

MR. MAISELS:

May it please Your Lordships.

M'lords, I now propose to pass to a consideration of the policy of the African National Congress. Your Lordships are aware that the central issue in this case is the policy of the organisations and more particularly, of course, the policy of the African National Congress and I would like to remind Your Lordships of two passages in the record of this aspect of the matter.

The first is a passage in the judgment of Your Lordship Mr. Justice Bekker at the time of the application to quash the indictment and I refer to Page 26 of that judgment: Your Lordship said this:- (Quoting from an argument that I had submitted); This was my argument, m'lords:- "It is clear from the summary of facts, if anything is clear, that the basis of the case against the Accused is that they were members and supporters of organisations which - I am going to use a general term -

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"were revolutionary in object and because they knew and supported and played a prominent part in the activities of those organisations that they are said to have conspired to overthrow the State and it is therefore fundamental to the case to find out what the policy was and the facts upon which it is said for the Crown the organisations had those policies." Then Your Lordship proceeded: "I have no fault to find with this assessment of the situation or the submission as a whole. In fact, I share Counsel's view on that which is said to represent the basis of the case against the Accused."

Now, M'lords, in addition to that, Your Lordships will recall that at the opening of the trial proper, of the evidence, the Accused, after pleading, elected to make a statement in terms of Section 169 (5) of the Code and at page 138 - or at the foot of page 137 and the top of page 138 - the following passage appears:- "It has already become apparent during the preliminary stages of this case that the central issue is the issue of violence. While no admissions are made in regard to any of the Crown's allegations, the Defence case will be that it was not the policy of the African National Congress or of any of the other organisations mentioned in the indictment to use violence against the State. On the contrary, the Defence will show that all these organisations had deliberately decided to avoid every form of violence and to pursue their ends by peaceful means only. The Defence will rely for its contentions as to the policies of these organisations upon their constitutions, the resolutions taken by them at their conferences and the pronouncements of their responsible leaders. If necessary, these leaders will be called as witnesses for the Defence. The Defence will place before

"this Court the material relating to these organisations from which their policies might normally be expected to be deduced." And then we deal with certain speeches and we say:- "That insofar as such speeches were, in fact, made in the terms alleged, the Defence will say that they may have represented the notions of individuals but not the policy of the organisation." M'lords, that was the basis upon which this case has been fought by the Defence and in considering this issue we have begun by making certain submissions to Your Lordships as to what is meant by the policy of an organisation and we will consider in the argument to follow what sort of evidence is necessary to prove it and what sort of evidence has been presented in the present case. M'lords, it has been submitted that the policy of an organisation means those decisions by which the members are bound in accordance with the constitution. When a person joins an association - the submission has already been made to Your Lordships - he agrees to be bound by the constitution and by such decisions as may be made by the governing body which is empowered by the constitution to make binding decisions.

M'Lords, in the case of the African National Congress, that body was - and the evidence will be placed before Your Lordships in due course - that body was the National Conference and no other. The Crown case, therefore, necessarily involves the proposition that at some time the National Conference of the African National Congress made a decision to overthrow the State by violence. That, m'lords, is fundamental to the whole of the Crown case. Now it is not disputed by the Defence that the existence of such a decision can be proved by evidence

other than the evidence of a witness who was present when such a decision was taken. Now the words "By circumstantial evidence" and this apparently is what the Crown has attempted to do in this case. It may legitimately do so but there are certain comments which must be made initially in regard to such an approach. M'lords, circumstantial evidence contains two possible sources of error; errors arising from the fallibility of testimony and, secondly, errors arising from the fallibility of the inference; especially in a case where the volume of evidence is so great; especially in this type of case where you have this great volume of evidence but at the same time this volume of evidence does not constitute the whole picture - it is easy to see patterns in it which are not really there. The Court, of course, m'lords, will bear in mind that a single fact inconsistent with the Crown inference, will destroy the Crown inference, while no amount of fact consistent with that inference will suffice to establish it unless they also exclude all other reasonable inferences.

The second matter, m'lords, for comment at this stage is that there are certain points upon which it might reasonably have been expected that the Crown would have produced direct evidence. These points will be dealt with later. They arise in various aspects of the case; in various of the so-called links upon which the Crown relies.

Thirdly, it will not be forgotten that the Defence has called direct evidence. Some of the Defence persons are persons who must have been present at any decision taken by the African National Congress to adopt the policy of violent revolution. They have denied that there was any such decision. We shall comment upon the failure of the

Crown to put to these witnesses any precise hypothesis either as to the contents of the decision or the time or place of its adoption. Your Lordships will recall that has never been put anywhere in the whole of this case. A section of the evidence which will be dealt with in detail is the evidence of the so-called "Violence Speeches". We propose analysing these speeches thoroughly - an examination which, of course, may involve several weeks - six to eight weeks - an examination of these speeches.

MR. JUSTICE RUMPF: Why do you mention the time, Mr. Maisels?

MR. MAISELS: Because it is a horrible thought to me, m'lord.

MR. JUSTICE RUMPF: I thought you had also accepted the inevitable in this case, that time is not of the essence.

MR. MAISELS: I don't know, m'lord, whether the Accused would go all the way with Your Lordship on that remark but I merely mention that it will have to be, and is intended to be, a thoroughly exhaustive analysis of the speeches.

MR. JUSTICE RUMPF: Yes.

MR. MAISELS: Because our approach is not going to be quite the same as the Crown's nor are we going to tackle the problem in the same way. We are proposing to deal with the speeches by 'reporter' as it were. To take Reporter A and deal with him and take Reporter B and deal with him in the volume of the speeches. Now this analysis of the evidence will naturally involve consideration of the credibility of the witnesses who reported these speeches - in most cases. The submission to Your Lordships will be that the long-hand reporters do not give a sufficiently full and accurate version of the speeches to justify the foundation of any inference upon their evidence.

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With regard to the balance of the speeches, the argument will be that most of them contain nothing from which an inference of violent policy could properly be drawn. Many speeches - many - contain references to death, to sacrifice and similar words which might be construed as references to violence by the African National Congress or its followers but which are plainly capable of other meanings. It will be submitted that such phrases have been adequately explained by the Defence witnesses. There are, admittedly, a few speeches which the Defence concedes contain suggestions of violent action. These have also been dealt with in the Defence evidence and the evidence is that these speeches do not, and did not, reflect the policy of the African National Congress and that is what the Court will be asked to find.

