

TREASON TRIALS DEFENCE FUND

PRESS SUMMARY

No. 53.

This is the Fifty-third issue of a regular bulletin giving a factual resume of the proceedings of the Treason Trial.

Period Covered: 13th/17th February, 1961.

CROWN ARGUMENT CONTINUES

T. TSHUME

ACCEPTED COMMUNIST THEORIES

Adv. Liebenberg took over the Crown argument on the accused T. Tshume on Monday, February 13th, dealing with the aspect of Communist principles according to the Crown submissions. It was submitted that this accused accepted and propagated the Communist doctrine of the unity of theory and practice and of class divisions and class consciousness, the Communist theory in regard to the need for the overthrow of the capitalist state and its replacement by a Communist state, and also by implication the Communist theory in regard to revolution.

Mr. Justice Rumpff asked, in regard to the fourth submission, assuming that the Crown proved that this man had accepted the first three principles as Communist principles and had propagated them, and seeing that these principles per se did not deal with violence or the violent overthrow of the state, how the Court could come to the conclusion that he had by implication accepted and propagated principles which propagated the theory of violence.

PERSONAL ACCEPTANCE.

Adv. Liebenberg expressed his gratitude to the Court for pointing this out and said that the Crown might be able to show personal acceptance of Communism without the actual propagation of violence, or at least sufficient to infer that this accused must have accepted violence, e.g. he had condemned capitalism and advocated Socialism and had lauded Russia and the Communist revolution. These taken together led to the inference that he had appreciated that the transition to communism would be by violent revolution. It might be that, since the four principles stated by the Crown in relation to this accused were so peculiarly Communist, the Court could say that the fifth principle was there. Even if the evidence on these submissions fell short for the inference that Tshume accepted and propagated the theory of violence, it was not without value, and could still be used to determine the presence of Communist theory and knowledge; also the factual evidence on violence might be such that this type of evidence might even be superfluous.

The Crown then stated that it would be shown from documents how Tshume had accepted basic Communist principles and how he sought to implement these theories in his writings. His position must also be seen against the background of the writings of his confederates. Referring to the address by Tshume to the Youth League Conference in Queenstown in 1954, the Crown drew the attention of the Court to the expression, "You have nothing to lose, but your chains". When Mr. Justice Kennedy remarked that he had seen this phrase used in non-Communist papers, it was pointed out that it came originally from the Communist Manifesto. The Accused was the author of this address and this fact, taken together with the origin of the quotation showed a direct Communist line.

Adv. Liebenberg then referred to a statement on Bantu Education, signed by Tshume and bearing the handwritten comment : "Leninism stated this very clearly."

STUDENT OF COMMUNIST THEORY.

The Crown submitted that Tshume's position should not be examined in isolation but in the light of the ideological line followed by the ANC Youth League of which he was a prominent member, which was the propagation and acceptance of the same dialectical approach. He was in fact giving expression to the point of view of his organisation. Moreover he had in his possession certain books and documents containing Communist matter.

CASE AGAINST NDIMBA.

The next accused to be dealt with by the Crown was B. Ndimba. It was pointed out by Adv. Terblanche that this accused had held office only at the branch level and the Crown would rely for the most part on meetings and a few documents. Referring to the longhand reports of the detective Mrodlana, the Court was asked to accept this on the same basis as in the case of Segone, despite the denial by the accused Ntsangani in the witness box that they were fair and accurate reports. The Crown submitted that in certain speeches this accused had advocated the same methods of struggle as were being used in Kenya and therefore was advocating the use of violence. If the Court was to find the ANC policy as the Crown submitted, and not as the defence witnesses had suggested, then the evidence of these speeches which had been made by Ndimba and those to which he had listened would strengthen the Crown submission.

OATH DENIED.

Dealing with the speech made by Ndimba in which he was alleged to have said that if volunteers were instructed to kill, then they must kill, the Crown referred to the denial of the accused Mkalipe that there was any such oath to be taken by volunteers and also to Ndimba's Court evidence when charged with incitement to public violence on this speech. He had then explained that he had added that if volunteers were not to kill then they should not and that it was an instruction to obey. The Crown submitted that the speech of Ndimba was enough to show the mental preparedness to use violence and compared it to the speech of Rasha on the 22nd November, 1956 which had been to much the same effect.

HOSTILE INTENT.

The Crown submitted that from the evidence of the meetings, the hostile intent of Ndimba had been shown and his adherence to the conspiracy proved. He had been active in the Korsten branch of the ANC and knew that the struggle was to be carried out by unconstitutional and illegal methods and that the ANC was aiming at the seizure of power throughout the country. From the meetings which he had attended he knew and supported the policy and activities of the ANC and incited the people to the same violent methods as in the struggle in Kenya; he had supported the Western Areas Campaign and knew that the resistance there might lead to violence. He had supported the Freedom Charter and had foreseen the possibility of bloodshed in the struggle and had said that it was "not far off". Adv. Terblanche submitted that the overt acts alleged by the Crown against this accused had been proved and also his adherence to the conspiracy and his hostile state of mind and asked that he should be found guilty.

Adv. Liebenberg continued the argument on Ndimba by submitting that he had accepted the Communist analysis of the present state in the Union and had propagated Communist methods to achieve its overthrow. He had aimed at the establishment of a Communist state, which he knew would involve violence

against the present state and had made speeches lauding Russia and China and the overthrow of capitalism by them, and had praised and advocated the acceptance of the Communist system. In all his speeches he had shown that he accepted the inevitability of a violent revolution in South Africa.

KNOWLEDGE LIMITED.

Mr. Justice Kennedy commented that the knowledge of Ndimba of China appeared very limited for he had spoken of Chou En Lai being sent to Formosa. The Crown replied that his knowledge might be limited but he propagated and accepted the theory of violent revolution. His references to Russia, Stalin and Lenin in one of his speeches could be taken to show his attitude towards capitalist oppression. Mr. Justice Kennedy said that if there were any knowledge on the part of this accused, it was elementary in the extreme and continued, "You'll have to convince me, Mr. Liebenberg, that he had any knowledge of the principles of violence."

Mr. Justice Rumpff commented that this accused, from the evidence, might or might not have had knowledge of Communism; he liked Communism in Russia because there was no oppression and thought that China was free. This took the Crown argument no further and the highest that the Crown could say was that Ndimba referred to China in favourable terms. Adv. Liebenberg replied that the Court might find that violence had been sufficiently proved, "although not ideological violence."

CASE AGAINST NKAMPENI

Adv. Terblanche then began the Crown argument on the next accused, J. Nkampani, dealing first with the evidence on his membership of the ANC and his attendance at meetings. When asked by Mr. Justice Rumpff where in the evidence of a particular meeting there was proof that the Bantu Education campaign was part of the whole campaign against apartheid, Adv. Terblanche replied that the meetings were organised for the struggle generally and all subjects should be taken note of. This accused was a member of the Executive and would have known that Bantu Education was part of the general campaign and wouldn't have been at these meetings if he had not agreed with this. The Crown conceded that this accused had made very few speeches himself, but relied on his attendance at meetings and that he had heard the speeches of others and had not disassociated himself from what was said. He had been active in arranging these meetings and would have known what was going on. When Mr. Justice Rumpff pointed out that there was no evidence that he had associated himself with what was said, the Crown replied that it could be inferred from all the surrounding circumstances.

JUDGE QUESTIONS CROWN ON SPEECHES

THOUSANDS NON-VIOLENT.

Mr. Justice Bekker asked the Crown what their line would be in relation to the difficulty that these speeches before the Court represented only a fraction of all the speeches that had been made and even if the speeches were proved, it might be argued that neither the policy nor the knowledge of violence had been proved on account of the thousands of non-violent speeches. When Adv. Terblanche said that there was no evidence that the thousands of speeches did not contain violence, Mr. Justice Bekker said that it was the Crown's business to show violence. From the fact that numbers of speeches were not produced, it could not be inferred that they were violent speeches.

SILENT APPROVAL.

Continuing the following morning, Adv. Terblanche repeated that the accused Nkampani must have attended a number of meetings but when the Court asked if any knowledge of violence could be inferred, said that it could be taken no further. The Crown submitted that although this accused did not

utter violence, he associated himself with the remarks of others; it was not necessary for him to speak himself to associate himself with violence.

The Crown submitted that the act of conspiracy had been proved against Nkampani and also his hostile intent; he had been a very active member of the active Korsten branch of the ANC and had attended the meetings which were charged as overt acts against him. He had spoken at some of these meetings and had been Chairman at others. From these meetings it was submitted that he knew that the ANC wanted to achieve a new state and he supported the drawing up of a Freedom Charter; the struggle was to be unconstitutional and illegal and he had known that violence might result, but nevertheless they were determined to carry on their struggle; this accused had spoken against Bantu Education and had known from the meetings which he attended that the methods to be used in the struggle would be the same violent methods as were used in Kenya. He also knew that the ANC supported the campaign against the Western Areas Removals and that the decision had been taken that the removals would take place only over the dead bodies of the people there and that the same would happen in Port Elizabeth. The ANC had supported the campaign against passes and had recruited volunteers, administering a pledge to them that they must be prepared to die fighting and must take action at all times as instructed by their superiors. This accused had himself recruited volunteers and had been present when the oath was administered to volunteers.

ATTENDANCE AT ONE MEETING.

After argument on the overt acts alleged against this accused, the Crown conceded that only one had been proved against him beyond reasonable doubt, i.e. the attendance at one meeting and his agreement with what had been said there, and submitted that all other reference should be used to show adherence to the conspiracy and proof of his hostile state of mind.

APPLICATION FOR RELEASE.

At the conclusion of the Crown argument on this accused, Adv. Flewman addressed the Court in an application for his release, submitting that although the Defence did not admit that there was a case against any of the accused the Court should consider whether there was any evidence beyond a reasonable doubt that he had entered in the conspiracy. Mr. Justice Rumpff said that the Defence would have to argue the case of this accused and pointed out that the difficulty was that not all the evidence was before the Court as some of it would have to be related to the credibility of the witnesses. Mr. Justice Kennedy said that speaking for himself the position of this accused would depend on the reliability of the reporters. Adv. Flewman replied that the application had been based on the case as presented by the Crown, but Mr. Justice Rumpff stated finally that the Court preferred not to deal with this accused at that moment.

ARGUMENT ON NTSANGANI

PROMINENT ANC MEMBER.

Adv. Trengove took the argument on the next accused, F. Ntsangani dealing first with his membership, submitting that he was a prominent member of the ANC. In his evidence he had adopted the attitude that he knew the policy of the ANC and had said that he used National and Provincial Executive reports. The Crown submitted that this accused was an intelligent person who knew and understood English very well and would therefore have understood the full import of what was contained in these reports. Dealing with his attitude towards the state, the Crown submitted that he regarded it as the enemy and oppressor of the non-white people.

INSOLENCE.

After reading extracts from the evidence of this accused, the Crown submitted that one of the factors to be taken into consideration inter alia was his demeanour in the witness box; he had given his evidence with studied insolence and impertinence, just as Kesha had done. The Crown also referred to his insolent attitude in replying to questions "that could have been answered in one sentence.. " It was quite clear, the Crown submitted that from his speeches, that his attitude was that the constitutional government was vicious, unjust, brutal and irresponsible. He had accepted the Freedom Charter and that the struggle should be directed towards achieving a State based on the principles of the Freedom Charter.

On his own admission, Ntsangani had accepted the 1949 Programme of action and the methods set out therein as the means of achieving his political ends. Notwithstanding his professed ignorance of strike action, it was submitted that he fully realised the implications of the Programme of action. He had been a prominent volunteer in the Defiance Campaign. The evidence showed that he had supported the Western Areas Campaign, fully realising what it involved and notwithstanding the fact that in the ANC view the Government was becoming more vicious and more hostile as the campaigns progressed. His view that the ANC kept on the non-violent plane and avoided a bloodbath in the Western Areas was untenable.

HOSTILE.

The Crown submitted that Ntsangani's state of mind in relation to the Western Areas Campaign was undoubtedly hostile to any constitutional action. The government would resort to violence to enforce the laws, yet he still supported the campaign to make the laws unworkable. His attitude was the same as that of the ANC and the Court would not accept that the ANC was trying to avoid a bloodbath; it was trying to create a bloodbath and knew that it was a probability.

The Crown submitted that Ntsangani was actively and intimately associated with the training and recruiting of volunteers in his area. He assisted with the training of volunteers in the Eastern Cape, but he denied that he had used the three lectures, The World We Live In, etc. The Crown submitted that Ntsangani was not ignorant of the position, he was too well informed, and he was misrepresenting the facts about the lectures because he knew that they were subversive documents. His evidence on the lectures and the extent to which they were used in the Eastern Cape should be rejected.

SPEECHES TO "ILLITERATE MASSES".

The Crown then referred to speeches made on a number of occasions when the illiterate masses were told that in the liberatory struggle they must expect bloodshed from the police who had been told by the Minister of Justice to shoot first and ask afterwards, and that rivers of blood would flow before the African people would get freedom. The Crown submitted that such speeches would build up a state of mental hatred in the minds of illiterate people; the Government was always held out as brutal and vicious.

