TREASON TRIALS DEFENCE FUND

PRESS SUMMARY

No. 38.

This is the thirtyeigth issue of a regular bulletin giving a factual resume of the proceedings of the Treason Trial.

Period Covered: 1st - 9th August, 1960.

WITNESS NKALIPI CALLED.

The Court resumed on August 1st, 1960, two years after the first appearances of the accused in the special court and three years and nine months since they were arrested in December, 1956. The accused, Mr. S. Nkalipi, replying to questions by Defence Adv. C. Plewman said that he was about 47 years old and came from the Korsten area of Port Elizabeth. His formal education had not gone beyond Standard IV. He had been a member of the Methodist Church until 1953.

The witness said that he had first become interested in politics in 1936 when the common roll vote had been taken away from Africans in the Cape. He had attended his first A.N.C. meeting in 1943. He had understood the A.N.C. to be the mouthpiece for complaints and grievances and to advance the interests of the African people, and that it had never had a policy of achieving its aims by violence. He was against any violence in conducting campaigns and he was also opposed to violence in all its forms, irrespective of A.N.C. policy. In this he followed the teaching of Christ. He had read the Bible from his schooldays and frequently quoted it in his speeches.

Non-violence emphasized.

Mr. Nkalipi said that in the Defiance Campaign he had been the first volunteer to defy apartheid laws in the Korsten area. The Defiance Campaign had been conducted on a non-violent basis, and non-violence was the first thing that volunteers were taught in the code of discipline. If at any time the A.N.C. changed from a non-violent to a violent policy, he would withdraw from the liberation struggle.

When he had led the Defiance Campaign volunteers in 1952 he had broken railway apartheid laws and was sentenced to £3 or 3 weeks imprisonment. In January 1953 he was convicted of leading an unlawful procession and received a suspended sentence of 30 days. On two occasions he was convicted of using a microphone without a permit. In August 1956 he attended a religious meeting in Grahamstown called by a man alleged to be a prophet. At this meeting he had been asked to read from the Bible and to say a few words. He was then arrested with others and charged with holding an illegal meeting. His final sentence was 8 months imprisonment or £134. He had been serving his sentence when he was arrested for High Treason in 1956.

Economic Boycotts.

Mr Nkalipi stated that he had attended the Conferences in the Eastern Cape at which resolutions had been taken to use economic boycotts as a method of struggle. He indicated how the economic boycott had been applied in Port Elizabeth to shops and stores in non-European areas which did not employ non-Europeans to serve the public and who failed to treat their customers correctly. He stressed that these boycotts were not undertaken without mutual negotiation with these shops and stores, and that finally negotiations ended the boycotts. His experience in these economic boycotts had made him believe not only in the method of boycott, but also in protests and demonstrations on the lines of "passive conduct".

2/ Congress aims ....

Congress Aims.

Replying to questions on the aims of the A.N.C., the witness said that they were for equality of the African people with Europeans in all walks of life, and full franchise rights and the right to be elected to Parliament. The Africans did not want the white people to leave the country, but to sit with them side by side in peace. There should be peace, friendship and harmony with all racial groups.

The A.N.C. wanted a Parliament but not the same as "this Parliament"which was composed of Europeans only.

The witness said that after the Defiance Campaign had been called off, volunteers had been kept on for organisational tasks so that when Chief Luthuli's call for 50,000 volunteers had been issued, his area had merely called for more volunteers.

Witness Denies Allegation.

Adv. Plewman then questioned the witness on certain meetings which he had addressed in Port Elizabeth. Referring to a report of a meeting at which a speaker was alleged to have said, "....we will fill sugar bags with the brains of the Boers....", the witness said he doubted that this could have been said. He would most certainly have repudiated such words as chairman, and the report of the meeting did not contain any repudiation.

The witness also denied that he could have said "If some one hits you at Congress, you must hit him harder." He denied also that another speaker could have said, at another meeting, "If the Europeans resort to violence we shall hit back. Anything can happen." The witness, as Chairman, would have corrected the phrase "hit back", for that was not Congress intention, "No one must resort to violence, we must just be as lambs", Mr. Nkalipi said.

The witness was then questioned on an allegation in which he had said, "The Congress of the People is meeting in the Transvaal. Anything can happen after the meeting, we don't care. The American Republic was formed after a bloodbath; so will the South African Republic be achieved after blood shed. The Russian Republic was also achieved through bloodshed at the time of Lenin, the Chinese People's Republic was achieved through bloodshed under Chou-En-Lai." Mr. Nkalipi replied that he recalled the speech but it had been far longer than this and he had emphasized that the struggles of his people were not to be violent. He remembered making the example that the A.N.C. would achieve freedom "under the methods of Gandhi - non-violent".

Die Fighting.

The witness explained also that the words "I will die fighting as a volunteer" used by a speaker at a meeting for the enrolment of volunteers, meant "I will struggle all my life... till my natural death."

Adv. Plewman then referred to the speech by the Accused B. Ndimba at the same meeting, for which he had been charged with incitement to violence. The speech had been discussed by the Branch A.N.C. executive and Ndimba had been warned that he must not make such speeches. Ndimba had apologised for the speech, in which he had said that if the volunteers were told to kill, they must kill. The witness stated categorically that the volunteers were not called upon to take any oath to kill. He believed however that "though we are non-violent, we may come across violence".

Cross-examined by Adv. Trengrove Q.C. for the Crown, Mr Nkalipi agreed that he had participated in thw A.N.C. from 1952. He had acquired his views on A.N.C. policy through listening to A.N.C. speakers at public meetings and at Conferences, but could nc remember if it had also been from A.N.C. bulletins and documents.

3/ He had read .....

He had read Fighting Talk because he found it very interesting not because it was an ally of the liberation struggle or because the Congress movement encouraged people to read it.

The witness agreed that he had taken a very active part amongst the volunteers, and had been a group leader of defiers in the Defiance Campaign. He might have recruited volunteers, by calling upon people to be prepared to sacrifice. He did not know of any test for volunteers, and thought everybody had been acccpted.

No Need to Teach Oppressed.

Replying to questions on the duties of volunteers, Mr Nkalipi said that he thought their duties had been to spread the voice of the oppressed people. He doubted very much that it would be necessary to teach the people about the oppression under which they lived. The people were being prepared for the liberation struggle by the very conditions under which they lived.

When Adv. Trengrove questioned the witness on the pamphlet, "Welcome Freedom Volunteer" he explained that he had only read portions of it when he received it, for he could see that his own line really corresponded with its contents. He agreed that it was the duty of volunteers to distribute leaflets and pamphlets, but did not agree that they sold publications such as New Age, Fighting Talk and Liberation. He did not know of any study notes prepared for volunteers, but agreed that it was an important part of the volunteers' duties to teach people. people.

The witness agreed that the A.N.C. was striving for a state on the terms of the Freedom Charter, which made provisions for the division of land and the redistribution of mineral wealth, but did not follow what was meant by the abolition of monopoly industry. He agreed that very big changes would have to take place for these things to happen.

A People's Democracy.

Replying to questions on the establishment of a people's democracy, Mr Nkalipi said that he would be one of the happiest persons to see it; he thought a people's democracy would be like the Kingdom of God. He could not recall any parfcular country which the A.N.C. had described as a people's democracy. The witness said that the liberation struggles in other countries such as Malaya, Indo-China, French Morocco, Algeria, Kenya were not the type of struggles practised in South Africa. He condemned violence because of his Christian precepts wherever he found it but he did not have "the knowledge which Counsel for the Crown would like me to have" about the A.N.C. attitude. As far as he understood, however, the A.N.C. had never supported armed clashes. He had referred to the struggle in Kenya on his own in his speeches and was not ordered to the A.N.C. to make such references. He condemned the Kenya authorities for their actions, some of of which were the same as in South Africa, because he did not want those actions to produce a struggle in South Africa like that in Kenya.

Mr Nkalipi said that in Kenya the people were made to flee into the the forests and live like beasts, because of the implementation of pass laws, and arrests, so that there was no work and no food. Then these people were called Mau Mau but he did not know of any such organisation. He only knew of the Kenya African Union led by Jomo Kenyatta. He had gathered this information from A.N.C. speakers on platforms but could not remember their names.

Continuing the cross-examination of this witness on the following mornong Adv. Trengrove dealt with the address by Dr. Mji to the Cape A.N.C. conference in February 1953. Mr. Nkalipi said that he did not recall what Dr. Mji said, but would accept that it was in accordance with A.N.C. policy because he was a prominent member of the A.N.C. When Adv. Trengrove however questioned the witness on certain phrases such as "the revolutionary path" on which the African people had set out, he said he did not understand this language. He had accepted that Dr. Mji was talking along the A.N.C. line of non-violence and passive resistance; the way to freedom was through gaol. The

4/ witness accepted ....

witness accepted that as the struggle progressed, more sadistic moves would be made to crush it and to keep the people in a state of oppression. "It has been the position ever since I was born!"

Enlistment of Farm Labour.

Cross-examined on the 1953 National Conference at Queenstown Mr Nkalipi agreed that one resolution dealt with the need for political education for volunteers, and another with the necessity to enlist farm labourers as part of the liberation movement. The witness had difficulty with the language of the phrase "tremendous revolutionary potential which lies entrapped in white farming areas" but finally expressed his own view that people on the farms were not well treated. A man could work for one day to bring in the value of £50 for labour but only gets 5/- or 7/6. He can't maintain his family; children might die of T.B."

Adv. Trengrove asked the witness that imperialist and capitalist aggressors were referred to in one of the resolutions. Mr Nkalipi said that in his view French Indo-China, Morocco, Kenya, the Malay States and Algeria were countries in which the people were oppressed by capitalist and imperialist powers.

Mr Swart Quoted.

The witness said that he had accepted that the A.N.C. must be prepared to make the supreme sacrifice in the struggle for liberation. The former Minister of Justice, Mr Swart, had said that if Africans met in illegal groups they should be "dispersed with batons and also sjamboks", and that the police should "shoot and ask the dead bodies afterwards."

Adv. Trengrove then cross-examined the witness on the speech made by the accused B. Ndimba. He quoted the statement that the volunteers oath did contain the words, "If the instructions are given to the volunteers to kill, they must kill." Mr Nkalipi said there was no such oath in Congress. Pressed by Adv. Trengrove to explain why Ndimba should have made this statement, he said he could find no explanation except that he might have thought it would help him.

Kenya.

On the subject of Kenya, Mr Knalipi said that when he mentioned this, it was to indicate that the people there also wanted freedom. He did not speak of their fighting for freedom because he thought "this manner did not show it would lead to freedom." Asked whether the struggle and bloodshed in Kenya was a common topic at meetings he said he had never heard it praised as a good thing. His one object in mentioning Kenya was because he thought it was not wise for the South African Government to do the same things, such as banning meetings, and the sensible leaders of the people. When people outside Congress asked him "when will fighting take place?" he replied, "Ours is a spiritual, not a physical encounter" and quote from the Bible to show how this could achieve freedom.

Cross-examined on his own speech at the meeting in Port Elizabeth held simultaneously with the Congress of the People at Kliptown on 26/6/55, the witness said that he had referred to the Republics of Russia and America being achieved through bloodshed, because he knew that many people had heard stories and believed that was the right way "instead of ours". He had given examples and then shown that "we can achieve by our method without shedding of blood - but we can still meet with blood", This was in the sense that force would be used by the police in dispersing people.

Adv. Trengrove then referred to the 1952 riots in Port Elizabeth. The witness explained that his own view was that he was sorry that people should die on account of a thief who was not arrested. Congress view was that a Commission of Enquiry should have been appointed.

5/ He denied .....

He denied most emphatically that the Congress attitude towards riots generally was to comemorate all the people who died or went to gaol as heroes of the liberatory struggle. The Port Elizabeth riot did not figure in the Congress plans.

Government likened to Nebuchadnezzar.

Mr Nkalipi explained that he did not agree with the Congress attitude as put to him by the Crown that as the struggle progressed the ferocity of the State would grow worse. His own view was that ultimately "If we are strong spiritually the government will repent, as King Nebuchadnezzar had done."