M'lords, in examining the speeches, Your Lordships will be asked to bear in mind that no speech made by a particular individual, by any particular individual, can be regarded as direct evidence of the African National Congress policy. Not even the President General and certainly not anyone else had authority to lay down policy in his speeches. Speeches are thus only material from which policy may be inferred. The Crown argument is no doubt intended to be that if speeches of a certain kind are consistently made from A.N.C. platforms one can infer a decision at a high level to make such speeches and one can further infer a decision to do such things as the speeches suggest. But the word "consistently" is essential to this argument. It is only from a series, from a consistent series, of speeches of a similar kind, made all over the country over a definite period, that one would be justified in inferring

a policy decision. No inference of policy can be drawn, or could be drawn, from the sporadic appearance of a certain theme in speeches. Such sporadic appearance would obviously not eliminate the hypothesis that some members of the African National Congress believed in a particular doctrine in question while others do not and we shall argue that even taking the Crown case at its highest, and accepting the Crown interpretation of many doubtful speeches, the Crown has done nothing more, has shown nothing more, than the sporadic appearance of violent ideas in A.N.C. speeches. The speeches placed before the Court are only a fraction of the speeches which must have been made during the indictment period and the 'Violence Speeches' in themselves are again only a fraction of the speeches placed before the Court. The speeches placed before the Court are not necessarily the most important fraction of the total made. They are simply the fraction on which the Crown found most support for its case. The submission will be that the Court should not draw an inference as to the policy of the A.N.C. as a whole from such material. Another point which will be argued is related to this one which I have just mentioned. Just as the Crown has failed to show, in our submission, that the policy for which it contends runs through all the material produced by the A.N.C. over the indictment period so it has failed to challenge defence evidence which positively establishes that the alleged policy of violence was unknown in large sectors of the A.N.C. Organisation and, m'lords, this is vital, this is a vital point which doesn't seem to have been dealt with at all - because if you have a policy of violence presumably it is to be known by the organisation as a whole. We shall

argue that this policy was unknown by the organisation as a whole. We shall argue that this policy was unknown, by evidence which wasn't challenged in this Court, by larger sectors of the A.N.C. population. Your Lordships will remember we produced before the Court rank and file members of the African National Congress. They were called towards the end of the Defence case. They weren't really cross-examined except to show that there may have been others who knew A.N.C. policy better than they did. Of course there may have been, m'lords. That is hardly the point. It is not the point at all, in fact. The point is that we are here trying to infer A.N.C. policy from what the A.N.C. did and said. These witnesses deal with what the A.N.C. did and said over a large part of its organisation. The Court will be asked to consider what can be left of the conspiracy after the area dealt with by these witnesses has been excised. M'lords, whilst on the subject of the cross-examination of defence witnesses, we shall make particular reference to the cross-examination of Professor Matthews. The argument will be that this was a witness who had an unrivalled direct knowledge of the sources of A.N.C. policy. There was no better qualified witness who could have been brought to give evidence on that subject. His record in the African National Congress and the details will be placed before Your Lordships later. But plainly it cannot be disputed that he had an unrivalled direct knowledge of the African National Congress policy. If, too, his evidence destroys the Crown case completely yet his evidence was not challenged in cross-examination upon the vital points and very half-heartedly (if I may say so) challenged in argument. He apparently, according

to my learned friend Mr. Hoexter, who argued this part of the case, knew enough to be a conspirator but not enough to be a reliable witness on policy. My only comment on that, having regard to his knowledge, is to say "Really, is that what the Crown contends with regard to Professor Matthews.

And we turn next to the consideration of the African National Congress policy from a more positive point of view. The submission will be that there is no mystery about this policy - no mystery at all. And there is no need for the elaborate piecing together of inferences from unlikely sources. There is on record both direct evidence for A.N.C. policy and indirect evidence from very important sources and this evidence, the submission will be to Your Lordships, establishes beyond doubt that the A.N.C. policy was, in fact, a policy of non-violent extra-parliamentary action aimed at putting moral and economic pressure upon the Government and the White electorate of this country. In this connection an important source to which we will refer, is the writings and speeches of the two principal leaders of the African National Congress during the Indictment period, namely Mr. Luthuli and Professor Matthews. M'lords, the utterances of an acknowledged leader, as we conceded previously, are an important fact from which policy can be inferred, more especially if it be shown that such utterances were known to the National Conference at the time of their election or re-election and there, m'lords, is one statement of Mr. Luthuli's which is particularly important from this point of view and I refer to EXHIBIT A.J. L. 30, which appears on the record in Vol. 54 at Pages 10,860 to 10,865. It is a booklet entitled "Our Chief Speaks"

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which was before the National Conference which first elected Mr. Luthuli as a President General of the African National Congress. The Crown's evidence and the argument are alike singularly lacking in information about the last months of 1952 which the Indictment might have led one to believe would be a crucial period. The Defence, however, has been able to produce this booklet which was issued at that time which provides better evidence than anything else before the Court of what the A.N.C. policy really was precisely at the beginning of the Indictment period. This Exhibit will be dealt with in detail and the submission will be that it clearly expounds a non-violent policy. We shall then proceed to examine the statements of Mr. Luthuli which are before the Court and to show Your Lordships that certain concepts are consistently through them and I am referring to statements ante litem motam. I am referring to statements made at the time when he could have had no idea there was going to be a charge of high treason. I am referring to statements made both inside of South Africa and outside of South Africa which bear the same imprint notwithstanding my learned friend Mr. Trengove's rather uncharitable description at one stage of statements made outside of the country. I shall show Your Lordships that there is one consistent concept running right throughout all these statements and that is the concept of non-violence and an idea of sacrifice which, in his case, is plainly rooted in Christian Doctrine. Now such consistent themes running through the utterances of the President General over a period of years are of far more significance than the outbursts of lesser men which show no such consistency even on the individual level.

As to Professor Matthews, the submission will be

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that his importance in the Congress - second only to that of Luthuli in position - his knowledge of Congress affairs is probably to some extent greater than that of Luthuli's because he had a longer association with it - we will show that in regard to Professor Matthews his utterances, too, are consistently non-violent. But, m'lords, all individual utterances, however, as we stated before, submitted before, are merely inferential evidence of policy and we now turn to consider the real sources of A.N.C. policy.

