

- ① This is a part of the Advice on Evidence.
- ② The pages 12-34 inclusive } have been
+ Sections 1-20 }
sent to André Brink.
-

IN THE SUPREME COURT OF SOUTH AFRICA
TRANSCAAL PROVINCIAL DIVISION

In the matter between :

THE STATE

and

S. COOPER and TWELVE OTHERS.

ADVICE ON EVIDENCE

1.

We propose in this Advice on Evidence to deal with each of the counts in chronological order as they appear in the Indictment. Insofar as the Main Count is concerned we are faced with the difficulty that the State has not yet supplied all the particulars which it is necessary to have so as to enable us properly to advise the Accused on evidence. In the event of the State being ordered to supply further particulars and supplying them the Accused shall be furnished with a copy of the further particulars and asked to deal specifically with the information supplied insofar as it relates to each of them.

MAIN COUNT /

MAIN COUNT :

2.

The conspiracy relied upon by the State extends over a period of six years and in the light of the argument addressed by Counsel for the State to the Court on the application for particulars it appears that the Accused may in fact face on this count alternative charges/allegations involving a number of conspiracies during the period with varying objects.

3.

At this stage we advise each of the Accused to :

- (a) read the Further Particulars supplied by the State at pages 2 to 12 and in writing advise Counsel who is representing him what allegations in the Further Particulars the Accused specifically disputes with reference to conduct attributed to him. Insofar as participation in and attendance at the meetings etc. of the organizations is concerned each Accused should study

page /

page 3 of the State's response to the application for Further Particulars with particular reference to Annexure "A" and the events scheduled in that Annexure.

- (b) Prepare for Counsel representing him written instructions concerning the events specified in the fourth column of Annexure "A" to the State's aforementioned response to the application for further particulars. In doing this each Accused must bear in mind that the allegation made by the State is to the effect that by attending the more important meetings specified in the said schedule the "terroristic" objects of the organizations (which objects are spelt out in paragraphs 1 to 10 of the Main Count) became apparent to the Accused in question. This is the crux of the State case in support of the allegation that each Accused knew or became aware of, (either at the time of becoming a member or after he became a member), the "terroristic" activities which each organization was in fact engaged

in /

in as part of its daily activities.
SEE: on this aspect pages 2 and 3,
paragraphs 4 and 6 of the State's
further and better particulars.

(c) Give careful consideration when preparing the instructions for Counsel in terms of paragraph 3(b) above to providing information which will enable Counsel when cross-examining any of the State witnesses who were present on the occasions referred to as the events in the schedule to establish that the aims and objects of the organizations in question were not terroristic and that the activities which occurred on the occasions to which the State has alluded do not have the sinister conotation attributed by the State to them. It is essential when instructing Counsel for each of the Accused to deal frankly with any material in the volume references provided by the State in the schedule and where no such references have been

provided /

provided. Counsel needs to be alerted if there is any danger that the State in the said schedule references may be in a position to allege that statements were made or matters were discussed or decisions taken which could properly fall into one or more of the categories alleged by the State to be the objects of the conspiracy specified in paragraphs 1 to 10 of the Main Count.

- (d) Read carefully the interrogation statement made by him during his detention and to instruct Counsel representing him in writing which portions of the contents of that statement are not correct. We believe that the whole structure of the State case and the salient features in it can be gleaned from the line of questioning and topic of questioning dealt with by the security branch in each of the statements of the Accused. Put differently each Accused's statement should afford him a useful guide-line of the features of his conduct which the State will deal with in the course of leading its

evidence /

evidence as well as information relating to the identity of State witnesses who will be called to testify against the Accused. Each of the Accused's detention statements is studded with references to persons who are detained and have not been charged, to persons who were detained and have been released and to persons who have been neither detained or charged.

It will therefore assist Counsel representing the Accused if each Accused prepares for him a written summary in respect of each of the persons who are either detained or who have been detained and released showing where those persons feature in the Accused's detention statement (i.e. the page and paragraph reference) with a criptic note as to the topic dealt with.

