

P. 11  
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Judgment  
20, 1966

IN THE PRIVY COUNCIL

No. 22 of 1965

ON APPEAL FROM THE FEDERAL  
SUPREME COURT OF SOUTHERN  
RHODESIA

B E T W E E N:

KESIWE MALINDI                      Appellant

-and-

THE QUEEN                              Respondent

RECORD OF PROCEEDINGS

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ON APPEAL FROM THE FEDERAL SUPREME COURT  
OF SOUTHERN RHODESIA

B E T W E E N :

KESIWE MALINDI

Appellant

--and--

THE QUEEN

Respondent

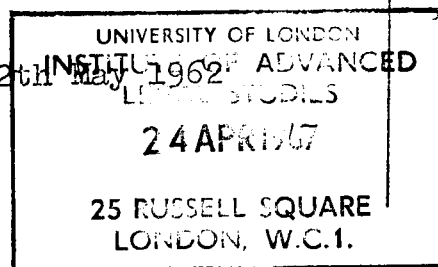
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E X H I B I T S

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1	Plan and Key
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IN THE PRIVY COUNCIL

No. 22 of 1965

ON APPEAL FROM THE FEDERAL SUPREME COURT  
OF SOUTHERN RHODESIA

B E T W E E N :

KESIWE MALINDI

Appellant

-and-

THE QUEEN

Respondent

RECORD OF PROCEEDINGS

NO. 1

In the High  
Court

10

INDICTMENT

No. 1

In the High Court of  
Southern Rhodesia

Indictment

Eric William George Jarvis, Esquire, Attorney  
General of our Sovereign Lady the Queen,  
within the Colony of Southern Rhodesia, who  
prosecutes for and on behalf of Her Majesty,  
presents and gives the Court to be informed:-

20

That KESIWE MALDINI, a native school teacher  
residing at Goromonzi in the district of Salisbury  
in the Colony aforesaid (hereinafter called the  
accused), is guilty of the crimes of Conspiring  
with other persons to aid or procure the  
commission of or to commit the offences of arson  
and malicious injury to property in contravention  
of paragraph (a) of subsection (2) of section  
366A of the Criminal Procedure and Evidence Act  
/Chapter 28/ and Arson, or one or more of the  
said crimes.

30

Firstly.- In that upon or about the 14th May,  
1962, and at or near Chinyika Native Reserve in the  
district of Salisbury aforesaid, the accused did  
wrongfully and unlawfully conspire with Hensiby,  
Masawi, Lovemore, Sixpence and Ronnie and Nowa,  
natives there residing, all and each or with one

In the High  
Court

\_\_\_\_\_  
No. 1

Indictment  
(continued)

or more of them, to aid or procure the commission of or to commit offences, that is to say, the offences of wrongfully, unlawfully and maliciously setting fire to and setting on fire -

(a) a certain hide shed and a certain dip storage shed situated at the Chinyika Dip Tank in the Chinyika Native Reserve aforesaid, the property of the Trustees of the Native Reserves and in the lawful custody of Chawada, a native there residing; and

10

(b) certain huts situate in the Chinyika Native Reserve aforesaid, the property of Tigere, a native there residing, or the property of the Trustees of the Native Reserves and in the lawful custody of the said Tigere; and

(c) a certain school house situate in the Chinyika Native Reserve aforesaid, the property of the Roman Catholic Church or the property of the Trustees of the Native Reserves, and in the lawful custody of Ernest, a native there residing; and

20

(d) a certain hide shed and a certain dip storage shed situated at the Kumswe Dip Tank in the Chinyika Native Reserve aforesaid, the property of the Trustees of the Native Reserves; and

(e) a certain maize field situate at Baines Hope Farm in the district of Salisbury aforesaid, the property of John Adams Gwynne Hughes, a European farmer there residing;

30

with intent to burn and destroy the said hide shed and dip storage shed situated at the said Chinyika Dip Tank, the said huts of the said Tigere, the said school house, the property of the Roman Catholic Church or the Trustees of the Native Reserves, the said hide shed and dip storage shed situated at the said Kumswe Dip Tank, and the said maize field, the property of the said John Adams Gwynne Hughes; and with intent to injure the said Trustees, the said Tigere, the Roman Catholic Church and the said John Adams Gwynne Hughes, all and each or one or more of them, in their property; and thus the accused did commit the crime of Conspiring with other persons to aid or procure

40

the commission of or to commit arson and malicious injury to property in contravention of paragraph(a) of subsection (2) of section 366A of the Criminal Procedure and Evidence Act / Chapter 28 / .

In the High Court

\_\_\_\_\_  
No. 1

Indictment  
(continued)

Or otherwise.- That the accused is guilty of the crime of Inciting, instigating, commanding or procuring other persons to commit the offences of arson and malicious injury to property in contravention of paragraph (b) of subsection (2) of section 366A of the Criminal Procedure and Evidence Act / Chapter 28 / .

10

In that upon or about the 14th May, 1962, and at or near Chinyika Native Reserve in the district of Salisbury aforesaid, the accused did wrongfully and unlawfully incite, instigate, command or procure Hensiby, Masawi, Lovemore, Sixpence and Ronnie, natives there residing, all and each or one or more of them, to commit offences, that is to say, the offences of wrongfully, unlawfully and maliciously setting fire to and setting on fire -

20

(a) a certain hide shed and a certain dip storage shed situated at the Chinyika Dip Tank in the Chinyika Native Reserve aforesaid, the property of the Trustees of the Native Reserves and in the lawful custody of Chawada, a native there residing; and

(b) certain huts situate in the Chinyika Native Reserve aforesaid, the property of Tigere, a native there residing, or the property of the Trustees of the Native Reserves and in the lawful custody of the said Tigere; and

30

(c) a certain school house situate in the Chinyika Native Reserve aforesaid, the property of the Roman Catholic Church or the property of the Trustees of the Native Reserves, and in the lawful custody of Ernest, a native there residing; and

(d) a certain hide shed and a certain dip storage shed situated at the Kumswe Dip Tank in the Chinyika Native Reserve aforesaid, the property of the Trustees of the Native Reserves; and

40

(e) a certain maize field situate at Baines Hope Farm in the district of Salisbury aforesaid, the property of John Adams Gwynne Hughes, a European farmer there residing;

In the High  
Court

\_\_\_\_\_  
No. 1

Indictment  
(continued)

with intent to burn and destroy the said hide shed and dip storage shed situated at the said Chinyika Dip Tank, the said huts of the said Tigere, the said school house, the property of the Roman Catholic Church or the Trustees of the Native Reserves, the said hide shed and dip storage shed situated at the said Kumswe Dip Tank, and the said maize field, the property of the said John Adams Gwynne Hughes; and with intent to injure the said Trustees, the said Tigere, the Roman Catholic Church and the said John Adams Gwynne Hughes, all and each or one or more of them, in their property; and thus the accused did commit the crime of Inciting, instigating, commanding, or procuring other persons to commit the offences of arson and malicious injury to property in contravention of paragraph (b) of subsection (2) of section 366A of the Criminal Procedure and Evidence Act /Chapter 28/.

10

Secondly,- As also, in that upon or about the 14th May, 1962, and at or near Chinyika Reserve in the district of Salisbury aforesaid, the accused did wrongfully, unlawfully and maliciously set fire to and set on fire a certain church there situate, the property of the Salvation Army or the trustees of the Native Reserves and in the lawful custody of Gudza, an officer of the Salvation Army there residing, with intent to burn and destroy the same, and did then and thereby burn and destroy the said church, with intent to injure the Salvation Army or the Trustees of the Native Reserve in their property; and thus the accused did commit the crime of Arson.

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30

Wherefore upon due proof and conviction thereof the said Attorney General prays the judgment of the Court against the said KESIWE MALINDI according to law.

Attorney General.

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NO. 2

CHARGES

In the High Court

No. 2

Charges

15th October 1962

IN THE HIGH COURT OF SOUTHERN RHODESIA  
SALISBURY CRIMINAL SESSIONS,  
OCTOBER 15, 1962.  
BEFORE THE HONOURABLE MR JUSTICE  
MAISELS AND ASSESSORS, MESSRS CRIPWELL  
AND LING.

R E G I N A

10

versus

KESIWE MALINDI

CHARGE: (1) Conspiring with other persons to aid or procure the commission of or to commit the offences of arson and malicious injury to property in contravention of paragraph (a) of subsection (2) of section 366A of the Criminal Procedure and Evidence Act (Chapter 28) and Arson or one or more of the said crimes.

20

Alternatively, inciting, instigating, commanding or procuring other persons to commit the offences of arson and malicious injury to property in contravention of paragraph (b) of subsection (2) of section 366A of the Criminal Procedure and Evidence Act (Chapter 28).

(2) Arson.

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NO. 3

PROCEEDINGS

No. 3

Proceedings

15th October 1962

MR MASTERSON of Counsel for the Crown.

MR ANDERSON of Counsel for the Accused.

30

Interpreters: THOMAS and ARTHUR.

MR MASTERSON: In the first charge it is alleged in the third line that he did "wrongfully and unlawfully conspire with Hensiby, Masawi, Lovemore, Sixpence and Ronnie." I would apply for the name

In the High  
Court

No. 3

Proceedings  
(continued)

15th October  
1962

of Nowa to be added.

The bottom line on the same first page alleges that one of the things to be set on fire was "a certain school house situate in the Chinyika Native Reserve" at St. Dominic's, "the property of the Roman Catholic Church", etc. The evidence will be that it was planned to set fire to a church and that a school house was burnt down accidentally. I wish to apply for "school house" to be deleted and the word "church" substituted.

10

MAISELS, J: Situate in the Chinyika Reserve.

MR. MASTERSON: The reserve in which this church was situated was actually Kumswe Reserve, not Chinyika.

Particular (d): it was apparently planned to burn a hide shed and a dip storage shed and in particular a dip tank which is now included. I ask that to be added.

I would apply for the same amendments to be inserted in respect of the alternative, that is the incitement charge. In particular (c) change "school house" to "church" and "Chinyika" to "Kumswe". Particular (d) add "and a dip tank". And that is all.

20

MAISELS, J: Have you any objection?

MR ANDERSON: No.

MAISELS, J: Very well, the amendments will be allowed. Do you want the charge to be put?

MR MASTERSON: I believe my learned friend has discussed the charge with the accused.

MR ANDERSON: The accused understands the charges and pleads not guilty to the first count and its alternative, and not guilty to the second count.

30

MAISELS, J: Will you tell the accused that counsel who is appearing for him advises the Court that he pleads not guilty to all counts and the alternative to the first count. Is that correct or not?

THE ACCUSED: That is my intention, to plead not guilty to both the main charges and the alternative.

MAISELS, J: That covers the indictment as amended this afternoon.

40

MR MASTERSON: Yes, my Lord.

Mr Masterson outlined the facts of the case.  
Evidence led for the Crown.

CROWN EVIDENCENo. 4JOHN ADAM GWYNNE HUGHESIn the High  
CourtCrown EvidenceNo. 4John Adams  
Gwynne Hughes

Examination

15th October  
1962JOHN ADAMS GWYNNE HUGHES, duly sworn and examined.BY MR MASTERSON: Do you farm anywhere near  
Goromonzi? - I do.What is the name of your farm? - Baineshope  
and Middleton.

Are there two farms? - Yes.

10 Does Baineshope border on any native reserve  
or native area? - Yes, borders on Chinyika Reserve.Being on what boundary of Baineshope? -  
North-east and north-west.And for how long have you occupied this farm? -  
I have been on it since 1936.Does your holding this farm or occupying this  
farm have anything to do with your services during  
the last war? - No.20 Are there any other farms in the vicinity which,  
to your knowledge, were issued to ex-servicemen after  
the last war? - Not to my knowledge, no.Now, on the farm what produce do you go in for?  
- I am a dairy farmer. I grow mostly crops for my  
dairy herd.

Does that include maize? - It does.

And in May this year, and to refer particularly  
to the 14th May, the middle of May, did you have any  
maize in the fields? - Yes, my Lord.30 And how many acres of maize did you have? -  
Approximately 55.On which part of the farm were they situated  
in relation to your boundaries with Chinyika  
Reserve? - They were on the farm Middleton which  
adjoins the school reserve area.When you talk about the school reserve area,  
what do you mean? - The Goromonzi school is a  
portion of Chinyika Reserve and Middleton farm has  
a common boundary, on the north-west side with the  
school boundary.

In the High  
Court

Crown Evidence

No. 4

John Adams  
Gwynne Hughes

Examination  
(continued)

15th October  
1962

BY MAISELS, J: Goromonzi school in the Chinyika Reserve? - Yes, the secondary school.

BY MR MASTERSON: In what condition was the maize in mid May as regards inflammability? - I should think fair.

What would have happened if somebody had lit a couple of plants, put matches to them? - I think at that stage they would have probably gone up in smoke.

BY MAISELS, J: Was the maize dry? - Yes. 10

BY MR MASTERSON: Had you reaped your maize, then? - No.

If the maize had been burnt have you any idea of the damage that would have been occasioned to you? - We would have been unable to reap the crop for grain at all; and the subsequent reaping showed the maize was going to about 15 to 16 bags to the acre, which would be approximately 800 bags plus.

Had that maize been destroyed would you have had to replace it to keep your dairy herd going? - Most certainly. 20

Would the accused or any other person have any right to set your maize on fire at that time or at any other time? - Certainly not.

Was there any possibility of its being burnt down subsequently, would you have burnt it down after you had reaped the crop? - Well, I usually plough it under to get humus.

Now, I believe that you saw active service during the war? - Yes, correct. 30

Have you any idea either from your war experiences or from your farming experiences of what would happen to a four-gallon tin of petrol that was caught in a blazing thatched roof hut? -

MAISELS, J: What would happen to the tin?

MR MASTERSON: Yes, my Lord.

MAISELS, J: If it was what?

BY MR MASTERSON: If it was caught in a blazing thatched roof hut? - I think ultimately it would explode.

Have you had any experience of that sort of thing happening? - I did see one case in the war where a grass canteen caught fire and petrol was 40

stored in the eaves of the canteen and I think they all exploded eventually.

Do you know by what name you are normally known amongst the Africans in the Goronmonzi area?

- I think Jack Hughes.

And is there anybody else called Jack Hughes or are you the only Jack Hughes as far as you know? - I am sure I am the only one.

10 Do you remember hearing the fact that there had been trouble in Salisbury on Monday, 14th May, this year? - I would not like to swear to it, no.

BY MAISELS, J: You would not like to swear to the date or hearing about the trouble at all? - I think I probably heard, but I would not like to swear to any date.

CROSS-EXAMINED BY MR ANDERSON: How far were your maize fields from the Goronmonzi primary school? - I am afraid I do not know where the Goronmonzi primary school is.

20 How far away are they from the secondary school? - The secondary school is about 400 yards.

From the maize fields? - Yes.

BY MAISELS, J: Is that the school building itself? - The school building, yes, my Lord.

BY MR ANDERSON: I take it you do not have guards? - I have two African guards.

30 Is it well known you have those guards there? - I would think it probable; I have them every year.

BY MAISELS, J: You mean at specific times when the crop is ripened? - They usually have a roving commission to destroy wild pigs, porcupines and such like; and also warn off any prospective thieves.

BY MR ANDERSON: Generally police your farm? - Just during the day when the maize is ripe, up to the time we reap it.

40 Do they watch this field in particular or see to other fields as well? - All my maize is in one area, although this was actually in three blocks; but these two have a general patrol round about the maize.

BY MAISELS, J: Do they patrol your two farms? - No, just patrol the maize on the farm Middleton.

In the High Court

Crown Evidence

No. 4

John Adams  
Gwynne Hughes

Examination  
(continued)

15th October  
1962

Cross-  
Examination

In the High  
Court

Crown Evidence

No. 4  
John Adams  
Gwynne Hughes  
Cross-  
Examination  
(continued)

15th October  
1962

Is that during the day? - From early morning until 8 at night.

BY MR ANDERSON: Do they then go off duty and go home? - Unless they think there is a likelihood of any trouble, and they do sometimes stay later.

Is that also well-known? - That is not probably so well known.

Have they always adopted that procedure? - Yes.

For how long have you had them? - They have been in my employ since 1949. 10

I take it that when they are not there your maize lands would be extremely accessible if anyone from Goronmonzi school wished to go and set fire to them? - That is so.

Re-examination

RE-EXAMINED BY MR MASTERSON: You did seem to suggest that your crop guards were operating during the day time and up to 8 p.m. in the evenings. Is that the position? - Yes, they have a sort of roving patrol all the time. 20

Have you ever had any system whereby your crops are guarded throughout the night? - No.

BY MR CRIPWELL: Where are your crop guards recruited from? - They applied for work with me about 1949 and being old retainers I put them on as crop-guards as being the most reliable Africans.

BY MAISELS, J: You mean they have worked for you in another capacity? - Before the maize is ripe and at other times after it has been reaped they do other jobs. 30

BY MR CRIPWELL: They are continuously employed on the farm on jobs like stumping? - Continuously employed.

(The witness stepped down)

Further hearing adjourned till Tuesday, 16th October, 1962.

Tuesday, 16th October, 1962

NO. 5

CHRISTOPHER CARVER

CHRISTOPHER CARVER, duly sworn and examined.

In the High  
Court

Crown Evidence

No. 5

Christopher  
Carver

Examination

16th October  
1962

BY MR MASTERSON: Sergeant Carver are you a sergeant in the British South Africa Police stationed at Goromonzi? - I am.

Were you stationed there in May this year? - I was, my Lord.

10 And in May how long had you been at Goromonzi? - I had been there one year and six months, my Lord.

During that time had you ever come in contact with the accused? - I had, my Lord.

20 Where did you know him from then? - The accused I know to be the headmaster of the Goromonzi primary school which is situated some mile or so from the camp. I had seen him in and around the camp. I had also met him outside at political meetings and elsewhere.

And were you at Goromonzi on the morning of the 15th May this year, Tuesday? - I was, my Lord.

On that day did you receive reports of certain incidents involving burning of buildings? - That is correct, my Lord.

Was the first place that you visited the Chinyika school? - That is correct, my Lord.

Did you prepare a plan of what you found there? - I did.

30 Did this incorporate certain indications made to you by witnesses at that scene? - That is correct.

I produce this, my Lord. It was exhibit one in the Court below. It is this one.

MAISELS, J: What count does this relate to?

MR MASTERSON: This relates to the second charge, my Lord. That is the arson charge against the accused as a substantive crime. It is not included in the incitement and conspiracy charge.

40 MAISELS, J: Is that count two of the indictment.

In the High Court

Crown Evidence

No. 5

Christopher Carver

Examination (continued)

16th October 1962

MR MASTERSON: Yes, my Lord.

THE WITNESS: This is the plan, my Lord.

(Plan put in as Exhibit 1)

BY MR MASTERSON: Will you read out the key to the plan, please?

(Key to plan read.)

From Chinyika school did you go down to the Chinyika dip tank? - I did.

Did you prepare a plan of what you found down there? - I did, my Lord.

10

Exhibit two in the Court below, my Lord. This evidence relates to the first of the particulars in the incitement and conspiracy charge.

(Plan put in as Exhibit 2).

Will you read this out, please. Read out the key.

(Key to plan read.)

MAISELS, J: This relates to what?

MR MASTERSON: It relates to particular (a) of paragraph A in the incitement and conspiracy charge.

MAISELS, J: In count one?

20

MR MASTERSON: In count one.

MAISELS, J: And the alternative?

MR MASTERSON: And the alternative.

BY MR MASTERSON: Now, when you got to the scene in what condition were the dip storage shed and the hide shed (a) and (b)? - They had been burned out, my Lord.

Later that day did you go down to the Kumswe Reserve and there visit the St. Dominic school? - That is correct.

30

What did you find? - Did you prepare a plan of your findings there? - I did, my Lord.

Do you recognise that as your plan? - This is it, my Lord.

(Plan put in as Exhibit 3)



Right, will you read out the key to this plan, please?

In the High Court

(Key to plan read)

Crown Evidence

MAISELS, J: This relates to what?

No. 5

MR MASTERSON: This relates to particular (c) in the main charge, the first charge and the alternative. (To witness): When you visited these three places did you also take a series of photographs? - I did, my Lord.

Christopher Carver

Examination (continued)

10 Have you since bound all these photographs into one album as it were? - That is correct, my Lord.

16th October 1962

And is this the album of photographs? - That is correct.

I produce them, my Lord.

(Album of Photographs, Exhibit 4)

Now, do the photographs have accompanying keys? - Correct, my Lord, they do.

20 Will you read to the Court the keys to each photograph as you start?

BY MAISELS, J: You took the photographs yourself, did you? - I took them myself.

And these represent what you actually saw yourself? ? This is what I saw, my Lord, yes.

(Key to photograph A read)

BY MR MASTERSON: Now, does the point to which the arrow points have any corresponding point on any of the plans? - It does, my Lord.

30 On exhibit one? - On the first plan one corresponds to point X.

And the building which is shown in this picture is which on that plan? - A, my Lord.

Right, your next photograph.

(Key to photograph B read)

MAISELS, J: That is count two, is it?

In the High Court

Crown Evidence

No. 5

Christopher Carver

Examination (continued)

16th October 1962

MR MASTERSON: Yes, my Lord, the first two photographs relate to the second count.

BY MR MASTERSON: The next one. We have just had B. Will you mark C as you go along, Sergeant? - Yes, I will.

The next photograph, which I trust you will label C, what does that say?

(Key to photograph C read)

Photograph D, which is the next one?

(Key to photograph D read)

10

THE WITNESS: I have spelt "Dominic" wrongly, my Lord. I have in my copy put an "S" for a "D".

BY MAISELS, J: Dominic? - Dominic. It is "D-o-m", yes, my Lord; not "S-o-m".

BY MR MASTERSON: Yes?

(Key to photograph E read)

THE WITNESS: I have again marked here with an arrow an area where the fire is alleged to have started indicated to me by Ernest on the 15th May.

BY MR MASTERSON: Does that point correspond to point X on exhibit 3? - It does, my Lord, and the building is point A.

20

The final photograph? -

(Key to photograph F read)

THE WITNESS: Again, my Lord, there is a typing error.

BY MR MASTERSON: Now, do the or does this whole building at St. Dominic's consist of three rooms? - It does, my Lord.

Was there anything to indicate that any part of this was a church? - Yes, my Lord, the largest room which is on the eastern end of the building had a cross on the wall indicating to me that it was used as a church.

30

Is that on the inside or outside of the building? - On the inside of the building.

Does that appear on photograph F? - It does, my Lord. The charred remains that are there.

In the High Court

Was there anything on the outside of this building to indicate that it was a church? - Not that I can remember, my Lord, no.

Crown Evidence

No. 5

To recap. on these visits shortly, was there anything at the Chinyika hide shed to suggest that there had been hides in the shed when it had burned down? - Yes, my Lord. There was some burned, charred matter lying in the middle which would appear to have been hides. They were not recognisable as hides, but they could have been.

Christopher Carver

Examination (continued)

16th October 1962

10

BY MAISELS, J: Burned charred matter? - Matter.

Which might have been hides? - Which might have been hides.

20

BY MR MASTERSON: And the photograph of that hide shed suggests that it was a construction built predominantly of poles. Had you ever seen this before it was burned? - I had.

And what was its appearance? - The walls were constructed of poles. It had a wire running round the outside of the walls.

Is that wire netting or wire? - Wire netting.

Yes? - And it had a thatched roof.

30

Well, how substantially fixed to the ground was this? - Quite substantially. It was all dug into the ground. The poles were all dug in, and as can be seen from the photograph, the corner poles are quite large.

In the church at St. Dominic's the benches or pews all appear to be of a mud or dagga construction?

MAISELS, J: What photograph are you on now?

MR MASTERSON: I am on the first - on the second photograph, my Lord, B.

THE WITNESS: Photograph of Chinyika, my Lord.

MAISELS, J: Chinyika hide shed photograph is photograph C.

40

MR MASTERSON: Photograph C.

THE WITNESS: Yes.

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MAISELS, J. I would be obliged, Mr Masterson if you would refer to them by numbers.

MR MASTERSON: As your Lordship pleases.

THE WITNESS: The pews and the altar, my Lord, were constructed of mud. I think it was actually Kimberley brick covered in mud.

BY MR MASTERSON: Was there anything to indicate that anything had been destroyed by this fire in the church apart from the roof? - I could not see anything, my Lord, but then there was a lot of grass lying on the floor and there may have been something underneath. I did not search through it. 10

BY MR MAISELS, J: Had you been in this building before it had been burned down? - I had.

Was there a roof of thatch? - There was a thatched roof, my Lord.

BY MR MASTERSON: The St. Dominic's building which is shown in photographs D, E and F, had you known that before it was burned down? - I had.

What sort of roof had that had? - It had a thatched roof. 20

From your examination of the interior of the building after the burning, was there anything to suggest what had been destroyed in the fire, if anything? - The charred remains of some benches and a table.

That is what you were able to identify? - That is all I was able to identify, my Lord.

Have you also prepared a plan of the general area of Chinyika Reserve, Goromonzi, and the Kumswe Reserve? - I did, my Lord. 30

(Plan produced as Exhibit 5)

How did you prepare this plan? - I traced it off a survey map we have in our office, my Lord.

During your year or more at Goromonzi has your experience of the neighbourhood reflected in this plan enabled you to make any comment on its accuracy? - As far as I can tell, my Lord, it is accurate. 40

Will you read the key to this plan, please?

(Key to plan read).

Where is the Goromonzi secondary school? -  
The Goromonzi secondary school, my Lord, is at the  
bottom or the south of the Chinyika Reserve round  
the house of Kesiwe Malindi, point E.

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Is that slightly south of E? - That is  
correct.

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10 Where is Goromonzi primary school at which the  
accused is apparently a teacher? - Goromonzi prim-  
ary school, my Lord, is situated within the  
boundaries of Goromonzi secondary school. It is a  
small school house situated to the south of the  
accused's house which is point E. To the south  
and slightly to the east as we look at this plan,  
it is not marked on the plan.

BY MAISELS, J: What is this Goromonzi school  
marked on the plan? What is that? - That is the  
secondary school.

And the primary school is at the same spot? -  
It is in the same area, my Lord, yes.

20 BY MR MASTERSON: And in the same vicinity  
your plan suggests that there are football grounds?  
- That is correct, my Lord.

And on which side of the road are these foot-  
ball grounds? North or south? - North, on the  
northern side of the road.

BY MAISELS, J: That line blue is that a road? -  
That double line is the road, my Lord.

30 BY MR MASTERSON: I believe the blue lines are  
the Reserve's boundaries? - That is correct, my  
Lord.

In the vicinity of the football grounds are  
there any buildings or habitations? - There is a  
sort of stadium. A pavilion would probably be a  
better name for it at the football ground, just a  
roof on poles and the headmaster's house is  
situated on the same side of the road, but to the  
extreme west.

That is the western side of? - Of the foot-  
ball ground.

40 And the northern side of the road? - That is  
correct, my Lord.

Is there any veld around the boundaries of the  
football ground? - There is, my Lord. It is all  
grass and trees.

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Around the football grounds? - Yes, my Lord.

If a person went to the veld or bush anywhere near the football ground, would they be visible or audible from the headmaster's house? - No, my Lord.

I believe that apart from the headmaster's house, the majority of the occupied habitations are on the south side of the road? - That is correct.

If you went into the bush round the football ground could you in any place be neither visible nor audible from the other habitations on the south side of the road? - I could, my Lord. 10

MAISELS, J: Be what? -

MR MASTERSON: Be neither visible nor audible.

MAISELS, J: I just did not understand the question and I do not understand the answer. Would you mind putting it again, Mr. Masterson?

MR MASTERSON: Certainly, my Lord. (To witness) If you went into the veld bordering the football ground could you be heard or seen from the habitations on the south side of the road? - No, my Lord. 20

Is the farm Baineshope farm with a bracket underneath it Mr Hughes, the farm of the Mr Hughes who gave evidence yesterday? - That is correct.

Do you know where his farm Middleton is on which he said he had maize? - The farm Middleton, my Lord, is to the south-east of Baineshope.

Is that bordered by the stream and the other boundary line? - That is correct, my Lord.

Can you give us any idea of relative distances on this map? Firstly, from E, the accused's Quarters, - how far is it to Yafele's kraal which appears to be on the other side of the road from E and slightly towards the east? 30

MAISELS, J: From where?

MR MASTERSON: The other side of the road and slightly to the east of E, an inch away from E.

MAISELS, J: I am terribly sorry, Mr Masterson. E from where?

MR MASTERSON: From E to Yafele's kraal, my Lord. 40

MAISELS, J: The point marked Yafele's kraal?

MR MASTERSON: Yes, my Lord.

THE WITNESS: Approximately half a mile.

BY MR MASTERSON: And from E to the Chinyika school at A? - Approximately two miles, my Lord.

The distance from A to B and C? - Half to three-quarters of a mile. They are visible from each other.

From E across the map to D? - About 12 miles, my Lord.

10 Can you give the Court any idea of the nature of the road connecting E and D? - Normal gravel country road, my Lord.

Does it involve any particularly difficult hazards in the way of mountain ranges or rivers or anything? - No, my Lord, none.

Does the mark "B.S.A.P." included in the circle to the north-east of Goromonzi school indicate the B.S.A.P. camp at Goromonzi? - It does, my Lord.

20 Now, did you arrest an African called Sixpence in connection with these burnings? - I did, my Lord.

When you arrested him did he have a note in his possession? - He did, my Lord. This is the note, my Lord.

(Note put in, Exhibit 6)

Will you please read this?

MAISELS, J: Is this note in the original English?

30 MR MASTERSON: Yes, my Lord. (To witness): Will you please read it from top to bottom? - The top right-hand corner it has got "Local June 6th, 1962". On the left: "Comrade Sevenzai, We are all well here".

MAISELS, J: Just a moment, our copies are wrong: "We are all well here".

THE WITNESS: "We are all well here".

MAISELS, J: Be careful in reading, sergeant. Mr Masterson, have these been checked with the originals?

MR MASTERSON: No, my Lord, they have not.

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BY MAISELS: J: Is it Sevenzai? - Sevenzai.

Yes, carry on? - "We are well here. We are pleased you and your family are safe. Please receive the following - 3/6 for card No. 2872 LEONARD; 3/6 ditto marks, "RONNIE; 3/6" .....

Under what do the ditto marks fall? - Under "for", my Lord.

Just let me see it please. Well, this typing is quite wrong, Mr. Masterson. They have even put in words which are not here on the copy.

10

MR MASTERSON: I believe so, my Lord.

MAISELS, J: Just a moment. I will just amend it.

BY MR MASTERSON: You have read 3/6, ditto, ditto, under "for" Ronnie. What comes next on the original? - 3/6 ditto marks Nowa.

Under what do the ditto marks fall? - Under "for" again, my Lord.

Go on? - "3/6" ditto "No. 2871 RICHARD BEN". The ditto marks fall under "for" and "card".

20

Go on? - "3/- subscription" .....

(Reading of exhibit completed)

On what date was it that you got this note from Sixpence? - On the 6th June, my Lord.

That is the date on which it is itself dated? - That is correct, my Lord.

That same day did you arrest the accused? - I did, my Lord.

When you arrested him did you search his house? - I did, my Lord.

30

Was he with you when you searched? - He was.

Were you the only person searching? - No, my Lord.

During the course of this search do you know whether a notice .....

MR ANDERSON: I object to this question, my Lord. It must not be put in a leading manner.

MAISELS, J: I do not know what the question is.



MR ANDERSON: I know perfectly well. My learned friend has a document and is waving it around.

MAISELS, J: Just sit down a moment. Just a moment. Mr. Masterson?

MR MASTERSON: Yes, my Lord.

MAISELS, J: What did you start to say, Mr. Masterson? I am afraid I have not got it. I have to write.

10 MR MASTERSON: I am afraid I had said something, "during the search did you ....". I may well have said, "did you find ....."

MAISELS, J: "Did you find ....."

MR MASTERSON: Yes. Apparently I said, "did you find a notice?". I shall reframe that question.

MAISELS, J: Yes.

BY MR MASTERSON: Do you know anything about this notice? - We found this in his house, my Lord.

20 BY MAISELS, J: You found this document now before you in the house of the accused? - This one here, not the typed one.

MR MASTERSON: That is the typed Roneoed document.

BY MAISELS, J: "I found ....." . Did you find it yourself? - Yes, my Lord, it was found in his bedroom at the back as far as I remember.

"I found a typed Roneoed document"? - Document written in Shona or what I believed to be Shona.

30 "Written in a language which I believe to be Shona", and you say you found it where? - In a bed-room at the back of the house.

Yes? - I presume it is a bedroom. It did not have a bed in it.

In a room? - In a room at the back of the house among other papers.

(Notice produced, Exhibit 7)

MAISELS, J: Any objection, Mr. Anderson?

MR ANDERSON: It is rather late at this stage.

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MAISELS, J: Late for what?

MR ANDERSON: My Lord, it is not admitted by the accused that he knows anything about this particular document.

MAISELS, J: The witness is giving evidence. You can cross-examine him. Is there anything objectionable about what was done?

MR ANDERSON: My objection was that it was put to the witness, "Did you find this notice?", when he was searching the accused's house. It is clearly leading. 10

MAISELS, J: The question was not that as far as I recall.

MR ANDERSON: The question was "did you find..." He had just been asked if he searched the accused's house and the document was being waved around.

MAISELS, J: The document will be admitted.

THE WITNESS: When I found this document, my Lord, it did not have the word "strike" written in red on the top. 20

MAISELS, J: Just give me that last exhibit 6, while we are on things. On exhibit 6 there were certain lines underlined in red ink.

THE WITNESS: They were not underlined.

MAISELS, J: They were not on exhibit 6 either; and exhibit 7, you say, did not have the word.

THE WITNESS: "Strike" written on the top.

MAISELS, J: Written in red ink as well.

THE WITNESS: Written in red ink and in English.

BY MR MASTERSON: Is the exhibit 7 at the moment attached to a piece of paper which has English words written down below? - It is. 30

This I will lead evidence of being an interpretation of the strike notice, my Lord.

MAISELS, J: Well, I do not know what it is. Why call it a strike notice? What notice?

MR MASTERSON: Exhibit 7.

MAISELS, J: Mr. Anderson, have you any objection to our looking at it meanwhile, pending the interpretation? 40

MR. ANDERSON: No, none at all.

MAISELS, J: Do you wish the translation read subject to its being right?

MR MASTERSON: Yes, please, my Lord.

MAISELS, J: Mr. Anderson, wants to have a look at it.

MR MASTERSON: He has already seen it.

MR ANDERSON: I have seen it. I asked for a copy.

10 MR MASTERSON: I am afraid I do not have a copy.

MAISELS, J: Yes, well, read it.

(Exhibit 7 read)

BY MR MASTERSON: At the same time that you searched the accused's quarters, did you find any other document? - Yes, my Lord.

What form did some of these documents take? - There were note books, personal letters and that was about the majority of it: notebooks and letters.

20 MAISELS, J: I beg your pardon? - Notebooks and letters.

That is the majority.

BY MR MASTERSON: Were there any pamphlets? - Yes, my Lord, I think there were pamphlets.

All right. Now do you know anything about this book? - This is one of the books we found in the accused's quarters, my Lord.

(Exercise book with red hard cover, exhibit 8)

30 Now, Mr. Carver, I have flagged three passages in that book. I would like you, please, to read them to the Court. The first is flagged what, please?

MAISELS, J: Flagged one?

MR MASTERSON: Flagged what.

MAISELS, J: What?

MR MASTERSON: Yes.

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WITNESS: S.A. Indicative of accused's dissatisfaction with prevailing situation.

MAISELS, J: No, no, just a moment. How can you put that in and have that read?

MR MASTERSON: My Lord, I am just saying that is what is flagged.

MAISELS, J: I will not have that in there at all. That is your comment and it is quite improper and should not be there. Please have it removed at once.

10

MR MASTERSON: Will you please remove that flag and, for that matter, the other flags.

MAISELS, J: You can shew which you want the witness to read by an ordinary piece of paper.

MR MASTERSON: As you Lordship pleases. Have you got the right pages? (Plain paper markers inserted).

MR ANDERSON: My Lord, I submit, with respect, it is not necessary for this to be read. My Lord, under the amendment of the Criminal Procedure and Evidence Act - I am afraid I have not the amendment here, my Lord; it is a very recent one - I understand it is not necessary for all documents to be read at the trial.

20

MAISELS, J: Oh, I see, that you can just hand it in without reading. Are they very long, Mr. Masterson?

MR MASTERSON: My Lord, one is two pages in length in that book.

MAISELS, J: There are no copies, are there?

30

MR MASTERSON: No, there are not.

MAISELS, J: I think, Mr. Anderson, they had better be read.

MR. ANDERSON: As your Lordship pleases.

MR MASTERSON: Right, will you read that first essay, please.

(Essay "My Surroundings Now" in exhibit 8 read)

WITNESS: "A Change in Southern Rhodesian Politics", I think this appears to be a new essay.

MR MASTERSON: That is another page? - Another page.

40

Will you just stop at that point. That is the first passage I am interested in. Now the next place which was flagged, I believe, is writing on the top third of the page and it is right down the side. Yes, will you leave the passage out, please, and take the flag away and don't read it at all. Will you go right to the back of the book now. What does the back cover of the book have written on it? - Over the back two, the cover and the page before it, it has got written in green ink "Nationalist Principles".

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Let us start with the back cover page. - "One".....

What is that headed, the back cover page. What is it headed, if anything\_ - There is no heading at all.

(Writing on back cover of exhibit 8 read).

20

That is what is written on the back cover? - On the back cover.

BY MAISELS, J: What date is that, September 12th? - September 12th?

What is the significance of that date? - As far as I know, my Lord, it is Pioneer Day.

BY MR MASTERSON: Is that a public holiday? - Public holiday, yes, my Lord.

(Court adjourned 10.57 a.m.; Court resumed 11.17 a.m.)

30

CHRISTOPHER CARVER recalled, still under former oath:-

BY MR MASTERSON: Sgt. Carver, you had read out what was written on the back page of this book, Will you now read out what is written on the first page at the back of the book? - Very good, my Lord.

(Relevant extract from exhibit 8 read)

Now is there any name on the outside front cover? - There is, my Lord.

40

What? - K. Malindi Ndlovu. Spelt "N-d-l-o-v-u".

Right now do you know anything about this book, exhibit 9? - Yes, my Lord, this was another book in his house.

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(Exercise book with hard brown cover, exhibit 9)

Where does it come from? Found in the accused's house? - In his house.

Is it labelled with anything on the outside? - It is, my Lord.

What? - Name, Kesiwe Malindi Ndlovu. Subject, "My Life".

Now inside that book there are two essays or two sets of writing, one entitled "My Life" and the other entitled "Zimbabwe"? - There are. 10

Is the first a fairly lengthy article, as it were? - It is, my Lord. It is very lengthy.

And does it contain five pages about what appear to be the writer's views on religion? - As far as I can recollect, my Lord, that is correct.

I have starred the five pages that I am interested in, in red, my Lord. Will you read these pages to the Court, please?

MAISELS, J: What the witness has said appears to be not evidence, Mr. Masterson. That is purely information given by him on the meaning of the article. 20

MR MASTERSON: Certainly, my Lord.

MAISELS, J: It will not be regarded as evidence of the article itself.

MR MASTERSON: Not as evidence.

THE WITNESS: This is a section, my Lord, from the article.

(5 pages starred in red in essay "My Life" in exhibit 9 read). 30

BY MR MASTERSON: That is all from that passage. I believe, that I am interested in. Now will you turn to the next passage that I have marked. I believe this falls within the essay entitled "Zimbabwe"? - It does.

Now, there are two pages in that which I have starred with red. Would you please read them?

(2 pages starred in essay "Zimbabwe" in exhibit 9 read).

That is all I am interested in in that part. Now, Sergeant Carver, during the conduct of your police duties have you had to attend political meetings addressed by members of the Zimbabwe African People's Union? - I have, my Lord.

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Have you attended meetings both in Chinyika Reserve and Shangure Native purchase area which borders on Kumswe Reserve? - There have been no political meetings in the Chinyika Reserve and the meetings which I have attended were in the native purchase area and that borders on the Kumswe Reserve, Shangure native purchase area. It is situated, my Lord, due south of the Kumswe Reserve.

BY MR MASTERSON: At these political meetings have members of the Zimbabwe African People's Union addressed large crowds? - They have.

20

Do you know whether people from Chinyika Reserve used to go to Shangure? - They did, my Lord. I do know that.

At these meetings did you ever hear any mention of the attitude of the Zimbabwe African People's Union towards police reservists?

MR ANDERSON: My Lord, I object to that.

MAISELS, J: How is that admissible?

MR MASTERSON: My Lord, the evidence will, I hope, establish that the accused was a supporter of the Zimbabwe African People's Union.

30

MAISELS, J: That does not matter. He need not associate himself with everything said.

MR MASTERSON: I appreciate that.

MAISELS, J: You have not charged him with being a member of the Zimbabwe African People's Union.

MR MASTERSON: I have not.

40

MAISELS, J: How is it admissible? Unless you can show that the accused has spoken at a meeting and said things himself or identified himself some other way with what is said by other people?

MR MASTERSON: As your Lordship pleases. I will not persist on that basis then. (To the witness) Do you have any knowledge of what would

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happen if a paraffin-soaked rag were put on to or into the thatched roof of a building and a match were put to that rag? - I would say, my Lord, that the paraffin would ignite which in turn would ignite the thatch roof of the building and the building would be destroyed or the roof would be destroyed.

BY MAISELS, J: Paraffin would ignite and a fire would start? - A fire would start, my Lord, yes.

CROSS EXAMINED BY MR ANDERSON: Sergeant Carver, would it be correct to say that you arrested at least nine people in connexion with this offence? - I arrested six people. 10

Who were they? - The accused, Agripa Sevensayi, Masawi, Lovemore, Hensiby, Sixpence. I have lost count, I am afraid.

MR MASTERSON: Six.

MAISELS, J. Six. Yes, you have given six.

BY MR ANDERSON: Any others? - I did not arrest any others, no. 20

Were any others arrested? - Not for this offence, no.

What about Nowa? - He was not arrested.

Was he never arrested? - No.

Was he ever brought in for questioning? - He was, my Lord, yes.

What about Ronnie? - He was not arrested, my Lord, but he was also brought in for questioning.

And Supa? - The same, my Lord.

Supa? - Brought in for questioning. 30

No charges were preferred against them? - No, my Lord.

Of the six who were arrested, would it be correct to say that all have been prosecuted except for Agripa Sevensayi? - That is correct, my Lord.

Who was released? - The charge against him was withdrawn.

BY MAISELS, J: All six except for Agripa were prosecuted? - Were prosecuted.

The charge against Agripa? - The charge against Agripa was withdrawn. 40



Yes? - Pending further inquiries into his case.

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The charge was withdrawn? - Was withdrawn.

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He never pleaded to it? - He never pleaded, my Lord, no.

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BY MR ANDERSON: I understand Agripahas now absconded? - Well, I cannot find him.

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BY MR ANDERSON: I take it you inferred from that that he has absconded? - Yes.

Examination (continued)

10 BY MAISELS, J: He may be hiding? - I understand that he is somewhere in Salisbury, but that is hearsay.

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You cannot find him now? - I cannot find him now.

20 BY MR ANDERSON: Now, it is correct to say, is it not, that a Sergeant Aaron was investigating these cases along with other policemen? - Aaron - he is an African Detective Sergeant, my Lord. He was investigating cases at the beginning and he returned to Marandellas where he is stationed and returned back to Goromonzi on the 6th June after we had arrested the accused.

And is it correct to say that Sergeant Aaron is related in some way to Agripa Sevensayi? - I would not know.

30 You have your ear to the ground, Sergeant. Have you not heard? - I have not heard. I know that Aaron had a sister living in the Chinyika Reserve but I did not find out whether his sister was related at all. I know nothing about it.

Do you know whether or not Aaron stayed with Agripa Sevensayi when he stayed in the Reserve, when he was conducting his investigations? - To my knowledge Sergeant Aaron never stayed with Agripa Sevensayi.

BY MAISELS, J: As far as you know? - As far as I know.

Where did he stay? - He stayed at the police camp.

40 BY MR ANDERSON: Would it be correct, Sergeant, to say, or would it not - I do not know - that these people who were arrested had all been arrested by the time the accused was brought into the Marandellas

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gaol, which I believe took place at some stage or other? - That is correct.

BY MAISELS, J: And the other persons you mentioned? - Have been detained.

Sorry, Lovemore, Hensiby, Sixpence, Masawi and Agripa had all been arrested prior to the accused's being brought into the gaol? - Correct.

BY MR ANDERSON: And I take it you had statements from all of them - warned and cautioned statements or charge sheets? - That is correct, my Lord. 10

Would the same apply to Nowa, Ronnie and Supa? Did you have statements from them at that stage? - We had statements from them, my Lord, before the accused was taken to Marandellas gaol.

I understand you were visited by Detective Inspector Rattray? - I was, my Lord.

And I assume he would have known of all the statements made by these people? - He did, my Lord. He, I and others were all engaged on this case at the time. 20

You, I take it, Sergeant, were the investigating officer who assisted the prosecutor in the preparatory examination in this matter? - I did not actually assist him, my Lord.

Well, would you be by his side in case he wanted something? - I was in the Court.

The whole time? - Yes.

You are aware that another prisoner on a totally different charge was placed in the same cell as the accused in Marandellas gaol, I assume? - I did know that some days after the accused had been taken to Marandellas, my Lord. 30

This man was put in as a spy?

BY MAISELS, J: Just a moment. You were aware some days after the accused had been taken to Marandellas? - I was informed.

You were informed? - Yes, I was informed the following day or the day after that the accused had been put into a cell with another man. I do not know who he is or what he was arrested for. 40

BY MR ANDERSON: Put it the other way around, Sergeant. The other man was deliberately put in the

same cell as the accused as a spy? - No, my Lord.

Correct? - No, my Lord, not by me. I did not put the accused in the cell at all or the other man.

You have not heard that? - That he was put in deliberately?

Yes, as a spy? - I have heard of no such statement.

10 I assume you have not even heard whether or not a prisoner put in the cell with the accused was told what to do in the cell? - No, my Lord.

BY MAISELS, J: You know nothing about it? - I know nothing about it at all.

BY MR ANDERSON: I take it that you had sight of the police docket at all times? - I did.

And I take it you were aware of a statement made by the prisoner who was put in the cell with the accused? - I did see a statement, my Lord, from another prisoner.

20 That prisoner was available at the time of the preparatory examination to give evidence about what took place in the cell during the night? - I understand he was, my Lord.

And he was not called? - Not to my knowledge, my Lord. I do not think he was, not while I was there.

30 I can assure you he was not. Now, Sergeant, I take it that you were also in Court at the time the accused made a request to the Court for the police to obtain certain documents for him. That would be on the 27th July this year? - I cannot remember, my Lord.

The matter was resumed on that day? - It may be, my Lord. The accused made quite a number of requests, but I cannot remember any specific request for any specific documents.

Do you remember his requesting that ZAPU cards, amongst other things, should be obtained by the police for him? - Obtained by the police?

40 Yes, for him, yes? - I am afraid I do not remember that, my Lord.

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Do you remember his asking for the cards and receipts collected from the persons to whom we have already referred, the other persons arrested and questioned? Do you remember his asking for their cards and receipts to be obtained for him? - No, the accused made no such request to my knowledge.

MAISELS, J: I think Counsel is referring to something the accused said in Court.

MR ANDERSON: Yes, I understood this witness said he was in Court all the time.

10

THE WITNESS: I was to the best of my knowledge, and when I was in Court the accused made no request to obtain any cards of other people.

BY MAISELS, J: You might have been out of Court at the time? - I may have been. I heard of no such request.

BY MR ANDERSON: What I really want to know, Sergeant, is if you did in fact search the house, or wherever they live, of the other witnesses in this case, the accomplices? - I did, yes. Not all of them personally.

20

BY MAISELS, J: You did search or cause to be searched? - The houses of these other people.

BY MR ANDERSON: All of them were searched by someone? - Yes, my Lord.

Were ZAPU cards found at any of those houses? - Yes, they were.

Where are they? - They are still at Goromonzi camp as far as I can remember.

BY MAISELS, J: Were any of them, Sergeant, handed in when these other persons were prosecuted? - No, my Lord.

30

As far as you remember they are still at Goromonzi camp? - As far as I can remember, they are still at the office.

BY MR ANDERSON: So you have at Goromonzi camp all the cards and receipts which were found in the possession of the accomplices? - Yes, my Lord, I think I have.

Would you be able to bring those to the Court tomorrow, Sergeant? - Yes, I think I would.

40

BY MAISELS, J: It is not too far from here, is it? - It is 24 miles from here, my Lord.

MAISELS, J. Do you want them, Mr. Anderson?

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Court

MR ANDERSON: I want them, yes.

BY MAISELS, J: Do you go home in the evenings?  
- I do, my Lord.

Crown Evidence

No. 5

Will you bring them? - I will have a look  
and bring them in.

Christopher  
Carver

BY MR ANDERSON: When you searched the  
accused's house, did you find any text-books on  
nationalism? - Not to my knowledge, not any  
text-books.

Cross-  
examination  
(continued)

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10

BY MAISELS, J: Well, what do you mean  
"text-books"? Did you find any books there? -  
Yes, my Lord, I found these books.

BY MR ANDERSON: Did you find any other books  
which referred to nationalism or the principles of  
nationalism other than the one you read out? -  
I can't remember.

BY MAISELS, J: Did you make a list of the books  
and papers that you had seen? - All the papers we  
had seen we put them altogether; there were quite  
a number of them and we took them back to the camp  
with the accused.

20

BY MR ANDERSON: Now the accused was not  
present when you searched his house? - The  
accused was present all the time.

He was present? - Yes.

I beg your pardon. Was any list made at the  
time of any of the things you took from his house?  
- No, my Lord.

30

BY MAISELS, J: Did he see your taking the  
documents? - He saw our taking everything.

Did he see your parcelling them up? -  
Yes, my Lord.

And he went with you to the police camp? -  
With the documents.

BY MR ANDERSON: I want to refer to the docu-  
ment that had "strike" written in red ink on it.  
You remember that exhibit 7? - Yes, I have it  
here.

40

As I understood you, you were not sure, not  
certain as to precisely where it was found? -  
As far as I can recollect, my Lord, it was found

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Court

Crown Evidence

No. 5

Christopher  
Carver

Cross-  
examination  
(continued)

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in a cupboard in this back room with a lot of other papers and personal letters, etc.

MAISELS, J: The witness said he did not know whether it was the bedroom, but he knew where it was found. It was a room in the back of the house. His doubt was whether or not it was a bedroom.

MR ANDERSON: I am obliged to you. (To witness): Was it just amongst all those papers? - Yes, my Lord, as far as I can remember, it was.

Would it be correct to say, Sergeant, that a lot of documents similar to that one were discovered all over Southern Rhodesia at about this time? - I do not think so, my Lord, no, not as far as I know, not of this type. 10

Was it not thought to be a Roneed notice which had been distributed freely by some unknown person? - Maybe, my Lord.

And was put in the townships? - Maybe it happened in Salisbury, but we in Coromonzi received no such notice as this. 20

BY MAISELS, J: Is this the only one you found? - This is the first one I found.

The first one, the only one? - The only one at that time, yes.

BY MR ANDERSON: The accused will say he knows nothing about that notice. He cannot deny that it might have been found in his house, but he knows nothing about it? - Well, the accused was present, my Lord, when we found all these papers.

I take it he did not look at each one as you parcelled them. You just took them in toto? - In fact, my Lord, the accused did. Every time we took up a paper we shewed it to him, said: "What is that?", and some of them he looked at in detail. Some he said he wanted to keep and some he said we could take. 30

How long did this search take? - It took some time, my Lord; at least half an hour.

There must have been a large number of documents that you took? - We took quite a number of documents, my Lord, but there were quite a large number of documents and books to look through. 40

Do you suggest that the accused looked at every single one? - Yes, my Lord, I think he did.

Am I to understand that you are not certain about that? - I could not be sure that he looked at every single one, but he was certainly present and he certainly looked at most of them and as far as I am concerned he saw everything we took away from his house.

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Court

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Christopher  
Carver

Cross-  
examination  
(continued)

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1962

10 He may well have seen your taking a document, but is it possible he might not have seen that precise document? - I could not say it is possible, but all I could say is that the accused, as far as I know, knew and saw everything we took.

BY MAISELS, J: As far as you remember he looked at practically every one of them? - At practically every one of them. We were not trying to hide anything from him around his house. If we found anything we shewed it to him.

20 BY MR ANDERSON: That is not suggested. You said you went to various meetings of the Zibabwe African People's Union in a purchase area nearby? - The Shangure Purchase Area. I did.

Did you ever see the accused as a speaker there? - Not as a speaker, no, my Lord.

Did you see him in attendance at any of those meetings? - I have seen him attending some of those meetings, my Lord, yes; not all of them.

BY MAISELS, J: As an ordinary member of the audience? - That is correct, my Lord.

30 BY MR ANDERSON: Would he inevitably have been there or when you say you saw him at some of the meetings were they recent ones you saw him at or scattered over a long period? - They averaged one meeting a month. The accused attended most of them. I could not say at which ones he was there and at which ones he was not there.

My Lord, might I be allowed to take brief instructions from the accused?

MAISELS, J: Certainly.

40 BY MR ANDERSON: Sergeant, I am instructed that there were three of you, in fact, searching accused's house at the same time? - Correct.

All three of you taking documents at the same time? - That is correct, my Lord. We were all looking through the documents at the same time.

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Christopher  
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Cross-  
examination  
(continued)

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MAISELS, J: I beg your pardon?

THE WITNESS: We were all looking through documents and taking them out.

Now, how do you know then that he saw everything or practically everything that was taken? - I was present and everything we took the accused looked at.

Do you mean you collected them altogether and showed them to him? - We put a piece of paper on the floor. Everything we took we put on the piece of paper.

10

And he was there? - He was there.

Seeing what was taken? - Seeing what was taken.

All the documents were put in as one parcel?

BY MR ANDERSON: Were taken and put down and you hoped the accused would notice? - We did not hope anything, my Lord. The accused was there and he noticed.

I take it you cannot exclude the possibility that he might have been attending to one of the other persons searching at the time when exhibit 6 was placed there? - I cannot.

20

Who found exhibit 6? Was it you or one of the others? - As far as I can remember it was found by one of the others and it was shown to me.

BY MAISELS, J: That is the exhibit? - Exhibit 7, my Lord, not 6.

MR ANDERSON: I beg your pardon.

MAISELS, J: You mean 7, don't you.

MR ANDERSON: Yes, my Lord, I beg your pardon.

MAISELS, J: Six was one written to Comrade Sevensayi.

30

MR ANDERSON: Yes, I beg your pardon.

Re-examination

RE EXAMINED BY MR MASTERSON: Agrippa Sevensayi who is a suspect; are you as the police interested in him for any reasons other than the present matter? - We are, my Lord.

What? - A case against him, my Lord, of which he is accused.

What sort of case is it? - Theft by conversion.



Have you any reason to believe that he is aware that you are looking for him for that case? - I know, my Lord, that he has been told.

Is that hearsay or is that your own having told him? - I know from information received from another.

Sorry? - But he has been told.

BY MAISELS, J: Anyhow, as far as you know, he ought to know that you are looking for him? - Yes.

BY MR MASTERSON: During the searches of the other people's quarters, do you know if any other notices such as the one labelled "Strike", that is exhibit 7, were found? - No, my Lord.

You did say that the note, exhibit 7, was the first one you had found? - The first of its sort we had found in our area.

BY MAISELS, J: Did you subsequently find others? - Yes, my Lord, in this last operation we found some more.

BY MR MASTERSON: When was that?

BY MAISELS, J: When was the last operation? - This month, September, my Lord; last September.

In September you found others? - Yes, my Lord.

Worded exactly the same? - No, my Lord, the wording is not exactly the same; it differs slightly; it had the same meaning calling for a strike on the Monday.

Calling for a strike on the Monday? - Yes, my Lord, that is the theme behind them all.

BY MR MASTERSON: Were there many of these notices recovered or not? - No, we found two, my Lord.

And how many premises were searched in the course of finding those two? - These two were not found during the course of any search. They were found discarded on the side of the road.

Very well, you say that that exhibit 7 was found by somebody else and shown to you? - Yes, my Lord.

Can you recall whether you showed it to the accused? - No, my Lord. I did not show it to him, not personally.

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Christopher Carver

Re-examination (continued)

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Court

Crown Evidence

No. 5

Christopher  
Carver

Re-examination  
(continued)

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1962

No. 6

Masawi

Examination

BY MAISELS, J: Where was the accused when it was shown to you? - In the same room with us, my Lord.

Is it a small room or a large room? - Quite a small room, my Lord, with a built-in cupboard.

I beg your pardon? - Quite a small room; it had a built-in cupboard.

(Witness withdrew).

NO. 6

MASAWI

MASAWI, duly sworn and examined, through Interpreter, Arthur. 10

BY MR MASTERSON: Are you at present a hard labour prisoner? - I am.

How long are you serving in gaol? - Four years and six months.

When were you sentenced to this term of imprisonment? - I was tried on the 25th July.

For what offence or offences were you so sentenced? - Setting fire.

To what? - Setting fire to a dip tank. 20

Which dip tank? - A shed situated at Chinyika and a house where petrol is stored.

Where? - AtChinyika.

Do you realise that you are being called to give evidence in relation to the same set of facts now? - I do.

My Lord, may the witness be informed of his position at the moment?

MAISELS, J: As regards giving evidence? - What do you mean? What position? 30

MR MASTERSON: May he be informed he has been convicted, that he has nothing to gain, nothing to lose by changing his story.

MAISELS, J. There is no question of his giving evidence to incriminate himself because I take it he has been convicted.

MR MASTERSON: YEs, he has, my Lord.

MAISELS, J: So that does not arise. What is the purpose of telling him he has nothing to gain? How do I know?

MR MASTERSON: By virtue of the fact that he might consider .....

10

MAISELS, J: You must ask him the question if you wish to. It is not for the Court, surely.

MR MASTERSON: It is a practice I have observed being followed in other Courts.

MAISELS, J: For all I know he may have been offered all sorts of inducements. How do I know?

MR MASTERSON: As your Lordship pleases.

(To the witness): Do you have any idea of what your position is in relation to giving evidence against the accused in this case? - I do.

20

And what, if anything, do you understand will happen to you as a result of giving this evidence? - I do not know anything.

BY MAISELS, J: What does he say? - I do not know anything.

Do you know what will happen to you if you give evidence in this case? I suppose you know what your purpose is, that this should be done. As far as I know it could be left to the defence to make suggestions. If you like to do it this way it is your affair.

30

MR MASTERSON: As your Lordship pleases.

(To the witness): Prior to your arrest were you ever a member of the Zimbabwe African People's Union, known as ZAPU? - I was a member of the Youth League.

Where were you living at the time that you joined the ZAPU Youth League? - I was living at Goromonzi, my home.

40

Whereabouts at Goromonzi? - In Chinyika's kraal, a line of huts situated in Chinyika's kraal.

Is that Chinyika Reserve? - Yes.

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Crown Evidence

No. 6

Masawi

Examination  
(continued)

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Masawi

Examination  
(continued)

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And who was your headman? - One Madongo, my Lord.

Are these quarters anywhere near the Goromonzi primary school? - It is a short distance.

When did you join the Zimbabwe African People's Union Youth League? - I joined it in March this year.

And did you ever receive a membership card? - Yes.

Who did you get this card from? - Sevenzayi, the secretary. 10

Did you ever have anything to do with the finances of any portion of ZAPU at Goromonzi? - I do not know what you are referring to.

Did you have any money to look after? - No, my Lord, I used to enrol new members only and issue them with cards.

When you issued a person with a card did you receive any money for the card? - Yes, I would receive money.

Do you know one Ronnie? - I do. 20

Do you remember when you first started to think along the lines of taking action or burning any houses?

MAISELS, J: No, just a moment, that is an improper question, Mr Masterson. Do not put it that way.

MR MASTERSON: As your Lordship pleases.

MAISELS, J: I do not know that he ever thought on those lines.

MR MASTERSON: As your Lordship pleases. 30

MAISELS, J: Did you burn, why did you do so? Put it that way, if you like. Lay the foundation first.

MR MASTERSON: As your Lordship pleases.

(To the witness): You have said that you were convicted of burning down some buildings at Chinyika dip? - Yes.

Did you, in fact, burn any buildings down there? - We set the two buildings on fire, the shed where hides are kept and another hut where dip is kept. Those two were set on fire. 40

BY MAISELS, J: Were you convicted for that?  
- Yes.

Anything else? - No, those are the two that I set on fire, myself.

And did you have anything to do with any other fire for which you were convicted? - Those are the only two that I personally set on fire, my Lord.

10 You were not convicted for any other offence?  
- When I was then convicted, my Lord, some counts were added which were committed by my companions who went to start the buildings on fire at St. Dominics.

BY MR MASTERSON: Now, when did you first start thinking of burning down these places?  
- Ronnie, Hensiby, Nowa and I thought of this on Friday.

Prior to this Friday had you ever thought of anything like that? - No.

20 You talk about a Friday. What Friday was that in relation to the day on which you burnt down these buildings? - We arranged on Friday, my Lord, so on Monday these buildings were set on fire.

BY MAISELS, J: The Friday before the Monday on which the buildings were set on fire? - That is right, my Lord.

BY MR MASTERSON: Did you, in fact, set fire to these buildings on a Monday night? - Yes.

30 Now, then, on this particular Friday where was it that you first thought of these burnings?  
- We were on the main road when we thought of it.

When you talk about the main road, which do you mean? - The road that runs from Salisbury to Goromonzi.

Does that go past the Secondary school? - Yes.

Who were you with initially? - Lovemore, Hensiby, Nowa, Ronnie.

40 MAISELS, J: Just a minute. Lovemore .....

MR MASTERSON: Hensiby.

MAISELS, J: Yes.

MR MASTERSON: Nowa, Ronnie and presumably yourself?

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No. 6

Masawi

Examination  
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Masawi  
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THE WITNESS: And myself.

BY MR MASTERSON: Did you arrive to find the other four already there or were you joined by other people?

MR ANDERSON: I object.

MAISELS, J: How did the five of you come to think of it?

MR MASTERSON: Can I go a little behind that?

MAISELS, J: Yes, but do not put it as you put it. 10

BY MR MASTERSON: How did the five of you come together? - I was going to meet Hensiby, my Lord, when I met my companions on the road. We casually met.

Now, once you met what discussion, if any, occurred? - We were talking about taking an action at Goromonzi.

What did you mean by taking action? - Well, we knew that we would go at Mr Malindi's house to inquire and get the exact ..... 20

BY MAISELS, J: You knew, did you say? - We knew that we would go to Malindi's hut to enquire.

Is that the accused Malindi? - Yes, my Lord.

BY MR MASTERSON: Did anybody go anywhere after you had met on the road? - We arranged to go to Malindi's house to see him there.

BY MAISELS, J: Is that all five of you? - Hensiby, Nowa, and I went there, my Lord, and Lovemore.

All of you excepting Ronnie? - That is so, my Lord. 30

BY MR MASTERSON: What happened when you went to Mr Malindi's? - We arrived to find him not in his house. He had gone to the class, where we found him.

Did you find him in a classroom then? - Yes.

Did you four and the accused have any conversation? - Yes.

What was discussed? - We told him that we wanted to take action in Goromonzi area, my Lord. That is what we told the accused. 40

Go on?

BY MAISELS, J: Who did the talking? Can you remember? - I did the talking, my Lord. The arrangement was that I would be spokesman.

BY MR MASTERSON: Go on? - Malindi replied that what we had thought upon was a good idea because no action had ever been taken in Goromonzi.

10 What do you mean by that? - Because nothing has ever happened there which is against the soil, against the things of the soil.

BY MAISELS, J: Look here. You said you told the accused that you wanted to take action at Goromonzi? - Yes.

What do you mean by taking action? - To do something.

What sort of thing? - Well, we would know what it is when a meeting is then convened.

20 I beg your pardon? - We would then know what it is to take place, my Lord, when a meeting was then convened.

What did you have in mind by taking action? What did you have in mind? Was it to buy school books? What was it to do? - To damage property and things.

Is that what you had in mind? - Yes.

Yes, very well.

MR MASTERSON: I am indebted to your Lordship.

(To the witness): When you discussed taking action with the accused, what was the accused's attitude?

30 MAISELS, J: Well, he has answered that. He said accused's reply was that it was a good idea because no action had been taken at Goromonzi.

MR MASTERSON: Sorry, my Lord.

(To the witness): Did anything else happen after the accused said he thought it was a good idea? - He said we would meet Saturday night at his house.

How soon was the Saturday decided upon as a date on which to meet at his house?

40 MAISELS, J: What do you mean, how soon? Was there nothing else said?

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Masawi

Examination  
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Masawi

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(continued)

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1962

MR MASTERSON: No, my Lord, it is not quite what I am after.

MAISELS, J: Was this a Friday?

MR MASTERSON: Yes, my Lord.

MAISELS, J: Perhaps the question can be answered by the witness. I do not understand.

THE WITNESS: Well, by Saturday, you mean the following day?

BY MR MASTERSON: Was there any other day that was thought of as a possible day for your meeting? 10

MAISELS, J: No, you cannot put the question that way.

MR MASTERSON: As your Lordship pleases.  
(To the witness): How did you come to arrange upon Saturday as the day upon which to meet again?  
- Because on Friday, my Lord, we would not find all the numbers. Their homes were situated some distance apart from each other, so on Friday we would not be able to see them all. That is the reason why Saturday was decided upon as being the date or the day upon which all the members would be seen. 20

Were there any other days upon which a meeting could be held? - No, my Lord, the only better day was Saturday.

BY MAISELS, J: What? The only better day was Saturday? - Saturday.

You mean the best day was Saturday? - That is what it is, my Lord, because everyone is free and would not be working. 30

BY MR MASTERSON: When you decided to meet again on Saturday who was present? - Lovemore, Hensiby, Sixpence, Nowa.

MAISELS, J: Just a minute. Are you talking about who was present at the meeting on Saturday?

MR MASTERSON: I want to know who was present on Friday when you decided to meet on Saturday.

MAISELS, J: Who went with you to Malindi's house? Did they go inside with you or stay outside?

MR MASTERSON: My Lord, they did not say they went to his house. He said they went to the school. 40

MAISELS, J: They went to the school and then to the classroom.



THE WITNESS: We all entered the classroom.

BY MAISELS, J: And were they all present when the discussion took place? - Yes, all my companions were with me in the classroom with the exception of Ronnie who was not.

Yes, well, Ronnie you told us did not go with you? - Yes, my Lord.

10 BY MR MASTERSON: Which Saturday was it that you planned to meet again? - The following day was Saturday, so we planned to meet that day.

Where did you go after the meeting? - We went to our respective homes.

The next day, Saturday, did you do anything about this meeting? - We all went to the meeting. Everyone was told about it.

Where did you go to? - To Mr Malindi's house.

20 Who were present on Saturday? - Agrippa. Malindi, Lovemore, Ronnie, Nowa, Masawi, Hensiby; Sixpence arrived to find us all ready inside.

BY MAISELS, J: Sixpence arrived later? - Yes.

BY MR MASTERSON: Now that is eight? - Yes.

You have given us eight people? -

MAISELS, J: Plus himself.

BY MR MASTERSON: No, he has counted himself.

MAISELS, J: I am sorry, that is quite right.

THE WITNESS: I had omitted one Supa.

BY MAISELS, J: Supa was also there? - Yes.

30 BY MR MASTERSON: Now, having met at the accused's house, where did you people go? - We did not go anywhere else. The meeting was held in his house.

Inside? - Yes.

How many people were inside at the meeting? - At first we were about eight. Hensiby was told to go outside to watch out for police reservists.

What did he do? - Hensiby remained outside.

40 Now, with Hensiby outside what happened? - Well, we were discussing about why we had convened this meeting.

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Masawi

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(continued)

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Now, who did the talking? - I was the first speaker.

And what was it that you started off with? - I said, "Boys, you are all here. You have been invited by us. We have words to say here".

Then what happened? - Mr Malindi then asked us a question. The question was: What is nationalist?

BY MAISELS, J: Malindi then said .....  
accused? - Yes.

10

Accused said what? - What is nationalist?

What is nationalist? What is nationalist? - Yes, Malindi asked us what is nationalist; put a question to us. The question was: what is nationalist?

What is nationalist or nationalism? - Nationalist, my Lord, not nationalism.

In what language was this discussion held? - It was a mixture of English and Shona.

BY MR MASTERSON: What happened when Mr Malindi asked this question? - No one answered this question, my Lord, so Malindi went to fetch a book in which all these questions were written in.

20

Can you describe this book to us? - It is a book with a red cover.

What sort of cover? - The edge is black, my Lord, but all the rest is red.

Now here is a book. This is a Gardiner and Lansdowne book, my Lord. Can you indicate which parts were red and which were black? - These parts were red, (Indicates covers) and this part was black.

30

BY MAISELS, J: How did you describe that? The spine is black he said? - Black, my Lord.

The spine was black and the covers were red? - That is so, my Lord.

BY MR MASTERSON: Can you indicate how thick this book was?

BY MAISELS, J: Here is a variety of books. How thick? And here is another one. Bring that book to me, Mr Interpreter? - Similar to this one, my Lord, but the covers of this book are thin.

40

Soft? - Soft, yes.

Well, the book which the witness says is similar to the one that he saw is the October 1962 volume of South African Law Reports which contains about 212 pages. Is that a good enough description, do you think?

MR MASTERSON: Yes.

10 THE WITNESS: My Lord, the book was not a complete book. Some papers or leaves had been removed from the book.

BY MR MASTERSON: Did you handle this book yourself at all? - No.

How did you come to realise that some papers had been removed? - Well, when the book was opened, my Lord, it was obvious that all the papers were not in the book. The book was not complete.

20 BY MAISELS, J: You could see that sheets seemed to be missing. Is that what you mean? - Yes, my Lord, one could easily see that some sheets were missing.

Yes? - It is not a complete book.

BY MR MASTERSON: Now, was this a book which had printed matter inside it or not?

BY MAISELS, J: Could you see whether what was inside was printed or in writing? - They were in writing, my Lord.

Did you see that? - Yes.

30 BY MR MASTERSON: Now, when the accused produced this book what did he have to say about it or do with it? - He read out questions written in that book.

Do you have any idea as to what part of the book these questions appeared in? - No.

BY MAISELS, J: Was it in the front, in the middle, the back? You have no idea where about in the book it was? - No, I have no recollection, my Lord.

40 BY MR MASTERSON: Do you remember what sort of things the accused read out? - Well, he was reading out questions written in that book, my Lord, and referred to those questions as being questions which were used when the party was called N.D.P.

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BY MAISELS, J: Just a moment. He said the questions which he was reading out were used when the party was the N.D.P.? - Yes.

BY MR MASTERSON: Now, can you remember what sort of things it was that he read out? - He said; what is meant by nationalist?

Did he read anything else out? - He said: "No son of oil will ever share a table with a European or fraternise with a European".

Do you remember anything else? - That is what I still remember. 10

BY MAISELS, J: You mean that is all you remember, or is that all that was said or read from this book? - There were a large number of questions, my Lord. I would not remember them all.

BY MR MASTERSON: What happened once this book had been produced and questions put or read? - Well, he explained the questions. All the people present were unable to answer these questions, my Lord, but the accused had to explain. 20

Then what happened after he had explained? - He then said we had better choose and put people into groups when going to take action.

BY MAISELS, J: Now, just a moment. You said, he said .....? - We must form into separate groups.

The accused said: "We must form into separate groups"? - Yes.

"To take action" Is that what you said? - Yes.

BY MR MASTERSON: Did anybody say why groups should be formed? 30

MAISELS, J: Just a moment, no, just a moment, Mr. Masterson. Please do not put the question that way.

MR MASTERSON: As your Lordship pleases.

BY MAISELS, J: The accused said: "We must form into separate groups in order to take action". Did he say anything else? - He said if we take action when we are all in one group, if we are arrested there will be nobody to look money for fines for the others, who are arrested. If we are all arrested there will be nobody to help us. 40

What were the groups formed for, if anything?  
 - We formed into groups of two, my Lord, so that if they are going to take action the two would go together for action.

BY MR MASTERSON: How many groups were formed?  
 - Four groups were formed.

And was anything further discussed as regards the action to be taken? - No, not at the time, my Lord. What was discussed was the area to which each group would go.

BY MAISELS, J: What was discussed was the errand.

BY MR MASTERSON: The area? - The area, my Lord.

Was there any talk of when action would take place? - No the arrangement was a meeting was to be convened at a later date when things went well.

BY MAISELS, J: Just a minute. The arrangement was that a meeting was to be convened at a later date when? When this went well you said?  
 - That is so, my Lord.

Court adjourned 12.45 p.m.

Court resumed 2.15 p.m.

MASAWI, still under oath, recalled.

BY MR MASTERSON: Before we adjourned, we were talking about the meeting that you held at the accused's house on Saturday evening? - Yes.

I understood you to say that Agrippa was there? - Yes.

I believe that was so?

BY MAISELS, J: Are you meaning on Saturday?

MR MASTERSON: Yes, my Lord, because we had got up to 9 people and once we had got to 9 he is there. He may have been called Sevenzayi. Possibly he is.

MAISELS, J: Sevenzayi, yes.

BY MR MASTERSON: Do you know Agrippa by the name of Agrippa or Sevenzayi? - Sevenzayi is his surname. His name is Agrippa.

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BY MAISELS, J: Did you say he was at the meeting? - He was, my Lord.

On the Saturday? - Yes.

BY MR MASTERSON: Do you know what part Agrippa played in your discussions? - Well, he seconded the motion and said what we had decided about taking an action in Goromonzi was a good thing.

How did your Saturday evening meeting come to an end? - When we were all divided into separate groups then the meeting ended. 10

Once the groups had been formed was anything further discussed? - Sevenzayi said he was not taking any part because he was the secretary.

How were the groups to do anything if and when they were going to do it?

MR ANDERSON: I object to that question.

MAISELS, J: Why?

MR ANDERSON: I submit it is put in a leading manner. 20

MAISELS, J: What answer is suggested by the question?

MR ANDERSON: Well, my Lord, the immediate suggestion is that these groups were going to go out.

MAISELS, J: But the witness has already said that the four groups were formed and at the time what was discussed was the area to which each group would go.

MR ANDERSON: Yes, my Lord. 30

MAISELS, J: Well, supposing the question was put, was anything said as to what each group would do. Is that objectionable?

MR ANDERSON: No, my Lord. I had forgotten the earlier record.

MAISELS, J: Put it that way: was anything said as to what each group was to do? That is the sensible question.

MR MASTERSON: It is not really, my Lord.

MAISELS, J: I am sorry, Mr Masterson; put it your way. I am sorry. 40

BY MR MASTERSON: How were the groups to be associated with one another after this particular meeting?

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MR ANDERSON: My Lord, there is no suggestion that these groups were to be associated.

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MAISELS, J: Well, each group was to go somewhere. I do not understand why you do not put this question as I suggested, Mr Masterson, to which Mr Anderson had no objection?

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10 MR MASTERSON: My principal reason is that I have forgotten my original question.

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MAISELS, J: Surely it is much easier and easier to translate and easier for the witness to understand and also Mr Anderson says it is not leading.

MR MASTERSON: All right. What was it that each group .....

MAISELS, J: What was each group to do?

20 THE WITNESS: They would go and do whatever it is they were instructed to do.

BY MAISELS, J: Was anything discussed as to what it was they were going to do? - No.

BY MR MASTERSON: Would each group know what other groups were doing after that particular Saturday? - They would know, my Lord, because everything was arranged in the meeting.

30 BY MAISELS, J: Each group would know what the other group was going to do? - Yes, they would know it because they would have heard it from the meeting when it was arranged.

BY MR MASTERSON: Had you any idea of when the groups were to do anything? - No, we would not know the time, my Lord. We would never know what would take place at a future time.

Once the meeting broke up on Saturday where did you go? - I went to my own house.

Now what happened on the Sunday? - On Sunday I went to Mr Malindi's house.

Do you remember when? - In the evening.

40 Do you remember on how many occasions you went to his house on the Sunday? - I went there once.

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Did you have anyone with you? -- I was with my younger brother Hensiby.

Who did you find when you went to Mr Malindi's house? -- I found Mr Malindi in his house.

What did you do there? -- Upon our arrival we found a letter in Mr Malindi's house which was announcing the strike.

Who had this letter? -- When we entered the quarters we found the letter on a table.

BY MAISELS, J: Where was Malindi? -- He was inside these quarters. 10

In the room where the letter was found? -- Yes.

BY MR MASTERSON: Do you know whether the accused knew anything about the letter? -- He knew something about the letter because this letter was in his house.

Was there any other reason which makes you think he knew about the existence of that letter in his house? -- Yes, my Lord, because he gave the letter to us to read. 20

Now, can you describe to us in what form this letter was?

MAISELS, J: What do you mean by that?

MR MASTERSON: I mean literally what form it was, my Lord.

MAISELS, J: Do you mean was it written or printed?

MR MASTERSON: I mean was it written or printed; on one piece of paper; ten pieces of paper, etc., my Lord. 30

MAISELS, J: I see; all right.

THE WITNESS: It was a type-written letter.

