

Communist theory. He says so. Now must he at this stage produce his authorities for the proposition that the United States in Communist theory is a warmongering country. Must he do so at this stage or can he say that and if cross-examination reveals that he has got no grounds for that statement, then it goes out. When must he do it? 5

BY MR. NICHOLAS :

With submission, My Lord, if the analogy with the handwriting expert is correct, until there is an authentic document before the Court, or a document which is prima facie authentic, there is no basis... 10

BY MR. JUSTICE BEKKER :

I follow that, Mr. Nicholas. What I am suggesting is this : Does not this statement - forget anything else he said - does not this statement that the United States in Communist theory is a warmongering country - now, is that not to be regarded as evidence that according to Communist theory the United States is a warmongering country. 15

BY MR. NICHOLAS :

Your Lordship suggests that it is to be regarded as a compressed fact - he is saying in effect, in Communist theory the United States is a warmongering country, and this extract is in line with that theory. 20

BY MR. JUSTICE BEKKER :

That is what I had in mind. Must he go further at this stage in saying, or must he leave it to cross-examination to show whether or not he has got authority for that proposition? When must it be done? I know you referred - the reference I think is Jacobson's case, but that case doesn't deal with the stage at which the expert has got to give this evidence, does it? At the end - if at the end of his evidence he hasn't given any reasons for 25 30

his expert opinion, then his evidence falls away. But when - must the Crown do so before there is any cross-examination or is it for cross-examining Counsel to destroy the evidence?

BY MR. NICHOLAS :

5

My Lord, His Lordship Mr. Justice Ramsbottom said at the bottom of page 146 "Unless the expert witness states the grounds upon which he bases his opinion, it is not possible to test its correctness so as to form a proper judgment upon it". So that if, My Lord, there were no cross- 10 examination as to the grounds, it would still not be possible for the Court to test its correctness. So that the submission is, My Lord, that the grounds must be stated before the Court can consider it at all, before it can be admissible. 15

BY MR. JUSTICE RUMFFF :

I just want to draw your attention to the previous judgment, the short judgment today, with which we dealt - where we dealt with the question as to whether in the Communist theory or doctrine it was accepted as a 20 fact that Russia supported, in fact, the North Koreans, whether the doctrine accepts as a true fact that there was actual support. Now what is this question here? Whether in Communist theory the United States is a warmongering nation. That is then a question of opinion. There is 25 a big difference.

BY MR. NICHOLAS :

With submission, My Lord, they would seem to be parallel. In this case it is whether Communist doctrine or Communist theory accepts as a fact that the United 30 States wants war.

BY MR. JUSTICE RUMFFF :

Then in truth if you are correct, every single

bit of evidence he has already given, before dealing with the doctrine, he should in terms of that judgment - he should have referred to authorities. That is your submission.

BY MR. NICHOLAS :

5

That is our submission, My Lord.

BY MR. JUSTICE RUMPFER :

What authority have you for that?

BY MR. NICHOLAS :

Jacobson's case, My Lord! Because My Lord, 10  
there is nothing for him to compare the document with.

BY MR. JUSTICE RUMPFER :

What document?

BY MR. NICHOLAS :

The particular document with which the witness 15  
is now dealing. There is nothing for him to test it against.

BY MR. JUSTICE RUMPFER :

He says Communist theory is that the United  
States is a warmongering nation, and he has got a document...

BY MR. NICHOLAS :

20

With respect, My Lord, the fact that in  
Communist theory the United States is a warmongering coun-  
try has not been proved until the witness has given the  
grounds for that opinion. That is in terms of Jacobson's  
case. And until that comparative fact has been proved, 25  
there is nothing with which to compare the document.

BY MR. JUSTICE RUMPFER :

What is the meaning of this phrase "that it  
is a warmongering country"? That it is inclined to do  
something.

30

BY MR. NICHOLAS :

It is a nation which seeks war, which wants war.

BY MR. JUSTICE BEKKER :

In that case, in what other language did the other learned Judges discuss this?

COURT ADJOURNS.

COURT RESUMES.

BY MR. NICHOLAS :

My Lord, I have made the submission that if the witness is stating as an opinion that it is part of Communist doctrine that America is a warmongering nation, then he should, My Lord, give the grounds for that. I submit that that appears from Jacobson's case, in the judgment of Mr. Justice Milne and that of Mr. Justice Ramsbottom.

BY MR. JUSTICE KENNEDY :

Have you got Marena's case there, the one in the Appellate Division, 1947 (3)?

BY MR. NICHOLAS :

Yes, My Lord. That, My Lord, was a case of fingerprint evidence, and it has been held, My Lord, that fingerprint evidence stands upon a somewhat different basis. But even in such a case, the fingerprint expert should point out to the Court the reasons for his opinion, although in the case of fingerprint evidence the Court does accept the opinion of the expert.

BY MR. JUSTICE KENNEDY :

Jacobson's case was approved of, was it?

BY MR. NICHOLAS :

As Your Lordship pleases. My Lord, there are two other remarks of Professor Murray in regard to this document which in the submission of the Defence are inadmissible. He said, My Lord, that the document was in

line with current Communist statements. What he is saying in effect is that the statement contained in the document accords with statements currently made by Communists. In our submission, My Lord, until the comparative fact has been properly proved, such evidence is inadmissible. Until there 5 has been proper proof of what statements are currently made by Communists, the evidence is inadmissible. My Lord, the author said that there are many phrases in the document which follow the Communist line.

BY MR. JUSTICE BEKKER :

10

Just on this last point - current Communist statements. If he says independently, these are current Communist statements...

BY MR. NICHOLAS :

And if he could establish the fact that the 15 statement he was referring to had a Communist source, if he could establish that by admissible evidence, then that would be perfectly competent. But again, whether such statements are made by Communists is a question of fact which must be proved by persons having direct and personal 20 knowledge of that fact. It can't be proved by hearsay, My Lord, with respect. Then he said, My Lord, that there are "many phrases which follow the Communist line". By that I take him to mean that there are many phrases which follow the Communist policy. A line is an attitude or policy. 25 What is the Communist line or what is the Communist policy, is again, in our submission a question of fact.

BY MR. JUSTICE BEKKER :

Mr. Nicholas, can you tell me with reference to what passage in Exhibit A.9 did he say "the document is in 30 line with current Communist statements". He said it very quickly and I got a very incomplete note, My Lord. In my

note, My Lord, it is the sentence starting "The Youth of Africa...." It is the first sentence of the second paragraph. "The youth of Africa and the world cannot but salute the great victories of the people of Indo-China, whol, like the people of Korea have routed imperialist bandits". And he said, My Lord, that that.... 5

BY MR. JUSTICE BEKKER :

We have had reference to the word "imperialists" in some of the references given by the witness. Now that would be permissible, wouldn't it? 10

BY MR. NICHOLAS :

With respect, My Lord, what the witness is saying in effect is that these are phrases which follow the Communist line. He may say, and he indicated at the outset that in the case of some documents he would say that many of the phrases that are used, many of the words that are used, are direct quotations from the classical works. That he can say, My Lord, because he shows a concurrence between the acknowledged language of the master and the language in this particular document. But what he is saying here, is that there are phrases which follow the Communist line. 15 20

BY MR. JUSTICE BEKKER :

Is it the generality of the evidence that you object against? 25

BY MR. NICHOLAS :

No, what I am objecting against My Lord, is that he is saying that there are phrases which follow Communist policy.