- (e) Read carefully each of the volumes including volume 4(a) and provide Counsel who is representing him with written instructions about any material in those volumes which the Accused believes to be incriminatory

of /

of either himself or other Accused. Where possible Counsel ought to be provided with written explanations or written suggestions as to cross-examination designed to destroy or weaken the incriminatory conotation of any such documents.

- (f) Prepare a composite cross reference in respect of each detainee (released or not) which reflects the page and paragraph number where the name of such person appears in each of the Accused's detention statements with a criptic note as to the topic dealt with in such paragraph reference. Obviously each Accused should provide Counsel with written suggestions as to the motive (apart from the fact that the person concerned is or has been a detainee and is accordingly an accomplice) as to why any of the potential State witnesses should have a motive for incriminating any specific Accused. In this regard we

are /

are alluding to personal animosity or differences between any specific Accused and the witness concerned.

(g) Prepare written instructions about the "non-terroristic" activities of each of the organizations so as to enable Counsel when questioning State witnesses who were members of any particular organization to have to concede in cross-examination that there were innumerable activities of each of the organizations which could by no stretch of the imagination be suggested to have any sinister conotation and were in fact designed to achieve the advancement and improvement of the education and living standards of various sections of the black community in the Republic.

(h) Make themselves completely familiar with all the documents that have been annexed to the Indictment with a view to being able to give their interpretation of the meaning of the poems and dramatic works

referred /

referred to in the annexures and the purpose of the resolution that was taken concerning foreign investments. We shall deal with these annexures in more detail when we discuss the first Alternative Count.

- (i) Prepare for Counsel a written statement which deals in detail with the circumstances under which the Accused was detained with particulars as to the basis given to him from time to time by any Police Officer for his detention. The detention statement should also deal with the treatment, including the day to day living conditions, opportunity for exercise and social intercourse etc., as well as any torture or assault that was inflicted upon him during detention, identifying where possible the person who inflicted any such torture or assault. In using the word torture we include any humiliating, disparaging and insulting conduct on the part of any Police Officer or jailers. Counsel also wish to know what psychological effects, solitary confinement

produced /

produced on each Accused during his detention, what his appetite was like and whether and for how long he suffered from insomnia.

- (j) Read and familiarise himself with all the SASO newsletters and all the literature which is available and which was published by BPC, TECON or PET so as to be able in the course of his evidence to refer to material that was published which could on no conceivable basis be suggested to fall within the category of the objects 1 to 10 of the alleged conspiracy. It would assist Counsel if the Accused would draw our attention in written instructions to articles or literature appearing in such publications which fall outside the scope of the aforementioned objects so that Counsel can put such articles or passages from the literature concerned to various State witnesses with a view to obtaining concessions from them in cross-examination.

ALTERNATIVE COUNT (i) :

4.

This count concerns Accused Nos. 1, 2, 8, 9, 10, 11, 12 and 13. In those instances where any of the aforementioned Accused contributed to or was the author of or participated in any of the material or events which are set out on the schedule marked "A" to the Indictment, the Accused concerned should give written instructions to Counsel who is representing him as to :

- (a) his association with or participation in any of the material which is referred to in Annexure "A";
- (b) the meaning which he attributes to any of the poetry, the plays, the resolution and the articles in question bearing in mind that it is the State's allegation, inter alia, that the articles, poetry and dramatic works were likely to or did in fact cause, encourage or further feelings of hostility between the White and other inhabitants of the Republic.

(c) /

concerning the subject matter in question.
Enquiries must be made by the Accused's attorneys **
to see whether witnesses are available who were
present on either occasion and who can corroborate
Accused No. 8's version of what he said.

31.

We draw attention to the fact that the State
might have a verbatim recording, (either electrical
or stenographical), of what Accused No. 8
actually said. It is important therefore not to
jeopardise Accused No. 8's credibility or that of
other Accused who might wish to corroborate his
version of what he says he said if unimpeachable
evidence of what was actually said by him is
available to the State.

ALTERNATIVE COUNT (iii) :

32.

The matters canvassed in the State's allegation
on these counts are essentially factual. The
Accused should therefore give written instructions
to Counsel representing him of the part, if any,
played by them in organizing the rallies, the

steps /

steps taken to discontinue them and the events which occurred on the campus at Turfloop. The enquiry record of the Turfloop rally should be studied by the Accused and Counsel should be provided with written instructions concerning the evidence of persons who testified at the enquiry with particular reference to the correctness of incorrectness of such evidence. In due course we hope that the State will be ordered to furnish more detailed particulars of the precise part alleged to have been played by each of the Accused in the staging of the pro-Frelimo rallies.

