

IN THE SUPREME COURT OF SOUTH AFRICA.
(TRANSVAAL PROVINCIAL DIVISION).

Pretoria: 18th November, 1964.

BEFORE:

The Honourable Mr. Justice BEKKER.

In the matter of;

THE STATE versus HIRSON AND OTHERS.

- EXTRACT OF EVIDENCE -

MARY JEAN SCOTT SILK (Declares under oath):

EXAMINATION BY MR. BEYERS:

Is it Mrs., Miss or Doctor?---It is Doctor Scott, and Mrs. Silk.

Are you professionally Doctor Scott at the University?---Yes, I am officially Doctor Scott at the University.

And you are a lecturer at the University of the Witwatersrand in the department of Physics?---I am.

Do you know Mr. Hirson, the first accused?---I do.

What position did he fill there?---He was also a lecturer in the department of physics.

And did you at any time share an office with him?---Yes, I did share an office when I first joined the Physics Department. I did share an office with Mr. Hirson when the physics building was being renovated and we were in the chemistry block, and very crowded.

And that was... oh, well, I don't think we need go into all that, really. Now, I understand that in about December, 1962, Mr. Hirson left to go to England?---That is correct.

And did he ask you to do anything for him while he was away?---Yes, even though we were back in the Physics Department, the Department was still crowded. Someone else

was in his office during his absence, he found that he did not have sufficient storage space for all his papers, and asked me if I had a spare cupboard in which he could put some of them.

Did you agree?---Yes.

Did he leave anything in your cupboard?---Yes, there were a large number of papers there.

Did he make any other request to you with regard to what you should, or could do, in regard to these papers while he was away?---He said occasionally that a Mr. Dennis Higgs might wish to look at them, and asked if this would be alright with me. I answered that it would, as long as he didn't bother me.

While Mr. Hinson was away did Higgs on occasion ask you whether he could...?---Yes.

And do you know whether or not he did?---Well, on several occasions he asked me for the key to my office so that he could look at these. I can only presume that he did.

Until when did these parcels, or whatever they were, stay in your office?---In about the middle of the year - I don't remember exactly when - I moved from one office to another. At that time I moved the cupboard and the papers separately, and at that time I noticed that in addition to papers there were a couple of boxes. When Mr. Hinson returned I had a new office. This was the end of 1964...

The...?---I am sorry - the beginning of 1964. I had been using some of my previous office bookshelf space for my own journals and now I needed my shelf space back from Hinson, because my new office mate needed his own bookshelf space. At that time I asked him to remove the papers.

You asked Mr. Hinson?---I asked Mr. Hinson to remove the papers, yes.

And do you know whether the stuff was removed?—
About a month later I asked him again. I said he would speak
to Higgs about it. Some time after that I noticed that that
cupboard was clear, and I then put my own journals into that
part of the cupboard.

Now, on the 28th of July, which I think was some
time after Mr. Hinson had been arrested, you caused a report
to be made to the police. That was, I think, on the 28th of
July?—On the 28th... well, after Mr. Hinson was arrested
under the 90 Day Act, as a member of the Executive of the
Lecturers' Association I was active in taking food parcels
daily to the detainees, and in particular was keeping in touch
with Mrs. Hinson, to ascertain what the "lecturers' Association
could do to assist her. On the 28th of July I phoned her
at the hospital about 12.30...

BY THE COURT: Was she in hospital?—She was working at the
Children's Hospital. She said...

EXAMINATION BY MR. BRYERS (Continued):

You cannot tell us what she said, Doctor Scott.
Did you speak to her, and as a result of what she said you
caused the police to be called?—She spoke to me, and I told
her that to the best of my knowledge all of Mr. Hinson's
papers which had previously been in my office were gone. I
said that in good faith at the time. I went back to the
office, and woman's curiosity got the best of me, and I had
another look. Behind the journals which I had placed in that
cupboard I then found some papers.

And are those the papers which....?—Those are
the papers which I gave over to Lieutenant Venter, in addition
to some other papers which I found in a neighbouring cupboard,
which I must have put there by mistake myself in moving from
one office to another.

MR. BEYERS: No further questions.

CROSS-EXAMINATION BY MR. BOGGOTT:

Doctor Scott, during the period 1962 and 1964 is it correct that Mr. Hirson was particularly involved with the formulation and preparation of a new Physics course?---
That is correct.

The formulation and preparation of a new Medical Physics Course?---That is correct.

Would it be correct to say that this was something in the nature of a pioneering effort on his part?---I think that would be correct to say that.

And involved a tremendous amount of work?---It certainly did.

MR. BOGGOTT: No further questions.

OTHER COUNSEL: No questions.

MR. BEYERS: No re-examination.

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**SOUTH AFRICAN INSTITUTE OF RACE RELATIONS, Security trials Court
Records 1958-1978**

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MRS. COSTAVO EISENSTEIN, declares under oath (Interpreted from Polish).

EXAMINATION BY MR. ZWARENSTEIN:

Mrs. Eisenstein, you are the mother of the fourth accused, Raymond Eisenstein - is that correct?
---Yes.

Where and when was your son, the fourth accused born?---The 1st of December, 1936, in Warsaw.

Now, during the month of September, 1939, when the world war had broken out, what happened to your home in Warsaw?---At the beginning of the war when bombing 10 took place, our home burnt, and 64(?) people burnt in it.

Yes, and was your son, the fourth accused, injured?---Amongst the twelve people who were injured was my son. His wounds were on his head and ear.

Now, in October, 1940, what happened to the Jewish Community of Warsaw?---In 1940, the ghetto(?) was introduced and all Jews were taken into the Warsaw Ghetto.

And you and your husband were both Jewish?
---Yes. 20

Now, did you live in a room with your son and with other people? Did you share a room with other people?---Yes, with twenty other people.

Yes, and were living conditions extremely bad?---It was terrible, twenty people stranded without food and without drink.

Now, in...later in the month of October, 1941, a certain German regiment arrived in Warsaw. Do you remember the name of this regiment or commando?---
Yes, I remember - it was called **Death Corps**. 30

And what was the purpose or the objective

of this regiment?---Their aim was to exterminate the remaining Jews.

Yes. Now, how did you save your son's life?---While the selection of people who had to be gassed was taking place, we were separated - men and children and women. I had a bag where I had a few belongings, I took some of them out and put the child inside and tied the string around it.

And is that where you kept him until the inspection was over?---While a German kept guard walking 10 up and down I always watched that when he was turned away, I could open the string and let some air inside so that the child could breathe.

Now, you...did you remain in Warsaw with your son until 1943?---Yes.

Now, during that period of two years, was there a reign of terror in Warsaw?---Yes, the child has witnessed killings, beatings. We were hiding, changing our places and so on.

You speak of the child, that is her child 20 the accused?---Yes, I speak about my son who is here the accused.

Now, in 1943 did you escape from the Ghetto with your son the accused?---At that time, it was practically impossible to hide away in the Ghetto, it was so bad that we decided to escape through secret channels.

Yes?---And my husband, my son and myself went to the so-called Arian Side(?) and tried to find refuge there.

And were you sheltered by various people 30 until October 1944, after you had escape through the

underground sewers from the Ghetto?---Yes, we were hiding with different people, with gentile friends.

