

And what work was he doing at that stage? ---
I don't know, My Lord.

Would it be wrong to describe him as a full-time employee or worker in the liberatory movement? ---
That may be, I have heard it said that he was giving most 5
of his time to work in the liberatory movement.

What sort of work was he doing to your knowledge, or have you no idea at all? --- I have no idea.

Would you look please at Exhibit L.M. 139, at the beginning of your cross-examination I referred you 10
to certain Minutes in this book. Can you just tell us please, the ones I referred you to, whether to your knowledge they are the Minutes of the Transvaal Action Council?
--- They appear to be so, My Lord.

Do you know what official positions in the 15
African National Congress were held by Accused No. 10, Mr. Molife? --- No, My Lord.

Did you attend any meetings organised on Colonial Youth Days? --- I don't think so.

You may have told us, I am not sure, if your 20
organisation have a Youth League? --- For a short while in Cape Town, yes.

Not in the Transvaal? --- No.

I asked you at the last hearing to go through all the speeches made at Freedom Charter 25
Committee meetings - you know that was the one on which you were asked to comment on the speech of Sejake? --- Yes.

Have you since had an opportunity of looking at all the speeches made on that occasion? --- I am afraid not, My Lord. 30

Sofar as your memory serves you, is there anything in any of the speeches made on that occasion which

appears to you to have been contrary to the policy of the Congress movement? --- No, My Lord, I don't think so.

NO FURTHER QUESTIONS BY MR. HOEXTER.

RE-EXAMINED BY MR. O'DOWD :

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Mr. Lollan, I think you have told the Court that your organisation was a small organisation. Now could you give us an idea, during the period say from the time it was formed in the Transvaal to the Congress of the people, who - how many really active, experienced people were there in the Transvaal at that time? --- No, there weren't very many.

10

How many people did you have to choose from when you had to send your representatives to the various joint committees like the National Action Council and the Transvaal Action Council and all the rest of them? --- We had about four.

15

As a result of that, how many committees did you find yourself on? --- I found myself on very many.

Were you able to keep up with the work of those committees? --- No, My Lords.

20

You were asked about two speeches made by A.N.C. people, Sejake and Resha. Has your organisation ever discussed those speeches? --- No, My Lords.

When you give a view as to what those speeches mean, are you giving anyone's view other than your own? --- I am giving my own view.

25

And when you say whether those speeches are consistent with policy of the Congress movement, are you giving anyone's view but your own? --- My own view.

30

You were asked about the speech of Sejake in which he referred to a possible need to clash with the

armed forces of the state, and you gave your interpretation of that and you said that in your view it was not inconsistent with Congress policy? --- That is so.

If that speech meant that the speaker envisaged a time when there might be armed warfare 5
between the army on the one side and armed Congress people on the other, if the speech meant that, with it be consistent or inconsistent with Congress policy? --- It would be inconsistent with Congress policy and definitely with the policy of my organisation. 10

You also dealt with the speech of Resha in November, 1956 and again you gave your interpretation and you said it was not inconsistent with Congress policy. Now if any volunteer in chief were actually give an order to a volunteer to murder somebody, what 15
would the duty of that volunteer be? --- To refuse to do so, My Lord.

Therefore if that speech meant that it was the duty of a volunteer to obey such an order, would his speech be consistent or inconsistent with Congress policy? 20
--- It would be inconsistent with the policy of the organisation.

Now you were asked about a number of articles and reports which appeared in New Age, Fighting Talk and Liberation. Now with respect to those again, 25
were any of those articles ever discussed by your organisation? -- No, My Lords.

Is what you have said about those articles anybody's view other than your own? --- No.

You said that the Freedom Charter represented a form of Socialism. In your view, is there only 30
one form of socialism or more than one? --- I think

there are degrees of socialism. Some people contend that socialism is when all industry and means of production are nationalised, and some people contend that socialism is when you have free hospitals and free medical services and free schooling and some of the industries nationalised. 5

Can you name any countries that have differing degrees of socialism? --- Yes, I think England, and I think - I don't know if at the time when there was free hospitalisation in South Africa and the nationalisation of railways that is not a certain amount of socialism. 10

What do you call the system in the Soviet Union? --- Communism.

Do you know of anyone who called it socialism? --- I think I have heard it referred to as socialism. 15

In that article that you were referred to this morning, from Fighting Talk, it is reported to be a report of something which Mr. Kruschov had said, in which he dealt with the transition to socialism, did you have any idea in your mind when you read that, of what he meant by Socialism? --- No, My Lord, I think he meant Communism. If it is Mr. Kruschov, then he would mean communism. 20

Did you understand him to mean the system envisaged by the Freedom Charter? --- No, My Lord. 25

You were also referred this morning to a document A. 162 called the Report of the Secretariat on the Western Areas. My learned friend put it to you that that was a description by the Congress movement of the Western Areas Campaign and you agreed to that proposition. Now what exactly did you mean by saying that that was a 30

description by the Congress movement? --- That it was a Report by the A.N.C. Secretariat, I think.

Do you know whether or not it was ever adopted by any other body of any other meeting - movement?
--- No. 5

Now that Report referred inter alia to the concept that the Congress movement should aim at the employment of more and more government forces in the Western Areas, and you were asked whether it was part of the aim of the Congress movement to bring about the employment of a large police force. Now I want to ask you this: Did the presence of such a large police force on the 9th of February, 1955, indicate anything to you with regard to success of the Congress campaign? --- Yes, My Lord, it was that the government was aware of the opposition of the people and the fact that the government, in order to remove the people, sent such a large force, was a success of the campaign on the Western Areas itself. 10 15

BY MR. JUSTICE RUMPF :

Do you agree that the more police there would be the bigger the probability of violence breaking out? --- Yes, My Lord. 20

BY MR. O'DOWD :

Why would that be so? --- Because the presence of such a large force of police - first of all it is difficult for the officers to control the force, when you have such a large force present, and as I have said at the meeting that I attended at the Trades Hall, if one policeman had come up to the stage and taken away the notes of Mr. Sejake, nobody would have been excited by it, but seeing about one and a half dozen police rush the stage, everybody gets excited. 25 30

You were referred to a speech made at a S.A.C.P.O. meeting in Cape Town. It was one at page 903 of the record by Lionel Morrison and you said that this was one consistent with the policy of Congress, and inter alia the speech stated, "what happened in Germany is not going to happen here". Now I want to ask you, if the speaker had said that what happened in Germany would happen here, would that be inconsistent with the policy of the Congress? --- It depends on what the speaker means. If the speaker said what happened in Germany will happen here, he may be showing that - the overthrow of oppression, that it can happen, that we can also overthrow oppression and it doesn't necessarily follow that he is talking about the war that is happening in Germany.