33.

What we have said with regard to State witnesses with reference to the Accused's detention statement and material for cross-examination of such witnesses in passage 3(e) and (f) of our advice on the Main Count is also appropriate with regard to the Alternative Count (iii).

34.

It is important to bear in mind that Alternative

Count /

Count (iii) involves an allegation that the Accused concerned intended to endanger the maintenance of law and order by their actions. In their written instructions to Counsel the Accused should pay particular reference to this allegation in the light of their admitted conduct.

ALTERNATIVE COUNT (iv) AND THE LAST ALTERNATIVE COUNT :

35.

Insofar as Alternative Count (iv) is concerned the Accused there involved should give Counsel representing them written instructions as to whether the State's allegations are correct bearing in mind the resolution that was taken with regard to foreign investment in the Republic. Here too, we hope the State will be compelled to supply further particulars but we refer the Accused to the replies given by the State in its Response at pages 9 and 10, paragraph (h), after receipt of the Notice of Motion.

36.

Mr. Soggot has suggested that an economist should

be /

be approached to see whether the State's allegations that the effect of the conspiracy in Alternative Count (iv) and the effect of the letters that were written with reference to the last Alternative Count would have had or been likely to have any of the results specified in Section 2(2)(d)(h) and (1) of the Terrorism Act. An expert of this nature should be precognised on this aspect and should supply us with a memorandum of his views thereon and his reasons for his views.

37.

What we have said in paragraph 34 above with reference to Alternative Count (iii) is equally of application to Alternative Count (iv) and the Last Alternative Count. **

38.

Arrangements should be made to interview the Secretary of each of the companies set out on Schedule B and to whom a letter, in terms of the Further Particulars to the Last Alternative Count,

was /

was sent. The purpose of this interview is to find out what happened to the letter in question after it was received by the company. In particular information should be obtained, preferably in the form of a written statement, as to what the company's attitude was towards the contents of the letter and whether the letter caused it to take any steps which could conceivably be described as falling within one of the results specified in Section 2(2) of the Terrorism Act. Details concerning its Share Capital and the extent of foreign investment in it should be sought.

GENERALLY :

39.

The attorneys instructing us should attend specifically to the following matters :

(a) find out whether Dr. West is prepared to give evidence and find out what has happened to the promised set of topics for cross-examination which he undertook to let us have.

(b) Obtain from Counsel representing each of

the /

the Accused copies of the written instructions with which each of the Accused has been asked to provide his Counsel in terms of this Advice on Evidence.

- (c) Have available the undermentioned information and documents in a Lever-Arch file or files, suitably indexed, paginated and subdivided into sections dealing with SASO, BPC, TECON, PET and SRC Turfloop.

IN CONNECTION WITH SASO

- (i) The background to SASO with which Mr. Soggot was provided by Accused Nos. 3, 4, 9 and 10, and its constitution;
- (ii) The brochure entitled "SASO On The Attack";
- (iii) The bulletin entitled "Students

Politics /

Politics, Black Power, New Movements
and New Appraisels";

(iv) The various SASO newsletters in
chronological order;

(v) Any other relevant SASO documents,
apart from those in the five volumes
supplied by the State, which show
SASO's non-involvement with
"terroristic acts" and acts falling
outside the scope of any of the
results specified in the sub-paragraphs
to Section 2(2) of the Terrorism Act.
In order to compile these documents
it will be essential to peruse all the
SASO documents with which Consultant's
attorneys were provided from sources
in Durban after the commencement of
the trial and to peruse the documents
available at Compol;

(vi) a typed chronology of the date and

place /

and place of all general meetings of SASO, meetings of its Executive and meetings of its branches, including Minutes if available or volume references to them;

(vii) a typed chronology of the persons elected to office as Executive members of SASO or executive members of its various branches with the date and place where the election occurred and the office to which the person in question was elected;

(viii) an index, in chronological order, namely order when the event in fact occurred, to every document in the 6 volumes of documents supplied by the State and which has reference to a bearing upon the activities of SASO;

(ix) an index with volume and page reference numbers of all documents that were :

(aa) /

(aa) found at the offices of SASO or any of its branches;

(bb) found in the possession of any office bearer, member or active supporter of SASO.

