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masses to defeat fascism? That is also in accordance with the policy of your organisation? --- Yes, it would be. I must stress however that I have not looked at the Road to Liberty for many months. I did look at the other paper because it occurred in the Crown's opening address". "And the Road to Liberty makes mention of the decisive clash to which South African affairs were moving? --- My Lords, without looking at the document I really would not be able to know very clearly what the writer had in mind." "Then I will read it to you Mrs. Joseph", and then the paragraph is read, and the question continues: "Is not that in agreement with the policy of your organisation? --- My Lords a description of the forces of reaction and democracy would agree with our policy, but I am not quite clear and I would not like to commit myself on what is meant by decisive clash, whether it means a physical clash or a clash of ideas, it is not clear, My Lords." "But was it not discussed, Mrs. Joseph? --- I cannot remember now whether these documents were discussed in detail or not. I know that they were read, but I have already said that I do not recall what form the discussion took. It is a very long time ago." "Is it possible that you are not fully acquainted with the policy of your organisation? --- I have always thought that I was fully acquainted with the policy of the Congress of Democrats as a member of the National Executive." And then My Lords I skip the next question and answer, and then it says : "Here we have had no less than three papers, the Springbok Legion circular, Draft of Immediate Programme of Action, the Road to Liberty, all

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three putting this as a view, two opposing forces in South Africa, the one is the force of total democracy and the other is total fascism. This one says, Road to Liberty, speaks of the forces of reaction as against the forces of progress. They all follow that same line, do you agree? --- I have already said that that is, broadly speaking the way in which we view the situation. My objection was to the fact that I did not understand clearly what was meant in this paper by a decisive clash. What form of clash was envisaged. That was my sole objection." "Well, could it mean a revolution, Mrs. Joseph? --- I don't know". "Could it? --- I don't know what was in the mind of the writer, I have not been given an opportunity of studying the document, My Lords." And she interrupts and says "I don't know whether he means a violent revolution, a clash or not. I would like to stress My Lords that in the context of the policy of the Congress of Democrats, none of these documents are official policy statements of the Congress of Democrats, not the letter of the Springbok Legion nor these two papers which were presented by individuals to the Conference. There was no South African Congress of Democrats before that Conference."

Then there is a little portion dealing with C.268, The Threatened People, and that is the portion : "May I remind you that this paragraph The Road to Liberty was literally incorporated in The Threatened People", and then that paragraph which has been incorporated is quoted to the witness, and she agrees that that is so, and she says "That may be so, My Lords, I would have to look at

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The Threatened People." "The Threatened People, My Lord, C.268, this is issued by the South African Congress of Democrats? --- Yes, I know this pamphlet."

"Now on page 31, . . . . . Tomorrow", and then the paragraph is read, My Lord, and it says "Now do you agree that this portion from The Road to Liberty was embodied in the policy statement of your organisation? --- Yes, My Lords, I agree that it was embodied in it".

"And in this paragraph the word clash is used no less than three times? --- Yes, My Lord, may I add something to that, I thought I was getting another question. My Lords, when I see the sentence now in the framework of this extract from the Threatened People, then it does become more clear to me and I state that I certainly did not interpret it and I don't think the writer intended it to be so interpreted as a revolutionary clash in the sense of a violent revolution. He is merely emphasising that events in South Africa are moving to a point where people must take a decision, they cannot any longer push it into the future. That is what I see. I don't see it in the sense, now I see it in this context, of a physical clash or a revolution, a violent revolutionary clash."

MR. JUSTICE RUMPF :

What is the paragraph quoted?

MR. TERBLANCHE :

My Lord, the paragraph quoted is "South African affairs are moving to a decisive clash in which are ranged on one side all the forces of South African reaction gathered under the slogans of apartheid and White supremacy, and on the other side all the forces of democracy and

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progress gathered under the banners of ending race discrimination and establishing a living and all embracing democracy. That clash has been a long time in the making. All South African history has been pregnant with it, but until recently it has been possible for people everywhere to avoid taking sides, to put off the day of decision until tomorrow, or to convince themselves that the clash would somehow, miraculously/<sup>be</sup> postponed for decision by a later generation."

Then the question My Lord : "Mrs. Joseph, your organisation wanted a clash between these forces? --- My Lords I do not know on what grounds that is put to me, that our organisation wanted a clash".

"According to this paper? --- That is not my interpretation of it at all, My Lords, that there is anything that indicates that we wanted that clash. It merely states that people are being compelled to make a decision, and when I say people, I mean the White people because this pamphlet was aimed primarily at the White electorate, that they were being compelled by events along the road where they would have to make a decision. They were not any longer able to stay in the middle of the road, they would have to decide in which direction they are going. That has always been the point of view of the Congress of Democrats, My Lords".

"Then I want to put to you a passage appearing on page 2 which reads as follows", and Your Lordship interrupts and says "Of what?" "Of the Road to Liberty, My Lord." Then the passage is put and I'll read it : "This void in the democratic camp must be filled and filled soon if the

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pending clash is not in fact to take place on racial lines."

"Now do you agree Mrs. Joseph that the idea of the pending clash is not repudiated here but welcomed, only that some steps should be taken to prevent it from taking place along racial lines? --- I really don't see any implication of welcome. It merely says it is not to take place on racial lines. But My Lords, I must again ask if I could see this document. It is not a welcome". And then the prosecutor is instructed to place the document before the witness, and the next question is :

"Would you agree that it predicts a clash? --- The writer seems to have that in mind, yes, My Lord, he seems to feel that a clash is coming, but I am not sure of the nature of the clash until I have had more opportunity to see this document. When it appeared in The Threatened People, I understood it, now this is another portion."

Then My Lords there is put to the witness a certain speech of Sejake, in which the word clash is also used, and the question is "Do you remember this speech? --- Yes, I remember, but I also think I gave my idea of what he intended by clash".

"What is the ordinary meaning of the word clash, Mrs. Joseph", and then the witness studies the document and the replies : "My Lords, in this whole paragraph what I see is an emphasis on the importance of a body amongst Europeans which would be comparable to the Congress taking a stand alongside the Congresses so as to avoid the clash in whatever sense the writer intended the word clash. . . . . racial lines. In other words it is

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advocating an organisation such as the Congress of Democrats. Clash does not appear to have a specifically violent meaning here as I read it, My Lord. The author seems to suggest that various groups should co-operate together under the banner of democracy and avoid a clash taking place, an impending clash taking place on racial lines."

