

Indian Congress would be a completely different case,
but with the allegation....

BY MR. JUSTICE RUMPF :

That may be, but there is the allegation
of knowledge and support. 5

BY MR. KENTRIDGE :

It is to indicate, My Lord, that this alle-
gation of knowledge and support, is in effect the gra-
vamen of the Crown's case against, what I might call,
the lesser organisations - the other organisations. I 10
shall illustrate, My Lord, the absolute necessity from
our point of view, of having that blanket allegation
particularised, because in the case of some of the orga-
nisations, which I shall refer to, if violence is to be
found anywhere, My Lord, it must be found in that alle- 15
gation. Not anywhere else, only in that allegation.
My Lord, I can - My Lord, as an introduction, I could
refer Your Lordships perhaps, in the first place, if I
may deal, let me say, with the Coloured People's Orga-
nisation first - if I could refer Your Lordships to 20
page 14 of the Further and Better Particulars. My Lord
that is where one finds the allegations of the type
averred to by Your Lordships a few moments ago - page
14 of the Further and Better Particulars, sub-paragraph
(c) - the S.A.C.P.O. and the A.N.C. exchanged fraternal 25
messages, stressed support of and solidarity with each
other, and (d) they sent fraternal delegates - and then
in (e), we come to the real point of it - "A.N.C. de-
legates or representatives attended S.A.C.P.O. confe-
rences or meetings, explained A.N.C. policies and ac- 30
tivities." Now, My Lord, the point is, in what terms

did they explain it.

BY MR. JUSTICE RUMPF :

That is evidence.

BY MR. KENTRIDGE :

Yes, My Lord, but that is the vital evidence, 5
because, My Lord, in all the speeches and documents re-
ferred to in these Further Particulars - in this docu-
ment, there is no reference given, as far as we can
make out.

BY MR. JUSTICE RUMPF : 10

But these policies have already been set out.
This doesn't purport to deal with the contents of the
policies. This purports to deal with delegates atten-
ding the conferences, talking and so on - that is what
it deals with. 15

BY MR. KENTRIDGE :

My Lord, this is in support of the blanket
allegation of knowledge and support.

BY MR. JUSTICE RUMPF :

Yes, whether all these together may be suf- 20
ficient to - as a basis for inference of knowledge and
support, is another matter, but this is the Crown's
case.

BY MR. KENTRIDGE :

But My Lord, we don't know whether there 25
is any basis for it or not - we can't even argue it,
because we have not been referred here, in this roneod
document - the roneod Further Particulars - we have not
been referred to any occasion on which an A.N.C. dele-
gate attended a S.A.C.P.O. conference, or meeting, and 30
explained the A.N.C. policy. My Lord, a S.A.C.P.O.

man - a S.A.C.P.O. Accused, reading these Further Particulars will be told that he must read the matter which appears at pages, I think it is 103 to 113 - he may read through that and find no violence anywhere, but then he is told, the Crown also relies on the fact that his organisation knew of and supported the A.N.C. policy of violence. He now asks, why do you say that, what are your facts and circumstances - the answer given on page 14 is, basically, well, you had close co-operation, for instance, A.N.C. delegates attended your meetings and explained A.N.C. policy. Now, My Lord, if they did that, if an A.N.C. man did attend a S.A.C.P.O. meeting or conference, and explained A.N.C. policy, and moreover explained them in terms of violence, then the S.A.C.P.O. man knows the case he has to meet. But as I said, My Lord, in this volume, there is no allegation - no reference to any such meeting, where A.N.C. policies were explained, still less, to any meeting where A.N.C. Policies were explained as being violent policies.

BY MR. JUSTICE RUMPF :

In what volume?

BY MR. KENTRIDGE :

The volume of the Further Particulars.

BY MR. JUSTICE RUMPF :

What about the Preparatory Record?

BY MR. KENTRIDGE :

Yes, My Lord, it may be there. That, with respect My Lord, I think was my learned leader's submission.

BY MR. JUSTICE RUMPF :

Yes, when we deal with all the evidence

and everything, but if now say, - (a), (c) (d) - what -
 (e) - we might not know, or atleast this volume of
 Further Particulars does not specifically refer to a
 delegate of the A.N.C. appearing and explaining the
 policy of the A.N.C. All it says, that this is the 5
 Crown's intention to lead the evidence.

BY MR. KENTRIDGE :

Well, we've got to take it that it is a
 true allegation.

BY MR. JUSTICE RUMPF : 10

Yes.

BY MR. KENTRIDGE :

Well, now, My Lord, in order to - from the
 point of view of the one S.A.C.P.O. Accused in this
 case - there is one S.A.C.P.O. Accused and a number of 15
 co-conspirators - from his point of view, My Lord, if
 there is a case of violence against him, on our sub-
 mission, bearing in mind these Further Particulars -
 if there is a case of violence against him, it's on
 page 14 of the Further and Better Particulars - these 20
 explanations given to him, this knowledge of A.N.C.
 documents, in which presumably violence is discussed -
 that is the case against him, and in order to find that,
 My Lord, he has got to go to the Preparatory Examina-
 tion Record. 25

BY MR. JUSTICE RUMPF :

He may have to.

BY MR. KENTRIDGE :

Yes. Now My Lord, rightly or wrongly,
 with respect - rightly or wrongly, we understood the 30
 judgment of Your Lordships, and the Order of Your
 Lordships, to mean, that in order to find out where

the violence comes from, this one S.A.C.P.O. member - I deal with him at the moment - should not have to go to the Preparatory Examination Record; that exactly what Your Lordships intended was that if an A.N.C. delegate came to a S.A.C.P.O. meeting and explained that the A.N.C. Policy was a violent one, and S.A.C.P.O. people were there, that that was exactly what Your Lordships intended should go into the Further Particulars. 5

BY MR. JUSTICE RUMPF : 10

This is not an allegation of a direct policy of the S.A.C.P.O. organisation, it is an allegation that it had knowledge - it may be regarded as part of its policy, if it has notice of another organisation's policy - that is the allegation - it has knowledge of the A.N.C. policy and it supported it. Now this obviously supports the allegation that it had knowledge, not support here. The A.N.C. delegate attended conferences, explained the policy - that's all. So that is the basis for the Crown's allegation that that particular organisation had knowledge. 15 20

BY MR. KENTRIDGE :

Yes. And then, My Lord, there are other allegations which indicate that S.A.C.P.O. supported the A.N.C. Now, as my learned leader indicated, My Lord, that is really not an issue - there seems to be no doubt that S.A.P.C.O. supported the A.N.C., but the allegation on page 111 of the Further Particulars, that S.A.C.P.O. had knowledge of the policies of the A.N.C., as stated above in Part A and supported such policies, is only relative presumably to particulars 25 30

about the violent policy of S.A.C.P.O. - is only relevant if the S.A.C.P.O. support of the A.N.C. was done with the knowledge that the A.N.C. policy was violent. My Lord, whether one regards it as part of S.A.C.P.O. policy or not, or merely as a fact which proves that S.A.C.P.O. had a violent policy, the gravamen of the allegation is that S.A.C.P.O., with knowledge that the A.N.C. policy was violent, none the less supported the A.N.C. I submit, My Lord, that that must be the relevance of paragraph 4 on page 111. Consequently, from the point of view of a S.A.C.P.O. Accused, the real case against him, is that his organisation, not only supported the A.N.C., but knew that the A.N.C. had a violent policy. But if he asks, My Lord, why should it be said that my organisation knew that the A.N.C. which we were supporting, had a violent policy, he is referred to page 14 of the Further and Better Particulars, in which he is told that the A.N.C. policy was explained to his organisation. Now, My Lord, that is only relevant, if the violent policy was explained, but if he says, well now, where do they get that from, the answer is, the Preparatory Examination, these Schedules, the Summary of Facts. My Lord, if we have wrongly interpreted Your Lordship's judgment, if, with respect, it was contemplated in Your Lordship's judgment that that could be a proper answer to the particulars, then my part of the argument, to a large extent, falls away. But, My Lord, it is our respectful submission, that if Accused No. 3, or Accused No. 8 - any Accused belonging to an organisation, other than the A.N.C., let us say, if that Accused wants to

