently does not really become relevant, because he admits that he spoke and attended practically every meeting.

Now, My Lords, we finally come to the submissions, as far as this witness is concerned, the first overt act alleged against him was the conspiracy. Now My Lords, I will ask Your Lordships to find on all the evidence, his own evidence, plus the evidence of meetings to the extent that Your Lordships rely on it, on all the evidence, as proof of his hostile intent.

I say, My Lords, respectfully, that this man had this hostile state of mind, a state of mind which we explained in our argument, what hostile intent is, the state of mind against the state, with the object of achieving a fundamental and radical constitutional change, in the light of what he said indeed Your Lordships will find that that hostile intent - he wanted to undermine the safety and security of the state, and Your Lordships will find that proved beyond reasonable doubt.

As far as the conspiracy itself is concerned, My Lords, we submit that on his own evidence apart from anything else, on his own evidence, the fact that he admitted, as set forth in this analysis of evidence, the fact of his position, his part played in the Defiance Campaign, his attitude towards the state and the Freedom Charter, the unconstitutional methods, the role he played in African National Congress activities, on all that evidence Your Lordships will find that on his own admission, the overt act of conspiracy has been proved beyond any doubt. So that, My Lords, in his case, Your Lordships will accept that the two witness rule doesn't even apply, because if the facts admitted satisfy Your Lordships that he was in the conspiracy, that is admitted by him the section in the State is of no application at all.

My Lords, as far as the meetings are concerned, we rely My Lords on two meetings, although four have been quoted, five have been quoted in our Indictment, but we rely My Lords for overt acts particularly only on two. That is firstly the meeting

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of the 6th February, 1955, the meeting at Veeplaats. My Lords, I have given the references in the record, I will be referring Your Lordships to those. In the Annexure Your Lordships will find that meeting at page 16, meeting No. 7.

MR. JUSTICE KENNEDY :

And are these overt acts 4(b)(iii)?

MR. TRINGOVE :

My Lords, the overt act of the 6th February, 1955, is 4(b)(iii). Now My Lords, the portion quoted, the overt act, is firstly the portion of the speech of Mqotha, "The dark clouds are gathering on the horizon and the day of reckoning is not far. Saturday the 12th is going to mark...", now My Lords that part of the overt act is dealt with in his evidence at page 16239 and 12640/41. Then the other part of the overt act where Mqotha says "I am afraid the oppressor has promised that the river is going to be full of blood", that My Lords, is dealt with in the evidence at page 16237. I respectfully submit that if Your Lordships read that with the evidence of Ntsangani himself, that that overt act has been proved and in fact has been admitted by him.

The next overt Act My Lord is that of the 1st May, 1955, a meeting of the 1st May, 1955. That is also 4(b)(iii), and there, My Lords, the 1st of May, we rely on the speech of Mayekiso, but My Lords more particularly on the speech of the Accused himself. That portion quoted in Schedule C of the overt

act, "I want to tell the traitors there are a few days left before the 25th and 26th of June", the portion My Lord which he dealt with in his evidence at page 16247, and in cross-examination at 16270/71.

I say My Lords, that these overt acts, apart from the evidence of Segoni (?) that they have been proved. I say that Your Lordships will find that those speeches were made with the hostile intent and in pursuance of their struggle for liberation, and that they are overt acts proved as alleged in the Indictment. My Lords, there is no further argument as far as this Accused is concerned, and I ask Your Lordships to find that the Crown has proved its case against him.

My Lord, the next Accused is Accused Nkalipi, No. 23. Your Lordship will remember that he also gave evidence. My Lords, we set forth his membership of organisations, page 1. Now My Lords, as far as he is concerned, that is of particular importance, because Nkalipi, in giving evidence, adopted the attitude that he was in a sense ignorant, stupid, that he didn't really always understand or know what was going on in the African National Congress, that he didn't know what their attitude was in respect of certain matters, and My Lords, we will be arguing that that is feigned ignorance, that it is not a genuine excuse, it is only My Lords that he wouldn't have been able to explain their policy of non-violence, if he had to admit th t

he was aware of their attitude. So My Lords, as far as his activities are concerned, we say one of the points we make is that a man of his activity and his position in the African National Congress would have known much more, and that Nkalipi was too modest when he said in his evidence that he didn't know much about the African National Congress activities.

Your Lordships will see he participated actively since 1952. At Korsten he was vice chairman in 1952, and chairman he said during 1953, to about March, 1954. Now My Lords, there is a document A.A.N. 14, at page 4013 of the record, volume 21, a document found in the possession of Nogaya, which shows, My Lords, according to that document, that it is stated - it is stated to be A.A.N. 12, a document Agenda for the Congress of the People, 13th March, 1955, and it gives - I am sorry, My Lords, I made a mistake. It is really his chairmanship of the Congress of the People Committee, I am sorry, My Lords. He was chairman up to March, 1954. Then the Action Committee of the Congress of the People, at Korsten Branch, he was chairman of that, on his own admission, and also the supporting evidence. He was a member of the Volunteer Board at Korsten, and he was the Defiance Campaign volunteer, and he was Deputy to the Volunteer in Chief, and My Lords, he was an Eastern Cape Regional Committee member of the African National Congress. Now he stated in his evidence that this Eastern Cape Regional Committee was composed of the chairmen of the various branches, he was an elected member to this committee. At