Did Congress have any settled view as to whether what happened in Germany was not happening here? --- No, My Lord.

Then later at the same meeting, there is reference to a pledge which you said was consistent with Congress policy, at page 9041, My Lord. The pledge read as follows : "Gathered here today under the banner of S.A.C.P.O. we pledge our support, we pledge that we will defend our rights, that we will not be intimidated by any South African dictatorship, we stand together with our White, Indian and Coloured compatriots and pledge loyalty to the C.O.F., we pledge that we will rather die on our feet than forever live on our knees". Now how do you understand that last sentence which says that we shall rather die on our feet than forever live on our knees? --- That is figurative, that has often been used, My Lord, that we would rather - you have the

expression you would rather die fighting, which means that you will continue to oppose the laws of the government and not quietly submit to them.

Does it signify any physical combat? --- No, not at all, My Lord. 5

You referred to the fact that the Freedom Charter was only adopted by S.A.C.P.O. in 1957. On what occasion in 1957 was it adopted? --- At a Conference in Cape Town.

A National Conference? --- That is correct. 10

Was any national Conference of S.A.C.P.O. held between June 1955 and that date? --- No, My Lord.

NO FURTHER QUESTIONS BY MR. O'DOWD.

BY MR. KENTRIDGE :

My Lords, I renew my applicatinn for an adjournment to the 1st of August.

BY MR. JUSTICE RUMPF :

Mr. Kentridge, the accused Kathrada is at the moment leading his witnesses and it means that a next witness will have to be called. Have you decided which witness you will call?

BY MR. KENTRIDGE :

No, My Lord.

BY MR. JUSTICE RUMPF :

Why not?

BY MR. KENTRIDGE :

Well, My Lord, I could give Your Lordship an indication of the various professional and personal commitments that my learned seniors and my learned

colleagues who are appearing - I could explain in detail why it is that we haven't been able to discuss this, why we haven't been able to consult with the people between the 30th of June and now, I could tell Your Lordship which were in Johannesburg and which weren't, but with great respect, My Lord, the position is simply that we have not been able to do so.

BY MR. JUSTICE RUMPF :

How many Counsel have now been asked to come back by the Accused.

BY MR. KENTRIDGE :

As far as I know, My Lord, there are five of us that will be available.

BY MR. JUSTICE RUMPF :

Who are they?

BY MR. KENTRIDGE :

My learned friend Mr. Maisels, Mr. Fischer, my learned friend Mr. Flewman, my learned friend Mr. O'Dowd, myself and possibly I understand my learned friend Mr. Berrange, but I don't know what the position is there, My Lord, he has got certain commitments, I don't know what his position will be.

BY MR. JUSTICE RUMPF :

Now the Accused were informed when they cancelled the mandate that- when they told the Court that they might bring Counsel back, depending on circumstances, that an application for an adjournment at that later stage, if such occasion arose, would be considered in the light of this warning that they should keep Counsel informed of the proceedings, because if the Accused want to cancel a mandate of Counsel for their own purposes, and they want to re-engage Counsel for their own purposes then they carry

on a practice which of course is a matter for themselves to consider, it is something which the Court has nothing to do with. The Court will not sit and adjourn at the whims and pleasures of the Accused and start again whenever they are ready, the case must be tried. The Accused have their witnesses and when the application was made to adjourn, at the end of June, the point was put to the Court that the Accused might - at first they said they might want to consider to re-engage Counsel, then thereafter they said they had decided to re-engage Counsel and Counsel might not be ready. Now, the position is that the Accused should have known that if Counsel could not be ready, they simply had to carry on themselves. On that basis they conducted the case before they decided to re-engage Counsel. So that we feel that the Accused have been kept well informed of the position. Now, while we do not wish to deprive the Accused in any way of the opportunity to bring back their Counsel, we are not prepared at this stage to adjourn the Court again to the 1st of August. The position is simply that another witness has to be called. The Crown case closed I think in March. Now it is in our view at this stage quite unnecessary to have a fortnight's adjournment to decide on and deal with the witness that has to give evidence later.

BY MR. KENTRIDGE:

My Lord, I take it with respect Your Lordship has understood it is not merely a question of being ready, it is a question of the availability of Counsel to get ready.

BY MR. JUSTICE LUMIFF :

Well, if Counsel is not available, then the Accused if they want Counsel must get Counsel who is

available. We can't adjourn the Court until one of the number of Counsel may become available.

BY MR. KENTRIDGE :

My Lord, there are no doubt two hundred Counsel in the Transvaal, but with respect if the Accused had attempted to brief any other Counsel, those Counsel would have needed one would have thought very much longer in order to acquaint themselves with the issues in this case.

BY MR. JUSTICE RUMPFER :

That may be, but the Court is not prepared to have the case conducted in a manner which is quite unusual.

BY MR. KENTRIDGE :

My Lord, I don't need to remind Your Lordship that the circumstances in which the Accused terminated their mandate, those with respect were quite unusual circumstances.

BY MR. JUSTICE RUMPFER :

I still can't see the reason why, if the case is more difficult to conduct one doesn't discharge your Counsel. You re-engage more Counsel if necessary, that is a simple principle as far as I can see.