The following morning Mr Nkalipi read the extract from the Bible to illustrate the reference to Nebuchadnezzar, following with the statement that it was his belief that just as then the 3 young men had defied the King's unjust commandment, but his heart had eventually been softened, so it could happen here, and the Government repent.

With reference to the State using force to maintain security, Mr Nkalipi said that the question surprised him. He took no part in making the laws that govern this country, and it became an offence if he protested. "The Government who governs like that, is a brutal elephant....." The elephant can trample, but I am expecting God to talk one day. That is my belief. God will answer one day. He knows how."

Mr. Justice Rumpff asked whether in the Old testament, God allowed his own chosen people to occupy a country by force. Mr Nkalipi replied that he did not know that people whp use violence do it through God. He did not see anything wrong in urging people to continue to defy laws, for "the Government's arm could tire." He did not concede that the masses might retaliate against police violence.

During the re-examination by Defence Adv. Plewman, Mr Nkalipi said that he could not accept as correct any reports by detectives of speeches made at meetings in Port Elizabeth by such persons as J.Jack, the accused F. Ntsangani, B. Ndimba and R. Resha. He knew all these speakers, they did not make disjointed speeches. They also made long speeches. The reports of their speeches by the detectives who had given evidence were nothing like the real speeches. They were inexact and words had been left out.

NELSON MANDELA CALLED

The next Defence witness was the accused Mr. Nelson Mandela. Replying to Defence Adv. S. Kentridge he said that he was born in Umtata in 1918. His father had been chief of the Tembu tribe. When he was 12 years old his father had died and his unbringing and education had been taken over by the Acting Paramount chief. At the end of 1940 he had left the Fort Hare University College and had completed his B.A. by correspondence with the University of South Africa. He had studied law at the University of the Witwatersrand, and had become articled and qualified as a lawyer in 1952.

Mr Mandela said that he had joined the A.N.C. in 1944 and was one of the foundation members of the A.N.C. Youth League. This was a pressure body created to bring about a more militant policy in the A.N.C. He had helped to draft the document "The Basic Policy of the A.N.C. Youth League". The cornerstone of the policy of the Youth League was African nationalism. It had always been the policy of the A.N.C. to bring about a united African community, and this basic policy of the Youth League went further in that it set out and analysed African nationalism. There had been considerable debate and great controversy at the time of drafting this document on the attitude of white people in South Africa. Eventually the view prevailled of a moderate Africanism and the realisation that the different racial groups had come to stay, but that white domination must disappear. The economic policy of the Youth League was for far-reaching agrarian reforms (but envisaged private ownership) and the elimination of the

6/ of the colour bar .. ,

colour bar in industry and the recognition of the right of all workers to organise. Nationalisation was not part of the policy. The Youth League also felt that the existing form of A.N.C. organisation bore no relation to the conditions prevailling amongst African people and urged the creation of local branches which would attend to problems in local areas. The Youth League also pressed for changes in the methods of the A.N.C. Until the formation of the Youth League, only purely constitutional methods had been adopted, e.g. deputations, memoranda, resolutions. There had been found wanting and the need was felt for more militant forms of political action in addition to the previous methods.

A.N.C. open to all.

Mr Mandela referred to the move in the Youth League to expel members who were Communists. He explained that the resolutions moved at Conferences had always been defeated by overwhelming majorities, on the ground that every person above the age of 17 was entitled to join the A.N.C., irrespective of political views, provided he supported the objects as set out in the constitution. At that time he had strongly supported the resolution to expel Communists.

Mr. Mandela said he had been elected as a member of the Transvaal Executive of the A.N.C. in 1946. From about 1950 he had worked with Communists on certain issues. He had discovered that his views on Communism in the A.N.C. were not justified because of the outlook and attitudes of these people and also because of their devotion and loyalty to the African National Congress.

It was the A.N.C. Youth League which had introduced and pressed for the Programme of Action finally adopted at the 1949 National Conference. The witness explained that the Programme of Action provided for more militant forms of action such as the boycotting of differential political institutions, strikes, non-cooperation, and also "such other means as may bring about the accomplishment and realisation of our aspirations." The final phrase provided latitude to adopt forms of political action within Congress policy, and also those already employed before 1949. A policy of violence had not been contemplated then or at any time. The Programme of Action did not exclude negotiations; these could however only take place when both parties had something to give.

The witness said that he had joined the National Executive of the A.N.C. in 1950. The first issue on which the Programme of Action had been implimented was the Native Resettlement Councils and the Advisory Boards, when Dr. Moroka and Prof. Matthews were called upon to resign.

Bill An Attack On Political Rights.

The African National Congress had opposed the Unlawful Organisations Bill (later the Suppression of Communism Act) because it attacked the rights of political organisations to exist and was intended to destroy all organisations which opposed the government's racial policies. The "Defend Free Speech" Convention was called in 1950 by the African National Congress, the S.A. Indian Congress, the African People's Organisation and the Communist Party of S.A. A resolution was taken to observe 1st May, 1950 as Freedom Day, by calling upon people to stay at home from work. On the evening of that day there had been disturbances and police shooting. The witness gave a first hand account of shooting in Orlando.

Replying to questions on the Defiance Campaign, Mr Mandela said that this had first been discussed with him by the accused Walter Sisulu, and had then been raised with the A.N.C. Working Committee. Discussions had been held with the S.A. Indian Congress and the Joint Planning Council was set up. The witness was appointed as National Volunteer-in-Chief in charge of all volunteers. He described the screening and selection of volunteers. They had to reply to various questions, of which the whole crux was their belief in non-violence and their acceptance of discipline. He, together with others, had been

7/ charged with ....

charged and convicted under the Suppression of Communism Act for his part in the Defiance Campaign. The witness had received a suspended sentence and had been banned under the Suppression of Communism Act and ordered to resign from the A.N.C. and numerous other specified bodies. He had also been prohibited from attending gatherings for 2 years and had been confined to the Magisterial area of Johannesburg. He had then resigned from the A.N.C. and the A.N.C. Youth League.

No Easy Walk.

In October 1952 Mr Mandela had been elected Transvaal President of of the A.N.C. and in 1953 had prepared his presidential address for the October conference but had been banned before the conference was held. His address was taken over by the Executive Committee and presented to Conference and then published by the Youth League under the title No Easy Walk to Freedom. Replying to questions by Adv. Kentridge on military phrases he had used, the witness explained that these had been used purely metaphorically. Commenting on the Defiance Campaign in this address, he had in mind that the Defiance Campaign had been planned in three stages and that the final stage had envisaged mass defiance when everybody would be expected to break the laws; it had been anti-oipated that the government would then have been forced to capitulate - to the people of South Africa both black and white. The A.N.C. had not discussed the form that capitulation might take. There had been no certainty that there would be capitulation and in fact the Defiance Campaign had been suppressed. The passing of the Criminal Laws Amend-ment Act had provided for heavy penalties for defiance.

The next day Adv. Kentridge continued with further questions on "No Easy Walk to Freedom" and the witness explained the significance of the expression "new forms of political struggle" and "higher levels". By the use of these phrases he had stressed the necessity for more intensive and mass organisation, as outlined in the M. plan, which envisaged a vast scheme of house visiting and organisation of the people in small units. The M. plan was infact his own plan, M. standing for Mandela, and if this were carried out efficiently it would provide for closer and more effective contact with the mass of the people, and would overcome some of the difficulties arising from the anticipated banning of meetings. There had been nothing specific implied in "higher levels" other than better organised campaigns.

Revolutionary.

By his reference to "powerful revolutionary eruptions" the witness had had in mind political struggles for reform, for independence, for profound change. He had for example regarded the Defiance Campaign as revolutionary, and when he wrote "the day of reckoning is not far off" he had had in mind the day would come when the Government would not be able to resist the demands of the people for their rights. The passage from which the title "No Easy Walk to Freedom" had been taken was in fact a quotation from Jawaharlal Nehru's book "The Unity of India".

Adv. Kentridge then questioned the witness on a meeting in December 1953 at which both he and Dr Dadoo, President of the Indian Congress had spoken (This was during a brief interval when the ban on speaking at meetings had been invalidated.) The witness did not agree that he could have said "Our Freedom is a direct threat to Europeans" and thought he must have said, "to the policy of those Europeans hostile to us." Replying to a question by Mr. Justice Bekker on this quotation from the report of his speech, the witness explained that the A.N.C. was not anti-white, but anti-white supremacy. In fact the Congress could take credit that there was a movement in South Africa for racial peace; the A.N.C. had consistently preached racial harmony and condemned racialism.

Questioned by Mr Justice Rumpff as to the impression on listeners of this speech in which, as recorded, references were made to Europeans being driven out of a number of countries, and also atrocities committed. upon Kikuyu men and women, the witness replied that his speech must be examined in relation to the whole policy of the A.N.C. He did not concede that it was an accurate report, it was very disjointed, and

7/ vital sentences ....

vital sentences were not there; the speech as recorded might well have an effect which would not be there if it had been fully recorded. He himself had never set out to make a speech to throw Europeans out of the country, and this was not the way he spoke.

Western Areas Removal.

Replying again to Adv. Kentridge, Mr Mandela said that opposition to to the Western Areas Removal had been discussed as far back as 1951. After he had been banned from the Congresses he had still been consulted as a lawyer on certain aspects of the campaign against the removal, e.g. whether it would be a criminal offence for a Western Areas resident not to comply with a removal notice. He had obtained Counsel's opinion that it would not be a criminal offence. After the banning, he had been kept informed by the A.N.C. in accordance with their custom in relation to prominent banned A.N.C. members. He was banned at the time of the Congress of the People but he had seen and subscribed to the Freedom Charter, which he regarded as envisaging socialism only to a limited extent. He was attracted to socialism but had not made a deep study of it. He had read a little about the Soviet Union and was interested in the system and was particularly impressed by the absence of the colour bar, the fact that the Soviet Union had no colonies, their stand against imperialism and the strides made in industry and science. He had no desire, however, to reproduce the same social system in South Africa. On the question of a one party government, the witness said that it would need careful examination, in relation to South Africa. Here there was a multi-party system at present, but the most despotic system imaginable for non-Europeans. These were however, his personal views, he was not aware that this had ever been discussed by the A.N.C. The witness agreed that in terms of the Communist Manifesto, (a copy of which had been found in his possession) the transformation to socialism could be effected only through violence, but he had heard other views expressed, to which he personally subscribed, that it would be possible to effect it by peaceful means.

Mr Mandela said that he had been invited to write articles for the journal "Liberation" by the proprietor, Mr D. Tloome, a member of the A.N.C. Transvaal Executive until he had been banned. His critical article on the Liberal Party had been written to express his own point of view. Other members in the A.N.C. had different attitudes, e.g. Chief Luthuli who was in touch with other prominent members of the Liberal Party. Although the Liberal Party had shifted a great deal from their original position, he still held the view that they were a Parliamentary Party and influenced by that fact. The constitutional attitude was in fact an attack on the 1949 Programme of Action.

The witness, replying to questions on his article in "Liberation" on the Freedom Charter pointed out that the Charter was not a document for only one political view but for all groups, white and non-white who felt that the policy of racialism should go. When he had said that the Freedom Charter was a revolutionary document because it could not be achieved without the break up of the political and economic set up, he had had in mind the calling on the Government to resign as a result of the intense economic pressure of defiance campaigns and stay at homes, and changes in the present economic structure which reserved 80% of the land to Europeans and denied acquisition of land or industrial sites to Africans, except the reserves.

Lectures.

Adv. Kentridge then turned to two lectures found in the possession of the witness, "Political organisation" and "How S.A. is governed." Mr Mandela explained that there had been a group of 5 lectures, of which he had himself contributed "How S.A. is governed", but did not know who had prepared "Political Organisation". These lectures had been issued either at the end of 1952 or the beginning of 1953, and had been systematically distributed and discussed amongst the membership in the Transvaal. A later lecture, issued probably in 1956, "What Every Congressman should know" had been sent to him by the Congress office. Members of the A.N.C. were not necessarily expected to agree with such

9/lectures ....

lectures; the idea was to give information and stimulate discussion. It was possible that lectures in conflict with Congress policy could also be distributed for discussion.

