

# TRIAL OF PETER MOLL A715<sub>1</sub>

## RECORD OF PROCEEDINGS ORDINARY COURT MARTIAL

1. The members of the Court Martial gather behind closed doors at 08h50 on 4/12/79 at The Castle in terms of Convening Order No 277 dated 28/11/79.

### 2. PROCEDURE IN CLOSED COURT

Rule 49 MDC complied with.

### 3. PROCEDURE IN OPEN COURT

Court declared open and accused marched in. Convening Order read. Accused informed of his right to object to members of Court. Accused has no such objection.

### 4. SWEARING IN

The members of Court Martial are sworn in in terms of Sec 76 and Rule 121 MDC. Adv I.S. Farlam instr by Buchanan, Buchans, Boyes assisted by Mr Newpin and Dr Mulder.

### 5. CHARGE AND PRELIMINARY OBJECTIONS

Prosecutor reads charge to accused whose rights to object to the charge and jurisdiction of Court are explained to him. Accused does not object to charge or jurisdiction of Court.

### 6. PLEA

Accused requested to plead separately to every charge and pleads as follows:

Not guilty.

PROSECUTION: 70115811KV Capt E.S. Wright, Cape Flats Comdo,  
sworn states:

I am of Cape Flats Comdo. I am the adj. I know the acc  
- he is the member of our Comdo and I hold his personal file.  
By virtue of letter of WP Comd HQ dd 14/4/75 (Annex A) (defence  
acknowledges insight into it) acc was transferred to our Unit.  
Allocated to do service its section 44 of Defence Act.

Acc did basic trg in 1974 from 9/1/74 to 7/1/75. Subsequent  
to that acc did unit trg camp from 22/11/75 to 6/12/75 (15 days).  
That is all continuous trg acc did & I hand in Unit trg card.  
(Annex B - defence had insight). Acc is still subject to MDC.  
Acc was sent call-up for continuous trg camp on 16/10/79 by  
registered post which was addressed to him at his residential  
address and the call-up was not delivered by post office as  
"undelivered". According to the call-up accused had to report  
on 19/11/79 for continuous trg from 19/11/1979 to 7/12/1979.  
(Annexure C - Certificate of posting - defence acknowledges  
insight).

Acc failed to report for his service and I hand in a copy  
of the Call-up (Annex "D" defence had insight).

On the evening of 19/11/79 the acc phoned me at the  
HQ of the Comdo. He informed me that he had not reported and

did not intend reporting for camp. He asked when proceedings would be instituted.

Acc did not apply for postponement but in fact he wrote a letter to the unit in which he acknowledged receipt of the call-up and refused to attend the camp - hand in annexure "E" - defence has copy.

Acc was not given permission to be absent or leave of absence.

Acc would have been employed as medical orderly at Bn HQ had he reported. Acc was aware of this fact. He was previously informed that he would be employed in a non-combatant role and he was told personally by me at Youngsfield what that post would be. This was on 21/9/79.

Medical orderly is a non-combatant capacity.

X Exam I have a copy of the letter I sent to him - hand in as annex "F" - defence had insight.

The decision was made - I do not know into what section of the Act. It is correct that acc requested a period of service of national interest under civil direction. I have a letter dated No 77 - I hand it in as annex "G". (Defence hands in letter dd 2/6/79 marked annex "H").

I assume the decision to apply acc was made by WP  
Comd HQ (in non-combatant capacity).

As far as I know Cndt Choice took copies of acc's  
letter to the Castle, but as far as I know Cndt Choice  
made no recommendations similar to that of accused.

XX Exam-: None.

Vervolging maak volg erkenning:

The decision to employ acc as medical NCO was made in  
consideration of all the various and relevant sections of the  
Defence Act including Section 67(3), 97(3), 70 (bis) 68 and also  
SADFO 1/21/78 and the requests of the accused.

Aanklaer handig verklaring in deur besk gemaak by V.O.  
- verdediging het geen beswaar.

Prosecutor closes case for prosecution.

Defence calls witnesses.

Reverend J. Wilton declares solemnly: I am Baptist  
Minister at Claremont for 7 yrs and know the acc for ±

12 yrs. I know the family.

Acc did discuss his views with me. I believe the acc's views to be sincere. He is member of my congregation of good standing - takes his religion sincerely. The Baptist church functions independantly from congregation to congregation. The Baptists are not pacifists, we would participate in what we consider to be a just war but we would recognise that individuals could come to a different understanding concerning their participation in war from the general accepted view and therefor we would respect the individual conscience.

In a situation of war the congregations and the individual members would decide whether it is a just war. Even if the church differs from an individual member's viewpoint we would respect his view.

