

BY MR. NOKWE :

May it please Your Lordships, there is one matter which I would like to appeal through this Court. Your Lordship, at the tea adjournment I approached the Crown and asked the Crown to make available to us a copy of a document which I think the Crown alleges to be a speech made by Chief Luthuli, in Durban. I was informed by the Crown that they would/^{not}make it available, to the Accused and to me, because that document was not before the Court. Your Lordship, I can't comprehend their reason, and the document is necessary for the purpose of the Accused preparing re-examination. The Crown has cross-examined the witness on that document, and I can't comprehend what the Crown means when it says it is not before the Court.

BY MR. TRENGOVE :

My Lords, the Crown is not using that document as evidence in any way. The Crown was using that to refresh this witness' memory. As far as the Defence is concerned, if they want the full text of the speech made by this witness on that date, they can get it from the witness.

BY MR. JUSTICE BEKKER :

When a litigant uses a document to refresh a witness' memory, is the witness not entitled to look at the document?

BY MR. TRENGOVE :

Yes.

BY MR. JUSTICE BEKKER :

And if the witness is entitled to look at the document, may not his Counsel look at it?

BY MR. TRENGOVE :

My Lords, there was no duty on the Crown to make the document available to the witness. The Crown said, did you on such and such a date make such and such a speech, were those the words that you uttered.

BY MR. JUSTICE BEKKER :

Yes, and you then said that you wanted to refresh his memory, and then you showed him the document.

BY MR. TRENGOVE :

My Lords, I gave him the facts set forth in the document to refresh his memory, but this is not a document, My Lords, not a speech, a document prepared by him.

BY MR. JUSTICE BEKKER :

Well, the evidence suggests that it is a speech taken down by a member of the security force, that is what the witness said.

BY MR. JUSTICE RUMPFER :

It may not strictly be before the Court, it certainly isn't strictly before the Court. But what is the real objection to the Defence looking at the document?

BY MR. TRENGOVE :

My Lords, these are documents that are compiled for our purposes and it is not being used by us in any way to prove anything.

BY MR. JUSTICE RUMPFER :

Except this that you did purport to quote from the document when you put the question to the witness. You didn't put it in general terms. Did you say on that day the following or words to the effect that.. That is - You quoted what appeared to be a verbatim report.

Then the witness suggested that he - asked you whether you had the speech there and then you showed him the document.

BY MR. TRENGOVE :

The position as far as our duty to provide 5
this document is concerned would be as follows, assuming
that a witness attended that meeting, and he came back to
the Crown and he reported verbally what was said and we
took that down for our purposes, not knowing who the wit-
ness is and not knowing even whether the statement was 10
ever made. I don't rely on that document at all, I say
to the witness, Mr. Luthuli, did you on such and such a
day make a speech in which you said the following. That
is our position.

BY MR. JUSTICE BEKKER :

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But you went a step further. The witness
said well, I might have said that, I am not sure, and you
said well, I would like to refresh your memory. You then
quoted a whole speech or part of it, and you said here you
are, have a look at it, refresh your own memory, which he 20
did. Doesn't that let in the right of the other Accused
to say well, we want to look at the document too. Let me
find out, Mr. Trengove, is there any real objection - you
may be right in law, I don't know, we can debate that,
but have you got any real objection to handing over this 25
document?

BY MR. TRENGOVE :

My Lords, before doing so, I would put some
further passages to the witness.

BY MR. JUSTICE BEKKER :

If you completed the document - your use of
the document, do you mind handing it over to the Accused?

BY MR. TRINGOVE :

My Lords, there are - I quoted only from the speech of the witness Luthuli, and we are prepared to hand to the Defence for their perusal, a document containing his part of a speech. 5

BY MR. JUSTICE BEKKER :

Well, I don't know if they wanted to go any further.

BY MR. JUSTICE RUMPFER :

Well, they are certainly not entitled to more. 10

BY MR. TRINGOVE :

My Lords, we are doing that as a gesture towards the Defence, not because the Crown feels..

BY MR. JUSTICE BEKKER : 15

Well, whether you do it as a gesture or whether you do it as an act of grace or whether you are compelled to do it, will you do it?

BY MR. TRINGOVE :

Yes, My Lord, alright. 20

ALBERT JOHN LUTHULI, under former oath;

CROSS-EXAMINATION BY MR. LUTHULI CONTINUED :

Mr. Luthuli, I want to put to you two other documents to show that your attitude in connection 25 with clashes and riots in 1959 is consistent with that of the African National Congress throughout the period 1952 to 1956. The first document I want to put to you is 1 J.M. 63 (B), it is a Youth League bulletin. It deals with the liberatory struggle and in the third 30 paragraph on the front page of this bulletin, it states : "We have witnessed a ruthless and systematic campaign

aimed at entrenching foreign domination and colonial
enslavement. We have seen a shameless and cynical cam-
paign directed at the people's leaders and organisations.
We have seen the hand of the oppressor threatening and
bloodstained with the blood of innocent victims on its 5
fingers, and we remember Denver, Kimberley, Port Eliza-
beth and East London. They must not be forgotten. Stretch
out your hand and feel the tightening pressure of the
chain about your arms and feet. Sink on your knees and
die ignominiously, with the mud and dirt of the oppressor's 10
feet in your mouth or rise up and stand on your feet and
die with the kiss of the sweet air long breathed by our
forefathers before us on your cheeks. The final choice
is yours." Now do you agree with the statement that in
these riots, Denver, Port Elizabeth, Kimberley and East 15
London, that the hand of the oppressor is bloodstained
with the blood of innocent victims? --- My Lords, the
expression isn't mine, but I think that this, My Lords,
in my view would really fall in in the same category of
other incidents where I have explained our attitude how, 20
My Lords - I remember saying to this Court it might be a
human weakness, but there is a tendency without going
into the causes and sympathising with the underdog, and
it must not be forgotten My Lords, that generally these
things are associated with the struggle in one way or 25
another, and My Lords, it is true - it may be true
rather that in the process of carrying out this struggle,
rioting of which one may not approve may arise...

That you have told us already? --- Yes,
and it seems to me the same type of thing.