BY MR. KENTRIDGE :

It may well be, My Lord, that the Accused made an error of judgment, My Lord.

BY MR. JUSTICE RUMPFER :

It is not an error of judgment, it was a very purposeful action on their part. It may have been a protest to the passing of the Emergency Regulations,
I

BY MR. KENTRIDGE :

Well, My Lord, if Your Lordship will suggest what the purpose was, I can take instructions on that. I know of no purpose other than that stated in Court by Mr. Nokwe which I for my part fully accepted. I accept his truthfulness and I accept his assurance. If Your Lordship does not and puts to me what Your Lordship considers what the purpose was, I will take instructions and deal with it.

BY MR. JUSTICE RUMPF :

It is a thing of the past, it has been done.

BY MR. KENTRIDGE :

My Lord, I can only say that we have noticed what Your Lordship has said and we will take instructions, My Lord. I don't know how to deal with it.

BY MR. JUSTICE RUMPF :

When Accuse cancel the mandate of their Counsel for their own purposes, not because they lack money or funds, so we were informed, not because of that, then they do so at their own risk, and if they are informed of the risk which they incur, if they want to bring Counsel back in regard to adjournments, they also do that -they proceed at their own risk. We are not here to shift the convenience of Accused who want to cancel the mandate of their Counsel for their own purposes and then re-engage them for their own purposes. We are not here for that purpose at all.

BY MR. KENTRIDGE :

I am afraid I can't take it any further, My Lords.

BY MR. JUSTICE RUMPF :

Mr. Kentridge, Counsel can't help of course

- they can't help if the Accused cancel their mandate and if they re-engage them, your own position may be a difficult one and that of the other Counsel, but we are prepared in the circumstances, although we do so reluctantly - we are prepared to adjourn the Court for a number of days. In all the circumstances we are prepared to adjourn the Court for a week, which ought to enable Counsel to decide on the next witness, whether he be an Accused or a person other than an Accused and to have consultations with him. That we are prepared to do.

BY MR. KENTRIDGE :

My Lords, we are indeed grateful to Your Lordships for extending this indulgence, but I must tell Your Lordships that when this morning I told Your Lordships that we couldn't be ready before the 1st of August, I was speaking after consideration with such of my learned colleagues and learned friends as I have been able to consult with. In view of what Your Lordship has said, those Counsel who are at present working on the case will do doubt do their best to see if anything can be done, but I must inform Your Lordship that it is highly probable that next Monday Counsel will again have to inform Your Lordship that there is no witness available.

BY MR. JUSTICE RUMFEE :

In that case the Accused may then be in a position to lead his witnesses himself, as has been the case before Counsel were re-engaged.

BY MR. JUSTICE BEKKER :

Would it not be possible to take a decision within the period amongst Counsel appearing for the Defence as to the identity of the next witness.

BY MR. KENTRIDGE :

I take it My Lord we could possibly fix on the identity of the next witness, that I don't know.

BY MR. JUSTICE RUMPF :

But Mr. Kentridge why can't you do that? Are the other Counsel not available?

BY MR. KENTRIDGE :

My Lord, they have not been available, they have other personal commitments, they have been away on holiday with their families, they have had other work, they have had to earn their living, My Lord.

BY MR. JUSTICE RUMPF :

I am not talking about the past, I am talking from now on. You are available, are you not?

BY MR. KENTRIDGE :

Well, I am available today of course, My Lord, I am not available tomorrow or the next day or the day after, Thursday.

BY MR. JUSTICE RUMPF :

Are the other Counsel on holiday?

BY MR. KENTRIDGE :

My Lord, I understand that one of my learned friends is returning to Chambers today.

BY MR. JUSTICE RUMPF :

Who?

BY MR. KENTRIDGE :

My Lord, perhaps I could send up a note to Your Lordship, but I don't feel with great respect disposed to discuss the holiday arrangements of my colleagues.

BY MR. JUSTICE RUMPF :

But Mr. Kentridge, surely five Counsell....

BY MR. KENTRIDGE :

But I can assure Your Lordships as I have said...

BY MR. JUSTICE RUMPF :

The point that I want to make is that one need not have five Counsel to lead the witness or to prepare the witness for his evidence, surely not. That is why I am asking, is there not even one Counsel available who can now - and the attorney's mandate has not been cancelled, he has been available all the time, - do you mean it is not possible to decide who the witness - the next witness should be?

BY MR. KENTRIDGE :

My Lord, it may be possible to decide who the next witness is, but what I was saying with respect, My Lord, that it would not be possible for us to lead his evidence next Monday, no doubt we can decide who it will be.

BY MR. JUSTICE RUMPF :

The Crown case, as I say, was closed in March.

BY MR. KENTRIDGE :

As Your Lordship pleases, and it has been going on since then. My Lord, these things happen when one has this sort of trial. However My Lord, once we are retained, and if it is our duty to call witnesses, My Lord, we must call them on a proper basis.

BY MR. JUSTICE RUMPF :

I say it ought to be possible for one Counsel to consult with the witness and to be able to lead him in a week's time.

BY MR. KENTRIDGE :

It is unfortunate, My Lord, that they are not available, that we have these commitments. It may be, My Lord, that we may be unfortunate that we are in this position, that the Accused couldn't have found other Counsel.

BY MR. JUSTICE RUMPF :

Well, you see, that is just why we warned the Accused, we warned them that this may happen, and now it happens when Counsel either is engaged or on holiday and now this Court must wait.

BY MR. KENTRIDGE :

My Lord, we do sincerely regret the inconvenience.

BY MR. JUSTICE RUMPF :

Well, you can't help it of course, but it does seem to me that it ought to be possible to have a Counsel available in a week's time to lead one witness. And from then on we can see. Again we take some days to deal with the evidence in chief...

BY MR. KENTRIDGE :

As far as I am aware, My Lord, there won't be any such Counsel available, but naturally My Lord, I shall convey Your Lordship's remarks to all my learned friends and my instructing attorney as well.

