

MR. VAN NIEKERK: Levy spoke then, he did not
disassociate himself from these speeches and said that
the workers have to fight against exploitation and dis-
crimination. He further stated that the workers should
work side by side with Congress. All the workers should
be prepared to fight their bosses in this exploitation and
that there is a great future for them in South Africa, the
future of the Freedom Charter.

Byleveld spoke thereafter and stated that the
struggle of the worker in South Africa is linked up with
the struggle for democratic freedom. At the National
Conference in Cape Town, S.A.C.T.U adopted a policy in
which they clearly outlined the Agreement with the Congress
Movement. He denounced critics in the Labour Movement
as enemies and stated that in South Africa the struggle
of the working class cannot be separated from the struggle
for Liberation. In the Freedom Charter they have the
framework of a very beautiful South Africa."

Then, my lords, the final meeting is that of
the 4th March, 1956, a South African Congress of Trade
Unions meeting at Cape Town . . .

BEKKER J: You've summarised what the speakers
said at that meeting; what is your submission?

MR. VAN NIEKERK: It shows co-operation, my
lords, with the Congress Movement.

KENNEDY J: You didn't make any submission,
in your Heads of Argument, on this meeting.

MR. VAN NIEKERK: May I be allowed to do so
my lords; it serves to show co-operation with the Congress
Movement and an expressed intention for a change of State form.

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And also support for the Freedom Charter, my lords. 1

A new State form based on the Freedom Charter.

And finally, my lords, the meeting of the 4th March, 1956, a S.A.C.T.U. meeting at Cape Town; Levy spoke at this meeting and said that the Trade Union Movement must lead the workers to freedom, to the South Africa of the Freedom Charter. 5

Byleveld referred to the Freedom Charter on the alternative to the Nationalist Government. He is dissatisfied with the present Government, and states that S.A.C.T.U have found in the great struggle for the realisation of the aims and objectives of the Freedom Charter. 10

RUMPF J: What page is this?

MR. VAN NIEKERK: Page 50, my lords. And the reference . . . my lords, in the fourth line the word 'found' should be 'joined'. 15

G. Subande condemned the persons who were standing in the middle and threatened to crush them before crushing our enemies the National Government. They are referred to as spies who deserve the death penalty. 20

My lords, it is submitted that at this meeting dissatisfaction was expressed with the present State, and the establishment of a new State on the basis of the Freedom Charter is advocated.

Sibande includes in his means to obtain this, violence against the State as well as violence against persons who do not agree with them. 25

That concludes the meetings, my lords.

Now the second Overt Act, my lords . . .

KENNEDY J: What do you say about Sibande there? 30

MR. VAN NIEKERK: He includes in his means to obtain this new State of the Freedom Charter - crushing the Government as well as crushing the people who do not agree with them. 1

KENNEDY J: Would you mind referring me to that; is that page 50? 5

MR. VAN NIEKERK: Page 50, my lord. He refers to the people in the middle of the road and says 'Those people who stand in the middle saying that instead of saying apart heid we say separation, they better excuse us right now and stand away, because we will crush them . . . we will crush them first, my lord, because they are our obstacles. We will crush the enemy after that. 10

KENNEDY J: Well, that's what you suggest.

MR. VAN NIEKERK: That is my submission, my lord. 15

KENNEDY J: Yes, but it is not what is said.

BEKKER J: Did he say how he was going to crush them?

MR. VAN NIEKERK: He doesn't say how they are going to crush them, but 20

BEKKER J: Is there anything in this speech which casts light on the method by which he was going to crush the enemy?

MR. VAN NIEKERK: My lord . . .

KENNEDY J: Did Sibande say anything about this when he gave evidence? 25

MR. VAN NIEKERK: It's not the accused Sibande, my lord.

KENNEDY J: Oh, I beg your pardon.

MR. VAN NIEKERK: My lords, there is nothing in

the speech as reported, to indicate how they were to crush their enemy. It's found at page 8073 of the record, my lords. 1

BEKKER J: This was a shorthand writer, was it?

MR. VAN NIEKERK: This was a shorthand writer - a tape recording, my lords. I'm sorry, my lords, at the top of page 50 your lordships will see there is witness Vlok - recording. 5

BEKKER J: Tape recording or shorthand recording?