X BY MR. JUSTICE RUMPF :

The question was a simple question, whether

you agreed with this extract that the - in regard to the people concerned at the places mentioned, whether you agree that the hands of the oppressor were bloodstained with the blood of innocent victims? --- My Lord, I would say that having regard to our attitude to those situations, 5 I would say yes, because I have already said in this Court that in the absence of a judicial enquiry and you do not know the facts, your tendency is to say well, those people were shot by the police, and it is a pity that they were shot, because you do not know the underlying facts, and 10 to that extent, My Lords, I would say that one can only be general on the same basis, My Lord.

BY MR. TRENGOVE :

You know for instance that in Port Elizabeth buildings were burnt down to the ground by rioters. You 15 know that people lost their lives and you know that Africans were found guilty and sentenced to terms of imprisonment for their activities in that riot. That you know? --- Yes, I think that is correct, My Lord.

Did the African National Congress ever con- 20 demn in this type of language the activities of those Africans that committed those acts of violence in Port Elizabeth for which they were found guilty? --- I don't think they ever did, My Lord, I don't recall that they did. 25

Now why not? --- I have already explained myself.

I don't think you have, Mr. Luthuli? --- Well, if I can't satisfy the Crown, I can't go any further. It seems that I will only be repeating myself 30 all the time. The why not has been asked me at almost every instance when there was a riot and then the African

National Congress didn't condemn, and I have given in effect the same reply.

Mr. Luthuli, you said just now because the facts weren't known, that is why the African National Congress couldn't really express positive views one way 5 or the other, but as far as specific people were concerned the facts were known because they were found guilty in a Court of law for their participation in those riots. Why did the African National Congress not condemn the actions of those people? If it condemns 10 the actions of the government? You don't want to reply to that? --- My Lords, it is not a question of not wanting to reply, because I don't know what other reply I can give other than what I have already said. The Crown picks a certain thing out of a whole situation. 15 One isn't disputing the fact that those people were condemned and they were found guilty by the Court and rightly found guilty by the Court, but surely it is not going to be suggested My Lord that because the African National Congress didn't say anything about those people 20 condemned, therefore in fact the African National Congress is approving of the rioting which those people may have done.

✓ BY MR. JUSTICE RUMPF :

That really is an argument? --- That is 25 what I am saying, I don't know how far to go now.

You say because the A.N.C. didn't specifically condemn, it didn't mean that they approve. That is of course an argument. The question put to you is, - you must really look in this light, if the policy of 30 the A.N.C. was consistently anti-violence, non-violent,

- I shouldn't say anti-violence, I should say non-violent, then I think the Crown wants to know why, if that was so, why did the A.N.C. not specifically condemn the acts of violence in these particular instances? --- My Lord, that is why - my difficulty really arises out of a desire not to unduly repeat oneself, because without excusing anything, I have said it might be human nature, but there is the tendency in human nature to think of the person who is at the time an underdog. I mean My Lords, I don't know that one would say the attitude is peculiar to the A.N.C. That is all I can say, My Lord.

BY MR. TRENGOVE :

Mr. Luthuli, was it the attitude of the African National Congress that the Defiance Campaign had nothing to do with the riots at Port Elizabeth? --- That was the general view of the African National Congress.

Was it not the attitude of the African National Congress that because the government tried to suppress the Defiance Campaign, they provoked a riot in Port Elizabeth? --- My Lord, I wouldn't go as far as that. Certain individuals may have, but I don't think I will say that was an A.N.C. view. I don't recall at all that that was the A.N.C. view. I don't recall.

In same - in this same bulletin that I am referring you to, 1 J.M. 63(B), the next page, at page 4, there is an article, "The True Significance of the Defiance Campaign" and the writer in the second paragraph states "that the campaign for the defiance of unjust laws marks the beginning of the revolution in South Africa, for what else could voluntary acceptance of suffering be a manifestation of than a radical change

in the way of the thinking of people." And then it deals with the Defiance Campaign, and concludes : "This brings me to my earlker assertion that we are on the verge of a revolution. Revolutions are supposed to be violently cataclysmic, but the explosion is always preceded by a phase of mental preparation," and I say the Defiance Campaign is a means to that end, or is it not? Do you agree that the Defiance Campaign was a phase of the matal preparation for a revolution? --- What kind of revolution? 10

An actual clash, Mr. Luthuli? --- A physical clash?

Yes? --- No, I don't agree. I just don't agree at all, because it isn't so.

Well, if you don't agree, there is another 15 document that I want to refer you to, P.D.N. 168, referred to for the first time at page 2788. This last document, 1 J.M. 63(B) was referred to at page 2945? --- May I ask what you were reading from just now?

The last part of the passage on the first 20 - on page 4 there, the passage beginning, "This brings me to the assertion...."? --- I am afraid I don't quite follow the expression, "revolutions are supposed to be violently cataclysmic, but the explosion is always preceded....", could you assist me there? 25

Violently cataclysmic, I put it to you that that means a violent outburst? --- My Lords, insofar as this paragraph quoted by the Crown, if I understand it well, I am subject to an understanding, as I read it, my first impression would be this that that does not 30 represent the view of the African National Congress in relation to the Defiance Campaign. I read earlier above

"The campaign for the defiance of unjust laws marks the beginning of a revolution in South Africa, for what would - for what else would voluntary acceptance of suffering be a manifestation of than a radical change in the way of thinking of the people, for materially the campaign does 5 not offer anything to the Volunteer, but a psychological rewards are incalculable. It immediately provides a spiritual and intellectual emancipation".

BY MR. JUSTICE RUMPF :

Yes, a change of thought. 10

BY MR. TRENGOVE :

Now Mr. Luthuli, the change of thought is the mental preparation that the writer refers to, that precedes the violent outburst.

BY MR. JUSTICE RUMPF : 15

Isn't cataclysmic really a reaction?

BY MR. TRENGOVE :

Yes, a violent reaction? --- My Lords, I was going to say, this first portion which I have just read, personally contrasts the state at the time of 20 starting the Defiance Campaign and prior to the implementation of our militant programme. I think it has reference to that.

Yes, quite right. Now it is in the same regard that I just want to put to you P.D.N. 168. 25

X BY MR. JUSTICE RUMPF :

Anyway, your answer is, Mr. Luthuli, if the writer has in mind a violent revolution, then you say that is not the A.N.C. policy? --- Definitely, most definitely, My Lord. That never was the intention of 30 the Defiance Campaign in any case.

The point is not that the Defiance Campaign

was a violent revolution. The Defiance Campaign might have resulted in a change of thought which would precede the violent revolution? --- No, My Lord.

