

state or to make active preparation for a violent revolution against the state, or one or other of the means set out in B.1?

BY MR. NICHOLAS :

5           It may well be, My Lord. My Lord, one could ask, My Lord, should Accused persons be asked to look for implications? Should they be asked to construe an Indictment as if it were a will where the testator is no longer with us? The Crown is still with us, and they should, with respect,  
10 My Lord, make it clear and not leave it to be construed. My Lord, in sub-paragraph 4, the allegation is that the means were to be achieved "by organising and participating in various campaigns against existing laws" and the laws are set out here and in the Further Particulars. My Lord, the  
15 Crown has refused to say what these campaigns consisted of, and there is no allegation here that they included any kind of forcible action. Schedules C and D contain numerous verbal attacks on the acts listed here, My Lord. I will quote examples at the next and final stage of my argument,  
20 and one can only surmise that these verbal attacks, these verbal criticisms, often in strong, often in intemperate terms constitute the campaigns which it is alleged were agreed upon. But, My Lord, we submit again that that is not treason. One may lawfully criticise legislation, protest and protest  
25 vigorously against legislation. Such criticism cannot become treason just because it is sharp and <sup>part</sup> consistent and may be widespread.

BY MR. JUSTICE KENNEDY :

And in none of the preceding steps or the organisational and participatory steps is the campaign is there any  
30 suggestion of violence?



BY MR. NICHOLAS :

No, My Lord. Except in this agreement to instigate the use of violence.

BY MR. JUSTICE KENNEDY :

5 Are you talking about 4(iv)?

BY MR. NICHOLAS :

Yes. So far as the Crown's allegation is concerned, My Lord, it does not allege that they were to be violent  
10 campaigns directed against the state. That allegation is missing. And when it described the effects of these speeches in Parts C and D, it does not allege in the main part of the Indictment that there were incitements to violence. But the Crown has given particulars, My Lord, of speeches which it  
15 says contain violence, and there is an overlap between allegations of extra-parliamentary action and unconstitutional action, violence conducing to Marxism-Leninism and so on. So that there are allegations in the Further Particulars that some speeches that deal with these things are violent.  
20 At this stage, My Lord, our submission is that there is no allegation that they agreed on violent campaigns, or that any force was to be used against the state. Then My Lord, the next, (v) is that they agreed "to promote feelings of discontent or unrest amongst and/or hatred or hostility between  
25 the various sections and races of the population of the Union of South Africa." Now My Lord, that is very wrong. Very wrong conduct, if such an agreement was made. It probably constitutes an offence under the Riotous Assemblies Act, in that there is alleged an agreement to commit offences, to  
30 commit matters which would be offences under the Riotous Assemblies Act. But, My Lord, in our submission that is not treason. To make the people of South Africa dislike one another, to make the White people dislike the non-European



people and to make the Asiatics dislike the Bantu, that is not treason. That is not conduct which is directed against the state. That is conduct which is dealt with by legislation, and if the Crown wishes it to be punished, it should  
5 be charged as such.

BY MR. JUSTICE BEKKER :

Here I would like you to consider this. Combining an allegation as is contained in sub-paragraph (iii), that is the use of violence, with what is set out in (v), the present  
10 paragraph, and having as preamble to that a conspiracy to overthrow the state, by the use of violence and promoting unrest amongst the people. How does one deal with that?

BY MR. NICHOLAS :

My Lord, one asks where is the force to be directed  
15 ted against the state? The state isn't mentioned in this paragraph.

BY MR. JUSTICE BEKKER :

That is a softening up process, part of the softening up process, "together with the use of violence, bringing  
20 about the overthrow of the state".

BY MR. NICHOLAS :

My Lord, the state isn't being softened up. The state isn't being attacked in any way in the integrity of its administration, or its security or of its opportunity  
25 to make its laws and enforce its laws.