BY MR. JUSTICE BEKKER :

If he had said, I see in this document the use of the words 'the days of the imperialists are numbered' and the word 'imperialist' you will find in - you wouldn't 30

object to that?

BY MR. NICHOLAS :

That would be permissible evidence, My Lord.  
Or if he found the idea in the Marxist. But when he talks  
about the Communist line or Communist policy, he is talking 5  
about a current political attitude, and in our submission  
he can only do that if the current political attitude has  
been duly established by admissible evidence.

BY MR. JUSTICE RUMPF :

What would be your submission in regard to the 10  
following hypothetical position : Assume a theologian is  
called to give evidence on a certain document, and he says  
that he is a theologian and he has made a study of old  
religions, or Eastern religion for that matter, and he then  
purports to qualify himself. Then he says that I have made 15  
a study of Buddhism, and one of the doctrines of Buddhism  
is that there is reincarnation of the soul. I look at this  
document shown to me and it sets out facts which indicate  
a reincarnation of the soul. In my view this document  
conforms with the Buddhist attitude. Now is your submis- 20  
sion in a case like that that when he says - before he can  
say what Buddhism says about the reincarnation of the soul,  
that he should give his source?

BY MR. NICHOLAS :

With submission yes, My Lord. That - His 25  
opinion is valueless until it is duly supported by reference  
to the source.

BY MR. JUSTICE RUMPF :

Have you got any authority for that?

BY MR. NICHOLAS :

30

My Lord, in our submission that follows from  
Jacobs' case.

BY MR. JUSTICE RUMPF :

I don't think that is Jacobs' case, and in any event I think Jacobs' case must be looked at from the point of view of the facts of that case.

BY MR. NICHOLAS :

5

My Lord, the question there was whether the accused person was under the influence of intoxicating liquor. In my submission it is the same sort of enquiry where the question is what are the tenets of Buddhism.

BY MR. JUSTICE RUMPF :

10

What happened there was, as far as I remember, I had a look at the judgment briefly during the adjournment - in chief the medical witness said that he thought that the man was under the influence of liquor, but he didn't specify the test. In cross-examination questions were put and then it appeared - and specific reference was made to two factors there relating to be able to pick up a pin and certain hand movements too. But the evidence was also that there were some tests which were positive and some negative, but on the whole the doctor came to the conclusion that he was under the influence of liquor. Now then there is the statement in the judgment that having regard to those two tests which did come out in the evidence, there was no suggestion why that should be conclusive evidence, why that should be regarded as conclusive. Taking that in the abstract, that is obvious why it couldn't possibly be. Now what does the judgment then say, the tests are not explained, it is not said by the doctor or explained by the doctor why these two tests should be regarded as conclusive at all.

15

20

25

30

BY MR. NICHOLAS :

My Lord, in the judgments of both the learned



Judges reference was made to the way in which opinion evidence should be given. And both Milne J. and Ramsbottom J. said that when expert evidence is given, when opinion evidence was given, it should be supported by the facts on which that opinion is based, so that the Court can test its correctness. The Court will not accept a mere ipsi dixit. 5

BY MR. JUSTICE RUMPF :

Having regard to the facts of that case and to the general statement in the Judgment, one realises what the learned Judge meant to indicate that - subject to argument by you at this stage - that if the witness comes and says, I am an expert on Buddhism, and he produces his qualifications, I look at the document and I say this is a Buddhist document. Obviously that is not good enough. 15  
The Court cannot test that. But when he says, I am an expert on Buddhism, and it is one of the doctrines of Buddhism that there is reincarnation of the soul, and I see in the document a reference to that, well that is my reason for saying that this is a Buddhist document. If you want him, the witness, to give the source of his statement that part of Buddhism is that particular passage which I referred to, are you not then asking him to support every bit of his evidence with authority? He has given us the test. 25

BY MR. NICHOLAS :

With respect, My Lord, that may well be so.

BY MR. JUSTICE RUMPF :

I don't know, I ....

BY MR. JUSTICE BEKKER :

Is an ipsi dixit a reason? 30

BY MR. NICHOLAS :

My Lord, insofar as doctrine is concerned, My

Lord, I think I am driven to concede that when a witness gives as his opinion that a particular belief forms part of the doctrine, that it may not be necessary for him than to go further in chief why it is - why he says that that belief forms part of the doctrine. 5

BY MR. JUSTICE BEKKER :

If you are correct, what is the difference then between that position and the present position?

BY MR. NICHOLAS :

My Lord, insofar as the witness says that in 10 Communist theory the United States is a warmongering nation, there he is on the face of it giving an opinion as to what is contained in Communist theory.

BY MR. JUSTICE BEKKER :

What is the difference between that statement 15 and Buddhism holds a particular view?

BY MR. NICHOLAS :

No, My Lord, it would be a consequence of that concession that my objection in regard to this, on the grounds which I have taken it, would fail, My Lord. If it is part 20 of the doctrine, then my objection to this evidence that in Communist theory the United States is a warmongering nation, would be a bad objection. Of course, My Lord, it doesn't effect the other grounds of objection which I have taken. Because those, - when the witness talks about Communist 25 theory, he is really giving opinion evidence. When he is talking about something being in line with Communist policy, that is a different position.

BY MR. JUSTICE RUMPF :

That is a different ground of objection. That 30 hasn't got a clear meaning.

BY MR. JUSTICE BEKKER :

But on this other position, Mr. Nicholas, in

terms of the decision in Jacobs' case, the Court, before it acts on expert opinion, must be satisfied that the expert drew the proper conclusions from the material before him, unless, using the example of the expert on Buddhism, unless he discloses the sources of his information, how can the Court be satisfied that he drew the correct conclusions from the material at his disposal. This is on your concession. 5

BY MR. NICHOLAS :

My Lord, the witness in the drunkenness case might say, I am a medical practitioner, I have had a great deal of experience of examining people alleged to be under the influence of liquor. In my experience, the following are the tests which have to be applied, slurred speech and so on. He probably wouldn't My Lord, have to go further and say, this is also supported by writers on... 10 15

BY MR. JUSTICE BEKKER :

Yes, but then he gives a reason. But is it a reason to say, I am an expert on Buddhism, and for that reason - is that a reason as contemplated by that judgment? 20

BY MR. NICHOLAS :

My Lord, he would have to qualify himself and show that he was an expert on Buddhism.

BY MR. JUSTICE BEKKER :

Assume that it is true, that he is indeed an expert on Buddhism, the Court is satisfied that he is an expert. Would it be sufficient for that expert to say, in my opinion Buddhism holds this view without disclosing the material on which he relies for that particular statement? In other words, I am on this position, if the Court has to be satisfied in terms of Jacobs' case, that it is safe to rely on expert opinion, how can the Court be satisfied 25 30

that the expert is indeed on the proper track unless he discloses the information he relies on.