BY MR MASTERSON: Type-written?

MAISELS, J: Type-written, yes.

BY MR MASTERSON: On what colour paper was it? -- On a white paper, my Lord.

On how many pieces of paper? -- One piece of paper.

On how many sides of that piece of paper?



MAISELS, J: Oh, Mr Masterson, I think even Mr Anderson will not object if you now show it to him and ask him if he can identify it or not.

MR MASTERSON: As your Lordship pleases.

MAISELS, J; Is that right?

MR ANDERSON: I have no objection.

MR MASTERSON: Do you know anything about this piece of paper? I believe it is exhibit 7, my Lord.

10 MAISELS, J: Take it off the other piece of paper because that is the translation and this part of the case does not deal with that.

THE WITNESS: Yes, this is the letter.

BY MAISELS, J: Exhibit 7, is that Mr Interpreter? What is the exhibit number? Seven?  
- Yes, it is seven.

Exhibit 7 is the letter.

20 BY MR MASTERSON: Once you had read this notice at the accused's house on the Sunday what happened? - We left to go away, but the accused said I had better go back to his house at one o'clock to hear the B.B.C. news.

One o'clock when? - This is Monday afternoon.

BY MAISELS, J: I am sorry, this was on Sunday evening that you were at the accused's house - Yes, my Lord.

He showed you the letter? - Yes, my Lord.

Did anything else happen that night? - No.

30 He told you to go away? - No, my Lord, he did not tell us to go away. We told him we were going away.

And what about the news at one o'clock, B.B.C. news? - He told me to come back. He said come back tomorrow at one o'clock. We want to listen to the B.B.C. particularly. We want to know whether people will go to work or not, or will have gone to work.

40 BY MR MASTERSON: Did you see anybody else at the accused's house on the Sunday when you went there? - No, my Lord, I found Mr Malindi alone.

BY MAISELS, J: You found what? - I found Mr Malindi alone, accused alone.

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BY MR MASTERSON: What happened on the Monday then? - I did not go to the accused's house on Monday afternoon. That is at one o'clock, as arranged.

What did you do? - I had some work to do, my Lord, and was unable to go.

What happened once you had finished your work? - Some minutes after four, my Lord, Hensiby, my young brother, and I passed the accused's quarters.

What happened? - He then told us that we should all meet at six p.m. that night near the grounds. There is a football field, my Lord, which is used by the school, that is run by the accused, and we should all meet there at six p.m. 10

Who said you should all meet there at six? - The accused said so.

Was any further instruction given as regards where in relation to this football ground you were to meet? - At the bottom of the ground, my Lord.

Then what did you do? 20

MAISELS, J: There are two bottoms if you are going to be so particular.

MR MASTERSON: Sorry, my Lord.

MAISELS, J: You may have a reason for it, but if there is a point saying the bottom, what is the bottom? The east, the west, the goal posts, the ten-yard line, the 25-yard line, what?

BY MR MASTERSON: Which part do you understand to be the bottom of the ground in relation to the main road that goes from Goromonzi to Salisbury? - This ground is situated some distance away from the road; it is not near the road at all. 30

MAISELS, J: Perhaps we will leave it at the bottom of the ground.

MR MASTERSON: As your Lordship pleases.

(To the witness): Right, having heard that from the accused, what happened? - Well, I went home telling my fellow members of the ZAPU Youth League.

Mr Interpreter, was that "I" or "we"? - I went with Hensiby, my Lord. 40

And then what happened? - Firstly, we went home to leave bread, because the mother had sent us to go and buy bread. After leaving bread, we then

went to look for our friends.

Go on? - We went to this part of the grounds, my Lord, to find the accused there. We found him with one Sixpence.

Was anybody else there?

BY MAISELS, J: Who came with you? - I was with Hensiby and Nowa.

BY MR MASTERSON: I believe the accused is having difficulty in hearing the witness, my Lord.

10 MAISELS, J: Does the accused not understand English, Mr Anderson?

MR ANDERSON: I understand he does, my Lord. Perhaps he wants to hear the vernacular as well.

MAISELS, J: Well, tell the witness kindly to speak up.

MR ANDERSON: Apparently the accused cannot hear the interpreter.

MAISELS, J: Not hear the interpreter. The same applies to you, Mr Interpreter.

20 BY MR MASTERSON: I understand you have just said you arrived there with Hensiby and Ronnie?

MAISELS, J: No, Nowa.

MR MASTERSON: Sorry, my Lord. (To the witness): Hensiby and Nowa? - Nowa.

And who did you find there already? - We found Mr Malindi there and Sixpence and Lovemore.

That makes six of you? - Yes.

MAISELS, J: Five as far as my addition goes.

MR MASTERSON: No, with respect.

30 MAISELS, J: The accused, Sixpence, and Lovemore is three; and he was with Hensiby. Quite right, six. Sorry, Mr Masterson.

BY MR MASTERSON: That is six of you. Did anybody else come? - No one came.

Now what took place there that evening? - When we arrived, my Lord, they had already arranged.

What do you mean "they had already arranged"? - Because all the instructions of what to do had already been given.

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Well, what happened? - We were told places where we are to go and burn.

Who told you? - Mr Malindi.

What did he say? - I was instructed to go and set Tegere's house on fire.

BY MAISELS, J: Whose house? - Tegere, my Lord. Nowa and Hensiby were to go and burn the dip and the shed. The dip tank and the shed.

BY MR MASTERSON: Which dip tank and which shed? - Chinyika dip tank and the shed. Lovemore and Sixpence were to go and burn at Ruseke's place. They had said that they would get bicycles to go there. 10

BY MR CRIPWELL: Lovemore and who? - And Sixpence.

BY MR MASTERSON: Did you hear the discussions about the bicycles or is this something you have heard since then? - I heard them saying they were the people who were going that end because they had bicycles with them.

BY MAISELS, J: You mean at this discussion Lovemore and Sixpence had bicycles? - No, they had not brought the bicycles to the discussion, to the place where they discussed, my Lord. After this discussion they then went to collect bicycles in order to go away. 20

I see. Who told them to get them? - Accused, Malindi.

Accused told them to go and get bicycles to go to Ruseke's place? - Yes, my Lord. The accused said he was going to set a church at Chinyika on fire by himself. 30

BY MR MASTERSON: Now, is Ruseke's area the Kunswe Reserve? - Yes.

Is Ruseke in fact the chief in the Kunswe Reserve? - No, I do not understand that.

All right. Now, what happened when the accused suggested that these people do these various acts? What I am interested in is what was the reaction of you and the other people there to the accused's saying so and so will burn such and such a place? - We were agreeable. 40

Do you know whether the accused had an opportunity of assessing your reaction to his grouping you off and allocating tasks to the group?

BY MAISELS, J: You could put the question to the witness whether the accused could see that they agreed. Why do not you put it that way? It is such a complicated question. I do not know how the interpreter can put it.

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BY MR MASTERSON: Do you know whether the accused was aware of the fact that you agreed?

BY MAISELS, J: First of all, did all of you agree to do what you were instructed to do?  
10 - Yes, my Lord.

Did the accused know that you had agreed?  
- Yes, he knew that; that is why he suggested to Lovemore to give me his watch.

BY MR MASTERSON: Do you remember whether anything else was to be burnt that night, that is apart from the Chinyika dip, Chinyika church, Tegere's and Ruseke's place? - All these were to be burnt that night.

BY MAISELS, J: Was anything else, that is  
20 the question? - That is all that was said.

BY MR MASTERSON: Was anything said as to how the burnings were to be carried out? - Those who were going to burn the house at Ruseke's were told that they would use paraffin and cloths.

What about the other people? - That is including Chinyika church. Others would use anything that they are able to use.

BY MAISELS, J: Those who were to go to  
30 Ruseke's were told to use paraffin cloths and you said something about Chinyika's church, and also Chinyika's church? - Also Chinyika's church.

To be burnt that way? - Yes.

And the others were told to use what ever they could? - Whatever they could, my Lord.

BY MR MASTERSON: What happened once those arrangements had been made? - We dispersed from this meeting place and said we were going to perform the actions.

Where did you go?

40 BY MAISELS, J: Just a moment, just a moment, just a moment, please. Do you know why Tegere's house was selected? - Yes, my Lord, he is a police reservist.

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Was that given as a reason or is that what you are assuming is the reason? - Well that was discussed on Saturday night when the meeting was held.

On the Saturday night? - Yes.

Who discussed it? - Sevenzayi had mentioned it.

I beg your pardon? - Sevenzayi.

And do you know why the other places were selected: Ruseke's place or the church or the dip tank? - They were interfering with the propitiation of ancestral spirits. 10

I beg your pardon, the churches or all of them? - It was just the church which interferes with the ancestral spirits.

Well, who gave that as a reason? - I do not know who mentioned that on the Saturday night in the course of discussion.

BY MR MASTERSON: Why were the dip tank or the hides at the dip tank to be burnt? - The dip was said to be causing an animal to become sick. 20

MAISELS, J: And Ruseke's place? - The church at Ruseke was set on fire.

No, no, no, no. Is the thing you were to burn at Ruseke's place a church? - A church and a dip tank, my Lord.

At Ruseke's place? - Yes, my Lord.

I see.

BY MR MASTERSON: What happened once you left this meeting place? - Well, we all dispersed and left for our respective homes. 30

Where did you yourself go? - I went home.

Who with? - With Hensiby.

And what did you do when you got home? - I went home and had my evening meal.

What happened once you had eaten? - After eating my evening meal I was there until the arrival of Mr Malindi.

Do you know when he arrived? - I did not look at the watch, my Lord. I am afraid I am unable to tell the Court what time it was when he then arrived. 40

BY MAISELS, J: You say Malindi had told Lovemore to give you his watch? - Yes, that is so, my Lord.

But when Malindi came home I did not look at this watch.

Why had you to get the watch from Lovemore? Why did he tell Lovemore to give you the watch? - Well, he wanted us to set the time so that the action should be brought into operation at the same time.

10 BY MR MASTERSON: Who wanted this? Lovemore or the accused? - Mr Malindi, because he was going to burn the same area as ourselves.

BY MAISELS, J: What time was fixed? - When we set off the time fixed was 11 p.m.

You mean that is when they left Malindi's house, prior to their going home and having their evening meal? - No, this was after we had had our evening meal. When we were going to take the action into operation.

20 BY MR MASTERSON: Right, you say that the accused came to your quarters after your evening meal? - Yes.

And what happened once he had arrived? - When he arrived we stayed with him for a short long time chatting.

BY MAISELS, J: Is that for a long time? - A short long time.

30 BY MR MASTERSON: And then, go on? - We walked together to a point where the road branches to Chinyika. We then picked up a bag; it appeared as if he had placed this bag there at this place.

BY MAISELS, J: Where the road branches. Where did you say? - To Chinyika; that is where the footpath branches to Chinyika's kraal. The accused picked up a bag. I believe he had left the bag there and his stick.

Picked up a bag and a stick? - Yes.

Where were these articles? - He picked them from off the roadside, my Lord. It is a footpath, on the side of the footpath.

40 What was there in the vicinity of this bag and stick? - There was grass, my Lord. It was near the footpath and they were just placed on the edge of the footpath.

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And then what happened? - So we left to go together, my Lord.

And then? - When we had walked some distance ahead then he put on the sack he had. Hensiby and I put on a belt around him of hessian.

BY MAISELS, J: He put on a sack? - Yes.

Where did he get that from? - This sack had been in the bag. This bag that he picked up from the side of the path.

Yes? - So we walked some distance. He then started using some plastics which he covered his shoes in plastics. We then set the time that this was to be brought into operation at 11 p.m. 10

BY MR MASTERSON: What was to be brought into operation? - The burning was to be carried out at 11 p.m.

Go on? - When we reached Chinyika, we left the accused there because we had to proceed further on. Accused remarked: "I wish you good luck".

Go on? - SO we left him at Chinyika school when we proceeded ahead to our destination where we were to go and burn. 20

Who is we? - Hensiby and I.

Earlier you said that you were going to burn Tegere's place? - Yes, what happened, my Lord, Nowa did not succeed in coming; he was supposed to go and burn in company with Hensiby.

So what happened? - So we left Malindi at the school. Hensiby and I went to our destination.

BY MAISELS, J: What happened to your plan that you were to burn Tegere's house? That is what the Prosecutor wants to know? - We did not go to burn Tegere's house because Nowa who was supposed to go there with Hensiby did not turn up. 30

So did you go with Hensiby? - I went with Hensiby.

BY MR MASTERSON: Why did you go with Hensiby instead of letting Hensiby go by himself and your going by yourself to Tegere's? - I told the accused and Hensiby, my Lord, that I was afraid to go to Tegere's because there are ferocious dogs there and it was very late at night. 40



Right, now once you had parted and you and Hensiby were now going to your destination, what happened? - Well, we waited until it was eleven when we then saw the church alight.

Then? - We then burnt the shed and a certain building where dip is kept.

What shed did you burn? - The hide shed.

10 And how did you do this? - What I did was pull the grass, then struck a match, lit the grass and with the grass then burnt the hut.

Mr Interpreter, was that what I did or what was done? - What we did.

BY MAISELS, J: We pulled the grass and we struck matches?

MR MASTERSON: I believe it is all in the plural.

MAISELS, J: That is what I have put it as.

(To the witness): We pulled the grass and we struck matches? - Yes.

20 BY MR MASTERSON: What effect did it have on these two buildings? - They were burnt down.

Did you wait to see them burn or not? - No.

Before you left in what state were they? - Well, when they started burning, my Lord, we set off. We did not wait.

Now, did you do anything to the dip tank itself? - No.

Why not? - The wall is built of stones, my Lord, and the roof is of iron.

30 What happened once you had left the dip and the burning sheds? Where did you go? - We went back home.

I want to go back over this story for a few details. The meeting on the Monday night: where was it actually held? You say you were to meet at the bottom of the football ground, but I do not think you said where you did meet? - We met at the bottom of the football ground.

40 When you met there in what state was the light? - It was something after six, my Lord.

Well, was it dark or light at that time? - When we actually arrived at this spot it was slightly dark.

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Were there any other people moving about in the vicinity of where you met? - No.

You say that on Saturday night Ronnie had been with you at the meeting at the accused's? - Yes.

What happened to Ronnie after Saturday night?  
- You are referring to what? I do not understand.

MAISELS, J: I beg your pardon.

INTERPRETER: The witness wants to know what happened to Ronnie in what way counsel wants him to say what happened to Ronnie.

10

BY MAISELS, J: Did you see him again, Ronnie?  
- Yes, I saw him, on Monday when we went to this meeting.

On Monday evening? - Yes, we passed collecting him from his home at sunset.

You saw him on Saturday night. You did not see him at the accused's on Sunday? - No, I did not.

You saw him again on the Monday evening. You collected him on the way to the meeting. Is that what you say? - Yes, we collected him; when I delivered the bread I had I was already in his company. From our home we went to the meeting place together.

20

BY MR MASTERSON: Now, did Ronnie take any part in the discussions on Monday evening? - Yes, he had been instructed to go and burn Mr Hughes' maize.

Who said that he should burn Mr. Hughes' maize?  
- Well, all these partitions were allocated to each group by the accused.

Was anybody to assist Ronnie and be a group member with him? - No, no one. He was said that he would go alone.

30

Have you any idea of what Ronnie's reaction was to having Mr Hughes' maize allocated to him? - He was quite willing to go, my Lord, but he complained of suffering from his leg and said he would not succeed in going to do so.

Do you know if he in fact was suffering from a sore leg? - Yes, because the knee was bandaged, my Lord.

40

When was Ronnie to burn Mr. Hughes' Maize? -  
The same day.

Now, this bag which you say the accused picked up from near a path: how far had you gone from your quarters before the accused picked this bag up? - It was a short distance, my Lord. I should say approximately from where the witness is to that door.

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From where, Mr. Interpreter? - From where the witness is to that door.

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10 MAISELS, J: What is this, Mr Masterson?  
 MR MASTERSON: It is about 40 feet, I believe.  
 MAISELS, J: Yes.

MR MASTERSON: Now you say 40 feet from where?

MAISELS, J: From where you asked him. From your house, where you picked him up to the bag.

MR MASTERSON: Yes, with respect, I do not think that is what is indicated.

THE WITNESS: That is from the end of a cleared yard as to where this bag was picked up by the accused; that is the distance I have indicated.

20 BY MAISELS, J: Whose yard? His yard? - His yard, yes, my Lord. Cleared yard to the spot.

BY MR MASTERSON: Now, if you are coming from the accused's quarters to your own quarters, would you come anywhere near where the bag was? - That is the same road one would travel. Only this bag was further ahead.

30 Had the accused not picked up the bag from where it was, could you say whether or not you would have noticed it by the side of the path at that time of night?

MAISELS, J: I beg your pardon, what is that question again? If he had not picked it up would he have noticed it?

MR MASTERSON: Yes.

MAISELS, J: How would it follow? What is the non sequitur?

MR MASTERSON: He obviously noticed it because it was picked up.

MAISELS, J: Obviously.

40 MR MASTERSON: I want to know how obvious it was that there was a bag with a whole lot of disguised clothing in it.

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BY MAISELS, J: Was the bag concealed in any way? - No, the bag was not concealed.

Do many people go on this road at the time that the accused came to your house or a few people, ordinarily speaking, at night? - We were inside a hut, my Lord. I do not know whether during the time the accused was with us anybody passed along that path.

No, but usually at night is there a lot of traffic along this footpath? - No.

10

CROSS-EXAMINED BY MR ANDERSON: Am I to understand from you that it was the accused who told you what day action was going to take place and no one else? - Yes.

Am I to understand from you that it was the accused who told you that there was to be a strike on the Monday and nobody else? - With regard to strike, my Lord, we had seen a letter that was in his quarters.

Yes, was that the first you knew of any strike? - Yes, that was the first I knew of it. 20

Would it be correct to say that Sevenzayi was the secretary of the local branch of ZAPU at Goromonzi? - He was.

He would then be the senior ZAPU man in the area, would he, or did you have a chairman there? - Sevenzayi was the secretary, but when this discussion was taking place he was not taking an important part because he was the secretary.

What has that got to do with it? - Well, I am repeating what he said, my Lord. Sevenzayi said, "I am not taking any part because I am the secretary of the mother body, of the parent body which is ZAPU. I am not a member of the youth league", so that is what he said. 30

Did he have nothing to do with the discussion then or is he merely referring to actually participating in action when he said he would have no part? - He said he was not going to take part when bringing the action into operation, but he was there advising us on how to bring it into operation. 40

Was he playing an important part in the discussions then doing most of the advising?

MAISELS, J: That is a double-barrelled question. In the High Court  
Put it separately, please.

MR ANDERSON: I beg your pardon, my Lord.

THE WITNESS: The reply was, my Lord, he gave us examples of what had taken place in the past.

MAISELS, J: And was that all he did? - Yes.

BY MR ANDERSON: What sort of examples did he give? - Well he gave us an example of how Nkai buildings were set on fire and at Gwaai Reserve.

10 And other examples like that? - Yes.

Did he give you any actual advice as to how to set fire to any of these places in your district?

MAISELS, J: That is Sevenzayi?

MR ANDERSON: Sevenzayi, I am talking about.

THE WITNESS: He said if a person had done this alone by himself he must be very quiet because it is easier if he has done it alone for us to help him with money.

20 BY MR ANDERSON: Did he give you any other advice? - He said members of the youth are soldiers of ZAPU. You must carry out all orders.

BY MAISELS, J: Who said this? --- ... that are given to you. Sevenzayi.

BY MR ANDERSON: Was there anything else, anything important? Is there anything else important?

MAISELS, J: Well, does the witness know what is important?

30 MR ANDERSON: I beg your pardon, my Lord.

MAISELS, J: Did he say anything else relating to burnings or anything else of that nature? Is that what you had in mind?

MR ANDERSON: Yes.

THE WITNESS: He said when you want to put the action into operation start with small things.

40 BY MR ANDERSON: What is meant by that? - He said when we then start burning we must start burning small things and see if we will succeed in burning them.

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Examination  
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Small things like what? - Churches and dip tanks.

I see. Is there anything bigger in the area? - He further went on to say he wanted to see whether there were demonstrators.

MAISELS, J: I beg your pardon, I did not hear the beginning of that? - He further went on to say that we must see that in this area there are demonstrators. He said there are certain injections or inoculations which are given to animals; we want to see whether they are injecting animals so that they have calves. 10

MR MASTERSON: Artificial insemination.

BY MAISELS, J: We see that in the area there are demonstrators who are injecting animals so that they have calves? - Yes, my Lord.

And so? - He said such animals, my Lord, the offspring of these animals which are brought up as a result of injection, they are weak; they can hardly work from eight o'clock up to midday, especially when oxen are inspanned; they can hardly work that time. 20

BY MR ANDERSON: Are you talking of artificial insemination?

MAISELS, J: What does he know about artificial insemination?

MR ANDERSON: If it is plain to your Lordship.

MAISELS, J: Is it not plain to you, Mr. Anderson?

MR ANDERSON: Yes. 30

MAISELS, J: I think we understand it.

BY MR ANDERSON: Let us get back to the burnings. You said he said you should start off by burning small things like churches? - Yes.

What were the big things you were going to burn after that? - Well, we would sit down and convene a meeting and then discuss what big things we had to burn.

Is there anything else you can think of that one could burn apart from churches, anything bigger? - I would not know anything of it. 40

So really, Sevenzayi was the person who was telling you what to do. He was giving you all the advice? - No, he gave us examples, I said.

And he also told you that you start off by burning churches and dip tanks? - Yes.

Did he tell you which churches and which dip tanks to burn? - Yes, he did say so.

10 He told you to burn the ones that you did in fact burn. Is that it? - No, my Lord, when we then went to burn these churches he was no longer there.

BY MAISELS, J: Who was the one who told you to burn those? - The accused.

When Sevenzayi was telling you these things where was the accused? - He was present with us.

BY MR ANDERSON: Now you say Sevenzayi told you to burn the places which were eventually burnt, told you which churches were to be burnt. Was he the first person to say that?

20 MAISELS, J: I think, Mr Anderson, pardon me a moment. You may be right but I understand the witness to say he had been told to burn the things he did burn. "The accused told us that".

MR ANDERSON: The question I put was: did he tell you which churches to burn?

MAISELS, J: And he said, yes, and I put a question.

MR ANDERSON: Then he said, no, Sevenzayi was not there at the time.

30 MAISELS, J: Yes, that is right.

MR ANDERSON: Perhaps I did take him a step too far. I will go back on it.

BY MR ANDERSON: You say Sevenzayi told you in his opinion you should burn .....

MAISELS, J: "Did you say" would be fair.

MR ANDERSON: As your Lordship pleases.  
 (To witness): Did you say Sevenzayi told you which churches and dip tanks you should burn? -  
 40 I said all he said was as examples, my Lord. He made this as a suggestion and said, well you could set houses on fire, say, like a church at Chinyika or Tegere's house, who is a police reservist - putting these as examples.

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Masawi

Cross-examination  
 (continued)

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examination  
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And the examples he gave you happen to coincide with the churches and dip tanks that were actually burnt? - Yes.

And did he give you all those examples before the accused said anything about which places should actually be burnt? - Yes.

And was it decided which churches and which dip tanks should actually be burnt while Sevenzayi was present? - Are you referring to the day that these buildings were actually set on fire? 10

I am referring to any day. I just want to know from you whether Sevenzayi was present when you decided which churches and dip tanks you were going actually to burn? - When we actually arranged to go and burn these huts and allotted the group to each part where to go to bring the action into operation, Sevenzayi was no longer there. Sevenzayi had only said it the previous day when he gave us examples.

Those were the final arrangements. When they were made Sevenzayi was not there? 20

MAISELS, J: No, no, no, no.

MR ANDERSON: As your Lordship pleases.

MAISELS, J: I do not think you must put the question that way. As I understand the witness's evidence, it is this:- you can cross-examine but I don't think the way you put the question is correct - Sevenzayi had given him these particular places as examples of places which ought to be burnt, which it was a good idea to burn, but at the time it was decided to go and burn those particular places that was a decision arrived at when Sevenzayi was not present. 30

MR ANDERSON: Yes, he has said that; but I also understood you to say in your evidence in chief that Sevenzayi was present when some groupings were made? - Yes, when the groups were formed that was on a Saturday when he gave these examples.

And was it suggested perhaps just as an example to each group when Sevenzayi was present what each group should do? - Not at that time, my Lord, in the presence of Sevenzayi. The groups were formed and these examples were given. It was then decided at a later meeting which was going to be convened at some later time, which group was going to be allotted what part to take. 40



Was anything allotted to each group, anything at all while Sevenzayi was present? - No.

They were not even allotted areas while Sevenzayi was present? - Yes, areas were assigned to us in the presence of Sevenzayi.

Well, tell us will you, which areas were allotted to which group in Sevenzayi's presence? - Lovemore and I were supposed to go to Rakafa area.

10 Where is that? - That area is in Chinyika Reserve; it comes under Goromonzi.

Which part of Chinyika Reserve? - That is in the east of Chinyika Reserve.

And what would there be in that area to burn? - No, it had not been said what was to be done, but just the area was assigned to us only.

Is there anything in that area that could be burnt? - Well, we did not know anything at the time in the area; that was going to be discussed.

20 Do you know that area, Rakafa's area? - I do.

Do you know it well? - Yes.

What is there in that area that could be burnt? - I do not know.

BY MAISELS, J: What? - I do not know, my Lord.

Are there any dip tanks there? - No.

Are there any houses there? - Living houses, yes, there are, my Lord; there are people living in that area.

Churches? - No churches there.

30 Are there any schools? - No.

So it is only African houses? - Yes.

BY MR ANDERSON: Any police reservists in the area? - No.

Any European lands? - No.

So there would be nothing that the youth league of ZAPU would have liked to have burnt there? - Well, I would not have known anything at that time, my Lord, until it was decided in the meeting. Then we would be told what to go and do.

40 The next group: where was it assigned?

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BY MAISELS, J: Just a moment, please, Mr Anderson. Where is this place Rakafa's area? He said in the Chinyika Reserve; east of Chinyika Reserve he said? - It is in Chinyika's Reserve.

BY MR CRIPWELL: Where - east or south - where? - East, my Lord.

On Chinyika River? - This place is divided by a road that runs to Ruseke, my Lord; the other side of the road is Rakafa's area and Mahariwa.

BY MR ANDERSON: And the next group where was it to go? - Oh, my Lord, I did not commemorate where all these groups were assigned to. I am only able to tell the Court the manner in which these groups were formed. It is difficult to have kept them in my mind. 10

Was each group in fact given an area? - Yes.

I think that you told the Court that the first talk of action was on a Friday immediately before the Monday on which the burnings took place? - Yes. 20

When you met Ronnie, Hensiby and Nowa? - And Lovemore.

I see and you then mentioned this action. You then mentioned that there would be some action? - Yes, it was at this meeting that Ronnie suggested that an action be taken.

Did Ronnie suggest what sort of action should be taken? - No, he said he would first inform the leaders.

Would he have meant innocent action, like passive resistance or political agitation without violence? - Well, he said we want to take action because no action has ever been taken in this Goromonzi area. 30

Do you think he meant action which did not involve violence? - Well, because he had said we would hear what the parent body said. At the time when this action was mentioned, my Lord, I did not know whether he meant action without violence or action in which violence would be used. He further went on to say we will hear what the parent body is going to say about it. 40

Did he have any idea of when there should be action at that time?

MAISELS, J: You mean on the Friday?

MR ANDERSON: On the Friday, yes.

THE WITNESS: I personally did not know when it was that this action would be brought into action.

BY MR ANDERSON: Did you say when? - I did not know when.

If some other witness were to say a decision had been taken before this Friday that there should be action what would you say to that? - Well, I will disagree with them, my Lord, because it is something that I did not know.

You were never present with any other persons when they discussed action?

MAISELS, J: Prior to the Friday.

BY MR ANDERSON: Prior to the Friday, yes? - If anybody would say that such a decision had been arrived at before this Friday, it might have been held in my absence.

You were never present when there was any talk of action prior to the Friday? - I do not know it, so I was not present.

You never ever had a meeting with Sevenzayi and Ronnie to discuss action prior to this Friday? - I remember a certain day I went with Ronnie when he went and collected his membership card of ZAPU.

BY MAISELS, J: You remember going with Ronnie when "he went to collect his membership card"? - Yes.

Yes, what happened? - Sevenzayi pointed out to us where Tegere's hut is situated.

"Pointed out to us" what? - Where Tegere's hut is situated. He said there is Tegere's house and said there were visitors from Ruseke on Saturday.

I beg your pardon? - He further went on to say, my Lord, that there would be visitors from Ruseke who were coming there on Saturday.

But what did they have to do with Tegere's house? - This was merely said in the course of discussion when he said "On Saturday we shall have visitors who are visiting us from Kunswe".

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Cross-examination (continued)

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BY MR ANDERSON: What did he point out Tegere's house for? To pay him a visit? - Well, he said that house was owned by a sell-out, a police reservist.

What did he think that you should do about it? - Well, he said that if an action was to be taken these are things that should be destroyed in this area.

So you talked about action with Ronnie and Sevenzayi at that time? - Yes, I was present. 10

And that action involved violence? - Yes.

That, in fact, took place on the 2nd May. This was a Wednesday?

MAISELS. J: Tegere's house.

MR ANDERSON: Yes.

THE WITNESS: I do not remember the date, my Lord. I admit that it was on a Wednesday.

BY MR ANDERSON: What, about nine days before Friday when you went to see the accused? 20

MAISELS, J: To get the house destroyed is that what was put? 20

MR ANDERSON: Discussed.

MAISELS, J: Oh, just discussed, was it? You said that in fact took place.

MR ANDERSON: I beg your pardon, I meant the discussion took place there. The discussion about Tegere's house which should be destroyed by an action, took place about nine days before you saw the accused. Is that correct? - I am afraid, I am unable to tell the Court the lapse of time. I do not know whether it was nine days or more. 30

Do you remember that occasion well when you talked about action? - I do.

I take it you probably remember it so well that you have never forgotten it? - Well, my Lord, I am unable to tell the Court the lapse of time. I took no particular care or notice to enable me to tell the Court the days that elapsed between.

Yes, I can understand that; but you remember the occasion well. You have never forgotten it. 40

MAISELS, J: Are you talking about this discussion with Sevenzayi on the Wednesday?

MR ANDERSON: I am.

THE WITNESS: I remember the incident.

BY MR ANDERSON: You remember it well; you have never forgotten it. Yes or no? - Yes, I remember the discussion, my Lord, but not the days.

You haven't ever forgotten it? - That is so.

10 Probably the first time that you really actually were told what should be done to a particular house? - No, my Lord, not on that occasion. He merely said if anything was to be taken into operation and suggested Tegere's house as being one where such an action should be taken.

When I asked you just now whether you ever talked about action before the Friday, why did you tell me you had not if you remember this thing well?

20 MAISELS, J: Just a moment, Mr Anderson. The question was put in a general form and then when you put specifically about a discussion at which Sevenzayi and Ronnie were present, then the witness said, "Yes, I remember an occasion going with Ronnie" and then he told about this thing.

MR ANDERSON: Precisely, my Lord.

MAISELS, J: Well, just why do you put to him - it is correct he said he did not remember any discussion generally?

30 MR ANDERSON: He said there had been no discussions.

MAISELS, J: "I will disagree if someone else said it had been decided prior to that Friday that action should be taken."

MR ANDERSON: He also said there had been no discussion.

MAISELS, J: It had been decided.

MR ANDERSON: That was one of the answers.

40 MAISELS, J: Carry on, put the question. Counsel put it to him how is it that he forgot about this discussion if he remembers it so well.

THE WITNESS: I had just forgotten about it, but when it was mentioned I remembered it.

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BY MR ANDERSON: I put it to you what happened is that you are trying to protect Sevenzayi's name?  
- No.

I put it to you that is the whole object of saying that the accused is the person who organised these burnings? - No.

Now you have also told the Court that if it had not been for going to the accused's house and seeing a letter, you would never have known that there would be a strike in Salisbury, that is on the Monday? - That is correct. 10

MAISELS, J: He saw the letter on the Sunday, did not he say?

MR ANDERSON: The strike was on the Monday.

MAISELS, J: Yes, he saw the letter on the Sunday.

THE WITNESS: Sunday night.

BY MR ANDERSON: I take it then you did not know either there was going to be any other sort of action in Salisbury on the Monday? - I did not know, my Lord. I had no knowledge of it. 20

You would associate a strike with action? - Well, we had discussed this matter; this is Ronnie, myself and Hensiby; Lovemore and Nowa had discussed this action ourselves before we took the matter to Mr. Malindi, the accused.

Yes, discussed action generally? - Yes.

At that time did you or did you not know there was to be action in Salisbury on Monday? - No, we had no knowledge of it. 30

BY MAISELS, J: What is a strike? - What I describe as a strike is if we say nobody is to go to work today. If anybody goes to work you will be assaulted so we call that a strike because people did not go to work.

MR ANDERSON: Being current interpretation.

MAISELS, J: Well, unfortunately, there is something to be said for it.

BY MR ANDERSON: And since you did not know there was to be any action in Salisbury on Monday, you, Ronnie, Hensiby and Lovemore, you did not decide on any day when you would have your action as well. You have already said that, I think? - We had not 40

arranged or picked upon a day.

You had not even suggested a day? - No, no day was suggested.

I see. Now, do you remember giving evidence at the Magistrate's Court? - I do.

10 I refer to page B13 in my copy of the record, my Lord. You were asked this question: "What was the subject of your conversation (whilst you were talking to these other people)", and this is what you are recorded as saying: "Ronnie said there would be an action on a Monday in Salisbury; therefore we should stage our own action here". Did you say that? - I did.

And lower down on the same page the question was put: "And why had you thought of taking this action?" The answer was: "Because Ronnie had said no action has ever been taken in Goromonzi here, as there was an action in Salisbury ours should coincide with that one"? - Yes.

20 You said that? - I did.

Now, what is the truth, did you or did you not, before you saw the accused, know that there was to be an action in Salisbury on Monday? - Ronnie had told us, my Lord.

Why did you tell the Court earlier that you did not know anything about an action in Salisbury on Monday? - I thought because these questions were put to me at Goromonzi and recorded I did not know it is what is required by this Court.

30 BY MAISELS, J: Now, what is required by this Court is the truth which I hope you were told at Goromonzi as well. The question put by counsel is this, that you said you did not know any action was going to be taken in Salisbury on the Monday. You did not know that on the Friday when you spoke to Ronnie and the others. Is that right? Then your attention was drawn to the fact that you admitted it that you said in the Magistrates Court that Ronnie had told you on the Friday  
40 that there was going to be an action on the Monday in Salisbury, and as there had not been any action in Goromonzi up to now, it would be a good idea to have the action in Goromonzi on the Monday to coincide with that in Salisbury. Counsel wants to know why it is you originally said in this Court that you did not know on the Friday that there was

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going to be action on the Monday? - Because of lapse of time, my Lord, I had forgotten.

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You had forgotten it? - Yes.

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BY MR ANDERSON: When Ronnie told you there was to be action in Salisbury, did you understand that was to be a strike or something else? - Yes.

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Yes what? A strike or something else? - A strike.

Cross-examination (continued)

BY MAISELS, J: Did Ronnie say it was a strike? - He said there would be a strike in Salisbury on Monday.

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BY MR ANDERSON: Now, when you told this Court on numerous occasions that the first time you knew there was to be a strike in Salisbury was when you read a letter in the accused's house you were not telling the truth? - I believe I have already replied to that question. I have told the Court that because of the lapse of time I had forgotten these things.

I put it to you you are not telling the truth and deliberately trying to lead the Court into believing that the accused told you there was a strike. Therefore you should have some action on Monday? - My Lord, Ronnie discussed this with us on Friday. We saw the letter in accused's quarters on Sunday when we went there. That was some two days after we had discussed this with Ronnie.

20

Now, when you were first asked why you told the Court that you did not know of a strike before you went to the accused's you said, because you had said that at the Magistrate's Court, Goromonzi, and you did not know that was required here or words to that effect? - I later changed the story and said I had forgotten it. If I had remembered it I would have said everything there and then.

30

Just explain to me why you said you did not think it was required in this Court? - My Lord, when I gave evidence before the Magistrate during the Preparatory Examination at Goromonzi the Court recorded everything and I expected the Court to remind me at certain points where I would have forgotten. The Court relies on what is written and I am expected to remember everything in detail.

40

Why did you tell us that you did not think that was required in this Court?



MAISELS, J: He explained it. He said because he thought it was written down, and everything he would have forgotten he would be reminded of. Is that so?

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MR ANDERSON: My Lord, with respect .....

THE WITNESS: Yes, my Lord. I explained to the Court that I expected the Court to remind me certain points I have forgotten.

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10 BY MR ANDERSON: Look here, you were asked to give your evidence in this Court and you were not reminded of anything or you were reminded of very few things. Is that correct? - It is.

You were not told what to say when you were giving your evidence? - Well, I said all that I remembered.

20 Well now, I put it to you that there is some other explanation as to why you said to this Court that you did not think that this piece of evidence was required? - I believe I said that before I thought of what to say, my Lord.

Precisely.

BY MAISELS, J: But the question is why did you say that? - I merely said that impulsively, my Lord.

BY MR ANDERSON: You had no reasons for saying it - I had no reason for saying that.

30 So you are also lying when you said that your reason for saying that was because you thought it was already recorded? - No, I did not say so. I said when I gave the evidence everything I said was recorded and it is possible that I may forget something.

You are imprisoned with some of the other witnesses in this case, is that correct? - Repeat the question again.

You are imprisoned with some of the other witnesses in this case? - Yes.

BY MAISELS, J: Are you altogether? Do you see one another? - Yes.

40 BY MR ANDERSON: Would you like to explain to me why it was that you went to the accused's house on the Sunday?

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MAISELS, J: In the morning.

BY MR ANDERSON: Sunday morning? - We did not go there Sunday morning. We went there Sunday night.

MAISELS, J: Sunday night, sorry.

MR ANDERSON: Yes, I beg your pardon, my Lord, it was in the evening.

MAISELS, J: Did you forget, Mr Anderson? Did I forget?

MR ANDERSON: Your Lordship said to me it was in the morning. 10

MAISELS, J: You said yes.

MR ANDERSON: I assumed your Lordship was correct.

MAISELS, J: I forgot though. Go on Mr Anderson.

MR ANDERSON: Is your Lordship putting a question to me?

MAISELS, J: No, it shows you ..... Well, carry on.

BY MR ANDERSON: Why did you go to the accused's house on Sunday evening? - We went to hear the news. We went there for the news. 20

What time?

MAISELS, J: For the news he said?

MR ANDERSON: News, yes. (To the witness): At what time did you go there? - I went there before eight p.m.

Is it usual for you to go to the accused's house to listen to the news? - Well, we were on visiting terms, my Lord, prior to this. 30

Is it usual for you to go to listen to the news or not? - No.

The accused says you have never been to his house before this offence took place; before these discussions took place.

MAISELS, J: I am sorry, the accused said he has never been ..... ?

MR ANDERSON: The accused said you have never been to his house before this particular week-end. Would you agree with that? - We used to visit him 40

at times and at times found him in the classroom and at times in the garden and exchanged greetings with him.

If he said you have never been into his house before this week-end would you agree with that? - If he is referring to Sunday, my Lord, and I think if you remind him, I think he will agree that on Saturday we had been there.

10 MAISELS, J: No, weekend. Had he been to visit him? Mr Anderson said the weekend you went.

MR ANDERSON: Saturday and Sunday, yes.

MAISELS, J. Saturday and Sunday?

THE WITNESS: I personally had not entered his hut or house prior to this weekend.

BY MR ANDERSON: You just decided to go along on this particular Sunday evening to listen to the news? - I had been there Saturday night when this meeting was held. I went on Sunday to listen to the news.

20 What were you going to listen to in the news? What was interesting you in particular? - When a person is listening to the news he would like to know all that is taking place in the world.

Was there anything in particular that was interesting you? - No, we wanted to get how things were moving in the world.

30 I see, you are particularly interested in world affairs, are you? - Yes, when a person is listening to the news, my Lord, it implies he wants to know what is taking place in other countries.

BY MAISELS, J: And does something come on the news occasionally about what is happening in this country? - Well, when news is being broadcast, my Lord, they do not say what is happening in this country only, but what is happening in various countries.

40 But they do say what is happening in this country as well as telling you what is happening in America, China and the United Nations? - When we went to listen to the news we wanted to hear what is happening everywhere, not particularly only in this country.

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Cross-examination  
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BY MR ANDERSON: Right, on the Friday Ronnie had told you there was going to be a strike on the Monday? - Yes.

MAISELS, J: Did that piece of news interest you? - Not at the time, my Lord, because nothing had been said. It interested me after we had had our meeting.

On the Saturday night? - Yes.

I see, yes.

BY MR ANDERSON: How often do you listen to the news normally when you are not in prison? - Every day. I have a wireless set at home and I listen to the news every day.

10

The wireless set was working this particular week-end, I take it? - From where we came, my Lord, it would be too late for me to go home; by the time I got home, it would be after all the news.

You possessed a watch did you? - No.

I take it you had no means to telling the time after the sun has gone down? - Well, it is common practice among Africans to know by certain things; when such things occur you can fix the happenings with the time and I concluded at the time that the time had gone.

20

From what did you conclude on this particular evening? - Well, the way I know things would differ from someone, my Lord. I have got my own way of assessing the time.

Just tell me how you assessed it on this particular evening.

30

MAISELS, J: What do you mean how he assessed on that particular evening? Did he assess on that particular evening and can he remember how he did it.

MR ANDERSON: I am sure the witness would rather answer that. That is what I am trying to put to him.

MAISEL, J: Yes.

BY MR ANDERSON: How did you assess the time that particular evening? - Well the time I used to listen to the news when at home, that time had passed so I realised the time had gone.

40

How did you realise that time had passed because I put it to you you did not go to the accused's house on that evening?

MR MAISELS, J: On Sunday evening? - I did.

10 BY MR ANDERSON: How did you know that that time had passed then? - What I am trying to explain was there was not sufficient time for me to go home and listen to the news because of some distance. I thought if I wait and hear the news there because it would be of no use my going some distance for the news because I would get there after the news.

How did you know that it was not sufficient time to hear the news? How did you know what time of night it was? - I left the hotel at something to 7.

BY MAISELS, J: Left the hotel? - The Hotel.

20 BY MR ANDERSON: What hotel? - There is an hotel at Chinyika township owned by one Gwatidzo.

I see. Did you have anywhere in particular to go after you left that hotel? - From this hotel I went to the accused's home to listen to the news.

I put it to you that that hotel is nearer to your house than to the accused's? - What it is to walk along the main road accused's house is situated nearer the main road than it is mine.

30 Is that hotel nearer to your own house than to the accused's? - I do not know the measurements; no one measured the distance.

BY MAISELS, J: But what do you think without measuring the distance? Is your house nearer to the hotel or is the accused's house nearer to the hotel? - My Lord, that is why I said it is difficult to say without measuring the distance. To go to the accused's hut one would walk along the main road, whereas to go to mine you have to pass Goromonzi school, then go into the reserve.

So you say that the accused's house is nearer?

40 MR ANDERSON: With respect, he did not say that, no, my Lord, with respect.

MAISELS, J: I do not know. I am told by the assessors we can get the evidence I assume from the police. It is in the Goromonzi village.

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No. 6

Masawi

Cross-Examination  
(continued)

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Cross-  
examination  
(continued)

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MR ANDERSON: Yes, I believe that is so.

MAISELS, J: And the accused's house is at E?  
Now, you can say that would be along a main road.

MR ANDERSON: Yes, my Lord.

MAISELS, J: I understand that the witness's  
house is in the reserve.

MR ANDERSON: That is so.

MAISELS, J: That would be going off the road  
presumably in a northerly direction roughly.

MR ANDERSON: Well, one is guessing. 10

BY MAISELS, J: Well what kraal do you live in?  
- Chimarkers.

That would look on the map to all effects to be  
probably a little nearer to the hotel if it is drawn  
to scale, but I think Mr Anderson we can get that  
cleared up from the Sergeant of police presumably.

MR ANDERSON: We can, my Lord.

MAISELS, J: You put it to the witness that  
the accused's house is further from the hotel than  
his house and if that is established then your point 20  
is made.

MR ANDERSON: Yes. (To the witness): You say  
when you go to your house you go along the main road  
past the accused's house?

MAISELS, J: I said that.

MR ANDERSON: I thought the witness had said  
that.

MAISELS, J: No, I assumed that. I am wrong  
apparently.

MR ANDERSON: My Lord, he said he went along 30  
the main road.

MAISELS, J: He then turned off.

MR ANDERSON: I beg your pardon. (To the  
witness): You go along the main road and then  
turn off to your house, is that what you say? -  
No, I meant when I was going to the accused's hut  
to listen to the news.

How would you normally go from your house to  
the hotel?

MAISELS, J: The hotel to the house. 40

MR ANDERSON: Put it the other way around, Mr Interpreter -

THE WITNESS: From home, my Lord, I would walk along a footpath on to the main road and then along the main road to the hotel.

BY MR ANDERSON: And do you pass the accused's house at all? - To go to the main road accused's house would be some distance away.

Would it be as far from where you join the main road as your house is from the main road? - From the road to go to accused's quarters is nearer than it is from the road to mine.

Can you give me any idea as to how much nearer? - To estimate the distance, my Lord, I will not give the distance accurately. Always estimations are wrong.

Give me your estimation how much further to the accused's house.

BY MAISELS, J: Do you know what a mile is? - I know that is a mile if I was to measure it by means of a tape measure, but not saying it from my mind.

Well, do you know what a 100 yards is? - Yes, after measuring it I would know what 100 yards is.

Do not you think you might ask Mr Carver and then having established that possibly you could interpose Mr Carver and then continue cross-examination?

MR ANDERSON: AS your Lordship pleases.

MAISELS, J: But if you want to continue I am not stopping you. I think it would save a lot of time.

MR ANDERSON: No, my Lord, I have made the point I intended to make.

MAISELS, J: Yes.

BY MR ANDERSON: Where exactly in the accused's house did you find that piece of paper that you read?

MAISELS, J: That exhibit 7.

BY MR ANDERSON: Exhibit seven? - We found it on the table.

Would that be the same table where the radio is or are there a number of tables? - That is the table at which people sit when they are at table having meals. It is different from the table where the radio set is placed.

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BY MAISELS, J: It is different from the table on which the radio is placed? - Yes.

BY MR ANDERSON: Was the accused present when you found it? - He was present; we entered his hut in his presence.

He was in the room when you actually saw Exhibit 7 and read it? - Yes, well he showed us.

So that was how you came to see it because he showed it to you not because you happened to find it? - When we arrived we saw the paper on the table, my Lord. When we had sat at this table then the next thing the accused said, "I have received this note". He said, "I have received this note from Salisbury". We then read.

Are you able to read? - Yes, I can read very well.

Court adjourned 4.20 p.m.

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RESUMED 17th October, 1962

REGINA versus KASIWE MALINDI

EVIDENCE FOR THE CROWN Continued

MASAWI, recalled, sworn and examined (through Interpreter):

MR ANDERSON: I understand the Crown is prepared to admit that if this witness were to proceed to Chimanikiri Kraal, the one he was referring to yesterday, along the main road, the accused's house would be some 350 to 400 yards closer than that kraal. The difference in distance is 350 to 400 yards. The accused's house would be 350 to 400 yards closer to the branch which you turn off or the point on the main road where you turn off to Chimanikiri Kraal than Chimanikiri Kraal itself, and the Crown is also prepared to admit that there is another route from Chimanikiri Kraal to the hotel in question which is some 750 yards shorter than the route from the hotel to the accused's house, but that that route is over a rough terrain. Is that correct?

MR MASTERSON: That is so. I think "rougher terrain" would be more correct, than the main road track.

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CROSS-EXAMINATION BY MR ANDERSON continued:

I am told that if you went from the hotel via the main road to Chimanikiri Kraal, you would only save 350 yards in distance if you went to the accused's house before you went to that kraal?

MAISELS, J: Just a moment, would you mind repeating that?

10 BY MR ANDERSON: I am told that if you went from the hotel to Chimanikiri Kraal along the main road that you would only save 350 yards if you went to the accused's house instead of to that kraal.

MAISELS, J: This may be all very clear to you, but I am afraid I simply can't understand that question.

MR ANDERSON: I am just putting to the witness that the position is that the accused's house is only shorter by 350 yards to the destination to which he was going.

20 MAISELS, J: You mean the accused's house is 350 yards nearer the hotel than Chimanikiri Kraal?

BY MR ANDERSON: Yes. I am told that the accused's house is only 350 yards nearer to the hotel than Chimanikiri Kraal if you go via the main road? - Not from the hotel, no.

You don't accept that? - I do not.

30 Very well. Now, I am also told that there is another route which is more direct from Chimanikiri Kraal to the hotel?

MAISELS, J: Than along the main road?

BY MR ANDERSON: Than along the main road. - Yes, that is normally used during the day. It is not used at night time because the road is rough.

How rough is it? - It is sort of a causeway near a dam and it is so narrow that even if a person was walking on foot it would be very dangerous at night time.

40 I see. You prefer to use the road then, is that it? - Yes.

Can you give me any idea as to how long you would expect it to take for you to walk from the hotel to Chimanikiri Kraal via the main road? - I have never measured the distance, that is looking

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at a watch then set off along that direction to see how long it would take me.

Well, do you think it would take an hour or two hours or half an hour? Have you no idea at all? - I do not know. I have no idea.

BY MAISELS, J: You know the time, do you? - I have never timed it.

BY MR ANDERSON: I rather understood you to say yesterday in your evidence-in-chief that your kraal was Madongo Kraal where headman Madongo lives. Is that correct? Did you tell the Court you were living in Chinyika's Kraal where the headman is Madongo? - I said so.

10

And that is different from Chimanikiri Kraal, is it not? - That is so.

Is your home at Chinyika's Kraal where the headman is Madongo? - My mother lives at Madongo. I am staying at Chimanikiri's Kraal.

Why did you tell the Court yesterday you were living at Madongo?

20

MAISELS, J: He didn't say that at all.

(Presiding Judge reads extract from notes.)

MR ANDERSON: As your Worship pleases. I have got it wrongly recorded, but that was the recording your Lordship also read out to me.

MAISELS, J: No, no. I didn't read that.

MR ANDERSON: I withdraw the question if that is so.

MAISELS, J: No, no, he didn't say that.

BY MR ANDERSON: Very well you say you do live at Chimanikiri Kraal? - Yes.

30

When you went to the accused's house on the Sunday night .....

MAISELS, J: Wait a minute, Chimanikiri or Chinyika? Chimanikiri Kraal in the Chinyika Reserve, is that it?

THE WITNESS: The Reserve is Chinyika, but I live at Chimanikiri's Kraal.

MAISELS, J: That's right. Thank you.

BY MR ANDERSON: When you went to the accused's house on this particular night .....

40

MAISELS, J: That is Sunday night.

BY MR ANDERSON: The Sunday night, and you were given Exhibit 7 to read, did you read it at the dining room table? - Yes.

Was the wireless in the same room? - Yes, that is where it is kept.

And you listened to it in that room as well? - Yes.

10 The accused will say that, in fact, the radio set is kept in a sitting room which is separate from the dining room and that he never takes visitors into his dining room. He takes them into the sitting room, always? - On Saturday night when this meeting was held it was held in the very room where the radio set was.

That may well be .....

20 BY MAISELS, J: Excepting you put, really, two questions. Last time you said "It is in the sitting room, he never takes visitors into the dining room". The witness has answered a part. He said on the Saturday night the meeting was held in the very same room where the radio was. Now, what room is it, the dining room or the sitting room? - I am not quite clear as to whether this was the dining room or sitting room, but on the day in question we had the tea there. I merely assumed that it is a dining-room. I am not certain.

30 Is that the room where you were on the Sunday night? Was that the same room as you were on the Saturday night, or was it a different room? - It was the same room.

BY MR ANDERSON: Well, in that case you couldn't have been in the dining room, because that is the sitting room, on the Sunday night? - We entered the same room where the meeting was held and that is where the radio set was, that is where the meeting was held.

40 I understood you to tell me that you read the letter at a table and that you were in that same room when you listened to the wireless? - There is a very small table in this room. A person would have his meal at this table. It is not a big table at all.

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BY MAISELS, J: How many tables are there in this room in which you were? - There are resting chairs and a very small table.

Only one table or two tables? - I think I saw only one, a small one.

Didn't you tell me yesterday that there were two tables? - No.

MAISELS, J: He said there was one table where he could eat and another table on which there was a radio.

10

THE PROSECUTOR: Yes, my Lord.

THE WITNESS: These tables are almost of the same size, a small one where the radio was and another small one on which he had his meal.

BY MR ANDERSON: I want you to go back to the meeting on Friday. You recollect that? Do you remember that? - Yes.

On that day the accused will say that it was only Ronnie and you who approached him? - I disagree with you.

20

Would you tell me then where Ronnie had gone to? - We parted company when we went to the classroom where the accused was.

Have you any idea where Ronnie went? - I haven't finished answering the question. We parted company. He left in his own direction. He didn't tell me where he was going.

And the accused will say that at that stage he was walking towards his home away from the school? - No, my Lord. We found the accused in the classroom. We knocked at the door and announced our presence. We found him cutting some clothes for needlework, cutting some cloth, material.

30

BY MAISELS, J: Who was with you? - I was with Hensiby Lovemore, Nowa and I.

BY MR ANDERSON: And the accused will say that when you came across him, wherever it was, you asked whether you can talk to him and he stopped? - No. I said we entered the classroom to find him sitting in a chair cutting the material. Then we spoke to him there and then.

40

And he will say that you told him that there was to be a strike in Salisbury on the following Monday? - We had received the information from Ronnie.

BY MAISELS, J: Never mind where you received it from. Did you tell him that? - We did.

He told you that? - Yes.

BY MR ANDERSON: And he will say that he asked you how you knew there was going to be a strike in Salisbury, and that you told him that someone had come from Salisbury and had revealed it to you? - No, we told him that we had received the information from Ronnie.

10 BY MAISELS, J: Did the accused know you? - Yes, he knows me.

How does he come to know you? - When I was employed by the Engineering Department I used to go to the accused's classroom and at times when he visits children who attend school at his school, he had occasion to see me at our kraal.

Did he know Ronnie? - I do not know.

20 BY MR ANDERSON: The accused will say that you then told him that the Youth Group of ZAPU had decided to take an action in Goromonzi. You had been sent to get his co-operation? - I did not say that we had arranged. We said we had decided about it. We wanted to hear what he was going to say about it.

Did you tell him that you had decided to take action on Monday and you wanted to see what he had to say about it? - No, we did not mention a day. We merely said we wanted to take action in here.

30 I understood you to say a moment ago you told him you had decided something? - I do not know whether it was a misinterpretation. That was in reply to the Counsel's question.

The accused will say that he told you he had nothing to do with the Youth Group, that you should go and see the secretary? - When we spoke to him he asked us if one of us would go and see the secretary so that a meeting be held at his house in the evening.

40 BY MAISELS, J: What made you go to see the accused? - Well, he was a leading member of ZAPU so as an executive officer we thought we should go to him and hear what he was going to say about it.

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BY MR ANDERSON: Well, the accused will deny that he was an executive of ZAPU? - But he used to enrol new members.

So did you? - Yes.

Were you an executive member? - Well, I would not describe him as an executive member. What I would say, the accused is a grownup. He is the man to whom we used to appeal for advice as a grownup.

BY MAISELS, J: Grown up member of the party?  
- Yes. 10

BY MR ANDERSON: What you really mean is the accused was a non-supporter of ZAPU and you went to see whether he would co-operate with you? - Well, we had agreed among ourselves to go and see him because he was a bigger man than ourselves.

Was it the accused, then, who arranged for the meeting on Saturday? - It was the accused who arranged that the meeting be held on Saturday.

Did he arrange it at the time on Friday while you were there? - Yes, he told us to go and invite all the others that we should meet at his house at six o'clock. 20

You are quite certain that another day was not arranged and that it was unexpectedly changed to Saturday? - No.

The accused will say that he did not invite you to his house at all and did not arrange any meeting at all? - If he had not invited us there would have been no need for us to go and hold a meeting in his house. 30

MAISELS, J: The accused will say he didn't invite you to his house, didn't arrange a meeting, and the answer is that if he didn't invite us we wouldn't have gone.

BY MR ANDERSON: I put it to you that even if he hadn't invited you, you still would have gone if you decided to hold another meeting for the same reason that you went to see him on a Friday? - No. No meeting would have been held in his house because if he had refused we wouldn't have gone there. 40

After the meeting on Friday and before the meeting on Saturday, did you go and see Sevenzayi?  
- I did not go.

The accused will say that on the following day, that is Saturday, about 5.30 p.m., whilst he was working in his garden, Sevenzayi, Ronnie, Nowa Hensiby, Lovemore, Sixpence, Supa and you all came to his house at some stage, all came to his house together? - No.

BY MAISELS, J: What do you mean, no? You didn't go? - Well, we did not arrive there at the same time.

10 BY MR ANDERSON: He will say that when you did arrive he invited you all into the sitting room? - Yes.

He will say that Hensiby may well have remained outside, but he didn't know that and he certainly didn't instruct him to remain outside? - I said in my evidence-in-chief that Hensiby was instructed to remain outside.

20 Instructed by whom? - Mr. Malindi instructed him to do so. He said there were Police Reservists there and he was afraid that they would overhear the conversation.

Did you actually hear that said? - Yes, when he gave instructions to Hensiby to go outside I heard that.

I understood you to say that when you got into his house you spoke first? - Yes.

BY MAISELS, J: You mean you personally? - Yes, I spoke first because I am the person who had been to see Mr. Malindi on Friday.

30 BY MR ANDERSON: Did you ask him if you could do the action which you had thought of, of burning schools and dip tanks? - No.

40 So if Ronnie says that he is not telling the truth - I am reading from page 9 of the preparatory examination? - I do not understand your question. Are you saying in your questions that that very evening when I went there I told the accused, or you imply by your question that this was said in the course of the discussion when the meeting was held in his house?

The question was this, quite simply. You went into the accused's house and when you went in and first spoke, did you say to him: "Could we do the action regarding what we have thought of, namely burning schools and dip tanks"? -

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I did not mention the place or anything that have to be burnt. I merely said: "We are here to take an action." That is all. Without mentioning anything.

The accused will say that Agrippa Sevenzayi repeated what you and Ronnie had told him the day before about a strike and action? - What did they say?

BY MAISELS, J: The accused will say that Agrippa, that is Sevenzayi - Agrippa and Sevenzayi are the same person - the accused will say that Agrippa or Sevenzayi, who is the same person, repeated what you and Ronnie had told him the day before about the strike and action? - Because I personally had not seen Sevenzayi on Friday I do not know whether Ronnie had met him.

10

Was Agrippa there that evening? - No, he was not.

BY MR ANDERSON: All the accused is saying is that when you went into his sitting room on Saturday evening Agrippa started the conversation?

20

MAISELS, J: He says that Agrippa wasn't there.

BY MR ANDERSON: All the accused is saying is that on the Saturday evening Agrippa Sevenzayi started off the conversation by talking about the strike and action? - Well, I said he spoke there when he gave examples and suggest what things that should be burnt.

Well, I will go a step further. The accused will say that after Agrippa had spoken about the strike and action, he, the accused, asked Agrippa what action he had in mind and it was then that Agrippa gave the examples about burning churches, dips, etc.? - Yes.

30

You admit the whole of that conversation on Agrippa's part, between Agrippa and the accused? - Yes.

The accused will then say that after Sevenzayi had told him about burnings, he called Sevenzayi's attention to Mr. Nkomo's statement that no member of ZAPU would be allowed to act without his instructions, that is, I take it, Mr. Nkomo's instructions? - No, he explained that this action was merely for Goromonzi District alone. It does not connect with anything in Salisbury, so had it been something that connects Salisbury

40



and the other district, then Nkomo's instructions would be sought, but as it is merely for Goromonzi this is our own. We do it ourselves.

BY MAISELS, J: Who said that? - Sevenzayi.

Do you mean the accused did say they had to get Nkomo's approval and Sevenzayi said no, this is in Goromonzi. Is that what you mean? I don't follow? - That is so.

10 Well, then you admit that the accused said that but Sevenzayi replied this was in the Goromonzi area? - I admit that part.

BY MR ANDERSON: And the accused will say that he then added that the actions contemplated were illegal, that the action that should be taken was something like a procession? - No.

BY MAISELS, J: Did he mention anything about procession at all? - No.

20 BY MR ANDERSON: Did he mention anything at all about the action concerning burnings being illegal? - No.

The accused will say that there was then an argument? - No, I heard no argument at all.

Not even concerning whether Nkomo's permission was necessary or not? - But that had been explained that the action we were going to take was not an important one. It was merely for Goromonzi and Nkomo was not concerned.

Was there no further argument about that? - No.

30 The accused will say that the argument, which you deny, ended roughly when the group walked out of his house calling him moderate and a police informer? - No, that is not so. Are you saying by this question that we walked out from his room?

BY MAISELS, J: No, he says that all of you, that is Sevenzayi, Nowa, all of you walked out of the room, left him and said to him that he is a moderate and a police informer? - No, we did not. He had not informed any police we know of.

40 No, no, no. You don't understand the question. It is put to you that all of you walked out apparently in disgust, I suppose, Mr Anderson?

MR ANDERSON: Yes, I presume so.

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BY MAISELS, J: Apparently cross or in disgust, telling the accused, one of you telling the accused that he, the accused, was nothing less, that he was really a police informer and a moderate.

BY MR ANDERSON: Or words to that effect? - No, that did not occur.

MAISELS, J: Was this conversation in English, Mr Anderson?

MR ANDERSON: I think it was in Shona but I better just make sure. (Mr Anderson takes instructions.) The conversation was in Shona. (To the accused.): The accused will say that all of you also threatened to take action against him if he were to inform the police of what had been said? - It was the accused who said if anything or any information leaks and if any of you who do inform the police we will see what will take place or what we will do to this person. It was the accused who said that to us.

10

When did he say it? - That is Saturday night at this meeting.

20

Is that the only occasion on which he made that threat? - Yes.

The accused will say that you then, all of you left his house and he didn't see you again. He knows nothing more about this? - Well, after the meeting we left for our respective homes.

BY MAISELS, J: Did you see him again? Did you see him on the Sunday or the Monday? Did you see him again before you were arrested? That is the question put. Is that so, Mr. Anderson?

30

MR ANDERSON: That is so.

THE WITNESS: I said we met him on Sunday night.

BY MR ANDERSON: Now, accused will deny that he read from any book about nationalism or nationalists or anything like that? - With the Court's permission may the book be shown to me. I will then tell the Court.

Yes, just wait a moment. Was it either of these two books?

40

(The witness is shown Exhibits 8 and 9 by Counsel at a distance of approximately four yards away. He picks Exhibit 8 as the book out of which accused read. This is a red covered book with a black spine.)

BY MR ANDERSON: I take it that the accused, according to your story, took hold of this book, opened it and read from it? - The question was first put, then he went to collect the book.

Yes, apart from the question, when he took hold of that book did he just take hold of it, open it and read? - Well, he read the questions in the book and then he explained them.

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10 Were kyou sitting at the time? - We were sitting in the chairs in his house, all of us.

Was the accused standing or was he sitting when he opened the book and read from it? - He was sitting in a chair when he read it.

Were you sitting next to him or were there people between you and the accused? - I was sitting facing him. There was Sevenzayi sitting between us.

And am I to take it that he opened it exactly as I am doing now?

20 MAISELS, J: How am I to get that down? How are you opening it?

MR ANDERSON: I am just opening it, opening the book and turning the pages. The point is that the book would be at a slight angle to the witness.

MAISELS, J: As though he was sitting in the chair facing the accused?

30 MR ANDERSON: Perhaps I could frame the question at the same time indicating what I am doing. (To witness): When the accused opened the book did he have it at a slight angle away from you? - Well, I am unable to say whether it was at a slight angle as you have opened the book now. I am able to see the black spine and the red cover of the book, but it is difficult if one is not taking particular notice whether the book is held at a slight angle or straight.

40 Were you able to see the writing in the book when it was opened by the accused or were you not? - No, I could not see the writing in the book because I could only see the cover from where I sat.

Precisely. You never ever saw the writing in the book, did you?

In the High  
Court

Crown Evidence

No. 6

Masawi

Cross-  
examination  
(continued)

17th October  
1962

THE PROSECUTOR: With respect, the question was not "You didn't see what was written", but "You didn't see that there was writing."

MAISELS, J: Oh, I see. I am sorry, Mr. Interpreter, it is pointed out by the Crown he didn't see what was written. The question is you didn't see writing as opposed to what was written.

BY MR ANDERSON: The question is that you did not see the contents of the book, you didn't see inside? - I did not see the contents of the book. I heard the accused reading it out to us. 10

That was because only the covers were facing you. You could only see them. You couldn't see inside? - Yes.

And you never saw inside? - Well, I did not touch the book and I wouldn't have seen inside.

Ever? - Ever.

So you did not know whether or not what was inside the book was in longhand or had been printed? - Well, I would never know whether the contents of the book was written in longhand or printed matter. 20

Precisely, and you don't know either whether there were any pages missing from the book or not? - Anybody looking at the book as you lifted the book, it is clear that some of the pages are missing.

Can you see that from there? - Yes, it appears so.

Where would you say pages are missing in this book? - Looking at the book itself you can see that it is not complete. It appears there is one side the papers are missing, the sheets, from the top. 30

Which side? It is correct, my Lord, there are about ....

MAISELS, J: Well, may I see the book, please. Shall we call it a number of pages or do you want to count them specifically.

MR ANDERSON: I think there are about twelve pages missing there.

MAISELS, J: Well, approximately. 40

MR ANDERSON: Approximately, yes, a substantial number, anyway.

MAISELS, J: And it is visible from where you were showing it to the witness?

In the High Court

MR ANDERSON: Oh yes, yes. (To witness): I put it to you that you saw this book in the custody of the police at some time or else at Goromonzi Court and that is how you knew when you said in examination-in-chief that what was written in the book was written in longhand? - No, I never touched the book.

Crown Evidence

No. 6

Masawi

Cross-examination (continued)

10 BY MAISELS, J: That is not the question? - And would not have seen the contents.

17th October 1962

You say you saw it in the accused's house on that Saturday night? - Yes.

Since that time till just now have you ever seen that book? - Yes, during the preparatory examination the book was produced at Goromonzi.

BY MR ANDERSON: And did you look inside it? - No, I did not look inside it. I was in the box and the book was away from me.

20 Who told you then that whatever was written in this book was written in longhand and was not printed? - I did not know that the contents was written in longhand. I have already said that before this Court that I have never had occasion to touch the book.

Did you think that whatever was in this book might have been printed? No, I am not prepared to say anything. I do not know anything about it.

30 You wouldn't even guess at it? - Well, if I guess at it I will guess wrongly.

Do you remember saying in your evidence-in-chief that what was written in this book was written in longhand?

MAISELS, J: Writing, he said.

MR ANDERSON: With respect, there was a clear distinction drawn at the time between "handwriting" and "in print".

40 MAISELS, J: This is my note, "It appeared as though sheets were missing, the words were in writing".

MR ANDERSON: Yes, that is what I am putting to him.

In the High  
Court  
-----  
Crown Evidence  
-----  
No.6  
Masawi  
Cross-  
examination  
(continued)  
17th October  
1962

BY MAISELS, J: Did you say in examination-in-chief that the words were in writing yesterday when you gave evidence? Do you remember saying yesterday when you gave evidence that the words were in writing? Did you say that? - I remember telling the Court that the letter, because I picked up the letter to read it personally, that the letter was typewritten, or a typed letter.

But don't you remember saying yesterday that in this book the words were in writing? - I remember describing the colour of the book and not the contents or what is written. 10

You don't remember saying it was in writing? If you did say it was in writing what is your explanation? - My difficulty is I have never had occasion to touch the book. I do not know why I should have told the Court that the contents was in longhand since I have never had occasion to read the book.

BY MR ANDERSON: I put it to you that with regard to Exhibit 7, the printed notice, you also saw that at the preparatory examination. I put it to you that you either saw that at the preparatory examination or in the custody of the police? 20

BY MAISELS, J: We are now talking about Exhibit 7, the printed notice. The question is put to him, did he see that either in the possession of the police, or at the court at the preparatory examination? - I believe I saw it yesterday when I was called. 30

But before yesterday you saw this note in the accused's room, you say, on the Sunday evening? - I said, my Lord, at first I saw it in the teacher's room, the letter was on the table.

When did you see it again? - Yesterday I was called by the Sergeant. I saw it before we came here.

Before you came into court? - Yes.

BY MR ANDERSON: Which Sergeant showed it to you? ? The Sergeant sitting behind the Counsel for Prosecution. (Indicates Sergeant Carver.) 40

That is before the case started, before you gave your evidence? - Whilst at Goromonzi.

BY MAISELS, J: Whilst at Goromonzi? - We came from Goromonzi yesterday. This was shown to me before we set off for Salisbury from Goromonzi.

Oh, you have been at Goromonzi? - I am at Goromonzi.

BY MR ANDERSON: Was it also shown to the other witnesses in this case? - The three who were present saw it.

You? - Hensiby and Lovemore.

Shown to you at the same time by Sergeant Carver? - Yes.

(Court adjourned.)

(Court resumed.)

BY MR ANDERSON: I wish to deal with ~~St~~aturday evening's meeting. You have said that Supa was there? - Yes.

Did Supa at any stage during that meeting indicate his reluctance to have anything to do with the burnings? - He merely asked a question. He said: "When you suggested that these churches should be set on fire, why should we set them on fire".

20 Was he answered? - He was.

Who answered him, what was said? - He said because these churches are interfering with us in our propitiation of ancestral spirits.

BY MAISELS, J: Who said it, who replied that way? - Sevenzayi.

BY MR ANDERSON: Did Supa say anything else? - He did not say anything else.

He never said he didn't want to have anything to do with this? - No.

30 So if he says that is what he said, he will not be telling the truth? - Regarding to the agendas before us at the time, that is what he said.

BY MAISELS, J: You mean did he say other things not relevant to the business of the meeting? - He merely put a question and said: "Why should we burn the churches" only.

40 BY MR ANDERSON: I understood you to say, I think it was you who said that Sixpence arrived late? - Yes.

Did he arrive after the groups had been arranged? - Yes.

In the High Court

Crown Evidence

No. 6

Masawi

Cross-examination  
(continued)

17th October  
1962

In the High Court

Crown Evidence

No. 6

Masawi

Cross-examination (continued)

17th October 1962

And I understood that prior to this the accused had merely told you to collect whoever you could to come to this meeting? - No.

Who had decided who was going to come to the meeting on Saturday night? - Accused said: "You better inform members of the Youth League that we are holding a meeting on Saturday evening."

Is Sixpence a member of the Youth League? - I have never had occasion to look at his card. I do not know whether he is a full member of ZAPU or was a member of the Youth League.

10

How is it then that Sixpence was put in a group before he had even come? Do you know? - Because all those who met there were people coming from the same area. I believe the reason why he was assigned to a certain group before his arrival was that he was coming from the same area as those who were present at the meeting.

No one said Sixpence would be coming later? - Sevenzayi had been at his place of work during the day.

20

BY MAISELS, J: Did Sevenzayi say so? How do you know that? - Yes.

BY MR ANDERSON: You have said that on the Sunday evening you saw the accused? - Yes.

Was there any meeting in the bush on Sunday evening? - No.

BY MAISELS, J: Which you know about? - No.

BY MR ANDERSON: And I think you have said that the accused said on Sunday evening that you should return on Monday to listen to the one o'clock news? - Well, we were not in the bush when that message was passed. This was said when we were in his house.

30

Where were you working at the time? - I was unemployed at the time.

Why then did you have to go to the accused's house to listen to the one o'clock news if you could listen to it at your own house? - Accused had suggested to me, he actually said: "You come to my home and listen to the one o'clock news. Then we will know what is taking place".

40

And you have also said that on the Monday at



some time after four, Hensiby and you passed by the accused's quarters? - About after four, I think.

Where were you going? - We were going home from the store.

Is the store in the township? - No.

Where is the store, then? - Past Goromonzi School.

10 I understand there is a store on Baines Hope Farm, Mr. Hughes' farm? - This store is situated at the boundary of the Reserve and the farm of Mr. Hughes. The store is situated on the boundary. I do not know whether the exact spot where the store is situated is a farm area or a reserve, because that is where the boundary is.

20 And I also understood you to say that you were then told to go to a football field at 6 p.m. and when you got there with your companions instructions had already been given? - I said I arrived there to find the others having received instructions already.

And were you then given your instructions? - Yes.

So you weren't present when the others were given their instructions? Is that it? - Well, I found the three of them together. What the discussion that took place among these three is what I did not hear.

30 Did the accused give them any instructions in your presence or not? - Yes.

I also understood you to say at some stage or another that it was arranged that the burnings would be at about 11 p.m.? - Yes.

And you had a watch? - Yes. Lovemore was told to give his watch to me so that I could use it.

Can you say what time you actually burnt the buildings that you did burn? - Eleven o'clock.

40 Would it be correct to say that the Chinyika Church which the accused, according to you, had undertaken to burn, was already burning at that time? You saw it light up? - I was waiting for the time. At eleven dead I saw the church beginning to burn, then we set fire to the hut, to the hide shed and the dip tank.

In the High Court

Crown Evidence

No. 6

Masawi

Cross-examination  
(continued)

17th October  
1962

In the High  
Court  
-----  
Crown Evidence  
-----  
No. 6  
Masawi  
Re-examination  
17th October  
1962

RE-EXAMINED BY MR MASTERSON: Do you remember talking of the Saturday evening meeting and saying how Sevenzayi had put forward all sorts of suggestions? - I do.

And what was the accused's reaction to Sevenzayi's suggestions? - Well, he was quite agreeable. He did not question him why.

And did anybody other than Sevenzayi put forward suggestions? - Well, they all seconded what Sevenzayi had suggested. 10

When Sevenzayi made his suggestions on Saturday evening, to what extent were those suggestions actually implemented on the Monday evening? - Well, his suggestions was what was implemented because the burnings that he had suggested were those that were set on fire.

Did Sevenzayi suggest any buildings which were not eventually set on fire? - Well, there are suggestions that he had mentioned which weren't taken into operation. He said we must look for Tigere's house, that is the Police Reservist, and also those demonstrators who go injecting animals. 20

And the places that were burnt down, were they all mentioned by Sevenzayi or not? - They all had been mentioned by Sevenzayi.

Apparently groups had been arranged on Saturday and had areas allocated to them, but no specific targets? - Yes.

Now, how did the groupings arranged on Saturday night compare with the groupings arranged on Monday night? - Those were different groups from those of Saturday. Groups formed on Saturday differed from those formed on ... 30

MAISELS, J: On Monday. Mr Masterson, you put the difference between Saturday and Monday, did you?

MR MASTERSON: Yes.

THE WITNESS: Groups made on Saturday differed from those on Monday.

BY MR MASTERSON: Who reorganised the groups on the Monday? - When I arrived they had already been arranged. We were merely told which part to take or which area to take. 40

BY MAISELS, J: Who told you? - The accused, Mr. Malindi.

BY MR MASTERSON: Now, do you know whether the police can find Sevenzayi or not?

In the High Court

MR ANDERSON: With respect, I can't see that there is any relevance.

Crown Evidence

MAISELS, J: Are you seeking for corroboration of Sergeant Carver when he says he can't find him?

No. 6

MR MASTERSON: There was a suggestion by my learned friend to the effect that these witnesses were trying to shield Sevenzayi.

Masawi

Re-examination  
(continued)

10 MAISELS, J: Well, I suppose it does apply, then.

17th October  
1962

MR MASTERSON: With respect, it was put directly.

MAISELS, J: Yes, you are quite right. So you want to show, all right, put the question. I think it is permissible, Mr. Anderson.

MR ANDERSON: As your Lordship pleases.

20 BY MR MASTERSON: Do you have any idea whether the police can or cannot find Sevenzayi? - I wouldn't know.

Do you have any reason to believe that the police can't find Sevenzayi? - I am in custody. I wouldn't know. Had I been at large then I would have slight knowledge about it, not where I am at the moment. It is difficult to know anything.

Now, what other witnesses have been in prison with you? - Lovemore and Sixpence.

30 I believe, however, that yesterday for at least part of the morning you were in company of Ronnie and Hensiby and Noah? - Yes.

Was Lovemore also with you? - Yes.

Apparently Sergeant Carver showed you this strike notice, Exhibit 7? - He merely said, "Is this the paper". I said yes.

Can you explain to the Court how Sergeant Carver discussed the piece of paper with you?

40 BY MAISELS, J: In the answer he said "Is this the paper and I said yes". Now, was there anything else said?

BY MR MASTERSON: Was anything else said about this piece of paper? - No.

In the High  
Court  
Crown Evidence  
No. 6  
Masawi  
Re-examination  
(continued)  
17th October  
1962

BY MAISELS, J: How did he come to ask you this question? - Well, he called us in the morning from where we were. When we got up to him he said: "Is this the paper announcing the strike". I said "Yes, that is the paper", and that was all.

BY MR MASTERSON: Did he ask you any other questions? - No.

Were Lovemore, Ronnie, Hensiby and Noah all present when Sergeant Carver discussed that paper with you? - It was just the three of us, Hensiby, Lovemore and myself.