That is how I think he puts it. You say that was not the view or the policy of the African National Congress? --- Never, My Lord, never. Apart from the fact ^{writer} ^{writing} that it is a rioter here rioting, it never was, My Lord.

What is this, an African Youth League bulletin? --- Issued by the African National Congress Youth League, Transvaal, My Lord. 10

BY MR. TRENGOVE :

Now Isizwe, P.D.N. 168, Isizwe, October 1955, also referring to the Port Elizabeth riot and the Defiance Campaign, an article, "This Tin of Paint cost Lives", says in the third paragraph : "The Defiance of Unjust Laws Campaign had been gaining momentum for weeks .." - that is prior to this outburst in Port Elizabeth. "Thousands of freedom loving patriots had been imprisoned for their participation in a glorious undertaking, whose impact was being felt by the tyrants of the Nationalist regime. The fire of a people's wrath swept the country, and if the oppressor did not act, the wrath of the people would sweep them away too". So that the writer makes this point, Mr. Luthuli, that in Port Elizabeth the anger of the people had reached such a point, if the oppressor did not act, he would be swept away by the people. Did you know that that was the position in Port Elizabeth? --- My Lords, it isn't clear to me, I'll just have to read this passage again. "The Defiance of Unjust Laws Campaign had been gaining momentum for weeks. Thousands of freedom loving patriots had been imprisoned for their participation in a glorious undertaking, whose impact was 15 20 25 30

being felt by the tyrants of the Nationalist regime."
"The fire of the people's wrath swept the country, if
the oppressor did not act, the wrath of the people would
sweep them away too". I must say My Lord, that speaking
about Port Elizabeth as the Crown was, I associated this 5
particular passage with the riots, but my reading of it,
My Lords, now as I read it, to me it specifically refers
to the Defiance Campaign.

Yes, that was the question. Whether the
Defiance Campaign in Port Elizabeth had reached such a 10
point that if the oppressor didn't act it would be swept
away by the wrath or the anger of the people? --- Well,
My Lords, I think that it is true that in Port Elizabeth
the Defiance Campaign reached quite a high mark, and I
think that what the writer is trying to say there is that 15
it was really progressing very well indeed, so that if
say in another area it had progressed as in P.E., you
might have reached that point which I have already
stressed here in Court. Now the expression "swept away"
of course, My Lords, to me is a metaphorical expression. 20

And "wrath"? "Anger"? --- But surely My
Lord, in a struggle those expressions come indicating
that you are struggling against a thing that you don't
like. I think such expressions, My Lord, should be read
in that context. After all, people don't like oppression. 25

Just one question there then, Mr. Luthuli,
how does the anger of the people, how can that sweep away
the oppressor? What could that mean? --- My Lords, in my
view, as I said it is just an expression indicating that
people are opposed to oppression. I mean that is just 30
a fact, I mean they are, and they don't like oppression
and the more you oppress them, the more they become angry.

That is true.

And how will that anger sweep away the oppressor? --- I have already said, My Lord, that so far as I am concerned, really the words "sweep away the oppressor" must be taken as metaphorical, meaning that 5
- it means that it will come to a point, at least we hope it will come to a point when the oppressor will see reason and change. I cannot see anything other than that personally, My Lord.

And negotiate? --- Yes. 10

You mean that this means that the wrath of the people would have the effect of persuading the government to negotiate? --- Quite so, My Lord.

My Lords, before we adjourn, I would like to say that the Crown has asked Colonel Snyman in charge of the prison and also Colonel Prinsloo of the police to come down so that this matter of the consultations and meals could be ironed out this afternoon.

BY MR. JUSTICE RUMPF :

Yes, the Accused may not wish to say here every day until six o'clock, they may want to leave sooner, but they should indicate that. I think that when their lunch is here, they might indicate whether they want to go back at five or six or later or earlier you see, at once, because if supper has to be brought - I am on the assumption that it may have to be brought here, the gaol authority would like to know at that time, not later.

CASE REMANDED TO THE 11TH MAY, 1960.

COURT ADJOURNS.

COURT RESUMES ON THE 11TH MAY, 1960.

BY MR. MANDELA :

May it please Your Lordship. There are one or two matters which I wish to raise. My Lords, yesterday we were informed that these premises would be available to us for consultation. As we understood the position, My Lord, we could consult or work hereuntil about eleven o'clock in the evening if we so desire.

BY MR. JUSTICE RUMPF :

Well, I think the whole question will have to be gone into again, and either you or Mr. Nokwe or both of you on behalf of the Accused will have to consider the position with Mr. de Vos.

BY MR. MANDELA :

My Lords, we have already consulted with Mr. de Vos. I might mention immediately after the adjournment yesterday we advised the Court Sergeant that it was our intention to use the premises until eleven o'clock in the evening, and we were then told that that would be arranged. Then at about three o'clock I had a consultation with the learned prosecutor, Mr. Trengove about the matter, and he informed me that the gaol authorities...

BY MR. JUSTICE RUMPF :

Have you had a discussion with Mr. de Vos?

BY MR. MANDELA :

I alluded to that My Lord when I began this address, that I have already discussed this matter with Mr. de Vos this morning.

BY MR. JUSTICE RUMPF :

Mr. Trengove, has the position been explained to the Accused by Mr. de Vos?

BY MR. TRENGOVE :

My Lords, Mr. de Vos started discussing the matter, discussions have not been completed yet, My Lords.

BY MR. JUSTICE RUMPFER :

Well, the position is such that the matter will have to be reconsidered in view - apparently in view of information that is now available. I have been instructed that the Chief of the Police and the Chief of the Gaol are here, - I didn't want to see them, I gave the message that they should consult with Mr. de Vos, and I also gave instructions to Mr. de Vos to consult with you or Mr. Nokwe or both of you on behalf of the accused. Now the whole position will have to be gone into, and we propose to start now and when we adjourn, immediately after we adjourn, the matter must be discussed between Mr. de Vos and you and Mr. Nokwe.

BY MR. MANDELA :

As the Court pleases. As far as we are concerned, Mr. de Vos has given us all the information which was relevant in regard to the matter, but if Your Lordship wishes that there should be further discussions, we will raise the matter a little later.

BY MR. JUSTICE RUMPFER :

Yes, immediately after the adjournment the matter will have to be discussed.

