

inverted commas, my lord, 'ready' - when they are ready, you 1
organise a general strike or a stay at home.

Step 6: If the Crown does not then make con-
cessions and tries to suppress the strike, or stay at home
by violence . . .

BEKKER J: The State you mean? You said the 5
Crown.

MR. MAISELS: The State, my lord, I'm sorry.
If the State does not then make concessions and try to sup-
press the strike, or stay at home, by violence - which, my
lord, is probable but not certain, of course, you then use 10
the volunteers and/or - - I use it this time - - and/or the
masses to retaliate and launch a final onslaught on the
State, or possibly you rely on the likelihood that the masses
will sell out. How this is to be done, my lord, is appa-
rently not known. Shall we test it in this way, my lord? 15
Thus when Resha speaks speaks in Sophiatown and says "We
shall not move", his act is an act of preparation for the
overthrow of the State in the sense that firstly, he hopes
that his audience will be moved to some unspecified form
of action which will secondly, cause the State to use some 20
unspecified form of violence against them, in order that
thirdly, in future Resha can make propaganda out of the
State's action. So that fourthly, the masses will even-
tually be prepared for a general strike, and fifthly, be
prepared to launch a violent insurrection, if - if, my lord - 25
if the State tries to suppress the general strike by violent
action.

All this, my lord, says the Crown was agreed
upon by the A.N.C, and all this, says the Crown, was known
to and agreed upon by all the accused not later than February, 30

1954. That's the date when they were supposed to have
been in the conspiracy. 1

Now, my lords, let's examine this. There is
not a document . . .

RUMPF J: Is that according to the Further Particulars? 5

MR. MAISELS: Yes, my lord, that all the accused
knew of the conspiracy by February, 1954. Now, my lord,
there is not a document, there is not a speech, there is
not a passage in the Defence evidence in which any such plan
is set forth; not one, my lord. There is no direct evi- 10
dence, either that it was ever agreed upon, nor is there
any evidence that this was ever communicated to any of the
accused or co-conspirators. The whole idea in our sub-
mission is really a theory evolved by the Crown, and the
Crown invites your lordships to find beyond reasonable doubt 15
that this is the only theory that fits the facts. The
Crown, of course, must satisfy your lordships that the proved
facts are inconsistent, not only with the Defence version
of what the accused intended, but also with every other
reasonable possibility, and of course, my lords, they must 20
satisfy your lordships on the second limb that all the
proved facts are consistent with the Crown theory.

BEKKER J: On the probabilities, what do you
say is to be conveyed by the resolution of the Executive
Committee saying that 'This is going to be the test, this 25
is going to be the Waterloo of Apartheid'; what did they
have in mind?

MR. MAISELS: That they were going to see
whether they could get away with a policy of non-violence,
my lord, and defeat the Government - - that's all; the 30

Waterloo of Apartheid, my lord, doesn't mean a battle of apartheid. 1

BEKKER J: No, no, a Waterloo . .

MR. MAISELS: In a metaphorical sense, my lord.

BEKKER J: What is it they had in mind, when the National Executive said 'This is going to be the Waterloo of Apartheid'? And 'It's going to be the test'. 5

MR. MAISELS: Your lordships will remember - - I'm not dealing now with Prof. Matthews' evidence which is rather an exaggerated view - -

BEKKER J: Yes. 10

MR. MAISELS: What they said was this, my lord: 'Here is the Government trying to move these people from this area, in pursuance of its Apartheid policy," because it's clear, the evidence establishes it, my lord, that the moving of these people from this particular part was not in pursuance of a scheme of slum clearing; it was in pursuance of the Government's Apartheid policy, and my lord, I'm not talking of the rights or wrongs of it. They said "Very well, we are going to see if we can show a passive resistance, a strong passive resistance and do nothing - we won't move - we'll organise public opinion and get everybody on our side; we won't move - - the Government realises that to get us to move it might have to use force". 15 20

RUMPF J: At the time when that resolution was adopted, did they know that a handful, comparatively speaking, of people would be moved on the first occasion? 25

MR. MAISELS: No, my lord, I don't think so. I think, my lord, that that was in the very early stages . .

RUMPF J: In May, 1954.

MR. MAISELS: Yes, and the actual first removal 30

took place in 1955, the beginning of 1955. It was a general 1
 sort of statement - the sort of thing that one gets in any
 political(?) and my lord, if they had succeeded
 - if the Government had said 'These people really don't
 want to move, and this is their genuine desire, we will -
 because there is a general force of public opinion - - -" 5
 and your lordship will remember that there was - there were
 a number of outside bodies not connected with the A.N.C. -
 the Johannesburg Municipality - - there were various people
 who were opposed to this on principle. Now, my lords,
 if the Government had not pursued its policy of removing 10
 them because of this welter of opposition, that indeed
 would have been a major victory

KENNEDY J: Mr. Maisels, you say that in spite
 of the wording this was not - this campaign was not one
 of an irresistible force meeting with an immovable object 15
 because in fact the objects met

MR. MAISELS: Exactly, my lord.

BEKKER J: As I understand the Crown case, the
 Crown, in order to construe what meaning is to be attached
 to the words 'The Waterloo of Apartheid,' and this is going 20
 to be a test case' - suggested that the Court must look at
 what happened thereafter. That supplies a clue, says the
 Crown, to what the A.N.C. had in mind, and the Crown says
 in order to see what did transpire they said "Look at the
 speeches, look at the type of speeches made, and bear in 25
 mind 'We shall not move' - we are not going to move."
 And then the Crown refers to A.162, and the evidence of
 Luthuli and says that as far as that campaign was concerned
 the A.N.C. was determined that the people should not move.

MR. MAISELS: Within the limits of its policy, my lord. 1

BEKKER J: Yes, well, within the limits of its policy, but I'm putting to you the Crown case. The Crown says 'In that setting, the Waterloo of Apartheid and making this a test case, brings about the inference that what they had in mind was violence - if necessary there was going to be violence'. 5

MR. MAISELS: My lord, we counter that by the direct evidence and we will address your lordships very fully on the Western Areas campaign. 10

My lords, this is the very point upon which I submitted to your lordships earlier - the point on which one would have expected direct evidence, my lord. They did not resist violently. Why didn't they?

BEKKER J: Well, the Crown says the Government anticipated that 15

MR. MAISELS: Your lordship means by coming in beforehand?

BEKKER J: Yes, at an earlier date. That is what the Crown says. 20

MR. MAISELS: My lord, we had direct evidence of a woman who gave evidence and said she went to the meetings and heard a number of speeches; she was a householder; she was one of the people affected. 25

BEKKER J: She couldn't have been present at the beerhall and the speech, which is common cause . . .

MR. MAISELS: My lord, the beerhall language speech is one speech; that was in 1956.

BEKKER J: Was it?