Yes, and on one occasion was it suspected by the Germans that there were Jewish people concealed in the house in which you were living?---Yes, once we were hiding in a shelter made inside a cellar, and we realised the Germans broke out windows and jumped inside. They had information that there was a Jewish family hiding there.

And what did they do to the house?--- 10
They could not find anyone, also they were searching the house, so they let all the Christian inhabitants leave the house, poured petrol onto the wood, the house was of timber, and threw a grenade in, and of course, the house caught fire and when we felt the heat my little boy asked me to put sand on him so that he does not feel so much the heat.

And then what did you and he do?---We realised that we would be burnt alive if we stay so we decided rather to be shot by the Germans and we left the burning 20 house, we went out and waited for shots, but then some miracle must have happened, because there was nobody there.

Now, from then onwards you lived in Warsaw till the end of the year in various cellars and tombs and other places?---Yes.

And then at the end of the war through the help of a refugee organisation, you were taken to France? ---Yes.

Now, when your son was about 10 years old in 1946, was he placed in an orphanage?---Yes, when we arrived in France our situation was very bad, and we approached

the Bureau for help, and they took our son and placed him in an orphanage, where all other children were also children of refugees.

Yes, were there children of different colours and races in this orphanage?---There were different races, nationalities and religions.

And did your son then develop a great friendship with the other orphanage children?---Yes.

Now, what was the effect of what he went through in the Ghetto and in Warsaw on his mind? How did it show in your son's mind?---He was very nervous, he did not sleep well, he woke sometimes screaming, especially he was very frightened of fire, he was treated also by doctors in the home and when he left the home, I went with him also to a doctor.

Was he treated by a psychiatrist while you were in France?---Yes, he went to Professor Baruk.

Now, you came to South Africa in 1955, the end of 1955?---Yes.

Now, how did your son, the fourth accused react to the racial position in South Africa?---He did not like it and he wanted to go back to France.

And did he show in any way what his feelings were about what he thought was wrong and right?---Yes, he did show it.

Can you just give his lordship a few examples of how he indicated his sympathy towards the Non-Whites in the Republic?---For instance, he never let the African children clean his shoes. When he was left in charge of the factory which belongs to the family, he always supervised the white workers, but never the African workers, and

when his father reproached him that he lets them do what they like, he said well, for the money they are earning, they are still doing too much. Whenever his car was cleaned in the factory by one of the people who were already paid in the factory, he always gave them additional money for it.

I just want to sum up - would it be correct to say that rightly or wrongly, your son developed some kind of a phobia about the racial conditions in South Africa?---Yes.

Now, the German Government recognised the 10 fact that your son had gone through a certain amount of suffering and compensation was paid to your son by the German Government?---Yes.

Would you just have a look if these are the original documents which...the German documents which you received from the Government, and I have a sworn translation for your lordship's guidance.

MR. BEYERS: Asks about the admissibility of documents.

MR. ZWARENSTEIN: My lord, technically my learned friend may be right, I do not know. I understood that in regard 20 to matters of mitigation there is some relaxation of the strict rules of evidence. All that this document shows and all that your lordship need refer, is the first page, which is an acknowledgement by the German Government that apparently the fourth accused had undergone suffering in the Warsaw Ghetto and because of that the German Government paid him some compensation. (After some discussion and Mr. Beyers informing the Court that he is not disputing, it is decided not to hand the document in).

MR. ZWARENSTEIN: Hands in short report by Professor 30 Baruk. Both document in French as well as translation is

handed in. (Mr. Zwarenstein reads the document to Court).

MR. ZWARENSTEIN: No further questions.

CROSS-EXAMINATION BY MR. BEYERS:

Mrs. Eisenstein, when you came to South Africa your son was already just on 19 years old?---Yes.

And I take it that you had, throughout his life, been worried about him and concerned about the effects of his early hardship on him?---Yes.

It has not affected his intelligence, because I understand that he is in possession of a South African University Degree?---It did not affect him intellectually but psychologically. 10

And you say that right from the inception of his being in South Africa, he was unhappy about the colour policy here, and its application?---Yes, and he left.

He left - he went where?---He asked us to give him money but we refused. So he wrote to his friends in France, and they sent him money and he left for one year and then came back.

Why? Because it was better here than there? 2
---He came back because we wanted him back, because he could not study there.

And you knew just how badly this state of affairs here was playing on his mind, and you knew just how much he meant to you - why did you not go back to France with him? Because it was better for you and your husband to be here?---I and my husband are very happy here and we wanted him to be with us together, and that is why we tried to get him back.

But you realised that he was very unhappy, 30
and he continued to be unhappy did he not?---I did not think

that he would be happy. I hoped that he would get used to it.

How long has he been back after being away?---About six years he is back.

Did you know that he was a member of an organisation?---No, never.

Well, is he a normal obedient son?---He is normally obedient and good to us.

Well, if conditions were really intolerable, he is over 21 and he could have gone somewhere where he could have studied, possibly not as well as here, but he could nevertheless have studied or found something to do to make a living, could he not?---He tried, and we did not send him money and he could not work and study at the same time, and we probably forced him this way to come back.

MR. BEYERS: No further questions.

BY THE COURT TO WITNESS: What degree did he obtain?--- B.A. and L.L.B. He could not finish it because he was arrested.

MR. ZWARENSTEIN: No re-examination. I just want to make it clear in view of the line of cross-examination, that I did not call this witness for any political purposes or any political motive. I am only concerned with the state of mind of the son, and this witness, as your lordship has heard is not here to criticise the Government or its policy, nor am I.

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HIRSON

1.

ACCUSED NO. I.

MR. SOGGOT informs the Court that Accused No. 1 wishes to make a statement from the dock. (After some discussion, Court grants permission).

ACCUSED NO. I, states

My lord, in making this statement to the Court, I am aware of the fact that I have already pleaded guilty and that it is the Court's duty to punish me. I have pleaded guilty, and the extent of my involvement is not in dispute.

My lord, I wish to say that what I did was 10
absurd and futile. What I have to say to this Court, will therefore, not be any attempt to distract from the undisputed facts. In making this statement, I can only hope to explain to your lordship how I come to be standing here now.

At the time of my arrest on the 10th of July, 1964, I was lecturer in Physics at the University of the Witwatersrand. I was arrested on my way back from a conference on Medical Education in Durban where I had read a paper on a new course in medical physics which I ini- 20
tiated at the University in 1962.

My lord, as far back as I can remember, I wished to study science, but I only commenced my University career at the age of 25, after saving sufficient money to pay my fees by working at part-time jobs and teaching at colleges. After we married, my wife and I supported one another. I was studying for a further degree at Cambridge in the years 1950 to 1952, and she was studying medicine thereafter. It was only 1956, when I was appointed to the University staff, as a lecturer in Physics, and in 30
1957 when my wife qualified as a doctor, that for the first

time we were free of financial strain.

The difficulties were heightened during my entire career by continuous attacks of gout which have afflicted me from the age of 10 and from which I am still a chronic sufferer, and from which I am continuously being crippled. Although I was deeply interested in the Sciences, I have always read widely, particularly in philosophy, politics in education and literature. I read and studied the contemporary ideologies of our time including Marxism and Fascism, and followed closely the 10 development of Communism since 1917.