MR. VAN NIEKERK: Tape recording, my lords. 14

My lords, I then proceed to the second overt act, that the accused Levy attended the Congress of the People conference at Kliptown, Johannesburg, on the 25th and 26th June, 1955, as set out in Part E of the indictment. My lords, there is an error in the argument: it should be 1955 and not 1956, my lords, and Levy actually addressed this meeting on the 26th June, 1955. This was taken down by the witness Schoeman, shorthand writer, and he said "... Let us go forward to freedom, there is no freedom without peace and there is no peace without freedom". 15

My lords, certain documents were taken from him at this meeting. LL.2 and LL.4. LL.2 my lords, is a delegate's badge and LL.4 is a C.O.P. agenda. He was seen at the meeting by Moeller and Sharp on the 25th and by Moiller, Sharp, Hatting and Sauerman on the 26th and he was properly identified, my lords, and at page 10825 the Defence admitted that the documents LL.2 and LL.4 were taken from the accused at the Congress of the People at Kliptown on the 25th and 26th June, 1955. 20

It is submitted, my lords, that this Overt Act is proved. 25

My lords . . . the next Overt Act deals with the
Freedom Charter . . . 1

BEKKER J: Just before you go on, what evidence
do you rely on as against Levy to show that the means whereby
these aims were going to be achieved would be by way of violent
means, or unconstitutional means, or illegal action? 5

MR. VAN NIEKERK: Is your lordship referring now
to the Congress of the People?

BEKKER J: Yes.

MR. VAN NIEKERK: Will your lordship allow me to
come back to that at a later stage. 10

BEKKER J: Yes.

MR. VAN NIEKERK: Then, my lords, the last Overt
Act on which the Crown relies is the Freedom Charter Com-
mittee meeting, and I give the extract from the indictment
and the full speech of Sejake, my lords. 15

KENNEDY J: Do you say accused Levy associated
himself with the utterances of Sejake? You do not say he
disassociated himself.

MR. VAN NIEKERK: As your lordship pleases. He
spoke, my lords, on page 75 of the Argument - he spoke after
Sejake . . . 20

KENNEDY J: Where does it say that?

MR. VAN NIEKERK: My lord, that is from the record.
The record shows Sejake's speech starting on page 7574, and
the accused Levy's speech starts at page 7585, and it appears
from the record, my lords, that both Sejake and the first
portion of Resha's speech - also Ngoyi spoke before Levy
spoke, my lords. He also spoke after Lollen and Hutchinson,
my lords, and on page 75 I refer to his speech; it was 25

taken down in shorthand, my lords, by the shorthand writer Coetzee... .

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KENNEDY J: I just want to know why you say he associated himself with the speech alleged to have been by Sejake and the speech of Resha?

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MR. VAN NIEKERK: My lords, he spoke . . .

KENNEDY J: Did he say something which indicated that? Or do you say the mere fact that he spoke afterwards and did not disassociate himself makes him associate.?

MR. VAN NIEKERK: No, my lord, I go further than that. I say he associated himself - at page 75 - at the bottom of the page he said, "It gives me great pleasure and satisfaction today to speak at a conference at which the great campaign to launch the work for the Freedom Charter is being discussed.

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KENNEDY J: Yes.

MR. VAN NIEKERK: So, my lord

KENNEDY J: That's the Freedom Charter.

MR. VAN NIEKERK: No, my lord, to launch the work of the Freedom Charter. Now, my lords, at the Freedom Charter campaign was launched at this time, on this day, and in that launching of the campaign Sejake said 'You must be prepared to clash with the armed forces of the State'.

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My submission is, my lords, that not only did he not disassociate himself from Sejake and Resha's speech but to a certain extent he associated himself with them by inference, by saying that he was pleased to be there when the great campaign was being launched.