MR. MAISELS: Yes, my lord. 30

RUMPF J: Isn't there a document which reflects
the view of either the local body of the Transvaal suggest-
ing that the actions of the A.N.C. had compelled the Govern-
ment to anticipate because the position was so dangerous?

MR. MAISELS: I've got my own ideas about that, my
lord. I suggest to your lordship that one must look at
that curgrano salus, but at all events that will be dealt
with very fully on the whole of the Western Areas campaign.
All those documents, all those speeches will be dealt with.

But, my lords, I was dealing generally with
this theory of conspiracy. I merely gave that as an example-
the Western Areas, because it's a general theory; the evidence
of what happened in the Western Areas supports us. I'm
leaving that aside because we might have hoped for something
else . . . I don't think, my lords, - the passage I gave
your lordships last week - that the Western Areas was intended
to be the final revolution. But, my lords, your lordship
Mr. Justice Bekker invited my learned friend in Vol. 89
page 18700 to deal with the probabilities of the suggestion
he was making -- I'd just remind your lordship of that
passage. He was dealing with a document -- I think it's
B.25, my lord -- one of the documents, I think it's B.25 -
it doesn't really matter which one -- but what my learned
friend was saying at page 18699 -- now, my lords, it's
quite clear from this document that the African National
Congress fully realised the consequences of political strike
action; strike action as a political weapon. They knew
at the outset that that type of action could, and probably
would involve the country, would involve them in a violent
clash with the State; that if masses were used against the

State it could turn into a war, into a rebellion; it could
turn the country into a bloodbath, but that did not deter
them. My lords, if you embark upon a campaign which has
certain consequences, probable consequences, or likely con-
sequences, then you intend those consequences in law and
if those consequences which you foresee and intend, if they
are the methods by which you want to achieve your object
you must accept responsibility for them.

My lords, that is what the Authorities that I
quoted at the outset said; that you cannot deny and say
that the consequences of these actions, if they lead to
violence, you didn't intend them. My lords, ordinarily
in cases of this nature - Treason - the Courts have accepted
as a test even the objective approach. If a person should
know the Court is satisfied that he should have known that
those were going to be the consequences, and he could be
held responsible for them, but, my lords, in this case it's
not even a question of should or shouldn't know - - they
knew, they preached it to their people; they told them
that that would probably be the result; they said 'Do not
let that deter you'. Then my learned friend quotes:
'Let courage arise with danger, be prepared to make the
supreme sacrifice. All through history people have been
prepared to shed blood and make the supreme sacrifice;' that
was their approach, my lord; they were deliberately pro-
voking violence, violent action, and deliberately involving
the masses in what could be a violent conflict with the
State.

My lords, my learned friend goes on - - "Then,
my lords, another aspect of the Programme of Action....."
and your lordship Mr. Justice Bekker said to him: "You're

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going to deal with the probabilities, are you not, Mr. 1
Tregrove?", and then Mr. Tregrove said 'Yes', but he
never dealt with the probabilities on the Crown's argument
on conspiracy as put.

Therefore, my lord, we invite your lordships 5
to consider the matter this way. Is the Crown theory in-
herently probable? No argument was addressed to your
lordships on that by the Crown. Is it inherently probable?
And secondly, my lords, does the Crown theory constitute
a sufficiently precise agreement to overthrow the State by
violence which is still the conspiracy pleading, my lord? 10
And we submit, my lord, that there are certain gross impro-
babilities in the theory; some of them - we don't pretend
to be exhaustive in our argument. We say firstly, my
lord, it is improbable that an organisation like the African
National Congress could achieve agreement on so elaborate 15
or speculative a plan without a word of its discussions
leaking out.

My lord, let us compare the years taken to for-
mulate the Programme of Action, Your lordship will re-
member the evidence of Prof. Matthews, Vol.85, pages 17884 20
to 7, reading from line - - Prof. Matthews had been giving
evidence about the dissolution of the Natives Representa-
tive Council - - that was in 1946, my lord - - the adjournment
of the Native Representative Council - - it adjourned in
1946 following on a deadlock, that had arisen out of the 25
refusal by the Government to let the members go to the
Rand and see what had happened in 1946 - in the 1946 Riots.
And the question is, "Now following that deadlock" - - line
24, my lords - "Did the African National Congress call an
emergency conference?-- (A) Yes." Dr. Xuma who was President 30

of the A.N.C. called an emergency conference which was held in Bloemfontein in October of that year to consider the position that had arisen as a result of this deadlock between the Government and the Natives Representative Council". 1

("Q) Now what was the feeling expressed at that conference about the role of the N.R.C?-- (A) The feeling that was expressed at this particular conference was that it seemed to the members, the members of the conference, that they could no longer look to the N.R.C - that is the Native Representative Council as a body which might bring them results, and that instead they should look to the building up of the African National Congress into a stronger body than it was at that time." 5 10

("Q) And during the next year or so was there consideration at the National Conferences of this question?-- Yes. This question was considered at the conference in 1946, and also at the conference in 1947". 15

("Q) Were suggestions made then that the African members should resign from the Native Representative Council?-- Yes." 20

("Q) Was that rejected at that time?-- Yes, the A.N.C. did not support the idea of resignation at that time because there were still certain negotiations going on between the Government and the Native Representative Council".

("Q) Now in May 1947 did you as a member of the Native Representative Council meet anybody in the Government?-- Yes, in 1947, May, General Smuts who was then the Prime Minister invited a number of members of the Native Representative Council to come to Cape Town to discuss with him new proposals for improving the functions of the N.R.C." 25 30

I was one of those who were invited to that conference." 1

("Q) Did the Government ever do anything to put into effect the new proposals?-- No, before the new proposals were put into effect there was a general election in the country and a change of government in 1948".

("Q) Now as the National African Congress saw it in 1948 what was the attitude of the new Government towards the political advancement of the Africans?-- (A) The African National Congress, as they saw it, the coming into power of the new government in 1948 with its new policy of apartheid, meant that Africans would lose even the meagre political rights which they had at that time." 5 10

("Q) In 1948 the African National Congress held its annual conference at Bloemfontein?-- That is correct; I was present at that conference in 1948."

("Q) What was decided on at that conference?-- At that conference it was decided that a new programme of action, as it is called, should be drawn up to meet the new conditions, and that this programme of action should be considered during 1949 by the different provinces and would be finally adopted at the 1949 conference." 15 20

("Q) Was the formulation of a new programme of action discussed during 1949?-- It was discussed during 1949 in the different provinces."

("Q) And taking your own province now, the Cape Province, did it have much consideration?-- Yes, in my own province in the Cape this question of a new programme of action was taken very seriously; both by the branches and also by the Provincial Conference; so that at the end of the year when we went to Bloemfontein for the annual conference we went with certain definite proposals." 25 30

(") Had you also discussed the Cape Executive?-- Yes." 1

("Q) So you took specific proposals from your province to the National Conference in 1949?-- Yes."