In my readings I learnt to distinguish between Communism and Democratic Socialism, and detested Communism. Because of this I have never joined the Communist Party and have steadfastly opposed it. My views have always been my own, and in the main, I have remained outside the ranks of organised political groups;

I came to some basic conclusions about South Africa, which I formulated as a student, which I have subsequently maintained. It was for me then, and is still 20 for me now, important to abolish the Colour bar and race discrimination, and accord to the African a greater share in the wealth of this country.

As a student, I took part in student activities, and I expressed my opinion openly in discussions. Later when I returned to the University as a lecturer, I never hesitated to express my viewpoints before my colleagues, but never did I discuss politics in the Lecture Room.

My interest in politics, was only one of 30 many interests. I quote as an example, that as an elected

member of the computation of the University, I helped to organise lectures for graduates on new developments in the humanities and the sciences. I also helped to re-organise the defunct Students' philosophical Society. There is amongst the books found at the University, a published copy of one of my talks to the Student Body on the subject of free Universities. This expresses clearly my own views on the subject.

As Indicated in the evidence, a large box of Leftist literature belonging to me, was found in the base- 10
ment of the University. I kept them there because they were either banned or likely to be banned. Asked why I never destroyed these books, I can only say that I am unable to destroy any book, but these volumes my lord, taken in my possession, may give a wrong impression. I have always been an avid collector of books, and our library at home numbers over 2,000 volumes. They reflect my interest in philosophy, in history, literature, education and the sciences.

It was during the period 1958 to 1960, that 20
the relative tranquility of my university career was disturbed and led to my joining the Socialist League. It was not one particular factor which made me turn to active politics, but rather a confluence of events which came to affect my thinking.

I have seen the astonishing swift movement in Africa and Asia towards independence after the second World War. I saw the growth of African Nationalism as an inevitable tide which had to be met some way or another, but which if dammed up, could only lead to disaster. 30
This was not the view of White South Africans, and I was

convinced that it would lead to a terrible and unnecessary civil strife. Against the background of this was the tragic event of Sharpeville. It induced in me as a member of a privileged group, a feeling of deep guilt.

After Sharpeville came the state of emergency, the banning of the A.N.C., a new state that characterised South Africa as the pole cat of the world, and yet, at the time, there was a feeling that the authorities might make concessions. The pass laws were certainly relaxed. There was a distinct feeling that some small event, expressing resentment, by part of the population, could make such a change in this country. 10

At that time I felt that my own indignation at what had happened, was part of the indignation that echoed throughout the civilized world.

The other event that affect me my lord, was much closer home. I refer to the attack on the open University and the plan to remove Non-White s from Wits. Education has always been indivisible in my mind, and matters of race or creed seemed irrelevant. I had come into 2 close contact with Non-White students who showed a burning desire for education. Again and again I met individuals whose families had skimped and saved and literally starved in order to collect funds for schooling.

I personally lectured to the first Africans to be admitt@d as students, to a faculty of Engineering in this country. I had seen their difficulties in the class, and found that their schooling had been grossly deficient. Despite this, they made a desperate effort to keep up with the class, and yet, after the fourth student had been admitted, further entry was stopped by the new

University Law, and no other faculty existed in the Republic to train African Engineers. This confounded all reasons, because the country needs far more Engineering graduates than it can possibly produce.

In addition, there was at that time, a wave of feeling that something had to be done. Everywhere there were talks of legal political organisations going underground. It was in this context that Basil Stein, already mentioned by Mr. Prager, a fellow lecturer of mine, spoke to me and urged the view that it was wrong to be 10 passive. He invited me to a discussions which called itself the Socialist League. There I met Rhoda Prager and the others who have been mentioned in incidents. Also a Doctor and his wife, whose names I do not wish to mention here, and Philip Green. We all had the sense that something had to be done, until we eventually linked up with the existing National Committee of Liberation. We did nothing other than talk.

Two members of the Socialist League, also already mentioned, called Simon and Sylvia, introduced us 20 to Milton Setlapello, through whom we eventually made contact with the African Freedom Movement.

In the course of 1961, Rhoda Prager in turn, introduced me through a third person, to Cox and Vigne. At this stage, as far as I remember, there was no conscious effort to expand. The picture was rather one of like-minded people getting together at parties, socials and discussions. My lord, we were a small group of intellectuals, interested in discussion and investigation. We were not politicians in the accepted sense of the word. 30 We did not have grandecous ideas.. If anything, we were

Olifant has suggested to the Court that it was our intention to carry out widespread sabotage to civil industry and to bring about a state of confusion that would lead to guerilla warfare. At no time was it our aim, and at no time did we have such grandiose beliefs.

In 1961/1962 there was talk in the country about guerilla warfare. The events in Cuba were being discussed and many people were questioning the possibilities of guerilla warfare in South Africa. It was at that time that I bought the books that have been mentioned, 10 with the idea was clearly rejected by us. Vigne put it to us that condensed versions of political literature should be issued, the first of which should be an extract of Chequavara. For the purpose of the record, I deny making that extract, but in substance, I and the others accepted Vigne's suggestion. The document was distributed, but there were no group discussions based on this extract.

During 1962, I had an unusually heavy load of academic duties. I was lecturing on a new course of 20 Medical Physics and had spent a long time preparing the course. By the time the second term commenced in July, 1962, there were large parts of the report yet unprepared, and from that time till the end of the year, I was literally one jump ahead of my students. I was also engaged in the research work on the electrical property of alloys, and for two years, I had made little progress with this problem. Fortuitously, experiments suddenly began to fit into a pattern which made sense, and I wanted to finish this project before I went to lecture at the University. As the result, I became completely pre-occupied with my

academic work, and literally worked 16 hours a day, seven days a week. From the time of the main meeting at Cox's house and the Regional meeting at the end of August, when I surrendered my functions as secretary, I attended one other meeting in May, again at Cox's house, and in my capacity as Secretary, as far as I can remember, wrote two letters to Vigne.

By the middle of July, I had withdrawn entirely from the activities of the organisation. I barely thought about the N.C.L., or indeed, politics from that time on. 10 In the circumstances, Rhoda Prager took over my functions, and for the rest of the year I was defectively cut off from the organisation.

The two explosions effected in 1962 - I heard about them only after they had been carried out. I was not consulted about them before, and no report was made to me after. From July until my departure in December, 1962, I did not contribute anything to the organisation.

I understood from Eisenstein in August of that year, that there was much irritation even with me then. 20 That there was talk of expelling me from the organisation, but this was not done. Why my lord, I do not know.

During the year I was working at the University, I continued my research work on metals for my doctorate, and was on the staff as a temporary lecturer. I was deeply involved in my work, and devoted all my time to my duties. I do not think very much...I did not think very much about the situation at home, but there was a sense of relief and relaxation from being away from politics.

During my stay in England, I took no part 30 in political activities, and I met no political parties.

On one occasion only I was asked to attend a discussion at the Bermans' flat in London. It was during the summer vacation, and I was passing through London on my way to a conference on Alloys at Sheffield where I presented a report on the work I had completed. At the meeting I met Ruben, Laing and Leftwich, although they were not known to me by name at the time.