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And, my lords, as I said he spoke after Sejake

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and I read from page 79 of the Argument; after Sejake, 1
after the first portion of Resha and after the speech of
Ngoyi; the other speeches preceding his speech, my lords,
were that of Lollen who referred to the Freedom Charter as
the basis of the struggle against oppression, and then 5
Hutchinson who referred to freedom and democracy, then
my lords, as far as Levy is concerned, it is submitted
that there can be no doubt that these speeches were in-
tended to incite the audience to open revolt against the
constituted authority in this country and accused Levy, 10
whilst having an opportunity to disassociate himself from
this incitement did not do so, but spoke about Peace and
Friendship. The desire that South Africa should be a fully
independent state . . ." which in my submission it consti-
tutionally is - - ".....Levy wanted freedom and peace, for 15
example not the freedom and peace existing in South Africa,
but one in which Imperialist exploiters and robbers and
imperialist users of soil for war bases, and forcing
South Africa to buy armaments to kill others - - or to buy
warships and military equipment - - are eliminated - - and
a new era - a programme on the Freedom Charter, wherein 20
a paradise on earth will be constructed."

It is further submitted that Levy denounced
the present State form and propagated a change to a new
State form based on the Freedom Charter. He acquiesced 25
in the incitement of Sejake, Reasha and Ngoyi.

It is submitted, my lords, that this evidence
proves the Overt Act as alleged.

Page 80, my lords, If the Court is asked to
accept the submissions of the Crown in respect of Overt 30

Acts Nos. 1, 2 and 3, the Crown does not rely on the
evidence of the meeting at Cape Town on the 4th March,
1956, as proving a separate Overt Act, but respectfully
suggests that this evidence be taken in consideration when
the question of the conspiracy and the adherence of the
accused thereto are being determined.

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It is respectfully submitted that the evidence
proves that the accused is guilty of the crime of treason
and that he committed the undermentioned overt acts, and
these Overt Acts are set out, my lords.

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That completes my argument on this accused
my lords, subject to the points raised by the Court.

THE COURT ADJOURNED FOR 15 MINUTES

COURT RESUMES ON THE 1ST MARCH, 1961.

APPEARANCES AS BEFORE.

MR. VAN NIEKERK :

My Lord, with regard to the argument on the Accused Levy, there were some submissions I made on page 62 of the summary. I ask leave, My Lord, to hand in amended references with submissions on this meeting, My Lord. My Lords, I start off by saying that ...

MR. JUSTICE RUMPF :

This whole submission in regard to the C.O.P. Anniversary meeting goes out from your original at page 60 up to page 62, and then we substitute that with this document?

MR. VAN NIEKERK :

As Your Lordship pleases. I say, My Lord, that Masina, the chairman lauded June 26th as their national day of rededication, stating that on the 26th June 1957 Freedom fighters gave their blood on that protest day, and the same date the date when the Defiance Campaign was commenced and that was the day on which the Freedom Charter was accepted at the Congress of the People.

MR. JUSTICE RUMPF :

What is your submission here?

MR. VAN NIEKERK :

My final submission, My Lord, is as contained at the bottom of page 3, My Lord. It is respectfully submitted My Lord, that the following views were propagated at this meeting. A desire for a

new state based on the Freedom Charter, that they were conducting an unconstitutional struggle, that as a result of that they would come into conflict with the state and that they may have to make the supreme sacrifice but even that prospect should not deter them. That is my final submission on this, My Lord.

There is a further submission ...

MR. JUSTICE RUMPF :

You say that at this meeting the following views were propagated. A desire for a new state based on the Freedom Charter. That they were conducting an unconstitutional struggle. You say that the view was propagated that they were conducting an unconstitutional struggle?

MR. VAN NIEKERK :

As Your Lordship pleases.

MR. JUSTICE RUMPF :

The view was propagated that as a result of conducting an unconstitutional struggle, they would come into conflict with the state. Where was that view propagated?

MR. VAN NIEKERK :

My Lord, Luthuli, on page 2, My Lord, - I make a submission after paragraph (c), having referred to these events, - Luthuli first refers to these events, My Lord, and then he says - he points out that I am not the only - he points out that they are not the only ones who have struggled for their liberation in this country, and refers to men and women of all ages

MR. JUSTICE RUMPF :

Where are you reading?

MR. VAN NIKERK :

Paragraph (c) page 2, My Lord. It refers to men and women of all ages who in the Defence of freedom have voluntarily sacrificed even to the extent of paying the supreme sacrifice.
. by asking the people to pledge themselves to count no too great to gain freedom.

MR. JUSTICE RUMPF :

Where is the view propagated that as a result of unconstitutional action they would come into conflict with the state? You see, you say that they hold the view that they would come into conflict with the state. Not only did they hold the view, but they propagated that view. Before you propagate a view you must hold it. Now where do they hold the view that they would come into conflict with the state?