know why it is said that his organisation is violent,
 he must be given the relevant speeches and documents,
 if they exist, and not be left to go to the Preparatory
 Examination Record. Now, My Lord, the importance of
 that to the S.A.C.P.O. Accused, take for example, I 5
 submit, is plain, if one looks in a general way at the
 speeches and documents relied on. My Lord, in the
 case of S.A.C.P.O., that was an organisation alleged
 to have been founded in October 1953, one Accused, S.
 Lollan, that is Accused No. 5, is alleged to have been 10
 a member of it from 1954 to 1956, and three co-con-
 spirators - Nos. 39, 41 and 81 - are also alleged to
 have been members. My Lord, the S.A.C.P.O. Further
 Particulars, which are at pages 103 to 113, refer to
 a total of 20 speeches, made by the four persons re- 15
 ferred to and also by one person who is not a co-con-
 spirator, but who is said to have been a member, and
 it also relies on a small number of documents found
 in different places, which the Coloured People's Orga-
 nisation is alleged to have written or published or 20
 distributed. Now My Lord, if necessary I can deal
 with each allegation - each speech, each document, but
 it is sufficient for me here to say, My Lord, that if
 Your Lordship goesthrough these documents and speeches
 and the references are given, Your Lordships will find 25
 that these documents talk of freedom, of liberation,
 criticised the Government, criticised the present po-
 litical system, opposed Laws, criticised Laws, criti-
 cised the present franchise, expressed lack of confi-
 dence in existing political parties, but nowhere, as 30
 we see it, is there any talk of violence. My Lord,

Your Lordships will see, if Your Lordships look, for instance at page 110, where a number of speeches are set out. Your Lordships will see that speeches are relied on, covering several pages, in some cases seven or eight pages. I don't propose, My Lord, to read all these out, but Your Lordships will find, in looking at them, that these are political speeches which indicated the desire for change, indicated dissatisfaction, indicate, also My Lord, that the members of the organisations did not look merely to Parliament for the change. But, My Lord, apart from the fact that parts of these long speeches seem to be irrelevant to any issue, certainly irrelevant to the issue of violence, one finds, on looking through them, that one does not get violence in these speeches. Now My Lord, in that respect, there is a great deal of difference between this type of speech or document, and the type that one finds under the heading of the A.N.C. Now, My Lord, under the A.N.C. heading, one did find a type of speech, which, subject to anything which may be said at any other time about its accuracy, its context, status of the man who made it, on the face of it, it had something to do with violence. Your Lordships will recall that some of these speeches were mentioned on the last occasion. There was this speech in which someone, purporting to deal with Freedom Volunteers, said, that if they were told to be violent, they must murder. Now, My Lord, there is no such speech, or document, under the heading of the Coloured People's Organisation. Now, My Lord, it would appear that the speeches and documents do not in fact purport to be of that type.

BY MR. JUSTICE BEKKER :

But then wouldn't such an individual be in the happy position of knowing that the case set up against him by the Crown is incapable of proof, but he knows what the case is.

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BY MR. KENTRIDGE :

Yes, exactly, My Lord. He would be in that happy position, but for this blanket allegation that in addition to this, what I might call, harmless stuff of his own organisation, there is this blanket allegation that his organisation knew that the A.N.C. policy was a violent one, and none the less supported it.

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BY MR. JUSTICE BEKKER :

Well, he knows the Crown case includes a blanket allegation which the Crown can't prove, but that is the Crown case.

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BY MR. KENTRIDGE :

But My Lord, the Crown can't prove it, if your Lordships now, with respect, say that it is not entitled to prove it in that form, but My Lord, we are not in a position to say that there is nothing in the Preparatory Examination Record to show this. Somewhere lurking in the Preparatory Examination, there may be an allegation....

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BY MR. JUSTICE BEKKER :

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No, well, you are referred to the Summary of Facts, the Schedules and the Further Particulars - not the Preparatory Examination Record.

BY MR. KENTRIDGE :

I'm sorry My Lord. Well, let's take the Summary of Facts. Somewhere in this Schedule of

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meetings and speeches, there may be a speech which the Crown is going to rely on, and my learned leader illustrated that, with respect, particularly with regard to the Freedom Volunteers. If one merely looks through these Further Particulars, one sees that it is not 5
alleged here that the Trade Union Organisations supported the Freedom Volunteer campaign, but if one looks at the Further and Better Particulars, one sees the allegation there, that they did, but that one has to trace in the Summary of Facts. In other words, My 10
Lord, if one compares the organisations, if one is a member of the Indian Congress, then when it comes to the question of Freedom Volunteers, one turns to page 66 and one finds there set out on page 66 and the following pages, the facts and speeches which give rise to 15
the allegation that the Indian Congress supported the Freedom Volunteers campaign - it is there. But when one comes to Trade Union, My Lord, there is nothing in here to say that the Trade Unions supported the Freedom Volunteers campaign. To find that, one has 20
to go, My Lord, to page 15 of the Further and Better Particulars. There it says, they supported the campaign, but unlike the members of the Indian Congress, My Lord, it isn't set out for them here, as we thought Your Lordships intended it to be set out, but it is 25
to be found in here, and in all the other Schedules, including, My Lord, some thousands of documents. Well, My Lord, in our submission that was never intended by Your Lordships' Order. My Lord, with regard to the position of a person who might otherwise know 30
the strength or weakness of the case against him, one

has the position of people in the other organisation, who on reading through the speeches and documents, under the headings of their organisation in these Further Particulars, find that far from speeches or documents being violent, they are expressly non-violent. 5

The speech my learned leader referred to, and of the Indian Congress on page 5698, where someone says specifically that the Freedom Volunteers are to be non-violent - sort of religious army - torch bearers of civilisation. If that Accused - the Accused concerned, 10 could confine himself to those Further Particulars, he would know, he had nothing to worry about on that score, but he is not, My Lord, he is sent back to the whole Summary of Facts, to indicate that his organisation presumably supported the A.N.C. in its policy of pre- 15

paring Freedom Volunteers, not for civilisation but for violence. But that, My Lord, that, My Lord, is hidden. My Lord, I don't want to read out . Your Lordships' judgment on that point, but it is our submission that it is basically Your Lordships' Order that that type 20

of allegation was not merely insufficient, My Lord, but positively confusing. My Lord, I've indicated that the South African Coloured People Organisation, was an organisation in which a small number of speeches and documents put under its paragraph number, that is 25

paragraph B in the Further Particulars, has on the face of it, no violence in it, or at any rate, no violence that could^{not} be dealt with in a comparatively easy sort of way. My Lord, in the case of the Indian Organisations, the difficulties are even greater, because 30

there, one has, My Lord, not one organisation, but six.