BY MR. JUSTICE RUMPF :

In Isolation, if one takes the allegation in sub-paragraph (v) in isolation, speaking for myself, I can see the force of the argument. But it is not in isolation  
30 for present purposes, it is combined with what is set out in conspiracy.



BY MR. NICHOLAS :

Might I with the greatest submission ask Your Lordship to indicate the sort of situation which Your Lordship envisages when these two paragraphs are taken in  
5 combination?

BY MR. JUSTICE BEKKER :

Well, the Indictment alleges that a number of Accused conspired to destroy and overthrow the state by using violence - that is sub-paragraph (iii) and promoting  
10 feelings of discontent and unrest and hatred and hostility amongst the various sections of the Union, which may or may not be capable of being construed as the use of violence coupled with this state of unrest will facilitate the achievement of the object, namely the overthrowing of the  
15 state. It is in that sense that the allegations are not in isolation.

BY MR. NICHOLAS :

Does Your Lordship read it, "instigating persons among whom feelings of discontent have been promoted to use  
20 violence"?

BY MR. JUSTICE BEKKER :

No, the use of violence, coupled with the creation of a state of unrest in the state, which might facilitate the overthrowing - the ultimate object.

25 BY MR. NICHOLAS :

My Lord, I am sorry, but I can't quite follow it.

BY MR. JUSTICE BEKKER :

Your submission at the moment is that sub-paragraph (v) is not suggestive of violence. It may be something very  
30 wrong to do.

BY MR. NICHOLAS :

Yes, My Lord.



BY MR. JUSTICE BEKKER :

That is the paragraph in isolation. Right. Why must the paragraph be read in isolation?

BY MR. NICHOLAS :

5           The Your Lordship envisages some situation<sup>in</sup> which the violence of the previous paragraph, sub-paragraph (iii), is used in connection with the feelings of discontent in this paragraph?

BY MR. JUSTICE BEKKER :

10           Yes.

BY MR. NICHOLAS :

That one excites feelings of discontent among people....

BY MR. JUSTICE BEKKER :

15           And you are going to use violence...

BY MR. NICHOLAS :

Those people are going to use violence, My Lord.

BY MR. JUSTICE BEKKER :

20           The Accused having created a feeling of hostility amongst people and a state of unrest, then are going to use violence to achieve their object.

BY MR. NICHOLAS :

25           Then, My Lord, treason is committed when they use violence. But treason is not committed by creating feelings of discontent or unrest. Because treason, by definition in our submission, is the use of violence. My Lord, the next category is "advocating, propagating or promoting the adoption and implementation of the Marxist-Leninist doctrine in the Union of South Africa, and/or advocating or teaching."  
30 - I'll deal with that separately, My Lord, but "advocating, propagating or promoting the adoption and implementation of the Marxist-Leninist doctrine in the Union of South Africa."



My Lord, the Indictment affords no clue as to the contents of this doctrine and My Lord, my learned friend Mr. Hoexter told Your Lordship in the previous application, told Your Lordship, I submit correctly that the Court could not take  
5 judicial notice of this doctrine. So that, My Lord, the Court is told that the Accused advocated the adoption of a doctrine, and we submit, My Lord, that the mere adoption of a doctrine cannot affect the security of the state. So far as its implementation is concerned, My Lord, it may be  
10 that a doctrine can be implemented by forcible means, or it may be that it can be implemented by peaceful means. We are not told what the contents of this doctrine are, and there is no allegation that it was to be implemented by any forcible means. So My Lord here there is no allegation in this part  
15 of the use of force against the state. Then, My Lord, if Your Lordship takes this paragraph (vi) and relates it back to sub-paragraph (f) in Paragraph 1 of Part B, Your Lordship will see that the Accused conspired to "establish a Communist state by advocating, propagating or promoting the  
20 adoption and implementation of the Marxist-Leninist doctrine in South Africa, and advocating the establishment of a Communist state."

BY MR. JUSTICE RUMPF :

What are you reading from now?