the Regional Committee Meetings the activities of the Congress in that area used to be discussed and views were exchanged by branch representatives, for instance they would discuss and exchange views on the recruiting of volunteers and their duties and so on. And then it was just put to him, in the Secretarial Report of the A.N.C. Cape, 1955, this Eastern Cape Region was referred to as the pride of the Province and the marrow of the A.N.C. in the Cape. I make that point, My Lords, because the activity in Port Elizabeth and in the Eastern Cape Region was lauded by the Provincial report, and apparently that was one of the places where one could go to to find out how African National Congress policy was put into practice successfully. In regard to his possession of documents, My Lords, exhibits S.N. 1 to 11, there is one document in particular which we invite the Court's attention to, and that is at the bottom of page 3, which is Luthuli's Address to the 1953 Conference, the famous N.R.M. 11. Now My Lords, we then give an analysis of his evidence. We deal with his membership of the African National Congress, that has been dealt with, and then My Lords the part that he took in the Defiance Campaign, that he was in the Campaign, a volunteer just right from the start, he was a volunteer at the Korsten Branch, and he said that the volunteers had to defy laws and had to be non-violence, because it was the policy - he was against the use of violence, and he also stated that he based his attitude on the teachings of Christ. Then My Lords, he apparently from time to time was prepared to defy laws, he gave that

in his evidence in chief, how inspite of the existence of certain laws, he was prepared to defy them, and he gives those examples. My Lords, the first example quoted at page 5, the unlawful procession to a meeting which was to be addressed by Luthuli, the evidence shows, My Lord, at a later stage, that that is where he led a procession of twenty thousand people, at a stage, My Lords, when public meetings were banned in the Port Elizabeth Area as a result of the disturbances in October, 1952. Now My Lords, in his cross-examination his participation in the Defiance Campaign is dealt with, paragraph (b), he said when there was a campaign, the Defiance Campaign about restrictive laws applicable in this country, we were told that we will continue to fight so that the government will see another way of turning things, in a manner that would be satisfactory, and people would not be required to take up arms. And then he refers, My Lords, to the instructions in regard to the Defiance Campaign. Then My Lords, at page 6, he said the Defiance Campaign was merely directed against certain specific laws, and he was questioned about the temper of the people in the Eastern Cape, and he at first were not prepared to admit that feelings were running high at the time. Then My Lords, paragraph 3, we refer t this incilent early in 1953, and during the period of the Defiance Campaign, the Accused led twenty thousand people from Korsten to listen to Luthuli. At this time meetings and processions were banned on account of the Port Elizabeth riots, but notwithstanding the ban he led the procession because his

branch wanted it. He agreed that as a volunteer he obeyed orders, whether legal or illegal, irrespective of the consequences of such action. Then we give that evidence there, My Lords, to support that submission. My Lords, would I just refer Your Lordships, page 7, to the first four paragraphs on that page, particularly the fourth paragraph, where he refers to the instructions of the Board to lead the group, and it is put to him, "And because they decided this, because you were a volunteer to obey orders, whether they are legal or illegal, you did that? --- Yes exactly".

"Irrespective of what the consequences of such action can be? --- Yes."

"Is that part of your Constitution, the constitution of the liberatory struggle? --- Yes".

Then, My Lords, the speech that Luthuli made on that occasion is put to him, or the report of the speech, as it was recorded in the New Age, and that is dealt with at the bottom of the page, where Luthuli expressed his gratitude at seeing thousands of ex-volunteers present, where he said that the fight by Congress is a non-violent one, and that the violence was coming from the police, and the reference there to the refusal to hold a judicial enquiry, and where Luthuli made that speech in which he said, talking has failed, we are living in a time of action, history has been made, the Africans are on the right road, world progress has been achieved by revolutionary action, in France the people fought for liberty, equality and fraternity and in America they did the same. Now the process has reached South Africa

and he agrees with that, My Lords, although throughout he adopts the attitude that they never were in favour of methods in those countries. Then My Lords in this connection he is asked how they expected to compel the government, the oppressor, to accept what is contained in the Freedom Charter, and he says, as has been put in the Programme of Action, you yourself have mentioned it, there is no other way except that. And there, My Lords, he accepted - My Lords, he is asked, "Do you accept the position that a violent clash with the state was inevitable? --- No, I do not accept that". "You accept the position that as your struggle progressed and the ferocity with which the state hit back would grow worse? --- Is that all? "

"Do you accept that position? --- I do not accept it because I think the government is composed of people who can think, and what I said of the government was that the government would try and make things like that, but not too much, with the object of instilling fear in our hearts, but if we were strong I expect that the government would repent".