Leftwich, gave a report on South Africa and a general discussion ensued. I was more an observer than a participant. I had little to offer, because I had lost contact with the feeling of political urgency. Berman expressed the view then that the N.C.L. should work with the Communist Party and The Spear of the Nation. This I opposed, and thought that the road he contemplated for the N.C.L. in relationship to the Communist Party, was entirely false. This was my only physical contact with the London members of the N.C.L. during that year. As far as the N.C.L. was concerned, I did nothing to further its cause during my stay overseas.

During 1963, I was able to gain a new perspective of political events in this country. On the long boat journey home, I worked out my attitude to sabotage. It was then that I gathered the idea that had been growing during the year. Exorbitant claims had been made for the value of this methods. To me it now appeared that it was wrong. Sabotage was totally ineffective as a means of putting any pressure on any Government. Far from gathering sympathy for the cause we had started, sabotage had only hardened the attitude of the whites. Sabotage, in fact, could only lead to a greater onslaught on political parties, would lead to more stringent legis-

lation, and would provoke further and justified probes in the freedom of the speech, it was wrong to argue with dynamite.

I arrived in Johannesburg on the 12th of January, 1964, and I was struck then by the obvious prosperity of the towns. Towns had grown even more prosperous during my thirteen months abroad than ever before, and affected all parts of the population. It strengthened my stand against sabotage, because I realised that reforms must come with the expanding economy. 10

I was approached to re-join the Regional Committee of the N.C.L. but my inclination was to stay away completely. I did not want to go back, because not only did I think that ^{sabotage} ~~that~~ was also futile, but I was also extremely aware of the dangers involved. However, I did value my former friends for their idealism and sincerity, and after a delay of nearly two months decided that I should go back in order to persuade them of my views. I met Eisenstein and Lewin at a preliminary meeting, and put my views to them. I told them of my belief that nothing 20 could be done, until the mood of the country changed, and that until then we could only keep together, so that eventually we could express our ideas in a more sympathetic manner.

From Eisenstein I gathered that there was a great deal of disillusionment as far as he was concerned. Lewin said there was considerable substance in what I said, and that he was even thinking of leaving the country. I joined the Regional Committee, and soon realised that the organisation had changed during my absence. The mem- 30 bership had changed radically, I was unaware then of the

membership of Wentzel, Lloyd, Dhladhla, the Mutches and others. I gathered, however, that Higgs was the driving force of the organisation. That he planned most of the activities. Without him most of the action would never have taken place.

I sought out Higgs whom I knew as a lecturer at the University. We had normally been friendly prior to my departure in 1962, and when I tried to persuade him that the days of sabotage were over, he rejected my arguments. He implied that I was cowardly, and laughed at my suggestions that the acts of sabotage were ineffective. He had a ¹⁰⁵⁶grandiose conception of the effectiveness of glowing up pylons and seemed to see the temporary cutting of electricity, as an almost mortal blow to the regime. 10

Countering my arguments, he said that I had nothing to offer, that I was defeated, and that to stop sabotage would be a betrayal of everything that we have stood for. In one sense my lord, he was right. I had no alternative, except to suggest the Socialist ^{League} should preserve themselves until such time as they could again play a meaningful role. He accused me of being an academic with no understanding of what the world was like. He told me to go into the world and open my eyes. I only heard after my arrest, that Higgs was carrying out a campaign in the N.C.L. to discredit me completely. 20

To belong to a sabotage group and yet oppose sabotage, can only be described as chitzophrenic. While acts of sabotage were being prepared, I had to accept the decisions, and yet present a minorical view. I wished to persaude them away from sabotage, so that we could revert to open politics, and hence, I did nothing in substance on 30

behalf of the organisation. I was being criticised for this, and Lewin has told me that Leftwich once described me as dead wood that should be removed.

In one way my lord, I blame myself for what happened during 1964. Perhaps my fault was not that I belonged to the group, but that I did too little. I should have made a greater effort to stop the sabotage, but I had lost the great part of my interest in politics. I was tired of it all. I was torn between my desire to get out, and my sense of obligation to those I knew. 10

In April Higgs went to Lusaka. He went there to marry an African woman, and I knew they were expecting a child in July. I knew then that he intended staying in Zambia thereafter, and I felt that things would change when he left, and despite my disillusionment, I stayed.

At the end of April, the Regional Committee died a natural death. It had met no more than half a dozen times since I joined it. At that stage, Eisenstein, completely disillusioned after talks we had together, left the N.C.L. Olifant had just stopped coming. I 20 hoped that a definite decision against sabotage would emerge from the Easter National Meeting. Daniels did put forward a suggestion that sabotage be stopped. Before I could intervene, Higgs came out with a passionate argument against stopping it. He said that the decision had been taken long ago to proceed after the Ryflonia verdict, and Leftwich agreed with him, Lewin appeared to be half asleep at that meeting, and took no part in the discussions. There was no vote, but there was the feeling that the anti-sabotage line had been discredited. 30

On what Daniels had said, I believed that there

were others in Cape Town who had the same views. We felt that with Higgs' impending departure, there might be a change. I felt that to leave now would be an admission of failure, and if that, cowardly.

In the light of that, I wish to explain my connection with the A.R.M. Statement. I did not know that statement was being drawn up, nor did I know of Leftwich's presence in Johannesburg until late at night on the Saturday. I was working at my desk when he arrived with Higgs. It was a hasty visit, they were in a hurry, that the statement had to be finished and typed that night, and that Leftwich was flying back to Cape Town early the next morning. They read me the statement, and said it was a propaganda document intended to make an impact on the public. It did not occur to me then, to break from this previous reluctance to advertise ourselves, and I offered no objection.

The following morning, I asked Higgs for a copy so that I could read it more carefully. I decided then that it was wrong, both in spirit and in fact. We were not an organisation, we were not the representatives of any people. I disliked its bold text and the impression it gave of a vast movement. We were certainly not going to act against people, nor were we going to crush anyone. I expressed my disapproval in the strongest terms. Yet, on the Tuesday I was sent a typed stencil with the instructions that I was to roneo it immediately and have it distributed. Also that I was to telephone the newspaper. I refused, I telephoned no newspapers. This unused stencil was handed in to the police after my arrest, by Dr. Scott. The other documents handed in by Dr. Scott, had been

sent to Johannesburg for comment. Higgs had passed them on to me to read. I found those ideas equally unacceptable. They were at variance with the reality of the situation, and as far as I was concerned, those views were not the views of the N.C.L. as I had known them, and could not represent the views of a small group of intellectuals.

My lord, I wish to state as well, that I was unaware of the contents of Higgs' trunk, and in particular, had no knowledge of the existence of manuals. 10

In conclusion my lord, I wish to add that in all this period I recruited no one, although as a lecturer I had ample opportunity to do so, and that as a physicist, although I had the ability, I was never asked and never offered to take part in any of the technical developments, for which I could have been called upon.

What has now happened my lord, is that I have been dismissed from my post on the staff of the University. I have interrupted my scientific career, I have been separated from my family. I will now pay the penalty for a set of events, which I should never have become involved in, and which I now regret.

I thank his lordship for allowing me to state my position.

MR. SOGGOT informs the Court that he has no further evidence on behalf of Accused No. 1.

Collection Number: AD1901

**SOUTH AFRICAN INSTITUTE OF RACE RELATIONS, Security trials Court
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MR. SOGGOT: Asks leave to call evidence on behalf of Accused No. 1, in mitigation, on the accused's state of mind in 1964.