Replying to a question by Mr. Justice Bekker referring to an explanation given by Chief Luthuli, Adv. Trengove replied that whether it was Luthuli or Ntsangani who over a period of years, in their speeches from public platforms to illiterate masses over whom they had no control, encouraged them to join the liberation struggle, and to fight a government prepared for violence, that was creating a state of mind in the people, which was consistent with coercion by force and not with mutual agreement.

CROWN'S SUBMISSION.

BUILDING HATRED.

When Mr. Justice Bekker said that Chief Luthuli had said that the people must be informed and asked whether that would be a warning or mental hatred, Adv. Trengove said that would be for the Court to decide.

Mr. Justice Bekker : "What is your submission?"

Adv. Trengove replied that the Crown submitted that it was building up a mental hatred. From the witness box, the witness had shown his attitude that the people were entitled to struggle against duly constituted authority, notwithstanding the situation created when the government had to resort to force to crush unconstitutional and illegal action. These statements had been made over and over again to inspire mental hatred in the minds of the people and the Court would hold that the Government was in duty bound to take the necessary steps to enforce the laws and ensure the safety and security of the state. These statements were indications of a treasonable state of mind.

REPORTERS WEAK.

Continuing the submission on the meetings attended by Ntsangani, Adv. Trengove asked the Court to find that even though the reports of the speeches at certain meetings might not be reliable owing to the inherent weaknesses of the reporters, the topics discussed and the attendance of this accused should be considered.

On Wednesday February 15th, the Crown continued its submissions on the accused Ntsangani dealing with the analysis of his evidence and contending that whatever the Court might find on the reporting of the witness Segone, the facts relating to Ntsangani's state of mind stood and would not be affected by the evidence of Segone. In his references to the incident of the tin of paint and the riot following this incident, and reference to the river of blood, inter alia, there was always the idea of unconstitutional action and no thought of constitutional reform. The Crown submitted that the Court should find from all the evidence that there was proof of the hostile state of mind of the accused. In the light of what he had said and done, it was clear that he wanted to undermine the state and this was proved beyond all reasonable doubt. On his own evidence and admissions the overt act of conspiracy had been proved beyond any doubt.

The Crown would rely on two meetings for overt acts and not five as shown in the indictment, and submitted that the first had been proved against him by his own evidence. The speeches of Mayekiso and the co-conspirator Ngota were submitted to have been made in pursuance of the conspiracy and with hostile intent and could be held as overt acts against this accused, for his association with them. The Crown informed the Court that there would be no further argument on Ntsangani and asked the Court to find that the case had been proved against him.

SUBMISSION ON MKALIPE.

Adv. Trengove then made the Crown submissions on the accused Mkalipe who had also been a Defence witness, referring to the attitude of the accused in saying in evidence that he was ignorant and stupid and did not always know what was going on in the ANC. The Court would argue that this was feigned ignorance, feigned because he could not give an explanation. The Crown submitted that he had been too modest; in his position he would have known much more. He had from time to time been prepared himself to defy laws and had taken part in the Defiance Campaign, and he had accepted the position that the Government would become more ruthless. Referring to the

example quoted by this accused from the Bible, the Crown pointed out that the Bible did not advocate mass unconstitutional action, so his example of the change of heart did not hold, he was trying to coerce the government into changing its mind.

The evidence of this accused on the riots in Port Elizabeth was unsatisfactory and evasive. He had agreed that the ANC was engaged in a liberatory struggle but had said that he did not know the ANC attitude towards the struggles in other countries. His evidence on this point had been evasive and unsatisfactory and the Court should not accept it. It had been a constant theme at ANC meetings. Mkalipe had said that his utterances on the struggle in Kenya and elsewhere were his own, but the Court would not find that his speeches were frolics of his own, but that he knew and expressed ANC policy. On the question of the state, this accused had said that he did not know the meaning of fascist and "was lost, at sea", but the Crown submitted that he would have known. He had maintained that it had always been his view that the Government would ultimately "turn" but he had been present at Conferences when ANC reports were read and the Crown submitted that the Court could not accept that he had never thought that the Government would go to the point of blood flowing.

RADICAL CHANGES NECESSARY.

The Court submitted that Mkalipe had accepted the Freedom Charter and supported it, realising that radical changes would have to take place before it could be implemented. He had accepted that this would be brought about by unconstitutional action such as boycotts, resistance movements and strikes on a mass scale, and the Crown submitted that he appreciated that such action would result in bloodshed, because it was directed against a brutal government. In his attitude on strikes he had conceded that the state might have to intervene and would use the army and the police, and when pressed conceded that there might be the possibility of mass retaliation; the Crown submitted that he had been aware in fact of this possibility and that it might lead to violent conflict. No group was more aware than the Port Elizabeth people that riots could arise from minor incidents. He said he did not have it in mind, but the Crown submitted that he reasonably foresaw the possibility of violence.

ACCEPTED POSSIBILITY OF VIOLENCE.

Mkalipe had known, the Crown submitted, of the campaign against the Western Areas Removal and had accepted that the people would not move except at the point of a gun. He accepted that armed police or armed soldiers might be used to force the people out of their homes and he accepted that if one resisted the laws of a government, which he described as a brutal elephant, it would trample him. He had been a member of the Volunteer Board in Korse, and had said that it had recruited volunteers as a part of the organisation for the Congress of the People. He had said in evidence that there had been no particular enquiry in his area into the political or religious background of recruits for the volunteers. He had said that he himself had not been politically trained, but the Crown submitted that his evidence on the lack of political training for volunteers should not be accepted.

On the overt acts of this accused, the Crown submitted that if the Court found that there was a conspiracy, then this accused had the hostile intent and there was sufficient evidence to find that he was a party to the conspiracy. The Crown was relying on only one overt act for this accused, other than the conspiracy, that of his association with the speeches made at one meeting, but the other meetings would have to be taken into consideration for his mental attitude.

The Crown then made the general submission on the accused from Port Elizabeth that the Court should have regard to all the evidence on the ANC in that area for the positions of the accused and what they should have known.

STANLEY LOLLAN

SUBMISSIONS ON SACPO.

Adv. van der Walt then addressed the Court on the accused Stanley Lollan referring to his membership of the S.A. Coloured People's Organisation from March 1954 and his position on the various Congress Consultative and Action Committees. The Crown submitted that SACPO had urged its members to read the journals "Fighting Talk", "Liberation" and "New Age", etc. He had admitted that the National Action Council for the Congress of the People had prepared the three lectures and that it had also been responsible for the Memorandum of the Anti-Pass Campaign. The Crown submitted that this accused knew that SACPO was part of the Congress alliance and part of the liberatory struggle in South Africa. He had attended very many meetings and had heard many speeches; he had also attended meetings of the S.A. Society for Peace and Friendship with the Soviet Union and Peace Council meetings, though there was no evidence that he attended these as a representative of his organisation.

The Crown submitted that the accused Lollan was aware of and supported the attitude of SACPO towards the condemnation of the State and the necessity to replace it with some other form of state based on the Freedom Charter. His evidence showed, inter alia, that he was aware of and supported the attitude of SACPO towards the liberation movement and accepted that it would be waged by mass action including unconstitutional and illegal action which might involve the use of violence by the state. He had admitted that he thought that the possibility of violence was always there.

When Mr. Justice Rumpff asked how the Crown arrived at the submission that the liberatory struggle was to be waged by violence, Adv. van der Walt said that perhaps it was not a happy expression.

Mr. Justice Rumpff: "Well, make it happy".

The Crown then corrected the submission to indicate that mass action would lead to unconstitutional and illegal action.

SUPPORTED STRUGGLE AGAINST PASSES.

On the Freedom Volunteers, the Crown submitted that Lollan knew that the volunteers were being recruited for the purpose of carrying out the work of the Congresses in the campaign of resistance to the Western Areas Removal.

He had admitted that he and his organisation gave unqualified support to the ANC in its struggle against the passes. Lollan had stated that his organisation had taken very little part in the campaign against Bantu Education, but they had been extremely interested in it; he thought that SACPO was fully aware of the form of opposition that was being planned in the Western Areas, although it did not really participate in this campaign. He admitted that the possible consequence of this campaign might be not merely the arrest of the leaders but also the commission of acts and violence, though not by the Congresses.

OVERT ACTS AND HOSTILE INTENT.

Dealing with his overt acts, the Crown submitted that Lollan had attended the meeting of the Freedom Charter Committee where he had associated himself with the speech of Sejake, since he spoke after him and had not dissociated himself from the speech. He had also attended the Congress of the People. The Crown submitted that these overt acts had been proved against this accused and also his hostile intent.

CROWN ON INDIAN CONGRESSES.

FARID ADAMS

Adv. van der Walt continued with the Crown submissions, dealing with Members of the Indian Congresses. The first Indian accused was No. 1 Farid Adams. The Crown referred to his membership of the Transvaal Indian Congress and the Transvaal Indian Youth Congress and to the active part he had taken in its activities; he had at times worked full time for the Transvaal Indian Congress. He was the author of articles and letters dealing with the activities of the liberatory movement and had signed documents on behalf of some of the organisations. In a letter he had addressed to a friend, "Miriam" he had expressed himself in favour of the Communist Party and on a Christmas Card to the same person had written, "Forward to World Communism".

Referring to meetings, the Crown submitted that Adams had been present at a number of meetings of the Congress organisations and had expressed the view that the Western governments were causing the cold war. He supported the Peace Council and had signed a press statement on behalf of the S.A. Indian Congress congratulating China on establishing a People's Republic, and also a letter on behalf of the Transvaal Indian Congress protesting against the closing of the Soviet Consulate.

LETTER ON COMMUNISM.

Adams had expressed the view in his letter to "Miriam" that it was a great and honourable thing to belong to the Communist Party and he held the view that world Communism would mean a world free from exploitation and misery. He had attended the Congress of the People meeting in September 1955 and had heard Massina say that Freedom Fighters had died in the past for freedom and had also heard Sejake's speech in which there was reference to the "armed clash". He was aware of the campaigns and was a clerk in the offices of the Congress at that time. He had heard Congress speakers at the meetings which he had attended explain the duties of volunteers and the significance of the Congress of the People. They had dealt with the liberatory struggles in other countries and had lauded the achievements of Russia as a country fighting for peace; the Crown submitted that these speakers were preparing the people for violence in the course of the struggle. This accused had condemned the Government and expressed his view that he was sure they would one day get a government in South Africa which would take the Freedom Charter as its constitution; they would have to fight and die for the Charter.

JUDGE QUESTIONS CROWN.

Asked by Mr. Justice Bekker whether this accused was aware of the campaigns and also the methods, the Crown replied that he was aware of the campaigns, as he was a full time clerk in the Congress office at the time. Mr. Justice Bekker asked whether the Crown submitted that his knowledge of these campaigns made him a member of the conspiracy to overthrow the state by violence. The Crown replied that it could not take the submission any further.

Adv. de Vos addressed the Court on the Communist aspects of the case in relation to this accused, submitting that Farid Adams had expressed explicit praise for the Communist Party and had supported the world revolutionary movements, which he must have known, from the extensive Communist library found in his possession, included the doctrine of violence. He had given active support to the World Federation of Democratic Youth and the World Peace Council and had expressed support for the journals "Advance" and "New AGE"; he had adopted a partisan attitude in favour of Russia and China and knew the Communist trend of the Congress movement and supported their policies.

ADOPTED COMMUNIST ATTITUDES.

The Crown submitted that this accused adopted the Communist attitude towards the state and adopted and propagated Communist tactics to change the present state aimed at the establishment of a Communist State; he was so closely linked with Communism that he must have accepted the Communist doctrine of violent revolution.

Mr. Justice Bekker asked whether, even if it could be assumed that he knew the theory, that could be enough or would the Crown have to show that he had the intention? Adv. de Vos replied that this accused had said "Forward to World Communism", but agreed that the Crown must go further than merely to prove that he knew the theory of revolution, it must show intention. But it was submitted that he must have known; he couldn't have had so many books and not have known and there was also his lauding of Communism. In the Union he could not be expected to do more than he did; the Crown would not be able to say that he had actually said, "I propagate Communism".

JUDGES ON COMMUNISM

Mr. Justice Rumpff pointed out that a Communist Party might say that the theory of revolution depended on the circumstances and on the opposition of the ruling class, and on "our state of mind. We are here following a constitutional line and not revolution, but fighting for seats in Parliament." Then there would be no question of High Treason.

The Crown agreed that would be so in the case of a person not actually engaged in preparing for the violent overthrow of the state. Mr. Justice Rumpff asked what would be the difference between such a member of a Communist Party and this accused, where had he stepped off the constitutional path into the field of High Treason? "Forward to World Communism" could also be aslogan on the constitutional path. Adv. de Vos submitted in reply that the aim of constitutional battle was not the case here. Mr. Justice Rumpff asked how, assuming that this accused was a self-confessed Communist, he had set out on the path of revolution, but the Crown said that it could not take this matter further than the previous argument by Adv. van der Walt. The present argument shed a light on his state of mind and his hostile intent indicated that he must have known the Communist line of his organisation, and that he was in a liberatory movement actively preparing for Communist revolution.