"I suggest to you Mrs. Joseph on ideological lines? --- I would like to be clear on what the prosecutor means by ideological lines".

"Your ideology as against the one that you describe as White supremacy? --- That is so, My Lord. That as I understand it is the meaning of this paragraph, the importance of there being a body of people who would be prepared to take their stand for the Congresses under the banner of democracy".

"And then work for this forthcoming clash? --- Not work for the forthcoming clash, My Lord, not at all. There is no such implication here, My Lords." i

"Well, Mrs. Joseph, perhaps this Threatened People will help you", and then it says : "Your policy was one of exerting pressure on the electorate and in that fashion to secure changes, political changes, what have the references to a clash on racial lines to do with it? Why refer to a clash on racial lines and avoiding a clash on racial lines? --- My Lord, I imagine that that reference fits into the context of the whole document, I haven't yet read the whole document".

"I suggest to you that the reference to clash there seems to indicate that you have no policy of exerting pressure

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on the electorate? --- My Lords, that is really incorrect. The whole purpose of the Congress of Democrats was to exert influence on the European electorate. That is why we were mandated to work amongst them."

"Why speak of a decisive clash, Mrs. Joseph, if you wanted to exert pressure on the electorate? --- My Lords, I can think of quite a few reasons why one would speak of a decisive clash. If one is addressing oneself to the European electorate, one would warn them about the dangers of the conflict that was developing. I can see that it would be quite logical to mention the clash. I cannot see that it is inappropriate".

"Well, I suggest to you that that clash means one thing, and that is violent action, Mrs. Joseph? --- My Lords, I do not agree. I say again I have not yet had an opportunity of refreshing my memory on the whole document, but I do not think it is necessarily a violent clash. If the writer is speaking from the point of view of prediction, of the possibility of a violent clash, and it may well be that in the document he is trying to put forward ways of how this can be avoided, not that he is welcoming it, because I cannot see that that would be the line of policy adopted by a member of the Congress of Democrats. My Lords, I must really first read the whole document, but to me it is inconceivable that such a line as suggested by the prosecutor would have been put forward at an inaugural meeting of the Congress of Democrats. It would be totally in conflict."

My Lords, my submission on this is not that the South African Congress of Democrats welcomed this clash,

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this impending clash, but firstly that the clash referred to a violent clash, because the other clash wasn't impending, it was already in existence. Secondly, My Lords, that the Congress of Democrats knew that if they proceeded on the way which they had chosen, that such a clash would inevitably result between the masses and the government.

My Lords, the document itself first poses the question, why the South African Congress of Democrats was to be founded then, and the answer was that because all South African affairs, all fields of South African affairs were moving to a decisive clash between the forces of reaction, that is apartheid and White supremacy, and the forces of democracy and progress. It says the clash has been a long time in the making and cannot be avoided any longer. My Lords, Helen Joseph admitted, if I read it correctly, I submit that that is what she said, that this - these two forces is in accordance with SACOD policy, the existence of these two forces in South Africa, the forces of reaction and the forces of democracy and progress, and that these two forces are standing opposite each other and that that is what will bring the clash. As has been indicated from this cross-examination of Helen Joseph, the SACOD was necessary, if this pending clash which was foreseen was not to be on racial lines. It shows My Lord that as far as SACOD was concerned, there was urgency in the matter to obtain this new state which they desired, therefore the destruction and overthrow of the old and substitution of the new was therefore as far as SACOD was concerned an immediate object, and object that

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was to be worked for immediately.

Then My Lords on page 1560 line 17 to line 26, I read that portion to Your Lordships where it says : "If my concept of the type and character of organisation we are forming is the right one, it is clear that we are not today forming a political party which will go to the people and ask to be entrusted with the reins of government. We are forming an organisation which, together with the Congress and others will work for a change whereby the power of government will be entrusted to all the people of South Africa without distinction of race and colour". Now My Lords, even if this is not a policy document, even if the Court should find that, when My Lords my submission is that this expression here is borne out by all the other evidence, all the other documents, SACOD was not a political party, it was not a party that was claiming to go and never did go as a party to the White population in order to put their policy before the White population and to ask the White electorate to vote for candidates which they put up, to go to parliament to achieve what they wanted through parliament, that was very far from their idea all along, My Lords. They were an extra-parliamentary organisation that was only going to work extra-parliamentarily. My Lords, I'll indicate to Your Lordships later when I deal with their attitude towards the Hillbrow by-election, why they instructed their members to vote for a certain candidate in parliament. It was not, My Lord, in order to achieve their objects through parliament.

Then My Lords line 25 to 31 on page 1562, this

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document states : "I believe that small though our numbers are today, that they are growing and must continue to grow as each step to fascism makes it clearer to our fellow citizens that ours is the only alternative future to the grim and primitive future of full fledged Nationalist fascism". Again My Lords, the words which I quoted in my general submission.

Then the last quotation, My Lords, on this page, which says : "It will not be easy, there will be casualties, for no group in this country will arouse more bitter government persecution than ours which challenges the whole basis and source of fascism so directly". Again the words which I used in my general submission.

Then on page 1563, lines 27 to 32, this same document says the following : "We must find the way to put forward our ideas strongly and decisively, that South Africans may choose now before it is too late and may once again set our country and our people on the road forward to a democratic and advancing future." Again, My Lords in my submission this shows how they considered the South African government, how they considered what they wanted, and it shows My Lord that as far as the South African Congress of Democrats is concerned, it was an immediately object which they were striving to attain in the shortest possible time.