Now the Constitution establishes - Your Lordships will be given the references later in the detailed argument - that the National Conference is the source and the evidence confirms that it functioned as such. The Crown has not been able to produce or to suggest any other source of policy. Reference will be made to three major policy documents which were approved by the National Conference. Those three are the booklet "Africans Claims", "The 1949 Programme of Action" and the "Freedom Charter". In the light of the evidence, it cannot be disputed that these are the basic policy documents. Yet only the third of these, that is the Freedom Charter, was originally relied on at all in the Crown case and the second, "Programme of Action" at a much later stage and I shall deal with that now.

The document "Programme of Action"-most directly relevant to policy or methods of struggle is the Programme of Action. Now this document, on the face of it, does not envisage violence and does envisage the kind of non-violent methods which have been repeatedly described in the Defence evidence and it is therefore not surprising that it was not relied on by the Crown in pleadings or evidence and was read into the record by the Defence. At the stage of argument,

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however, my learned friends appearing for the Crown had realised that it couldn't deny the importance of this document and that its non-violent nature would have to be explained away. The Crown, therefore, set up an elaborate structure of interpretation in terms of which the programme adopted by the National Conference in 1949 was to receive a meaning other than its plain and ordinary meaning because of things which were said by bodies or persons other than the National Conference at times other than 1949 and we hope to be able to persuade Your Lordships that the programme should be read in its plain and ordinary meaning and that it is entirely in favour of the Defence. But, m'lords, most important of the glosses which the Crown seeks to put upon the Programme of Action is to the effect that the African National Congress knew - and that is the fundamental aspect of the Crown case - that the African National Congress knew that the methods envisaged in the Programme would necessarily lead to violence. M'lord, the Crown is very fond of the phrase "They knew". The most obscure speaker or writer only has to enunciate a proposition for it to become in the eyes of the Crown something that 'They knew'. Our submission will be that the knowledge of an organisation consisting of thousands of members scattered all over South Africa cannot be proved from any piece of paper that happens to be found in the possession of one of those members. Much of what the Crown relies on as proof of knowledge is nothing more than propaganda expressing the views of individuals in highly metaphoric language. Can it be taken literally? And even if it is taken literally, it can't be attributed to the A.N.C. as a whole. We shall invite the Court's attention, m'lords, to what we submit is a far more reliable source of A.N.C.

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policy, namely the defence evidence given on oath. The evidence deals expressly with the question whether violence was regarded as an inevitable outcome of the methods used in the Programme of Action. The evidence is that it was not so regarded.

The Crown has further suggested.....

MR. JUSTICE RUMPEF: The violence that you refer to here and on which you say the Crown relies is violence by the masses as the result of violence by the State?

MR. MAISELS: Yes, m'lord. I shall show your Lordships when we deal with that in detail that that is really what was submitted by my learned friend in argument on Programme of Action in detail. The Crown has further suggested that violence follows from the methods envisaged in the Programme of Action by virtue of the logic of the situation. The contention appears to be this: that if you use civil disobedience against a brutal fascist government violence must so obviously result that you can be presumed to 'envisage it'. 'A natural and probable consequence' says my learned friend. The Defence will submit that this is not so as a matter either of experience or of logic. The matter is dealt with in one sentence in Gardner & Lansdown in Vol. 1 at Page 480/1 of the 6th edition, where the learned author says this:- "it is the universal but rebuttable presumption of law that a man intends the reasonable and probable consequences of his acts. This view may be based upon two grounds: firstly, that from the common course of human affairs the act in question must to a reasonable mind be prima facie taken to have been done with the intention of the particular consequences which in universal experience usually follow an act of that character." A man fires a gun down Eloff Street - universal experience is that somebody is to be hurt. But

one hardly applies this approach to the particular problem now under consideration. There are many possible results of non-violent resistance to a government, whatever the nature of its government. The Defence witnesses have said that they hoped - what they hoped and intended the result of their resistance to be and it will be submitted that these hopes and intentions are far more reasonable and credible than the Crown theory of a plan for massacres leading to retaliation and eventual overthrow of the State. It will be observed that the essential feature of this plan, if it is to be treasonable at all is the retaliation which was to follow upon police violence against the masses. The Crown is a little bit vague about this retaliation. We have never really been told how it would work or when or anything about it because the reason is there is no evidence to support the Crown on this material point. Your Lordships will be referred to direct defence evidence, credible evidence, to the effect that if police violence took place there would be no retaliation. That is supported by many documents and isn't contradicted by any evidence at all. And it is noteworthy in this connection that a feature upon which the Crown relies for its interpretation of the Programme of Action is the Defiance Campaign. We agree that this Campaign does show the methods of the Programme being put into practice. We agree with that and we agree that that should be looked at to see what those methods really were. Where we differ from the Crown is in the fact that we want to look at the Defiance Campaign as it actually was. The Crown prefers to look at it as it might have been. Perhaps it might have been all sorts of things but it was, however, m'lords, an entirely peaceful campaign of civil disobedience. It shows, if anything is shown, that the

African National Congress and the South African Indian Congress which was associated with it at that time, were in earnest about non-violence. It explains their faith in non-violence. It gives the lie to the Crown's flights of fancy about the consequences of non-violence. We rely strongly upon the Defiance Campaign as a practical demonstration of the policy as we see it.

MR. JUSTICE RUMPF: What have you to say in general on the three stages of the Defiance Campaign?

MR. MAISELS: M'lord, a detailed argument will be addressed to Your Lordships on the Defiance Campaign and the three stages. Your Lordship will re-call the cross-examination of Professor Matthews on it. The matter will be dealt with in great detail, m'lord. We will deal with that in detail but one thing is plain - that at no stage, whether the first, second or third, was it ever intended that they should lead to violence. It was never intended at all and, indeed, cannot be seen as a natural and probable consequence. We shall analyse that matter we hope to Your Lordship's satisfaction.

Now the other two major policy documents - the Crown doesn't rely at all upon the Campaign and we rely upon it as showing the legitimate nature of the African National Congress's aims and the continuity of those aims throughout the years. M'lords, there is an importance in this. Your Lordships will see when we analyse that in detail, the phrases, the sacrifices, the mass liberation movement - all those words that have now become swear-words almost - or smear-words, perhaps - have been used by this organisation peacefully pursuing its objects over the years. Certainly since 1943 which is the date when that document

was drafted.