PROFESSOR'S MURRAY'S EVIDENCE

Replying to further questions by Mr. Justice Kennedy, the Crown referred to the evidence of Prof. Murray; Mr. Justice Kennedy said that he was not talking about the classics but wanted to know whether violence would necessarily be part of the dogma in all cases. The Crown replied that there had been no documents found in the possession of the accused to support this. Prof. Murray had taken the statement of Krushchev into account on this point when testifying to the correct meaning of Communism, but he had eventually conceded after further questions that modern Communism in the West might accept that violence was not essential.

When the Crown wanted to refer to a document not in the record, Mr. Justice Bekker pointed out that it was not before the Court. Adv. de Vos said that that seemed a technical point but Mr. Justice Rumpff said that the Crown could not challenge a ruling by the Court by saying that it was merely a technical point. The Crown then indicated that it would not go further with the details of the Communist affiliations of this accused.

ACCUSED KATHRADA.

CONSPIRACY PROVED.

The next accused to be dealt with by the Crown was A.M. Kathrada.

The Crown submitted that the conspiracy had been proved beyond reasonable doubt and that his hostile intent and his adherence to the conspiracy could be inferred from his activities. He had been a prominent member of the Indian Congresses and of the Youth Action Committee; he had worked full time for the Indian Congress and had been a member of the Executive Committee for the World Federation of Democratic Youth and had worked at its headquarters. He had been a member of the Communist Party. This accused had heard meetings addressed by prominent members of the Congress such as R. Resha, D. Nokwe, S. Shall, L. Bernstein, P. Nthithe, E. P. Moretsele and others.

THIRTY NINE ORGANISATIONS.

The Crown submitted that Kathrada had taken an active part in the liberatory movement and had worked full time for two years before he was ordered to resign from 39 organisations in terms of his banning order. He held the view that peace was close to the liberatory movement and when they fought against Malan they were fighting for peace. He had expressed the view that the Soviet Union was the greatest friend of the struggle in South Africa and that South African newspapers were spreading lies about the Soviet Union.

He held that the S.A. Government was giving its last kick and that its life was short and white domination coming to an end. This accused was a member of the Volunteer Board and took an active part in recruiting volunteers. He had supported the Congress of the People and was fully aware of and supported the ANC in its campaign against the Western Areas Removal and was also aware of the Campaign against Bantu Education. He had expressed the view that in their struggle people were shot for their demands and in order to make everybody happy in South Africa the people were prepared to do anything. "If death is the price, we must pay it." Dealing with the overt acts of this accused, the Crown submitted that they had been proved beyond a reasonable doubt, and that the hostile intent should be inferred from the activities of this accused. It was submitted also that this accused was particularly intent on preparing the masses for the idea that freedom can only be bought at the price of blood; he was preparing them for unconstitutional and illegal action which would result in a violent clash with the state.

KNOWLEDGE AND ACCEPTANCE.

Dealing with the Communist aspect of the activities of Kathrada, Adv. de Vos submitted that in coming to a conclusion on his knowledge and acceptance of Communism, the following features should be taken into account. He had visited a Communist country where he had been attached to the World Federation of Democratic Youth and it was submitted that he must have gleaned considerable information on Communism. His interest in Communism could also be inferred from the Communist library in his possession and he had in fact been a member of the former Communist Party of South Africa. His attitude reflected what would be expected of an indoctrinated Communist. Amongst the documents found in his possession had been "Politics and Economics". The Crown submitted that it was not coincidence that this document so exclusively and peculiarly Communist had been found with this accused and must be taken into consideration when dealing with his position.

MOOSA MOOLLA

The third member of the Indian Congress to be dealt with by the Crown was the accused Moosa Moolla who the Crown submitted was a prominent member of the Transvaal Indian Congress and the Indian Youth Congress, of which he was the joint Secretary from 1954 to 1956. He had been a volunteer and was the clerk to the National Action Council. He had attended meetings of the Congress organisations and had also spoken at some of

those meetings; he had also been present when leading members of the organisations had made speeches at meetings. He was fully aware of the activities of the National Action Council for the Congress of the People and also the Consultative Committee and as a clerk to the NACCOP he knew that the lectures had been distributed and had been a party to their distribution.

FORCES OF EVIL.

Hoolla had expressed the view that the forces of evil were preparing to plunge the world into another war and that the colonial powers resorted to force to crush the movements for national liberation. He thought that all the oppressed people should join to destroy the capitalist system and that it was the duty of the working people in South Africa to follow in the footsteps of the people of Korea, China and Russia to liberate themselves from capitalist oppression. In the light of the views he had expressed it was submitted that this accused was aware that the state would endeavour to crush the liberatory struggle in South Africa by violence. He had attended meetings where the imperialist powers were condemned and Russia and its achievements lauded, where it had been said that the struggle in Kenya was part of the struggle in South Africa; and where speakers had prepared the people for acts of violence which might occur in the course of the liberatory struggle. The Crown did not agree that this preparation was in the sense of warning the people to expect violence but submitted that it was in the sense in which Sejake had said that they must be prepared to clash with the State.

KNOWLEDGE AND SUPPORT.

Adv. de Vos then submitted that this accused, Moosa Moolla knew and accepted and propagated the theory of dialectical materialism including the theory of violent revolution. He had accepted the division of the world into two camps and lauded the USSR and China and condemned the USA as an aggressor. He had known and supported the Communist policies of the organisations to which he belonged and therefore supported policies adopting the Communist analysis of the present in the Union, propagating the use of Communist methods and aiming to establish a Communist state, knowing that this would involve the use of violence. The material written by this accused showed knowledge of dialectical materialism and clearly showed knowledge of Communist concepts. He had contact with and supported the World Federation of Democratic Youth.

The Crown submitted that the overt act of conspiracy had been proved against this accused and that his hostile intent and adherence should be inferred from his activities as set out by the Crown.

HELEN JOSEPH

Adv. Terblanche then addressed the Court on the accused Helen Joseph, submitting that she was educated and had great experience and knowledge and therefore understood all the implications of the struggle in which she was involved. Amongst the documents found in her possession were the three lectures, "The World We Live In", etc., and copies of the Journal Liberation. She had said that she was a regular reader of this and the other journals. This accused had also admitted that she had been to the conference of the Women's International Democratic Federation as a delegate and that the document found with her was a copy of her address to the conference. In her evidence she had said that it reflected the position in South Africa as she saw it, but that there was no intention of violent destruction of the state. The Crown submitted that in this document, Helen Joseph foresaw that resistance to the Western Areas might result in violence which might spread throughout the country. Other documents included articles written by her for "Fighting Talk" and the report of

the Federation of South African Women.

ACTIVE SUPPORTER.

Helen Joseph had been a prominent member of the S.A. Congress of Democrats and also of the Peace Council and the Federation of South African women. She had been a member of the National Executives of these organisations and had served on the National Action Council for the Congress of the People and also in the National Consultative Committee. She had been a member of the Transvaal Resist Apartheid Committee and was both Regional and National Secretary of the Federation of South African Women. This accused had attended many meetings and conferences, mainly in the Transvaal but also in other parts of the country and the Crown submitted that from her attendance at these meetings she had full knowledge of the policies and activities of these organisations.

The Crown submitted that this accused was one of the most active members of the liberation struggle and actively promoted that struggle: She had gone on a tour of the whole union to organise women to come to Pretoria for the national protest against passes.

At the Congress of the People Anniversary meeting, Helen Joseph had attacked the pass system and Bantu Education and had said that the march towards freedom could not be stopped by the Government or any power. At the meeting of July 1954, she had been elected to the Resolution Committee. Commenting on the speech of Kathrada she had said that it was completely within the policy of the organisations and that the use of the term "army of liberation" had no military connotation. The Crown submitted that her explanation should not be accepted, the volunteers were intended to be a shock brigade.

When the Crown submitted that by her silence at meetings, by her continuing to attend them and continuing her activities in the liberation movement, this accused had agreed with all that was said at the meetings which she attended, Mr. Justice Kennedy asked whether the Crown submitted that she must have approved of all that was said there. Adv. Terblanche said that was the Crown submission, and Mr. Justice Kennedy asked whether that was not taking it too far, but the Crown repeated that she had continued in the liberation struggle.

NOT TRUTHFUL.

When the Crown submitted that Helen Joseph had not been a truthful witness in her evidence on speeches made at some of the meetings and that this showed her state of mind, Mr. Justice Rumpff asked "What state of mind? Is it an untruthful state of mind?" By her comments in evidence on a number of speeches made at meetings, the Crown submitted that she had foreseen that possible violence might break out, but Mr. Justice Bekker asked how a comment made for the first time in Court could be used for this purpose, since she had not been present. The Crown submitted further that the evidence of the witness on a speech by Resha showed her attitude that anything of that sort that was said did not amount to violence, and that she accepted that the discipline of the volunteers was such that even if given instructions to be violent they would have to be violent.

AWARENESS AND SUPPORT.

The Crown submitted that the evidence of Helen Joseph showed inter alia that she was aware of and fully supported that liberation movement and also the liberatory struggles elsewhere in the world. She supported the policies of her organisations in regard to the new state and her attitude to the present state was that it was not a duly constituted authority because it was not constituted with the active consent of the people.

She was in favour of a people's democracy based on the Freedom Charter and agreed that the changes were to be brought about by unconstitutional and extra-parliamentary means and by mass action, because she could see no hope of the white electorate voluntarily conceding the rights of the non-white people. She foresaw that the Programme of 1949 could result in violence and that no guarantee could be given that any major campaign could be peaceful. She had supported the Western Areas Campaign although she had known that the state was determined to proceed and she feared a violent clash, she had also supported the campaigns against Bantu Education and the passes. She also accepted that peace and liberation were indivisible; that Russia was a peace-loving country and that the S.A. Government was committed to preparing for war.

The Crown submitted that the overt act of conspiracy had been proved against this accused and the hostile intent and the adherence to the conspiracy had been proved by the facts set out against her.

OVERT ACTS.

Dealing with the overt acts, Helen Joseph had admitted attending the Congress of the People and the Crown submitted that the meeting she had attended on 7th November, 1954 had been convened in pursuance of the conspiracy and was part and parcel of the active preparations for the violent overthrow of the state and substitution of another state. This accused had proceeded to this meeting with the same purpose and the intention of participating; she had associated herself with the speech of Resha, which was made for the same purpose; she had given evidence on this speech and had said that the "major clash" was not necessarily violent and she didn't agree that "to die like men" was a reference to a violent clash. The Crown submitted that her evidence of what was meant was not to be accepted. This accused had stated that she was present at the time of the speech of Sejake at the Congress of the People Committee meeting in September 1955, and she had given her explanation of his speech and also that of Lilian Ngoyi; the Crown submitted that this meeting was held in pursuance of the conspiracy and that this accused had attended for that purpose and had associated herself with the speeches made there.

ADVOCATED ILLEGAL ACTION.

Dealing with the fourth overt act against this witness, the Crown submitted that her article in "Fighting Talk" - "Women against Passes" had been written in pursuance of the conspiracy and that the Court should find that this article did contain advocacy of illegal action; the decision not to carry passes had already been made and "the action to be decided upon" could only mean unconstitutional and illegal action.

This accused had admitted her presence at the Congress of the People and the Crown submitted that from all the evidence the charge had been proved against her.

Adv. De Vos informed the Court that the Crown did not allege that the accused Helen Joseph was a Communist in the sense that she understood Communist doctrine or the doctrine of violent revolution in particular, but on the questions of policy of the organisations dealt with by her in her evidence, the Peace Council and the S.A. Congress of democrats, there were points that should be noted.

PEACE COUNCIL.

Helen Joseph conceded that the Peace Council regarded the USSR as a peace-loving country and not the western powers, and that the Peace Council

regarded every conquest won in the course of the struggle for national liberty as an advance of the peace forces over the forces of aggression. She had conceded that the Peace Council had judged issues between the East and the West. This accused conceded that the SACOD had held out China to the oppressed people as a country which had reached the highest stage of liberation and that she knew of no documents which referred to any country in the non-Communist bloc as a people's democracy, though she herself did not accept that term as peculiar to the Communist bloc. She conceded the SACOD did not criticise Communism and admired its achievements as improvements and that the SACOD had never praised any facet of capitalism. The Crown submitted that this bore out the Crown submission on the Communist orientation of the Peace Council and the S.A Congress of Democrats.

ADV. HOEXTER ON MANDELA

ANC EXECUTIVE.

Adv. Hoexter continued the Crown argument with submissions on the accused Nelson Mandela, showing that this accused had been a member of the ANC from 1944 and had been on the Transvaal Executive since 1946 until 1953. In October 1953 he had become Transvaal President and his presidential address had been issued as "No Easy Walk to Freedom". He had been a foundation member of the Youth League and had helped to draft the Basic Policy of the Youth League. The Crown submitted that his activities and knowledge of the ANC had continued after his banning, and he had taken a lively interest in its affairs. It had been the practice of the ANC to keep its prominent members well informed even after their banning.

The Crown submitted that Nelson Mandela showed awareness of and support for the ANC attitude towards the liberation struggles in South Africa and elsewhere; understood and supported fully the demand for a new state based on the demands of the Freedom Charter and possibly a Communist State similar to those of the USSR and Peoples China. Referring to the three lectures, the Crown submitted that he had said that he found nothing in them inconsistent with the policy of the ANC and the Crown also submitted that in his address "No Easy Walk to Freedom" he had propagated the idea of a substantially, entirely different state.