BY MR. JUSTICE RUMPF :

Well, the position is this, we are prepared to adjourn the Court for a week. If Counsel is not then available, then the Court must proceed on the basis that it has been proceeding and the Accused must lead their evidence. They must decide either with or without the consultation of their Counsel which witness to lead.

BY MR. KENTRIDGE :

My Lord, the accused I think will be guided by us, if we think there is a witness available to give evidence, we will advise accordingly, but if not I take it the accused who have recalled us will not themselves lead any evidence before their Counsel are available.

BY MR. JUSTICE RUMFF :

Well, the case will have to proceed then. We are prepared to adjourn for a week, and then the case must proceed.

BY MR. KENTRIDGE :

Well, My Lords, we will do our best, I can't add anything.

BY MR. JUSTICE RUMFF :

We will adjourn then to Tuesday of next week, to make it a full week. I think it is the 26th of July, 1960, at ten o'clock, and Counsel should endeavour to be ready to lead the next witness, and if Counsel can't be ready, then the accused should lead their own witness, whichever accused wishes to lead his witness. I think we are dealing with Kathrada still. He is still dealing with his case. Can he inform us at this stage whether he has another witness?

BY MR. KENTRIDGE :

At the moment I know that he hasn't, My Lord.

BY MR. JUSTICE RUMFF :

He may have. Is the position he may have?

BY MR. KENTRIDGE :

No, he hasn't, My Lord. There was a witness My Lord, and we have advised him not to call that witness,

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that it won't take the case any further.

BY MR. JUSTICE RUMFF :

Now what about himself? If there is no further - are there no further witnesses that he wishes to call?

BY MR. KENTRIDGE :

Not as far as I know. My Lord, there was one witness, another Mr. Cachalia.

BY MR. JUSTICE RUMFF :

Then if there are no other witnesses, then the question arises whether he wants to give evidence himself or not?

BY MR. KENTRIDGE :

I take it he will want to discuss that with us, My Lord.

BY MR. JUSTICE RUMFF :

That he must consider then.

CASE REMANDED TO THE 26TH JULY, 1960.

COURT ADJOURNS.

COURT RESUMES ON THE 26TH JULY, 1960.

(Accused Ndimba not present)

BY MR. FISCHER :

My Lords, I appear today with my learned friend Mr. O'Dowd, and I would like Your Lordships' permission to give Your Lordships the exact position in which the Defence stands today. My Lords, the Accused have prepared a witness to testify today, and are consequently prepared to proceed with this witness. We have examined the evidence that it is proposed that this witness should give, and there is no doubt, My Lord, that it is very lengthy evidence and that it is to a considerable extent repetitive of evidence already given in this Court. In those circumstances, having considered this evidence, the Defence Counsel have come to the conclusion that it should not be placed before the Court, and if we had control of that evidence we would not place it before this Court, because it might occupy the Court's time for at least ten days and possibly more, My Lords. As far as our position is concerned - I am referring now to Counsel, My Lord, we have been working under very grave handicaps. Your Lordship will remember that we were asked to return to the case at the end of June. None of us were immediately available. All of us had many other matters to dispose of and we have done the best we possibly can, but we have also been labouring under very considerable difficulties. Your Lordships will realise that to have to consult with clients who are detained has greatly slowed up the work. There are always inevitably delays, My Lord, and the time is very much shorter than one would otherwise use for preparation. In the result the simple position, My Lord, is that we as Counsel are not able

today to lead any evidence, but that although we will not be ready in the sense of being fully prepared, we will be ready to lead evidence as from Monday the 1st. We have considered this position and we believe - we leave the matter entirely in Your Lordship's hands, but it would appear that in fact the Court would save time, instead of listening to a witness who might turn out largely to be superfluous, the Defence - instead of listening to that, if the Court would allow the Defence to use to the full extent the next four days for consultation with witnesses whom we hope will deal specifically with the events that took place in the Transvaal and in the Eastern Province. Your Lordships will realise that if Your Lordships sit that our consultation time during the rest of this week will be cut down to something like - at the outside - three quarters of an hour in the morning and something in the region of half an hour in the afternoons, except for Saturday when we will have half a day. That My Lord is the position.

BY MR. JUSTICE LUMIFF :

Mr. Fischer, what is the position of the Defence case as from now on? How long do you think the Defence case will take to conclude, the evidence?

BY MR. FISCHER :

My Lord, the leading of the evidence we do not think can occupy a great deal of time. It is terribly difficult to say how long, My Lord. There may be a few lengthy witnesses, by that I mean witnesses who will take a day or two to lead. Others will be short in leading, but of course to a large extent My Lord we are in the hands of the Crown and the degree to which the Crown will cross-examine, the length of time they take.

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BY MR. JUSTICE RUMPF :

Now if you have in mind calling another witness on the 1st, have you notified the Crown of the name of that witness?

BY MR. FISCHLER :

No, we haven't yet, My Lord. We are trying to prepare a group of three or four or five who will all be ready to carry on from the 1st. We haven't determined precisely what order they will be in. We will be able to let the Crown know within a few days, My Lord.

BY MR. DE VOS :

My Lord, the Crown fully understands the difficulties in which Counsel for - under which Counsel for the Defence labour, but they fail to see the reason for the attitude taken up by the Accused themselves. My Lords, if I may just enumerate very shortly the relevant facts which bear on this matter. First of all there was a deliberate and considered attitude taken up by the Accused when they decided to conduct their own case.

BY MR. JUSTICE RUMPF :

We know all that, because we have expressed our own opinion on that before, on two occasions that went before the present adjournment. We know that.