25 BY MR. NICHOLAS :

I am reading My Lord, from paragraph 1(f), and I am reading it with sub-paragraph (vi) of paragraph 4. Then My Lord, sub-paragraph (vi) continues, "advocating and teaching the duty and necessity of establishing as an immediate  
30 object a Communist state in the form of a so-called People's Democracy or People's Republic or some related form of state flowing from an implementation of or founded on the



doctrine aforesaid". My Lord, apart from specific legislation which penalises the specific conduct, the subject is free to say that it is desirable or necessary that some different form of state should be propagated. And we submit, 5 My Lord, that this doesn't contain an allegation necessarily of illegality. It may be that a charge could be framed under the Suppression of Communism Act, but certainly it contains no allegation that force is to be used. Then finally, My Lord, it is alleged - there are two more, I beg Your Lordship's 10 pardon. (vii) - "Advocating or propagating or actively promoting as an immediate object the establishment by illegal or unconstitutional means of a state intended to replace the present state." Here again, My Lord, Your Lordship will observe that although reference is made to illegal means, and 15 unconstitutional means, there is no reference to violence. Although in sub-paragraph (iii) there was a reference to unconstitutional and illegal methods, including the use of violence. We submit My Lord, that these words, the allegations in this sub-paragraph are in precise and - they could 20 cover all sorts of activities, My Lord, which do not involve the use of violence. For example, My Lord, if a South African Member of Parliament entered into an agreement with another - let us take the National Government, if the National caucus agreed to establish a republic by passing 25 legislation to disfranchise all opposition voters, that My Lord, would be regarded as unconstitutional action, but we submit, My Lord, that that would not be treason. The My Lord, (viii) - "inciting or encouraging the population of the Union of South Africa to take part in and support by mass action 30 the activities set out in paragraph 4(1)(vii)" insofar My Lord as there wasn't an incitement to support by mass action violent activity, in our submission this paragraph does not



import violence. It must really be read, My Lord, as parallel with the previous paragraph. The Crown hasn't told us what it meant by mass action, and they haven't answered the question what sort of mass action. There is  
5 all sorts of non-treasonable action, My Lord, which can be described as "mass action". Large public meetings, demonstrations, marches of people bearing torches. My Lord, if the Crown means mass revolutionary action, why does it not say so? So that we submit, My Lord, that with  
10 the possible exception of sub-paragraph (iii) where the word "violence" is specifically used, none of the means, none of the Acts which the Accused agreed to do to attain their object constitute treasonable means, treasonable acts. We submit, My Lord that when paragraph 4 is read with  
15 paragraph 1, as it must be, My Lord, because it was one agreement, whatever the Crown's allegations in sub-paragraph 1, the Accused did not agree to do anything unconstitutional. ~~these were the things~~ - anything treasonable. These were the things that they agreed to do, and they do not in  
20 our submission amount to treason.

BY MR. JUSTICE BEKKER :

If it is convenient, I would like to take you back to your basic submission that there must be violence in a case of high treason. Why in principle should that  
25 be the case?

BY MR. NICHOLAS :

My Lord, don't...

BY MR. JUSTICE BEKKER :

If the overthrow of a state could be achieved  
30 by means other than violence, but let it be assumed illegal means, why shouldn't that in principle be high treason?



BY MR. NICHOLAS :

My Lord, my submission is that the reason for that must be found not in law, but in politics.

BY MR. JUSTICE BEKKER :

5 Well, it may be an extreme example, I don't know how it is going to work, but I would like to put this to you. Assuming a number of people get together and they say we are tired of the present form of state. We haven't got enough people of our persuasion to ensure a different  
10 form of state, but we intend overthrowing the present form of state, and the manner in which we will do it is the following : We will put up a number of candidates at the next general election, and we will put into the ballot boxes - remove the genuine votes, and substitute therefor  
15 a lot of forgeries, ensuring that our candidates get in, and we will go to parliament and vote for a new form of government. Now that envisages the - some fraudulent means. Why shouldn't that be high treason?