ATTRACTED TO SOCIALISM.

Nelson Mandela had said that he had studied Marxism and formed his own views; if to be a member of the Communist Party would mean strict adherence to Marxism-Leninism, then he would certainly not be a member. He was very much attracted to socialism and the ideal of socialist society; he did believe in a classless society but he was not prepared to work for a leftist ascendancy in Congress. He had explained his own ideal and wanted the rule of class to go, no matter what the Soviet Union wanted; the state he wanted could be on the lines of the USSR or China, but would not be a copy. The Crown submitted that this accused knew and approved of the pamphlet "South Africa's Way Forward".

This is the fifty-fourth issue of a regular bulletin giving a factual resume of the proceedings of the Treason Trial.

Period Covered: 20th to 24th February, 1961

ARGUMENT ON MANDELA CONTINUED.

On Monday February 20th, the Crown continued the argument on the accused Nelson Mandela, dealing with the aspect of his support for unconstitutional action. It was submitted that this accused was aware of and fully supported the view of the ANC that the new state desired by them was to be achieved by extra-Parliamentary, unconstitutional and illegal action including the use of violence. He personally strongly believed in mass action and conditioning the masses for militant mass movement; the masses should be regarded as the effective instrument for coercing the government by illegal means and imperiling the stability and security of the State. This accused had in mind that violence was a likely result and that the people should expect to be shot in the course of their struggle. In support of this submission the Crown referred to documents and speeches by the accused, particularly the article, "No Easy Walk to Freedom", despite the statement by Mandela that when he had spoken of the "day of reckoning" he had not intended to imply a physical clash, but merely sharpened antagonism. The Crown submitted that this expression in the context of the article could only mean a physical clash, and that this accused was wedded to the concept of mass action, illegal mass action, which could very likely lead to violence.

LEADING PART.

The Crown submitted further that the accused Mandela knew and approved of the ANC policy of organising campaigns against laws and inciting the people to illegal and violent resistance against the administration and enforcement of these laws. It was submitted that he had full knowledge of the Defiance Campaign and that he played a leading part in it, a member of the National Action Committee for the Defiance Campaign and also National Volunteer in Chief. He knew that this campaign was extremely dangerous to the safety and security of the state and that the government would not capitulate easily. This submission was supported by references to "No Easy Walk to Freedom" and the Crown submitted that it was clear that in the mind of this accused, there was no hope of capitulation by the government unless the third stage of the campaign was reached; the exhortations to non-violence at the beginning of the campaign ought to be seen against the whole campaign, for any violence in the first and second stages would have increased the risk of its suppression.

MAJOR CLASH.

It was submitted that this accused had spoken very strongly against the Western Areas Removal Scheme and had foreseen a major clash and, from his articles, seemed to concede that months prior to the removals the possibility of bloodshed had been considered. The Crown suggested that this accused, on account of his ban, was not qualified to speak with any authority on the campaign, and his answers on the later conduct of the campaign did not take the matter any further.

THE LECTURES.

Dealing with the attitude of Nelson Mandela towards political education the Crown drew attention to his comments on the lecture Political Organisation and also on the three lectures The World We Live In, etc.

of which he had said that he found nothing in them contrary to the policy of Congress and that he would have had no objection to L. Bernstein circulating them as his own, but would not have approved of their being circulated by the ANC, who wanted the support of both socialists and conservatives. Although this accused had said that the lecture Political Organisation had not been circulated for the purpose of indoctrination, it was common cause that the Congress was an organisation of people against the government; the Crown submitted that the lectures did carry the authority of the organisation and the explanations of the accused ought not to be accepted.

INFERRED.

The Crown submitted that the hostile intent of this accused and his adherence to the conspiracy were clearly to be inferred from his activities and his state of mind during the period of the indictment and relied particularly on his executive position and his active participation in the ANC and the ANCYL up to the time of his banning. On his support of and understanding of the present state and type of state with which he wished to replace it; his determination to employ unconstitutional and mass action; his knowledge of and approval of the various lectures used for political training and his own writing in support of the liberatory movement and his speeches at meetings.

COMMUNISM.

Adv. de Vos followed Adv. Hoexter with submissions on the question of Communism with regard to this accused; as an active member of the conspiracy, he applied and propagated the Communist analysis of the state, also Communist methods to replace the state by a Communist state, knowing that the achievement of this would involve violence. The Crown submitted that Mandela knew Krushchev's statement and must have appreciated that in the Union a violent revolution would be necessary because the ruling class resisted the advance of the proletariat and its allies, and a stable Parliamentary majority could not be obtained by the oppressed and exploited people in the Union. He had admitted that a stable Parliamentary majority was a prerequisite for a peaceful transition to socialism and was evasive when pressed on this aspect in South Africa. The Crown submitted that he could not have believed in the possibility of this in the Union and that it was in fact an afterthought. The Crown submitted that he had in fact accepted the exposition of Krushchev of Communist doctrine. He had said that he wanted a classless society and a socialist state. Replying to questions by Mr. Justice Rumpff and Mr. Justice Bekker on the type of violence referred to by the Crown, Adv. de Vos submitted that if the Communist ideology of violence were accepted, then there must be violence in the transition to socialism for the Communist doctrine taught that there must be violent revolution for the overthrow of the State. Mr. Justice Rumpff repeated his question as to what would be violence in terms of Communist doctrine, supposing that it was known that the state would resist demands made by the people. Adv. de Vos replied that this was not specified in Communist doctrine. Mr. Justice Rumpff again suggested that the accused might say that they were going to organise the masses and if the state didn't grant their demands, then there might be violence as a result of strike or industrial action, asking whether that would be violence in terms of Communist doctrine. The Crown was most emphatic that it would be so. It was not submitting that the masses must actively engage the State; they were the tools of Communism and the convinced Communist would go forward, actively preparing for violence; if the State conceded, the violence would fall away, and if not then there would be violence.

Mr. Justice Rumpff: "Violence by whom?"

RETALIATION.

Mr. Justice Bekker asked whether there would be any difference according to Communist dogma in the case where there might be no retaliation to

violence employed by the State but a continuation with industrial action. The Crown replied that that might be a tactic, but a convinced Communist would proceed from that point and go further to prepare for a violent revolution. The Crown agreed that in theory there must be a violent revolution against the state and that anything short of that would not be revolution, although emphasising that anything that led to the violent revolution would be in accordance with Communist doctrine. After further argument, the Crown submitted that the accused Mandela knew and accepted the Communist doctrine of violent revolution.

ONE PARTY.

A further submission was made that this accused aimed at the establishment of a Communist state and personally saw the Freedom Charter as a step towards socialism and a classless society and supported it as such. He had admitted that he had read about the state in the U.S.S.R. though he said that he did not want to copy it in South Africa; he approved of the one party system. The Crown submitted that this approach could not be reconciled with the Western concept of democracy. Mr. Justice Bekker reminded the Crown that Mandela had qualified his approach by saying that as long as there was equality he did not mind what form of democracy there would be.

BELIED.

Dealing with the attitude of the accused towards Communism and Communists, Adv. de Vos submitted that in so far as he had denied being a convinced Communist, the evidence belied his denials, and that his pronounced favourable attitude towards Communism was emphasised by what he said, and in his writings. On points which affected policy this accused had testified that the ANC wanted a people's democracy incorporating the specific changes set out in the lecture "A change is needed" and that it would be a state where the exploitation of man by man would be abolished. He had conceded that an ordinary reader, looking at these lectures, would come to the conclusion that the new kind of state which the Congress movement must build was identical with or similar to China, the Soviet Union, Rumania, Hungary or Poland. He had denied that the ANC had a policy on capitalism or that his own ideas as expressed in "In Our Lifetime" were those of the ANC, but had conceded that the first two lectures contained nothing that was inconsistent with ANC policy. The Crown submitted that his denials of the Communist policy of the ANC were unavailing and should not be accepted, though in so far as his evidence agreed with the Crown case, it strengthened it.

HOEXTER ON SIBANIE

Adv. Hoexter then presented the Crown argument on the accused Gert Sibande, submitting that this accused was aware of and supported the ANC attitude towards the liberatory movement and also similar struggles in other parts of the world. He had also supported the ANC in denouncing the present state and demanding its destruction and replacement by a form of state based on the Freedom Charter. He had attended at least four National Conferences of the ANC and had helped to collect signatures for the Freedom Charter. The Crown submitted that he was aware of and supported the policy of the ANC in regard to unconstitutional and illegal action, including the use of violence. In support of this submission, the Crown quoted from speeches by this accused in which he referred to "blood flowing in the river" and his description of the government as a "person who believes in shooting". He had recognised that if they used unconstitutional and illegal action the police would shoot. After questions by Mr. Justice Bekker, the Crown agreed that the words, "the use of violence" should be deleted from this submission, but emphasised that the accused knew that unconstitutional and illegal action might result in violence by the state.

PARTICIPATED.

Dealing with the campaigns, the crown submitted that the denial by this accused that the situation in the Western Areas was potentially dangerous was false and should be rejected; he had participated in the campaign as a volunteer, and he must have been aware that the passions and opposition of the people had been aroused and that they were not told what to do, despite his statement that it was nonsense to suggest that the people were not fully instructed. The Crown submitted that the falsity of this accused's version of the Western Areas Campaign was demonstrated by overwhelming evidence to the contrary, mostly contained in documents relating to the ANC. That he knew it to be false should be inferred by the positions held by him in the ANC and speeches made at meetings attended by him. The Crown submitted that from the evidence this accused was actively involved in the Western Areas Campaign and asked if it were possible that such a man would honestly have the impression that the situation was not tense and full of danger and deny that Congress contributed to the danger by whipping up the feelings of the people and then leaving it to them to decide what to do.

STATE OF MIND.

The Crown submitted that the hostile intent and adherence to the conspiracy were to be inferred against this accused in respect of his activities and his state of mind during the period of the indictment; he had been associated with the ANC for some thirty years and had actively participated in Congress affairs; he was a member of the Transvaal Executive and also on the National Executive; he saw South Africa as a country ruled by fascists who knew how to silence the masses only by shooting them and he knew that it was the aim of the Congress movement to take over the government and rule the country. This accused was committed to a course of unconstitutional and illegal method as a political method and had supported all the campaigns of the ANC as part of the struggle for liberation.

Dealing with the overt acts, the Crown submitted that only two meetings were being relied on, in addition to the conspiracy.

CROWN ON MALOAO.

The next accused was Patrick Maloao against whom the Crown submitted that, although he had not been a member of the ANC itself but only of the ANC Youth League, he had taken an active part in the affairs of the ANC and had occupied an important position in the Congress movement. It was submitted that he was fully aware of and supported the ANC attitude towards the liberatory struggle and despite his reluctance to admit it, the Youth League had identified themselves with the struggle in Kenya; this was clear from their writings in their journals and it was idle to suggest that these journals would put forth propaganda which was not in line with the Youth League and this accused knew this.

USUAL SUBMISSIONS.

On the question of the new state desired, the Crown made the usual submissions, and referred to extracts from the second of the three lectures, the Country We Live In. Mr. Justice Bekker asked whether the statement by this accused that he saw nothing offensive in them supported the Crown submission, pointing out that this was his present state of mind, not his past state of mind. The Crown replied that these documents presented a well defined political analysis and it was unthinkable that this accused would not have said so, if his view had been different; the fact that he agreed now was some pointer to his agreement then.

The Crown again made the submissions that this accused also desired the destruction of the present state and its replacement by a state based on the

Freedom Charter. He saw South Africa as under the sway of the imperialists. The Crown submitted further that it was the policy of the Youth League to establish a People's Democracy in South Africa on the lines of the Soviet Union, China or Poland. This accused had supported the Freedom Charter and wanted a state based upon it.

FULLY AWARE.

It was submitted that the accused Molaoa was fully aware of and supported the policy of the ANC for the achievement of the new state by extra-parliamentary, unconstitutional and illegal action, including the use of violence. The Court should reject the statement by this accused that he did not see in the use of the word "clash" a physical clash when used by Sejake in his speech; he had matriculated and had a good command of English and he couldn't have understood these words in the fashion claimed by him. This accused had also recognised the possibility of violence in the course of the struggle and when the "griest portion" of the document "No Easy Walk to Freedom" had been put to him, he had said, "That is my view". In his evidence on the Anti-Permit meeting in Sophiatown, he had said that Matlou who had made what the Crown submitted to be the "bloodthirstiest speech in the whole case" had explained it to the satisfaction of the ANC. Adv. Hoexter commented that Matlou must be very persuasive; and submitted that this speech could not be dismissed as a mere metaphor. The account given by the accused of his understanding of this speech and that of Kathrada at the same meeting, should be rejected. He had said that the language was extravagant, but he could see no suggestion of incitement. The Crown submitted that the speech by Matlou was barefaced incitement and that no other construction was possible; there could not be any doubt of the true import of the words. Resha's speech had also contained a clear threat of reprisals against the police and the Crown submitted that this accused had understood it so; the Crown also argued against the explanation given by this accused of the distinction between a stay at home and a strike; this topic had been canvassed by many witnesses and this distinction was not mentioned anywhere in the documents.