Conscience is at the heart of the matter. The executive of the Church recently adopted a resolution recognising that there certain people not prepared to serve in any military capacity and accordingly we requested the Government to provide alt civilian service.

We believe it to be a biblical principle that christians may follow their conscience to the example of the letter to the Corinthians concerning the eating of meat sold in the butcher shops of Corinth that had previously been offered as

an idolatrous sacrifice. In the congregation some said you could eat the meat, some said you could not and they appealed to St Paul for a ruling. Paul's ruling was that both was right, although the man that could not eat would be the brother with the weak conscience, but he should not be forced to eat because that would violate his conscience.

Rising out of the reformation where Baptists in Europe were persecuted to death for refusing to have their infants baptised they subsequently came to the conclusion that they would never persecute anyone else for a different religious belief. For the Baptists the bible is the fundamental authority.

X Exam: The Union did not prevent its members from partaking in military activities. The Union does not make a statement against military service.

XX Exam

By the Court. The Baptist Church would acknowledge the right of the State to call upon its citizens in defence of its country and a person must relate it to a South African context.

No further questions by defence and prosecution.

Reverend D. Bax, sworn states:

I am Presbyterian Church minister. At the moment I am minister and convenor of two of its committee's nl., discipline and on church and nation.

I am former moderator of Pres Church. I have known acc since Feb 79. Acc was co-opted member of the Church and Nation committee. He was invited to serve in consultant capacity. He also contributed to a large section on the report on military service and conscientious objection.

Baptist Church stands in broad reformed tradition, differing in some aspects. In the process of compiling the report we discussed his views. I am quite sure that his views are sincere, emanating from the fact that he is a Christian.

For the first 300 yrs of its existence the Church was strictly pacifist. Tertullian, said "The hand in disarming Peter, unbelted every soldier". Then after Constantine the Great professed to be Christian, the attitude changed for the majority of Christians, then

adopted to only other point of view that has been christian namely that christians may fight if the war is just, but may not fight if it is unjust.

One could make a broad classification in three classes: On the extreme left is the strict pacifist view, on the other extreme is the unqualified militarist point of view, namely one is free to partake in any war, which has not been the traditional standpoint of any church, and thirdly the qualified conscientious objector whose objection is based upon the "just war" theory. The problem arose what criteria to use for term "just-war" and the man who began to articulate this was Ambrose.

The views of acc was influenced by Calvin and others. Luther taught and spoke of five criteria: If a ruler decided to wage war and his cause was not just then Christians must refuse to aid that war even at the cost of their own lives. Calvin by implication takes the same view, but further that each individual must decide. Calvin does not say this specifically but it can be read into the context. Calvin says: Let us return to human laws, if they were passed to lay scruples upon us, as if the observants of these laws was necessary of itself we say that something unlawful is laid upon the conscience. For our consciences do not have to do with men, but with God alone. This is the purport of that common distinction between the earthly forum and the forum of conscience".



Later Calvin states: „The Lord therefore is the King of Kings, who when he has opened his holy mouth must alone be heard before all and above all men, next to him we are subject to the men who rule over us, but subject only in the Lord. If they command anything against him, let us not pay the least regard to it. And here let us not be concerned with all the dignity that magistrates possess; for no harm is done to it when it is humbled before that singular and truly supreme power of God."

Calvin states that if the King gave a contrary to God's word command, he abrogates his own authority.

(Witness reads on and will supply photostat)

Annexure „L".

All the main churches in this Country are fundamentally Calvinistic, and as far as the „just war" theory is concerned they share this view except the Roman Catholic and Lutheran church.

What I read is also the teaching of the „Susterkerke en Dogterkerke" namely subjecting to States authority as

long as it does not contradict the word of God. In the main the Baptist Church was influenced more by Calvin.

X Exam: My views are official and I also taught theology and is the view of Presbyterian church. I am sure Prof Heyns would not disagree but might disagree with the criteria.

XX-Exam: None.

Accused sworn states: I admitted receiving call-up and failed to report for service. I have a good reason, namely as set out in annexure "D" I am not prepared to except the non-combatant capacity as medical NCO as my objection concerns participating in military structure of SA because I believe the present war be unjust. Even as a non-combatant I would still be making a more or less direct contribution to the war effort. In addition by wearing the uniform I would be symbolically identified with those structures, therefore it is unacceptable for me to be a non-combatant.

I still have 225 days to complete and I am prepared to do duty anywhere in SA under civilian direction for a minimum of a year at nominal remuneration.