DOROTHY LAVIN, declares under oath

EXAMINATION BY MR. SOGGOT:

Miss Lavin, would you speak up so that his lordship can hear?---Yes.

What is your professor?---I am a lecturer in history.

Would you briefly tell his lordship what your qualifications are, and when you acquired them?---I matriculated from (?) School in 1956. I then went to Rhodes University for a year, then to Oxford where I took an honours degree in history, and then stayed for another year, and then in the middle of 1962, I took an education diploma.

After you received this education diploma, what did you then do?---I then returned to South Africa, and for a year and a half, I lectured in history at the University of the Witwatersrand.

And where are you lecturing at the moment?---At the Johannesburg College of Education.

Also in history or some other subject?---Also in history.

Now, would you tell his lordship, some time in February this year, were you approached to give a lecture?---Yes, I was.

To whom was this lecture to be delivered?---The lecture was to be delivered to a summer school of the Liberal Party.

And what was the subject of the lecture which

you were to give?---A history of African political movements in South Africa, and an evaluation of the African political movements at the present time.

Now, when was this request made to you?---The request was made to me on a Friday evening.

And when was the lecture to be delivered?---At noon the next day.

Now, did you have knowledge of these particular movements?---No, I had very little knowledge of it.

Well, what did you do then before you gave 10
this lecture?---Well, I said that I would try and get the information, before I would give the lecture, and I approached a friend and a student of mine, who I knew was interested in these matters, and he had read widely on them. He said that he had a friend, also a lecturer at the University of the Witwatersrand, who knew more about these things than he did, and he was read very widely on them.

Well, did he eventually introduce you to this person?---Yes. 20

Who was this person?---Mr. Hirson.

Accused No. 1?---Yes.

And did you tell Mr. Hirson, Accused No. 1, what you required and to whom you were to present this lecture?---Yes, I did.

And would you, in very brief form, tell his lordship what he told you?---Well, the talk was on the historical survey of the movements and so Mr. Hirson began by describing how the A.N.C. was founded in 1912, a brief evaluation of the movement before the war, and then how 30
it picked up. After about 1936, there was the Hertzog

Land Act, and after the war a narrative of what the movement had done.

Well, if I may interrupt you, did he eventually come to deal with present political movements?---Yes, he did, in the question of evaluation.

And did he also deal with, what one might call, the underground political movements in the present day? ---Yes.

Now, would you briefly tell his lordship what movements he mentioned, and what his attitude was towards the efforts being made by such movements?---In the talk, we took it that Umkonto We Ziswe, was an off-shoot of the A.N.C. and Poqe of the P.A.C. We spoke about violence, this being understood to mean sabotage, terrorism and guerilla warfare. 10

Now, did he make mention of any other movements? ---Yes, he mentioned the National Committee for Liberation, in a passing way.

And did he make mention of those persons who were involved in what is called the Rivonia trial?---Yes, 20 in that this was a sabotage case.

Now what, in brief, was his attitude towards the violence which you described?---He said, and I remember it clearly, because I agreed with him, that violence defeated its own ends, that it undermined the purpose for which it was serving, or which it was serving.

Well, in what way? Can you try and give his lordship a better idea? In what way did Hiron indicate that violence was wrong in the situation?---He said that it alienated white supremacy from the cause to which violence was directed, and he also said that it gave substance 30

to the fear which was very prevalent in White South Africa, of a "Swart Gevaar".

Now, you have indicated to his lordship that violence included sabotage?---Yes.

In your talking?---Yes.

What, as far as you can gauge, was Mr. Hirson's view as to the prospect, the future, as to what should be done?---I think he was hopeful, because he said that on coming back from England, he had noted an affluence in South Africa which had not been there before, that the 10 economic boom was not only affecting the Whites but the Non-Whites as well, and was integrating them economically into the South African set-up, and that he felt that there was much chance and much hope for mutual understanding and reform in this way. That this kind of reform was going to achieve what the political movements are trying to do.

And what was his suggestion, if any, as to what forms political activity or discussions, should take? ---I think that they were that they should take place 20 within the ambit of the law, and that what a political movement could do/^{was}to keep alive the ideals of a society, by discussion.

MR. SOGGOT: No further questions.

CROSS-EXAMINATION BY MR. BEYERS:

Miss Lavin, the accused was a lecturer in physics, and quite obviously, his knowledge of political history, if one may call it that, was..must be mainly as a result of his interest in it?---From my knowledge of the accused, I would say that he has very wide interests, and 30 that these include history.

5.

D. LAVIN.

In fact, he had a whole trunk full of books on Communism - would that have any effect on what you think about his knowledge, including three handbooks on guerilla warfare and a handbook on the use of explosives? ---I did not know that he had such literature.

MR. BEYERS: No further questions.

MR. SOGGOT RE-EXAMINATION:

My lord, one question - from your discussions with Accused No. 1, what did you gather, if anything, as to his attitude towards Communism?---I should say that he 10 did not subscribe to Marxist/Lenninist doctrine, I suppose that is one of the ways in which you would define a Communist.

MR. SOGGOT: No further questions.

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CROSS-EXAMINATION BY MR. SOGGOT: Mr. Leftwich, I want to refer you to your trip to Johannesburg at the time that this A.R.M. statement was formulated...

BY THE COURT: What are you talking about A.R.M. statement?

EXHIBIT M.12.

MR. SOGGOT: My Lord, I think that is it. The one which started the African Resistance Movement.

BY THE COURT: I think you better just call it M.12.

CROSS-EXAMINATION BY MR. SOGGOT (CONTD.) I understand that when you stepped off the plane you had some draft which you had already scribbled in your own hand. Is that correct? --- No. /10

Isn't it correct? --- No, it is not correct.

Did you yourself write out the original draft?

--- Yes.

Was that done in Johannesburg? --- Yes.

And you arrived in Johannesburg, I think, late on Saturday afternoon? --- That is correct.

And you left Johannesburg again by plane early the next morning? --- That is correct. /20

Belt 42.

It was quite a concentrated trip, not so? ---

That is correct.

Now, as you have indicated, you drafted this various document and changes were made by a number of people, and then you went to the house of Eric, that is Baruk Hirson, not so? And you showed him the draft? --- Yes.

And, I understand, it was read in the space of a few minutes and you then left? --- Yes.

It was after that then that the final draft was prepared, and you took a copy with you to Cape Town? /30

--- Yes, the draft as it finally stood was the draft which

I left with from Eric's home.

MR. SOGGOT: NO FURTHER QUESTIONS.

BY THE COURT: In the evidence which was put to you - your statement made with the Cape court, it opens up 'this treachery'? --- No, I think it is mis spelt, it should be tragedy.

CROSS-EXAMINATION BY MR. LEVESON: Mr. Leftwich, just one or two questions concerning Accused No. 3. The hotel at which you met George in Cape Town, was that on a main road? --- Yes. /10

I don't know the actual hotel, but is it possible that this is a hotel called Waterford Arms, would that be right? --- No, it is a hotel called Randalls and there is a separate pub called the Pig & Whistle. It was in that that the meeting took place.

Now, parking is difficult on the main road in the vicinity of that hotel, isn't it? --- Correct.

One would have to spend a little time looking for parking? --- Yes.