10

At the time of this offence why were you staying at Chimanikiri if your mother stays at Madongo's? - I was brought up by my grandmother so that is where I stayed.

Is Hensiby related to you at all? - He is a relation of mine.

Is your mother divorced or not? - She is divorced.

Yes, now the book, Exhibit 8, you mention having seen it at the preparatory examination? - Yes.

20

Now, before these matters even got as far as the preparatory examination, did you ever see the book in the custody of the police at the charge office somewhere at Goromonzi? - I did not. In fact, I had nothing to do with the book at the time.

Have you ever seen a book like this before, this sort of book?

MAISELS, J: Before when?

30

MR MASTERSON: Before today?

MAISELS, J: He said he had.

BY MR MASTERSON: Sorry. Have you seen this type of book before? This shape and bound in this manner? - Which time are you referring?

Any time in the past?

MAISELS, J: Are you trying to put to the witness the type of book as opposed to this specific book?

MR MASTERSON: Yes.

40

MAISELS, J: Put it.

BY MR MASTERSON: Have you ever seen this type of book before?

BY MAISELS, J: As opposed to this particular book. Has he seen that kind of book before as opposed to that particular book which he said he has already seen?

10 BY MR MASTERSON: Mr Interpreter, I didn't mean the colour. I mean a book of this type (indicates the book)? - We used this type of book at school.

Now, at school what did these books have inside them? - One would just buy that and then write your subjects at school.

MAISELS, J: That is Exhibit 8, is it?

MR MASTERSON: Yes, that is Exhibit 8.  
(To witness): You say Supa was present at the meeting on Saturday evening and he asked why the churches should be set on fire? - Yes.

20 Can you remember anything of the tone in which he asked this question? - I would not remember the tone of the voice at the time, but I still remember the question because there were many questions which were put in the meeting on the evening in question.

Do you know if Supa was allocated to any group? - Yes, he was.

Have you any recollection of his reaction to being allocated to a group? - He was agreeable.

BY MR CRIPWELL: How old are you? - 20.

30 Where did you learn all this about business of the meeting, seconding resolutions? - I do not know them.

But have you not been using those expressions now? - I spoke to them in Shona. not in English.

You have got words in Shona for those resolutions and seconding and things like that? - No, there are no words in Shona.

Well, what is your standard of educations?  
- I passed standard 4.

40 At what school? - Mawanda Council school.

You never attended the school supervised by the accused? - No.

In the High Court

Crown Evidence

No. 6

Masawi

Re-examination  
(continued)

17th October  
1962

In the High Court  
Crown Evidence  
No. 6  
Masawi  
Re-examination  
(continued)  
17th October  
1962

And had you ever visited him prior to this week-end which we are talking about? - No. We used to meet and exchange greetings whenever I met him on his way to the store or on my way up to the store.

And you say you used to go and listen to the news regularly. What news did you listen to? - Not at the accused's house.

I am not saying where you listened to it. You said you used to listen to the news. You had your own set? - Well, it depends on one's interest.

10

But what are your interests?

BY MAISELS, J: You were asked what kind of news did you listen to? - Anything that is said in the wireless that is on the happenings that will be taking place.

BY MR CRIPWELL: Did you tune in to any particular station? - Well, there are certain stations with Shona and Chinyanja spoken, so one would tune to such station or metre.

20

Can you give me the names of any such stations? - Well, I only know the station that I use myself.

What is it? - I use the 90 metres.

Can you tell us if on this 90 metre band you ever heard the announcer say: "This is such and such a place called"? - Normally it is the Federal Broadcasting.

Now, you have a good memory of what happened such a long time ago in May. You say that the only thing you remembered the accused saying to you out of that book was something about "sons of the soil"? - That is what the book said.

30

But how long was the accused talking to you out of that book? - No one timed it. I wouldn't know what time it was.

BY MR LING: Who is the leader of this Youth Movement in your area? - I do not know who is the leader in the Goromonzi area.

BY MAISELS, J: Well, who was the leader when you were there? - We had no leader.

40

BY MR LING: Well, then, how did you convene meetings then? - Well, meetings were held at Mr. Malindi's house.

BY MAISELS, J: We are not talking about the meetings of this case. Did you have any meetings other than the ones you attended at Maldini's house? - No. We used to attend public meetings organised by party members at Rusiki.

In the High  
Court  
-----  
Crown Evidence  
-----  
No. 6

BY MR LING: How old would you say the accused is compared to you? - It is difficult for me to say. I do not know his age nor does he know my age.

Masawi  
Re-examination  
(continued)  
17th October  
1962

10 In your community in the Reserve would you order the accused about, or would you follow the accused? - According to Shona custom a person who is older than you is to be respected.

That is what I want to know, is how old you consider the accused is, compared to you? - I know he is older than a year, but I do not know his age.

20 Well, do you consider he is old enough to command your respect according to your custom? - Yes.

BY MAISELS, J: You say that you used to attend meetings of the Zimbabwe African Peoples Union? - Yes.

Those were public meetings? - Yes.

Did you ever see the accused at those meetings? - No.

You never saw him there? - No.

30 You say you knew that the accused was a member of the Zimbabwe African Peoples Union? - Yes.

How did you know that? - Well, he asked for a receipt book in order for him to write the money. I gave him the receipt book.

You mean he asked you for a receipt book? - I had the receipt book.

How did you happen to have a receipt book? - The secretary was on duty so he had given the receipt book to me.

Is that Agrippa? - Yes.

40 And did Agrippa tell you to give it to the accused or did you give it to the accused merely because the accused asked you for it? - He had a new member who wanted to join the party. In order

In the High Court  
Crown Evidence  
 No. 6  
 Masawi  
 Re-examination  
 (continued)  
 17th October  
 1962

to enrol a new member a receipt book is used as well as a card so he wanted to enrol a new member. That is why I had to give the receipt to him.

And did he give you the book back after he had enrolled the new member? - Well, he merely wrote down. After enrolling this member he returned the book to me.

To you? - Yes.

Was the membership free? - Yes.

And what did you do with it? - Well, I looked after it until the arrival of the secretary then handed it to the secretary. 10

Now, the accused is the head man of the school, isn't he? - Yes.

Do you know him as that? - Yes.

What do you understand by "an imperialist"? Have you ever heard that word before? - Yes, that word was read out from the book.

What does it mean? - It meant Europeans.

When was it read from the book? - Saturday night when we were in the meeting. 20

How did it come about that this was read from the book? - The accused first said to us. "What is meant by nationalist"? We were unable to answer that question. That is why the book was read out.

Witness stands down.

NOTE:- Coun sel for the Defence intimates that he does not wish Sergeant Carver to be recalled to produce certain documents about which Sergeant Carver gave evidence yesterday. All documents have been submitted to the Counsel for the defence. 30

No. 7  
 Lovemore  
 Examination

NO. 7  
LOVEMORE

LOVEMORE, sworn and examined (through Interpreter):

BY MR MASTERSON: Are you at present a hard labour prisoner? - I am.

Are you serving four and a half years sentence for three counts of arson? - Yes.



Where were these crimes of arson committed?  
 - Goromonzi, at Chinyika Reserve.

In the High  
 Court

Anywhere other than Chinyika Reserve? -  
 At the Rusiki.

Crown Evidence

Did you play any part in the commission of  
 any these crimes? - Yes.

No. 7

And what did you do? - I burnt down.

Lovemore

What? - The church at Rusiki.

Examination  
 (continued)

10 What do you consider to be your position in  
 this court while giving evidence in relation to  
 those crimes for which you have been convicted?  
 - I consider myself to be a mere witness.

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 1962

MAISELS, J: Well, I should think so. I  
 can't imagine any other answer being given to that  
 question, Mr Masterson.

BY MR MASTERSON: When was it that you burnt  
 down this church building at Rusiki? - On the  
 14th May.

20 And had anything occurred prior to the 14th  
 May which led up to the burning of this church?  
 - A meeting had been held.

When? - We held our meeting on the 14th.

What day of the week was that? - It was on  
 Saturday.

Do you remember what day it was that you  
 burnt down the church? - It was on Monday then.

Do you understand the 14th to have been a  
 Saturday then? - I remember, I believe it was  
 Saturday.

30 BY MAISELS, J: What day did you burn down  
 the church? - It was on Monday.

You were asked did anything happen before you  
 went to burn the church on the Monday? - We held  
 a meeting.

When was that meeting held? - The meeting  
 was held on Saturday.

BY MR MASTERSON: How many days before the  
 Monday on which you burnt down the church? -  
 Two days.

40 That is Sunday, Monday and you burnt the  
 church down? - Yes, on Monday the church was  
 burnt down.

In the High  
Court

Crown Evidence

No. 7

Lovemore

Examination  
(continued)

17th October  
1962

Had anything happened on the Friday before the Saturday on which there was this meeting? - Yes.

What had happened then? - Masawi, Ronnie, Noah and myself, Ronnie spoke about taking an action.

You say Masawi, Ronnie, Noah and yourself. What did you do? - We met.

Just before you go any further, you have mentioned four people, yourself, Masawi, Ronnie and Noah. Do you know if anybody else was present? - No other person was present. It was just the four of us. 10

And how did you come to meet the others? - We met them after they had already been told.

You say "we met". Who is "we"? - I should say I met them after they had already been told.

Where did you meet them on the Friday? - On Friday the four of us met. Then we left for Mr Malindi's house.

Where did you meet on Friday? - We met on the road. 20

How did you happen to be on the road when you met them? - It just happened that we happened to meet on the road. We started discussing other matters until we came to this.

And now, just what was discussed on the road before you went anywhere else? - Ronnie said we wanted to take an action because no action of any type had ever been taken in Chinyika Reserve.

And what was the attitude of the people other than Ronnie? - They were all quite agreeable to his suggestion. 30

Does that include you or not? - Including myself.

So what happened? - Ronnie suggested that we go to see Mr. Malindi and hear his views on it.

So then what happened? - He then said he was going home and suggested that we three go to see him and hear what he has to say about it.

BY MAISELS, J: Ronnie said he was going home but the rest of you should go? - That is so. 40

BY MR MASTERSON: Go on? - We went to his house to find him not in his house, so we went to the classroom where he was.

He being? - Mr. Malindi, the accused.

What happened then? - When we entered the classroom in which he was, Masawi told him that we thought of taking action.

Go on? - Because there is nothing that has ever happened in Chinyika or done in here.

Go on? - Accused was quite agreeable. He then said we would pick out a certain day that we would meet. We had arranged to meet on Sunday, so we did not meet on Sunday. Instead we met on Saturday.

Do you remember how this change of plan occurred? - Sevenzayi arrived then and suggested that the meeting be held that day because the following day he will be having visitors.

Now, when you say Sevenzayi suggested the meeting should be held that day, what day do you mean? -

MAISELS, J: He said Sevenzayi arrived on Saturday and suggested that the meeting be held that day. That means Saturday.

MR MASTERSON: I am sorry, my Lord. (To the witness): Go on? - We waited for our companions who then came.

Where were you? - On Saturday evening we were at Mr. Malindi's house.

When did you go to Mr. Malindi's? - I went there something after five.

Where are your own quarters in relation to the accused's? - I was employed at the Secondary School. My quarters are situated a short distance away from those of Malindi.

BY MAISELS, J: What were you employed there as? - I was a labourer in the Engineering Department.

BY MR MASTERSON: Was anybody else there when you arrived at the accused's? - When I arrived I found Sevenzayi, Noah, Masawi and Hensiby present.

Was the accused there? - Yes, the accused was there.

Did other people come after you got there? - Yes.

In the High Court  
 Crown Evidence  
 No. 7  
 Lovemore  
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 (continued)  
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Who else? - Supa and Sixpence arrived and found me there.

Anybody else? - No, that is all.

Was there anybody who had been present on Friday evening at any stage who was absent on Saturday? - No.

Do you know where Ronnie was on Saturday evening? - Ronnie arrived Saturday evening.

Now, what took place at the accused's house that Saturday evening? - When all the people were present Ronnie said we thought of taking action because no action has ever been performed in Goromonzi district. 10

Go on, tell us a bit more about this meeting? - So all the people who were present were agreeable to the suggestion. It was suggested that we be divided into groups.

BY MAISELS, J: Who suggested it? - Malindi, the accused, and Sevenzayi divided us into groups.

BY MR MASTERSON: Go on? - After we were divided into groups we were told that we would meet on Saturday of the following week. 20

What was discussed as regards the purpose of forming these groups? - It was said that if any action was to be performed and if we did so when we are all in one group we will easily be detected.

Was anything else said? - No.

BY MAISELS, J: What were the groups to do? Play tiddlywinks? - To go and burn.

Who said it? - It was Malindi who formed all the groups. 30

BY MR MASTERSON: What did Sevenzayi have to say about these groups and what they should do? - He was quite agreeable that we go and burn. He even further went on to say that after setting a fire we must not leave the spot running. We better leave the spot walking at a normal pace.

BY MAISELS, J: Sevenzayi said that? - Yes, and said that we must not set fire soon or quickly set them on fire. 40

You say accused supplemented this or Sevenzayi. What is the answer, Madam Shorthand Writer?

(Shorthand Writer reads extract.)

BY MR MASTERSON: Just what do you mean by that? - I do not know what he meant when he said we must not set them on fire there and then. It is best known by him.

And now, what happened after this meeting on Saturday night? - We parted company. We dispersed.

10 Did you see the accused at all again after Saturday? - Yes, the following day, that was Sunday night.

Where? - At my house.

How did he happen to be there? - He came holding a letter and said to me that: "I have received this note. There will be a strike in Salisbury on Monday".

Have you seen that note again since then? - No.

20 Was anything shown to you yesterday by Sergeant Carver? - Yes.

What? - He showed me a note similar to the one the accused had.

Do you know anything about this note, Exhibit 7 (indicates)? - Yes, that note was similar to this one.

BY MAISELS, J: Can you read? - I can read.

BY MR MASTERSON: Well, will you have a look at that and give us a slightly more definite opinion as to the identity of this note?

30 BY MAISELS, J: Just a moment. Perhaps we can save time. When the accused came to you on a Sunday did you read the note? - I did not read it fully.

Did he explain the contents? - Yes, he merely said: "It is said that people will go on strike in Salisbury tomorrow".

And then you saw a similar note shown to you yesterday by Sergeant Carver? - Yes.

40 BY MR MASTERSON: How did you and the accused come to separate on the Sunday evening?

MAISELS, J: He said following day. I don't know whether it was the evening.

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MR MASTERSON: I believe it was. "Night" actually, I think, was the word used by the Interpreter.

MAISELS, J: I am sorry, I have it as the following day, but I may be wrong.

MR ANDERSON: I have night.

MAISELS, J: I am sorry, Mr Masterson.

BY MR MASTERSON: If I can put my question again slightly differently. Was anything in particular said before you parted on Sunday evening? - Malindi said if it was possible we should have ours coincide with one in town. 10

Did he make any other arrangements? - No.

Did you see him at all on the Monday? - Yes, I met them at 6 p.m.

BY MAISELS, J: Met who, the accused? - Yes, the accused. I met them, my Lord, at 6 p.m.

Who is "them"? - I met him in company of one Sixpence.

BY MR MASTERSON: Where? - At his house. 20

Why did you go to his house? - I wanted to go and listen to the news.

What time did you want to hear the news? - 6 p.m.

What happened? - After the news he then said: "Our companions have already gone there because they had been informed that we were meeting on Monday".

Gone where? - We had been told that we would meet in the bush that is behind the football ground on Monday at 6 p.m. 30

Who told you that and when? - The accused.

When did he tell you that? - When he came to my house.

On the Sunday? - Yes.

BY MR MASTERSON: Did you go to this place in the bush? - Yes.

What happened when you got there? - We got to the spot to find our companions not there. We were there for some time and they eventually arrived. 40

Who went to the football grounds with you? - Sixpence and I went together, although Malindi went with us, but he took a different direction from that of ours.

And who, if anybody, joined you there? - Hensiby, Masawi, Noah and Ronnie.

So there were seven of you? - Yes.

Now, what happened there that evening? - We arranged to go and burn and it was decided that we form new groups.

Who decided there should be new groups? - It was Mr. Malindi who said we wanted to do these things early, immediately.

But who arranged the groups? - Malindi did.

And do you remember what groups were arranged and how they came to be arranged? - Noah was to go to the dip tank with Hensiby.

Which dip tank? - Chinyika dip tank. Masawi was to go to Tigere's house, Ronnie was to go to Mr. Hughes.

What was to be done there? - They were to go to burn the maize.

Go on? - Sixpence and I were to go to Rusiki's.

Was anybody else going? - Accused was to go to Chinyika himself.

Why were you and Sixpence to go to Rusiki? - Sixpence and I had bicycles and that part was allotted to us so that we go and burn the church and the dip tank.

And was anything else discussed as to how the burnings were to be done? - We were told when on the way that we were to use paraffin in order to ignite it quickly.

MAISELS, J: Mr. Interpreter, you are talking to Mr. Masterson. There is a terrible noise outside and I can't hear you.

THE INTERPRETER: I beg your pardon my Lord. Whilst on the way we were told means of setting alight that we would use paraffin.

BY MAISELS, J: Who told you that? - Mr. Malindi.

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BY MR MASTERSON: Who had allocated the particular targets to the different groups? - The accused, Malindi.

Now, what happened when that meeting broke up?

MAISELS, J: Just a moment, Mr. Masterson. You say the accused Malindi had allocated the targets?

MR MASTERSON: I understood that.

MAISELS, J: Is that the last answer?

MR MASTERSON: Yes.

BY MAISELS, J: Why did you listen to what the accused said? - We were also interested in taking an action in the Reserve.

Why did you listen to what he said? What did he have to do with that? - Well, there was nothing about it.

What do you mean, nothing about it? Why did the accused have any right to tell you or anybody else to go to a particular place and burn it down? - Well, he is a member of ZAPU, although he was not a secretary, but the fact that he is a member of ZAPU.

BY MR MASTERSON: What happened after the meeting broke up? - We dispersed. We went to collect our bicycles and left for Rusiki.

Did you go anywhere before actually setting off for Rusiki? - From the meeting I went straight home to collect my bicycle, nothing else.

And now, earlier I asked you about the means whereby these places were to be burnt down, the methods, and you said while on the way it was discussed? - Not at the meeting. We were told whilst on the way.

Who by? - Malindi, because we travelled along the same journey. We travelled together with Malindi.

Where from? - From the spot where the meeting was held.

Where to? - To go home to our respective homes.

And did you go anywhere other than to any home other than your own? - No.

Did you have anybody with you when you went to your own home? - I was alone when I went home.



What happened to Sixpence, the person who was together with you? - He remained in Malindi's house. From the spot in the bush where the meeting was held, we went to Malindi's house, and from Malindi's house I then went home to collect a bicycle.

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BY MAISELS, J: And Sixpence remained there?  
- Yes.

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10 Where was his bicycle? - He had come by his bicycle. His bicycle was in Mr. Malindi's house at the time.

BY MR MASTERSON: Now, where did you and Sixpence meet up again, if at all? - I called for him at Mr. Malindi's house.

Before you left Mr. Malindi's house did you and Sixpence have anything with you that you hadn't earlier that evening at the meeting? - We took some material and paraffin.

20 Where did you get that? - I brought paraffin from home.

And the material? - Together with the material.

Did Sixpence have any paraffin and material?  
- No.

Once you and Sixpence had met again at Mr. Malindi's, where did you go? - We left for Rusiki.

Whereabouts in Rusiki? - At St. Dominic.

What is that? - It is a name of a school.

30 Do you know the Nora River? - Yes.

Does that form the western boundary of the Rusiki Reserve, also known as the Punzwe Reserve?  
- Yes.

What happened when you got there? - We stopped there for some time because it was still slightly light.

So then what did you do? - Because it was not dark we decided to go to my home first.

40 BY MAISELS, J: By slightly light do you mean it had not yet got dark or it was moonlight? - It had not become very dark.

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BY MR MASTERSON: Did you or Sixpence have lights for your bicycles? - Yes.

Had you used them at all on the way to the Nora River? - Yes.

Where had you started to use them? - From Mr. Malindi's as we travelled into the road.

So all the way from Mr. Malindi's to the Nora River you had been using the lights? - Yes.

You say you went to your home. Did Sixpence come with you? - Yes. 10

And what happened at your home? - We sat at home for a short time, then we left to go and burn down.

And where did you go? - We went to Nora at St. Dominic. St. Dominic's Church is situated not very far from the river.

What did you do when you got to St. Dominic's? - We leaned our bicycles against the wall. We set the building on fire. We left there for the dip tank. 20

What building did you set on fire at St. Dominic's? - We set on fire the church.

How did you know this was a church? - We looked inside to see if there were no benches for school, benches used by children, by pupils in the school.

And how did you set the place on fire? - Sixpence went on the otherside and I was on the other side, so we pulled the grass from the church then soaked the material, cloth, into paraffin, then lit. 30

And what happened to the building? - The building was burnt.

Now, you say that from the school you went to the dip tank? - Yes.

What did you want to do there? - I wanted to go and burn down the dip.

What did you find? - The roof of the dip tank smelt of asbestos so we would not burn it down.

So what did you do? - We saw a room occupied by the dip attendant. We pushed one sheet of asbestos which fell down and we left the place. 40

Just what is this little place that you pushed down? - It is a house occupied by the dip attendant, a small house.

When does the dip attendant occupy that building? - When cattle are coming to dip he occupies that.

Where is it situated in relation to the entrance to the dip or the exit from the dip? - The small house is situated at the entrance to the dip.

And what does the dip attendant do when he is in that house on dip days? - He writes a card for the animal, dip tank card.

Did you do anything other than remove a sheet of asbestos from this little hut? - We only removed one sheet, that is all, and we went away.

Where did you go? - We went back to Goromonzi.

Court adjourned.

Court resumed 2.15 p.m.

LOVEMORE, still under oath:

BY MR MASTERSON: You said that after you had been to Kunzwe Dip you went back to Goromonzi? - Yes.

Now, on the Tuesday, that is the day after the burning, did you see the accused at all? - I met him on the road as I was going to work.

And did anything take place between you and the accused? - I told the accused that we had set the church on fire and we could not do anything with the dip tank, save removing one sheet from a small house situated next to the dip tank.

What was the accused's reaction to your news? - He said Ronnie and Noah did not succeed in going.

Did he say anything else? - And that Supa did not turn up.

Did he say anything about himself? - He said: "We have burnt at our end".

Was anybody with you when you had this conversation with the accused? - It was just the two of us as I was passing to go to work.

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After this incident until the time you were arrested, did you and the accused have anything to do with one another? - No.

Did you ever see one another or speak to one another? - I used to go to listen to the news but did not discuss anything.

Did the accused ever express regret at the burnings having taken place? - No, we have never conversed about it.

Do you know where Hensiby was on the Friday evening that you first went to the accused? 10

MAISELS, J: Friday evening or Friday afternoon?

BY MR MASTERSON: Friday afternoon? - He was with us.

Up to the time that you set off to burn these places, had you had any discussion as to why churches should be burnt? - I do not know anything about it.

What about dip tanks? Why should they be burnt? - Except because we are issued with the dip tank card book and our animals are to be destocked. 20

Do you know these dip card things? - I do.

What do they have recorded on them? - The registration number of the person who owns the card and the number of the animals that person possesses.

Have you any idea why Tigere should have his house burnt? 30

MAISELS, J: Just a moment, Mr Interpreter, don't put that question yet. Has this witness said anything about Tigere's house burning?

MR MASTERSON: I believe that I did sort out the groups and their targets, my Lord.

MAISELS, J: You may be right, but I would like to see.

MR ANDERSON: He did say it.

MAISELS, J: Oh yes, that's right, I am sorry. Ronnie was to go to Hughes and burn the maize, Masawi was to go to Tigere's house. 40

BY MR MASTERSON: Have you any idea why Tigere's house was to be burnt? - Because Tigere is a Police Reservist.

Do you know the attitude of Zimbabwe African Peoples Union supporters to the Police Reservists?

MR ANDERSON: I submit that this is irrelevant unless the accused can be connected with it.

MAISELS, J: We know that the accused is a member of ZAPU. The value of this evidence may be very little, but is it inadmissible?

MR ANDERSON: I submit, with respect, that it is not relevant.

MAISELS, J: Why?

After argument:

MR MASTERSON: As your Lordship pleases, I won't take the matter further. (To witness): Have you any idea why Mr. Hughes' maize should be burnt? - I do not.

Do you know what Hensiby did on Saturday evening? - Yes.

What? - He went outside to watch out passers-by.

And why did he go out?

MAISELS, J: He has given you the reason. (To witness): How was it that he came to go out? - He was told to go out and watch out for passers-by.

Who told him? - Well, Malindi said to him: "You go out and watch the people outside".

BY MR MASTERSON: Do you know whether there were any particular people whom Hensiby had to look out for?

- He was merely told to go outside and look out for people. He did not tell what people to look out for.

Do you remember anything connected with the arrival of Sixpence to the Saturday evening meeting? - He arrived to find Hensiby outside. He knocked at the door and entered the room

BY MAISELS, J: He arrived when Hensiby was outside? - Yes.

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CROSS-EXAMINED BY MR ANDERSON: Am I to understand from your evidence that if it were not for the accused telling you that something was happening in Salisbury on the Monday, the burnings would not have taken place on Monday? - The burning was going to take place on Saturday of that week.

Saturday the same week as the Friday meeting or the following Saturday? - The following Saturday.

Who decided that? - Masawi, Hensiby, Noah and I had changed that day. 10

And when did you elect that day? - We had mentioned the day in the meeting, during the course of the meeting.

Which meeting? - The meeting that was held on Saturday.

BY MAISELS, J: You mean Saturday night? - Yes.

At the accused's house? - Yes.

BY MR ANDERSON: While the accused and the others were present? - Yes. 20

So everyone decided at that meeting that in a week's time all these burnings would take place? - Yes.

Did they also decide at that meeting who would burn what? - No, only the areas were allotted to us but not what was to be done in that area or what was to be burnt.

When did you first hear that there was going to be a strike in Salisbury on Monday? - Well, I heard when the accused told me he had received a letter from Salisbury and that there was a strike on Monday. 30

That was when he came to see you on Sunday evening? - Yes.

I take it that that is the only reason that he came to see you, on your evidence .....

MAISELS, J: I think that question is not quite fair because according to the evidence of this witness: "The accused came to me with this letter and told me something about the meeting next day". 40

MR ANDERSON: I follow you, my Lord. (To witness): As I understand your evidence the only reason the accused came to see you was to tell you about the strike and to arrange another meeting? - When he came he merely told me about the strike and then he went away.

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Are you now saying that he didn't make any arrangement with you on the Sunday evening for a future meeting? - They did not.

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10 Why did you tell us in your examination-in-chief that he did? He told you to go and see him on Monday, that you would meet at the football ground? - I misunderstood the question. Will you please put the question again.

You have just told me that the accused made no arrangements for a future meeting with you when he saw you on Sunday night. Is that correct? - Not on Saturday, on Sunday he did.

20 Well, we are talking about Sunday the whole time? - Just now the Counsel said Saturday.

BY MAISELS, J: Did the accused come to see you on Sunday night? - Yes.

What did he tell you? - He told me about the strike which was going to take place in Salisbury.

Did he tell you anything else? - And lastly he said we better meet on Monday.

BY MR ANDERSON: Where on Monday? - At his house.

30 Well, now, the accused only came to see you at your house on this particular weekend once and that was the occasion you have now described? - Yes.

In your evidence-in-chief you said at one stage that at that time the accused made no other arrangements and a couple of minutes ago you also said that the accused made no arrangements for a future meeting when he came to your house? - Well, that was not a meeting. He was merely going to tell us the targets, what to burn.

40 In any event you now say that on the Sunday night he said that you had better have a meeting at his house, is that correct? Have you just said that when the accused saw you on Sunday evening he said that you had better have a meeting at his

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house on Monday? - He said we better meet.

Where? - Meet at his house.

On Monday? - Yes.

Was that all he said? - He said come to my house on Monday, then we will go to the place where we have arranged and we will see what to do.

Anything else? - Nothing else.

He didn't tell you what place had been arranged for you to go to? - No.

He said nothing about a football field? - That was the place where we were to go and meet. 10

When did you arrange that? - That had been said in the meeting on Saturday.

Who had said it? - Mr Malindi had said it.

And when did he say that you would meet at the football ground?

MAISELS, J: You mean what time would the meeting take place?

BY MR ANDERSON: Yes, I beg your pardon. At what time did he say that the meeting at the football ground would take place? - At 6 p.m. 20

On what day? - In the meeting we had said we would meet on a Saturday of the following week but when we met on Sunday it was then that he said that we would go there and discuss that we were no longer going to wait for Saturday.

BY MAISELS, J: When you met on the Sunday he said you were to go there on a Monday? - On Sunday we met when he said we would go there on Monday. 30

BY MR ANDERSON: So on Saturday night it was arranged that on the following week you would meet at the football ground at six o'clock? - Yes, Saturday of the following week.

Everyone was present and everyone heard that arranged? - Yes.

Well, now, are you suggesting that the first you knew of the strike was when the accused came and told you about it on Sunday evening? - Yes. 40

Would it be incorrect to say that Ronnie had told you, Masawi and Hensiby about the strike on Friday? - No, I never heard anything about it.



Masawi tells us that that took place and that Ronnie also said that the strike was going to take place on Monday and you were present when that was said? - No, that is incorrect. If he had said it on Friday when we discussed this matter on Saturday we should have said let's take the matter into action on Monday.

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10 You certainly would have if you had discussed it on Saturday? - He said we would have discussed it on Saturday if it had been said on Friday.

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Yes, you certainly would have, and I put it to you that you did not discuss it on Saturday because you didn't have the meeting you have described?

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MAISELS, J: What meeting?

BY MR ANDERSON: I beg your pardon, although you had a meeting on Saturday the events of that Saturday meeting were not as you have described? - What we discussed on Saturday is what I have described before this Court.

20 Now, Masawi also told this Court that he informed the accused on Friday that there was to be a strike in Salisbury on the Monday? - Masawi was unemployed. He might have met Ronnie on Friday during my absence and talked about it. I wouldn't dispute it.

Masawi said you were present when he told the accused that? - No, I do not know anything about that.

30 The accused will say that when he was approached on Friday it was by Masawi and Ronnie and that you were not there? - Ronnie was not there. I went there on Friday.

You said that Ronnie was not there because he had told you he was going home? - When we met in the evening that is what he said.

This is Friday you are talking about? - Yes.

He told you he was going home? - Yes.

Did he tell you why he was going home? - No, he did not.

40 It is your evidence that on the Friday when you spoke to the accused it was arranged that you would all meet on Sunday? - Yes.

MAISELS, J: On Sunday? "On Friday we arranged to meet on Sunday".

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BY MR ANDERSON: Yes. Did you arrange where you would meet on Sunday? - We had arranged to meet in Mr. Malindi's house. From there then we would go into the bush.

You didn't decide to meet in the bush first?  
- Well, all the people would never know the spot in the bush because they were not present. They expected to be told where in the bush we had to meet.

Was it not possible to arrange that at the time you were arranging the meeting? - It could not be done. 10

Do you mean to say a whole group of you were going to meet at the accused's house and then go together to the bush- - Yes.

I take it the object was to remain hidden? - Yes.

Were you all going to go together in the bush?  
- Yes. Well, we would leave, take separate directions then meet at an arranged spot. 20

I see, it was possible to arrange the spot from the accused's house but it would not have been possible to arrange the spot earlier and avoid meeting at the accused's house? - Well, no one thought of arranging it on Friday.

I put it to you that the truth is that no meeting at all was arranged on Friday, no future meeting?

MAISELS, J: I think you put it that the accused never saw them on Friday at all. 30

MR ANDERSON: He didn't see this man. He saw Masawi and Ronnie. I have already put that.

MAISELS, J: He says he was there.

MR ANDERSON: May I put the question?

MAISELS, J: Certainly.

BY MR ANDERSON: I put it to you that if you were at the Friday meeting with the accused, Masawi and the others, that no future meeting was arranged? - He merely said that we would meet on Sunday, then we will hold the meeting. 40

I understand from you that the date was changed because the secretary, Agrippa Sevenzayi, had someone visiting him on Sunday? - Yes, he had visitors on Sunday.

Had the accused told Masawi to go and see Agrippa Sevenzayi? - Yes.

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When did he tell him that? - On Friday.

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Did Masawi, in fact, go and see Agrippa? - Yes.

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When did he see him, which day? - He saw him Saturday morning.

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How do you know that he saw him? - Sevenzayi told us that he had received, he had been told by Masawi.

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Was Masawi present when Sevenzayi told you that? - That was before he arrived.

BY MAISELS, J: Before Masawi arrived, you mean? - Yes.

BY MR ANDERSON: Is there any other person who might have gone to call Sevenzayi who Sevenzayi mistook for Masawi? - No. He is well known to Masawi and he would not have mistaken him for someone else.

And you did, in fact, as you have said, meet on Saturday? - Yes.

I put it to you that when you met on Saturday you had already decided amongst yourselves that you would take action? - Yes, we had, Ronnie and I.

And you had already decided that the action would constitute violence in the form of burnings amongst other things? - No, the nature of the action had not been decided.

What sort of action were you contemplating then, that you had already decided to take? - No one mentioned what it was, how in what form this action was going to be performed.

What did you think? - I had nothing in my mind because I didn't understand what is meant by action.

Did you ask anyone? - No, I did not ask anybody.

Why not? - Everyone was agreeable and I then thought of not querying anything about it.

Everyone was agreeable to take action? - Yes.

You also agreed without knowing what it was? - Yes.

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Do you usually do that? - Not usually do that because we had never done anything like that. This was the first of its kind.

MAISELS, J: Your sarcasm is wasted completely on the witness.

MR ANDERSON: Well, I am sorry, it wasn't intended to be sarcastic.

MAISELS, J: I am sorry, I thought it was.

BY MR ANDERSON: When you have had other meetings with these members of ZAPU and they have suggested things which you haven't understood, have you not queried it? - No, I have never queried anything. 10

You never asked any questions about anything you didn't understand? - I was not a regular attendant of all the meetings held.

BY MAISELS, J: How old are you? - 19 years old.

What schooling have you had? - I went up to Standard 3.

BY MR ANDERSON: In any event would it be correct to say that you went to the accused's house on Saturday evening to see whether or not he would co-operate in the action that had been decided, whatever that was? - We went to the accused's house on Saturday. We wanted to go and find out whether he will sanction our taking action. 20

Whether he agreed with it or not? - Yes.

Did the accused suggest anything in particular that you should do on the Saturday evening? - He mentioned all the areas which were to be burnt. 30

The actual areas where burnings were to take place? - Yes, all in Chinyika Reserve.

And did he mention what particular objects in those areas should be burnt? - No, he did not mention any particular object in the areas. He said anything that is set on fire, it is an action, even if we were to burn an anthill, it is an action.

Did he give you a list of things that were going to be burnt? - No.

I refer to page B6 of the record. You are recorded as saying this at the Magistrate's Court. Perhaps you will explain to me what was meant by it. "He did not say what was going to be burnt but he 40

gave us a list of what was going to be burnt or things which were going to be burnt, but we did not burn those things on that day." Did you say that? - Yes.

What did you mean by that? - Well, I said he did not emphasise on a particular object that was to be burnt.

10 But did he tell you any objects which were to be included in the list? - Well, he mentioned anthills, grass in the Reserve.

Anything else? - That is all.

Did he not mention dip tanks or churches? - Sevenzayi spoke about the churches or dip tanks.

Did the accused say anything about them? - Well, he agreed with Sevenzayi when he mentioned it.

Was any arrangement made as to who would direct the groups as to what they should burn? - No one was told to direct the groups. People were formed into separate groups. Each group would know what do.

20 How was the group going to know what to do? - They were told to choose what they wanted to do for themselves.

Without referring to anyone else? - Each group would decide itself what action it was going to take, is that it? - Yes.

And that, as you say, was decided at the Saturday night meeting with everyone present? - Yes.

30 Did anyone give any reasons on the Saturday night as to why any particular object should be burnt? - No one gave any reason or emphasised on any particular object.

Did you know why they were going to be burnt? - They were going to be burnt only in order that we should take an action.

You don't know why those particular objects were chosen? - It had not been chosen in the meeting. Each group was going to choose what to burn on its own.

40 You eventually decided which objects each group was going to burn, did you not? I think you said on Monday you decided that? I think you said that on Monday you decided which objects each group would burn? - Yes, on Monday we were then formed into

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proper action groups which took the action to burn.

Did you ever at any stage before these objects were burnt hear why they were to be burnt? - No, it was not said why they were going to burn.

Did you ever ask? - I did not.

You just went blindly and burnt what you were told? - Yes.

I think you have also told the Court that on Monday night when you went to do the burnings you collected some rags and paraffin from your home? - Yes.

10

And you didn't get rags or paraffin from anywhere else? - No.

I refer you again to what you are alleged to have said at the Magistrate's Court, on page B9, "The accused then issued to us some paraffin and some rags, dirty rags, with these instructions; You soak these rags in paraffin, stick them onto the roof, light a match onto the rag and let it burn"? - Yes, he told us how to set them alight. That is correct.

20

Did you tell the Magistrate that the accused had issued to you paraffin and rags? - Yes.

Which is true, that the accused did give them to you or that he did not? - The truth is he did not give them to me. I took them from my own quarters.

Why did you tell the Magistrate then that he had given them to you? - I was mistaken.

How did you come to make a mistake like that? - I had been drowsing. That is why I made such a mistake.

30

Drowsing when? - Will you repeat the question again?

Which question do you want repeated? - When I was drowsing when I said that .....

You were drowsing when you actually said this? - Well, it is not that I was actually drowsing at the time I said this. My mind was not composed.

Why not? - Well, I was thinking of being arrested.

40

You had already been arrested at that time and sentenced? -- Yes.

What were you worrying about, then? - It was because of the sentence I had received.

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Did it affect you in any other way, thinking of the sentence? - Because this sentence is so long, that is why my mind was affected by it.

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You were giving evidence on the 27th July? - Yes.

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You had been sentenced on the 25th July, is that correct? - Yes.

Cross-examination  
(continued)

10 If you were to give evidence against Sevenzayi, do you think that members of ZAPU might do something to you, something unfavourable? - I do not know what they would do to me.

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Would you consider Sevenzayi to have been the senior ZAPU man in the district? - No, he was just a secretary of ZAPU in the area.

20 I have already put to you what the accused has said about Friday. This is what the accused will say happened on the Saturday. He will say that Sevenzayi spoke about the strike and about action. Do you admit that? - I would not admit it because he did not tell me.

No, this is when you were supposed to be present, all of you, at the accused's house? - I did not hear anything about the strike.

30 BY MAISELS, J: Did Sevenzayi speak about, on the Sunday night, at the accused's house, did he speak anything about action and what sort of action should take place? - Ronnie stood up and said: "We thought of taking an action here", so he merely agreed to what Ronnie had suggested.

40 BY MR ANDERSON: The accused will say that Sevenzayi was the first person to speak, that he spoke about taking some sort of action. Do you deny it? - Ronnie spoke first because it was he who had gone to Mr. Malindi's house with us and when we got there we told the accused that we have been sent by Ronnie and it was he who spoke first on this occasion.

Which day are you talking about now?

BY MAISELS, J: Are you talking about Saturday or Friday? - I am replying to the Counsel's question who said Mr. Malindi told the Counsel that it was Sevenzayi who started speaking about the action.

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Yes, but you say that Ronnie was the first one to speak about taking action. Did Ronnie say that to the accused? - He said this in the meeting to anybody who was present at the meeting.

On the Saturday night? - Yes.

BY MR ANDERSON: Did you hear Sevenzayi say to the accused on Saturday night that it was thought that action should be taken? - He did, after Ronnie had spoken.

Did you hear the accused ask Sevenzayi what he had in mind? - No, I did not hear that. 10

Did you hear Sevenzayi say that by action he was thinking of burning churches, dip stores and mealie lands? - He mentioned those things which ought to be burnt.

BY MAISELS, J: Sevenzayi did? - Yes.

BY MR ANDERSON: And when Sevenzayi had mentioned that, did you hear the accused say that Mr.Nkomo's instructions were that these things should not be done without his instructions? - I did not hear that. 20

Did you hear Sevenzayi at any stage tell the accused that this had nothing to do with Mr.Nkomo's instructions because it was Goromonzi and not Salisbury? - No, I did not hear that.

Are you saying that these words were not spoken or are you saying that you might have forgotten them? - I think they were not spoken.

This is the sort of thing you would remember if it was said, is that so? - Yes.

Did you hear the accused say further that the burnings contemplated were illegal and also that there was a lack of school facilities at Goromonzi? 30

MAISELS, J: I am speaking for myself, but I find it quite impossible to hear in this court, both the heat and the noise. I do not propose to sit in this court any longer this afternoon. I am going to consider whether I shall sit in this court at all in future, certainly not in the afternoons, and we will adjourn now until nine o'clock tomorrow morning. If the government can't provide us with better court accommodation the government must put up with the delay. 40

Court adjourned.



Thursday, October 18, 1962.

LOVEMORE, still under oath, recalled.

CROSS-EXAMINATION BY MR. ANDERSEN continued.

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You will recollect that yesterday when the Court adjourned I was putting the accused's case to you? - Yes.

10 And you will recollect that you had denied that the accused had told you that the burnings which were being talked of were illegal and that he reminded you of the lack of school facilities in Goromonzi? - I said so.

Did the accused say at any stage that you should take some other sort of action? - He did not.

In particular, I put it to you that the accused said to you that you should do something like making a procession? - No, he did not say that.

20 I put it to you too, the accused will say an argument ensued which ended when the group of you walked out of his house? - No argument of any sort ensued.

Did you all suddenly walk out of his house at any stage? - No, my Lord, we left the accused's house when the meeting ended when we dispersed to go to our respective homes.

30 Well, the accused will say the group walked out of the house calling him a moderate and a police informer and threatening to take action against him if he informed the police? - No one said that, my Lord.

The accused will deny that he saw you on Sunday? - I am certain he came and showed me the note he had, my Lord.

40 He will say further that there was no necessity for him to inform you of a strike in Salisbury because you already knew that? - I personally did not know of anything. The first time I knew of a strike in Salisbury was when the accused showed me a paper.

In regard to Monday the accused will deny that he saw you at all on Monday evening? - On Monday I went to the accused's house at 6 p.m. I listened to the accused.

BY MAISELS, J: You need not go through all that again, I do not think. You say you did see

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him on Monday? - I did.

BY MR. ANDERSEN: While we are on Monday evening, when you went down to the football field was anything said about a strike in Salisbury on Monday? - He said, "There will be a strike in Salisbury on Monday, tomorrow, so this evening we had better set objects on fire so that our action coincides with the strike in Salisbury that is taking place tomorrow". The strike was on Monday when we went to the football grounds. 10

BY MAISELS, J: But the question is: was anything said about the strike on Monday night when you went to the football ground? - He said: "There is a strike in Salisbury, so let us perform our action as the strike is going on in Salisbury".

BY MR. ANDERSEN: Was he at that stage merely repeating himself, reminding you what you were there for or were there some persons present who did not know why you were having action on Monday? - He was repeating what was known because it had already been said. 20

Everybody knew when you got to the football field on Monday that there was to be action because there was a strike in Salisbury on the same day? - Yes.

The accused will further say that although he may have seen you on Tuesday since you lived very close to each other he did not discuss the burning with you? - He discussed the burning with me. 30

Now you will recollect that at some stage Supa was involved in this? - Supa attended the meeting on Saturday. On Monday he was not with us.

Did he give any indication on Saturday that he did not intend to have anything further to do with the fire? - No, he made no indications about that.

Have you any idea why Supa was not present on Monday then? - No. 40

Do you possess a wrist watch? - Yes.

Did Sixpence possess a wrist watch? - No.

When you went out to do the burning on Monday night were you going to burn the places that you went to at any particular time? - The particular

time that was mentioned to burn was 12 o'clock, but we went to our destinations without a watch.

Who said that you were to burn at 12 o'clock?  
- Mr. Malindi gave us the time to burn.

BY MAISELS, J: You say you went around with a watch. What happened to your watch? - I had given my watch to Masawi.

10 Why? - They were going to do their burning at a place which was not very far and that is why they wanted the watch. We were going a long distance where there were no people and there was no need. We did not need any watch.

Whose idea was it that you should give your watch to Masawi? - It was Masawi who borrowed my watch.

Did he ask you for it? - Yes.

20 BY MR. ANDERSEN: The accused did not tell you to give it to Masawi? - The accused spoke about it when Masawi had already asked him about it.

Did the accused have a watch, do you know?  
- Yes, he had a watch.

A wrist watch? - Yes.

Why was it necessary for Masawi to have a watch? - Well, he wanted to see the time because where he had to do the burning was near where people are. He wanted to try and set it on fire when people were asleep.

30 Surely he would not need a watch to see whether or not people were asleep. He could tell whether it was late at night? - I would not know. I believe he wanted the time that had been mentioned by the accused.

Did you ever have any other meeting in the bush apart from the one on Monday evening you have described? - No.

Did you ever tell anyone that you had had a meeting in the bush on Sunday evening? - No, no meeting was held in the bush on Sunday.

40 If I produce a statement in which you said that there was a meeting in the bush on Sunday evening, what would you say about that? - I do not know anything about that.

Would you say that you did not make the statement at all? - The fact is no meeting was held on

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Sunday night in the bush.

If I produce a statement in which it is alleged you said there was a meeting on Sunday night in the bush, what would your answer to that be? -

MAISELS, J: The answer is that he knows nothing about such a statement so far.

BY MR. ANDERSEN: Are you saying that you know nothing about such a statement and that you did not ever make such a statement? - I would not know whether I said it or not, but what I know is no meeting was held in the bush on Sunday. 10

Well, if you did say it, why should you have done so? - I do not remember having said it. I say I might have said it and forgotten.

You have no explanation if you did say it as to why you said it? - I have no explanation because it did not happen.

My Lord, I understand that the Crown is going to make available to the Defence the inconsistent statement made by this witness: I have not yet got it. May I continue my cross-examination when I have it? I have nothing further to cross-examine on at this stage. 20

Re-Examination

RE-EXAMINED BY MR. MASTERSON: On the Friday evening when you met Ronnie and Masawi and Nowa and Hensiby, what was it that Ronnie said? - Ronnie said we want to take action in Goromonzi because no action has ever been taken in Goromonzi.

Did he mention anything about action anywhere else? - No, he only referred to the action to be taken in the Goromonzi area only. 30

On the Friday evening, did you learn of any possibility of anything happening anywhere else? - No.

Why was it that on that particular Friday evening you decided to do something about taking action? - He thought of it because nothing had been done in Goromonzi.

Now, on the Saturday night apparently Sevenzayi mentioned various things that could be done? - Yes. 40

What was the accused's reaction to everything that Sevenzayi said? - He was quite agreeable to all the suggestions made by Sevenzayi.

There were other things that he said people would not be able to do.

BY MAISELS, J: Who said? - Malindi said.

BY MR. MASTERTON: Have you any idea what it was that the accused said could not be done, that is about going into the farms and setting the farms on fire? - Malindi said that can only be done by people who are accustomed to do it.

10 What part of farms did he say could not be done in that manner? - No particular farms were mentioned, but he referred to farms surrounding Goromonzi district.

I said what part of any particular farm had it been proposed to burn? - Nothing was actually mentioned that would be burnt in the farms or what part of the farms that day because it had not been mentioned what was to be set on fire.

20 Have you any idea how it came to be that Ronnie was later designated to burn Mr. Hughes's maize? - I would not know why, my Lord.

Apart from this suggestion of burning farms was there anything else as regards action to be taken in which the accused disagreed with Sevenzayi? - No.

How was it that Sevenzayi fell out of the picture for Monday night? - He was told on Saturday that he was not required as he was the secretary.

30 And once Sevenzayi had dropped out of the picture who was the senior person ?

BY MAISELS, J: Just a moment Mr. Masterson. Who told him he was not required? - We all said it in the meeting.

BY MR. MASTERTON: Once he had dropped out of the picture who was the senior person amongst you when you met on Monday evening? - Malindi was the senior man followed by Ronnie.

40 Why should Mr. Malindi be the senior man? - It was clear to us that he had a wider mentality than ours.

How does his age compare with you and the other people who were involved on the Monday night's expeditions? - They were all younger than he; he was older than them all.

BY MAISELS, J: What were the occupations?

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You are a labourer? - Yes, I am a labourer in the Engineering Department.

And Masawi, what was he? - Masawi was unemployed.

Hensiby? - He was also unemployed.

Ronnie? - So was Ronnie.

Supa? - Supa was employed by Mr. Kerry's store.

As what? - As store assistant.

Sixpence? - Sixpence was employed by Mr. Hughes. 10

As what? - He used to deliver milk.

A driver? - No delivery of milk on a bicycle.

What does Sevenzayi do? - Sevenzayi was employed at Masasa Hides.

As what? - I do not know what work he was doing at the hides. He was employed at the hide shed.

What about Nowa? - Nowa was unemployed.

BY MR. MASTERSON: That is all I wish to do in the way of re-examination. 20

There is one matter which I feel is most important which I omitted in examination-in-chief which was not raised by my learned friend. May I raise that matter now, that is exhibit 8?

MAISELS, J: I had intended raising it. Have you any objection Mr. Andersen?

MR. ANDERSEN: I could not have any objection to your Lordship's raising it.

MAISELS, J: No, but Mr. Masterson? 30

MR. ANDERSEN: No, my Lord.

EXAMINATION CONTINUED.

BY MR. MASTERSON: Now, I want to come back to the Saturday evening's meeting. Do you remember the details of what happened early on in that meeting, once you had gone into the accused's house? - I believe I still remember some of the details.

Now try to tell us everything that happened at the beginning? - We entered the house and sat down. 40

Examination  
(continued)

Go on?

MAISELS, J: I am not prepared to allow Sunday evening to be gone through again.

MR. MASTERSON: With respect, my Lord, I think what I am after has come out already in the next answer which has not been interpreted yet.

THE WITNESS: Mr. Malindi stood up and asked us if we knew what was meant by Nationalism.

10 Then what happened? - We told him that we did not know the meaning.

Then what happened? - Then he went and fetched a book and read out from a book.

What did he read from this book? Do you remember? - I do not remember what was read from the book.

Well, in broad outline what was it about, cows or motor cars, or what? - Politics. It was all about politics.

20 Have you seen that book again since that day? - No, I have not.

Were you by any chance shown it during the police investigations? - Yes, the book was shown to me after I made the statement.

How long was it after that? - I believe there was a lapse of 3 weeks if not more.

Since that time when you were shown it at the charge office when you were making your statement have you seen it again? No, I have not seen it again.

30 Can you comment on the identification of the book that you were shown at the charge office in relation to the book Mr. Malindi had?

MAISELS, J: What do you mean by "comment on it"?

MR. MASTERSON: I mean what has he to say about it.

MAISELS, J: What are you after?

40 MR. MASTERSON: I want to know whether there is any possibility of any different books being involved.

MAISELS, J: But he said he saw that book again.

MR. MASTERSON: As your Lordship pleases.

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MAISELS, J: What do you want to get from him, the colour of it?

MR. MASTERSON: I just want an identification of the book.

MAISELS, J: He said he has not seen it since that day but the book was shown to him when he made the statement.

MR. MASTERSON: As your Lordship pleases.

(To the witness): Can you describe that book? -  
The book has a red cover. 10

Do you remember anything else about it? -  
No.

Do you know what that book is generally used for? - No, I do not.

Have you ever been to school? - I went to school up to standard three; we have never used books of that type.

Do you know what was inside this book with the red cover? - There are papers and what the accused read out for us from the book. That is all I know. 20

Did you notice anything about the size of the book? - I did not notice anything.

Was it as big as this Gardiner and Lansdowne? - No, that is much too large.

Can you comment on those books and give us an idea of what it was like? - I should say this is more or less the size of it, (Indicating) but not exactly. (Indicating volume 5 of the Southern Rhodesia Statutes for 1955) 30

Cross-  
Examination

CROSS-EXAMINED BY MR. ANDERSEN: Do you recollect that when you were arrested you made a statement to the police? - Yes.

That statement was made on the 6th June, 1962? - Yes.

You made that statement freely and voluntarily after the police had warned you that you did not need to say anything that would incriminate you? - Yes.

I believe that statement was produced at your trial? - Yes. 40

Did you have any objection to the contents of that statement? - No.



Do you agree that you had said everything in it? - Yes.

At the trial did you adhere to what was in the statement, not only that you said it, but did it also reflect truthfully what had happened? - Yes.

10 Now, this is what is recorded in part of the statement. You said: "It was agreed to meet on the following Saturday. On Sunday, the following day, I saw Malindi at my house and said that he had received a letter saying there would be a strike in Salisbury on Monday. He said that we should make trouble in the reserves as well; not only have trouble in Salisbury. He said that he wants a meeting after Sunset at his house. I went to Malindi's house after sunset and later others arrived. We then went into the bush near the school playing grounds. We had our meeting there. The following were present: Sixpence and myself, Masawi and Henisby, Nowa, Malindi and 20 Ronnie. Sevenzayi and Supa were not present. Malindi spoke: 'We have got the groups as arranged before. We will mention the things we want to burn. Malindi, Masawi and Hensiby are to burn the hide shed at Chinyika dip tank'. Malindi said he would burn Chinyika church. The last two had bicycles". Then there follows a further bit about bicycles and what you were going to do. You then said: "Malindi said: 'We will not sleep on Monday night and we shall meet at this very spot after sunset'. On Monday night after sunset we all met in the bush: Sixpence and myself, Masawi and Henisby, Malindi and Ronnie. Nowa, but not Supa, were present. Sevenzayi was not present". Do you recollect making that statement? - I remember part of that statement, my Lord. There is an error in that statement that I have noticed, my Lord.

40 What is the error? - The meeting which it is alleged was held on Sunday evening. No meeting was held on Sunday evening.

Why did you not object at the Magistrates Court and say that the statement was incorrect?

MAISELS, J: Did he plead guilty in the Magistrates Court?

MR. ANDERSEN: I understand he did. I have a Preparatory Examination record here in which the plea is not recorded. At the end of the Preparatory Examination he said: "I have no

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witnesses to call. I have no evidence to give. I will reserve my defence."

BY MAISELS, J: What is the answer to the question? Did you object to anything in this statement when it was read out in the Magistrates Court? - I did not raise any objection, my Lord. I believe I did not understand clearly.

BY MR. ANDERSEN: Furthermore, is it not correct that after you had made the statement it was read over to you? You adhered to it and you signed it. 10

MAISELS, J: By the police, you mean?

BY MR. ANDERSEN: By the police? - Yes.

You did not object to the police at that stage that it was incorrect? - It did not occur to me to do so.

BY MAISELS, J: What language was the statement in?

MR. ANDERSEN: In Shona and English, my Lord.

BY MAISELS, J: In what language did you make the statement? - I made the statement in Shona. 20

Was there somebody acting as interpreter? - Yes.

Who was he? Was he a police officer? - A police constable. He was a police constable. I do not know his name.

BY MR. ANDERSEN: It was Detective Mishek? - It was a detective.

Now, could you tell the Court how you came to make this error in the first place when you made this statement to the police? - I have no recollection; I am unable to say how I made this error. 30

You made the statement at your own speed. You were not in a hurry. It was not suggested to you what you should say? - Yes, that is so.

There is another passage in this statement I should like to question you about. Could you tell the Court why it was that Sevenzayi was not placed in the groups that were arranged? - He was not placed in any groups because he was the secretary. 40

Whose idea was it that he should not be placed in a group? - This was discussed by all the people who were present in the meeting.

Someone must have started originally and said Sevenzayi should not be in the groups for some reason or another? - It was suggested by Mr. Malindi that he should not be placed in any group when the groups were formed and he also said that he did not want to take part in any group.

BY MAISELS, J: He, Sevenzayi, said he did not want to take part? - Yes, he Sevenzayi.

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10 BY MR. ANDERSEN: Now, you will also recollect that, I think, you said yesterday that no reason was given as to why you should burn any of the places you did burn? - I gave reasons when it came to the dip tank because of the card which was issued.

Did you give reasons as to why churches should be burnt or as to why any particular church should be burnt? - No, I did not give any reasons about churches.

Are you able to give one now?

20 MAISELS, J: Do you mean relating to what was said at the time?

MR. ANDERSEN: Yes.

MAISELS, J: Well, make that clear.

BY MR. ANDERSEN: Are you able to tell the Court now as to the reason why any church should be burnt? - The Salvation Army church was said to be burnt because they wanted to frighten Mr. Graver the missionary or the European in charge of the Salvation Army church.

30 BY MAISELS, J: Who said that? - Mr. Malindi said that.

BY MR. ANDERSEN: The accused, of course, will deny that.

MAISELS, J: That goes without saying.

BY MR. ANDERSEN: Finally, you have referred to a book which the accused read from on the Saturday evening at his house? - Yes.

40 You say when you made a statement to the police at some stage or other you were shown that book? - Yes.

Is exhibit eight the book? - I think this is the book.

What is the matter, cannot you remember now?

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MAISELS, J: Just a moment, Mr. Andersen. That last answer did not call for that comment: "What is the matter, cannot you remember now?" He said: "I think it is the book".

THE WITNESS: The book which was shown to me was similar to this one.

BY MR. ANDERSEN: Was it also shown to the other witnesses? - It was read out at the meeting in the presence of everybody. They all saw the book when it was read out to them. 10

What I want to know was whether the police showed it to other witnesses? - In the office we were taken singly; we were not altogether taken to the charge office. We were taken one by one.

The accused will deny that he ever read from that book? - I am certain he read from the book. All those who were present heard what was read from the book.

Did he read in English or in Shona? - He read it in English. 20

Do you understand English? - ... And explained in Shona.

Do you understand English? - Well, I understand English a little. I have only passed standard three.

Did it take him a long time to read or just a short while? - A short while.

Re-Examination

RE-EXAMINED BY MR. MASTERSON: What did you plead when you were eventually charged at the Magistrates Court? - I pleaded guilty. 30

On the day that you were arrested and when you made this statement which my learned friend has just read out to you did you know what was going to happen?

MAISELS, J: Did he make the statement when he was arrested?

MR. MASTERSON: I believe so, my Lord. It was the 6th June; I shall clear that up.

MAISELS, J: Yes.

BY MR. MASTERSON: Do you remember the date on which you were arrested? - I do. 40

What date was it? - Wednesday, 6th June.

Did you make a statement to the police that day? - Yes.

Did you know what was going to happen to you that day? - No, I did not.

Did you think it was going to be pleasant or unpleasant? - I did not know anything about it.

What did you think the police were going to do to you? - I merely thought that I was arrested and nothing else.

10 BY MAISELS, J: Did you think you were going to be punished or let free? - I thought I was going to be punished.

BY MR. CRIPWELL: You say you got to standard 3? - Yes.

And you seem to know a lot about the conduct of meetings, too. Where did you learn that? - I do not know a lot about the conduct of meetings. I only know what he did on that particular occasion, that is all.

20 Is this the first time you had ever done what you did on that particular day? - Yes.

BY MR. LING: Is the accused a member of the same reserve? - No.

BY MAISELS, J: Have you ever heard the word "Imperialist"? - Not before that day. I heard it for the first time on that occasion.

What occasion are you talking about? - Well, on Saturday when this word was read out from the book.

30 Who read it out? - Mr. Malindi.

Do you know what it means? - No, I do not.

Was the meaning explained to you? - The meaning was explained at that moment but I have forgotten the meaning; I cannot repeat it.

No. 8.

RONNIE

RONNIE, duly sworn and examined (through African Interpreter, Arthur)

BY MR. MASTERSON: Where were you living in

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Lovemore

Re-  
Examination  
(continued)

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Ronnie

Examination

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Court  
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 Ronnie  
 Examination  
 (continued)  
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May this year? - I was living at Goromonzi.

Where? - At William Jafele's kraal.

Where is William Jafele's kraal in relation to the school at Goromonzi and Chimanikere's school? - The school is situated on the southern side and Chimanikere's kraal is on the north.

Earlier this year, did you give evidence in a case in which Masawi, Lovemore and Sixpence were prosecuted for three counts of arson? - Yes, my Lord.

10

Have you yourself ever been prosecuted for any of these cases? - I was arrested together with my companions, but I was later made a witness because I had not committed any offence personally.

Had you burnt anything down? - No.

May I refer your Lordship to Rex versus Simakonda, 1956, 463?

MAISELS J: Are you informing me that this witness is an accomplice who has not been charged?

MR. MASTERSON: Yes.

20

MAISELS, J: And to whom the provisions of section 289 might apply?

MR. MASTERSON: Yes, my Lord.

MAISELS, J: Will you explain to the witness please that the prosecution has informed me that he is an accomplice who has not been charged?

(Interpreter explains to witness) I have to warn you that you are not compelled to answer any questions that might incriminate you, but if you do answer all the questions truthfully you will not be liable to further prosecution, even though the answers may incriminate you. Do you understand that?

30

THE WITNESS: I do, my Lord.

Very well.

MR. MASTERSON: I am indebted to your Lordship.

BY MR. MASTERSON: Do you know when it was that the church at Chinyika school and the dip shed at Chinyika dip were burnt down? - I believe it was on the 14th May.

40

Do you remember what day of the week that was? - It was on Monday.

Did you have anything to do with anything that occurred before the actual burning? - I attended the meeting where this burning was discussed.

Do you remember on how many occasions you attended meetings before this burning? - I remember two meetings.

On what days? - Saturday and on Monday when these buildings were set on fire.

10 And when you talk about Saturday, do you mean the Saturday immediately before the Monday on which the burnings were done? - Yes.

MAISELS, J: Mr. Andersen, is it not common cause that this witness was at the accused's house that Saturday night?

MR. ANDERSEN: It is common cause.

BY MR. MASTERSON: Now, on the Friday before the Saturday on which you held the meeting at the accused's house, did you meet any of the people who were at the meeting on Saturday? - Yes.

20 Whom did you meet? - I met Masawi, Hensiby, Lovemore and Nowa.

Where did you meet them? - I met them on the road to Salisbury.

And what was discussed at that meeting on Friday evening?

MAISELS, J: Is this witness tendered on the basis of evidence which was tendered prior to a conspiracy being entered into or on what basis? Why do you want to lead it?

30 MR. MASTERSON: With respect, my Lord, I have an inconsistency to explain.

MAISELS, J: Well, why have you to worry about it? Is this admissible?

MR. MASTERSON: I believe it is admissible on the basis of being discussions of conspiracy in a conspiracy which was subsequently joined by the accused.

MAISELS, J: Have you any objection to that?

MR. ANDERSEN: No, my Lord.

40 BY MR. MASTERSON: Did you go anywhere after the five of you had met on the road on the Friday evening? - I went home.

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Where did the other four people go when you went home? - When I left there, my Lord, Masawi and Hensiby said they were going to the accused's house.

MAISELS, J: Have you any objection?

MR. ANDERSEN: No, my Lord.

MAISELS, J: Anyhow, it has no evidential value, Masawi and Hensiby went somewhere else.

MR. MASTERSON: That is all I am after.

BY MR. MASTERSON: How did you come to meet at the accused's on the Saturday night? - I was invited by Masawi to meet them. 10

And what time did you arrive at the accused's house? - I do not know what time it was. It was about five o'clock. I am not certain of the exact time.

Can you explain to the Court what happened once you people had met there? - We entered the accused's house. We sat down. Then we were being told, because I was a novice in the party. A book was produced and we were told the contents of the book. We were told the constitution of the party and what we should do whenever an order is given to us. 20

Go on?

MAISELS, J: You keep on saying, "We were told". Mr. Masterson, it saves a lot of time if instead of having, "We were told", what we were told, if we found out who said it and get the consecutive story at one swoop if we can.

MR. MASTERSON: I am sorry, my Lord, I thought we were getting the story coming out. 30

MAISELS, J: No, it is very unsatisfactory: "We were told", because afterwards you say to him: "Who was it who told you the contents?" or you go back over the thing. Cannot you try to get it in one consecutive way?

MR. MASTERSON: I shall try, my Lord.

BY MR. MASTERSON: Now, who were the people who were told about the party? - We who had been invited.

Who were they? - Lovemore, Sixpence, Nowa, Supa, Hensiby, Sevenzayi, and myself. 40

Was the accused present at that meeting? -



He was present.

Now who did the telling and who was being told.

MAISELS, J: Just a moment. Lovemore, Sixpence, Nowa, Supa, Hensiby, Sevenzayi and yourself, and the accused. Was there anybody else present? - I do not remember meeting anybody.

MR. MASTERSON: How did you come to go that meeting? - I said Masawi told me we were to meet there.

10 Now, where was Masawi when you held the meeting? - He was present.

I have an idea I still have not an answer as to who was doing the telling and who was being told? - Malindi did the talking telling all the people whose names I mentioned.

What part did Sevenzayi play? - Well, Sevenzayi seconded the motion that he supported what the accused had said.

20 Mr. Interpreter is the phrase, "seconded the motion" a literal interpretation of what the witness said? - (Interpreter): It means supporting what was said or seconding what was being said.

MAISELS, J: Seconding a motion has a somewhat technical meaning and if the witness reported what the accused had said I think it would be preferable to put it that way.

INTERPRETER: As your Lordship pleases.

30 BY MR. MASTERSON: Have you any idea of where the accused got his information from which he supplied you people with? - I do not know where he got it.

Did he have anything with him when he was speaking?

MAISELS, J: He said a book was produced and "We were told the contents of the book". When he spoke he had placed the book on the table.

BY MR. MASTERSON: Do you know what sort of book this was? - It was an exercise book with a red cover.

40 Have you seen it again since that day and, if so, where? - When I was arrested I later saw the book at the police station.

Can you remember any particular things that the accused referred to the book for when he was

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talking to you? - Yes, there were things that were to be read from the book.

Can you remember what things they were? - I remember his telling us that we were not supposed to break the constitution of the party. We must obey what we were told.

Do you remember anything else? - We were told that a nationalist is a person with a black skin.

Do you remember if he said anything else about a nationalist? - We were told that a nationalist should not go in a place where he will have food with Europeans. 10

Anything else? - And that we must respect African women.

Do you remember any other points? - I do not remember the others, my Lord.

Now, at what stage of the meeting was this book and its nationalist subject discussed? - In the evening. 20

At the beginning or middle or end of the meeting? - At the beginning of the meeting.

Do you remember where Hensiby was when this was being discussed? - He was outside.

Do you know why he was outside? - He was outside to watch out for people who would be coming to his house.

Do you know how it came about that he went outside? - I only heard when I overheard when he was given instructions to go outside. 30

Who instructed him? - The accused.

Do you remember when Sixpence arrived at this meeting? - I do.

When? - He arrived to find all of us in the house. Hensiby was already outside but we were all of us inside.

Once you had discussed this business about nationalist and not breaking the party constitution, what happened then? - Masawi said, "If we thought of taking action, what have you to say about it?" 40

Did anybody react to Masawi's statement? - Yes, it was replied that if you are brave you will be able to do it.

MAISELS, J: Who replied? - The accused.

BY MR. MASTERSON: Do you remember how this conversation continued or developed? - Well, examples of things that could be first done or attacked if any action were being taken were given.

Do you remember who it was who gave those examples? - I believe and remember that it was the accused who said it.

10 Did anybody else give examples? - Yes, one Sevenzayi did.

Do you remember what sort of examples were discussed? - Examples were given of things like churches, dip tanks and European farms. That is what I still remember.

Was anything discussed as to what should be done to these places? - Well, examples were merely given that such places could be set on fire or damaged or destroyed.

20 Was anything discussed as to how they should be set on fire and methods to be adopted? - No, my Lord, methods of performing the act were not discussed. What was discussed was then putting this into operation; we must not all go together in a big group.

Was anything else discussed about groups? - Yes, we were formed into groups consisting of two in each group.

30 Do you remember who supervised the formation of these groups on the Saturday night? - The accused mentioned it so we were agreeable to his suggestion.

Did Sevenzayi have anything to do with the formation of the groups? - No, Sevenzayi did nothing in the formation of the groups.

Was Sevenzayi included in any groups? - No.

Why not? - I would not know why.

40 Do you remember what Sevenzayi had to say about the formation of these groups if anything? - He said if any group is allotted to a certain area they must perform whatever they are told to do.

Did anything else happen as regards what these groups were to do that night? - No, my Lord.

Do you know if any school matters were discussed that night? - I do not know, my Lord.

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(continued)

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Do you remember whether anything was done about meeting again after the Saturday night? - No, I do not.

Did you see the accused at all on the Sunday? - No.

When did you next see the accused? - On Monday.

Where did you see him? - At the spot where we met.

Where was that? - Near the football field. 10

Why did you go there? - Masawi invited me to go there.

What time was it, when you got there? - I do not know what time it was. It was after sunset.

And who was there? - The people I found there were Masawi, Hensiby, Nowa, Lovemore, Sixpence and the accused. Those are the people I found there: when I arrived.

Whom did you go with, if anyone? - My Lord, I should have said I went with Nowa, Masawi and Hensiby. 20

When you got to the football ground, was anybody else there? - Do you mean beside those whose names I have mentioned?

BY MAISELS, J: You mentioned the names of six people apart from yourself, who were there that night? - Yes.

You went with Nowa, Masawi and Hensiby? - Yes.

Were the other persons you have mentioned at the football ground when you got there, or did they come there later? - We arrived to find them there. 30

BY MR. MASTERSON: What happened once you all got together there? - The accused said he had received a letter from town and that there was a strike in town.

Go on? - So here we must do something that will coincide with the strike there.

Go on? - So people were chosen who would go, to see those who possessed bicycles. 40

Who were chosen? - Lovemore and Sixpence.

Who did the choosing? - The accused.

Were any other people chosen? - Masawi was told to go to Tegere's house. He was chosen for Tegere's house.

Who by? - The accused.

Go on? - Nowa and Hennisby were chosen to go to the dip tank, Chinyika's dip tank.

10 Go on? - The accused himself said he would go to Chinyika's church. I was sick. Had I not been sick, I should have been detailed to go to Mr. Hughes.

Were you sick? - I was slightly sick.

What was wrong with you? - I was suffering from a sore leg.

At that time, was there any possibility of your going to Mr. Hughes's? - Yes, there was that possibility.

What were you to do at Mr. Hughes's? - I was supposed to go and burn the mealies in the lands.

20 And was anything discussed at that meeting as to how the burning should be done? - Yes, it was said that what was required was paraffin and some rags.

Who talked of that? - The accused.

How did you come to disperse? - The accused said, "That is all that has to be done today so we had better disperse." So we did.

Where did you go? - I went home.

Did you do anything about burning Mr. Hughes's maize? - No, I did nothing.

30 At what point was it that you decided not to burn Mr. Hughes' maize? - I thought of it there and then at the time and did not mention anything about it.

When you left the meeting had you any idea of what the accused's expectations were as regards your burning Mr. Hughes's maize? - He did not expect me to do it because I had already informed him that I was sick and he knew that I was indisposed.

40 BY MAISELS, J: Was that the end of this meeting as far as you are concerned?

MR. MASTERSON: I believe so.

MAISELS, J: I had better ask this question now. You say Masawi was told to go to Tegere's

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house? - Yes.

Nowa and Hennisby were supposed to go to Chinyika dip tank? - Yes.

And the accused said he was going to Chinyika church? - Yes.

Do you know at the time when you left as far as you know was that the plan to be carried into action? - Well, I concluded that, that it was what was going to take place.

Very well, yes.

10

BY MR. MASTERSON: I am indebted to your Lordship. What were the reactions of the other people who had been detailed to commit these various burnings by the accused? - I take it they were pleased at it because they accepted it and were quite agreeable.

BY MAISELS, J: You mentioned something about bicycles did you? - I did, my Lord.

What were the people to do who were chosen for Chinyika? - One was to burn the church and the other to burn the dip tank.

20

BY MR. MASTERSON: And who suggested that they should do that? - The accused.

I believe I have not asked you who suggested that you should burn Mr. Hughes's maize? - The accused said: "If you were able to go there that would be the place for you to go".

Did you ever see the accused after this meeting? - I saw the accused the following day.

Where? - At his school.

30

How did you come to see him there? - I was on the way to the clinic, my Lord, and passed by the school.

Did any conversation take place between you and the accused? - Yes, I spoke to the accused who told me he had finished his work.

Was that his teaching? - No, he was referring to the result of the meeting that had been held: the previous meeting.

Did he say anything else about what had happened as a result of the meeting? - No.

40

You spoke earlier of your being a new member of something or other and that is why you were instructed about the party constitution about

nationalist or nationalism? - I said so.

Of what were you a new member? - A new member of ZAPU.

Do you know whether the accused had anything to do with ZAPU? - Well, I had learned that he was a member of ZAPU.

BY MAISELS, J: You believed him to be a member of ZAPU? - Yes.

10 Were you a member of ZAPU or of ZAPU Youth League? - I was informed that I was a member of the youth league of ZAPU.

BY MR. MASTERSON: Did you have a card? - Yes, I had a card at the time.

And on the Monday evening when you all met together who was the most senior person? - The accused.

Tea adjournment.

20 CROSS-EXAMINED BY MR. ANDERSEN: Do you recollect speaking about a burning of buildings on any occasion other than the ones you have mentioned? - No.

Did you ever have a meeting prior to the Friday before the week in question with any other persons and discuss burnings? - No.

Did you and Masawi ever go to Sevenzayi's house at a time when burning Tegere's house was mentioned?

BY MAISELS, J: Prior to Friday?

30 MR. ANDERSEN: Prior to Friday? - No, I went there to collect my membership card.

BY MAISELS, J: To Sevenzayi's house? - Yes.

BY MR. ANDERSON: Was Masawi with you? - Yes, he was with us.

Were any other persons there? - I beg your Lordship's pardon, there were just the two of us. He was with me.

Just you and Masawi and Sevenzayi? - Yes.

40 Now, on that occasion did Sevenzayi or any other persons say that if action were to be taken Tegere's was the sort of house that should be burnt? - I do not know if Tegere's house was mentioned, my Lord; I have no recollection.

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Do you remember burning being mentioned on that occasion? - No, I do not remember.

Well, do you remember any sort of action being mentioned on that occasion? - I do not remember clearly.

Surely, if burning or any other sort of action involving violence had been mentioned you would be able to have some sort of recollection of it? - Yes, my Lord, but in this instance, I have no recollection of anything.

10

Do you think it possible that you did discuss these matters and you have forgotten? - I would not say: I would not know and would not say it.

What do you think is likely: that you may have forgotten or that you did not discuss such matters? - I do not think it was discussed.

Do you recollect giving evidence at the Magistrates Court when the accused was first brought before the Magistrate? - I do.

I refer to the top of page 14 of the record. This question was put to you: "Now, who made this decision at your first meeting that action should be taken".

20

BY MAISELS, J: What meeting are you talking about?

MR. ANDERSEN: I understand, my Lord....

MAISELS, J: If you look at what went before, Mr. Andersen, are not they talking about the meeting at the football ground, page 13, just look at the sentence: "And at that meeting did you decide what the action would be?" Or start just above that. Now, what meeting is he talking about?

30

MR. ANDERSEN: I understand the first meeting he is talking about must be either Friday or Saturday. In any event, my Lord, unless I misunderstand the question completely his answer does not really make much difference.

MAISELS, J: Yes, well I just wanted to make clear what the first meeting was.

40

MR. ANDERSEN: My Lord, my recollection is it is not clear what is meant by the first meeting.

MAISELS, J: That is the only point I am concerned with.



MR. ANDERSEN: I am obliged to your Lordship.

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10 BY MR. ANDERSEN: The question put to you was: "Now, who made this decision at your first meeting that action should be taken?", and the answer you are recorded as giving was: "Masawi and I mentioned this, but we had been to Sevenzay before that time". My Lord, the first meeting was Saturday, with respect. At the bottom of page 13 the question by the Court, the Magistrate clearly going back over the evidence: "Did you say that you decided to take some action at your first meeting?" The witness initially, my Lord, had said that he had met these persons on page 7 to 8. The evidence was that the witness had met various persons on the evening of Friday 11th. He spoke to them and the evidence then proceeded immediately to Saturday where a meeting was referred to.

20 MAISELS, J: That is Friday and Saturday and then by this time he is on Monday.

MR. ANDERSEN: Then he comes on to Monday, my Lord, and then his examination-in-chief is finished. He is not cross-examined. The Court then clears up certain points.

MAISELS, J: Yes.

MR. ANDERSEN: Perhaps I should try to make it clear to you, my Lord.

MAISELS, J: Certainly.

30 BY MR. ANDERSEN: The question which was put by the Magistrate was: "Now, who made this decision at your first meeting that action should be taken?" and as I understand it, the Magistrate was referring to the meeting on Saturday, and your answer is recorded as: "Masawi and I mentioned this but we had been to Sevenzayi before that time". Do you recollect saying that? - Yes, I remember saying so.

Could you tell the Court what you meant by that answer? - I said I remember having said it.

40 BY MAISELS, J: Now, when you said this: "Masawi and I mentioned this but we had been to Sevenzayi before that time", that meant by relating to action that Masawi and you had mentioned that action should be taken and that you and Masawi had been to Sevenzayi before that time; but what were you referring to when you said: "But we had

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been to Sevenzayi before that time"? - By that I meant that it is where it was first mentioned.