ALBERT JOHN LUTHULI, under former oath;

CROSS-EXAMINATION BY MR. TRENGOVE CONTINUED :

Mr. Luthuli, at the adjournment yesterday, I was busy referring you to the Isizwe of October, 1955, P.D.N. 168. I think you will remember it was the passage dealing with the Defiance Campaign where the

article points out that the fire of the people's wrath had reached the point that if the oppressor didn't act the wrath of the people would sweep away the oppressor, do you remember? --- Yes, I recall.

Now Mr. Luthuli, how many people took part 5
in the Defiance Campaign in all throughout the Union?
What was the figure that the African National Congress
worked on? --- My Lords, I have forgotten - two thousand
odd, I am not so sure, My Lord, I have forgotten the
figure. 10

I think it was about ten thousand wasn't
it? People who participated in the Defiance Campaign
to the extent that they defied laws? --- My Lord, just
to be clear, there were those who voluntarily surrendered
themselves to defy the laws and were arrested. Do you 15
mean those?

Also people who were not arrested but took
part in the campaign? --- In what form if I may ask?

In defying laws? --- Would that take into
account - you have been questioning me about rioters and 20
things like that.

Any form of defiance during that period
as part of that campaign? --- I wouldn't know, My Lord.

It is a fact is it not that 90% of the
defiers came from Port Elizabeth? --- I don't know. 25

This article then goes on to deal with
the riots in Port Elizabeth, and in the middle of the
page the writer says : "On this warm afternoon, however,
there was nothing to indicate that the borrowed tran-
quility of the people would be disturbed, least of all 30
by the spectre of death. Emanating from the local
train was, among the passengers, an African who was

connected with a tin of paint. The tin of paint cost eleven lives, thousands of pounds of property and even more, incalculable pangs of remorse, injury and pain". You see it refers to that incident where an African was arrested in connection with a tin of paint, you remember? 5 I recall, My Lord.

Then the article goes on to say "This then was the tin of paint which enabled fascism to demonstrate its power and to seize the initiative as the government opposition of White South Africa vacillated and ignominiously betrayed its alleged principles. On this day as the mask was ripped off, so the opposition of the so-called United Party and Liberals capitulated to the extent where they competed with each other in villifying the people's movement and its struggle against unjust laws". Then it 15 refers to the fact that people were shot and it says, "This day fascism had good reason to feel triumphant. It rode the wave, its filthy mind was content with its work of destruction, that being its fulfilment, thus its satisfaction." And then it says, Mr. Luthuli, that 20 "Thus Sotewu arrived in New Brighton". What is that word, do you know? Does it mean the imposition of a curfew? --- I don't know it, My Lord.

It then refers to the fact that a curfew was imposed by the City Council of Fort Elizabeth, 25 and to the fact that pimps, informers and sellouts were created and then ultimately the writer concludes "All glory to those who have perished in this noble struggle. All glory to those who remain true to those martyrs who have made the supreme sacrifice in the battle 30 against the evil forces of fascism". Now Mr. Luthuli, did the African National Congress regard the people who

died in that riot as people who perished in the noble struggle for freedom in this country? --- My Lords, there never was what you might call an African National Congress point of view. There might be expressions by individuals one way or the other. 5

Would this represent the African National Congress view of the riots at Port Elizabeth? --- I thought My Lords, I had already expressed the views of the African National Congress regarding the riots there.

This is in a publication of the African National Congress Youth League. Now does this or does this not represent the view also held by the African National Congress? --- My Lords, I thought I had already explained the views of the African National Congress in relation to the riots in P.E. 10 15

I am asking you that question again. Does this or does this not represent African National Congress view? --- My Lords, I would say, as I have already said that might be an individual point of view and expression, it might be shared by others, but you cannot say that represents a view of the African National Congress, taken up by the African National Congress. One must - having said so, My Lord, one must continually stress that in situations like this it is but natural for people, it is true, My Lord, with emotions high, in situations like that, to express themselves strongly. 20 25

Mr. Luthuli, before you go further on the question of emotions being high, this was in October 1955, three years after the event? --- My Lords, it is a matter of common experience than whenever your mind goes back sometimes to certain incidents in history, it is not peculiar to this situation, if a particular incident 30

had certain relation, ot brings back to you, to your mind and to your heart what took place there. All I can say is that the African National Congress has no specific view on things like that. Individuals might express themselves.

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You see, this is not the expression of an individual view, it is not an article writer under the name of a particular person, it is published in an A.N.C.Y.L. bulletin, - in Isizwe? --- Well, I should think it was either the editor writing, somebody was writing.

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You see, Mr. Luthuli, in the document, A. 83 which is the same as B. 11, it is the 21st Conference Report of the South African Indian Congress at Durban in July, 1954, which you opened, there in the Secretarial Report presented to that South African Indian Conference at page 11, in paragraph 37, the report referring to the Defiance Campaign and the reaction to it, makes the following comment referring to the government : "It believed that the campaign would not arouse popular response as it thought the masses would remain apathetic. When this was proved otherwise, the Minister of Justice declared that he would introduce new legislation to meet the situation. The following are significant reactions on the part of the government.... (c) Riots were provoked at New Brighton through police shooting. Subsequently a shooting order was issued to the police by the Minister and it resulted in a loss of innocent lives at Denver, Kimberley and East London". So that this report also makes the point that the riots in Port Elizabeth was really the government reacting to the Defiance Campaign and that the government in reacting to the Defiance

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Campaign provoked that riot". Was that the A.N.C. view too? --- My Lords, I cannot add further to what I have already said. I have stressed that the opinion of the African people generally, especially in the absence of a judicial enquiry was that the government was responsible, or rather police were responsible for the events there. I mean that was general opinion held, but you cannot say, My Lords, that now that is a view of the A.N.C. It is true the public there held that view, and that view was generally held amongst the African people. 10.

Well, Mr. Luthuli, you see this paragraph in the report of the South African Indian Congress refers to an Annexure A(6), and Annexure A(6) is a statement by W.M. Sisulu and Y.A. Cachalia, joint secretaries of the National Action Committee of the African National Congress and the South African Indian Congress. There was such an action committee on which both Congresses were represented, was there not? --- That is correct, My Lord.

