

# 'A Time to Think'

Friday Aug. 1: Dreamed I was back home eating a bathful of periwinkles. The Lord only knows why it should have been periwinkles. Why not beans stew or peaches and cream? But it was periwinkles and halfway through the banquet, shhhush, boom, the lift in the block of flats wakes me up and there's the dirty grey sunlight coming through the chinks in the curtain like a bum sneaking into a parish tea. D-day, comrade. Rise and shine. T-day, you mean. It's as chilly as an ice-cube's belly outside. Give me the sunny south. Orders of the day: All accused to assemble outside the Congress office and therefrom to march in open order to the point of embarkation, namely Leyd Street. Spit and polish to be applied to all shoes, and hair combed according to regulations. There's a breeze up that cuts like a razor. They should've held this trial in Durban, somebody grumbles. All aboard! Hey, why's that bus got a hump on its back? Special with soft seats, with the compliments of the Minister of Justice, in case any of the fair White accused want to avail themselves of apartheid as prescribed in the million-and-one regulations, legislation and proclamations that make this sunny land of ours such a nice place to live in *Everybody's got cigarettes. Miraculous!* The famous PUTCO buses. Guaranteed to take you where you want to go, provided you don't mind arriving with addled brains and your ribs around your neck. Pretoria. Everybody's singing in the buses. Pretoria stares. The peace and quiet of this centre of reaction has been drastically impaired.

Is this the Synagogue? Nah, wait until you see a lot of cops standing around and that's it. Here we are. Afrika! Mayibuye!

How long do you think this will last? Guess we'll sit right through now, month, two months, year

All seats please! For goodness sake, it's Sergeant Davidson of the Drill Hall. Handshakes, grins, laughs. *Will you all please be seated?* Well, this place looks like something. Nice white paint on the ceiling with the sun coming through a skylight of stained glass. Polished woodwork. Balconies of the public overhead, black on the right, white on the left. We're all here. P.W.D. brown and cream. Hey, look at all

those law books. *Words, your fate depends on words.* How many million words in the English language? The Concise Oxford Dictionary has 1498 pages of words, excluding the addenda and abbreviations, beginning with the letter A, and ending with *zymotic*. The tables around the defence counsel look like the gathered loot from several libraries. I suppose there'll be a lot of talking. A trial in Japan, it was estimated would last fourteen years. Fourteen years of words. *How many words can be spoken in a court case lasting fourteen years?* Listen, this treason trial right here has gone on long enough for me. Say, when I got home nobody recognised me. And another five years to come? Well, you ought to worry. All your creditors might be dead and under by the end of it.

*Silence in court.* Here come the judges. All red and grey, bowing formerly. That's Rumpff in the middle. On the other side is Justice Ludorf. Seems a friendly looking chap. Smiling. The defence team are lined up, their sights whetted. That's Pirow himself over there. Heard he's not going to talk much. Got a cold or something. So his voice is like breaking bottles. The registrar of the court is reading the official appointment of the court. A hush falls. It's on. *A million words of copy for umpteen newspapers.* Overhead, behind us the pressmen are ready, working out the headlines. The Accused Henry Magothi has been hospitalised for six months. The Crown withdraws the charges against him. Somebody cracks: Lemme out of here. I've got a stomach ache. The spectators hang over the crowded galleries. Maisels, number one defence counsel is on his feet, big, easy, an old hand. **Bombshell.** The accused have reason to believe that they will not have a fair trial. The judges Ludorf and Rumpff are asked to recuse themselves. Argument continues. The law books are unlimbered, quotations, quotations, judgement in this trial and that trial. Maisels goes on, pulling everything out of the bag. *Steady and controlled as an axe cutting into a tree.* The crown looks blank. Beyond them the "experts"

Father Bochenski and Professor Murray, probably waiting for the cue, sit patiently. It never comes. Justice Rumpff: Have you anything to say, Mr. Pirow? Milord, (like a creaking door), I am precluded from saying anything. I wish I were not! The court adjourns until Monday to consider the defence application. Everybody troops out amid a hubbub of comments. The reporters flee for the telephones. Outside the court the accused are assailed by photographers. No pictures can be taken in the limits of the court so the cameramen hang over the green railing after they've been put out by the cops. Will you hold it please? I'd like to have a picture of the Professor talking to Chief. Thanks awfully. Do you think they'll recuse themselves? I don't think Ludorf has any alternative... I don't know about Rumpff... I don't think Rumpff will recuse himself... Ludorf, sure. Well, we'll see. I've been speculating about this case for nearly two years now, and it's never turned out the way I thought it would. All the way back to Johannesburg. Headlines: *Treason Trial's Dramatic Start.*

Saturday and Sunday: Do you think they'll recuse themselves? Do you think Rumpff will step down? Do you think Ludorf will? What happens when a judge recuses himself? Do you think...? Do you think...? Do you think...? Celebration. Get out that old guitar, boy. What'l I sing? **If I Had the Wings of An Angel.** Sunday papers, Treason Trial, Treason Trial, Buck Rogers, Mapula Roodt.

August 4: Back to Pretoria. How'd the week-end go? So-so. Did some reading. Finished *Candide* and *Quiet Flows the Don*. Some reading, that. Jokes on the bus and roars of laughter. Outside the court the photographers are waiting like hawks. The spectators are queueing. It doesn't look as if they'll all get in. **Got a cigarette?** Oh, oh, it's starting. Damn this cold. **All seats please.** Sergeant Davidson is no longer with us. The new officials stagger through the business of check-

ing everybody in. Somebody missed the bus because the trains from Orlando went the wrong way or something. Please refer the matter to Minister Schoeman. Tension. The red-gowned judges. *The tree falls.* Mr. Justice Ludorf reads carefully from his script and ends: I recuse myself. Mr. Justice Rumpff: I was not consulted by the Minister regarding the appointment of my brothers, neither did I recommend their appointment... The suspicions of the accused are without foundation, and I can only obey the dictates of my conscience. I cannot recuse myself. Mr. Maisels replies politely for the defence that the accused greatly appreciate the explanation given. There is a slight argument about the position of the court now that one of the judges has recused himself. Court adjourns until next Monday when it is hoped the Minister will have appointed another judge.

August 5 to 10: *Time to think.* Ninety-one of us. Single, married, divorced, black, white, brown, male, female, mothers, fathers, democrats, Ghandi-ists, Christians, communists, socialists, all the ists and the isms to which the liberatory movement gives rise. *To the interest of the nation as a whole, all lesser interests are subordinate, whether of Right or Left, whether they be employer's federation, trade union, banking or professional interests...* All those who pursue a sectional and anti-national policy will be opposed by the might of the organised State. Who said that? Strijdom? No. That was the other Oswald. Moseley. They haven't established the true fascist state. I don't think they can do that. But they're on the right track, brother. They've got the idea. All this concerning us, and the other Whites, those Union Jack, flag-waving chaps, and the kids shunted out of schools, Afrikaans only. **Die Taal. Ein Volk, Ein Reich, Ein Fuhrer.** I wonder what the other ninety think about. Politics, home, the affairs of the branch and the organisation, how to raise money for the T.T. Defence Fund, most of all when this damn thing will be over. But nobody has regrets. Since to each man has been given but one life... There are some hard boys in this trial. Tough organisers from the slums and the townships, and the mob who went through the Defiance Campaign, and who can go through this, too, I'm sure. They and the others. Comrades. The spirit of the struggle.