Now, the other thing about that meeting is this, wasn't that the venue that night for some sports club social or a club meeting or something of that nature, which caused you to have to leave early? --- I'm afraid I don't know, I can't remember.

MR. LEVESON: NO FURTHER QUESTIONS.

MR. REES: NO RE-EXAMINATION.

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LEWIN

1.

ACCUSED NO. 2.

ACCUSED NO. 2, states

My lord, I am 24 years old. I was born in Lydenburg in the Eastern Transvaal where my father was the Anglican Parish Priest.

When I was one my father was transferred to Irene, where he became Parish Priest and Chaplain to the Irene Homes. When I was eight I was sent to the boarding school to St. John's College, an Anglican Private School in Johannesburg. I remained there as a scholar until 1957. In 1956, I matriculated with a first-class pass and stayed on at school for a first matric year in preparation for my studies at University. 10

I wanted to become a Priest, and arrangements were made for me to go first to Rhodes University and then to a Theological College in England. I completed my B.A. at Rhodes in 1960, but I felt then that I was not yet equipped to face the rigours and demands of the priesthood, so I postponed my trip to England.

My father my lord, was a gentle and loving man. I had a close and warm relationship with him which lasted until he died in 1962. He brought me up to believe that all men, rich or poor should be respected and loved as creatures of God. I have always believed and still do believe that all men are equal in the eyes of God. This belief was a strong factor in my decision to commit sabotage. 20

During my last few years at school, I spent a large number of Sundays as a guest of the Fathers of the Community of the Resurrection in Sophiatown. Here, for the first time, I was brought into direct contact with the poverty and suffering of the African Community

that lived there. I went into their homes and saw the conditions in which they lived. I listened to their conversations, and heard them speak about their frustration caused by the laws which prevented them from improving their lot, and about their hatred especially for the pass laws which disrupted their lives.

On one occasion, whilst I was talking in the streets of Sophiatown, with some friends, some of them Africans, we were stoned by a group of Africans, who abused me for being white. I began to realise that many 10 of the African people blamed the whites for their poverty and lack of dignity. I also began to realise that there was an enormous difference between the living conditions of the whites and those of the Africans.

In the White Community my father was a poor man, but by comparison with the Africans whose homes I went to, he seemed very wealthy. This difference between whites and blacks and the laws which governed them, set them against the whole Christian teaching which was the basis of my life. 20

As I grew older I began to believe that this negation was the fault of the Whites who governed the country. I also began to believe that those who accepted the situation shared with those who governed the responsibility. I began to feel guilty of being white and felt a powerful need to do something myself which could alter the situation.

At the University I joined organisations which were non-racial in character, and I became a member of the Liberal Party which then advocated a non-racial 30 policy. I worked hard at these activities in the hope

that I would be able to do something to change a way of life which white South Africans seem to regard as traditional.

I continued to hold these beliefs after I left the University, and continued to do what I could to focus attention on the laws which I felt prevented Africans from living a full and proper life, but my efforts seemed puny and hopeless. It seemed that nothing would awaken the whites.

At about this time I was approached by Rosemary Wentzel to join the National Committee of Liberation. She explained the objects of the organisation to me, and asked me to become a member. My lord, I was terrified. Instinctively I was opposed to any form of violence and knew that I was not suitable to the role I was being asked to play, but in spite of this, I decided to join.

Two factors in particular influenced me in making this decision - I was told that the N.C.L. was not a mass movement, but was a small group, consisting largely of young people who wanted to make a demonstration of their protest, in the hope that by such demonstrations attention would be focused on the living conditions of the Blacks. My previous attempts to do this had been completely ineffective. I thought that sabotage might shock the Whites into an awareness of the conditions under which the Blacks were living, and in due time, to change the system. 20

Secondly, I was told that the sabotage would be committed only against installations such as pylons, which were to be selected in a way which would 30

ensure that the explosions would not endanger human life. The motive was to shock - not to injure. This, perhaps wrongly, I was able to reconcile with my conscience. So with some trepidation I joined the organisation.

I was a member of the N.C.I. for about one year. Our efforts were disorganised, our actions were sporadic. During that year, I personally participated in three acts of sabotage. Another five acts were committed by other members of the organisation, but there were no changes, and it seemed that ^{what} we were doing was 10 futile. I was filled with doubts, and even thought of leaving my own South Africa, but always I came back to the sense of guilt and the feeling that I was part of a problem which I could not escape from by running away. So I stayed in the organisation and remained a member until my arrest.

Early in July this year, I heard of the arrests in Cape Town. The reports from Cape Town suggested that the organisation had been broken, and that we in Johannesburg, were in danger of being arrested. Then 20 on the evening of July the 8th, Michael Schneider flew to Johannesburg from Cape Town. He told us that Leftwich had given the whole organisation away and he warned us to leave the country. That night I passed on the news to as many people as I could or whom I knew. I helped make arrangements for Schneider to escape to Swaziland with Rosemary Wentzel, I also helped make arrangements for the Mutchers to escape to Bechuanaland. I was up the whole night and thought of my own position. I decided 30 that it would be wrong for me to flee, that I should stay

behind to face the consequences.

I arrived back at my flat early in the morning, and had just enough time to shave, wash and go to work. I was arrested at my work that morning.

I know my lord, that I must go to gaol for what I have done. I know too that what I have said is not likely to lighten my sentence, but I have felt a need to explain myself not only to your lordship, but also to those people who by their love and their loyalty have shown their trust in me.

I thank your lordship for granting me that opportunity.

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RE LEWIN

1.

D. RAPHAEL.

MR. CHASKELSON CALLS IN MITIGATION ON BEHALF OF ACCUSED
NO. 2:

SISTER DOROTHY RAPHAEL, declares under oath

EXAMINATION BY MR. CHASKELSON:

Sister Dorothy, I understand that you are
a sister of the Community of St. Mary the Virgin?---Yes.

And that is an active community of the Anglican
Church?---Yes.

And that you are in it, as a member of that
community, the assistant Sister Superior at the Irene 10
Homes in Pretoria?---Yes.

Now, I believe that you have known Hugh Lewin
and his family for some time?---Yes, our community has
known him since he was 18 months old, but I have known
him for seven years.

And you also know that Hugh Lewin has pleaded
guilty to a charge of sabotage?---Yes.

I think you asked me to make it clear to his
lordship that you and your community are opposed to this
form of activity, and in fact, never participate in poli- 20
tics at all?---Yes, we belong to no political party, and
are opposed to violence in any shape.

But despite this you have indicated your
willingness to come to Court to tell his lordship what
you do know about Hugh Lewin and his background?---Yes.

Now, Hugh's father was a priest?---Yes.

He was the Chaplain at your homes in Irene?---
Yes, for many years.

And their house is just down the road from the
Irene home?---Yes. 30

And I understand it was a place which you got

to know quite well? You knew his home environment, and knew his parents well?---We knew him well my lord, and we were often allowed to see his letters and read his reports from school.

Now, Hugh will tell his lordship that his father was a gentle man, and that he grew up in a deeply religious home where he was taught to love and honour all men. Can you comment on that sister?---I knew his home very well. It was a deeply religious home, and Hugh was very much attached to both his father and his mother and 10 responded always to their religious atmosphere in his home.

I understand that he himself attended chapel regularly, and in fact, served his father at Irene?---Yes, that is true.

