

a republic or some other form of state. Our submission is, My Lord, that this much, with respect, is clear : That if the speech or the document is not hit at by any other law, it is a constitutional speech or document and cannot be
5 treasonable, But we go further, My Lord, and say that even if the speech or document is prohibited by law, if the utterance of the speech or the publication of the document is made illegal by law, it cannot amount to treason, whatever other offence may be committed, unless it is an agree-
10 ment to use violence or an incitement to use violence.

We submit, My Lord, that it cannot be the law that a speech that is made in front of the Johannesburg City Hall with the consent of the Town Clerk is not treason, whereas the identical speech made in front of the City Hall without the
15 consent of the Town Clerk as required by law, is treasonable.

We submit, My Lord, that it cannot be the law that speeches advocating the establishment of a Nationalist Socialist State, which is not prohibited by statute, ^{are} is not treason; whereas speeches advocating the use of a Communist State,
20 which may be prohibited by statute, amounts to treason.

My Lord, in our submission, the introduction of legislation prohibiting the making of certain speeches, was necessary because without such legislation there would have been no offence at common law. That is why, My Lord, it was neces-
25 sary to introduce the Riotous Assemblies Act and why it was necessary to introduce the Suppression of Communism Act.

But My Lord, we reiterate the submission that in order to be treason, there must be force or there must be action which constitute agreement or an incitement to force. And
30 nothing less than that, in our submission, My Lord can constitute treason. My Lord, those are our general submissions, on the nature of a treasonable act. And against

the background of those submissions, My Lord, we turn to the Indictment. Now My Lord, one of the overt acts which has been alleged against the Accused is that they conspired with each other to do certain things which are set out in 5 sub-paragraphs (a) to (f). Now My Lord, (a) says - our submission is, of course, My Lord, that unless the conspiracy is to use force, it cannot be a treasonable conspiracy.

BY MR. JUSTICE BEKKER :

And I take it you are now going to argue that 10 some of these sub-paragraphs are not suggestive of force?

BY MR. NICHOLAS :

I am, My Lord.

BY MR. JUSTICE BEKKER :

Others may?

15 BY MR. NICHOLAS :

Others may, My Lord, but I will address another argument to Your Lordships in regard to those which are suggestive of force. Now My Lord, one gets the impression and I think my learned friend Mr. Maisels mentioned it in 20 his original argument, that these words as set out in sub-paragraphs (a) to (f) were not derived by the Crown from the writings and documents of the Accused, but were derived from a study of the law reports. Now My Lord, the first is that they conspired to subvert, overthrow and 25 destroy the state. "Subvert" appears frequently in the Roman Dutch authorities. The word was used in Leibbrandt. "Overthrow" is merely an Anglo-Saxon way of saying "subvert" and destroy. All of those words, My Lord, I concede import the idea of force. Because it is impossible to subvert a 30 state except by force. Then (b) is "make active preparation for a violent revolution against the state." There My Lord, the words "violent revolution" clearly import force. But,

My Lord, what the Accused conspired to do was not to start a violent revolution, but to make active preparation for a violent revolution. And the nature of the active preparation can be found only, in our submission, in paragraph 4 5 of Part B. Paragraph 4 of Part B on a proper construction of this Indictment, constitutes the "active preparations" which were to be made for a violent revolution. Then, My Lord, (c) - "disturb, impair or endanger the existence, independence and security of the state". Those 10 words come from van der Linden. In their context, My Lord, as I submitted to Your Lordship yesterday, they are words which were quite clearly intended by van der Linden and presumably by the Crown, to allege force and violence or to imply force and violence. But Your Lordships will see 15 in that paragraph an intrusion by the words "or authority". My Lord, that word doesn't come from van der Linden.

BY MR. JUSTICE BEKKER :

Does it matter much?

BY MR. NICHOLAS :

20 I don't know, My Lord, it may be tautologous, but I just remark on it in passing at this stage. Then My Lord, the next one "hinder, hamper and coerce the state". So far as "hinder" and "hamper" are concerned, those words were used in the indictment of Leibbrandt, but there they 25 were "hinder and hamper the state in the prosecution of the war". But here My Lord, they are simply "hinder and hamper" and they are here words of very vague import and in our submission they don't connote the idea of force. Because, My Lord, the state may well be hindered by an 30 action of the mass of the people suddenly withdrawing their money from the Post Office Savings Bank or by....

BY MR. JUSTICE BEKKER :

Then passive resistance would fall in that group too.

BY MR. NICHOLAS :

5 Yes, My Lord, which doesn't involve the idea of force. And My Lord, the word "coerce", that probably comes from Erasmus. But in Erasmus it was clearly stated "coerce by force", and the Crown has not here alleged My Lord, coerce by force.

10 BY MR. JUSTICE BEKKER :

What was said in Erasmus?

BY MR. NICHOLAS :

It was said in Erasmus, My Lord, "coerce the state by force of arms with hostile intent" constitutes
15 high treason.

BY MR. JUSTICE BEKKER :

Could one coerce the state, using this phrase here, without violence?

BY MR. NICHOLAS :

20 With respect, yes, My Lord. There can be moral coercion, there can be financial coercion; Coercion which is exercised by force of public opinion. The state depends, My Lord, for its existence on its trading relations with the rest of the world. A group of South African citizens
25 entered into a conspiracy to wreck those trading relations or financial relations. That would constitute a coercion of the state. But not, in our submission, treason. Then the next one, My Lord, is (e) - "oppose and resist the authority of the state and in particular the power of the
30 state to make and enforce laws". My Lord, in our submission, we haven't been able to find where those words have been used before, - but in our submission, they do not import the

use of force. And finally, My Lord, (f) - "establishing a Communist state or some other state in the place of the existing state". My Lord, we submit that this is the clearest example of all. Because the bare conspiracy to
5 establish another form of state, even a Communist state, can never in our submission be treason or any other common law offence. There is an agreement, My Lord, among numerous South African citizens to establish another form of state in the form of a republic. No one could possibly contend that
10 they are guilty of treason by entering into such an agreement. So our submission is My Lord, that in their present form, sub-paragraphs (d), (e) and (f) should have no place in this Indictment. My Lord, Your Lordship raised yesterday the question of prejudice, if these were allowed to stand.
15 But My Lord, our submission is that what the Crown has done in paragraph 1 is to allege a number of alternatives. There can be no doubt, My Lord, that the Crown would contend at the end of the case that if it has established a conspiracy to establish a Communist state, that it was entitled to a
20 conviction, even if it established no other conspiracy at all. So each of these, My Lord, and perhaps some of those inside each of these categories must be treated as an allegation of a separate offence. We submit, My Lord, that if an offence is alleged in an indictment which does
25 not constitute an offence cognisable by the Court, then My Lord, unless the Crown seeks to amend its Indictment by striking out that offence, the Court has, with respect, no alternative but to quash. It is clear from Andrews' case, My Lord, to which the Court was referred to at the previous
30 application, that the Court cannot itself strike out....