My Lords, I may just refer Your Lordships to page 19 of this analysis, where My Lords, he accepted the position, - we will be referring to that - he accepted the position that as the struggle progressed the government and the people that have would become more vicious and sadistic. My Lords, he is, on the question of change of heart, Your Lordships will remember, that he had his own attitude, as he explained it, he relied My Lord, on the Scriptures, on the Book of Dan (?)

and the experiences of Shadrack, Meshack and Abednego, and their experiences as to how they changed the heart of Nebudhadnezzar. Your Lordship will remember that. My Lords, whatever he may believe as regards Shadrack, Meshack and Abednego, My Lords, it is quite clear that they didn't embark on mass campaigns, unconstitutional action against the government. It is true that they disobeyed the decree, they prayed, My Lords, and his example doesn't carry him to the extent that he and the African National Congress went, and Shadrack, Meshak and Abednego achieved a change of heart, and what he was trying to do, My Lords, was to coerce the government to change its mind. My Lords, we just have a paragraph there, we will be dealing with it. Arising out of the evidence on the Defiance Campaign, and the riots in Port Elizabeth, his evidence is evasive and unsatisfactory. My Lords, we quote his evidence with regard to his knowledge of the Port Elizabeth riots and what happened there as an example of the unsatisfactory and evasive nature of his evidence. We have the passage there, My Lords, at page 15737(b) to 15737(d). My Lords, he is asked about the riots, and then it is put to him that everybody was shocked and it received wide publicity. And then he is asked - My Lords, this is a man who is on the Eastern Cape Regional Committee, where New Brighton and Korsten met to discuss matters of joint interest and joint campaign - "Did you discuss it with your colleagues in New Brighton, the A.N.C. Executive there, you discussed this riot with them? --- I did not discuss that with colleagues, I

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discussed it with any person who spoke about it."
"Didn't you discuss it with people like Mayekiso, Ntsangani, Mkwazi and the leading people in New Brighton? --- My Lord, I saw those people after I had seen a number of people that I had discussed this matter about - that I discussed this matter with. I do not know what difference it makes to me talking to them about it from that talking to the public".

MR. JUSTICE KENNEDY :

Mr. Trengove, have you detailed the various bits of evidence which you say leads to the conclusion that the witness was evasive and unsatisfactory?

MR. TRENGOVE :

Yes, My Lord.

MR. JUSTICE KENNEDY :

Is it necessary for you to read them out?

MR. TRENGOVE :

No, My Lord, I make that submission, and I rely My Lords for instance on this particular passage. My Lords, that was the Defiance Campaign. The next deal with the liberatory struggle. My Lords, we make the submissions in the first three paragraphs, we said that they were engaged in the liberatory struggle with their allies, that they were seeking the support of the masses in their struggle, and that the purpose of their public meetings was to educate the masses as to the objects and methods of the African National Congress. In regard to the liberatory struggles in other countries, he said he read about the American

Republic, he didn't agree with the way in which they fought. Referring to present day history he said in Korea, Indo-China, Malaya, Kenya and French Morocco and Algeria liberatory struggles were being waged. He said he knew that those struggles consisted of armed clashes. My Lord, the next paragraph he says he said he did not know what the African - what the attitude of the A.N.C. to the liberatory struggles in those countries was. It is respectfully submitted that his replies to questions as to whether either he or the A.N.C. condemned violence on the part of the colonial powers are evasive and unsatisfactory.

My Lords, just before I get to those passages, I ask Your Lordships not to accept that he says he didn't know what the attitude of the A.N.C. to the liberatory struggles in those countries was. My Lords, just to quote one example, I pointed out to Your Lordships just now, that one of the documents he had in his possession was this 1953 Address of Luthuli. where Luthuli deals to some extent with liberatory struggles throughout the world. We will be referring to this again, My Lords. My Lords, Luthuli deals particularly in this speech of his, with the situation in Kenya, where Luthuli as Your Lordships remember, refers to the bombing - the indiscriminate shooting and bombing of people in Kenya and - under the pretext of maintaining law and order, and the revolt of the Kenya people prompted by their legitimate aspirations. So My Lord, a man in his position -

MR. JUSTICE KENNEDY :

What is the Exhibit number?

MR. TRENGOVE :

My Lord, the exhibit in his possession is Exhibit S.N.5., and it is the same as N.R.M. 11. My Lords, Your Lordships have heard the speeches at public meetings there - where it is a constant theme at African National Congress meetings, which he himself says, to tell the masses what the struggle was about, the references to liberatory struggles in other countries.

And then, My Lords, on page 10, we deal with the - his attitude towards liberatory struggles, and My Lords, the time it takes to get this man to say why the African National Congress condemned violence on the part of the oppressors, but never condemned violence on the part of the oppressed, - My Lords, that is dealt with in passages at page 10. Could I just refer Your Lordships to one or two paragraphs there. The fourth paragraph in that passage quoted : "Do you know if they ever condemned the oppressed people for using force in seeking to achieve their aims? --- I don't remember, because I don't think that the oppressed people do take up arms themselves first, I never heard that."

"But even if they don't take up arms first, your attitude is that they should be like lambs and not retaliate? --- That is my belief".

Then he is asked if that was the A.N.C. belief, and he says he took that to be the position. Then the paragraph, the second one from the bottom :

"Did the A.N.C. not adopt the attitude that the oppressed

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