There are six Indian Congresses, and they are all dealt with under paragraph B. Each one of them had its speeches and documents, but, My Lord, again, in addition to those, which are set out in the Further Particulars, there is the blanket allegation, starting on page 7 of 5 the Further and Better Particulars, covering all the Indian Congresses. Now, My Lord, the embarrassment to the Indian Congresses, is clear, if one takes the matters relied upon, starting, My Lord, at page 47. If Your Lordships would look at page 47 of the Further Particulars. My Lord, it starts off with a speech by Accused No. 3. That speech calls for a repetition of the defiance campaign. It says that the powers of the non-European peoples in South Africa is the power of their labour. The second speech, the speech of N.T. 15 Naiker, simply discusses the franchise. The third, the speech of Patel, is a protest against Police raids and bans. The fourth one is a long, 3 to 4 page, description of the lot of non-Europeans in South Africa. My Lord, there are a number of documents which I'll 20 deal with later, but it goes on to the speeches, on page 48, at the bottom of the page. There is a speech of D.A. Seedat - parts of it are incomprehensible, the rest of a general political discussion of anti-imperialist tone, the second one deals with difficulties 25 with the Police. It deals with the naval mutiny in India in 1946, the Bantu Education and Foreign Affairs. My Lord, a speech of Mathala on the next page - a speech about what happened in India, how people brought about changes in India. The next speech by N.T. Nai- 30 ker, seems to us to have nothing at all to do with violence. The next speech, My Lord, is apparently

a mistake by the Crown - apparently it was not by B. Meyer, but some other person. The last one by N.T. Naiker has got absolutely nothing in it which is on the face of it relevant to violence - it deals with the Freedom Charter, in a favourable sort of way. My Lord 5

if one goes on to the other speeches, one finds some - one finds a great deal of repetition of the same speeches and documents, My Lord, but if one goes on again to page 52, one sees another speech by - a speech by someone called Moola. It is an anti-imperialist 10

speech, My Lord, but there is no praise of violence - no violence in it - he quotes from Victor Hugo, praises the Freedom Charter. The next speech by Adams on that page is a criticism of the late Cecil Rhodes, also criticism of Bantu Education, chances for non-Europeans, 15

calls for signatures for the Freedom Charter. My Lord if one goes to page 56, one sees there five speeches by Accused No. 3, Kathrada. The first one is an anti-American speech, but without any lauding of violent act or encouragement of violent acts; then next one 20

similarly, My Lord - anti-American, nothing else. The next one, My Lord, is positively non-violent - it is specifically non-violent. It states that the policy of the Congress is a non-violent policy. Now, My Lord, people concerned with these organisations, 25

reading these speeches, and My Lord the documents are similar, reading those speeches and those documents, they would think that, well, they have nothing to worry about - far from showing that the policy was violent, it may well show that the policy was non- 30

violent. My Lord, they might be right and they might be wrong, but that is the view they might take.

Again, until they find this blanket allegation, that they supported the policy of the A.N.C. - the violent parts of the policy. And they wonder what that means. Does that mean that some Indian Congress officials were present when the violent speech was made by an A.N.C. man - what does it mean. My Lord, none of that is stated. My Lord, with regard again to the documents, there again, looking through the documents, one will find, and I can refer, for instance, to page 63. On page 63 there is reference to a Presidential address by the President of the South African Indian Congress, relied on by the Crown. My Lord, that is again positively non-violent - relied on by the Crown. Similarly, My Lord, on the next page - First Statement issued by the Natal Action Council of C.O.P. One looks at that, one sees it contains a statement by the President of the Indian Congress, which is specifically non-violent. So, again, My Lord, is it going to be suggested, one wonders, from some information in the Summary of the Facts, that in spite of this, the Committee of the South African Indian Congress, were present at some meeting not referred to here, where the African National Congress explained that their policy was violent, and none the less asked for the Congress' support. My Lord, there is no need, with submission, for me to deal specifically and in detail, with the documents, because as my learned leader pointed out, with regard to these other organisations, it would appear from the Further Particulars, that many - perhaps most - of the documents under the headings of the other organisations, are intended to fulfil a different function from the

documents and speeches under the heading of the A.N.C. My Lord, the contrast was pointed out too, between what is on page 27 and on page 66. On page 27, it is said that the documents and speeches are there to support the inference that the Freedom Volunteers were to be prepared for acts of violence - on page 66, in the case of the Indians, it is just to show general support for the Freedom Volunteer campaign. However, My Lord, although it would appear on the face of it, that the documents and speeches are required for different purposes, none the less, it is not something which we can simply stand on with that blanket allegation - with the general methods of the Summary of Facts. My Lord, those are two organisations, the Coloured Peoples Organisation and the Indian Organisation, where on the face of it, there seems to be not only no violence, but in many cases, non-violence. My Lord, if one turns to some of the other organisations, once again one has this difficulty, which I can demonstrate to Your Lordships, that long speeches and documents are relied on, which seem to us to have either nothing to do with violence, or at any rate, not to have anything to do with violence in the same way as some of the A.N.C. speeches may have something to do with violence. There again, My Lord, one can't simply recognise it. If one takes, for instance, the Congress of Trade Unions. My Lord, one finds here, in these particulars about violence, annexures, other documents relating to Trade Union Organisations - I can refer Your Lordships in the first place to page 118. Annexure No. 6 - 'How to organise unorganised Workers'. My Lord, one gets this document referred to - one is referred to certain

one is referred to certain pages of it. On page 115, one has the same document referred to, but this time the whole document. One is referred to the whole document, and we find that half of it consists of advice to an organiser on how to approach and speak to workers. 5 The questions he must ask them. 'What time do you start work in the morning. Are there any tea breaks during working hours. Does your employer use harsh language when he wants you to do some work.' Now, My Lord, it is quite true now, with regard to this sort of document, 10 we are not in the position which we were previously. We know now, more or less, why this document is relied on, and we know that if we think that there is nothing in this document, well, we can just argue that. But again, My Lord, S.A.C.P.O., Trade Union Accused and the 15 co-conspirators, are not in a position simply to rely upon this and say we can rest our case on that, because for all they know, there in the blanket allegation, of their support for the A.N.C., lurking in the Summary of Facts, is something additional, and there, My 20 Lord, it may be, and one does not know what the additional matter is. It may be that the Crown intends to prove that some S.A.C.P.O. people went to a meeting of the Indian Congress, at which some member of the A.N.C. explained to the Indian Congress what was 25 happening, the Indian Congress supported the African National Congress, and later the Trade Union Congress supported the Indian Congress. My Lord, there are any number of possible variations, and I submit again, in the case of the Trade Unions Organisation, that if 30 violence is to be found anywhere, it can only come from the blanket allegations. On the other documents

and speeches, My Lord, we - either we would fight the case in a simple way - we might even have an exception, but while that blanket allegation remains, the Crown has still failed to set out properly its case on violence. And My Lord, I should point out, that although I've referred to it from the point of view of say, an Accused who is a member of the Congress of Trade Unions, it does affect other Accused also, because there are a number of co-conspirators, who are, say, only the members of the Congress of Trade Unions. The admissibility of their speeches and documents depend possibly on whether they are shown to be parties with the conspiracy, which will depend on whether their organisation is a party to the conspiracy.

BY MR. JUSTICE BEKKER : 15

Did you say there might be other exceptions?

BY MR. KENTRIDGE :

No My Lord, I said that if there were - if there was....

BY MR. JUSTICE RUMPF : 20

Will you be some time still?

BY MR. KENTRIDGE :

Well, My Lord, I don't know what time Your Lordships propose to rise, but I should, I think, be at least another half hour. 25

THE COURT ADJOURNS UNTIL THE 4TH AUGUST, 1959.