BY MR. JUSTICE BEKKER :

Construing them in one, you say it does not

amount to a conspiracy setting out (a) to (f) as the individual aims of the conspiracy, they are all in the alternative?

BY MR. NICHOLAS :

5 Yes, My Lord.

BY MR. JUSTICE BEKKER :

What would have been the position if it had been conjunctive?

BY MR. NICHOLAS :

10 Then, in our submission My Lord, we would still have been embarrassed because if it had been set out conjunctively, no doubt the Crown would still argue that if it proved only a portion of the conjunctive allegation, that would constitute high treason and.....

15 BY MR. JUSTICE BEKKER :

Which portion? Assuming the Crown should prove (a), (b) and (c), but not (d), (e) and (f).

BY MR. NICHOLAS :

Then it would claim a conviction.

20 BY MR. JUSTICE BEKKER :

Now if the Crown failed in proving (a), (b) and (c), but proved (d), (e) and (f), it could not claim a conviction?

BY MR. NICHOLAS :

25 As Your Lordship pleases. It would claim it, My Lord, but in our submission they wouldn't be entitled to it.

BY MR. JUSTICE BEKKER :

30 Assuming the Crown claimed and assuming the Court upheld your contention, that inasmuch as (d), (e) and (f) are not suggestive of violence, there is no treason. How would prejudice arise?

BY MR. NICHOLAS :

My Lord, there are allegations in a charge which are irrelevant to prove the charge.

BY MR. JUSTICE BEKKER :

5 Is that the only ground of prejudice?

BY MR. NICHOLAS :

My Lord, it is a very substantial ground of prejudice.

BY MR. JUSTICE BEKKER :

10 We can analyse the scope of the prejudice later on, but is that the only prejudice which you suggest?

BY MR. NICHOLAS :

My Lord, the other prejudice is the fact that the other overt acts alleged are alleged to have been in
15 pursuance of the conspiracy. Now which part of the conspiracy, My Lord? Of the innocent part or of the guilty part? My Lord, in my submission it is a very great prejudice to the Accused and a great inconvenience to the Court, that
20 months should be spent on listening to evidence, considering and weighing evidence, in support of allegations which are legally irrelevant, and can be seen to be legally irrelevant
at this stage.

BY MR. JUSTICE BEKKER :

But in any event, these considerations would
25 only arise if (a) to (f) happen to be conjunctive.

BY MR. NICHOLAS :

Your Lordship is regarding this now from the end of the case. But during the case evidence ^{will be} ~~was~~ led on all these things, and the prejudice is arising ~~all~~ the
30 time. My Lord, my submission in regard to sub-paragraphs (a), (b) and (c) is a somewhat different submission. The submission here, My Lord, is that the Crown in using these

large and general words has really told the Accused nothing if means are disregarded, - if the means in paragraph 4 of Part B are disregarded, if they are regarded as irrelevant.

5 BY MR. JUSTICE BEKKER :

Shouldn't you in that event have asked for particulars as to what was meant?

BY MR. NICHOLAS :

10 With respect no, My Lord. If I may just develop the point. These words in sub-paragraphs (a), (b) and (c) are not descriptive of acts but are descriptive of the consequences of acts. My Lord, there can be no act of overthrowing the state or subverting the state. There can only be that consequence which follows as a result from
15 successful warlike operations. The acts My Lord, are the warlike operations.

BY MR. JUSTICE BEKKER :

Aren't we getting back to this position : The means don't matter, if the parties agree we are going to
20 overthrow the state without having settled the means, then that would be a treasonable conspiracy.

BY MR. NICHOLAS :

With respect, no, My Lord. If means are to be disregarded, My Lord - might I suggest this example....

25 BY MR. JUSTICE RUMPF :

As long as they employ - as long as the terms of that conspiracy employ force.

BY MR. NICHILAS :

30 My Lord, may I just suggest. Might I ask the rhetorical question, would it be a sufficient Indictment to allege that the Accused conspired together to commit treason, with hostile intent? In my submission, My Lord,

clearly not. That doesn't inform the Accused of the nature of the case which they have to meet.

BY MR. JUSTICE RUMPF :

But it discloses an offence.

5 BY MR. NICHOLAS :

My Lord, it doesn't sufficiently allege an offence in terms of the Code.

BY MR. JUSTICE BEKKER :

I suppose one is not to draw a distinction
10 between an agreement on the one hand and an agreement to be arrived at by way of inference on the other hand. But assuming three persons get together and they solemnly agree that we are going to commit high treason. Nothing more is said.

15 BY MR. NICHOLAS :

Then in my submission that wouldn't constitute a crime.

BY MR. JUSTICE BEKKER :

Why not?

20 BY MR. NICHOLAS :

Because, My Lord, it is a matter so vague - it is an agreement completely without terms, My Lord. If I could put it this way, in a declaration in a civil case the plaintiff and the defendant entered into an contract of
25 sale, wherefore the plaintiff claims payment of the sum of £,5000. My Lord, with submission, an agreement which has no terms, which is of such wide import merely to commit high treason, cannot be a sufficient charge.

BY MR. JUSTICE BEKKER :

30 I have some difficulty here, Mr. Nicholas. Assuming you get a number of persons, with the necessary hostile intent, saying, we are not satisfied with the present

form of state, let us take steps to overthrow this state. As to the means, we will decide upon that later, but initially how do you all feel about it? And they are all agreed that they will now direct their energies towards
5 devising ways and means to overthrow the state. Wouldn't that be a treasonable conspiracy?

BY MR. NICHOLAS :

Our submission, My Lord, - not apt words to use in this context - but such an agreement must, My Lord,
10 be void for vagueness. The parties haven't undertaken any obligation with regard to one another.

BY MR. JUSTICE BEKKER :

Yes, but it is the evil intent as manifested by the overt act, the overt act here being to overthrow the
15 state.

BY MR. NICHOLAS :

My Lord, in my submission it isn't manifested, by an agreement of such a vague nature 'Let us commit high treason'.

20 BY MR. JUSTICE BEKKER :

Need the agreement be definite as long as there is an agreement?

BY MR. NICHOLAS :

My Lord, with respect, until the terms have been
25 agreed upon, until the means to be undertaken have been decided upon, it is really still in the sphere of consultation. It is not an agreement.