BY MR. DE VOS:

My Lords, we - the position is simply this. As far as the Crown sees the position, we cannot conceive why the Accused after having conducted their case in person, with assistance from outside to some extent, outside the Court that is to say, professional assistance and with the assistance from amongst their number of one qualified attorney and a qualified Counsel, they have in fact conducted their case for two months

now, why it should have been impossible for them to further conduct and proceed with the case for another four Court days before Counsel could return to the case. In fact, My Lords, they really hold now a revolver to the head of the Court and say either we get further time or we waste further time. That is what it really amounts to. At least a week ago they were informed - they had already been informed by other Counsel that a certain witness they intended calling was - should be eliminated, would not perhaps be necessary. Surely, My Lords, the Accused have all the potential witnesses readily available. Many of the Accused themselves have not yet given evidence. It would not have been difficult for them to arrange for a suitable witness, a necessary witness as far as that is concerned, they have to be judge in their own case of course, but to arrange for a proper witness to be called to further their Defence case as they see fit. Your Lordships may recall that the Accused Mandela on the 29th of June mentioned in Court that he had already had an agreement with the Crown for an adjournment up to the 18th. Then matters extrinsic to the case itself came about and apparently the more lenient application of certain Emergency Regulations moved the Accused to reconsider their position and re-engage Counsel. But they have been able to continue for two months, they were able to take up again on the 18th of July, they had no objection to doing that at all, and as I say due to certain factors extraneous to the case itself, or the conduct of the case in Court, they then said they want to re-engage Counsel and for that purpose they required further time. My Lord, surely under these circumstances and with the full consultations they have been able to have ^{with} outside professional

assistance, they could have been in a position today to say to the Court we have a proper witness to continue with. Instead of that in fact they present the Court with an ultimatum, and they say either we get our time or we waste the time of the Court. My Lords, that in the submission of the Crown is not a proper way of conducting the case and of course My Lords, the Crown is in the hands of the Court, but it would suggest that it would be a proper exercise of the judicial discretion admittedly in the hands of the Court, admittedly to be exercised by the members of the Court, if the Accused were told to continue with their case today.

BY MR. FISCHER :

My Lords, I do resent the suggestion that this is an ultimatum or holding a pistol to the Court's head. It happens to be what is the precise situation, it is a fact, and this witness has been prepared, we have examined his evidence and we think the Court should not be wearied with it. There is no escape from that position. As far as the decision of the Accused is concerned, My Lord, it would seem to be entirely unprofitable to try and examine why a decision was first taken that the Defence should be conducted in person and thereafter that Counsel should be recalled. The position is that once we were recalled, My Lord, we felt it our duty to return. We could hardly have turned round and said having once made your decision to conduct the defence personally you must continue. So, My Lord, what my learned friend is really asking the Court to do is to lessen (?) at very considerable length the evidence which we would not present to Your Lordships, and My Lord, I leave it entirely to Your Lordships.

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BY MR. JUSTICE KENNEDY :

Mr. Fischer, I take it this is a calculated basis of the duration of the next witness' evidence insofar as you can?

BY MR. FISCHER :

Insofar as we can judge from the past, My Lord.

BY MR. JUSTICE RUMPFER :

We will consider the application.

COURT ADJOURNS.

COURT RESUMES.

BY MR. JUSTICE RUMPFER :

The Defence have asked for a further adjournment of this case until the 1st of August. When the Court indicated that it was willing to adjourn for a short period, the Accused asked for an adjournment to the 1st of August, but this Court refused this application. It considered that in all the circumstances it was not necessary for a long adjournment and that the case could go on. We felt, and we still feel, that this case has gone on for a long time, and should proceed without any unnecessary adjournments. Mr. Fischer has indicated this morning that a witness is here to give evidence, if the Court should wish the case to proceed. He indicates that the witness is a witness who was originally intended to be called by the Accused, but that Counsel who have since been recalled are of the opinion that the witness would give evidence mostly repetitive of what has been given, and in their opinion not strictly necessary. He says that they are not in a position to carry on with any other witness and that they will be in a

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position to proceed on the 1st of August. The Crown has objected to the further adjournment, and in all the circumstances I think the Crown was entitled to oppose the application. The Court is put in a difficult position. It still thinks that the adjournment or the application for the adjournment which was made before was rightly refused, but we are really in effect put before a choice this morning, either on going on with a witness who may occupy the witness box for at least ten days, or we may adjourn the case to the 1st of August to enable the Counsel to call such witnesses as they really think are necessary. It is most regrettable that the situation has arisen. We still want to indicate that this case must be proceeded with and no unnecessary waste of time must occur. However, we have considered the application and in all the circumstances we think that we must acceded to the request of the Defence, although we do so reluctantly, because of the circumstances. We will adjourn the case to the 1st of August.

COURT ADJOURNS.

COURT RESUMES ON THE 1ST AUGUST, 1960.

BY MR. FISCHER :

My Lords, before I ask my learned junior Mr. Flewman to lead the next witness, I would like to state My Lord that appearances are as they were before Counsel withdrew. My Lord, then there is I understand one Accused who is absent, Ndimba, who is ill and in hospital, he is No. 25, and I ask that Your Lordships permit the case to proceed in his absence. Then there is a further Accused, My Lord, Mkwai No. 24, whose whereabouts are unknown and for whom the Defence no longer appear.

BY MR. JUSTICE RUMFF :

What is the position in regard to the case of the Accused? Is this a witness...

BY MR. FLEWMAN :

This is a witness called on behalf of all the Accused, My Lord.

BY MR. JUSTICE RUMFF :

But some of them have already close their case.

BY MR. FLEWMAN :

I was not aware of that, My Lord. In that case, on behalf of all those who have not yet closed their case.

BY MR. JUSTICE RUMFF :

We have proceeded - I think when we adjourned Katrada opened his case and led some witnesses. He led Cachalia and the Accused Lollan. The case of No. 1 has been closed, the case of No. 2 has been closed.

BY MR. FLEWMAN :

My Lord, this witness would then be called

on behalf of all the Accused after No. 2, except for Mkwayi...

BY MR. JUSTICE RUMFF :

At the moment the Accused who is dealing with his own case is Kathrada, but I take it it makes no difference, you are calling - in any event you are calling your witness on behalf of Kathrada and the other Accused whose cases have not been closed?