Democracy Dangerous.

When the witness agreed to a suggestion by Adv. Kentridge that all people must vote, the only qualification being that of age, Mr Justice Rumpff asked whether unqualified democracy could not be dangerous. The witness replied that every person should have the right to vote, and emphatically repudiated Mr Justice Rumpff's suggestion that people who knew nothing could be like children and led by leaders. The witness pointed out that educated people have carried out savage policies, whilst uneducated people often have very advanced views. Adv. Kentridge asked whether he would consider the previous witness Mr Nkalipi, who had only completed Standard IV, fit to vote. When Mr Mandela said that he certainly would consider him fit to vote, Adv. Kentridge said : "I respectfully agree, but our views are irrelevant!" Replying to Mr Justice Bekker, the witness said that although the A.N.C. had not formally considered it, views had been expressed at conferences and meetings that a qualified franchise would cut off a large number of Africans, because they had no educational opportunities.

Replying to questions on the three lectures "The World We Live In", "The Country We Live In" and "A Change is Needed", the witness said that he found nothing in them inconsistent with the policy of Congress. In his opinion the paragraph "peoples' democracy" was purely descriptive and did not regard the use of it in the lectures as indicating certain countries which called themselves peoples' democracies. He agreed fully with the suggestion contained in the lectures that racial discriminatory laws should be abolished, although the A.N.C. had not discussed any specific legislative programme. It was understood that existing discriminatory laws would be repealed. Replying to questions by Mr. Justice Rumpff on the suggestion of a peoples' armed guard to uphold the rights of the people Mr Mandela said that he found this term purely descriptive, in contrast with present set up in South Africa where the army and police were used not to safeguard the interests of all sections, but to suppress the aspirations of the African people. Replyging to Mr Justice Rumpff, the witness agreed that the final formulation of the lecture, referring to control passing from the hands of the old rulers and exploiters to the workers and peasants could be a typically basic Communist formula. He found it not clear and would not say that it would be in line with A.N.C. policy. The purpose of the lectures he had understood to be to stimulate discussion.

Cross-Examination.

Adv. Hoexter, for the Crown, began his cross examination with the lectures, questioning the witness on the use of the phrase "peoples' democracy". The witness did not agree that a reader would clearly gain the impression from the 3rd lecture that by peoples' democracy the writer meant such countries as the Soviet Union, Czechoslavakia, Poland, etc. He felt that in the lectures the term had been clearly defined and the precise meaning set out. He was not interested in any comparisons. "We want these changes, a peoples' democracy, whether it is similar to other countries is immaterial". The witness continued by explaining that Congress had not sat down to discuss formally how the peoples' democracy would be achieved. He could not accept the suggestions in the lecture as the Congress view. They expressed the view of the drafter, some people in Congress might agree with them.

Replying to the question as to whether Congress could expect substantial concessions from the State, Mr Mandela said that a tremendous amount of pressure would be needed, but that was not inconsistent with negotiations. The witness stressed that these lectures did not set out the policy of Congress, although he did not find anything in the lectures inconsistent with Congress policy. He explained in detail, in reply to a number of questions by Mr. Justice Bekker, how the African National Congress functioned in respect of policy, which could only be laid down by the National conference.

10/ Replying to questions ...

Replying to questions on a number of phrases, expression and words occuring in the lectures, the witness reiterated that the lectures did not necessarily express the Congress viewpoint. In some cases they might well express the A.N.C. view, in others they went beyond the A.N.C. views, as he understood it. On many aspects, the A.N.C. had no particular viewpoint. There would nevertheless be no objection to ideas or points of view being canvassed amongst members, through the medium of lectures. When Adv. Hoexter suggested that the idea that existing Parliamentary parties were agreed that changes must not upset the cheap labour and profit system would be consistent with the policy of the Congress of Democrats, th witness replied that he would be surprised if the aims of the Congress of Democrats went further than the Freedom Charter and would give the same answer with reference to the S.A. Congress of Trade Unions and the S.A. Indian Congress.

The witness said that it had been indicated to him that L. Bernstein formerly of the S,A. Congress of Democrats was the author of these lectures.

Dealing with the link between imperialism and capitalism, the witness said that the Congress had never discussed capitalism. Their quarrel was with imperialism, and capitalism was not on the A.N.C. agenda. The views on capitalism and the class struggle set out in the lectures tallied with his own views.

Apparatus of Coercion.

When the Court resumed on Monday August 8, Adv. Hoexter continued his his cross-examination of the witness N. Mandela, on the point of the State as an instrument which rules by armed force, by quoting several extracts from a document found in the possession of the witness. These extracts referred to the State as the "apparatus of coercion" for maintaining the rule of one class over another. The witness agreed that the essential idea in these references coincided broadly with the idea of the State as outlined in the three lectures, adding that his experience was based on the practical effect of the State in S.A. Congress, however, had not discussed the nature of the State, because it had no special ideological philosophy beyond equality in S.A. realising that discussion of these theoretical problems might split the unity of Congress.

The witness said that he did not agree with all that the author of the lectures said, particularly if he meant that State institutions would have to be scrapped and replaced by a new form of state. That would be contrary to the policy of the A.N.C. He said further that he did not understand the reference in the lectures to "armed gaurd". As he understood Congress policy, there would still be the police and the army, but free from any colour bar. Nor did the witness agree with the view expressed in another document, that it would be necessary to smash the "bourgeois state machine". His own view was that it would not be necessary in S.A. to employ force and violence to achieve the demands of the Freedom Charter. The Congress attitude was that institutions of State would remain but would have to be radically changed. He would say that the writer of the lectures had leftist political affiliations. He did not agree that the lectures implied that a peoples' democracy would have to be achieved by violence.

Adv. Hoexter then put to the witness a report published in Fighting Talk of a statement by Krushchev on Soviet policy in regard to the achievement of a peoples' democracy. The witness said that he held a similar view in some respects only, although stressing that Congress went further with its policy not to resort to violence. Krushchev's views were not binding on him and all that he really thought it to be possible in South Africa. The witness then gave the example of the peaceful transformation to a socialist state as effected in Hungary and also in the Indian State of Kerala where the transformation was brought about through Parliament. The witness pointed out, however, that the A.N.C. had never had in its programme the transformation to a socialist society. Its policy was one of exerting pressure on the Government. The possibility that strong pressure might cause

11/ the government ...

the government to harden was always there, but he believed that the Congress policy would bring down the government, nevertheless, There was already a large body of voters who were hostile to Government policy. Replying to Mr Justice Kennedy the witness said that Congress did not believe that its policy of pressure would fail, although it did expect force from the government, precautions had been taken to ensure that violence did not come from the Congress side. This had been shown in the Defiance Campaign and through the Congress policy of stay-at-homes rather than strikes, so as to avoid the use of pickets, which might lead to police violence. He admitted that there might be instances where people did not behave as they were asked, but Congress experience had been that people did agree to follow the policy of non-violence.

Non-Violence and Discipline.

When Mr Justice Rumpff asked what precautions had been taken by the A.N.C. to prevent violence in the Western Areas Campaign, Mr Mandela replied that according to reports he had had of this campaign, a statement had been issued telling people to be non-violent and disciplined. He had accepted this report. The witness also referred to the many thousands of speeches relating to the Western Areas which had been made and which he would have expected to propagate the Congress policy of non-violence. The speeches before the Court were only a fraction of the total. By the time that the A.N.C. took up the issue of the Western Areas, the whole policy of the A.N.C. emphasised non-violence and discipline.

Mr Justice Rumpff then asked the witness how he could reconcile the efforts of the volunteers to save people from compulsory removal, by evacuating them to other parts of Sophiatown, with precautionary measures against violence. The witness explained that these might have been in fact precautionary measures, since these evacuations took place before the arrival of the police.

Objection.

Defence Adv. Kentridge rose to register a formal objection to the form of Mr Justice Rumpff's question which by employing the need for reconciliation suggested that the volunteers' plans might have had an element of violence. The Defence submitted that the Court ought not not to assume inconsistency with precautions against violence. Mr Justice Rumpff explained that his question had been that if the armed police were forcibly removing the residents and others tried to remove them in the vision of the police, whether there might not be the possibility of a clash, and if so how could this be reconciled with precautions against violence.

Replying to further questions by Adv. Hoexter on the Congress attitude towards a possibly military dictatorship, the witness emphasised that the Congress weapon was non-violence not as a mere expedient but because Congress believed that non-violence should be employed to achieve the demands of the Freedom Charter, even if this would take a longer time the Congress was still committed to non-violence.

Replying to questions on articles published in Liberation, the witness said Liberation discussed matters of interest, but was not the mouthpiece of the A.N.C. and its views were not necessarily consistent with those of the A.N.C. In his own article "the spectre of Belsen and Buchenwald" he had had in mind the suffering of the people and had stressed that nevertheless Congress had become stronger and more powerful. When Adv. Hoexter suggested that the possibility of violence might therefore be increased, the witness replied that the lesson of Sharpeville taught that the government will not hesitate to massacre, even in hundreds.

Class Struggle.

Adv. Hoexter then put to Mr Mandela extracts from articles appearing in the journals of the African Youth League, dealing with the class struggle, the dialectical approach. The witness repeated that the A.N.C. had no policy on the class struggle. and consistently refrained

12/ from discussing ....

from discussing this issue. His comment on the article referring to the dialectical approach was that this was full of "left stuff" and appeared to be an interpretation of society in terms of Marxist philosophy. When another article in which a distinction was made between the concept of liberation for an African and a European, was put to him in respect of the Congress of Democrats, the witness said that the C.O.D. concept of liberation was not that of freedom from class and economic liberation. Members of the Youth League would be free to express their own points of view in their journals, but this this could not be taken as expressing A.N.C. policy. Replying to Mr Justice Rumpff, the witness said that he would say that the C.O.D. unreservedly supported the point of view and policy of the A.N.C. It was committed to the Freedom Charter and members whom he know had no theory of the class struggle.

Commenting on a quotation from the journal Iziswe, Mr Mandela said that this passage was capable of two interpretations. It might be taken as meaning that if the terms of the Freedom Charter were realised there would be a state in which the exploitation of man by man would be to a great extent have been eliminated, but it would still be a capitalist state. If it meant that to achieve freedom, capitalism must be destroyed and replaced by socialism that it could be interpreted as an attack on capitalism but it would be inconsistent with the policy of the Congress. In the view of the witness, the passage could carry either of these two meanings.

When Adv. Hoexter put to the witness extracts from a report of a speech alleged to have been made by him, he pointed out the report presented a most garbled version of his speech and denied strongly that he had ever urged people to support violent revolution. Mr Justice Bekker asked if this report had been led in evidance and the witness replied that it had only been led at the Preparatory Examination and had been part of the evidence of Detective Sergeant Isaac Sharpe.

The following morning Mr Justice Rumpff informed the Court that owing to the indisposition of Mr Justice Kennedy the Court would be adjourned to the following Monday, 16th August.

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PRESS SUMMARY.

This is the thirtyninth issue of a regular bulletin giving a factual resume of the proceedings of the Treason Trial.

Period Covered: 15th - 22nd August, 1960.

When the Court resumed on Monday 15th August, Adv. Hoexter, for the Crown, cross-examined the witness, Mr. Nelson Mandela one of the accused, on speeches made at the National Conference of the South African Peace Council in August, 1953. He conceded that the witness might not have heard the speeches since he was not present throughout the Congress.

Mr Mandela said he did not have the impression that the Peace Council was anti-capitalist, only anti-imperialist. He was not aware that the Peace Council was concerned with social revolution. The Congress movement was certainly not.

Mr Mandela, replying to questions on his own article "Searchlight on the Liberal Party" published in "Liberation" in 1953, denied that the reference to "struggles on a higher level" could ever refer to an armed struggle. Congress had decided once and for all, on the policy of non-violence.

Rule By Vote.

Mr. Mandela explained that his use of the expression "revolutionary democracy" meant a democracy which would embrace all people, and would ensure the realisation of the demands of the Freedom Charter.