BY MR. JUSTICE RUMPFER :

I think - I am under the impression that Mr.
30 Trengove quoted some authority which is reflected in the judgment of the Court. Means don't matter.

BY MR. NICHOLAS :

My Lord, means don't matter if there is a distinct treasonable act alleged, but our submission is, My Lord, that an agreement in these wide terms - it can't with
5 respect be called an agreement. Because neither of the parties knows what is to be done.

BY MR. JUSTICE RUMPF :

But they have agreed on the object.

BY MR. NICHOLAS :

10 Not even that, My Lord. They have agreed to commit high treason.

BY MR. JUSTICE BEKKER :

We, with hostile intent, being dissatisfied with the present form of state - the parties agree that they are
15 going to devise ways and means to overthrow a state. That is the full term of the agreement.

BY MR. NICHOLAS :

That is what happened in Labuschagne's case. They met together under an implied agreement to discuss ways
20 and means of attacking a military camp.

BY MR. JUSTICE RUMPF :

I wouldn't like to say that an agreement to commit treason is sufficiently clear - a sufficiently clear agreement. But if there is an agreement to destroy the
25 state or terms to that extent to overthrow the state. In other words, implying force, the use of force.

BY MR. NICHOLAS :

But, My Lord...

BY MR. JUSTICE RUMPF :

30 What is vague about that?

BY MR. NICHOLAS :

My Lord, the commission of high treason involves

the use of force in itself. My Lord, we submit that what the Crown has done here is really to allege in effect that the Accused conspired to commit high treason. Because, My Lord, they said "conspired to subvert, overthrow and destroy 5 the state". Those are the words which are the definition of high treason. They haven't added anything, My Lord, by saying that that was the conspiracy, or that there was a conspiracy to "disturb, impair or endanger the State".

BY MR. JUSTICE KENNEDY :

10 But isn't any manifestation of the hostile intent treasonable?

BY MR. NICHOLAS :

My Lord, in the case of an agreement, if an agreement is reached, that constitutes treason, yes. But if 15 it doesn't reach, My Lord, the form of what can be called an agreement, in which the parties undertake to do things, it cannot in our submission amount to a treasonable conspiracy. It is too vague.

BY MR. JUSTICE RUMPF :

20 In it an incoate agreement. When does it become coate?

BY MR. NICHOLAS :

When the parties agree, My Lord on measures.

BY MR. JUSTICE RUMPF :

25 Why?

BY MR. NICHOLAS :

Because, My Lord it is too vague before that stage.

BY MR. JUSTICE RUMPF :

30 But it is not vague. Let us put it this way, it may be vague in regard to the means, but there is no doubt about the overt act manifesting the intention. The

agreement has been reached that treason will be committed. That is a definite agreement. I'll go further and say they sign an oath, a blood oath.

BY MR. NICHOLAS :

5 To commit treason?

BY MR. JUSTICE RUMPF :

Yes, just to add a little bit of atmosphere to it. But there is no agreement as to the method. The parties are going to treat this matter in instalments. They convene
 10 a meeting, at which the parties are - at which the parties discuss whether all the parties present are against the Government and against the present existence of the state. And they all agree that the state must go. And they all agree that it ~~must~~ go by force. But, in view of the modern
 15 developments in regard to science and so on, they prefer to wait a bit to see what are the latest weapons they may use. And because this is a very serious matter, they say you will have to sign with your own blood, and all that. And they reduce it to writing, and they agree that the state must go,
 20 and that they will meet again finally to agree upon the methods in a week's time. Do you say that is not an agreement?

BY MR. NICHOLAS :

No, My Lord, it is just a contract to enter
 25 into a contract which has no effect. There is an agreement that they will negotiate a contract in the future.

BY MR. JUSTICE RUMPF :

You may be right when you refer to the civil law and say that when I agree with my neighbour to sell my house
 30 without stipulating the price there is no agreement. But that is not treason, that is not the test for treason, is it? That would be an agreement. I definitely undertake to sell

my house to my neighbour, but no price is fixed. Well, that is not an enforceable agreement. But it is an agreement showing - manifesting the intent to sell.

BY MR. NICHOLAS :

5 My Lord, when the agreement is in vague and general terms, like we agree to commit high treason, in our submission, My Lord, if Your Lordship will bear with me - we have reached an irreconcilable position from this but....

10 BY MR. JUSTICE RUMPF :

How do you mean we have reached an irreconcilable agreement?

BY MR. NICHOLAS :

Your Lordship says that does sufficiently
15 manifest a hostile intent, and I say that it doesn't.

BY MR. JUSTICE RUMPF :

No, only at the time of judgment will we have reached either a reconcilable or irreconcilable agreement. We are only putting our difficulties to you.

20 BY MR. NICHOLAS :

My Lord, with the greatest respect, would Your Lordship allow me to take that as the starting point and develop the argument a little bit further, and then perhaps this difference may cease to be important.

25 BY MR. JUSTICE RUMPF :

On the question of this agreement, that the agreement to commit treason - I'll go to the extreme that you put it - is not an agreement constituting treason, have you got any authority for that?

30 BY MR. NICHOLAS :

Only the authority of silence, My Lord, that there is no authority that says there is - that says that it

is treason.

BY MR. JUSTICE KENNEDY :

Doesn't Leibbrandt's case - didn't it say that a conspiracy in those terms was a treasonable act?

5 BY MR. NICHOLAS :

Yes, My Lord, a conspiracy in the terms set out there in that case.

BY MR. JUSTICE KENNEDY :

A conspiracy to commit high treason is
10 treasonable.

BY MR. NICHOLAS :

My Lord, the conspiracy in the Leibbrandt case was the blood-oath which was set out on page 265. But, My Lord, we submit My Lord that it would not be a sufficient allegation of a treasonable conspiracy to say that
15 the Accused conspired to commit treason. We submit, My Lord, that in (a), (b) and (c), the Crown has done nothing more than that, because instead of using the words "high treason", it has set out the words of the definition of
20 high treason. So that it hasn't really in (a), (b) and (c) set out the nature of the conspiracy. But it has, My Lord, set it out in paragraph 4. The nature of the agreement, My Lord, appears from paragraph 4. Your Lordship will see that the first sub-paragraph (i) is just repetition of what is set out in paragraph (a), in slightly
25 different words. Because in paragraph (a) it says that they did commit high treason "in that they disturbed, impaired, endangered the existence, attempted or actively prepared", and then they say in Part B that they conspired
30 together to do those things, which are merely words descriptive of treason. But My Lord, there is an agreement alleged in this case. There is an agreement to commit

high treason, by doing the acts set out in paragraph 4.
So that the Crown does here allege, not a vague agreement,
but an agreement with terms.