MR. VAN NIKERK :

My Lord, my submission is that in this paragraph of the message of Luthuli, where he says that - he refers to people who have voluntarily sacrificed and then he concludes the by asking the people to pledge themselves to count no cause (?) too great to gain this freedom. My submission, My Lord, is that from Luthuli's message that he was calling upon the people to be prepared to make the supreme sacrifice, that is death itself. In order to achieve their aims by the 1 unconstitutional and illegal

methods, which the African National Congress was in terms of their Programme of Action prepared to use in order to achieve their aims, My Lord.

MR. JUSTICE KENNEDY :

Where in your Heads is your extract from Luthuli's message?

MR. VAN NIEKERK :

My Lord, it is at the top of page 44.
 That extract is not complete My Lord. My Lord, this message starts at page 7840. It says My Lord : "Let us all - let us here in all unanimity remember that we in this age are not the first and the only one to have struggled for the liberation of our people, of our land, so that we can recall men and women of all ages in our day who in defence of our freedom voluntarily sacrificed most dearly, to the extent that some made the supreme sacrifice. We shall recognise June 26th for what it is, a symbol of something real and continuous, a spirit that has its roots in the past, and will shine in the present and will go on in the future, a living past, and present and future not least a symbol of unity." And then My Lord, "In recalling (?) the struggle for freedom in any period, we should solemnly name the fighters of freedom", and then he goes on : "I to rededication and introspection the occasion should be a call to all to rededicate themselves unreservedly to the cause of freedom. Our act of remembrance would be nothing if it ended..." - that is an uncompleted sentence - "..... and did not inspire us with fresh determination to resolve ?

to continue the fight until freedom is won. Our re-dedication should result in our complete surrender to the cause of freedom. We call too great(?) No Cross, No Crown.." and then something is omitted - ". . . . travelling along the highway. I call upon all men and women of our land who love freedom..." - something omitted My Lord - "... on this day to enter into solemn and united spiritual fellowship with thousands of freedom lovers throughout the length and breadth of our country and on that day and at that hour we will engage in a ceremony and act of remembrance and rededication . . . spirit of freedom in our land. Wherever responsible people should assemble in small or large groups..." and then it goes on to say a flame should be regarded as a torch of freedom. "The fighters of freedom resolve to carry out to the corners of South Africa darkened by the oppressive apartheid laws made by the parliament of Whites only. We should at this ceremony of fellowship recall the noble deeds and sing songs of freedom. It is at this ceremony that we should rededicate our words. I want to say this, I want you to say this after me, until freedom becomes the possession of all in the Union of South Africa, I pledge myself to count no cause (? cost ?) too great toto gain this freedom". That is on page 7841, My Lord.

MR. JUSTICE KENNEDY :

Where does your new extract end? Where does the extract upon which you rely now end?

MR. VAN NIEKERK :

Page 7841, My Lord, line 29.

MR. JUSTICE KENNEDY :

And on what do you rely for your submission (c), that they would come into conflict with the state? Immediately above that, above (a), you refer to a speaker from the Eastern Cape, saying that the African people must be prepared to make the supreme sacrifice. Then I presume this is what you submit, this is a warning to the people that they are engaged in a struggle which would involve them in a violent and physical conflict with the state.

MR. VAN NIEKERK :

As Your Lordship pleases.

MR. JUSTICE KENNEDY :

And do you rely on that submission for the extract set out at page 46?

MR. VAN NIEKERK :

My Lord, and the extract of the accused Ngoyi at the top of page 45, My Lord, where she referred to people outside - women outside South Africa had fought for freedom and died for freedom, and she condemns exploiters, she referred to the of exploiters, Chiang Kai Shek ...

MR. JUSTICE KENNEDY :

Yes, we had that yesterday. Is it your submission that because various speakers say that you must be prepared to pay the supreme sacrifice, this would of necessity involve them with violent and physical conflict with the state?

MR. VAN NIEKERK :

That is my submission, My Lord.

MR. JUSTICE KENNEDY :

Why?

MR. VANNIEKERK :

With respect, My Lord, they are preparing the people, saying to these people, what you are doing in this struggle will probably end in your death.