My Lords, the next document is C.166. This is a Counter Attack, the official bulletin of the South African Congress of Democrats as admitted by Helen Joseph in her evidence, and it is undated. My Lords, it could only have been issued during the period covered by the Indictment

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as the South African Congress of Democrats did not exist before 1953. My Lords, I firstly refer Your Lordships to page 1750 line 14 to page 1751, line 2, which reads as follows : "The recent Congress of the People was the largest and most representative gathering to assemble in South Africa. Its impact on the political scene was twofold. It for the first time laid the basis for uniting all democratic elements around a common platform and it gave rise to a new spirit and enthusiasm among large sections of our people. Coming at a time when the anti-Nationalist struggle had received a number of setbacks, the Congress of the People has consolidated organisational forces of the liberatory movement and has given a guide to the future struggle. There can be no doubt that every visitor and delegate to the Congress of the People left it with a new vigour and courage and a fresh realisation of the ability of the people to hit back at Nationalist oppression. Not only did the Congress of the People create a new spirit, but it produced the Freedom Charter, a document which has laid the basis for important advances in the future. That becomes our immediate and urgent task, to set in motion a campaign for the popularisation of the Freedom Charter.", My Lords this paragraph is firstly in praise of the Congress of the People and deals with its impact which was twofold. Firstly, that it united all the democratic elements and secondly that it gave rise to a new spirit of enthusiasm. It then says that it produced the Freedom Charter, a document which has laid the basis for important advances in the future. My Lords again, what I quoted in my general

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submission the words of the document. This in my submission My Lords shows support for the Freedom Charter and the form of state envisaged by the Freedom Charter. My Lords this document was also found in the possession of Horwitz, I.H. 6, who is alleged to be a co-conspirator, and he is a member of the South African Congress of Democrats. My Lords, this document is C.247 which is a National Executive Committee statement on the implications of the Hillbrow by-election. Your Lordships will remember that I said I would refer to this document in regard to one of the previous documents.

My Lords, I firstly refer Your Lordships to page 1675 line 18 to line 22, which says : "With the aid of the most backward and reactionary section of the White electorate and the fascist support or acquiescence of finance capital, the Nationalist Party is rapidly imposing a fascist republic on South Africa." That is dealing with the situation in the country at that time. Here again, My Lords, as I set out in my general submission, they call the Nationalist Party as rapidly imposing a fascist republic in South Africa. My Lords, it then deals with the duties of SACOD, and it says at page 1676, line 23 to line 27: "In terms of the duty of each . . . . . Congress, the South African Congress of Democrats has the task of winning over a militant anti-Nat European to the Congress movement for an extra-parliamentary struggle and for the aims of the Freedom Charter." Now My Lords, the witness Helen Joseph in her evidence has stressed the fact that although the South African Congress of Democrats was carrying on an extra-parliamentary struggle, that did

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not mean My Lords that they were not also taking part in parliamentary activity or that they did not want to achieve their aims through parliament. My Lords, my submission is that according to this document which deals with the parliamentary election, it will be clear My Lords that they never intended to have representatives in parliament, who there would propagate their views on what South Africa should look like, and that they were only going to propagate that view extra-parliamentarily, for extra-parliamentary action, My Lords. My Lords, her evidence in regard to this document appears in the record at page 14444 line 12, to page 14445, line 15, that is the first reference to this, My Lords, and it says: "Perhaps it would be easier if I put to you another passage which appears from a South African Congress of Democrats National Executive Committee's statement, Exhibit C.247, and it was read into the record at page 1275. This statement was issued apparently in connection with the political implications of the Hillbrow by-election and it reads as follows", and then the paragraph is read. "The salient factors in the situation are (a)..." that is the portion I have read to Your Lordship, I am not reading it again: "I put it to you that it is clear from this passage that the National Executive Committee of the South African Congress of Democrats recognised the existence of finance capital in South Africa? --- My Lord, we certainly recognised the existence of finance capital, that is surely a fact." "As well as its relationship with the controlling powers in South Africa, that is with the Government? --- My Lord, I think I have already said that we regarded capitalism as a contributory cause towards the situation in South Africa, but I don't find that an

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expression of policy in relation to capitalism generally. My Lords, as far as I remember, I haven't the whole document before me, but I think it was more of a political analysis and if I may have the document, I think it was a document for the purpose of discussion within our branches. I would however ask to be able to see this document to be clear as to its function. I don't think it was a press statement or anything of that nature".

"We will deal with this document again, all I am trying to establish at the moment is that in the view of the Congress of Democrats there was a relationship between capitalism and the rulers in South Africa? --- Yes, My Lords, I think that is correct, but I really would like to see the document as a whole".

Then My Lords, the next reference is on page 14566, line 18 to page 14570 line 13: "You have stated your attitude in regard to parliamentary action very clearly, in C.247 Mrs. Joseph, which is the National Executive Committee statement on the Hillbrow by-election? --- I think I have already commented on that, My Lords, and I don't recall that what I said is the same as what the prosecutor is now suggesting." What he suggested before that was in connection with the Constitutional Fallacy My Lords, by Ruth First. "To wage an extra-parliamentary action? --- My Lords extra-parliamentary action - is the prosecutor's question finished?"

"Yes? --- Extra-parliamentary action as complementary to parliamentary action. It seems to me that the very fact that this was concerned with the by-election in Hillbrow in which we were assisting, surely puts it into its context, My Lords."

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"Your assistance had an ulterior motive, Mrs. Joseph. You didn't want Mr. Friedman to win as much as you wanted to make contact with the electorate to put across your own point of view? --- My Lords, that may be the Crown's interpretation, it is certainly not my understanding of the situation. We supported Mr. Friedman because we supported his action on the question of the Coloured vote, and the dispute that we had with the United Party. We felt that he had acted correctly, but I think I also pointed out that in our view he had not gone far enough, but nevertheless we supported his candidature and assisted him". Then there is some question by the Court to the Prosecutor, and the Prosecutor then continues : "You see this Exhibit C.247 Mrs. Joseph contains the following", and he then reads the paragraph : "In terms of this the Congress of Democrats has the very difficult task of winning over the militant anti-Nat. Europeans to the Congress movement for an extra-parliamentary struggle for the aims of the Freedom Charter. Is that a correct statement of your policy? --- My Lords, it is correct in the sense of winning over, being to convince the militant anti-Nat. Europeans of the correctness of bolstering up the White electorate with extra-parliamentary activity, doesn't mean to take them away from parliamentary activity, because that in itself would be to my mind nonsensical. The electorate has the vote". And then the prosecutor says : "It goes on 'Your organisation must avoid the tendency to tail on to the more progressive elements in the White population. C.O.D. must be itself the most progressive in that sphere and try to draw these elements

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to itself.' Do you agree with that? --- Yes, My Lords, I agree with it in the sense that it would be wrong for the Congress of Democrats merely to attach itself to other progressive elements who were less progressive. In other words we should not compromise with our progressive ideas by merely tailing on to other progressive elements."