BY MR. JUSTICE KENNEDY :

5 Again I am trying to clarify the position.
Would you care to take 290, Leibbrandt's case? What is
the meaning of the quotation there? Isn't it contrary to
what you are now saying?

BY MR. NICHOLAS :

10 No, My Lord, with respect, in Mulcay's case
the problem was whether conspiracy may be an overt act of
treason. And it said that there are many authorities which
establish that it is a sufficient allegation. It is a mis-
take to say that conspiracy rests in intention only. It
15 cannot exist without the consent of two or more persons,
and their agreement is an act in advancement of the inten-
tion which each of them has conceived in his mind. But
that doesn't deal with the nature of the agreement, My
Lord. That doesn't say that an agreement to commit high
20 treason is a sufficient treasonable conspiracy.

BY MR. JUSTICE KENNEDY :

Does it not?

BY MR. NICHOLAS :

If Your Lordships would refer to the judgment,
25 to the authorities that were there relied on, one of them
was Roscoe on Evidence. I read, My Lord, from page 1138
"Where the act itself which is the object of the conspiracy
is illegal, it is not necessary to state or prove the means
agreed on or pursued to effect it". Here My Lord, there is
30 no act alleged, there is only a consequence of acts alleged.

BY MR. JUSTICE RUMPF :

Well, the act - what is alleged here is an

agreement to overthrow the state. Now, such an agreement if implying the use of violence, is illegal.

BY MR. NICHOLAS :

My Lords, a conspiracy to perform acts which
5 result in the overthrow or tends to the overthrow is illegal. In our submission one cannot stop short of the act. The act is an essential part of the agreement.

BY MR. JUSTICE KENNEDY :

Well, isn't the formation of the conspiracy
10 there?

BY MR. NICHOLAS :

No, My Lord. What is the act which the parties conspire to do?

BY MR. JUSTICE BEKKER :

Do you suggest that if the parties agree to
15 overthrow the state, that is a conspiracy?

BY MR. NICHOLAS :

Yes, My Lord.

BY MR. JUSTICE BEKKER :

But, they say we are not going to use violence,
20 we are going to use the ballot box. That wouldn't be a conspiracy?

BY MR. NICHOLAS :

That wouldn't be a conspiracy.

25 BY MR. JUSTICE BEKKER :

Well now, if it is conceded that paragraph (a) - or implicit in paragraph (a) is the use of violence lurking in the phrase, that excludes the ballot box. That means this type of agreement is illegal?

30 BY MR. NICHOLAS :

It means, My Lord, there is implicit in this that forcible means are to be used. My Lord....

BY MR. JUSTICE BEKKER :

Now if the parties agree we are going to overthrow the state by forcible means, wouldn't that be sufficient ?

BY MR. NICHOLAS :

With respect, no, My Lord.

BY MR. JUSTICE BEKKER :

The means being agreed upon, being forcible means?

BY MR. NICHOLAS :

My Lord, that only gives the quality to the means. It still doesn't define the act which the parties are to do. My Lord, might I just continue....

BY MR. JUSTICE RUMPF

I am sorry, just before you go on, may I just take you to the English law. Assume that two people conspire to kill X on the 1st October, but the means are not agreed upon. Would that not under the English law be a conspiracy?

BY MR. NICHOLAS :

I suggest it would My Lord.

BY MR. JUSTICE RUMPF

Why?

BY MR. NICHOLAS :

Because there is the conspiracy to do an illegal act, namely to kill a human being, and there is an act agreed upon, My Lord, the killing of a human being.

BY MR. JUSTICE RUMPF

Here the act that is alleged is the destruction of the state.

BY MR. NICHOLAS :

With respect, My Lord, that isn't an act. It is the consequence of action. One can't overthrow the state

like a table.

BY MR. JUSTICE BEKKER :

To agree to kill a person, doesn't involve an act.

5 BY MR. NICHOLAS :

My Lord, killing is an act.

BY MR. JUSTICE BEKKER :

But to agree to kille a person?

BY MR. NICHOLAS :

10 It is an agreement to perform an act.

BY MR. JUSTICE BEKKER :

What is the difference between an agreement to kill a man and an agreement to overthrow the state?

BY MR. NICHOLAS :

15 Because, My Lord, with submission, there is no agreement as to the acts to be committed. We are not concerned with means, My Lord, but the acts to be committed.

BY MR. JUSTICE BEKKER :

20 Well, the act to be committed in the one case is the killing of a human being, and the act to be committed in the other case is the overthrowing of the state?

BY MR. NICHOLAS :

But My Lord, "overthrow" is a metaphorical description of a consequence.

25 BY MR. JUSTICE BEKKER :

But killing a person is both the act and the result of the act?

BY MR. NICHOLAS :

30 Because, My Lord, an act by definition on the juris prudential writers, an act can't be separated from the circumstances and its consequences.

BY MR. JUSTICE BEKKER :

But the killing is also a result of the act.

BY MR. NICHOLAS :

It is a consequence, My Lord. And the whole conglomerate is the act. My Lord, might I just refer to the judgment, page 1138, the passage from Roscoe : "Where the act itself which was the object of the conspiracy is illegal, it is not necessary to state or prove the means agreed on or pursued to affect it." There an act is in contemplation. In East's Pleas of the Crown : "But suppose a conspiracy to levy war, and a plan of operation settled, and those to whom the execution was committed afterwards see occasion to vary, then it doesn't matter." There, My Lord, there is a conspiracy to perform an act, "to levy war". But a conspiracy to commit treason, My Lord, it not a conspiracy to commit acts.

BY MR. JUSTICE RUMPFER :

Your submission is that the Crown should in a case like this, if it relies on this only, in its Indictment, it should allege either that the agreement was to kill the sovereign, blow up parliament, or any of the other various varieties of treason, which in law might be described as having the effect of overthrowing the state.

BY MR. NICHOLAS :

As Your Lordship pleases. And My Lord, the Crown has in this case attempted to do that. In paragraph 4.

BY MR. JUSTICE RUMPFER :

I think an analogy on the crime of murder in your favour would be if the Crown alleged that certain two Accused, in the English law, conspired to commit patricide, and just that, without specifying the particular father

concerned.

BY MR. NICHOLAS :

Yes, My Lord. But My Lord, one could get an analogy in this case. Could it ever be a proper indictment
5 on a charge of murder to say that the Accused did kill -
My Lord, take the conspiracy where an Accused is charged under the Riotous Assemblies Act, of conspiring to kill and murder, "the Accused did conspire to kill and murder a human being". Could that be a sufficient indictment?