BY MR. NICHOLAS :

My Lord, Your Lordship persuades me that the concession I made should not have been made. 5

BY MR. JUSTICE BEKKER :

I don't want to do that, Mr. Nicholas.

BY MR. NICHOLAS :

My Lord, the submission would be that in the case of the Buddhist that where he says that the Buddhist 10 doctrine is such and such, he must give detailed reasons why he says that.

BY MR. JUSTICE BEKKER :

Now what about the other position. On occasion it does happen that an expert gives his opinion, and he 15 doesn't disclose the source of the information, other than this: By sheer process of my own reasoning, my experience, my knowledge, I can't give you authority, it is what I think.

BY MR. NICHOLAS : 20

Then he gives his reasons, My Lord. He says that as a result of my vast experience in this particular field, I know that those symptoms are indicative of this position.

BY MR. JUSTICE BEKKER : 25

Then he need not disclose his ...

BY MR. NICHOLAS :

He must in every case give his reasons, My Lord.

BY MR. JUSTICE BEKKER :

But it would be sufficient to say well, I have 30 made a vast study of the subject, I have thought about the matter, and this is the position. Need he then disclose

the sources of his - the studies he embarked on?

BY MR. NICHOLAS :

The detailed studies?

BY MR. JUSTICE BEKKER :

Well, a reference to books, for instance. 5

BY MR. NICHOLAS :

No, My Lord, with submission, what he must do is place before the Court reasons to show that his opinion is likely to be a correct one. Those reasons might be derived from his own experience, or they may be based on sources. 10

BY MR. JUSTICE BEKKER :

Do you mean that whatever he has got to place before the Court must be of such a nature to satisfy the Court that it would be safe to rely on his opinion? 15

BY MR. NICHOLAS :

As Your Lordship pleases.

BY MR. JUSTICE BEKKER :

But then if a man says, I have made a study, an intensive study of Communism, thought about it a great deal, and in theory of Communism, the United States is regarded as a warmongering nation. 20

BY MR. NICHOLAS :

My Lord, with submission, Communism is not something that can be experienced, My Lord, or thought out. It is a body of knowledge, and it can only be learnt by reference to the sources. Communism is not something that can be experienced. A witness who talks on a philosophy such as Communism must necessarily, when he gives reasons for his opinions, have regard to the sources of Communism. He can't have regard to experience. 25 30

BY MR. JUSTICE RUMPF :

The real issue is not whether his reasons are sufficient. The real issue, in a particular case of this nature, is whether he has given a test as to his opinion, whether the Court can satisfy itself or can know why he 5 has come to a certain conclusion. One shouldn't, I think, confuse the two. If a document is put to the witness in the Buddhist case, then the issue is, whether that document constitutes Buddhism. That is the issue. The Court has to decide. Now the Court is presumed to know nothing about 10 it, so an expert is called who says he knows everything about it. He may or may not. That issue, whether he knows or he knows not, is a matter which will be dealt with and may be dealt with separately, whether he has satisfied the Court that he is qualified to express an opinion. Once he has 15 said - on the assumption that he has qualified prima facie, once he has established his qualifications, then he is now ask to decide something. His decision is not binding. His - his decision or opinion, is merely a guide. Now then he is asked, will you look - you have said that you are an 20 expert on Communism and you have given reasons why, you have made an intensive study, you have read all about it - now will you look at this document. Yes, I look at the document, and I say it is Buddhism. Now that doesn't help the Court, because the Court has to come to the con- 25 clusion whether it is Buddhism. Then the requirement is obviously, now why do you say that? Well, he says, I know. Buddhism, I am an expert. Buddhism has a doctrine called reincarnation, and he explains it. Now need he give his sources at that stage, when he has qualified as an expert, 30 and he produces to give evidence on that basis.

BY MR. NICHOLAS :

With submission yes, My Lord, because the witness

is really giving two opinions. He is not giving one opinion. His opinion evidence falls into two stages. The first question is, what are the doctrines of Buddhism, and he gives his opinion as to those doctrines, and those opinions should be supported. 5

BY MR. JUSTICE RUMPF :

But they are not in issue.

BY MR. NICHOLAS :

With respect, they are, My Lord. Just as in the case of a disputed document and an authentic document. 10  
The authenticity of the first document is in issue, and until it has been established, there can be no question of comparison.

BY MR. JUSTICE RUMPF :

Is what he says is Buddhism, is that in issue? 15

BY MR. NICHOLAS :

His opinion, or rather the existence of an expert opinion as to what is Buddhism is in issue, because until that fact has been established, there is nothing with which to compare the other document. 20

BY MR. JUSTICE RUMPF :

There is no general rule, obviously, like that.

BY MR. NICHOLAS :

With submission, the general rule is that an expert must give reasons for his opinion. 25

BY MR. JUSTICE RUMPF :

Well, now assume that there is a religion about which there consists no writing. I think it is impossible to think that, because it is invariably the case. But assume that. And the evidence is of a witness 30  
who says I have spoken to many of the leaders, I have lived amongst them for thirty years, I know every aspect of their

religion, - assume it is a primitive religion, about which there is no writing. And in terms of their religion, this and that is the case.

BY MR. NICHOLAS :

He has given reasons for the opinion as to what 5  
their religion is.

BY MR. JUSTICE RUMPF :

Pure hearsay.

BY MR. NICHOLAS :

No, My Lord. He has lived among these people 10  
and observed them. It is first hand observation, direct  
evidence which Courts of law insist upon.

BY MR. JUSTICE RUMPF :

But you can't see religion.

BY MR. NICHOLAS :

15

No, My Lord, but the reasons are given. If the  
question arises as to the customs of the South Sea Islanders,  
the anthropologist goes into the box and says I have lived  
amongst these people for fifteen years, I have studied them  
and watched them, and these are their customs. 20

BY MR. JUSTICE RUMPF :

Let us put it on the question of a primitive  
philosophy.

BY MR. NICHOLAS :

This is their philosophy.

25

BY MR. JUSTICE RUMPF :

And he acquired that only through talk.

BY MR. NICHOLAS :

Through watching people practising their  
religion or their philosophy. 30

BY MR. JUSTICE BEKKER :

He is a blind man, he can't watch them. He just



talks to them and he listens to them.

BY MR. NICHOLAS :

My Lord, religion is one of the - one of the elements of religion is talk, the forms of worship, prayer, song and so on. They are observed in some way. 5

BY MR. JUSTICE RUMPFER :

I try to bring you back to philosophy, pure philosophy, not religion.

BY MR. NICHOLAS :

My Lord, he would go to the repository of the philosophy, to wit the elders of the tribe, who carry it on from generation to generation. 10

BY MR. JUSTICE RUMPFER :

And what he acquired was by word of mouth.

BY MR. NICHOLAS : 15

That is the source, My Lord. In the same way as the source of Communism is in the works of the masters. That is where you find this doctrine, this philosophy.

BY MR. JUSTICE BEKKER :

Well, in that case the reason why the Court could be satisfied that it would be safe to act on his opinion is his own personal experience. 20

BY MR. NICHOLAS :

Which he explains and he tells the Court about his many years of experience and his opportunities for observation. 25

BY MR. JUSTICE RUMPFER :

Then, I take it, then if you withdraw your concession, if the witness says that Communist doctrine teaches that capitalists are oppressors, then that is not sufficient? 30

BY MR. NICHOLAS :

My Lord, no! He should give reasons why that is Communist doctrine.