August 11 to 22: The weather's getting warmer. The Durban boys haven't shed their overcoats yet, but they don't keep their hands in their pockets so much. The European gallery has thinned out, but the N.E.s are steady. House full every day. Leaning over and listening intently. This case has certainly produced some sea lawyers. Somebody jokes: When I'm through here I'm going to apply for my Q.C. Everybody's got an explanation, a way out. A new judge. Mr. Justice Bekker. Mr. Maisels is on his feet again. His gown's going to fall off. Oops, just in time, and it's back on his shoulders. **Bombshell.** The defence will apply for the quashing of the indictment. A war of attrition. The marathon speech begins. Twelve hours of words spread over two days. A giant saw cutting into an old redwood tree. *Milords... this mass of rot and rubbish... the defence is expected to read through the entire record of the preparatory examination... twenty-six volumes of the selected works of Lenin... this trial can go on for years... further particulars... exhibits, a Russian recipe book (recipes for what, Mr. Maisels?) for poisoning wells, I suppose, m'lud... a school magazine, ... take the case of Heyne (or did he say Heimie?)... S.A. Law Reports, 19... at page... further particulars.* The voice of Maisels goes on, relentlessly, the saw sinks deep. Lunch in the grounds of the rectory with Father Nye as host, tall, lean, smiling, passing around the cigarettes. Would you like some more bread and butter? Orange squash? The committee has done sterling work. The stew and the curries, not too hot, to suit everybody's taste. Somebody even donated ice-cream. Like a garden party. Should've worn my morning pants and top-hat. Maisels continues. *Thousands of words are reduced to inches in the columns of newspapers.* Mr. Kentridge. Smooth, precise and devastating as a scalpel... this indictment should be quietly buried. Do you find no movement in it at all, Mr. Kentridge? If there is, m'lud, I suggest that it should be quickly put out of its misery. Advocate Fisher, quiet, confident, exact. Advocate Nicholas, shatteringly expert, arguing with experienced ease, answering each question without hesitation. The saw cuts into the tree, deeper, deeper. The crown replies. *The indictment shows with absolute clarity the charge*

*against each of the accused.* What is the position of each accused? Each person wants to know the details of the conspiracy and his part in it. Why can't you give them those facts?... Any manifestation of a hostile state of mind renders a person guilty of treason. Trengrove and Hoexter wade on. Surprise. Pirow wishes to hold discussions with the defence about the possibility of limiting the scope of the trial. The loudspeaker has broken down, anyway. Court adjourns until Monday. More time to think. Reflections upon the political situation in the country and the financial situation of the accused. **Got a cigarette?** Here we go again. *No agreement between the defence and the crown, but we assure your lordships that no time was wasted.* The crown struggles on. Take the case of Heyne. Who is this Heimie, anyway? It's Hymie Barsel and the case he's always carrying around with him, somebody jokes. It's hot. Some of the accused are nodding. The fans whirr ineffectively. Somebody has received a *Darling Dear* and reads it surreptitiously, smiling. The crown grinds to a finish. Reply by the defence. Mr. Justice Rumpff would like Mr. Trengrove to answer questions with reference to misjoinder. These law books are like the Bible, says Accused Mgugunyeka, anybody can quote from them and each gives his own interpretation. The last stages of the replies grind to a stop. **We hope to give our decision on Wednesday.** Not our reasons, however. Those we will only be able to give at a later date. **Court adjourns.** Ninety-one people wait to hear the outcome of the clash of the giants. **More time to think.**

August 27: This is it. Twelve talking days, twelve days of law books and marathon argument, listening and waiting to hear. On the bus to Pretoria it is the morning again of the sea lawyers. When Wilson Conco dishes out the pocket money there is a rush for the cafe opposite the court. **Stilte in die hof!** All eyes on Mr. Justice Rumpff. The first part of the alternative charge quashed. The rest stays but Mr. Pirow and his team are ordered to supply umpteen further particulars — many of them asked for by the Defence in the first place. That was one month ago. Now the court adjourns for a month. The whole business to start all over again on September 29 — Heyne's case, misjoinder, prejudice to the accused? Time to think. The months go by.



## 'Africa for the Africans?'

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expect from any purely commercial undertaking, and on top of it facing the continuing and very real danger of State and police victimisation every day of their lives.

If ever there was a paper which none in his senses could possibly call "a business journal", that paper is "New Age."

There is no paper in South Africa which is so much loved and respected by the downtrodden and oppressed people as "New Age." Why? Because, like the papers which went before it and which were banned, "New Age" has consistently exposed the crimes and misdeeds of the South African Government against the voteless majority of the people. It has fought against low wages and pass laws and group areas and Bantu Education. It has stood side by side with the people in every struggle: in the bus boycotts and the rural struggles and in every one of the trials and tribulations of the Congress movement. Although it is not and never has been an official Congress organ, there is not a single loyal and sincere Congressite who does not appreciate and value what this paper has done and is doing for the movement and the people. By their cheap sneers at "New Age", the "Africanists" expose themselves as assistants, willing or unwilling, of the oppressors.

It is not true that "New Age" is the organ of the Congress of Democrats. It is an independent newspaper. Certainly it supports the policy of the Congress movement. It gives more information about Congress activities than any other newspaper. If one reads the paper regularly one cannot help being struck by the fact that, in proportion, very little appears as a rule, about the Congress of Democrats. By far the greatest amount of space is devoted to the activities and statements of the African National Congress. This fact is not very remarkable, for the A.N.C. is of course a much bigger and stronger organisation. It would be hardly worth mentioning, but for the unwarranted slurs of "The Africanist."

### The Dirty Stick

So far, I have been dealing with some of the more gross mis-statements of fact which the "Africanists" keep repeating, and which I am sorry to see are thoughtlessly taken up by the United Party press and even by elements within the Liberal Party, who seem anxious to find any stick with which to beat Congress — even if the stick is so dirty that it is bound to soil their hands.

It is not a very pleasant task to have to wade through and reply to these conscienceless fabrications. Nevertheless, it has to be done. Many new members and supporters of the Congress movement do not know the truth about these matters. If people are not aware of the facts they will swallow mis-statements which are repeated over and over again, unless those who know the truth are prepared to expose the lies and nail them in public for all to see.

### An Africanist 'Ideology'?

The "Africanists" do not restrict themselves to spreading far-fetched slanders about inter-Congress relationships. They claim to have an "ideology". This so-called ideology finds its clearest expression in their abuse of the Freedom Charter, which they refer to contemptuously as "the Kliptown Charter", which they say "emanated from the Vodka Cocktail parties of Parktown and Lower Houghton." They profess to find some conflict between the Charter and the resolution (the Programme of Action) adopted at the A.N.C. Conference in December 1949. They keep repeating that the present Congress leadership has "abandoned" the 1949 resolution.