And they issued a statement in connection with the disturbances in Port Elizabeth, and they say the true causes of the recent disturbances in Port Elizabeth are to be found in the explosive atmosphere in which South Africa has been placed by the ruthless tyranny of its present rulers, and its disregard for human feelings which has characterised their actions and public declarations. And then it refers to the decision of the Port Elizabeth City Council to introduce a curfew and to ban public gatherings at the time when this Defiance Campaign was on, and it says that decision has precipitated a situation which is as unfortunate as it is unavoidable. So that the African National Congress did issue a statement in connection with

those riots, did it not? --- I didn't recall it. My Lords, I see the statement. I just don't know exactly why the Crown refers it to me.

I referred it to you to say that the African National Congress says that that riot was inevitable 5 and that the circumstances giving rise to the riot are blamed on the government? --- My Lords, I think I have already said about the general opinion, and insofar as that statement is concerned, one's own immediate reaction, one must always say that in a statement like that, 10 reviewing the general situation, and the two secretaries were saying that with intensity of oppression people's tempers are high so that a situation leads sometimes to some of these unfortunate happenings. I think they were merely reviewing the general situation as I read that 15 article, their immediate reaction to it.

They had a good opportunity to condemn the violence and the arson which was committed on that occasion, did they not? You agree that they had that opportunity? --- My Lords, am I compelled to reply to things 20 on which I have already expressed an opinion?

Alright...? --- Because after all, My Lords, one would just have to be repeating oneself on some of these things.

Mr. Luthuli, do you know anything about 25 these other riots that took place, riots in Newclare and Randfontein and these places? --- I do not specifically recall, My Lords.

You don't know whether the African National Congress had any attitude towards those riots? --- My 30 Lords, I wouldn't know.

Do you know if commissions of enquiry were

held to enquire into those riots? --- I don't recall at all, My Lords.

So you didn't really investigate when riots occur whether commissions of enquiry are held or when they are not held, or what the causes are. You are not really interested, Mr. Luthuli. You are only interested in exploiting riots for your own purposes? --- That is the opinion of the Crown, I don't share it. I could never be interested in riots. There is no indication at all that I was ever interested in riots, rather to the contrary. The fact that, My Lord, I do not recall incidents that may have happened here and there, is no indication that I am interested in riots. 5 10

Did you ever study any report of any commission of enquiry on any riot? --- My Lords, I do not know that there were any enquiries. If there were, I didn't read. 15

Well, in your evidence in chief Mr. Luthuli you referred to the Durban riots, do you remember? --- Yes, I remember. 20

Did you study the report of the commission of enquiry in connection with that riot? --- I didn't study it, I just had a casual look at it, I didn't study it in the sense of studying it.

Did you read the report? --- My Lords, I don't think I read the report. I don't recall reading the report. 25

So that even if commissions of enquiry are appointed, the African National Congress isn't really interested in what the true facts are? --- My Lords, I cannot stop the Crown making its conclusions, I don't share that conclusion. 30

Mr. Luthuli, you mentioned during the course of your evidence in chief the Bulhoek incident? Do you know anything about the circumstances of the Bulhoek incident? --- My Lords, I did refer to that incident as merely illustrating a particular point of how the State 5 in carrying out its lawful duty, I said so, would go to the extent of finding itself forced to use shooting, to illustrate the atmosphere of shooting. I wasn't....

Do you know the facts of the Bulhoek incident? --- I don't, but I know that took place, and I was 10 referring to the general atmosphere created. You see, the topic there was the question of the people fearing, having an attitude towards police action, and I was merely giving instances there of what took place. I never did suggest what I knew the details of those incidents. 15

And did the African National Congress ever try to disabuse the minds of the masses from this fear that they had? --- Fear of the police?

Fear of this action that the government or the police takes against people? --- My Lords, but in our 20 view it is just a fact. The government might be justified in doing it, it is a fact. What does the Crown mean by disabuse people?

Did you ever tell your people that the government would never use force against the masses unless²⁵ it was necessary for them to do so for the maintenance of law and order? --- My Lords, I don't recall making a statement to that effect, nor do I think that one, My Lords, would be expected with the general policy being what it is, to be stressing details here and there. I 30 don't recall that I ever did that, but I can't say other leaders didn't, I didn't, I can't speak for other people.

The view propagated by the African National Congress was that the state was reckless in its use and application of force? --- My Lord, that was our general feeling, I think that sofar as that is concerned, our general feeling is that in a situation very often 5 before a point has arisen to use strong force, the government uses strong force. I mean it is just an opinion.

During this period, 1952 to 1956, and prior to that period, can you point to any incident which justified that statement of yours? --- My Lords... 10

A specific incident, Mr. Luthuli? --- I cannot. I might think of it later. I cann't recall. I should say that there is such an incident, but I cannot at the moment recall an incident like that, a specific incident, apart from the general - apart from others that 15 I have given in connection with the action of the police.

You can't recall a specific incident, and yet you propagate this dangerous view amongst the masses, that the government recklessly employs force against them? --- My Lords, I think that insofar as that is concerned, 20 my evidence in chief and in the cross-examination already, I have referred to incidents which created that impression, rightly or wrongly among us. I have already said that, rightly or wrongly, it created that impression.

But you can't mention a specific incident? 25
--- But My Lords, it would mean repeating myself.

Mr. Luthuli, just to round this off, stepping off riots, just concluding the attitude of the African National Congress with regard to the hopes that they hold out for negotiation up to the period 1956, 30 Congress Voice of August, 1956, A.G. 32, paragraph 1 under the heading "Editorial", it once more makes the

statement that the government is intensifying its policy of terrorism and ruthless persecution, and it says that these atrocities and this persecution is still being unleashed by the government. That was still the view in 1956 was it not? That was still your view, that there was no hope of change on the part of the government? --- There were no signs. 5

And that is also the tenor of your message as published in Sechaba in August, 1956, where you send a message on the significance of June the 26th, and you once again refer to the example of people who have paid the supreme sacrifice for the achievement of their freedom. Mr. Luthuli, you were also one of the people that propagate the view that the White man came to the country ostensibly to civilise the black man, but in reality to rob him of all his possessions. That is correct, is it not? --- One doesn't recall statements that one made, but it is quite possible. 10 15

I mean you hold that view? --- Oh no, if you want my view, I hold this view that of the White people who came to this country, there are others who came to exploit, there are others who came with a message of goodwill. That is my view. 20