"And it must draw the progressive elements to itself? --- Yes, My Lord, that certainly is in line with our policy". Then there is an interruption again by the Court, and the next question...

COURT ADJOURNS.

COURT RESUMES.

MR. TERBLANCHE :

My Lords before the adjournment I was dealing with the evidence of Helen Joseph in regard to this document. I mentioned that at that stage there was an intervention by the Court which put certain questions to the prosecutor, and then on page 14569 the cross-examination continues : "But my point is you wanted a change outside parliament, you were not interested in the parliamentary machinery? --- My Lords we are interested in the parliamentary machinery, I have said that over and over again. My Lords we put up candidates ourselves, we are interested in the parliamentary machinery."

Then His Lordship Mr. Justice Kennedy asks a question :

"As I understood it you were interested in any means according to your evidence, non-violent means, to attain your ends? --- That is so, My Lord".

And then although the record does not indicate it, the

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next question is by the prosecutor, I take it that that was so : "You might have been interested in parliamentary action, but I put it to you that you regarded that prospect of getting changes through parliament as out of the question? --- No, My Lords, I have already said that we did not see that it would happen now. I said earlier on that I did not have any faith in the spontaneous change of heart but I believe and my organisations believe that through the extra-parliamentary pressure, both moral and economic, the White electorate will eventually be drawn to the stage and it will realise that the franchise must be extended to all people." My Lords, my submission is that this document shows clearly that the evidence of Helen Joseph in this regard that they were so interested in parliamentary activity is incorrect, that they were not at all interested in parliamentary activity except to put their policy of extra-parliamentary activity before the public. Nowhere in the documents, My Lords, is there ever any mention of parliamentary activity as far as the South African Congress of Democrats is concerned, except this document dealing with the Hillbrow by-election, and as I will show from this document, it is clear that they had an ulterior motive in that by-election.

My Lords, the next passage I wish to refer Your Lordships to is at page 1677 line 15 to line 20 where the document says : "It..." - that is the South African Congress of Democrats - "... is in fact challenging all comers, including the United Party and the Bernard Friedmans for leadership of the militant White opposition to the Nationalist Party and its programme. It must do so

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increasingly as the process develops". Now Your Lordships will remember that Bernard Friedman according to this document, was the parliamentary candidate whom the members of the South African Congress of Democrats had to support, for whom they had to vote in this election, but this is what they say about Bernard Friedman, . . . . . the United Party and says that the South African Congress of Democrats is also challenging him for the leadership of the militant White opposition to the Nationalist Party and its programme.

MR. JUSTICE BEKKER :

Why do you say they had to vote for him?

MR. TERBLANCHE :

That was an instruction from the South African Congress of Democrats, My Lords, and it appears from this document. It therefore shows in my submission My Lords, this paragraph, that the South African Congress of Democrats wanted to challenge all parties going to the electorate with the intention to fight through parliament, constitutionally, and therefore they did not want a new government, My Lord, but a new state, and that is what they were after. They wanted to get that extra-parliamentarily, because they were aware, they knew that they would not be able to convince the electorate, even by pressure, to bring them to a point where the electorate would accede to all the aims of the South African Congress of Democrats or the Congress movement for that matter.

My Lords, the next is at page 1678, still the same document, lines 26 to 32, where it says : "Obviously it is correct for the C.O.D. to contest parliamentary and

other elections. It cannot hope to influence and attract militant White democrats unless it enters the field of European politics and uses the situation, no matter how directly unprofitable as a means of getting its policy and programme to the White population." My Lords, I draw attention to the wording of this section. They say they have got to enter the field of European politics, but for what purpose? To use that situation, no matter how directly unprofitable it may be, as a means of getting its policy and programme to the White population. And what is that policy and programme they want to get to the White population? An extra-parliamentary programme, My Lords.

And then My Lords the next is at page 1679, lines 24 to 31, which says : "The directive to members residing in Hillbrow to vote for Friedman recognises correctly that those who have an opportunity to vote and therefore to influence the situation by so doing, should do so to the advantage of Friedman as a protest against the U.P.'s failures. This also gives the correct emphasis to the Friedman election and its relative unimportance in the struggle". There was no importance in a victory for Friedman, except insofar as it may undermine, if I may put it that way, the United Party.

Then My Lords, the next document which follows on this is C.250, which is a press statement issued by the South African Congress of Democrats. The first extract to which I wish to refer the Court is at page 1680, lines 22 to 30. "The South African Congress of Democrats<sup>is</sup> acting in the election as an independent organisation." This My Lords is a press statement issued by the South African

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Congress of Democrats as a reply to certain allegations which appear from the first paragraph of the document which says : "The South African Congress of Democrats denies the allegations made by Dr. Steenkamp at his meeting in Hillbrow as reported in the Rand Daily Mail of August 31st, to the effect that the Congress of Democrats is supporting Dr. Friedman in his election campaign". It says then : "This allegation is unfair to the South African Congress of Democrats, to Dr. Friedman and above all to the voters of Hillbrow who are entitled to know the truth." And it then continues at line 22 : "The South African Congress of Democrats is acting in the election as an independent organisation presenting its own interpretation of the issues involved while advocating to the voters that they vote for Dr. Friedman as a protest against the many failures of the United Party. The Congress is challenging both the U.P. and Dr. Friedman for the allegiance and support of the voters for its own principles and programme. We are calling on the electorate for their support and allegiance for an extra-parliamentary struggle in alliance with the non-White peoples in the Congress movement for the aims of the Freedom Charter, and to halt the Nationalist Party's march towards a fascist republic. These principles and programme have neither the support of Dr. Friedman nor the United Party", and it then says that it encloses a copy of a leaflet and the Freedom Charter referred to, and they challenge Dr. Steenkamp to interpret that in any other way than as stated here." My Lords, my submission, following on that National Executive Committee statement, is that this clearly shows what interest they had, the South African Congress of Democrats,

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in this election. They were not supporting Dr. Friedman, they denied that they supported him, although they were going to vote for him, but they were doing this for their own purposes.

MR. JUSTICE BEKKER :

No, they explain in that document why they are doing it, they say as a protest to the United Party.