("Q) And other provinces?-- Other provinces also came along with suggestions as to what should be included in the programme of action." 5

("Q) And in the Cape during 1949, as part of this discussion, was there discussion of the various political methods which were open to you?-- Yes, there were discussions for inclusion in the programme of action."

("Q) And then at the annual conference in 1949 was a drafting committee appointed?-- Yes; at that conference Dr. Xuma who was still the President at that time, referred the various drafts of suggestions to a special committee which was appointed." 10

("Q) Who was the chairman of that committee?-- I was the chairman." 15

("Q) Did your committee then produce the draft programme of action?-- Yes."

("Q) And was that adopted by the 1949 conference?-- Yes, that is so." "I think I might say here that the programme of action didn't just deal with political methods and so on, but it also dealt with other aspects of what was called the 'building up of the African people'." 20

Now, my lord, the point I make in regard to that is that here your lordship finds an important step - adopting the programme of action, different methods of pressure - - this was discussed over a period of time at national conferences. There is evidence on it, there are documents. Your lordship will remember the time it took to agree on a new Constitution. Your lordship will remember 25 30

the two conferences needed to deal with the Freedom Charter. 1
 Your lordships will remember the chaos into which the Bantu
 Education boycott plan resolved. Your lordships will re-
 member the endless talks about the 'M' plan. When a new
 Constitution was proposed to be drawn up, my lord, the
 Cape made accusations against the Transvaal. Memoranda 5
 and counter memoranda were fired off, one to the other.
 Luthuli and Matthews threatened to resign if certain
 principles were adopted. When thw Freedom Charter was
 adopted Natal had reservations - - so did Luthuli. When
 the National Conference took a resolution on school 10
 boycotts the National Executive Council countermanded
 it and the Transvaal defied the A.N.C. Vundhla, in
 turn, defied the Transvaal. He was expelled. All these
 controversies my lords, are reflected not only in offi-
 cial documents but in the numerous private letters and 15
 memoranda which were seized by the police, yet, my lords,
 this elaborate long range scheme this long range plan
 which the Crown speaks of, and which it makes its case
 now - which was designed to lead step by step from the 20
 initial preachings and practice of non-violence to the
 complicated chain reactionof the ultimate revolution - -
 that, my lord, went smoothly to a secret conference.
 Not only, my lord, of the A.N.C, but of the other four
 or five organisations, and was unanimously accepted by 25
 everyone.

This, my lord, alone caused no inter-provincial
 disputes; this, my lord, alone satisfied both Communists
 and Africanists; this alone, my lord, caused no break
 aways from the A.N.C. This alone was not used as a
 stick to beat the A.N.C. by disgruntled members. My 30

lord, the policy of non-violence, your lordship will recall, 1
aroused the ire of an Orlando Africanist Group. I refer
your lordships to Vol. 59, page 11767 to 70, an article
that appeared in the "Africanist" - Vol. 1, No.3, May
1955, issued by the Orlando A.N.C.Y.L. Your lordships
will remember, page 11767, "the Congress of Democrats I said 5
is there to apply the brakes to Congress. Read the state-
ments by Patrick Duncan during the Defiance Campaign. The
Congress of Democrats will ally itself to the Congress
so long as she binds herself to a policy of non-violence."
What does that mean? It means passivism, making doormats 10
of us. Non-violence is an expensive commodity for the
Africans in South Africa. What's the use of calling on
the people of Sophiatown to resist the removal non-
violently? How is this possible? Is it not a contradic-
tion in terms? One either resists violently or submits 15
unwillingly, and the Congress of Democrats know this very
well. A Liberatory Movement should stop at nothing to
achieve its independence, and since white domination is
maintained by a form of arms, a force of arms, it's only
by superior force of arms that it can be overthrown." 20

That was a criticism, my lords, of the A.N.C.
That was a criticism of the A.N.C. policy of non-violence.

RUMPF J: Mr. Maisels, if you put the Crown
case as you have done, isn't the Crown case that -apart 25
now from the Indictment - isn't the Crown case that
the parties concerned had agreed to take a certain course
of action; that is the agreement - that's all. Isn't
the case, as put by you, subject to what(?)
isn't the case that the Crown suggests that it has proved
that all the parties to that agreement knew, or ought to 30

have known - that if that course of action is carried on to completion, violence would or might result' 1

MR. MAISELS: That's the case, my lord, yes.

RUMPF J: Now, in other words the agreement is not specifically 'Look, we agree that this will happen'. The agreement is 'We enter upon a certain course of action - 5 take unconstitutional action against the Government". Now says the Crown "If that is proved, the agreement, and if it is proved that ever party to the agreement knew that certain results would follow if the action was completed, then the Crown says, they are guilty of an offence - - if 10 that is an offence."

MR. MAISELS: Yes, my lord.

RUMPF J: One gets the question of the Indictment, whether this is covered by the Indictment; one gets the question "If that is so, if it was proved by the Crown 15 that there was an agreement to proceed on a certain course of action, and that the parties who agreed on that knew that a certain result would follow, and finally that that result which the Crown says was within the contemplation of the parties would follow, constitutes the offence with 20 which they are charged." Now if that is so, then the agreement itself - - if that is so, then one need not consider, on this part of the Crown's case, the proposition that the agreement was an agreement as such - - to contemplate certain results; only that the parties knew. 25

MR. MAISELS: Well, then, my lord - - yes, your lordship means in this part of the argument I should really confine myself to say that there is no evidence to show a knowledge of the results, or a contemplation of the results. 30

RUMPF J: Well, let's put it this way; on this 1
basis of the Crown's case, the Crown doesn't allege that
the parties agreed in terms, that there would result violence.

MR. MAISELS: But, my lord, that's the only
thing that makes the conspiracy.

BEKKER J: Yes, they say the natural probable 5
result of that will be violence.

MR. MAISELS: Yes, my lord. It would be an im-
plied term, my lord, of conspiracy? Would that be un-
fair to the Crown, my lord? And I propose testing it
on that basis. I propose testing it on that very basis 10
as I deal with the matter, my lord. I'm now, my lord,
dealing with the facts, that this plan - - my lord, with
the implication which it has - - that's a fair way of
putting it, with the implications which it has is nowhere
to be found anywhere. One would expect a discussion on 15
it; this is the very sort of thing, my lord, if your lord-
ship pleases, when one gets a situation that the plan is
a plan of unconstitutional action; then one would expect
a discussion of the implications of this - what's going
to happen to the people whom you are going to recruit? 20
What are you going to do? At what stage?

RUMPF J: Of course the evidence might be that
"We don't care" what's going to happen.

MR. MAISELS: Your lordship means on the other
basis, that well, we're just reckless - - if it doesn't 25
come off well, it's just too bad.

RUMPF J: It's immaterial, it's immaterial to
us what's going to happen because this is our only course
- the only course we can take. We have no alternative . .
and that is what happens then . . . 30

MR. MAISELS: Then, if your lordship pleases, it's 1
not an intended consequence.