COURT RESUMES ON THE 4TH AUGUST, 1959.APPEARANCES AS BEFORE.BY MR. KENTRIDGE :

My Lord, on the argument which I was addressing yesterday, I have nothing further to add, but I would like if I may to recapitulate the effect of my argument. My Lord, in my submission we have shown that not all the speeches and documents on which the inference of violent 5 policy is based are set out in the Further Particulars. By reason of the blanket allegation about knowledge and support it follows that a part of the basic material on which the inference is based, and undefined but in some cases - in the case of some organisations apparently a 10 substantial part of the speeches and documents relating to or found in the allegations of violence are still to be sought in the Schedules annexed to the Summary of Facts. Now our submission is that this is a substantial failure to comply with the Court's Order, and this sub- 15 mission, My Lord, is based on our interpretation of Your Lordships' Judgment and Order. We understand it as meaning at a minimum that all speeches and documents on which the Crown relies to found its allegation that the organisations had a policy of violence should be 20 extracted and plainly set out or indicated. And we understand it as meaning that it is not sufficient for the Crown to continue to refer generally to the speeches and documents in the Summary of Facts. And if our interpretation on this point is correct, we submit 25 that we have plainly shown that there has been non-compliance. But, My Lord, if on the other hand we were wrong, and if it is consistent with Your Lordships'

Judgment and Order, that the Crown can give the Defence
some particulars, and in addition refer the Defence in
general terms to the Summary of Facts and the Schedules,
so that My Lord in order to find the complete case on
violent a search must again be made at large through the 5
Schedules attached to the Summary of Facts, if My Lord
that is the meaning and intention of the Order, well
then our objection and argument would be based on a mis-
conception and would fail. But in my submission, the way
in which we have understood the Order is the correct one, 10
and if we are correct on that My Lord, then I submit that
the rest of the argument follows. My Lord, I now turn to
the argument in paragraph 1 of the Notice of Motion and
there My Lord there is not very much which I have to add
toward my learned friend Mr. Nicholas said yesterday in 15
dealing with the preliminary objection. I should like
however, as a starting point to ask Your Lordships to
refer to page 22 of the Judgment of His Lordship Mr.
Justice Bekker on the question of Further Particulars.
Your Lordships will recall that in that passage His 20
Lordship stated that the Crown elected not to answer the
original question about violence specifically, but to
content itself with a general reference to the Summary
of Facts. It admittedly sought to emphasise those
portions which in its view of the matter might have 25
more important bearing than the rest of the Summary
of Facts on the issue of violence. This document, His
Lordship said however, does not confine itself to the
issue of violence. It goes on to state that to the
extent that certain topics may have nothing to do with 30
the issue of violence the Accused should not have been
called upon to consider the Summary of Facts and the

many speeches and documents it incorporated. Yet that
 is precisely what they are called upon to do in their
 endeavour to ascertain from the Crown the facts, speeches
 and documents upon which reliance is placed in support of
 the inference of violence. My Lord, I refer to that 5
 passage at the outset by reason of the question which
 Your Lordship the presiding Judge put to my learned
 friend Mr. Nicholas yesterday morning, when Your Lordship
 asked whether the position was that previously we com-
 plained that we had too little and now we complain that 10
 we havetoo much. As Your Lordship will see from that
 passage of the Judgment, our complaint was always on this
 point that we had too much, in the sense that we were
 given a large undigested mass of facts from which to
 find the policy of violence. Our complaint now, My Lord, 15
 is not a different one. It is the same one, except that
 now instead of a large undigested mass of facts, there is,
 with respect to my learned friends, a small and only semi-
 digested mass of facts. My Lord, if I may refer Your
 Lordships to these Further Particulars, your Lordships 20
 will see that once again the speeches and documents which
 are set out are confused in the sense that one finds docu-
 ments and speeches which are used for a purpose which
 isn't made clear. If Your Lordship will look at page 2
 of the Further Particulars, Your Lordships will see that 25
 in paragraph 1(a) a number of things are stated. It is
 stated that the A.N.C. denounced the present form of
 State, also that it demanded its destruction, which may
 mean destruction by violence, propagated the substitution
 of another form of State and said that the form of State 30
 propagated was to be a Peoples' Democracy or a State
 based on the Freedom Charter. And then, My Lord, there

are several pages set out of speeches and documents.
 My Lord, the point is simply this, once again when we
 read these large number of speeches and documents, and
 some of these speeches Your Lordship will see are very
 long speeches, speeches of several pages, we are still in 5
 the position of wanting to know whether a speech is there
 simply to show that the Accused want a Freedom Charter
 type of State or whether lurking in that speech there is
 some expression which the Crown is going to rely on in
 order to show that the speaker had a policy of violence. 10
 Perhaps My Lord, the speaker used a form of expression
 which the....

BY MR. JUSTICE BEKKER :

Doesn't the Crown tell you for what purpose
 it is going to use these speeches? They summarise in 15
 1(a) what they say will be gleaned from the various
 speeches set out, and they are going to use it for that
 purpose.

BY MR. KENTRIDGE :

Except My Lord that what they allege here 20
 are a large number of things, but the main point is that
 one doesn't know whether the speeches are intended to
 show a demand for destruction by violence or merely the
 form of the new State. We did in our Request....

BY MR. JUSTICE BEKKER : 25

In 1(a) they tell you these things were said.
 1(b) says the facts set forth in sub-paragraph (a) are to
 be inferred from the following. So you know for what
 purpose at least these speeches are going to be used.
 It is in that sense that I want to know how you are kept 30
 guessing what these speeches are to be used for.

BY MR. KENTRIDGE :

Well, My Lord, some of the speeches presumably are for the last part of paragraph 1 about the Freedom Charter. One finds on reading through the speeches some of them are about the Freedom Charter. 5
Some of them on the other hand contain a denunciation of the State as an imperialist State. But which, if any, are alleged to contain a demand for the destruction of the State by violence if that is meant is by no means clear. My Lord, I could give you an example. There are 10
large numbers of documents here which are articles in a newspaper called "New Age". One can read twenty of them, My Lord, and one finds in them advocacy of the Freedom Charter, but one wonders is that all the article is for? Or is it also relied on as a demand for the 15
destruction of the State by violence as an immediate object? We can't say it is irrelevant, because it has got something about the Freedom Charter in it. But must we find the man who wrote the article and ask him whether when he used the words "struggle for equality" he meant a 20
violent struggle? Or is the article simply relied on as showing...

BY MR. JUSTICE BEKKER :

Look, presumably the Crown says it does.

BY MR. KENTRIDGE :

Well, My Lord, we asked them to state that plainly, because we took this as meaning possibly that some of the articles were for one purpose and some were for another. But My Lord, the answer given in the Reply to the Request for Further Particulars was simply that 30
we weren't entitled to know. My Lord, there is a much clearer example that I can perhaps give. That is on

page 22. "The A.N.C. accepted and propagated the view that the new form of State desired by them was to be achieved by extra-parliamentary, unconstitutional and illegal action, including the use of violence". Now My Lord, there we had the position that we always complained 5 about, and where we thought, with respect, that our complaint had been upheld. All these speeches and documents under such a heading. Which of them is relied on merely to show extra-parliamentary or illegal action, and which of them to show that it was to include the use of violence. 10 My Lord, there are large numbers of these speeches and documents. I can point to them, where on the face of them there would seem to be no reference to violence, where what is referred to is simply extra-parliamentary action. Now I fully concede, My Lord, that the Crown may 15 say as part of our inference of violence we are going to show that you were in favour of extra-parliamentary action of whatever type, but insofar as they say that you were definitely in favour of the violent form of extra-parliamentary action, there at the very least, in our sub- 20 mission we thought that what the Crown was expected to do was to say these speeches and documents show that your views were extra-parliamentary, and these shows that they were actually violent. Here we have it once again mixed up in this paragraph and every equivalent paragraph 25 throughout these particulars. And that is why, My Lord, in our Notice to Quash, on page 2 in sub-paragraph 1 we said that many of the said facts, speeches and documents do not in the circumstances set out relate to the issue of violence etc. My Lord, it wasn't our intention 30 there to go through every speech in detail, but merely to show that on the face of it a substantial portion of

what is put in here does not on the face of it refer to violence, but is mixed up with things which might be taken to refer to violence, and might not. My Lord, it is not my intention to go through these facts, speeches and documents. I referred to some yesterday in my other argument. What are we to do when under section 3(a), either under the A.N.C. or under another heading, under another organisation, we find a speech in which someone says "our struggle must be extra-parliamentary but it must be non-violent". Where are the special facts and circumstances which Your Lordships ordered....

BY MR. JUSTICE BEKKER :

I would imagine you could say to the Crown you are talking nonsense. How does this speech - you know what the Crown case is. The Crown says that speech I say is a violent speech. And you, you can say to the Crown if that is your case it is nonsense.

BY MR. KENTRIDGE :

Well, My Lord, except that Your Lordships said in the Order that it was implicit that if on the face of the speech or document the violence didn't appear, the special facts or circumstances must be set out.