10 BY MRL JUSTICE RUMPF :

Well, except that "the State" here, in capital letters, can mean only one State, doesn't it?

BY MR. NICHOLAS :

Yes, My Lord, but it does in my submission lend
15 support to the suggestion My Lord that there must be some clarity. It can't be left in the vague terms of a legal definition. But My Lord, the Crown has attempted in paragraph 4 to set out the acts which the Accused conspired to do, and which they intended to have these effects of over-
20 throwing the state. Then My Lord, the question arises whether the acts which are set out in paragraph 4, are not ! legally irrelevant to that consequence. Whether the acts agreed upon are incapable of producing that consequence. Because, My Lord, the acts alleged are not acts involving
25 force or violence. My Lord, again to refer to paragraph 4 of the Indictment, the attention of Your Lordships ^{has} have already been drawn to the fact that the means set out in paragraph 4, or the words describing the means in paragraph 4 are substantially, almost completely, identical with the
30 effect of the act set out in Parts C and D. The words are taken over from paragraph 4 in Part B, almost verbatim into Parts C and D. Now My Lord, it is our argument that if the

Crown has in Parts B and D correctly described the effect of the speeches and documents, accepting that that description is correct, the speeches and documents, the great majority of them, cannot be overt acts of treason, for the
 5 reason that they do not involve the use of force against the state, or incite to the use of force against the state. My Lord, this portion of the argument is really two arguments concertinaed into one. I will be arguing at one and the same time, because of the identity between paragraph 4 in
 10 Part B and D, I will be arguing at the same time that these alleged means were not treasonable means, and that the acts committed were not treasonable acts.

BY MR. JUSTICE KENNEDY :

Are you going to take us through all speeches...

15 BY MR. NICHOLAS :

No, My Lord, unless Your Lordships invite me to do so.

BY MR. JUSTICE KENNEDY :

Will it not be necessary to do so?

20 BY MR. NICHOLAS :

With submission not, My Lord. My submission is My Lord, that Your Lordship can reach a conclusion on the principle involved here on the basis of what the Crown has alleged in paragraphs 4 of Part B and D. That Your
 25 Lordship, by accepting the Crown allegations as they stand, in Part C, "^{inabna}extorting and encouraging people to attend the Congress of the People", that Your Lordships can say, without looking at the speech which has that effect, that such speeches do not constitute an incitement to force or
 30 violence. And our submission, My Lord, is that it won't be necessary to take the Court through every speech. What we propose to do, My Lord, subject to Your Lordships not

indicating or directing otherwise, is to treat the matter as one of principle. We have, My Lord, taken out from Parts B and D samples of speeches to examine, but My Lord, we don't propose unless invited to do so, to start at 5 page 1 of each of the Schedules and go through and discuss each speech.

BY MR. JUSTICE KENNEDY :

Is it your submission that we can get a true position, by the examples which you are going to give to us.

10 BY MR. NICHOLAS :

We'll get a true position, My Lord, by taking the Crown's allegation at face value, the Crown's allegation as to the effect of the speeches at its face value, and my submission is that if the Court does that, it will, with 15 respect, come to the conclusion that the great majority of speeches and documents can't be treason. But we are, My Lord, of course prepared to go through the whole of the Indictment.

BY MR. JUSTICE RUMPF :

20 Yes, but if that is the broad submission that the great majority of those speeches do not employ the use of force or incitement, then as such you can leave that, apart from the principle of the matter. If the Crown then wishes to suggest that they do so, the Crown can point out 25 such speeches as it wishes.

BY MR. NICHOLAS :

My Lord, taking it My Lord from paragraph 4 of Part B, sub-paragraph (i), "the aims purposes and objects were to be achieved by sponsoring, organising and 30 preparing for and convening a gathering persons known as the Congress of the People for the adopting of the Freedom Charter". I pause there, My Lord, It is possible, My Lord,

that the organisation of a seditious gathering, of a gathering which is to commit acts of violence may be a treasonable act. The Crown has not alleged that this gathering was to be a gathering with such a purpose, or
 5 that it was in any way to be used for the purpose of forcible action. As the allegation now stands, it was a gathering, like any other political gathering, and no sinister purpose at the gathering itself is in any way suggested. My Lord, it is quite clear, in our submission,
 10 from what is contained in the Indictment and the Schedules, that the Congress of the People was in fact nothing like a seditious gathering.

BY MR. JUSTICE KENNEDY :

Doesn't the Crown allege that it was part of
 15 the conspiracy?

BY MR. NICHOLAS :

It alleges, My Lord, that the calling of this gathering was one of the means by which the overthrow of the state was to be achieved.

20 BY MR. JUSTICE KENNEDY :

It was the means whereby the conspiracy....

BY MR. NICHOLAS :

Yes, My Lord, and our submission is that unless the means are forcible means, they are incapable of being
 25 treasonable means. My Lord, the Crown version of what happened at the Congress of the People is set out in Part E of the Indictment, where it is said that "in pursuance of the said conspiracy and with hostile intent and in order to bring into effect to implement the aims, purposes and
 30 objects enumerated in Part B above, did attend a gathering of persons known as the Congress of the People held at Kliptown in the district of Johannesburg on the 25th and

26th of June, 1955, for the adoption of a Freedom Charter, participate in the said gathering, and then and there draft and adopt such Freedom Charter, a copy of which is attached hereto marked Schedule E, and pledge themselves

5 to work together and campaign for the achievements in their lifetime of the demands set forth in the Freedom Charter".

Now My Lord, the Freedom Charter is set out in Schedule E to the Indictment. That My Lord, is a document which sets out the political principles which were adopted at the

10 Congress of the People at Kliptown. I don't propose to read it, My Lord, but in our submission it is merely a document of political aims and principles, no different in kind from a document embodying the political aims and principles of other political parties. There is not in it,

15 My Lord, any suggestion of sedition or violence or force. My Lord, the Court has before it in the Indictment the resolutions passed at the meeting. That appears in Schedule D and page 117. The last document on that page, My Lord, is a roneod document which is said to be a resolution

20 adopted at the Congress of the People at Kliptown, Johannesburg, on the 25th-26th June, 1955. "We who have come from every corner of our land, chosen by our people to meet together in this great assembly believe that the Freedom Charter we have adopted contains the true and just desires

25 of the overwhelming majority of the South African people. We proclaim that in this land where the mass of the people own nothing and know only poverty and misery, this Charter will become the most greatest possession of all who are oppressed and of all who love liberty. Wherever there are

30 people living or working together, they must be told of this great Charter, so that they may see and understand the sweeping changes that will come from their everyday

struggles against indignity, inequality and injustice. We declare that all true sons and daughters of South Africa will work from this day on to win the changes set out in the Freedom Charter. Those who are in the forefront of the struggle will forever hold an honourable place in our history. Those who work against it will be isolated and scorned. We pledge that when we return from here to our homes, we will at once make known to all our neighbours and workmates what we have done here, and we will win support for the Freedom Charter. We pay tribute to the African National Congress, South African Indian Congress, South African Congress of Democrats and South African Coloured Peoples' Organisation for the services that they have rendered to South Africa in starting and organising the campaign for the Congress of the People and the Freedom Charter. Those bodies must continue to work together and campaign for the achievement of the demands of the Charter and to get the Freedom Charter endorsed and accepted by all democratic organisations and people". My Lord, the Charter, in our submission, is simply a statement of political beliefs and aims and the resolution amounts to nothing more than a decision to publicise the Charter. My Lord there were speeches made at the Congress of the People. They are contained in Schedule C.