In the latter regard the schedule to the State's Further and Better Particulars will be of assistance in compiling this chronology.

IN RELATION TO BPC :

(i) the background to BPC with which Mr. Soggot was provided by the Accused whom he is representing and its Constitution;

(ii) copies of any publications issued by or on behalf of BPC other than those referred to in the volumes supplied to the Accused by the State. In this regard it will be necessary to examine the documents sent to our instructing attorneys from Durban after the

commencement /

commencement of the trial and the documents at Compol. In particular, documents which show that BPC was engaged upon activities could not conceivably described as "terroristic" are of considerable importance as their contents should be put to various State witnesses in the course of the State case;

(iii) Where available, Minutes of all meetings of BPC, its Executive and its branches, notwithstanding that many of these are available in the volumes supplied to the defence by the State. What we have said in this regard should also be made available in the sub-section of the file dealing with SASO;

(iv) Chronologies of the same nature as those set out in the above references to SASO in sub-paragraphs (vi), (vii), (viii) and (ix).

IN /

IN RELATION TO SRC Turfloop, PET and TECON,
in the respective subdivisions of the file
or files on the Main Count there should be
inserted with paginated index references

(i) the Constitutions of these
Organizations;

(ii) a chronology of all the meetings of
the members of these Organizations
and their Executives;

(iii) a chronology of all office bearers
with details as to when and where and
at what meeting the particular office
bearer was elected to office;

(iv) Minutes of all meetings in chronological
order. Where copies of these Minutes
are available in the volumes supplied
by the State, the volume references and
page numbers to be given;

(v) a chronology with reference to every
document in each of the volumes

which /

which concerns SRC Turfloop, PET and
TECON;

- (vi) in the case of SRC Turfloop, a copy of the commission of enquiry record together with a document prepared by the Accused with regard to the evidence led at that enquiry;
- (vii) a list in chronological order of all the productions and publications of TECON, PET or SABTU including those with which the Accused have been charged or which are referred to in the volumes supplied by the State. This list should indicate when and where the matter was produced or published, who the participants were and there should be inserted in the file any programmes, advertising sheets, press announcements, reviews, critics or comments concerning these productions and publications. Obviously the Accuseds' assistance should be sought in the preparation of this

material /

material which we required is contained in the files which are already in possession of those instructing us;

(ix) the Accused should prepare a background to each of these organizations. One has already been prepared in connection with TECON but has not yet been typed. As far as we are aware no such background has been provided with regard to SRC Turfloop, PET or SABTU.

(d) The aforementioned Lever-Arch file or files on the Main Count should also have a subsection marked "General" so that additional information which comes to light of a general nature which is concerned with the Main Count can be filed under this sub-heading. Into this section of the file, the following documents which are already available should be inserted :

(i) a type-written copy of information prepared by the Accused with reference to commissions;

)ii) /

- (ii) a type-written copy of the information prepared by the Accused on "Shadow Executive" - paragraphs 151-153;
- (iii) the extract from Chapter 4 of Professor Kuper's book, the extract being entitled "On The Theme Black is Beautiful";
- (iv) the first draft of a memorandum on Black Consciousness and Black Power prepared by an unidentitied author;
- (v) Memorandum II prepared by the same person;
- (vi) Part 2 of "Black Consciousness in South Africa" prepared by the same person;
- (vii) the draft "Black Attitudes : Reaction and Adaptation" by Lawrence Schlemmer dated April, 1975;
- (viii) the report on the proceedings at the Black Press seminar held on the 9th and 10th October, 1972;
- (ix) /

(ix) the report on the Black Theology Conference held at Edendale from the 13th to 16th February, 1973;

(x) a typed copy of the handwritten list of potential defence witnesses prepared by the Accused;

(xi) any of the writings or publications or documents by Drake Koka on the subject of Black Consciousness;

(xii) such memoranda as the defence are provided with by the persons who it is contemplated will be consulted and whose testimony, dealing with "Black Consciousness" is dealt with in this Adviceon Evidence commencing on page 11 et. seq. with reference to Alternative Count (i).