As for the Freedom Charter which is the other major policy document, that has declined sadly in importance I am afraid in the eyes of the Crown since this case began. Apart from the communist aspect which I shall deal with very briefly, m'lord, in due course, the Crown bases only one argument on it. As we understand it, m'lord, it is suggested by the Crown that the changes involved are so radical that they could only be obtained - or perhaps the African National Congress believes they could only be obtained by violence. There are many answers to this argument but the simplest is given by the Crown witness, Professor Murray. He points out that if the franchise were once granted to the non-Europeans any other reform, whether it is in the Freedom Charter or in any other Charter, would then follow by perfectly constitutional means. Thus we will submit to Your Lordships that none of the demands of the Freedom Charter really take the matter any further than the basic demand for equality which has been the A.N.C.'s policy since 1912. That is the basic demand. That is the basic point of this whole thing.

MR. JUSTICE BEKKER: What about the economic demands?

MR. MAISELS: If franchise rights are given.....

MR. JUSTICE BEKKER: What I have in mind is 'Schedule 71 A' where the difference between African claims and the Freedom Charter are discussed and there the point is made that economic claims....

MR. MAISELS: As Your Lordship appreciates, economic claims and economic consequences follow from parliamentary legislation and we will deal with that aspect fully in the course

of the argument. Of course, m'lord, we shall submit in regard to the Freedom Charter that it arises naturally out of the grievances of the people and has no sinister significance whatsoever. There is one point that I omitted to make in regard to the Defiance Campaign. It is not, Your Lordships will appreciate, for the Defence to prove that the Defiance Campaign would not lead to violence. The Crown must prove that it must have led to violence and in agreement that it should, we shall show Your Lordships the different stances - to put it mildly - adopted by the Crown in regard to its attitude to the Defiance Campaign.

The remaining direct source of the African National Congress is the ordinary resolution of the Annual National Congress. We shall comment on the fact that although the Conference, in fact, met regularly, the Crown has been unable to rely on its resolutions. Now these are the only documents which in themselves embody A.N.C. policy. We do not dispute, however, that inferences as to policy can be drawn from other documents but again in order to draw such an inference, we shall submit the Court must take into account a number of factors. With respect to any given document it is necessary to ask what the status was of the person who wrote it; what was the occasion upon which he wrote it; the purpose for which it was written; whether it is consistent with all the other documents which touch on the same point? Before the Court will assume that any statement other than a National Conference Resolution reflects policy it will have to be satisfied that such a statement is not the opinion of an individual or of a clique; that it is not a tentative view put forward for discussion; not an attempt to change policy and not, as it is in most cases relied upon by the Crown mere rhetoric

of ephemeral propaganda.

In the light of these considerations we shall consider a number of documents which the Crown has relied on. The documents upon which considerable emphasis has been placed by the Crown are, firstly, A 309 - "No Easy Walk to Freedom" and A 84 to A 86 - the three lectures. Next follow a number of documents classified as the Crown has classified them under the heading "Liberatory Struggle - Propaganda for a New State" and last come the publications known as 'Advance', 'New Age', 'Fighting Talk' and 'Liberation'. On all these documents considered together and making due allowance for rhetoric, for individual aberrations, the submission will be that there is nothing inconsistent with the Defence version of the African National Congress.

When dealing with the documents placed under the heading of the "Liberatory Movement", we shall consider the whole position of the Crown's allegations on the subject and we shall show that the allegation that an international communist inspired liberatory movement actually existed, an allegation that was once described by my learned friend as being the kernel of the Crown case, has collapsed ignominiously at that. And this collapse has left the Crown with the task of making something out of a hotch-potch of propaganda statements on a variety of situations in other countries. That is what is the result. By making a careful selection of these statements which suited, the Crown has contrived to suggest that the theme running through these foreign policy statements is a theme of approval of violent revolution. We submit, m'lords, that that is not the position at all.

MR. JUSTICE BEKKER: Mr. Maisels, on the question of policy, when you said that these documents, writings, utterances may be inferential evidence of policy - on the submission of Mr. Nicholas that policy-for policy you have got to look at the Constitution - how does propaganda give rise to an inference of policy? That is your submission.

MR. MAISELS: No, I said that you could look at it to see.

MR. JUSTICE BEKKER: To see what?

MR. MAISELS: To see if there has been a resolution adopting a policy which was not reflected in any official document - it may be adopted at some secret conference. You could look at it and see whether there had been - whether there was a consistency. You could look at it because although it had been said there was no secret policy one must assume on this that there must have been some secret resolutions which have not been placed before the Court otherwise, m'lord.....

MR. JUSTICE BEKKER: My difficulty is this: assuming the policy of the African National Congress is non-violent and assuming everybody thereafter said the policy is violent...

MR. MAISELS: Everybody?

MR. JUSTICE BEKKER: Everybody - all the leaders say it is violent, how can you draw an inference from their statements that it is violent if the constitution is non-violent?

MR. MAISELS: That is a matter, m'lord, which my learned friend Mr. Nicholas argued. It is a question of a unanimity of opinion - evidence.....

MR. JUSTICE BEKKER: I am aware of that. I am quarrelling with the statement you made here. You said - and that is what I want to know - you said utterances, documents, is

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inferential evidence of policy.....

MR. MAISELS: May be looked at. In their absence - let us take this position: let us assume that no - that there was no direct evidence to the contrary, no constitutions, no documents to the contrary - all you had was a mass of evidence which led one way...

MR. JUSTICE BEKKER: I don't quarrel with that but we have got a constitution here. If there is no constitution I can understand the position.

MR. MAISELS: Well, perhaps, m'lord, on re-consideration we have conceded too much. I would like to consider that.

MR. JUSTICE BEKKER: I don't know. As you please, Mr. Maisels. I want to understand the submission.

MR. MAISELS: M'lord, we took the situation in this way. We take our stand on what are called the Resolutions of Conferences which are the constitution, the documents which I have mentioned, the Programme of Action, the Freedom Charter, African's Claim.....

MR. JUSTICE RUMPF: Mr. Maisels, I take it that although a constitution may contain a provision about something, the organisation may develop a policy in regard to details generally....

MR. MAISELS: May adopt a policy....

MR. JUSTICE RUMPF: May adopt and develop it in due course after a matter has been put, for instance, by leaders - may have been dealt with in a speech at a conference; may not have been disputed, rejected; may have been accepted as a policy over a course of years although it may be that a number of the individual members of that organisation may not know about it.

MR. MAISELS: That is not the policy, m'lord.

MR. JUSTICE RUMPF: Why not?

MR. MAISELS: Because the constitution lays down what the objects are and how you adopt policy..

MR. JUSTICE RUMPF: Yes, but I am putting it to you that this is a policy about a detail not inconsistent - let us put it this way - not inconsistent with what is contained in the constitution.