RUMPF J: I know that this involves legal argument
on every one of these points.

MR. MAISELS: Oh, yes, my lord.

RUMPF J: But I'm merely putting it, this point, 5
to clarify the position in regard to the terms, the actual
terms of the agreement.

MR. MAISELS: My lord . . .

RUMPF J: I don't think, on the way the Crown has
put it, the Crown can contend that it was a specific term 10
of the agreement; they could only argue that it was an
implied term

MR. MAISELS: Something that would necessarily follow
from the course of conduct. Too, of course, the knowledge
of the people, the contracting parties. In other words, 15
my lord, when Dr. Conco, or Prof. Matthews, or anybody else
who was a party - - my lord, it was necessary to give business
efficacy to it; they must have understood it that way.
If anybody had come into the conference and said - when this
was being discussed - "Well, of course, what will happen 20
in such and such an event", then the answer would be "Go
away, you stupid fellow, this of course must be the conse-
quence." That's the way it's got to be approached, my lord,
and I'm quite happy to meet the Crown case on that basis,
quite happy to do so, my lord, and I propose in this very 25
argument which I am now addressing to your lordships, to
deal separately with that aspect of the matter. My lord,
at the moment what I'm concerned to show is that even if,
as your lordship puts it, that the Crown is not suggest-
ing that there was a specific agreement with the various 3

steps which I have suggested as part of the plot, but 1
 merely that those are the implied terms of the plot - one
 would expect to find somewhere somebody saying "But look
 here, this isn't the way to do it", or somebody being
 discontented, or somebody resigning, because, my lord,
 it's all very well talking about implied terms, and it's 5
 quite often that the reason why you imply the term is
 because it's so plain that nobody ever talks about it - -
 I understand that - - but when one talks, my lord, of
 an implied term in a conspiracy of this nature, then, my
 lord, it's quite fantastic to suppose there were no such 10
 discussions.

RJMFFF J: Couldn't the Crown argue perhaps
 that the witness for the Defence called on policy - -
 I suppose you can't say that, but Mr. Luthuli was asked
 about - - he was cross examined about the expectation - - 15
 and I remember there is some part, some portion where he
 said, "Well, did you expect us then to go out of action?"

MR. MAISELS: Quite correct, my lord, and that
 we will deal with - the possibilities of the sort of thing
 that might happen, because your lordship will appreciate 20
 when this argument is developed in greater detail when
 we deal with the Programme of Action - - because that is
 where the various things lead to, my lord - - your lord-
 ship will appreciate that when taking the case of the
 general strike which is the highest level of political 25
 action that was discussed - - one assumes a political
 strike, and one assumes, and one has to assume, for the
 basis of this argument, that the Government is the brutal
 Fascist Government; that's true; not that the accused
 believe it, but that that is true - one must assume that - - 3

for the argument to have any validity - - then one proceeds
 my lord, with this situation - - there is the general
 strike and that as a natural and probable consequence of
 that general strike this Government will use violence, or
 a Government will use violence to overthrow, to break the
 strike; to drive the workers back to work at the point
 of a gun. That's what one must assume. Now, my lord,
 of course that carries with it so many different positions.
 May I just exemplify, my lord: In the first place, it
 presupposes that the method of breaking the strike by
 violence is - if not the only method, the most probable
 method of doing so - - it presupposes - - one would have
 thought that that method of strike breaking had gone out
 in modern times; but it presupposes other things, my lord,
 it presupposes that the strikers will resist. Why is it
 any more probable that those strikers will resist than
 that they won't resist and will simply go back to work?

RUMPF J: In regard to Mr. Luthuli, when he
 says: "Yes, we know the Government is hard, we hoped -
 we based our hope on the innate goodness of man, but
 we know that the Government is hard, it is true that
 if there is to be a general strike one day - if we fail
 in our efforts up to then and we have to go through to
 that stage there may be violence. . . .

MR. MAISELS: On the part of the Government.

RUMPF J: On the part of the Government - -
 doesn't he go further than that and say there may be some
 isolated cases. . . .

MR. MAISELS: One cannot exclude the possi-
 bility.

RUMPF J: One cannot exclude the possibility... 3

MR. MAISELS: One cannot exclude the possibility of some people acting violently: we do all that we can, to stop it 1

RUMPF J: Mr. Luthuli, when he gave evidence, that evidence, was he speaking on behalf of the whole African National Congress 5

MR. MAISELS: Let's assume that, my lord, for the moment; I'll accept that, my lord. I'll show your lordship the evidence in detail on all those matters; it will be dealt with, but, my lords, let us assume that. He went on in the passage which your lordship referred to and said "We don't intend that, we don't want it, we don't expect it; we cannot entirely exclude the possibility of some people reacting violently." 10

Now, my lord, take an example of a political meeting. Take an example of a political meeting. The A.N.C. calls a meeting, or any political party. And they know when there is a political meeting that some people do come up and do try to break up the meeting. It would be going very, very far indeed, my lord, to say that they intend that that meeting should be broken up so that there should be retaliation by the people at the meeting, and still less, my lord, can it be said that they agreed to that as some form of implied term.... Everybody knows it's a possibility, my lord, experience has taught us 15 20 25

RUMPF J: Your submission here is that although it may have been in the contemplation of the majority of the people - the possibility of that - - it was a matter which was not to be regarded as an implied term of the agreement. 30

MR. MAISELS: That is so, my lord; of the conspiracy. 1

RUMPF J: Not intended. . .

MR. MAISELS: Not an intended result, and, my lord, not a part of the sort of thing that was in contemplation in the sense of a means of achieving an end. Your lordships bear in mind that we are all talking about achieving an aim; the aim is to get their disabilities removed. 5
My lord, I will develop this matter to your lordships and show the various contingencies

RUMPF J: Would it matter in law if it was within the contemplation, but not intended? 10

MR. MAISELS: No, no, my lord, if it is within the contemplation of the parties in the sense that they were going about knowing that this is the sort of thing that was likely to happen - that it must happen in fact . . . 15
your lordship will remember I referred your lordship to a passage in Vol.1 of Gardiner and Lansdowne - - oh, the Crown have taken the book - - a matter of general experience, my lord, when you fire a gun - - but when you have to speculate on what is the likely course of a political 20
plan, we find it extremely difficult to see the application of this principle at all. Extremely difficult, my lord. One's not dealing with negligence, my lord, one's not dealing with a plan of two people to go and rob - one carrying a gun. One is dealing with quite a different set of 25
circumstances..

I'll revert, if your lordship pleases, to the position of the general strike. The Government, however brutal or Fascist the A.N.C. may believe it to be -

may adopt other means; it may say, "We will starve these
 people out; we've got lots of white people in this coun-
 try who will do the work; it's a good time for them to do
 it. We will import strike breakers from neighbouring
 territories, or from the Reserves. We will just starve
 them out." What happens then? Or the Government may
 say, "We stopped the Defiance Campaign by passing legis-
 lation, we might do that too". Or the Government might
 say "Well, we'll arrest the ring leaders and throw them
 into gaol and that'll be the end of the strike; they'll
 have nobody to lead them". "We'll declare a state of emer-
 gency". They can do anything they like, my lord.