BY MR. JUSTICE RUMPF :

Then any witness on any philosophy should support everyone of this statements concerning the contents of that philosophy by reference to authorities. 5

BY MR. NICHOLAS :

With submission yes, and that is what this witness has very largely done. 10

BY MR. JUSTICE RUMPF :

Apart from that. We want to come to the broad submission.

BY MR. NICHOLAS :

With submission, My Lord, I don't know of any other case in which evidence of a philosophy has been given in our Courts, but in my submission opinion on that as a philosophy should be approached in exactly the same way as opinion in any other case, alcoholic intoxication, why harbours silt up and so on. The witness should give his reasons, so that the Court can be in a position to assess the value. 15 20

BY MR. JUSTICE RUMPF :

Is - if a pure scientist would come along, the Court would not ask him or demand of him to support everyone of his statements, would it? 25

BY MR. NICHOLAS :

If they were in issue, yes, My Lord. The Court would ask him, why do you say this, why do you say that this is an atomic bomb? If that is the opinion he expresses. 30

BY MR. JUSTICE RUMPF :

And if he were to say that it is accepted in our science that it is so?

BY MR. NICHOLAS :

With respect, My Lord, if it is a matter in 5  
issue before the Court, the Court won't just say - won't  
accept the ipsi dixit of the scientist that this is accepted.  
It must be supported, something more persuasive than the  
acceptance of somebody outside the Court.

BY MR. JUSTICE RUMPF :

10

Now if a doctor comes forward and says that  
it is accepted practice that a certain operation is done  
in a certain way, that is general medical practice. Would  
you require him to support that?

BY MR. NICHOLAS :

15

No, My Lord, he is stating as a fact what  
medical science accepts, and that is what his experience  
is and what he himself does,

BY MR. JUSTICE BEKKER :

And if that very thing is in issue? Do you 20  
say he would have to support it?

BY MR. NICHOLAS :

He must give reasons why he says it is accep-  
ted medical practice. He could say I do it myself.

BY MR. JUSTICE BEKKER :

25

I thought you said he needn't give reasons in  
that case.

BY MR. NICHOLAS :

No, My Lord, he must give reasons, I beg  
Your Lordship's pardon. He must show why he says that it 30  
is accepted medical practice.

BY MR. JUSTICE RUMPF :

But he says so as an expert, he knows it.  
Then of course one need not have expert opinion at all.

BY MR. NICHOLAS :

One must, My Lord, because the Court doesn't 5  
have the material without it.

BY MR. JUSTICE RUMPF :

But then anybody could come and give evidence,  
with the particular sources if they are admissible.

BY MR. NICHOLAS : 10

If the facts can be independently proved,  
yes, My Lord. But it was held in van Heerden's case that  
a non-expert can't come along and put in the sources, the  
textbooks.

BY MR. JUSTICE RUMPF : 15

But on your argument, why shouldn't he?

BY MR. NICHOLAS :

Because, My Lord, what the expert does with  
the sources is to say that these confirm my own opinion.  
They are confirmatory only. 20

BY MR. JUSTICE RUMPF :

As far as I know medical opinion, expert  
opinion, need not be based on practice, but on knowledge  
of books, only.

BY MR. NICHOLAS : 25

No, I don't think so, with respect My Lord.  
One has the case in van Heerden's case where there was a  
specialist physician who had some general experience as  
to the effects of chlorine gas, but no detailed experience  
at all, and the Court held that he wasn't entitled to 30  
give evidence on the industrial effects of exposure to  
chlorine gas.

BY MR. JUSTICE RUMPF :

Yes, but what did he say about the general -  
did he say anything something ...

BY MR. NICHOLAS :

He produced a lot of books, My Lord. 5

BY MR. JUSTICE RUMPF :

Did they all support that?

BY MR. NICHOLAS :

If I might read to Your Lordship what was said  
in that case. Unfortunately, My Lord, the Judgment isn't 10  
fully reported, but portion of it is set out on page 262  
of May on Evidence, and I have amplified it somewhat by  
by own reference to the original Judgment in the Witwaters-  
rand Local Division.

BY MR. JUSTICE RUMPF : 15

It is not reported?

BY MR. NICHOLAS :

It is reported only in Prentiss-Hall, but  
even the Prentiss-Hall is incomplete. His Lordship said :  
"As far as I can see Dr. X has no qualifications whatever, 20  
beyond those possessed by any other man of scientific  
attainments who has studied chemistry as part of his  
training. He has never worked in a place where chlorine  
gas is produced on a commercial scale. This is his first  
experience in a chemical factory and the plaintiff is his 25  
first patient suffering from alleged chlorine gas poisoning.  
He has never before this case began made a special study  
of the effects of the gas upon the workers who produce it  
or acquired any experience therein. He has not given  
evidence based on his own personal knowledge and experience. 30  
Confessedly he has not had that knowledge and experience.  
What he says to the Court in effect is this, I am a man

who possesses a certain amount of general chemical knowledge and experience, and I have worked with and handled chlorine gas. Of my own knowledge I know little or nothing of the effects of prolonged exposures upon individual workers. But I have looked the matter up in various quarters and the results I present to the Court in a number of textbooks which I hand in. Can he be allowed to do this? I do not think so. As I view the matter he must first lay the foundation by expressing his own views based on his own special knowledge and experience, and having done so, may be permitted to fortify his evidence by reference to appropriate passages in textbooks." Then there is a reference to textbooks, legal textbooks, the Sussex Peerage (?) case, and then His Lordship continues : "I have come to the conclusion therefore, firstly that Dr. X cannot justifiably be regarded as an expert witness on this portion of the case, and secondly that it was not competent for him in the circumstances to present these textbooks to the Court and to invite the Court upon the statement of opinion therein contained and upon the facts therein stated to arrive at certain conclusions. In effect the Court is asked to accept as established facts testified to, often second and third hand, and opinions expressed not always on their own authority by writers not before the Court." So that it was there held, My Lord, that the expert medical witness must have direct personal experience.

BY MR. DE VOS :

My Lords, first as to the legal position. In my submission the position is this. An expert has to be qualified, and having been properly qualified he is permitted to give opinion evidence on the subject matter on which

he has been qualified. Formally and technically it is quite competent, it is legal for him just to give that evidence and nothing more, give his opinion on a particular document say, and he says what he thinks about it. But he may be permitted to explain why he comes to that particular 5 conclusion.

BY MR. JUSTICE RUMPF :

Why do you say that it is sufficient for him just to give his evidence on the document without setting forth his reasons? 10

BY MR. DE VOS :

My Lord....

BY MR. JUSTICE RUMPF :

I am now on the test which he should indicate to the Court so that the Court can see whether that is a 15 good test. I am not on his qualifications.

BY MR. DE VOS :

My Lord, in my submission...

BY MR. JUSTICE RUMPF :

Does this follow from your submission that 20 - you say that the witness on Buddhism can say this document contains Buddhist doctrine, without saying why.