MR. MAISELS: Then, if Your Lordship pleases, that would merely be an executive administration of the policy as laid down. If it had been consistent then there would be no difficulty at all.

MR. JUSTICE RUMPF: Yes, let us start off on the basis that it is not inconsistent - on that basis, obviously, minor details in regard to the putting into effect of the policy, for instance, may be developed and may be adopted in the course of time without it ever appearing in the constitution in writing.

MR. MAISELS: Correct - but then of course, Your Lordship appreciates the policy is the same; it is merely the implementation or method which within the terms of the policy is being carried out.

MR. JUSTICE RUMPF: Yes, that is then, I take it, the gist of your argument here and your quarrel with the Crown, to say a policy contained - a policy found in the constitution or resolutions of an organisation contains a certain principle, then to suggest that that principle has been abandoned or that an opposite principle has been adopted, you must show more, much more, than mere speeches etc.?

MR. MAISELS: Yes, m'lord. One would have to get - the evidence must be so overwhelming as to lead the Court to the conclusion that that policy or resolution must have been reversed,

changed, rescinded.

MR. JUSTICE BEKKER: And sanctioned by the consenting parties?

MR. MAISELS: That is so, m'lord; rescinded by the authoritative body - by the constitutional body - to do so.

MR. JUSTICE BEKKER: I suppose it is possible, as in contract, as in ordinary contract, where you pay your rentals late regularly that the contract is thereby amended?

MR. MAISELS: No, m'lord, as Your Lordship pleases, I think that is a slightly different principle.

MR. JUSTICE BEKKER: Well, now, I want to put this to you: Is it not possible - because here we are dealing with a contract - on the authority of 'Wilken's case, it is an ordinary contract, an agreement. Now if a course of conduct over years is followed it can only be regarded as policy if it is shown that all the contracting parties were aware of that particular course of conduct.

MR. MAISELS: Yes, m'lord, exactly, because what is happening then - if one is in a certain sense implying a term, implying that something else has happened - and one has the well-known test - it must necessarily lead - it is not a bad way of looking at it, in fact - it must necessarily lead to the inference that something else had happened, namely that all the members had agreed or that there had been a proper constitutional authority by the National Conference.

COURT ADJOURNED TO MONDAY, 13th MARCH, 1961.

MR. MAISELS

MR. DE VOS: My lords, the accused Moretsele is absent this morning. I take it my learned friend on the other side may have some information about his position, to give to the Court. 1

MR. MAISELS: Well, I'm informed he died, my lords. That's the position, my lords. 5

RUMPF J: Yes, I saw something in the paper to that effect.

MR. MAISELS: Other accused have told us that that is so.

MR. DEVOS: My lords, one other matter before my learned friend continues. Subject to what the Court may direct the Crown proposes to argue the legal points as requested by the Court on Wednesday morning, if that would suit the Court. 10

RUMPF J: Well, may we just ask Mr. Maiseles - how long do you expect to be on the African National Congress? 15

MR. MAISELS: Your lordship will appreciate that on the African National Congress it would involve not only the documentary side and general arguments on probabilities; that part I think, my lord, would take about another week or two. 20

RUMPF J: Well, the point is this; we would like to hear the Crown not before you have completed your argument on the general part of the African National Congress. In other words, if you require till after Wednesday then we would prefer the Crown to wait, until you have completed that part of your argument. 25

MR. MAISELS: There may be a convenient stage; perhaps I could indicate to your lordship how we propose

arguing? Your lordship will appreciate that what I have argued so far has been a general outline of the case. In addition, my lord, I propose, as soon as I have finished that, to argue the probabilities of the new conspiracy, as we call it - - then after that, my lord, my learned friend Mr. Kentridge will address your lordships on political method, the language of political struggles, then after that I will address your lordships on what we call the main policy documents, namely the conferences, resolutions, programme of Action, Freedom Charter, Africans' Claims and so on. Then the Defiance Campaign and matters of that nature; then, my lord, it may be convenient at that stage for the Crown possibly to address your lordships. All I want to say, my lord, is that we could find a convenient stopping place by tomorrow afternoon at all events.

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RUMPF J: Or even if it's more convenient a little later.

MR. MAISELS: Yes, my lord.

RUMPF J: Very well, Mr. de Vos, then we won't call upon the Crown to answer before Wednesday, and it may even be a little later, depending on the position.

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MR. DE VOS: As your lordship pleases.

MR. MAISELS: We will try, my lord, to finish a convenient part of our argument by tomorrow so that the Crown can make its reply.

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RUMPF J: Yes.

MR. MAISELS: Now, my lord, may I just for a moment revert before continuing with my general opening on the African National Congress, to a question that was raised on Friday morning by his lordship Mr. Justice Bekker

in the Constitution? 1

RUMPF J: Yes. In terms of the Constitution.

MR. MAISELS: Oh, yes, my lord, I'm sorry. A National Conference has power to alter and therefore it's really a decision of the duly constituted body of the Conference. I say the duly constituted body, I mean the law making body of that Association, my lord, and I was about to submit, my lord, that one of these three things the Crown must prove and it can do so, my lord, either by direct evidence, but, of course, as with any other fact it may do so by circumstantial evidence. 5 10

BEKKER J: Is there yet perhaps not a fourth way: if it's shown that all members of the political organisation are aware, or were aware of a consistent course of conduct over years, and nothing is said and nothing is done? 15

MR. MAISELS: That's by the agreement, my lord, but your lordship will appreciate that that's not the case here. I was about to make it quite clear that the third category does not enter this case at all.

RUMPF J: Whatever the scope of the third category may be? 20

MR. MAISELS: Yes, my lord.

RUMPF J: Let us put it at its highest here which may not have been proved at all. Let's assume that the Constitution says, "Non-violent struggle"; let's assume that at the beginning of a certain year the leaders, and all the leaders consistently throughout the year on the platforms all over the country preached a contrary suggestion -- all the newspapers used by the organisation and published by the organisation advanced that policy -- 25 30

particularly in regard to the question of how one proves policy as a matter of evidence, and my lord, I had perhaps failed to make it clear - as I should have - the way in which the question of inferential evidence of policy fits in with our main submission on the policy of an organisation.

My lord, we have already submitted to your lordship that policy means one of three things. Firstly, the objects set forth in a Constitution; secondly, a decision consistent with the Constitution and duly adopted and I stress the words, my lord, 'duly adopted' by the policy making body established by the Constitution; or thirdly, my lord a unanimous decision of all the members.