25 BY MR. JUSTICE KENNEDY :

Have you got specific references to all of them? Would you mind giving them to me?

BY MR. NICHOLAS :

Yes, My Lord, they are in Schedule C in pages 30 115-119. My Lord, on pages 115-119 are set out Schedules - are set out innumerable acts, so the Crown alleges, of treason. Innumerable overt acts. Because, My Lord, not only

has each speaker, according to the Crown, committed an overt act of treason, but everybody who was present at the meeting and associated himself with every speech, and byso doing he committed an overt act of treason. My Lord,

5 the treason that was committed that day, according to Schedule C are the following : N. T. Naicker - and the Crown says in its preamble to Schedule C that it sets out the relevant portions of the speeches, gives their effect --

"N. T. Naicker moved and spoke on the first clause of the

10 Freedom Charter, extract of speech quoted hereinafter."

"Dr. Letele moved and spoke on the second clause of the Freedom Charter. B. Turok moved and spoke on the third clause of the Freedom Charter, extract of speech quoted hereinafter. Tshunungwa moved and spoke on the fourth

15 clause of the Freedom Charter. Kathrada moved and spoke on the fifth clause of the Freedom Charter, extract of speech quoted hereinafter. Masina moved and spoke on the seventh clause of the Freedom Charter. Mapelela moved and spoke on the eighth clause of the Freedom

20 Charter, extract of speech quoted hereinafter. H. Joseph moved and spoke on the ninth clause of the Freedom Charter. Dr. Conco spoke at the Congress of the People and supported the Freedom Charter. Chamile spoke at the Congress of the People and supported the Freedom Charter.

25 Resha spoke at the Congress of the People and supported the Freedom Charter.." and so on, with Bayleveld and so on. And then, My Lord, the speeches begin on page 116. And unknown speaker said "Today I see delegates around me who have gathered from the four corners of the Union to draw a

30 Freedom Charter as a mighty weapon, uniting all the democratic forces in the country in the noble struggle to defeat the evil forces of racialism and oppression and

for the betterment of all in South Africa, the people of South African, ensuring peace, freedom and human life, better and higher living conditions and unbounded social activities for all the people, both White and non-White."

5 BY MR. JUSTICE KENNEDY :

I only wanted, at this stage, the reference to the speeches.

BY MR. JUSTICE RUMPF :

10 What do you suggest is the meaning of the part of the speech at page 117? Column 4. Msumi, with a question mark, is the speaker, at page 117.

BY MR. NICHOLAS :

15 Yes, My Lord. "They think that they are the only people created by God to come and rule the people of South Africa. It is not like that. It is now time that the people should take over."

BY MR. JUSTICE RUMPF :

What does that mean?

BY MR. NICHOLAS :

20 It is now time, My Lord, that the people who have no say in the government should be able to take a say in the government and the administration of the country.

BY MR. JUSTICE RUMPF :

25 But, "It is now time that the people should take over". Take over what?

BY MR. NICHOLAS :

30 I should think, My Lord, take over the government. And he expresses the view, My Lord, "that the time has now come" when the people without votes and without rights should take over. But that is a view which he is entitled to express. That is no stronger, My Lord, than the language which was used in Roux's case.

BY MR. JUSTICE RUMPF :

But isn't it an implication of force?

BY MR. NICHOLAS :

My Lord, it is not an incitement, with
5 respect, to anybody to use violence. It shows that the
speaker may have in his mind the use of force at some
stage.

BY MR. JUSTICE RUMPF :

But isn't it an incitement? Could it not be
10 incitement?

BY MR. NICHOLAS :

With submission, no, My Lord. It is not
incitement to anybody to do anything.

BY MR. JUSTICE BEKKER :

15 It may be an incitement, but is it an incite-
ment to the use of violence?

BY MR. NICHOLAS :

It is an expression of opinion, at this stage.
It is not an incitement to anybody to do anything.

20 BY MR. JUSTICE RUMPF :

Here at the bottom of page 119, the last para-
graph. "I am not asking you to kill the snake", meaning
thereby the European population of South Africa - "I am
saying this that if we all join together, we will make the
25 snake so afraid that he will hide in his hole and die there
of hunger."

BY MR. NICHOLAS :

That is a complete absence of violence, My
Lord. It is a Native term.

30 BY MR. JUSTICE RUMPF :

This apparently was not said at the Congress
meeting, but at the top of page 120. There Jack is alleged

to have said at Port Elizabeth "The day is still coming when the African will fight the Dutch people by any means they may choose, but at the People's Conference in Johannesburg the decision was taken by South African people as a whole."

5 You say this doesn't necessarily mean fighting by force?

BY MR. NICHOLAS :

No. My Lord, there are speeches which may be construed as incitement to violence....

BY MR. JUSTICE RUMPFER :

10 I was only looking at the speeches at the Congress, because we are only concerned with those at this stage.

BY MR. JUSTICE KENNEDY :

15 What is your interpretation of Selepe's speech at page 119? Is there no incitement to violence there?

BY MR. NICHOLAS :

My Lord, I myself have difficulty in detecting it. Perhaps Your Lordship would indicate where the violence lies.

20 BY MR. JUSTICE KENNEDY :

No, I am not trying to indicate where it lies. Is there no suggestion that the struggle to drive the enemies away from us, may contain incitement or of violence?

BY MR. NICHOLAS :

25 My Lord, with respect, My Lord, when one talks of an incitement to violence, it is an incitement, an instigation to people to do something, now or in the near future. To prophesy My Lord that a time may come when violence will have to be used, is in my submission not an incitement to
30 violence. If it were, My Lord, very few of the politicians in this country would avoid a charge of that nature.

BY MR. JUSTICE RUMPF :

It may be. It entirely depends on how the speech is made.