Was this at Sevenzayi's house that you and Masawi had had discussions about action? - Yes, it was there that Sevenzayi spoke about it.

At Sevenzayi's house? - Yes.

And when was that in relation to the meeting that took place on the Saturday? How long before that? - We met on Wednesday before this Saturday.

You and Masawi. Was that when you became a member? When you got your membership card? - Masawi was already a member, but that is the day when I became a member.

10

Is that what you want?

MR. ANDERSEN: Yes, my Lord.

BY MR. ANDERSEN: Was it the same week as you had the meeting on Saturday? - Yes.

And was burning Tegere's house mentioned on that occasion? - Not on Wednesday, my Lord, I did not hear it.

20

In any event before you ever saw the accused you had discussed action? - Yes, we had.

When you had discussed action, what sort of action had you discussed? - Well, it was just an action with examples of the things I have already mentioned in my evidence: churches and dip tanks.

Burning them? - Burning them or breaking them down.

And who else was present when you discussed this sort of action prior to when you saw the accused? - On Wednesday it was just the three of us.

30

On the Wednesday when you discussed this, did you contemplate taking action in the near future or did you just discuss it without deciding on any time? - No time was mentioned, my Lord, when the action was going to be performed; it was just a mere discussion which could be performed at some future time.

40

Did you consider at that stage there was any urgency for taking action? - No.

On the Friday you met various persons on the road as you have described? - Yes.

Was that a casual meeting or were you looking for those persons? - It was a casual meeting.

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Were those all persons known to you as supporters of ZAPU? - Yes.

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Had you had meetings with them before? - No.

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Had you discussed these sorts of matters, action and so on, with them before? - No.

Cross-  
Examination  
(continued)

10

Now, taking the sort of action that you had been talking about is a serious matter and you must have known that it would be a crime to burn churches? - Yes.

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Consequently, I assume that you would not have spoken about it to any person in case it leaked out to the police?

MAISELS, J: I did not quite follow that question. Do you mean to any person?

BY MR. ANDERSEN: To just anybody.

MAISELS, J: I see.

20

BY MR. ANDERSEN: You would be particular about the person one would speak to?

MAISELS, J: I think the question could be put slightly differently.

MR. ANDERSEN: As your Lordship pleases. I take it since this was a serious matter it would be a crime and you would be particular about whom you would speak to about it? - That is so.

I take it, furthermore, that you would not speak about it too often? - No.

30

Now, there must be some reason as to why you should have spoken to these persons at a casual meeting on a Friday about taking action? - The reason was because the matter had to be taken to senior members the following day.

Who decided that? - Masawi decided that.

Now, why did the matter have to be taken to senior members on the following day? What was the urgency? - Because we were going to meet the following day.

40

Masawi tells us that you told them that there was going to be a strike in Salisbury on the Monday and that it was considered that any action on your part would coincide with that strike? - That is not so.

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Why then was there this urgency to meet senior members on Saturday? - Because that is a day that we had arranged to meet; we thought of meeting that day.

You arranged that with Masawi when you saw him on Friday? - Well, Masawi told me that we would be meeting. That is why I suggested that this be asked in that meeting.

Masawi told you you would be meeting what? - Masawi told me that we were going to meet the following day at the accused's house. 10

Was this before Masawi had been to see the accused? - He had not been to see the accused.

What was the purpose of the meeting that was to be held at the accused's house the following day? - I believe that meeting was specially to teach new members the constitution of the party.

What makes you believe that? - When I entered the house that was the first thing that was told me. 20

You mean when you went to the accused's house on Saturday? - Yes.

But on the Friday when Masawi told you you were going to meet at the accused's house the next day did he tell you why you were going to meet there? - He did not.

Did you ask? - No.

Why not? - I thought he was just intending to invite all the members to go to the accused's house. 30

BY MAISELS, J: For a meeting? - Yes.

BY MR. ANDERSEN: Did I understand you to say that you then told Masawi that you wanted the question of action raised then? - Masawi and I agreed upon it.

BY MAISELS, J: Agreed upon what? - That this question of action be raised in the meeting as we were to meet the next day.

BY MR. ANDERSEN: At this stage had you and Masawi decided that there was to be action of a particular nature and that you just wanted to see what the reaction of the meeting would be to it? - Yes, we decided to raise the question in the meeting and hear what senior members would say about it. 40

Had you and Masawi already decided that there would be action? - We had heard this from Sevenzay's house. That is where we got this idea.

Had you decided that there was definitely going to be action? - Are you referring to the time that we were at Sevenzayi's house?

10 You say that you and Masawi decided that you would raise the question of action at the meeting on Saturday? - Yes.

Had you decided at that stage or any stage prior to the meeting on Saturday that there would definitely be action? - We had talked about it on Wednesday at Sevenzayi's house.

20 MAISELS, J: Is your answer that you thought it was a good idea and you were going to see what the leaders thought about it or is your answer that you had made up your mind to take action? It does not matter what the leaders thought about it? - We wanted to raise the question and hear what the leaders would say about it.

BY MR. ANDERSEN: I put it to you that you had decided with Masawi and perhaps with other people that you were going to take action regardless of what the leaders said and you merely hoped that they would join in with you? - No, that is not so.

30 Did Masawi tell you that the meeting which was to be held at the accused's house on Saturday evening had been arranged with the accused? - Masawi merely gave me the message; he said he was instructed by the accused to invite us.

Did you say that you then went home? - Yes.

BY MAISELS, J: What day was this?

INTERPRETER: This is Friday, my Lord, after they heard the discussion.

40 MAISELS, J: No, unless I am wrong, I understood the witness's evidence to be that he parted with these people and he was told the next day by Masawi that there was to be a meeting at the accused's house.

MR. ANDERSEN: Might I just clear that up because I understand him to have given a different answer now?

MAISELS, J: This is what he said in chief.

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Ronnie

Cross-  
Examination  
(continued)

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Cross-  
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MR. ANDERSEN: Have you just told me that Masawi told you on Friday that the accused had been instructed to tell you?

MAISELS, J: No, he did not say that. You cannot put it that way. He never mentioned Friday; that is why I raised the question then. Put it, "When did he tell you?"

MR. ANDERSEN: My Lord, with respect, might I put it in a different way?

MAISELS, J: Certainly, what way? 10

MR. ANDERSEN: I intended to ask the witness whether or not he has been speaking of Friday the whole time he has been giving his evidence.

MAISELS, J: How can he answer that, because he has been speaking of several days? That is not a fair question to ask.

MR. ANDERSEN: With respect, my Lord, I beg leave to ask whether the last series of answers he has given relate to what he was told on Friday.

MAISELS, J: May I remind you of certain answers he has given which plainly relate to Wednesday? The last few answers: "We had heard this at Sevenzayi's house. We wanted to raise the question with the leaders before the action was taken. We had not decided to take action. Regardless of what action was taken, Masawi said he was instructed by the accused to invite us back on Saturday night". You say you want to put the question whether all that referred to Friday. Well, put it. 20

MR. ANDERSEN: My Lord, I did not intend to put that.

MAISELS, J: That is the last question you did want to put.

MR. ANDERSEN: Very well, I will put it a different way.

BY MR. ANDERSEN: When did Masawi tell you that the accused had instructed him to ask you to come to his, the accused's, house? - On Friday.

Is that what you intended to tell me in your answer a moment ago as well? - Yes. 40

MAISELS, J: Masawi said he was instructed on Friday. I want to get this right. "On Friday Masawi told me he was instructed by the accused to invite me to a meeting at his house".

BY MR. ANDERSEN: On Saturday? - Yes.

And was that the time after that had been said; did you then part company with Masawi and the others? - Yes.

BY MAISELS, J: Was the meeting that Masawi arranged then for Saturday night at the accused's house before you went home and Masawi and his three went off somewhere else? - Yes.

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Ronnie

Cross-  
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(continued)

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10 BY MR. ANDERSEN: What then were Masawi and Henisby going to see the accused for after they left you on Friday? - I do not know what they wanted to go and see the accused for, my Lord; I thought they just intended to go and see him.

Now, you say on Saturday you did in fact go to the accused's house? - We did.

What did you do when you first arrived at his house? - I arrived to find the accused in the garden. I then helped him in doing his gardening work.

20 For how long did you help him gardening before the meeting was held? - For quite a long time; I am unable to say how long.

Did you discuss action with the accused at that stage? - Not whilst in the garden, we did not.

Did you ask him what the meeting was to be about? - I did not.

30 Are you a frequent visitor to the accused's house? - No, my Lord. I was not a frequent visitor; I used to meet him at times after long intervals.

Had you ever been to his house before? - No.

You just arrived at the accused's house, helped him do his gardening without asking him what the meeting was about that you had come for? - I expected to hear what the meeting was for when the meeting was then started. I knew we were going to start the meeting.

40 Now, you have said that at some stage during the meeting Masawi said that you had thought of taking action. What did the others think about it? - Well, he said if we had thought about it, what would the others say about it.

Did he say what he meant when he used the word, "Action", what sort of action he was referring

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to? - He gave examples of things like schools,  
dip tanks.

MAISELS, J: Who, Masawi? - Yes, my Lord.

BY MR. ANDERSEN: You mean burning schools  
and dip tanks? - Yes.

Then at some other stage during the meeting  
you were divided up into groups? - Yes.

And I think you said the groups were allotted  
an area but were not told what they should do in  
that area? - The areas were only allotted to us  
and not what to do in the area. 10

Was it decided when these groups would start  
taking action? - No.

Was any decision made on Saturday night as  
to any future meeting? - We were supposed to  
meet the following week at a party.

At a party? - By a party I meant a party  
where refreshments would be served and people  
would be eating and drinking.

Quite an innocent affair, a social gathering?  
- Yes. 20

Was there any arrangement as to when the  
people who were going to take action would meet  
again in the future?

BY MAISELS, J: Were the people who were at  
the meeting chosen to meet at this party? - Yes,  
my Lord.

Was a day fixed for that party, can you  
remember? - I believe it was said to be on the  
12th and it was going to be Saturday of the  
following week. 30

The following week? - Yes.

BY MR. ANDERSEN: Were any other persons  
going to be at the party? - I did not hear of  
any other persons save those who were present at  
the meeting.

Where was the party going to be? - At the  
accused's house.

Does the date, the 2nd June, mean anything  
to you? - I do not remember anything. I cannot  
connect it with anything. 40

I understand that you have indicated at some  
stage or another that there was to be a party on



the 2nd June? - This social party I am referring to?

Yes? - I am not certain of the date, my Lord; these things took place some time ago, but I remember it was to be held on the following Saturday.

It was to be a quite innocent party, was it? No talk about action or anything like that? - It was quite an innocent party which had nothing to do with the action.

When the groups went into action who was going to tell them what to do or were they going to decide for themselves? - I did not ask that question, my Lord.

What did you understand from what went on? - I was under the impression that the seniors who were forming these groups would then give instructions of how the action was going to be performed.

BY MAISELS, J: How old are you? - I am 21 years old.

BY MR. ANDERSEN: I refer to Monday evening when you went to the football field; it was said that what was required to burn various places was paraffin and rags? - Yes.

Who was going to supply them? - I do not know who was going to supply them; whether they were told to go and collect them from the various homes I have no idea.

You did not see any paraffin or rags? - I did not.

My Lord, I have discovered the passage, if I refer back to that. At the Magistrates Court when Masawi, Sixpence and Lovemore were being tried you will recollect that you gave evidence? - I do.

This is recorded, this question and answer: the question was referring to the Saturday evening's meeting: "Did you talk about anything else apart from this action at this meeting?" And your answer was: "Yes, we spoke about a party which we intended to hold on the 2nd June". Do you recollect that? - Yes.

Now, does that jog your memory at all as to when the party was to be held? - At the accused's house.

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Cross-  
Examination  
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Does it jog your memory at all as to the date on which the party was to be held? - The 2nd June if it is a Saturday.

Was that a definite date which was fixed, the 2nd June? What do you remember in particular that the party was to be on a Saturday or that it was to be on the 2nd June? - I remember clearly that the party was to be held on Saturday.

I think the 2nd June was in fact a Saturday.

MAISELS, J: The Witness's answer has been that he remembers it as a Saturday. 10

BY MR. ANDERSEN: The point I am leading to is if the party was to be on a Saturday, 2nd June, that is not the following week.

MAISELS, J: Yes, I understand, but the question is where the 2nd June came from the Magistrates Court, Goromonzi.

MR. ANDERSEN: I was just trying to work out what the 2nd June was. Now, the 2nd June was a Saturday, but it was not the Saturday which you had been describing as the Saturday following the meeting at the accused's house? - (No answer). 20

What I am trying to find out is are you certain that the next meeting, the party, was to be on the following Saturday or is it possible it was to be in a couple of weeks' time?

MAISELS, J: Three weeks' time.

BY MR. ANDERSEN: Three weeks' time? - It was going to be held after some weeks.

So, as far as you were concerned, there was to be no meeting on the following Saturday? - No. 30

Now, did you at any stage know on this particular week-end that there was to be a strike in Salisbury on the Monday? - No, my Lord, I did not.

Did you ever find out that there was to be a strike in Salisbury on the Monday when the burning took place? - No, I did not try to find out.

BY MAISELS, J: What time are you relating to prior to the Saturday? 40

MR. ANDERSEN: My Lord, I beg your pardon, I had better rephrase it more accurately.

MAISELS, J: Yes.

BY MR. ANDERSEN: I am trying to find out whether you ever knew prior to the burning on Monday whether there was to be a strike in Salisbury on that Monday? - No, I did not.

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Did you ever find out at all if there had been a strike in Salisbury on the same Monday as when the burning took place? - No, I did not try to find out.

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Cross-  
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(continued)

10 BY MAISELS, J: The question is not whether you tried to find out; did you ever hear that there was a strike in Salisbury on the Monday? - Yes, I heard it. I heard of it on the Monday, the day that this burning took place.

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BY MR. ANDERSEN: Why did you tell me a moment ago that you had not heard of it prior to the burning? - I thought you were referring to the time before the last meeting was held.

20 Was it not put to you quite clearly by the Interpreter that I was referring to any occasion before the burning took place? - I had not clearly understood what was said.

I suggest to you that you gave the answer that you had not ever heard of it because you are reluctant to admit that you had prior knowledge of this strike? - On the meeting which was held on Monday evening, my Lord, it was at this meeting that I heard for the first time about the strike in Salisbury.

Who told you? - The accused.

30 Had anyone else spoken to you about this strike before that? - I do not remember one doing so.

Did it appear to you that the accused was telling members of your party who were at the football field on Monday night, apart from you, for the first time that there was to be a strike in Salisbury on that day? - Repeat the question please. I did not understand it.

40 Did it appear to you when the accused spoke at the football ground about a strike on Monday that apart from you he was also telling other persons who were there who did not already know that there was to be such a strike? - Well, he said this to all of us who were present there.

You were invited or you were asked to go to

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the football field by Masawi? - Yes.

When had he asked you to go there? - Monday  
at sunset.

MAISELS, J: Sunset may refer to the time of  
the meeting or the time when he was asked to go.

MR. ANDERSEN: I will put the question again.

MAISELS, J: Mr. Andersen, please yourself,  
but the answer to me seems to permit of an  
ambiguity. I suggest you clear it up.

MR. ANDERSEN: I am obliged to your Lordship. 10

BY MR. ANDERSEN: Do you mean to convey by  
your last answer that Masawi asked you at sunset  
on Monday to go to the football field that evening?  
- Yes, he said, "Let's go. It is there where we  
are said to be meeting".

And did you immediately go with him? - Yes,  
we went together.

Was that the first time that you had heard  
that there was to be a meeting at the football  
field? - Yes. 20

Did you ask Masawi why you were having a  
meeting there at that time? - I did not.

What did you think you were going to the  
football field for? - Well, I did not know what  
was going to be said by the senior members. I  
thought of going to hear when I then got to the  
meeting what would be said.

You did not consider it necessary to ask  
Masawi what you were going for? - No.

I think you will agree with me that had you  
known at an early date that there was to be a  
strike in Salisbury on that Monday it would have  
been an obvious time for you to have staged what-  
ever action was to take place? - Not personally,  
my Lord. I did not have that in my mind at all. 30

Very well. Now, I wish to put to you what  
the accused will say in regard to these events.  
Dealing firstly with Friday, he will say that you  
and Masawi saw him as he was leaving his school?  
- No they do not teach on Saturdays. 40

Friday?

BY MAISELS, J: Did you and Masawi see the  
accused as he was leaving his school on Friday?  
- I do not remember so, my Lord.

BY MR. ANDERSEN: Is it possible that you and Masawi did see the accused as he was leaving the school on Friday, that would be Friday evening, and spoke to him? - I have no recollection, my Lord.

BY MAISELS, J: No recollection of that? - I do not remember meeting the accused when I was in company with Masawi, my Lord.

10 BY MR. ANDERSEN: Well, the accused will say that the two of you did meet him and that you told him that there was to be a strike in Salisbury on the following Monday? - No, my Lord.

He will say that you told him that you had decided to take action and that you had been sent to get his co-operation?

BY MAISELS, J: On the Friday afternoon? - No.

20 BY MR. ANDERSEN: He will say that he told you to go and see the secretary? - No, I have no recollection.

He will say that the following day, Saturday, when he was working in his garden you and the other persons you have mentioned approached and asked whether you could talk to him? - No.

He will say that he invited you into his sitting room? - From the garden he said to me, "Let's go into the house to hold a meeting".

30 He will say that when you were all in the sitting room Agrippa, who is the secretary, spoke about the strike in Salisbury on the Monday? - I do not remember it.

Well, Masawi has admitted that Agrippa spoke about the strike in Salisbury on the Monday. Are you prepared to admit it or do you say it definitely did not occur? - This might have been said and I missed it; I did not hear it.

40 Were you paying attention to everything that was said? - Well, when the meeting started I was.

BY MAISELS, J: As far as you are concerned, when was the first time you knew there was going to be a strike or had been a strike? - (n Monday.

BY MR. ANDERSEN: The accused will state further

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that Agrippa, the secretary, mentioned action and that the accused asked him what action he had in mind? - No, I do not remember it.

And he will say that the secretary then mentioned burning various places? - The two were talking about it and came to an agreement.

He will say that when burnings were mentioned he reminded the secretary that Mr. Nkomo had said that members of ZAPU should not act without his instructions? - No, I do not remember that. 10

Do you remember any mention being made of Nkomo? - No.

I take it then that you do not remember either that the secretary, according to Masawi, said that this was Goromonzi and not Salisbury? - That was after Nkomo's name had been mentioned.

Yes? - No.

The accused will say that he also reminded Agrippa of the lack of school facilities in Goromonzi and told him that burnings were illegal? - No, I did not hear the accused say so. 20

MAISELS, J: Was that last thing that is put to you the accused's saying that there was a lack of school buildings and that burnings were illegal, was anything that the accused said that night consistent with the position being whether school buildings or churches or hide sheds or anything of that sort which were being discussed, were against the law and should not be done whether in connexion with this particular thing or anything else? - Not anything of the sort was said by the accused. 30

BY MR. ANDERSEN: The accused will say that he suggested that some other action should be taken like a procession? - No, my Lord, I did not hear that.

He will say there was then an argument which ended when you all walked out of the house? - No.

He will say that you called him a moderate, a police informer and threatened to take action against him if he informed the police? - No. 40

He will deny that he told Hensiby to go outside and he will deny that he read from any book? - He read out from the book.

BY MAISELS, J: What about Henisby? - He instructed Henisby to go outside.

Do you know what a constitution is? - Well, I was going to hear the constitution on that day.

Do you know what the word, "Constitution" means? - Not very well, my Lord.

10 I am not talking about the Southern Rhodesia constitution either. I am just talking about the word, constitution? - Well, I take it the word means laws.

Not a bad answer.

BY MR. ANDERSEN: I take it that you have been to other meetings held by ZAPU? - No.

Have you never been to a ZAPU meeting? - No.

Have you talked with your friends about the principles ZAPU stands for, apart from action? - No.

20 Have you ever talked to your friends about what the attitude of ZAPU towards white men is? - No.

BY MAISELS, J: Why did you join ZAPU? - Well, I saw many people joining ZAPU; I merely followed suit. I thought it was useful because all the others were joining.

But what did you think it was? - Well, I thought it was just a party which deals with country affairs.

30 What do you mean, in what way was it dealing with country affairs? - Well, my Lord, I had not occasion to know all the principles of the party.

But did you know any of the principles? - Well, I only know what I was told at the meeting.

At that meeting on Saturday night? - Yes.

Yes.

40 BY MR. ANDERSEN: Why were you taking this action? Why were people talking about action? - I would not know my Lord; that was first suggested by the members who had been in the party for a long time. I was a novice and I was the last to speak.

Did they give any reasons as to why they should take action? - I do not remember, my Lord.

Did you think it quite normal for a party such

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as this to take the action that was contemplated?  
- Well, I thought that is the way in which things  
were carried on. As I have said, I was still a  
new-comer.

Now, the accused will also deny that any  
social party was to be arranged at his house in  
future? - I remember that it was mentioned.

And he will also deny that he saw you or had  
anything to do with you at the football ground  
on Monday? - No, he was present. That meeting  
was convened by him. 10

He will also deny that he saw you on the  
day following the burning and spoke to you? -  
I remember clearly that he saw me and spoke to  
me.

And I put it to you that for some reason best  
known to yourself you decided to implicate the  
accused in these burnings? - No, I said that  
he was present.

I put it to you that quite probably you are  
shielding Sevenzayi? - No, I am not shielding  
Sevenzayi. I am telling the Court what Sevenzayi  
said. 20

Am I to understand from you that the persons  
who did the burnings were quite willing to do so  
and it was not necessary to bring any pressure to  
bear on them? - From what I saw they were willing  
to do it.

In fact, if the accused had not directed  
them probably someone else would have. They were  
quite decided to take some sort of action? - I  
would not know, my Lord. 30

Were you eager to burn Mr. Hughes's mealie  
lands? - No.

Were you sufficiently fit to have done so if  
you had wished to? - I was.

Were you eager to take some sort of action?  
- No.

Why was it then that you and Masawi were the  
persons who wanted action to be spoken about at  
the accused's house on Saturday? - We merely  
repeated what had been discussed at Sevenzayi's  
house. 40

You see, I put it to you that quite possibly  
you were actually involved in some of the burnings  
and you are possibly the person who burned



Chinyika church? - No.

BY MAISELS, J: Is that a question put on instructions?

MR. ANDERSEN: Not this one in particular, but it is a suggestion, that it was done by some other person.

MAISELS, J: Anyhow the witness has denied it.

MR. ANDERSEN: He has.

10 BY MR. ANDERSEN: And I suggest to you that there was no reason why you who were fit enough should have desisted from burning any place that night? - Well, I was not willing to do so. I did not want to do so.

BY MAISELS, J: This leg of yours which you said was sore, were you limping? - No, I was able to walk steadily, my Lord, but with slight pain.

20 RE-EXAMINED BY MR. MASTERSON: Did you ever attend a party at the accused's after the burning? - No.

BY MR. CRIPWELL: When you first started to talk about those burnings you were quite enthusiastic, were you? - Well, I appeared so, my Lord, but it was not my intention to take any part.

When someone suggested you go and do something you did not feel like doing it? - No.

You put forward the excuse of this leg of yours? - Yes.

30 BY MR. LING: How did you join ZAPU? What did you do to join? - I saw a person who had cards and I told him that I wanted to join.

Who was that person? - One Sevenzayi.

Where did you collect your card from? - I collected my cards from Sevenzayi.

Where are you employed? - I was employed by the Department of Engineering and Construction at Goromonzi.

40 How long have you been employed there? - About 3 months now, my Lord.

BY MAISELS, J: Where were you working at the time of these things? - I was at home without work. I was unemployed.

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Re-Examination

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You say that the accused read out of a book at the meeting on Saturday night? - That is what he did, the first thing he did.

Now, you say you saw that book again when it was in the custody of the police? - Yes.

When it was in the custody of the police, did you have an opportunity of reading anything that was in the book? - No.

Was anything out of that book read to you by the police or by anybody else other than the accused? - No, my Lord, I do not remember anybody doing so. 10

Was anything said at this meeting on the Saturday night about whether ZAPU members should be friendly with Indians? - No.

Or with white men? - No.

We are talking about the Saturday night? - Yes.

Do you know the word "Capitalist"? Have you ever heard it? - Yes, I have heard of the word, but I do not remember its meaning. 20

Where did you hear the word? - At the accused's house.

When? - On Saturday evening.

Who used it? - The word was used by the accused when he was reading.

You say you do not know the meaning of that word? - I have forgotten the meaning.

Can you remember whether a meaning was given you? - I remember the meaning was given to me but I have just forgotten the meaning. 30

Have you ever heard the word, "imperialist?" - Yes.

Where? - At the accused's house.

By whom? - By the accused.

The same night? - Yes.

Do you know what that means? - I do not know what it means, but it has something to do with Europeans.

How do you know that? - I know that because it was explained to me. I have just forgotten all 40

the words and the exact meaning of the words.

Explained to you by whom? - The accused.

Do you know anything at all about the accused's attitude towards churches? - I do not know his attitude towards churches.

Do you know anything at all about the attitude of ZAPU in regard to churches? - No, I would not know the attitude of ZAPU towards churches, my Lord.

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10 Do you know what the Bible is? - I know what the Bible is.

Do you know what the attitude of ZAPU is towards the Bible? - I would not know, my Lord.

Luncheon adjournment.

No. 9.

SIXPENCE

SIXPENCE, duly sworn and examined (through African interpreter, Arthur)

No. 9.

Sixpence

Examination

20 BY MR. MASTERSON: Are you at present a hard labour prisoner? - I am.

What term of imprisonment are you serving?  
- Four years and six months.

What for? - I set a school on fire.

Were you, in fact, charged with three counts of arson out at Goromonzi? - Yes.

How did you plead to those charges? - I pleaded guilty to those charges.

Now, in May this year where were you living?  
- I was living at Mr. Hughes's.

30 What were you doing there? - I was employed by Mr. Hughes.

What sort of work? - A milk delivery boy.

Have you ever been to school? - No.

BY MAISELS, J: Do you know how old you are?  
- I am about 24, my Lord.

BY MR. MASTERSON: Now, do you remember when it was that you burnt down this school? - I do not remember the date, my Lord.

Do you know what month it was? - It was

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in May.

What school was it? - A school a Chinyika and one at St. Dominics school.

BY MAISELS, J: There were two schools you burnt down? - No, I burnt down? - No, I burnt down one; the other was burnt down by my companion.

BY MR. MASTERSON: Which school did you burn down? - St. Dominics school.

Do you know what day of the week it was? - It was a Monday. 10

Daytime or night-time? Is that the night which would have dawned, becoming Tuesday? - Yes.

Now, do you know the accused at all? - I know the accused in the course of my duty when delivering milk. I used to pass the school where the accused is.

And during the week or so prior to your having burnt down the school, did anything in particular take place between you and the accused - No. 20

Did you see him during the week prior to the burning? - Yes, I saw him when I was delivering milk. The accused spoke to me and told me to go to the meeting.

When was it that the accused told you to go to a meeting? - It was on Saturday.

MAISELS, J: Was the meeting on Saturday or did he tell you to go to a meeting, or was it on Saturday when he told you to go to a meeting? - The meeting was held on Saturday and I met the accused on Saturday who told me to go Saturday night for the meeting. 30

BY MR. MASTERSON: Does that mean the same evening or another Saturday evening? - The same Saturday that we met; the meeting was held on the Saturday evening of the Saturday we met.

Was that on the Saturday immediately before the burning? - Yes.

Did you go to a meeting on Saturday evening? - I did; I arrived to find the meeting finished. They had finished when I arrived. 40

Where was the meeting that you found finished? - The meeting was held in Mr. Malindi's house.

When you did get there on the Saturday evening,

did you speak to the accused at all or did he speak to you? - When I entered the house, Malindi and Ronnie spoke to me. They said: "You're too late; the meeting is finished".

Did they say what had happened or anything like that? - Malindi told me my group would be with one Ronnie.

10 Did he tell you anything about what this group was for? - He said that would be the party that would go into the reserve.

What was the group to do in the reserve, if it went there? - We were going to be told what to go and do when we were then going to the reserve; we did not go there there and then.

Did you have any idea what sort of thing you might do eventually?

BY MAISELS, J: Was anything said to you by the accused as to what you might have to do? - No, my Lord, not that day; he did not.

20 BY MR. MASTERSON: And when did you next see the accused? - On Monday I saw the accused; he told me again to come to his house in the evening.

What were you doing when you saw the accused? - I was delivering milk.

What time of the day was this? - 12 midday.

What did you do about the accused's request to go in the evening? - When I went off duty, I went there in the evening.

30 Where did you go to? - I went to the accused's house.

Do you know where the sun was; when you got there? - It was after dark.

What did you do when you got there? - When I arrived he said: "Let's go; your companions have already gone; I was waiting for you".

Was there anybody else at the accused's house? - I found Lovemore there.

40 Where did you go to from the accused's house? - We went in the bush at the bottom of the football field.

What happened once you arrived there? - He said: "I have received a letter from town. There is Mau Mau in Salisbury, and we also must perform Mau Mau here".

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Court

Crown Evidence

No. 9.

Sixpence

Examination  
(continued)

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Examination  
(continued)  
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1962.

Who said that? - Malindi and Ronnie said that.

BY MAISELS, J: What do you understand by that?  
- I do not understand it, my Lord.

BY MASTERSON: Who else was present when you  
talked about doing Mau Mau? - Ronnie, Nowa,  
Masawi, Hensiby, Lovemore, the accused and myself.

Had you found these people at the football  
ground when you got there or did they come after  
you?

BY MAISELS, J: Lovemore, went with him and  
the accused did not; he says that. 10

MR. MASTERSON: I do not think he did, my Lord,  
I am sorry.

MAISELS, J: Lovemore was at the house when  
you went to the house of the accused? - Yes.

Did he go with you to the ground? - Yes.

The other people that you have mentioned, did  
they come later or were they there when you got  
there? - We found them already there, my Lord.

BY MR. MASTERSON: What happened once the  
accused had said that there was Mau Mau to be  
performed? - He said, "We have all gathered  
here this evening. Now, Lovemore and Sixpence,  
you who possess bicycles, will go to St. Dominics  
school". All the people were given different  
areas. I do not remember the areas, my Lord; I  
cannot remember which is which. 20

Who did the giving of areas? - Malindi, the  
accused.

And can you be a little more specific as to  
what was given in the way of areas? - We were  
given paraffin and rags and some matches. 30

BY MAISELS, J: When were you given paraffin,  
rags and matches? - These were given to us by  
the accused, Malindi.

When? - After the meeting in the bush; when  
we had gone back to his house.

BY MR. MASTERSON: Going back to the meeting,  
you say that you were to go to St. Dominics  
School? - Yes, and with Lovemore. 40

Now, do you remember what places other people  
were to go to, irrespective of who was to go to  
those particular places? - I understood that

Masawi was to go to Tegere. Nowa and Henisby were to go to the dip tank. The accused himself said he was going to burn at Chinyika.

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Crown Evidence

I think you are referring to the accused as Muredzi? - Yes, the accused is the owner.

No. 9.

Now, what does Muredzi mean in this context? - Well, a senior person. That is why we called him the owner.

Sixpence  
Examination  
(continued)

10 Being the owner of what? - Well, he was in charge. The owner of that party.

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When you talk of party, do you mean a political party or a group of people? - Well, he was our leader there.

What was the reaction of the other people to the accused's saying that they should go to these various places? - They appeared to be interested.

BY MAISELS, J: Did they agree? - Yes.

Did you agree? - I agreed. I had a bicycle.

20 BY MR. MASTERSON: Did anybody disagree with the accused or at any stage suggest that anything the accused was talking about was wrong? - No, my Lord, I did not hear that.

Now, you talked a little while ago of collecting rags and paraffin and matches from the accused? - Yes.

Was that after the meeting? - Yes, when I left the meeting and went to collect my bicycle at the accused's hut, I was to collect the paraffin and rags from the accused's hut.

30 At whose suggestion was it that you should collect paraffin and rags at the accused's hut? - He, Mr. Malindi, had suggested it.

If the accused had not suggested to you that you should come to the meeting on the Saturday and again on the Monday, would you have gone on these expeditions? - No.

Having collected the paraffin, rags, etc., where did you go? - I went to St. Dominics school.

40 Who with? - I went with Lovemore.

What did you do when you got there? - When we got there, we cycled past Lovemore's house first.

And then? - From Lovemore's house we passed

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Examination  
(continued)

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the school and set the school on fire.

And then? - Then we went home.

Between setting the school on fire and finally setting off for home, did you do anything else or go anywhere else? - We went to the dip tank.

Which dip tank? - There is a dip near St. Dominics school.

What were you going to do there, or why did you go there rather? - We wanted to go and set the dip tank on fire; but the roof is of iron, corrugated iron. 10

Why were you going to set the dip on fire? - Well, we had received instructions to set the dip tank on fire.

Who from? - The accused.

Did you see the accused again after this Monday? - I did not pass the accused's house on Monday.

Did you see him on Tuesday by any chance? - I saw him on Tuesday. 20

What happened? - He asked me if I had set the school on fire which he had instructed me to do in company with my friend and he said he himself had set his on fire.

Do you know an organization known as ZAPU? - No, I do not.

BY MAISELS, J: Have you never heard of ZAPU? - When Sevenzayi enrolled me he gave me a card and told me that I had joined ZAPU.

When Sevenzayi enrolled you he told you were a ZAPU member? - After Sevenzayi enrolled me he told me I was a member of Zapu. 30

You did not know what it was? - No, I did not understand it.

You still do not know? - Up to this day I do not know anything.

What are you supposed to do in ZAPU? - They say they were going to teach me, they the owners of the people who had given me the card.

BY MR. MASTERSON: Had you received this card before these burnings or not? - Before these burnings. 40



A little while ago I mentioned something about exhibit six. Will you have a look at this letter, exhibit six, and tell us if you know anything about it?

MAISELS, J: Can you read? - I cannot read.

Where was exhibit six found?

BY MR. MASTERSON: According to Sergeant Carver, it was found in possession of this witness on the date on which he was arrested.

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10 BY MAISELS, J: You cannot read you say. Did you ever have a peice of paper like that? - I had this particular letter with me. The letter was given to me.

Who gave it to you? - Malindi gave it to me.

And what happened to it? - This letter was given to me by the accused to deliver to Sevenzayi. I did not reach where Sevenzayi was. I was arrested when I had the letter in my possession.

20 In relation to the day on which you were arrested, when had you received this letter from the accused? - The day I was arrested was the day I had received a letter from the accused.

Court adjourned at 2.35 p.m.

Until 8.30 a.m. tomorrow.

Friday, October 19th, 1962.

FIFTH DAY OF TRIAL.

19th October,  
1962.

EVIDENCE FOR THE CROWN continued.

Cross-  
Examination

SIXPENCE, under former oath.

30 CROSS-EXAMINED BY MR. ANDERSEN: How long were you a member of ZAPU? - One month.

Were you ever a member of any other party?  
- No.

Did you ever hear of the N.D.P.? - I heard of the name, N.D.P., but I was never a member of N.D.P.

Did you ever have an N.D.P. card? - No.

What is this? - This card belonged to my uncle.

40 Has your uncle got the same name as you? -  
Yes.

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 (continued)  
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Was that found in your possession when the police arrested you? - Yes, I had two cards. This one and mine. Two cards were found on me.

What were you doing with your uncle's card?  
 - My uncle left for Northern Rhodesia and left the card in my possession.

That is an N.D.P. card? - Yes.

BY MAISELS, J: Are you putting that in?

MR. ANDERSEN: No, my Lord. (To witness):  
 You told the Court that on Saturday evening you went to accused's house? - I did. 10

And you were told that you would be in a group with Ronnie? - Yes.

You were told that you would go into the reserve; the group would go into the reserve?  
 - Yes.

Were you told any particular area of the reserve? - Yes, Chinyika.

Which part of Chinyika reserve? - The Goromonzi area. 20

What were you going to do there? - We were not told what we were going to do there.

Had you any idea of what sort of things you were going to do? - I had no idea.

What did you think you were going to do over there? - Well, it was said that we would be told when we were then awake what we could go and do.

What were you to be? - The police for ZAPU in that area? - I would not know. 30

You were not told that? - I was not.

You were not told that it was your area to look after or keep as the police for ZAPU? - No, I was not told that.

You recollect giving evidence in this case in the Magistrate's Court (first page, B 23) Do you remember that? - Repeat the question.

You remember giving evidence in this case in the Magistrate's Court? - I do.

Do you remember being asked what happened when you arrived at the accused's house? - We were asked if we did not hold a meeting when we 40

got to Malindi's house.

And you said you went to Malindi's house and the accused spoke to you, you remember that? - I told the Magistrate that when I got at Mr. Malindi's house the meeting had finished. I found the meeting already over; I was then told that I and Ronnie are in the same group and that I would go out with Ronnie.

10 You were then asked this question: "Did he say what you and Ronnie were to do or anything like that?" - Yes.

That answer that is recorded is that you said: "He said Ronnie and I would keep in the Chinyika area?" - Yes.

Then you were asked: "For what reason?" - Yes.

20 And then you said: "He said we were the police for ZAPU and we should look after and keep that area?" - No, my Lord, I did not say so; my companion said that. I would not have said that we were the police force of ZAPU because when I arrived the meeting was finished.

You say your companions said this? - Yes, we were together when he said so.

Which companion? - Ronnie.

Who did he say it to? - He told the Court in the Magistrates Court.

BY MAISELS, J: Ronnie what? - Yes, my Lord, and also spoke in the same Court.

30 I am sorry, I think there is a misunderstanding. He said Ronnie spoke in the Magistrate's Court and "I also spoke in that Court". Would you clear it up, please.

40 BY MR. ANDERSEN: Are you saying that Ronnie told the Magistrate that you were the police for ZAPU and you should look after the area? - My Lord, this was said by Ronnie and when I was asked, I told the Court that I heard my companion saying so, because even when we were arrested, Ronnie told the police that we were the police for ZAPU and that we were detailed to look after the area.

You told the Magistrate that you heard Ronnie say that you were to be the police for

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(continued)

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ZAPU? - No, I did not tell the Magistrate that; it was Ronnie who said so. I merely said we were to be the police for ZAPU.

You did say this to the Magistrate? - Yes.

Why did not you admit that in the beginning?

MR. MASTERSON: It is not quite the same thing.

MAISELS, J: I think there was difficulty in interpretation. There is always difficulty where you say: "He said that you said,..." It is a terribly difficult thing to get across to the African man. That has been my experience. I think that is so; I am not a linguist, but I think that is so.

10

MR. ANDERSEN: As your Lordship pleases.

MAISELS, J: But I am only saying I think you will agree there was a misunderstanding.

MR. ANDERSEN: As your Lordship pleases.

BY MR. ANDERSEN: When I asked you earlier whether or not you had been told you were to be the police for ZAPU in the area, you denied it; you said you had not been told it? - The reason why I said so, I heard this from Ronnie, I was not told this by Malindi.

20

Did you tell the Magistrate that the accused told you this, because that is what is recorded? - No, I had forgotten.

MR. MASTERSON: With respect, the passage which my learned friend appears to be referring to, which I understand to be at the bottom of page B 23, does not appear to me to say that the accused said this to the witness.

30

MAISELS, J: It is ambiguous, but the general sense is as put by Mr. Andersen, I think, Mr. Masterson, because you see it all starts higher up: "Q. Did the accused speak? A. He said you have arrived; the meeting is over, but Ronnie will be a member with whom you will stay. Q. Did he say anything else to you? A. No. Q. Did he say what you and Ronnie were to do or anything like that? A. He said Ronnie and I would keep in the Chinyika area. Q. For what reason? A. He said we were the police for ZAPU and we should look after or keep that area."

40

You can argue subsequently that there is room

for misunderstanding and misinterpretation, but, I think, Mr. Andersen is quite entitled to put the question in the form in which he has.

MR. MASTERSON: As your Lordship pleases.

BY MR. ANDERSEN: You cannot remember whether it was the accused who said that and you told the Magistrate? - No, I have forgotten that; I have no recollection.

10 BY MAISELS, J: If, in fact, you did say that it was the accused who told you this, that you were to be the police for ZAPU in the area, if you did say it, would that be correct; was it the accused who told you this or was it Ronnie who told you this? - My Lord, Ronnie stayed not very far from the accused. He had the opportunity of seeing the accused more often than I; so, Ronnie told me this, not the accused.

20 BY MR. ANDERSEN: In any event, you were told you were to be the police for ZAPU in the area?  
- Yes, I learnt that from Ronnie.

Now, you say the next day, Monday, you saw the accused who told you to come to his house in the evening? - Yes.

At what time did you see the accused when he told you that? - Twelve midday.

Had you a watch or are you estimating the time? - No, I have no watch on me, but the position was I often returned at 12 midday.

Returned where, to the farm?

30 BY MAISELS, J: From your milk round? - I used to deliver the milk to the police camp and it was at 12 o'clock that I would cycle from the police camp back home.

BY MR. ANDERSEN: Would it take you long to cycle from the police camp back to your home, have you any idea? - Yes.

Would it take you long to reach the accused's house or would that be quite near to the police camp? - A distance of about two miles.

40 BY MAISELS, J: Is that from the police camp to the accused's house? - No, my Lord, from the accused's house to the police camp I believe it is less than half a mile, but from my own house to the police camp would be two miles.

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(continued)

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BY MR. ANDERSEN: Now, the accused will deny that he was teaching at that time? - No, he saw me on Monday at 12 midday.

Where do you say you saw him? - I met him on the road.

Whereabouts? - My Lord, there is a carpenter's shop not very far from the accused's house which is close to the road. I saw the accused there.

Saw the accused going to his house or to the carpenter's shop? - No, I merely found him on the road as I was cycling past on my bicycle. 10

BY MAISELS, J: But where was he going, away from his house or to his house? - I met him on the road. It is hard to say. I do not know, whether he was going to his house or from his house.

You simply met him on the road? - Yes.

BY MR. ANDERSEN: And your evidence then is that that evening you went to the football field where there were other persons? - Yes. 20

And you say that accused and Ronnie, as I understood it, told you they had received a letter from Salisbury saying there was Mau Mau in Salisbury? - Yes.

Were those the exact words you used: "Mau Mau"? - No, we did not actually repeat the words, Mau Mau. I am using the word Mau Mau because I am speaking in my own language; that was not the exact word used by the accused. 30

BY MAISELS J: What does Mau Mau mean in your language? - It means riot.

BY MR. ANDERSEN: Did they say what was taking place in Salisbury? - Yes.

What? - People were fighting in Highfields.

Now, did Ronnie appear to know all about it? - Well, Ronnie knew it because accused had visited, gone to Ronnie's house.

BY MAISELS, J: How do you know that?

INTERPRETER: I beg your pardon, it is the other way round: Ronnie went to the accused's house. 40

BY MR. ANDERSEN: When? - I do not know

when it was that he had gone to the accused's house. I heard of it for the first time when we met.

Ronnie said he had been to the accused's house and heard of the strike? - On Monday evening when we met.

Did you understand that then that Ronnie had prior to that been to the accused's house and had learnt about the strike or riot, whatever it was?  
10 - Well, that is what he said there in the meeting in the presence of the accused.

Ronnie said that? - Yes, and the accused also.

Now what did Ronnie say, that he had been to the accused's house at some earlier time or did he just talk about this riot? - He said he had been to the accused's house.

Now, if Ronnie says that the first he ever heard of any disturbance in Salisbury was at the football field on Monday night, would you say he is not telling the truth? - No, I am not certain.  
20

Not certain? - Well, I am not certain of what you say because he definitely told me that he had been to Mr. Malindi's house. He did not tell me at the meeting that he had heard the news there at the meeting.

BY MAISELS, J: Did he tell you he heard the news anywhere else? - No, he said he had heard it from Mr. Malindi.

BY MR. ANDERSEN: I understood you to say that you went to the football ground with the accused and Lovemore and when you arrived there the others were already there? - Yes, in the bush.  
30

Are you sure they were there, because I understood from them that you, Lovemore and the accused got there first? - They were all there in the bush, because when we arrived we got at a place where there were some boulders and rocks and we sat down; we could hear them conversing a short distance away from these rocks.  
40

You have already also told the Court that you were given paraffin, rags and matches by the accused at his house? - Yes.

Was Lovemore present when you were given them? - Yes.

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If Lovemore told the Court that the accused did not give you any paraffin, rags and matches, and that Lovemore got them from somewhere else, what would you say to that? - Well, I do not know whether they were got previous to that from somewhere, but when I arrived the paraffin and rags were produced from the accused's house.

Did the accused produce them from some other room and give them to the two of you? - I was called into the kitchen where Lovemore and the accused were. When I entered the kitchen these rags and the paraffin were given to me. 10

BY MAISELS, J: The kitchen of whose house?  
- The kitchen of Mr. Malindi's house.

Lovemore and the accused were in the kitchen and you found the paraffin and rags there? - Yes.

BY MR. ANDERSEN: Were you told where they had come from? - No, I was not.

You have also said that you saw the accused on Tuesday, the next day? - I saw him on Tuesday, the next day, but Wednesday is the day he gave me the letter. 20

A Wednesday or the same Wednesday of the week the burning took place? - There was just a lapse of one day in between.

In any event could you tell me what time you saw the accused on the Tuesday? - I do not know what time it was; it was in the morning when I saw him.

Would it be on your milk rounds? - I was delivering milk at the time. 30

At that stage had you already delivered milk to the police camp or were you about to do so?  
- No, that was before I did.

That would be before midday? - Before midday.

Where did you see the accused on that occasion? - Well, when delivering milk I had occasion to go round the school, so the children came to greet me, the pupils of his school, and at that stage the accused saw me. 40

Were the pupils present when he saw you? - Yes, they saw me; I do not know them; I am unable to say who they are, but they did see me with him.



Were they present when the accused spoke to you?

BY MAISELS, J: Put it that way if you like. I take it you want to know whether they could hear; the wording of the question was a little ambiguous.

BY MR. ANDERSEN: Could the pupils have heard what was said by you and the accused to each other? - No.

10 What were you doing there? - I was delivering milk. I stopped to exchange greetings.

What were you going round the school for? - Well, there is a road. To go to Goromonzi one has to pass by the school.

20 BY MAISELS, J: Is that the normal route you take for your milk delivery? - Well to go to Goromonzi Secondary School there is another road which would take me direct to the school, but there is another road again which passes by the accused's school.

And did you go past the accused's school personally? - Yes.

Why? - Well, that is a short cut to go.

To the kitchen? - No, from the kitchen to go to Goromonzi itself this is a short cut.

30 BY MR. ANDERSEN: The accused will deny that he saw you on this occasion? - I am certain I saw the accused; I did not go to his house, I passed by his school along the road and saw the accused.

BY MAISELS, J: Did you speak to him? - I spoke to him.

BY MR. ANDERSEN: You were quite willing, I take it, to go and burn the places you burnt? - I was not willing, I was sent, so I obeyed; what was said to me, so I did.

40 You were just told to go and burn, nothing else? - He said we also want to take action to this end, what I have already described as Mau Mau in my country.

You were quite willing to co-operate with the other people to take action? - Because I was sent and it was quite co-operative.

You did not have to be forced to co-operate? - No, I was not forced.

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Sixpence

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Examination  
(continued)

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(continued)  
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You were not threatened by anyone? - Well, there was a threat. They said: "Anyone who refuses to do this, his house will be set on fire". That was the only threat I had.

BY MAISELS, J: You mean as a sort of general talk? - Yes.

BY MR. ANDERSEN: Who said that? - This was said at the meeting in the evening. So many people spoke in the course of the meeting, I do not remember who said that, whether it was Malindi or Ronnie. 10

BY MAISELS, J: Which meeting, on Monday night? - On Monday night in that bush.

BY MR. ANDERSEN: I take it that everyone present heard this threat?

MAISELS, J: He said many people said this.

BY MR. ANDERSEN: Perhaps I can just clear it up. I take it that all the people present must have heard this threat? - I would not know if they all heard it. 20

BY MAISELS, J: Who said it? - No one answered after this person had said it. Now, I am not certain who said it, but Malindi and Ronnie.

BY MR. ANDERSEN: You will recollect making a statement to the police after you had been arrested and after you had been warned that you did not need to say anything that would incriminate you? - No, that was never said to me by the police. 30

You made a statement to the police, to the C.I.D., a statement which was produced at your trial? - Yes, I made a statement to the C.I.D.

Did you make a truthful statement to them? - Yes.

Were you confused at all when you made the statement to them? - My Lord, when a person is under arrest he will just say what he thinks could be said. I do not know whether I was confused or not because I was arrested. 40

What do you mean by that, that you would say what you thought best for you? - No.

You would tell them the truth in other words? - Yes.

You were not rushed; you were allowed to make a statement in your own time? - I was not rushed.

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You were not threatened? - No.

Do you recollect saying this in that statement: "On Sunday, the day before the burning, and the day after our first meeting, I went off on my milk rounds"? - I said that and at the same time I told them that.....

Sixpence

Cross-  
Examination  
(continued)

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10 MR. MASTERSON: I.....

MAISELS, J: Just a moment.

INTERPRETER: The witness's answer is: "I admit saying so, but at the same time I told the police that I was mistaken".

BY MR. ANDERSEN: So you did not see the accused on Sunday when you went on your milk rounds? - I did not see him on Sunday.

20 When did you tell the police that you were mistaken? - When the statement was read out to me I told them there and then that with regard to Sunday it is a mistake.

It is recorded in the statement that it was read over to you and you adhered to it, you signed it, put your mark to it? - I admit I signed it and adhered to the statement, but that was after I told them that I had not met the accused on Sunday.

Did they change the statement? - They did not.

30 They read out the statement at the Preparatory Examination, at your trial? - Yes, they did.

You did not challenge it then and say it was not correct? - I may be mistaken that I did not mention it at the Court.

What do you mean by that? - Well, I may be to blame because I have not challenged it at the Court.

40 BY MAISELS, J: "I may be to blame for not having done so". Is that what you say? - Yes, my Lord.

BY MR. ANDERSEN: When you told the police you were mistaken did you ask them to alter the statement to record accurately what happened? - I did not tell them to alter the statement, but I

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definitely told them that I did not see him on Sunday; that is a mistake. I wanted them to understand that I had not seen him on Sunday; that I definitely said.

I had better read the rest of your mistake. After you said the first sentence you said: "I called at Malindi's house at midday, he said come to my house tonight; there will be a meeting."

MAISELS, J: I am sorry, Mr. Andersen, the first sentence you read is something about the Sunday. 10

MR. ANDERSEN: The second sentence is: "I called at Malindi's house at midday; he said come to my house tonight; there will be a meeting."

MAISELS, J: Called at Malindi's house at midday; that is the same mistake.

MR. ANDERSEN: Yes, I am just....

MAISELS, J: "Called at Malindi's house at midday and he said"....

MR. ANDERSEN: "Come to my house tonight; there will be a meeting. I went to his house after sunset. The others present were Malindi and Ronnie. I then went with them to a place in the bush near the school playing fields and there I saw Lovemore, Masawi, Hensiby, Nowa and Supa; but Sevenzayi was absent". Do you recollect that? - Yes, I do. 20

Can you tell me how you came to make that mistake? First of all can you tell me whether it is also a mistake when you said you met in the bush on Sunday night? - Yes, it is a mistake with regard to the day. 30

Can you tell me how you came to make that mistake? - My Lord, the days were Saturday and Monday. On Saturday I did not arrive in time. I arrived to find the meeting already finished; but on Sunday - I mean Monday - I got there on time.

MAISELS, J: That is not an answer to the question, Mr. Andersen. You need not tell me if you do not wish to, but in that statement is there a reference to another meeting on the Monday? 40

MR. ANDERSEN: Yes, there is, my Lord.

MAISELS, J: Now, this bit that has just been read out, about the witness's having told the police that he called at Malindi's house at

at Midday and he said: "Come to my house tonight; there will be a meeting". He said he went to his house after sunset and there found Malindi and Ronnie and they went to the football field and they met the others. That relates, apparently, to a meeting on the Sunday night. Now, did you make such a statement to the police to say that you had had a meeting on the Sunday night as well?  
 10 - My Lord, I told the police after I had made the statement that I was confused about the days. I admit I was confused about the days. When I was then composed I was able to tell them the correct days.

So you made a mistake about that as well; that is the question? - He is repeating what I said. I have already said that I was confused only about the days and not the contents of the statement, but the days. I recorded the Sunday as being a Saturday, my Lord. We went into the bush on Monday and on Saturday the meeting was held in the house.  
 20 So I was confused over the days only.

BY MR. ANDERSEN: And you also recollect that in the same statement to the C.I.D. you told them that on the Sunday night it was arranged what places would be burnt and who they would be burnt by? - I still say that the mistake there is just the day; if you can only omit Sunday, then the story will be correct.

You may well have made a mistake, but the fact is you told the police that you made all the arrangements on Sunday night; is that correct?  
 30 - Well, I still say if I made a statement with regard to Sunday, may the Court just omit the word, "Sunday"? I was confused over the day.

MAISELS, J: He says he made a mistake. He told you that so far as everything you read is concerned for Sunday read Monday.

MR. ANDERSEN: I have not understood him to concede that he did tell the police that he made the arrangement for Sunday.  
 40

MAISELS, J: He said all that, correct me if I am wrong. When you put to the witness all the things that had been read out to him he said: "Instead of Sunday one should read Monday".

THE WITNESS: That is correct, my Lord.

MAISELS, J: That is as I have understood it for a long time.

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MR. ANDERSEN: I am much obliged. And then you continued that Malindi told you that you should meet him again at the same place after sunset on Monday night. I have to rephrase it. I shall read the exact words: "Malindi said that we must meet again at this place after sunset on Monday night."? - No, my Lord, I met him on Monday at midday when he told me to come.

All I want to know is whether you told the police that on Sunday night Malindi told you to meet again at the same place after sunset on Monday night? - On Monday he said we were going to meet here, meaning his house, because I had met him on Monday near his house. 10

Accepting your mistake, did you say to the police on Sunday night Malindi told you to meet again at that place the following night after sunset? - No, Not on Sunday; I did not say so.

You deny making that statement to the police? - I do not know whether the Court misunderstood me; I said I was confused about the days. I met Mr. Malindi on Monday when he told me, "come here tonight". When he referred to the same place, he referred to the place where we had met because I had met him near the house on Monday, but you repeat Sunday again after I had told you I was confused over the days. 20

You see, you could not have been confused as to the days when you had spoken of both Sunday night and Monday night? - Well, I repeat to you the first meeting was held on Saturday and the second was held on Monday. Those are the correct days. 30

I am not interested in that; I am only interested in what you told the C.I.D.

MAISELS, J: What you are recorded as having told them through an interpreter, to be strictly correct, if you are going to put it to him - but carry on.

MR. ANDERSEN: (To interpreter) Will you put that? 40

MAISELS, J: What Counsel is putting to the witness are a statement that he is said to have made through an interpreter to the police and, according to a document which he has in front of him, was interpreted back to him after it had been written down and in that he referred, apparently,

to a meeting on Sunday night and a meeting on Monday night. Is that correct?

MR. ANDERSEN: That is correct.

BY MAISELS, J: The question that has now been put is did he tell the police that there was a meeting on Sunday night and on Monday night, in addition, I take it, to the meeting to which he came late on Saturday night? - I admit saying this, my Lord. That is why I said I was confused over the days.

10

BY MR. ANDERSEN: Do you also admit saying to the police when you went into the bush on Monday night the accused said you must burn the places arranged which had been arranged on Sunday night? - No, I said he said when you get there we must burn what ought to be burnt, that is schools and churches.

No, no, I am just putting to you that you are....

20

MAISELS, J: But he has admitted that he told the police that.

MR. ANDERSEN: With respect, he has not admitted that yet.

MAISELS, J: He has admitted that; he told the police that there were meetings on Sunday and Monday.

MR. ANDERSEN: I now seek to find out the day. Does your Lordship wish me to put that question?

MAISELS, J: Put whatever you like.

30

BY MR. ANDERSEN: Do you also admit that you told the police in that same statement that when you met on Monday night the accused said you should burn the places which had been arranged, meaning the places arranged to be burnt on Sunday night? - Yes, I did say that.

Now, the accused will deny that he arranged any burning with you and the others? - Well, let him deny it; but the truth is he instructed us to do so.

40

And he will also say that on the Saturday night you were present at the whole of the meeting that took place at his house? - There was a meeting in the accused's house on Saturday.

BY MAISELS J: No, no, you have missed the

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Re-Examination

point. You have said that you came when the meeting was finished? - Yes.

The accused says, or will say, that you were there right through the meeting from beginning to end? - No, he is lying; that is incorrect.

BY MR. ANDERSEN: He will say that you must have known well that there was a strike in Salisbury on Monday? - No, no one told me that.

RE-EXAMINED BY MR. MASTERSON: When did you first hear of the possibility of a strike occurring in Salisbury? - On Monday, I was told that on Monday. 10

That is the Monday you did the burnings? - Yes.

Do you know anything or any details of Ronnie visiting the accused?

MAISELS, J: Just a moment; how does he know, if he does know, from what Ronnie told him or from what somebody else told him?

MR. MASTERSON: Anything, my Lord. 20

MAISELS, J: I see, all right. Very well.

THE WITNESS: In the course of my rounds with the milk I have often seen Ronnie going to the accused's house or met him coming from the accused's house. I concluded from that that Ronnie was a frequent visitor at the accused's house.

BY MR. MASTERSON: You talk about the meeting in the bush to the effect that you and the accused and Lovemore went to where there were some rocks and you heard other voices? - Yes. 30

Did you go to where the voices were or did the voices come to where you were? They came to where we were.

And this statement that my learned friend has been putting to you in which you talk of two meetings, one on Sunday and one on the Monday - sorry, three - one on Saturday, one on Sunday and one on Monday - do you remember what day you made that statement in relation to the day on which you were arrested? - I do not remember. I believe it is on the 6th June when I was arrested. 40

MAISELS, J: That is not a satisfactory way of putting it. You will always get that kind of



answer.

BY MAISELS, J: You were arrested? - Yes.

How long after you were arrested did you make that statement? - Not many days.

A day or so or the next day or a week. How long; can you remember? - The following day.

BY MR. CRIPWELL: Who did you make this statement to that you have been asked about? - I made this statement to the police.

10 The police or the C.I.D.? - The member in charge and an African detective.

BY MAISELS, J: An African detective? - Yes.

BY MR. CRIPWELL: And you say that when it was read back to you, you asked for something to be deleted; you said something was not correct? - Yes.

And after that you made your mark on the statement? - Yes.

20 Yet when they read it back they had not omitted that piece which you said was a mistake when it was read back to you. You now say they had not taken out that bit? - Well, when it was read out again, after some time, I noticed that it had not been struck out or deleted.

Did you make another appeal? - No, I only said it there and then at the time, once only. I did not repeat it again.

30 BY MAISELS, J: I want to come to this meeting on the Saturday night. You told the Court that you came late? - Yes.

You were told the meeting was over? - Yes.

Were the others there, Masawi and Sevenzayi, the accused and Lovemore, and the other people of whom you have spoken? Were they still there? - Yes, I found them all still there.

When they left, did they appear to have an argument with the accused? - No, not at all.

Have you ever heard the accused use a word, "Imperialism"? - No.

40 "Capitalist"? - No.

"Nationalist"? - No.

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Did you ever hear the accused saying that you have to respect African women? - No, he did not.

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Sixpence

Witness withdrew.

Re-Examination (continued)

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No. 10.

No. 10.

Hensiby

HENSIBY

Examination

HENSIBY, duly sworn and examined (Interpreted).

BY MR. MASTERSON: How old are you? - Thirteen and a half.

Where do you live? - I live at Goromonzi.

At whose Kraal? - At Yafeli's Kraal.

10

How long have you lived there? - I was born there.

Do you know one Masawi? - I do.

Is he related to you in any way? - Yes.

BY MAISELS, J: What is the relationship? - Masawi's mother is my mother's younger sister.

So he is your cousin? - Yes.

BY MR. MASTERSON: And were you living at Yafeli's kraal in May this year? - Yes.

Now, have you any knowledge of the fact that the church at Chinyika and certain hide sheds and storage sheds at Chinyika dip tank were burnt down this year? - Yes, I have knowledge of it.

20

Have you been convicted in relation to any of these offences? - Yes.

Did you receive eight cuts for your part in these crimes? - Yes.

Did you, in fact, take any part in these burnings? - Yes, I took part.

What did you do? - I pulled the grass thatch.

30

Where? - There is a small brick house just built next to the dip tank.

Which dip tank? - Chinyika dip tank.

Was Masawi with you? - Yes.

And was this on Monday, 14th May this year? - Yes.

Prior to this burning and as far as you were concerned, when was the possibility of such an event taking place first discussed? - It was first discussed on Friday.

Where were you when this was discussed? - It was first discussed on the road.

Which road? - The road from Goromonzi to Salisbury.

Anywhere near the Secondary School? - Near there.

Who was with you when this was discussed? - Masawi, Ronnie, Nowa, Lovemore and myself.

And do you remember whether Ronnie had anything in particular to say at that meeting on Friday afternoon? - Ronnie said it would be better if we took action in Goromonzi.

Did he talk about action anywhere else? - He merely referred to Goromonzi only.

How did this group of five come to move away.....

BY MAISELS, J: What sort of action? - Well, he merely used the word if we could do action and did not say what sort of action it was.

BY MR. MASTERSON: From where you were discussing this on the road, how did this group of five come to leave the road? - When we left Ronnie left to go to his own house; he asked us if we would go and see teacher Malindi.

What did you do? - Masawi, Lovemore, Nowa, and myself went to teacher Malindi's house.

What did you find when you got to the house? - He was not at his house when we got there. We went to the school and found him there.

What happened there? - We entered where he was in the School. What took place there? - Masawi spoke to him. He said Ronnie had said if an action was performed in Goromonzi area....

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I do not understand that. Ronnie said, "If an action was performed".

BY MAISELS, J: What was the last thing you said?

INTERPRETER: May I ask him to repeat it?

MAISELS, J: Yes.

THE WITNESS: We entered the class room where the accused was. Masawi spoke to Malindi, the accused, and said Ronnie had suggested that an action would be better if performed in Goromonzi. It was Ronnie who suggested that.

10

BY MAISELS, J: An action better be performed in Goromonzi? - In Goromonzi.

BY MR. MASTERSON: Then what happened? - This is all what was said. Then we left.

BY MAISELS, J: What did the accused say about it? - He said everything was all right, but said we should go and see Sevensayi first.

BY MR. MASTERSON: Then what happened? - It was suggested that Masawi who was employed should go and see him and Masawi was agreeable to go and see him. On the Saturday morning he went to call Sevensayi.

20

Did you see any of this yourself, or is that just what you heard? - He went there because I was staying with him.

BY MAISELS, J: Did you go with him? - No.  
Go on.

BY MR. MASTERSON: When did you next see the accused? - At sunset.

30

What day? - On Saturday.

Where? - At his house.

How did you come to be there? - Well, he had said, "If we found Sevensayi better go to his house in the evening, then we would arrange what to do".

BY MAISELS, J: I am sorry. The accused had said if you find Sevensayi then you should have a meeting at his, the accused's house on what night? - On Saturday night.

40

That was arranged at the class room? - Yes, my Lord.

I see.

BY MR. MASTERSON: And what happened when you got to the accused's house on the Saturday evening? - I found my companions already there.

Who did you find there? - Masawi, Ronnie, Nowa, and Lovemore. Those are the persons I found there.

Did you go to the teacher's house alone?  
- I went with Supa.

10 Did anybody else appear at the teacher's house? - Sixpence appeared.

And was the accused there? - He was.

Did you see Sevenzayi that evening? - Yes, I saw him.

Where? - In teacher Malindi's house.

20 Now, once you had got to Malindi's house, what happened? - I entered the house and sat down while they were still chatting. When they then started the meeting I was told to go outside and watch out for people who are coming.

Who told you to go out? - The accused, Malindi, told me to go out.

What did you do when he told you to go out?  
- I went outside.

And while you were outside did anybody come?  
- No one came.

Do you know when Sixpence got to the accused's house? - Sixpence was the last person to come. He found us all there.

30 BY MAISELS, J: Were you outside when he came or were you inside when he came? - I was outside.

BY MR. MASTERSON: Now, do you remember how the meeting on the Saturday evening came to an end? - I do.

What do you remember about that? - When the meeting ended I was told to go inside, I was called inside.

40 What happened when once you got inside? - Accused told me that he would go with me.

Where to? - He did not tell me where we were going to go.

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What did you understand by his saying that he would go with you? - Well, they all had been formed into groups of two each.

BY MAISELS, J: How do you know that? Who told you that? - The accused told me that.

BY MR. MASTERSON: And what happened once the accused had informed you that you were to go with him and that there were these groups? - He told me to go to his house whenever I had time at a later date.

10

BY MAISELS, J: "Whenever I have time"? - Yes.

BY MR. MASTERSON: Do you remember anything else that was said? - That was all. Then the meeting had ended.

Now, how did the people come to leave the accused's house?

BY MAISELS, J: What do you mean by that? On bicycles?

MR. MASTERSON: No, how it was that they parted.

20

MAISELS, J: Do you mean what was the atmosphere?

MR. MASTERSON: Yes, that is what I am after.

BY MAISELS, J: I think you might put it another way. When the people left the house did you see them leave - Lovemore, Masawi, Sevenzayi, and all the people who were there? You saw them going away? - I did.

Did you hear anybody say anything in anger to anybody else? - No.

30

Did anybody appear to you to be, did the people when they left appear to be friendly or unfriendly? - They were friendly when they left.

Friendly amongst themselves; and what about towards the accused? - So with the accused too; they were friendly with him.

BY MR. MASTERSON: What did you say to the accused immediately before you went away? - I said I would come when I have time to do so.

40

Do you remember what other people said when they left the accused? - I did not overhear what they said.

Who did you leave with? - I left with Masawi.

When did you next see the accused? - On Monday at about four o'clock, 4 p.m.

Did you see him on Sunday at all? - I do not remember if I did.

Firstly, where did you see the accused on Monday? - I saw him watering his flowers at his house.

10 And what time of the day or night was that? - About four o'clock I would say.

And what happened then? - He told me that all the people had been to his house and that he had told them that they were to come to his house that night.

Were you with anybody at that time? - I was with Masawi.

20 What did you do after the accused has informed you of that? - He said we would meet at the football ground, that is the ground used by the school children.

Did you do anything about meeting at this place?

MAISELS, J: Did you go to the meeting? - I went there at sunset, yes.

BY MR. MASTERSON: Who with? - With Masawi, Nowa and Ronnie.

30 Who did you find when you got there; if anyone? - I saw teacher Malindi, Lovemore and Sixpence.

What happened there on Monday evening at the football ground?

40 BY MAISELS, J: That Monday night at the football ground? - The accused was holding a letter which he said came from town. The letter said that there was a strike in Salisbury. He said an action should be taken here today, tonight; he asked if anyone knew where St. Dominics is situated and Sixpence said he knew where that church was.

BY MAISELS, J: Who said he knew where it was? - Sixpence, and he said where the dip tank is situated.

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Who said? - The accused; and Lovemore said he knew where the dip tank was situated, and he said we ought to go and burn them down tonight. And Lovemore said he was prepared to go, but he was to go with Sixpence, the two of them. Nowa and myself were told to go and burn down the dip at Chinyika.

To go where: - A dip tank at Chinyika, to go and burn that down. Masawi was told to go and burn down Tegere's house. Accused himself said he was going to burn Chinyika's church. He said he was going to use paraffin in burning down the church himself. That was all that was said there on the spot; then we left. 10

BY MR. MASTERSON: Who was it who arranged that you and Nowa should burn the Chinyika dip? - Teacher Malindi was saying all this.

Who was it who arranged that Masawi should burn Tegere's house? - The accused.

I understand Ronnie was there; what happened to him? - He was to go and burn maize in Mr. Hughes's farm. 20

Who arranged that? - Teacher Malindi.

And what was the reaction of you and the others to the accused's suggestions? - We were quite agreeable.

BY MAISELS, J: Ronnie, was he agreeable? - He was, my Lord, but later said he was suffering from a sore leg and that he would not go.

BY MR. MASTERSON: Was there anything to prevent the accused realising that you did all agree to this? 30

MAISELS, J: Why do you want to put that question over Mr. Masterson? He says the accused gave us instructions and we agreed. You leave that to the defence. It is an unnecessary question.

BY MR. MASTERSON: As your Lordship pleases. Do you know if anything took place between Lovemore and Masawi before you went off? - No, I do not know anything. 40

All right. Where did you go from this meeting place at the football ground? - I went home with Masawi.

Where to? - At my parents' house.



BY MAISELS, J: Went home with Masawi to my parents' home? - Yes.

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BY MR. MASTERSON: Is that Chimanukili's Kraal?

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MAISELS, J: No. Be more careful not to lead, Mr. Masterson.

Hensiby

BY MAISELS, J: Where is your parents' home? - The kraal is Chinyika's kraal. The kraal head is Yafeli.

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10 BY MR. MASTERSON: So, to whose kraal did you go? Did you go to Yafeli's kraal or to Chimanukili's kraal, which is part of Yafeli's kraal? - Chimanukili's kraal.

And did anybody go back there with you? - I was with Masawi.

Do you know what happened to Nowa when you left him? - No, I do not.

MAISELS, J: You say you do not know what happened to Nowa.

20 MR. MASTERSON: That is what he said.

BY MR. MASTERSON: Now, what did you do once you got home? - I had my evening meal, was chatting and then lay down to sleep and went to sleep.

30 Then what happened? - When we were fast asleep Malindi knocked at the door; we opened for him and he entered the house. He sat on the bench. When he sat we fried some monkey nuts for him. When he had finished eating the monkey nuts he said, "Now, let us go". He said, "We do not know whether Nowa is coming or not."

Who was it who said that? - The accused, Malindi.

40 Then what happened? - We left the house, we walked up to the road. When we got to the road, he picked up a bag which he had. We left in the direction of Chinyika church. When we arrived at the house occupied by a demonstrator, the accused then put on a sack that he had; we got up to this school roof. Then he told us we should set ours on fire at 11 o'clock. We left him entering a class room.

BY MAISELS, J: How would you know what the time was? - Masawi had a watch on him.

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Where did he get it from? - He had got it from Lovemore.

BY MR. MASTERSON: Did you see him getting it from Lovemore? - Yes.

Where was that? - It was given to him whilst we were at the meeting.

And where did you and Masawi then go? - We went in the direction of the dip tank. We arrived at the dip tank; we sat down for some time Masawi told me it was then the time to go and burn. I pulled the grass thatch, then he lit it. He went to burn the hide sheds alone. Then we went back home to sleep.

10

I thought that Masawi was originally meant to burn Tegere's place? - Yes.

Why did he go to the shed and burn that? - He was afraid of dogs at Tegere's house.

When did you learn that? - Whilst we were still in the house he said: "As Nowa did not turn up I am no longer going to burn Tegere's house down; I am going to the dip tank".

20

Was the accused there when this was discussed? - He was.

What was his reaction to that discussion? - Well, he said that was all right: "You go and do that".

Did you see anything happening at the school that night?

BY MAISELS, J: What school, Chinyika school? - No, I did not.

30

BY MR. MASTERSON: When you talk of burning down a shed and a hide shed where were these buildings? - There were two houses. One is built of brick walls and the other has a pole and dagga wall. So, I pulled the grass thatch from the brick wall.

Is this the Chinyika dip? - Yes.

Cross-  
Examination

CROSS-EXAMINED BY MR. ANDERSEN: You say that on Monday evening when you met, the accused told you about a strike in Salisbury? - Yes, on Monday evening.

40

Was that the first you had heard about the strike in Salisbury? - Yes.

I want to question you about Friday, where

you recollect you met various persons on a road, can you give any idea as to why you met on the road; were you walking together or had you arranged to meet? What was the position? - I was employed at the time and I met them on the road.

Were the other persons already together when they met you? - Yes.

10 BY MAISELS, J: Was it just a casual meeting or was it arranged? - It was a casual meeting. I was on the road going home when I met them.

BY MR. ANDERSEN: Now, Ronnie has told us that the meeting to be held at the accused's house on Saturday evening had been arranged by him when you saw the accused on Friday? - Well, he had told us to come and see Malindi and tell him about.....

20 Tell Malindi about what, the meeting to be held on Saturday? - No, tell him that Ronnie suggested that an action should be taken in the Goromonzi area.

Did you hear anything at that stage about a meeting to be held on Saturday? - I heard of it when I then went to the school where Malindi was.

Was that before you spoke to the accused that you heard of it, or after? - Masawi had already told him what Ronnie had said.

30 When was the meeting actually arranged, the meeting for Saturday, as far as you know? - It was arranged in the school at the time.

BY MAISELS, J: When you went there with Masawi? - Yes, and Lovemore and Nowa.

BY MR. ANDERSEN: Masawi has told the Court that on Friday evening Ronnie said that a strike was to be held at Salisbury on Monday. Did you hear that? - No, I did not.

40 And he has also told us that Ronnie contemplated taking action on Monday to coincide with that strike. Did you hear that? - No, I did not know that.

Did you have any idea as to why Ronnie decided to talk about action at this particular time? - No, I have no idea.

Now, the accused will deny that you saw and spoke to him on Friday evening? - We found him in the class room at his school.

In the High  
Court  
Crown Evidence

No. 10.

Hensiby

Cross-  
Examination  
(continued)

19th October,  
1962.

In the High  
Court  
Crown Evidence

No. 10.

Hensiby

Cross-  
Examination  
(continued)

19th October,  
1962.

He will say that it was Ronnie and Masawi who went to see him and spoke to him? - No, that is I, Masawi, Nowa, Lovemore.

Had you any idea where Ronnie had gone? - On Friday?

Yes. Why did not he go with you to see the accused? - Well, he said he was going home and suggested that we go and see him.

Ronnie lives just nearby where you do, does he not? - Yes, to go to Ronnie's is up and our huts are below that place. 10

Was Ronnie employed at the time? - He was not working.

Did he give any reason why it was necessary for him to go home, why he should not go and see the accused? - No, he did not give any reason.

When the accused on Friday evening mentioned a meeting on Saturday did he mention any definite time for a meeting or did he just say there would be a meeting at some time on Saturday? - No, he said if we found Sevenzayi a meeting might be held. 20

So, there was no definite arrangement for a meeting on Saturday? - There was no definite meeting.

How did you find out if there was to be a meeting on Saturday evening? - Masawi, after visiting Sevenzayi's house called in to tell me and invite me to go to the meeting with him.

What time did Masawi tell you that? - At sunset. 30

Did you immediately go to the accused's house? - Yes, we set off straight away. Whilst on the way he then gave me his bicycle and told me to go and call Supa.

BY MAISELS, J: Who gave you his cycle? - Masawi.

BY MR. ANDERSEN: Did you call Supa? - I did.

The accused will deny that he told you to go and wait outside his house while the meeting was held on Saturday evening? - He definitely told me to go outside. 40

When you went outside where did you go to?

- I stood outside past the verandah on to the steps; as one goes to accused's house there are steps before you come to the verandah outside.

Were you standing on the steps? - The steps outside, not the steps inside the house.

Steps leading on to the verandah of the house?  
- Yes.

BY MAISELS, J: From the garden on to the verandah? - Yes.

10 BY MR. ANDERSEN: So you would be right on the edge of the verandah? - Yes.

Could you hear what was going on inside the house? - No.

You have said that at some stage or another the accused called you and indicated that you were to be in a group with him? - Well, when the meeting had ended he then called me. It was then he called me and told me that he would go with me.

20 He also told you the other groups? - No, he merely said we have formed them into groups of two each.

Did he give you any idea as to when these groups were likely to take action? - He said a meeting was to be held the following week.

On what day of the following week? - On Saturday.

Where would the meeting be held? - A meeting was to be held in the bush.

30 BY MAISELS, J: On the following Saturday? - He said a meeting would be held in the bush.

BY MR. ANDERSEN: Did he tell you where in the bush the meeting would be held? - No.

Were the other persons able to hear when the accused told you there would be a meeting in the bush the following Saturday? - Yes, they were able to hear that.

40 Did he give you any idea of what would be done, what would be the purpose of the meeting to be held? - No, he did not.

Did you have any idea at all of what you and the accused were going to do?

MAISELS, J: You mean on that Saturday?

In the High  
Court

Crown Evidence

No. 10.

Hensiby

Cross-  
Examination  
(continued)

19th October,  
1962.

In the High  
Court

Crown Evidence

No. 10.

Hensiby

Cross-  
Examination  
(continued)

19th October,  
1962.

MR. ANDERSEN: Yes, as a group.

MAISELS, J: At what stage?

BY MR. ANDERSEN: On the Saturday night, when the accused told you you were to be in a group with him, did you have any idea of what the two of you were going to do? - No, I did not know what we were going to do.

Were burnings mentioned at all on that occasion? - No, no burnings were mentioned.

BY MAISELS, J: Not to you? - Not to me. 10

BY MR. ANDERSEN: The next time you saw the accused was on Monday at about four o'clock? - Yes.

Where had you been, how did you come to pass his house? - I was coming from work.

Where do you work? - I was employed by the Secondary School.

BY MAISELS, J: As what? - Watering the flowers in the garden and vegetables near the school. 20

You said you were 13 and a half. What standard have you reached at school? - I passed standard III and I had no money for school fees, then I stopped.

