

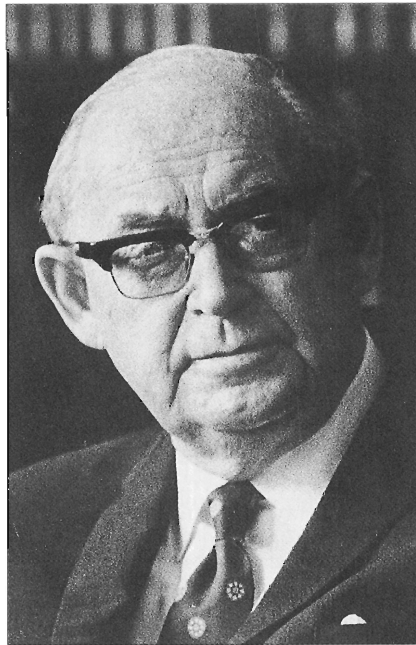
Isie Maisels — A personal tribute

Sydney Kentridge QC
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Last November Israel Aaron Maisels QC retired from the Johannesburg Bar, at the age of 87, after as remarkable a career as any advocate has enjoyed at the South African Bar. He was in active practice until his retirement.

Since taking his LLB at the University of the Witwatersrand Isie Maisels has worked in an attorney's office, has held a wartime commission in the South African Forces, has been briefly a businessman, a Judge (although not, unfortunately, in his own country) and above all an advocate. As an all-round advocate he was in my experience unsurpassed. I say "all-round" because Isie (as everyone calls him) has achieved his greatest fame as a cross-examiner. Anyone who has seen him achieve complete dominance over a witness within the first five minutes of his cross-examination will understand why. He will also understand that there are certain powers of cross-examination which cannot be taught but only admired. But Isie's talents as an advocate went well beyond his skill as a cross-examiner. His advocacy was based on a thorough grasp of the facts of a case and on a sound, practical and yet often imaginative approach to the law. The public knows Isie Maisels through his more spectacular cases in the criminal courts. But he is also a lawyer's lawyer. His perception of legal principle is exemplified in one of the earliest cases which he argued in the Appellate Division, *Rex v Manasewitz*, reported at 1933 AD 165 and 1934 AD 95.

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Isie Maisels QC
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In that case his client had been charged in the Magistrate's Court with making fraudulent representations to the Secretary for Lands in his official capacity, "to the prejudice of the Secretary for Lands". He was duly convicted but an appeal to the Transvaal Provincial Division (TPD) was upheld on the ground that prejudice shown was not to the Secretary for Lands but to the Union Government. Manasewitz was put on trial a second time, this time on a charge of making the same false representations to the Secretary for Lands in his capacity as a servant of the Union Government, "to the prejudice of the Union Government". He was again convicted and a second appeal to the TPD was dismissed by a court consisting of

Tindall and Greenberg JJ. On appeal to the Appellate Division Isie argued that the conviction should be quashed on the grounds that in the first trial prejudice to the Secretary for Lands meant nothing more than prejudice to the Union Government and therefore (although he had been acquitted) his client had been in jeopardy at his first trial on the self-same charge that was brought against him at his second trial. This entailed arguing not only that the TPD had been wrong in dismissing the second appeal but also that it had been wrong in upholding his client's first appeal. This was on the face of it a startling submission and one can understand that to make it required both a considerable degree of forensic panache and a perceptive understanding of the principle of "double jeopardy". There are not many young counsel who would have had either of these attributes. As it was the Appellate Division accepted Isie's submissions and his client went free.

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The cases that brought Isie's name to public attention are too many to list. There is no doubt that the first of them was the De Melker murder trial in the early 1930's where he was junior counsel to Harry Morris QC for the defence. After the war his practice developed in all directions, civil as well as criminal. It was the criminal cases that made the headlines. He appeared for two young men, sons of well-known Johannesburg families, who were accused of the murder of Bubbles Schroeder in Birdhaven. He secured their discharge

at the end of the preparatory examination. In the early 1950's he appeared for the defence in what became known as the "wife in the bath" case. A Johannesburg housewife was found dead in her bath and her husband was charged with her murder, solely on the basis of the findings and conclusions of the state pathologist. Isie mastered the medical evidence and his cross-examination of the state pathologist demolished the case against the defendant.