NOT ISOLATED.

Dealing with the campaigns, the Crown submitted that Molaoa had supported the ANC in all the campaigns on which it had embarked and has said the campaigns were not isolated but part of the general campaign. He had agreed that the ANC had omitted to tell the people what to do on the day of removal but he had denied that this campaign would create a potentially dangerous situation; in as much as this accused had taken part in the campaign, the Crown submitted that he must have known that the ANC was creating this situation which would lead to a show of force and arms in the Western Areas.

The Crown submitted that the hostile intent of the accused and his adherence to the conspiracy was clearly to be inferred from his activities; he had been a prominent figure in the ANC Youth League and had attended and spoken at many meetings of the ANC, appearing often with such speakers as Resha, Tyiki and Peter Nthithe. He had supported the liberation struggle, both locally and internationally, and knew that the Youth League identified itself with the struggle of colonial peoples to throw off foreign domination and enslavement, expressing solidarity with the people of Kenya, Indo-China and other such countries. He had supported the Freedom Charter and knew that it was the policy of the ANC to establish a People's Democracy in South Africa and had accepted the necessity for unconstitutional and extra-Parliamentary action. He had taken the view that the Government was ready to drown the whole country in blood if there was a prospect of preserving white supremacy and that, according to Congress policy they would not get freedom unless they were prepared to shed blood. As a volunteer he had been impressed with the requirement of complete discipline and absolute obedience. The Crown submitted that the overt acts, which included four meetings in addition to the

conspiracy had been proved against this accused. No argument on Communism was led against this accused.

HOEXTER ON MORETSELE

Adv. Hoexter then addressed the Court on Wednesday, February 22nd, on the accused, E.P. Moretsele, who had not given evidence. Dealing with his authorship of certain documents, the Crown recalled the evidence of Resha who had said that this accused wrote his own addresses and speeches in Sepedi and then had them translated into English; they were his own. The Crown submitted that this accused had been chairman at a number of meetings, including those at which strong speeches had been made, notably the meeting on 22nd November 1956, when Resha had addressed the volunteers. At the Congress of the People, which was laid as an overt act against this accused, he had welcomed the delegates and had also been a speaker at a number of meetings. It was submitted that the hostile acts of this accused and his adherence to the conspiracy were to be inferred from his activities; he had been a member of the National Executive Committee of the ANC throughout the period of the indictment and also President of the ANC in 1955 and 1956; he had been Treasurer of the ANC and represented the ANC on the National Action Council; he was also a member of the Transvaal Peace Council. He had supported the liberatory movement, here and overseas and as Transvaal President had called upon his followers to dedicate themselves unconditionally to the cause of freedom and to reckon with death and disaster without flinching. He had expressed solidarity with the bloody struggles in Malaya, Vietnam and Kenya. He knew, inter alia, that Congress aimed to replace the government with a People's Democracy and accepted that final victory could only be achieved in the overthrow of the ruling class and the winning of the Freedom Charter as the ruling policy of South Africa. On the question of the overt acts laid against this accused there was no problem of proof that he had attended these meetings and also the Congress of the People.

DE VOS CONTINUES ARGUMENT ON MORETSELE

Adv. de Vos then addressed the Court, submitting that the accused Moretsele had been a prominent member of the conspiracy and had been influenced by the Communist theory; this was to be inferred from his presidential address which was completely consistent with Communism; he had referred to reactionary imperialist powers under the influence of American imperialism and the indebtedness of the enslaved masses everywhere to the progressive powers such as the USSR. The technique of mass action was exemplified in this presidential address. The Crown conceded, however, that it could not say that this accused knew the Communist theory of violence; there was no proof of that. Mr. Justice Rumpff asked what the Crown meant by its suggestion that Moretsele was influenced by Communism and the Crown replied that it showed that he was moving in the direction of a new State differing fundamentally from the present state.

Mr. Justice Rumpff remarked that it could be consistent with Communism, but a Communist in this country might also accept this view and the necessity for mass action. Adv. de Vos replied that in this particular instance the mass action was set in a particularly Communist setting; the accused had referred to the toiling masses and reactionary big farmers and industrialists; the whole context was Communist and showed the application of Communist influence. The documents in his possession also showed his orientation, whether he knew it or not, to be Communist.

Mr. Justice Bekker: "What must we find? That he is Communist?"

Adv. de Vos: "I cannot go so far"

Mr. Justice Rumpff: "Do you mean that he is pinkish?"

Adv. de Vos: "I cannot say that he knew Communism."

HOEXTER ON MATHOLE

Adv. Hoexter resumed the Crown argument, making submissions on the accused P. Mathole that his hostile intent and adherence to the conspiracy were to be inferred from his activities. He had served on the National Executive of the A.N.C. and had also been a member of the Secretariat and Provincial Secretary. He had supported the liberatory movement and had understood its local and international implications and that it might call for the supreme sacrifice. He had heard speakers say that in Kenya and elsewhere people were dying for their freedom and that they too would have to shed their blood in the course of the struggle. He had seen the ANC in the Transvaal as a force destined to play a decisive role in the liberation of the oppressed people from imperialist domination, and had known that the ANC had embarked on militant forms of struggle including extra-parliamentary, unconstitutional and illegal action. He had also been a member of the Western Areas Committee and had been present when Resha explained the duties of volunteers at the meeting on 22nd November, 1956. The Crown submitted that these submissions were fully supported by the evidence that the overt acts of attendance at two meetings and also the Congress of the People had been fully proved.

DE VOS CONTINUES.

Addressing the Court on the aspect of Communism, Adv. de Vos submitted that in a written message by this accused he had expressed praise for China in its victory over imperialism and for its having established a social order in which the exploitation of man by man had been abolished; he had also lauded the role played by the People's Republic of China in the struggle for peace and friendship. Finally he had expressed confidence that the common people would achieve liberation from oppression in the not too far distant future, and from these examples the Crown submitted that inference should be drawn that Mathole was advocating the type of state existing in China, i.e. a Communist state.

HOEXTER ON TYIKI

The next accused to be dealt with by the Crown was S. Tyiki. Dealing with meetings attended by this accused, Adv. Hoexter submitted that the reports of detective Sgt. Helberg were coherent and that no doubt had been cast by the defence on the correctness of his testimony and therefore the Crown could rely on all the speeches reported by him. On the meeting of 11th July, 1954 the Crown submitted that all the speeches expressed violence, including that of this accused. Mr. Justice Bekker asked what a member of the audience who heard violence from the platform could be expected to do; the Crown replied that if he were a chairman of an important branch he would be expected to take the matter further. Mr. Justice Bekker asked whether the Crown knew that that had not been done and Adv. Hoexter replied that if it had Tyiki would have given evidence to that effect. Mr. Justice Bekker referred to the onus not being on the accused, but the Crown replied that apart from this, it could be brought to the notice of the Court through other witnesses. It was unthinkable that anyone could hear such speeches, disapprove and not voice disapproval and if it had been voiced, then it would have been brought to the notice of the Court.

WAS HE SEEN?

When the Crown dealt with the meeting of the Freedom Charter Committee at which it was submitted that Tyiki had been present during the speech of Sejake, Mr. Justice Bekker asked whether this accused had actually been seen during the speeches of Resha and Sejake; the Crown referred in reply

to the position of Tyiki and the purpose for which he had gone to the meeting; there was a reasonable possibility that he had gone there to listen to the speeches and the Court was asked to exclude all other possibilities. It would have been easy if he had not been there, to have thrown out such a suggestion, quite apart from taking the witness stand.

Mr. Justice Kennedy asked whether the Court had to assume that the accused had been at the meeting all the time and the Crown conceded that there might be some doubt, but added that this accused had given no indication that he had not heard these speeches. After referring to other meetings at which this accused had been present, the Crown stated that in so far as the Anti-Apartheid Conference was concerned it would not be held as an overt act against this accused.

OVERT ACT.

Mr. Justice Rumpff asked why it should be held as an overt act against others but not against this accused and vice versa in connection with other meetings. Adv. Hoexter replied that that would have been a good question two years ago and said that it might have been an unwise step which the Crown might have cause to regret.

ACTIVE BRANCH.

The Crown then made the usual submissions on this accused in relation to his hostile intent and adherence to the conspiracy, referring to his activities for these inferences. Tyiki had been the Chairman and an executive member of the Sophiatown branch from 1953 to 1956; his was a very important and active branch and worked closely with the ANC Secretariat. Thirty two meetings had been attended by this accused during the period and of those he had acted as Chairman at twelve, fifteen had also been attended by Resha, at eleven both he and Resha had been speakers and Resha had been Chairman at six of the meetings addressed by Tyiki. Taking his position into consideration and the extent of his activities, and particularly speeches made at certain meetings which he attended, the Crown submitted that the only reasonable inference that could be drawn was that he supported the liberatory movement, here and elsewhere, and followed the ANC Policy of achieving a new State by unconstitutional and illegal action. He knew that this sort of action was likely to lead to clashes between the masses and the forces of the state and that that would involve physical violence and the loss of life. The overt act held against this accused was the Congress of the People which the Crown submitted had been proved against the accused.

V.N NIEKERK CONTINUES ARGUMENT - ON SELEPE

Adv. van Niekerk Q.C. continued the Crown argument, dealing with the accused Peter Selepe. Most of the meetings at which this accused had spoken had been in Alexandra Township, reported by the Detective Masilele, against whom the Defence had levelled the criticism that a meeting which had occupied two to three hours was reported in three pages; there had not been any criticism, the Crown submitted, of his ability to take down a report. Frequent questions were asked by the Court during his argument on these meetings as to the meaning of the extracts quoted by the Crown and the interpretation to be made by the Court.

Concerning one quotation, Mr. Justice Rumpff commented that although the Crown submitted that reference to soldiers' uniform suggested violence, the accent was on the uniform, not on the battlefield. The Crown agreed not to take this submission any further. Of another meeting Mr. Justice Kennedy asked whether, if the reports were so weak, the Court could rely on anything at all of the report of this meeting; the Crown said that it would not press this meeting unduly. The Crown submitted that the reference

by Selepe to Bantu Education being "over his dead body" constituted violent resistance to Bantu Education. Mr. Justice Bekker commented that this phrase could sometimes be taken literally, sometimes metaphorically, and asked what test the Crown should apply to decide. The Crown replied that unless it could be shown to be metaphorical, it should be taken literally. Mr. Justice Kennedy said that this phrase had been used by the Executive Committee of the Province of Natal concerning a certain appointment in the Education Department and asked whether the Crown would say that was violence?

WOULD NOT WAIT.

Adv. van Niekerk replied that this was not in the evidence. The Crown then agreed that the submission should be incitement to violence against the constituted authority. It was submitted that the hostile intent of this accused and his adherence to the conspiracy should be inferred from his activities; he had been an active member of the ANC and had attended a number of meetings of the ANC and also of the Communist Party. He had supported the anti-Pass campaign and the whole liberation movement; he had stated that the people would not wait for the changes to be made, they would make the changes themselves tomorrow. He had attacked the Bantu Education Act and the capitalist system and had suggested a change of state form. His speech of May 9th 1954 was submitted to be an incitement to revolution by which could only be meant armed insurrection. Of other speeches it was also submitted that they were an incitement to violent action to gain freedom, to crush white imperialism which should be driven out of South Africa as it had been driven out of Indo-China. This accused had condemned the present state and advocated violence to get rid of the present Government. The only overt act laid against him was the Congress of the People and no argument on Communism was addressed to the Court.

VAN NIEKERK ON MOLIFI.

On the following morning, February 23rd, Adv. van Niekerk addressed the Court on the accused J. Molifi. When the Crown submitted that this accused had participated in a national ANC conference, the Court asked for proof that he had taken part, but the Crown said it would delete the reference. When the Crown was dealing with documents found in the possession of this accused, reference was made to "The Review of World Events" and the Court asked what they should infer. Adv. van Niekerk said that the record merely had that title and Mr. Justice Rumpff commented that the Crown might as well put in the Huisgenoot or the Outspan. The Crown said that every document found with this accused had been put in to the argument, but agreed to take out this one. Of another document, the Court ascertained that its contents had not been read into the record and on obtaining no satisfactory reply from the Crown this was accepted to show possession only.

DOCUMENTS.

The Crown submitted that the documents found in the possession of this accused showed support for the liberation movement and also contained a denunciation of the present state, demanding its destruction and its replacement by a different state based on the Freedom Charter. The documents showed support for the Freedom volunteers and condemnation of capitalism, imperialism and fascism. The omission of a word caused the deletion of another document from the argument when Mr. Justice Rumpff pointed out that as the extract stood it was meaningless, and Mr. Justice Kennedy said that the submission of the Crown on this document was an assumption. Mr. Justice Rumpff commented on the Court's difficulty in linking up some of the documents with the argument.

DID NOT MAKE SENSE.