BY MR. ANDERSEN: Masawi was with you at the time on Monday afternoon? - Yes.

How did he come to be with you? - Masawi came with me, coming to my place of work. He was sitting outside when I was told to go off duty.

And then you walked past accused's house? - Yes, the two of us. 30

Did not go for a strole anywhere? - No.

The accused will deny that he saw you on this occasion or Masawi? - I saw him when I was with Masawi.

You say he told you and Masawi to go to his house in the evening? - He said people who had been to his house were told by him to go back to his house that day in the evening.

And did he tell you and Masawi to do the same? - He told us we would meet at the football ground. 40

Did he tell you where you had to meet at the football ground? - The arrangement was we would meet at the ground itself, that we would find them there.

In the High  
Court

Crown Evidence

Did he give you any idea where you would find them; would they be in the middle of the field? - No, no particular spot was mentioned.

No. 10.

Hensiby

How would you know where to find them? - We went to the football ground and saw them outside the ground and we went there.

Cross-  
Examination  
(continued)

10

Did you remain with Masawi for the rest of that afternoon up to the time you went to the football ground with him? - Yes.

19th October,  
1962.

Did you speak to any other person during the course of the afternoon after you had seen the accused? - No.

Did Masawi speak to any other persons? - Not that I saw.

20

Well, you were with him the whole time? - Yes.

How is it that you came to meet up with Ronnie and Nowa, I think you said, whom you went to the football field with? - They called for us at the home.

BY MAISELS, J: Ronnie and whom? - Ronnie and Nowa.

30

BY MR. ANDERSEN: When you got to the football field where you say you found the accused, Lovemore, and Sixpence, it was arranged what burnings should be done? - Yes.

Was everyone very pleased to be able to take action for ZAPU? - Yes.

BY MAISELS, J: Were you a member? - I had just joined; I was.

Was the accused a member? - Yes.

BY MR. ANDERSEN: None of you had to be persuaded to do anything? - No one was persuaded.

There were no threats? - No one threatened anyone.

40

At any time? - No.

I take it you were there the whole of the time these arrangements were made? - You mean in the bush?

In the High  
Court

Crown Evidence

No. 10.

Hensiby

Cross-  
Examination  
(continued)

19th October,  
1962.

Yes? - I was.

You apparently then went home, had an evening meal and went to sleep? - Yes.

And the accused then came and woke you? - Yes.

Where was Nowa going to meet you? - He was supposed to come and collect me from home.

At what time? - After he had had an evening meal.

So you knew long before the accused got there that Nowa was not going to go? 10

MAISELS, J: Because he had not turned up.

BY MR. ANDERSEN: Because he had not turned up? - No, I expected him to come.

Were not you expecting him to come after the evening meal?

MAISELS, J: He said he went to sleep after the evening meal.

MR. ANDERSEN: Perhaps I could clear this up. You were expecting Nowa after your evening meal? 20

MAISELS, J: After Nowa had his evening meal?

THE WITNESS: Well, I expected him to come after I had had my evening meal, that is, after his evening meal.

BY MR. ANDERSEN: Were you surprised or not that he was not there by the time you went to sleep? - I thought he might have been disturbed by something from coming at the time. 30

You had expected him before you went to sleep, is that it? - Yes.

After the accused had come and you and Masawi left with him you say the accused picked up a bag? - Yes.

I think you said, could you tell me where he picked up the bag in relation to the road that you went along? - A short distance from the kraal, before we come to the main road, on the grass verge; that is where the bag had been placed. 40

When you refer to the main road, is that the



road going to Salisbury? - It was from the footpath, not from the road.

In the High  
Court

The bag was a short way away from the footpath? - Yes.

Crown Evidence

No. 10.

Did you go along a road at all or did you go along a footpath? - We walked along a footpath and joined the road further ahead.

Hensiby

Cross-  
Examination  
(continued)

19th October,  
1962.

10

Would you say the bag was near the roadside when you got to the road that you eventually got on to? - No, I said on the grass verge, just on the side of the footpath before we got to the road.

You appear to have said to the Magistrate (page 25, bottom), when you were asked this question: "When you went out of the house what did the accused do?" Your answer is recorded as: "We walked and when we got to the road on the roadside the accused picked up a sack".

MAISELS, J: That is on the side of the road.

20

MR. ANDERSEN: No, he says it is not.

MAISELS, J: On the grass verge on the side of the road.

MR. ANDERSEN: On the footpath.

MAISELS, J: "We walked along the footpath, the bag was on the grass verge next to the footpath where it joins the road".

MR. ANDERSEN: I asked him was it anywhere near the road and he said no.

30

MAISELS, J: He said earlier the accused picked up a bag a short distance from the kraal before we came to the road, on the grass verge, that is where the bag had been placed.

MR. ANDERSEN: Is that his evidence-in-chief?

MAISELS, J: Well, ask the question; put it again.

BY MR. ANDERSEN: Did the accused pick up this bag anywhere near the road? - It was on the side of the footpath.

40

BY MAISELS, J: And how far is the footpath from the road? - A considerable distance.

All right.

In the High  
Court  
Crown Evidence  
No. 10.

Hensiby  
Cross-  
Examination  
(continued)  
19th October,  
1962.

BY MR. ANDERSEN: Did you say to the Magistrate: "We walked and when we walked to the road on the road-side the accused picked up a sack"? - It is a footpath which was referred to as a road in the evidence you are reading.

Why did you say: "We walked and when we got to the road"? - Well, we walked from the kraal on to the footpath.

I see. You also said that at some stage the accused put on a sack? - Yes.

10

Did he put on anything else? - Firstly, he put on a sort of plastic paper and removed that. He said they were noisy and people would hear him.

BY MAISELS, J: Plastic paper where, where did he put it on, on what? - put them on his feet.

And then he took them off because he said they were making a noise? - Yes.

BY MR. ANDERSEN: When did he take them off? - He put them on and walked a short distance from where I am to the table, a few yards, where he said they were noisy.

20

MAISELS, J: I am putting it down as walking a few yards.

MR. ANDERSEN: As your Lordship pleases.

BY MR. ANDERSEN: Did he put anything on, on his head, for example? - I did not see it.

When he put the sack on did anyone assist him? - Well, we helped him making the holes for the arms.

30

Did he tie anything around his wrist? - I did not see if anything was tied on his wrist.

MAISELS, J: "We helped him to make holes". Is that what you said? - Yes, for the arms.

BY MR. ANDERSEN: Do you mean by that that you opened up the sack or that you cut holes in it? - We cut the holes to make the holes; the sack had no holes.

BY MAISELS, J: Did you ask him why he wanted

to put the sack on? - I did not.

BY MR. ANDERSEN: The accused will deny that he had anything to do with these burnings? - He did.

He will deny that he said anything to you about a strike? - No, he told us and showed us a letter he had.

This was on Monday evening at the football field that he showed you the letter? - Yes.

10 Did the other persons there appear to know anything about it? - I do not know, my Lord. I think they did not know because the letter was produced there.

Masawi had never said anything to you about it? - No, he did not.

20 When you were on your way to the football field with Masawi, Ronnie and N'wa, did you have any idea what you were going there for? - Well, we had been called to meet at the football ground. I personally went to hear what it was that I was going to be told when I then arrived at the football ground.

Did you have any idea; what did you think you were going there for? - I had no idea.

Did you think of asking Masawi, Ronnie or Nowa or were they equally in the dark? - I did not think of asking them.

RE-EXAMINED BY MR. MASTERSON: Do you know the main road to Goromonzi in Salisbury that goes past the school? - Yes.

30 Are there any roads along which cars go that pass anywhere near Chimanikili kraal? - There are roads if one passes Chimanikili's kraal.

When you take the path by which you and the accused and Masawi left the Chimanikili kraal on the Monday night, do you come across any roads that cars go on? - Yes, our path would join the road.

How far from the Chimanikili kraal?

MAISELS, J: What is all this in aid of?

In the High  
Court

Crown Evidence

No. 10.

Hensiby

Cross-  
Examination  
(continued)

19th October,  
1962.

Re-Examination

In the High Court

MR. MASTERSON: There does appear to be confusion between roads and paths.

Crown Evidence

MAISELS, J: I suppose there is. Carry on by all means. Do not let me stop you. I am just wondering when we are going to get to the end of the road. Mr. Andersen, I am not quite clear. You put it to the witness that he was inside at the meeting on Saturday night.

No. 10.

Hensiby

Re-Examination (continued)

MR. ANDERSEN: No, I did not.

19th October, 1962.

MAISELS, J: You said the accused did not tell him to go outside.

MR. ANDERSEN: He may have been outside, but the accused did not tell him.

10

MAISELS, J: It is not part of your case that he was at the meeting?

MR. ANDERSEN: No.

MAISELS, J: I was not sure about that.

Witness withdrew.

No. 11.

No. 11.

Nowa

NOWA

Examination

NOWA, duly sworn and examined (Interpreted)

BY MR. MASTERSON: Where do you live? - Goromonzi.

20

Have you any idea of your age? - I do. I am not quite certain.

What do you believe yourself to be? - Between 16 and 17.

And were you living in Goromonzi in May this year? - I was.

Whereabouts in Goromonzi were you living? - At Yafeli's kraal.

Is that William Yafeli? - Yes.

30

Were you employed at the time? - No, I was

not employed; I had left employment.

Have you ever been to school. - Yes.

What standard did you reach? - I reached standard III and could not get a place for standard IV.

Do you know anything about the burnings which occurred at Chinyika Salvation Army School and Chinyika dip, Rusiki, St. Dominics School, on Monday the 14th May this year? - I do.

10 (To the Court): I do not want the witness warned in terms of section 289 on this occasion.

MAISELS, J: Why not.

Counsel addressed the Court.

After Counsel's submission on the point and the witness having been taken out of Court .....

20 MIISELS, J: If you tell me that this person is an accomplice - and from the evidence given already I think it is apparent prima facie, without assuming the evidence may be true - surely I have a plain duty under section 289.

MR. MASTERSON: As your Lordship pleases.

The witness called back.

NOWA, under former oath, recalled.

30 MAISELS, J: Will you tell the witness that certain questions are going to be put to him in connexion with what he says he knows about the fires that took place, and possibly questions in regard to other matters. Now, I have to tell you that you are not compelled to answer any questions which might incriminate you; but if you do answer all the questions that are put to you, truthfully, you will not be liable to future prosecution, even though the answers that you give may incriminate you. Do you understand that? - I do.

Very well, yes.

MR. MASTERSON: I am indebted to your Lordship.

BY MR. MASTERSON: When did you first know of the possibility of anything like that happening? - It was on Friday.

40 Where were you when you learned of this possibility? - We were on the road.

Is that the main road between Salisbury and Goromonzi? - Yes.

In the High Court

Crown Evidence

No. 11.

Nowa

Examination (continued)

19th October, 1962.

In the High  
Court  
Crown Evidence

No. 11.

Nowa

Examination  
(continued)

19th October,  
1962.

And who did you meet there that day? -  
Masawi and Lovemore, Ronnie and myself.

Anyone else? - I think Hensiby was also  
there.

And from this place where you met on the  
road where did you go? - We went to Mr. Malindi's  
school.

Who went to the school? - Lovemore, Masawi,  
not Ronnie; I think it was Hensiby and myself;  
the four of us went there. 10

Did Ronnie go? - No, he did not.

Why not? - I do not know why he did not go.

And did you find the accused? - We found  
him at his school.

Did you go anywhere before going to the  
school? - No, we did not go anywhere else.

And what happened when you got there? -  
Masawi saw Malindi, the accused.

BY MAISELS, J: Did you see the accused as  
well? - Because Masawi spoke to him; we were  
present; we saw him with our eyes. What I am  
referring to is because he spoke to him. 20

You all saw him and Masawi was the spokesman?  
- Yes.

BY MR. MASTERSON: And what heppened? - When  
we arrived, Masawi said, "Teacher, we want to see  
you".

Go on? - We went to his house, we did not  
discuss anything; it was arranged that we should  
meet on Saturday evening. 30

And why were you to meet on Saturday evening?  
- Masawi said that to him; it was not said why  
we were going to meet on Saturday evening.

BY MAISELS, J: Masawi said, "Teacher we want  
to see you"? - Yes.

Did anybody ask why or did anybody say why  
Masawi wanted to see him? - I cannot remember  
if any reason was given then, my Lord.

BY MR. MASTERSON: Did you see the accused  
again after the Friday? - Yes, we saw him on  
Saturday. 40

Where? - At his house.

Do you remember who else was there? - Accused, Sevenzayi, Lovemore, Sixpence, Ronnie, Hensiby, and myself.

In the High  
Court

Crown Evidence

No. 11.

Nowa

Examination  
(continued)

19th October,  
1962.

MR. ANDERSON: It is common cause, if my learned friend wishes to lead.

MAISELS, J: The only one the accused says was not there is Hensiby. He might have been outside, but he knows nothing about having told him to go outside.

10 MR. ANDERSEN: I think Nowa and Supa have not been mentioned.

MAISELS, J: And Masawi.

BY MR. MASTERSON: And were Masawi and Supa also there? - Supa was there.

And Masawi? - Masawi was there.

Do you remember what happened once you people had got to accused's house? -

MAISELS, J: He mentioned Sixpence?

MR. MASTERSON: He has, my Lord.

20 MAISELS, J: Sorry.

THE WITNESS: I arrived to find all the others there. I entered the room. I had been told by Masawi to go to the teacher's house. When I entered the house the teacher asked me if we knew the meaning of the word, "Nationalist" or what is meant by nationalist.

BY MAISELS, J: Just a moment. Was Sixpence there when you arrived? - No, Sixpence arrived to find me there.

30 Did Sixpence arrive during the course of the meeting, at the beginning of the meeting or at the end of the meeting; when did he arrive? - In the middle of the meeting.

Yes.

MR. MASTERSON: Where was Hensiby during this meeting? - He was outside.

Why was he outside? - He was told to watch out if there were people who would like to listen to what was taking place inside.

40 Who told you? - Malindi, the accused.

You say inside the meeting the accused produced

In the High  
Court  
Crown Evidence  
No. 11.

Mowa

Examination  
(continued)

19th October,  
1962.

a book? - Yes, he stood from where he sat and brought a red book.

And then what did he do? - He then read the book.

What did he read about? - It was being read out in English. Although I listened I could not understand everything.

BY MAISELS, J: What did you understand? - After reading the book he then said: "We want to make an action".

10

Do you remember anything that he read from the book? - No, my Lord, the truth is I do not remember what was read out from the book. It was read out in English; I am not good at English.

Very well.

BY MR. MASTERSON: Was anything done about the English words that were read out? - A question was put to us, "What is meant by Nationalist?"

Do you remember any other words that were used when this nationalist question was being discussed? - No.

20

Do you remember anything that was said about nationalist? - No.

When you started to discuss action, who did the talking? - The first speaker was Masawi; who said: "Men, now we have all gathered here in this house". He said, "I have gathered here so that an action be taken here in Goromonzi", and he then said he was putting this before the teacher and Sevenzayi who are present and saying, "I am putting this before you, you will tell us what to do today". The accused then said: "Yes, action could be performed". The accused then said, "If you want an action to be performed you must be brave. It can only be performed by brave people".

30

What did Sevenzayi have to say about it? - Well, Sevenzayi was also supporting and said we ought to do things willingly and strike when we really mean to do it bravely.

40

Anything else that Sevenzayi said? - Sevenzayi then asked when it was that they thought the action could be taken.



Go on? - It was then suggested that Saturday would be a possible day or a better day that an action would take place. It was not done on Saturday as suggested.

In the High  
Court  
Crown Evidence

No. 11.

Mowa

Examination  
(continued)

19th October,  
1962.

Just a minute. When you were talking about action, what sort of action was discussed? - Burning things like churches, dip tanks and hide sheds.

10 Did any discussion take place as to how these burnings were to be performed or who by? - It was suggested that when action was to be taken people must be formed into groups of two or one in each group.

BY MAISELS, J: Formed into groups of two or one? - Yes, my Lord. The meeting ended at that stage as far as I still remember.

BY MR. MASTERSON: Were any groups formed? - Yes, the groups had been formed, but the action was not carried out as suggested.

20 Was there any dissent by the accused from any of these suggestions? - No dissent at all. He was interested in it.

Do you remember how you and the others came to leave the accused's house that evening? - Well, after the discussion we told him that we would meet on Saturday, so we said goodbye and left.

When you said we would meet on Saturday, did you mean the next Saturday or some other Saturday in the future? - Meet the following Saturday.

30 Did anybody show any anger towards the accused immediately upon the meeting breaking up? - No, not that I saw.

When did you next see the accused? - I saw him on Monday, when I was called.

Who called you? - Masawi and Hensiby called me.

Where from? - From home.

At what time of the day was that? - I had no watch with me; it was after sunset.

In the High  
Court

Crown Evidence

No. 11.

Nowa

Examination  
(continued)

19th October,  
1962.

And what did you do as a result of being called by Masawi and Hensiby? - Hensiby, Masawi and Ronnie and I went to the spot where they said we were supposed to go.

BY MAISELS, J: Hensiby, Masawi, Ronnie and I? - Yes.

BY MR. MASTERSON: How did you come to meet up with Ronnie? - On our way he was then called.

Where did you four go to? - We went to the football ground. 10

Did you find anybody there when you got there? - Yes.

Who? - We found teacher Malindi, Sixpence and Lovemore; those are the three we found there.

What happened once you had got together? - The accused said: "Today is Monday; we want to perform our action so that it coincides with what is taking place in Salisbury".

Did he say anything else about what was happening in Salisbury? - No. 20

BY MAISELS, J: Well, what was happening in Salisbury, as far as you knew? - I did not know what action was taking place in Salisbury or being performed because he said, "Let us carry on together so that it coincides".

He did not tell you what it was that was happening in Salisbury? - No, he did not.

Further hearing adjourned to Monday.

22nd October, 1962.

Monday, October 22nd, 1962.

SIXTH DAY OF TRIAL

Evidence for the Crown continued.

MAISELS, J.: (To accused) I understand that your counsel has withdrawn from the case.

THE ACCUSED: Yes, my Lord.

MAISELS, J.: And you will be defending yourself for the rest of these proceedings?

THE ACCUSED: That is correct, my Lord.

10 MAISELS, J.: This Court was supposed to resume at 10 o'clock this morning, but for reasons personal to me it is commencing, as you see, now at 20 past 9. You have no objection?

THE ACCUSED: No, my Lord.

NOWA, under former oath.

EXAMINATION by Mr. Masterson continued:

You remember that on Friday you told us that on Monday evening you went to the football ground near the school? - Yes.

20 Once you people had got together at the football ground, what happened? - We formed into groups to take the action.

Who formed you into these groups? - Teacher Malindi formed the groups.

Do you remember what groups were formed? - I remember some of the groups.

All right. What do you remember? - The accused said he was going to set the church on fire personally.

30 BY MAISELS, J.: The church where? - The church at Chinyika area, Chinyika church. Sixpence and Lovemore were to go to Chinyika reserve at Ruseki.

Do you know why they were to go there? - They were told to go and burn at that end, churches that we were told to burn.

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Do you know how it came that Sixpence and Lovemore were selected to go to Ruseki? - Because they had said that they had bicycles.

Were there any other groups that you remember? - Ronnie was detailed to go and burn lands belonging to Mr. Hughes, but he complained he was suffering from a sore leg and he did not succeed in going. Hensiby and I were detailed to go and burn at the dip tank.

Which dip tank? - There is a dip tank situated next to Chinyika school. 10

Do you know what Masawi did? - Masawi was to go and burn huts at Tegere.

Do you know who this Tegere person was? - It was said at the time that it was because Tegere was a police reservist.

Are there many people called Tegere who are police reservists? - Not that I know of, my Lord.

Do you know of any other people called Tegere who were police reservists, apart from the house Masawi was to burn? - No, my Lord. 20

And was anything discussed as to how these burnings should be effected? - I heard the accused asking Lovemore if he had paraffin at his house because they wanted to soak clothes in the paraffin and then light and strike a match on the paraffin and set the buildings on fire.

Did any discussion take place between you and the accused as regards what was to be done at the dip tank? - As we dispersed I said, "I am afraid to do this". That is all I said. I merely told him that I was scared. 30

BY MAISELS, J.: You told the accused? - I said it in the presence of everybody as we left.

BY MR. MASTERSON: Did you notice whether anything took place between Masawi and Lovemore at the meeting? If you do not remember, say so? - I have no recollection. 40

And now, what was the reaction of all the people at the meeting to the accused allocating

them into groups with certain targets to burn down? - They are quite agreeable.

Did you do anything once the meeting had dispersed? - Ronnie and I went home.

What did you do that night? - I left Ronnie at his home. I went past straight to my home and retired to bed.

Did you do any burning? - No, I did not.

10 CROSS-EXAMINED BY ACCUSED: Do you know the people who worked in the Engineering Department at Goromonzi? - Some of them are newcomers. I would not know them all.

Do you know their time of work? - There is no specific time for them to go to work. Some start at 7 and some at 7.15.

BY MAISELS, J.: In the morning? - Yes.

20 BY ACCUSED: What time do they finish work in the evening? - If one finishes his work early, one would go off duty at a quarter to five, others at 5 and some at quarter past 5. It depends on the time that one finishes one's work.

Is there anybody who leaves work before 4 o'clock? - They are normally given task work. Some can perform their work faster and it is possible one may go early.

I want the question answered.

30 MAISELS, J.: That is the answer: "We are given task work normally and when a person is finished his work he may go." Does that mean he may go before 4 o'clock if he has finished then? - Yes, and he then reports the next day.

BY ACCUSED: I am going to refer to your Friday meeting. Where was this meeting held? - On the roadside.

Did anybody know that there was going to be a meeting that evening? - We were merely walking along the road when we just casually met.

40 This Court has been told by different witnesses that Ronnie met the others, Lovemore met the others, Masawi also says he met the others? - If the people you mentioned met the others, no one told me. I met them unexpectedly as I was walking along.

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BY MAISELS, J.: Whom did you meet? When you say you met them unexpectedly, you say you were walking along the road and you met the four others? - Yes.

BY THE ACCUSED: When you met those people was Lovemore there? - Yes, he was.

What did you find them discussing? - Their discussion was had it been possible an action should be performed in this part.

BY MAISELS, J.: Was it possible that action should take place at this part? - If it had been possible, they were merely discussing, just a general discussion. 10

BY THE ACCUSED: Is it possible that they said something about action before you arrived there? - I have already told the Court that I met them unexpectedly and it is possible that they had been discussing about action. I do not know what they were talking about before I met them.

What did you understand about action? - I only heard them discuss the word "action" and they said these words shall be explained when we went to the teacher, meaning yourself. 20

Why did not you ask them to explain the word? - I was not taking a great interest in it and it had nothing to do with me. There was no need for me to ask them to explain.

If you were not interested, why were you in the delegation that met me then? - I said I took no particular notice at the time what they were discussing on the roadside. I thought we would get what it is when we then reached you. 30

All right. When you got to me, did you then get the meaning of action? - No, not that day. We did not discuss about it.

Did you ask? - No, we did not ask.

Why did not you ask? - You said we were going to meet on Saturday and I thought you would explain everything on Saturday when we then met.

Now, about your Saturday meeting, when you came to my house, who was in your company? - I came alone, if my memory is correct. 40

Why did you tell the Magistrate's Court,

page 15, you came with Lovemore, Sixpence and Hensiby?

BY MAISELS, J.: Did you go by yourself or with Lovemore, Sixpence and Hensiby to the accused's house? - This took place a long time ago, my Lord. I am under the impression that I went alone.

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10 If you said this in the Magistrate's Court it might be correct that you went with these other three, but you have forgotten it? - It is possible, my Lord, because of the length of time.

BY THE ACCUSED: The Magistrate's Court in Goromonzi and this Court were both told that Sixpence came late? - Yes.

What do you say to that? - When we were in your house on Saturday, Sixpence came late.

Do you say Sixpence came late?

BY MAISELS, J.: Yes, that is what he says.

THE WITNESS: Yes.

20 BY THE ACCUSED: So that it was not true when you said you came with Sixpence to my house? - I have already told the Court that because of the lapse of time I have no clear recollection. I am under the impression that I went alone. It is possible that I was with Sixpence or Sixpence came late.

BY MAISELS, J.: What is your impression now? Did Sixpence come late or did he come with you? - My impression today is I went alone.

30 Sixpence came late? - Yes.

BY THE ACCUSED: What did you want at my house? - Masawi had invited me to go to your house.

Why did you say something different to the Magistrate at Goromonzi? On the same page your statement was: "My companions wanted to find out if they could take an action"? - (Pause for reflection)

40 BY MAISELS, J.: Now, you have told the Court that you went to this house because Masawi invited you to go there? - Yes, my Lord.

For what purpose did Masawi invite you to go there? - He merely said "Let us go to the teacher's house." We went together and discussed

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something there, so I was quite agreeable and set off.

In the Magistrate's Court you are recorded as having said that your companions wanted to find out from the accused because he was a member of your party, if they could take an action. Did you say that in the Magistrate's Court, can you remember? - I am forgetting some of the events because of the lapse of time and days. It is too much to remember.

10

If you said that in the Magistrate's Court, that your companions wanted to find out if they could take an action, would that be correct? - Yes, that would be correct. I would not dispute it.

BY THE ACCUSED: When you were asked what sort of action you said you wanted to burn things.

BY MAISELS, J.: In the Magistrate's Court?

BY THE ACCUSED: Yes, my Lord? - Yes.

20

What things are those? - I do not remember if things that were to be burnt were mentioned.

BY MAISELS, J.: Did you have any things in mind yourself when you went there to the accused's house? - No, my Lord, I had nothing in my mind to burn.

BY THE ACCUSED: What do you call things? - It is a general term used in language. No particular thing was mentioned.

30

Now, about your meeting on the Monday night, when you were asked whether you spoke to me after that meeting, you answered that you told the whole group that you were afraid to do things? - I told all the people present. If they did not understand what I said, still that is what I personally said.

I did not suggest they did not understand. Is that correct that you told those people that you were afraid? - I told them, but I spoke in a lower voice that I was afraid. If all of them did not hear what I said, the truth is I did say it.

40



Who was sitting next to you? - When I said this we were no longer sitting down. We were not sitting down. We were all standing and we were about to leave.

Who was standing next to you?

BY MAISELS, J.: Can you remember now who was standing next to you? - No.

10 Who was the person to whom you addressed the remark that you were afraid? - The remark was addressed to the accused. That is why I do not remember who was standing next to me because the remark was addressed to the accused.

BY THE ACCUSED: Then I was standing next to you? - It might be correct. If you still remember it; I have forgotten all about it.

20 BY MAISELS, J.: I do not think that by that question the accused means to say that he was there. He is just saying: "Well, then, you were standing next to me when you made those remarks"? - I do not remember, if the accused was standing next to me. If accused heard what I said, then his suggestion is correct that he was next to me.

BY THE ACCUSED: If I was next to you, how could you speak in a low voice and expect me to understand what you were talking about? - Well, that is what occurred to me.

BY MAISELS, J.: Did you speak to the accused? - Yes, my Lord, I was talking to the accused; that is what I had in mind.

30 BY THE ACCUSED: And you only said that you were afraid? - Yes.

40 I am referring to page 19 of the record, my Lord. When you were asked, these are the words you gave the Magistrate at Goromonzi: "I spoke to the accused. The accused suggested to me that I should go and damage and knock off the pillars of the dip tank, so that they would fall inside the tank. I said this was frightening as I was concerned because it would make a great noise"? - It is possible that I said this. Many things were discussed and many things were kept. The accused is referring to a written page. He is not quoting this from memory.

BY MAISELS, J.: Yōu say you may have said that and you have forgotten it now? - Yes, my Lord.

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BY THE ACCUSED: Is it possible that some of the things you are saying today are not true? - Some of the things I have said today are true.

BY MAISELS, J.: Are all the things you have said today true? That is the question? - Most of the things I have said today are true. I may have been mistaken on some other parts, but most of the things I have said are true.

What I want to get clear is this: are you trying to give evidence of what you remember, or are you trying to tell the Court something which you do not remember? - I am telling the Court what I remember. The truth is I am telling the Court what I remember.

10

BY THE ACCUSED: Were you a member of ZAPU when you committed this crime? ? I was just a novice. I had only been a member for a period of about five days.

BY MAISELS, J.: Was the accused a member of ZAPU as far as you know? - He was, my Lord. He told us he was something to do with ZAPU. He was a member of ZAPU.

20

BY THE ACCUSED: Had you a card? - Yes.

Had you paid your subscription? - I paid 3s.6d. as a joining fee to buy the card. I gave the accused sixpence, and three shillings to Ronnie.

Through whom did you join ZAPU? - Masawi, because he is the person who wrote out the card.

Do you still have the card with you? - No, I burnt the card.

30

You were not warned by the police that you should not burn it, that you would need it in Court? - No, they did not tell me that the card was required in Court.

I refer to the letter which was found with Sixpence, my Lord, exhibit 6.

MAISELS, J.: Do you mean the letter which Sixpence says you gave to him to give to Sevenzayi?

40

THE ACCUSED: Yes, my Lord.

MAISELS, J.: Exhibit 6, yes, what do you want?

THE ACCUSED: Item three has the witness's name. Opposite that is 3s.6d. which he had paid to me on the 5th June. It was then that he wanted to join the Zimbabwe African People's Union.

MAISELS, J.: You are putting it to him that at the time of the meeting in your house he was not a member of ZAPU?

THE ACCUSED: He was not a member of ZAPU.

10 MAISELS, J.: The accused has explained to the Court that in this letter he speaks of some money having been received, but he is putting to this witness that this witness paid him, the accused, 3s.6d. in June, on the 5th June, 1962, some three weeks after this Saturday meeting of which the accused has spoken and that the witness only became a member of ZAPU on the 5th June, when he paid the accused 3s.6d. and that the witness was not a member on the Saturday night when he went to a meeting at the accused's house.

20 THE WITNESS: That is correct, I was not a member.

BY THE ACCUSED: You were not a member of ZAPU when you went to the accused's house? - I got the card from the accused at his house.

BY MAISELS, J.: When? - It was Saturday evening.

That same night of the meeting? - Yes, on the day of the meeting. It was the day I received the card.

30 The day of the meeting in the accused's house? - I believe it is the same day Masawi came out with my card that very day.

MAISELS, J.: I am afraid we have to adjourn at this stage. Just give me those admissions, please. Now, I understand that the prosecution made an arrangement with your counsel that certain things would be admitted by you.

THE ACCUSED: Yes, my Lord.

40 MAISELS, J.: You are now appearing on your own. A list of these has been given to you, has it?

THE ACCUSED: Yes, my Lord.

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MAISELS, J.: I must tell you that you are not obliged to admit anything, irrespective of whether your counsel had agreed that privately with the Crown before he retired. Do you understand that?

THE ACCUSED: Yes, my Lord.

MAISELS, J.: What is your attitude? Do you make these admissions contained in this document or do you wish to consider them?

THE ACCUSED: I wish to admit the last, except those that refer to the interpretation of exhibit 7. 10

MAISELS, J.: Then I shall draw a line through that and for the rest you make all those admissions?

THE ACCUSED: Yes, my Lord.

MAISELS, J.: Although I have explained to you you are not obliged to make them?

THE ACCUSED: Yes, my Lord.

MAISELS, J.: Do you understand that? 20

THE ACCUSED: I understand that, my Lord.

Court adjourned till 8.30 a.m.  
tomorrow morning.

Tuesday, 23rd October, 1962

SEVENTH DAY OF TRIAL

REGINA versus KESIWE MALINDI

MR. MASTERSON of Counsel for the Crown.

THE ACCUSED in person.

Evidence for the Crown continued.

Witness, NOWA, still under former oath.

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10 MR. MASTERSON: My Lord, the accused has asked if he might come out of the dock where he finds difficulty in recording evidence. He says it is inconvenient for him to write.

MAISELS, J.: Very well, he may come and sit in counsel's seat.

MR. MASTERSON: There are two matters, the first is the continuation of the cross-examination of this witness. The other is to have the admissions made at the end of the proceedings, to put them in.

MAISELS, J.: Very well.

20 MR. MASTERSON: You no doubt remember the question of the interpretation of exhibit 7 was deleted and the accused has now had full sight of the interpretation of the notice and there are two alterations which have been put on the interpretation that is attached to the notice. One is the omission of the word, "in", where it says, "in and at home".

MAISELS, J.: It will now simply be, "at home".

30 MR. MASTERSON: Yes, my Lord, and the other is in the last line. The word, "this" is changed to "here". Not "this is", but "here is".

MAISELS, J.: Very well.

MR. MASTERSON: The admissions made by the accused, as I understand, fall into the following headings: firstly, regarding the Chinyika dip tank, etc., the accused admits that on the night of Monday the 14th May, 1962, a hide shed and a

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dip storage shed at Chinyika dip tank were burnt down. These two sheds were not burnt down accidentally and no one had any right to burn them down. The damage to the storage shed and contents, which consisted of drums of dip and a tin of petrol, is estimated at about £9. The damage to the hide shed and contents is estimated at about £17. The sheds and contents were the property of the trustees of the native reserves and in the lawful custody of Chawada, an African there being.

10

Secondly, as regards Tegere, the accused admits as follows: Tegere, the person mentioned in the main charge and the alternative to that charge, is an African police reservist who at one time drove a bus running between Salisbury and Arcturus. His family occupies three huts in the Chinyika Reserve and during week-ends he stays at his kraal. Though Tegeri has no dogs, there are dogs in the immediate neighbourhood of this kraal. No one would have any right to burn or destroy any of Tegeri's huts.

20

Then, as regards St. Dominic's school, the accused admits that on the same night a church-cum-school building at St. Dominics school in the Kunswe reserve was burnt down. This burning was not accidental, nor did anyone have any right to burn down the building. The damage caused to this building and its contents is estimated at about £150. The building was the property of the native reserve trustees of the Roman Catholic Church and in the lawful custody of Ernest, an African there being.

30

As regards Kunswe dip tanks, the accused admits that a shelter at Kunswe dip tank, from which the dip attendant checks the cattle, was damaged on the same night. No value was attached to this damage. The dip tank at Kunswe is roofed with asbestos. No one would have any right to damage or destroy the dip tank, nor the hide shed, the storage shed and dip attendant's shelter there situate. The dip tank, a hide shed, storage shed and dip attendant's shelter there situate are the property of the trustees of the Native Reserve.

40

Then, as regards the Chinyika Salvation Army School, the accused admits as follows:

10 the church building at Chinyika Salvation Army School was burnt down on the same night. The fire from this building spread to a neighbouring building occupied by a teacher, Jacob. This building was burnt down. These fires were not started accidentally, nor did anyone have any right to burn the buildings down. In the church, two tables, one flag, two drums, three chairs, a table-cloth and a blackboard were destroyed. The damage is estimated at about £100. A radio, some blankets and a suitcase and clothing were saved from Jacob's house, but the rest of the property in the house was destroyed. The damage is estimated at £60. These buildings were the property of the trustees of the Native Reserve of the Salvation Army and in the lawful custody of Gudza, an African there being.

20 In the miscellaneous admissions, that Agrippa Sevenzayi's kraal is correctly shown as "F" on exhibit 5 (your Lordship will remember Sergeant Carver was not certain of that from personal knowledge), it is across the Chinyika River from the Chinyika School.

MAISELS, J.: Yes.

MR. MASTERSON: And he admits that the interpretation of exhibit 7 is substantially correct.

MAISELS, J.: I think we shall do that separately. The thing to do is to read in the interpretation.

30 MR. MASTERSON: I will omit that, and the final admission is those parts of exhibits 8 and 9 that were read out in Court, are in the accused's handwriting.

Those are all the admissions contained in that form. Then there is the interpretation of exhibit 7.

MAISELS, J.: Do you wish to read that?

40 MR. MASTERSON: The interpretation reads as follows: "To the person who works and the person who does not work: he is informed that on Monday there is to be no work in the whole Salisbury area. We are being chased from jobs. We are being denied houses to live in and so our families suffer; but the country is ours. You and I will simply stay at home on Monday. There is no one who will go into Salisbury itself to work. We

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will be thinking of the troubles on our shoulders. This is the time to show our unity; 338 people have been arrested in Highfields and many have been arrested in back yards. We have not said anything, but we are angry. The black man has been bullied in his own land. He does not receive the riches of his own land. Hear ye! Hear ye! Hear ye, again! On Monday no one at all will lay a foot in Salisbury to work for industry. Here is the time to unite, children of Zimbabwe". 10

That is the extent of the admission, I understand, the accused is prepared to admit.

MAISELS, J.: (To accused) Stand up, please. You have heard the interpretation of exhibit 7 read.

THE ACCUSED: Yes, my Lord.

MAISELS, J.: I understand from what the counsel for the Crown has said that you are prepared to admit that the interpretation and translation which has been read out is a correct one. 20

THE ACCUSED: Yes, my Lord.

MAISELS, J.: I have to advise you that you are not obliged to make any admission.

THE ACCUSED: Yes, my Lord.

MAISELS, J.: You appreciate that?

THE ACCUSED: I do.

MAISELS, J.: But notwithstanding you make this admission. 30

THE ACCUSED: Yes, my Lord.

MAISELS, J.: Very well, that translation will be admitted. I also asked yesterday whether you were prepared, and I understood you were prepared, to admit the facts, certain facts which have been read out by counsel for the Crown, without his calling evidence to prove those facts.

THE ACCUSED: Yes, my Lord.

MAISELS, J.: Again, I have to advise you that you are not obliged to make any such admissions. 40



THE ACCUSED: I do understand.

MAISELS, J.: Nevertheless, you make those admissions?

THE ACCUSED: I do.

MAISELS, J.: Very well. Those admissions are now recorded. Yes, please continue your cross-examination of this witness.

NOWA, under former oath.

Cross-examination by Accused, continued.

10

When this Court adjourned yesterday, you had just told it that it was not true that you joined ZAPU five days before the 12th May? - I do not understand.

BY MAISELS, J.: Well, it is put to you that yesterday you told the Court that you were not a member of ZAPU before these burnings. Is that correct? - That is so.

Yes.

20

BY THE ACCUSED: But that you joined on the 12th in the meeting?

MAISELS, J.: I suggest you put the question on the Saturday night, the day of the meeting, in your house?

BY THE ACCUSED: Yes.

THE WITNESS: Yes, my Lord.

BY THE ACCUSED: Is that true? - It is.

30

Will you then explain why you gave me 3.6d. on the 5th June? - My Lord, I do not recall the occasion that you alleged that I gave you 3s.6d. in one lump. What I do recall is that I paid 3s.0d. to Ronnie on one day some time after this meeting at your house had occurred and subsequent to that I recall paying you the remaining 6d.

Is it to Ronnie that you gave the 3s.0d., not to Masawi? - Yes, my Lord.

BY MAISELS, J.: You gave it to Ronnie, not Masawi? - That is so.

40

BY THE ACCUSED: I understood you to say yesterday that you joined through Masawi, not through Ronnie? - It is true that I was introduced to ZAPU by Masawi who entered me down, but on the day that I brought some money, unfortunately I

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could not contact Masawi, so I handed the money to Ronnie.

Was Ronnie then in the office of ZAPU? - He was a member of ZAPU only.

BY MAISELS, J.: Ronnie? - That is so, Ronnie.

BY THE ACCUSED: What will you say when I tell you Ronnie was not a member until the 2nd June? - Ronnie informed me that he was a member of ZAPU Youth Council. 10

Did he inform you before the 12th May?

BY MAISELS, J.: Just a moment. Does the witness understand the significance of the 12th May, the significance of that date? - I do appreciate the significance of that date, because it was on that day that a meeting was held in accused's house and it was also on the same day that I joined ZAPU.

Now, put the question again, please.

BY THE ACCUSED: The question was whether he was told by Ronnie by that date that he was on the ZAPU Youth Council? 20

BY MAISELS, J.: Did Ronnie tell you before the 12th May that he, Ronnie, was a member of ZAPU Youth Council? - Yes, he told me that he was a member of ZAPU and that he had obtained his membership card on credit before the 12th May.

Obtained his card on credit? - Yes, my Lord.

Yes. 30

BY THE ACCUSED: I will leave that question. When you came to my classroom on Friday, where did you find me? - I am not too sure; it may be that I found you cutting up some material for your school children, or that you were at your house. I am not certain.

That is not the question. I am saying where did you find me?

MAISELS, J.: He says he is not too sure where he found you, cutting up material in your classroom at the school or at your home. He answered the question, by saying he is not sure where he found you, but he describes what you did at the time. Yes, carry on. 40

BY THE ACCUSED: I am puzzled because I do not see a connexion to the material.

BY MAISELS, J.: You mean he has added to it, cutting up material, was not part of the question you asked, but he had answered by saying, "I am not too sure whether it was at the classroom or whether at your home". That was what he said, but he said, also, that you were cutting up material. That is what he added.

10 THE ACCUSED: I think, my Lord, I shall be given time to recall this witness on that question later on.

MAISELS, J.: No, you will have to cross-examine him now, unless some new situation arises; but you can only cross-examine a witness once, excepting in special circumstances. So, you must continue your cross-examination.

THE ACCUSED: I wanted to find out what he said before.

20 MAISELS, J.: You mean in the Lower Court?

THE ACCUSED: Yes, my Lord.

MAISELS, J.: Well, look it up, take your time. I do not think he was asked anything about Friday.

BY THE ACCUSED: Now, listen to what you said at the Goromonzi Court. These are quotations from what he said.

MAISELS, J.: Can you give me the page reference?

30 THE ACCUSED: I have not got them down.

MAISELS, J.: Start reading.

40 THE ACCUSED: You said that you came to my house on Saturday with Lovemore, Hensiby and Sixpence (page 15). When I asked you yesterday you said that was not so. You had said you had come to my house because I was your member. When I asked you yesterday you denied it. At Goromonzi Court you said: "Action was to burn things." When I asked you yesterday, you refused that as well. About your Monday meeting you said that I suggested you should destroy the pillars of the dip tank.

MAISELS, J.: Where did he say that?

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THE ACCUSED: After the Monday meeting.

MAISELS, J.: In the Magistrate's Court?

THE ACCUSED: Yes, he said on page 19. When I asked you yesterday you said that was not true. Now will you tell me why you made that statement at the Magistrate's Court?

MR. MASTERSON: I think I should object. I do not think that is the way the witness answered. He said he may have said whilst he was mistaken. I think that was the basis of his replies yesterday. 10

MAISELS, J.: I think it is inadmissible to put so many questions in one question; in fact, it is not proper. You must put one question. You must say, if you wish to, "Did you say this at the Magistrate's Court? Did you say this here yesterday?" That is one thing. Then, having got the answer to that, deal with the next question.

THE ACCUSED: I do understand. I thought we had done it yesterday. 20

MAISELS, J.: If you have done it yesterday, you need not do it again. Then you can argue the matter to the Court. Unless you want to put a question to the witness arising out of the conflict you say there is in his evidence.

THE ACCUSED: What I want to know is why he has mentioned these things.

MAISELS, J.: You cannot put them altogether; you put them one by one. Do you understand?

THE ACCUSED: Yes. 30

MAISELS, J.: Just start again, and I shall see if I can help you.

THE ACCUSED: As I have put them in this wrong way, I feel I should leave them now.

MAISELS, J.: I am not stopping you from putting questions, but it is very difficult to get across to the witness all these things in one question. Perhaps I can help you.

BY MAISELS, J.: It has been put to you that you have given different evidence in three respects in this Court and in the Magistrate's Court. The first relates to your coming to a meeting with Sixpence, and Lovemore and Hensiby. That is what 40

you are recorded as having said in the Magistrate's Court. In this Court you said that if your memory serves you correctly, you came along to the accused's house on that Saturday night and that Sixpence came later. You explained in this Court that you had gone to see accused at his house because Masawi had instructed you to go there. It was then also put to you that in the Magistrate's Court you said that at the meeting on Monday night, the accused had suggested to you that you should go and damage and knock off the pillars of the dip tank so that they would fall inside the tank. In this Court you said it was possible you said that in the Magistrate's Court, but you did not remember the incident now. What is the third point?

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MR. MASTERSON: Burning things, and he was not able to mention the things.

THE ACCUSED: On page 15.

MAISELS, J.: Oh, yes, and in this Court he said there was no discussion about burning things at that time.

THE ACCUSED: Yes, my Lord.

MAISELS, J.: Very well. It is said that in the Magistrate's Court, when you gave evidence, you said that when you and your companions went to see the accused on Saturday night at his house, your companions wanted to find out if they could take action consisting of burning things. Whereas in this Court you said that the question of burning things only arose later in the meeting and not before you went there.

MR. MASTERSON: With respect, I think that the point yesterday was that the witness was not able to say what things were to be burnt.

MAISELS, J.: That is no contradiction.

MR. MASTERSON: No, it does not appear to be one, except that it would be a contradiction between him and other witnesses.

MAISELS, J.: Just withdraw the last point. Would you mind giving me the last point again. In this Court what did he say about this piece of evidence?

THE ACCUSED: He said there was never any discussion of burning anything before he came to my house.

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MAISELS, J.: I will repeat the last one. In the Magistrate's Court he is recorded as having said that his companions wanted to find out when they went to the accused's house about taking action for burning things, whereas, in this Court, he said they did not discuss burning things before they went there; but this was discussed at the meeting for the first time. That is your point?

THE ACCUSED: Yes.

10

BY MAISELS, J.: There are differences in three respects. What the accused wants to know from the witness is why is it that there are these differences in his evidence? - My Lord, it must be remembered that a person can make a mistake due to forgetfulness, although he is all the time endeavouring to speak the truth.

Yes, go on with the next question.

BY THE ACCUSED: Is it possible that you have forgotten who actually organised these burnings? - Although I am forgetting several things, I cannot forget a person who actually organised the burnings.

20

BY MAISELS, J.: And who was that? - The accused.

BY THE ACCUSED: Will you tell us who organised the groups on the Saturday night? - The elders in that room were two, that is Sevenzayi and the accused. Between them they split these people into groups.

30

If somebody says it was Sevenzayi who arranged the groups, would you refuse that?

BY MAISELS, J.: You say that it was the accused and Sevenzayi who together formed these groups? - Yes, my Lord, that is what I said, and it was a result of that grouping made between Sevenzayi and the accused that I left with Hensiby.

Never mind about that for the moment. It has been put to you that somebody else said or will say that it was Sevenzayi alone who formed the groups and not Sevenzayi and the accused. What do you say to that? - I do not know whoever may give such evidence, but what I am talking of is what I know.

40

THE ACCUSED: Exhibit D.

MR MASTERSON: That is a warned and cautioned statement and produced as Exhibit D at the Preparatory Examination.

MAISELS, J.: That document is not before us; the prosecutor tells me.

THE ACCUSED: This is a document which was used by the Chief Magistrate here.

MAISELS, J.: Whose statement is it?

10

MR MASTERSON: It is Masawi's statement.

MAISELS, J.: Well, he has answered the question. He does not know who said such a thing, but whoever it was, was wrong; but now you want to put to him a statement.

THE ACCUSED: If Masawi says he is wrong, then I will leave the question.

20

MAISELS, J.: He said as far as he knows, it was the two of you, you and Sevenzayi. (To witness): It was put to you that Masawi said that it was Sevenzayi who arranged the groups and not the accused and Sevenzayi. What do you say to that? - What I know is that Masawi and you were talking together when the grouping was taking place.

Do you adhere to your previous answer that it was both of them, the accused and Sevenzayi, or that it was Sevenzayi alone who did the grouping? - I adhere to my former statement, that the grouping was conducted by the accused in conjunction with Masawi.

30

Masawi or Sevenzayi? - It is my mistake, Sevenzayi.

You said Sevenzayi because just before it was the same thing? - I am very sorry, it was my mistake. With Sevenzayi, I say that because it was you personally who said I was to go with Hensiby.

BY THE ACCUSED: Masawi, however, states that you were not at the Friday meeting..

40

MAISELS, J.: You are wrong. In this Court Masawi said that he met Lovemore, Hensiby, Nowa and Ronnie on Friday, the 11th May. I do not know whether in cross-examination that answer was altered.

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Nowa

Cross-  
Examination  
(continued)

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Re-Examination

MR MASTERSON: Again, I think it has reference to one of the original statements made by Masawi which has not been produced; it was produced in the other Court.

MAISELS, J.: Masawi did not say that in this Court and I know nothing about that statement he is supposed to have made somewhere else at all.

THE ACCUSED: Thank you, my Lord.

MAISELS, J.: Is that all?

10

THE ACCUSED: Yes.

RE-EXAMINED BY MR MASTERSON: Yesterday you will remember you were asked certain questions about how it was that you came to mention that you were afraid of doing this job at the dip tank? - Yes, my Lord.

Now you say you addressed your remarks to the accused.

MAISELS, J.: What remarks were those?

MR MASTERSON: That he was afraid to carry out his assignment.

20

MAISELS, J.: Yes.

THE WITNESS: Yes, my Lord.

BY MR MASTERSON: Do you remember at that stage whether the other people were all present at that time? - I passed this remark when all the people who had been at the meeting had stood up and were in the process of dispersing. They were moving away. I believe that some of them were as far away from me as I am from the shorthand writer (about four paces.)

30

Were your remarks intended for everybody who had been at the meeting? - When I said that I was afraid, I said it in lower tones. If people who were there may have heard, they may have done so although I did not intend that they should all have heard.

Re-examination concluded.

BY MAISELS, J.: You said on Friday, when you gave your evidence, that the accused read out of a book on the Saturday night? - Yes, my Lord.

40



You said it was a red book? - Yes, my Lord.

Can you remember anything that was read out of that book? - It was immediately after the accused had asked whether I understood what was meant by "nationalist", that he took up the red book and commenced reading. He read in English and what he read was in too hard English for me to have understood.

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10

Did he not explain it in Shona? - No, my Lord, he did not explain in Chizizuru.

Now, when you went to the meeting on Saturday night, did Sixpence go with you or not, that is actually go with you to the meeting? - No, my Lord.

When did Sixpence arrive at the meeting? - He arrived at the meeting round about the middle of the proceedings.

20

Now, I want to get this membership of ZAPU cleared up, if I can. What subscription do you have to pay to become a member of ZAPU? - One has to pay 3s.6d.

Is that once and for all, or is it to be paid yearly or half yearly or monthly? How is it to be paid? - 3s.6d. was a membership fee and there was a subscription charge of 1s.0d. monthly thereafter.

Did you pay any of the one shilling subscription charges? - No, my Lord, because I was not in employment.

30

You told us you paid the 3s.6d.? - I did.

Tell me again, how you paid it, to whom? - I paid the three shillings to Ronnie. I told him that he must accept it from me because I was afraid I might use it.

And what about the sixpence? - I handed the sixpence to the accused at his house.

40

Before or after the burnings? - This must have occurred after the burnings, because I obtained the membership card on credit when we were at the meeting and only paid these amounts of money afterwards.

You mean paid the three shillings afterwards as well as the sixpence afterwards, or only the sixpence afterwards? - Both amounts, the 3s. to Ronnie and the 6d. to the accused after the burnings.

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(continued)

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Just a moment, when did you get your membership card? - I obtained it on Saturday at the meeting.

I thought you told us that you gave Ronnie 3s. at the accused's house? - If I said that it is a mistake because what actually happened was one day when we were on a footpath which leads to Ronnie's house, I met him and gave him the 3s.

Was that after the burnings? - I believe so, my Lord. 10

Witness withdrew..

MR MASTERSON: I am going to call Supa. A statement was recorded from this witness and I gave it to Mr Andersen when he was still appearing. I believe it has been passed on to the accused.

No. 12

Supa

Examination

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No. 12

SUPA

SUPA, duly sworn and examined.

MAISELS, J.: Is this witness an accomplice? 20

MR MASTERSON: He only features on a Saturday evening's proceedings, so although he might be tied up in it, I do not think that he is theoretically an accomplice to these crimes at the same time.

MAISELS, J.: You have led evidence of that as part of the conspiracy firstly, have not you?

MR MASTERSON: Yes, my Lord. This person does not seem to have conspired. I certainly have no objection to his being warned. 30

MAISELS, J.: (To interpreter) Would you explain to the witness that he is not obliged to answer any question that might incriminate him; but that if he does answer those questions truthfully, he will not be liable to future prosecution, even though the answer that he gives may incriminate him.

INTERPRETER (After explaining to witness): He understands, my Lord.

MAISELS, J.: Very well. 40

BY MR MASTERSON: Do you know the accused? -  
I do.

Where were you living in May this year? - I  
was living at the store known as Mr Carey's Store.

Where is this store? - It is situated near  
the police camp, Goromonzi.

BY MAISELS, J.: The store is situated near  
the police camp at Goromonzi? - Yes.

10 BY MR MASTERSON: You remember that in May  
this year there were some burnings in the Chinyika  
Reserve? - Yes, my Lord.

Do you remember what day of the week these  
burnings took place? - I cannot remember clearly  
when the burnings occurred. It may have been on  
Monday.

A few days before these burnings occurred did  
you attend any gathering at which the possibility  
of such burnings taking place was discussed? - Yes.

20 Where was that? - This discussion occurred  
at accused's house.

Do you remember what day of the week it was  
that this discussion took place at the accused's  
house? - It was on a Saturday night.

Do you remember how you came to get to the  
teacher's house? - Yes, my Lord, it was as a  
result of a report that I got from Hensiby.

I do not think we should have the effect of  
this report.

30 MAISELS, J.: He says: "I went as a result  
of a report I got from him".

BY MR MASTERSON: And when you went to the  
meeting did you go in company with anybody? - I  
did. I was accompanying Hensiby.

And was there anybody else with you and Hensiby  
when you went off to the meeting? - There were  
just the two of us.

40 Do you remember what happened once you got to  
the accused's house? - Once we got to the accused's  
house we knocked on the door and entered to find  
that there were already assembled in the accused's  
house five persons.

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Supa

Examination  
(continued)

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Supa

Examination  
(continued)

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1962

BY MAISELS, J: You found five people assembled; who were the five people? - Masawi, Ronnie, Nowa, the accused and Sevenzayi.

Did Hensiby go in with you? - He did.

Did he stay at the meeting? - He remained for a short while when he was told to leave the room by the accused.

Why was he told to leave the room? - He was told to leave the room in order to guard against the approach of persons who might hear what was being discussed. 10

(To counsel): Now you can ask what happened at the meeting.

BY MR MASTERSON: What happened at the meeting? - The accused then got up and picked up a book which he read in English.

Go on.

MAISELS, J.: If you are going to come back and ask what kind of book, would you mind doing it now. 20

BY MR MASTERSON: As your Lordship pleases. Do you remember what kind of book this was and what it looked like? - The cover of this book was red.

Do you remember what the accused read from it? - What he read in English was beyond my understanding and the explanation which he gave in Chizizuru was also beyond my understanding because I come from Nyasaland and speak Chizizuru very little. 30

Have you seen this book again since that time? - No, my Lord.

When you went to the police camp after everybody was arrested, did they show you the book there? - No.

And do you know the essence of what it was the accused was discussing in relation to this book? - Nothing at all that I might grasp.

BY MAISELS, J.: From the book? - Yes.

We have left the book now. 40

BY MR MASTERSON: Once the book was finished with, what line did the conversation take? - The

accused said something to this effect, that people were to be grouped in different groups.

And did anybody else talk on the same lines as the accused? - No.

Do you remember anything about what these groups were to do?

10 BY MAISELS, J.: What were these groups going to do? - These different groups were delegated with what ever they wanted to go and do, such as burning things and other things.

What other things? - Just what the groups chose to do.

BY MR MASTERSON: Do you remember what part, if any, Sevenzayi played in this discussion? - I remember Sevenzayi saying, "You people have been grouped in various groups like this and you must go and do these things cleverly."

What did you understand him...

20 MAISELS, J.: Never mind what this witness understood. When he said you must do so cleverly, did he say what he meant by cleverly? - I do not remember. (To Mr Masterson): Have you interviewed this witness before you put him into the witness box?

BY MR MASTERSON: No, I have not.

BY MAISELS, J.: What did he say? - I do not remember if he explained it.

30 BY MR MASTERSON: Was there any disharmony in this meeting at any stage? - There was no disharmony.

Did you ever notice the accused get himself involved in a quarrel with Sevenzayi? - No, my Lord.

And do you know a person called Sixpence? - I do.

Did you see him at all that Saturday evening? - Yes, he arrived some time after I had been there.

40 And where was Hensiby when Sixpence arrived, do you remember? - Hensiby was outside.

Did you ever take part in any of the burnings? - No.

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Supa

Examination  
(continued)

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1962

Did you ever meet the accused again before the burnings?

MAISELS, J.: You mean after Saturday night?

MR MASTERSON: Yes, my Lord.

THE WITNESS: Yes, I saw the accused when I was carrying out my rounds, delivering newspapers.

BY MAISELS, J.: Is this really his ordinary newspaper delivery?

MR MASTERSON: It appears so, my Lord.

10

BY MAISELS, J.: You saw the accused on Saturday night? - Yes, I did.

Did you see him the next day, the Sunday? - I do not recall seeing him.

Did you see him on the Monday? - I saw him at his school.

On Monday? - Yes.

Did you speak to him? - I did not.

Cross-  
Examination

CROSS-EXAMINED BY THE ACCUSED: How long have you been in Southern Rhodesia? - I came to Southern Rhodesia when I was that high.

20

(Indicating)

BY MAISELS, J.: When you were a small boy? - I was living in the Bindura area in the farms.

BY THE ACCUSED: Did you meet any Shona-speaking people in Bindura? - Yes, my Lord, very few.

When did you leave Bindura? - I think it was during the year 1958 that I left Bindura.

You are working in a store at Goromonzi? - That is so.

30

BY MAISELS, J.: "I think it was during the year 1958 that I left Bindura"? - Yes, my Lord.

You say you were working in a store at Goromonzi? - Yes.

BY THE ACCUSED: What tribe are most of your customers?

BY MAISELS, J.: Well, what work do you do in the store? - I am a store assistant.

The question is what tribe do most of your customers belong to? - My customers consist of mainly three tribes, Shona, Inyanja, and Chinkunda; but the majority of my customers are Mezizuru, Mashona-speaking.

By THE ACCUSED: What language do you use when speaking to them? - I speak to them in limited Shona. Mostly they would point out to me the article they would like to buy.

10 Did you say Hensiby came with you to my house on this particular Saturday? - That is so.

Can you say the actual words he said when he got to you? - He spoke in Shona words to this effect, "It is said by teacher Malindi come."

If Hensiby says that he did not say so....

MAISELS, J.: Where did Hensiby say that?

THE ACCUSED: I think he referred yesterday that he had been sent by Masawi.

20 MAISELS, J.: You mean this witness was sent by Masawi?

THE ACCUSED: No, Hensiby was sent by Masawi.

MAISELS, J.: Yes, but he says he went with Supa, that is what Hensiby said.

THE ACCUSED: I though he said when he was on the way he was given a bicycle to go and fetch Supa.

30 MAISELS, J.: What I have in examination- in-chief is Hensiby said, "I went with Supa". That is what he said, originally. It may be in cross-examination; I will just check up.

MR MASTERSON: I have a note something to the effect that Hensiby said Masawi gave him his cycle and said, "Go and get Supa".

MAISELS, J.: Well, there is no conflict so far, because Masawi might have told Hensiby to tell this witness that the teacher wanted him.

THE ACCUSED: I will accept that.

40 MAISELS, J.: You can put the question. (To witness): Did Hensiby say he was sent by Masawi? - No, my Lord.

Right, next question.

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Supa

Cross-  
Examination  
(continued)

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In the  
High Court

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Evidence

No.12

SUPA

Cross-  
Examination  
(continued)

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1962

BY THE ACCUSED: Is it true that you got to my house whilst we were already in the house?

MAISELS, J.: You mean inside the house?

BY THE ACCUSED: Yes, my Lord.

THE WITNESS: That is correct.

BY THE ACCUSED: Was Lovemore there? - He was.

So that we were not five; we were six.

MAISELS, J.: So you were six, not five.

THE ACCUSED: Six, not five. 10

BY MAISELS, J.: Did you leave out Lovemore's name? - That is so; we were six.

Lovemore was there; you were six, not five; right.

BY THE ACCUSED: Why did not you give Lovemore's name? at the beginning? - I did not think correctly.

No re-examination.

BY MR CRIPWELL: Were you a member of Zapu? - My intention was to have joined ZAPU, but unfortunately, I did not. 20

BY MAISELS, J.: Unfortunately, or fortunately? - Unfortunately.

"I intended to join ZAPU, but I did not, unfortunately."

BY MR CRIPWELL: Was that the reason why you were invited to attend at the accused's house? - At the time that I was invited to this meeting at the accused's house, no one knew of my intentions. 30

When did you make up your mind then? - It was one day before the meeting at accused's house that I met Masawi and he invited me to join ZAPU. On that occasion I told him that it would be improper for me to join political parties in a foreign land. I belonged to Nyasaland and I only came to Southern Rhodesia in quest of money.

Yet you went to the meeting? - Yes, my Lord, although I did not know that I was invited to attend a meeting. It was only said I was wanted by accused. 40



But there was no particular reason for you to be wanted by the school teacher? - No particular reason was offered.

You did not know that he had anything to do with this organization? - No, my Lord, I only knew that Sevenzayi had something to do with it.

BY MAISELS, J.: You say Sevenzayi had something to do with it? - Yes, my Lord.

10 BY MR CRIPWELL: You got a message that Sevenzayi had something to do with it? - I knew that Sevenzayi had something to do with it, not the accused.

Did you assume that Sevenzayi would be at that meeting? - I did not know the reason why the accused wanted me at his house; I did not anticipate that any other person would be there.

BY MAISELS, J.: Do you know the Shona word for "police informer"? - No, my Lord.

20 Do you know the English words, "Police informer"? - I do not.

Witness withdrew.

\_\_\_\_\_  
No.13

GUDZA

MR MASTERSON: I call Gudza. There appears to be conflict about the times of the burnings between his evidence and that of Masawi and Hensiby.

MAISELS, J.: If the accused wishes to have him, let the accused call him.

30 MR MASTERSON: I appreciate that, but the arrangement was that he would make admissions and I would call him.

GUDZA, under former oath.

BY MR MASTERSON: Are you a teacher at the Salvation Army School in Chinyika Reserve? - I am.

Were you at the school on the night of Monday, 14th, when the school was burnt down? - I was.

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Supa

Cross-Examination  
(continued)

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Gudza

Examination  
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1962

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High Court

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No.13

Gudza

Examination  
(continued)

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1962

Cross-  
Examination

Can you give the Court any idea what time it was that the school burnt down? -  
According to my watch, it was at 10.15 p.m.

Have you any idea of how accurate your watch is? - It was a new watch. At that time I had no means of checking as to its correctness, but I have since acquired a wireless set and I find that it is out by five minutes, that it is late by five minutes in the course of 24 hours; five minutes slow. 10

CROSS-EXAMINED BY ACCUSED: Is it possible on this particular night when your watch showed a quarter past ten, it was in actual fact 11 o'clock? - I would not know.

Is it possible? - I said I had no means to check the correctness of my watch; therefore, I did not know exactly whether it was slow or fast on the day in question.

No re-examination.

BY MAISELS, J.: Were you in your house when you heard sounds of a fire? - I was. 20

What were you doing at the time when you heard these sounds? - I was busy writing, preparing for my school work the next day.

Are you in the habit of working into the late hours of the night? - Yes, and this is brought about by the fact that I have pastoral work in addition to my school work.

So you frequently work late at night? - Yes, my Lord. 30

Do you know the accused at all? - I knew him as a school teacher.

Prior to this burning? - That is so.

Do you know whether he had ever been to your school, Salvation Army School? - He used to call on other school teachers at my school.

Witness withdrew

No. 14  
Sawada

Examination  
23rd October  
1962

No.14

SAWADA

SAWADA, duly sworn and examined. (Interpreted) 40

BY MR MASTERSON: Are you the dip attendant at Chinyika dip tank in the Chinyika Reserve? - I am.

Are you the only dip attendant? - I am.

Do you remember the night of Monday, 14th May, in which the hide shed and the storage shed at Chinyika dip tank were burnt down? - Yes, my Lord.

Did you see the fire that night? - I did.

Can you give the Court any idea of when in the night it was? - Between 10 and 10.30 p.m.

Did you have any clock or watch with you? - Yes, I had a wrist watch.

10 When you saw the fires, how many fires did you see? - At first my attention was drawn towards the fire which must have issued from the Salvation Army School, Chinyika Reserve.

And then? - Shortly after, noticing this glow of fire I also noticed that there was a second glow, issuing from the direction of the Chinyika dip tank.

20 And do you know whether anything had been done in the way of artificial insemination of cattle in the Chinyika Reserve? - During the rainy season a demonstrator named Mosowa was engaged in insemination of cows in the Chinyika Reserve.

Do you know whether any bulls were brought into the reserve? - Yes.

Who brought them in? - The Government did.

What was the general reaction of the people in the Chinyika reserve to the introduction of these bulls and to artificial insemination?

MAISELS, J.: Is that admissible?

30 MR MASTERSON: I submit it is.

MAISELS, J.: What are you trying to prove?

MR MASTERSON: A motive for the burning of the dip tank.

MAISELS, J.: Nonsense. You have to prove the accused knew that.

MR MASTERSON: I am just trying to prove that there was general approval or disapproval from which I may be able to lay some cross-examination of the accused.

40 MAISELS, J.: I do not see that you can do that.

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Sawada

Examination  
(continued)

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High Court

MR MASTERSON: As your Lordship pleases.  
I will not proceed.

Crown  
Evidence

No cross-examination.

No. 14  
Sawada

Witness withdrew.

Examination  
(continued)

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No. 15

No.15

Mishak

MISHAK

Examination

23rd October  
1962

MR MASTERSON: I call African detective, Mishak.

MAISELS, J.: Is that another witness we have  
not heard before?

MR MASTERSON: No, he did not give evidence. 10

THE ACCUSED: Before this witness is called,  
I would like Sergeant Carver to be outside.

MAISELS, J.: Why?

THE ACCUSED: There is some corroboration in  
their evidence. I would like to question them on  
that.

MAISELS, J.: Sergeant Carver has given evidence  
already.

THE ACCUSED: I understand he might be recalled.

MAISELS, J.: Very well, Sergeant Carver you 20  
should wait outside.

Sergeant Carver left  
the Court.

MISHAK, duly sworn and examined in English.

BY MR MASTERSON: Are you an African detective in  
the C.I.D.? - Yes.

Did you assist Sergeant Carver in searching the  
accused's house when the accused was arrested? - I  
did.

During the search do you remember coming across 30  
any forms which you took possession of? - Yes, my  
Lord.

Do you remember any particular forms? -  
There were a lot of papers which we took  
possession of.

In the  
High Court

BY MAISELS, J.: You know what a form is?  
- I do, my Lord.

Crown  
Evidence

What is it? - A form which has papers  
written, that is written separately.

No. 15

Yes.

Mishak

10 BY MR MASTERSON: Do you remember what was  
contained on any of these pieces of paper?

Examination  
(continued)

MAISELS, J.: What are you doing it this way  
for, leading secondary evidence?

23rd October  
1962

MR MASTERSON: I am trying to avoid leading  
on exhibit 7.

20 MAISELS, J.: You can go along way if you do  
it this way; we will be here forever. You are  
entitled to ask the witness whether he found the  
document and where, (to witness) unfortunately,  
something has been written across this exhibit.  
You see that?

THE WITNESS: I do see it.

BY MAISELS, J.: Have you ever seen it before?  
- I saw it before.

Where? -- During the search. It was amongst  
the accused's books on the shelf.

That was exhibit 7. Where did you see it? -  
It was in the accused's house.

Where? - Amongst the books, the books were put  
in the shelf.

30 The books in the book shelf? - That is right.

Did you take possession of it? - When I  
looked at the pamphlet I saw it and read it and  
later gave it to Sergeant Carver.

Did you give it to him in the presence of  
accused? - The accused was in the house.

In the house? - He was present.

When you gave it to Sergeant Carver? - When I  
gave it to Sergeant Carver.

40 BY MR MASTERSON: Did Sergeant Carver show it to  
the accused, that document? - Yes, I would say the  
accused saw it because the accused was seated on a

In the  
High Court

Crown  
Evidence

No. 15

Mishak

Examination  
(continued)

23rd October  
1962

Cross-  
Examination

chair while we were doing the search and when I took possession and began reading, the accused also read it, and when I took possession of it, the accused was there.

BY MAISELS, J.: And said something? - Said something.

CROSS-EXAMINED BY THE ACCUSED: How many people were searching in my room? - We were three, the member in charge, Sergeant Carver, and myself.

10

All searching at the same time? - Correct.

Do you remember what I did at the beginning of the search? - You were asked to make a search; you allowed the member in charge to get in and myself and Sergeant Carver.

MAISELS, J.: You were asked what? - He was asked permission to get in his premises.

You mean Mr Carver asked permission to search and the accused gave that permission? - Correct.

BY THE ACCUSED: I mean when you were already in the room searching?

20

BY MAISELS, J.: The question is put when you were already searching, where was the accused at the beginning of that search? - The accused was in the sitting room where we were searching and that was where I found this.

BY THE ACCUSED: Do you remember at any time when I went out of that room? - Yes, there was a special time when the accused asked to go and drink some water, and I went together with him.

30

Was it to drink some water or fetching my food? - About his food I would not know, but what I remember, because I accompanied him, was to go and drink some water.

You do not remember anything about my bringing food into the sitting room? - You might have

brought some food into the sitting room, but I cannot remember very well.

So it is possible to bring food without your seeing?

MAISELS, J. : No, it was not possible, He said he does not remember. He says you may have brought food, but he cannot remember.

10 BY MAISELS, J.: If he had brought food into the sitting room, would you have seen it? - I would have seen it.

But you do not remember his doing do? - I do not quite remember.

BY THE ACCUSED: Is there anything I did in that room? - You did nothing, you were only sitting on your chair.

Did I listen to the news? - No.

No re-examination

Witness withdrew.

20 MR MASTERSON: I have at last acquired two African detectives whom I wish to lead on the question of the appearance of pamphlets of the nature of exhibit 7 in Salisbury on the Sunday.

MAISELS, J.: I see, yes.

MR. MASTERSON: And I have informed the accused of my intention to call these people. I would like to see whether I am on the right track.

MAISELS, J.: I propose to adjourn now.

The Court took a short adjournment and reassembled at 10.40 a.m.

30

\_\_\_\_\_  
No.16

MONGA

MONGA, duly sworn and examined in English.

BY MR MASTERSON: Are you an African detective Sergeant in the C.I.D.? - Yes, my Lord.

In the High Court

Crown Evidence

No. 15

Mishak

Cross-Examination (continued)

23rd October 1962

No. 16

Monga

Examination

23rd October 1962

In the  
High Court

Crown  
Evidence

No. 16

Monga

Examination  
(Continued)

23rd October  
1962

On Sunday, the 13th May this year, did you attend any meeting? - Yes, I did.

Where? - At Mufakosi township.

I believe that is some nine miles to the west of Salisbury? - That is correct.

BY MAISELS, J.: How far from Goromonzi? - I cannot estimate; it is very far.

Very far? - Very far.

How far is Goromonzi from Salisbury? - I have never been to the area, I do not know how far. 10

BY MR MASTERSON: And how many people were there at the meeting that you attended? - About 800.

May the witness be referred to exhibit 7?

MAISELS, J.: Yes.

BY MR MASTERSON: Have you ever seen any notices of the type of exhibit 7? - Yes, I have.

Where? - At Mufakosi.

When? - On the 13th May, 1962. 20

At the meeting? - At the meeting, yes.

How many notices like that were there? - There were many.

How did you come to see them, where were they? - That was at the meeting when they were being distributed.

BY MAISELS, J.: They were being distributed at the meeting? - Yes, my Lord.

BY MR MASTERSON: Did you see who was distributing them? - I saw him, but I do not know him. 30

BY MAISELS, J.: By a man? - He was a man.

An African? - An African, yes, my Lord.

BY MR MASTERSON: What time of day were these notices being distributed? - This was towards the end of the meeting.

During the day? - It was about 12 noon.

No cross-examination.



BY MAISELS, J.: Do you often go to meetings of this nature? - Oh, yes.

In the High Court  
Crown  
Evidence

You say you saw notices like exhibit 7 on the 13th May, that was a Sunday? - Yes, my Lord.

No. 16  
Monga

Had you seen any of these before that day? - No, my Lord.

Witness withdrew. Examination  
(continued)  
23rd October  
1962

No. 17

No. 17

10

TREVOR SIDNEY WRIGHT

Trevor Sidney  
Wright

TREVOR SIDNEY WRIGHT, duly sworn and examined.

Examination  
23rd October  
1962

BY MR MASTERSON: Are you a detective in the C.I.D.? - I am.

What branch? - I am now at headquarters. At this particular time I was attached to the....

MAISELS, J.: What time are you talking about? - May, 13th. I was attached to the Property Section, Salisbury.

20

BY MR MASTERSON: On the 13th May this year did you go out to Mubvuka township? - Yes.

Where is that in relation to Salisbury? - It is on the Goromonzi road, 12 miles from Salisbury.

Do you know how much further on from Mubvuka it is to Goromonzi? - I do not know exactly, but I estimate about 10 miles.

BY MAISELS, J.: Ten miles further on? - Yes.

BY MR MASTERSON: Have you ever seen any notices like exhibit 7? - I have.

30

Where? - Mabvuka.

On that day? - Correct.

Had you ever seen any before? - No, I had not.

I believe, however, that the notices you did see were already at the police camp at Mabvuka? - They were.

In the  
High Court

Crown  
Evidence

No. 17

Trevor Sidney  
Wright

Examination  
(continued)

23rd October  
1962

BY MAISELS, J.: You saw notices on that day at Mabvuka police camp? - That is correct.

BY MR MASTERSON: How many did you see there? - Approximately 3 or 4.

No cross-examination.

Witness withdrew.

No. 18

PROCEEDINGS

No. 18

Proceedings

23rd October  
1962

MR MASTERSON: The question of the identification of the book, exhibit 8, has played quite an important part in this case. I understand, however, that Sergeant Carver, during the course of his investigation, did show it to some of the witnesses and certainly recollects having shown it to Masawi and Ronnie, and having read to them from the passages at the back on nationalist principles. I think I should make that as an admission in favour of the accused. 10

MAISELS, J.: Yes, what is the admission?

MR MASTERSON: That during the investigation Sergeant Carver did show exhibit eight to some of the witnesses who have been referred to as accomplices. 20

MAISELS, J.: You do not remember which ones?

MR MASTERSON: He does not remember which; he says to some of them, not all. He says, however, that he certainly remembers showing it to Masawi and Ronnie and he says he remembers reading to them from the passage at the back involving nationalist principles, for the purpose of seeing if he had the right book. 30

MAISELS, J.: I think he ought to be recalled.

MR MASTERSON: As your Lordship please.

No. 19

CHRISTOPHER CARVER (Recalled)

CHRISTOPHER CARVER, under former oath, recalled.

BY MAISELS, J.: You heard counsel for the Crown saying that during investigations you recollect showing exhibit eight to some of the witnesses. You do not remember all of them, but certainly two of them were Masawi and Ronnie? - That is correct.

10 And you remember reading to these two from passages at the back of the book? - That is correct.

And other passages on those last two pages? - That is correct.

For what purpose did you do that? - I wished to tie up that the book which I had found in the accused's house was, in effect, the book from which the accused read to the witnesses at the meeting on Saturday as has been explained to the Court.

20 Do you wish to ask any questions?

THE ACCUSED: No, my Lord.

Do you wish to, Mr Masterson?

MR MASTERSON: No thank you, my Lord.

Witness withdrew.

CASE FOR THE CROWN CLOSED.

No.20

PROCEEDINGS

MAISELS, J.: (To accused) The Crown has now closed its case. You understand the courses open to you?

ACCUSED: Yes, my Lord.

30 MAISELS, J.: Do you know what they are, or would you like me to explain them to you?

THE ACCUSED: The various courses that are open, I would wish you would explain.

In the High Court

Crown Evidence

No. 19

Christopher Carver

Examination

23rd October 1962

No. 20

Proceedings

23rd October 1962

In the  
High Court  

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No. 20  
Proceedings  
23rd October  
1962  
(Continued)

MAISELS, J.: Very well. You may, if you wish, give evidence under oath, in which event you will be subject to cross-examination by the Crown and also subject to questioning by members of the Bench; or you may, if you wish not give evidence under oath, but make a statement from where you stand, in which event no questions may be asked you; but I have to tell you that, although in any such statement that you make will be taken into account, it will not be given the same weight as would be given to a statement made under oath which is subject to cross-examination. You appreciate that?

10

THE ACCUSED: Yes, my Lord.

MAISELS, J.: Or you may, if you wish, elect to say nothing at all. In other words, you may not give evidence or may not make a statement if you wish to. In any event you may call witnesses, if you wish to, and if you have any. Do you understand that?

20

THE ACCUSED: Yes, my Lord.

MAISELS, J.: I will put it this way. You can, if you wish, give no evidence and call no witnesses. You can make a statement and call no witnesses; you can give evidence and call witnesses; you can make a statement and call witnesses; you can make no statement and call witnesses; you need not give evidence and call witnesses; or you can elect to say nothing at all and call witnesses; or you can elect to say nothing at all and call no witnesses; do you understand all those courses?