A detailed examination of their allegations against the Charter, of the alleged conflict between the Charter and the Programme of Action, and of the steps taken by Congress to implement the 1949 programme, will show that the "Africanists'" case is as untrustworthy and ill-founded in the field of ideas as I have already proved it to be in the field of facts.

### "Africa for the Africans"

The main complaint of the "Africanists" against the Freedom Charter is the profound and challenging statement with which it opens:

"That South Africa belongs to all who live in it, Black and White."

The "Africanists" deny that they are racialists. But, in fact, their attitude towards this clause of the Charter shows beyond doubt that they are racialists; that they are unable to emancipate their minds from the petty racial confines in which the ideologists of apartheid and "White domination" seek to imprison all of us.

They claim that the Preamble to the Charter is contrary to the slogan (which although they "claim" it, was not invented by them and does not belong to them) "Africa for the Africans."

It is time some fresh thinking and analysis was applied to this slogan. Slogans are not Bible texts; they must not be treated as shibboleths which are

holy and sacrosanct for all time and in all contexts, otherwise we shall not be rational political thinkers but mystics and mumbo-jumbo men.

In a certain sense and in a certain context, "Africa for the Africans" is a sound, militant and correct slogan. The continent of Africa is and has for a long time been the prey of foreign sharks, financiers and exploiters who have seized its natural resources and even its people, by force and by fraud, who have planted alien flags and administrations, carved up the continent among themselves, and sent their garrisons and settlers here to lord it over us and exploit our labour. When we say "Africa for the Africans", with a view to the Continent as a whole, we mean of course that this wicked and unjust state of affairs must come to a speedy end, that the peoples of this Continent must — as is already happening in some parts of it, and as has already happened in most of Asia — have restored to them their inherent human right of self-government and enjoyment of their own natural resources.

When we cry: "Africa for the Africans!" we are demanding that foreign powers, like Britain, France, Belgium and Portugal must quit Africa and allow its people to conduct their own affairs. We mean that the land and natural resources which have been seized by these imperialist powers must be restored to their rightful owners. We mean that no special rights and privileges should be conceded to aliens in this continent. And these are all legitimate and proper demands.

But we cannot take this legitimate and proper general slogan and turn it into a sort of magical formula which is going to solve all of the problems of each of the countries and territories of this vast continent. And when people try to use the slogan in a purely racial sense, as the Africanists want to do, they destroy the value of the slogan and obscure its meaning. For, applied to particular countries, the slogan becomes, for example, "Ghana for the Ghanians!" or "Nigeria for the Nigerians!" Quite correct. And — South Africa for the South Africans!

And — who are the South Africans? They are the people who live in this country, who have made it their home, and who know no other home.

It is true, and most regrettably so, that one section of the population, through the imposition of a wicked and unjust form of government and social structure, dominates the rest, secures to itself a monopoly of all political, economic and other rights and privileges, and

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# A Case of Scandal

The day after Mr. Pirow's sudden withdrawal of his massive three-volume, 406 page indictment in the treason trial, a Johannesburg daily paper reported an interview with the Attorney General. The report ended with the startling remark: *'The Crown will now undertake an exhaustive study of the case against the accused.'* At any other time, or in respect of any other case, the remark could be glossed over as a careless slip of the editorial typewriter. But on the very day of the withdrawal of the indictment, there had been another remark of the same nature. "It seems" said Presiding Judge Rumpff after following every word of the two months argument on the indictment intently, *"that the Attorney General, when drawing up the indictment, did not give full consideration to the implication of allegations of treason in peace time."* Mr. Pirow, naturally, protested hotly that the very fullest consideration had been given, and the Judge naturally accepted that assurance.

But the strong impression remains; however many man-hours have been spent on it, the prosecution produced an ill-conceived, deformed and misbegotten charge, and knowingly foisted the monster on the accused and the courts. I do not speak here of the facts of the case against the accused, of the question of whether the evidence can or will establish the guilt of any or all of them. That is a question for the courts alone to decide, and any comment on that issue would be both unlawful and undesirable. But of the conduct of what is politely termed 'The Crown, of the manner of behaviour of the prosecution and of the Minister of Justice who is the real head of the prosecution team, it is necessary to speak before a scandalous injustice is allowed to continue in the name of justice.

## Genesis

What are the facts? Almost two years ago, 156 people were arrested in the most abrupt and dramatic fashion. They were released on bail in the face of strenuous opposition from the police after some two weeks in the Johannesburg Fort. At the preparatory examination, they were told by the senior prosecutor that the crown case would be over in six weeks. With some short periods of defence cross-examination of witnesses it lasted thirteen months — the longest in the country's history. After almost a year of the Drill Hall hearings, charges against 61 of the accused were suddenly withdrawn without a single word of explanation, and without a penny of compensation for their lost year. Seven weeks later, another four were similarly released. Only 91—three out of every five of those originally arrested — stayed to the bitter end. All 91 were committed for trial.

The course of the preparatory examination itself was as remarkable. Though the warrants of arrest alleged 'High Treason' between 1953 and 1956, the crown presentation of evidence proved elastic. Evidence went back to 1952, to include the Defiance Campaign — and forwards to 1957 to include riots outside the Drill Hall while the accused were still imprisoned, as well as campaigns for their release. Matters which had not been mentioned in the prosecutor's

two-day opening address were conjured up suddenly in the middle of the hearings — evidence of mysterious school burnings, evidence of Mau-Mau atrocities in Kenya, evidence of 'brainwashing' in Korean prisoner-of-war camps, evidence of plots to smuggle in arms from China and a mysterious 'gas powder' from Russia.

## Test of Faith

It was said — properly — by Magistrate Wessels, that it was legitimate for the prosecution to lead such evidence provided they undertook to link it up with the accused at a later stage. Repeatedly, over defence objections, the undertaking was given that it would be so linked. But there is a difference between what is legitimate, and what is fair to an accused person. The test of the crown's fairness is that there was not, at any stage, any such link or any attempt to prove any such link. It was from this that there arose the first real questioning of the prosecution's conduct. Had the crown made any attempt to sort the evidence dumped into its files by Special Branch policemen? Had any attempt been made to test the reliability and credibility of the gangster and convicted murderer, witness **Ralekeke**, who testified to events during the Klijtown bus boycott? Or of the life-long jail-bird and fraudulent B.A., witness **Mgubasi**, brought from a prison cell to testify about arms plots? Had there been any serious effort to sort from the police archives those documents and speeches which were relevant and to discard those irrelevant?