Arguing on the meetings attended and addressed by this accused, Adv. van Niekerk conceded that in the reporting by Masilele there were certain portions which did not make sense but a great portion could be easily understood and followed; he submitted that where the reporting by Masilele of this and other speeches made sense it could be relied on. This reporter had been quite honest and had admitted that he might have made mistakes. Mr. Justice Kennedy asked what, if the matter might be mistaken, it could amount to? The Crown submitted that the Court could test the contents of the meetings against the general background; what Masilele had reported did not depart from the general theme. The Court would bear this in mind and would find that Masilele was a trustworthy and reliable reporter. Dealing with other meetings reported by Sgt. Wessels, the Crown submitted that this reporter could be relied on even though he had conceded in evidence that he might have made mistakes in reporting the speech of Sibande.

The Crown submitted that the conspiracy had been proved against this accused and that his hostile intent and adherence to the conspiracy should be inferred from his activities. He had been a prominent member of the ANC and the ANCYL during the period of the indictment and on the National Executive of ANCYL; he had been the branch secretary of the ANC and also secretary of the People's Transport Committee in Evaton. He had attended a number of meetings at which he had supported the liberation movement and denounced the present state, advocating its substitution of another state. He had supported the call for Freedom Volunteers and unconstitutional and illegal action, including the use of violence against the constituted authority. At none of these meetings had this accused dissociated himself from the speeches made. Finally it was submitted that the accused J. Molefi was guilty of the crime of treason in that he had adhered to the conspiracy set out in the indictment and that he had attended the Congress of the People.

VAN NIEKERK ARGUES ON NENE.

On the following morning the Crown led the argument on the accused P. Nene. Adv. van Niekerk submitted that the speech made by Rasha on 21st February, 1954 advocated violence against the constituted authority through the references to bullets and atom bombs and the sacrifice of their bodies or their blood. He had said the people must be ready; no one knew the hour or the day and the Crown submitted that this meant the people must be ready for something, sacrifice Mr. Justice Kennedy asked how the Court could infer that and the Crown said it could take the matter no further. Referring to a speech submitted by the Crown to be inciting the people to take mass action to destroy the government, Mr. Justice Kennedy commented that the whole speech might mean either one thing or another. Of another speech Mr. Justice Bekker asked why the speech had to be given its ordinary meaning rather than a metaphorical meaning. The Crown submitted that the suggestion that where there must be sacrifice, people must die, referred to unconstitutional action in which the government would be forced to take violent action and this would be unconstitutional action, even if not violent, against the authorities; the Crown could not take this aspect any further.

ANC NAVY?

When the Crown submitted that the statement by Selepe at a meeting that they must fight the nationalists in the sea, on the land and in the air, constituted violence against the state, Mr. Justice Rumpff said that these references were surely metaphorical and asked whether the ANC had had an air force or a navy? With Churchill it had been a different matter; Adv. van Niekerk referred to a statement in another speech that the ANC

was at war with the government and again Mr. Justice Kennedy commented that it was obviously metaphorical, since there was no war in 1954. The Crown submitted that these references showed a mental attitude, but Mr. Justice Kennedy said that the evidence had not shown anything other than that they were against the government. Adv. van Niekerk replied that when there was a reference to war, he had taken it to mean in ordinary language a physical clash between two parties - unless the Court should find it to be metaphorical.

Mr. Justice Rumpff: "You should convince us! We are not going to work out your argument!"

A LOT OF EVIDENCE.

After hearing the Crown submissions on other speeches, Mr. Justice Bekker said that the Court had listened to a lot of evidence, there had been talk about the supreme sacrifice and that they must be prepared to face a government which would stop at nothing and asked why the speeches must have a primary meaning rather than a secondary meaning unless there were words in the speech which justified the primary meaning. Mr. Justice Rumpff said the Court wanted to know what unconstitutional action was advocated. When Adv. van Niekerk said that the speeches advocated unconstitutional action which would force the government to take violent steps to enforce law and order, Mr. Justice Rumpff pointed that this was not advocacy of violent acts against the Government and urged the Crown to make this material distinction. Adv. van Niekerk thanked the court for pointing this out.

When the Crown had made submissions on the speeches at the Congress of the People Anniversary meeting, Mr. Justice Kennedy said that the whole tenor of what the Crown had referred to had been that this was a day of commemoration for those who had died for freedom, but the Crown submission was that the extracts quoted showed advocacy of violence against the state. He would be obliged if the Crown would refer in detail to the parts which supported its submission. When Adv. van Niekerk had referred to a few extracts Mr. Justice Kennedy pointed out that there could be other interpretations, his difficulty was that these extracts did not seem to support the contention of violence against the state. Mr. Justice Rumpff gave his opinion that what the Crown submitted was no more than unconstitutional action and asked whether it was for the Court to look at the Crown submissions to find out? It was for the Crown to tell the Court. Adv. van Niekerk then agreed that the extracts in question fell into the category of unconstitutional action which might lead to violence by the state.

HOSTILE VIEWS.

Finally the Crown submitted that this accused was guilty of treason and referred to his activities for inference of his hostile intent and his adherence to the conspiracy. He had been chairman of the Alexandra Township branch of the ANC and had had documents in his possession which contained support for the liberatory movement, denouncing the present state, advocating a new state, and praising conditions in the Soviet Union; the documents showed support for unconstitutional and violent action and in the speeches made or heard by this accused, there had been support for Korea, Indo-China etc. and also the denunciation of the state and advocacy of its replacement by another state based on the Freedom Charter. He had expressed view hostile towards capitalism and had also tended to create enmity between the black and white races in South Africa. He had supported the ANC campaigns and advocated unconstitutional and illegal action including the use of violence against the constituted authority.

CROWN'S ARGUMENT ON NKADIMENG

When the Crown began the argument on the accused Nkadimeng, the attempt

was made to follow the suggestions made by the Court for the presentation of the argument distinguishing between violence against the state and violence by the state, but after a short while, Adv. van Niekerk asked the Court to adjourn until the following Monday to provide time for the re-casting of the argument on this accused and the three others to follow. Adv. Kentridge for the Defence said that the Defence would not oppose this adjournment which would save time in the long run, but asked whether the Crown could not proceed with the argument on one of the co-conspirators. When the Crown admitted that there was no argument ready, the Court adjourned.

Issued by : THE TREASON TRIALS DEFENCE FUND (W.O. 2092)
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TREASON TRIALS DEFENCE FUND

PRESS SUMMARY

No. 55.

This is the Fifty-fifth issue of a regular bulletin giving a factual resume of the proceedings of the Treason Trial.

Period Covered : 27th February to 3rd March, 1961.

VAN NIEKERK CONTINUES ARGUMENT ON NKADIMENG.

When the Court resumed on Monday February 27th, Adv. van Niekerk continued his argument on the accused John Nkadimeng, submitting that the conspiracy as set out in the indictment had been proved against him and that his hostile intent and his adherence to the conspiracy would be inferred from his activities. This accused had been a prominent member of the A.N.C. and also the S.A. Congress of Trade Unions; he had also been a member of the Resist Apartheid Committee and had also been Deputy Volunteer-in-Chief to Resha; he had served on the Transvaal Peace Council and had in his possession documents which contained denunciation of the state, support for the liberation movement and the Congress of the People and envisaged a struggle against the Government.

IN LUTHULI'S LIFETIME.

This accused had expressed the following views at meetings where he had spoken; that the people of South Africa should move to freedom during the lifetime of Luthuli; that the workers should share in the wealth of the country; he attacked the Government and said that anyone who stood in their way would be pushed aside. At one meeting which he had attended he had seconded the motion that SACTU should affiliate to the World Federation of Trade Unions. At meetings which he had attended and at which prominent members of the Congresses had spoken, the Crown submitted that capitalism, fascism and imperialism had been denounced, and it had been said that the Government had a policy of exploitation directed against the workers; that the Congress of the People and the Freedom Charter had been supported for the progress of freedom and democracy; that the working class struggle could not be separated from the struggle for liberation and the workers should be organised for the ideal of the Freedom Charter; speakers had also said that passes should be burnt and that the Soviet Union had brought about the new ideal of society which they had dreamed of. At these meetings speakers had denounced the present state, had demanded the substitution of a state based on the Freedom Charter, had lauded the conditions in the Eastern European countries, China and the Soviet Union and had said that the struggle in South Africa is the same as the struggle the world over for peace and freedom. Support had been expressed for the Bantu Education Campaign, the Western Areas Removal Campaign and the pass campaign. The people were prepared at these meetings for unconstitutional and illegal action including the use of violence.

TWO OVERT ACTS.

In the case of this accused, the Crown particularly relied on the important executive position that he had held, the documents in his possession, his participation in meetings and his association with other persons in the struggle. These factors pointed inevitably to his knowledge and support of the views, objectives and methods of the Congress movement in the liberatory struggle. He must have known that illegal means would be used in which the masses would be brought into conflict with the forces of the state. The Crown submitted that two overt acts had been proved against this accused, his attendance at the Congress of the People and also at the meeting of the A.N.C. in Johannesburg on November 22nd, 1956.

VAN NIEKERK ON LILIAN NGOYI.

Adv. Van Niekerk then made the Crown submissions in respect of the accused Lilian Ngoyi, referring first to the positions she had held. She had been an active and prominent member of the National Executive Committee of the ANC and also National president of the ANC Women's League as well as of the Federation of South African Women. Mrs. Ngoyi had been a member of the Transvaal Peace Council and also of the National Consultative Committee. The Crown submitted that she had knowledge of the contents of documents found in her possession, because the contents were more or less the same as the contents of her speeches, but the Court objected that in that case it would have to look at the whole contents of the documents found in her possession. The Court submitted that these documents contained denunciation of the present state and the demand for a new state and supported the liberation movement and the Defiance Campaign.

TO BE INFERRED.

The Crown submitted that the hostile intent of this accused and her adherence to the Conspiracy should be inferred from her activities; at meetings she had denounced the present state form and demanded its replacement by a state based on the Freedom Charter, and had supported the Bantu Education, Western Areas, and anti-Pass campaigns, advocating unconstitutional and illegal action including the use of violence to effect the change of state. She had recommended political education for the instruction of the people.

"WHERE IS THIS ATMOSPHERE?"

Dealing with the meetings attended by this accused, the Crown submitted that the speakers had inter alia supported the liberation movement, denounced the present state and demanded its destruction, and advocated the use of unconstitutional and illegal action involving violence against the constituted authority and at none of these meetings had she dissociated herself from what had been said. The Court asked many questions on the submission that she had associated herself with these speeches, pointing out in one case that Mrs. Ngoyi had in fact spoken before the speaker with whom she was alleged to have associated herself. On a speech by Mrs. Ngoyi herself, the Crown submitted that the inference that she had denounced the present state and demanded its substitution was to be drawn from the atmosphere of the meeting. Mr. Justice Rumpff asked where the Court could find this atmosphere. It could not create it! Adv. van Niekerk submitted that Mrs. Ngoyi had set out Russia as a state which she would like to have. Mr. Justice Kennedy asked how the Crown could say that - it didn't fit in!

RIGHT TO CRITICISE.

Mr. Justice Bekker called the attention of the Crown to a judgement in the U.S.A. Court which had upheld the right to criticise the system of government, even though this might undermine confidence in it or lead to discontent with it; and the right to criticise or praise the internal or international role of other governments. He had asked whether the law of South Africa varied on this? And when the Crown agreed that it did not differ, went on to say that the mere fact of praising Russia could not be relied on without something else, for example reference to the desirability of having a similar government here.

The Crown submitted that the conspiracy had been proved against this accused and proceeded to deal with the other overt acts laid against her, her attendance at two meetings, claiming that by not dissociating herself from the speeches of Rasha and Sejake she had agreed with them.

ORDER OF THE DAY.

Dealing with Mrs. Ngoyi's own speech at the Freedom Charter Committee meeting, the Crown submitted that there was no doubt of incitement to violent revolution against the constituted authority; even if there could be any doubt about her own remarks, violent speeches had been the order of the day and her remarks as reported would have been in accordance with the speeches at this meeting. Referring to the evidence of Helen Joseph that she had not hear Mrs. Ngoyi say that those who stood in their way would be taken alive and thrown into the fire, and that she would have discussed it with Mrs. Ngoyi if she had made such a statement, the Crown submitted that the evidence of the shorthand writer should be preferred.

The Crown finally submitted on this accused that she should be found guilty of treason in that she had adhered to the conspiracy and had addressed and attended the two meetings laid as overt acts against her. No argument on Communism was led against this accused.

CROWN'S ARGUMENT ON LEON LEVY

The next accused to be dealt with by the Crown was Leon Levy. It was submitted by the Crown that the conspiracy had been proved against him and that his hostile intent and his adherence to the conspiracy could be inferred from his activities. He had been an active member and Secretary of the Transvaal Peace Council and on the National Executive and also Secretary of the S.A. Peace Council; he had been an active member of the Congress of Democrats and played an active part in the preparations for the Congress of the People. Since the inauguration of the S.A. Congress of Trade Unions, he had been an active and prominent member and had also served on the National Consultative Committee. He had been a party to the organisation of study classes and lectures in SACTU. At the National Conference of the Congress of Democrats he had been present when the resolutions had been passed denouncing the present state and propagating its replacement by a state based on the Freedom Charter which would guarantee the rights embodied in it through unconstitutional means. The Crown submitted that this accused could be held responsible for the adherence of SACTU to the policies of the ANC.