RUMPF J: It's a difficult problem; assume that
 two people come together and talk about a rich uncle of
 theirs and they say "Well, look, we must make a plan to
 get money from the old man; he is an uncle of ours, we
 will first of all going to tell him that we are relations
 and we need money; we'll go and talk nicely to him. We
 know that he is a bit of a miser but we'll put up a proper
 show and he might give us what we want, or part of it.
 We don't know if we are going to be successful; we know
 that he's a miser, there is a possibility we may not get
 anything. Now if we are not successful with this type
 of thing then we're going to be a bit more severe - -"
 I cannot think of any possibility at the moment to give
 you as an example, but . . .

MR. MAISELS: We won't take him to the Rugby
 with us. He'll have to walk.

RUMPF J: Well, we are going to boycott him
 - he cannot go out by himself, and we'll tell him "Old man,

if you don't want to give us what we want then you can sit in your room", and "finally, if he is still morose and he doesn't give in, well, we may have to go a bit further with him; we may have to drag him out of the house and take him for a walk and talk seriously to him - we won't necessarily kill him, but he is going to be man-handled, and we are going to assault him as a matter of fact. That is the course of action we are going to pursue....."

MR. MAISELS: That's an agreement to assault.

RUMPF J: Well, I'm putting it on that basis - it's a long term basis.

MR. MAISELS: But it's an agreement, my lord.

TUMPF J: Yes, an agreement that "We will...."

MR. MAISELS: My lord, may I put it this way; the agreement is "We want to get money out of the old man by fair means or foul. If he doesn't give it to us by fair means then we will use foul means".

RUMPF J: I'm putting a lot of alternatives in between to make it contingent in the sense that if he gives in "We won't go over to the attack"; I'm putting it on that basis. Now in that case, would that be an agreement to commit violence?

MR. MAISELS: Well, it's rather doubtful but, my lord, at all events there would be the initial agreement.

RUMPF J: Oh, yes, I'm putting it on that basis, the initial agreement. . .

MR. MAISELS: Your lordship is putting no more, with respect, than the agreement of a man who goes into a house, a robber, who says "If you don't hand over

your money peacefully I'm going to hit you over the head." 1

RUMPF J: Yes, except that it's a process --
there is a process first of all to try and persuade him.
And a number of things may happen.

MR. MAISELS: But, my lord, let us put it this
way. If your lordship takes this matter - it would have 5
to be dealt with on a conspiracy basis, the agreement be-
tween the two nephews to deal with their uncle in this
particular way. I would venture to doubt, my lord, very
much indeed whether that would be a conspiracy in law to
steal or to rob. 10

RUMPF J: Why not? Is it because there are a
number of contingencies which may arise.

MR. MAISELS: Yes, my lord, it's too speculative,
it's too vague - - it's the sort of Labuschagne thing - -
there is no definite plan in it - this, that, or the other 15
- - it's not . . .

RUMPF J: It's not a fixed agreement, that they
will assault.

MR. MAISELS: No, my lord.

TUMPF J: It's conditional on if this, that or 20
the other happens - if this, or that fails, then

MR. MAISELS: It's not an agreement to do
acts, my lord, and we would submit it's necessary for
the Crown case - - of course, the Crown case doesn't go
anywhere as far as that, my lord - - - 25

RUMPF J: I know, but I'm trying to get some
sort of approach on one part of your argument, the contin-
gent part. I know it does not fit the position here,
but I wanted some advice on that. 30

MR. MAISELS: Yes, my lord. Before your lordship adjourns, may I just put the one point. When I was analysing the different ways of strike breaking by the Government, the purpose of that, my lord, was to try and show your lordships that merely because you have these various different acts by the Government which are the necessary step before there is going to be this retaliation, indicates that you cannot consider retaliation as a natural and probable consequence. It disappears immediately, my lord; it would be a misuse of words, my lord, to call it a natural and probable consequence of retaliation under those circumstances, a complete misuse of words.

(COURT ADJOURNED FOR 15 MINUTES)

ON THE COURT RESUMING:

MR. MAISELS: My lords, in discussing the question of natural and probable consequences - of course one always bears in mind the word 'natural' - being nature - what is the sort of thing that happens in nature, as a matter of general experience. Now, my lord, the Crown is in this difficulty. If one applies the subjective test, that is the test of the accused, then your lordship will remember the mass of evidence that the possibility of violence in the ultimate stage we have now reached is regarded - - the question of ultimate violence, the question of violence in the ultimate stage is regarded as a possibility, at most, my lord, by the witnesses who gave evidence, and of course, that may be sporadic. It may not be

insurrection; it may be something that cannot be a particular thing, and that depends for example - that depends for its validity, my lord, the whole of that depends for its validity on the assumption that the State will act as a brutal Fascist State. But, my lord, if one applies the objective test then the Crown is in a hopeless position with respect, because it has to take as its fundamental basis that the State is a brutal and Fascist State. There is no evidence of that. The Crown has not suggested that to be the case, I hope, and if that is so, my lord, then you don't get anywhere near the last step. Then there is no natural and probable consequence of violence at all.

RUMPF J: What test have you got to apply? Subjective or objective?

MR. MAISELS: There is only one test, my lord, what's agreed.

BEKKER J: On the inferential, on the implied term - - would the test be vis-a-vis the accused, the subjective test - - did he know . . . did he contemplate . . .

MR. MAISELS: The implied term, my lord, yes; there is no question, my lord - - then it's part of the agreement, and if there is no direct evidence, and if you want to talk about natural and probable consequences then you must look at it objectively.

BEKKER J: Well, the Crown, I think, suggested that what the accused or some of the leaders did, is that they spread propaganda to the effect that this Government is in fact

MR. MAISELS: I quite agree, my lord, I quite agree. Then you have to deal with the evidence and then

you must say "Let's take the question whether it's an im- 1
plied term - by reason of that one implies that there will
be violence, as part of the agreement. In other words,
it becomes then, my lord, an intended consequence.

My lord, I was, however, at this stage of my
argument, dealing with the somewhat different aspect on 5
the probabilities. Your lordship appreciates that it's
essential to the Crown case that there must be an initial
preaching of non-violence; that's fundamental. You
must get your masses in - that's essential. You must tell
them "We are a perfectly lawful body, harmless, because 10
(a) - - " and you can only preach non-violence because
that's the only way in which you can do it in public and
get the masses - - but your lordship appreciates what
difficulties that leads the Crown into, on examining pro-
babilities of this plot. Nobody apparently though that 15
the initial preaching of non-violence might only lead to
difficulties in the end. Your lordship appreciates the
situation. If you train a band of assassins you don't
train a band of non-assasins. At what stage do you switch?
The Crown has not considered rhat, my lord; they have not 20
addressed an argument to your lordships on it at all.