Adv. Hoexter also cross-examined the witness about his article, "No Easy Walk to Freedom". Mr Mandela explained that when he had referred to the 1952 Defiance Campaign in the article as being dangerous to the security and stability of the State, he had had in mind the final stage which had been envisaged for the campaign, when the government would have to capitulate or to be thrown out by the voters. The Defiance Campaign was potentially a threat to the Government. He agreed t at he held the view expressed in this article, that the ruling classes were prepared even to massacre to preserve white supremacy. He referred to incidents of police shootings in 1950 and 1952, where Africans had been shot and injured.

Under further cross-examination, Mandela denied that when he referred to "the day of reckoning" he had had in mind a physical clash, if the Government did not give in to the demands of the people.

Non Violence Slower.

This phrase referred to sharpened anatagonisms and opposition. He looked upon political campaigns as clashes, not physical clashes. Violence was not part of Congress policy and Congress would never resort to anything which would cause suffering. It would be better to take a longer time to achieve the Congress policy rather than arouse animosity and passions.

In reply to questions by Mr. Justice Bekker, the witness explained that Congress would not be to blame if there were violence because it would not come from the Congress side. They would take precautions against it. The whole idea of the "Stay-at-Home" in preference to strike action was so as to avoid violence, which might arise from picketing for despite all precautions, there might still be incidents Congress had to a large extent succeeded in its policy of non-violence.

Strike Action Academic.

Adv. Hoexter questioned Mr. Mandela on the lecture "Political Organisation". He said he considered the discussions in the lecture on strike action as academic and not related to Congress conditions. He had made no study of the use of the strike weapon generally.

In Congress he did not remember any actual document which dealt with the "Stay-at-Home" as a better weapon than the strike. He remembered, however, that the subject had been discussed.

Principles - Not Tactics.

To Mr. Justice Rumpff's comment that this lecture stressed the fact that a people's movement must not be bound to rigid forms of struggle, the witness replied that this was not inconsistent with Congress policy, which was not tied to any particular form of action but it was tied to non-violence, as a principle, not as a tactic. Congress did not want to build a new South Africa on a legacy of bloodshed.

When the Court resumed on the following day August 16, the witness Mr. Mandela was still in the box. Mr. Justice Bekker asked if in his view, the three lectures, "The World We Live In", etc. on which Chief Luthuli was extensively cross-examined, presented a one-sided view. Mr. Mandela replied that these lectures put forward a political exposition of a certain view and he felt there was very little, in his experience, to be said for "the other side".

There were political lecture he said, which dealt with imperialism which had brought death and destruction to millions, Congress had long ago decided its attitude to imperialism, which was certainly unreservedly condemned in the lectures.

The relationship of capitalism to imperialism in the lectures went beyond the Congress view. But there was a left wing in Congress, which was entitled to state their view and try to interest others. This was not uncommon in a political organisation.

Too Left.

Replying to questions on the significance of the phrase "seizure of power", which occured in an article in the Youth League Bulletin, African Lodestar and also in a memorandum on the Draft Constitution of the A.N.C., Mr Mandela said that it was capable of a number of interpretations, such as the "voting out" of the Government.

He did not, he said, read any suggestion of force and violence into the expression. He also pointed out that one memorandum on the constitution was criticised for its emphasis on left terminology and structure, which was foreign to the A.N.C.

Franchise versus Supremacy.

Mr Justice Bekker asked the witness whether the Congress alliance had considered what would be the reactions of white supremacists to the idea of universal franchise. The witness replied that this aspect had been considered but it was not important because universal franchise was a right that was being demanded and would be achieved, regardless of the policy of white supremacy. New political parties had arisen with a policy of extended franchise.

No International Movement.

Mr Mandela said that Adv. Hoexter's inference from the three lectures, The World We Live In etc. of the existence of an international liberation movement was grossly untrue and he challenged the Crown to produce these lectures.

He disagreed most strongly that the Congress movement worked for an international liberation movement.

3/ Replying to questions ...

Replying to questions by Mr. Justice Rumpff on the question of the redistribution of land, Mr Mandela explained that Congress has accepted the idea as a principle but had not discussed the methods of achieving it.

It was possible that the Freedom Charter provisions might be regarded as the first steps to a people's democracy. Congressmen wanted a people's democracy.

He himself was in favour of the Freedom Charter even if it were identical with the People's Democracies of Eastern Europe, although he had only a limited knowledge of them.

Capitalism and Socialism.

Mr Mandela questions on his article on the Freedom Charter,"In Our Lifetime" said that once the Freedom Charter were realised he could see the possibility of Congress splitting into two parties, socialist and non-socialist.

He himself would probably be in the Socialist Party. The capitalist structure would however remain intact as a result of the Freedom Charter, although there would be some nationalisation.

Western Areas Campaign.

In answer to questions on the Western Areas Removal, the witness said that they did not expect the police to use violence to remove the people, in view of Counsel's opinion that it was not a criminal offence for the people to refuse to obey the order to move.

The whole aim of Congress was not to compel the Government to remove the people by force but to prevent voluntary removal. His understanding was that Congress wanted to avoid all danger of violence.

Bench Differs.

When Defence Adv. Kentridge proposed putting extracts to the witness from a speech by the leader of the Opposition, Sir De Villiers Graaff and from Hansard Reports of Parliamentary debates, as examples of the use of such words as "clash" or "revolutionary" in political discourse, the Court after discussion decided that these could be typed into the record for later use in argument.

Mr. Justice Bekker said that there had been a "clash" on the bench over this matter.

Finally Adv. Kentridge put the press statement issued by the Secretary General of the A.N.C. on the eve of the Western Areas Removal to the witness. They emphasised that the struggle was to be peaceful and conducted in a disciplined manner. The people were called upon to be calm in the face of all provocation.

DEFENCE CALLS F. NTSANGANI.

The next witness called by the Defence was the Accused F. Ntsangani a member of the Port Elizabeth A.N.C. This witness told the Court that 2 or 3 A.N.C. meetings weekly were held between 1952 and 1957, after that only one a week because of the difficulty in finding a venue. The Special Branch had been present at every meeting taking notes of the speeches, but he could not accept their reports as a fair representation of what had been said. Their reports did not make sense because he thought the reporters did not understand English or Xhosa very well, particularly the Xhosa used in political speeches because a political language had developed, which the detectives would not be in a position to interpret correctly.

African Detectives.

The witness admitted on replying to Mr. Justice Bekker that he could have referred to African detectives as Judas Iscariot, because

4/ that was how ....

that was how he saw them. They were part and parcel of the oppressed people who ought to be standing with the Congress.

Questioned on the three lectures, The World We Live In, etc., Mr. Ntsangani said that neither the Eastern Cape Regional Executive nor the Branch Executive had ever seen them.

Agents Provocateur.

Replying to questions on the 1952 riots in Port Elizabeth the witness explained that the A.N.C. did not regard the eleven people who lost their lives as having "given" their lives in the battle against the forces of fascism, but as victims of the brutal, vicious government.

The view of the A.N.C. was that such acts were not spontaneous uprisings of the people but the work of government agents who incited the people to commit violent acts, so that the A.N.C. could afterwards be blamed.

Ex-President in Box.

The next witness called on August 18, by the Defence was the Accused Robert Resha, who said that he lived in Sophiatown from 1940 until 1959 when he returned one evening from the Treason Trial to find that his home had been demolished by the Resettlement Board and his furniture thrown out into the street.

His wife and his two children were out at the time but good neighbours looked after the belongings until his return.

Mr. Resha questioned about his background, said that he had worked as a miner underground for 13 months. Later he had been a welfare officer in an engineering firm for three years, and he then became a full-time free lance journalist. He was mainly a sports reporter.

He first joined the African National Congress in 1939 and he joined the A.N.C. Youth League in 1944 as a foundation member. In 1949 he was elected to the Provincial Executive of the Youth League and became Transvaal President in 1953. In 1955 he was elected to the National Executive of both the A.N.C. and the A.N.C. Youth League.

REMOVAL OF SOPHIATOWN.

Mr. Resha said that the Youth League was important because it was a pressure group working for a more militant policy in the African National Congress. It had succeeded in this when the 1949 Programme of Action was adopted.

Replying to questions by Defence Adv. Fischer Q.C., Mr. Resha said that the first suggestions for the removal of the Western Areas were made in 1939. It was not mooted again until 1949 when Sophiatown was designated for the first time as a "black spot". The A.N.C. called a special Conference in 1951 where it passed a resolution to oppose the removal.

The Johannesburg City Council in 1953 was prepared to participate in the scheme and assist the Government.

The A.N.C. then took up the matter with the result that the African Advisory Board asked the City Council to protest, and discussions were held with City Councillors.

Protest Committee.

A Committee of Europeans was formed which was known as the Western Areas Protest Committee. It was led by Father Huddleston and included a number of well known citizens.

The purpose of this Committee was to protest against the removal

5/ on ideological ....

on ideological grounds and to educate the European public about the removal, by way of meetings, press statements and pamphlets.

Deprived of Freehold.

Mr. Resha said that the attitude of the A.N.C. was not against slum clearance of the area as such but they opposed the removal because the fundamental purpose of the Government was to rid the African people of their freehold rights in Sophiatown.

In Sophiatown there were tarred streets, water, telephones, a swimming bath and all other amenities lacking in other townships.

Continuing his evidence in chief the witness said that in Sophiatown the people could meet freely, whereas in municipal locations permits were required for meetings as well as residential permits and lodgers' permits for sons and daughters over 16 years.

An additional objectionn to the removal was that there would be higher transport costs and the further loading of an already over-crowded and inadequate railway system.

Movements Restricted.

Mr. Resha told the Court that when the scheme was first mooted there was no suggestion of alternative housing being provided. People were going to be moved to the bare veld. All that was to have been provided was a site and a lavatory and everyone would have to build shanties.

Continuing his evidence Mr. Resha said that an Anti-Removal Committee was set up in Sophiatown which carried out a poll to ascertain the feelings of the residents. The overwhelming majority of the people were opposed to the removal.

The Native Resettlement Act was passed in 1954. The Western Areas was declared a separate area and was taken over by the Native Resettlement Board, which applied Influx Control and its own permit system.

Decision to Oppose.

In May 1954 the A.N.C. decided to oppose the removal at national level, because it was based on the Government ideology of apartheid and could be applied to freehold areas in other parts.

The National Executive decision was that industrial action should be used as the form of protest and that the Western Areas should be organised not to co-operate with the government by giving any information and by selling properties to the Resettlement Board.

The details of the campaign were left to the A.N.C. Working Committee. Legal opinion was obtained to the effect that no offence would be committed by persons not carrying out the removal order. Even failure to obey an ejection order issued by a magistrate would be nothing more than contempt of court.

Details of the proposed industrial action were not worked out in 1954 and the decision of the Executive was not conveyed generally to members, because it was thought that it would be an offence to call for industrial action.

Campaigns and Polls.

Mr. Resha said that the duties of the volunteers in the Western Areas were to conduct the poll, to distribute leaflets and pamphlets, to call and address meetings and to do other work, as required by the local A.N.C. branches.

Regular public meetings were held twice a week in Sophiatown and from from April to September, 1954, street corner meetings were also held. He had attended and spoken at almost all of the meetings. The police

were always present, taking notes. He said that during 1954 there were strong hopes that the Government might drop the scheme but on 28th December, the first 150 families received notices to remove by 12th January, 1955; failure to do so would be an offence carrying a penalty of six months or £100 fine.

No Offence.

The A.N.C. immediately sent out volunteers to inform the people that it was not true that failure to move would constitute an offence and to urge the people to disobey the removal orders. Mr. Resha said that violent resistance was never considered.

In replying to a series of questions by Mr. Justice Rumpff, the witness explained that it was thought that the Resettlement Board personel and the police might take the property of a resister and load it on to the lorry or might even take the tenant and throw him physically on to the lorry. It would have been the duty of the volunteers to prevent physical resistance by the people.