Perhaps, to this, there is only one answer. That is in the indictment, laboriously prepared over six months after the committal of the accused for trial. In it there is not a single word or reference to the Klijtown bus boycott, said by the prosecutor at the start of the preparatory examination to be "the prelude to the revolution." In it there is not a single word or reference to Kenya or its Mau-Mau, to the Korean war and 'brainwashing', to arms plots or gas powders. There is not a single allegation of school-burnings or assaults connected with school boycotts. Once again the dates have reverted to "the period 1st October 1952 to 13th December 1956." There is, accordingly, no possible reference to the Defiance Campaign, to riots in Port Elizabeth, Kimberley and East London, to riots outside the Drill Hall during the preparatory examination. **Countless weeks of the Drill Hall prosecution have, mysteriously, melted away to nothing. Legitimate perhaps. But morally indefensible.**

## Retreat in Disorder

In Pretoria, stage two, the crown conduct of the trial has not got beyond the indictment. In the original indictment itself there was only one specific allegation of any practical and criminal result of the actions of the accused — that their speeches and writings ". . . did in fact create feelings of discontent or unrest and/or hostility between the various sections and races of the population in the Union of South Africa." The defence asked, simply, on what facts the crown would rely to prove that such discontent was created. And by way of answer the crown, simply, withdrew the whole allegation. **Can the original allegation have been made on the basis of evidence and in the interests of justice? There was also an allegation of ". . . organising and participating**



as proposed by Owen Vine, is a long way from achieving this, such a consolidation should be welcomed as a potentially powerful force against rampant Nationalism. **United action by these groups is of importance to us since it is clear that only opposition from the widest section of the people can stop Nationalist inroads on our liberties.** But in addition, at a time when Verwoerd's propaganda machine is going into top gear, there is an urgent need for the liberal and democratic European organisations to counterpose to Europeans the feasibility of a democratic multi-racial society as the alternative to apartheid.

A great many thinking Europeans understand and accept this reasoning and many others who have been antagonised by the Government in one way or another are waiting for a lead. If this common opposition to the Nationalists, which is felt by large sections of the Europeans, could be co-ordinated in some way the Congress movement would have a powerful ally in the struggle for a democratic society. The successful campaigns of the Torch Commando serve as a reminder of just how powerful this section of the people could be.

### Reservations about Unity

Unfortunately there are indications that Owen Vine's suggestions are not being taken up as willingly as they deserve to be. Many leaders of the organisations concerned appear to lack the broadmindedness and vision that will be needed to establish ties across party loyalties. Some leaders of the Liberal Party, for example, are staking their hopes of building their party on the collapse of the United Party.

They feel that if the Liberal Party remains untainted by "extremism" (a condition which joint mass action with the Congresses might engender), or if they can retain their identity and withstand a merger with other liberal organisations, the U.P. moderates will sooner or later drift into the Liberal Party.

Such reasoning is clearly false. **Surely the best chances of a major Liberal Party advance lies in the creation of a liberal front which would be sufficiently imposing in strength and numbers to have a marked impact on the political scene.**

If such a front were to take up the struggles of the Johannesburg Municipality against Government interfer-

ence, or the threatened ban on meetings on the City Hall steps, it would soon win many new adherents. Our primary concern should not be whether the U.P. moderates leave their organisation and join another but the mobilisation of these and many other people into active protest against the Government. Neither the Liberal Party nor any other organisation of liberal Europeans is strong or effective enough to attract these people at present, but by acting together they might well alter the position.

Unfortunately still other obstacles to unity among these groups have been raised. There is the desire on the part of some to be thought of as "middle-of-the-road" organisations — the Liberal Party recently referred to itself as being between Black and White nationalism. To achieve such a reputation one has to attack both those on the left and the right. This has led to frequent attacks on the Congress of Democrats — admittedly the most "extreme" European organisation—by the other groups, to attacks by U.P. moderates on the Federal Party, to attacks on the Liberal Party by Federalists and so on. All this is an effort by the one group to white-wash itself so as not to offend potential recruits to the right of it.

### Name-calling Tactics

Nothing could please the Government more than to see its opponents adopt its name-calling tactics against one another. Such a practice simplifies its task of persecuting its most militant opponents and laying them open to being banned. It also does not in fact protect the moderate organisations for if the Government should ban the Congress of Democrats there can be no doubt that the Liberal Party would be next on the list and so on down the line. **The answer to Government persecution does not lie in saying 'I am not as extreme as so and so', but in presenting a solid front to its attacks and fighting jointly for the right to exist and advocate our points of view.**

### The Need for Joint Action

When considering the various liberal organisations — the Liberal Party, the Labour Party, the Federal Party, the Black Sash, C.O.D. etc, one must admit that each of them arose at a different time and for different reasons. Yet, in spite of this, all these organisations have something in common. Their public activities prove this.

But no attempt has been made to co-ordinate these activities and thereby make them more effective. Consider for example the ban on meetings on the City Hall steps by the Johannesburg City Council. The Black Sash, to their credit, were the first to take up the issue. They were followed by the U.N.E.S.S.A. applying for permission to hold a meeting. The Congress of Democrats sent a deputation to the Chairman of the General Purposes Committee. The Liberal Party sent a letter of protest. The combination of these protests had the desired effect and the ban was lifted, but who can deny that if they had been co-ordinated they would have been even more effective? One must remember that the way each organisation leapt into action in this case was exceptional. Usually when an issue arises only one of these organisations takes it up and no support is forthcoming from the others. The recent increases in tram and bus fares in Johannesburg is an example of such an issue.

### First Steps to Unity

By calling for joint planned action we are not suggesting that these organisations should amalgamate. That would amount to trying to achieve too great a degree of unity at the first step. In any case it may be desirable to maintain separate organisations in order to give expression to particular points of view. C.O.D. members, for example, would not lightly jettison the right to advocate the Freedom Charter in an organised way, nor would they sacrifice their close alliance with the African National Congress and the other members of the Congress movement.

For these reasons co-operation on a consultative basis would be preferable. It may also be advisable to work for united action on issues which, while they affect all people, do not raise differences which tend to divide us. An issue such as the defence of free speech would not involve the contentious question of franchise rights. Another feature of this proposed unity which should be considered is the advisability of a positive platform, such as that of the multi-racial conference, being adopted as a basis for our joint work. If this could be achieved, the alignment of opposition forces would have a powerful positive appeal and would win support from

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in various campaigns against existing laws . . ."; the defence asked for a list of the laws referred to; the crown replied simply "all laws." Could such a reply be the result of serious consideration, or merely wild talk? The indictment alleged — as the second alternative charge — a breach of the Suppression of Communism Act by means of ". . . acts calculated to further the achievement of one or more" of the objects of Communism. The court, after argument, directed the crown to state precisely which speech or document would be used as evidence of furthering which object of Communism. The crown, again, simply withdrew the whole allegation and the charge. Legitimate, perhaps. **But fair?**

Perhaps frivolous is the best description of the casualness with which the Crown mutilated the indictment — frivolous of the responsibilities of a prosecution, whose duty is not to persecute at the whim of the state, but to uphold justice and safeguard the interests of the accused.