Do you also know a little bit about his school career? He, I understand, attended St. John's College in Johannesburg?---Yes.

Do you know what his career was like at school?---Well it was an attested fact my lord, that when he left school he was a prefect and was regarded as one 20 of the best boys for the year.

Who told you that?---The headmaster, Mr. Yates.

He has no objection to your repeating it?---No.

Now, Hugh will tell his lordship that while he was at school, he began to feel deeply about the poverty in which most Africans lived. Now, I want to know whether you know anything to show whether or not this was a sincere feeling which he held at the time. Whether you can think of anything to inform his lordship about, at that time?---When he was at school I read some of his 30 essays, and I could see the growing passion for justice

there was for all the under-privileged, and as myself, I have worked with them, I sometimes had conversations with him in which I could see that he shared that great desire to better the conditions of the needy.

Now, when he left school, he went to University in Grahamstown?---Yes.

And I understood that he intended then to become a priest. Do you know whether that is so or not?---That is so.

That he did intend to become a priest?---He 10
did indeed, intend to.

And he will also tell his lordship that his feelings underwent no change while at University, and then he continued to feel deeply about the separation of Whites and Africans, and suffering as he saw it, of Africans in South Africa. Do you know anything from your conversations with him, to indicate whether this was a sincere view or not?---I did have one or two conversations with him in which I could see that he had a great desire for equality of opportunity for all races, and was prepared 20
to be courageous in trying to do something to bring this about.

Now Sister Dorothy, if Hugh were to tell his lordship that he became involved in sabotage, in order to draw attention to the living conditions of the less privileged sections of the community, how would that fit in with his character as you have known him?---I am quite sure that there is deep in him an abhorrence of hurting anybody, and therefore, I think that there must have been some feeling of exasperation and frustration which led him to these 30

acts which he now deplores as much as we do ourselves. In some sort of attempt to make a protest to show that he wanted to express the feeling of guilt in his own conscience, about these conditions.

Now, just a few details sister - I understand that Hugh's father died in 1962?---That is so.

And at that time his mother became seriously ill and went to England?---She was in England, and had to go to hospital, yes.

Now, Sister Dorothy, I know it must be an 10
 ordeal for you to come to Court - could you perhaps explain to his lordship why you answered the request to come here to give evidence?---I and my superior officers, felt
 /that we had a great respect for both Hugh and his parents, and that we longed to bear witness to those good qualities of his character that wide hearted loving kindness founded on the love for God and man and a courageous to help all the needy, and we had a great longing that those gifts might be enabled to be used for the good of the country which he loves, as indeed I do, and that is the 20
 reason why I have come here today.

MR. CHASKELSON: No further questions.

CROSS-EXAMINATION BY MR. BEYERS:

Sister, you say that his home was deeply religious. I probably knew his father before you did, but as a very staunch Anglican, surely divorce is abhorrant or would have been abhorrant in his family?--- I am sure it would have been abhorrant.

The accused himself was only just 24 years old? Or in that vicinity as I understand it, and he has 30
 already been married and divorced - how does that fit in

5.

D. RAPHAEL.

with your picture of the result of his upbringing?---I cannot possibly know causes that most regretful occurrence. I can say no more.

MR. BEYERS: No further questions.

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MR. ZWARENSTEIN ADDRESSES COURT:

Belt 82

The fourth accused pleaded guilty to the first eight counts and also to count 12 - that was the vicarious possession of explosives.

The basis of the plea was recorded in writing, and is before your lordship. My lord, I concede of course, that the accused's participation in the conspiracy makes him equally guilty with those who carried out the actual acts of sabotage, even although he himself, the fourth accused did not participate in the actual deeds. He was 10 a party to the conspiracy and on the basis of his plea, he was aware of the acts of sabotage.

What I will ask your lordship however, to infer from the formulate admissions and denials, is that the fourth accused was not a leader in the organisation, and in that regard it is common cause between my learned friend for the State and myself that that is the position. I mention this because as far as one can gather from the various sabotage and similar political trials which had been heard in the Courts of the Republic, there has been 20 a differentiation in sentence between leaders and non-leaders.

BY THE COURT: What is a leader?

MR. ZWARENSTEIN: My lord, I think the leader is one who dictates the policy and the acts of the organisation.

BY THE COURT: Who would you suggest would be the leader in this case?

MR. ZWARENSTEIN: My lord, for instance, there was evidence that in regard to the commission of sabotage, the leader in this affair in the Transvaal was Dennis Higgs. 30

BY THE COURT: Do you mean in saying he is not a leader,

you contrast him in the role he played, with Higgs?

MR. ZWARENSTEIN: Oh, very much lesser, my lord.

BY THE COURT: I wanted to know what you had in mind by leader?

MR. ZWARENSTEIN: My lord, the leader is the one who tells the others what to do, and those who are not the leaders, for various reasons, good or bad, do what they are told.

My lord, what I however, mainly place reliance upon, is the fact that the fourth accused ceased to participate in the conspiracy in April, 1964. 10

My lord, the accused in this matter was a 90 day detainee, and I think it is accepted judicially and otherwise, that this form of detention inevitably must create a severe measure of hardship for the person detained. During this period of detention, it was suggested to the accused that he might be used as a State witness and so in all likelihood gain his freedom if he were prepared to make a statement.

BY THE COURT: Who said that?

MR. ZWARENSTEIN: Major Britz. 20

BY THE COURT: It is a practice.

MR. ZWARENSTEIN: No, no, he said that it was actually done in the case of the accused. Accused No. 4.

BY THE COURT: I am afraid I missed that.

MR. ZWARENSTEIN: My lord, I had him specifically called for that purpose, and I may say that before he was called, I interviewed Major Britz with the permission and in the presence of my learned friend for the State, and it was for that reason, after having checked this information, that I had him stand over to enable me to question him. 30

Now my lord, the accused did not avail himself

of this possible way out. I mention this only for one reason, and that is that the attitude of the fourth accused shows at least that the accused was sincere and honest in what he did. Having pleaded guilty to what he had actually done, he did not try to take the easy way out, and in refusing to make a statement, he virtually convicted himself, because as your lordship appreciates there was, in fact, no factual or legal way out of his difficulties for the accused.

At the time when he rejected the offer, he would not have known whether he would face the death penalty, life imprisonment or in any event, a possibly long term of imprisonment. 10

My lord, the admissions made by the accused, cover the following allegations against him - he was a foundation member of the conspiracy, he fulfilled administrative organisational and liaison functions, he was a member of the political, political and propaganda committees of the bodies which were mentioned in paragraph 3, (2) of the indictment - these were bodies such as the Socialist League, the National Committee of Liberation and the African Resistance Movement. 20

The accused's denials which were accepted, were that he trained members in the use of explosives, that he participated in obtaining, storing and preparing these explosives. These functions apparently were carried out by Watson and Higgs.

There were certain further particulars furnished to the indictment, and most of the allegations there were covered by the plea of guilty, but there were one of two denials, not of great importance. One was that 30

he became the head of a study group. That denial was accepted, and it would appear from the evidence in fact, that no study groups were ever formed. I think it is common cause, in fact, between the State and myself that no such group came into existence.