> Mr. Justice Rumpff: "Were there volunteers to help the police?".
>
> Mr. Resha: "The volunteers had noting to do with the police but they would do the right thing and try to avoid violence at all costs."

Stay-At-Home.

Continuing his evidence, Mr. Resha said that the working committee of the A.N.C. decided in January 1955 that there should be a "stay-at-home" in the Western Areas and throughout the country on Saturday 12th February and Monday 14th February.

On the Sunday there were to be protest meetings and prayer meetings throughout the country. Explaining the difference between a "Stay-at-home" and a strike, the witness emphasised that a "Stay-at-home" was the highest form of struggle for a politically conscious man, particularly for an African who might not only lose his job, but also run the risk of being endorsed out of the town through Influx Control.

The decision of the A.N.C. was not announced publicly at the time that it was taken, in case the announcement should be illegal and consequently arrests of leaders stop the "Stay-at-Home" from being a success

Special Entry.

After the short adjournment, Defence Adv. Fischer requested that the Court make a special entry on the following grounds :

> "that the questions put to the Accused 17, (R. Resha) during his examination-in-chief by His Lordship, the learned Presiding Judge, on the duties of volunteers in the Western Areas, culminating in the question whether the volunteers were expected to assist the police, constituted an irregularity in the proceedings."

Mr. Justice Rumpff informed the Defence that the Court would consider the request for the special entry.

In reply to further questions on the Western Areas the witness said that as the 12th of February approached, some people asked the A.N.C. to be in their houses on the day of removal. The A.N.C. continued to call upon the people not to fill in forms for the Resettlement Board; not to get into the lorries on the day of removal and to join the A.N.C.

Various organisations, other than the A.N.C., issued press statements and a deputation from the Congresses, the Advisory Boards, the Liberal Party and the Western Areas Protest Committee went to the Mayor of Johannesburg.

banned.

On the afternoon of February 8th members of the Special Branch served a notice on the witness banning all meetings in Johannesburg and Roodepoort and informed him that the removal would take place the following day, the 9th February.

A press statement was prepared by the Secretary-General of the A.N.C., calling on people to remain calm in the face of all provocation. The members of the Working Committee, whom he had been able to call together, decided that it was not possible in the changed situation to implement the plan for industrial action.

Mr. Resha said that he himself then went to Sophiatown where he saw fully armed police standing at every corner. At the corner which was the usual meeting place of the volunteers he saw a crowd of from three to five thousand people. A score of policemen were trying to disperse them because of the ban of meetings.

At the request of a police officer, he addressed the people and explained to them about the ban on meetings. He read the statement by the Secretary-General of the A.N.C. which called for calm and discipline.

Quiet Dispersal.

The crowd, including many of the volunteers, dispersed to their homes and those volunteers who were left began to move some of the people who were to be moved to alternative accomodation in Sophiatown.

Some 40 or 50 families were thus moved before fully armed police carrying rifles, revolvers and machine guns, cordoned off the area, at about 3 a.m. The purpose of moving these families was to prevent their removal to Meadowlands.

Those volunteers who were inside the cordon then advised the people to move in view of the large number of the police present to intimidate the residents. There was no disturbance or violence.

No Guns.

Replying to questions by Adv. Fischer, Mr Resha said that he did not know of the existence of any firearms or explosives amongst the people of Sophiatown, which was the excuse later used by the Government for the presence of all the police. Dealing with the Report of the Secretariat on the Western Areas, about which many of the defence witnesses had been questioned, Mr Resha said that it had been prepared by Mr. Oliver Tambo, the Secretary-General and himself.

It was a political report and had to try to show that the campaign against the removal was not the failure that people thought it was.

His own view was that the people were more prepared to resist the removal in 1954 but once the Government had said that the people would not be moved until there were sufficient houses, the Sophiatown removal was no longer a burning issue.

It was a political campaign, which could not carry on indefinitely. There had been constant intimidation of the people by the Government agents, assisted by the police and incessant permit raids and police patrolling. It seemed that the authorities were seeking a clash.

Insufficient Information.

Mr. Resha said that the major weakness of the campaign was the failure to inform the people of the type of resistance they were to take for the removal.

"We promised the people somebody would tell them, and we never did," he said.

The phrase, "lifting the struggle to a higher level" meant simply

the participation pf the African people throughout the country in the political campaigns.

Replying to questions on the volunteers, the witness said that he had been the volunteer-in-Chief in the Transvaal in 1954.

"The volunteers' pledge contained no undertaking to die. The pledge was taken at a meeting of volunteers and could also be taken at a public meeting in order to encourage others to come forward as volunteers."

The political education of volunteers, which he had himself conducted in Sophiatown, consisted of weekly lectures, study and discussion of the presidents' addresses, Executive reports and also a document called "Africans' Claims" and "Self-discipline for Volunteers".

Grounds for Special Entry.

When the Court resumed on Monday August 22, Adv. Fischer Q.C. informed the Court that the Defence had been busy considering a large number of passages, so that a much wider application for a special entry could be made. This application was based on the following grounds :

"(1) that the frequency and extent of the interventions of the learned Presiding Judge hampered the defence in the presentation of its case;

"(2) the learned Judge's questioning appeared to constitute cross-examination of the witnesses by way of assistance to the prosecution;

"(3) the learned Judge appeared at times to be entering into political debate with the witnesses;

"(4) certain of the learned Judge's questions gave the impression of constituting hostile comment on the evidence of the witnesses."

A Further Reason.

After quoting authorities to support the application Adv. Fischer read a number of extracts from the record, containing questions put by the presiding judge to the witnesses, Chief Luthuli, Dr. Conco, and Helen Joseph.

Adv. Fischer then informed the Court of a further ground for special entry :

"the cumulative effect of the said interventions by the learned presiding judge have created the impression that he had not approached the evidence with an open mind which has given rise to a reasonable fear in the minds of the accused that they are not obtaining a fair trial."

Adv. Fischer added that he would produce in support of this contention a total of 119 passages which occurred during the questioning of eight witnesses in all.

Adv. de Vos Q.C. for the Crown, submitted that according to the Criminal Code, an application for a special entry must be granted unless the judge is of the opinion that it was not bona fide or it was frivolous or constituted an abuse of Court process.

The Crown submitted that the first four grounds were frivolous and absurd and the application should not be acceded to.

Adv. de Vos pointed out that the role of a judge in a criminal case was not merely of an umpire but to find out the truth, and as

the administrator of justice to see that justice was done.

In English law the judge played a virile part as the director of the proceedings. He could call witnesses on his own account.

Dealing with the fifth point of the application, Adv. de Vos said that the formulation was peculiar. Its only possible basis would be that of an application for recusal.

The State of mind of the Accused.

Mr. Justice Bekker asked whether the position might not be that although the Defence might consider it could rightly ask for recusal, it might limit itself to asking for a special entry for iregularity.

Adv. de Vos pointed out that if the Court made this particular entry, it would open the door to an application for recusal. Such a piecemeal approach, he contended was incorrect.

Mr. Justice Kennedy asked whether the crux of the matter were not that provided the application were not mala fide or frivolous, the Court must pay attention to the state of mind of the accused.

Mr. Justice Rumpff: "Is your argument that the impression is not an irregularity but a ground for recusal?"

Adv. de Vos: "If the fifth ground of the application is correct, then the accused must decide whether to ask for the recusal of the judge. I submit that the first four grounds ought to be dismissed as a gratuitous insult to the Court and the fifth ground is unnecessary and unwarrented and takes the application no further."

Infringement or Not.

Mr Justice Rumpff said that the application seemed correctly brought in respect of the first four grounds but in the fifth ground the effect of the first four was said to be an irregularity; he felt that this should be regarded as qualifying the other four grounds rather than as an application for a special entry in itself.

If, according to the first part of the fifth ground, the questions asked had infringed the rule that justice must be seen to be done, then it was a statement of fact and the Court must consider it in the light of the Criminal Code, section 364, but if the statement were added that there was a reasonable fear in the minds of the accused that they were not obtaining a fair trial were added, the Court could not possibly go on without recusing itself.

Adv. Fischer requested time to consider the fifth ground so as to avoid the pitfalls pointed out by the Court.

Police Violence.

The trial continued with the examination of Mr. Robert Resha.

Replying to questions by Adv. Fischer on police violence, the witness stated that Africans regarded manhandling, abusive language and assaults as the main features of the police behaviour when they dealt with Africans. Under pretence of raiding for passes the police would enter houses at any time of the day or night, break down the doors, and sometimes rip off the blankets of the beds leaving parents naked in front of their children.

The witness told the Court that the African National Congress had made numerous requests for public or judicial commissions of enquiry into the behaviour of the police.

10/ Delegates As aulted. ....

Delegates Assaulted.

Replying to questions by Adv. Fischer about increased police provocation in the Western Areas prior to the removal of the residents Mr. Resha said that the police would come to the meetings in large numbers and demand passes or they would demand the name and the reference book of a speaker on the platform. Sometimes they would park their car in the centre of the meeting, which was held on a private square.

The police also abused the speakers and would threaten to shoot if the people resented it. The witness described the behaviour of the police at conferences at which he had been present.

At a conference on the Western Areas in 1953, Mr. Y. Cachalia had been arrested on the platform, manhandled and his hair pulled in front of about 1500 delegates.

Questioned on the African National Congress policy of non-violence, Mr. Resha said he both accepted this policy and practised it and had on accassions both stopped and prevented violence.

The witness admitted however that he though he might have departed from this policy occasionally in his speeches, for he had sometimes had grave doubts about the policy of non-violence in the face of the brutal methods used by the government in imposing its inhuman policy on the people and its readiness to use force and violence against every endeavour of the people to improve their lot and obtain political rights. "Sometimes I feel we too have the right to use violence at times". But when he considered the A.N.C. policy calmly, he realised that the only wise policy was that of non-violence.

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TREASON TRIALS DEFENCE FUND

PRESS SUMMARY No. 49.

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

Period Covered: 23rd/24th August, 1960.

SPECIAL ENTRY AND RECUSAL

When the Court resumed on August 23rd, Defence Adv. Fischer informed the Court that the Defence had given serious consideration to the fifth point in the application for the Special Entry. They felt that the proposition was inescapable that this point could not be formulated properly other than by turning it into an application for recusal.

The Defence had decided to make this application but felt the obligation to present a full argument to the Court.

Adv. Fischer began his argument by submitting that the application was based on the fundamental rule that justice should manifestly be seen to be done and he submitted that it would not be so, if the Presiding Judge continued to sit in this trial, because the impression had been created, arising from intervention in the evidence of defence witnesses, that his lordship did not approach defence witnesses with impartiality and an open mind and had thrown his weight on the side of the Crown.

Politics and Justice.

The Defence would rely on 120 interventions, which it was submitted constituted an irregularity but the Defence went further to say that the effect was to disenable the Presiding Judge from taking an impartial view of the evidence of defence witnesses. The Defence contended that Mr. Justice Rumpff had allowed himself to become involved in political debate and had permitted himself to descend into the political arena, frequently and vigorously, thereby gravely endangering the administration of Justice.

In many instances a method and a form of question had been adopted which appeared not be be designed to elucidate a matter but had created the effect of what appeared to be hostile cross-examination.

Fact or inference.

At times, Adv. Fischer submitted, the Presiding Judge had directly challenged witnesses by putting propositions adverse to the Defence case which were deduced either from a controversial interpretation of documents or from an assumption of facts not proven or even incapable of being proven.

Many of the passages covering the interventions suggested a planned scheme to obtain concessions from witnesses, based on hypothetical suggestions which would lay the foundation for further questions and concessions. At times pressure was applied by the repetition of the same question or by putting a suggestion to the witnesses.

The Defence submitted that the putting of questions and propositions on several important issues suggested that the Presiding Judge had already come to a conclusion on some of the most important issues and submitted also that in most cases the questions appeared to adopt or accept the Crown attitude or "line", and were calculated to give the witness or the accused the impression that they had to face a double cross-examination.

Judicial /

Judicial aid.

Adv. Fischer said that the Presiding Judge, except in the case of the first witness, had not waited to see whether a question would be dealt with later but had intervened at a very early stage of a cross-examination to put his questions, which gave the impression that he was favouring the case for the Crown.