Why do you hold your view to yourself, and why do you publish the contrary to the public? Your message of June 26th says this - it refers to the liberatory movement, and then you say, "A movement whose beginnings date from the first time when the Whiteman came into contact with the Black man, ostensibly to civilise him, but in reality to rob him of all his possessions, including his land, his freedom and his manhood"? --- Well, that is the history of South Africa 25 30

surely, surely that is the experience of the people throughout South Africa, and I was indicating that from the time the White man came here there has been a struggle between, unfortunately a struggle between the people and the White man. That was the specific point I was making, in that connection it wouldn't be necessary for me to bring in other elements and say now there were other elements that came for this purpose. 5

My Lords, the number of this Sechaba is L.I.N. 8...? --- My Lord, the Crown says they were rounding up negotiation. Now I want to say in that connection, it is merely a matter of stress. My experience, our experience, in the African National Congress is this, that during really the period of the Nationalist Party government there has never been any indication on the part of the Government. Now contrasting that with the previous period, I don't say that anything came out of that, - you take, My Lords, during the 1936 discussion on the so-called - on the Native Bill, in the end the government did call the leaders to discuss with them. I don't say - I am not talking about the results, but the government did call the people to discuss with them, and again My Lords, I think it was in 1946 at the time when there was an impasse between the government and the Native Representative Council, the then Prime Minister did call some members of the Council to discuss with them. Again I am not saying what came out of those discussions, but the fact is that there were occasions when the government did seem to - now insofar as our experience goes, with the present government, there is no indication. On the contrary, My Lord, the government has consistently said it relies on 10 15 20 25 30

chiefs, it cannot rely on the so-called elected leaders of the people. Sometimes they will say these leaders represent no one, sometimes they will say they are agitators. The present government has distinctly shown signs of not wishing to consult with the elected leaders 5 of the people.

I'll deal with that, Mr. Luthuli in the next fifteen minutes, can you leave your explanation until then? --- I thought you were finished on negotiation, I was trying to give an explanation. 10

No, I'll deal with that. Just finally this one further document, Mr. Luthuli, it was referred to in your evidence in chief, S.D.N. 98, your 1956 Address to the Annual Provincial Conference of the A.N.C. Natal, "The Struggle must go on", and you have this heading, 15 "Paying Tribute to the Men and Women who in the struggle for freedom in our country have suffered or died", and you remember you said, "It is appropriate at this stage in our thinking about our subject, the struggle must go on, and to pay tribute to those men and women who have 20 tried to carry on the struggle, who have suffered or died for freedom in our country." And then you refer to the men or women who lost their lives in the struggle for freedom, their dependents, banished people, banned people, and you say "they have not suffered or died in 25 vain if all those lovers of freedom are not to have died, or suffered in vain, it behoves those of us who still in some way can act or play our part faithfully, If we are truly pledged to the cause of freedom, so to play our part faithfully, we should say with determina- 30 tion here and now that the struggle must go on". I want to put it to you Mr. Luthuli, that right throughout the

period there is no indication in any passages to which the Crown has referred you, of any hope ever held out by the African National Congress that it could achieve its aims by negotiation? --- My Lords, ...

X BY MR. JUSTICE RUMPF : 5

You have explained to us that the hope existed - I thought I would just put the question again. The question is that in the passages referred to by the Crown, there was no expression of such hope? --- That

X is correct, My Lord. 10

BY MR. TRINGOVE :

Now Mr. Luthuli, I now want to refer to your 1949 Programme of Action, J. D. N. 24. Mr. Luthuli you have made the point that the 1949 Programme of Action laid the basis for a new form of struggle in that suppli- 15 cations and deputations and protests were no longer relied upon by the African National Congress as the only way of conducting their struggle, is that correct? --- That is correct, My Lord.

Mr. Luthuli, you will also agree that one 20 other important difference between the struggle prior to 1949 and that envisaged in the Programme of Action itself, is that the African National Congress was now going to rely on the masses, and mass participation in all activities organised by it? - - That is correct, My 25 Lord.

And the - in deciding to employ the masses in furthering its cause, the A.N.C. was to a very large extent influenced by the Mine Workers Strike of 1946? --- I wouldn't know, My Lords. 30

And that it was in the mine workers' strike in 1946 that the African National Congress saw the latent

power of the masses? --- My Lords, I wouldn't agree to that point of view. It might have been one occasion that stands in that view, I wouldn't say it was an occasion that started the view, My Lord.

Wasn't it as a result of the mine workers 5
strike and the Alexandra bus boycott, numerous events before 1949, that revealed to the African National Congress, to the leaders, the concealed militancy of the people and the potentialities of mass action? --- My, My Lords, I cannot add to what I have said. I have said 10
those incidents may have merely strengthened that view, I wouldn't say they germinated the view, My Lord.

Mr. Luthuli, the mine workers' strike of 1946, that was really a strike in which the Communist Party played a great part, was it not? --- I do not know 15
the details, I must preface my remarks with that, but I think it is correct that the Communist Party did take part in that.

You were a member of the Native Representative Council at the time? --- Yes, I had just come in in 20
1946.

And the members of the Native Representative Council took a great interest in the 1946 strike? ---
They did, My Lord.

And I take it you took a great interest in 25
it too? --- I did, My Lord.

And the strike, about 75,000 Africans took part in that strike, did they not? --- I do not remember the details, My Lord.

But a very serious situation developed on 30
the Rand? --- That I recall, My Lords.

And subsequently a large number of Communists

were found guilty of aiding and abetting the strikers, do you remember? --- My Lords, I say I don't remember those details, I definitely don't. I remember the situation in general, but I don't remember the details, of the organisers and what happened, no I don't My Lord. 5

You knew enough about it though to realise that at the time the State had to take strong action for the maintenance of law and order? --- Oh yes, I have never questioned that.

Now Mr. Luthuli, the Native Representative Council, were the members elected by the people? Some of them? --- That is so, My Lord. 10

Were there various political parties who took part in those elections? --- No, My Lord.

How were they elected? Not on a party basis? --- No, not on a party basis, just individuals standing for election. The voters were chiefs, and in some areas what was called Electoral Committees. 15

Prior to 1949, were there ever any occasions on which the African people elected people to bodies on a party basis? --- I do not recall, My Lord. 20

The deadlock in the Native Representative Council arose in approximately 1945 or 1946? It had not been operating - the Native Representative Council had not really been functioning satisfactorily, is that correct? --- My Lord, I will say round about 1946, because I became a member round about 1946, and in that session that I attended for the first time, was the sessions when the Council moved the resolution of boycotting the proceedings until the government had removed all discriminatory laws. I would put it at round about 1946, My Lords. 25 30

And both the late J. H. Hofmeyr and General Smuts tried to persuade the Native Representative Council to co-operate with the government? --- Well, My Lords, what happened is this...