Nobody doubted, my lord, on the Crown's theory
- nobody doubted the wisdom of getting an organisation's
loyal followers shot down merely to make martyrs at a stage
before the ultimate insurrection . . . nobody spoke a 25
word about that, my lord. A most extraordinary state of
affairs, my lord, apart from the wisdom of the policy
in any event.

Nobody suggested, my lord, that when you are
going to condition people for non-violence that it might 30

prove impossible to organise the ultimate insurrection. 1
Where is the evidence about it, my lord? My lord, we
submit it's improbable that any political party, any
political body, would agree upon a plan exhibiting such
a strange combination of detail with vagueness. One
would expect, my lord, to find some clear indication of 5
the purpose for which violence by the State was desired,
if indeed there had been there had been a firm view that
it was desired. It's a little odd, my lord, that the
plan is clear and specific on the points necessary to
secure a conviction; that is ultimate violence against 10
the State and no others. For example, my lord, how
were the volunteers to be trained for violence? And
how was violence by the State was to be provoked?

My lord, we submit it's improbable that the
A.N.C. would on the one hand have a clearly worked out 15
scheme to prevent premature violence by the volunteers
and to lure in people who would shrink from a violent
policy, and would on the other hand embark on campaigns
reckless of the consequences envisaging violence with no
hope of victory for their side. It's improbable, my lord. 20

Did they want to have violence whenever and
wherever possible? Did they want to wait till the time
was ripe? My lord, with respect, the Crown's effort
to have it both ways is not impressive. The Crown's
plan requires a balance, a balance of violence and non- 25
violence so delicate and intricate as to be unworkable.
Work it out, my lord - imagine the thing in practice.
This is the plan said to be agreed on. My lord, may I
remind your lordship of some evidence that Professor

Maisels gave at Vol. 85, page 17979. Prof. Matthews said: 1
 And his qualifications to speak on this subject are un-
 challenged, my lord, and unchallengeable. Page 17979,
 line 9, my lord.

("Q) Now bearing in mind your knowledge and experience 5
 of the A.N.C. and of general public political work in
 this country, and your knowledge of the African people,
 do you think it's possible that as a practical matter
 for an organisation like the A.N.C. to preach to the public
 the policy of non-violence, while it really wants to
 pursue a policy of non-violence?-- (A) As I said already 10
 it seems to me that to adopt an attitude like that would
 be futile, because if you have a secret policy of violence
 you would have at some time to tell your followers to whom
 you've been preaching non-violence over a long period of
 time - you would have to reveal to them the secret policy, 15
 and my own impression would be that they would regard you
 as somebody who had deceived them all along and your follow-
 ing would fall away." It seems a highly probable approach.

And, my lord, I find the argument of the
 Crown strange, when this piece of evidence by Prof. Matthews 20
 wasn't even challenged in cross examination; he wasn't
 asked a single question on it. My lord, in fact what
 political organisation, let alone a loose, disorganised
 - unorganised body as the A.N.C. was during the period
 of this Indictment - - 25

RUMPF J: What did you say it was?

MR. MAISELS: A disorganised and unorganised,
 body, my lord.

RUMPF J: Why do you say that?

MR. MAISELS: Because, my lord, there is constant 30

evidence of lack of organisation; 'We can't get this, 1
we can't get that, we can't get the other'. They were
not a closely knit organisation, my lord, with a Feuhrer
at their head dictating -- they were a very loosely knit
organisation meeting under great difficulties. What
political organisation, my lord, let alone an A.N.C. - - 5
let's take a closely knit organisation; what one could
adopt so delicate and impracticable a policy? Non-
violence, my lord, may require discipline and organisation.
This policy which the Crown suggests is the policy would
require an organisation, my lord, of trained social psycho- 10
logists to work out how to balance Dr. Naicker's non-violent
speeches, Luthuli's non-violent speeches, Matthews' non-
violent speeches, against the Alexandra Africanists - to
produce the right mixture, to bring in volunteers without
dampening the enthusiasm of potential insurrections. It 15
doesn't stand up to scrutiny, my lord. My lord, it's
improbable if one goes further. If non-violence was
merely a lure and discipline merely a check on premature
violence - and that's what the Crown says - - not it says
that discipline was a check on premature violence - - and 20
they knew they had to wait till the time was ripe - -
it's improbable, my lord. If non-violence was a trick, a
ruse - a discipline on premature violence - that the
importance of non-violence and the African National Con-
gress' faith in it would be so constantly stressed? 25
Dr. Naicker, my lord, might on the Crown theory, pay lip
service to non-violence and conceal the ultimate aim of
violence, but he and the Congresses could never have
issued self discipline for the volunteers, which is con- 30

1
conditioning - if anything is conditioning for non-violence
- if I am going to use the Crown phrase again - - the
effect of which, my lord, it might be difficult, if not
impossible to erase. The passage in Prof. Matthews's
evidence which I've just read to your lordships makes
that point. None of the police witnesses, my lord, who
5 heard non-violence suggested - - there was D/H/Const.
Moeller, D/H/Const. Truter - - very experienced police
officers - - they never ever suggested, my lord, that
this had been put forward in an insincere way, or in an
unimpressive fashion, and this, my lord, is borne out by
10 the effect on the man in the street. His evidence wasn't
challenged, the evidence of this man or the other eleven
witnesses who were called from all over the country.
My lord, if what was aimed at was not an organised armed
15 insurrection but a mass reaction to Government strike
breaking, this negative indoctrination would be fatal.
You couldn't do it.

My lord, the Crown says that a large scale
strike was planned some time in the future - time unknown
20 but some time - - and the sparking point of State violence
and retaliatory mass violence. It is conceivable, my
lord, that a government may use force to break a strike.
That has been A.N.C. experience. But a mass country wide
stay at home would be the form of action which would give
25 least scope for violence. Surely less, for example, my
lords, than mass defiance in public places? Much less.
And this, my lord, is an improbable plan if violence is
desired. If one has faith in violence, my lord, if you
have faith in being able to overthrow the Government,

30

if you have faith in being able to overthrow by force, without arms, why don't you organise an uprising under your own control? My lord, surely that is the position. Why rely on a devious chain reaction by the masses? A devious chain reaction, my lord, which is aided by volunteers who have been taught not merely discipline but non-violence; the thing is absurd, my lord. You wait to be provoked, you let the enemy choose the ground - you don't choose your own ground. What nonsense is this, my lord, if one works it out? Here we are, a band of revolutionaries planning an uprising, and we don't do it; that's one thing we don't do; we tell the people to be non-violent, we don't plan the moment of attack, we don't plan the time when we'll go and blow up the Power Station, commit other acts of sabotage; we don't blow up the Railways, the trains and so on. No, we wait for a possible reaction from the Government in the hope that the people who we have been telling to be non-violent will be violent. I submit, my lord, it's only to be stated to carry its own interpretation.