Equally frivolous seemingly, was Mr. Pirow's sudden announcement in Court on September 29th — after lengthy, involved and serious argument on the meaning of the indictment — that "*If the Crown fails to prove a conspiracy then all the accused go free.*" Mr. Maisels had argued that the indictment was clearly drawn in such a way that, whether there was conspiracy or not, each accused stood charged with high treason in respect of each of his own speeches and writings. Mr. Justice Rumpff felt the same way. "As I understood it, the Crown claimed that it was entitled to find any accused guilty, conspiracy or no conspiracy." The defence had previously asked the crown to state, simply, whether the accused faced one charge or many charges. The crown had replied, simply, 'Read the indictment.' In the confusion caused by Mr. Pirow's statement, Mr. Maisels specifically challenged the crown, in open court, to amend that answer to put the matter beyond all doubt. The crown, simply, declined. Fair? The just way to set out clearly to the accused the case which they must answer? Perhaps the best summing up was made by Mr. Justice Rumpff. "*What sort of case is this?*" he asked. The question is still pertinent, as pertinent as its corollary: **what sort of a prosecution is this?**

## Erroneous

But the real sensation was yet to come. On October 13th, after two months of argument, Mr. Pirow applied for leave to amend the indictment **for the fifth time!** This amendment, if granted, would have removed from the indictment all the extracts from 700 documents (which together make up 204 pages of Schedule D of the indictment) and all save eighteen of some 700 extracts from speeches (which make up 178 pages of Schedule C). **What sort of a case is this?** If eighteen extracts from speeches are sufficient on October 13th to acquaint the accused clearly and precisely with the case they have to meet, why were they not sufficient on August 1st when the trial opened? Were the 406 pages of indictment originally served necessary? Were they included to confuse? Or were they merely the "Drill Hall process" of stirring up indigestion all the facts the police archives can spew forth, in the hope that somewhere, at some time they will fall into the shape of a comprehensible charge?

There have, doubtless, been other cases in our history where questions such as these have been made by prejudiced and partisan opponents of the crown. But the questions in this case are now being seriously asked not by the partisans but by all sober, impartial and judicial observers. The treason trial has proved to be something special.

Among its specialities are the listing in the indictment of 152 "co-conspirators." These people are not charged. **At its best, this is an easy device to enable the prosecution to**

**use their acts and speeches as evidence against those who are accused, without the necessity of proving a case against each and every one of them.** At its worst it is a device for making criminal allegations against them, and preventing them from answering those allegations — what is known across the Atlantic as "the smear technique."

Two months ago, in England, a similar listing of "co-conspirators" came before Mr. Justice Salmon, who delivered such a blistering attack upon the prosecutor for this way of conducting the case that the case was withdrawn: the prosecutor himself resigned from his post. Such scrupulous regard for the rights of persons to defend themselves in a fair trial does not apply in the prosecution team in the treason trial. For them the standard of conduct has been set by the leader of the team, the man who in terms of the law is the real controller of the prosecution, Mr. C. R. Swart, Minister of Justice.

## Deus ex Machina

Mr. Swart's conduct has set a new standard of irresponsibility and immorality in South African legal history. Six months before any arrests were made, he told Parliament that some two hundred people were to be arrested and charged with treason. If the crown evidence then available were sufficient to justify the threat, why were no arrests made and no prosecution started? **Is it perhaps possible that the decision to arrest was taken first and the evidence accumulated and put together afterwards?** Such suspicion

is strengthened by the Minister's systematic course of conduct towards the treason accused. Four times, since the preparatory examination started, he has amended the law specially to assist the treason prosecution. There was an amendment to permit mass trials to continue even in the absence of the accused for illness or other reasons. There was an amendment to provide that documents such as those in this case shall be proof of the truth of their contents unless disproved by the accused. There was an amendment to allow himself to appoint a Special Court to try cases under the Suppression of Communism Act. And finally there was the indecent amendment by which he validated his illegal appointment of a 'Special Court' after the accused had elected to be tried by a judge without jury.

There comes a time when scandal blows up into an almighty stink. The fourth and final amendment to the law was such a time. Mr. Justice Rumpff in court openly contradicted Mr. Swart's statement, made behind the shield of Parliamentary immunity, that the members of the Special Court had been decided upon after consultation with Judge Rumpff. A leading national newspaper, in its editorial columns, openly accused Mr. Swart of lying about the whole matter, and challenged him to sue for libel. Elsewhere, anywhere else in the world, a Cabinet Minister so challenged, would either sue or resign. Mr. Swart did neither. He stayed in office; despite the stink, around his name, he has been reappointed by the new Prime Minister to control the country's "justice."

## Time to Talk

For two years as these facts have multiplied, there has been silence about them. The country has rested confident that, in the end, justice would be done by the courts. But there comes a time when — as Mr. Maisels told the court — justice deferred is justice denied. Even now, two years after their arrest, when the prosecution indictment has collapsed like a pack of cards despite the new laws specially designed by chief of the prosecution Mr. Swart — even now



the attorney general is working on a new indictment. Is it not now time to ask whether Mr. Swart is pursuing justice or a private vendetta? There comes a time when continued prosecution — especially when conducted in the frivolous unfair and scandalous fashion of this trial — changes into persecution. That time is now at hand in South Africa's treason trial.

I have been told by one of the foreign observers at the trial that the crown in Britain also has the right to indict a second time after a first indictment has failed or been quash-

ed. But in all the history of the British courts, there has never been an occasion when it has, in fact, done so.

It is time now for decent men and women everywhere to speak out against any further indictment of the treason trial accused. They have suffered enough — more than enough, and for too long. The Minister of Justice has had his chance of proving that there is a charge for them to answer. He has failed. He must not be permitted to try again, and so add another chapter to the most scandalous abuse of our legal system ever recorded.

## WHAT IS TREASON ?

By A LEGAL CORRESPONDENT

When the treason trial resumed at the end of September, there seemed to be an air of confidence in the Crown camp. The court's judgement in August had been in their favour on a number of important points. They had supplied further particulars at great length in response to the Court's order. Their reaction to the news that the defence intended to renew its attack on the indictment was an impatient "Let's not go into all these quibbles again."

It did not take very long for the atmosphere to change. Mr. H. C. Nicholas opened the attack on behalf of the accused, and everyone in court soon realised that this was to be an even more fundamental attack on the Crown case than that which had been launched in August.

The first part of the defence argument dealt with the basic question "What is treason?" The indictment charged as acts of treason a large number of speeches and writings which, on any interpretation, amounted to nothing more than statements of political ideas and beliefs. The defence contended that such things could never be acts of treason. Treason meant attempting the violent overthrow of the state, or making direct preparation for such an attempt. Thus treason could not be committed by words, unless the words amounted to an agreement or incitement to use violence. Even if a person had, at the back of his mind, an intention to overthrow the state, that did not mean that his every action became treason. Only such acts as bore a direct relation to the achievement of violent resolution were treasonable.

The second main division of the argument related to the allegations in the indictment which charged the accused with possession of documents. Here the defence argued that possession is not a positive act at all, but merely a static relationship between a person and a thing. It cannot, therefore, be an act of treason.

Thirdly, the defence renewed its argument on misjoinder. Persons cannot be brought together as accused in a joint trial unless they are charged with joint participation in the same offence. Now, although the Crown alleged that all the accused had conspired together, it said that they had joined the conspiracy at different times. There were numerous acts charged, for which not all the accused were to be held liable. In some cases, acts were included in the joint indictment for which only one accused was alleged to be responsible. These charges, according to the argument, had no place in a joint trial.

Lastly, the defence argued that the Crown had still not supplied sufficient particulars of its allegations. There were hundreds of pages of particulars, but these did not enable the accused to know what the case against them really was. The particulars referred to thousands of speeches and documents which were alleged to show the existence of a conspiracy, but no explanation of their relevance was given. In many cases, the defence was unable to see that they had any relevance at all.