BY MR. NICHOLAS :

20 Because, My Lord, in that situation the integrity of the state is in no way affected. Its existence as an organised entity is in no way affected. Its police force, its army all its other instruments of government are not touched. It retains its full power to legislate...

25 BY MR. JUSTICE BEKKER :

Does that matter where a different form of state is achieved?

BY MR. NICHOLAS :

30 My Lord, the only conduct which is treated as treasonable, is conduct which is directed towards the integrity of the state and its administration, which can only be done by force. Because the state, as long as there



is no forcible attack upon it, is free to legislate as it has done in times of crises, at the time of the defiance campaign, to legislate and to control. But when force is used against the state, My Lord, then its integrity is in  
5 danger.

BY MR. JUSTICE RUMPF :

Would the same position arise if a group of people in a country managed to bribe the majority of the members of parliament? That would also be fraud, but you  
10 say that wouldn't be high treason?

BY MR. NICHOLAS :

No, My Lord. My Lord, there is the whole administration of the criminal law, the law as a whole, the judicial system to deal with that sort of conduct. My Lord, unless  
15 a breach of the law is to be regarded as an injury done to the majestas, in my submission, My Lord, it is mere illegality.

BY MR. JUSTICE BEYKER :

It may be that I am looking at it from the wrong  
20 point of view, but if the sin really is overthrowing the state, or trying to overthrow the state, does it really matter whether it is done by force or not?

BY MR. NICHOLAS :

So long as the state is not attacked, My Lord,  
25 the integrity is not attacked by an enemy, it is able to deal with all such situations. My Lord, there have been many political frauds. The Electoral Act is designed to prevent that sort of thing. If, by force, the Electoral Act is prevented from coming into effect or is avoided,  
30 then there is an attack on the integrity of the state, but a mere breach of the law, that is dealt with under the ordinary laws. And historically, My Lord, there has



been in our submission no deviation at all in this current that treason, apart from the obsolete acts, is always *inherent*. Other acts against the state are different crimes, not treason. My Lord, the state retains the power to legislate 5 and to punish all breaches of the law, and in our submission there is no reason for an extension by what would, My Lord, in effect be a judicial extension of the law of treason as we know it.

BY MR. JUSTICE BEKKER :

10 Yes, well, anyway you stand or fall by your submission that there must be violence or force?

BY MR. NICHOLAS :

As Your Lordship pleases. And My Lord, I would make just one suggestion, if I may respectfully do so, My 15 Lord, in regard to Your Lordship looking for the principle. My Lord, the Roman Dutch law is a flexible system and it is based on principles, but with great respect, My Lord, in the case of a serious crime such as treason, the Court should not extend the law beyond what is has been recognised to be 20 in the past. My Lord, may I refer again to a brief passage by His Lordship Mr. Justice Schreiner in the Spoorbond case. That is the case reported in 1946, A.D. p. 1013. His Lordship said : "The complete absence of authority for such an action.....Such a new or extended remedy cannot properly 25 be provided by the Court in a case of the present kind." And My Lord, Parliament has done so. It has passed the Riotous Assemblies Act and the Suppression of Communism Act, in order to safeguard the state from these non-violent attacks. Now My Lord, the submission is that with the possible exception 30 of sub-paragraph (iii), none of the means agreed upon, and these are the only means set out in the Indictment, involve the use of force, and we say, similarly My Lord, with regard



to Part C and D, taking the Crown's allegation as to the effect of the speeches and resolutions and the documents at their face value, none of those speeches and documents with the exception of those to which the Crown attributes  
5 violence, is capable of constituting a treasonable act.

Now, My Lord, we have attempted....

BY MR. JUSTICE KENNEDY :

Are they specified?

BY MR. NICHOLAS :

10 They are indicated in the Further Particulars.

BY MR. JUSTICE KENNEDY :

I haven't read them.

BY MR. NICHOLAS :

Well, My Lord, Your Lordship will have considerable  
15 difficulty when Your Lordship does read them.