BY MR. JUSTICE BEKKER :

You see, let us assume the Crown is living in a fool's paradise. The Crown has told you, as far as I can see, well this is what I am relying on. The Accused can then turn to the Crown and say well, if that is your case, what is your case?

BY MR. KENTRIDGE :

Well, My Lord, we are in the position we were. Must we get this mah up...

BY MR. JUSTICE BEKKER :

I think you are in a slightly better position. The Crown said this speech I am relying on to establish the element of violence. You can say to the Crown if that is your case, well, let us hear it. 5

BY MR. KENTRIDGE :

My Lord, I do stand corrected. I didn't mean to say that we were in the same position. Obviously we are in a much better position to that extent, although there might be a mixture of extra-parliamentary and violent speeches, the bulk of it is produced. But as we understood Your Lordship's Order, if what the Crown puts in this Summary is a speech which on the face of it is non-violent, it wasn't simply for us to come to trial and to say well obviously the Crown will never persuade Your Lordships that a speech which is non-violent is violent. 10 15

BY MR. JUSTICE BEKKER :

No, but the Crown has now made its position clear. Whether a speech is a type of speech you mentioned or not, whether the Crown is right or not, the Crown has said and has committed itself by telling the Accused this speech in my view is a violent speech. The Accused can say well, it is news to us, but we just don't see how you arrive at it. 20

BY MR. KENTRIDGE :

Well, My Lord, the only further point I would make on that is simply this, My Lord. Afterall, we are all speaking or reading the English language. If the President of an organisation says in a speech we are a non-violent organisation and the Crown relies on that to prove violence, they must have some special fact or circumstance in mind, My Lord. 25 30

BY MR. JUSTICE BEKKER :

Assuming they have got nothing, but in their wisdom or ignorance they interpret the speech that way.

BY MR. KENTRIDGE :

Well, My Lord, with great respect, we 5
understood that if they were using anything which in Your Lordship's words as used in Your Lordship's Judgment were not suggestive of violence, then

BY MR. BEKKER :

At that stage, Mr. Kentridge, the Crown 10
hadn't pointed to the specific speeches. At the present stage the Crown has said that speech, which you say on the face of it cannot be reconciled with the concept of violence, the Crown says well, we say it is that type of speech. Now you know. 15

BY MR. KENTRIDGE :

Well, My Lord, - yes, if that were so, but what we fear is that there is some special fact or circumstance.

BY MR. JUSTICE BEKKER : 20

But the Crown hasn't set out any special fact or circumstance.

BY MR. KENTRIDGE :

Well, in that case one would take it that they would not be entitled to - they would not be entitled 25
for instance to set out that the speaker used a sarcastic...

BY MR. JUSTICE BEKKER :

That is not the point you take at the moment. The point is non-compliance with the Order.

BY MR. KENTRIDGE : 30

Yes, My Lord, that was my submission. My Lord, the second point in sub-paragraph 1 on page 2 is that

they have set out here a large number of speeches and documents which seem to be relevant only to the different kind of State that is contemplated. There My Lord, I have nothing to add to what my learned friend Mr. Nicholas said. It is our submission that that is an irrelevancy 5 which clutters up the Further Particulars and makes it more unnecessarily difficult to deal with, but there is nothing that I have to add to this submission. Then My Lord, the point in the second paragraph that many of the said facts, speeches and documents are inconsistent with 10 the policy use - to use violence, that I have dealt with, and there is nothing more I can say. I have already made my submission. The third point made My Lord is that included in the facts, speeches and documents or portions thereof referred to by the Crown, are portions of such 15 facts, speeches and documents which are irrelevant or inconsistent with the policy to use violence against the State. Now there, My Lord, what is - we are in a similar position as Your Lordship has suggested on the question of non-violence. In theory it would have been a compliance 20 with Your Lordship's Order if the Crown had said we are using every speech and document, we are relying on the whole and not on a portion. That might have been the case. However, My Lord, once again with submission we all speak and read the same language, and it appears 25 here that the Crown has simply not carried out Your Lordship's Order with regard to the speeches and documents in marking the portions. It has in many cases done it properly, it has marked a paragraph or a page, but My Lord, once again yesterday I referred Your Lord- 30 ships to a long speech, a seven page speech in which people talk about sitting upstairs under bus-apartheid

in the Cape. My Lord, once again it may be that the Crown relies on it, but on the face of it it is complete irrelevant to violence, and the obvious inference one draws is that the Crown hasn't selected its portions.

There is the document to which I referred Your Lordships 5
on how to organise people in Trade Unions, six or seven pages, what they have for tea and what time they start work. My Lord, we can't really believe that the Crown in its case on violence is going to ask....

BY MR. JUSTICE BAKER : 10

But for present purposes you have got to believe it for the Crown says so.

BY MR. KENTRIDGE :

Well, My Lord, with great respect, if the Crown were to have put in here a bus ticket or a cinema 15
programme or a map of Bucharest, I submit My Lord that we wouldn't with respect have to accept it. I know my learned friend submitted that the Crown is the sole judge of relevancy at this stage, but with submission, My Lord, that isn't correct. If there are documents which on 20
the face of them have nothing to do with violence, then My Lord I submit again with great respect that the proper approach is to assume that they are irrelevant until special facts emerge...

BY MR. JUSTICE BAKER : 25

From the point of view of Counsel for the Defence I would imagine they will tell the Accused well the Crown says this is a document suggesting violence. Read it for yourselves. The Crown says this is a document, but we can ignore it. Why couldn't you adopt that 30
attitude?

BY MR. KENTRIDGE :

Well, My Lord, I suppose we could adopt that attitude, save that in the seven or eight or ten page speech or document there may be some phrase which the Crown is going to say has a special meaning, that it means violence on the face of it, although we can't see it. That is why My Lord we took it that the Crown has to mark its portions and why we take it that if something isn't relevant to violence on the face of it, the Crown has got to say why. It is quite true, My Lord, it is very much easier to go through this than it was to go through the Summary of Facts and we have done our best to do so, but in our submission your Lordships ordered the Crown to take out their case of violence, to show the violence, and where the violence wasn't plain on the face of it....

BY MR. JUSTICE BAKER :

No, not to show its case of violence.

BY MR. KENTRIDGE :

Well, to pick out its case, to select the case of violence, but My Lord, in our submission it was - I was going to say implicit in the Order, but I think I should say express in the Judgment that where they wanted to rely on something in which the violence is not apparent they would have by pleading a colloquium or innuendo to give the reason in effect the special facts and circumstances which make them say is violence. Unless and until they have done that, My Lord, we are in the position that having a speech which on the face of it, read in its ordinary meaning has got nothing to do with violence, and I submit My Lord that although it may be that we can ignore it, that when they tender

it in evidence we can object to it, our simple submission My Lord is that that is not a compliance with Your Lordships' Order, and is only at best a partial and inadequate compliance. And for those reasons, My Lord, we submit that the objection taken in paragraph 1 of our Notice is well- 5 founded.

BY MR. JUSTICE RUMPF :

Is that the Defence argument?

BY MR. MAISELS :

Yes, My Lord.