When the Crown asked for an adjournment of a week, it was assumed that there would be a lengthy reply to all these argu-

ments. The Crown must surely have considered these points in preparing its case, and must be ready with an answer?

That was not how it turned out. The Crown used its adjournment to prepare, not a reply, but a fifth amendment to the indictment. By cutting out some 98% of the acts of treason which had originally been alleged, the Crown sought to concede and evade the first two sections of the defence argument. As for the other two sections, the attitude was "let's all co-operate to save time — we give in on half and you forget the other half."

When the defence would not bite, the Crown still would not face the task of replying to the arguments. Now it was "agree to our amendment, or else . . . ." Mr. Pirow announced that if his amendment was not granted, he would withdraw the charge and frame a new one. In the event, he did not even wait for a decision on that. The mere fact that his amendment was opposed proved sufficient to bring his threat into operation.

Thus the case approaches its second anniversary with nothing decided and the charge still awaiting final formulation. The Crown is now free to frame a new indictment, which may either be the old one as it would have been amended, had the fifth amendment been allowed, or an entirely new one. The alternative charges can be brought back, the number of accused can be changed, the number and nature of the treason charges can be changed. There is no time limit for this process, and the accused simply have to wait for the Attorney General to make up his mind.



# The Freedom Charter and the 1949 Programme of Action

The "Africanists" hate the Freedom Charter as much as the Nationalist Government does. The great majority of Congress members, who support the Charter, they refer to contemptuously as "Charterists". They describe this noble document, which has won world-wide admiration for the clarity of its language and presentation, and which sums up the demands and aspirations of countless thousands of South Africans, as a "catalogue" of "ill-digested ideas and ill-defined statements."

Yet, apart from their objection to the statement that "South Africa belongs to all who live in it" — an objection which merely, as I have shown, exposes their own naked chauvinism — what is it that they really object to in the Charter? We may look for the answer in an article in "The Africanist" which claims, not very modestly, to be a "penetrative study and critical analysis."

As usual the article starts off with the sort of ranting and nonsensical abuse which is the trade mark of the Africanists. Pretending to describe who was at the Congress of the People, it says: "The Whites who were at Kliptown, from the Special Branch, were mainly members of the Congress of Democrats." Can you believe it? These people, who are persecuted day and night by the Special Branch, who have their homes raided, their telephones tapped, their letters opened, who are banned, arrested, vilified, victimised by the Special Branch — the "Africanists" tell us they were "from the Special Branch." Who will believe them? Only political simpletons and people who are as crazy as themselves. And what was their purpose at Kliptown — where they voted for the most radical manifesto in the history of our country? "They are in reality concerned with the maintenance of the status quo," says "The Africanist." Rather a strange way, isn't it, to "maintain the status quo!"

The members of the S.A. Indian Congress who were at the Congress of the People are described as "the Merchant Class," as "an exploiting alien group." The African leaders present, we are told, "were mainly elements receiving economic benefits from the 'Marshall Aid Plan' of the C.O.D. and the S.A.I.C."

The previous two articles in this series dealt with African National Congress co-operation with other bodies, the slander of so-called Congress of Democrats domination of the ANC, the 'inverted racialism' of the Africanists, and the Madzunya-Leballo expulsions.

This month the writer discusses the Freedom Charter and the 1949 Programme of Action.

None of the allegations or imputations is evenly remotely true. All of them have the same purpose — to prejudice the mind of the reader against the text of the Charter. For when it comes down to the actual text the critics have surprisingly little to say that is either intelligible or worth saying.

## Looking for Points

They do not like the formulation: "That no government can justly claim authority unless it is based on the will of all the people." Why? It should have said "the will of the majority." But, as a matter of historical fact, all the great democratic documents, including the French and American declarations of the rights of man, say that government should be derived from the will of the people. Why, in South Africa, should we specify "all the people?" Precisely because the concept "will of the people" (or volkswil) has been narrowed down to imply a privileged minority which has a monopoly of democratic rights. Either the Africanists just don't understand this, or — more likely, they are just "looking for points."

They say they do not agree that the people "have been robbed of their birthright to land, liberty and peace by a form of government founded on injustice and inequality." What, you may wonder, could anyone who pretends to be an African patriot and a democrat find to object to in this formulation? Do they think South Africans have no birthright to land or liberty or peace? Do they think our government is founded on justice and equality? No, the gentlemen raise no such objections. They say the Charter **should have said**, rather, "The African people have been robbed by the European people." They think

(what a petty quibble!) the word "freedom" should have been used instead of the synonym "liberty." Well, in the first place, let me say that the Charter should not have said anything of the sort. The "European people" as a whole have not been the robbers, but the minority of imperialists, land-grabbers and exploiters among them: most of them do not themselves possess land, liberty or peace, and never will until the New South Africa envisaged in the Charter has been won.

The merit of the Charter is that it exposes this great central truth of our country and enables us to see the struggle as it really is, under its outward forms, as one of the great majority of the people, White as well as Black, against a wicked form of government — not, as the Nationalists, whether of the Verwoerd or Leballo variety would like us to see it, as a clash between White and Black.

## A Common Programme

Let me add to that, that persons with any pretence to intellectual integrity cannot take a document like the Freedom Charter, a broad common programme meant to unite all the democratic forces in the country, and attack it not for what it says but for what it does not say. The Charter is not and is not meant to be a programme for the African National Congress alone, or for the Congress of Democrats, or the trade unions. It is not meant to be a programme for the right, or the left, or the centre, for workers or peasants or businessmen or intellectuals alone. It is, and is meant to be, a common programme for all these elements, omitting those questions which we disagree about, which divide us, and outlining those minimum demands which we can all agree are **ESSENTIAL** for the building of a democratic South Africa.

An African nationalist, for example, might feel that in certain directions the Charter does not go far enough, that as a programme for African nationalism it is inadequate. Nevertheless, if he is a genuine African patriot, he will recognise that its realisation will carry our people a long stride forward; he will gladly and unreservedly accept the Charter, therefore, as a basis of co-operation with



other groups who do not accept his philosophy. If he does not do this he merely exposes himself, as do our "Africanists" as not a patriot, but a disruptive and mischievous person who in fact harms African freedom instead of advancing it.

Again, to take another example, a Socialist might also find the Charter quite inadequate as a statement of his aims and outlook. He might feel that as it does not call for socialism it cannot solve the long-term problems of the country. Nevertheless, he should recognise that the abolition of discrimination and national oppression, as demanded by the Charter, will mean an immeasurable step forward for our country, and will liberate the energies and minds of the people from their grim preoccupation with "racial" problems, to tackle the great social problems ahead.

### Wide of the Mark

It is precisely because they do not even begin to grasp this concept of the Charter as a broad unifying basis for the alliance of all the progressive and healthy elements in South Africa that the so-called "Africanists" criticisms are so wide of the mark.