30

THE ACCUSED: I do understand.

MAISELS, J.: What do you wish to do?

THE ACCUSED: I wish to give evidence on oath.

MAISELS, J.: Very well.

Defence  
Evidence  

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No.21  
Kesiwe Malindi  
Examination  
23rd October  
1962

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DEFENCE EVIDENCE

No. 21

KESIWE MALINDI

KIWIWE MALINDI (Accused), duly sworn (in English).

40

On the 11th May this year when I was leaving my school, Ronnie and Masawi approached. They asked if they could talk to me. I waited until they came where I was. Ronnie told me that there would be a strike in Salisbury the following Monday. I asked him how he knew. He told me that he had got some information. He told me that the Youth movement in Goromonzi had decided to take action; so they had sent to ask me if I would join them. I told them I had nothing to do with the youth Movement; I was not a youth member. They should go and see the secretary. The following day at about five thirty p.m. the secretary in company of...

In the  
High Court

Defence  
Evidence

No. 21

Kesiwe Malindi

Examination  
(continued)

23rd October  
1962

BY MAISELS, J.: Is that Sevenzayi? - Yes, my Lord.

In company of? - Of Ronnie, Masawi, Nowa, Hensiby, Supa, and Sixpence, came to my house. They stood outside my garden which is just about five yards from my house and asked if they could talk to me. I invited them into the sitting room. When we got there Sevenzayi repeated what the boys had said the previous day. I asked him what action he had in mind. He gave as an example, churches, dip tanks, and mealie lands. I told him of the lack of education facilities in Goromonzi. I brought to his knowledge the statement by Mr Ndomo that no members of ZAPU would act without his directions. I told him about the illegality of those activities he had proposed. I suggested that they make a procession and even told them that that, also, would need permission. An argument then ensued which ended when the whole group walked out of my house with some shouts that I was a moderate and a police informer; that if I revealed this to the police it would act upon me. The whole group left. I remained in my house thinking about what had happened. I then decided to write to the regional office and tell them about what had happened. This I did, and posted my letter. I did not receive any reply until I was arrested.

BY MAISELS, J.: When were you arrested? - I was arrested on the 6th June. That is all, my Lord.

CROSS-EXAMINED BY MR MASTERSON: I think it is fair to say that you are a self-made man and that you have had to struggle to attain the position

Cross-  
Examination

In the  
High Court

Defence  
Evidence

No. 21

Kesiwe Malindi

Cross-Examination  
(continued)

23rd October  
1962

of headmaster at your school? - That is true.

You are one of a large family, are you not? - Certainly, I am.

And during your childhood there was a stage when you could not stay at home, but you had to go and live with relations because there were so many at home? - That is true.

I believe that eventually you did manage to go to school and completed the passes up to standard III? - That is true. 10

Was that in the Marandellas area? - It was.

At a kraal school? - Yes.

How old were you when you completed standard III?

BY MAISELS, J.: You say you went to school and got to standard III? - Yes, my Lord.

BY MR MASTERSON: How old were you when you completed standard III? - I was over 15 years.

And I believe that you then could not go on because of lack of funds in your family? - That is true. 20

Was it then you went out to seek work? - That is true.

I believe you got work first in Marandellas and then down in Bulawayo? - That is true.

During this time you were trying to save money for your education and to advance your education even though you could not go to school? - That is true.

When did you leave Bulawayo? - I left Bulawayo, I think, on the 10th January, 1954. 30

Were you 19 then? - I was about that.

You were born in 1935? - I was born in 1935.

From Bulawayo you came back to Marandellas and went to Wadilove? - That is true.

I believe that is a mission school? - Yes.

Run by what denomination? - Run by the Methodists.

How long did you stay there? - I stayed there for four years. 40

What standard did you reach then? - I reached the teacher's lower course.

Did that qualify you to become a teacher? - Yes, my Lord.

Is it correct to say that up to this stage you received treatment from various people which you considered to be discriminatory and unfair to you? - That is correct.

10 Did this lead you to form any particular political opinions? - That is correct.

And what political opinions did you come to hold as a result of these incidents? - Well, my political opinion at that stage was that the African should be allowed to participate in the Government of the country.

Indeed, it is still your opinion? - Certainly it is.

BY MAISELS, J.: Is it only participation? - I beg your pardon.

20 Is it only participation? - Certainly, it is.

You appreciate the point of that question? - I do.

Yes.

BY MR MASTERSON: Once you qualified at Wadilove, can you give us any idea as to how your political view developed? - I do not think I can give you how they developed unless there is a specific thing you are asking for.

30 Well, you say when you left Wadilove you came to the opinion that Africans should participate in the Government? - Yes.

Did those views become more deeply rooted in your or did you change your opinions or what opinions did you hold as time went on? - I never changed, my views deepened.

BY MAISELS, J.: You mean you became more convinced than ever that Africans should be allowed to participate in Government? - That is true.

40 BY MR MASTERSON: Since you left Wadilove, have there been any incidents in the development of your political ideas and ideals which have played any specific part in the formation or conformation of your views or the altering of your views?

In the  
High Court

Defence  
Evidence

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Kesiwe Malindi

Cross-Examination:  
(continued)

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In the  
High Court

Defence  
Evidence

No. 21

Kesiwe Malindi

Cross-  
Examination  
(continued)

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1962

MAISELS, J.: Do you understand that question? - I do not understand it.

Nor do I.

BY MR MASTERSON: Sorry, my Lord. Once you had left school, did anything in particular happen which made you alter your views at all or made you more convinced that your views were correct, or anything like that? - I do not understand what you are driving at.

For instance, did you ever get treated in such a way that you became all the more convinced the Africans should play a greater part in the Government? - That is true. 10

What sort of incidents? - Incidents such as discrimination in trains.

Yes, what else? - Treatment by the police force, discrimination in some shops, and the like.

That sort of thing? - Yes.

And when those sorts of things came to your attention forcibly, what effect, if any, did they have on your political views? - There was not any effect besides deepening my conviction that we should participate in Government. 20

Did your views change at all and ever go to the extent of the African being required to take over Government? - Not to take over Government, but to participate, as I have said.

MAISELS, J.: The word take over is ambiguous. Do you mean, Mr Masterson, whether he ever came to the conclusion that the African should be the sole governing party, the sole persons to govern, as distinct from merely participating? Are you using the word, "take over" in any sinister sense? 30

MR MASTERSON: I am using it in the sense of how your lordship put it.

BY MAISELS, J.: The question is whether you ever thought that the Africans alone should govern the country? - That never came to my mind.

It did come to your mind no doubt; but the question is did you think it? Did your views crystalise that way? - No, my Lord. 40

It came to your mind, but you did not agree with that? - I say that did not come to my mind.



Oh, I am sorry, I did not hear you. Yes.

BY MR MASTERSON: As your views became more and more crystalised, did you form any ideas as to how soon the Africans should be allowed to participate in the Government? - That I certainly did not come to.

10 And what were your views in later times, that is, within the last two or three years, as regards the Europeans' position in this country? - I do not understand what you mean by the European position.

I mean the last two or three years, what have you considered the rights of Europeans should be in this country? - My Lord, I do not think they need any more rights than they enjoy at this stage.

BY MAISELS, J.: Do you think that their rights ought to be curtailed? - Curtailed?

Curtailed? - No, my Lord.

20 Did you think the rights they enjoy were unfair by comparison with the rights Africans enjoyed? - I did not think they were unfair; I thought Africans should also enjoy the same privileges.

BY MR MASTERSON: Do you believe that the Africans today do enjoy the same privileges as the Europeans? - I do not.

What do you believe to be the reason for their not enjoying the same rights? - I believe the reason lies in the form of Government.

30 Is there any particular aspect about the government which causes this position to prevail? - Will you repeat the question?

Is there any particular aspect about the government which you believe causes this aspect to prevail, that is the denial of rights to Africans? - What particular aspect?

Do you think that the Europeans as a group are responsible for the continual denial of rights to Africans? - Not the Europeans as a group, but the government.

40 BY MAISELS, J.: Who puts the government in power? - The electorate.

Which is the electorate? - The people

Who are they, whites or blacks? - Both.

In the  
High Court

Defence  
Evidence

No. 21

Kesiwe Malindi

Cross-  
Examination  
(continued)

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1962

In the  
High Court

Defence  
Evidence

No. 21

Kesiwe Malindi

Cross-  
Examination  
(continued)

23rd October  
1962

In Southern Rhodesia? - Both.

Well, what is the majority? - The majority is white.

They do elect the Government? - Yes.

And you believe the white majority is responsible for this position that the blacks have not the same privileges as the whites? - They are, my Lord. You are asking me to crucify the people on the type of government they have devised.

10

I am not asking you to crucify anybody. You drew a distinction yourself between Europeans in this government and the government. I am putting to you that you know the government is elected by the majority of the people? - It is elected, but I do not think the government acts...

In terms of its mandate? - In terms of its mandate, yes.

BY MR MASTERSON: And what view do you hold as to how changes should be brought about? - I have not formed my own views as to how this should be changed.

20

BY MAISELS, J.: You have no views at all? - Not to effect a change.

You have no views as to how changes should be brought about? - No, my Lord.

BY MR MASTERSON: You do believe that changes should be brought about? - I certainly do.

Have you ever thought how changes should be brought about? - I might have at times.

30

Surely, you are a person who has a certain amount of education and ability. You believe that the Africans are not granted the privileges they should have. Surely, it has occurred to you some time or other to think of how you people should obtain those rights and privileges? - That is true, but it will be realised here that I had certain aims in my life which were not fulfilled at that stage.

What aims were those? - I am keenly interested in education and I have been carrying on with private studies.

40

BY MAISELS, J.: Did that prevent you from forming any ideas as to how these changes should be brought about? - It would not prevent me, but I felt that the stage had not come when I should put anything into practice.

In the  
High Court

Defence  
Evidence

No. 21

Kesiwe Malindi

The stage had not come when you should do what? - When I should put anything into practice what I believed in...

Cross-  
Examination  
(continued)

23rd October  
1962

10 You did not think the stage had been reached when you should put into practice what you believed in? - Yes, my Lord.

BY MR MASTERSON: Had you any idea of the possibility of taking action in the form in which these youngsters appeared to have taken action? - Not before that Friday.

BY MAISELS, J.: You had never considered it, is that the answer? - Yes, my Lord.

20 The possibility of action being taken before the Friday that these two boys came to see you? - Yes, my Lord.

Ronnie and Masawi, is that it? - Yes, my Lord.

BY MR MASTERSON: Had you not heard of all the burnings that had occurred before in places like Nkai? - I do not know what events happened in Nkai.

You do not know that burnings occurred in Nkai this year? - No.

30 Or last year? - I do not think I remember burnings in Nkai, but I do remember burnings in Bulawayo during the strike.

BY MAISELS, J.: Burnings in Bulawayo in what strike? - I think the July strike; I do not know the date.

July of what year? - July 1960.

Is that all you remember? - That is all I remember at present.

All that you remember at present? - Yes.

BY MR MASTERSON: You are a person who is keen on reading his newspaper? - Certainly, I am.

40 You get the daily papers? - I do get daily papers.

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High Court

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Evidence

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Kesiwe Malindi

Cross-  
Examination  
(continued)

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1962

Herald or Daily News? - Herald.

And the Daily News? - No.

Surely, during the past year or so, you have read of various schools and dip tanks being burnt and destroyed? - I am not refusing that I have read; I might have read, but it is not in my mind at the present time.

BY MAISELS, J.: You say you might have heard that there had been burnings of schools and destruction of dip tanks? - I might have read, not heard.

10

But it did not interest you, is that what you said? - I say I do not remember it now.

BY MR MASTERSON: You say you are a person deeply interested in education. Surely the burnings of schools, etc., had shocked you? - It should have.

Well, did it? - Yes, no. I mean it should have if I heard of such burnings.

BY MAISELS, J.: If you had heard of such burnings of schools you would have been shocked? - Yes.

20

And if you had heard that members of schools, if you had heard that responsible members of a political body were taking part in the burnings of schools, what would your reaction have been? - I would have been disappointed.

Is that all, only disappointed? - I do not know what you mean by reaction, my Lord.

30

Well do not you? - I thought that I answered to that reaction....

Just listen. If you had heard that members of a political party had taken part in burning of schools and if you had been a

member of that party, what would you have done? - I think the solution there was to get these members expelled from the parties.

Would you have continued to associate with those members who had taken part in burnings? - No.

Yes.

10 BY MR MASTERSON: Between the beginning of 1961 and the time of these burnings, had anything occurred in your life which specifically drew your attention to the desirability of avoiding burnings? - I do not understand that question.

Had you heard anything, seen anything, or been told anything, which made you realise more than ever that burnings were undesirable? - I do not remember anything.

MAISELS, J.: That is before this meeting.

20 MR MASTERSON: Before this meeting.

MAISELS, J.: On Saturday night? - Yes.

BY MR MASTERSON: Are you saying that at the meeting on the Saturday night, the meeting fell apart or dispersed because you held these moderate views? - I would not call them moderate views, but because I disagreed with what they were saying.

30 BY MAISELS, J.: The meeting dispersed because you disagreed with the wish and desire, the expressed wish and desire, of the others to take part in violent action? - Yes, my Lord.

And that violent action was to consist of burnings? - Yes.

In the  
High Court

Defence  
Evidence

No. 21

Kesiwe Malindi

Cross-  
Examination  
(continued)

23rd October  
1962

In the  
High Court

You disapproved of that? - Yes.

Defence  
Evidence

You disagreed with that strongly? - I  
disagreed with that strongly.

No. 21

Kesiwe Malindi

And that is why the meeting was  
dispersed? - Yes.

Cross-  
Examination  
(continued)

23rd October  
1962

MR MASTERSON: (To Court) I wish to  
proceed with the cross-examination at this  
stage in relation to certain passages which  
are included in exhibit 8. Before I do so,  
I would like to raise expressly the question  
of the admissibility of my doing so in  
view of the provisions of section 303 of  
the Criminal and Procedure Evidence Act.

10

MAISELS, J.: What is relevant?

MR MASTERSON: I wish to cross-examine  
the accused on the possibility of his  
previously having held notions which could  
possibly suggest that he is a man of bad  
character.

MAISELS, J.: Surely you are not  
cross-examining on that to show he is a  
man of bad character.

20

MR. MASTERSON: That is certainly  
what I would submit to your Lordship.

MAISELS, J.: As I understand it, you  
are proposing to put to him certain  
statements here because they are  
relevant to the question as to whether  
or not he took part in the matters which  
have given rise to the present case.

30

MR. MASTERSON: That is so.

MAISELS, J.: I do not see how section 303 comes into it. This is a document found in his possession. You are not cross examining that he committed other offences?

MR. MASTERSON: No, not other offences, but I will be cross-examining him to the effect that on a previous occasion he has suggested or held views which were consistent with the desirability of offences being committed.

MAISELS, J.: But that has nothing to do with section 303.

MR. MASTERSON: I am indebted to your Lordship. If I may have exhibit 8, I will proceed there.

BY MR. MASTERSON: Mr. Malindi, do you remember writing an essay on February 8th, 1961, regarding the change in Southern Rhodesian politics brought about by the introduction of the new constitution? - I might have.

BY MAISELS, J.: Well, look at it, and say whether you wrote it. Did you write that essay? - Yes, I did.

In exhibit 8, Mr. Malindi. It will do your case no good by the kind of "I might have" answer. If you say you would like to look at the book you will be allowed to do so? - Yes, my Lord. I told you, my Lord, this book has been away from me for a long time.

You have forgotten that you have written this essay? - There are many essays I have written.

Very well.

BY MR. MASTERSON: Do you remember concluding this essay in the following manner: "Violence is necessary and stones must be thrown to compell them to surrender; and notice here that unity among the masses is most essential. In conclusion, I would like to encourage all nationalists to be brave and uncompromising, to stand up and uphold comrade Nkomo, and throw as many stones as possible to expell these wolves from our land"? - I propose the whole composition.....

BY MAISELS, J.: Never mind, your proposition will doubtless be given consideration. Just answer the question. Did you write that? - I have said I am the one who wrote it.

In the High  
Court

Defence  
Evidence

No.21

Kesiwe Malindi.

Cross-  
Examination  
(continued)

23rd October  
1962.

In the High  
Court

Defence  
Evidence

No.21

Kesiwe Malindi.

Cross-  
Examination  
(continued)

23rd October  
1962.

What is the question?

MR. MASTERSON: Does he remember writing; he said yes.

MAISELS, J.: No, no, the next question.

BY MR. MASTERSON: Why did you write that? - What do you mean, "Why did I write"?

I mean why, for what reason? - Did I write the composition?

Did you write this particular part of that composition? - Well, I wrote it because I wrote it at the time I wrote the composition, I thought of it when..... 10

BY MAISELS, J.: "Wrote it because I thought of it when I was writing the composition". You mean it expressed your thoughts? - It expressed my thoughts at that time.

Is that what you mean, expressed your thoughts at that time, which was - what is the date?

MR. MASTERSON: The essay starts of, and "It is true that some people, especially those looking forward to obtaining freedom on a silver platter, will regard the change as a mere piece of paper." 20

BY MAISELS, J.: Was that composition written on that date? - It was written on that date.

BY MR. MASTERSON: How do you reconcile holding these views with the view you have given today to the effect that you are disgusted with the possibility of violence being resorted to? - I do not understand what you mean by holding those views. 30

BY MAISELS, J.: You said that this expressed your thoughts? - Yes, I thought of it. Views and thoughts are different.

Are they? What did you mean by saying it expressed your thoughts? - I do not know how I can answer you; but here was a composition I was writing; now I thought of this at that time and wrote it down. Surely, it cannot be said that those are views I held.

That is a matter of argument. Just give it to me, when you were writing this composition - it is headed, "A change in Southern Rhodesian politics"? - Yes. 40



Were you intending to write your own thoughts on the change that had taken place as a result of what you called the changes announced today, February 8th, 1961? - Those were my thoughts.

On that day? - On that day, yes, my Lord.

Yes. By that you mean you were writing down to express your own views that day? - To comment on a thing that had been announced that day.

To comment? - Yes.

10 Giving your own views? - Giving my own views, that is correct.

That is the whole point. On February 8th, 1961, when you wrote this composition, as you call it, you were expressing your own views at that date? - Yes, my Lord.

That is what I think the question was. You want this back (exhibit 8)?

MR. MASTERSON: I would like it back.

20 BY MAISELS, J.: What did you mean by, "I would like to encourage all nationalists to stand up and uphold comrade Nkomo, and throw as many stones as possible to expell these wolves from our land"? Who were the wolves? - That is why I said the composition should be read.....

Who were the wolves? Read the composition and tell me who were the wolves? - As I see it from a previous paragraph, this was referring to capitalists.

30 The wolves were the capitalists and who were the capitalists? - The people whether black or white. They can refer to both.

To whom you were referring as capitalists, independent of colour? - That is true.

BY MR. MASTERSON: Who did you understand to be the settlers? - The settlers?

Yes, who did you understand as the settlers; who does that refer to? - People who come into this country to settle.

40 BY MAISELS, J.: White or black? - There are some whites who have stayed.

You have used the term "settler" as applying to an African labourer from Nyasaland? - That is true.

In the High Court

Defence Evidence

No.21

Kesiwe Malindi.

Cross- Examination (continued)

23rd October 1962.

In the High  
Court

You really do? - I certainly do.

You do? - Yes.

Defence  
Evidence

Do you know anybody else who refers to these people as settlers? - In Southern Rhodesia?

Yes? - I have not met anybody.

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Kesiwe Malindi.

BY MR. MASTERSON: And do you recognise this passage in the little blue note book as being in your own handwriting? - Yes.

Cross-  
Examination  
(continued)

MAISELS, J.: That has not been put in.

MR. MASTERSON: It has not. I produce this book.

10

23rd October  
1962.

Put in as Exhibit 10.

BY MAISELS, J.: You say it is in your handwriting? - Yes. (To counsel) You were going to ask him to read a passage aloud.

MR. MASTERSON: Yes, my Lord.

BY MR. MASTERSON: Will you read it aloud to the Court? - Exhibit 10, comrades Maliangu, and Masauko, Chipimbere Chat Kota 1960.

BY MAISELS, J.: There is a photograph? - There is a photograph.

20

I think you were asked to read what is in your handwriting? - That is in my handwriting.

Carry on? - "I believe in Masauko, Chipimbere, his uncompromising attitude against imperialists even when facing imprisonment. His stand against colonialists and settler regimes; the liquidation of imperialists; the total evacuation of all foreign peoples in Africa; the entire freedom of every inch of African soil, the entire abolition of capitalism, and in African unity. The entire evacuation of all foreign military bases from Africa; and the establishment of domestic socialist governments on the principle of one man one vote."

30

BY MR. MASTERSON: There is another little book. Do you recognise this passage down that page up to there (Indicating) as being in your writing? - Certainly.

Put in as Exhibit 11.

40

BY MAISELS, J.: Just before you go to that, may I take it that everything in this book is in

your handwriting? - It would be correct if no additions had been made.

In the High Court

No additions have been made on the page on which is the passage which I have just come across. It says: "The leaders of N.D.P. were brought before the settler Court and the leader, Mr. Mawema, was sentenced to four years", though the settlers soon gave in and revoked this." What do you mean by "settler Court"? - By settler Court, I mean the Court that tried Mawema at that stage.

Defence Evidence

No.21

Kesiwe Malindi.

In what sense is the word "settler" used? - I used the word, settler, because that Court was wholly composed of settlers.

Cross-Examination (continued)

What do you mean by settler? - I have already explained "settler".

23rd October 1962.

Black or white persons who come to this country? - Yes.

And you say this referred just generally to that term? - Not generally to that term, but generally to the composition of that Court.

But that Court was white? - If it was white.

Do not you know? - I do know.

Well, what was it? - It was definitely white.

Now, when you say "the settlers soon gave in and revoked this," to whom were you referring? - I do not know.

"The leaders of N.D.P. were brought before the settler Courts and the leader, Mr. Mawema, was sentenced to four years, though the settlers soon gave in and revoked this". To whom were you referring? - I was certainly referring to the Courts, but I do not know what I mean by "soon revoked".

Why? - It might be explained either after or before.

I will read you the very next sentence: "The 19th November, 1960 saw the return of the great Joshua Nkomo to lead his people. Mass meetings of 30,000 to 50,000 people were held, but the settler government was blind". What did you mean by the term, "Settler government"? - The government composed of the settlers.

Black and white? - Not black and white.

White, it was white? - It was white, yes.

In the High  
Court

But in the essay which you wrote in exhibit 8, there the "settlers" has a different meaning? - It has certainly.

Defence  
Evidence

I just want to understand your evidence.

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Kesiwe Malindi.

BY MR. MASTERSON: And this is a small black covered note book which has been produced as exhibit 11. I have read from the page before that marked 11, and the top of the page, marked exhibit 11. And I believe you have identified this as being in your writing? - Certainly, I did.

10

Cross-  
Examination  
(continued)

23rd October  
1962.

It is headed: "The motto of my life". Then: "Whereas at the age of 24 the motto had been made to the effect that I shall not marry till the age of 30; whereas in that motto a clause was inserted to the effect that I should not marry before I had obtained a degree; may it be added to the above that in view of the continuous oppression of the African by the settlers, I will not marry before the age of 40 years, unless liberty and freedom are completely out of the settlers' hands before the period; be it therefore signed by me here in red ink to be strictly kept as from today, the 27th day of August, 1960 at the age of 25 years, that I shall have nothing to do with women in any form whatsoever connected with sexual relations until the above conditions are fully considered and implemented." Then it appears to be signed by you? - That is correct.

20

Now, who do you mean by settler here? - The composition of the government of this country is clear.

30

Just answer the question; the question was a simple one.

BY MAISELS, J.: What do you mean by settler there, who were you referring to? - I meant the whites.

Tell me, Mr. Malindi, it will save a lot of time, do you wish in any way to alter your evidence in regard to the use of the word "settler" in exhibit 8 in the passage read to you? - If that will shorten the time, yes.

40

It is in the interest of truth, not a question of shortening time. A person can make a mistake in giving evidence. If you made a mistake you should say so? - I certainly ask that the present interpretation, that is the correct one.

Let us just go back. The capitalists, I think, you referred to as settlers, is that right? And you remember you said the wolves were the capitalists? - It certainly referred to the capitalists.

In the High  
Court

Defence  
Evidence

No.21

And I understood you to say that the capitalists were the settlers? - I said the capitalists who accumulate property for their own future use.

Kesiwe Malindi.

10 But did you not equate the capitalists with the settlers? - I do not know the meaning of the word, "equate".

Cross-  
Examination  
(continued)

Did you not say that the capitalists were the same as the settlers? - To a large extent it is.

23rd October  
1962.

And in that context you mean white settlers?  
- Yes, my Lord.

20 Because this passage immediately preceding the one which said: "Violence is necessary and stones must be thrown to compell them to surrender", the sentence immediately preceding that reads: "Whatever happens, the capitalists will never give freedom to their colonies on a silver platter without compulsion."? - Yes.

To whom were you referring there? - I think there I was referring to the Europeans, not in this country, but overseas.

If you want to expell wolves from your own land, to whom would you be referring? Those people are overseas; were there any wolves in your own land? - Certainly, yes.

30 What colour were the wolves? - White.  
Yes.

BY MR. MASTERSON: Now, at some period in your life you appear to have held those very strong views; is that not so? - It is correct to take them as views, but I did not, because most of these things were not taken seriously.

Why did you write them down? - I did not write them down for anybody to read. That was personal; purely for my own use.

40 Why did you write down that sort of thing instead of other views that you expressed earlier to the effect that burnings of schools were out, because they were bad and hindered education? - If the burnings had come at that time, I would have condemned them.

In the High  
Court

Defence  
Evidence

No.21

Kesiwe Malindi.

Cross-  
Examination  
(continued)

23rd October  
1962.

BY MAISELS, J.: Just a moment. If the burnings had come at that time, you would have condemned them? - I would have condemned them.

Would you mind just answering the question. Is there anything in any of these books which have been placed before the Court as exhibits 8, 9, 10 and 11, which indicates that you are a lover of peace and peaceful methods and you are an opponent of fires as a means of achieving political ends? - I have a feeling that certain things, that these leaves, have been removed, so they are no longer in the red book.

10

By whom? - I do not know.

You mean it would be in exhibit 8? - Yes, my Lord.

Are you suggesting that these pages which are torn out of the book - there seem to be some pages missing - contained this sort of sentiment? - Certainly, I do.

You do, and who do you say tore these pages out? - I cannot say who tore them because I have not seen this book since I was arrested.

20

This book has been in the possession of the police, as far as I know, but that is what you are suggesting? - That is so.

You remember the evidence of one of the witnesses who said at the time he saw the book in your house the pages were torn out? - He did mention it.

That, of course, must be untrue? - I fully believe it was untrue.

30

But in none of the remaining pages is there anything which shows this humane sentiment of yours? - May I be allowed to know which book?

In any of the remaining pages in this book is there anything which indicates this peaceful philosophy of yours. Would you like an opportunity of looking through those books at lunch time so that you can take your time? - Certainly.

Very well, can you go on to another topic.

40

MR. MASTERSON: Yes, my Lord.

MAISELS, J.: You can still continue on these books, but in this particular matter, I want the witness to have an opportunity of looking through

the books. You will take steps to see there is a member of the police present while the books are examined.

MR. MASTERSON: I shall.

BY MR. MASTERSON: If you held those views at the time you wrote them, what, if anything, had caused you to change those views by the time you got to this meeting on Saturday, 12th May? - In all my views there is nothing which refers to burning of schools.

In the High  
Court

Defence  
Evidence

No.21

Kesiwe Malindi.

BY MAISELS, J.: Nobody asked you about burning of schools. You were asked about expressing views of using violence as a means of achieving political ends? - Yes.

Cross -  
Examination  
(continued)

23rd October  
1962.

Nobody said anything about the burning of schools yet. Now would you mind answering the question? - Put your question.

The question is what made you change your views by the time the meeting was held on that Saturday night? - I had not changed my views expressed in those books.

In which books? - In those books; because as I say, in these books, I did not mention destroying of particular things.

BY MR. MASTERSON: Did you say destroying or doing? - I said doing a particular thing.

After you heard that this group of people wanted to do these wicked things like burning schools and churches, did you continue to associate with them? - I did not associate with them before this date.

MAISELS, J.: I think the question was after.

MR. MASTERSON: I asked if you continued to associate after the events and your answer was: "I did not associate with them before the events"? - I was saying that because of the word: "continue".

Did you associate with these people before the events? - I think I did meet them.

MAISELS, J.: The question was a perfectly proper one and you should have given a proper answer.

BY MR. MASTERSON: Were you a member of the Zimbabwe African People's Union? - Certainly.

And you were a member of the N.D.P. before that? - Yes.

10

20

30

40

In the High  
Court

Defence  
Evidence

No.21

Kesiwe Malindi.

Cross-  
Examination  
(continued)

23rd October  
1962.

You are a member of the African National Congress? - I was, certainly, a member.

And were you not interested then in finding out who the secretaries and officials of the party were? - Not finding out, I knew them.

Did you do anything to assist them? - Assist them in what way?

MAISELS, J.: In any way? - I remember meeting some of them.

Is that all? Did you do any party work? - At branch level. 10

I do not care at what level? - At branch level, yes.

BY MR. MASTERSON: Did that involve your working with Agrippa Sevenzayi? - Yes, my Lord.

Once it became apparent that Agrippa Sevenzayi and these youths were interested in burning churches and dip tanks, did you continue to have anything to do with them? - I continued to have something to do with Sevenzayi, yes. 20

What did you have to do with Sevenzayi after that? - Anything that was on party lines was sent to him; anything with regard to party work was referred to him.

And why did you continue to associate with Agrippa Sevenzayi after you knew that he was possibly involved in these burnings? - Sevenzayi was an elected secretary; it would not be for me to push him from that position and elect somebody else.

BY MAISELS, J.: "It would not be for me"? - It would not be for me to oust him from that position. 30

BY MR. MASTERSON: No doubt there were other committee members in Goromonzi? - Most of them stayed in Salisbury.

BY MAISELS, J.: It was put to the Crown witnesses by your counsel that Sevenzayi was the real man behind all these burnings? - That is true.

That was put on your instruction? - Yes, my Lord. 40

And it was also put on your instruction, was it not, that Sevenzayi was acting actually contrary



to the official policy as laid down by Mr. Nkomo that nothing should be done unless he gave approval for it? - Yes.

That is correct? - Yes, my Lord.

Now, did you know the burnings had taken place? - I did.

And did you know the persons who had taken part in that burning? - I suspected.

Whom did you suspect? - I suspected this group.

10 Ronnie, Masawi, all these people we have heard? - Yes, my Lord.

BY MR. MASTERSON: Why did you continue to have anything to do with these people if you knew they had done such a very bad thing; you suspected that? - As I was saying, Sevenzayi was elected secretary so that anything which concerned the party at that time, would certainly have gone through him.

20 BY MAISELS, J.: But you were classed as a police informer and a moderate? - Certainly.

By Sevenzayi? - Yes, my Lord. The disciplining of Sevenzayi would not come from me, but from the regional office.

BY MR. MASTERSON: Do you know a Mr. Bendeke? - No, I do not.

Do you know a Mr. Mashware? - I do not know him.

Do you know Kunata? - I know Kunata.

Where does he live? - In Rusiki.

And do you know Mr. Chani? - I know him.

30 Where does he live? - In Rusiki.

Do you know Mr. Tapfumaneyi? - If he is J.M.

Where does he live? - In Chinyika.

Do you know Mr. Chibazhe? - I know him.

Where does he live? - In Rusiki.

Do you know Mr. Mhanje? - I do not know him.

All these names I have read out are the names of the committee members of the Goromonzi branch of ZA PU, are they not? - Yes, they are.

40 BY MAISELS, J.: All of them? - Those I have said I know are certainly the executive.

In the High Court

Defence Evidence

No.21

Kesiwe Malindi.

Cross- Examination (continued)

23rd October 1962.

In the High  
Court

Defence  
Evidence

No.21

Kesiwe Malindi.

Cross-  
Examination  
(continued)

23rd October  
1962.

Are members of the executive or were members of the executive of ZAPU, Goromonzi branch, when? - At the time I was arrested.

BY MR. MASTERSON: Did not you know who the chairman was? - I do not remember the chairman, but the chairman stayed here in Salisbury.

BY MAISELS, J.: Do not you remember his name? - I do not remember his name, but I knew the whole executive, not according to their positions.

You mean that he was on the executive, but you do not know whether he was a chairman? - Yes, my Lord. 10

BY MR. MASTERSON: Do not you know this man Mashware was on the executive? - I did not know.

And who was the chairman? - Yes, I did not know him.

BY MAISELS, J.: You did not know Mashware was on the executive or that he was chairman? - Or that he was chairman.

BY MR. MASTERSON: Now, if you disapproved of of Sevenzayi's actions, why did not you go to Mr. Tapfumaney's? - He also worked in Salisbury. 20

But you think he was on the Goromonzi branch? - He lives in Goromonzi but works in Salisbury.

BY MAISELS, J.: He lives in Chinyika reserve, you said? - But at that time he was working in Salisbury and was staying in Highfield.

BY MR. MASTERSON: Does not he come back for the week-ends? - He may at times.

Do you ever try to see him when he does come back? - I met him at times. 30

Did you make any effort to contact any of these people about Sevenzayi's behaviour? - The procedure there I did not think was necessary to see an executive member.

BY MAISELS, J.: Just answer the question. You can explain why afterwards. You did not get in touch with any of the others? - I did not.

And you said because it was not the correct procedure to do so? - Yes, my Lord.

BY MR. MASTERSON: Did you continue to have anything to do with Sevenzayi on party matters after the burnings? - On party matters, yes. 40

May I have exhibit 6. You have seen this statement? - Yes.

And you have a copy? - I have a copy.

But with the proper alterations to the copy? - Yes.

The last sentence in this letter, did you get a reply from the Goromonzi Trading Manager? - Yes.

What does that refer to? - I understood the executive had lodged a complaint to the manager.

10 BY MAISELS, J.: About whom and which executive? - The Goromonzi branch.

Had lodged a complaint to the manager about what? - I do not remember what it was, but it had something to do with domestic policy.

"I do not remember what it was, but it had something to do with domestic affairs". In Goromonzi? - Yes, my Lord, that is all I remember.

BY MR. MASTERSON: That is all you remember? - Yes.

20 You know Agrippa Sevenzayi's initials? - I know his handwriting.

BY MAISELS, J.: What are his initials? - A.S. I do not know whether it is A.S. I knew him as Agrippa Sevenzayi.

You do not know his initials?

BY MR. MASTERSON: Here is a piece of paper. Will you please write A.M. Sevenzayi, on that? And on the same piece of paper will you write "A.M. Sevenzayi" as if you were signing a signature? - I do not know what it means.

30 I mean try and write Agrippa Sevenzayi's name as a signature.

MAISELS, J.: A.M. Sevenzayi you want?

MR. MASTERSON: Yes, my Lord. (Done by witness)

I produce that my Lord.

Put in as exhibit 12.

Now, since Agrippa Sevenzayi was the secretary he would sign the back of Zimbabwe African People's Union, ZAPU, cards, would not he? - That is true.

40 Do you recognise these two cards as ZAPU cards with Agrippa's name on the back? - Yes.

In the High Court

Defence Evidence

No.21

Kesiwe Malindi.

Cross- Examination (continued)

23rd October 1962.

In the High  
Court

Defence  
Evidence

No.21

Kesiwe Malindi.

Cross-  
Examination  
(continued)

23rd October  
1962.

Is that Agrippa's signature? - I do not know; I have not seen it.

BY MAISELS, J.: You say you have never seen Agrippa's signature? - I have not seen it.

Do not you have a card? - I had a card.

You have never seen Sevenzayi's signature? - I definitively have not.

Does not the secretary have to sign all cards? - He might at times, but some cards are not necessarily issued by him. As Masawi issued cards, he would not sign Sevenzayi. 10

You say you have never seen Sevenzayi's signature? - No.

MR. MASTERSON: I produce the two cards and put them in.

Two cards put in as Exhibits 13 and 13A.

Now, in whose writing is that? - That is my writing.

And whose writing is that?

MAISELS, J.: This means nothing on the record. 20

BY MR. MASTERSON: Do you recognise that writing? - That is my writing.

These are two sheets of paper written on a writing pad and headed "ZAPU Goromonzi Central Branch, Chinyika School, Goromonzi". Dated May 12th, 1960.

MAISELS, J.: The accused says the writing is in his handwriting.

MR. MASTERSON: Yes. I just wanted to get an exhibit number. 30

Letter put in as exhibit 14.

And this reads as follows. (Letter read to Court)

That is in your writing? - That is in my writing.

And A.M. Sevenzayi is signed by you? - I have not seen it. (Shown to witness) - Yes.

That is the letter that you were inquiring about when you wrote this letter, exhibit 6, on the 6th June? - That is true.

How did you come to sign the letter, exhibit 14? - I did not sign the letter; I wrote the whole letter. 40

It was you and Agrippa and the rest of the executive who had discussed it...

BY MAISELS, J.: Just a moment. You wrote this letter? - Yes.

It is signed A.M. Sevenzayi, Central Secretary? Both written and signed? - Both written and signed.

Well, that is the point of the question. You signed Mr. Sevenzayi's name? - I signed Sevenzayi's name, that is true.

10 The question is why; that is all? - This letter, as I have said, was drafted by the Central Executive and it was brought to me for better language. After putting it into better language, that was when I wrote it like that.

You were not a member of the central branch? - I was not a member of the central branch.

Who is the man at Chinyika school who is a member of the central branch? - At Chinyika school, I do not know.

20 Why is this letter headed: "ZAPU Goromonzi Central Branch, Chinyika School"? - That is the address used for ZAPU letters in Goromonzi.

Who is the person who gets them? - The secretary.

Not you? - Not me; I was not in that school.

You were at Goromonzi school? - Yes.

You say you were asked to put this letter into proper language and you then wrote it and signed Sevenzayi's name? - Yes.

Who brought it out? - Sevenzayi himself.

30 BY MR. MASTERSON: Why were you still so interested in this sort of matter, if you knew that Sevenzayi was so radical as to burn down churches? - Do you realise that this letter was written on the 12th and not on the 17th?

Who was it handed to? - To the manager.

So you were not particularly kindly disposed towards people like that on that day either.

40 BY MAISELS, J.: No, no. This letter was written before the meeting? - It was before the meeting.

And up to the time of the meeting, as I understand you, you had not any reason for complaint against Sevenzayi? - No.

In the High Court

Defence Evidence

No.21

Kesiwe Malindi.

Cross- Examination (continued)

23rd October 1962.

In the High  
Court

Defence  
Evidence

No.21

Kesiwe Malindi.

Cross-  
Examination  
(continued)

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It was only that Saturday night that he came to you with his revolutionary proposal that they upset you? - Yes.

BY MR. MASTERSON: Why did you continue to be interested in Sevenzayi when you knew that he was going to resort to violence and had done so? - What do you mean I continued?

You wrote to him on the 6th June and asked him whether they had got a reply back? - Yes, I asked whether he had got a reply to that letter.

Why? - That thing concerned the party, not Sevenzayi personally.

BY MAISELS, J.: Exhibit 14.

BY MR. MASTERSON: Did you continue to have anything to do with Ronnie?

MAISELS, J.: Are you finished with this letter of the 6th June?

MR. MASTERSON: I have got a letter of the 6th June.

MAISELS, J.: Have you finished?

MR. MASTERSON: I was going to ask.....

MAISELS, J.: Before you leave Sevenzayi, I would like to ask him a question about that. (To witness) You say that first of all you disapproved strongly of what Sevenzayi had said about burnings? - Yes.

You disapproved strongly, also, because it was against Mr. Nkomo's instructions that no action should be taken until he gave the word? - Yes, my Lord.

And secondly because it was of a violent nature of which you strongly disapproved, being a man of peace? - Yes, not necessarily being a man of peace.

You disapproved of that because it was not the kind of action which you approved of? - Yes, my Lord.

You proposed a peaceful procession? - Yes.

And that only if proper permission was obtained? - Yes, my Lord.

In addition, when Sevenzayi and the others left, you parted on a note of hostility, did you not? - Not on a note of hostility, no, of the people of the group.

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Who was the person who accused you of being a police informer? - I did not hear any one in particular who said it; I think there were more than two.

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I thought it was put that it was generally said by all those people that you were a police informer. I took it to be generally from them and Sevenzayi associated himself with that? - Yes.

10 And so, did all the others? - Yes, all the others.

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And to call a person a police informer is at the best of times a dreadful thing, is it not? - It is an insult.

Cross-  
Examination  
(continued)

Did you regard it as an insult? - I did regard it as an insult.

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And to call you a moderate, was that regarded as a term of praise? - I did not regard it as a term of praise.

20 Did you regard it, too, as an insult? - I certainly did.

And the person who was the dominant personality amongst these people present, was Sevenzayi? - Certainly.

He was the secretary; he was the senior and he was the man who proposed the burning. Correct? - Yes, my Lord.

He was also the man, as put in cross-examination, who arranged people into groups? - Yes.

Did you see that? - No.

30 But you heard it? - I heard it.

Anyway, that night he was the man who proposed the burnings? - Yes.

He had insulted you personally, had he not? - I would take it that way.

Did you take it that way then? - Not at that time.

40 Why not? If a person calls you a police informer, why do you think four months later or six months later it was an insult and you did not think so then? - I did think of it as an insult.

At that time? - Yes.

Would you be interested in his welfare after that time? - I do not know what you mean by welfare.

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Would you be interested in his welfare after that time? Well, how he is; how his family is; how he is getting on; you know, the usual sort of courtesies one extends to one's friends? - It is true that I did not take him as a personal enemy.

I did not ask you that. I asked you whether you took him as a personal friend after that? - Not as a personal friend.

Why do you start this letter by saying: "We are still here. We are pleased you and your family are safe"? - I think that was a courtesy at the beginning.

10

"Safe from" what? - From illness.

Yes, I see.

BY MR. MASTERSON: I go on to the rest of exhibit 6. Did you ever see the telegram about which this letter was written? - If I am correct, it was brought to me.

Do you recognise this as a copy of the telegram? - Yes.

20

MAISELS, J.: A copy of the one that was destroyed? - A copy of the one that was destroyed.

Put in as exhibit 15.

BY MR. MASTERSON: Now, this reads: "To President, Box 3413, Salisbury. Goromonzi ZAPU people rejoice at boycott of the imperial agent Butler and are ready to crush the settler regime at a minutes notice. Damm their concession. We want our country. Sevenzayi". Is that the telegram you saw before it was sent off? - Yes.

30

And that is the telegram about which you wrote the letter, exhibit 14? - Yes.

BY MAISELS, J.: Whose handwriting is this? - I do not know, my Lord.

MR. MASTERSON: I believe it may be a copy made at the Post Office, my Lord.

BY MAISELS, J.: But you saw the original of this document before it was sent off. You remember it? - Yes.

Who had written it out? - It had been drafted by the executive.

40

I asked you who had written it out? - It was in the actual copy I sent to the post office.



You wrote that? - Yes, I did.

BY MR. MASTERSON: Why did you have such a change of mind by that evening? - After what?

BY MAISELS, J.: The question is why did you have a change of mind. I think you have to put other questions first, Mr. Masterson. Did this express your views? - It expressed the views of the executive.

10 I did not ask you about that. I asked you about yourself. Did it express your views? - No, my Lord.

BY MR. MASTERSON: Why did you write it out for them? - This was an executive thing and I had no right to alter it.

Did you not agree with them when they sent it off? - Well, this thing had been provided to me as a draftsman. Would I have any right of saying this should not be sent?

20 You had a right to say do not burn places down? - I refused to co-operate. I did not say do not go and do it.

BY MAISELS, J.: You did not say: "Don't go and do it"? - My Lord, I do not understand your question.

Well, did you say that on the Saturday night: "You refuse to co-operate"? - Yes.

You did not refuse to do what? - I did not stop them from doing anything.

30 You merely said that: "As far as I am concerned, leave me out; you do what you like"? - Yes, my Lord.

On the Saturday night? - On the Saturday night, although I did hint to them that these things were bad.

You did hint to them these things were bad? - Yes.

If they wanted to do it, it was their affair, but you had nothing to do with it? - That is correct.

40 And again: "If you want to do it, it is your affair; I want nothing to do with it"? - Yes, my Lord.

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But I am still puzzled about this. This does not express your views? - It does not express my views.

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Did you not want the settler regime crushed?  
- That I did.

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Just a moment. Did you want the settler regime crushed? - I certainly did.

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By the settler regime, what do you mean by that? - Exactly what it means?

Cross-  
Examination  
(continued)

What does the settler regime mean? - The government.

10

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A black government? - I do not understand.

A white government? - Because of the discrimination, that was in that one.

But what government, the white government? - Yes, my Lord.

Were you pleased that Mr. Nkomo was boycotting Mr. Butler? - Yes.

Did you rejoice at it? - I did rejoice.

Did you regard Mr. Butler as the agent of imperialists? - I certainly did.

20

Were you not satisfied with any concession that Mr. Butler might make? - I was not.

Did you "want your country"? - Yes.

Would you mind reading this telegram and telling me where it did not express your views?

(Pause: witness reads)

What is your answer? - My answer is it does express my views, but I would like to add...

That is exhibit 15. It does express your views, but you want to say? - Not in the sense that these were my views on the paper, but that I agreed with the views on the paper.

30

Not in the sense that my views were being expressed and I agreed with it? - Yes, my Lord.

You mean you had nothing to do with the formulation of this telegram as such? - I had nothing to do with it.

But it just so happened that what was said in the telegram coincided exactly with your views? - Yes, my Lord.

40

BY MR. MASTERSON: Now, what did you mean by: "Crush the settler regime"? - Remove it.

Why did not you say remove? - I did not say remove; they said remove.

BY MAISELS, J.: No, no. I want to remind you that they came to you, as I understand your evidence, to draft this in proper form? - Yes.

You were to put it in good language? - It is the letter I set in good language.

10 And this? - That was mainly copying it down.

Why did they come to you merely to copy it down? Cannot Sevenzayi write? - He can write.

Why did they come to you merely to copy it down? - Both those things were sent to me.

Were they both sent on the same day? - I think that is correct.

So, a telegram was sent completely drafted? - Yes, my Lord.

20 But the letter was not; the letter was just put in rough form, what they had in mind, and you drafted it out properly? - These things did not come at the same time.

The same day? - The same day, but not the same time.

You must have been very busy on that Saturday? - It was certainly a busy day.

You had a telegram, a letter; you had a meeting that night; very busy day in Goromonzi? - Yes, my Lord.

30 BY MR. MASTERSON: And how does the word "crush" happen to appear here? - Where?

In the telegram.

BY MAISELS, J.: Exhibit 15. Would you like to have the telegram before you? - I think I know the contents.

Very well, answer the question then.

BY MR. MASTERSON: How does "crush" come to appear in this telegram? - I do not know how it comes to appear.

40 You wrote out the telegram for them? - I did write out the telegram for them.

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You understood the word "crush" in this context? - I certainly do.

What does it mean? - Another word would be destroy, or remove, as I have said.

It involved a rather violent removal or destruction, does it not? - It certainly does, yes.

BY MAISELS, J.: Well, I suppose in the language of politics you sometimes use strong words without conveying their literal meaning? - Yes, I do.

10

You accept that, do you? - Yes, I do.

BY MR. MASTERSON: Nevertheless, once you had written this telegram, what caused you to change your views by the time you held the meeting in the evening? - Do you mean those views in the telegram?

Yes? - I did not change my views on the telegram.

But you said in the evening they were not to try and burn schools or anything like that. "You must co-operate and do things legally"? - Do I understand you to mean that burning schools will crush the government?

20

BY MAISELS, J.: What you are saying to counsel is that this telegram says nothing about burning schools and dip tanks and churches and things like that, and a different sentiment is being expressed in exhibit 15 from that which was put forward by Sevenzayi on the Saturday night? - That is true.

The witness can see the exhibits mentioned before, in the presence of a member of the C.I.D.

30

The Court adjourned for luncheon  
till 2.15 p.m.

Court resumed at 2.15 p.m.

KESIWE MALINDI, under former oath.

BY MAISELS, J.: Have you had an opportunity of looking through exhibits 9, 10 and 11 during the adjournment? - I have, my Lord.

Have you found anything there against the use of force in the achievement of your political aims?

40

- Not in the achievement of my political aims, but there is something to the effect that force is not good.

Can you show me where it is, please? (Witness indicates)

You refer me to an essay in exhibit 8, headed: "Atomic Energy: a curse or a blessing?" - Yes, my Lord.

10 But this has nothing to do with the matter which we are now discussing. This has to do with atomic bombs being used in war and the fact that the discovery of atomic energy, if so used, might be a curse and not a blessing? - That is what I said, my Lord. It was nothing in particular.

It had nothing to do with the question of the achievement of your political aims in this country? - That is so.

20 Is there anything in any of these documents, exhibits 8, 9, 10 and 11 or, indeed, in any of the other exhibits in this case, which refers to your advocating passive resistance or processions as a means of achieving your political aims? - No, my Lord.

CROSS-EXAMINATION BY MR. MASTERSON continued.

When was it that the telegram, exhibit 15, was written out and taken to the Post Office? - Some time in the morning of the 12th.

Incidentally, I believe that the Post Office is in the Goromonzi Trading Company building? - Yes.

30 And that there is a postal agency in that building run by an employee of the Goromonzi Trading Company? - That is true.

Who were the people who brought you this telegram to rewrite? - It was brought to me by Sevenzayi.

Anyone else? - He was the only one.

When you wrote the letter, exhibit 14, was anybody else with you? - I do not remember anyone else.

40 Do you remember exhibit 14 is the letter to the trading company about the treatment received by the person who had taken the telegram? - I know that letter.

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Did you write that letter or did you have any-  
one with you? - I was with Sevenzayi and Sevenzayi  
only.

Is Sevenzayi a person who reads a lot? - That  
I cannot say.

Have you ever discussed the works of other  
politicians with Agrippa Sevenzayi? - No.

The expression, "Damn your concessions. We  
want our country". Where does that come from? Is  
it one of Mr. Nkomo's expressions? 10

BY MAISELS, J.: Just ask him where it comes  
from. What did you say? - I do not know, my Lord.

You do not know where the expression comes  
from? - I do not know where it comes from.

Was that the first time you had ever seen it?  
- No, I have seen it sometimes.

Where had you seen it before? - I do not know  
in which book.

Does it mean anything to you? - It certainly  
does. 20

Do you think it is a good slogan? - Yes, it is.

That is why you used it so much in those books?  
- If it is used, yes.

What do you mean, if it is used? Do not you  
know if you used it? - I do not remember in which  
particular case.

Do you mean you cannot remember whether you  
used it or not? - Yes, my Lord.

BY MR. MASTERSON: Have you ever heard Seven-  
zayi talking about, "Damn your concessions. We  
want our country"? - I have never heard him discuss-  
ing politics with other people 30

BY MAISELS, J.: Well, he has not discussed  
politics with you either? - With me he has.

Then you can answer the question. In the  
course of his discussions with you, have you ever  
heard him use this phrase? - My Lord, he would not  
use it referring to me.

No, no, no. Of course he would not. You  
did not give him any concessions, did you? - No. 40

Have you ever heard Sevenzayi use this phrase:  
"Damn your concessions". That is the question.  
It is a simple one? - I do not remember, my Lord.

BY MR. MASTERSON: The closing phrase of the telegram is "Damn your concessions. We want our country". Who put that into the telegram? - I cannot say.

Was it not you, by any chance, who suggested, "Yes, that is all right. I suggest you add this little bit at the end of it"? - If I did, I do not remember.

10 But you said it is possible that you did add to the wording of the telegram? - It could be possible, yes.

BY MAISELS, J.: You say it could be possible? - Yes, my Lord.

But how could that be possible if the evidence you gave before lunch is correct? - I did say that this was brought to me for writing.

Writing only? - Yes.

20 It was all written out and all you had to do was write it again, as distinct from the letter, exhibit 14, which you had to redraft. That is how I understood your evidence before lunch? - Yes.

How can you say it is possible this phrase was yours? - I mean it is possible that additions could have been made.

Do you think it likely? - I do not think it is likely.

You have put it to the witness that that is a phrase which he uses in these books?

MR. MASTERSON: I have, I believe, my Lord.

30 MAISELS, J.: Well, can you show me where.

MR. MASTERSON: I think so, my Lord. The accused thinks he can help me by looking in exhibit 11. The witness has referred to the bottom of page 11 in exhibit 11: "Damn your concessions. We want our country!"

BY MAISELS, J.: Is this in your handwriting? "Damn your concessions"? - It is, my Lord.

You say you do not know where you got it? - I do not know where I got it, but those are quotations.

40 You have written from time to time? - Yes, my Lord.

Now, reading that and seeing that is exactly

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the same wording in the telegram, exhibit 15, do you think it is likely that that phrase or that sentence was added by you in the telegram? - I said it was possible, my Lord, but I do not think it is likely.

BY MR. MASTERSON: Now, after the burnings did you discuss them with Sevenzayi at all? - I do not think I met Sevenzayi after the burnings.

Did you attempt to discuss them with him? Did you try to get hold of Sevenzayi to discuss these burnings with him? - I did not. 10

Why not? - It was not necessary.

Did you do anything about action after the burnings? - Not to my knowledge.

BY MAISELS, J.: I think you said you sent a letter, did not you? - I sent a letter before the burnings, my Lord.

Do you mean on Sunday or Monday? - It was on Monday, when I sent the letter.

To whom? - To the regional office. 20

Where is that? - It was in - I do not remember the name.

Was it in Salisbury? - Yes.

You say that was a letter to which you had not had a reply? - I had not had a letter when I was arrested.

By the 6th June? - By the 6th June.

Had you kept a copy of it? - I did not keep a copy.

Was that a letter of complaint about Sevenzayi? - I actually told them about the whole proceedings. 30

Do you mean you gave them a full report of what had happened? - Yes, my Lord.

BY MR. MASTERSON: Do you remember whether you did anything more about reporting to regional headquarters when you found they had, in fact, done the burnings? - I did not find out that they had actually done the burnings. There was one thing which faced me about the burnings. When the burnings were reported, I found the area was so wide-spread that I thought somebody with a car could have done that thing, so that I could not really pin these boys to say they had done the burnings. 40



Nevertheless, you did suspect them, did not you? - I did suspect them, yes.

Did you do anything about finding out from them whether they had, in fact, done the burnings? - I did not.

Why not? - As I say, it was not necessary for me to find out through these boys.

10 BY MAISELS, J.: Why not? - If I had tried to find out anything about the burnings from the very boys who made the Saturday threat, they could have done anything to me.

BY MR. MASTERSON: Would they necessarily have done anything to you if you simply asked if they were responsible for the burnings? - Obviously, this would have led them to suspect that I was going to do something about it.

Why? - Why did they say that they would deal with me if I reported to the police?

20 I am not saying did you ask them if they knew anything about it so that you could go and tell the police, but for your own knowledge.

BY MAISELS, J.: The witness has explained: "If I had asked them, this would have led them to suspect I was going to report it, because they had called me a police informer already"? - Yes.

Is that your answer? - That is my answer, my Lord.

30 BY MR. MASTERSON: Did you receive any threats other than the threats you say were uttered on the Saturday night? - Not any others.

BY MAISELS, J.: Did you see any of the others after the fire? When did you first hear there had been a fire? - I think it was on Tuesday evening.

On Tuesday evening you heard about the fire? Now, after that Tuesday evening, did you ever see any of the persons who were present in your house on the Saturday night and who had threatened you? - It is possible that I saw some of them.

40 Well, cannot you remember? - I do not remember at any particular time when I met one of them.

You do not remember if you met one at any particular time? - Yes, my Lord.

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But did you not put it to Nowa yesterday that he paid you 3s.6d. on the 5th June, 1962? - That was not immediately after.

No, I did not say immediately after the fire; I said after the fire? - If that is what you implied, I did meet Ronnie on the 2nd June.

Well, it does not matter if it was the 5th or the 2nd. You say you met Ronnie on the 2nd June? - Ronnie on the 2nd and Nowa on the 5th.

Did you speak to them? - I spoke to Ronnie, yes.

10

BY MR. MASTERSON: Did you ever speak to Sixpence after these fires? - I did not speak to Sixpence.

Does the fact that the letter, exhibit 6, from you to Sevenzayi, was found in the possession of Sixpence on the 6th, not mean anything to you? Sixpence says that he had this letter? - Yes.

..... When he was arrested? - That is true, on the 6th.

20

Did you give it to him? - Yes, I did.

BY MAISELS, J.: Is that your handwriting? - It is, my Lord.

BY MR. MASTERSON: Is it written by you? - It was written by me, yes.

Now, did you see these people any earlier than the beginning of June? - I could have seen them not on any particular event.

BY MAISELS, J.: You mean to pass them in the street? - Yes, my Lord.

30

BY MR. MASTERSON: Did you never make any attempt to talk to them? - Actually, I never made any attempt to talk to them on this particular subject.

But you talked to them on other subjects? - I might have, yes.

Even though you were afraid that these people might be annoyed with you because they suspected you of being a police informer? - That would not have stopped me from talking to them.

40

Did you ever do anything about organising processions? - I have never organised a procession.

Well, after the fires, did you organise a procession or try to organise a procession? - No.

Did you try to get anybody else to? - No, I did not.

BY MAISELS, J.: On the Saturday night, there was a proposal in your house that there should be a burning of what? - It was a burning of schools.

Not churches? - No, not a church.

Not a church at all? - It was not a church, but schools, my Lord.

Anything else? - To burn dip tanks.

10 Anything else? - And the mealie lands.

Now a school-cum-church was burnt down on Monday night? - I beg your pardon, my Lord.

A building which was used as a school and a church was burnt on Monday night? - Yes, my Lord.

A dip tank was burnt on Monday night and destroyed? - Not a dip tank, but a dip storage shed.

BY MR. MASTERSON: Are you sure that there was no mention of burning churches? - I do not remember the burning of churches in particular.

20 Why did you mention in your evidence-in-chief in English that Sevenzayi had given as examples, churches, dips and mealie lands? - That could be correct; it is quite a long time since these things were talked about.

You remembered it this morning, but just now you said there was definitely no mention of churches; only schools? - I feel it was schools that was mentioned.

30 BY MAISELS, J.: What did you mean that that was correct, churches, a moment ago? Now you say you feel it was churches? - My Lord, I did not say so.

You said churches in chief. You say that is a mistake? - Yes, my Lord.

You say it was schools, not churches? - Schools, my Lord.

BY MR. MASTERSON: Do you know what the attitude of ZAPU, as an organization, was as regards religion, in May this year? - At the time I did not.

40 BY MAISELS, J.: Do you mean in May you did not know what ZAPU's attitude was to churches? - I did not, my Lord.

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BY MR. MASTERSON: Had anybody in ZAPU mentioned to you at any stage that churches were to be destroyed? - Not to my knowledge.

Sevenzayi had never talked to you about the unsatisfactory position of churches and missions? - No.

And the other youngsters, Ronnie, Masawi and that crowd, had they ever discussed with you the undesirability of churches and missions? - I never discussed any politics with those young boys.

10

Had you undergone any particular change in your religious beliefs in the last few years? - Certainly, I have.

What? - I have come not to believe in religion.

Is that the form of sentiment expressed in your essay on "My Life"? - The one that was read to the Court, yes.

BY MAISELS, J.: Was that your belief in May this year? Were those the views you held in May this year? - I still hold them to this day, my Lord.

20

Well, you held them in May this year? - Yes.

That is exhibit what?

MR. MASTERSON: Exhibit 9, my Lord.

BY MR. MASTERSON: So, when you give evidence on oath, the fact that you take an oath has no real significance?

MAISELS, J.: No, you cannot say that; do not put that last question. Are you suggesting that the witness took an oath not meaning to tell the truth because it was not binding on him?

30

MR. MASTERSON: I am suggesting that the mere fact that the accused gave evidence on oath is of no significance.

MAISELS, J.: Well, you can put it. I do not see the point of the question.

THE WITNESS: My disbelief in religion does not dispute the fact that I sincerely believe that there is a God. I thought when I was taking this oath I interpreted it to mean that I was speaking the truth before God, not before Christianity.

40

BY MAISELS, J.: What are your views on Christianity and churches? - I beg your pardon.

Churches? - I have no views on churches.

No views on churches at all? - No.

And on churches as places in which Christianity is preached? - I have views on Christianity, but not on churches, my Lord.

BY MR. MASTERSON: I believe that you are only opposed to Christianity? - Yes.

And I think that you concede that the churches mean quite a lot to Christians? - They may, yes.

10 Well, surely they are places which Christians use to worship?

BY MAISELS, J.: Not all Christians go to Church.

MR. MASTERSON: No, I am not saying that.

MAISELS, J.: Churches may mean something to some Christians, not to all Christians. I presume there are a lot of Christians who do not believe in formal worship.

MR. MASTERSON: That is so, my Lord.

20 BY MR. MASTERSON: Is it not true that many Christians believe in worship in churches? - That is true.

So, if one dispenses with churches, one would possibly be interfering with their practice of Christianity? - That is true.

You do not know anybody else in the Goromonzi area who holds those same views? - With me?

Yes? - No.

30 BY MAISELS, J.: Not Sevenzayi? - Not Sevenzayi, my Lord.

BY MR. MASTERSON: When you were arrested on the 6th June, did you realise that all these youngsters had been arrested too, Masawi, Ronnie and that lot? - Not till I saw them at the police station.

At the police station did you see that lot? - Yes, I did.

40 Did it occur to you then that something had leaked out as regards the plot to burn places down? - No, it did not.

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Why did you think they were there? - I thought they had been arrested for their own agreement.

When they arrested you, I understand that it was explained to them that you were being arrested for the burning at Chinyika school, Chinyika dip and Chinyika hide shed? - No, I was told that I had been arrested for burning Chinyika church.

When you saw all these other youngsters there, did it not occur to you that they might have been arrested for the burnings? - It did not, not at that time when I saw them. It was after, when I had been told.

10

When were you told? - I think soon after my arrival there.

At the police camp? - Yes.

BY MAISELS, J.: What did you think they were doing there when you first saw them? - There was no lapse of time from the time I arrived to when I was told.

You were told immediately you arrived? - Yes.

20

Who told you? - The boys were actually in the cells.

They told you? - No.

Who told you? - I was told by the police who were on guard.

You were told that those men had been arrested for burnings? - Yes.

BY MR. MASTERSON: Did you suspect that they might be responsible for these burnings? - I certainly did.

30

And you, no doubt, on your evidence, had a clear conscience? - Yes, my Lord.

When you saw that they had all been arrested, did it not occur to you that some one had talked and that the whole story had been revealed to the police? - I do not see what you are driving at.

When you got to Goromonzi police station, the day you were arrested, did you see Masawi there? - Yes.

Ronnie? - Yes.

40

Agrippa Sevenzayi? - I did not see him.

Lovemore? - Yes.

Sixpence? - Yes.

Hensiby? - I did see him.

Supa? - Yes.

Nowa? - Yes.

All the juveniles, you saw them there? - Yes.

BY MAISELS, J.: All the people who visited your house on Saturday night? - Except Sevenzayi.

I thought you said Agrippa? - I did not, my Lord.

10 They were all there, except Agrippa? - Yes.

BY MR. MASTERSON: When you saw them all there, surely you realised that something must have happened and that the whole story was out? - I do not know what you mean by the whole story.

You must have realised at the police station that the police must have got to hear of these people associated together for the purpose of doing burnings? - Yes.

20 Did you want to stay in gaol from May until now? - I did not.

Why did you not tell the police, when they asked you about it, about what happened on Saturday night? - When a person is arrested, I understand he has an option of either making a statement or not.

Yes? - I gave a statement that I knew nothing about the burnings.

This, in fact, is the statement you made to Mr. Rattray? as signed by you? - That is correct.

30 It reads: "The statement is this: I know nothing about the charge." Yes? - Yes.

Statement put in as exhibit 16

BY MAISELS, J.: What was the charge?

BY MR. MASTERSON: I believe you were informed by Mr. Rattray that he was making inquiries into certain cases of arson which occurred on the night of the 14th May, 1962 in Chinyika dip tank, Chinyika Church, and St. Dominics School classroom? - Yes.

40 BY MAISELS, J.: You say you took up the attitude you understand you have an option either to say nothing or to make a statement? - Yes, my Lord.

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Kesiwe Malindi.

Cross-Examination (continued)

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And you elected to say nothing? - I elected to make a statement, my Lord.

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You are not saying exhibit 16 is the equivalent of electing to say nothing? - It is not, my Lord.

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BY MR. MASTERSON: So, when you say: "I know nothing about the charge", you are not being truthful? - I was truthful.

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But surely you have told us repeatedly that you suspected all these people of being involved in the burnings? - Now I was charged with burning Chinyika Church.

10

Cross-Examination (continued)

BY MAISELS, J.: No, you were not charged with anything. Just read this again. Do you see that? - I have, my Lord.

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BY MR. MASTERSON: Now, what gave you the idea that you were charged with burning Chinyika church, a guilty conscience? - When my house was searched, I was told I was being arrested for burning Chinyika church. When the statement was taken, I knew it was in connexion with the burning of Chinyika church; therefore I told them that I knew nothing about the charge that I had burnt Chinyika Church for which I had been arrested.

20

Did it occur to you that since everybody whom you suspected of possibly being involved in the burnings had been arrested, except Agrippa, that there was no longer any point in concealing your knowledge of Saturday evening's meeting? - It did not.

30

Did you not realise that you would be kept in custody or that there was a possibility of your being kept in custody if you did not tell them what you knew about this? - I realised that this would happen, but I knew I would be brought before a Magistrate and tried.

But you did not want to wait all this time before being tried, surely? - Had I any alternative?

Why not tell them: "These people came and proposed all this violence. I said, 'No, please don't do it', but they appeared to have done it."? - I had not been told then that these boys had set it on fire.

40

But you suspected that they had done so? - I suspected, yes, but I was not working on suspicion.



You also realised that all the juveniles had been got together by the police? - That I did, yes.

Then why did not you explain then how you knew that they were, in fact, involved, even though it was only to the limited extent that you have told us? - Is that the only way in which a case is conducted?

10 It is not the only way, but did you not appreciate if you told the police what you did know that you would not be kept in custody all this time? - When the police came to my house, they came to arrest me, not to investigate anything. I knew the police had some information, which led them to arrest me.

BY MAISELS, J.: You knew the police had information which led them to arrest you? - Yes, because they would not just come to arrest me for nothing; because of that I waited my time to be tried and then say the truth.

20 BY MR. MASTERSON: Did you suspect that it was these juveniles who gave the police the information? - Yes, I did.

Meantime, you suspected the juveniles of having done the burnings? - Yes.

30 Why did not you tell the police: "Look, I am not the person. They are the people who did it. I didn't actually see them doing it, but they were discussing it at my place two or three days before"? - I have said, my Lord, that was not the only way of conducting that case.

BY MAISELS, J.: Was this read over to you? Did you admit having been informed by Detective Inspector Rattray that he was making inquiries into certain cases of arson which occurred on the night of the 13th May, 1962 at Chinyika dip tank, Chinyika Church and St. Dominics classroom? - Yes, my Lord.

Did you admit having been warned that you need not make a statement which would incriminate you in any way? - Yes.

40 You were told all those things by Mr. Rattray? - Yes.

And in reply to that you said: "I know nothing about the charge."? - Yes, my Lord.

You knew it had been planned to burn the dip tank? - That I did.

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Cross-  
Examination  
(continued)

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You also knew it had been planned to burn churches? - Yes, my Lord.

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Let us leave out the church? - Yes, my Lord.

Well, you did know something about it? - Not about the burnings.

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No, but you knew something about the plan? - Yes.

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That is the point which Mr. Masterson is trying to ask you. Not only did you know about the plan, but you suspected the persons who had actually done the burnings? - Yes, my Lord.

10

Cross-Examination (continued)

And you suspected that those were the persons who gave information which had led to this unwelcome visit by the police, did you? - Yes.

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Now, Mr. Masterson says under those circumstances, why did you not say, "Yes, I know about a suggestion to burn a dip tank, a classroom by X,Y,Z - whoever they may be - and I told those people then and there, I would not have anything to do with that and it was against the policy," and, in fact, gone on to say, "I actually wrote a letter to the regional committee to complain about it." Why did not you say that? - As soon as I would have said that I would have incriminated myself.

20

Why? - I mean I would have brought myself into the picture.

BY MR. MASTERSON: But you would not be incriminating yourself, because you would have said, "They came and I told them no," just as you have been telling us? - Yes, I told you because this is already before the Court.

30

Do you think what you are telling us now is incriminating you? - It is not incriminating me.

Why could not you tell what you have told us today to the police, when they asked you to make a statement to them? - I did not think to defend myself in that way.

Was there any other reason for your making that statement? - What other reason?

Other than deciding not to conduct your defence that way? - Of course, I made that statement to show the Police I had nothing to do with the burnings.

40

Is that the only reason why you made that statement? - That was the only reason.

So, once you had seen all these people, were arrested, there was no longer any question of being afraid of their taking action against you, because they were arrested? - How can they take action against me when I was in prison?

Precisely, how could they take action against you, when they were in prison too? Is not that another point? - Yes.

It works both ways? - Yes.

Did you make this statement freely and voluntarily? - To begin with, it was freely and voluntarily, although I was disturbed later on.

BY MAISELS, J.: But at that time that you made exhibit 16, was that freely and voluntarily? - Yes, my Lord.

BY MR. MASTERSON: Right now. Why did you not explain to the police at that stage that you have got the right people there? "These juveniles outside came to my place on the Saturday, but thereafter, I had nothing to do with them, and I told them they must not do anything"? - I told them I felt this thing would be incriminating me.

How did you feel that it would incriminate you if that is your very defence today? - I think I have answered that question.

I am afraid I do not think you have. You have told us today that on the Saturday night these people came to you and made the proposal to take certain action or violence? - Yes.

You disapproved? - Yes.

You are suggesting that to the Court as a defence? - Yes.

MAISELS, J.: Not as a defence? - That is the truth.

BY MR. MASTERSON: Well, that is the truth? - Yes.

That is as far as you are concerned, and you believe that it is a valid defence, do not you? - It is a valid defence, yes.

Why did not you raise that valid defence at

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Cross-  
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(continued)

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this stage, instead of saying: "I do not know anything about it"? - The police were not trying this case.

Did you not realise that you would be kept in custody unless you made some statement to satisfy them? - I knew I would be kept in custody but eventually I would be tried.

The Preparatory Examination, which was held before this trial, appears to have been commenced on the 4th July and completed on the 27th July? - Yes.

You must have been already in custody for some six or eight weeks by then? - Yes.

Why did not you tell the Magistrate at the Preparatory Examination that was so?

MAISELS, J.: Well, he had a right not to.

MR. MASTERSON: He certainly did.

MAISELS, J.: If he had a legal right not to say anything and he exercised that right, then you render nugatory the right by criticising him for not saying something.

MR. MASTERSON: As your Lordship pleases.

MAISELS, J.: It is a different thing if, in regard to exhibit 16, he said: "I will not make a statement at all." You can make no use of it at all, but clearly because he said, "I know nothing about the charge," you are entitled to make use of it. But, it is a different thing if in the Magistrates Court he says: "I am not going to say anything," then that is a legal right and you cannot criticise him for it.

MR. MASTERSON: As you Lordship pleases.

BY MR. MASTERSON: What class does your school go up to? - To standard IV.

For how long has it been teaching up to standard IV? - The standard IV class started this year.

Did you have any trouble getting this standard IV class started? - Certainly, we did.

Were the Native Education authorities awkward about letting you start this standard IV? - No, they were not awkward.

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What troubles did you have as regards starting it? - We applied for this class, I think it was after January, when we found out that some of our pupils had failed to get room in other schools, so we got a reply quite late that we would be allowed to run a community school, which is different from a normal school.

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Did you want to have the standard IV as part of your normal school? - We did, yes.

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10 Did the Native Education authorities prevent your doing that? - They did not prevent it. They told us that no money had been certified for that class and actually the application was late.

Cross-  
Examination  
(continued)

And did you ever have anything to do with Mr. Graver, of the Salvation Army, with regard to standard IV? - No.

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I believe you have something to do with the African Teachers Association at Goromonzi? - Yes.

20 Did the African Teachers Association at Goromonzi ever send deputations to Mr. Graver? - We did send delegations. In fact, I was a member of that delegation.

Mr. Graver, I understand, is the person in charge of Chinyika Salvation Army School, amongst other schools? - Yes.

What did you people go to him about? - We went last year to ask him to raise the Chinyika school to standard IV level.

30 Did he do so? - He did not do so at the time, but there was some arrangement to meet again with the Native Education authorities.

Has Chinyika school got standard IV this year? - It has not.

Do you think it should have a standard IV? - It should have, yes.

I believe Mr. Graver, in fact, did want or tell you people that he wanted standard IV? - Yes.

40 Did you have any trouble with Mr. Graver about your running a standard IV at your school last year? - No.

And are you aware of the fact that artificial insemination of cattle has been conducted in the Chinyika Reserve and/or Panzwe Reserve in the last year or so? - I know that it was being conducted.

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(continued)

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Are you aware of the fact that certain people in the reserves believe that the progeny of artificially inseminated cows are inferior? - That I do not know.

Do you know that certain bulls were brought into the reserves by the government? - Not last year.

Well, this year perhaps? - Not even this year, I do not know.

When did you first hear of the possibility of a strike taking place in Salisbury? - It was that Friday afternoon. 10

From Ronnie? - Yes.

When Ronnie told you that there was going to be this strike, did he explain from whom he received this information? - No, he did not.

Did you try and find out from him? - Not on that day.

Why not? - It was not necessary for me to find out that day. 20

Were not you interested? - I was not interested in any strike at all in Salisbury.

BY MAISELS, J.: Why not? If the strike in Salisbury had been organised by ZAPU, would you have been interested in it? - If it had been organised by ZAPU, yes.

Well, by whom was the strike organised? - I learnt after that it was the Southern Rhodesian African Trade Unions Congress.

Is that the body which broke away from the Trade Union Congress? - Yes, my Lord. 30

Is that the body which broke away from the Southern Rhodesia Trade Union Congress because, inter alia, the Southern Rhodesia Trade Union Congress was regarded as not supporting ZAPU? - I think the argument was by them not by ZAPU.

You never heard of that? - Not by ZAPU

You say that you knew the strike was organised by the Southern Rhodesia Trade Union Congress? - I was later told, my Lord. 40

When? - I think it was the Saturday evening.

Who told you? - It was Sevenzayi.

Sevenzayi told you where, at the house? - Yes.

BY MR.MASTERSON: Why did not you find out from Ronnie who was organising the strike? - I was not interested in the strike.

BY MAISELS, J.: But you did not even know on Friday if it was organised by ZAPU or not? - No, if it had been organised by ZAPU, I should have known it.

10 Why? Are you a prominent member of ZAPU? - I was at that time a prominent member.

BY MR. MASTERSON: In close contact with the executive? - Yes.

BY MAISELS, J.: Were ZAPU members sympathetic with the strike? - Individually, my Lord, they were.

All of them? - I cannot say.

As far as you know? - Yes, my Lord.

20 BY MR.MASTERSON: Did you ever hear of any ZAPU members who were in sympathy with the strike? - I did not hear of them.

Did Sevenzayi tell you the strike was organised by S.R.T.U.C. or S.R.A.T.U.C.? - A.T.U.C.

Do you know anything of the distribution of the pamphlets of the nature of exhibit 7? - No.

Did you ever hear that those pamphlets had been distributed? - I did.

Did you not hear some news that any pamphlets had been distributed? - Yes, that I did.

30 When, on Sunday? - First on Sunday.

On the Sunday evening news? - I think so, yes.

Sunday morning perhaps, or midday? - Not Sunday morning.

BY MAISELS, J.: On Sunday evening news from the F.B.C.? - I think so, my Lord.

BY MR. MASTERSON: And it was in the papers next day, on the Monday? - It was.

40 And I believe that these pamphlets were distributed in various African townships, including Mabvuku? - That was mentioned, yes.

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Kesiwe Malindi.

Cross-Examination (continued)

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(continued)

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BY MAISELS, J.: In the paper? - Yes.

BY MR. MASTERSON: Have you any knowledge of your own to confirm or disprove those suggestions? - Which suggestions?

That the pamphlets were distributed in the townships on Sunday? - Do you mean have I any knowledge to confirm it?

Or contradict it? - No, I have not any knowledge.

Had you ever seen any strike notices of this nature before? - No.

And is it possible for a person to come from town out to Goromonzi between midday and 3 o'clock in the afternoon? - Depending on the means used.

If he has a motor car? - Yes.

Even if he has a bicycle?

BY MAISELS, J.: How far is Goromonzi from Salisbury? - From Salisbury, 20 miles.

BY MR. MASTERSON: So, it would be quite possible to cycle out to Goromonzi in a matter of two or three hours? - Yes.

After Ronnie had mentioned the possibility of strike occurring on Monday, when did you next discuss the possibility of a strike with anybody? - It was the next evening.

And you had seen Agrippa earlier that day? - I had seen him, yes.

Did you discuss the possibility of a strike with him? - No.