10

BY MR. JUSTICE RUMPF :

It will not be necessary to hear the Crown. On the 2nd of March this Court made the following Order. "The Crown is ordered to inform each Accused upon which facts, speeches and documents or portions thereof as the 15 case may be it relies in support of its inference that it was the policy or part of the policy of each of the organisations mentioned in paragraph 8(b) and paragraphs 5 and 7 of the Summary of Facts, to use violence against the State. It is implicit in this Order that the special 20 facts or circumstances not enumerated in the further particulars or the Summary of Facts are relied on by the Crown in relation to any speech or document for purposes of drawing the inference aforementioned, such special facts or circumstances will be disclosed to the 25 Accused." In pursuance of this Order the Crown has supplied to the Defence a comprehensive document setting out in respect of each organisation the facts upon which it relies, with reference to the speeches and documents from which it seeks to draw the inference 30 that it was the policy of the organisation to use violence. There was a Request for additional particulars

to which the Crown replied on the 27th or 28th of July. The Defence is not satisfied with the information given by the Crown and has argued an exception and alternatively an application to quash the indictment. The Crown has objected to the notice of the exception and application to 5 quash on the ground that the notice does not comply with section 168 of the Code. I do not propose to deal with this objection, as in my view the exception and the application to quash cannot succeed. The Defence submitted that the Further Particulars supplied do not consti- 10 tute a compliance with the Order of Court dated the 2nd of March in that some of the facts, speeches and documents referred to do not relate to the issue of violence as such, but to the policy of the various organisations to bring about a change in the State or a different kind 15 of State, and many of the facts, speeches and documents are inconsistent with a policy to use violence against the State. We are not at this stage called upon to consider the cogency of the evidence upon which the Crown intends to rely. The Order was made to compel the Crown 20 to inform the Accused of the case they have to meet as far as the issue of violence is concerned. The Crown has informed the Accused of the facts, speeches and documents it intends to prove and the Accused in my view adequately know what the case against them is on 25 this issue. Now they are not in my view prejudiced in any way by the information given. The Defence has also pointed out that the Crown included in the Particulars a statement that the organisations other than the African National Congress had knowledge of the policies 30 and activities of the African National Congress and supported such policies. The Defence submitted that the

Accused are prejudiced by this statement as it stands because the Crown has not supported this statement with a reference to the primary facts from which such knowledge and support is to be inferred. It was submitted that the information given by the Crown in the additional Further 5 Particulars, in paragraph 13 thereof, was of no assistance and as the Accused were in effect referred to the whole of the preparatory examination record. I do not think that this submission is correct. Paragraph 13 is a Reply to a Request by the Defence, to state the facts and cir- 10 cumstances from which the knowledge and support of the organisations are to be inferred. Now although all the primary facts are not given in the Summary of Facts contained in paragraph 13 the gist of the case against the Accused on this issue is in my view sufficiently 15 set out. We make no Order on the exception or on the Application to Quash.

BY MR. PIROW :

I submit My Lord, that the Accused should now be called upon to plead. 20

BY MR. MAISELS :

If the Accused are to be called upon to plead that would involve the reading of the indictment presumably to thirty different persons and obtaining a plea. I don't know whether Your Lordships are 25 prepared to allow Counsel to....

BY MR. JUSTICE RUMFEE :

What we can do, Mr. Maisels, is that they can rise and they can be asked if they know the contents of the indictment and what they plead. That 30 way it is very simple.

BY MR. MAISELS :

It is not quite so simple because the charge is not...

BY MR. JUSTICE RUMPF :

I know. The method is simple.

BY MR. MAISELS :

The charge to be put to each person is not the same.

BY MR. JUSTICE RUMPF :

Have you any objection to Counsel indicating what the plea is, Mr. Pirow?

BY MR. PIROW :

No, My Lord.

BY MR. MAISELS :

Well, the plea is this on behalf of each of the Accused, My Lord : He or she pleads not guilty to the charge insofar as the overt acts are laid against him or her.

BY MR. JUSTICE RUMPF :

That I take it is because of the Crown's submission in regard to the indictment?

BY MR. MAISELS :

That is because the Crown has said this is what the indictment is, and on that basis we didn't take certain other points, and that is the charge to which we are pleading to.

BY MR. JUSTICE RUMPF :

In other words, the plea to the indictment as qualified - if I may use that word - by the Crown is not guilty.

BY MR. MAISELS :

Yes, My Lord.

BY MR. JUSTICE RUMPF :

In that case the plea is, insofar as this Court is concerned, not guilty.

BY MR. MAISELS :

Yes, I agree My Lord, all I am concerned with is to make it clear on what basis this case is being fought, but the plea is not guilty for each Accused.

BY MR. JUSTICE RUMPF :

We feel, Mr. Maisels that although in practice when non-Europeans are charged, very often Counsel indicate the plea and then the plea is noted. In this case the Registrar will ask each Accused in the light of what you have said whether he pleads guilty or not.

BY MR. MAISELS :

Yes, My Lord, I know the procedure. And then My Lord I wish to indicate that after that is done that we wish to avail ourselves of our rights under section 169(5) of the Code.

BY THE REGISTRAR :

Accused No. 1, will you rise. Do you plead guilty or not guilty?

BY ACCUSED NO. 1 :

I plead not guilty insofar as the overt acts are laid against me.

BY ACCUSED NO. 2 :

I plead not guilty to the charge insofar as the overt acts are laid against me.

BY ACCUSED NO. 3 :

I plead not guilty to the charge insofar as the overt acts are laid against me.

BY ACCUSED NO. 4 :

I plead not guilty to the charge insofar as the overt acts are laid against me.

BY ACCUSED NO. 5 :

I plead not guilty to the charge insofar as the overt acts are laid against me.

BY ACCUSED NO. 6 :

I plead not guilty to the charge insofar as the overt acts are laid against me.

BY ACCUSED NO. 7 :

I plead not guilty to the charge insofar as the overt acts are laid against me.

BY ACCUSED NO. 8 :

I plead not guilty to the charge insofar as the overt acts are laid against me.

BY ACCUSED NO. 9 :

I plead not guilty to the charge insofar as the overt acts are laid against me.

BY ACCUSED NO. 10:

I plead not guilty to the charge insofar as the overt acts are laid against me.

BY ACCUSED NO. 11 :

I plead not guilty to the charge insofar as the overt acts are laid against me.

BY ACCUSED NO. 12 :

I plead not guilty to the charge insofar as the overt acts are laid against me.

BY ACCUSED NO. 13 :

I plead not guilty to the charge insofar as the overt acts are laid against me.

BY ACCUSED NO. 14 :

I plead not guilty to the charge insofar as the overt acts are laid against me.

BY ACCUSED NO. 15 :

I plead not guilty to the charge insofar

as the overt acts are laid against me.

BY ACCUSED NO. 16 :

I plead not guilty to the charge insofar as the overt acts are laid against me.

BY ACCUSED NO. 17 :

I plead not guilty to the charge insofar as the overt acts are laid against me.

BY ACCUSED NO. 18 :

I plead not guilty to the charge insofar as the overt acts are laid against me.

BY ACCUSED NO. 19 :

I plead not guilty to the charge insofar as the overt acts are laid against me.

BY ACCUSED NO. 22 :

I plead not guilty to the charge insofar as the overt acts are laid against me.

BY ACCUSED NO. 23 :

I plead not guilty to the charge insofar as the overt acts are laid against me.

BY ACCUSED NO. 24 :

I plead not guilty to the charge insofar as the overt acts are laid against me.

BY ACCUSED NO. 25 :

I plead not guilty to the charge insofar as the overt acts are laid against me.

BY ACCUSED NO. 27 :

I plead not guilty to the charge insofar as the overt acts are laid against me.

BY ACCUSED NO. 29 :

I plead not guilty to the charge insofar as the overt acts are laid against me.

BY ACCUSED NO. 30 :

I plead not guilty to the charge insofar as the overt acts are laid against me.

ACCUSED NO. 6 ACTS AS INTERPRETER FOR ACCUSED NOS. 20, 21, 26 and 28.

BY ACCUSED NO. 20 :

I plead not guilty to the charge insofar as the overt acts are laid against me.

BY ACCUSED NO. 21 :

I plead not guilty to the charge insofar as the overt acts are laid against me.

BY ACCUSED NO. 26 :

I plead not guilty to the charge insofar as the overt acts are laid against me.

BY ACCUSED NO. 28 :

I plead not guilty to the charge insofar as the overt acts are laid against me.

BY MR. PIROW :

Just as far as the plea is concerned, I have no objection to the plea, but I have doubts as to whether the plea in that form should not be noted simply as a plea of not guilty.

BY MR. JUSTICE RUMPFER :

That is what I have indicated. It is not guilty to the charge contained in the indictment as qualified by the Crown. That is a plea of not guilty.