BY MR. DE VOS :

He could do that, having satisfied the Court first of all that he is a qualified man. 25

BY MR. JUSTICE RUMPF :

Do you say that that would be sufficient?

BY MR. DE VOS :

I submit that it would be, My Lord. I ...

BY MR. JUSTICE RUMPF :

30

What authority have you for that?

BY MR. DE VOS :

I refer Your Lordship to the case of Rex versus

Smit, My Lord, 1952 (3) S.A.L.R. A case in the A.D. decided by Fagan, J.A. At page 451 of the Report, My Lord, Fagan J.A. discusses the position and he says the following in paragraph (c) : "In die geval van handskrif egter kan n leek die verskille en ooreenkomste sien, as sy aandag daarop gevestig word, en kan hy dienodige gevolgtrekkings maak. Met die vergelyking van vingerafdrukke is dit nie die geval nie. Daarvoor is spesiale studie en kennis nodig, en..." then he quotes 'the opinion of skilled witnesses are admissible whenever the subject is one upon which competency to form an opinion can only be acquired by a course of special study or experience' and he refers there to Phipson, page 373. Dan gaan die Edelagbare Regter voort en hy sê : "In so n geval dus.." that is where a skilled witness is concerned - ".is die mening van die deskundige in sigself getuienis. Die Hof mag hom glo of nie glo nie, mag sy mening aanvaar of verwerp, byvoorbeeld uit hoogte van sy kwalifikasies of die gebrek daaraan, weens die manier waarop hy sy getuienis aflê, weens bevestiging of ontkenning daarvan deur ander deskundiges, maar sy posisie is tog anders as die van n gewone getuie wat slegs feite vermeld of van iemand wat soos n handskrif deskundige, wat aan die Hof leiding gee in die waarneming van feite waarvan die Hof self in staat is om gevolgtrekkings te maak. In Rex versus Morela, 1947 (3) S.A. 147, A.D. he Appèlregter Tindall met verwysing na sekere vroeëre beslissings waarin vingerafdrukgetuienis op die spel was- en u sal onthou dit word geskei van getuienis wat hier Edelagbare Regter beskou as deskundige getuienis, vingerafdrukgetuienis onderskei hy, en sê dit is iets wat enige leek kan vergelyk. "In Rex versus Morela het Appèlregter Tindall met verwysing na



sekere vroeëre beslissings waarin vingerafdrukgetuienis op die spel was gesê op bladsy 153 : 'If these were intended to lay down a general rule that the Court will not accept an expert opinion unless he can demonstrate the point of similarity in such a manner as to enable it to understand sufficiently to form its own opinion on them, then I disagree. Of course a Court should not blindly accept an act (?) on the evidence of an expert witness. It is necessary to get the expert on fingerprints to explain as clearly as possible the nature of the similarities, and as a result of his interrogation or for other satisfactory reasons, the Court may not be prepared to act on his testimony. But the Court or a jury, in cases of the present kind, has not the special training to enable it to act on its own opinion. It really decides whether it can safely accept the expert's opinion."

BY MR. JUSTICE RUMPF :

And make it evidence.

BY MR. DE VOS :

That is what it amounts to, My Lord.

BY MR. JUSTICE RUMPF :

Now what happened in that case? Did the fingerprint expert not indicate why he considered the one print to be the same as the other?

BY MR. DE VOS :

My Lord, in this particular case...

BY MR. JUSTICE RUMPF :

What was the issue in that case?

BY MR. DE VOS :

It was in issue whether a fingerprint expert could be allowed to testify on fingerprints not before the Court, on a bottle not before the Court, so the actual

matter in issue was somewhat removed from the discussion of the matter which is more in the form of an obiter by Fagan J.A. and it was decided then that an expert would be allowed to say on the basis of fingerprints not before the Court that a certain position existed, that he had compared 5 them and that he considered them to be similar.

BY MR. JUSTICE KENNEDY :

Does he give his reasons for saying that?

BY MR. DE VOS :

My Lord, yes, but as I was pointing out... 10

BY MR. JUSTICE RUMPF :

I have never come across a case in which fingerprints were involved where the expert didn't say that there were at least seven points or ten points of similarity.

BY MR. DE VOS : 15

My Lord, if I may explain, I merely quote...

BY MR. JUSTICE RUMPF :

I have never come across a case where the fingerprint expert says, I have looked at print A and print B, they are the same fingerprints, I am an expert. He 20 always says why he says that.

BY MR. DE VOS :

That is so, My Lord, and that is - I point out the way in which this matter is discussed by Fagan J.A. and why he distinguishes the fingerprint cases... 25

BY MR. JUSTICE RUMPF :

Does this support your submission that generally speaking the expert witness need not give any reasons for his opinion? He can just state his opinion.

BY MR. DE VOS : 30

My Lord, admittedly it is an obiter, but that seems to me to be supported by what is said here. "In so n geval..." - if I may repeat that passage again. Fagan J.A.

says : "By die vergelyking van vingerafdrukke is dit nie die geval nie, daarvoor is spesiale studie en kennis nodig en 'the opinions of skilled witnesses are admissible whenever the subject is one upon which competency to form an opinion can only be acquired by course of special study or 5 experience.' In so n geval dus, is die mening van die deskundige in sigself getuienis".

BY MR JUSTICE RUMPF :

That is the point that he makes, that the opinion becomes evidence. But not the opinion without any 10 reasons. He doesn't deal with that point at all. Have you any other authorities?

BY MR. DE VOS :

My Lord, if Your Lordship pleases. My Lord, with respect, I submit that the way in which this matter is 15 put here in this passage, it really does amount to a statement, obiter possibly, that autonomously the opinion of the expert given on fingerprints stands, whatever explanation he may give, whether it may be believed or not, that is another matter, that is a matter for the Court to decide, 20 obviously. The weight of the evidence is one thing, the admissibility of the evidence is another. But My Lord...

BY MR. JUSTICE RUMPF :

How can the Court believe his evidence if he doesn't give any reasons for testing it? 25

BY MR. DE VOS :

My Lord, that is of course a different matter and I submit that in the instant case, for instance to come to the case under discussion, a ...

BY MR. JUSTICE RUMPF :

30

I am on your first submission that it is not necessary to give any reasons, that the expert on Buddhism can merely say I am an expert on Buddhism, this is a document

which I look at, it is a Buddhist document. And that becomes evidence on which the Court...

BY MR. DE VOS :

My Lord, I would say it would be very unwise merely to rely on that, but technically I submit that it would be in order to put it before the Court and it would be admissible. It is for the Court then at the end to decide whether on all the data supplied as a basis for that particular man's qualifications, that particular opinion is acceptable or not. And I submit that it also could be inquired into as to the way in which he argued other basic propositions in that similar...

BY MR. JUSTICE RUMPF :

Why do you argue this point, because that is not your case. You don't want to ask this witness that, do you? You want him to give reasons.