Why not? - I did not know that these boys had seen Agrippa. You will remember when these boys came to see me I told them to go and see Agrippa. I did not know they had finished.

BY MAISELS, J.: Did you ask Agrippa whether they had seen him? - I did not ask him.

Why not? - It never occurred to me.

But you saw Agrippa at least twice that day? - Yes, he had come on business.

Is not a strike a matter that interested you as a man keenly interested in the politics of the country? - As I say, if this strike had been

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mentioned from authoritative sources, I would have certainly asked him; but it appears now that I did not believe in those boys.

BY MR. MASTERSON: When did you and Agrippa part on the Saturday prior to the occasion on which he and all the youths came to you? - It was in the afternoon. I do not remember the time.

It was in the afternoon some time? - Yes.

10 Was that after you had written the letter, exhibit 14? - It was after that, yes.

When you and Agrippa parted on that occasion, did you have any plans for meeting again? - No.

Were not you going ever to meet again? - No

Did you expect to see him on Sunday? - I do not remember.

Did you expect to see him that evening? - No.

Do you know where Agrippa was going to go after he left you? - He was going to his home.

And then? - I do not know.

20 Were you interested? - I was not interested.

So, do I understand that, as far as you were concerned, the arrival of Agrippa and all these juveniles on the Saturday evening was completely unexpected? - It was certainly unexpected.

BY MAISELS, J.: Why should they come to you? - I do not know why they came to me.

You were not an executive member of ZAPU in Goromonzi, were you? - I was not on the executive.

30 Were there any members of the executive of ZAPU at Goromonzi? - Besides Sevenzayi?

Yes? - Not those in that group.

All the people in that group, with the exception of Sevenzayi, were youngsters? - Yes, my Lord.

People of no standing? - Yes, my Lord.

Either new members or people about to become members of the ZAPU Youth League? - Yes.

We know that. Now the question asked you was were there no other members of the ZAPU executive in

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(continued)

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Goromonzi, other than Sevenzayi? - In Goromonzi there were not.

Or near where these people were, the Chinyika Reserve? - Most of them were working in Salisbury.

This was a Saturday night? - Yes.

Were there no local people at all? - I do not know, my Lord.

Why should they come to you? You are not a member of the executive? - I was certainly not a member of the executive. 10

But they came to you, perhaps because you are regarded as an educated man? - The boys had come to see me the previous day, my Lord. I do not know why.

They had never been to see you before? - No.

And here, arrived at your house on the Saturday night, was a whole crowd? - Yes, my Lord.

They had never visited you before? - No.

Why should they come to you of all people at Goromonzi? - Just as they had chosen me on Friday, my Lord, I do not know why. 20

Very well, Did you ask them why? - On Friday?

On Saturday? - On Saturday, they told me they wanted me to join them.

Just a moment, you mean they came to you and the first thing they said was: "We want you to join us"? - They wanted me to join their action group.

Oh, I see. They told you when they got there? - Yes. 30

Who was the one who told you? - On Saturday, it was Sevenzayi, but previously, it had been Ronnie.

BY MR.MASTERSON: Do you know what happened to Hensiby that evening? - After the meeting or before?

During or after, at your place? - I only know that he remained out during the meeting.

Did he come in? - I do not remember whether he came in or he did not. 40

What makes you remember that he was outside?  
- I do not remember his being in the group that was inside.

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Court

You certainly remember his coming to the house? - I do remember his coming with the group, yes.

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He was the youngest of the group? - Yes.

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10 If anybody was to be sent outside to keep an eye open to see that nobody came to listen to what was going on inside, who would be the person to send out? - If that had been decided, I think he was the likely one.

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If you had been taking part in this conspiracy, would you have picked on Hensiby to go outside? - Personally, I do not think it was necessary to send anybody outside.

Cross-  
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20 If you were going to conspire, if you were going to plan to do a lot of burnings, would Hensiby not have been the best person to send outside? - If it were essential, he would have been.

And you would have sent him out because he would have been the youngest person there? - Yes.

Did you hear Sevenzayi send Hensiby outside? - No.

Did you hear anybody say to Hensiby that he must stay outside? - No.

And if you noticed him come in.....

30 BY MAISELS, J.: But you said quite positively, he remained during the meeting? - I said he remained. I did not say he was told to go out.

I did not ask you that, yet. You said that Hensiby remained outside during the meeting? - Yes, my Lord.

You say you did not send him outside and you did not hear Sevenzayi send him outside? - I did not hear, my Lord.

40 BY MR.MASTERSON: If you noticed his coming, but did not notice him inside, why did not you ask why he was outside? - I did not think it was necessary, to ask him why he was outside.

A whole lot of people came to see you. Why should one of them stay outside? - He might have

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stayed outside because he had some other business to do. He could have gone somewhere else.

BY MAISELS, J.: Well, how do you know he went outside? - I said, my Lord, he remained outside. I did not say he got out of the room and went outside.

You mean he might have remained outside because he had other business to do? - He might have had other business to do.

BY MR. MASTERSON: Did he have anything else to do outside your house? - I do not know. 10

Did you tell him to stay outside? - No.

Was he watering the flowers or weeding the garden or something? - No.

Why did not you say to him: "Look, don't stay outside; come in"? - As I said, he might have stayed outside because he wanted to do something that I do not know.

What could he have been doing outside your place? - Goromonzi is a big place. There are many people around Goromonzi. He could have gone to the other houses. 20

Did you ask anybody else what happened to Hensiby? - No, I did not.

When the meeting broke up, was Hensiby about? - I did not look to find out whether he was about.

Did Sevenzayi do anything about planning how action was to be taken in your quarters that night? - No.

Did you hear anything about groups being formed? - No. 30

BY MAISELS, J.: My impression is, and I would like to have this confirmed, was it not put to the other witnesses, that Hensiby never went outside?

MR. MASTERSON: No with respect, my Lord. I understood he was outside, but the witness did not know why he was outside.

MAISELS, J.: I just wanted to clear that up. Carry on. 40

BY MAISELS, J.: But he arrived with the others and did not come inside? - Yes, my Lord.

You did not ask him why he did not come inside and nobody told you why? - No, my Lord.

BY MR. MASTERSON: You agree, however, that Sevenzayi did discuss the possibility of burning dip tanks, etc.? - Yes.

Though you say not churches? - Not particularly.

Exhibit 8, your nationalist principles? - Yes.

10 On the inside of the back cover, some of the items have crosses next to them? - Yes.

And others have ticks and there is one which is covered? - Yes.

From that I get the impression that you read out the list from the inside of the back cover first? - Yes.

And then revised it slightly and put it on the first page of the back? - Yes.

20 Do you still hold these principles which appear on the inside page? - I think I have given the background to the making of those.

BY MAISELS, J.: Just answer the question. You were asked a simple question: do you still hold the principles which are inscribed on that first page of exhibit 8 on the back? - Yes, my Lord.

Now, what do you wish to add? - I wish to add that these principles were not seriously meant.

BY MR. MASTERSON: Why did you write them out? - I was still going on.

30 I am sorry? - It was in 1960, when I was there with three other people, one I still remember is Nathaniai Chimonbe. The other one is now a student in Israel and I have forgotten his name. A question arose as to whom one would regard as a nationalist. At random we made the sentences on the right hand side.

That is the back cover? - Yes.

40 BY MAISELS, J.: Is it in your handwriting? - Yes, my Lord. After that we discussed each item in turn. Those we agreed upon were put on the left hand page. Those we disagreed upon were cancelled.

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BY MR. MASTERSON: And ZAPU was a nationalist party, was it not? - It was.

New members of ZAPU should, no doubt, be instructed on the principles of the party? - Not instructed.

You are a senior member of the party? - yes.

A lot of youths are enrolled for the party or about to be enrolled for the party? - Yes.

Do you not think it would help them if you pointed out what the principles of the party was? - The principles of the party, yes.

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Do you not think it would help them if you explained the principles of nationalism? - As devised by whom?

By you or anyone else? - I do not think that was necessary.

ZAPU is a nationalist party? - Yes.

Members joining ZAPU should therefore know of ZAPU's nationalist ideals? - Yes.

And are those not nationalist ideals which you held?

20

MAISELS, J.: You are guilty of a logical fallacy. It does not mean to say because all men are liars that all liars are men. That is a logical fallacy, unless you can equate these principles with the nationalist principles of ZAPU non constat.

MR. MASTERSON: As your Lordship pleases.

BY MR. MASTERSON: Are the nationalist principles embodied in that book, principles which were held by ZAPU? - No.

30

Now, ZAPU certainly believes in this country being controlled by the Africans, because they are the majority of the people. Do not they? - They believe in the majority rule, yes, not necessarily Africans.

But the majority of people in this country are Africans? - That is true.

Is it not therefore correct to say that ZAPU believes that nationalists should be Africans? - I think that therefore you will need to define African.

40

MAISELS, J.: You mean African could be anybody who makes Africa his home, whether he is black or white. Is that what you mean? - Actually somebody who is born in this country has a right to be called an African.

In the High Court

Defence Evidence

No.21

Anybody born here, whatever the colour of his skin? - Yes, my Lord.

Kesiwe Malindi.

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MR. MASTERSON: "A nationalist must fight for the freedom of Africa." Would it be fair to say that a member of ZAPU must fight for the freedom of Africa? - I thought ZAPU was not concerned with Africans, but Southern Rhodesia.

Cross-Examination (continued)

MAISELS, J.: Never mind what you thought, Your say you thought ZAPU was only concerned with Sothern Rhodesia? - Yes.

23rd October, 1962.

Do you consider that you have freedom in Southern Rhodesia? - Now, my Lord.

Yes? - No.

In May 1962? - No, my Lord.

20

You say you have never had freedom? - We have never had freedom.

Do you consider that that is because this is a colonial regime? - Yes, my Lord.

You are ruled by imperialist, capitalists, and colonialists? - That is true, my Lord.

And those people are the whites, originally from overseas? - Yes, my Lord.

They deprive you of getting your freedom? - That is true, my Lord.

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They oppress you? - Yes, my Lord.

They give you inferior education? - Not on education, my Lord.

They give you inferior schools, compared to those which the whites have? - That is true, my Lord.

The Africans have inferior churches to those the whites have? - I do not support that, my Lord.

But did not you write that? - That the African churches are inferior?

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Inferior buildings to those the whites have.

In the High  
Court

Defence  
Evidence

No. 21

Kesiwe Malindi.

Cross-  
Examination  
(continued)

23rd October,  
1962.

Am I wrong there? - That was at a particular place, my Lord; not Southern Rhodesia as a whole.

This is one particular place, the school buildings generally that the Africans have given to them are inferior to those the whites have? - That is what I say.

And in addition, the Africans do not get the same privileges as whites as far as education is concerned? - They do not, my Lord.

BY MR. MASTERSON: "And all nationalists must not touch food on September 12th in memory of our lost country and freedom." Surely, that would apply equally to members of ZAFU who shall not touch food on September 12th? - That would apply equally to them. 10

BY MAISELS, J.: What is the significance of September 12th? - We understand that that is the Pioneer Day.

Is it also called Occupation Day? - It was called Occupation Day. 20

What was that to commemorate? - To commemorate the coming of the European to this country.

BY MR. MASTERSON: And "All members of ZAPU should submit that this is their country." Is that not a principle which ZAPU people would be expected to hold? - No.

Why not? - We had some people who do not belong to this country in ZAPU.

Very few? - Very few, but they were there.

BY MAISELS, J.: What does this say here: "Translate the front of exhibit 13"? - Zimbabwe African People's Union. 30

We can read that as well. I did not ask you to translate the English. What is written there? In what language? - "The country is ours. Let's rule."

Is that, therefore, not a principle of Zimbabwe African People's Union? - That one is, yes.

Is it the same in two different dialects, one in Shona? - Yes, my Lord. 40

What is the other language? - Shona and Sindebele.



BY MR. MASTERSON: Do you have any reason to believe that any of the youths, who gave evidence in this court, have any grudge that they bear against you? - No, unless, if I take into account their insulting me on the Saturday evening.

Presumably you mean Saturday, the 12th? - Yes.

BY MAISELS, J.: You mean when they called you an informer and a moderate? - Yes, my Lord.

And threatened to fix you? - Yes, my Lord.

10 BY MR. MASTERSON: You never gave evidence against any of them? - No, I did not.

I should think that you will agree that these youths are the type of people who would need an organiser to perform the various crimes that they did perform? - That I do not know.

BY MAISELS, J.: Well, let us put it this way, just to make it easier. All these burnings that it is admitted took place on one night? - Yes, my Lord.

20 It looks, therefore, to you, does it not, as though this was as a result of a common plan? - Yes, my Lord.

That looks fairly clear, does not it? - Yes.

Now, do you think that these youngsters are capable of working out a common plan to go and work together on the same night? - I think some of them are, my Lord.

Who? - People such as Ronnie, Masawi, and Lovemore.

30 Without any assistance? - Without any assistance, yes.

BY MR. MASTERSON: But you yourself admit that Ronnie and Masawi came to you for assistance? - They did not come to me for assistance. They came to me to ask for co-operation.

Would that not be because you are an experienced, more knowledgeable person than they are? - It appears they had seen somebody about me already.

40 BY MAISELS, J.: Who was that, Sevenzayi? - Yes.

Was Sevenzayi really above you in the movement? - In the party, yes, my Lord.

In the High  
Court

Defence  
Evidence

No.21

Kesiwe Malindi.

Cross-  
Examination  
(continued)

23rd October,  
1962.

In the High  
Court

Defence  
Evidence

No. 21

Kesiwe Malindi.

Cross-  
Examination  
(continued)

23rd October,  
1962.

Do you mean he is a type of secretary? - Yes, my Lord.

You are a man of superior education to him?  
- Yes.

And a better speaker? - Yes, my Lord.

A more forcible speaker? - That could be, my Lord.

Do you ever speak at public meetings? - I have never, my Lord.

You are I suppose, as a civil servant, not allowed actively to take part in politics? - We are not allowed to. 10

Is that possibly the reason why you did not hold office? - That is the only one.

Was it not recognised that you were the power behind the throne- in Goromonzi, of course? - I do not think it was recognised, my Lord.

BY MR. MASTERSON: And do you say that Ronnie was not even a member of ZAPU at the time of these burnings? - Certainly. 20

Why, the, do you think that Ronnie should plan these burnings, if he was not even a member of ZAPU? - I do not know why, but it now appears that this thing had been started long before and they had had a meeting on the 2nd May, when this thing had been discussed.

I put it to you that on the Friday, Ronnie did not come to you? - That is not correct.

And I put it to you that Masawi, Hensiby, Nowa, and Lovemore came to you and they found you cutting some sort of cloth in the school room? - It is only correct in that you mentioned Masawi, but for the others, no. 30

I put it to you that, having heard of their plans, you said all right, but organise it with Sevenzayi? - That I did not.

I put it to you that you were well aware of the fact that the meeting was going to take place at your house on the Saturday evening? - I did not. 40

I put it to you that at the meeting on the Saturday evening you sent Hensiby outside to keep watch? - Not me.

That once he was outside you and Sevenzayi took a major part in discussing what sort of action should occur in Goromonzi? - No.

In the High Court

That you and Sevenzayi, between you, organised groups and allocated areas to them for the purpose of taking action sometime in the future? - That I did not.

Defence Evidence

No.21

And I put it to you that Sixpence arrived late at this meeting? - That is not true.

Kesiwe Malindi.

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I put it to you that you were going to meet in a week's time, but that on Sunday you received the strike notice, exhibit 7? - That is not correct.

Cross-Examination (continued)

BY MAISELS, J.: Now, did you get that notice, exhibit 7? - I did not, my Lord.

23rd October, 1962.

Was it found in your house? - I say it was not found in my house.

20

I want you to be quite clear about this. We have had direct evidence from an African sergeant. He said he found exhibit 7 in your house. It was among the books in your bookshelves. He looked at it. He gave it to Sergeant Carver in your presence. He said the accused was there and he said something about this piece of this exhibit? - I do not think that is correct.

Well, you heard him give that evidence? - I did hear it.

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Did you suggest to him in the course of cross-examination that he did not find that in the house? - I tried to question him to show him that I was not attending to their search, but he dodged everying until I left the question.

Are you suggesting that he planted this in your house, that somebody planted it? - I am not suggesting he planted it.

Well, who planted it in your house, can you suggest? - I cannot, my Lord.

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Can you suggest how it got into your house, if it was found there? If it was not found there, you need not worry. If it was found in your house, have you any suggestions to make as to how it came to be there? - No, my Lord.

BY MR. MASTERSON: I put it to you that once

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Kesiwe Malindi.

Cross-  
Examination  
(continued)

23rd October,  
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you got the notice you went and saw Lovemore and told him about it? - I did not.

I put it to you that Masawi also came to you that Sunday evening and you mentioned it to him? - I did not.

That, as a result of receiving the notice on the Sunday, you planned the Monday evening's meeting? - I did not.

That you and the five people did so, that they did meet there, did meet at the bottom of the football ground near your school? - No. 10

That there you organised the burnings which did take place? - No.

That you originally organised that Tegeri, an African police reservist, should have his house burnt out? - No.

That Mr. Hughes should have his maize burnt out? - No.

Except that Ronnie said that he had a sore leg and did not agree to do so? - No. 20

I put it to you that later that night you went and collected Hensiby and Masawi from Chinyika kraal? - I never.

That you went down towards Chinyika Salvation Army School? - No.

Where you put on certain sack clothing, which you had brought with you to disguise yourself? - No.

That you then went on to burn the school while Masawi and Hensiby went to burn the buildings at Chinyika dip tank? - I did not. 30

I put it to you that next morning you spoke to Lovemore, Sixpence, and Ronnie each, individually, and on separate occasions, and discussed your part in the burning of the Chinyika school and their part and Lovemore and Sixpence's success in the Ruseki Reserve? - I did not.

I put it to you that thereafter you continued to associate with Sevenzayi and all the conspirators? - I did not. 40

As if nothing had happened? - No.

I put it to you that there was not a rift

between you, on the one hand, and Sevenzayi and the youths, on the other hand, at the meeting on the Saturday evening? - There was.

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Court

10 BY MAISELS, J.: Do you wish to add anything to the evidence you have given in order to explain certain matters about which you have been questioned, or do you wish to do that after the members of the bench have asked you any questions which they may wish to put? - I have not anything which I would like to add.

Defence  
Evidence

Kesiwe Malindi.

BY MR. CRIPWELL: Did I understand that the two signatures on the back of these cards, exhibits 13 and 13A, are in your handwriting? - They are not.

Cross-  
Examination  
(continued)

23rd October,  
1962.

They are not in your handwriting? - They are not.

BY MR. LING: There was an executive of ZAPU in the Goromonzi or Chinyika area? - At branch level, yes.

20 And you were aware of that? - I was, my Lord.

Then, when you say these people walked out on you and accused you of being a police informer, etc., why did you not refer it to the executive, instead of writing to Salisbury? - As I have explained, my Lord, most of the executive members of the Goromonzi branch stayed in Salisbury.

But if there is a case there surely you could refer it to the executive and they could call a meeting? It did not occur to me.

30 Would not that have protected you if you had got in first to the executive and informed them what had happened, in case they did call a meeting? - I know now it would have protected me.

BY MAISELS, J.: You say that exhibit 14 was written out by you from notes or a draft given to you by Sevenzayi? - Yes, my Lord.

You even signed Sevenzayi's name? - Yes, my Lord.

40 Also exhibit 15 was written out by you? - Yes.

Were these the only two documents that you ever had to write for Sevenzayi or was it the practice for him to come to you and have you really

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Cross-  
Examination  
(continued)

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be his scribe? - It was a practice when something involving English came in.

In anything involving English you were the scribe? - Yes.

But, of course, you could not sign your own name, because you were not, as a civil servant, supposed to take part in politics actually? - Actually, I could not sign my name because it needed the name of an executive member.

And you could not be an executive member because of your position as a school teacher? - Yes, my Lord.

But, anything that required English generally, you were the man who wrote it out? - I was the man.

Was that known in Goromonzi that behind the scenes you were helping ZAPU as much as you could? - Not to my knowledge.

Or did you try to keep that quiet? - Not to my knowledge.

But Sevenzayi, of course, would know and so would members of the executive know? - Yes.

So did Sevenzayi ever come and ask you for advice about anything? - On certain matters, yes, my Lord.

Often? - Not often as he was working, my Lord.

Well, did he come to you for advice on major matters? - On major matters, yes.

Would the question of burning schools or churches or dip tanks be a major matter? - I do not know in his opinion, but in my opinion, I feel it was a major matter.

Now, I want you, please, to consider some evidence you have already given. I want you to look at exhibit 8 and I want you to tell me whether that book was in that condition on the day it was seized by the police, except, possibly, for some red marks that have been made on certain passages? - I feel some pages are missing, my Lord.

And do you say they must have been deliberately extracted? From what part of the

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book? - Some appeared to have been deliberately removed, yes.

From the front part? - Yes.

And others? - But those from the back do not appear.

Not at all? - No, my Lord.

So, it is only the front pages that are missing? - No, my Lord.

10 And those seem to be cut out? - There are some missing at the back, but they do not appear to have been removed deliberately.

Some at the back might have fallen out? - Yes.

And those, you say, would contain writings by you to show that you are a believer, shall we call it, generally, in non-violent means of attaining political power? - I would not say that for certain, as I do not know what title I wrote for each year.

20 Is it possible there was something? - It is possible, yes.

Do you remember anything there was there? - I do not remember all the titles.

Do you remember anything special? - No, my Lord.

Now, do you feel that the African peasants - do you use the term "peasants", by the way? - Yes, I do.

To mean what? - Farmers.

30 Do you feel that these peasants in the Goromonzi area were overcrowded with insufficient land? - Yes, my Lord.

And by contrast, did you feel that the white farmer had a vast amount of land? - Yes, my Lord.

And did you feel that that was unjust? - I felt it was unjust.

That is reflected in this article that you wrote: "My surroundings now," which appears in exhibit 8? - Yes, my Lord.

40 Was Mr. Hughes one of those farmers whom you felt had too much land? - He is certainly one of

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Kesiwe Malindi.

Cross-Examination (continued)

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Cross-  
Examination  
(continued)

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the farmers, yes.

There is an article here, in exhibit 8, called: "The Place of Sport in Modern Life"? - Yes, my Lord.

Did you write that? - I do not remember it, my Lord.

Would you look at it? - Yes, it is I who wrote that.

You talk about "capitalists who grow lazy in so much that they have their beds made up by somebody. Most of their time is spent in sitting; thus their bodies grow fat and weak. They live to eat and not eat to live," and so on. By capitalists, whom do you mean? - I say that by capitalists I mean people who accumulate a lot of wealth.

This had nothing to do with whether they were white or black? - No, my Lord.

Well, I had better read a paragraph: "How do the minority capitalists manage to enjoy sport? That question is important: You see, these capitalists do not want the masses to prosper. They will try to beat the masses and exploit them by all means. Capitalists will give £1,000,000 for building a sports ground but never for the starving masses!" Who are the capitalists who will give a million pounds for sports grounds? White or black? - I cannot quote, but in many countries this is happening.

Is this white or black? - Both, my Lord.

This Salvation Army School, St. Dominics, which was burnt down, was a school was it? - Yes, my Lord.

Did you know the place? - I was there once for a meeting, my Lord.

That is a church together with a school? - I understand it to be a church together with a school, but I do not know.

Well, you admitted that in the admission which I will refer you to? - Yes, my Lord.

That is a school run by the Roman Catholic church? - Yes.

Are you in favour of the influence of

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missionaries on African children? - Rather, I should put it this way: do you think missionaries have a good influence on African children? - Religiously, I do not, my Lord.

And the church building that was burnt down, that is a building which you are supposed to have burnt down at Chinyika Salvation Army School? - That I am supposed to have burnt down.

10 That is the allegation against you? - Yes, my Lord.

That is the one that you are alleged actually to have set on fire? - Yes, my Lord.

That school is run by the Salvation Army? - Yes, my Lord.

Do you approve of the Salvation Army as teachers? - Yes, my Lord.

Do you think that it is a good thing for them to teach and for the missionaries to teach? - Yes, my Lord.

20 In this article that was read to you from exhibit 9, you described Abel Mazarwa? - Yes, my Lord.

Is this a pure work of fiction or does it purport to be an account of something that has actually happened? - Although some of the things might not be true, it was an actual argument.

30 This incident that you talk about, Abel Mazarwa, are you purporting to set out something that actually happened or your own thoughts in that connexion? - Yes, my Lord.

You mention the fact that he had been attended by Catholics at Kutama College? - Yes.

Then you say: "You may have some knowledge about the way these people are taught about the Bible."? - Yes, my Lord.

Do you believe the way in which these people talk about the Bible is good or bad? - As I have said, I do not believe in Christianity.

40 I did not ask you that. What these people talk about the Bible, do you think that is good or bad? - I think it is bad.

Because, as you say, you think he had been

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Kesiwe Malindi.

Cross-Examination.  
(continued)

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Cross-  
Examination  
(continued)

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1962.

persuaded to become humble and meek and that the poor would enter heaven? - That is true, my Lord.

Not the rich, but your philosophy, of course, was that you would like a bit of heaven on earth? - Yes, my Lord.

Then you say: "When I quoted Abraham saying, 'They pretend to believe in the Bible and be God-fearing Christians, yet by their ballots they are demonstrating that they do not care whether slavery is voted up or down'". Who is Abraham? - Abraham Lincoln, my Lord. 10

Did he say this? - Yes, my Lord.

Then you talk of religion being opium? - Yes, my Lord.

Where did you get that from? - I do not remember the title of the book, but I got it from one of my books.

You have seen this book: "I reminded him of of the coming of the pinks into this country." Who are the pinks? - I have not believed in the word "white", my Lord. 20

Just answer my question. Who are the pinks? - They are called white.

Why do you not believe in the word white? - I felt white expressed something different.

You mean pink was a more derogatory way of referring to white-skinned people? - It gave more explanation.

More derogatory. Do you understand the meaning of the word, derogatory? - No, my Lord. 30

Was it rather a contemptuous way of referring to these people who call themselves white people, to Europeans? - I felt that was correct.

Not intended to be insulting? - Not intended to be insulting.

Or contemptuous? - No, my Lord.

You were of the opinion that those people were responsible for mass-killing, the pinks? - In which country, my Lord? 40

Here? - Yes, my Lord.

And that they were responsible for the wicked oppressive laws and the poverty in the reserves? -- That is true, my Lord.

And what was one of the worst features, of course, was these people pretended to be Christian? - That is true, my Lord.

And that they indoctrinated the ignorant African child with the wrong ideas? - As far as religion is concerned, yes, my Lord.

10 Now, conditions in African schools - I think we have already been into that - in your opinion are not as good as they are in white schools? - That is true, my Lord.

And one of the things which you did not like when you were at school was that you had to attend church and class meetings? - Yes, my Lord.

That, of course, is particularly the case at a place like St. Dominics or at Chinyika Salvation Army School? - No.

20 Have not they got to attend church and school? - Children in the country are not compelled to attend church and class meetings, but the students were, during our time.

But these people in the country are taught by missionaries or members of the church? - That is true, my Lord.

30 Now, I want you to take a copy of exhibit 6 in your hand, please. When did Ronnie give you 3s6d.? I think you told us it was the 2nd June? - On the 2nd, yes.

And Nowa on the 5th June? - Yes, my Lord.

Now, what do you mean by this phrase: "This money should have been paid long ago, but Masawi is playing the fool?" - The other items of money there had been brought to me quite some time back.

By whom? - By the owners of those cards.

By Lenard and Richard Ben? - And the other three who are not named here who brought their money as subscriptions.

40 But 17s.0d. is added up. Ronnie and Nowa came to you; one, 3 days before and one the day before you sent this letter? - Yes.

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Cross-Examination (continued)

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Cross-  
Examination  
(continued)

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1962.

Then with whom was Masawi playing the fool? -  
Because I felt he was playing the fool to me.

Why? - Because each time I asked him for the  
book he would say it was at the house.

How often did you ask him for the book? - I  
do not know how often, but it was quite some time.

After the fires? - That is true, my Lord.

Many times? - It was many times, my Lord, yes.

Did not he inform you: "I am a moderate; I  
am not having anything to do with you after that  
Saturday night"? - No, he did not. 10

All he did was make excuses to you? - No, he  
only made excuses; he would bring it.

You were not a member of the executive. Why  
should he make excuses to you? - He was not a  
member of the executive either.

What right had you to get anything from him?  
- I thought I had a right as a member of the  
party.

For no other reason? - No other reason. 20

Now, what is meant by this phrase: "You can  
give the man my 8s.9d. if you do not mind"? -  
Sevenzayi had borrowed some money from me from a  
way back. I wanted him to hand it over to  
Sixpence.

Which man? - Sixpence.

Now, Sixpence was one of those people who  
had threatened you on the Saturday night? - That  
is true, my Lord.

Why did you make him the messenger for carry- 30  
ing this letter? - Sixpence supplied me with fresh  
milk from his farm, so when he came in the morning,  
I then handed him the letter to Sevenzayi.

So, when he says he used to see you often  
because he delivered milk, that would be correct?

- That is correct, yes.

Do you wish to add anything to your evidence? - Not at this stage.

You have no further evidence to give yourself? - I have no further evidence.

You are entitled to add anything to the answers to any questions that you have given which you did not answer fully. For example, do you wish to do so now? - I do not think I have any, my Lord.

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CASE FOR THE DEFENCE CLOSED

In the High Court

Defence Evidence

No.21

Kesiwe Malindi.

Cross-Examination (continued)

23rd October, 1962.

CROWN EVIDENCE

No.22

Christopher Carver (recalled)

Crown Evidence

No.22

Christopher Carver (recalled)

CHRISTOPHER CARVER, recalled by the Court, still under oath.

Examination

BY MAISELS, J. : Sergeant Carver, you gave evidence to say that when you searched the accused's house on the 6th June you found exhibit 8? - I did, my Lord.

20

Would you look at exhibit 8. Is that the book you found? - This is the book, my Lord.

Having searched the house and found that book, what did you do with that book? - I took it back to Goromonzi police station.

Do you know the condition of that book when it was first seized? - Yes, my Lord, it was exactly as it is now.

Were any pages torn out that you know of? -

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Crown Evidence

No.22

Christopher  
Carver  
(recalled)

Examination  
(continued)

23rd October  
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No, my Lord.

Was the front of that book exactly the same as it is now? - Yes, my Lord, there appear to have been some pictures here which we never saw.

The point is that no pages were deliberately torn out? - No, my Lord.

Was that book in your custody until it was produced in this Court? - No, my Lord, after a week or so, I handed it over to the C.I.D. at Marandellas like this.

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In that conditon? - In this condition.

In exactly the same condition today as it was when you handed over? - That is correct.

And it was in the same condition as when first you took possession of it in the accused's hut? - Yes, my Lord.

Do you wish to ask any questions?

THE ACCUSED: No, my Lord.

MAISELS, J.: You understand the effect of this evidence?

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THE ACCUSED: Yes, my Lord.

MAISELS, J.: You do not wish to ask any questions?

THE ACCUSED: No, my Lord.

MAISELS, J.: You are quite sure?

THE ACCUSED: I am quite sure, my Lord.

No cross-examination by Mr. Masterson.

MAISELS, J.: Malindi, do you require any of the witnesses to be recalled?

THE ACCUSED: I now feel it it unnecessary, my Lord.

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No. 23

In the High  
Court

Judgment

No.23

9th. DAY, THURSDAY, OCTOBER 25, 1962

Judgment

J U D G M E N T25th October,  
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10 MAISELS, J: The first count in the indictment against the accused is that he conspired with other persons to aid or procure the commission of, or to commit the offences of, arson and malicious injury to property in contravention of paragraph (a) of sub-section (2) of section 366A of the Criminal Procedure and Evidence Act, [Cap.28].

20 It is alleged that upon or about the 14th May, 1962 and at or near Chinyika Native Reserve in the district of Salisbury aforesaid, the accused did wrongfully and unlawfully conspire with Hensiby, Masawi, Lovemore, Sixpence and Ronnie, natives there residing, all and each or with one or more of them, to aid or procure the commission of or to commit offences, that is to say, the offences of wrongfully, unlawfully and maliciously setting fire to and setting on fire -

(a) a certain hide shed and a certain dip storage shed situated at the Chinyika Dip Tank in the Chinyika Native Reserve aforesaid, the property of the Trustees of the Native Reserves and in the lawful custody of Chawada, a native there residing; and

30 (b) certain huts situate in the Chinyika Native Reserve aforesaid, the property of Tigere, a native there residing, or the property of the Trustees of the Native Reserves and in the lawful custody of the said Tigere; and

(c) a certain school house situate in the Chinyika Native Reserve aforesaid the property of the Roman Catholic Church or the property of the Trustees of the Native Reserves, and in the lawful custody of Ernest, a native there residing; and

40 (d) a certain hide shed and a certain dip storage shed situated at the Kumswe Dip Tank in the Chinyika Native Reserve aforesaid, the property of

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the Trustees of the Native Reserve; and

(e) a certain maize field situate at Baines Hope Farm in the district of Salisbury aforesaid, the property of John Adams Gwynne Hughes, a European farmer there residing; with intent to burn and destroy the said hide shed and dip storage shed situated at the said Chinyika Dip Tank, the said huts of the said Tigere, the said school house, the property of the Roman Catholic Church or the Trustees of the Native Reserves, the said hide shed and dip storage shed situated at the said Kumswe Dip Tank, and the said maize field, the property of the said John Adams Gwynne Hughes; and with intent to injure the said Trustees, the said Tigere, the Roman Catholic Church and the said John Adams Gwynne Hughes, all and each or one or more of them, in their property; and thus the accused did commit the crime of conspiring with other persons to aid or procure the commission of or to commit arson and malicious injury to property in contravention of paragraph (a) of sub-section 2 of section 366 (A) of the Criminal Procedure and Evidence Act, Cap. 287, to which I have referred. 10 20

There is an alternative to this count, namely, that the accused is guilty of the crime of inciting, instigating, commanding or procuring other persons to commit the offences of arson and malicious injury to property in contravention of paragraph (b) of sub-section (2) of section 366A of the Criminal Procedure and Evidence Act. 30

Particulars of this charge are substantially the same as those of the main one to which I have already referred.

The second count against the accused is that upon or about the 14th May, 1962, and at or near Chinyika Reserve in the district of Salisbury aforesaid, the accused did wrongfully, unlawfully and maliciously set fire to and set on fire a certain church there situate, the property of the Salvation Army, or the Trustees of the Native Reserves and in the lawful custody of Gudza, an officer of the Salvation Army there residing, with intent to burn and destroy the same, and did then and there and thereby burn and destroy the 40



said church, with intent to injure the Salvation Army or the Trustees of the Native Reserves in their property, and thus he is said to have committed the crime of arson.

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The evidence against the accused is mainly that of accomplices of these, Masawi, Lovemore, Sixpence and Hensiby were convicted and sentenced for their parts in the crimes that they have admitted they committed. Three others, Ronnie, Nowa and Supa have not been charged with their alleged complicity in these crimes and were given the warning under section 289 of the Act. As they have duly answered all lawful questions put to them, they are freed and discharged from all liability to prosecution in such cases, and this is hereby entered on the record of these proceedings.

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Before dealing with the evidence in detail set out in broad outline, what is the Crown case against the accused? It is that at a meeting held at a football field in Goromonzi on the 14th of May, 1962, the accused conspired with the persons mentioned in the indictment to set alight and to damage the various places mentioned in the indictment. This meeting, it is said, was a sequel to a meeting held at the accused's house on the 12th of May, 1962, the origin of which is to be found in an approach made to the accused by certain of the accomplices on Friday, 11th of May, 1962. I propose dealing with the evidence of the witnesses in the order in which they appeared before the Court.

The first witness was an accomplice Masawi, who stated he was 20 years of age. He had passed Standard IV and was unemployed at the time of the committing of the offence. He was sentenced to 4½ years imprisonment with hard labour for his part in the crime which he admitted committing. He was at that time a member of the Zimbabwe African People's Union Youth League. I shall refer in this judgment to the Zimbabwe African People's Union as ZAPU. He admitted that he, together with Hensiby, burnt down the hide shed and building where dip is kept at Chinyika.

Perhaps before proceeding with the examination of the evidence of the witnesses, it would be convenient if I set out a number of admissions which were made by the accused after being warned by the

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Court that he was not obliged to do so. I set those out now because it will to some extent curtail what I have to say.

It was admitted, firstly, that on the night of Monday the 14th May, 1962, a hide shed and a dip storage shed at Chinyika dip tank were burnt down. These two sheds were not burnt down accidentally and no one had any right to burn them. The damage to the storage shed and contents which consisted of drums of dip and a tin of petrol is estimated at about £9. The damage to the hide shed and contents is estimated at about £17. The sheds and contents were the property of the Trustees of the Native Reserves, and in the lawful custody of Chawada, an African there being. According to the evidence given, Hensiby and Masawi were responsible for the burning of the hide shed and storage shed which I have mentioned and also, according to their evidence, and the evidence of other persons, Nowa was the person who was appointed to go with Hensiby to do this work on the night in question, but did not keep the appointment and took no part in the burning.

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It was also admitted that Tigere, the person mentioned in the main charge, and in the alternative to that charge, is an African police reservist who, at one time, drove a 'bus running between Salisbury and Arcturus. His family occupies a free hut in the Chinyika Reserve and during weekends he stays at his Kraal. Though Tigere has no dogs, there are dogs in the immediate neighbourhood of his kraal. No one would have any right to burn or destroy any of Tigere's huts. According to the evidence to which I shall refer in detail, Masawi was appointed to do this. He did not go, firstly, because he said he was afraid as there were dogs at Tigere's house and secondly, because Nowa defaulted. As I have said, the evidence of the witnesses is that Masawi went with Hensiby to burn the hide shed and dip storage shed at Chinyika dip tank.

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It is also admitted that on the same night, that is the 14th of May a church-cum-school building at St. Domonic's School in Kumswe Reserve was burned down. This burning was not accidental,

nor did anyone have the right to burn down the building. The damage caused to this building and its contents is estimated at about £150. The building was the property of the Native Reserve Trustees or of the Roman Catholic Church, and in the lawful custody of Ernest, an African therebeing. This burning, according to the evidence, was done by Lovemore and Sixpence.

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10 A shelter at Kumswe dip tank from which the dip attendant checks cattle, was damaged on the same night. No value was attached to this damage. The dip tank in Kumswe is roofed with asbestos. No one would have any right to damage or destroy the dip tank, nor the hide shed, storage shed and dip attendant's shelter there situate. The dip tank, a hide shed, storage shed and dip attendant's shelter there situate are the property of the Trustees of the Native Reserves. This shelter was damaged, according to the evidence, by Lovemore and  
20 Sixpence as well.

It was also admitted that the church building at Chinyika Salvation Army School was burned down on the same night. This, it is alleged, was the building which the accused burned down. It is admitted that the fire from this building spread to a neighbouring building occupied by a teacher, Jacob. This building too was burned down. These fires did not start accidentally, nor did anyone have the right to burn the buildings down. In the  
30 church two tables, one flag, two drums, three chairs, a tablecloth and a blackboard were destroyed. The damage is estimated at about £100. A radio, some blankets and a suitcase of clothing were saved from Jacob's house, but the rest of the property in the house was destroyed. The damage was estimated at £60. These building were the property of the Trustees of the Native Reserves or of the Salvation Army and under the lawful custody of Gudza, an African therebeing.

40 It is further admitted that Agrippa Sevenzayi's kraal is correctly shewn as "F" on Exhibit 5, and it is further admitted that those parts of Exhibits 8 and 9 that were read out in court are in the accused's handwriting. I may say it subsequently appeared that practically everything in Exhibits 8 and 9 to which I shall refer later was in the accused's handwriting.

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It will be noticed that all these burnings took place on the same night, the 14th of May, 1962 and I think I should say immediately that it does not appear to have been disputed by the defence that the persons who said they were responsible for the burning and the damage to the property in one case were, in fact, the persons who burned and damaged the property. The question, of course, however, in this case is of the first count whether this arose as a result of a conspiracy to which the accused was a party. 10

To return to the evidence of Masawi - he says, and I am referring now to his evidence in chief - that on Friday, the 11th of May, 1962 he met with Lovemore, Hensiby, Nowa and Ronnie and there was a discussion about taking "an action." He says he went with these (except Ronnie) to the accused's house. He was not there. He went to the school where he found him and he told the accused he wanted to take "an action" at Goromonsi. 20 The accused replied it was a good idea and suggested they should meet at his house on the Saturday night. On the Saturday evening according to this witness, that is the 12th of May, there was a meeting at the accused's house. There were present, Agrippa Sevenzayi, the local Secretary of Zapu, the accused, Lovemore, Ronnie, Supa, Nowa and the witness. Hensiby, according to this evidence, was told by the accused to keep watch and one Sixpence arrived later. The witness said that he opened the proceedings by saying: "Boys, we are all here. You have been invited by us. We have words to say here." The accused asked them: "What is a Nationalist?" No one answered. He then described how the accused fetched a book and read out of it. It was said to be a red book with a black spine, with pages missing. Exhibit 8 was a book found in the accused's house when it was searched by the police on the 6th of June in the presence of the accused. This is a red book with a black spine with pages missing. Masawi said the questions which the accused was reading out, the accused stated were used when the party was in the N.D.P. He, the accused, said: "What is meant by a Nationalist?" I should say here that the accused admitted that he was formerly a member of the N.D.P. The accused then explained, or read out, that no son of the soil will share a 30 40

table with, or play with, a European or fraternise with a European. This is all he remembered. He said there were a large number. In Exhibit 8, the back of the book, there appears the following: "Nationalists shall not dance, watch films, drink or play any other game with Imperialists. All Nationalists shall not touch food on the 12th of September in memory of our lost country's freedom." I asked him whether he ever heard the word "Imperialist." He said he had on this Saturday night. It was used by the accused and was explained by the accused as meaning, or he understood it to mean, European. I have already referred to a sentence where the word "Imperialist" appears. In Exhibit 8 there is another sentence to which I may refer, which says "Nationalists shall never join forces with Imperialists." He said the accused stated they would be formed into separate groups to take action, explaining that if all took action in one group and they were arrested, there would be nobody to help them. He says they were formed into four groups, each group being allotted an area. Agrippa Sevenzayi, according to this witness, seconded what was said, but he, Sevenzayi, was not to take part in any action as he was the local secretary of ZAPU. It was arranged that a meeting was to take place at a later date when things went well.

On Sunday, according to this witness, that is the 13th of May, he went to the accused's house in the evening with Hensiby. The accused gave or showed him a typewritten letter which he identified as Exhibit 7. Exhibit 7 is in the Shona language, and the admitted translation of it reads: "To the person who works and the person who doesn't work. He is informed that on Monday there is to be no work in the whole Salisbury area. We are being chased from jobs. We are being denied houses to live in and so our families suffer. But the country is ours. You and I will simply stay at home on Monday. There is no one who will go into Salisbury itself to work. We will be thinking of the troubles on our shoulders."

"This is the time to show our unity 338 people have been arrested in Highfields, and many have been arrested in back-yards. We haven't said anything but we are angry. The black man has been bullied in his own land. He doesn't receive the riches of his own land

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Hear ye, hear ye, hear ye again. On Monday no one at all will lay a foot in Salisbury to work for industry. Here is the time to unite, children of Zimbabwe."

This Exhibit 7 was, according to the police, found in the house of the accused when it was searched on the 6 th of June.

The evidence of the witness proceeds that on the Sunday he was told to come back at one o'clock on Monday to hear the B.B.C. news to know whether the people had gone to work. He says he did not go at one O'clock but he passed the accused's house after four o'clock in the afternoon on Monday, together with Hensiby. The accused told them to meet at six o'clock at the football ground. 10

On Monday night, that is the 14th of May, when it is said by the Crown that this conspiracy was hatched, there were at the football ground, according to this witness, the accused, Sixpence, Lovemore, Hensiby, Nowa, the witness himself and Ronnie, He says they were told by the accused where to go and what to burn. He Masawi had to go and burn the house of one Tigere, a police reservist. Nowa and Hensiby were to go and burn the dip tank and shed at Chinyika. Lovemore and Sixpence were to burn at Rusike's place. They, Lovemore and Sixpence, were to go there on cycles and were selected for that mission because they had cycles, so the accused said. He, the accused, was going to burn a church at Chinyika by himself. Ronnie was told to go and burn the maize of a Mr. Hughes whose farm is situated in the area and is shown on Exhibit 5, the plan prepared by Sergeant Carver, to which I shall refer later. Ronnie cried off because he said he had a sore leg. Lovemore was asked by the accused to give this witness his watch and he did so. This is corroborated by Lovemore and by Hensiby. He, Lovemore, and Sixpence, were told to use paraffin and cloth to set the building alight. This was also to be used at Chinyika church. The others were to use whatever they could. The reasons for burning the various objects were given by the witness as follows: 20 30 40

(1) Tigere's house because he was a police reservist (this was said to be suggested by

Sevenzayi on Saturday night.)

(2) Churches because they interfered with the ancestral spirits.

(3) Dip tanks because they were said to be causing the animals to become sick.

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10 The witness went home with Hensiby. He had his evening meal and waited for the accused to arrive. The witness explained that the accused wanted the burning operations to take place at the same time. The time was fixed at 11 p.m. Nowa did not come and there was a change of plan, the witness going with Hensiby and the accused to Tigere's house. Masawi says that he told the accused he was afraid to to Tigere's house because there were dogs there and it was late at night. When they left the witness's house and were some distance away where the path branches off to Chinyika, the accused picked up a bag from the side of the road. The accused put on a sack and covered his shoes with plastic. Hensiby and Masawi parted from the accused and went to the dip tank. He says he saw the church alight and he and Hensiby then set alight to a hide shed and a building in which dip is kept. He said that he had been told by the accused that when he saw the church burning he should get on with his job. They set those buildings alight. They, that is Hensiby and Masawi, did so by pulling grass and striking matches and setting the grass alight. They were unable to burn the dip tank itself because the wall is built of stone and the roof was an iron one.

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40 In cross-examination this witness's evidence differed in some important respects from that given by his in chief. In regard to the Saturday evening meeting, the impression given in chief was that Sevenzayi played a secondary part at the meeting. To quote the witness's words: "He seconded what was said." In cross-examination it appeared, however, that not only had Sevenzayi given examples of burning that had taken place in the past at Nkai at Gwaai, but he actually gave examples of what should be done at Goromonzi. He said they should start small with churches and dip tanks.

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In regard to the strike, although he stated in chief that he had heard about the strike in Salisbury on Monday from the accused, on Sunday evening at the accused's house when the accused showed him Exhibit 7, and first stated in cross-examination that if he had not seen Exhibit 7 he would not have known there was going to be any action in Salisbury, as he called it, on Monday, he admitted when he was referred to certain evidence he had given in the magistrate's court that Ronnie had told him on Friday that there would be an action in Salisbury on Monday and that as there had not been any action in Goromonzi those in Goromonzi should coincide with that in Salisbury. He admitted that this was correct, namely, the evidence he had given in the magistrate's court, but he said that he had forgotten.

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The second point is of particular significance became as will be seen, all the other witnesses who gave evidence of the events, Lovemore, Ronnie, Sixpence, Hensiby and Nowa, all denied they knew of a strike in Salisbury on Monday prior to the accused telling them on the Sunday or the Monday after showing them Exhibit 7, and from their evidence it would appear that the acts of arson to be committed at Goromonzi were timed to coincide with the Salisbury incident, as a result of their learning from the accused that there was to be a strike in Salisbury on Monday. It was denied by the accused that he saw this witness on the Sunday evening. Hensiby, who this witness said had accompanied him on the Saturday to the accused's house, was unable to remember whether he had seen the accused on that day, that is Sunday. In view of this witness's evidence at the preparatory examination on this point we cannot find it established on his evidence that the accused did shew Exhibit 7 to this witness and Hensiby on Sunday. Moreover, this witness states that when he went and saw the accused in company with Hensiby, Lovemore and Nowa on the Friday, he told the accused that Ronnie had said that there was to be a strike in Salisbury on the following Monday. This was denied by Hensiby and Nowa who we are satisfied accompanied Masawi on that occasion. The accused said that it was Ronnie and Masawi who had come to see him on

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Friday but we accept the evidence of Ronnie and Masawi, Hensiby, Lovemore and Nowa that Ronnie did not see the accused on Friday.

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10 On the important question as to whether, as would appear from Masawi's evidence, it was Ronnie who had suggested action being taken on Monday to coincide with the strike in Salisbury, we reject that as highly improbable, quite apart from the evidence of the other witnesses that this was not so. Ronnie was a new member of ZAPU. He described himself as a novice. He is a raw, uneducated young man of 21. The accused is a comparatively well-  
20 educated man and has pronounced political views and ideas. He was the Headmaster of a school, occupying a position of authority and if any suggestion of action being taken in Goromonzi to coincide with that in Salisbury was made, it seems to us it is far more probable that it would have been made by the accused, a member of ZAPU, of its predecessors the National Democratic Party and the African  
National Congress, a person who, judged by his writings, cannot be said to be a novice in political thought and action. We shall return to this matter later.

30 It was put to this witness that he was not invited to the accused's house on Saturday night by the accused and that the accused had not arranged a meeting. He insisted that he had. He was supported in this by other witnesses and we are inclined to accept his evidence on this point as also on the point that Hensiby was sent out to keep watch during the meeting on the Saturday night. We are satisfied and we shall deal with this matter in more detail later, that the meeting on Saturday night at the accused's house was not unexpected by the accused as is deposed to by him.

40 In regard to the reading out of Exhibit 8 to which the witness testified, which was denied by the accused, we accept the witness's evidence. Apart from it being the sort of thing which might well be used at a meeting of the kind which took place on the Saturday all the others who said they were present gave similar evidence.

The witness was asked whether he had heard the word "Imperialist" which, as I have said, appears in

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Exhibit 8. He said he had. It was used by the accused on Saturday night and as I have already stated he understood it to mean European. We bear in mind, however, that as deposed to by Sergeant Carver part of Exhibit 8, was read out to the witness when the statement was being taken from him, and he may possibly have acquired knowledge of its terms from the reading out of Exhibit 8 by Sergeant Carver.

It was put to this witness that the accused on the Saturday night had refused to have anything to do with the burning and unlawful acts suggested by Sevenzayi. The witness admitted that the accused had raised with Sevenzayi the proprietary doing anything of the kind mentioned until Mr. Joshua Nkomo, who was the leader of ZAPU, had authorised it, but the witness said that Sevenzayi had said that the action contemplated was to be at Goromonzi and had nothing to do with Salisbury, when Nkomo would have to be consulted. The witness denied that the accused had suggested that the action in Goromonzi that should take place was a procession, and he further denied what was put to him that there was an argument as a result of which the meeting broke up by all the persons present walking out calling the accused a moderate and a police informer. This witness is supported in his evidence on this point by all the others present at the meeting and we shall return later to this aspect of the matter when we give our reasons for rejecting the accused's evidence on this point.

Despite certain unsatisfactory features of this witness's evidence to which we have referred, we thought that on the whole he was trying to tell the truth. Nevertheless, it would, in our opinion, be quite unsafe, bearing in mind his position as accomplice, and the contradictions to which I have referred to place complete reliance on what was said.

Before we leave this witness's evidence, I should refer to Sevenzayi who it is suggested in cross-examination was really the guiding spirit and the chief instigator of the burnings. His name is sometimes referred to in the records as Agrippa and he was originally charged, but the

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charge against him was withdrawn, before plea. According to the evidence of Sergeant Carver which we accept, Sevenzayi cannot now be found. We shall deal with the accused's suggestion as to Sevenzayi being the guiding spirit later.

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10 The next witness was one Lovemore, a young man aged 19, employed as a labourer at the Goromonzi Secondary School. He had passed standard III. He was also a hard labour prisoner and an accomplice, presently serving four and a half years' hard labour for his part in the burings. According to his own evidence he, together with Sixpence, set fire to the church at Kumswe and the hide shed and dip tank at Ruseke in the Kumswe Reserve.

20 As to the events of Friday, he corroborates Masawi as to the meeting of that afternoon between Ronnie, himself and Nowa and Hensiby and Ronnie's statement that action should be taken in the Chinyika Reserve. He also speaks of the visit to the accused at his class room. (Ronnie not accompanying them.) He says, however, that it was not arranged that day that they should meet again at the accused's house on Saturday night. This was arranged by Sevenzayi who visited this witness on Saturday morning and said the meeting was to be that night at the accused's house. He corroborates Masawi in regard to the events of Saturday as to the people who were present in the accused's house on that evening as to Hensiby keeping watch and Sixpence arriving late. He speaks also of the accused asking if they knew what was meant by "Nationalism" and of the accused reading out of a book which he fetched and which the witness said was about politics. He did not remember what was read. He corroborates Masawi about there being a discussion and about persons present being formed into groups. He says the arrangement was that they would meet the following Saturday. He also speaks of Sevenzayi advising them how to avoid detection if they set anything on fire. They were to walk away and not run away.

40 He said he came to the accused's house on Sunday evening and he was shown by the accused a note similar to Exhibit 7. He says the accused told him that there would be a strike in Salisbury

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next morning and that they should have their action, if possible, to coincide with this. The accused told him to meet on the Monday evening at his house and then they would go to the football field. On the Monday evening he went to the accused's house at 6 p.m. to listen to the news. He went together with one Sixpence. After the news they went to the football grounds, the accused taking a different route. They were joined at the ground by Hensiby, Masawi, and Ronnie. The accused then arranged them in groups, and they all agreed to go and burn. He kept to the same arrangement of the personnel into groups and allocation of targets as Masawi does. He says the accused told them when on the way, apparently, to the football ground, to use paraffin in order to set the buildings alight. After the meeting Sixpence, Lovemore and the accused went to the accused's house. Sixpence remained in the accused's house while the witness went to get his bicycle. He returned with the paraffin and material, collected Sixpence and they went to Ruseke. They then set alight to St. Dominic's Church. They then went to the dip tank which they could not burn because the roof was made of asbestos. (This is confirmed by the admitted acts to which I have referred earlier.) But they removed a sheet.

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On the Tuesday, he says, he met the accused on the road going to work. He told the accused they set the Church on fire but they had failed to do anything to the dip tank except remove one sheet. He says the accused told him Ronnie and Nowa did not go. This, in fact, is what Ronnie and Nowa, as well as the other witnesses, say. The accused also, according to this witness, said "We have burned at our end." The witness explained the reasons for the particular targets being selected as follows:

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(1) The dip tanks because they were issued with dip cards and their animals were being disturbed;

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(2) Tigere's house was to be burned because he was a polic reservist. He did not know why the other targets were to be burned.

In cross-examination, the witness stated that at the Saturday night meeting it was arranged that the burnings were to take place the following Saturday. He said that he, Masawi, and Nowa had decided that they had agreed. as it were in principle, but no targets were decided upon. Only areas were allotted that night. He reiterates that the first time he heard of a strike in Salisbury was on Sunday. He says that when they went to the accused's school on Friday it was arranged they would meet on Sunday, but this was changed to Saturday because Sevenzayi had some visitors on Sunday. The accused, according to this witness, told Masawi to go and see Sevenzayi. He says although they had decided amongst themselves to take an action and he agreed to do so, he did not know what was meant by it.

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I should mention that in regard to the witness's evidence that the accused told Masawi on Friday to go and see Sevenzayi, the accused himself said that he told Masawi and Ronnie on the Friday to go and see Sevenzayi.

On the saturday night according to this witness, the accused did not emphasise any particular object, but Sevenzayi was the one who spoke about the dip tanks and churches, the accused agreeing with Sevenzayi. Groups were formed, but the groups were told to choose for themselves what action they would take. It was on Monday night that the targets were allocated.

The witness admitted at the preparatory examination he had said that the accused had given him paraffin and rags, but he said this was a mistake. The reason he gave for making this mistake in the Magistrate's Court was that he was dosing or that he was concerned about the sentence he had received. Neither of these reasons is at all convincing and this is a serious criticism in our opinion of his evidence.

But a more serious cricitism of his evidence is the fact that, after saying in cross-examination that -

(1) no meeting was ever held on the Sunday night in the bush; and

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(2) that he knew nothing about having made a statement to this effect; and

(3) he did not know he had made such a statement, he was confronted with and admitted that he had made a statement to the police on the 6th of June in which he gave an account of the meeting on Sunday night at which was arranged substantially what he said had taken place on the Monday night. The witness finally said that, in fact, no meeting took place on the Sunday night. We consider that in view of the unsatisfactory nature of these parts of the witness's evidence, even more caution than would be ordinarily applied to a consideration of his evidence qua accomplice is required. He is substantially corroborated by the other accomplices in regard to most of his evidence. Nevertheless, we think it would be unsafe to place reliance on his evidence, certainly standing by itself. 10

The next witness was Ronnie, a young man, again 21 years of age, unemployed at the time of the burnings, now employed as a labourer. He was originally arrested but not prosecuted. He was plainly an accomplice and was given a statutory warning. As to the events of the Friday, he speaks of the meeting between Masawi, Hensiby, Lovemore and Nowa on the road to Salisbury. He says he did not go to see the accused, but was visited by Masawi on Saturday and told to go to a meeting at the accused's house on Saturday night. On the Saturday he says that there were present Lovemore, Sixpence, Supa, Hensiby, Sevenzayi, Masawi, the accused and himself. He explained that Hensiby was placed on guard outside by the accused, and Sixpence arrived late when the meeting was already concluded. The accused spoke from a book which was placed on the table. He described the book as an exercise book with a red cover. He says the accused told them not to break the Constitution of the Party and to do what they were told. The accused explained that a Nationalist is a person with a black skin and a Nationalist should not go into a place where he will have food with Europeans, and that they must respect African women. A comparison with Exhibit 8 shews, for instance, this phrase: "Every Nationalist shall 20 30 40

require to respect and honour a woman Nationalist and shall not force her into submission." There is also a statement: "A Nationalist shall possess a dark skin." We bear in mind, however, in connexion with this evidence as well the evidence of Sergenat Carver that certain parts of Exhibit 8 and particularly these parts, were read to this witness together with certain of the other witnesses when their statements were being taken by the police. He says that this discussion about Nationalists was at the beginning of the meeting. In this he is supported by all the Crown witnesses who were present and who gave evidence. He says that after they had discussed Nationalism Masawi said: "If we think of taking action, what have you to say about it.?" The accused replied: "If you are brave, you will be able to do it." He says that both the accused and Sevenzayi gave evidence of things to be attacked. They were churches, dip tanks and European farms. They were not to go in big groups but were formed into groups consisting of two each. Sevenzayi was not in any group, but the witness did not know why.

On the Monday, he says, he met the accused at the football field. Masawi instructed him to go there. It was after sunset. He gave the same account of the grouping and targets as Masawi and Lovemore and the evidence of all these others who say they were present. He says the accused spoke of their using paraffin and rags and this witness was assigned to go and burn some maize fields himself, but he says he could not go because he said he had a sore leg.

On the Tuesday he says he saw the accused at his school on the way to the village, and the accused told him that he had finished his work. In cross-examination the witness, although he did not at first remember talking about action with Sevenzayi before the Saturday in question, when referred to evidence he had given at the Magistrate's Court said he remembered a meeting at Sevenzayi's house either on the Wednesday or some days before the Saturday in question, where action was discussed between Sevenzayi, Masawi and himself. He denied that he had told Masawi on Friday about the strike on Monday. As to this, he is supported by the other persons who were present on that occasion except, of

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course, Masawi. He says it was on Monday night that he heard about the strike for the first time, and this was from the accused. He explained that Masawi had decided to raise the question of action at the Saturday night meeting because they wanted to raise the question with the elders before action was taken and that when it was raised by Masawi at the meeting, Masawi gave the burning of dip tanks and sheds as examples.

He says he does not remember the accused raising the questions of Joshua Nkomo's desires at the meeting on Saturday.

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There were certain facets of his evidence, for example, his contradictory evidence about the meeting having been arranged on Saturday night for the following Saturday night, which were unsatisfactory. The Crown itself submitted that he was not a reliable witness and we are not inclined to disagree with the attitude taken up by the Crown.

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I now turn to a consideration of the evidence of the witness, Sixpence. He, too, is a hard labour prisoner, serving four and a half years' imprisonment with hard labour, for the events on the night of the 14th of May. He was employed on delivering milk by cycle, by Mr. Hughes. He says he is about 24 years of age and he has never been to school.

5 On the Saturday he says that he was invited by the accused, whom he saw when delivering milk, to come that Saturday evening to a meeting at his house. He arrived to find the meeting finished. He says he was told by the accused he was in a group with Ronnie and would go into the Reserve. The accused did not say what he might have to do. He would be told when he went to the Reserve. He says he next saw the accused on Monday at midday when he was delivering milk. He was told to go to the accused's house, that evening. He went there after dark and found Lovemore there. They all went to the football field where the accused told them that he had received a letter from Salisbury that there is Mau Mau in Salisbury and that they must perform Mau Mau here, meaning Goromonzi. In cross-examination he explained that the words "Mau Mau" were not used but that the accused said there was fighting in Highfields. It will be noticed that

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Exhibit 7 refers to Highfields and talks about a large number of people having been arrested in Highfields. He corroborates all the others as to the persons there. He said that they were all given different areas. He understood Masawi was to go to Tigere's house. Nowa and Hensiby were to go to a dip tank. He and Lovemore were to go to St. Dominic School. The accused said he was going to burn at Chinyika. He referred to the accused as "Muridzi" while giving evidence. This, according to the interpreter, means a senior person. He said the accused was "our leader." The witness left to get his cycle and went to the accused's house to get paraffin and rags. This, he said, was at the suggestion of the accused and he went off to get the cycle and was told to come back to the accused's house. After getting the paraffin he and Lovemore went to St. Dominic's. They set the school on fire, then they went home, but before doing so they went to set a dip tank on fire, but the roof was of iron and they could not do so.

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On the Tuesday he met the accused who asked him if he had set the school on fire. The accused told him he had set his - presumably meaning his target - on fire.

On the 6th of June it is common cause that this witness received a letter from the accused, written by the accused, for delivery to Sevenzayi. This letter is Exhibit 6, and I shall refer to it in some detail later. In cross-examination the witness stated that he got Exhibit 6 one day after he saw the accused on Tuesday, after the burning. It is obviously incorrect that he got it on the day after the burning. The burning was on Monday the 14th of May and the letter was handed to him, as was admitted by the accused, on the 6th of June, and indeed it is dated the 6th of June. He says that he got paraffin and rags at the accused's house in the presence of Lovemore. It will be recalled that Lovemore said he had brought paraffin and rags with him to the accused's house and there is thus apparently some contradiction between him and Lovemore on this point, but we consider the position to be that the paraffin was obtained at the accused's house which had probably been brought there by Lovemore before he, Sixpence, got there. This witness was also referred to a

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statement he had made to the police in which he referred to a meeting on Sunday. It will be recalled that Lovemore made a similar statement. According to the statement of Sixpence, there was also a meeting at the playing field on the Sunday at which all the persons I have mentioned were present. This witness says, however, that when the statement was read over to him by an African detective he told the detective that the reference to Sunday was wrong. We accept the witness's evidence on this point, and no evidence was called to contradict his statement.

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This witness referred to a threat at the football ground that was made to him, and possibly to others as to what would happen to them if they did not carry out their part in the burning. Nobody else gave evidence on this point, but we do not for that reason reject the possibility of it having occurred. It was a remark passed by somebody and the others may well have forgotten or they may not have been asked about it.

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This witness was a simple labourer, and he appeared to us to be trying to give a truthful account of what occurred. Indeed, we thought him to be a truthful witness.

The next witness was one Hensiby, a very young lad who had passed Standard III. He said he is 13½ years of age and he appeared to be about that age. He is a cousin of Masawi, and he was sentenced to eight cuts for his part in the burning. He says that on the Friday Ronnie said he would be wrong if they took an action in Goromonzi. He says that Masawi, Ronnie, himself, Lovemore and Nowa were present when this happened. This is the meeting of which these witnesses spoke and to which I have already referred. It appears to have been a casual meeting on the road to Salisbury. They all, except Ronnie, according to this witness, went to see the accused and saw him at his school. Masawi said that Ronnie had suggested, according to this witness, that actions should be performed at Goromonzi. The accused said that was all right, but they should first go and see Sevenzayi, but he also said there would be a meeting on Saturday night. He says that on the Saturday he went with

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Supa to the accused's house and he saw Masawi, Ronnie, Nowa, Lovemore and Sevenzayi. Sixpence was the last to arrive. He entered the house but was told to go outside and watch for people. He was called inside at the end of the meeting and the accused told him they had been formed in groups of two and that Hensiby was to go with the accused, but he did not say when. He could not remember seeing the accused on Sunday. Masawi, it will be recollected, had said that they had both gone to see the accused on Sunday evening. he says, however, that at about four o'clock on Monday afternoon he saw the accused watering his flowers at his house. The accused told him to meet that night at the school ground. He corroborates the witnesses who have already given evidence as to what occurred. He says the accused was holding a letter which he said had come from town. The letter said there was a strike in Salisbury and the accused said that action should be taken here meaning Goromonzi of course, that night. Lovemore and Sixpence were assigned to go to St. Dominic's school and to Kumswe dip tank. Nowa and the witness were to go to a dip tank in Chinyika. Masawi was to go and burn down Tigere's house and the accused himself was to go and burn Chinyika school. Ronnie was to go and burn maize at Mr. Hughes's farm, but Ronnie said he had a sore leg, and would not go. The meeting broke up and he went home. Nowa did not come to his house as arranged, but the accused came. The witness said he was fast asleep when the accused arrived. He was awakened. The accused said that he did not know if Nowa was coming. They left. The accused put on a sack. By "they" I meant the witness and the accused. The accused put on the sack. The accused said they must set fire at 11 p.m. Masawi had a watch which he had obtained from Lovemore. Masawi went with this witness to the dip tank and they burned a hide shed with grass and a dip tank at Chinyika. They used thatch which was ignited. Masawi did not go to Tigere's place as previously arranged because he said he was afraid of dogs. In cross-examination this witness said the meeting on Saturday was arranged at the school on Firday. The accused said it would take place if they could find Sevenzayi. He said Ronnie spoke about action at the meeting with the other young men. After the meeting on Saturday he was told by the accused that there

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would be another meeting next Saturday. He spoke of the accused putting plastic paper on his shoes when they set off to burn on Monday night.

This witness was a simple lad who, although not clear on all points, appeared to us to be a truthful witness.

The next witness was one Nowa, a young lad who says he is between 16 and 17 years and he looked to be of that age to us. He had reached Standard III at school. He gave the same account of the meeting on Friday on the road with Lovemore, Masawi, Ronnie and Hensiby. He also speaks of the deputation to the accused of all of them minus Ronnie. He said it was arranged they would meet on the Saturday evening. He said he went to the meeting at the accused's house on Saturday and he gives the same account of the names of the persons who were present. He also said that Hensiby was outside. He says that Sixpence arrive in the middle of the meeting. The accused asked if they knew what was meant by Nationalists." The accused produced and read out of a red book. After that, Masawi said they were gathered to take action at Goromonzi. He said: "We are placing this before you and Sevenzayi for you to tell us what to do about it." The witness is referring to Masawi. The accused replied: "If you wanted action to be performed, you must be brave. It can only be performed by brave people." Sevenzayi supported the accused. He said things like burning churches, dip tanks and hide sheds were discussed. Nothing was said about specifically burning that night. People would be formed into groups of two or one. It was arranged they would meet the following Saturday. He said he next saw the accused on Monday. He was called by Masawi and went to the sports ground with Hensiby, Ronnie and Masawi. There they found others. They were formed by the accused into groups to take action. He corroborates the others as to the groups assigned for the targets. Lovemore and Sixpence went to go to the Kumswe Reserve which was far away because they had cycles. He, the witness, was detailed to burn the dip tank at Chinyika and he said that he was afraid to do so and cried off. There were certain variations between this witness's evidence in this Court but they appear to us to be minor

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discrepancies and of no real importance. This witness also gave a somewhat confused account as to how he had paid his subscription of 3s.6d. to become a member of ZAPU. This also appears to us to be a minor point. We have borne in mind these contradictions. Nevertheless he appeared to us to be a simple lad and we did not think that his evidence was untruthful.

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10 Supa, the last of the accomplices, if indeed he was an accomplice, but he was treated as one, hailed from Nyasaland and is employed as a shop assistant. He appeared rather nervous or frightened when giving evidence. On the Saturday he says he went to the meeting as a result of a report from Hensiby. He speaks of Hensiby being sent out to keep watch. He talks of the persons who were there and of the accused reading out of a book in English. He could not understand that or the explanation in Shona, because he comes from  
20 Nyasaland. He never saw this book. He says the accused says they were to be formed into groups. They were delegated to burn things or whatever they chose to do. He says there was no disharmony. He also says that Sixpence arrived after the meeting and he took no part in the deliberations. Nothing was raised in cross-examination which tended to throw doubts on the credibility of this witness. Although, as I have stated, this witness appeared to us to be nervous, he nevertheless appeared to us to be quite  
30 truthful. His evidence is important on three points, only, firstly, that the accused read out of a red book which is denied by the accused; secondly, that Hensiby was sent outside, which is denied by the accused; and, thirdly, that Sixpence arrived after the meeting was over. This, too, was denied by the accused. I should say that we accept his evidence in preference to that of the accused on all these points, but I shall deal with the matter more fully later.

40 That concludes the accomplices' evidence. A witness Gudza who worked at the Salvation Army Hostel at Chinyika, says a fire occurred on the 14th of May at the Salvation Army school at about 10.15 p.m. according to his watch which might not have been accurate. The accused had been to the school at some time prior to the fire. Chawada, a dip attendant at Chinyika dip, says he remembers when

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it was burned down. He gave the time as between 10 to 10.30 p.m. He says his attention was first drawn to the fire at the Salvation Army school. He saw the glow of this and he said he saw the dip tank alight at the same time. It will be recalled that Masawi and Hensiby said the fire was to be at 11 p.m. and that is the reason why he, Masawi, was given Lovemore's watch so that the fires could be synchronised, but Masawi also said he was told that when the Salvation Army School was set alight by the accused he should set the dip tank on fire. Masawi says he saw this fire and that he and Hensiby then set about their work. We regard the facts of this burning as deposed to by Chawada as important, and we do not think that the fact that there is an apparent difference of time between Gudza and Chawada on the one hand, and Masawi on the other as of real significance. It may well be that 11 p.m. was fixed as the time to arrive, but the important thing was that the fires should take place at the same time. It seems to us to be highly probable that the accused got on with the job and when Masawi saw this, which was to be his signal, he went ahead with his burning. 10 20

African Detective Mishek of the Criminal Investigation Department spoke of the search of the accused's premises on the 6th of June, 1962. He says he saw and found Exhibit 7 in the house of the accused amongst some books. He says he saw it and gave it to Sergeant Carver in the presence of the accused who made a remark about it. The accused denies this. We have no hesitation in accepting Mishek's evidence, supported as it is by Sergeant Carver, who is also positive that Exhibit 7 was found in the accused's house. Sergeant Carver could not remember whether it was shown to the accused when it was found. We are satisfied that the accused's denial that Exhibit 7 was found in his house is false. The significance of this denial as it appears to use will be dealt with later. As to Exhibit 7 there is evidence that similar leaflets were handed out at Mufukose Township some nine miles west of Salisbury on Sunday the 13th of May. This evidence was given by Detective Monsa. He was not cross-examined on it. He saw none before that date, although, of course, this does not mean that they may not have been distributed or handed out by 30 40

some person before that date. Detective Monsa says he saw three or four copies of Exhibit 7 at a police station in a Township some 10 miles from Goromonzi on Sunday the 13th of May.

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I may add that the Crown called a witness by the name of Joseph who gave certain evidence as to an alleged conversation he had with the accused when they were both in custody at Marandellas. This evidence was wholly untruthful in our opinion. We informed counsel who was appearing for the accused in the course of cross-examination of this witness, that unless he wished to establish something positive from this witness's evidence that we did not propose to place any reliance on this witness at all. Counsel did not then continue cross-examining this witness. We placed no reliance on the evidence of the witness Joseph and we do not take it into account at all in this case.

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I have mentioned Sergeant Carver produced a plan, Exhibit 5. According to the evidence from "A" the Salvation Army school which was burned on the night of the 14th of May to the Chinyika dip tank at "B" which was burned on the same night was a distance of between half and three quarters of a mile approximately, and from "E" where the accused lives to "D" that is St. Dominic's school is about 12 miles. It will be recalled that Sixpence and Lovemore and the other witnesses say Sixpence and Lovemore were selected for this target because they had cycles. From "E" to Yafelle's kraal where Ronnie and Hensiby live is approximately half a mile. From "E" where the accused lives to Chinyika school alleged to have been burned by the accused is approximately two miles. Yafelle's kraal where the accused is said to have met with Masawi and Hensiby seems to be on the way to Chinyika school.

I deal now with the evidence of the accused. His evidence in chief was short and was as follows: "On 11th May this year" he said, "when I was leaving my school, Ronnie and Masawi approached me. They asked if they could talk to me. I waited until they came to where I was. Ronnie told me that there would be a strike in Salisbury the following Monday. I asked him how he knew. He told me he had got some information. He told me

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the Youth Movement in Goromonzi had decided to take an action, so they had been sent to ask me if I will join them. I told them I have nothing to do with the Youth Movement. I was not a Youth member. They should go and see the Secretary. They left. The following day at 9.30 p.m. the Secretary, that is Sevenzayi in company with Ronnie, Masawi, Nowa Hensiby, Supa and Sixpence came to my house. They stood outside my garden which is just about five yards from my house and asked if they could talk to me. I invited them into the sitting room. When we got there Sevenzayi repeated what the boys has said the previous day. I asked him what action they had in mind. He gave us examples churches, dip tanks, and mealie lands. At that time there was a lack of educational facilities in Goromonzi and I brought to his notice a statement by Mr. Nkomo that no member of ZAPU would act outside his direction. I told him about the illegality of the activities he had proposed. I suggested they made a procession and even for that they would also need permission. Argument then ensued which ended when the whole group walked out of my house with shouts that I was a moderate and a police informer and that if I revealed this to the police they would act upon me. The whole group left. I remained in my house thinking about what had happened. I then decided to write to the regional officer and tell him about what had happened. This I did, and posted my letter. I had not received any reply till I was arrested on the 6th of June." 10 20 30

It will be seen that there is a violent conflict between the evidence of the accused and that of Masawi, Lovemore, Sixpence, Hensiby, Nowa, Ronnie and Supa. Firstly, the accused says he was approached by Ronnie and Masawi on Friday. Ronnie, Lovemore, Masawi, Hensiby and Nowa all say Ronnie did not go to the accused on that day, but Lovemore, Masawi, Hensiby and Nowa say they went to the accused. 40

Secondly, the accused says Ronnie said there was to be a strike on Monday in Salisbury. Lovemore, Hensiby and Nowa denied that. Masawi admitted in cross-examination he had said that in the magistrate's court and that that was the case and that Ronnie had told him this. We have been puzzled as to the conflict between the accused



and the Crown witnesses as to whether Ronnie went to see the accused on Friday. In view of the fact that a meeting took place between some of these youths and the accused on Friday, we have been puzzled as to why he has contended that it was Ronnie, together with Masawi, who came to see him, and we think it highly probable that the accused has manufactured this piece of evidence taking as its foundation Masawi's statement in the magistrate's court that Ronnie had told him, Masawi, on the Friday that there was to be a strike on the Monday. The accused, it appeared to us, was anxious at all costs to find some reason for these persons having knowledge of the strike on Monday from a source other than himself. This was a heaven-sent answer. We have already said that the accused was untruthful when he said Exhibit 7, the strike notice, was not found in his possession. This denial was, we consider, an attempt on his part to get over the evidence of the Crown witnesses that he had shewn them this letter on Sunday or Monday, and had told them that there was to be a strike and suggested to them action to coincide with the strike.

After considering all the evidence, we are in no doubt that Ronnie did not go to see the accused on Friday, but that Lovemore, Masawi, Hensiby and Nowa did so. Notwithstanding Masawi's evidence we reject the suggestion that Ronnie knew on Friday there was going to be a strike in Salisbury and we reject the accused's evidence that Ronnie told him.

Thirdly, the accused says that he told Ronnie and Masawi when they asked him if he would join them in an action, that he would have nothing to do with the Youth Movement. He was not a Youth Member, and he sent them to Sevenzayi. In view of the accused's evidence of the part he played in ZAPU'S affairs in Goromonzi to which we shall refer later, we regard it as highly improbable that the accused would take up this attitude.

Fourthly, the accused says that all the visitors arrived at his house about 5.30 p.m. quite unexpectedly. They were all together and he had no reason to suspect that they were going to come there. All of them claimed they went there by

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arrangement and we think it far more probable that this should be so than that this should have been, as it were, a surprise visit, especially as the accused admitted that he saw Sevenzayi twice on that day, in the morning when the accused wrote Exhibit 5, and in the afternoon when he wrote Exhibit 14, and the accused himself states that he on the Friday sent Masawi and Ronnie to Sevenzayi.