I speak Xhosa and my father is Regional Magistrate of Transkei. I am prepared to work in Ciskei or Transkei. The Minister of Finance and Agricultural Affairs of Ciskei has been approached by Sir Richard Luyt and either are prepared to accept me immediately in their departments. This specific offer has been made to the Army and before this case began the SADF knew this and I am still prepared to go.

I do not want to be a martyr, but I am prepared to accept punishment if court does not hold my reasons to be "good" reason.

In my standpoint I was influenced by Calvin. I have studied his institutes and other reformed theologians by Barth and Beiler. I have studied Calvin's teachings on church and state. Calvin's criteria to a just war "influenced me strongly because" there has not yet been a round table conference of black and white leaders in SA. There have been few attempts at negotiation with black people in order to avert war. The present war is not the last resort and I must thus decline to participate.

I came to above decision in 1976 and 1977. It was

a combination of prayer, studies and reading and deliberations in regard to social justice that had me make this decision. When I was at Varsity I was chairman of SCA, but my stand is individual. If it became clear to me that it is a just war and that it is God's will, then I will bear arms.

X Exam: I refuse to partake in a specific war and not war in general. I refuse to partake in the SADF's war against ANC, PAC and SWAPO. There is a difference in my view with the Jehovahs.

Prosecutor's Statement: Annexure „E“ is political in its phrasing, not religious (page 3, page 4).

Answer: No, in as much as religious views have political implications.

My political beliefs form part of my religious beliefs. The NGK once took a resolution condemning migratory labour, and in the same way I have made a political judgement based on my religious beliefs.

I did send letters to organizations.

Questions: Why

Answer: There were other young men engaged in similar dilemma and I felt a responsibility of ministry towards them.

XX Exam:

By Court: National interest is the interest of the people as a whole. Survival is one of those interests. We the public are dependant on what is written in the papers re the South West War. Seen in the view of Nkomo's statements on warfare our chances of survival are slim, but would be even slimmer for people who are involved in oppressive structures, they will thus have brought justice upon themselves. Our Government should have liaised long ago.

Questions by defence: Attempts were not made to exhaust peaceful alts, because peace must be brought about in SA - war is destroyer of human rights, therefor I have engaged in peaceful action of conscientious objection I believe there has been intransigence, countless black organizations have been banned and others imprisoned.

Through the Court. It would have been easy for me to have left the country after these problems, but decided to remain because of patriotism and want to be part of solution.

Defence closes its case.

Address by prosecutor: Reads out closing address and hands in as annexure „K“.

By defence: I agree with prosecutor that acc is liable to serve and that he refused to report. Question is whether acc did so without „good reason“. My submission is that S v Lovell is an interesting case iro „good reason“. That case is not authority for his view point.

Construeing sec 126A as in Lovell case referred to old section „just cause“ and religious objection did not constitute „just cause“.

In that same year, 1972, section 126A was inserted in the Act and originally provided „refuses to report for service“. Thus whether or not their was „just cause“ or „good reason“ was guilty of an offence. In 1978 section 126 was repealed and 126A re-cast as it is present - now a failure is excusable if it was for „good reason“.

„Good reason“ is wider than „just cause“. „Just cause“ presupposes „something legal“ and parliament used wider phrase. Words deliberately inserted means different intention. In the Dictionary of Legal Words and Phrases, Vol II is the quotation, Cohen Brothers v Samuels, 1906 TS, 224:

Good cause - justified in a specific situation and not pre-conceived.

In deciding whether acc had good reason the court must consider the whole background, and legislative background and our values and beliefs that brought our society into being.

This acc is not adopting an attitude of total refusal, he is prepared to serve the country for longer than is necessary, everywhere in the country - suggests Ciskei because he speaks Xhosa - as hard and arduously as anyone else.

If anyone is forced to act against his dictates, it would be monstrous - our forefathers came here because of their battle for freedom of conscience. (Defence reads preamble to Constitution). Calvin preached the right of individual conscience - whatever the authorities may say.

In this case the court must find that acc believes sincerely in his views, the court must not make a finding of whether he did right or wrong.

Question: Did parliament think that a man who was sincere in a view, that he must be compelled to do a duty - is that "good reason".

The court cannot find that acc is not patriotic or less patriotic than others who serve in the SADF. If he

served for instance in the Ciskei he would not serve  
lighter than his comrades.

Court closes to consider finding.

For further procedures see page 17 (pro forma).

(SIGNED) H.W. DEMPERS MAJ



9. FINDING

Court reopens and announces finding of guilty.

10. RECORD OF SERVICE

Prosecutor reads accused's record of service to him and hands it in marked Annexure „M“. He does not wish to tender evidence as to the prevalence of the crime. Accused admits to the statements contained on his record of service.