BY MR. PLEWMAN :

That is so, My Lord. I call the Accused S. Nkalipi, Accused No. 23.

(Interpreter : Mr. Lee)

SIMON PAKAMA NKALIPPI, duly sworn;

EXAMINED BY MR. PLEWMAN :

Your home language is Xosa? --- Yes.

And you wish to give your evidence in Xosa?

--- Yes, my home language is Xosa.

Do you wish to give your evidence in Xosa?

--- Yes.

You were born in Grahamstown? --- Yes.

You are forty-seven years of age? --- Yes.

Before your arrest in this case you lived in Fort Elizabeth? --- Yes, My Lord.

In the township of Korsten? --- Yes.

As far as your formal schooling goes, you were not able to take that beyond standard four? --- Yes, I stopped in standard four.

And for the seven years before the commencement of this case, you were employed as a representative of the United Tobacco Company in New Brighton and in Korsten?

--- Yes.

Until 1953, were you a member of any church?

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--- Yes, since 1952.

No. What church were you a member of? ---
Methodist Church.

When did you leave the Methodist Church? ---
In 1953. 5

Why was that? --- Because I did not agree
with what the Minister said at the time.

We will come back to the nature of that dis-
pute later.

When did you first become interested in 10
politics? --- In 1936.

What was it that aroused your interest in
1936? --- The first thing that caused me to go into politics,
My Lord, was when the vote was taken away from us.

Is that the Cape African franchise, repealed 15
in 1936? --- Yes, that is correct.

How did you follow that matter? --- I heard
people speaking, My Lord, and I spoke to people who were
then members of Congress. I heard them speaking about
this vote, My Lord, and I read newspapers concerning the 20
vote.

Were you yourself at that stage a member of
any political organisation? --- No, not at that time.

Do you know whether at the time there was any
opposition on the part of Africans to this legislation? 25
--- Yes, My Lord, I heard that there was quite a lot of
disapproval of this vote having been taken away from them.

BY MR. JUSTICE KENNEDY :

What was the position of the vote? --- At
that time, My Lord, Africans could vote with Europeans. 30
They had a right to vote.

Were you a registered voter? --- No, I had

not been on the roll for voters personally, My Lord.
Transkei?

Was this applicable to the franchise in the
Cape generally? --- I have no knowledge of the Transkei,
My Lord, because I never lived there.

BY MR. FLEWMAN :

5

When was it that you first heard of the
African National Congress? --- I heard about it in 1936,
My Lord, it was the African National Congress that was
protesting at the time.

When did you first attend a public meeting 10
called by the African National Congress? --- In 1943.

Where was that meeting held? --- It was at
Moloteni Square in New Brighton, Fort Elizabeth.

Do you today remember any of the persons who
spoke at that meeting? --- I could remember some of them. 15

Give me such names as you can remember? --- I
remember Professor Matthews spoke, My Lord, and Reverend
Calata, and Phineas Nhlanhla.

As you understood the speeches by the Reverend
Calata and by Professor Matthews, were they members of 20
this organisation, the African National Congress? --- My
Lord, prominent members I understood them to be of the
African National Congress.

And as far as the African National Congress
is concerned, are both those people still members of the 25
African National Congress? --- Yes, as far as my knowledge
goes, they are still members.

Prominent in African National Congress affairs?
--- Yes.

Now, at this meeting, did they tell you 30
something about the aims of the African National Congress?
--- Yes, My Lord.

Were they recruiting members, were they inviting people to join this organisation? --- That is quite correct, My Lord.

Did you join the African National Congress then? --- On that day, yes, My Lord. 5

At the time that you joined, did you have any understanding as to the policy of the African National Congress, how it wished to achieve its aims? --- As far as I understood it, My Lord, they were to be the mouthpiece of the African people to put forward what certain - certain things which they felt were against them, all their complaints My Lord.

They wanted to advance the interests of the African people? --- Yes.

Did you feel that that was the sort of organisation you should join? --- Yes.

You remained a member of the African National Congress throughout the indictment period? --- Yes.

In all that time have you followed and have been aware of the policy and activities of the African National Congress? --- Yes, My Lord. 20

Have you followed how the African National Congress proceeded in trying to bring forward its views to the African people? --- Yes, My Lord.

Has the African National Congress ever had, so far as you are aware, a policy of achieving its aims by the use of violence? --- No, never, My Lord. 25

What part have you played in African National Congress campaigns? --- In 1952 My Lord, first I joined the Volunteer Corps. 30

What Volunteer Corps was that? --- Of the Defiance Campaign.

For what area were you a volunteer? --- At Korsten.

Were you in the - in fact the first volunteer in the Korsten area?--- Yes, I was the first.

What was the nature of the campaign then 5 conducted? How was it conducted? --- Laws, My Lord, were defied, apartheid laws.

Volunteers recruited to defy certain specific laws? --- That is correct.

Were those volunteers ever to be violent? --- 10 No, My Lord.

Were any of the campaigns of the African National Congress in which you participated thereafter conducted on any other basis? Perhaps I should make it clear that my reference is to the question of violence? 15 --- No, never in any of the campaigns that were conducted.

Now I want to know something about your own views. What are your own views on this topic of violence as a means of achieving political ends? --- I am against any violence, My Lord, in the conducting of these cam- 20 paigns.

Your own personal views - the views which you hold, are opposed to all forms of violence, independent of the African National Congress policy? --- Apart from what the Congress might do or say in regard to violence, 25 My Lord, personally in every sense of our struggle I am against violence.

What is the foundation of that opinion of yours and that belief? --- I am following - my foundation for that, My Lord, is the following of the teachings of 30 Christ.

Have you read the Bible carefully? --- Yes,

since my schooldays and up to date, My Lord.