Fifthly, the accused says Sixpence was present throughout the meeting. This is denied by everyone. We disbelieve the accused on this point. Sixpence, particularly, on this point could not be mistaken. 10

Sixthly, the accused admits Hensiby was outside. All the witnesses say this is because the accused put him outside to keep watch. The accused can give no reason for his remaining outside, but says if somebody had been selected to be sent outside Hensiby was the person and we think he would have been. He was the youngest person there. We accept the evidence of all the witnesses that Hensiby was sent outside for the reason given by them. It seems to us to be a probable reason and the accused could give no reason at all why Hensiby should come to his house and voluntarily sit outside while all the others were inside. 20

Seventhly, the accused says that he opposed the suggestion of burning anything and particularly schools, and suggested a procession as a means of protest. He pointed out that this required a permit as well. This, according to the accused, led to an argument which ended when they all walked out of the house with shouts that the accused was a moderate and a police informer and that if he revealed what had happened to the police they would act against him. This, of course, is in flat contradiction of all the evidence of all the witnesses who were present at the meeting, at the accused's house on Saturday night. This is a point of vital importance in the case, because if the Crown has not established the accused did not break off with Masawi and company to use a generic term, on the Saturday night, that is the end of the Crown case. 30 40

The accused also, it will be recalled, stated that on that night he decided to write to the regional officer of ZAPU to relate what had happened. This, he says, he did, but he had not received a reply up to the time he was arrested on the 6th of June. The accused said he had not kept a copy of this letter and there would appear to be no way of checking the correctness of the accused's evidence on this point. Conversely, of course, although there is no onus on the accused, it should be mentioned that apart from the accused's ipse dixit, there is nothing to support his evidence on this point. It will be recalled that the evidence of Masawi and company, again to use a generic term, is that there was a further meeting on the Monday night at which the conspiracy the subject matter of the main charge was entered into. This meeting was summoned, according to them, by the accused, and the accused, according to the evidence of some to them told them on Sunday, and according to others on Monday that there was a strike in Salisbury and shewed them Exhibit 7 or read its contents. It will be recalled that the accused denied that Exhibit 7 was found in his house, and we have already found that his evidence was false on this point. We are satisfied it was found in his house and that the explanation for his false denial is to be found in the fact that he realised that if he admitted he had Exhibit 7 this would tend to support the evidence of the Crown witnesses who said he shewed it or read it to them. What is important we consider is not merely his false denial that he had Exhibit 7, but the reason for this denial, and we consider that he knew that he had shewn it to the Crown witnesses before the affairs of Monday night, and after the Saturday night meeting at his house, and that is why he made this false statement. This action of shewing Exhibit 7 to these witnesses is quite inconsistent with his evidence that he had parted with Masawi and the others on terms of hostility on the Saturday night.

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The accused was not a member of the executive of the local branch of ZAPU but we are in no doubt that he played an important part, if not the most important part, in activities in Goromonzi. The fact that he was a teacher forbade him from openly taking part in politics, but we entertain no doubt

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that he took a most active part in ZAPU behind the scenes. He had been a member of the African National Congress and of the National Democratic Party, and he was a member of ZAPU. He was, according to his own evidence, the most literate and educated member of the local branch. He wrote Exhibit 14, he says, from a draft supplied by the Secretary. It is significant that he signed the Secretary's name, although he saw the Secretary at least three times that day, that is, in the morning 10 when he drafted Exhibit 15 a telegram to which I shall refer presently, and in the evening when they met. The accused said he did not know the name of the chairman of the local branch. We do not believe him. We find it impossible for this to be the case. The accused first stated that with regard to Exhibit 15, although it was written by him the working was that of the Committee, in other words that he was a mere scribe. He subsequently admitted substantially that the 20 wording was his. The last sentence in Exhibit 15: "damn their concessions, we want our country," is to be found in Exhibit 11, the notebook of the accused in his own handwriting, and in Exhibit 9, another notebook of his seized by the police. The sentiments in Exhibit 14, as he himself admitted in cross-examination, were plainly his. But with regard to this last sentence to which I have already referred, "damn 30 their concessions we want our country," he said it was possible that he had suggested this sentence. We consider that it is far more than possible. We have no doubt that this was his sentence and we have very little doubt that he was the author of the telegram.

The strike called in Salisbury referred to in Exhibit 7 was called, according to the accused, by a body known as the Southern Rhodesia African National Trade Union Congress. He first took up the attitude that that is why it had nothing to 40 do with him; he was not a member of the Southern Rhodesia African National Trade Union Congress, he was a member of ZAPU. But he admitted that all ZAPU members supported the Southern Rhodesia African National Trade Union Congress.

The accused is a person of strong character and holds strong political views which, of course,

he is perfectly entitled to hold. The plan on Sunday night as deposed to by the witnesses was that six separate fires were to take place. In fact, for various reasons, there were only three, and a shelter suffered minor damage. This was plainly a fairly elaborate plan. It was suggested by the accused that Ronnie might have conceived it. Having seen Ronnie in the witness box and considering his position in the movement by contrast with that of the accused, having regard to Ronnie's low standard of education compared with the standard the accused had attained, having regard to the standard of the accused's political education as evidenced by his own writing and indeed by what he said in Court, we entertain not the slightest doubt that if there was a plan to commit arson on the scale on which it was to be committed to coincide with the strike in Salisbury, that it is far more probable that, as the Crown witnesses in fact say, this plan was the plan of the accused and not that of Ronnie. Indeed, we consider it in the highest degree unlikely that Ronnie could ever have conceived such a plan.

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It was suggested by the accused that Sevenzayi might have conceived the plan. As to Sevenzayi, it will be recalled that the witnesses said it had been arranged on Saturday that Sevenzayi would not take part in any burning as he was the secretary of the local party. Although his name was signed on Exhibit 14 by the accused, his name was signed as the central secretary of the ZAPU Goromonzi central branch. It appears to be likely that as he occupied this position, although Sevenzayi may have had something to do with, and may, indeed, have played quite an important part in the planning of the Saturday night, it appears to us to be likely that he would keep out of actual illegality when actual targets were fixed and when actual burning was to take place.

But unless we reject the evidence of the Crown witnesses that there was no argument or disharmony on the Saturday night, there would appear to us to be no reason why the Crown witnesses should implicate the accused and not Sevenzayi. It will be recalled that the accused stated that this meeting broke up in disharmony after he had been called a police informer and a

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moderate, and it will be recalled that these witnesses all denied this. We find it impossible to reconcile the accused's evidence that the meeting broke up on the Saturday night with his being called these names, and being threatened in the way which he described with the contents of Exhibit 6 apparently written by the accused. This letter reads:

Local.  
June 6th. 1962. 10

Comrade Sevenzayi,

We are all well here. We are pleased you and your family are safe. Please receive the following:

3/6	for card Rd. 2872.	Leonard	
3/6	" "	Ronnie	
3/6	" "	Nowa	
3/6	" " No.2871	Richard Ben	
3/-	subscription (please send stickers)		
Total	<u>17/-</u>		20

This money should have been paid long ago but Masawi is playing the fool. He must be told that the receipt book should be given to fellow Nationalists on demand. I have asked for it several times and he has always said: "It is at the house and I shall bring it." But never brought.

Your can give the man my 8/9 if you dont mind.

Did you get a reply from Goromonzi Trading Manager? 30

Comrade Keswiw Malindi."

The accused said first, in cross-examination, that he could not remember what this reference to the Goromonzi Trading Manager was all about. There was some complaint but he professed to be quite vague about it. Subsequently when he was confronted with Exhibit 14, he had no difficulty in recalling that the reference to Goromonzi Trading Manager was a reference to the person about whom the complaint was made in the letter Exhibit 14. 40

Now, this Exhibit 6 was admittedly given by the accused to Sixpence for delivery to Sevenzayi on the 6th of June. By that time the accused said he suspected that Masawi, Ronnie and company had committed the crimes of arson, of which he says he had heard at that time. Sevenzayi and Sixpence were among those who had threatened him on the Saturday night, and so were Ronnie, Nowa and Masawi who were referred to in that letter.

10 According to the accused he had received the moneys referred to as a subscription from Ronnie on the 2nd of June, and from Nowa on the 5th of June and he had seen Masawi on several occasions after the fire. The tone of the letter generally :  
 "We are well here. We are pleased you and your family are safe," for example, is, in our view, not consistent with that of a man who had been threatened and who was writing to a person who, he must have believed, had conspired to perform acts of arson of  
 20 which he strongly disapproved. Nor it it likely that Ronnie and Nowa and Masawi would, as the accused said they did, continue to transact ZAPU business with the accused if they thought he was a moderate and a police informer; nor is it likely that the accused would have continued to have had anything to do with these people of whose action he says he strongly disapproved.

The continued relationship between these persons as evidenced in this letter is much more  
 30 consistent with the story of the accomplices that the accused was with them in the crimes that were committed than with the evidence of the accused. We regard this letter as of considerable importance, firstly, as tending to show that the accused's evidence of the quarrel and disharmony that is alleged to have taken place on the Saturday night was false, secondly, in shewing that the accused continued an association with these people after  
 40 the Saturday night; and, thirdly, as constituting important corroboration implicating the accused in the events that followed the Saturday night, particularly in view of his denial that he had anything to do with these people after the Saturday night.

We really have no doubt at all that the Monday night meeting and the conspiracy there hatched followed upon the Saturday meeting preceded by the Friday interview with the accused, and the

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receipt by the accused of Exhibit 7, the strike notice. We find corroboration outside of that required by the Statute of the accomplice's evidence and implicating the accused in Exhibit 6, in Exhibit 7 and the accused's false denial with regard to both these documents. We also find the accused, making due allowances for the fact that he was giving evidence in his own defence in a serious case, an evasive and untruthful witness. Apart from the examples we have already given of cases where we are satisfied that his evidence was false, we mention a few more. He asserted that Exhibit 8, which had some pages missing, was deliberately mutilated by the police. This was not put to Sergeant Carver when he originally gave evidence, but emerged for the first time in the cross-examination of the accused. Consequently Sergeant Carver was recalled by the Court and he stated that the book as produced in Court was in exactly the same condition as when it was seized at the accused's house on the 6th of June. Although the accused's attention was specifically directed to the necessity of cross-examining Sergeant Carver on this further evidence, he elected not to do so. We have no doubt that Sergeant Carver's evidence was truthful. He was a completely honest witness. The accused, in fact, we have no doubt made this assertion that the book had been tampered with after it had been seized in an attempt to endeavour to show that there were writings in his book that revealed his desire to attain his political ends by peaceful means. No such writings could be found in any books of the accused, and he was driven to make this suggestion in an attempt to mislead the Court. He attempted to play down his close and important association with ZAPU. We consider this was significant. His evidence about the telegram, Exhibit 15, was contradictory and evasive. His evidence about "settlers" and the meaning he attached to the word "wolves" in Exhibit 8 was patently untruthful. He was altogether an unsatisfactory witness and, in our opinion, an untruthful one. In the result we are satisfied that the meeting on Saturday night took place at the accused's house, not unexpectedly, as he said, but by arrangement. We are satisfied that the meeting did not break up, as alleged by the accused. We are satisfied that there was a

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10 discussion on Saturday night about acts of burning,  
and that the accused together with Sevenzayi took a  
leading part in this discussion. We are satisfied  
that the accused put Hensiby outside on guard. We  
are satisfied that the accused received Exhibit 7  
before Monday and arranged for the meeting to be  
held on Monday night, and this was all arranged as  
a sequel to the happenings on Saturday. We are  
satisfied that he arranged for the burning to  
coincide with the happenings in Salisbury. We are  
satisfied beyond doubt that he was present at the  
meeting on the football ground on Monday night when  
the burning alleged to take place were planned. And  
we are satisfied that he arranged the burning, and  
himself took part in the burning of the church at  
Chinyika. He burned it himself, in fact. The accused  
said he reslised there was a shortage of schools for  
Africans and, although he was opposed to Christianity,  
he would not do anything to bring about the  
20 destruction of schools. The schools set on fire  
were church schools and even if, in fact, he had the  
belief that he would not want to destroy the  
facilities for Africans for education, we see  
nothing improbable in his having organised and taken  
part in the burning of these church schools.

30 The Statutory requirements of Section 282 have,  
in our opinion, been complied with in regard to the  
charge of conspiracy by the evidence of the  
accomplices who corroborated one another  
substantially in regard to the events of the Monday  
night and in regard to the preceding meeting. We  
bear in mind, of course, that there are inconsistencies  
and contradictions to some extent in the evidence of  
these accomplices, but they do corroborate one  
another substantially, and this constitutes  
sufficient corroboration from the point of view of  
fulfilling the requirements of the Statute. See  
Rex v. Thielke, 1918, A.D. 373 and Nkambule and  
Others versus the King, 1950, A.C. 379 and The Queen  
40 v. Chingwa, 1962, (4) S.A.L.R. p. 142 at 149.

In regard to the second count of arson, the  
requirements of section 292 have in our opinion all  
been complied with. There is the evidence of the  
accomplices and it was admitted and indeed  
established that the school at Chinyika was burned  
down on the night of the 14th of May. But not-  
withstanding the fact that the requirements of the

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Statute had been complied with, we have endeavoured to bear in mind the remarks of Schreiner, J.A. in the case of Rex v. Ncanana, 1948, (4) S.A.L.R. 392, A.D. and p.405, where the learned judge is recorded as having said:

"Even where sec. 285" (this South African section corresponds to our section 292,) "has been satisfied, caution in dealing with the evidence of an accomplice is still imperative. The cautious Court or jury will often properly acquit in the absence of other evidence connecting the accused with the crime, but no rule of law or practice requires to do so. What is required is that the trier of fact should warn himself, or, if the trier is a jury, that it should be warned, of the special danger of convicting on the evidence of an accomplice; for an accomplice is not merely a witness with a possible motive to tell lies about an innocent accused but is such a witness peculiarly equipped, by reason of his inside knowledge, of the crime, to convince the unwary that his lies are the truth. This special danger is not met by corroboration of the accomplice in material respects not implicating the accused, or by proof allunde that the crime charged was committed by someone; so that satisfaction of the requirements of sec.285 does not sufficiently protect the accused against the risk of false incrimination by an accomplice. The risk that he may be convicted wrongly although sec. 285 has been satisfied will be reduced, and in the most satisfactory way, if there is corroboration implicating the accused. But it will also be reduced if the accused shows himself to be a lying witness or if he does not give evidence to contradict or explain that of the accomplice. And it will also be reduced, even in the absence of these features, if the trier of fact understands the peculiar danger inherent in accomplice evidence and appreciates that acceptance of the accomplice and rejection of the accused is, in such circumstances, only permissible where the merits of the former as a witness and the demerits of the latter are beyond question."

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Schreiner, J.A. the same learned judge, dealing with the cautionary rule, in the case of the Queen v. Mpompotshe and Another, 1958 (4), S.A.L.R. 471 A.D. at p. 476 after quoting the trial Judge's directions to the jury in that case said:

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"Now the learned Judge, of course, fully appreciated that it was his duty to warn the jury of the danger of convicting on accomplice evidence. Since the commission of the murder by some one or more persons was clearly established aliunde, the requirements of sec. 257" (which at that time was the section corresponding to our section 292.) "of the Criminal Code were satisfied and it was only necessary to warn the jury on the lines of the cautionary rule. This the learned Judge set out to do and with much of what he said in the passage quoted no possible fault could be found. But in two important respects he reproduced the requirements of sec. 257 as if they satisfied the cautionary rule, with the result that the jury were wrongly instructed. In the first place the learned Judge expressly stated that the corroboration provided it was in material respects, need not necessarily implicate the accused. That was correct so far as the section was concerned but it was wrong in regard to the cautionary rule. The whole purpose of the latter is to ensure that, even if the section is satisfied, there is some further guarantee that the right man has been brought to trial. The cautionary rule does not require that the triers of fact should be told, or should warn themselves, that there must always be corroboration of the accomplice. As was pointed out in Rex v. Ncanana, 1948 (4) S.A. 399 (A.D.) at p. 405, there may be a sufficient guarantee if certain other features are present. But if those features are not present if for instance the accused has given evidence and has not been proved to have testified falsely, and if it cannot be said that the accomplice is beyond all question a satisfactory and convincing witness while the accused is the opposite, then corroboration is required. That was the position here since the appellants gave evidence which was not

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demonstrably false or manifestly inferior to that of NOMPIYO. Since corroboration was required it had to be corroboration implicating the accused and not merely corroboration in a material respect or respects. In fact the minds of the jury were directed away from the right question which they had to consider, namely, whether there was corroboration implicating the accused.

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The other respect in which the summing up was defective is that the learned Judge told the jury that corroboration of one accomplice may be found in the evidence of another accomplice, and that consequently NOMPIYO and MANTSHIZA could be treated as corroborating each other. This again was correct for the section but wrong for the cautionary rule."

We have endeavoured in our consideration of this case to bear these principles in mind and, for the reasons given, we are satisfied that the requirements of corroboration implicating the accused have been met, and, in addition, we consider the evidence of the accused is demonstrably false. We trust that we have not overlooked the peculiar danger of accepting the evidence of accomplices, and we have borne in mind that not all the accomplices were wholly satisfactory and truthful witnesses. Witnesses of that class are very rarely wholly consistent and reliable or wholly truthful, and the accomplices in this case were not different from the general run, (c.f. the remarks of Davis, A.J.A. in Rex v. Kristusamy, 1945, A.D. 554 at 556, and those of Van der Heever, J.A. in Rex v. Gumede 1949 (3) S.A.L.R. 758, A.D.). Nevertheless, we are satisfied, particularly with regard to HENSIBY, SIXPENCE, NOWA and SUPA, that their evidence in its substantial features is truthful and in regard to the incidents of the Monday night, we see no reason for rejecting the evidence of Lovemore, Masawi, and Ronnie, although by reason of their unreliability in other respects we would not have felt justified in accepting their evidence in regard to the events of Monday night if it stood alone. Of course we bear in mind also that Supa gave no evidence of the events of Monday night.

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In the result therefore, we are in no doubt as to the guilt of the accused on the main count, except in regard to the conspiracy to burn the maize field of Mr. Hughes in view of the fact that Ronnie said at the meeting that he would not go, and Mr. Masterson for the Crown said that he did not feel justified in contending that that part of the conspiracy had been established.

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10 In so far as the second count is concerned, we have accepted that the accused was a party to the conspiracy to set alight to the various buildings, We have already accepted the evidence of the accomplices that he said he was going to act about burning Chinyika school. We have already accepted the evidence of Hensiby that he, together with Masawi, accompanied the accused on the night in question for part of the way, that the accused parted company with him, that they went to burn the hide shed and the storage shed at Chingyika, 20 the accused being on his way to the school. We also accepted the evidence of Chawada that both the school and the hide shed were burning at the same time, and we have, for the reasons we have already given, satisfied ourselves that there is evidence corroborating that of the accomplices implicating the accused and that the accused is a witness not worthy of credence.

30 There is, of course, the evidence of certain accomplices which we do not think is untruthful, that the accused, in fact, told them on the Tuesday following the fire that he, the accused had done his task, but it is not necessary for us to investigate this particular aspect of the matter further because of the ample other evidence tying the accused with this crime. That being so, we are satisfied of the guilt of the accused on this count as well.

40 You are found guilty on the main count in terms of the indictment, save for paragraph (e) thereof, and for the deletion of all references to John Adams Gwynne Hughes, and the maize field his property which it was alleged that you conspired to burn, and you are found guilty on count two as charged.

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THE ACCUSED: I would like to be allowed to continue my studies in prison, and further, because of the old age of my parents, I would have liked to serve my sentence in Marandellas prison. I have remained in the remand prison since June and I would like that to be taken into account. That is all I wish to say.

S E N T E N C E

MAISELS.J.: You have been found guilty of two very serious crimes. The crimes are all the more serious when regard is had to the position which you hold as headmaster of a school and to the fact that young men were undoubtedly induced by you and by your example to commit crimes of arson. In addition, according to the evidence which was accepted by the court, the crimes which you committed were committed of set purpose to coincide with the strike in Salisbury. The crime which you committed in regard to the conspiracy is of a nature calculated to bring about chaos in this country, especially when it is deliberately timed together with other disorders in other parts of the country, and I really entertain no doubt that it was your purpose to bring about chaos. 10 20

Legitimate political activity is not on trial in this case and has not been on trial at any stage in this case, although at some stages in your evidence you suggested it. What was on trial in this case and what you have been found guilty of are crimes against innocent persons and in some respects crimes against the State because these crimes, as I say, were of set purpose to bring about, in my opinion, chaos. It is regrettable that a man in your position, who has achieved a standard of education for which you are to be complimented, having regard to your own struggle, and who was able to do a useful job of work for the community should have engaged in activities of this nature and should have been responsible for young men of the type that we saw in court also committing similar crimes. 30 40

It is necessary in this case to make an example of you. It is necessary in this case, in my opinion, to impose a sentence which may act as a deterrent to other persons similarly minded.

You have made a request that you be allowed to continue your education while you are in gaol. No doubt the gaol authorities will give consideration to that. You have also made a request that you be allowed to serve your prison sentence in Marandellas. The question as to where you have to serve your sentence is not a matter for this court. That is a matter for the prison authorities.

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(continued)

25th October,  
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10 I have decided in regard to the sentence that I shall impose upon you on the second count to make it run concurrently with that on the first count, because the burning and the conspiracy were all really part and parcel of the same events.

You are sentenced to ten years' imprisonment with hard labour on the first count and you are sentenced to five years' imprisonment with hard labour on the second count. The sentence on the second count is to run concurrently with that on the first count.

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No.24

No.24

Court Order

Court Order.

IN THE HIGH COURT OF SOUTHERN RHODESIA

25th October,  
1962.

R E G I N A

versus

KESIWE MALINDI

At Salisbury on the 15th to 25th days of October 1962.

Before the Honourable Mr. Justice Maisels and Assessors, Messrs Cripwell and Ling.

Mr. Masterson of Counsel for the Crown.

30 Mr. Anderson of Counsel for the Accused.

THE PRISONER, being arraigned and charged with the crime of:

(1) C/S 366 A(2)(b) of C.P.& E. Act  
(Chap.28)

In the High  
Court

(2) Arson.

No. 24

PLEADED: Not Guilty.  
15th October, 1962.

Court Order  
(continued)

VERDICT: Guilty.  
25th October, 1962.

25th October,  
1962.

SENTENCE: (1) 10 years I.H.L.  
(2) 5 years I.H.L.

Sentence on count two to run con-  
currently with that on count one.

25th October, 1962.

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In the Federal  
Supreme Court

No. 25

Grounds of Appeal

No. 25

IN THE FEDERAL SUPREME COURT

Grounds of  
Appeal

In the matter of:-

PRISON NO.1602 KESIWE MALINDI Appellant

and

25th October,  
1962.

THE QUEEN

Respondent

G R O U N D S O F A P P E A L

Against conviction

- (1) That the Court was influenced by essays written by me and produced as evidence against me. 20
- (2) That the Court was misled by the evidence given by the witnesses which were untruthful.
- (3) I did not commit the crime.

Against sentence.

In view of the foregoing I should not  
have been sentenced.

(Signed) KESIWE MALINDI  
H.L.P. NO.1602 KESIWE MALINDI.  
DATE: 27th October, 1962.

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381.

No. 26

In the Federal  
Supreme Court

JUDGMENT

No.26

Judgment No. 68 of 1963

Judgment

12th August  
1963.

IN THE FEDERAL SUPREME COURT

at SALISBURY

Criminal Appeal No. 253 of 1962

Between : KESIWE MALINDI Appellant

and

THE QUEEN Respondent

10 Before : Clayden, C.J., Quenet and Forbes, F.J.J.

the 10th and 12th days of June, 1963

J U D G M E N T

Clayden, C.J., :

The appellant, an African school teacher at the Goromonzi Primary School, was convicted of two offences: conspiring to commit arson and malicious injury to property with other Africans named Hensiby, Masawi, Lovemore, Sixpence, Ronnie and Nowa, and arson, by setting fire to the Salvation Army Church in the Chinyika Reserve.

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The grounds of appeal against these convictions are two main ones; that there was wrongful admission in evidence of certain essays which had been written by the appellant, and that the convictions were not justified on the evidence.

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Supreme Court

No.26

Judgment  
(continued)

12th August  
1963.

The evidence that the appellant had committed these crimes was given by six accomplices, the persons with whom he was alleged to have conspired, and by one other accomplice, in respect of the conspiracy charge, and by some of those accomplices in respect of the arson charge.

It was alleged that the conspiracy was one to set on fire sheds at the Chinyika Dip, the house of a police reservist in the Chinyika Reserve, the Roman Catholic School in that Reserve, sheds at the Kumswe Dip, and a maize field belonging to a European farmer. 10

After the arrest of the appellant his house at the school was searched and two notebooks were found, a red covered book Exhibit 8 and a brown covered book Exhibit 9. Exhibit 8 contained notes and essays, Exhibit 9 was the beginning of an autobiography called "My Life" and it also contained an essay called "Zimbabwe". As part of the Crown case certain extracts from these exhibits were read. An essay called "My Surroundings Now" was read: it dealt with the unjust distribution of land in the country. And a set of notes at the end of the book called "Nationalist Principles" were read. From Exhibit 9 passages were read which indicated views that religion was used by the capitalists, the Europeans, to maintain exploitation of the African, and that missionaries had come to enable the European to take the country and freedom from the African, and leave the African only with religion. 20 30

When the appellant was being cross-examined Counsel for the Crown indicated to the learned judge that he proposed to cross-examine on certain further passages from Exhibit 8, and referred the Court to s.303 of the Criminal Procedure and Evidence Act. He said "I wish to cross-examine the accused on the possibility of his previously having held notions which could possibly suggest that he is a man of bad character". The learned judge then expressed the view that the statements were being put "because they are relevant to the question of whether or not he took part in the matters which have given rise to the present case". Crown Counsel agreed, and the learned judge then said "I do not see how s.303 comes into it". 40

The cross-examination proceeded. The appellant said that the notebooks contained his writings. A passage from an essay in Exhibit 8 was referred to. It reads "Violence is necessary and stones must be thrown to compel them to surrender. I notice that unity among the masses is most essential. In conclusion I would like to encourage all Nationalists to be brave and uncompromising; to stand behind comrade Nkomo and throw as many stones as possible, to expel these wolves from the land".

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The essay in which this passage occurred referred to changes in the Southern Rhodesia Constitution announced on 8th February 1961 and it was written on that day. The appellant admitted that this passage expressed his thoughts at the time. In further cross-examination he admitted that "wolves" referred to white settlers, and he said that he had not changed the views expressed. He pointed out that in all his views there was nothing which referred to the burning of schools, and he said that at all times he would have condemned that act. One of the purposes of this cross-examination, to which reference will be made later, was to attack evidence, which the Crown contended was to the effect that he had tried to dissuade the other Africans from resorting to burning, and that he was a man of peace. He was also cross-examined on other passages from his note-books.

Whether or not cross-examination in this manner was permissible depends on the construction of section 303. That section is taken from section 1 of the English Criminal Evidence Act of 1898, but what is in s.1 of the English Act is found in several sections of the Southern Rhodesia Act. In order to apply the English decisions on the section it is necessary to set out the manner of correspondence of the Acts. The English Act was the Act which first allowed an accused person to give evidence on his own behalf, and it did so with certain safeguards for the accused. Section 1, which gave the right, contained provisos (a) to (h). In Southern Rhodesia s.272 enacts the main provisions of the English section, and the provisions of provisos (a), (c), (g) and (h). Section 304 deals with what is in proviso (d). Section 309

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proviso corresponds with proviso (e). Section 303 deals with what is in proviso (f). This case is concerned with s.309 proviso and s.303, and references in the English cases to provisos (e) and (f) can be read as applying to those sections.

Section 309 proviso reads:

"Provided that ..... an accused person called as a witness on his own application ..... may be asked any question in cross-examination, notwithstanding that it would tend to incriminate him as to the offence charged against him."

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Section 303, insofar as it is here in issue, reads:

"An accused person called as a witness on his own application shall not be asked, and if asked shall not be required to answer, any question tending to show that he has committed, or has been convicted of, or has been charged with, any offence other than that wherewith he is then charged, or is of bad character, unless -

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(a) he has ..... himself given evidence of, his own good character ....; or

(d) the proof that he has committed or been convicted of such other offence is admissible evidence to show that he is guilty of the offence with which he is then charged."

On the ground of appeal which relates to the use of the essays there are three questions which arise. The first is whether the questions as to the appellant's views on violence and the throwing of stones were questions tending to show that he was of bad character. This involves the meaning of "bad character" and of the phrase "tending to show". The second is whether if the questions did fall within s.303 they were permissible as relevant evidence to show motive, notwithstanding the provisions of section 303. The third is whether they were permissible under paragraph (a) or (d) of s.303.

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The proper construction of ss. 309 and 303, provisos (e) and (f) of the English section, has

been dealt with in three cases in the House of Lords: Maxwell v Director of Public Prosecution 1935 A.C. 309; Stirland v Director of Public Prosecutions 1944 A.C. 315; and Jones v Director of Public Prosecutions 1962 A.C. 635.

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10 What is the proper meaning of the term "character" in the section was dealt with in Stirland's case. Viscount Simon L.C., in a speech concurred in by all their Lordships, said at pp.324-5:

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20 "There is perhaps some vagueness in the use of the term 'good character' in this connexion. Does it refer to the good reputation which a man may bear in his own circle, or does it refer to the man's real disposition as distinct from what his friends and neighbours may think of him? In Reg. v Rowton (10 Cox C.C.25) on a rehearing before the full court, it was held by the majority that evidence for or against a prisoner's good character must be confined to the prisoner's general reputation, but Erle C.J. and Willes J. thought that the meaning of the phrase extended to include actual moral disposition as known to an individual witness, though no evidence could be given of concrete examples of conduct. In the later case of Rex v. Dunkley ((1927) 1 K.B. 323) the question was further discussed in the light of the language of the section, but not explicitly decided. I am disposed to think that in para. (f) (where the word 'character' occurs four times) both conceptions are combined."

40 In Jones' case Lord Reid at p.66 referred to Rex v Dunkley but left the meaning of "character" open. Lord Morris at p. 685 referred to the dictum of Viscount Simon without comment. In an article "Cross-Examination by the Prosecutor" by Professor Stone, (1935) 51 L.Q.R. 443 at 460-1 there is indication that general character is not meant. See also Cross on Evidence pp. 317-8. As used in the section the term "character" does not need to have the meaning which it bears in the law of libel - see Plato Films Ltd. v Spiedel 1961 A.C. 1090 at 1128.

It seems to me also that the fact that the other type of question which is prohibited under

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s.303, the question as to previous convictions or offences, may relate only to single instances of bad conduct, gives indication that in its use of the term "character" the Legislature was not referring only to general reputation but also to any particular propensity or disposition. But it is unnecessary to find other reasons having regard to the view expressed in Stirland's case. It was urged in this Court that views held could not show "bad" character if the holder of the views thought that what he was trying to achieve was a good thing. But there cannot I consider be that subjective approach to determine what is "bad". To advocate violence and breach of the law is bad and it is not made good by some motive for doing so. I have no doubt that in questioning an accused charged with arson about his liking for violence and the throwing of stones the Crown was questioning him on his "bad character".

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In regard to the term "tending to show" in the speeches in Jones' case of Viscount Simonds at p.659, Lord Reid at pp.663-4, and Lord Morris at pp.681 and 689, who took the majority view as to the meanings of provisos (e) and (f), it is said that it means "revealing" or making known something which was not known before in the case. I shall later discuss whether the bad character had been proved earlier in this case.

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In dealing with the second question, admissibility because of relevance despite s.303, it is proper to stress at the outset that s.303 in no way hinders the Crown in leading relevant evidence. It is concerned only with the questions which may be asked of an accused when he elects to give evidence. If in any case evidence of bad character, including a propensity to commit the crime charged, is relevant and admissible, always with the safeguard of the discretion of the Court to exclude evidence when prejudice outweighs relevance, the Crown can lead it. Section 303 has no application to witnesses other than accused persons - see per Lord Reid in Jones' case at 662.

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In Jones' case the question arose whether proviso (e), s.309, allowed of the questioning of an accused to show matter dealt with by

proviso (f), s.303, where the evidence would "tend to incriminate him as to the offence charged against him". In the speeches of the majority it was clearly stated that it did not. Viscount Simonds at p.658 said:

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"It appears to me that no language could be plainer than that by which the Act, for the first time making an accused person a competent witness on his trial, provides first what questions he may be asked and then what questions he may not be asked. I do not understand upon what canon of construction it can be said that the second proviso is in some way subordinate to the first. On the contrary, as if to make it clear that the first proviso is not generally paramount, there are particular qualifications introduced to the second proviso. I must reject the implied inclusion of another qualification, which, if it had been intended, could well have been stated. Here, if ever, the maxim 'inclusio unius, exclusio alterius' is applicable."

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See also Lord Reid at p.663. Lord Morris, in whose views Viscount Simonds and Lord Reid also concurred, said at pp. 682-3:

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"Proviso (e) permits questions to be asked: the corollary is that they must be answered. Proviso (f) does not say that certain questions may be asked; it says that certain questions may not be asked. This means that even if the questions are relevant and have to do with the issue before the Court they cannot be asked unless covered by the permitting provisions of proviso (f). 'The substantial part of that proviso is negative in form and as such is universal and is absolute unless the exceptions come into play'".

40

In all three speeches also there is distinction of, or dissent from, the second of the propositions set out by Viscount Simon in Stirland's case at p.326 - see in Jones' case at pp. 659, 664-5 and 683. It is therefore unnecessary to discuss that proposition. Nor will I refer to the dissenting opinions of Lord Denning and Lord Devlin at pp.668 and 690-1.

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As s.303 is in a Southern Rhodesia statute the views expressed in Jones' case are not decisive on construction. And there are the slight differences that ss. 303 and 309 are not part of the same section, and that s.309 comes after, and not before, s.303. But it seems to me that the reasoning to which I have referred makes it essential to take the same view as to the effect of the sections. Particularly it is to be noted that s.303, in paragraph (d), does, as does the proviso (f) in England, allow of certain questions which are relevant despite the general prohibition of the section, and there seems no reason whatsoever to allow further inroad on the prohibition of the section than the Legislature has seen fit to enact. 10

In Rex v Rorke 1915 A.D. 145 Innes C.J. dealt with a corresponding section in a Transvaal statute, and held that if questions as to a previous conviction were relevant they were permissible. He said at p.161: "The common law rule was not intended to be interfered with .....; and interpreting the section as we do, the proviso in the English Act was unnecessary, and was probably inserted to make assurance doubly sure". The Transvaal section contained the same general provision prohibiting questions as does the English section and s.303, but it did not contain the exception corresponding to paragraph (d) at all. It does not seem to me that this decision on a section without paragraph (d) can be applied to a section which does contain this paragraph. Once the paragraph is inserted by the Legislature it shows what relevant questioning of a type otherwise forbidden, it was intended to allow. And there is no justification to extend what is allowed because, but for the paragraph, it might have been allowed. 20 30

I am of the opinion therefore that the learned trial judge was not correct when he ruled that s.303 had no application because the questions were on a relevant matter. 40

To take this view of the construction of the sections does not I think hinder the Crown at all in the conduct of prosecutions. If there is evidence of bad character which is admissible because it is relevant the Crown, as I have said, can lead it as part of the Crown case. If the accused person does not deny it in his evidence-in-chief the Crown is left with that fact proved.



If the accused does deny it in his evidence-in-chief he must necessarily have given evidence of his own good character, and then he can be asked questions about his bad character under the section. And in any event where evidence as to bad character has been led that character has been revealed, and later cross-examination does not then tend to show such character.

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10 The final question is whether the questions were permissible under the paragraphs (a) or (d) of s.303; only paragraphs (a) and (d) were suggested as having application.

20 Paragraph (d) makes no reference at all to "bad character". It allows questions, despite the general prohibition in the section, only in respect of the commission or conviction of another offence. It cannot be invoked to allow proof of "bad character" which may be admissible to show that the accused is guilty of the offence with which he is charged. This is obvious: it was referred to by Professor Stone in the article above cited at p.449.

30 I turn then to consider paragraph (a), and whether the appellant had given evidence of his own good character. I do this on the basis that just as evidence that the appellant held the view that violence was necessary was evidence of bad character so evidence that he was against violence and a man of peace would be evidence of good character. To understand the Crown contention it is necessary to set out some of the facts. The conspiracy was alleged to have taken place on a Monday night at a meeting between the appellant and the accomplice witnesses. It was proved that there was a meeting on the previous Saturday night between the appellant and some of these accomplices, and they testified that at that meeting too the burning down of various places was discussed. The appellant in his evidence-in-chief said the following about the meeting on the Saturday:

"I invited them into the sitting room. When we got there Sevenzayi" (another African who did not give evidence) "repeated what the boys had said the previous day" (which was that the Youth Movement at Goromonzi had decided to take action).

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"I asked him what action he had in mind. He gave as examples, churches, dip tanks and mealie lands. I told him of the lack of education facilities in Goromonzi. I brought to his knowledge the statement by Mr. Nkomo that no members of ZAPU would act without his directions. I told him about the illegality of those activities he had proposed. I suggested that they make a procession and even told them that that also would need permission. An argument then ensued which ended when the whole group walked out of my house with some shouts that I was a moderate and a police informer; that if I revealed this to the police it would act upon me. The whole group left. I remained in my house thinking about what had happened. I then decided to write to the regional office and tell them about what had happened. This I did, and posted my letter."

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There was cross-examination of Crown witnesses to show that he had said these things at the meeting.

In this evidence of his efforts to dissuade the youths from engaging in organised arson it is clear that the first two reasons which he gave the youths, that educational facilities were short, and that they should not act without authority from Mr. Nkomo, can have nothing to do with his own character. The question is whether his urging that what was to be done was illegal, coupled with advice to hold a legal procession, did amount to evidence of good character. Before I consider that I must refer to certain cases, and other evidence. Before the Crown, in the passage which I have already cited, sought to adduce evidence of bad character there was the following cross-examination, and questioning by the learned judge:

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"Q. Are you saying that at the meeting on the Saturday night the meeting fell apart or dispersed because you held these moderate views? - A. I wouldn't call them moderate views, but because I disagreed with what they were saying

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By Maisels J. The meeting dispersed because you disagreed with the wish and desire, the expressed wish and desire, of the

others to take part in violent action? -  
Yes, my Lord.

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And that violent action was to consist of  
burnings? - Yes.

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You disapproved of that? - Yes.

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You disagreed with that strongly? - I  
disagreed with it strongly.

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And that is why the meeting dispersed? -  
Yes."

10 It was then that reference was made to s.303.  
It may well have been the intention of the Crown  
to seek to regard the evidence as evidence of good  
character, but as I have explained the matter went  
off on a question of relevance.

At a later stage in the cross-examination and  
after the questioning as to bad character there  
was further questioning by the learned judge as to  
what had happened at the Saturday meeting, as  
follows:

20 "You say that first of all you disapproved  
strongly of what Sevenzayi had said about  
burnings? - Yes.

You disapproved strongly, also, because it  
was against Mr. Nkomo's instructions that  
no action should be taken until he gave  
the word? - Yes, my Lord.

30 And secondly because it was of a violent  
nature of which you strongly disapproved,  
being a man of peace? - Yes, not  
necessarily being a man of peace.

You disapproved of that because it was not  
the kind of action which you approved of?  
- Yes, my Lord.

You proposed a peaceful procession? - Yes.

And that only if proper permission was  
obtained? - Yes, my Lord."

In Rex v Beecham (1921) 3 K.B. 464 an  
accused, charged with manslaughter by driving

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at an excessive speed, was pressed in cross-examination as to whether he had not bought his motor car because it was capable of high speed. He at last replied: "It did not appeal to me for that reason, because I do not care for driving at a high rate of speed myself". This was treated as evidence of good character and the accused was then cross-examined as to repeated convictions for driving to the public danger. Darling J., giving his judgment of the Court, said at pp. 470-1: "If the method by which this defendant was induced to bring his character into question were to be held legitimate, the result would be that practically any defendant might be forced into the same position. We are not satisfied that the defendant by his answer to these questions had 'given evidence of his good character' within the meaning of the Criminal Evidence Act 1898 s.1 (f) (ii)." In The King v Redd (1923) 1 K.B. 104 a witness, called by the accused, without any question being put to him volunteered evidence that the accused was of good character. There was then cross-examination of the accused as to previous convictions. It was held that the accused had not "given evidence of his good character". In Baldwin's Case (1925) 18 Cr. App. R. 175 an accused charged with a sexual offence had been asked in cross-examination "Are you a particularly moral man yourself?" and had said "Yes". He was then cross-examined to show that he was paying money under a bastardy order. Hewart C.J. at p.178 said: "The law on this matter is perfectly clear. One would have thought that it did not need a decision. It cannot be right for counsel for the Crown to ask questions for the purpose of eliciting answers which may be of such a kind as to involve the accused person inadvertently in the mischief provided for in this part of the statute. That was made quite plain, for example, in Beecham's case".

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The cross-examination by the Crown in this case as to the reasons for the break-up of the Saturday meeting did not in fact result in any evidence which might be regarded as evidence of good character. The appellant denied that he held moderate views; and his statement that he disagreed with what the youths were saying really added nothing to his evidence-in-chief. I shall later consider the questions by the Court.

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The decision in Rex v Beecham, and an obiter dictum in Baldwin's case that in a case of sexual assault a statement that the accused was a married man might be regarded as evidence of good character, in regard to which I express no opinion, indicate that evidence that the appellant was opposed to violence, or to illegal action, would constitute evidence of good character. And this I consider consistent with what I have already said in regard to what is evidence of bad character. Just as views in favour of violence constitute bad character so views against violence would constitute good character. There is however always a discretion in the Court to decide whether or not to allow questioning as to bad character. In Maxwell's case (supra) Viscount Sankey L.C. spoke of the discretion at p.321, as did Viscount Simon L.C. in Stirland's case at p. 327. See also Regina v Cook (1959) 2 Q.B. 340 at 347, and R v Flynn (1961) 3 All E.R. 58 at 62.

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It is clear that the learned trial judge did not approach the proposed questioning by Crown Counsel on this basis. As I have said the matter went off on the question of relevance. But that does not settle the matter. This Court has to decide whether or not there was evidence of good character, and, if there was, whether there was any reason to exclude, in discretion, examination as to bad character.

The second series of questions by the Court, after the questions as to bad character had been put, cannot I think be used as evidence of good character or be relevant to the exercise of discretion. It is to be noted that even in answer to those questions the appellant said that he did not disapprove of violent action because he was "a man of peace". And as I have said he had already disclaimed that he tried to stop what was proposed because he was a "moderate".

What the appellant had given evidence about was that he had opposed the proposed action on the ground that it was illegal, and had suggested legal action. In Rex v Ellis (1910) 2 K.B. 746 Bray J. giving judgment on behalf of a Court of five judges, and dealing with the evidence-in-chief in that case, said at p.762: ".... its object was not to set up the appellant's good character,

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it was to negative fraud. In our opinion if we were to give the slightest colour to the idea that a general examination as to the surrounding circumstances was such evidence of good character as to entitle the prosecution to prove or to cross-examine as to other offences or convictions, we should deprive the prisoner of the protection which the statute has given him. Sub-clause (ii) of s.1 Clause (f) of the Criminal Evidence Act, 1898, was not intended to apply to a case like this. It was intended to apply to cases where witnesses to character were called, or where evidence of the good character of the prisoner was sought to be elicited from witnesses for the prosecution. In civil actions evidence of good character is not, as a rule, admissible. It is admissible in criminal cases, and it is to this class of evidence that the statute refers, not to mere assertions of innocence or repudiation of guilt on the part of the prisoner, nor to reasons given by him for such assertion or repudiation."

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It does I think appear from the later cases to which I have referred that there has been an extension of view as to what can constitute evidence of good character. But the basic principle of Ellis' case remains. The accused person must be entitled to deny his participation in the crime charged, and to give reasons for his action which form part of the facts of the case, without losing the protection of the section. It is when he relies on tendency against the crime charged that he loses the protection.

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In this case the appellant was charged with conspiring with these young men to commit organised arson. His defence was that he had not done that; but at the meeting, which he admitted he had attended, he not only refused to take part in the action proposed but tried to dissuade the young men whom he met. Primarily that evidence was to negative the conspiracy charged, just as in Ellis' case the evidence was to negative fraud. In giving that evidence he used the phrase: "I told him about the illegality of those activities he had proposed". At the worst for the appellant I consider that that evidence was ambiguous. It could be meant in the sense that he was a man opposed to illegal action, or it could be advice to those younger

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than himself not to commit crimes. This reason which he gave at the meeting was one of the arguments which he used at it; the others suggested conditional disapproval of arson, that it was not to be directed to schools, and he was a schoolmaster, and that it was not to be without approval of the leader of the party, to which he belonged. The further questions by the Court, and the questioning at a later stage, are I consider open to the objection which was set out in Beecham's case. And even when he was asked if he disapproved of the violent action of burning and said that he did those questions were still related to the first question, that there was to be action by these young men, not by himself; and the ambiguity to which I have referred still persisted. Questioning under the exceptions to s.303 is I consider to be allowed when it is clear that the accused has given evidence of good character; not where the evidence might or might not be held to amount to that. If evidence which could be taken to be evidence of good character is given it would be proper either at the time when it is given or before questioning as to bad character is allowed to ask the accused whether he is relying on the evidence of good character. That was not made clear to him in this case. And the ambiguity remains.

I take the view that the questioning on his views as to violence, expressed in the essays, was not justified under paragraph (a) of s.303.

A further matter which has to be considered in regard to the cross-examination is the fact that the Crown did put in the note book in which the essay with views as to violence was contained. This came about in the following way. Sergeant Carver, who found the note book, identified it. Counsel for the Crown was asking him to read three flagged passages in the book. The learned judge rightly objected to notes made on the markers. When they had been removed Counsel for the appellant suggested that there was no need to read the passages, having regard to a recent amendment of the Criminal Procedure and Evidence Act. The learned judge ruled that the passages "had better be read". The section which was in mind was s.230 (2) and its proviso, but it was not specially referred to. Sergeant Carver then read one essay, which it appears was being relied

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on to show the appellant's dissatisfaction with the prevailing political situation. Counsel for the Crown changed his mind about making specific reference to the other two flagged passages. Sergeant Carver was also asked to read sets of "Nationalist Principles" on the last two pages of the book, and to refer to a name on the front cover. The latter reference was to go to show that the book belonged to the appellant. The reference to Nationalist Principles was also directed to that, and to showing that evidence of accomplices as to what had been said by the appellant at a meeting was correct. There was no specific reference to the essay in which the views as to violence were set out.

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It does not seem that s.230 (2), and the proviso introduced by Act No. 30 of 1962 s.20, are applicable. The matter has not been argued and so I express no settled view. But it seems that the reference to the reading of evidence by the prosecutor does not relate to documents produced by a witness - see The State v Hani 1962 (1) S.A. 668. In any event the consent of the accused was not here given, though it was suggested that it would have been given if sought.

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I have not been able to find authority on the general question whether documents, the contents of which are relied upon by the Crown, may merely be put in or whether there must be special reference to the parts which are relied upon. Wigmore on Evidence 3rd Ed. Vol. VI paragraph 1883 says: "There seems to be but one rule distinctively affecting the direct examination as such, namely, that in proving a document's execution, the document must be formally put in evidence and read to the jury before the close of the direct examination of the proving witness". The rule has the author's approval but seems to be based on statutes in various states. There might well be a difference when the trial is with qualified assessors. And it might be that indication of the portions which are relied upon would be sufficient.

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But where, as here, the portion of a document may be evidence of bad character it is I think proper that there should be indication in that respect so that if necessary there can be a ruling as to its admissibility. Evidence of



bad character is seldom admissible as part of the Crown case. It may be that the evidence was here admissible on the principles set out by Shreiner J.A. in R v Matthews 1960 (1) S.A. 752 (A). That I find unnecessary to decide for two reasons. The one I have indicated; that evidence can only be regarded as put before the Court in this way if there has been opportunity for the accused person to contest its admission, because he realises that it is so to be relied on, and for the judge if necessary to rule whether the evidence should properly be before the triers of fact, Cf. R v W. 1947 (2) S.A. 708 at 717.

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The second reason is as follows. If it be assumed that this evidence as to bad character was introduced by the Crown as part of its case, because it was relevant evidence, it still is my view that s.303 precluded cross-examination on it unless the accused, by denying the evidence, has in effect given evidence of good character. I have already discussed the effect of s.303. Paragraph (d) allows questioning about previous offences if they are relevant. But it does not allow it in respect of bad character. It could only be if the Crown evidence had revealed the bad character, so that cross-examination no longer tended to show it, or if the accused had given evidence of good character, that the questioning would be permissible. I have already set out why I do not consider that evidence of good character was given. And despite the earlier production of the note book containing the essay the questioning of the appellant was I consider questioning "tending to show" that the appellant was of bad character. The bad character had not been "revealed" to the extent to which it was revealed by the cross-examination in two respects. The Crown evidence that this essay was written by the appellant was, to say the least, slender. There appear to be some 5 different handwritings in the note book, and the name on the outside of the book is not K. Malinde, but K. Malinde Ndlovu, and there was no evidence to indicate that that fuller name was the name of the appellant. The cross-examination elicited immediate acknowledgment of the writings. Secondly even if there was some evidence to associate the writing with the appellant there was nothing to show that the views expressed represented the views of the appellant at the time

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of the crime, and it was only as that that the views could be relevant if at all. That too was elicited by the questioning. In Jones' case what had been made known before he was cross-examined was that he had been in trouble with the police. If it had only been shown that some person, who might have been him, had been in trouble with the police, and the cross-examination had shown that it was him, I think that the decision might well have been that the cross-examination had tended to show that he had committed 10 an offence, in that that had not been revealed before.

For these reasons I do not consider that the questioning was any the less unlawful under s.303 because the note book had earlier been produced in evidence.

The next question to be considered is how this questioning in contravention of s.303 affects the convictions. That there should have been this questioning is undoubtedly an irregularity. And it seems to me that there is little doubt that it did 20 affect the verdict. One of the main questions considered was whether the decision to take action on the Monday, to coincide with a strike in Salisbury, was more likely to have been that of the appellant than that of one of the accomplices, Ronnie. Though the respective ages, degree of education, and position of the appellant and Ronnie were the main factors in the decision that Ronnie was very unlikely to have been a leader, 30 the learned judge did place considerable reliance on the appellant's "writings" which of course included the passage as to violence. This was referred to in two places in the judgment. By reason of the irregularity the appellant would I consider be entitled to a setting aside of the verdicts unless it can be said, under s.13 (1) proviso (1) of the Federal Supreme Court Act that "no substantial miscarriage of justice has actually occurred". The Crown relies on this 40 proviso. The test is whether, having regard to the findings as to credibility of the trial court, it can be said that a court, without the inadmissible evidence, must have convicted.

As has been said the evidence against the appellant on the conspiracy charge was given by seven accomplices. Three of them were found to be untrustworthy as witnesses. It was found that the evidence of the others, Hensiby, Sixpence,

Nowa, and Supa was in its substantial features acceptable. The appellant has indicated a number of inconsistencies in their evidence, some of them relating to the Monday meeting. The learned judge considered these inconsistencies; but it does not necessarily follow that a trial court which had not before it the inadmissible cross-examination, which particularly disclosed that the appellant was not to be believed in his version of the break-up of the Saturday meeting, would necessarily have disregarded them. There was strong indication of the guilt of the appellant in his, disputed, possession of the strike notice, which indicated the likelihood that it was he, and not Ronnie, who advocated action to coincide with a strike in Salisbury. And generally having regard to the standing and education of Ronnie it was unlikely that he would have been the organizer of planned arson. But when so much of the corroboration of the accomplices, outside their own evidence, depended on important lying by the appellant and conduct which was inconsistent with his views, and that has to be disregarded, it is not proper in my opinion to say that a court must have convicted the appellant.

In regard to the charge of arson Masawi said that on the Monday night the appellant said that he would, alone, burn the church at Chinyika. Lovemore does not deal with the part which the appellant was to carry out. Both these accomplices were regarded as unsatisfactory witnesses. Ronnie said that the appellant said that he would go to Chinyika's church. Sixpence said that the appellant said that he would burn at Chinyika. Hensiby said that on the Saturday after the meeting the appellant detailed him to go with the appellant. In regard to the Sunday meeting he said that the appellant said that he would burn Chinyika's church. Nowa also said that the appellant said that he would burn the church at Chinyika. Supa did not speak of the Monday meeting.

In regard to the charge of arson the learned judge said "We have already accepted the evidence of the accomplices that he said he was going to set about burning Chinyika school. We have already accepted the evidence of Hensiby that he, together with Masawi, accompanied the

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accused for part of the way, that the accused paraded company with him, that they went to burn the hide shed and storage shed at Chinyika, the accused being on his way to the school".

There were several of the accomplices who said that at the Monday meeting the appellant said that he would burn the Chinyika church. As far as that evidence is concerned the case has to be treated on the same basis as the conspiracy charge. There is no evidence that the appellant did go to the church. The evidence that he went in the direction of a church, with paraffin, is again evidence of accomplices. 10

I do not consider that the proviso can be applied to the charge of arson.

The appeal should I consider be allowed and the conviction and sentences be set aside.

(SGD.) J. CLAYDEN

Chief Justice.

JUDGMENT OF QUENET, F.J.

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KESIWE MALINDI v THE QUEEN

The appellant was convicted by the High Court of Southern Rhodesia, first, of conspiring to commit arson and malicious injury to property in contravention of section 366A (2) (a) of the Criminal Procedure and Evidence Act (Chapter 28) and, secondly, of arson. On the first count he was sentenced to ten years' imprisonment with hard labour and, on the second, to five years' imprisonment with hard labour; the sentences were ordered to run concurrently. 30

In his first ground of appeal the appellant alleges the trial Court was influenced by the essays written by him and produced in evidence against him. In arguing this ground, the appellant submitted the essays should not have been admitted; their production "prejudiced the Court

unduly" against him; although he did not mention it in his judgment the learned judge used the essays to provide corroboration of the accomplice evidence; and the essays were introduced to make it appear he was a person of bad character.

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10 At the time of his arrest two books, Exhibits 8 and 9, were found in the appellant's house. The essays are contained in these books. Sergeant Carver produced Exhibit 8 and read an essay bearing the title "My Surroundings Now", and the writing which appears on the last page and on the back cover of that exhibit. He also read out the name "K. Malindi Ndlovu" on the book's cover. The same witness produced Exhibit 9. From it he read five pages of the essay "My Life", and two pages of an essay entitled "Zimbabwe". During his cross-examination a passage in Exhibit 8 not read during the Crown case, was put to the appellant. It reads:

20 "Violence is necessary and stones must be thrown to compel them to surrender; and notice here that unity among the masses is most essential. In conclusion, I would like to encourage all nationalists to be brave and uncompromising, to stand up and uphold comrade Nkomo, and throw as many stones as possible to expel these wolves from our land." The appellant admitted he had written it. Certain passages from two other books, Exhibits 10 and 11, were read to the appellant. He admitted

30 he had written them. It would be fair to say that the extracts referred to by the Crown in the course of its case and during the appellant's cross-examination indicated the breadth of the appellant's discontent and his reasons for it, the situation he wished to bring about and the means by which he believed it could be done.

40 Counsel for the Crown submitted these matters were properly before the trial Court. The accomplices who admitted their participation in the burnings were all members of a political organization; it was relevant to show not only the colour of the appellant's political views but also their intensity; the passages referred to by the Crown were relevant to motive in the sense it was probable a person holding such views would align himself with the conduct attributed to him. The essays, so counsel said, were not introduced to show the appellant was a person of bad character; even if they did show him in that light, as that

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was not the reason for their introduction and as they were not used by the Crown for that purpose, they were properly before the trial Court.

The trial Court was not told why the prosecution wished to put in Exhibits 8 and 9 or why it considered it necessary that certain passages should be read. The exhibits were produced and the passages were read without objection from the appellant's counsel. The learned judge did not question the propriety of the Crown's action and, speaking for myself, I can see no reason why he should have done so. There was nothing in any of the passages which could be considered objectionable as tending to show the appellant was a person of bad character. We were told by counsel for the Crown that his purpose in having the passages read, was to lay the foundation for his cross-examination of the appellant and to show motive. Although the exhibits were produced and the passages were read before the accomplice witnesses were called, it became apparent during the cross-examination of these witnesses that the defence denied the appellant had identified himself with the conspirators. The defence as put, amounted to this: Although the appellant held certain political views, he indicated to the conspirators he was opposed to illegal action; indeed, his expressed views were such that those who heard them considered him a "moderate"; and, presumably, they believed his allegiance to the cause to be so uncertain they called him a "police informer" and threatened action if he informed against them. In a word, the appellant's views were such it was improbable he would either conspire to or himself commit arson in order to attain his political goal.

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When he gave evidence the appellant said:

"The following day at about five thirty p.m. the secretary in company of ..... Ronnie, Masawi, Nowa, Hensiby, Supa, and Sixpence, came to my house. They stood outside my garden which is just about five yards from my house and asked if they could talk to me. I invited them into the sitting room. When we got there Sevenzayi repeated what the boys had said the previous day. I asked him what action he had in mind. He gave as

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10 an example, churches, dip tanks, and mealie lands. I told him of the lack of education facilities in Goromonzi. I brought to his knowledge the statement by Mr. Nkomo that no members of ZAPU would act without his directions. I told him about the illegality of those activities he had proposed. I suggested that they make a procession and even told them that that, also, would need permission. An argument then ensued which ended when the whole group walked out of my house with some shouts that I was a moderate and a police informer; that if I revealed this to the police it would act upon me. The whole group left. I remained in my house thinking about what had happened. I then decided to write to the regional office and tell them about what had happened. This I did, and posted my letter."

20 Clearly, then, he identified himself with the defence foreshadowed in the cross-examination of the Crown witnesses. In effect, he was saying: "I hold political views. I would not identify myself with illegal activities. That being so, I would not take part in a conspiracy of this sort".

The admissibility of the "Violence" passage was raised during the appellant's cross-examination:

30 "MR. MASTERSON: (To Court) I wish to proceed with the cross-examination at this stage in relation to certain passages which are included in exhibit 8. Before I do so, I would like to raise expressly the question of the admissibility of my doing so in view of the provisions of section 303 of the Criminal Procedure and Evidence Act.

MAISELS, J.: What is relevant?

40 MR. MASTERSON: I wish to cross-examine the accused on the possibility of his previously having held notions which could possibly suggest that he is a man of bad character.

MAISELS, J.: Surely you are not cross-examining on that to show he is a man of bad character.

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(continued)

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MR. MASTERSON: That is certainly what I would submit to your Lordship.

MAISELS, J.: As I understand it, you are proposing to put to him certain statements here because they are relevant to the question as to whether or not he took part in the matters which have given rise to the present case.

MR. MASTERSON: That is so.

MAISELS, J.: I do not see how section 303 comes into it. This is a document found in his possession. You are not cross-examining that he committed other offences?

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MR. MASTERSON: No, not other offences, but I will be cross-examining him to the effect that on a previous occasion he has suggested or held views which were consistent with the desirability of offences being committed.

MAISELS, J.: But that has nothing to do with section 303.

20

MR. MASTERSON: I am indebted to your Lordship. If I may have exhibit 8, I will proceed there."

Clearly, the learned judge did not understand the passage on which the Crown wished to cross-examine as being relevant to character, and he told counsel he would not permit its introduction to show the appellant was a person of bad character.

The cross-examination proceeded on the "violence" passage and on other passages, it was not directed to character but to show, inter alia, the falsity of the appellant's earlier statement that he was opposed to violent action in order to attain his political ends. In his judgment the learned judge did not examine the essays to discover whether by reason of his bad character the appellant had a propensity to conspire to commit arson. He referred to Exhibit 8 in regard to the appellant's suggestion that certain pages had been torn from the exhibit

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and also to his evidence about "settlers" and the meaning he attached to "wolves" - words which appear in Exhibit 8. In considering whether it was Ronnie or the appellant who suggested that action should be taken on the Monday so as to coincide with the strike in Salisbury, the learned judge said that the appellant "judged by his writings" could not be said to be "a novice in political thought and action". The other refer-  
 10 ences to Exhibits 8, 9, 10 and 11 cannot be construed as indicating that because the appellant had a bad character he was likely to commit the crimes with which he was charged.

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The learned judge's treatment of the questioned evidence has the support, so it seems to me, of cases such as R. v Katz and Ano. (1946, A.D., 71) and R. v Matthews and Others (1960 (1), S.A.L.R., 752 (A.D.)). In Katz's case it was pointed out that the rule which has the effect of precluding  
 20 the prosecution from proving the accused is of bad character is not an absolute one - "It only operates to exclude such evidence when such evidence is solely relevant to show that the accused, by reason of his bad character or his commission of other crimes, had a criminal propen- sity and was, therefore, likely to commit the crime with which he was charged. If, for any other reason, it is relevant to the question before the Court it is admissible" (per Watermeyer, C.J., at p.78; and  
 30 see the remarks of Schreiner, J.A., in Matthews' case, supra, at p.758). If that test was satisfied, then, apparently, the only limitation set upon the admissibility of the evidence was that the prejudicial effect of admitting it should not be out of proportion to its true evidential value (cf. Matthews' case, at p. 760). But neither of these cases was specifically concerned with the situation of the questioned evidence being elicited during  
 40 the cross-examination of the accused person. In Jones v Director of Public Prosecutions (1962, A.C. 635) the House of Lords considered that exact position, and the effect of proviso (f) to section 1 of the Criminal Procedure Act, 1898, which is in the same terms as section 303 of the Criminal Procedure and Evidence Act, (Chapter 28), and section 228 of the Criminal Procedure Act, 1955 (S.A.). It is clear from the reasoning of the majority that even if the questions put to an accused person in cross- examination are "relevant and have to do with the issue before the court they cannot be asked unless

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(continued)

12th August  
1963.

covered by the permitting provisions of proviso (f). 'The substantial part of that proviso is negative in form and as such is universal and is absolute unless the exceptions come into play.' (per Lord Morris at page 683). In applying that test, I assume that the questioned evidence "tended to show" bad character in the sense that something new was being revealed to the Court. If that evidence tended to show bad character it was because it indicated the lengths to which the appellant was prepared to go in pursuing his political convictions. The defence case as put to the Crown witnesses was that the appellant's conduct at the meeting was such that the other conspirators described him as a "moderate" and a "police informer", that he told them that burnings were illegal, that he suggested a procession and even that would require permission. His evidence-in-chief was to the same effect. If political opinions which accept the use of violence to attain political ends, are evidence of the appellant's bad character, his evidence in regard to the opinions he expressed at the meeting can only amount to evidence of good character. My conclusion is that the cross-examination of the appellant on the questioned evidence was covered by the permitting provisions of paragraph (a) of section 303. It is true the cross-examination was allowed on a different basis. But the appellant did not suffer any prejudice by reason of that fact because, for all practical purposes, the evidential value of the questioned evidence was the same. And, finally, on this point I would say that the legitimate probative force of the essays was considerable, and any prejudicial effect resulting from their admission cannot be said to have been out of proportion to their true evidential value.

The second ground of appeal reads: "The Court was misled by the evidence given by the witnesses which was untruthful" and the third states: "I did not commit the crime". The appellant drew our attention to a number of discrepancies in the evidence of the accomplices. These discrepancies undoubtedly exist, and the trial Court took full account of them before reaching a conclusion. The appellant said the accomplices had been together in goal; they had decided to incriminate him falsely because on the Saturday night he had refused to throw in

his lot with them. The learned judge was alive to the danger of relying upon accomplice evidence and dealt at some length with it. The Court was nevertheless satisfied of the appellant's guilt on both counts. The appellant submitted that throughout the trial the learned judge exhibited hostility towards him. So far from that being the case, the record shows that the trial was conducted with scrupulous fairness. There is nothing in the appellant's point that the trial Court examined the issue of responsibility as if the onus of proof rested upon him.

In the Federal  
Supreme Court

No.26

Judgment  
(continued)

12th August  
1963.

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There is also an appeal against the sentence. The learned judge gave the reasons which influenced him in assessing what sentences should be imposed. I can find no ground upon which interference would be justified.

I would dismiss the appeal.

(SGD.) V. QUENET.  
FEDERAL JUSTICE

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JUDGMENT OF FORBES, F.J.

KESIWE MALINDI v THE QUEEN

I have had the advantage of reading the judgments of Clayden, C.J., and Quenet, F.J., in this case. In view of the opinions expressed by the majority of the House of Lords in Jones v Director of Public Prosecutions (1962) 1 All.E.R. 569, I respectfully agree with the law as stated by Clayden, C.J., as to the effect of section 303 of the Criminal Procedure and Evidence Act (Cap. 28). I also agree as to the meaning to be given to the term "bad character" in the section; as to the discretion of the Court to refuse to admit evidence even though admissible in law if the prejudicial effect of the evidence is out of all proportion to its probative value; that an accused person is not to be forced or trapped into giving evidence of good character in cross-examination by counsel for the Crown; and that in the instant case the learned trial judge was wrong in saying that because the

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In the Federal Supreme Court questions in cross-examination were on a relevant matter section 303 had no application.

No.26

Judgment  
(continued)

12th August  
1963.

The difficulty I have had has been the application of the law to the facts of this case. The "character" which was in issue was whether or not the appellant was a believer in violence to achieve political ends. The offences to which the charges related were offences perpetrated for a political purpose, and it was certainly relevant in order to show motive, and the full extent of that motive, to show not only that the appellant belonged to the political party on behalf of which acts of arson were being carried out, but also to show that he himself held the view that violence should be used to achieve the political ends of that party; and I think the probative value of the evidence was, in fact, substantial. The question, however, is whether or not the appellant put his character in issue when he said:

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"I asked him what action he had in mind. He gave as an example, churches, dip tanks, and mealie lands. I told him of the lack of education facilities in Goromonzi. I brought to his knowledge the statement by Mr. Nkomo that no members of ZAPU would act without his directions. I told him about the illegality of those activities he had proposed. I suggested that they make a procession and even told them that that, also, would need permission. An argument then ensued which ended when the whole group walked out of my house with some shouts that I was a moderate and a police informer; that if I revealed this to the police it would act upon me."

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I have come to the conclusion that the appellant did put his character in issue; that that passage, read in the context of his evidence and of the conduct of the defence as a whole, was intended to carry the implication that the appellant would not agree to join the conspiracy because he did not approve of such illegal acts; that he was in fact a "moderate". In the circumstances I do not think the cross-examination was excluded by section 303.

40

I do not think there is any substance in the other matters which were raised on the appeal,

and, in view of my conclusion on the application of section 303 to the facts of this case, I would dismiss the appeal.

In the Federal  
Supreme Court

(SGD) A.G. FORBES.  
Federal Justice.

No.26

Judgment  
(continued)

DELIVERED at SALISBURY this 12th day of August,  
1963.

12th August  
1963.

Appellant in person.

Mr. A.N.B. Masterson for Respondent.

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No.27

No.27

ORDER

Order

IN THE FEDERAL SUPREME COURT

12th August  
1963.

at SALISBURY.

Criminal Appeal No. 253 of 1962.

Between:

KESIWE MALINDI Appellant

and

THE QUEEN Respondent

Before : Clayden, C.J., Quenet and Forbes, F.JJ.

20

The 10th and 12th days of June, and  
the 12th day of August, 1963.

Upon hearing the appellant in person and  
Mr. A.N.B. Masterson of counsel for the respondent  
and having perused the documents filed herein

In the Federal Supreme Court. IT IS ORDERED that the appeal be and it is hereby dismissed

No.27

BY THE COURT.

Order (continued)

GIVEN under my hand and seal of the Court this 12th day of AUGUST, 1963.

12th August 1963.

(SGD.) R.D.M. DAVIDSON.

REGISTRAR.

Order issued 12th AUGUST, 1963.

In the Privy Council

No. 28

ORDER GRANTING SPECIAL LEAVE TO APPEAL

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No.28

Order granting Special Leave to Appeal.

AT THE COURT AT BUCKINGHAM PALACE  
The 22nd day of December, 1964

22nd December 1964.

PRESENT

THE QUEEN'S MOST EXCELLENT MAJESTY

LORD PRESIDENT	MR. JENKINS
LORD CHESHAM	MR. WILLEY
MR. SECRETARY STEWART	MR. DU CANN
MR. SECRETARY GRIFFITHS	SIR KENNETH PICKTHORN

WHEREAS there was this day read at the Board a Report from the Judicial Committee of the Privy Council dated the 16th day of December 1964 in the words following, viz:-

20

"WHEREAS by virtue of His late Majesty King Edward the Seventh's Order in Council of the 18th day of October 1909 there was referred unto this Committee a humble Petition of Kesiwe Malindi in the matter of an Appeal from the Federal Supreme Court at Salisbury Southern Rhodesia between the Petitioner and Your Majesty Respondent setting forth that the Petitioner desires to obtain special leave to appeal in forma

30

10 Pauperis to Your Majesty in Council against the Judgment of the Federal Supreme Court at Salisbury Southern Rhodesia dated the 12th August 1963 dismissing the Appeal of the Petitioner from his conviction by the High Court of Southern Rhodesia at Salisbury on the 25th October 1962 for the offences of (a) conspiring to commit arson and malicious injury to property and (b) arson: And humbly praying Your Majesty in Council to grant him special leave to appeal in forma pauperis from the Judgment of the Federal Supreme Court at Salisbury Southern Rhodesia dated the 12th August 1963 or for further or other relief:

In the Privy Council

                      
No.28

Order granting Special Leave to Appeal (continued).

22nd December 1964.

20 "THE LORDS OF THE COMMITTEE in obedience to His late Majesty's said Order in Council have taken the humble Petition into consideration and having heard Counsel in support thereof and in opposition thereto Their Lordships do this day agree humbly to report to Your Majesty as their opinion that leave ought to be granted to the Petitioner to enter and prosecute his Appeal in forma pauperis against the Judgment of the Federal Supreme Court at Salisbury Southern Rhodesia dated the 12th day of August 1963:

30 "AND Their Lordships do further report to Your Majesty that the proper officer of the Appellate Division of the High Court of Southern Rhodesia ought to be directed to transmit to the Registrar of the Privy Council without delay an authenticated copy under seal of the Record proper to be laid before Your Majesty on the hearing of the Appeal."

40 HER MAJESTY having taken the said Report into consideration was pleased by and with the advice of Her Privy Council to approve thereof and to order as it is hereby ordered that the same be punctually observed obeyed and carried into execution.

Whereof the Governor or Officer administering the Government of Southern Rhodesia for the time being and all other persons whom it may concern are to take notice and govern themselves accordingly.

W.G. AGNEW

Exhibits

EXHIBIT 14LETTER, SEVENZAI TO  
GOROMONZI TRADING CO.

Exhibit 14

Letter,  
Sevenzai to  
Goromonzi  
Trading Co.Z A P U Goromonzi Central Branch,  
Chinyika School,  
P.O. Goromonzi.  
May 12th, 1962.

12th May 1962.

The Manager,  
Goromonzi Trading Co.

Dear Sir,

10

At 12 noon today, the Secretary of the Zimbabwe African People's Union, Mr. A.M. Sevenzai, came to the Post Office to send off a telegram, worked upon by the executive. On presenting this to the lady in the Post Office, he was shocked to see her cancel it and tear it into bits, before throwing it into her dust bin. On being asked why, the aggressive woman commanded him to rewrite it and there followed an argument, until the message was sent much later.

We notice that this supposed civil servant is taking an active part in politics. Whether civil servants want it or not, they have no right to hinder the progress of political parties.

20

We therefore fail to see why this woman should remain in this position. We have noticed that this woman is an opponent, and shall from now on treat her as our political enemy.

As we notice, however, that she is working for someone who is not concerned in the matter, we here ask you, as her manager, to ask her to apologise to the party, in writing, before May the 31st, 1962. Failure to do this, will leave us with no alternative other than to advise our people to avoid this store, as we do not want trouble here. This act will be regretfully taken, only as a measure to keep our members from possible trouble, through the provocative, aggressive and insulting attitude of this woman.

30

Yours faithfully,

(Signed) A.M. Sevenzai.

40

(Central Secretary)



413.

EXHIBIT 6

NOTE, MALINDI TO SEVENZAI

Exhibits

Exhibit 6

Local.

Note, Malindi  
to Sevenzai.

June 6th, 1962.

6th June 1962.

Comrade Sevenzai,

We are well here. We are pleased you and your family are safe. Please receive the following:-

10            3/6 for card No.2872 Leonard.  
              3/6 "                    Ronnie.  
              3/6 "                    Nowa.  
              3/6 "                    No.2871 Richard Ben  
              3/- subscription (Please send stickers)

Total 17/0

20            This money should have been paid long ago but Masawi is playing the fool. He must be told that the receipt book should be given to fellow Nationalists on demand. I have asked for it for several times and he has always said, "It is at the house & I shall bring it." But never brought.

You can give the man my 8/9 if you don't mind.

Did you get a reply from Goromonzi Trading manager?

Comrade Kesiwe Malindi.

Exhibits

EXHIBIT 7NOTICE OF STRIKE

Exhibit 7

Notice of  
Strike.STRIKE

KUNE ANOSHANDA NE ASINGASHANDE ANOZIVISWA KUTI  
 NEMUSI WE--MONDAY HAKUNA BASA NZWIMBO INO YESE YE-  
 SALISBURY. TIRIKU DZINGWA MUMA BASA. TIRIKUNYIMWA  
 DZIMBA DZOKUGARA, MHURI DZEDU DZOTAMBURA. ASI BYIKA  
 IRIYEDU. IWE NENI TINEZENGE TIGERE MUMBA CHETE MUSI  
 WE MONDAY. HAPANA ANOZOYENDA MUKATI MEHARARE KUTI  
 ANO SHANDA BASA. TINENGE TICHIFUNGA NHAMO DZEDU 10  
 DZIRIPAMA FUDZI EDU. HEYINO NGUVA YOKURAKIDZA  
 KUSUNGANO KWEDU. VANHU 338 VAKASUNGWA KU-HIGHFIELD,  
 NEMUMAYADI KWAKA SUNGWA VAZHINJI. HAPANA ZVATAKA  
 REVA. ASI TAKATSAMWA. MUTEMA ASHUSHWA MUNYIKA YAKE.  
 HUPFUMI KWENYIKA YAKE HAUWANE. TERERAI TERRAI TERERAI  
 ZVE---MUUVURO HAKUNA ANOTSIKA KU-SALISBURY KUNO  
 SHANDIRA INDUSTRY KANA KUTI ANI NANI ZVAKE. HEYINO  
 NGUVA YOKUSUNGANA VANA VEZIMBABWE.

To the person who works and the person who doesn't  
 work. He is informed that on Monday there is to be 20  
 no work in the whole Salisbury area. We are being  
 chased from jobs. We are being denied houses to  
 live in and so our families suffer. But the country  
 is ours. You and I will simply stay at home on  
 Monday. There is no one who will go into Salisbury  
 itself to work. We will be thinking of the troubles  
 on our shoulders.

This is the time to show our unity 338 people have  
 been arrested in Highfields, and many have been  
 arrested in backyards. We haven't said anything 30  
 but we are angry. The black man has been bullied  
 in his own land. He doesn't receive the riches  
 of his own land.

Hear-ye Hear-ye Hear-ye again. On Monday no one  
 at all will lay a foot in Salisbury to work for  
 industry. Here is the time to unite, children of  
 Zimbabwe.

415.

EXHIBIT 15

TELEGRAM, SEVENZAI TO PRESIDENT

Exhibits

Exhibit 15

TELEGRAM

FEDERAL MINISTRY OF POSTS - RHODESIA-NYASALAND

Telegram,  
Sevenzai to  
President.

To PRESIDENT  
BOX 3413  
SALISBURY

10

GOROMONZI ZAPU PEOPLE REJOICE AT BOYCOTT OF  
THE IMPERIAL AGENT BUTLER AND ARE READY TO CRUSH  
THE SETTLER REGIME AT A MINUTES NOTICE DAMN THEIR  
CONCESSION WE WANT OUR COUNTRY

From SEVENZAI

EXHIBIT 16

STATEMENT BY KESIWE MALINDI

Exhibit 16

Statement  
by Kesiwe  
Malindi.

20

I, KESIWE MALINDI, admit having been informed by  
Detective Inspector Rattray of the Criminal  
Investigation Dept., that he is making enquiries  
in certain cases of ARSON, which occurred on the  
night of the 14th May 1962, at (1) CHINYIKA DIP  
TANK, (2) CHINYIKA SCHOOL CHURCH, (3) ST. DOMINIC  
SCHOOL CLASSROOMS. I admit having been warned that  
I need not make any statement which may incriminate  
me in any way, wish to state:-

"The statement is this, I know nothing about  
the charge."

(Signed) Kesiwe Malindi

The above statement was read back to the abovenamed  
who adhered to it in full and signed his name.

Recorded by (signed) J. Rattray

30

D/Insp.

B.S.A. Police  
Goromonzi.

IN THE PRIVY COUNCIL

No. 22 of 1965

ON APPEAL FROM THE FEDERAL  
SUPREME COURT OF SOUTHERN  
RHODESIA

B E T W E E N:

KESIWE MALINDI

Appellant

-and-

THE QUEEN

Respondent

RECORD OF PROCEEDINGS

T.L.WILSON & CO.,  
6, Westminster Palace Gardens,  
London, S.W.1.  
Solicitors for the Appellant.

CHARLES RUSSELL & CO.,  
37, Norfolk Street,  
London, W.C.2.  
Solicitors for the Respondent.