In fact, when it comes to the demands of the Charter itself they are unable to find a single one which they are able openly to object to; for if they did so they would finally expose themselves as obvious reactionaries and upholders of White supremacy. In a five-page "analysis" of the Charter (supposed to be "penetrative") there are four direct (out-of-context) quotations from the Charter itself. The rest consists of abuse. When the Charter says "The People Shall Govern" they do not say "We disagree with this"; they say that the Congress movement does not really mean it, it really means that the people must carry out "directives" from "the top leaders and their lackeys and flunkies." With this sort of swindling argument one cannot really carry out a reasoned debate at all. Here is the Charter, gentlemen, it speaks for itself; tell us what you think is wrong with it. But they do not really tell us what they think is wrong with it; they merely swear at us and tell us we do not mean what we say!

### The Myth of the 1949 Programme

The "Africanists" keep on saying that they stand by the "Programme of Action" adopted by the A.N.C. Conference in 1949. They suggest that this document is somehow in conflict with the Charter and the Alliance, and moreover that the A.N.C. leadership has failed,

deliberately, to implement the Programme.

Both suggestions are false.

The 1949 Programme is not, like the Freedom Charter, a comprehensive list of concrete demands, but a plan of work for Congress. Thus the two documents are quite different in character.

The 1949 Programme, however, does start out by announcing certain principles and demands, such as the rejection of White domination, the right to direct representation in all governing bodies, abolition of differential political institutions, higher wages, education etc. **Every single one of these demands and principles is fully covered by relevant sections of the Freedom Charter.**

Considered as a plan of work — and it was a very ambitious one — most of the important tasks proposed in the Programme of Action have been carried out by the Congress leadership during the intervening years in a manner which many of those present at that Conference ten years ago would hardly have dreamed possible. Congress was then, after all, a comparatively small organisation, without much mass influence. When it decided upon "boycotts, strikes, civil disobedience," and "preparations" for a one-day national stoppage of work, many people must have thought that this was just "big talk."

Yet, when we look back at the past decade of struggle, at the Transvaal and National strikes of 1950, at the historic Defiance Campaign, at all the boycotts, campaigns and forms of action which Congress has initiated and carried out in the intervening period, which have built up the A.N.C. to a position of prestige, strength and influence previously unknown, and placed it at the head of a great multi-racial movement fighting for democracy in the teeth of the most terrible persecution and tyranny this country has ever known — we shall realise that the leadership has carried out the 1949 Programme with honour and credit. These have not been, as the Africanists maintain, years of failure. They have been years of great and proud achievement: the greatest, thus far, in the history of Congress, and the prelude to a yet greater decade ahead.

The 1949 Programme is of great historic interest and importance, as marking a turning point from former, useless methods, to a new period of militancy and mass action. Yet, like all plans of work and programmes of action, it was right in those circumstances and at that time, but it was not and could not be meant for all circumstances and all time. The Natives' Representative Council, which it set

out to boycott, has now been abolished by the Government, and similar institutions are fast being replaced by the even more undemocratic "Bantu Authorities" in country and in town. It proved impossible to set up educational centres, as envisaged in the programme, ten years ago; it is even more impossible today, under Bantu Education, when even Catholic mission schools are being closed.

### New Era — New Needs

We are approaching 1959. It is a new era. Under the Prime Ministership of Dr. Verwoerd, a time of increased taxes, of passes for women, of ever new trials and persecutions, bans and threats of more bans, the outlawing of Congress in certain areas, and the threat of further illegalisation, we face a future of new, bitter and relentless struggles, with new problems, new conditions, new tasks. The 1949 Plan is no longer adequate for our needs; though we must preserve and extend its uncompromising and militant spirit in the new programmes of action that the present times call for

In these bitter struggles we cannot afford, within our own ranks, to harbour a malicious Fifth Column, which is ever anxious to magnify and inflame any disagreement or misunderstanding which arises among us; whose weapons are lies and poisoned slanders; which absorbs our energies in barren and fruitless disputes and quarrels; which brings techniques of gangsterism and rowdiness into our own meetings and conferences, which the Government is making it more and more difficult to hold at all; which disregards every rule of Congress discipline and fair debate.

We can deal with the Government's attempts to smash Congress. We know why they make these attempts, and how to defeat them. It is far more difficult to deal with those who seek to smash Congress from within, using the name and adopting the outward colours of Congressmen. How are we to deal with these people?

Why are they receiving the support of certain Liberals and Chamber of Mines newspapers like the "World"? Can we really tolerate them within Congress, or regard them as part of Congress any longer? These are the questions I propose to answer in the next, and final, article in this series.

Should 'Fighting Talk' reprint this series of article on The Africanists in booklet form?

See letter on page 16.



as proposed by Owen Vine, is a long way from achieving this, such a consolidation should be welcomed as a potentially powerful force against rampant Nationalism. United action by these groups is of importance to us since it is clear that only opposition from the widest section of the people can stop Nationalist inroads on our liberties. But in addition, at a time when Verwoerd's propagandist machine is going into top gear, there is an urgent need for the liberal and democratic European organisations to counterpose to Europeans the feasibility of a democratic multi-racial society as the alternative to apartheid.

A great many thinking Europeans understand and accept this reasoning and many others who have been antagonised by the Government in one way or another are waiting for a lead. If this common opposition to the Nationalists, which is felt by large sections of the Europeans, could be co-ordinated in some way the Congress movement would have a powerful ally in the struggle for a democratic society. The successful campaigns of the Torch Commando serve as a reminder of just how powerful this section of the people could be.

### Reservations about Unity

Unfortunately there are indications that Owen Vine's suggestions are not being taken up as willingly as they deserve to be. Many leaders of the organisations concerned appear to lack the broadmindedness and vision that will be needed to establish ties across party loyalties. Some leaders of the Liberal Party, for example, are staking their hopes of building their party on the collapse of the United Party.

They feel that if the Liberal Party remains untainted by "extremism" (a condition which joint mass action with the Congresses might engender), or if they can retain their identity and withstand a merger with other liberal organisations, the U.P. moderates will sooner or later drift into the Liberal Party.

Such reasoning is clearly false. Surely the best chances of a major Liberal Party advance lies in the creation of a liberal front which would be sufficiently imposing in strength and numbers to have a marked impact on the political scene.

If such a front were to take up the struggles of the Johannesburg Municipality against Government interfer-

ence, or the threatened ban on meetings on the City Hall steps, it would soon win many new adherents. Our primary concern should not be whether the U.P. moderates leave their organisation and join another but the mobilisation of these and many other people into active protest against the Government. Neither the Liberal Party nor any other organisation of liberal Europeans is strong or effective enough to attract these people at present, but by acting together they might well alter the position.

Unfortunately still other obstacles to unity among these groups have been raised. There is the desire on the part of some to be thought of as "middle-of-the-road" organisations — the Liberal Party recently referred to itself as being between Black and White nationalism. To achieve such a reputation one has to attack both those on the left and the right. This has led to frequent attacks on the Congress of Democrats — admittedly the most "extreme" European organisation — by the other groups, to attacks by U.P. moderates on the Federal Party, to attacks on the Liberal Party by Federalists and so on. All this is in an effort by the one group to white-wash itself so as not to offend potential recruits to the right of it.

### Name-calling Tactics

Nothing could please the Government more than to see its opponents adopt its name-calling tactics against one another. Such a practice simplifies its task of persecuting its most militant opponents and laying them open to being banned. It also does not in fact protect the moderate organisations for if the Government should ban the Congress of Democrats there can be no doubt that the Liberal Party would be next on the list and so on down the line. The answer to Government persecution does not lie in saying 'I am not as extreme as so and so', but in presenting a solid front to its attacks and fighting jointly for the right to exist and advocate our points of view.