Do you sometimes quote from the Bible in speeches you have made? --- Yes, My Lord, it is a habit of mine and I do it as a rule to quote from the Bible when I make speeches. 5

I want to come back to the volunteers which were recruited for the Defiance Campaign in 1952. Was it explained to those volunteers that they should be non-violent? --- That was the first that they were taught, My Lord. 10

Were they given a code of discipline? --- Yes.

What was explained to them about this code of discipline? --- They were told, My Lord, that whenever they are on duty doing any of the work, they must never be violent, they must never lose their tempers. That is the primary lesson they were taught. 15

BY MR. JUSTICE BEKKER :

Who told them this? --- The Volunteer in Chief, the Chairman. 20

Who were they? --- The Branch committee chairman.

I want to know his name? --- The late A.B. Mathi (?), - A.I. Mathia, under whom I was at the time.

BY MR. FLEWMAN : 25

What was your position at the time? --- I was his deputy, My Lord.

Your difference with the Church, did that take place in 1953? --- Yes.

What was - I think you ought to explain to Their Lordships what your difference of opinion with the Minister was? --- We intended, My Lord, to go to the 30

Church services at 11 a.m., My Lord, - we were in the habit of going to Church services at 11 a.m. every Sunday, My Lord, and we would then be wearing our armbands, which were a sign that we were Volunteers, My Lord. The Minister then objected to that, he did not want us to wear 5 our uniform when we come to the Church services. He said, My Lord, it wasn't proper to come dressed in uniforms to the services of God, uniforms being things that were for the material side of life, and not for the church services of God. 10

They were material things as opposed to holy and sacred? --- Yes, My Lord, he wanted us to leave them at home and not wear them when we come to the services.

What was your view on the matter? --- First 15 of all, My Lord, the Minister himself in 1940 - In 1940 I heard a Minister preaching, My Lord, from the pulpit of the Church - I would like to put it in this way rather, My Lord, that Ministers of religion in the army for instance preached to people with uniforms on their bodies 20 in 1940. Therefore I found that his idea in regard to that as far as we were concerned, I did not agree with that.

Do you believe which - that those things which he described as earthly matters are the concern of the Church? --- Yes. 25

Do you believe that it is right that the African people struggle for their salvation? --- Yes.

I wonder if you wouldn't try to give your evidence in English? --- I am not sure that I will be able to express myself as I would like to express myself otherwise in my own language.

With Your Lordship's permission, you could try

and if you have difficulty, tell me. You have now told me that the African National Congress was a non-violent body, if I may put it in those words, and you have told me that you have yourself a belief in that policy. Did - If the African National Congress changed its views and wished to adopt a violent attitude - a violent policy, what would your attitude be? --- My Lords, if that could come that the African National Congress change its policy from non-violent into violent, I would withdraw my participation in the liberation movement of the Africans. 10

Now I want to deal with your political experiences over the period from 1952 onwards. In the Defiance Campaign, did you lead a batch of volunteers? --- Yes, My Lord.

What law did they break? --- The railway apartheid regulation at the station of New Brighton, Fort Elizabeth. 15

And were you arrested and charged? --- Yes.

And were you sentenced? --- Yes.

What was your sentence? --- Three weeks or £2. 20

Did you serve your whole sentence? --- No, I could not finish it on account of my illness.

What illness was that? --- I was attacked by eye ache and the losing of sight. 25

You had a very serious eye complaint and you were in danger of losing your sight? --- Yes.

What happened? --- Then the volunteers collected some money to pay my fine for the rest of the time. It was now £1, and then the branch refunded that amount to those people who helped me. 30

Just for the purposes of record, the eye

trouble which plagued you then still worries you? ---
Very much, it is worse now after these two operations that
I have experienced.

After your experience in the Defiance Cam-
paign, were you ever again charged because of your political
activity? --- Yes.

When were you next charged in connection with
what? --- If I may recall the date, it was the 26th of
January, 1953.

What did you then do? --- The charge followed
an unlawful procession which I led, about fifteen to twenty
thousand people to New Brighton to a meeting which was
going to be addressed by Chief A.J. Luthuli on the 26th
of January.

Why was the procession unlawful? --- During 15
that time processions of people who are gathered more than
ten were restricted in the area of Fort Elizabeth.

You say you led this procession from Korsten
to New Brighton in order to attend a meeting addressed by
Chief A.J. Luthuli? --- Yes. 20

Did you in fact reach there and did you
attend the meeting? --- We did reach there and attended
the meeting.

When were you arrested? --- The following
morning. 25

You were charged? --- Yes.

Convicted? -- Yes, My Lords, thirty days for
three years suspended.

Was that a peaceful gathering? --- Yes.

Thereafter, did you have any other occasions 30
on which you were charged for your political activities? ---
Yes, My Lords. The next month, February, there was

a Provincial public meeting which I presided, and we conducted that meeting over a microphone and that was also not allowed without a permit to be used.

I take it it was a municipal regulation dealing with the use of radio apparatus? --- Yes, so I 5
was charged for conducting that meeting with a microphone.

What was the result? Were you convicted?
--- Yes, I was convicted, thirty days or five pounds.

Did you thereafter again have experience of being charged as a result of your political activity? --- 10
The next charge was in 1954 in February. It was also of using a mike without a written permit.

The result was the same, you were charged, convicted and sentenced? --- Yes.

Apart from those occasions, in 1956 you were 15
again charged? --- Yes.

How did you come to be charged in 1956? ---
Well, in 1956 I think round about August I took a weekend to Grahamstown. When I got there I heard that there was a gathering on the side of the hill known as Maganaskraal(?). 20
There was a man who was alleged to be a prophet who was to tell the people of his visions. Then I also went there and assembled with the people to hear this strange man's words.

What happened? --- Unfortunately this man, 25
I would call his a steward of his, knows me very well. He also asked me to read some certain extracts from the Bible. I done so.

Can you remember what it was that you read?
--- He read in the Book of Lamentations of Jeremiah, I 30
think Chapter 5.

Can you remember what you read? --- I read

for myself in the Book of Isaiah, Chapter 11.