BY MR. PIROW :

That is a plea of not guilty. I have already indicated what our attitude is going to be about overt acts. If my learned friend cares to rely upon it, he can do so.

BY MR. JUSTICE RUMPF :

I don't follow this last remark.

BY MR. PIROW :

My Lord, ...

BY MR. JUSTICE RUMPF :

You have indicated to the Court that the Crown is charging the Accused with the overt acts against him or her, not with the acts against the others.

BY MR. PIROW :

That is so.

BY MR. JUSTICE RUMPF :

Yes, that is all that it means. The plea is not guilty.

BY MR. MAISELS :

In other words, My Lord, what we have saved is the necessity of reading out to each person the charge with the overt against him. And to that we have pleaded not guilty.

BY MR. JUSTICE RUMPF :

What does Section 169(5) say?

BY MR. MAISELS :

"Together with his plea the Accused may offer an explanation in his attitude in relation to the charge or a statement indicating the basis of his defence, and such explanation or statement shall be recorded and shall form a portion of the record of the case." In terms of that section, on behalf of all the Accused, My Lord, we make the following statement : "It has already become apparent during the preliminary stages of this case that the central issue is the issue of violence. While no admissions are made in regard to any of the Crown's allegations, the Defence case will be

that it was not the policy of the African National Congress or of any of the other organisations mentioned in the indictment to use violence against the State. On the contrary, the Defence will show that all these organisations had deliberately decided to avoid every form of violence, 5 and to pursue their ends by peaceful means only. The Defence will rely for its contentions as to the policies of these organisations upon their constitutions, the resolutions taken by them at their conferences and the pronouncements of their responsible national leaders. 10

If necessary these leaders will be called as witnesses for the Defence. The Defence will place before this Court the material relating to these organisations from which their policies might normally be expected to be deduced. In its indictment the Crown has relied upon certain 15 speeches. Most of them by persons of minor importance, which may seem to suggest the existence of a policy of violence. Insofar as such speeches were in fact made in the terms alleged, the Defence will say that they may have represented the notions of individuals and not the policy 20 of the organisations." Now My Lord, for purposes - so that I can sit down now My Lord for some time, I hope, I would like to indicate to Your Lordship that whereas up to now I have been appearing with all my learned friends on behalf of the Accused, as from now on, My Lord, there 25 will be an alteration in representation which I should like to ask Your Lordships to record. In the first place, Accused No. 16, Nokwe, will be appearing for himself. My learned friend Mr. Nicholas will appear for No. 1 Accused. My learned friend Mr. Kentridge for No. 2 30 Accused; my learned friends Mr. Fischer and Mr. Flewman for No. 3 Accused; my learned friend Mr. Berrange for No. 4 Accused; my learned friend Mr. Flewman for No. 5

Accused; my learned friend Mr. O'Dowd for No. 11 Accused, and I will be appearing My Lord with all my learned friends for the remainder of the Accused. I may say, My Lord, that it is not the intention of the Defence as far as possible for all persons to avail themselves of the right of cross-examination or of argument, and that generally speaking we will endeavour to have one person to put either the cross-examination or the argument, but it may become necessary in the course of the case for either more than one argument to be adduced or more than one cross-examination to take place. I may also indicate, My Lord, immediately, that from what we understand the trial will be an extremely long one. It will not be possible for financial reasons, mainly, for all Counsel to be present on all occasions, but some Counsel will always be present to represent the Accused on every day.

BY MR. FIROW :

My Lord, the next question is the question of the opening statement. Now the opening statement in this case, My Lord, is one of importance, because in the opening statement the Crown intends to tell the Court and to tell the Accused how we are to develop this case, and it is essential if possible that everything is foreshadowed, that we are not faced with the question of why was that not set out in the opening statement. Now we have gone to the trouble, My Lord, of preparing an opening statement in the first instance, having it roneod. Subsequent particulars have thrown that out of focus, we have done it a second time, subsequent developments have made that impossible, and we are not quite ready. This is our third attempt - rather, to present Your Lordships our third attempt. It will be a

fairly long document, read out with Your Lordship's permission and will be available at any time to the Court and to the Accused. And therefore, My Lord, under those circumstances I ask for a postponement until Monday, and we shall then be ready. May I just add, My Lord, I am quite sure we will save a lot of time at a later stage, but in addition to that we have not our witnesses here today. We have to prepare for our witnesses, and that will take a day or two to get them in order, so that in any case there won't be much left of this week.

BY MR. JUSTICE RUMPF :

But Mr. Pirow, why on earth couldn't you have this opening statement ready when this case started yesterday?

BY MR. PIROW :

Because, My Lord, we did not know whether this case was to be further postponed, further particulars asked for. We could not anticipate Your Lordship's Judgment...

BY MR. JUSTICE RUMPF :

But why does it take so long to have the opening statement ready?

BY MR. PIROW :

My Lord, that opening statement will be about a hundred pages. We have got most of it ready, but we want to consolidate it in view of what has happened in Court now, and we want to roneod. We didn't go to the extent of having it roneod. Now all that is a question of a few days, and I can assure Your Lordships that in the end this is going to save a lot of time, because the whole of the Crown case will be specifically set out, how we are going to deal with the various

witnesses and so forth.

BY MR. JUSTICE RUMPF :

Well now, assume that you postpone the opening speech for a few days, why can't you start leading formal evidence, or what may be considered formal evidence?

BY MR. PIROW :

We have already agreed, my learned friend and I, that we should begin by putting in all the documents, but I can't do that today because the witnesses have got to come from Johannesburg.

BY MR. JUSTICE RUMPF :

Well, can we start tomorrow? Informal evidence can be led and then you can address us at a later stage when you are ready.

BY MR. PIROW :

If Your Lordship pleases, we can start tomorrow morning.

BY MR. MAISLIS :

There is no reason if the witnesses have to come from Johannesburg, and presumably they have been standing ready since yesterday, why we shouldn't start at lunchtime. My learned friend made a certain insinuation with regard to our conduct yesterday which I ignored. I won't return the compliment, although he deserves it this morning. My Lord, I merely want to say this, that if my learned friend wants to present his opening speech next week, we have no objection at all. We would ask that the matter proceed. My learned friend is correct when he says we have agreed that the document part of the evidence should go in first. I have agreed, I have gone further with my learned friend

My Lord, and I have indicated that I will not cross-examine those witnesses, save insofar as those documents are concerned. So that, My Lord, my learned friend can proceed with that quite happily and with respect, My Lord, the resources of the State should be sufficient to enable us to make a start this afternoon.

BY MR. PIROW :

My Lord, this is eleven o'clock, It will be impossible for us to have them here at 2.15.

BY MR. JUSTICE RUMFF :

Mr. Maisels, in all probability if we say start at quarter past two, the witnesses will have to be taken through the documents and we won't be able to assemble. I think that we will adjourn until tomorrow at quarter to ten, but then the evidence should commence. Then at a later stage you may address us with the opening speech.

CASE REMANDED TO THE 5TH AUGUST, 1959.

COURT ADJOURNS.

COURT RESUMES ON THE 5TH AUGUST, 1959.

APPEARANCES AS BEFORE.

MR. VAN NIEKERK ACTS AS PROSECUTOR.

THE CROWN CALLS :

(P.E. RECORD
Page 96, Vol. 1)

THEODORE EMIL EDUARD MOELLER, duly sworn;

EXAMINED BY THE PROSECUTOR :

During 1955 were you a Detective Sergeant in the South African Police, stationed at Johannesburg? ---
I was.

On the 27th September, 1955, did you search the offices of the African National Congress? --- I did. 5

BY MR. MAISLS :

My Lord, I don't know whether that is common cause. I think the witness should be asked where he searched.

EXAMINATION BY PROSECUTOR RESUMED : 10

Now on that date, did you conduct any search on the 27th September, 1955? --- I did.