BY MR. DE VOS :

No, My Lord, that is so. I argue it because I don't to be caught out - if I may put it on that basis - by a small statement of principle introduced by this witness and it being said against the Crown that that particular bit has not been completely covered by the grounds quoted by the witness, because in fact the witness has attempted substantially to support his own stance on Communism by the quotation of authorities, but it would be difficult to be quite sure that all the subsidiary points of Communism, in toto, would always be covered by the quotation concerned, and that is why I wish to guard against that danger in the end, of being confronted with the position where it is said that in principle you have not complied merely because of an oversight, because of - which could very easily occur in a matter of this particular

compexity, especially on a philosophical subject. That is really a practical matter in issue, as far as the Crown is concerned. My Lord, may I refer Your Lordship to Hallsbury, Volume XV, the Third Edition, paragraph 590. "Examination of Experts. In every case in which the opinion of experts 5 are admissible, the grounds of the opinion may be enquired into, either in chief or as is more usual in cross-examination." Then it goes on on an irrelevant point. It seems to me, My Lord, that it is directly implied in this statement, "the grounds of the opinion may be enquired into, 10 either in chief, or, as is more usual in cross-examination".

BY MR. JUSTICE RUMPF :

Why should there be that option?

BY MR. DE VOS :

Because it seems to me, My Lord, and that is 15 my submission, that it is an option which is left to the party submitting the evidence concerned, to what extent he wishes to confirm the opinion expressed by the expert concerned with reference to data laid before the Court.

BY MR. JUSTICE RUMPF :

20

What do the cases say to which that paragraph refers?

BY MR. DE VOS :

My Lord, I must admit that I haven't been able to check the cases. I had this reference merely over 25 the lunch hour. I haven't been able to do that. My Lord, I can only refer Your Lordship to the case quoted also by my learned friend Mr. Nicholas, where he quoted the judgment in van Heerden versus S.A. Pulp and Paper Industries, Limited. I of course have - the report used by my learned 30 friend is not available to me, but I am using the Prentiss-Hall report, and I notice the same words occur in the report

he used. And it is notable, My Lord, that again there the Judge says - he puts it on the basis of permission to the party calling the expert, he is permitted to fortify the expert opinion he puts before the Court with reference to appropriate passages. He says "and having done so.." 5  
 - let me read the whole sentence. "Before these could be received..." - that is a reference to textbooks - " ..he.." that is the expert - ".. must first lay the foundation by expressing his own views based on his own special knowledge and experience, and having done so, he may then be 10  
 permitted to fortify his evidence by reference to appropriate passages." It is always put on the basis, My Lord, that ...

BY MR. JUSTICE RUMPF :

Isn't that a different principle? Fortifica- 15  
 tion of evidence, of opinion evidence. He may say I hold this opinion for these reasons as a result of my qualifications, but I do not stand alone. Others hold the same opinion, who are also qualified, and I refer to the author of this book. 20

BY MR. DE VOS :

My Lord, it is possibly somewhat technical to distinguish between the two functions of the sources quoted. It may be a source corroborating in the sense that it is another expert on the same subject matter, or 25  
 it may be a direct source, if it is philosophy, I would not like to distinguish between the two cases. I submit they are really similar in principle, they are meant to fortify or give a foundation for what the expert says and to demonstrate to the Court his reliability. My Lord, 30  
 I am merely on the particular comment offered here by Professor Murray, and I wish to say that he has explained

so completely what he considers his sources to be and how he argues - the way he applies his - the philosophical data he used in coming to certain conclusions, that it could hardly be said that he has not given any grounds for the stance he takes up in connection with Communism. 5

BY MR. JUSTICE RUMPF :

We are dealing with particular statements by the witness.

BY MR. DE VOS :

I realise that, My Lord, but it seems... 10

BY MR. JUSTICE RUMPF :

He may have dealt with many matters generally, but there is another matter which perhaps may be of importance too. When one deals with political science, involving a system of government, and a particular branch of this 15 political science, namely Communism, the phenomenon of Communism, about which a lot of written today in the daily newspapers, in magazines, should the Court not as a cautionary method demand that when a witness gives evidence of what he thinks Communism contains, that he supply the 20 sources from which he - on which he founds his opinion? It is a peculiar case where one deals with a phenomenon which is being discussed, about which a lot of - a lot is written daily, has been written, for many, many years, and the Court is not immune from the newspapers, the influence 25 that is wielded by magazines, newspapers, books. Should, as a matter of caution, in order to be on the safe side, when this is a contentious matter, a current matter, should not the Court as a cautionary method demand that the witness specify his sources? When he makes statements 30 of opinion in regard to Communism?

BY MR. DE VOS :

My Lord, I can quite conceive and I think it will be possible to quote instances to Your Lordship via the witness, that in certain instances it might be very difficult indeed for the witness to quote the pertinent source, the exact source because literature of Communism is spread all over the world, and the particular source is very often not easily available. That is certainly one possible practical aspect of the matter. As a matter of fact the witness must make use - has been making use of what he has so far...

BY MR. JUSTICE RUMPF :

Yes, but it depends on the information available. He needn't in every case quote a passage from one of the classics I might call it, in exactly the same terms. He may argue, he may deduce. I am not suggesting that he should, but he may be asked to deal with a particular country as having certain characteristics, and he may say well, there is a reference to this country in this book, this is the reference. Somewhere else this country is called an imperialist country, somewhere else the imperialist countries are described as oppressors. Therefore I say that Communism says that this country is an oppressor, although perhaps in so many words it doesn't say that, that that particular country is an oppressor. Obviously one is not concerned with that.

BY MR. DE VOS :

My Lord, I realise the value of that attitude...

BY MR. JUSTICE RUMPF :

Do you not think that in a case of this nature one should be careful?

BY MR. DE VOS :

My Lord, I agree that as a matter of policy



as far as the party concerned - quite apart from the Court at the moment - the party offering the evidence is concerned that should be done to the greatest possible extent, but I do submit that in principle, and that is the point I want to make, in principle it should not be as a matter of law 5 demanded - it may go to the weight of the evidence concerned, it may in the end influence the Court in looking at the evidence as a whole and saying that lack of authority on a particular point attacks the credibility of the expert evidence concerned, but my submission, as a matter of law 10 is that...

BY MR. JUSTICE RUMPF :

The point is just this, that the witness says he knows Communism, that he has made a study of it. He says that in Communism, Communist doctrine there is a cer- 15 tain tenet, there is a certain thought. Then he says, I look at a document, I see the same thought expressed in this document, therefore I think this is a Communist document. Now should he not, as a cautionary method, say well, the fact that I say that Communist doctrine contains this 20 particular thought is to be found in this form in a particular book.

BY MR. DE VOS :

My Lord, I am prepared to go this far and say that as far as the Crown is concerned it certainly intends 25 doing that in all possible instances. And whenever a principle is mentioned, and the Crown - and it is brought to the notice of the Crown that that principle hasn't been dealt with before, the Crown intends bringing sources to support and fortify the expert evidence on that particular 30 point. I am not - I do not wish to concede the legal point that in all cases that should be a legal postulate for

the competence of that evidence. That is shortly my attitude on that point, My Lord. As far as Communist propaganda is concerned, the witness - the evidence the witness gave on that particular point - if at this stage his qualifications are not deemed to be sufficient to give 5 evidence on that, I intend leading him further on that point to qualify him for that purpose.

BY MR. JUSTICE RUMPF :

Are you now dealing with the first point taken, current Communist propaganda? 10

BY MR. DE VOS :

Yes, My Lord, I ...