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Much has been written about Isie's conduct of the defence in the Treason Trial, where he led a large team of advocates for the defence against an equally large team for the prosecution led by the late Oswald Pirow QC (a man whom Isie always described as "a gallant opponent"). I was lucky enough to be a member of Isie's team. The trial was held in a converted synagogue in Pretoria. It began on 1 August 1958 and ran (with odd interruptions) until March 1961. On the first day of the trial the court was crowded. There were 90 accused in the dock. The public galleries and the press gallery were packed. The trial was to be heard before a special Court, appointed by the Minister of Justice, consisting of Rumpff, Kennedy and Ludorf JJ. Before the prosecution case could be opened Isie rose to his feet to make what must always be a difficult and delicate application – an application for the recusal of a Judge. He applied to recuse Ludorf J on the grounds that while at the Bar he had acted as the advocate for the police against some of the accused in a case arising out of one of the meetings which figured in the charge of treason. Ludorf J understandably acceded to that application. But then there was a second and even more delicate application – to recuse the presiding Judge, Rumpff J. This application was based on a statement made publicly by the Minister of Justice that it was Rumpff J who had recommended Ludorf J for appointment to the Special Court. Rumpff J however gave the assurance that what the Minister had said was untrue and, equally understandably, refused to recuse himself. In both applications Isie had displayed the utmost courtesy combined with complete firmness. He pulled no punches but

put his case without offence. An English Law Lord once described good advocacy as "tact in action". He could have been speaking of Isie Maisels on that August day in Pretoria.

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For me other highlights of the trial were Isie's cross-examination of a Cape Town professor of philosophy who had been called as an expert witness on communism. Isie utilised one of his great weapons of cross-examination – good-natured humour at the expense of the witness. The professor did not survive it. I also remember his final eloquent address to the court and I do not doubt that that was a major factor in the acquittal of all the accused. Once, at a meeting of the General Council of the Bar, I heard the then Chief Justice, Mr Justice Ogilvie Thompson, say that with the disappearance of juries in South Africa eloquence had no place in modern advocacy. As one who heard Isie Maisels, Harold Hanson QC and Oswald Pirow QC in full flight I must respectfully disagree. The role of an advocate in any Court is to persuade and to do so he must get the interest of his listeners, whether they be laymen or Judges of Appeal. That is what eloquence can sometimes achieve, where mere lucidity may not succeed. Isie is a naturally eloquent man who was always able to find the language which would grip his hearers and often enough persuade them.

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In 1961, after the end of the Treason Trial, Isie took a judicial appointment in Southern Rhodesia. It was clear by that time that no judicial appointment would be offered to him in South Africa, but it was no surprise when after a few years he resigned and returned to Johannesburg. The work of a first instance Judge in Southern Rhodesia in those years could hardly have extended him. My personal view is that Isie was too much the advocate to be entirely happy as a first instance Judge, but one may get a taste of his judicial qualities by reading his judgment in *Horne v Newport-Gwilt* 1961 3 SA 342 (SR).

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After a short period as a director at the head office of the OK Bazaars in Johannesburg he returned to the Johannesburg Bar where he at once resumed his predominant position. He did not entirely give up judicial work. He sat as an Appeal Court Judge in Botswana, Lesotho and Swaziland, later becoming Chief Justice of those countries – all, naturally, part-time appointments. He took the running of his courts seriously and conscientiously. He was a good appellate judge, sensible, decisive and humane. In *Molefi v Principal Legal Advisor* [1971] AC 182, an appeal to the Privy Council from Lesotho on the application to that country of the Geneva Convention on Refugees, the Judicial Committee preferred the judgment of Maisels JA to those of Roper P and Schreiner JA. (Nonetheless Isie puts among the high points of his career his experience of sitting with those two Judges on the Lesotho Appeal Court.)

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Isie, on the subject of judges and advocates he has known, is always fascinating although not always printable. He regards Wessels CJ as the most formidable of the Chief Justices before whom he appeared. He regards Schreiner JA as the outstanding lawyer and Greenberg JA as in general the best Judge whom he has known either at first instance or on appeal. Isie, perhaps fortunately, is not prepared to list the worst judges he has known.

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Isie's life has not been devoted only to the law. He played cricket in his youth and was a keen tennis player well into middle life. He has appeared occasionally on political platforms for the Progressive Party. He is a deeply observant Jew and notwithstanding the demands of his enormous practice has been a leader of the Jewish community in South Africa and an active worker for Zionist causes.

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Happily, this is not an obituary but a tribute to a man who is still active and who is, one suspects, a reluctant convert to retirement. I know that he will continue to live his life to the full.