Where? --- I searched the offices of the African National Congress at 38 Market Street, Johannesburg. 15

Was that on the authority of a search warrant? --- Under the authority of a search warrant.

Was there anybody present when you searched these premises? --- Two detective assistants, and the Accused Robert Resha. 20

Can you identify him? --- (WITNESS IDENTIFIES ACCUSED NO. 17).

Was there anybody else present at the search at that time? --- Not at that stage.

Did you - on the authority of the search

warrant did you take any documents? --- I siezed numerous documents.

Did you seize any documents from Resha, Accused No. 17? --- I did. I searched his person and took certain documents from him. 5

Will you have a look at this document A.1? --- Yes. This is an African National Congress membership card. The name of R.N. Resha, 41 Bertha Street, Sophiatown. It is a membership card for the Sophiatown Branch, of that organisation. 10

For what year? --- It appears for the years 1953, 1954 and 1955. In a portion of the document is recorded "Paid 2/6 on the 11/3/55". A further endorsement on the same page, "A.N.C.Y.L. 2/- 29/5/55 - signed J.B. Mashile". 15

And at the bottom of that document is there a further what appears to be a signature? --- Yes, it bears the signature of J. Nkadimeng, for Treasurer-General.

Do you know what position Resha, Accused No. 17 occupied at the African National Congress Offices? --- At that time he was acting as secretary. 20

How did you know that? --- I got to know that through various investigations and observations made from time to time. 25

Now that document, A.1, where did you get that document? --- In the possession of Resha, in his pocket.

Did you also look at A.2?

BY MR. MAISELS : 30

My Lord, is A.1 going in? We would like to see it.

145. (T.E.E.MOELLER)
(A.2)

EXAMINATION BY PROSECUTOR RESUMED :

Will you hand in A.1 please? --- Yes.

Before you go on to the next document, do you know J. Nkadimeng? Do you know a person by that name?

--- I do.

5

Do you know a person amongst the Accused by the name of J. Nkadimeng? --- I do.

Can you identify him? --- Yes. (WITNESS IDENTIFIERS ACCUSED NO. 15).

Will you have a look at document A.2? --- Yes.

10

Is that a roneod document? --- It is a roneod document, headed "Your signature for the Freedom Charter".

Where did you find this document? --- Also on the person of Accused No. 17.

15

"Would you please read that document? ---

"Your Signature for the Freedom Charter. We pledge that when we return from here to our homes, we will at once make known to all our neighbours and work-

20

mates what we have done here, and we will win support for the Freedom Charter. Extract from Resolution of the Congress of the People at Kliptown. The Transvaal Consultative Committee of the A.N.C.,

T.I.C., and S.A.C.T.O. and C.O.D. calls you to a mass conference. Mass Conference No. 3, Trades Hall, Kerk Street, Johannesburg at 10 a.m. 18th

25

September, 1955 to launch the signature campaign for the Freedom Charter. The Transvaal must collect signatures of 450,000 people. Put your

30

shoulder to the wheel. We ask you to undertake the following task: 1. Popularise the Freedom Charter.

2. Get signatures of the people pledging themselves for the Freedom Charter. 3. Send your complete forms to your local Congress Branch of the local Consultative Committee or to 37 West Street, Johannesburg. Distribute the Charter as widely as possible and obtain more copies from your local Congress Branch or 37 West Street, Johannesburg. 5. Organise the people with the Congresses behind the Freedom Charter. Come to the Trades Hall on the 18th September. A pledge for the Charter is a pledge for freedom. Maye Buye, Afrika". "Long live the Congresses". Unsigned, for the Transvaal Consultative Committee".

Now is there a second page to that document?
--- Attached to this document, My Lord, is a further document, "One Million Signatures for the Freedom Charter".

"We, the people of South Africa, Black and White, declare for all our country and the world to know that we pledge ourselves to strive together until the democratic changes set about in the Freedom Charter have been won. 1. The people shall govern. 2. All national groups shall have equal rights. 3. The people shall share in the country's wealth. 4. The land shall be shared among those who work it. 5. All shall be equal before the law. 6. All shall enjoy equal human rights. 7. There shall be work and security. 8. The doors of learning and of culture shall be opened. 9. There shall be houses, security and comfort. 10. There shall be peace and friendship." It is signed by various persons.

You hand in that document? --- I do.

147. (T.E.E.MOELLER).
(A.3.)

Exhibit A.3. Is that a manuscript document?

--- This is a manuscript document, a document headed
"Now or Never. Hands off the Coloureds".

Where was that found? --- This was also
found on the person of Resha, Accused No. 17. 5

Will you read it? --- "Hands off the
Coloureds. The long vicious hand of the pass laws
is being extended to the Coloured community. Thou-
sands of them are being rounded up and subjected to
racial tests, which have resulted in a number being 10
classified as Africans. What is the aim of this
attack. The aim is to turn the million Coloured
people into a cheap labour force which has been the
lot of the African in this country since time imme-
morial. To restrict their freedom of movement and 15
assembly; to deny them the right to do skilled work;
to restrict their right of freedom of association
and the right - and their right to collective bargain-
ing. If the pass laws are no good for the Africans,
then they are good for no section of the population. 20
The attack on the Coloured people equally an attack
on the African people. It is an attack on the
oppressed people of South Africa. The Coloured
people have decided to fight against this vicious
attack, and the African National Congress has decided 25
to support them. Let us build up a mighty unity in
action. Now or never." Unsigned.

You hand in that document? --- I do.

I just want you to have a look at A.4. Just
have a look at your marks on the document. Then I am 30
going to refer to A.5, the following document? --- Yes.

Where did you find that document A.5? ---

In a briefcase which was claimed by Janet B. Mashile.

Who is Janet B. Mashile? --- She was the typist-clerk at that time in the offices of the African National Congress at 26 Berkeley Arcade.

Is that the same premises? --- The same premises that I was searching. 5

Is that a manuscript document with some typed copies of the same document? --- It is.

Will you read the first page of the typed document, A.5? --- It is on the letterhead of the African National Congress Youth League, Transvaal, 26 Berkeley Arcade, 38 Market Street, Johannesburg, 23 September, 1955. 10

"All correspondence to be addressed to the Secretary. Dear Sir/Madam. This serves to introduce the African National Congress Youth League history. The African National Congress Youth League was established in 1943 on the occasion of the 30th Annual Conference of the African National Congress which was held at Bloemfontein. The sponsors and founders of the African National Congress Youth League were such leading personalities as the late A. M. Limbede, W. M. Sisulu, A.P. Mda. There was a general feeling at the time, particularly among the youthful members of the African National Congress that the liberatory movement required a more militant spirit which could be acquired by the organised participation of the youth of our motherland. Therefore the African National Congress Youth League was formed on the basis of the ideology of African nationalism, to provide a militant programme of action and raise the political consciousness of the African youth. The correctness of the view of the founders of the 15 20 25 30

African National Congress Youth League has been demonstrated by the subsequent history of the freedom struggle in general, and the African National Congress in particular, for since then the African National Congress had led all the democratic forces of our country to oppose the mounting oppression of our people as in the campaign for the defiance of unjust laws, the Bantu Education campaign, and the campaign for the Congress of the People. In all these campaigns the African National Congress Youth League played a distinguished rôle, and established itself as one of the leading organisations of youth in our country. The African National Congress Youth League in the Transvaal has so far established thirteen branches, mostly along the Reef, comprising over 1,000 members. The leading members of the African National Congress Youth League from a branch to national level are elected annually at a democratic general meeting. Difficulty in organisation. The African National Congress Youth League in the Transvaal lacks a permanent office staff. This is a serious difficulty and all the officials of the African National Congress Youth League are workers and they can only devote their energies to the enormous task of organising the youth during the hours when they are not in the place of their employment. Bound up with this difficulty is the problem of producing regular programme material, such as bulletins for the education of the youth. In the Transvaal for instance, the African National Congress Youth League produces at regular - at irregular intervals one bulletin only, namely "The

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