BY MR. NICHOLAS :

5 My Lord, one can discuss theoretically the possibility of violence, but My Lord, in our submission, unless there is an incitement to violence, unless the discussion leaves the realm of ideas and of opinions and moves over into action, it is not treason. We have a right to
10 speak freely, My Lord, we have the right to warn of the consequences of a continued policy of oppression. But we have no right to say "attack, be violent, use force". The latter may be treason, My Lord, but to discuss, to prophesy, to predict, in our submission, never can be treason.

15 COURT ADJOURNS.

COURT RESUMES.

BY MR. NICHOLAS :

My Lord, at the adjournment, I was dealing with the Congress of the People and the Freedom Charter, and
20 referred to the speeches in Schedule C, and we submit in regard to that that the gathering of the Congress of the People was perfectly lawful; that it was within the limits of the constitutional freedom of assembly and speech; and that nothing associated with that gathering, that lawful
25 gathering could be a treasonable act, and an agreement to have such a gathering could not be a treasonable act.

BY MR. JUSTICE BEKKER :

Mr. Nicholas, may I just interrupt you for a moment. I would like to get to the basis of this submission.
30 Are you addressing us on the basis now that even although (a), (b) and (c) of Part B.1 of the Indictment may carry the implication of the use of violence in it, that that is

insufficient, because these are the consequences and not the acts. Assuming that inasmuch as (a), (b) and (c) is suggestive of violence, and for that reason a conspiracy to, for example, overthrow the state, is a sufficient allegation supporting supporting an overt act of high treason. Would that effect your argument? And if so, in what way?

BY MR. NICHOLAS :

My Lord, if there were merely an allegation that there was an agreement to overthrow the state, without any means, without any of the agreed means being set out, it might be, My Lord, - though I don't concede it - it might be that there is an allegation of a treasonable conspiracy. But my submission is, My Lord, that treason can take so many forms, that the overthrow of the state can be done by so many acts of so many different kinds, that the mere agreement in those wide and general terms....

BY MR. JUSTICE BEKKER :

I am afraid I haven't made myself clear. You have submitted that a conspiracy to subvert, overthrow and destroy the state is not sufficient?

BY MR. NICHOLAS :

As Your Lordship pleases.

BY MR. JUSTICE BEKKER :

Assuming it is held that that in itself is sufficient, it is a treasonable overt act, how, if at all, would this affect your present submission? That is what I want to know.

BY MR. NICHOLAS :

Then, My Lord, I would say that there is an inconsistency between the agreement to overthrow the state, and the means which the Crown alleges were agreed upon to effect that purpose.

BY MR. JUSTICE BEKKER :

Because the means do not bear out the allegation or inference of violence?

BY MR. NICHOLAS :

5 And for another reason also, My Lord, that the Crown does not base itself here upon direct evidence as to agreement. It bascs itself on inference, from circumstances. And the circumstances are the employment of these very means.

10 BY MR. JUSTICE BEKKER :

And that would lead - that is irrespective of the submission you are making presently on (c) and (d)?

BY MR. NICHOLAS :

15 As Your Lordship pleases. My Lord, the submission is that the Congress of the People, that everything that lead to it, and all of the implementation of it was within the constitutional freedoms, and is incapable of constituting an act of high treason.

BY MR. JUSTICE KENNEDY :

20 Does that apply, Mr. Nicholas, to all these - sponsoring, the organising, the preparing for and the convening?

BY MR. NICHOLAS :

25 The whole of it, My Lord. The My Lord, the next part of paragraph 1 says that the aims, purposes and objects should be achieved by taking active steps for the - My Lord, I should have made reference - I should have stopped a little earlier. I should have taken paragraph 1 firstly up to "for the adoption of the Freedom
30 Charter" and then dealt separately with "propagating and actively implementing the aims of the Freedom Charter" which is the second stage. We submit in regard to that,

My Lord, that to "propagate a statement of political aims, and the "Freedom Charter" is no more than that, containing no suggestion of unlawful means, cannot be treason. So far as "actively implementing" is concerned, there is no
5 suggestion that it was agreed that such active implementation should involve the use of force. If the Crown means to allege force, in our submission, it must do so. The My Lord, the next means is "taking active steps for the establishment of a Communist state in the form of the
10 so-called People's Democracy" or People's Republic or some related form of state flowing from an implementation of or founded on the doctrine known as Marxism-Leninism." Now the active steps, My Lord, which it is alleged the accused agreed to take are not set out, but
15 it is not set out that those active steps were to be forcible steps.

BY MR. JUSTICE RUMPF :

What was the Crown's reply here? Didn't you ask....

20 BY MR. NICHOLAS :

Yes, and they said we didn't need to be told, My Lord. My Lord, it cannot be suggested that any steps taken towards the establishment of a new form of state is treason and it is unhelpful to be told that the Accused
25 conspired to establish a Communist state by taking active steps towards the establishment of the Communist state. The steps are not identifiable as treasonable steps, and it is not even clear, My Lord, from this allegation whether there is a contravention, whether contraventions of the
30 Suppression of Communism Act are intended. Here there is no allegation either of force or of illegality. The My Lord, sub-paragraph (ii) - "organising and setting afoot

a campaign of recruitment and enlistment of a special militant corps of Freedom Volunteers, being a semi-military and rigidly disciplined body whose members were obliged to take an oath or solemn pledge to carry out the instructions, 5 legal or illegal, of the leaders of the associations of persons or corporate bodies set forth in Schedule A, furthermore recruiting persons as Freedom Volunteers and administering the said oath or pledge to such persons." Now My Lord, this might, if the Crown was prepared to make some 10 extra allegations, this might come very near to an act of high treason, if committed with hostile intent. If the Crown alleged, My Lord, that the objects of the Freedom Volunteers was to set up a military body - My Lord, the Crown wouldn't tell us what is meant by "semi-military", 15 whether it was guns or uniforms, but if it was intended to allege that this was to be a military body, that these were to be used as shock troops or as my learned friend Mr. Pirow suggested yesterday, that they were to be used as a band of assassins, then My Lord, it would be hopeless to 20 contend that to set up such a body, if its activities were to be directed against the state, was not a treasonable act.

BY MR. JUSTICE KENNEDY :

Has the Crown not said or alleged that this 25 special militant corps of Freedom Volunteers was - came into being to further the conspiracy which has already been set out?

BY MR. NICHOLAS :

This was one of the acts which were to be done 30 in terms of the conspiracy.

BY MR. JUSTICE KENNEDY :

What extra allegations would you suggest were

necessary to make this a proper allegation?