BY MR. JUSTICE RUMPF :

We don't know what that means.

BY MR. DE VOS : 15

That has been objected to at this stage, of course, and I am prepared to elucidate - at this stage I am quite prepared to have it struck off if that ....

BY MR. JUSTICE KENNEDY :

And the other phrases, the general phraseology 20 in the document?

BY MR. DE VOS :

I am not quite sure what Your Lordship is referring to.

BY MR. JUSTICE KENNEDY : 25

Mr. Nicholas referred to many phrases which "follow the Communist line".

BY MR. DE VOS :

Well, My Lord, the witness has not yet completed his evidence of course, and we are certainly 30 still in a position to explain what he means by that. He could explain his reference to what the dogmatic position

is why he says that and what he means by that.

BY MR. JUSTICE RUMPF :

Mr. de Vos, we have come to the conclusion that in this case if you want to ask the witness his opinion on a particular document, you should lay a foundation 5 properly and you should read the evidence as to why the witness says that a particular statement is part of Communist doctrine and then the reasons why he says that a particular document falls within that particular doctrine. We do not think it advisable to go on with danger that 10 objections are raised and that you then say, well I'll call further evidence. You should lay your foundation before you deal with a particular document.

BY MR. DE VOS :

My Lord... 15

BY MR. JUSTICE RUMPF :

If you have done so in regard to certain questions that you want to ask, if you have laid the foundation through the evidence which he has already given, that is another matter. But you should see to it that 20 your foundation is laid.

BY MR. DE VOS :

I take it Your Lordships have in mind there that the dogma or the dogmatic part of it should cover all the points referred to when we commence on a particular 25 document concerned. Your Lordship will appreciate the difficulty at present is this, for practical purposes, that the expert stands in the witness box. He has to formulate an opinion in a very limited period of time, it is quite impossible to rehearse every opinion in 30 detail before hand, and there are bound to crop up certain points which are not properly covered from time to

time by the dogma concerned, and those - in those instances  
the Crown will undertake to satisfy the Court that there  
are grounds for making that statement. But I merely wish to  
point out that that is a practical proposition, and it  
would be extremely difficult, especially for a witness not 5  
versed in all the details of admissible evidence and so  
forth, always to keep into line, and I can only say that  
I understand the principle laid down, and of course the  
Crown is certainly not only prepared but the point of  
departure of the Crown, when laying this evidence before 10  
the Court was that that should be the position.

BY MR. JUSTICE KENNEDY :

I take it that you are going to ask Professor  
Murray to go through a number of documents and express his  
opinion as to whether they follow - what I should call for 15  
lack of a better phrase, a Communistic line. Would it not  
be advisable if that is the case, for Professor Murray to  
deal, if it does exist, with Communist phraseology in  
general? As he did in broad outline with some phrases,  
and then refer to the classical books on that phraseology. 20

It may cover a great deal of documents, I don't know.

BY MR. DE VOS :

There are difficulties in that, My Lord,  
because the pure phraseology itself is not considered  
a fine criterion of course. 25

BY MR. JUSTICE KENNEDY :

No, but in the few instances we have had in  
regard to Exhibit A.9 it was a question of phraseology, I  
gathered.

BY MR. DE VOS :

Superficially seen only, My Lord, but in  
effect the evidence of the witness is that basically that 30

particular phrase flows from a certain position in principle, a doctrine. So it is not really phraseology as such which is the criterion...

BY MR. JUSTICE KENNEDY :

You can say it is the phraseology of the doctrine.

I don't know...

BY MR. DE VOS :

I would not venture to express my own opinion on that, My Lord. I'll take note of what Your Lordship has said.

BY MR. JUSTICE RUMPF

Do you want a ruling on these points or do you want to lead further evidence in an endeavour to show that this opinion is admissible?

BY MR. DE VOS :

My Lord, I intend leading further evidence. As far as the United States is a warmongering power is concerned, that is the one point I think that was referred to, I have a very strong impression that that has been dealt with. If I am wrong of course I'll have to deal with that again. It is rather difficult just at the moment to decide whether that has been dealt with.

BY MR. JUSTICE RUMPF

You see, I think what one should consider is the principle involved here. If you accept the correctness of the argument by the Defence,...

BY MR. DE VOS :

No, I don't, My Lord. I can't accept the correctness. I try to conform as far as possible to a certain procedure in Court, but I cannot accept the legal validity of the argument.

BY MR. JUSTICE RUMPF

On what basis do you propose leading the opinion

evidence. Without the witness disclosing the source of his information?

BY MR. DE VOS :

No, My Lord. On the contrary, as a matter of practice, I intend disclosing the sources, and whenever my attention is drawn to any instance where a source is not disclosed on a matter of principle, I intend leading that particular evidence on that particular source. 5

BY MR. JUSTICE BEKKER :

Well, let us just take this one phrase, current Communist propaganda. Are you going to tell the Court through the witness what current Communist propaganda is? Is that your intention? 10

BY MR. DE VOS :

I'll ask the witness to explain what he means by that, and then if necessary to lay a further foundation for any statement he may make if it touches doctrine. 15

BY MR. JUSTICE BEKKER :

You see, the difficulty is we have been arguing the whole afternoon and it may be now that you can lead further evidence to overcome the Crown case. That is why I think one should consider what is the principle involved and you should arrange your case accordingly. 20

BY MR. DE VOS :

My Lord, as I said before, my attitude is that wherever possible that will be done and wherever I note that - and wherever it is brought to the attention of the Crown - how it occurs, it may occur in this instance, for instance, only insofar as a reference to America is concerned, the term warmongering has been explained, its context in Communist doctrine has been explained. The only possible gap, if it does exist, and I am not prepared 25 30

to concede that My Lord, without perusing the record...

BY MR. JUSTICE BEKKER :

May I just ask you, do you accept the correctness of the decisions in Jacobs' case?

BY MR. DE VOS :

5

My Lord, it seems to me that I interpret that section rather differently than my learned friends, the decision, I am sorry.

BY MR. JUSTICE BEKKER :

How do you interpret it?

10

BY MR. DE VOS :

My Lord, I interpret it that on those particular facts the question of drunkenness and the expert opinion on drunkenness, the Court decided that it would not act, it wouldn't consider the evidence on that particular subject of 15 the doctor sufficient, without the symptoms or the facts of the case being detailed, that is all.

BY MR. JUSTICE BEKKER :

Mr. de Vos, I can put my difficulty to you in this way : Do you or don't you agree that the Court is not 20 to act upon expert opinion unless the Court is satisfied that it is safe to do so?

BY MR. DE VOS :

I agree with that, My Lord, I accept that.

BY MR. JUSTICE BEKKER :

25

Do you agree that unless a witness, an expert witness gives his reason for his particular opinion, the Court is not in a position to know whether or not it would be safe to act on that opinion?

BY MR. DE VOS :

30

No, My Lord, I don't agree with that. Because, if the man is properly qualified by years of experience, a

certain latitude must be allowed him to express an opinion without in every instance, in building - building up a complete basis for that opinion in the form of formal sources...