MR. TERBLANCHE :

That is so, My Lord, but I'll show Your Lordships that they had a further - they want to do more than just protest against what the United Party was doing, they also say that they wanted to put their programme before the electorate.

The next document, My Lords, is C.268. I have already referred to this document in passing, in referring to C.52 I think. This is a booklet, The Threatened People, and it is admitted that this was issued by the South African Congress of Democrats, from the portion which I have already read to Your Lordships. My Lords, the first portion to which I wish to refer under this heading is the one mentioned at page 1387, lines 2 to 18, where it says : "Or can you - or can we persist in the belief that we can barricade ourselves with the bastion of White supremacy. We can ignore the tide of events everywhere in the world, where the underprivileged and backward are advancing towards the acquisition of universally recognised human rights. We can await the prospect of South Africa having to shoot out the issue as in Kenya. The day is past when the thinking South African believes that White supremacy would endure forever or even last another

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fifty years, long enough for our own lifetime. The issues have now presented themselves for our decision. Can a limited democracy survive? Can open conflict be averted? These are the issues which loom above all else, these are THE ISSUES which overlie the post election searchings of the democrats and the question of why the Nationalists won." My Lords, this again shows, as I indicated before, that the South African Congress of Democrats foresaw that unless, as they put it, unless their aims and objects were achieved, there would be open conflict in South Africa. My Lords, if they - if the South African Congress of Democrats was an ordinary political party, who put out these views to the electorate to influence the electorate to vote for candidates put up by the South African Congress of Democrats, and they tried to influence the voters by means of this kind of propaganda to vote for those candidates in order that they might constitutionally and through parliament attend - attempt to obtain their aims, there would certainly be no fault to find with them. But My Lords, when this is put forward and no attempt is made - I say no attempt is made, My Lord, although the witness Helen Joseph stated that they wanted to achieve this through parliament and wanted to influence the electorate, I say, in my submission, that is not so, My Lords. Now if a party tried to win the electorate or members of the electorate not for parliamentary action but for extra-parliamentary action, and this is what they foresaw, and they want to go to the masses, My Lord, not only the European masses, but they want mass action right through the country, the non-Europeans and the Europeans, then My

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Lords I say that in my submission they hasten that clash which they foresee. My Lords, as far as the South African Congress of Democrats is concerned, they did not believe in any middle of the road. To them there were only two sides, the reactionary side which is the government of South Africa, and which included all parliamentary parties at that stage, and the Congress movement on the other side, the democratic camp. As will be pointed out later, My Lords, not only did they foresee this and hasten by actions - and in my submission by their actions hasten that, but they knew on the other hand what the reaction of the ruling class would be, how they would react. They also knew, My Lord, as I will point out later, what the conditions in South Africa were, they describe them as inflammable, and that, My Lords, did not deter them from going to the masses, making their propaganda to the masses for mass action extra-parliamentarily. My Lords, after this passage which I have quoted in this document, there follows a criticism of the parliamentary opposition parties which I submit shows that they never intended to reform, in the usual sense of the word, but that they intended to overthrow and establish a new form of state. My Lord, this I submit is the correct view, because at page 13798, in dealing with steps to be taken, the following was said : "Secondly to work for the overthrow of <sup>the</sup> present unjust and dangerous system which will ultimately bring disaster to this country.

Then My Lords at page 1405, line 6, there follows that portion which I read when I dealt with the cross-examination of Helen Joseph, that is the portion in regard

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to the decisive clash, and it also refers to the united people's alliance against fascism. I don't intend reading that portion again, My Lords, it was read when I dealt with her cross-examination. I have read it up to "... they try to convince themselves that the clash would somehow miraculously be postponed for decision by a later generation". Then follows this, My Lord : "There is no longer room for any of these solutions (?) and that fact has been driven home inescapably to every South African, of every race or colour". And then at page 1406, line 24 to line 27 it says : "Working closely together with the African and Indian Congresses, the Congress of Democrats was helping to forge a mighty, united people's alliance against fascism." In this same document they refer to this mass action to which I have referred the Court which they were indulging in. My Lords, this document, as I indicate in the Schedule was also found in the possession of many other persons, both members of the South African Congress of Democrats and members of the other organisations. It was found in the possession of Mandela, N.R.M. 83, A.M.K. 12, that is Kathrada, and D.A.S. My Lords, that is Seedat and others.

My Lords, the next document with which I wish to deal - My Lords, before I pass on to the next document, the witness Helen Joseph gave evidence on this document, C.268, and her evidence is to be found at page 14548, line 10 to page 14557, line 10. My Lords, this follows on the portion which I read to Your Lordships in regard to C.52. The prosecutor says : "May I refresh your memory Mrs. Joseph. Was The Threatened People issued as an official policy statement by the Congress of Democrats? ---

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Yes My Lords, I would say that the Threatened People was." This is the document we are dealing with, My Lords, and it then refers to the paragraph in the report which was taken over from C.52 and I read up to page 14553 in dealing with C.52. Then on page 14553, line 15 it continues : "This document, the Threatened People, C. 268 on pages 7 and 8 has the following passage 'We can persist in the belief that we can barricade ourselves in a bastion of White supremacy'", that is a paragraph which I have read to Your Lordships, I am not reading it again, it continues up to "We can await the prospect of South Africa having to shoot the issue out as in Kenya". The question then is : "Does that not suggest that the clash would be a violent one, the prospect of having to shoot the issue out as in Kenya? --- My Lords, as I have heard it so far, the writer is simply putting forward the theme (?), the course of action which could be adopted, we could await such a prospect." "He said we can await the prospect? --- Yes, we could carry on in our present way and face the dangers of such a prospect. That is how I would understand it, My Lords. That does not mean that we would wait in the sense of welcoming it. I don't see any such indication here." Your Lordship will see that the question was not directed at this at all, but it was directed towards whether the clash here was a violent one, and there was no reply to that. Then it goes on : "Well, shooting the issue out as in Kenya, would that be a decisive clash? --- That would be a decisive clash, but that to my mind in this context, I don't know the rest of it, but I get the implication that the writer is putting forward a suggestion that we could do this, we could do this, we ought to do

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something else. I would like to know the rest of that, what follows, because I have a strong feeling that that is what he is coming to."

"The other alternative he says is to grant full rights to these people, the non-Europeans, that is the other alternative? --- Well, My Lords, that is the stand of the Congress movement."