DOCUMENTS.

The documents he had possessed contained inter alia, condemnation of the Bantu Education Act and the pass laws, support for the ANC in these campaigns, support for the Congress of the People and the Freedom Charter, statements that peace and freedom were indivisible and denunciation of the S.A. Constitution. This accused had taken part in meetings where the state had been denounced, illegal action had been encouraged against the state which would lead to a violent clash and the substitution of a state founded on the Freedom Charter had been encouraged. He had not dissociated himself from the speech made by the co-conspirator Vundla in which there had been incitement to violent resistance against the Western Areas Removal.

Mr. Justice Rumpff asked what was the type of action which the Crown alleged encouraged a violent clash; when the Crown referred to illegal and unconstitutional action, Mr. Justice Rumpff pointed out that not all unconstitutional and illegal action would lead to violence and asked again what type of action would lead to a clash? Pressed by the Court, Adv. van Niekerk pointed to the Defiance Campaign and the reference to fighting for freedom and suggested that perhaps the use of the word "action" was not very happy. Mr. Justice Rumpff said that this submission of the Crown was very important and the Court must be told how the Crown came to the submission that action had been encouraged which would lead to a violent

clash with the state. Adv. van Niekerk asked the Court to let this submission stand over.

Dealing with Crown submission that unconstitutional action had been praised, Mr. Justice Kennedy said that he could see no such praise and suggested that when the Crown studied its submission it might rephrase it.

SUPREME SACRIFICE

On the attendance of this accused at the meeting of the Freedom Charter Committee, the Crown submitted that he had spoken after Sejake and had not dissociated himself from that speech, although he had the opportunity to do so.

At the Congress of the People anniversary meeting, the Crown submitted that the desire for a new state was expressed, a new state based on the Freedom Charter, and the view was propagated that they were conducting an unconstitutional struggle and that as a result of that they would come into conflict with the state and might have to make the supreme sacrifice, but that should not deter them. This submission replaced the former submission that action which would lead to a violent conflict with the state had been encouraged. Finally the Crown submitted that from the evidence the charge against this accused had been proved.

CROWN ON MASINA - LAST ACCUSED

The last accused to be dealt with by the Crown was Leslie Masina, against whom the Crown made the usual submissions in respect of the conspiracy and the inferring of the hostile intent and the adherence to the conspiracy from his activities. Referring to documents found in his possession, the Crown submitted that they contained praise and defence of the Communist countries and support for the liberation movement and for people in colonial and semi-colonial countries such as Kenya, Malaya, Korea etc.; the present state was denounced as fascist and as a police state; the aim was declared to replace this state with a government of the people's democracy or a "sane progressive government as enshrined in the Freedom Charter"; there were statements condemning the Western Areas Removals and the Bantu Education Act and supporting the anti-Pass Campaign. At one of the meetings attended by this accused, the Crown submitted that the statement made by a speaker that they knew how China got freedom could be inferred to be advocacy against the Government. Adv. van Niekerk said that this was what was on the record.

Mr. Justice Rumpff : "Don't look at me; I did not complete the record."

GO TO GAOL.

On a further submission by the Crown that when Masina said they should be determined to go to gaol for freedom and if they died they would die for freedom, that constituted violence, Mr. Justice Rumpff asked "Why?". The Crown replied that it was advocating an illegal action because they were determined to go to gaol. The Crown submitted that this accused had been an active member of the National and the Provincial Executives of the ANC during the whole period of the indictment; he had been the general secretary of SACTU, an executive member of the Peace Council and a senior member in the liberation movement, also an executive member of the World Federation of Trade Unions and had been present when the decision was taken for SACTU to affiliate to the WFTU. He had been a party to the organising of SACTU study classes. At meetings which he had attended, the Crown submitted determination had been expressed to resist the Government by violence; the ANCYL Conference had expressed solidarity with the people of Kenya, Indo-China, North Korea, Malaya and British Guiana. The trend of the

meeting on the 10th April 1955 was submitted to be to offer violent resistance against the Bantu Education Act and against passes.

COMMUNIST ASPECT.

The Crown submitted that the conspiracy and adherence to it had been proved against this accused and also the overt acts of his attendance at certain meetings, where he had spoken and had not dissociated himself from the speeches of others. Adv. de Vos argued the Communist aspect of the Crown case against this accused, submitting that he had made favourable reference to the revolution in China, and had accepted the Communist concept of the class struggle and class divisions, denouncing capitalism and emphasising the role of the working class in the struggle against capitalism and imperialism and the need for working class rule. Apart from the fact that as General Secretary of SACTU he was responsible for the issue and distribution of the ten SACTU lectures, he also had all 10 of them in his possession. On the lectures the Crown submitted that the Communist theory of the development of society from one state to another through class struggle was propagated; reformist tactics in Trade Unions were condemned and the workers exhorted to work for the establishment of a people's democracy in contrast to the present system. The Crown submitted that the inference was inescapable that Masina as general secretary of SACTU had known and approved of the decision of his organisation to prepare the lectures and propagate their contents; he had also known their Communist orientation and that the first lecture especially propagated the theory of violent revolution. He had also set about organising the industrial workers to overthrow the capitalist system and had possessed numerous books with a Communist content. He was associated with the WFTU as an executive member and had attended the fifth session of this Federation in Warsaw in 1954.

COMMUNISM AND THE ANC.

On Wednesday March 1st, Adv. de Vos addressed an argument to the Court on the accused Dr. Conco, submitting that although the Crown did not submit that he was communist, his evidence would assist to show how Communist influence had infiltrated his organisation; he had admitted the ANC denounced the present state as imperialist and fascist and that the reference to the death of Stalin as a blow was consistent with ANC policy. He had also admitted that the ANC ideal state would conform to the People's Democracies and that the ANC accepted the division of the world into two groups. Referring to the evidence of Chief Luthuli on the same basis, the Crown submitted that he had been unreliable as a witness, because he had been trying to hide what he had in fact accepted as Communist ascendancy. The Crown referred in support to a confidential letter from Chief Luthuli to the "Hauser Group" in the U.S.A. in respect of financial aid for a newspaper. Chief Luthuli had failed to give a satisfactory explanation, the Crown submitted, of his reference to the "left ascendancy"; he had been afraid of showing leftish influence to this group in the U.S.A. The Crown also compared the original message drafted by Chief Luthuli on the Hungarian situation, in which he had condemned Russian intervention, with the final resolution at the ANC conference which had said that opinion must be reserved, but regretted the whipping up of opinion against the Soviet Union. The Crown submitted that there was clearly a conflict between his personal opinion and the final conclusion reached at the conference.

DIRECTION.

Although Luthuli had denied knowledge of Communist policy, he must have known the direction in which the ANC was going; some of his closest associates, such as Moses Kotane, were Communists and he had known of the visits of the Congress leaders to Russia. The Crown submitted that the ANCYL had affiliated with the knowledge of the ANC, to the World Federation of Democratic Youth; Luthuli had said that he didn't know of this affiliation,

but he had spoken at the Colonial Youth Day meeting. The Crown had not proved that Luthuli was personally a Communist, but he had not been able to curb the Communist influence in the ANC and he was aware of it.

Adv. de Vos also made similar submissions on the witness Yengwa, who had admitted that he had organised the Summer School at which the lecture by J.G. Matthews on African Nationalism Today had been read and discussed; this showed that leading members of the ANC knew about the lectures and the Summer School.

DE VOS BEGINS ARGUMENT ON CO-CONSPIRATORS.

After handing to the Court some further schedules relating to Communist "catchwords", the Crown concluded the argument on the accused, and Adv. Trengove began the Crown argument on the alleged co-conspirators, explaining that in addition to Chief Luthuli, Professor Matthews and Yengwa, other co-conspirators would be dealt with in three groups; the first group would include those whom the Court would be asked to accept as real co-conspirators. Those in the second group would not be submitted as co-conspirators although the Crown would refer to evidence concerning their speeches on the basis of its being admissible against certain of the accused, who had attended the meetings at which they had spoken. The Crown thus submitted that in view of the positions of this group of people, documents in their possession were still admissible and relevant in terms of the Section of the Code concerning inferences to be drawn from documents found in possession of members of an organisation. This evidence would not therefore fall away because they were not co-conspirators. The Crown would submit the facts at this stage because if the defence should argue the admissibility, the Crown would later only be entitled to argue on the law and not on the facts. The Crown then referred to meetings and documents in respect of the former co-conspirators, Andries Chamile, Barthelomew Hlapane, F. Kietsing and Moses Kotane. In the case of the last, Moses Kotane, the Crown submitted that although he was no longer alleged to be a co-conspirator, cross-examination on the documents written by him, such as South Africa's Way Forward, would still stand because the witnesses had made them their own by identifying them; other persons in this group were J. Kumalo and Frank Madiba. The Court would not rely at all on anything concerning the persons in the third group.

HUTCHINSON.

The Crown then turned to the group of twenty-seven persons, whom the Crown asked the Court to find in law were co-conspirators. If they were found to be co-conspirators, then anything they had said or done in pursuance of the conspiracy would be binding on the accused or the other co-conspirators. Beginning with Alfred Hutchinson, the Crown submitted that he had been actively engaged in the Head Office of the ANC and if anyone was, he was intimately involved. It was not necessary to ask the Court to find that this person was a co-conspirator, for it was abundantly clear. Tennyson Makiwane had been prominent in the ANC Youth League and the Peace Council and had also been the New Age representative on the Rand. A number of documents had been found in his possession relating to the liberation movement and to the struggle in other countries. In his speeches he had dealt with the Western Areas Removals, and the Bantu Education. He had attended a number of important meetings including that of November 18th 1956 where Matlou had made his violent speech. Having regard to his position, his possession of documents and the meetings he had attended the Crown submitted that he had full knowledge of and participated in the conspiracy.

JOSHUA MAKWE.

Joshua Makwe, was the next co-conspirator to be dealt with on the

basis of the speeches made by him, which the Crown submitted were violent, but the Crown added that if the Court should find that the witness who reported his speeches was not reliable, then he would not be a co-conspirator. The Crown submitted that the next co-conspirator M. Makgothi had in mind actual conflict and referred to articles written by him. There could be no doubt about his state of mind. He had attended a number of important meetings and had been a speaker at the meeting where the "Beerhall" speech had been made and it was clear from his attitude and his knowledge of the conspiracy that he had been part and parcel of it.

Similar submissions were made in respect of Sampie Malupi who had also been present when violent speeches had been made and who had himself incited people to violent action in the Western Areas; The Crown submitted that this co-conspirator must accept full responsibility for that campaign. Jonas Matlou was the next to be dealt with, and the Crown referred to his speeches, particularly to the speech where he had urged the people to be prepared to shed blood. These violent speeches disclose a violent state of mind and the Crown submitted that he was in the conspiracy. Of Nthithe the Crown said that he was clearly in the conspiracy with Resha.

VIOLENT CLASH.

Dealing with N. Sejake, the Crown submitted that there was no doubt that in his speech at the Freedom Charter Committee meeting, he was holding out to the people that if they wanted the Freedom Charter, they must be prepared to clash on a countrywide scale with the police and the armed forces. There could be no question of this having been a metaphorical allusion and it could not be reconciled with anything but the meaning of a violent clash. His activities showed that he was involved in the conspiracy and that he subscribed to the view that a violent clash was necessary.

When the Crown submitted its argument on the co-conspirator H. Tshabalala, Mr. Justice Bekker said that it had been suggested in evidence that the references to bloodshed were not to be taken literally. Depending on the context, it might transpire that a reference to blood might be metaphorical or literal, also for example the idea of going to gaol, or dying was submitted to mean that they were about to embark on unconstitutional action. What if they believed that even if they acted lawfully they might still have to face death? The Crown replied that even so they might create the situation where the state might find it necessary to use force. Mr. Justice Bekker asked the Crown to say what test should be applied to decide whether a speech were to be taken literally or metaphorically.

WHEN IS SPEECH METAPHORICAL?

Adv. Trengove replied that if a member of a politically constituted party used the expression "over my dead body" it would obviously be metaphorical, but if it were to be said by a member of what was not a true political party Mr. Justice Bekker asked whether in that case a member of a non-political party would be prohibited from using metaphorical language, the Crown replied that the test would be what were the methods to be used; if they were unlawful and then you said "Over my dead body" then it would mean that you were going to resist to the point where the government resorts to violence. The utterances must be seen in the light of expressed unconstitutional policy and the expectation of violence from the government.

Reverting to Tshabalala, the Crown submitted that he had participated in the propagation of violence and was involved in the conspiracy.

OLIVER TAMBO.

On the following morning, March 2nd, the Crown continued its submissions on the remaining 18 co-conspirators, dealing first with O. Tambo; The Crown relied on his position on the National Executive of the ANC and the fact that when Sisulu was banned, Tambo was appointed Secretary-General and afterwards elected to that position; he had been intimately connected with the Western Areas campaign and had, together with Rasha prepared the Secretarial Report on it. He had been a member of the National Action Council and had played an important part in the Defiance Campaign. Reference was made to documents found in his possession and to meetings attended by him. The Crown submitted that there was no doubt that he was fully aware of the Western Areas Campaign and supported it fully without any qualification. P.G. Vundla had also held an important position in the ANC and had functioned on the Resist Apartheid Committee. It was clear that the Western Areas Campaign had been the focal point of the Resist Apartheid Campaign.