Did they or did they not negotiate with the 5
Native Representative Council in an effort to break (?)
the deadlock? --- The late Hofmeyr did not, he replied
to the resolution. General Smuts did. I have already
indicated that.

And notwithstanding these negotiations, the 10
Native Representative Council was adamant in its attitude
not to continue with its sessions? --- My Lords, I have
already said that the late Hofmeyr did not start nego-
tiations, he merely replied. Now when the late General
Smuts came into the scene, he did call some members of 15
the Council and discussed with them, and certain proposals
emanated from that discussion. What their fate would
have been, My Lord, I do not know.

But the deadlock continued? --- Wait a bit,
wait a bit. Unfortunately before the United Party was 20
able to carry out the proposals, as I have already said,
I don't know what the state would be, they went out of
power, and the Nationalist Party came in.

Mr. Luthuli, the decision of the Council to
adjourn *sie die*, that was taken as far back as 1946? --- 25
That is correct.

And the decision to adjourn *sine die* was
taken until the government decided to abolish all dis-
criminatory laws. The decision of the Council was not
to reassemble until such time as the government had deci- 30
ded to abolish all discriminatory laws, do you remember
that? --- That was the resolution of the Council, I have

already said so.

And that was your attitude in 1946? That you were not going to reassemble until all discriminatory laws had been abolished? --- That was the resolution of the Council, I have already said so, it has got nothing to do with negotiation.

And it was after that that the government of the day negotiated in an effort to persuade the Council to carry on with its sessions? --- And the members of the Native Representative Council who were called, did not refuse to meet General Smuts, they did go to meet General Smuts.

And that deadlock which arose in 1946 had not yet been resolved when the Nationalist Party came into power in 1948? --- But I have just indicated to the Court...

That is correct, is it not? You agree with that? --- I find it difficult to say yes or no to this question, My Lord, in the light of what I have already explained to the Court, the position that after meeting the Council and before the Councillors were called, and before the government could carry on officially with the discussions it went out of power. How can I say no or yes to a thing like that, My Lord ?

Mr. Luthuli, the Programme of Action provides that the African National Congress will resort to four specific weapons, the one is immediate and active boycott; the other is strike action; the other is civil disobedience and the other is non-co-operation? Now Mr. Luthuli, the Defiance Campaign, what form of struggle would that be? --- I will put it under civil disobedience.

Your campaign against the Western Areas Removal Scheme, under what heading would that fall? ---

My Lord, I cannot - it comes near civil disobedience yes, My Lord, but I would say that it was a struggle against a specific situation of removing people, but I think to the extent that the law required them to move and we were suggesting that they should resist, it would come under civil disobedience. I would then try to put it under that heading, My Lord. 5

The pass campaign? --- My Lords, I think that would generally come under that same heading, under civil disobedience - it is a general agitation against passes, My Lord. 10

Oh, is that now agitation? That doesn't fall under one of these headings? --- I don't know My Lords that one can specifically classify all actions and say they fit in exactly into that. Now if you take the question of passes, My Lords, the African people had long agitated against passes, indicating their dislike for passes. 15

Now we know all that, Mr. Luthuli. Does it or does it not fall under any of these four headings? And if so, under what heading?--- My Lords, I think it was a general agitation. 20

You see, Mr. Luthuli, take for instance the question of burning of passes. Would that fall under any of those headings, or would that fall under general agitation? --- My Lord, I think that would fall under the general campaign against passes, but now when you refer specifically for instance now to say the burning of a pass, now I don't know whether here I shouldn't ask for guidance by the Courts, I am a layman. I am involved in a case that involves this, and I would like guidance there, My Lord. 25 30

BY MR. JUSTICE RUMPF :

I don't think it effects your position really whether in your opinion you think it is one, two three or four or a separate matter, but leave it, don't answer the question.

BY MR. TRINGOV :

5

The Bantu Education Campaign? --- My Lords, again it is difficult to make a sharp line, it would help raise in it some kind of civil disobedience, in the sense that there was a law, - no, My Lords, I wouldn't put it under that, I think it is just general. 10

Mr. Luthuli, you once or twice in your evidence referred to the African National Congress campaign as being on a par with the principles of passive resistance as expounded by Gandhi? --- Well, more or less, My Lord. 15

Have you ever studied Gandhi's theory and practice of passive resistance? --- No, My Lords, I have just read casually, I have got books at home on it, but I have just read very casually, I am not a student of it.

So you would rather not that I question you 20 on that? --- No, I am not an authority at all, I must say although I have got books on Gandhi at home, I have just read casually, I am not a student.

Because there are very, very important differences between his passive resistance and your 25 Programme of Action? --- I wouldn't deny that.

Something entirely different? I wouldn't deny that, but the general atmosphere surrounding it, I think would in some respects be the same.

Now, Mr. Luthuli, all these weapons, these four various weapons to be employed, for their success they

all depend on mass action? --- That is correct, My Lord.

And mass action extending far beyond the membership of the African National Congress? --- I don't understand that expressions.

Well, your membership, the African National Congress, during about the period 1954, was about 28,000 people, of which you had 16,000 in the Cape, 11,000 in the ...

BY MR. JUSTICE RUMPF :

Is it necessary to give all those details? 10
In order to effectively apply these weapons, alleged weapons by the Crown, you would require more than only the membership of the A.N.C.? --- Quite correct, My Lord.

BY MR. TRENGOVE :

Now, Mr. Luthuli, strike action, that was 15
really your most severe weapon, was it not? --- That is so, My Lord.

And that, your strike action, one could also call that your - I think you referred to it as "stay at homes" or "industrial action"? They are all strike action, 20
are they not? --- That is quite correct, My Lords, with slight differences in purpose and meaning.

Now Mr. Luthuli, this weapon, strike action, was being employed by the African National Congress, not merely as a weapon of industrial or shop workers, it 25
was being employed as a political weapon, the strike action? --- My Lords, I pause to try and recall an instance where a specific strike was engineered for a political purpose, but I cannot recall. I do recall stay at homes.