11. EVIDENCE IN MITIGATION

Accused tenders following evidence in mitigation:

None.

12. ADDRESS BY PROSECUTOR ON SENTENCE

Prosecutor addresses Court on sentence. The Defence of this country is of paramount important. The fact acc sent open letters and phoned Capt Wright - seeks publicity. State asks Court to have no sympathy with acc. Acc is not a first offender, he must be made an example of; he must get maximum sentence (2 yrs DB).

13. ADDRESS BY DEFENCE IN MITIGATION

Accused addresses the Court in mitigation.

Defence hands in photostat of Hemsard dd 13/9/79. Jehovah's have option - some apply to section 67(3) and some go to court. Re para 20(2)(a) (ii): Acc was referred to non-combatant unit but section 67(3) phrasing also appears in section 126A. Department is prepared to accept him to formula under 67(3). The reason must be - wide interpretation because it accepts member may belong to church who recognises his conscience as individual. Consistency indicates the same interpretation in 126A n1 126A (2)(a) and he must thus be sentenced as such. Court must adopt compassionate attitude. Acc was detained for 12 days. Sentence acc to detention to 126A(2)(a)(ii) for 10 days to show its displeasure with acc's actions. Maximum sentence is for draft dodger or selfish reasons.

#### 14. SENTENCE

Court closes to consider sentence. Court reopens and announces the following sentence:

Detention for a period 18 months. Acc forfeits pay for period in custody and detention.

#### 15. RULE 76(7) MDC

President informs accused that the sentence will not be enforced or executed until the finding and sentence have been confirmed and that he has the right to make representations

in writing to the confirming authority within forty-eight hours after sentence.

16. RULE 77 : THE ACCUSED

Will be detained pending confirmation.

17. Accused withdrawn.

## ARGUMENT BY PROSECUTOR BEFORE JUDGEMENT

Mr President, no dispute exists regarding certain relevant facts of the case. It is common cause that the accused is a member of the Cape Flats Commando; liable to render service in terms of section 44 of the Defence Act, and still subject to the Military Discipline Code by virtue of section 104(5)b of the Defence Act, 44/1957, and that he didn't obey a call-up instruction.

It seems to me as if the essence of the submission that is advanced by the defence is that the term „good reason“ in section 126A(1)a must be interpreted extensively so that it includes within its ambit. the religious, moral and political convictions of the accused, as stated in his letter dated 19th October 1979, which was handed in as evidence in this Court. The accused also explained his belief in his evidence and during the cross-examination. According to the presumption in section 126A(4) the burden is on the defence to proof that the accused's failure to report for service was with „good reason“.

The term „good reason“, is not defined in the Act. It must be given a meaning which would promote the intention of the Legislature as it appears from the Act as a whole, and a meaning which would make the statute effective rather than futile. (See Steyn, „Die Uitleg van Wette“ 3rd Edition, p115). By establishing an exemption board in terms of section 68 of the Act, the Regislature had foreseen that certain grounds may arise justifying exemption from military service. Section 70 bis of the Act sets out specific grounds of exemption. The Regislature was also aware of religious objection against military service, because this was granted specific recognition in section 67(3) of the Act. This is a concession to alleviate the military service of such objectors, but not to exempt them. Section 67(3) reads: „The registering officer shall as far as may be practicable allot any person who, to

his knowledge bona fide belongs and adheres to a recognized religious denomination by the tenets whereof its members may not participate in war, to a unit where such person will be able to render service in the defence of the Republic in a non-combatant capacity".

The accused stated explicitly in his evidence at the PI that he is a member of the Baptist Church and that the Baptist Church is not "a recognized religious denomination by the tenets whereof its members may not participate in war". It is therefore clear that the accused's case doesn't even fall within the ambit of sec 67(3) and that he isn't even subject to the alleviation made by sec 67(3) for conscientious objectors. The act made no provision for individual cons objectors. Nowhere else in the Act provision is made for conscientious objectors, especially not for conscientious objectors on other grounds, than religion, whether the grounds are moral, political or whatsoever.

Furthermore, with regard to moral convictions, the Court's attention must be drawn to the fact that our Courts "do not administer moral but judicial law" (See Rex v K and F 1932 EDL 71 on p. 77), and it is not the duty of the Court to question laws made by Parliament. That will be the task and duty of politicians. The duty of this court is to interpret the Defence Act and to give the words the meaning which would tend to promote the intention of the Legislature as it appears from the Act as a whole.