The witnesses or accused, facing a grave trial of this nature, had been entitled to expect that the judge would listen quite impartially but had met with what appeared to be a hostile cross-examination, not only in nature but in tone, and their ability to present their case clearly and coherently would suffer, because of the doubt whether they were getting a fair trial, particularly when they were not represented legally.

The Defence would argue this application as fully as possible in relation to the evidence of the accused Helen Joseph and passages from the evidence of other witnesses could be used to illustrate points which were not clear in her evidence.

Adv. Fischer said that a question like "Why should you personally accept that view?" suggested that the witness was not entitled to hold a particular view. At one stage of the proceedings the Defence said that the political debate between the witness and the Judge suggested that the Presiding Judge's design was to show that a particular view was unsound or not honest.

Three questions beginning with "why" suggested pressure for an explanation of the witness's belief. The aspect of a political debate appeared even more strongly in questions put to the witness on differences in their attitude to the liberation struggles in Malaya and Kenya. The interchange of question and answer gave the impression that the Judge had obtained a concession he sought from the witness.

Adv. Fischer detailed a number of the questions put by Justice Rumpff. One of these, Adv. Fischer said appeared to try to elicit a concession which the Crown prosecutor Adv. Liebenberg had been unable to obtain in his cross-examination.

Elucidation or challenge.

Referring to questions on the belief of this witness as to what a peoples' democracy was, Adv. Fischer pointed out that no doubt the Crown did and could challenge the belief "but not your Lordship!" Questions put and repeated to Helen Joseph on whether she had read certain books found in her possession could only be taken as challenging her statement that she had not read them, for there was nothing in her replies which required elucidation.

FIFTEEN PAGES OF JUDICIAL QUESTIONS.

Adv. Fischer dealt with 15 pages of questions by the Judge President.

The Defence submitted that these 15 pages of close systematic cross-examination ought to have come from the Crown, not from the Bench.

The questioning began with a hypothetical case put by the Judge to the accused in which he tried to get Mrs. Joseph to say that if fascist oppression could be got rid of by armed violence with a minimum of bloodshed, then she would approve of it and therefore could in certain cases favour violent revolution.

Seven questions of the same nature were asked.

The Presiding Judge asked the witness about the attitude of the

S.A. /

S.A. Congress of Democrats to armed violence. Adv. Fischer pointed out that the very essence of the Crown indictment was that the Congresses had a policy of violence, it appeared that the Presiding Judge "was taking up the cudgels for the Crown by suggesting that the Congress of Democrats approved of short term violence".

Later questions on the same issue by the Presiding Judge gave the impression that he tried to get the witness to contradict her statement on non-violence. This amounted to pressure on the witness to get an admission, directly relating "to her own hostile intent in terms of the indictment".

Breaddown in gaol.

A series of questions put to the witness Helen Joseph on whether violence from oppressed people had ever been condemned by her organisations, Adv. Fischer said, gave the impression that the bona fides of her belief in non-violence was being questioned. Even the witness was aware of the Judge President's intention and her answer to this question was of significance "I can see where your lordship is leading".

The Defence submitted that the Court had gone outside the facts and obtained a concession from the witness on the policy of non-violence. It might be that it was after this long cross-examination to which Mrs. Joseph had been subjected that she broke down in gaol.

The Defence submitted that his Lordship, in re-reading the evidence would find continued efforts to get the witness Helen Joseph to agree that she herself and her organisation envisaged violence and that therefore that was the Congress of Democrats policy. At this point Mr. Justice Rumpff drew attention to his attempt to get direct answers from the witness.

The Law and Politics.

Adv. Fischer then turned to the question put to the witness Helen Joseph on how the fundamentals of the policy of non-violence could be reconciled with the hard facts of life, from which question he submitted the inference could be drawn that the Presiding Judge had made the political assumption that Europeans could not be persuaded peacefully to grant the universal franchise to non-Europeans. This view was no doubt widely held and was the crux of the Crown case :

Adv. Trengrove: It is not the Crown case and the Defence knows it. Our case is that Congress believes this.

Adv. Fischer: Does my learned friend suggest that I am not telling the truth?

Adv. Fischer said that this question suggested that his Lordship held strong views and that it would be reasonable for the accused to think the people holding such strong views should not decide political cases, when these political views were at issue.

Dealing with questions put to the witness on an article in Liberation, Adv. Fischer submitted that the accused were entitled to ask for what purpose the Judge had asked a series of questions on the attitude of the Congress of Democrats to the West and to Communist countries.

From these they were entitled to draw the inference that the questions were designed to show the Congress of Democrats as a pro-Communist organisation.

It was part of the Crown case that former Communist Party members had infiltrated the organisation and it would not be unfair for the accused to think that these questions formed part of the Crown case and should therefore not be put to them by the Presiding Judge.

Questions relating to the Western Areas were submitted by the Defence as being entirely justified if they had been put by the Crown, but as having given the impression that the Presiding Judge was trying to elucidate something for the Crown.

Cross-fire.

The question to the witness Mrs. Joseph, "Is that a genuine statement?" would make the witness and the other accused think that the Judge President disbelieved the witness and the questions that followed could only be interpreted as an attempt by the Judge President to get the witness to admit that Congress would be responsible for any "conflagration".

A further series of questions was described by Adv. Fischer as "a running fire of questions" of which the whole burden was to show that something more than resistances to compulsion had been envisaged in the Western Areas. Some suggestions made by the Presiding Judge were pressed repeatedly and he said this must have created the impression in the witness that his Lordship thought she was hiding something.

When the witness did not concede his Lordship's suggestions, he then faced her with a written document in a manner that appeared hostile.

Alternative Allegation.

Adv. Fischer dealt at length with a suggestion made by the Presiding Judge that it might be the influence of the Congress of Democrats which had brought about class consciousness in the African National Congress, of which there had been no evidence before 1952.

Adv. Fischer described this as "a new theory emanating from the Bench". The accused would think it was related to the evidence of Professor Murray and might come to the conclusion that the question had the effect of establishing an alternative to the Crown allegation that after 1950 Communist Party members had infiltrated the organisations, bringing a "left wing tinge".

Scorn and scepticism.

Adv. Kentridge then continued the Defence submissions in respect of questions put to the witnesses Chief Luthuli and Nelson Mandela.

Referring to the Judge President's question "Do you equate innate goodness with the purse?" Adv. Kentridge submitted that the impression might well have been made on the accused that his Lordship was conveying scepticism at the witness's ideas or even pouring scorn on them. Chief Luthuli was a man greatly respected and revered by the accused and this would cause disquiet. On another occasion, when the Judge President was questioning the Chief as to whether he had read a certain article in Liberation, his reply was not accepted by His Lordship who suggested that he must surely have read Liberation.

The Defence submitted that the following questions must have suggested to the accused Chief Luthuli that his evidence was regarded with scepticism.

"Were you not a subscriber to it?"

"Was it not sent to you?"

"At this time you were President General of the A.N.C.?"

"Were /

"Were you doing any other work at the time, or was this your full-time occupation?"

"What work did you do?"

The Meaning of Peace.

Certain questions relating to the A.N.C. attitude towards "so called peace" would, the Defence submitted, give the impression from beginning to end that the examination by the Presiding Judge was designed to establish that when the A.N.C. referred to peace, it did not do so as the ordinary man would, but with a special political content. This would appear to be a sustained attempt to bring the witness to a certain point of view.

Adv. Kentridge then dealt with a series of questions addressed to the accused Nelson Mandela on unqualified franchise which the Defence submitted constituted only criticism of the merits of his policy :

"If you have children wh know nothing and people who know nothing?"

"What is the value of the participation in the government of a state of people who know nothing? Aren't they subject as such to the influence and direction of leaders as children would be?"

The Defence submitted that the only issue raised in this passage was the desirability of the policy of universal franchise. The questions addressed to the accused were unfortunate in that they suggested that uneducated people would be no better than children in relation to the vote.

Humiliation and hurt.

Adv. Kentridge said that he was sure that when the Presiding Judge asked these questions, he did not realise how hurtful the questions would be, for not only had many of their followers had no education, but some of the accused themselves on account of the poverty of their parents, had had no education. They were grown men, regarded as adult and mature and respected. These questions were both hurtful and humiliating.

From the point of view of the accused, there was a further unfortunate aspect: the points made by the Presiding Judge were those raised by the political opponents of the accused and their organisations. In these questions expression had been given to what might appear to the accused to be strong opposition to their own aspirations.

Who asks the questions?

Adv. Fischer resumed argument. He pointed out questions addressed to the witnesses S. Lollan, S. Mkalipe and F. Ntsangani, which he submitted might well have been put by the Crown if it felt so inclined but which ought not to have been put by his Lordship.

Another series of questions addressed to the witness S. Lollan constituted severe and sharp questioning on the Congress policy of non-violence, the central issue in the case.

Adv. Fisher said a statement was first obtained from the witness about his belief that China was striving for peace. Then, arising from his disclaimer of knowledge of the recent bombing of Quemoy, he was asked to assume that bombing had taken place, and he was asked whether this would be non-violent?

Adv. Fischer's final example in support of their place or special entry was a question addressed to the same witness which appeared to attack the

fundamental /

fundamental policy of the Congress and to show that the Presiding Judge had joined with the Crown on the issue of whether the Congress policy was one of violence or non-violence.

Judicial doubt.

There could be no clearer indication that his Lordship had at the very least a grave distrust of any evidence of non-violence. A number of detectives, including police officials of high status and from various parts of the country had been questioned and some cross-examined and they had agreed that non-violence was repeatedly stressed in speeches. Since it was anything from four to eight years since the speeches were made, the questions had had to be put in a general way, but the Presiding Judge suggested that these witnesses had not in fact been questioned.

It would probably not be unfair to contend, said Adv. Fischer, that his Lordship had adopted the attitude that unless a witness were proved to be non-violent, his Lordship assumed that he must be accepted as violent.

The Defence application said Adv. Fischer, was based on the rule that justice must not only be done, but must manifestly be seen to be done.

The motives of the Presiding Judge were not raised and were not in question.

The only problem was : what effect the questioning had created in the minds of the accused, whether the questions had created the impression that justice might not seem to be done.

If this were so the Presiding Judge would grant the application for recusal.

The Court was adjourned until Monday August, 29th, 1960.

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TREASON TRIALS DEFENCE FUND

PRESS SUMMARY No. 41

This is the fortyfirst issue of a regular bulletin giving a factual resume of the proceedings of the Treason Trial.

Period Covered: 29th August - 8th September, 1960.

APPLICATION WITHOUT GROUNDS

On Monday, 29th August, Mr. Justice Rumpff delivered his judgement on the application for his recusal, brought by the Defence Counsel in the previous week.

The Defence complaint was not that questions had been put, or that they were irrelevant, but that after five months of defence evidence, the accused thought that they were not getting a fair trial. During this period he had put questions to the witnesses in a manner which they felt infringed the rule that justice must not only be done, but must manifestly be seen to be done. In view of the Presiding Judge however, the present application was without any grounds for support and had been made either without full consideration of the record or under a complete misconception of the rights of the matter.

Mr. Justice Rumpff then went on to a detailed analysis of the questions put to him in relation to the whole evidence, pointing out that his questions covered only 200 pages of the record out of 5000 pages of evidence. The Crown case was based on between 4000 and 5000 documents, covering also 280 meetings at each of which 2 to 6 speeches had been made. It was therefore self evident that relatively few questions had been asked by himself.

JUDGE DENIES POLITICAL DEBATE

As far as the manner of the questions was concerned, it had been alleged that he had allowed himself to become involved in political debate, taking up an attitude hostile to the witnesses, whom he had challenged by putting assumptions to them. His questions had been termed a "planned scheme of cross-examination" and it had been suggested that pressure had been applied through repetition of the questions. The accused were said to have come to the conclusion that, on important issues, he had adopted the Crown line.