This meeting I understand took place over two days, on a Saturday and a Sunday? --- Yes, also on Sunday too he asked me to make some few words after they had finished speaking. 5

Was it a political meeting at all? --- No, these two were both religious gatherings.

Were you nevertheless arrested? --- I was arrested with others.

What was the charge against you? --- The charge against us all was that we conducted an illegal meeting, religious gathering, since all gatherings including religious gatherings were restricted in the municipal district of Grahamstown. 10

Was the evidence which was led against you directed to showing that this was a religious gathering or some other sort of gathering? --- There was evidence led against us that that was a political gathering. 15

What was the Magistrate's finding? --- After I had cross-examined a witness in the box, the finding of the Magistrate was that he approves that that was a religious gathering, but it was unlawful since we did not apply for a permit to assemble it. 20

What was your sentence? --- My sentence was a year or £200, and then there was an alteration in the sentence to eight months.... 25

Four months was suspended of your sentence, eight months imprisonment? --- Yes, and the four months was suspended to three years, and the fine then fell to £134. 30

BY MR. JUSTICE KENNEDY :

Was this an alteration on appeal, or how was

it altered? --- It was altered by the Magistrate at the same time.

BY MR. PLEWMAN :

Were you able to pay your fine? --- No, I was not, I served. 5

Were you still serving that sentence when you were arrested on this charge? --- Yes, on the 5th of December two Special Branch men came to the prison in Grahamstown and arrested me on a warrant of high treason.

I wonder if you will tell me now something 10 about meetings which you may or may not have attended in the Eastern Province over the years. When was the first Conference of the African National Congress, either provincial or national, that you attended? --- I think if I am not mistaken, round about April, 1952, a conference 15 I attended was in New Brighton, Port Elizabeth.

Was that a Cape conference or a national conference? --- I think if I am correct it was a Cape provincial conference.

Did you attend the meeting and listen to the 20 discussions? --- I attended as a delegate of the Korsten branch, and listened to discussions, yes, My Lord.

You remember a conference in August, 1953? --- Yes.

Also at Korsten? -- It was in Cradock. 25

Was that a Cape conference or a national conference? --- It was a provincial conference of the Cape.

Do you remember anything specific about that conference? --- I cannot remember everything that was said 30 in the Conference, but I remember an introduction of the economic boycott.

Was there a motion introduced that the African National Congress should adopt as a method of struggle economic boycott? --- Yes, it was discussed there, and the Conference adopted it, it should be taken over to the approval of the national. 5

I would like to follow the course of that discussion completely. Was it raised by one or other of the branches? --- By the Secretary of the Province.

It was discussed at provincial level? --- Yes.

And the decision was that it should go forward to the National Conference with a recommendation of the Cape to be discussed there? --- Yes. 10

Do you know whether there was discussion at a National Conference about economic boycott? --- Well, I haven't got a personal knowledge, but I understand from the report which was brought back by our delegate from the National Conference which was in December, the same year, in Queenstown, 1953. 15

What was the report? Was this method approved? --- Yes, My Lord. 20

Now I want to discuss something else with you. You have now described a method by which the decision to use economic boycott came to the National Conference and was adopted. How would any major change in policy of the organisation, the African National Congress, be dealt with? --- Firstly if I will be correct, I think anything that is to be embarked on by the A.N.C. My Lords, the view first comes out from a Branch, and then to the regional office and from there to the province concerned of that region, and that if the province accepted it, it cannot adopt it to be performed unless the approval of the National Executive of the National 25 30

Conference.

Now economic boycott having been approved by the National Conference, was it then put into force in Fort Elizabeth by your branch? --- Yes, My Lord.

I wonder if you will tell us something about the manner in which economic boycott has been used by your branch, the Korsten Branch of the African National Congress? --- The very same day of the general members' meeting of my branch, a motion was moved - a counter motion was moved by one of the speakers from the floor that since it has been implemented for the of how to handle African customers in a shop or anywhere where there is business, which perhaps does not satisfy the manner to which a customer is being served in a shop, one butcher was one of the places to be attacked by the boycott, Perlson's Brothers in Korsten. 15

What was the complaint against that butchery shop? --- Firstly, this butcher was trading amongst non-Europeans and did not have any employee as counterhand or blockman, only the staff employed was Europeans only. 20

And how were the customers treated? --- The customers were being illtreated very bad, My Lords. If a piece of meat happens to be bad and I turned now to complain that I cannot have it, then it was the system there, they used to take it and throw it in my face, not even wrapped in a paper, as my rubbish now. 25

Those being the complaints, was a decision taken to boycott this butchery? --- Yes, to the effect My Lord that it must employ a mixed staff, and where there are still Europeans there should be Coloureds and Africans as well, so that the manner in which our women-folk are being handled there should at least be in a 30

better position.

-And was the butcher shop boycotted? --- Yes, it was boycotted, My Lord.

In order to give effect to this boycott was there any violence exercised or anything of that order? 5

--- No, My Lords, not what I know of.

As a result of the boycott, what happened?

--- The manager called upon the officials of our branch including those of New Brighton for negotiations.

What were the negotiations? --- He asked 10
what he must do. Then we told him about what the people are complaining against, that firstly he has no non-European employee, and yet his business is being built up at the expense of Africans and Coloureds, so he must have one blockman that served the customers, both Coloured and 15
Africans with Europeans as well.

You wanted him to employ an African blockman?

--- Yes, and he promised to do so. He wanted that we should choose amongst ourselves one who can be the first to be employed and we refused, because we are not working 20
for our interest but for the oppressed people, the non-Europeans.

What was in fact the result of all this?

--- Well, he wanted to know under what means he can be able to find one to employ. We informed him that he 25
should put the advertisement in the daily press and apply for an African, if he want to apologise with us. Then he agreed and he did so the next morning.

And did conditions thereafter improve in that butcher shop? --- Yes, My Lord. 30

Where - were there any other instances where this method of struggle was adopted by you? --- Yes, in

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