### The Need for Joint Action

When considering the various liberal organisations — the Liberal Party, the Labour Party, the Federal Party, the Black Sash, C.O.D. etc, one must admit that each of them arose at a different time and for different reasons. Yet, in spite of this, all these organisations have something in common. Their public activities prove this.

But no attempt has been made to co-ordinate these activities and thereby make them more effective. Consider for example the ban on meetings on the City Hall steps by the Johannesburg City Council. The Black Sash, to their credit, were the first to take up the issue. They were followed by the U.N.E.S.S.A. applying for permission to hold a meeting. The Congress of Democrats sent a deputation to the Chairman of the General Purposes Committee. The Liberal Party sent a letter of protest. The combination of these protests had the desired effect and the ban was lifted, but who can deny that if they had been co-ordinated they would have been even more effective? One must remember that the way each organisation leapt into action in this case was exceptional. Usually when an issue arises only one of these organisations takes it up and no support is forthcoming from the others. The recent increases in tram and bus fares in Johannesburg is an example of such an issue.

### First Steps to Unity

By calling for joint planned action we are not suggesting that these organisations should amalgamate. That would amount to trying to achieve too great a degree of unity at the first step. In any case it may be desirable to maintain separate organisations in order to give expression to particular points of view. C.O.D. members, for example, would not lightly jettison the right to advocate the Freedom Charter in an organised way, nor would they sacrifice their close alliance with the African National Congress and the other members of the Congress movement.

For these reasons co-operation on a consultative basis would be preferable. It may also be advisable to work for united action on issues which, while they affect all people, do not raise differences which tend to divide us. An issue such as the defence of free speech would not involve the contentious question of franchise rights. Another feature of this proposed unity which should be considered is the advisability of a positive platform, such as that of the multi-racial conference, being adopted as a basis for our joint work. If this could be achieved, the alignment of opposition forces would have a powerful positive appeal and would win support from

(Continued on page 10)



# A Case of Scandal

The day after Mr. Pirow's sudden withdrawal of his massive three-volume, 406 page indictment in the treason trial, a Johannesburg daily paper reported an interview with the Attorney General. The report ended with the startling remark: *'The Crown will now undertake an exhaustive study of the case against the accused.'* At any other time, or in respect of any other case, the remark could be glossed over as a careless slip of the editorial typewriter. But on the very day of the withdrawal of the indictment, there had been another remark of the same nature. "It seems" said Presiding Judge Rumpff after following every word of the two months argument on the indictment intently, *"that the Attorney General, when drawing up the indictment, did not give full consideration to the implication of allegations of treason in peace time."* Mr. Pirow, naturally, protested hotly that the very fullest consideration had been given, and the Judge naturally accepted that assurance.

But the strong impression remains; however many man-hours have been spent on it, the prosecution produced an ill-conceived, deformed and misbegotten charge, and knowingly foisted the monster on the accused and the courts. I do not speak here of the facts of the case against the accused, of the question of whether the evidence can or will establish the guilt of any or all of them. That is a question for the courts alone to decide, and any comment on that issue would be both unlawful and undesirable. But of the conduct of what is politely termed 'The Crown, of the manner of behaviour of the prosecution and of the Minister of Justice who is the real head of the prosecution team, it is necessary to speak before a scandalous injustice is allowed to continue in the name of justice.

## Genesis

What are the facts? Almost two years ago, 156 people were arrested in the most abrupt and dramatic fashion. They were released on bail in the face of strenuous opposition from the police after some two weeks in the Johannesburg Fort. At the preparatory examination, they were told by the senior prosecutor that the crown case would be over in six weeks. With some short periods of defence cross-examination of witnesses it lasted thirteen months — the longest in the country's history. After almost a year of he Drill Hall hearings, charges against 61 of the accused were suddenly withdrawn without a single word of explanation, and without a penny of compensation for their lost year. Seven weeks later, another four were similarly released. Only 91—three out of every five of those originally arrested — stayed to the bitter end. All 91 were committed for trial.

The course of the preparatory examination itself was as remarkable. Though the warrants of arrest alleged 'High Treason' between 1953 and 1956, the crown presentation of evidence proved elastic. Evidence went back to 1952, to include the Defiance Campaign — and forwards to 1957 to include riots outside the Drill Hall while the accused were still imprisoned, as well as campaigns for their release. Matters which had not been mentioned in the prosecutor's

two-day opening address were conjured up suddenly in the middle of the hearings — evidence of mysterious school burnings, evidence of Mau-Mau atrocities in Kenya, evidence of 'brainwashing' in Korean prisoner-of-war camps, evidence of plots to smuggle in arms from China and a mysterious 'gas powder' from Russia.

## Test of Faith

It was said — properly — by Magistrate Wessels, that it was legitimate for the prosecution to lead such evidence provided they undertook to link it up with the accused at a later stage. Repeatedly, over defence objections, the undertaking was given that it would be so linked. But there is a difference between what is legitimate, and what is fair to an accused person. The test of the crown's fairness is that there was not, at any stage, any such link or any attempt to prove any such link. It was from this that there arose the first real questioning of the prosecution's conduct. Had the crown made any attempt to sort the evidence dumped into its files by Special Branch policemen? Had any attempt been made to test the reliability and credibility of the gangster and convicted murderer, witness Ralekeke, who testified to events during the Kliptown bus boycott? Or of the life-long jail-bird and fraudulent B.A., witness Mgubasi, brought from a prison cell to testify about arms plots? Had there been any serious effort to sort from the police archives those documents and speeches which were relevant and to discard those irrelevant?

Perhaps, to this, there is only one answer. That is in the indictment, laboriously prepared over six months after the committal of the accused for trial. In it there is not a single word or reference to the Kliptown bus boycott, said by the prosecutor at the start of the preparatory examination to be "the prelude to the revolution." In it there is not a single word or reference to Kenya or its Mau-Mau, to the Korean war and 'brainwashing', to arms plots or gas powders. There is not a single allegation of school-burnings or assaults connected with school boycotts. Once again the dates have reverted to "the period 1st October 1952 to 13th December 1956." There is, accordingly, no possible reference to the Defiance Campaign, to riots in Port Elizabeth, Kimberley and East London, to riots outside the Drill Hall during the preparatory examination. Countless weeks of the Drill Hall prosecution have, mysteriously, melted away to nothing. Legitimate perhaps. But morally indefensible.

## Retreat in Disorder

In Pretoria, stage two, the crown conduct of the trial has not got beyond the indictment. In the original indictment itself there was only one specific allegation of any practical and criminal result of the actions of the accused — that their speeches and writings "... did in fact create feelings of discontent or unrest and/or hostility between the various sections and races of the population in the Union of South Africa." The defence asked, simply, on what facts the crown would rely to prove that such discontent was created. And by way of answer the crown, simply, withdrew the whole allegation. Can the original allegation have been made on the basis of evidence and in the interests of justice? There was also an allegation of "... organising and participating



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