Now one of these three things the Crown must prove.

RUMPF J: Will you just repeat them please.

MR. MAISELS: Yes, my lord; firstly, the objects set forth in a constitution; secondly, a decision consistent with the constitution, and . . .

RUMPF J: A decision by whom?

MR. MAISELS: A decision of conference, my lord, the National Conference. And, my lord, I stress the words 'National Conference', consistent with the Constitution and duly adopted by the policy making body established by the Constitution. That's the National Conference, my lord. And thirdly, my lord, a unanimous decision of the members.

RUMPF J: May I just ask you this question. In regard to the second one, why do you limit it to a decision consistent with the Constitution?

MR. MAISELS: Your lordship means that one could visualise a situation where the National Conference had adopted something which would virtually amount to a change

then a National Conference takes place, nothing is said - - 1
the same thing then follows for another year and a further
year. Now, assume for argument sake that the argument was
then advanced, "Well, actually the leaders missed a small
district somewhere in the Eastern Free State" and there
there are still members who never heard of it. . . . then 5
I take it a Court might come to the conclusion that the
policy of that particular organisation changed, although
a few members may not have heard of it, but on the facts
- on those facts which I've set out one can safely say
that the policy has been changed - by course of conduct. 10

MR. MAISELS: Rip van Winkel, or whatever it was.
The course of conduct of the association changed the policy,
but that is in effect, my lord, substantial or virtual
unanimity.

Now, my lord, dealing with these three categories 15
very briefly then, since the Constitution itself is
before the Court the question of circumstantial evidence
doesn't arise in this matter, and my lord, the third matter
which has just been debated, with submission, need not be
considered because the Crown has conceded in this case - to 20
put it at its lowest, the Crown's concession - that the
rank and file at least were not party to the alleged con-
spiracy.

But, my lord. . . .

RUMPF J: There was a remark to that effect. 25
Where was it made?

MR. MAISELS: It was made by my learned friend
Mr. Trengove, my lord, in answer to a question which his
lordship Mr. Justice Bekker put, and your lordship will re-
member it arose also specifically in regard to an examination 30

on the evidence of what we call the ... omnibus sites, the man in the street, . . .

KENNEDY J: The ten or eleven witnesses that you called....

MR. MAISELS: That's right, my lord, and the evidence wasn't challenged.

RUMPF J: Yes, I was merely concerned about the statement by Mr. Trengove. You haven't got the reference to that?

MR. MAISELS: My lord, we'll find the reference for your lordship and give it to your lordship later to-day. Now, my lord, the Crown might, however, as your lordship put it, rely on circumstantial evidence of the fact that a resolution in written terms had been passed by a National Conference of the African National Conference, and as your lordship put it such evidence could conceivably emerge from for example the statements of leaders. For instance, if, my lord, a certain subject - by way of testing it - had never been mentioned at African National Congress meetings up to the date of a particular National Conference, while after that date one found a certain attitude on that subject taken up consistently by the leaders, at all A.N.C. meetings, one might be able to infer, my lord, in those circumstances that a resolution on that subject was passed at that Conference; subject, always, of course, to direct evidence to the contrary, but that's the sort of way in which one might be able to infer it, but, of course, my lord, the Crown really hasn't attempted in our submission to approach the circumstantial evidence in this case from that point of view. The Crown, my lord, in our submission

has attempted to draw certain inferences which we say are really vague from a mass of material but has never been able to submit that this material suggests that a particular resolution was taken by a particular Conference on a particular occasion, let alone a particular date. It is only, my lord, in our submission, if that submission could be made by the Crown that the Crown can rely on circumstantial evidence. In other words, my lord, we do not concede that policy can be made by anything less in the result - anything less in the result than a National Conference resolution. The Crown's evidence must be directed towards proof of the existence of such a resolution, in terms which will support the Crown's case. The Crown, my lord, can rely on any kind of evidence it likes, but it must be to that end, my lord, and to no other. Therefore, my lord, any circumstantial evidence upon which the Crown relies must in our submission, my lord, be tested by asking a question - - does this tend to prove - does this tend to prove that a policy decision in terms of the alleged conspiracy was adopted by the National Conference of the African National Conference. My lord, I submit that that is not putting the matter unfairly to the Crown. And it is with that question in mind, my lord, that we shall in due course examine the evidence in this case.

Now I revert to the argument that I was addressing to your lordships on Friday, and I had dealt very briefly with the allegation of the Crown of the International Communist inspired Liberatory Movement and it was suggested to your lordship that that, which was once the kernel of the Crown case, had collapsed ignominiously.

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And it was submitted, my lord, that this collapse left the Crown with the task of making something out of a hotch potch - propaganda statements, and a variety of situations in other countries.

And my lord, by making a careful selection of these statements which suited it, as it was entitled to do, of course, the Crown have contrived to suggest that the theme running through the so called foreign policy statements is a theme of approval of violent revolution. We submit, my lords, that that is not the position at all. The theme running through the documents, and in our submission the view that can safely be attributed to the African National Congress, is approval of independence for Colonial countries, and opposition to any measures taken to delay such independence. We shall show your lordships that that is the theme which goes back at least as far as Africans' Claims in 1943. In cases, my lord, where actual fighting is in progress the African National Congress expresses sympathy with one side: such sympathy in our submission cannot be taken, as the Crown takes it, to imply the intention to use similar methods in South Africa. The Crown suggests, my lord, that the A.N.C. criticism, for example, of violent methods used by the British Government in Kenya is a good example because it's often been used. The Crown suggests, my lord, that this implies the view that similar methods should be used by the South African Government. Some such suggestion, my lord, may be present in a few documents, but these take the matter in our submission no further, my lord, than what admittedly existed, namely a fear that among A.N.C. members that the Government might react, or might act violently.

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I then pass, my lord, to a brief consideration 1
in outline to indicate to your lordships what the argument
is on the documents used under the heading of "Propaganda
for a new State", and we will submit to your lordships that
all that really emerges from this is that the African
National Congress had a dislike - a strong dislike if one 5
likes to call it that - a dislike which sometimes went to
the extent of hate, for the present Government and for
previous governments, and because - - not 'and' but because
of the discriminatory laws, and my lord the Crown wishes
to draw farreaching conclusions from the language in which 10
some A.N.C. propagandists saw fit to express this dislike.