But, my lord, this theoretical conspiracy, to comply with the pleadings and the law, must constitute an agreement; not a state of mind or a prophesy, but a definite agreement. What is a conspiracy, my lord? And I'm reading from the case of Regina vs. Mulcuhy, 1868, Law Reports, Supreme House of Lords, page 306 at page 317, and it is so defined:

"A conspiracy consists not merely in the intention of two or more, but in the agreement of two or more to do an unlawful act. When two agree to carry it into effect the very plot is an act in itself, and the act of

each of the parties, promise against promise, actus contra
actus, capable of being enforced if lawful; punishable
if for a criminal object, or for the use of criminal means."
In other words, my lord, nothing less than an agreement
in the full contractual sense.

Labuschagne's case, your lordships will remember,
1941 Transvaal Provincial Division, page 271.

Now, my lord, the Crown here is trying to prove an
agreement by inference. Proof of a conspiracy may like
any other conclusions be established as a matter of inference
from proved facts, but the point, my lord, is not whether
you can draw that particular inference although the facts
are such that they cannot fairly admit of any other infer-
ence. In order, my lord, to draw an inference one must
be able to formulate, just as one must be able to formulate
any contract on which one relies. A precise analogy, my
lord, is the formulation of an implied term. It is a
basic principle that before one can ask a Court to imply
a contractual term it must be capable of clear and concise
formulation. That, my lord, your lordships know the judg-
ment of Mr. Justice Milne in Rapp & Maister vs. Aronowsky
reported in 1943 Witwatersrand Local Division Reports, at
page 68, and I'll just read the headnote, my lord:

"The term will not be implied by the Court in
a contract unless it isto give effect to what is
clearly the intention of the parties as disclosed by them
in the express terms that they've used and in the sur-
rounding circumstances. The mere fact that if one of
the parties or a bystander had suggested it, only an
unreasonable person would have disagreed, is not a sufficient

ground for implying the term", and in the judgment his lordship deals with the difficulties of attempting to imply terms where there is no - - where it's not capable of precise formulation. 1

Now, my lord, what would the position be - pausing there for a moment? The Crown could say "Well, it's only an unreasonable person who would have disagreed, if it was said at the conference of the A.N.C. that when the time comes and the Government uses violence on us we will retaliate." That wouldn't have been sufficient, my lord, to imply the term. 5 10

We say the Crown's theory doesn't meet this test; we say it's too vague, my lord, if I may use the term, to be enforceable. It's impossible to express it in clear and comprehensive terms, as has been demonstrated in the variations in the Crown's submissions. It's conditional, dependent insofar as the use of violence is concerned - - which is the only point with which we are concerned in this case - - on speculative possibilities, and events that may never happen, and are beyond the control of the accused. 15 20

My lord, the particular passage if I may just go back for a moment, in Rapp and Maister's case - on the necessity to formulate this term clearly and precisely - is to be found at page 75 where his lordship says this: "Again it follows from the principles which I have tried to extract from the cases, the term sought to be implied must be capable of clear and exact formulation; it must be capable of being formulated substantially in only one way, and once there is difficulty in formulating the term 25 30

or a doubt as to how it should be formulated, or as to 1
how far something or other should be extended which has
been thought of, it cannot be said that there is a term
which the parties had obviously intended to agree upon.
Once there is difficulty and doubt as to what the term
should be, or how far it should be taken, it's obviously 5
difficult to say that the parties clearly intended

That, my lord, is the situation. It must be
accepted, my lord, however insincere my learned friends
say the witnesses were in some cases - there were a large
body of them who under no circumstances would resort to 10
violence. Under no circumstances, my lords. That evidence
is clearly before the Court,

Where would one be able to imply this term of
contingent retaliation in the decision of the A.N.C. to
embark on its programme of action? It's just impossible. 15
my lords. There is overwhelming evidence to the contrary
- which has really not been challenged - to destroy that,
my lord.

Apart, my lord, from the improbabilities, we
submit to your lordships that the inference which the 20
Crown now asks the Court to draw does not amount to an
agreement to overthrow the State by violence, and it
appears, my lord, at its highest, we submit, as an agree-
ment to do non-violent things in the hope that if the
Government does certain things the masses may react in 25
a certain way, and that the conspirators will in such
event do their best to help the process. My lord, is
that an unfair formulation of the Crown case? Is that
an unfair way of putting it? I repeat it, my lord, the
case at its highest appears as an agreement to do non- 30

violent things, in the hope that one day, if the Govern- 1
ment does certain things, the masses may react in a cer-
tain way, and that the conspirators will in such event
do their best to help the process.

RUMPF J: Does certain things in answer to 5
the things done. 'In the hope that one day if the '
Government does certain things in answer"

MR. MAISELS: Certainly, my lord, yes.
But, my lord, there are other difficulties in the Crown
case, and the Crown in our submission leaves too many
questions unanswered and which we would submit are un- 10
answerable, my lord. My lord, when was this plan agreed
upon? Did the Crown suggest in its opening? When was it
agreed upon, my lord? Was it put to any witness? By
whom was it agreed upon in the first place, my lord?
Which conference? When was each accused brought into it? 15
How was he brought into it? Were any of the volunteers
told of their true role? When? How? The conspiracy
was in 1954, my lord - - by February, 1954, they were all
in it, according to the Crown, so it does not help the
Crown to rely on what Resha said in November of 1956, or 20
what Ndimba said in 1955. When were the volunteers in-
formed of their true role? How was it to be kept from
other volunteers? Who decided who should be let into the
secret? In what way can it be said to be A.N.C. policy?
None of those questions are answered, my lord; they are 25
not dealt with by my learned friends. They keep on saying
"Look at all the facts and circumstances"; do they ever
stop to enquire "If this agreement was made, then how, what,
who? How were the intricate parts of the plan worked out?"

How were the delicate nuances - when were they to be put
on it?" We say, my lord, there are no answers to any
of these questions. 1

The Crown, my lord, may say that it's unreasonable to expect it to give precise dates. I don't want precise dates, my lord, but can the Crown give any coherent
account at all of the way in which this conspiracy started? 5
The way in which it grew, and the way in which it maintained
secrecy or semi-secrecy? Or was it, my lord, perhaps just
like popseed that just grew and grew? What sort of a
case is this, my lord? Can the Crown point to any event 10
or landmark as the starting point, or of the joining by any
accused as a co-conspirator?

RUMPF J: Mr. Maisels, in regard to these questions
which you've put rhetorically, I come back to what I put
to you earlier in the morning. Is the contention of the 15
Crown not that the conspiracy was to take a course of
action; that is all. And that the accused are liable
because they must either have known or they must be deemed
to have known the consequences.... The conspiracy is
not an agreement to expect certain consequences - that's 20
not the conspiracy. It can only be an agreement to take
a course of action and a knowledge that something may happen.