(e) Another Lever-Arch file, indexed and paginated dealing with Alternative Count (i) should be kept. Into this file should be inserted :

(i) /

- (i) a cross reference to the various memoranda dealing with Black Consciousness which is referred to in sub-paragraph (xii) above;
- (ii) such memoranda with which the defence is provided by literary experts whom it is intended to consult with specific reference to the documents, articles, poems, plays and publications referred to in Column 1, Item references nos. 1 - 11 excluding the Resolution in Item 4.
- (iii) the memorandum prepared by Mr. Turner on the literature contained in the Charge Sheet, the document headed "For Defence Counsel Shanti" whose authorship is unknown to us, the author of the document should be identified, the notes prepared by Mr. Jonathan Paton;
- (iv) a clearly typed copy of the document headed "Critical Analysis";

(v) /

(v) a copy of the speech delivered on graduation day on behalf of the graduates by Tiro;

(vi) such material as is obtained with reference to the resolution numbered 46/76, Item 4 on Schedule A to the Charge Sheet. We have dealt specifically with this material in paragraph 19 of this Advice on Evidence. There is a document typed on green paper entitled "Resettlement". The author does not appear from the document. We draw this to the attention of those instructing us as it may be of some assistance on this aspect of the matter;

(vii) a cross reference to the information in the file on the Main Count which sets out a chronology of all the publications and productions published or produced under the aegis of PET, TECON or SABTU;

(viii) /

- (viii) the material which we have called for in paragraph 20 of this Advice on Evidence dealing with the BPC information brochure No. 1 of 1975;
- (ix) the precognitions obtained from persons who attended at any of the dramatic works which were produced by the aforementioned Organizations and which are specified in Column 4 of Schedule A to the Indictment;
- (x) the press cuttings and other documents which the Accused's attorneys have compiled in a file which is marked "White Racism". It will be recalled and we suggested that these documents be obtained as they might be of use in cross-examination. We are unable to say which of the documents we shall specifically be using as it is not possible to predict how cross-examination will materialise. To assist us in this regard, however, we ask that the

documents /

documents which have been obtained be placed in chronological order and that those passages in them which are clearly anti-Black or anti-Jewish be marked in red in the margin of the documents in question so that the passages will be highlighted.

(f) Insofar as Alternative Count (ii) is concerned this deals exclusively with Accused No. 8. We do not see any reason to have a specific Lever-Arch file for this Count. A separate file should, however, be kept and into it should be inserted such information as is obtained by the Accuseds' attorneys after giving effect to our Advice on Evidence on this Count.

(g) A Lever-Arch file marked "Alternative Count (iii) - Pro-Frelimo Rally" should be kept and the following information should be inserted in this file :

(i) in chronological order the press cuttings and other documents which have been kept

by /

by the Accused's attorneys in a file entitled "Mozambique Frelimo Relations". These documents should be put into chronological order and here, too, the relevant passages should be marked in red;

(ii) a copy of the judgment of the Regional Court Magistrate on the trial of The State vs. O'Malley. I have put a copy of this judgment in the file entitled "Mozambique Frelimo Relations";

(gg) the last two Alternative Counts are closely related to each other. A separate file should be kept for them. It does not seem to us to be necessary to have a Lever-Arch file as information will be required with regard to these Counts is not extensive. Into such file as is kept in respect of these Counts there should be inserted :

(aa) the precognition of any economist

who /

who is consulted and who provides
the material for these Counts;

(bb) the statements taken from any of
the officials of the companies
set out in Schedule B to the
Indictment whom we have suggested
be interviewed and which is
specifically dealt with in para-
graph 38 of this Advice on
Evidence.

(h) Another file, we suggest a Lever-Arch file,
be kept and into this file there should be
inserted all the : (We suggest the file be marked General):

(i) printed material with which we have
been provided by Professor Matthews
in respect of Law on the subject in
question;

(ii) the printed material with which we
have been provided by lawyers in the
United States of America;

(iii) /

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State v S Cooper and 8 others.

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