My lords, our submission will be that all
this is pure speculation on the part of the Crown. The
question 'How did the African National Congress hope to get
rid of such a government as they describe', which is a 15
question frequently posed, receives in our submission, my
lord, a clear answer from the evidence. In our submission
they hope to get rid of it by the means set out in the
Programme of Action, and the Crown cannot get away from
this, my lord, by building elaborate theories on isolated 20
phrases occurring in propaganda from time to time.

With regard to documents, with regard to
publications such as 'New Age', 'Liberation', 'Fighting
Talk', we shall submit firstly, my lord, that the Crown
has not shown the journals to be so connected with the 25
African National Congress that what they say necessarily
reflects A.N.C. policy, but secondly, my lord, and equally
importantly, if I may submit it in that way, the Crown
has been able to find only a few passages among the
hundreds of editions of these publications which have any 30

relevance at all to the question of violence. A few passages in articles, and these passages, my lord, do not even show that the journals which published them had a policy of violent revolution; still less that the African National Congress had.

BEKKER J: Could it be said that it was the policy of the African National Congress to encourage its members to read these newspapers?

MR. MAISELS: I think, my lord, the word 'policy', if I may suggest . . .

BEKKER J: Policy in the sense that it was decided at National Conference, that volunteers and the members of the African National Congress are encouraged to read 'Inyameso' and all these newspapers.

MR. MAISELS: My lord, I don't think with respect, it's a question of policy because I don't think one finds resolutions to that effect.

BEKKER J: If there was one. Put it on the basis, if there was a resolution . . .

MR. MAISELS: I speak subject to correction, my lord, but I think it was a Transvaal resolution to that effect. I don't recall . . .

BEKKER J: Orlando National Conference. It may have been that one.

MR. MAISELS: Yes, that's the Transvaal one, my lord.

BEKKER J: Then it could be said, if there was a National Conference resolution that people should - that people are encouraged to read these newspapers, then the policy of the A.N.C. could be said that people should read

these newspapers. 1

MR. MAISELS: That is all, my lord.

BEKKER J: Yes; but now arising out of that, can one draw any inference?

MR. MAISELS: No, my lord, with respect not. May I put it this way? Let's take the United Party for example, 5
or the Liberal Party. That Party is a good example.
"All our members should read 'Contact'" which as your lordship knows is a paper said to be edited by Mr. Duncan.
Mr. Duncan writes a lot of articles in that paper; not only Mr. Duncan but a lot of people write articles for that 10
paper. All that they are telling their members to do is to read that paper; that's all - nothing else, my lord.

BEKKER J: Couldn't one then say, as to the next step: inasmuch as it is the policy of the African National Congress to tell its Members to read particular newspapers, 15
that therefore it is the policy of the African National Congress to try and place that type of propaganda before the members?

MR. MAISELS: No, my lord.

BEKKER J: What's wrong with that? 20

MR. MAISELS: Your lordship has left out various other steps in reasoning, with respect.

BEKKER J: A short cut I take is this; if it's policy to encourage its members to read that, you'd like your members to read it. 25

MR. MAISELS: I agree, my lord, because there are things in there which you want your members to know.

BEKKER J: Yes.

MR. MAISELS: But the real question is, what are the things you want your members to know? Do you 30

want your members to know the things that they publish about
your own organisation. 1

BEKKER J: Whatever appears in these newspapers
they'd like their members to read, whatever.

MR. MAISELS: Well, my lord, may I suggest that
that would be a gloss on the resolution. Well, my lord, 5
assuming that were so, what happens then? Nothing.

BEKKER J: Well, then the Crown comes in and says
"Well, why do you want your members to read these papers"?

MR. MAISELS: Then you get the answer, my lord;
that's the point I made. We get them to read it because 10
they give us some sympathetic coverage; they give us the
coverage which we don't get in the daily newspapers - - that
evidence was given. The same as the Liberal Party and
(Contact', my lord. The same as any newspaper - - the same
as any political party 15

BEKKER J: Well, the Crown says 'No'; the Crown
says 'Take the reference to Kenya' - I cannot remember the
particular one about British soldiers pouring boiling water
over the breasts of women The Crown says "That is
what the A.N.C. would like its members to read." And the 20
Crown says "Why?" and the Crown says "Because it wants to
create hatred for the whites."

MR. MAISELS: No, my lord, with respect, not.
That, of course, would at least pre-suppose a censorship
in advance of what went out; there must at least then be 25
some evidence to that effect, my lord. Let's take the
example - - your lordships remember the controversy be-
tween Ruth First and Prof. Price. What did the A.N.C.
want its people to read? What Prof. Price had written
or what Ruth First had written? What both had written. 30

Your lordship sees you can draw no inference. They didn't 1
say "Don't read Price, read Ruth First", and the Crown
argues the matter as though they said "Read Ruth First and
not Price."

Now, my lord, I want to pass now to another 5
source of policy; that's actual activities, and the Crown
has sought to infer a policy which it relies on from
activities during the period in question, and these activities
my lord, consisted of what are called four campaigns; the
Western Areas Removal Campaign, the Bantu Education Cam-
paign, the Pass Laws Campaign and the Congress of the 10
People Campaign. Those are the four main campaigns.
The subject of Freedom Volunteers, my lord, will also
be dealt with under this head.

Now, my lord, on the Western Areas, the Crown 15
case originally appeared to be that the African National
Congress incited persons to commit acts of violence in the
Western Areas. This case, my lord, has had to be aban-
doned for lack of evidence to support it . . .

RUMPF J: You mean the first allegation was 20
in the Indictment or in the Particulars, 'violent resist-
ance'? To advocate violent resistance?

MR. MAISELS: Yes, my lord. Not to commit actual 25
violence themselves. And the Crown, my lord, has now
fallen back upon what we submit is the somewhat improbable
notion that the plan was really this: the plan was really
to provoke the police to massacre the inhabitants, or some
of the inhabitants of the Western Areas, and the object
of this, my lord, is sometimes said by the Crown to be
to test the preparedness of the people, and sometimes to
create martyrs, out of whose death propaganda could be made. 30

Now, my lord, such a scheme in our submission is in the highest degree improbable, and in any case, my lord, if that were the scheme it wouldn't amount to any offence cognisable in Roman Dutch Law. The nearest we've been able to find, my lord, in an English Law where it might be called some form of attempted suicide. But that's what this case really amounts to. . . .

RUMPF J: I take it the Western Areas will be dealt with in detail.

MR. MAISELS: Oh, yes, my lord, and it will be dealt with very fully indeed; it forms a full separate chapter in our argument.