BY MR. NICHOLAS :

An allegation that this militant corps was going to use force, against the state. Or that it was to
5 be used to apply force, The Crown has alleged legal or illegal, but My Lord, there are many illegal acts which do not involve the use of force. If the Crown wants to make a case that the Freedom Volunteers were to be used - were to use force, then My Lord, our submission is that they
10 must apply to amend to make that case. If they want, My Lord, to allege that they were to be used as a band of assassins, then the submission is that that allegation must be made in the Indictment and not from the Bar.

BY MR. JUSTICE RUMPF :

15 Having regard to the allegation that this was a conspiracy to overthrow the state, by means - that is the allegation - by means of a semi-military body, disciplined and having taken an oath, doesn't that comply?

BY MR. NICHOLAS :

20 My Lord, with respect, an Indictment should clearly express the nature of the allegations. Accused persons shouldn't be asked to look for implications which might lie lurking My Lord, in the allegations which are made. If it is the Crown case, My Lord, that the Freedom
25 Volunteers were to be - were to use force, it is easy enough to say so, and then we know the case. But they don't say it, and we don't know the case. They don't - if they don't say it, this, with respect, is not a reasonable act. Then My Lord, the next....

30 BY MR. JUSTICE KENNEDY :

Would you give me some reference to any speeches in regard to the formation of the Volunteers?

BY MR. NICHOLAS :

My Lord, I can arrange to do that. I can't do it at this moment. But there are many, many, many of them. Then, My Lord, thirdly "instigating and inciting each other
5 to...."

BY MR. JUSTICE BEKKER :

Before you step off this, Mr. Nicholas, even if-this is a question which will have to be debated - even if the Freedom Volunteers with all its attributes, gives
10 rise to a suggestion of force, the allegation here is "organising and setting afoot a campaign for the recruitment and enlistment of such a body". Does that not negative the use of force at this stage?

BY MR. NICHOLAS :

15 As Your Lordship pleases. All they plan to do is recruiting persons and administering an oath or pledge. Of course, My Lord, in Leibbrandt's case it was held that an oath could constitute an overt act of treason, but there the oath was to overthrow the state. Here the oath is merely to
20 carry out the instructions, legal or illegal, of the leaders of the association.

BY MR. JUSTICE BEKKER :

What is the corresponding allegation in C in this regard?

25 BY MR. NICHOLAS :

"Inciting, encouraging, or calculating to persuade the people attending such meetings to support a campaign of recruitment and enlistment of a special militant corps of Freedom Volunteers, and themselves to join and enlist in such
30 corps, and to take an oath or solemn pledge to carry out the instructions". It does not allege that they incited anybody to use force or that the Freedom Volunteers were given

instructions to use force. My Lord, in sub-paragraph (iii) one finds violence for the first and only time in paragraph 4 of Part B. The word here, My Lord, is specifically used and one asks that^{if} the Crown intended to allege violence or force in the other paragraphs, why didn't it do so? Here the allegation is that they agreed to "instigate and incite each other, the persons mentioned in Schedule B and other persons, to make use of extra-parliamentary, unconstitutional and illegal methods, including the use of violence." My Lord, the terms "extra-parliamentary" and "unconstitutional" are in our submission terms of vague import which might cover a wide variety of conduct. My Lord, it is clear from the context here, in our submission, that the words are intended to cover a wide variety of conduct, because they are not restricted only to violence, but are to include the use of violence.

BY MR. JUSTICE KENNEDY :

What do you say about 4.C then?

BY MR. NICHOLAS :

My Lord, the submission here is, My Lord, that merely to say that they agreed to use extra-parliamentary and unconstitutional methods does not amount to treason. So far as the violence is concerned, My Lord, - illegal methods, My Lord, I make the submission that illegality by itself is not enough. It must be an illegality involving the use of force. Violence, My Lord, to constitute treason, must not only be committed with an intention to overthrow the state, but it must be directed against the state, in order to be treason. A man who imagined that he could overthrow the state by beating his wife, would not be guilty of treason, although he would be using force. Similarly, My Lord, persons who committed acts of hooliganism at

election meetings, and who broke up election meetings, although their aim might be to influence the candidates elected, and thence to change the form of state. My Lord, the violence which is contemplated by the law of treason
5 is violence against the state.

BY MR. JUSTICE BEKKER :

Taking paragraph 1, of B, together with paragraph 4, the present sub-paragraph, and condensing the allegations as follows : The Accused conspired with each other to over-
10 throw the state by the use of violence. Would that not be sufficient?

BY MR. NICHOLAS :

With submission no, My Lord. Violence still against whom? Against the army? It must be against the organisa-
15 tions of the state, against the army, against the police, against the civil service institution. Against what bodies, My Lord, were the Accused to use violence?

BY MR. JUSTICE BEKKER :

Well, against those bodies, on this Indictment, -
20 isn't it capable of being construed in this way, against whatever bodies violence must be applied in order to overthrow the state.

BY MR. JUSTICE RUMPF :

The Crown isn't - isn't it encumbant on the
25 Crown at this stage to interpret the agreements, if this is an allegation of the term of the agreement? If it said this is the conspiracy to overthrow the state by violence. Now the Defence says, you must say what the Accused agreed upon, what violence. Doesn't it speak for itself?

30 BY MR. NICHOLAS :

I concede of course that I am on unsure grounds in connection with this. But, My Lord, I make the submission

that the Crown should have been specific and should have alleged against whom violence was to be directed. With regard to Your Lordship's observation that the Crown is being asked to construe the agreement, My Lord, then if Your
5 Lordship will permit me, this is a matter which is dealt with in Your Lordships' judgment, but this agreement, My Lord, the words of this agreement set out in the Indictment, are not words chosen by the Accused. These words, My Lord, have been chosen by the Crown, as a matter of inference....

10 BY MR. JUSTICE BEKKER :

I think that there is one speech to which we were referred to where the words "violence, if necessary" are used.

BY MR. NICHOLAS :

15 Yes, My Lord, but it is still the terms of the agreement have been drafted by the Crown, and they say we are going to prove the terms of the agreement as drafted by us from the acts, speeches and writings of the Accused. But My Lord, when we say "including the use of violence", it is the
20 Crown who must tell us what is the inference that they draw from the speeches and writings of the Accused.

BY MR. JUSTICE KENNEDY :

Have they not told you? I haven't been through the Further Particulars. Have you not been told?

25 BY MR. NICHOLAS :

No, My Lord. We have been told what speeches are violent, My Lord, in some Schedules, what speeches the Crown contends are violent. But the Crown hasn't told us what the agreement was as regards the object.

30 BY MR. JUSTICE KENNEDY :

Is it not implicit that it was violence to be used in furtherance of the conspiracy? Violence to overthrow the

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