"And if that demand of the Congress movement is not satisfied, then there will be a shooting out as in Kenya? --- My Lord, the writer has put it as one of the possibilities, he has not made a prophesy about it. These things did happen in Kenya, they did happen in other places. To my mind to say that we can await such things, doesn't mean to say that they are necessarily going to happen. I think I must see the whole paragraph to get a clear impression."

"Your organisation is very clear about this, that there is a tide of events everywhere in the world where the underprivileged and backward people are gaining independence? --- That My Lord is a fact, it is so".

"And it says that we can ignore that situation, but the prospect in that - but the prospect in South Africa will then be one of a violent clash as in Kenya? --- My Lord, I don't really accept that interpretation, because as I have listened to that paragraph, the writer said we can do a number of things, he doesn't stress one more than the other. He says we can ignore the tide of events, we can await the prospect of the tragic occurrences in Kenya.

I think the paragraph My Lord really must be considered as a whole. He is trying to set out some of the possibilities that might happen in South Africa if we ignore the trend of events."

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Then there are questions in regard to the position of Mr. Bernstein : "Your organisation - incidentally did Mr. Bernstein draft . . . . The Threatened People, it would be quite logical? --- There seems to be a similarity and so on in the paragraphs, I don't remember whether this was drafted by one individual or by two or three together". And then the prosecutor returns to this document : "And it goes on to say the day has past when thinking South Africans could believe that White supremacy would endure forever or even last for another fifty years, long enough for our own lifetime. The issues have now presented themselves for our decision." Then the prosecutor says : "My Lords, to assist the Court this pamphlet the Threatened People was read into the record as F.22", and His Lordship Mr. Justice Bekker asks where he can find it, and the prosecutor then gives a reference. He gives the reference and he reads further : "The issues have now presented themselves for our decision. Can a limited democracy survive, can open conflict be averted. These are the issues which loom above all else." Now I have read to you the whole paragraph Mrs. Joseph and I suggest to you that the author had in mind what he said here, open conflict? --- My Lord, the writer certainly in this paragraph poses that question, can limited democracy survive, can open conflict be averted. I presume he then goes on to answer", again no reply to the question, My Lord, in my submission. And then : "That is your organisation's view, Mrs. Joseph? --- It is a question, My Lord, I don't know where the view comes in."

"I am dealing with the meaning of the word clash, and I suggest to you that <sup>in</sup> this paragraph that I read to you

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it is clear that clash means an open conflict, a violent conflict, a shooting out of the issue as in Kenya? --- My Lords, the view (?) of this paragraph which has now been read to me, it now makes clear the meaning of clash, in the earlier pages of this pamphlet, but surely My Lord now this word has been used in this specific context there I agree, there it is quite clear that the writer is seeking in his mind how this - what he foresees as a possibility of open conflict can be averted. Now it becomes clear, My Lord, it is not a question of policy."

"Not the writer, Mrs. Joseph, your organisation? --- My organisation has always wanted to avert the possibility of open conflict".

"Your organisation issued this pamphlet, The Threatened People? --- Yes, My Lord."

"And your organisation says there are two alternatives in South Africa, either you grant the non-Whites all the rights they want or else you will face the prospect of having to shoot it out? --- My Lord, that is stated in a very categorical way, but it is true that our organisation believes that it is essential to grant universal franchise and to grant rights to all people in South Africa, and it certainly has a fear that if these rights are not ultimately granted, there is a possibility of chaos and a violent situation in South Africa as happened in other countries. My Lords, this is the very reason why our organisation takes the stand that the Congress alliance, who share the view with us. Our aim is to seek these remedies peacefully." My Lords, my submission is that this evidence in no way alters what I submitted in regard to this

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document, but as a matter of fact confirms what I have said. Of course, My Lord, as usual she ends off after admitting what they foresee, she ends off by saying that they wanted to attain their aims peacefully. My submission is, My Lords, taking all this into consideration, they foresaw what they - what would happen and they continued on the road which they chose, that is mass action, extra-parliamentarily.

My Lord, then the next document is C.281, it is the draft of the Immediate Programme of Action by J. Hodgson. My Lord, this document is on a par with C.52, also a document presented, a paper read at the inaugural meeting of the South African Congress of Democrats. My Lords, again the attitude of the witness Helen Joseph was that this document - her attitude was the same as regard to C.52, and again I make the same submission in regard to this document, in regard to its distribution and although I admit that there are other possibilities, ...

MR. JUSTICE BEKKER :

Does the evidence exclude those possibilities?

MR. TERBLANCHE :

My Lord, if these documents were in any way contrary to the policy in the other documents, one could perhaps ignore them, but they are in no way different, they just confirm, as it were. But My Lords, even if these are not policy documents, then I wish to make the following submission with regard to these two documents, and that is My Lord that they should be taken into consideration, in this way that prominent members of the South African Congress of Democrats, at this inaugural meeting

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Hodgson was elected Secretary of this new organisation, that is after they heard him read this paper, he is elected to that important position, My Lords. Even if they are not policy documents, then I ask the Court to take into consideration as a fact, one of the facts from which the policy can be inferred, that a person with his specific ideas, was such a prominent member and held such a prominent position in the South African Congress of Democrats.

MR. JUSTICE KENNEDY :

What does that lead on to in regard to the paper which he may have read?

MR. TERBLANCHE :

My Lord, in my submission it leads to this, that in the same way as will be argued, that because certain members of the defunct Communist Party of South Africa became members of these organisations, in the same way one can infer that if an organisation gives prominent position to a person who holds this view, and they know he holds this view because he delivered this paper at this inaugural meeting, at this meeting he is elected Secretary, then My Lords, the other statements on policy in my submission can be interpreted according to what this paper shows.