MR. MAISELS: My lord, may I just read to your
lordship a passage from Leibbrandt's case, dealing with an
argument as to the purpose of signing the blood oath in
that case? His lordship said: "It rests upon a confusion
in the terms expressly agreed upon, which may be called
the purpose of the agreement, and the unexpressed intention
existing in the mind of the signatory. In Markay's case,

Lord Chelmsford refers to this confusion as follows: 'Its
too late to argue that the conspiracy may not be an
overt act of Treason; there are many authorities to esta-
blish that it is a sufficient allegation in an indictment
for this offence - all of which are collected in the Judgement
of the Lord Chief Justice of the Queens Bench in Ireland on
this case. It is a mistake that the conspiracy rests in
intention only. It cannot exist without the consent of two
or more persons and their agreement is an act in advancement
of the intention which each of them has conceived in his
mind". Now the intention which has been conceived in the
mind must be the violent overthrow. That is the fundamen-
tal point.'

The judgment proceeds, my lord, "Confounds the
secret arrangement of the conspirators among themselves
with the secret intention which each must have previously
had in his own mind, and which did not issueuntil
it displayed itself by mutual concentration."

I doubt, my lord, whether on this one can at
all apply reasonable and probable consequences, but, my
lord, we have submitted to your lordship, and we shall
submit again, when we deal more fully with the Programme
of Action, that in fact these are not reasonable and probable
consequences of the case as the Crown puts it.

Now, my lord, we were saying that the Crown
cannot point to any evidence as the starting point of this
conspiracy; it cannot point to a combination of pieces of
evidence which would point irresistibly and exclusively to
its improbable conclusion. Take one example, my lord;
in terms of the Crown theory an excessively non-violent

document - Naicker's and many others - would constitute a deviation from policy orto your unfortunate expression on it. There are innumerable deviations of this kind. 1

Your lordship will remember when Naicker said for example that non-violence is a complete substitute for armed - - I forget the exact phrase - - for armed violence or something like that - - that's a deviation which is quite inconsistent. In fact . . . 5

BEKKER J: The Crown has suggested that that is a bluff. 10

MR. MAISELS: Eye wash, my lord. Who were being bluffed, my lord? That's the difficulty the Crown's got. The very people who were being bluffed are in the Crown's theory the revolutionaries, the masses. You call them to a meeting and you keep on telling them this and he's got to know not by the way you say it, because the police evidence is clear that there is nothing to show that - - they've got to know for some other reason that by non-violence 'read violence'. And then, my lord, to ~~make~~ it quite sure that you are continuing the bluff you circulate the document - - it's just nonsense, my lord; it doesn't hang together. How do you get your irresistible inference? 15

Indeed, my lord, it could be argued that Resha's speech in November of 1956, if it was a violent speech - is a deviation from policy - telling them to murder. That's not our idea. This is hopeless, my lord. (?) gets into this difficulty because he's got no real agreement and he's trying to suck something out of the air. 20 30

But if one looks at a non-violent speech as a deviation, my lord, is it any more improbable to consider an occasional violent outburst as a deviation? The Crown can't have it both ways, my lord, and on this aspect members of the A.N.C. were expelled. There was the man called Vundhla who joined another organisation - now repenting of the error of his ways. Why didn't he come along and tell us about it? Why didn't some informer come and tell us about it, my lord? And finally, my lord, . . .

BEKKER J: Well, you posed the question, was a violent outburst not to be considered as a deviation. Doesn't the Crown reply to this and say "Oh, well, take Resha when he had a violent outburst - well, he is a man who knows policy, he is a volunteer in chief, he's a very highly placed executive member." "Because a person in his position suggests this that is a factor you've got to consider in determining what the real policy of the A.N.C. was". That was the line taken by the Crown.

MR. MAISELS: Then that, of course, invites your lordships to ignore speeches made by people who knew the policy - - shall I say just as well as Resha did, - - to the contrary. Your lordships have to say that those speeches must be ignored, but not Resha's. It's impossible, my lords. That's why I made the point, my lord, why should it be any less a deviation of policy when Dr. Naicker, or when Luthuli, or when Matthews speak about non-violence? My lord, there is no escape from the position that has arisen in this case. Let's face it, my lords. We say let's face the situation that your lordship must find for example that Matthews committed perjury - - no escape, my lord.

There is no escape, my lord, on this

BEKKER J: Or that he didn't know enough about policy.

MR. MAISELS: I'm glad your lordship laughed when your lordship says that because really -- Matthews didn't know policy but Andries Chanile, or the person who wrote "The tin of paint costs 11 lives" -- they knew about policy, but not Prof. Matthews. That's what the Crown case is, my lord. But, my lord, they didn't really say he didn't know, because they say he is a co-conspirator, and, my lord, I would remind your lordships of the fact that Matthews says they just couldn't have this policy without his knowing about it, and I don't recall his being cross examined on that by Mr. Hoexter for the Crown, my lord.

Now, my lord, I made the point when I was arguing a similar point earlier -- a point in the Indictment -- that this hadn't been put to the Defence witnesses. My lord, it is interesting to see what was put to the second last Defence witness, Yengwa, at page 17638, Vol. 84, line 14, and the only criticism that my learned friend made of Mr. Yengwa's evidence was that he didn't remember in 1960 some words in a lecture that he had given in 1954. That's the only criticism he could make, my lord, of Yengwa's evidence.

("Q) Mr. Yengwa, I want to put it to you, that when you say your policy was non-violent what do you mean; do you mean that you are going to give the white people a chance of choosing either a bloody revolution or to submit to your demands, and if they are not prepared to submit to your

demands the other alternative facing them would be a
bloody revolution". My lord, that more or less is
the kind of thing one puts to a man who goes to rob.
He says "If you don't give me what I want I'm going to
kill you". (A) "I just don't know, my lord, how you
arrive at that, but as far as I'm concerned I've told you
the policy of the African National Congress. We have
no dual policy of violence and non-violence; our policy
is non-violent."

Now, my lord, if this matter had been investigated
for example -- if Prof. Matthews who is an experienced
politician, Anthropologist, and an expert on African thought,
he might have taken the unchallenged evidence, my lord,
which he gave at page 17979, Vol. 85, to which I have re-
ferred -- he might have taken that further, my lord, and
in our submission he might convincingly have demolished the
theory. Now, my lord, we submit therefore on this part
of the evidence that the Crown has failed to deal with
the probabilities of the agreement, has failed to put
the agreement now alleged to be the agreement, has failed
my lord, to establish the conspiracy, either as a matter
of probability or asevidence.

Now, my lord, before I deal with the major policy
document of the A.N.C. my learned friend Mr. Kentridge will
deal with the question of political activities and organisa-
tion, and also, my lord, with the question of extra-
parliamentary activities.

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