BY MR. JUSTICE KENNEDY :

If I am going to have some difficulty, I think you had better....

BY MR. NICHOLAS :

20 What the Crown has done, My Lord, is to furnish a series of Schedules of various innuendos to be applied to various speeches. "Unconstitutional, extra-parliamentary, violent, campaigns against existing laws." But they didn't do it, My Lord, in one document, they did it in a  
25 series of documents. So that in order to get all the innuendos in Schedule C, you have got to look at two or three Schedules in the Further Particulars. Then Your Lordship has to transfer from the Schedules to the Further Particulars onto the Indictment a series of numbers. That  
30 is the method the Crown has used to indicate them, a series of numbers. When, when that process has been done, Your Lordship can read a speech, and by referring to a list of



what the numbers represent, Your Lordship will be able to find out what the Crown alleges in regard to certain of the speeches.

BY MR. JUSTICE KENNEDY :

5           You have done that, have you?

BY MR. NICHOLAS :

          The Defence have done it, My Lord.

BY MR. JUSTICE KENNEDY :

          Perhaps you will assist me by telling me all  
10 about it.

BY MR. NICHOLAS :

          I will communicate that, My Lord, to my learned friend Mr. Fischer, who will probably have something to say about the way in which these Further Particulars have  
15 been furnished. Now, My Lord, we have samples, My Lord - the schedules to the Indictment. It is difficult, My Lord, to take a comprehensive sample, it is difficult if one doesn't take every speech to avoid the possibility that one is favouring the Defence or favouring the Crown in the  
20 selection of samples, and that is why, My Lord, we make the submission that if Your Lordship can decide this question on the broad allegations made by the Crown, as a matter of principle, then, My Lord, it won't be necessary to consider each speech separately, to consider whether it is an overt  
25 act.

BY MR. JUSTICE KENNEDY :

          Now supposing the Crown and the Defence were agreed on the nature of the speech, then no difficulty can arise.

30 BY MR. NICHOLAS :

          My Lord, what we are submitting is that if we can show that in regard to nine-tenths of the Crown's allegations



as to the effect of these speeches, they are not alleging treasonable acts, then in our submission, My Lord, those nine-tenths must leave the Indictment, or the Indictment must be quashed. Your Lordship has held that what is here  
5 alleged is a course of conduct. If it can be shown, My Lord, that nine-tenths of the acts or even fifty-per cent of the acts alleged as part of that course of conduct are incapable of being criminal acts, and therefore constituting part of the course of conduct, the Indictment should go. We are not  
10 here, My Lord, excepting to particular speeches. We complain that the great bulk of speeches and documents are not treasonable acts and that it is therefore embarrassing to include them in a course of criminal conduct. Now My Lord, may I start with the sampling process, My Lord, at Schedule  
15 C. Now My Lord, the sampling has been random, but it has been conditioned to this extent that we have tried to include examples of each of the categories alleged by the Crown. We start off, My Lord, with Schedule C, page 1. This is the speech made by J. G. Matthews, at Kimberley on the 26th October  
20 1952. The extracts which are included in Schedule C are "That the African people of this country demand that they should rule this country. We demand that it is on our own terms that what should happen, not on the terms of the people who had left their own countries and had come to  
25 Africa. I would like to warn Strijdom and the rest of them that inasmuch as the African people..." - he means the Afrikaans people - "... were able to fight against a large empire like Great Britain, we will be able to get our freedom with a few million. We are prepared to sacrifice a few of  
30 the million because we know history and time is on our side, and justice is on our side. Finally I would like to issue a warning to those people who like to speak of breaking this



country. Out of the two hundred million Africans we are prepared to lose a few, but White South Africa cannot afford to lose five. Therefore, let violence be put aside. It is not a solution. The sten guns and aeroplanes are not  
5 a solution. It is the social problem. Let them try one thing that they have not tried so far, to create a true People's Democracy in South Africa, in which all men, irrespective of race, creed or colour can live together. That day we describe you will have peace." The Crown  
10 says of this speech, My Lord, that it advocates the adoption of the Marxist-Leninist doctrine,.....