My Lord, the first extract to which I wish to refer the Court, at page 1731, line 28 to page 1732 line 13, the document says : "The attack of fascism can be withstood only by the stubborn resistance of the organised and militant democrats, White and non-White, taking their stand on the basis of their adherence to basic democratic

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rights and their active and militant assertion of the legality of these concepts and aspirations. Fascism can be defeated only by the mobilisation of all the people, White and non-White in some decisive action which ~~assesses~~ the will of the people for democracy. It follows from this that the organisational section and tasks of organising all militant democrats on the basis of their adherence to basic democratic principles and practices, providing stubborn resistance to the attacks of fascism, asserting actively and militantly the legality of democratic concepts and aspirations, mobilising the people and preparing them for some decisive action which will assert the will of the people for democracy." My Lords, my submission is that paragraph for instance, there is nothing in that paragraph which is in conflict with any of the other documents issued by the South African Congress of Democrats which followed on this after the inaugural meeting where they heard this paper read, and after it was sent to the branches and regions for further discussion. My Lord, one has here expressed the same idea as in C.52, the other document, the idea of the decisive action is expressed by the words decisive clash. It also contains the same idea always expressed that the present state must make room for the democracy of the state which will be the result of the overthrow of this fascist state. Further on in this document My Lords, is also expressed the idea to which attention has already been drawn, that as - that an alternative to the Nationalist Government is no longer a government of any of the White parliamentary political parties and that the struggle is one between the democrats

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on the one hand and reactionaries on the other. This again, in my submission, My Lords, shows that when they talk about the overthrow of the Nationalist Government, it really means the overthrow of the present system, and not of the state. This in my submission My Lords is further proved by the statement at page 1734 which says : "It has to . . . . . with a situation which requires the defeat of a government and its replacement with a democratic people's government", and it then sets out the methods by which this will be achieved.

My Lords, in these portions to which I have referred the Court there is nothing inconsistent with what is found in any of the other documents of the South African Congress of Democrats or in the evidence of Helen Joseph.

CASE REMANDED TO THE 6TH DECEMBER, 1960.

COURT ADJOURNS.

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6/12/1960MR. TERBLANCHE

MR. TERBLANCHE: My lords, yesterday afternoon at 1  
the adjournment I was about to deal with document C.281(A) -  
National Liberation Struggle in Asia. Now, my lords, I'll  
first deal with the evidence of the witness Helen Joseph  
with regard to this document. Her evidence appears firstly  
at page 14455; line 14 to page 14467, line 4. The Prose- 5  
cutor asked: "Would you mind answering the question, Mrs.  
Joseph" - that's just leading up to the putting of this docu-  
ment, my lords. ("A) My lords, the statement that the  
National Liberation Movement - by which I understand the  
Congress Alliance - to be a truly Peoples Movement, not 10  
merely transfer from National oppression, but economical  
oppression - - I would not disagree with it!"  
("Q) I suggest that that is a fair description of the object  
of the Liberation Movement in South Africa? That is how the  
Congress Movement understood it?-- (A) My lords, it wouldn't 15  
be in our phrasing but I think we would not be opposed to  
the expression of opinion in this, because I think we have  
always envisaged that when we say we are seeking for equality  
of opportunity and equal rights for all we see in that con-  
text that we want more equality, more economic relief from 20  
economic oppression as well as from National oppression!" ("Q)  
I think that is the aim of many political movements, and  
you must not stop short with the elimination of National  
oppression as in the case of Nehru's India?-- (A) My  
lords, we have never expressed a policy on this aspect. 25  
It was never discussed - Nehru's India."  
("Q) Mrs Joseph, may I refresh your memory; you have al-  
ready said that the lecture 'National Liberation Struggles  
in India" was issued by your organisation?-- (A) Yes, as  
a basis for discussion." 30

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MR. TERBLANCHE

("Q) As a basis for discussion and as a reflection of your policy?-- (A) No, my lords, those discussion notes were not necessarily a reflection of our policy; they were informative lectures as a basis for discussion. I don't recall that they were ever sent out as a reflection of our policy."

("Q) I put it to you that you would not issue speakers' notes in that form unless you wanted to influence the readers in a certain direction?-- (A) No, my lords, I can't accept that. The discussion notes were sent out on topics that were current at the time, and our aim would always be for our members to study them, to be provided with factual information and come to a conclusion. My lords, the Congress of Democrats . . . ." Then it's broken off, my lords.

My lords, in connection with this document the attitude of Helen Joseph, according to this portion of her evidence, is that this does not reflect policy at all, that it wasn't discussed at all 'Nehru's India' which is mentioned in this document, but she admits in this last sentence that it was to provide the members with factual information so that they could come to a conclusion. So that what they ought to get from this lecture at least is factual information as they saw it. Now, my lords, I wish to refer your lordships in this connection to Schedule No.3 which I handed in; there I listed the document C.32, the Chairman's Report at the 3rd Annual Conference of the S.A.C.O.D of the 24th June, 1955. Then, under 'Propaganda' there appears this, my lords, in that document at page 1529, line 22 to page 1530, line 5: 'Propaganda: Realising the importance of political propaganda and the important

role the C.O.D can play under the circumstances in this field, the N.E.C. has endeavoured to print as many pamphlets as possible during the last few months"; then there is mention of certain people 'Where the Devil Drives and Educating for ignorance' - 2 editions. Then it also says: "The Propaganda Committee are to be congratulated on the comprehensive speaker notes which were prepared for discussion by regions and branches on the following issues" and then it mentions the National Liberation struggles in Asia.

Now, my lords, they were not only discussion notes; they were all according to this Chairman's Report comprehensive speakers' notes. Now then, my lords, C.161 which is "A Counter Attack of mid-March 1954", at page 1647, line 20, to page 1648, line 5, deals with discussion notes for the branches and it says this, my lords: "The Propaganda Committee is continuing the issue of discussion notes designed (1) as a speakers' guide, and (2) to provide those taking part in the discussions with the main facts and arguments".

My lords, seeing that these discussion notes - speakers' notes - were in fact sent out through the National Executive Committee, it's my submission - - and what has been said there - - that this is a reflection of the view of the South African Congress of Democrats on the issues mentioned in these notes.

My lords, then her evidence continues at page 14456. The Prosecutor first answers a question by the Court and says, "My lords, I'm referring to a document, 'National Liberation Struggles in Asia'; the Exhibit number is C.281(a). That is the document that she has

already admitted was issued by the Congress of Democrats;  
it's a roneoed document dealing with the National Libera-  
tion struggle. ("Q) Do you remember the document, Mrs.  
Joseph?-- (A) Yes, I remember it." ("Q) A copy was found  
in your possession?-- (A) Yes, that is so, along with a  
number of others."

Then, his lordship, the Presiding Judge asked  
a question, ("Q) What do you say about this document?  
Was it meant for discussion?-- (A) Yes, my lord, it was  
put out as discussion notes; there were about six or  
eight different subjects and this is one of them".