Direct confirmation for the viewpoint as set out by the State can be found in the Appellate decision S v Lovell 1972(3) AD 760 on 765 and I quote from the judgement given by the Honourable Justice Oyiilvie Thompson: "Considered against the background of the various sections of the Act mentioned above, the dominant obligation to render service ... appears to me to be modified, so far as conscientious objections based upon religion are concerned, only by the relatively limited concession indicated in sec 67(3) of the Act. The qualified terms of that concession plainly do not include either a general

refusal to military service of any nature whatever ....., or more specifically, a refusal to undergo training as required by the Act."

The learned Judge also said: "The defence of the Republic is manifestly a matter of paramount importance. The obligation imposed ... upon all white male citizens between the ages of 17 and 65 to render service is a general obligation ... Exemption from that obligation is only by way of exception. Inasmuch as it is very often extremely difficult - if not, indeed, impossible - to test the sincerity of a person who avers that he has conscientious objections, whether based on religious convictions or otherwise, against any form of participation in the workings of the military machine, it is obvious, that recognition of claims such as those advanced by the appellant ... would tend both to disrupt the smooth administration of the Act and to cast an unfair burden upon the more patriotic of the country's citizens". (See also S v Schoeman 1971(4) SA 248).

Mr President, the defence failed to establish that the accused had a "good reason" not to attend the camp, as the burden of proof requires, and I therefore ask the Court to find the accused guilty of contravening section 126A(1)a of the Defence Act, 44/1957.

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"We are subject to the men who rule over us, but subject only in the Lord. If they command anything against him, let us not pay the least regard to it."

32. Obedience to man must not become disobedience to God

But in that obedience which we have shown to be due the authority of rulers, we are always to make this exception, indeed, to observe it as primary, that such obedience is never to lead us away from obedience to him, to whose will the desires of all kings ought to be subject, to whose decrees all their commands ought to yield, to whose majesty their scepters ought to be submitted.<sup>55</sup> And how absurd would it be that in satisfying men you should incur the displeasure of him for whose sake you obey men themselves! The Lord, therefore, is the King of Kings, who, when he has opened his sacred mouth, must alone be heard, before all and above all men; next to him we are subject to those men who are in authority over us, but only in him. If they command anything against him, let it go unesteemed. And here let us not be concerned about all that dignity which the magistrates possess: for no harm is done to it when it is humbled before that singular and truly supreme power of God. On this consideration, Daniel denies that he has committed any offense against the king when he has not obeyed his impious edict [Dan. 6:22-23, Vg.]. For the king had exceeded his limits, and had not only been a wrongdoer against men, but, in lifting up his horns against God, had himself abrogated his power.<sup>56</sup> Conversely, the Israelites are condemned because they were too obedient to the wicked proclamation of the king [Hos. 5:13]. For when Jeroboam molded the golden calves, they, to please him, forsook God's Temple and turned to new superstitions [I Kings 12:30]. With the same readiness, their descendants complied with the decrees of their kings. The prophet sharply reproaches them for embracing the king's edicts [Hos. 5:11]. Far, indeed, is the pretense of modesty from deserving praise, a false modesty with which the court flatterers cloak themselves and deceive the simple, while they deny that it is lawful for them to refuse anything imposed by their kings. As if God had made over his right to mortal men, giving them, the rule over mankind! Or as if earthly power were diminished when it is subjected to its Author, in whose presence even the heavenly powers tremble as suppliants! I know with what great and present peril this constancy is menaced, because kings bear

Handwritten note: "The native transl. of these lines above" with an arrow pointing to the text.

Small handwritten note: "No complete translation" with a checkmark.

<sup>55</sup> Cf. II. viii. 38.

<sup>56</sup> This sentence begins an addition of 1559, ending with "tremble as suppliants," below. Here, referring to Dan. 6:22 (cf. sec. 31, note 54). Calvin does not anticipate the strong phrase of the commentary. Yet he firmly requires a courageous disobedience to the "impious edicts" of ungodly rulers. It is his final emphatic admonition that obedience to the political powers, which he has repeatedly enjoined, must not deflect the Christian from "piety" or compromise his obedience to the King of Kings.

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defiance with the greatest displeasure, whose "wrath is a messenger of death" [Prov. 16:14], says Solomon. But since this edict has been proclaimed by the heavenly herald, Peter—"We must obey God rather than men" [Acts 5:29]—let us comfort ourselves with the thought that we are rendering that obedience which the Lord requires when we suffer anything rather than turn aside from piety. And that our courage may not grow faint, Paul pricks us with another goad: That we have been redeemed by Christ at so great a price as our redemption cost him, so that we should not enslave ourselves to the wicked desires of men—much less be subject to their impiety [I Cor. 7:23].

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