BY MR. PIROW :

My Lord, may I intervene at this stage. I view with apprehension the possibility that we may be busy, not  
15 for days, but for weeks and months discussing these speeches. Now, I think we could agree with the Defence to try one question first. If I understand my learned friend correctly, he says violence must be expressed in connection with treason. We may or may not quarrel with that. He goes on to say that  
20 violence must be expressed in connection with the means, and violence or force must appear from any overt act. If I interpret my learned friend correctly on that point, we may first dispose of that point, because if we don't, the Crown will have to deal with every single bit of evidence to show  
25 that you cannot take one speech or ten speeches, but the effect of all the speeches to come to a conclusion. Now if my learned friend will tell me whether I am correct in this assumption, then possible that could be disposed of first. If not, My Lord, I see no hope of avoiding the reading of  
30 all the speeches.

BY MR. JUSTICE RUMPF :

Mr. Pirow, I think that the Defence attitude is that



this matter of principle can be decided without referring to all the speeches. The point is that my Brother wishes to have some indication in regard to some of these speeches, and I think Mr. Nicholas is only going to deal with a few 5 samples.

BY MR. PIROW :

My Lord, I think he was going to deal with a few to support his contention, but not to supply the Bench with information.

10 BY MR. NICHOLAS :

My Lord, the Defence would with respect welcome a decision on the matter of principle involved in this case and would want to avoid spending the time of the Court on a detailed analysis. But if Your Lordships want it, of 15 course we shall do it, and take every speech if necessary.

BY MR. JUSTICE KENNEDY :

Mr. Pirow, I am as anxious as everybody is to avoid any waste of time in this case. It is quite clear that if the speeches are going to be referred to and the 20 documents, it would take a matter of weeks. I was voicing some doubt to Mr. Nicholas, because I doubt myself whether I could understand the whole matter without referring to the speeches and the documents. Now, if you think that the matter can be dealt with in principle, and thereby avoid 25 this, what may be a waste of time, I would be very glad to fall in with that procedure, if you think it can be done. If you tell me it can be done, and if we see at a later stage or I feel at a later stage it can't be done, well, - or if you tell me now you think it can be done, then I 30 will be very happy to fall in with that suggestion.

BY MR. PIROW :

May I put it this way, My Lord. If the Court



holds that the suggestion of violence must be included  
or appear from the means taken by themselves, irrespective  
of evidence, and that short of that the Indictment is  
defective, or if the Court holds that there can be no  
5 overt act which does not in turn include some reference to  
force, then we have got to go into the evidence. Should  
the Court hold that the means may be regarded as means  
for the violent overthrow of the state, although they do  
not specifically refer to violence in say a preliminary  
10 step, a softening up, and should the Court hold that  
overt acts may be acts - I use the words of the Judgment -  
apparently innocent in themselves in respect of which  
the circumstances will have to be considered. If the  
Court comes to that conclusion, we needn't take the evidence.  
15 If the Court comes to the conclusion that some reference to  
violence is necessary, we propose to show that violence  
through the documents and the speeches.

BY MR. JUSTICE RUMPF :

That is not the point made by the Defence, Mr.  
20 Pirow. The point made by the Defence is, as I understood  
the argument to be, that if in this Indictment the overt  
acts relied upon by the Crown are shown not to import  
violence, either specifically in terms or by statement of  
innuendo, then the Indictment should be quashed. If the  
8 25 Crown's attitude -- if their argument is correct, then  
because of prejudice, the Indictment should be quashed.

BY MR. PIROW :

May I just analyse that?

BY MR. JUSTICE RUMPF :

30 I think we can deal with it at this stage without  
going into the speeches. At the end of this argument the  
issues will be formulated, I am sure of that.