MR. JUSTICE KENNEDY :

Yes, will we have heard that countless times.

MR. VAN NIEKERK :

My Lord, my submission is that that is not the language of constitutionalism, or constitutional action. What they envisaged there was unconstitutional action, which would involve them in a clash with the forces of the state, which would end in the death of some of them.

MR. JUSTICE KENNEDY :

I shall assume that what you are saying is correct insofar as it might have been an unconstitutional struggle, but why of necessity when they refer to supreme sacrifice, does it refer to a violent conflict?

MR. VAN NIEKERK :

My Lord, with respect, my submission is that if a person is warned to make the supreme sacrifice in the struggle, that can only mean in a conflict.

My Lord, that concludes my argument on Levy.

MR. JUSTICE KENNEDY :

I think there was something else, I am not

quite sure - you said it was merely a matter of whether there was cross-examination of Sergeant du Preez at page 19, I think my Brother Bekker raised the question.

MR. JUSTICE RUMPF :

At the top of page 19 there is a reference to the evidence of Sergeant du Preez stating that the manuscript document there in question was in Levy's hands, and I think the question was raised whether there was any cross-examination.

MR. VAN NIEKERK :

I thought Mr. Justice Bekker asked the question of the witness, and the witness had said that he knows this man's handwriting, My Lord.

MR. JUSTICE RUMPF :

No, the question was whether there was any cross-examination of the witness concerning this evidence which he gave. Apparently you haven't looked that up yet.

MR. JUSTICE KENNEDY :

There was a query also about overt act No. 2, I can't quite remember what it was.

MR. VAN NIEKERK :

My Lord, there was a question asked whether the Crown connects, if I remember correctly, the Congress of the People with acts of violence. I don't know whether I heard that correctly.

MR. KENTRIDGE :

My Lord, if I could assist my learned friend, I took a note of the question of His Lordship Mr. Justice Bekker who asked it: What evidence is there

as against Levy that these aims were to be achieved by violence.

MR. VAN NIEKERK :

With respect, My Lord, the position is that one must go back right to the Indictment, My Lord to consider this matter, and on page 4 of the Indictment, paragraph 4(b)(i), reads : "During the subsistence of the said conspiracy and at various times during the said period and at places to the Prosecutor unknown, it was agreed that the said objects should be achieved inter alia by the following means : Sponsoring, organising, preparing, calling (?) or convening a gathering of persons known as the Congress of the People for the adoption of the Freedom Charter containing inter alia the demands set forth in Part E hereafter. And thereafter propagating the achievement of the said demands, such Charter Kliptown in the district of Johannesburg on the 25th and 26th of June'. Now My Lord, then Part E of the Indictment, that is page 7, My Lord, "In pursuance and furtherance conspiracy and more particularly as part of the acts of preparation for the violent overthrow of the state." the following accused, under which was Levy, My Lord - ". . with the hostile intent aforesaid did attend a gathering of persons known as the Congress of the People held at Kliptown in the district of Johannesburg on the 25th and 26th June, 1955, adoption of the Freedom Charter the said gathering, then and there drafted and adopted (?) such Freedom Charter and pledged themselves to work together and campaign for the

achievement of the demands set forth in the said Freedom Charter, inter alia..." and the various...

MR. JUSTICE BEKKER :

Yes, the four demands - the five demands are set out. Then your Indictment continues : "Which said demands they intended to achieve by violence." That is the amendment. And it is on that score that I asked you the question. Of the Accused a number are selected, eight or nine, and the charge against them is that the said Accused drafted and adopted the five demands set out in the Indictment there, and the Indictment concludes : "Which said demands these Accused", these eight "sought to achieve by violence". Now Levy is one of them, and that is what I want to know from you. Masina is the same.

MR. VAN NIEKERK :

My Lord...

MR. JUSTICE RUMPF :

Have you considered this?

MR. VAN NIEKERK :

My Lord, Your Lordship

MR. JUSTICE BEKKER :

Mr. van Niekerk, I don't think I will worry you about it. I had intended asking Mr. Trengove certain questions concerning this part of the Indictment, and concerning the Kliptown meeting and so forth. I will formulate my question and Mr. Trengove can deal with it at some convenient time.

MR. VAN NIEKERK :

As Your Lordship pleases, I am indebted to Your Lordship.

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