EASTERN CAPE.

Referring to 4 co-conspirators from the Eastern Cape, the Crown said that the facts which differed in respect of Mini, Mqota and Nogaya were only their positions in their organisations and the documents found in their possession. Dealing with Matjie, the Crown submitted that he had been a prominent individual in the Eastern Cape and after he had been banned, had been responsible for the issue of the Journal "Isizwe". His speeches and writings showed that he was a dangerous man who would not stop at anything to achieve his aims and violent action would not be excluded from his mind. The Crown then dealt with the former accused No. 24 W. Mkwazi, for whom a separate trial had been ordered; the Crown would now have to deal with him as a co-conspirator; there was no other way because then his evidence would not be admissible on account of the separation of his trial. Meetings attended by him had already been considered in relation to other accused.

L. BERNSTEIN.

The Crown then dealt with six co-conspirators from the S.A. Congress of Democrats, beginning with L. Bernstein, who the Crown submitted had been prominent in the SACOD and in the Secretariat of the National Action Council and had also been a member of the former Communist Party of South Africa. His documents showed that he had a knowledge of Communist doctrine; he had been at times editor of Liberation and of Fighting Talk. He had written the paper, "The Road to Liberty", which even if it should be found not to be a policy document of the SACOD, had been prepared by him in support of the liberation movement and the only inference which could be drawn would be that he wrote it in full knowledge of the aims of the conspiracy. He had also been responsible for certain issues and articles in Fighting Talk. The Crown submitted also that his speeches showed the Communist analysis and the objectives of a violent revolution leading to the Communist state.

Similar submissions were made in respect of P.J. Hodgson, who had also been a prominent member of the SACOD and had been elected National Secretary. He had been associated with Liberation and Fighting Talk and had prepared the "Draft Immediate Plan of Action" for the SACOD conference; this paper had also been referred to the branches for discussion. The Crown submitted that everything in that paper accorded with the policy of the SACOD and furthered the objects of the conspiracy. Even if there were doubt of the status of this document, there was no doubt that it was issued to promote the objects of the conspiracy.

RUTH FIRST.

Ruth First was the next to be dealt with in the Crown argument; it was submitted that she also had been a member of the former Communist Party; she had been prominent in the Peace Councils and had associated with Liberation and Fighting Talk. She had been one of the editors of New Age and had been a prominent member of the SACOD. She had visited the Communist countries and had consistently supported the peace and liberation movements. The Crown submitted that she had been involved in the conspiracy to overthrow the state and to establish a Communist state. Reference was made to her article "The Constitutional Fallacy" published in Liberation, and also to her speech on the Peace Movement in South Africa.

REV. D. THOMPSON.

The twentieth co-conspirator to be dealt with by the Crown was the Rev. Douglas Thompson, who had held prominent positions in the Peace Councils and the S.A. Society for Peace and Friendship with the Soviet Union. From the documents in his possession he must have known that this propaganda would have the effect of aiming at the overthrow of the State by violence and the establishment of a Communist State. He had attended ANC Conferences and the Congress of the People and had associated with prominent Congress members. Sonia Bunting was alleged by the Crown to have associated with ANC members and to have supported the struggle for liberation. She was intimately associated with the whole struggle and active in the Peace Council and at the Congress of the People. Sydney Shall was also submitted to have been a prominent person in connection with the volunteers. He had a hand in the Congress of the People and had made speeches for the purpose of furthering the conspiracy.

J.G. MATTHEWS.

Adv. Trengove then addressed the Court on the co-conspirator J.G. Matthews, referring to his close contact with the leadership of the ANC; he had been responsible for the Report to the 1954 ANC Conference. Considerable attention was paid by the Crown to letters addressed by J.G. Matthews to Professor Matthews and to Resha. Reference was made also to the lecture prepared by him, "African Nationalism Today" and also to the document "Economics and Politics", of which the Crown said it could not trace the authorship but submitted that it was very significant that it had been found in the possession of Resha, Kathrada and J.G. Matthews - three prominent Youth League leaders. The Crown submitted that J.G. Matthews should be found to be a co-conspirator.

Michael Motsele was the next to be dealt with; the Crown submitted that he associated with the ANC at Evaton and at Alexandra Township and that he spoke at meetings without repudiation - because he was an important member of the ANC. The Crown submitted that the meetings and the evidence of his position in the ANC left no doubt that he had been a co-conspirator.

PROF. Z.K. MATTHEWS.

The Crown then made submissions on the evidence of Professor Z.K. Matthews to the effect that from the positions occupied by him and from his evidence in chief there was no doubt that he fully appreciated ANC policy and that the ANC was embarking on unconstitutional methods as a form of political struggle and that he foresaw the possibility of bloodshed, as a result of the illegal methods adopted. He had been President of the Cape and was recognised as one of the ANC leaders. He had attended all the National and Provincial Conferences of the ANC and also National Executive meetings with fair regularity. The Congress of the People had been first mooted by Professor Matthews. The Crown submitted that although this witness was obviously qualified to speak on the broad policy of the

ANC and also to be a co-conspirator, it was important to see whether he was qualified to speak for the ANC. Living at Alice he lacked intimate knowledge of matters in the Transvaal, the main province for ANC activities. He had however known about the use of illegal action in the Western Areas Campaign, yet when confronted with documents he gave the reply that he did not know about this or that; the Crown submitted however that he knew of this campaign and of others and that he foresaw that if there were resistance the Government might use force. Adv. Hoexter said that the Crown accepted the flimsy knowledge of this witness on world front affairs, but when accepting his whole evidence, the question would have to be settled as to how far he was qualified to speak on the ANC. He was not well informed on the volunteers and the Crown submitted that this witness should have shown more knowledge of the National Action Council of the Congress of the People. Referring to an extract from one of his letters, the Crown submitted that when he said that because they were living in an explosive situation, they must be circumspect he had meant that they had leaders who were not circumspect. The Crown submitted that Professor Matthews had become inactive because he thought things might go wrong.

KNEW MORE.

Continuing on the following morning, Adv. Hoexter invited the Court to refer to the re-examination of Professor Matthews and submitted that he had feared, not the premature start of the campaign, but some reckless action which would lead to trouble. This witness had professed ignorance of certain matters; whether it was genuine ignorance or a desire not to say too much, the Crown submitted it should be examined in relation to his answers on the Western Areas, when his answers had been evasive. The Court would find that he knew more than he professed to know. He had recognised the need for pressure on the white electorate and had known that the Defiance Campaign had been planned in three stages and that the third stage would affect the safety and stability of the State; he did not admit this, in fact he denied it, but he had not been in the country in 1952 and 1953. He had refused to contemplate the possibility of the third stage ever being reached, yet other witnesses had been quite clear on this point. The Crown said that at any stage the Defiance Campaign might imperil the safety and security of the state, but this witness had resisted the suggestion and maintained that the third stage would not ever have been reached. The Crown submitted however that Professor Matthews had foreseen the possibility of violent clashes; that he had said that there was always the possibility that the government might use force and that they were prepared to face that, for the alternative would have been political impotence. They didn't hope for violence but they had contemplated violence by the state and had indicated this to their followers. The Crown finally quoted from the Report by Professor Matthews to the Cape Provincial Conference of the ANC in which he had referred to the two alternatives, "Give us Freedom or Give us Death."

EDUCATED MAN.

Adv. Trengove took over the Crown argument with submissions on the co-conspirator Yengwa, who had been one of the defence witnesses. From his evidence the Crown submitted that he had repeated what others had said about their non-violent policy and in certain aspects his evidence was in favour of the Crown. His position was such that he was out of the field of active participation in Congress affairs, on account of his banning order. He was not an ordinary member of the illiterate immature masses, but an educated man with the degree of Bachelor of Commerce. He had said that he could not remember ever disagreeing with anything in the ANC reports; he knew that the effect of the Defiance Campaign would be and was that the masses would commit illegal acts which would bring them into conflict with the police; his evidence had been evasive for it was clear that they must have decided at what stage they would go over into

the third stages of the campaign. The Crown submitted that his evidence on the Defiance Campaign was unsatisfactory, and that his replies were not candid statements. It was quite evident that they had been bitter against the Criminal Laws Amendment Act and also the Public Safety Act and to say that there was no bitterness was untrue. Although they knew that strike action could lead to violent revolution they had said that they would not be responsible because they didn't intend violence, but the Crown said that they would be responsible in law, and asked how Yengwa could go into the witness box and say that he didn't know much about strike action, when the 1946 strike and its results had formed part of his lecture to the Summer School. If he had not known the general acceptance by the ANC that blood would flow from the struggle, then he did not know much about the ANC and ought not to express an opinion. He had himself said that the road to freedom would be strewn with the blood of heroes, but had then said that it was a metaphorical allusion. On the question of the volunteers, to say that they were not subject to a call to break laws was not correct. The Crown submitted that the witness could have been expected to know what was in the lecture prepared by J.G. Matthews which had been read to the Summer School which he had organised and asked the Court to find on probabilities that he did understand these lectures.

LUTHULI.

The Crown submitted a written summary on the evidence of the last co-conspirator and witness, Chief Luthuli, referring to his evidence on his position in the ANC and his knowledge of policy. He had said that the ANC constitution did not provide for any methods and also that the objects must be read with the Freedom Charter; Africans Claims represented the basic aims on a broad basis only, and the Freedom Charter became the basic document. The ANC had considered changing the Programme of Action to suit the new conditions. He had said that the methods in the Programme of Action were all non-violent and that he believed in them because he believed in the innate goodness of man. The Crown then dealt with the ANC so-called policy of non-violence, referring to speeches dealt with by Luthuli in evidence. In his evidence he had tried to minimise the revolutionary stand of the Freedom Charter; his own leanings were towards a modified socialist state and he had wanted the ANC Conference to discuss the Nationalisation clauses of the Freedom Charter. In his address to the Natal Conference he had said that they must expect violence in spite of their non-violent policy.

BLATANT TERRORISM.

The Crown submitted that Luthuli's evidence in chief had shown clearly that he approved of the employment of unconstitutional extra-Parliamentary and illegal methods for the purpose of achieving fundamental and radical changes. His evidence showed that he knew and fully appreciated that as result of this mass action the Government might be compelled to suppress it by force and that this could result in a violent physical clash between the masses and the armed forces. He had held the view that this prospect, however regrettable, should not deter them from employing these methods. He knew that that kind of campaign against duly constituted authority was nothing else but blatant terrorism and that it could result in nothing else than armed clash. He was the mouthpiece of the ANC and he realised that the state of affairs they were creating would lead to force being used by the State. What the ANC had told their followers was that the state would use violence; whether compelled to or not, it would wantonly resort to violence against those struggling for their rights. However much Luthuli had relied on the innate goodness of man, the Crown submitted that that was not the attitude of the ANC up to 1956.

MAISELS PROTESTS.

At one stage when the Crown was reading extracts from the evidence of Chief Luthuli, Defence Adv. Maisels protested that the passages that the Crown was omitting answered the whole of their submissions.

The Crown submitted that the evidence of Luthuli that the ANC wanted to exert legitimate pressure to effect the changes they aimed at, must be rejected. He was not prepared to say how far the white people, were prepared to go in their resistance to the demands of the people, though he admitted that the government would use methods other than those used to suppress the Defiance Campaign.

DISGRACEFUL SPEECH.

The Crown submitted that Luthuli's attitude to non-violence destroyed any claim to genuine belief in non-violence. He had referred to the demonstration in 1959 of women against influx control when he had issued a call for control; whatever the motive it was not genuine condemnation of violence, and the Crown referred to his attitude in relation to Witziesshoek. In his evidence in chief he had made a point that he condemned riots. If he had been honest and candid and frank, he would have known that it was in 1959 that he had made that disgraceful speech about the people convicted of murder in Sekhukhuniland; he had already referred to Witziesshoek as an example of resistance to the Government. In his evidence he had shown, apart from his speeches, that he was prepared to give any excuse to explain how he had asked people to stand in respect for Sekhukhuniland.

BIASED.

On the foreign policy of the ANC, the Crown submitted that Luthuli's evidence had been that it was not important how other countries had achieved their freedom; the criticism of the U.S.A. had been that it was not itself imperialist but was closely associated with imperialist countries and supported them. Although he had at one stage said that under the pretext of restoring law and order, the British government had resorted to indiscriminate bombing and shooting, he had later tried to explain that the British Government had done what they had thought was their duty. The Crown submitted that Luthuli's evidence on the foreign policy of the ANC was unreliable; it had been ambiguous and contradictory; the ANC did in fact prepare their followers for struggles which would lead to similar consequences or results. The Crown submitted that Luthuli's replies to Mr. Justice Bekker on whether he could recall any incident of actual indiscriminate bombing or shooting in Kenya were biased and not honest; he was trying to avoid the consequences of his own statement.

Collection: 1956 Treason Trial
Collection number: AD1812

PUBLISHER:

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

Location:- Johannesburg

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