("Q) Was it put out by the Congress of Democrats?-- (A)  
Yes, my lord." ("Q) Now these, do these notes contain  
the advantages of a point of view and another point of  
view, a contrary point of view, or is it in one direction  
?-- (A) My lords, I would have to look at this one again;  
I remember it as an historical survey of the struggle for  
liberation. It might have gone further than that; I  
would really have to see it again, my lords."

Then the Prosecutor: ("Q) Perhaps I could help  
you; this is a rather lengthy document. On page 5 of  
this document it deals with the technique of formal in-  
dependence as was achieved in India, and I suggest it  
expresses the approval of the National Liberation Move-  
ment in India stopping short at the achievement of this  
form of independence. And then under the heading of  
'China' it deals with how China achieved its liberation  
on page 6; I suggest it condemns the state of develop-  
ment in India and approves of the development of the  
Movement in China. Do you agree with that? Just have a  
look at the document?-- (A) My lords, on the first point,

on the technique of formal independence as achieved in 1  
 India, and the disapproval it expresses of it, my lords,  
 - the document specifically states that one viewpoint has  
 it that the Republics of India and Pakistan are examples  
 of the technique of formal independence, and then it ex-  
 plains what it means, but that doesn't express an opinion 5  
 on it. It merely says one viewpoint has it. My lords,  
 on the rest of that part I wouldn't describe it as so  
 much a condemnation as it sets out certain .....of the  
 development in India, and then says 'Nevertheless, new  
 tendencies are today emerging'. In fact, my lords, it is 10  
 a survey. I can't see any condemnation."

My lords, I pause here for a moment to say  
 that I will later on refer to these new tendencies to  
 which the witness here refers, to show what those new  
 tendencies were according to this document. The witness 15  
 seems to find in that some justification.

Then, your lordship the Presiding Judge says:  
 ("Q) Yes, but the point that Mr. Liebenberg is making is  
 this: that in that document the suggestion is that the  
 change in India was not sufficient; that the change should 20  
 go further, economically particularly, to a change that was  
 effected in China. In other words, the inference being  
 that whereas there was liberation in India from British  
 Imperialism the liberation did not go far enough economically;  
 the inference again being that the document suggests that 25  
 the true liberation -- I'm using my own words -- the  
 true liberation should be a Peoples Democracy?-- (A) My  
 lords, that might be an inference from this, but I don't  
 find it expressed in the pronounced way in which it has  
 been suggested to me. It is more of a survey". 30

("Q) May I put it to you, isn't that what the document suggests, that true liberation should go beyond mere liberation from Imperialism, and should enter the realm of an economic State described as a Peoples Democracy?-- (A) It would be a very long drawn inference, my lords, from this ..... it doesn't go nearly as far as that." 1 5

("Q) It may not use the words but doesn't it suggest that India has stopped short and the direction in which there should be the approach is the direction of China?-- (A) My lords, there is no direct comparison with China at all." ("Q) Well, I'm going on what was quoted. May I just look at that document?"-- (A) I haven't read the document very carefully, my lords, but it deals with the different countries and one would have to study the whole document in order to draw that inference." 10 15

Then the Prosecutor again: ("Q) I think it is in that paragraph 5 dealing with China where the document describes the establishment of the Chinese People's Republic in 1949 as the beacon of hope to Colonially oppressed people the world over". I'm sorry, my lords, paragraph 3 and 4 on page 3 describing the Chinese Peoples Republic as a beacon of hope to Colonially oppressed people the world over", and then again on page 5, my lords, under the heading 'China': "That this was the most outstanding expression of the new Era of Colonial liberation since 1945." 20 25

And then after dealing with that, it deals with the unsatisfactory development in China and says "The example of the technique of formal independence" your lordships will see at the bottom of page 5.

("Q) Mrs. Joseph, I want to suggest to you that there is 30

only one inference to be drawn from that, namely that the author approves of the development in China and disapproves of the position in India? -- (A) I will agree that the author approves of the development in China; he criticises the development, the immediate development in India, but also points out that there are tendencies which are improving the position."

Again this reference to tendencies, my lords, in improving the position.

Then I think on page 6 of that document, paragraph 6, there is also a reference to India. It's not clear who says that, my lords, from the record, and then your lordship the Presiding Judge again asks this: -

("Q) Well, actually I think the reference here to India constitutes a criticism of the one point of view concerning the formal independence. It says this: 'For centuries the main base of the British Empire in India is experiencing great changes. Considerable lack of agreement exists on the character of these changes, but one viewpoint has it that the Republics of India and Pakistan are examples of the technique of formal independence. This is advanced as a method of countering the advance of National Liberation by granting independence, but in reality continuing the old principle of 'divide and rule' characteristic of British Colonial rule?-- (A) It certainly presents that as a viewpoint."

Then his lordship Mr. Justice Bekker asks:-

("Q) If this was a basis for discussion, discussion among who, why, for what purpose?-- (A) My lords, it was our practice in the Congress of Democrats to stimulate political discussion and education amongst our members, and we did put

out - I think it was six or seven or eight of these discussion notes, to serve as a basis for discussion at the branch level, and then discussions would be held on any of these particular subjects and people would express their opinions. They were not intended to be policy. Discussion of policy, of course, took place at Conference level - specific topics."

I may state here, my lords, that that was the approach in my submission of Helen Joseph to policy, that it only appeared from the Constitution and the aims and objects set out there, and any decisions taken at Conference.

Then, my lords, the Prosecutor asked: -

("Q) Well, I suggest that was done with the object of influencing the people in a certain direction?-- (A) My lords, insofar as our Congress of Democrats stood for the struggle of equality and for the removal of oppression I think it is quite correct that our discussion documents would probably present to our people specific aspects that we would like them to discuss." "But there was no directive, no opinions, in these documents that had to be accepted, my lords; I do want to emphasise that; they were intended as a basis for discussion notes; they would naturally be within the framework of the Congress of Democrats itself, but they were not directives."

I draw special attention to the latter part of the witness' answer, my lords, "They would naturally be within the framework of reference of the Congress of Democrats itself."

Then your lordship Mr. Justice Bekker asked:

("Q) In fact, these discussions, were they confined to

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