Mr. Luthuli, I thought we said now that industrial action and strike action and stay at homes are

all the same? --- I did say My Lords, that there would be a slight difference in purpose.

Well, where the African National Congress in its Programme of Action refers to strikes, does it refer to it as a political weapon or as a weapon to improve the position of a particular group of Natives working in a particular factory or in a particular area? --- It refers to it as political action, My Lord. But what I was trying to say to the Crown was I cannot recall instances where now the African National Congress has organised a political strike, I do not recall, My Lord.

We are just dealing with your Programme of Action now. Now in the light of its experience in 1949, the African National Congress knew that strike action in that sense would lead to a direct clash between the African people, the working class, on the one hand, and the ruling class on the other hand? --- In the nature of things that would be.

And the African National Congress, in the light of South African history, knew that that type of strike often led to rebellion and revolution and a clash with the armed forces of the country? --- My Lords, I don't know about leading to revolutions, I don't recall instances. I would say in general it would lead to a clash, but I wouldn't go as far as saying - I don't recall of any revolutions arising out of it.

Well, say rebellion if you like, if you prefer rebellion. You had the history of the 1922 strike on the Rand, of an actual clash between the strikers and an armed - the armed forces of the country? The mine workers strike on the Rand? --- Yes, My Lord.

And you also had the example of the mine

workers' strike in 1946? --- That is correct.

Where there was also an armed clash? So that the A.N.C. knew that strike action had this inherent danger?--- My Lords, whether in drafting they thought of that, I don't know, but it has that inherent danger, I mean it is obvious. 5

Now Mr. Luthuli, did the African National Congress ever intend to go beyond strike action? In an effort to achieve its liberation? --- Not to my knowledge, My Lord. 10

Now what shade of difference is there between strike action and industrial action? --- Well, strike action and industrial action, insofar as I am concerned, would be about the same. Now it would depend, again, if its workers who are carrying out that struggle, then it would come under the qualification of strike action or industrial action. 15

There is no difference between the two? --- I don't see the difference, My Lord.

I don't think there is, Mr. Luthuli. Now in this regard I just want to refer you to an Exhibit A. 162. You referred to it in your evidence in chief, I will deal with that again, it is the Report of the Secretariat on the Western Areas, and it deals with the Western Areas Campaign, and the concluding paragraph - you remember the idea was that on the day of the Western Areas Removal, the African National Congress also intended to have nationwide industrial action? --- That is correct. 25

Now the concluding paragraph of this report says, referring to industrial action and the Western Areas Removal Scheme, "The mistake should not be 30

made, however, of presenting industrial action,.. " -
"I.A.", which you have said is "industrial action", -
".. to the people as a decisive action which can solve
all their problems, but rather as a tactic of obstruc-
tion and resistance which can lift the struggle to a 5
higher level." So that, Mr. Luthuli, according to this
paragraph the Secretariat had in mind that industrial
action should serve to lift the struggle to a higher level.
Now to what higher level could the industrial action lift
the struggle? --- My Lords, I think that the position 10
there really is this, in the context of that report,
industrial action was to be used at a period in connec-
tion with Western Areas in order that the forces of the
government would not be concentrated in the Western Areas.

In order..? --- In order that the forces 15
of the State would not be concentrated in the Western
Areas only, and I think that the Report, in my view, My
Lord, tries to say to the people on that occasion, even
if you carry out this industrial action in connection
with the Western Areas, don't think that that in itself 20
will solve your problems, the struggle is still a long
one, you still have to struggle more. After all, when
you say you bring the struggle to a high level, it is
as the spirit of the people rises with greater determina-
tion, and My Lords, I think it is right to visualise - 25
I think I did say in my evidence in chief - when along
that line, if the situation did not improve, it is con-
ceivable that the African National Congress would call a
nationwide political strike. This was a special call
in relation with Western Areas. It certainly, if it had 30
taken place, would raise the spirit of the people to a
high level, but they mustn't think that they are going to

solve all of the laws about which they were complaining at the time, the very many laws - I think that is all that that in my views mean.

Mr. Luthuli, let us just analyse that.

COURT ADJOURNS.

COURT RESUMES.

BY MR. MANDELA :

My Lords, there have been certain discussions between ourselves and the Crown during the adjournment and certain suggestions were made. The Crown are going into the matter, and it will not be necessary for me to address Your Lordships as I intended.

ALBERT JOHN LUTHULI, under former oath;

CROSS-EXAMINATION BY MR. TRENGOVE CONTINUED :

Mr. Luthuli, I just want to deal again with this last paragraph in the report of the Secretariat, and your explanation of what this paragraph was intended to convey. Now the Western Areas Removal Scheme, the intention was that if the people are told to go by the government on a particular day, that they must then go. They were not to resist the removal? --- The intention was that they shouldn't go voluntarily.

In what circumstances should they go? --- Well, I think it was visualised that in trying to get the people to go, the Government would in all probability send for the police to get the people to go, and in that case people would not themselves willingly go, in other words, they wouldn't, if I may say, when there was some van to transport them, run to the van, but indicate an unwillingness to go, but if pressure is exerted on them to

go, then under those conditions, they would go.

Now take this position. The Department of Native Affairs were going to remove the people to Meadowlands, not so? --- That is correct.

Now the Resettlement Board, they were going 5
to move the people and lorries were being provided to transport the people with their goods to Meadowlands, that is what was going to happen? --- Yes, that is correct.

Now a single policeman accompanies the vehicle provided, and they go to a particular house, and 10
the policeman says, you must now go to Meadowlands. What was that person to do, who was ordered to go in those circumstances? --- Well, of course, My Lord, I really think the final decision rests with the individual. All that we are trying to say ... 15

What did the African National Congress want him to do? --- Well, we expected him to indicate that no, I am just not going to go to Meadowlands.

Now he indicates that to the policeman, and then? --- Yes, indicates that to the policeman. 20

And then? What would then happen? --- Well, if the policeman naturally tries to say now you get up or indicates that he is going to use force, then the individual would then decide in fact what to do. He would go.

What did the African National Congress 25
want such an individual to do? --- All that he expected...

What did you want him to do in those circumstances? --- It is really left to the level of an individual there, My Lord. All that we wanted him to indicate was their unwillingness, and so long as the 30
unwillingness was demonstrated, the A.N.C. would be satisfied. What an individual would do in any given

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