Now, my lord, the fact - - and I propose indicating to your lordship briefly the heads of argument on Western Areas. The fact, my lord, that the Crown has had to fall back upon theories of this nature we will submit really disposes of this part of the case, but we shall examine the evidence on the Western Areas Campaign in considerable detail. And our submissions will be firstly, my lord, that the opposition to the removal scheme arose out of genuinely felt grievances. Secondly, that the policy was to refuse to move voluntarily in order to demonstrate the popular feeling against the scheme, and also to organise a protest 'Stay at Home' strike. Thirdly, that there was no plan of violent resistance. Fourthly, that there was in fact no violence, and fifthly, that the worst accusation which can be made against the A.N.C. in this campaign is that their speakers were sometimes hotheaded, and that the decisions taken by the various bodies sometimes lacked precision. The Crown suggests, my lord, that the African National Congress' attitude in this campaign was reckless. It is

vert difficult, my lords, to know exactly what this accusation means, since the Crown has been very careful not to commit itself on the question whether there was objectively an existing danger of violence in the Western Areas, or only an A.N.C. belief that such a danger existed. Be this as it may, my lord, the evidence is that the A.N.C. was not reckless. The evidence we will submit shows that it endeavoured to take precautions against the risks of violence which it foresaw, and there is in our submission, my lord, no doubt that such precautions were taken and the question of their adequacy is not in issue. They were, however, whatever precautions they were - they were apparently successful, and no violence took place, and that being so, my lord, it is somewhat idle in our submission for the Crown to talk now of recklessness. The Western Areas Campaign, my lord, is one of the points - - and we shall comment particularly on the absence of direct evidence in the Crown case.

My lord, if there was any evil plan on the part of the A.N.C. in regard to the Western Areas it must have been communicated not to hundreds but to thousands; they presumably knew of this plan, on the Crown assumption, and they presumably disapproved of it, because we know that they didn't carry out the so called evil plan. Why, my lord, is there no evidence of the communication of the evil plan to anybody?

As for the Bantu Education campaign and the Anti-Pass campaign, the Crown has been able to make very little of these. It is not argued by the Crown that these campaigns were intended to involve actual violence against the State. The Crown refers to them merely as examples of

of the sort of unconstitutional action which would be taken
in terms of the Programme of Action. We are quite content,
my lord, to regard them as such examples, although in fact
the action taken in regard to the Anti-Pass Campaign was
perfectly constitutional and lawful. In our submission,
my lord, these campaigns are in fact examples of the way
in which non-violent resistance -- if one uses that term --
was intended to work.

The subject, my lord, of Freedom Volunteers is
another one on which, if I may say so, without disrespect
to the Crown -- the narrow dramatic allegations with which
the Crown began this case have suffered a remarkable attenua-
tion. The Volunteers began, my lords, as a band of
assasins. They appear now to be a group who had, in order
to while away the time before the violent revolution took
place, to be taught to grow vegetables lest they become
bored. . .

BEKKER J: Where is that?

MR. MAISELS: Your lordship will remember that
Dr. Naicker's Code of Discipline for the volunteers suggested
that; we will deal with that in detail later, my lord.
"Keep up your interests -- keep up the interests of this
band of assasins by growing vegetables -- and you keep up
their interests, my lord, lest they become bored, while
waiting for the mysterious Armageddon, because that's what
it is, which looms so dreadfully in the background of the
Crown case. We contend that the evidence on the volunteers
is very simply indeed, my lord.

The documents handed in by the Crown, and the
evidence for the Defence point in this connection to the
same conclusion; the volunteers, my lord, in our submission

were simply the most active Congress members who were to
act as propagandists and organisers. Insofar as anything
else may be hinted at in a few speeches these cannot be
taken as a reflection of A.N.C. policy. 1

In conclusion, my lord, your lordships will be
invited to consider the probabilities on the case as a
whole. On the one hand, my lord, there is the scheme of
things as testified to by the Defence witnesses. This
shows, my lord, that the A.N.C. was committed to a diffi-
cult and a delicate task, but a perfectly rational one. 5
They wanted certain reforms; they do not hope to get them
by mere supplication. Violence they neither desire, nor
equally important, my lord, do they think that it holds out
any hope of success. Therefore, my lord, they embark upon
a middle course. It may be that they are over optimistic
about the prospects held out by this course; that is very
difficult to judge, but in any case it is the only reason-
able course open to them. 10 15

Now what's the other side, my lord? What does
the Crown say? Your lordships will find that on the other
hand there is what we call a Wagnerian twilight through
which the Crown invites us to peer. This, my lord, involves
pointless massacres, planless violence, illdefined action
by illdefines masses, and all this, my lord, is supposed to
have been agreed upon by an organisation as cumbersome as
the A.N.C. without a word of deliberations by them ever
having leaked out, and we shall submit to your lordships
that this is so improbable that the Court will hesitate
long before accepting the evidence of a witness who had
testified directly that it had happened. Your lordships
have had direct testimony of this improbable fact. To 20 25

infer such a thing from the material which has been presented 1
in this case, my lord, we say is quite out of the question,
and I propose now examining, on the probabilities, the
Crown case as we now understand it, and as we understand it,
- I gave your lordship the reference on the first day when
I addressed your lordship last week - Vol. 92, page 19300 5
to Vol.93, page 19302. The plan alleged to have been
agreed upon by the A.N.C. was as follows: My lord, I hope
I'm putting it correctly:

Firstly, obtain support for the struggle
inter alia, by preaching non-violence. That's the start. 10
Thereby, my lord, when you do that you presumably recruit
people who believe in non-violence, but at the same time
as you do that you condition the population for violent
overthrow. That's the first step.

Step 2: you organise campaigns against laws 15
in such a way that the State may use violence to suppress
them.

Step 3: if the State does use violent you
possibly encourage retaliation, but in any event you pre-
sent the victim, as heroes and martyrs, and thus you further 20
inflame the feelings of the masses.

Step 4: Step 4 may go in with the first three.
You recruit volunteers; you tell them to avoid provocation
and refrain from violence. You promise them non-violent
duties, yet at the same time you condition - - I use that 25
word, my lord, because that's the word used by the Crown - -
you condition them for violence.

Now this, as far as the Crown's plan got into
practice, but it had further steps for the future. That's
step No.5: When the people are - - and I use this word in 30

Collection: 1956 Treason Trial
Collection number: AD1812

PUBLISHER:

Publisher:- Historical Papers, The Library, University of the Witwatersrand

Location:- Johannesburg

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