BY MR. PIROW :

If that is so, then I have nothing further to say, My Lord. But the question still remains, is my learned friend arguing or is he not arguing that it must appear  
5 from the Indictment - from the overt act itself, apart from anything else, whether or not violence is advanced.

BY MR. JUSTICE RUMPFER :

Yes, that is his argument.

BY MR. PIROW :

10 If the Court comes to a decision on that, then we can deal with it.

BY MR. JUSTICE BEKKER :

Well, is it necessary for the purposes of deciding this point to refer to any of the speeches at all? Because  
15 Parts C and D, that is the speeches and the documents, contain the inference which the Crown draws from those speeches.

BY MR. PIROW :

No, My Lord, it says inter alia, by doing certain  
20 things.. - It says in pursuance and furtherance of the said conspiracy, and with hostile intent, and with the object of overthrowing the state, they did the following. Now my submission is, My Lord, that without evidence it is impossible to say whether that will or will not have that effect.

25 BY MR. JUSTICE RUMPFER :

That will be your answer? Your answer to this point?

BY MR. PIROW :

That will be the answer. And then, My Lord, the  
30 evidence is everything.

BY MR. NICHOLAS :

Our submission, My Lord, relates the sufficiency



of the allegation in the Indictment. If the allegations are insufficient, we submit that the Indictment should be quashed. If they are sufficient, My Lord, then a different result follows.

5 BY MR. JUSTICE BEKKER :

Mr. Pirow, may I trouble you? Using the analogy of a declaration in an action for defamation, there words are not per se defamatory and the words are set out, and the innuendo drawn by the plaintiff is contained in the  
10 Indictment, that is contained in the declaration, if that innuendo is not justified by the words, that is the end of the matter, even if the words were spoken or not. Isn't that the position here?

BY MR. PIROW :

15 May Lord, may I just say, Your Lordships cannot just read this. Your Lordship has got to read all the particulars and the references to the particulars. May I just take one example, that is the question of a Communist state. Part and parcel of the particulars referred to is  
20 the evidence of the experts who say that that can never be accomplished without violence. So it is not just sufficient just to look at what appears in this part of the Indictment. It has to be read with all the particulars. The evidence is very clear that according to the Communist doctrine, the  
25 peaceful arrival of the Communist state is unthinkable.

BY MR. JUSTICE BEKKER :

I am not sure at the moment - does that meet the point? If in principle the overt act is only properly so called an overt act if it is linked up somewhere with  
30 violence, or in regard to a speech, inciting violence - that type of thing, and an Indictment in a high treason case does not embody any concept of violence or any incitement



to violence.

BY MR. PIROW :

If Your Lordships hold....

BY MR. JUSTICE BEKKER :

5 Isn't that the principle of the matter?

BY MR. PIROW :

If Your Lordships hold that an overt act cannot  
be an innocent act supported by innocent circumstances,  
then my learned friend may be right. But, if an overt  
10 act, according to the authorities, may be a perfectly inno-  
cent act, but may be proved not to be innocent, then it is  
another question.

BY MR. NICHOLAS :

My Lord, I don't want to embark on an argument  
15 with my learned friend on the legal issues, but our submis-  
sion is that Your Lordship can decide this matter as a  
matter of principle on the basis of the sufficiency of the  
allegations in the Indictment. My Lord, as regards just one  
point in my learned friend's observation, the submission is  
20 that you can't prove what you don't allege. If the Crown  
wants to allege circumstances which make a prima facie inno-  
cent act a guilty act, then it must do so. And unless the  
allegation is made in the Indictment, it cannot in our sub-  
mission be proved. Now My Lord, if I am not to discuss  
25 examples, that concludes my submissions for my part of the  
argument on this ground. My learned friend Mr. Kentridge  
has an argument to address to Your Lordship also on the  
same grounds contained in the Notice. That argument, My  
Lord, is based on the allegations in Part D as to the  
30 possession of documents. Possession of documents with  
the intention of disseminating their contents or of distri-  
buting them. My learned friend Mr. Kentridge, who follows,



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