The Judge President said that having read the passages of which the Defence complained, he had no doubt that the criticisms made by Defence Counsel were totally unfounded. Mr. Justice Rumpff then referred to eleven of the 122 Defence examples, showing how in some cases his questions had been attempts to bring the witness back to previous questions. He dealt similarly with other passages which he described as tainted in the eyes of the Defence. The passages referred to by the Defence as an important illustration of systematic cross-examination of the witness Helen Joseph, which ought to have been undertaken by the Crown, was in his view an example of bringing the witness back patiently to a particular question. The witness did not give simple answers. It was not cross-examination and no reasonable person could have understood it in that sense.

Breakdown.

Mr. Justice Rumpff also commented that he did not pretend to understand how Defence Counsel could have suggested that his questions might well have caused the breakdown of the witness Helen Joseph on a particular day. He knew

nothing /

nothing of any breakdowns. His questions had been put during the morning and the Crown had continued cross-examination for the rest of the day. The next day the witness had given evidence as usual.

Quoting various authorities on the duty of a judge, Mr. Justice Rumpff said that this question was one of reasonableness. Reasonableness had to be assessed in the light of the duty of a judicial officer to arrive at a just decision. It was not irregular to pursue a line of investigation not undertaken by the Crown. It was clear to him that while a judge was probing to the bottom of things, he was discharging his duty. He was not unmindful of that his questions had not followed at the conclusion of the Crown cross-examination and that this feature had been said to give rise to the fear of the accused that they were not getting a fair trial. But this was the right of a judicial officer beyond any question. In the present case the evidence of the witness ran over days and weeks. It was therefore convenient to take the questions as they arose rather than postpone them, which would involve the necessity of referring back. The Judge President concluded that in his opinion the fear of the accused was unreasonable and unfounded and the application for recusal was refused.

Advocate Fischer rose to renew the Defence application for special entries to be made both in respect of the interventions on the grounds set out the previous week and also in respect of the refusal of the application for recusal, on the ground that it constituted an irregularity in terms of Section 364 of the Criminal Code. This application was granted by the Court.

LANGUAGE OF THE BEERHALL

The evidence-in-chief of the accused Robert Resha was then continued by Defence Adv. Fischer, who led the witness on meetings which he had addressed. Mr. Resha stated that when he had referred to the "language of the beerhalls" he had been referring to riots, which had taken place twe weeks previously. He had witnessed some of the incidents of the riot and had seen the police baton charging and beating up African people. He himself had tried to prevent the stoning of cars, because he had felt it his duty to stop the stoning of innocent people.

His reference to the "language of the beerhall" and to the language of the Germiston hostel, where there had also been violence, was clearly and definitely outside the A.N.C. policy. After this meeting he had been called by two members of his branch executive who had felt the speech was completely outside A.N.C. policy and he had agreed and had apologised for making the speech from an A.N.C. platform. The matter had also been reported to the Branch Executive, which had condemned his speech.

Sacrifice, but not Violence.

Dealing with other speeches Mr. Resha, emphasized that violence had never been recommended for the Western Areas Removal Campaign. The idea of sacrifice did not imply violence. "We are prepared to struggle, perhaps to die, but the violence will come from others, not from us", he said. The witness referred to the government policy of banning the leaders of the people, such as Chief Luthuli, Dr. Dadoo and Mr. Sisulu, who had put forward the policy of non-violence, and were responsible for the behaviour of the people. The phrase "The young blood has been boiled" which he was reported to have used, might have been put in a different way, it was normal for youngsters in any oppressed country to think of violence first and question afterwards. He had done so himself when he was young.

Advocate Trengrove Q.C. for the Crown, commenced the cross-examination of the witness with a number of questions on the personnel of various committees on which the witness had served. Turning to the statements by the witness in his

evidence /

evidence-in-chief on the treatment of Africans by the police, Adv. Trengrove asked whether he had read the Report of the Commission of Engquiry on the Western Areas tram boycott of 1949.

No confidence.

The witness replied that he had given evidence at that enquiry, but had had no confidence in it, and had not read the report. Replying to Mr. Justice Bekker, the witness said he had no confidence in a Commission which did not include the people affected. Adv. Trengrove put it to the witness that he knew very well what was in fact contained in the commission report, that the police had dispersed the crowds on that occasion to protect from assault the people who were using the trams. The witness replied that he knew that perfectly well because he had been on the scene; the young element had assaulted people at the tram stops, but he had been referring in his evidence in chief to people assaulted by the police at the tram stops.

When Adv. Trengrove suggested that it was part of the tactics of the A.N.C. in the Western Areas, whether in connection with boycotts or anything else, to create a situation in which the police had to interfere to restore law and order - and were then blamed for the consequences. The witness replied that this suggestion was unfounded and there was not an iota of evidence to suggest it.

Adv. Trengrove: "You exposed innocent people of the Western Areas to these conflicts between the police and subversive elements to suit your purpose".

Mr. Resha : "You don't know what you are talking about!"

Minister unreliable.

Replying to questions by Adv. Trengrove on an assurance by the Minister of Native Affairs in 1953 that there would be no removals to Meadowlands before houses were built, the witness said that he placed no reliance on the Minister of Native Affairs, then or now. The Minister's reply in Parliament had been to Dr. Smit, not to the people who were going to be removed, and no assurance had been given to them at any time since the Nationalists came into power and mooted the removal scheme.

Adv. Trengrove : "If the Minister makes a statement in Parliament replying to the opposition, you don't accept it?"

Mr. Resha : "The Africans are not represented in Parliament ..... The Minister of Justice said in 1956 that 200 people were going to be arrested for High Treason, and only 156 were arrested. I therefore place no reliance on what any Minister says."

Adv. Trengrove : "Were you disappointed?"

Mr. Resha : "I said he was unreliable!"

Adv. Trengrove : "Did you tell the people not to accept the assurance of the Minister?"

Mr. Resha : "I told them and went further to say that they should place no reliance on Verwoerd. He is not a Minister of Native Affairs, but a Minister of Defence against Native Affairs. The African people place no reliance on him".

Mr. Resha said that although he spoke for himself, Congress of course did not place any reliance on Ministerial assurances.

Adv. Trengrove returned to the cross-examination the following morning by questioning the witness on his change of opinion regarding the use of violence as a means of achieving political ends. Mr. Resha repeated that in his youth he had shared the normal outlook of youth that violence could solve problems, but said that he had changed his mind since joining the A.N.C.

He denied strongly the suggestion by Adv. Trengrove that he had never abandoned the idea of violence. Replying to questions on the aim of the A.N.C. Youth League to establish "the highest form of democracy", the witness explained that the Youth League, and the A.N.C. mother body, wanted to achieve a true democracy - a country where everybody could be free.

Africa Struggle.

When it was suggested that the Youth League regarded the People's Republic of China as the highest form of democracy, the witness replied that the Youth League had not been concerned with China - the struggle was in South Africa. What knowledge he had about China or the Soviet Union he had obtained from documents and newspapers. He knew there was a Socialist state in China and conceded that it might be on the way to becoming a Communist State. When Adv. Trengrove enquired what examples he could give, other than China, of a state where all people were free, the witness quoted Belgium, Great Britain and France. He qualified the inclusion of Great Britain with the statement that Britain had colonies where people were not free, but the people in Britain itself were free.

To the suggestion by Adv. Trengrove that the A.N.C. Youth League tried to foster amongst its members a racial hatred against the white man, and to create racial tension, Resha replied : "That is not correct. The task of the A.N.C. Youth League, in which we have had a great measure of success, has been to foster race co-operation between the various groups. We have condemned racialism."

Adv. Trengrove then turned to the publication of the African Youth League, the African Lodestar quoting passages at length from a number of articles. The witness explained that this journal would be edited by a member of the Transvaal Executive of the Youth League. The editor would be expected to reflect the policy of the A.N.C. Youth League, but he did not know if this had always been the case. Names of authors might not always be published. This would be at the discretion of the editor.

Seizure of Power.

Replying to questions on the meaning of the quotation ".... seizure of power in the shortest possible time is the only way to handle the imperialists", the witness said that the expression "seizure of power" could mean to be in power yourself and drive others out, or to seize it by participating and sharing in it. It did not necessarily mean to grab it. It could not indeed have that meaning here in view of the background of the A.N.C. Youth League policy of non-violence.

Mr. Justice Bekker: "Your justification of this passage is that no matter what violent implication there might be, it must always be read against the non-violent policy?"

Mr. Resha : "No, I did not give a blanket answer. I say that if it is capable of two meanings, I would give the non-violent meaning, because of the policy of the organisation.

Replying to Mr. Justice Bekker, Mr. Resha said that a Government based on a minority of the people would always be in danger because it was ruling

against /

against the wishes and the will of the people. He agreed with the suggestion by Adv. Trengrove that, if the Defiance Campaign of 1952 had reached its final stage, it would have been a danger to the stability and security of the State.

Precious Document.

The witness then described "No Easty Walk to Freedom" as "a very precious document" which clearly expressed Congress policy, and about which no Congress member had any reservations. Adv. Trengrove then dealt with an editorial of the African Lodestar, questioning the witness closely on the reference to the unleashing of the fury of the oppressed people. The witness pointed out that if this implied violence, it would be inconsistent with A.N.C. policy. The A.N.C. was not designed to unleash fury at any given time. The A.N.C. Youth League members were, however, well aware of A.N.C. policy, and would know whether statements in the African Lodestar were or were not in line with A.N.C. Policy.

Asked why in the African Lodestar, views on Kenya were placed before the youth, and 'legalised murder' suggested, Mr. Resha replied : "It was relevant because what was happening in Kenya was likely to happen here."

End of Emergency Detention.

On the following morning, August 31st, the 29 accused appeared for the first time in 156 days without a police escort, having been released that morning after 5 months detention in terms of the Emergency Regulations.

Adv. Trengrove resumed his cross-examination with questions on the three lectures, The World We Live In, etc. Mr. Resha said he had found them highly involved and not particularly relevant to the struggle of the A.N.C. At times he did not know what the author meant, and at other times he did not know if the author were correct. He had not himself made a study of capitalism.

Mr. Resha said that in his view imperialists were those who oppressed others in their own country. He thought the terms imperialism and capitalism were synonymous. Originally he had read the lectures, and had then put them aside as being involved and not particularly relevant.

"Now I have discovered things I didn't attend to them" he said. Some passages he felt were in conflict with A.N.C. policy, but other facts, particularly in the third lecture, "A change is Needed" were relevant. He did not deny that the lectures were intended for use by volunteers and active Congressites, but stressed that they were particularly designed for workers and active trade unionists. He repeated emphatically that they were not, in fact, used by volunteers. Because the lectures had come from the National Action Council, and not directly from the A.N.C. headquarters, they had not been taken seriously. The branches were at that time extremely busy campaigning against Bantu Education and for the Congress of the People.

Legal Means.

Replying to questions on the Western Areas Removal, Mr. Resha said that the A.N.C. and the other Congresses were particularly concerned with the legality of the methods of resistance. They had obtained legal opinion. The A.N.C. had always known that the Government was "keen on a racial clash, as in the case of Sharpville, where innocent people were murdered in cold blood by this Government." But the Congress and its allies had done everything possible to avoid a bloodbath .... and fortunately they succeeded.

Adv. Trengrove: "One of your objects was to force the Government to remove the people by intimidation and force."

Mr. /

Mr. Resha : "That is absolutely incorrect and most unfounded."

Adv. Trengrove : "You wanted to provoke the Government to use force and intimidation."

Mr. Resha : "Never at all .... Our aims were to defeat the government by preventing it from removing the people from the Western Areas.

Non-Collaboration.

Adv. Trengrove then put to the witness an extract from the Report of the Secretariat on the Western Areas in which it was stated that the object had been to foster a mental attitude of non-collaboration and compel the government to secure the removal only by the use of intimidation and force. The witness replied that the A.N.C. wanted to demonstrate to the Government that the people were unwilling to move and that this would be the only way in which the Government could succeed. The way in which Adv. Trengrove had put the question was unfounded. The objective of the A.N.C. was to defeat the Government.

Adv. Trengrove : "You want the government to use force and intimidation".

Mr. Resha : "We want to struggle, and no amount of force and intimidation will deter us!"