He denied attendance at, and participation in demonstrations of the preparation and use of timing devices and explosives at the home of Accused No. 3 or at various other places. He admitted the possession of explosives but on a vicarious basis. He also denied 10 that the details of sabotage acts were submitted to the Regional Committee, and this would appear to be confirmed by the evidence of Rosemary Wentzel, whose evidence was to the effect that this was all done by the Actions Committee.

The further denial which was accepted by the State, was that the accused at any time suggested the purchase of firearms from Pantu gangsters in the township.

Now my lord, one of the factors obviously, 20 which always weighs with any Court in deciding punishment, is the attitude of an accused person towards the offence he has committed. In this matter, all I need say is that the accused left the Movement in April, 1964. The date is also of some importance in view of a number of queries raised by your lordship in regard to Exhibit 'N.12'. That is the document relating to the alleged aims and objects of the African Resistance Movement.

Whether that document was intended to be a propaganda sheet or anything more, is irrelevant as far 20 as the fourth accused is concerned, because it was prepared

after he had left the Movement, and quite apart from that, even if he had still been in the movement, it would not have been referred to him as a member of the rank and file.

Now my lord, I think it is also fair to say that in a criminal case of this nature, the personalities and the emotional motives of accused persons have to be taken into account, and in this regard, it is manifest that the position of the fourth accused is a most unusual one. Normally my lord, the fact that a person labours under a sense of injustice, is not necessarily a mitigating factor in itself, but here the accused, from the age of 2 until the age of 7 or 8, was a personal victim of racial terrorism and was an eye witness to what went on in the Warsaw Ghetto and in Warsaw itself. 20

He saw women and children being removed in order to be destroyed in the gas chambers, he saw the assaults, the beatings and the killings, and his mother who apparently is politically neutral described the effects upon the fourth accused. Not only during his stay in Europe after his departure from Poland, but also in South Africa. 20

This feeling which the accused developed about race persecution was strengthened by his stay in a French orphanage where he consorted with children from all races, children of all colours, and as his mother said, a very strong bond of affection developed between himself and the other inmates of the orphanage. This racial phobia as his mother called it, which he had developed, was of such a degree that he was not even prepared to remain in South Africa, and emigrated to France. Because his parents 30 were perfectly happy with their situation and their treatment

in the Republic, they compelled him to return by cutting the supply of money to him.

My lord, it is not for counsel for the defence, to deal with this doctrine of Apartheid, I must assume that those who advance it believe in it, but one must equally well accept that both inside the Republic and outside it, there is a large body of intelligent and honest opinion which abhors the doctrine, and in the case of the fourth accused, because of his unfortunate infancy, his feelings go very much further than those of churchmen, 10 politicians, trade unionists and others, who do not agree with the attitude of the two reigning political parties in South Africa, towards the Non-Whites.

The accused, as was stated in the report of the Professor from France, was hypersensitive on the issue of racial prejudice. I know that this report of the specialist is not really the best evidence, but it does confirm what his mother said in Court, and it accords with common sense and an understanding of human nature. I would my lord, refer your lordship to the evidence of 20 Rosemary Wentzel, at page 23 of her portion of the record. The evidence reads as follows - "Now Mrs. Wentzel I want to ask you briefly about some other persons in the organisation - one of them is a gentleman called Higgs. Now, I understand that Mr. Higgs was a person who figured very prominently in the preparation of explosive apparatus?--- That is correct. And that he, in effect, was the driving force behind the sabotage activity in the organisation?--- Yes. That he did the planning, the ideas were his, the targets were suggested by him, he organised things?---Not 30 all the targets were suggested by him. We found a few of our

own, but the rest is correct. But he was the person who prepared the apparatus?---That is correct. And he was the only person who had the technical ability to do that? ---To the best of my knowledge, yes. And he in fact, evolved the apparatus, using his ingenuity and ability, he perfected mechanisms not so?---To the best of my knowledge, yes. And would it be correct to say, that but for him, there would have been little or no sabotage committed by the Johannesburg organisation?---It would seem so." Then my lord, the witness was questioned about 10 the man Watson, and the questions and answers which appear at page 24 - are as follows:

"Now, I understand that he figured prominently towards the end of 1962...(quotes)...and he too was a person who you might say, was a rather ardent saboteur and interested in blowing up things?---I never knew him personally, I only knew him in the organisation. Well, in the organisation he was very active, not so?---Yes. And would it be correct to say that in 1963, he effected something of a complete re-construction of the organisa- 20 tion?---Yes".

Now my lord, the fourth accused, because of his approach to this question of racial hatred, racial discrimination as he conceived it, would obviously have been a very ready victim for people of the calibre of Watson, Higgs and I add, Leftwich.

It is quite clear from Leftwich's own evidence, that he was an active leader in the movement, not only in the Cape, but he brought his influence to bear in the Transvaal, and that he was one of the main contacts 30 between the organisation in England and elsewhere.

My lord, I merely want to refer to one authority on the question of sentence. The case to which I refer, relates to the matter of extenuating circumstances in a murder charge, but my submission is that the principle is of equal application in the present matter. The case I refer to my lord, is an appellate division judgment in the matter of REX vs. FUNDAKUET AND OTHERS 1948 III S.A.L.R. 810, and I quote from page 815.

There my lord, the learned judge in the appellate division cited with approval, a judgment of 10 his lordship Mr. Justice Lansdowne, the Judge President of the Eastern Districts Local Division, where he said as follows - "I am not aware that any definition has been given by parliament or the Courts of the term "extenuating circumstances". In our view, an extenuating circumstance in this connection is a fact associated with a crime which werv@s in the minds of reasonable men to deminish, morally or be it not legally, the degree of the prisoner's guilt. The mentality of the accused may furnish such a fact. A mind which though not diseased so as to provide evidence 20 of insanity in the legal sense, may be subject to a delusion or to some erroneous belief or some defect, in circumstances which would make a crime committed under its influence, less reprehensible or diabolical than it would be in the case of a mind of normal condition. Such delusion, erroneous belief or defect, would appear to us to be a fact which may, in proper cases, be held to provide an extenuating circumstance." In this particular matter in the Eastern Districts, the Court had to deal with a belief in witchcraft. 30

My lord, the compulsory minimum sentence which

the Court must impose is a sentence of five years, and no portion of that may be suspended. In dealing with the accused my lord, in view of the factors which I have mentioned, I would earnestly ask your lordship to consider giving him this minimum sentence, but as an alternative, if your lordship feels inclined to pass a higher sentence than the minimum, to suspend a large portion.....

MR. BEYERS interupts.

MR. ZWARENSTEIN: My lord, perhaps I have misread the act. I understood that it does not apply in the case of five 10 years. If it applies in regard to the sentence as a whole, that no portion may be suspended, then as I say my lord, I would ask your lordship earnestly to consider passing the minimum sentence.

BY THE COURT TO MR. BEYERS: Do you wish to reply on the particular question of sentence?

MR. BEYERS: On the particular position of Accused No. 4 - not. There is a dictum in a judgment in the appellate division, with regard to the seriousness of the nature of the offence, that in my submission my lord, speaks for 20 itself. There are no aggravating features applying to Accused No. 4 which I wish to bring to your lordship's notice, but the offence is there my lord, and it was committed with full knowledge of its possible consequences if the accused were detected. I submit that the circumstances have been sufficiently illustrated in the evidence placed before your lordship, for your lordship to be able, adequately, to deal with the matter.

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