Adv. Trengrove: "You know full well that the situation you were creating in the Western Areas would be a spark to start off a conflagration."

Mr. Resha : "We know the government wanted to start a conflagration because it wants to rob the people of their rights and threatens force. The Government sent 2000 armed police to remove the people."

Adv. Trengrove: "You regarded that as a victory?"

Mr. Resha : "Yes, because they went away without shooting one person."

The Court then adjourned for the afternoon so as to give the accused the opportunity to reach their homes early after the five months detention.

Events disgusted Witness:

The following morning, September 1st, Adv. Trengrove questioned Mr. Resha on his speech in which he had referred to "the language of the beerhalls". Mr. Resha explained that there were a number of things taking place in South Africa and in Sophiatown which had worked on his mind and disgusted him.

Adv. Trengrove: "What was your object in saying this to the youth of Sophiatown?"

Mr. Resha : "I wanted them to know what I am about to tell you."

The witness then spoke of the Germiston hostel incident, of the intensification of permit raids and people being killed "running away from permits", of woman giving birth in the streets of Newclare and on the veld outside Sophiatown; of his anger at Bantu Education and the expulsion of well-trained school teachers.

"All these things and others were working in my mind" he said.

Mr. Resha agreed that in the speech he had called upon the youth of Sophiatown to use the language of the beerhall riots. He agreed that the Chairman at this meeting, Mr. Peter Mthithe, had endorsed and supported his incitement of the youth, and added that he regretted his influence on the Chairman.

Adv. Trengrove : "I put it to you that the only reason you have admitted responsibility for this speech is because the shorthand writer took it down, and you can't get out of it."

Mr. Resha : "No. I place no reliance on the shorthand writer because he also has made mistakes ..... God alone knows what I did say."

Asked why he referred, in another speech, to the police as cowards and imbeciles, the witness replied that only hooligans and imbeciles would go to a peaceful A.N.C. meeting and disturb it, and only cowards would go fully armed to a peaceful unarmed meeting.

Police Tact Averts Bloodshed.

Adv. Trengrove suggested that in all campaigns, there would have been bloodshed had it not been for the "restraint and tact of the police". The witness replied : "It has never been the policy of the A.N.C. to provoke bloodshed. The A.N.C. has avoided bloodshed right through." Adv. Trengrove then read to the witness a statement by Mr.H. Lawrence, when Minister of Justice, praising the tact and restraint of the police during the Mine Workers Strike in 1946. The witness interjected : "After the police had shot and baton killed. It would appear that the Crown and the Minister of Justice look at brutal assault and murder as restraint to be commended. Not I. If the Crown and the Minister are happy that the police baton charged - we condemn it. We differ."

The witness denied strongly that the Congress wanted violence. "Throughout the years there has not been a single case of Congress members charged for violence."

Adv. Trengrove: "In the Western Areas, you embarked on a vicious and ruthless campaign using masses of innocent people and provoking violence between the government and them".

Mr. Resha : "There is no evidence anywhere before this Court of such actions. The A.N.C. is clearly and completely non-violent. Throughout the Western Areas Campaign not one Congressman was arrested for anything arising out of violence, despite the actions of the police who broke down doors and other such things."

APPLICATION FOR DETENTION

When the Court was about to adjourn at the end of the day, Crown Adv. de Vos Q.C. rose to make an application, as a matter of urgency, for the detention of all the accused, in terms of Section 162 of the Criminal Code. This provided that, when a trial was postponed or adjourned, the Court might direct that the accused be detained until liberated in law or released on bail. The Crown would lead evidence from a high ranking police officer to show reasons why the accused should be so detained.

Defence /

Defence Adv. Maisels Q. C. pointed out that the accused were before the Court on summons, and submitted that there were no grounds for arrest and that this Court had no power to order the arrest of the accused. As from October, 1958 both bail and the bail conditions had been withdrawn. No evidence could be admissable. Adv. Maisels reminded the Court that at a certain stage of the trial, the late Adv. Pirow had applied for bail to be reimposed. He had then warned Adv. Pirow to arrest the accused at his peril! Adv. Pirow had then said he would not press the matter. When the first indictment had been withdrawn, the bail had been returned to every person by the Attorney General.

Giving Judgement after nearly three hours of argument and consideration, Mr. Justice Rumpff said that in his view this section of the Criminal Code had never been intended to give the Court power to deal with persons not in custody or on bail and left free to come to Court. The application by the Crown could not be granted. Mr. Justice Kennedy and Mr. Justice Bekker agreed with the Judge President.

The Court was adjourned until September 6th.

COMMUNIST INFLUENCE.

When the Court sat again on Tuesday September 6th., Adv. Trengrove resumed his cross-examination of the accused Robert Resha, suggesting that the only people whom the accused knew to be connected with the bulletins Liberation, Fighting Talk, New Age and Advance, had been members of the Communist Party. Volunteers had been encouraged to read these bulletins. The witness admitted that he did not know if these people had ever changed their views after the dissolution of the Communist Party in South Africa. He was neither concerned nor worried about it. If these persons had been indoctrinating the African people with Communist propaganda they would have been arrested by the Government.

Mr. Resha denied that the African National Congress policy in world affairs followed the lines of the Peace Council. It had an independent stand and did not follow the line of any particular organisation with regard to world affairs. It had its own policy which might be the same as that of other organisations. In so far as the A.N.C. and the Peace Movement both believed in peace, their policies would be the same. He had not however, compared the policies of both in regard to such specific matters as Formosa, N.A.T.C., S.E.A.T.C., Kenya, the H. Bomb or Hungary.

Asked whether he would take part in any war for the benefit of South Africa, the witness replied "I did not and I won't."

Slavish Imitation.

After a series of questions on his own relationship and that of the African National Congress to the Peace Movement and the S.A. Society for Peace and Friendship with the Soviet Union, Adv. Trengrove suggested that the attitude of the A.N.C. towards world affairs slavishly followed the Soviet Union and that their source of information was the "world front organisation" and the S.A. Peace Council.

Mr. Resha : "The African National Congress is an organisation consisting of intelligent and mature politicians who at any given time will make their own interpretation. Such men as Chief Luthuli are head and shoulders above the politicians of South Africa. To think that we are dictated to is an insult to my organisation."

Replying /

Replying to questions on the Freedom Charter, the witness said that there should be neither white supremacy nor black supremacy. The Freedom Charter envisaged that all the people of South Africa should participate equally in the Councils of State. "We are opposed to the present position and we will fight it to the bitterest end", he said. It was not a question of the whites losing the franchise, it must be given to everyone, black and white. The whites would have to forego nothing, but would have to share with all people.

When Adv. Trengrove suggested that in the Western Areas Removal Campaign, the A.N.C. was deliberately striving for a bloody conflict between the Government and the masses, the witness replied : "Your wishes have nothing to do with the policy of the A.N.C. Our policy is clear, it doesn't support violence. We want happiness for all people ..... Our policy had always been non violent. The man to accuse us of violence has yet to be born."

Democracy - Freedom for all.

Re-examined by Defence Adv. Fischer, the witness said that his understanding of true democracy was that everybody should be free, particularly to participate in the Councils of State. By economic freedom he meant that the African people should be allowed to sell their labour freely, to form trade unions, and to enter all trades and professions. This was of great importance to Africans. On the Western Areas Removal Campaign. Mr. Resha said that the main object of the Congress was to compel the Government to abandon the scheme. If they had been prevented from implementing it, the government would not have then carried it on in other areas.

The next Defence witness was the accused Patrick Molaoa, born in 1925, Roman Catholic, and matriculated. Led by Defence Adv. O'Dowd, the witness said he had joined the A.N.C. Youth League in 1946 but had only become active in 1954. His understanding of A.N.C. policy was "a South Africa as a home for all, irrespective of race." The A.N.C. was struggling for the rights of all people through non-violent methods. As a volunteer in the Western Areas his tasks had been to assist in the census of the residents and to propagate the Congress viewpoint. The slogan "We shall not move!" had meant that the people would not move voluntarily.

Referring to a speech of the accused Robert Resha in Sophiatown, the witness said that he had thoughtthis speech "very inciting." The examples used had not been pleasant and "a few of us were very worried". At a Branch meeting in the following week, a general warning had been given to A.N.C.members against inciting the youth of Sophiatown to violence.

People's Democracy.

Cross-examined by Adv. Hoexter, Mr. Molaoa said that he understood the A.N.C. idea of a people's democracy to be a country where every person would have a say in the Government. He could not himself give examples of a people's democracy as he had not studied the government of other countries, but he had heard other people refer to such countries as Rumania, the Soviet Union and China.

Referring to the speech of the accused Robert Resha at the volunteers meeting on 22.11.56, the witness said that he agreed with the theme of discipline, but thought the examples might not be healthy. He himself had always called in his own speeches for admiration of discipline, even quoting Hitler. The theme of Mr. Resha's speech had been to call for dedication, obedience and devotion to the struggle. When he had said that the examples might not be "healthy", he had not meant that he thought they might create an unhealthy impression on the audiance, for the speech had been made to Congressmen.

On the following morning, September 8th, the witness Mr. Maloao

said /

said that after having read again the three lectures, he had found them not to be contrary to A.N.C. policy. He disagreed strongly with Adv. Hoexter's suggestion that Congress policy was that a sweeping change could not be brought about by gradual reform, but only through one bold stroke. Congress did not expect to achieve its aims all at one time.

Farm Labourer.

The accused Gert Sibande was the next Defence witness to be called. Born in 1901 he had worked as a labour tenant on Bethal and Ermelo farms. He had never been to school but had taught himself to read and write. From 1922 until the present time, he had been a lay preacher of the S.A. Gospel Church of Zion. A widower, he had 10 children, all dependent on him.

Mr. Sibande said he had first heard of the African National Congress as a youth from his father. He had been disturbed by the 1936 legislation which had deprived Africans in the Cape of their vote in Parliament, for his experience in Ermelo had shown him that the Africans needed representation in Parliament. Ermelo people had great confidence in him and brought their troubles to him. He had formed the Farm Workers Association there, of which he had been the Chairman. The objects of the Association were to prevent the eviction of farm tenants before they could reap their crops, to free the tenants from debts to the farmers for advances of food, and to press for individual and not family wages for each worker. He had noticed the African National Congress opposing the 1936 legislation, and when his Committee had had no success with deputations to the Native Commissioner over their grievances they decided they should join Congress. He had then been sent by his Committee to an A.N.C. Conference where he had spoken. On his return he had formed an A.N.C. Branch in Bethal. His own knowledge of the A.N.C. and its policy he had learnt from his father and had never heard of any policy of violence. The non-violent A.N.C. policy "goes with my religious beliefs" he said.

Homeless and Destitute.

After 20 years of A.N.C. work, Mr. Sibande said, he no longer had a home or any livelihood. When he had been deported from Natal, the Special Branch detective had said : "You'll never again see anything wrong in the town and tell the whole world?"

Describing the conditions of farm labour, the witness said the African men were told to take off all their own clothes, and were given an empty sack to cover themselves. They had to work "early and late" and to eat their food "from the floor like pigs." Some labourers had died from cold; he had seen and touched their bodies at the police station. When the labourers tried to go to the Native Commissioner to put their grievances before him, the person in charge would say they had deserted, and arrests would follow. On one occasion he had himself gone to the Chief Magistrate to say that the farm labourers had been on their way to him when they were arrested. The case had not been proceeded with and the men were sent back to the farm.

On the 1st May, 1950 he had organised demonstrations and processions in Bethal. The demonstrations were peaceful and he had said to the people at the meeting "even if a fly sits on your nose, you must move it, not kill it". Mr. Sibande said that he had started writing directly to the

Minister /

Minister of Native Affairs, Dr. Verwoerd, who replied saying that he had met the chief who had told him that conditions had improved. "I then asked the chiefs, they said they had never seen him and the conditions were the same. So I then answered the Minister and said "no one knows you or knows that conditions have improved."

At this stage Mr. Justice Rumpff informed the Court with regret that an adjournment would be necessary until September 18th on account of Mr. Justice Bekker's ill-health.

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