BY MR. JUSTICE BEKKER :

5

In matters of pure skill it may be so, but where we have this position, let us assume the question of political science and an expert qualifying himself in that regard is based on pure skill, he was asked whether this document contains current Communist propaganda. He says 10  
yes. The Court is not told what Communist propaganda is, the Court is unaware what current propaganda is, and the Court is unaware of the reasons motivating this witness in giving that reply. In those circumstances, do you suggest it would be permissible for the Court or safe for the Court 15  
to accept his mere ipsi dixit and be guided by opinion?

BY MR. DE VOS :

My Lord, I suggest that it would be permissible perhaps not advisable. It is a question of, on the judgment of the Court... 20

BY MR. JUSTICE BEKKER :

If it is not advisable, are you going to ask the Court in the end to be guided by an opinion which you say how would be inadvisable for the Court to follow?

BY MR. DE VOS :

25

My Lord, I said perhaps not advisable. It depends on the subject matter touched, But I do submit that if you have a man of long experience in a certain science or certain learning, certain discipline, certain branch of learning, then his own judgment and his own 30  
veracity and his own reliability must...

BY MR. JUSTICE BEKKER :

I am not discussing veracity or credibility at



the moment.

BY MR. DE VOS :

I accept Your Lordship's assurance on that. But certainly My Lord, his expert experience as a judge of the material put before him must count for something, and it 5 must not be felt that he must lay a complete basis in every instance for every single opinion he gives. I don't suggest that he can merely give an ipsi doxit in the light of all his experience, all his reading, all the authorities he refers to. I submit that he is entitled to refer to the 10 lot and on that basis the reliability of that witness and his opinions on that subject matter can be judged by the Court, and may be rejected in the end or it may be of course accepted.

BY MR. JUSTICE RUMPF :

15

But you see, there is in addition this difficulty there, that he has indicated, as he is perfectly entitled to do, how he operates as a political scientist in his particular field of study, and he has indicated to the Court that apart from consulting of course the classics, 20 on any particular branch of political science I presume or philosophy, hereceived information from persons, publications. Now this is a criminal case, where we must decide whether or not certain documents, inter alia, documents which could be said to be influenced by the Communist 25 doctrine, show perhaps Communist doctrine. We must decide that. The evidence of the expert, although opinion, may become evidence, on which we have to act. But it is for us to decide what Communism means, and whether acts or documents fall under Communism, the concept of Communism. 30 Now when there is a reference by the witness to a document being in line or the contents of the document being in line

with current Communist statements, we don't know whether - how that has been arrived at by the witness, whether it is from the body of information which he may get from a source which may be inadmissible, strictly speaking.

BY MR. DE VOS :

5

My Lord, may I remind Your Lordship that as far as I remember the witness hadn't yet completed his evidence. He gave a certain resume, and I would still have had to elucidate on certain points. At that stage, - it is almost impossible for a witness on this sort of material My Lord, not to - in certain phrases perhaps to use a phrase of a certain vagueness and then afterwards be allowed to explain.

10

BY MR. JUSTICE RUMPFER :

No, I know, but he should then be asked - I don't expect him to give evidence within the straightjacket of legal requirements. But, certain liberties are obviously granted to the witness. But then he must immediately be asked and brought back on the straight and narrow road.

15

BY MR. DE VOS :

20

Your Lordship will appreciate that the witness has to deal with a document in one, as it were in one breath, and it sometimes is purely a question of procedure not to interrupt him immediately and say, in the middle of a sentence, stop now and let us have the exact definition of what do you mean by Communist line.

25

BY MR. JUSTICE RUMPFER :

He could be asked that at the end of the sentence. We don't expect you to interrupt him in the middle of a sentence.

30

BY MR. DE VOS :

I don't think I had the opportunity of doing so,

My Lord.

BY MR. JUSTICE RUMPF :

Obviously the situation is such that this Court feels that you should not allow these things to go down on record and then go on for a considerable length of time without bringing the witness back or without explaining or asking him to give his reasons. 5

BY MR. JUSTICE KENNEDY :

If necessary, after every particular sentence, if there is an opinion expressed... 10

BY MR. DE VOS :

My Lord, I may say that before I had the opportunity of elucidating the whole opinion of the witness there was an objection from the other side, and it was not quite clear exactly how far and on what grounds that objection would be taken immediately. Argument began, and obviously... 15

BY MR. JUSTICE RUMPF :

Then you should have said that subject to argument by the Defence, I just want to finish this evidence and then I'll argue on that, I haven't finished his evidence, I am going to deal with what he said. That you didn't say. 20

By MR. DE VOS :

I suppose I could have done that, My Lord. On the other hand, I didn't know what the gist of the argument from the other side would be. 25

BY MR. JUSTICE RUMPF :

I am afraid that you will have to comply with the requirements laid down by the Court. 30

BY MR. DE VOS :

As Your Lordship pleases. I call Professor Murray.

ANDREW HOWSON MURRAY, under former oath;

EXAMINATION BY MR. DE VOS CONTINUED :

Professor Murray, I would like you to give your opinion on that document, de novo, A.9, which you have before you now? --- Yes.

5

I want you to give it slowly so that I may be able to ask any further questions in elucidation of any statement you make? --- My Lord, I read the second sentence. "It is a day for celebrating the victories won by the oppressed and exploited people in their struggle for independence, national existence and peace." It is a part of Communist doctrine that there are - that the capitalist system, on their analysis, has produced certain people who are oppressed and exploited, and that it is the Communists duty to assist these people and to rejoice with them when they achieve independence and national existence and peace. That sentence must be regarded as an expression of Communist doctrine.

10

15

Yes, the next point? --- I read the next sentence : "Only five years ago the great Chinese people threw off the shackles of feudalistic and imperialistic bondage and have established the highest form of democracy ever evolved by mankind, namely a people's democracy." Two points occur. It is a part of Communist doctrine that capitalism, on their analysis, and a previous stage, feudalism, has produced certain forms of bondage and that at the present stage in history there economic system has reached a stage when this bondage must be discarded. I go on, "have established the highest form of democracy ever evolved by mankind, namely people's democracy" is an integral part of Communist doctrine that when this bondage and to the extent that this bondage is discarded, a form of

20

25

30

society will be realised increasingly and that at the present moment the so-called people's democracy, that form of society, is the highest achievement of that element in Communist doctrine. For that reason I regard this sentence also as Communist in nature. 5

Will you proceed to the next point? --- I read the second paragraph, first sentence.

All the sources on the subject matter you have dealt with as far as it touched Communist dogma on this point were quoted by you, not so? --- I referred to these 10 sources.

I mean not all of your sources, but there were sources quoted by you in support of those propositions? -- I think that the sources cover these statements. I read the second paragraph, "The youth of Africa and the world 15 cannot but salute the great victories of the people of Indo-China who, like the people of Korea, have routed the imperialist bandits". Two points occur there. The reference to "routing the imperialist bandits" is part of Communist - is part of the analysis of the present day situation 20 based on Communist doctrine, because imperialism at the present stage is regarded as having reached the stage of exploitation, also commonly called fascism and it is the Communist interpretation that this form of oppression and aggression must be routed, must be removed. The 25 reference to the "youth of Africa and the world cannot but salute the great victories of the people of Indo-China" is contained - may be referred to the Communist doctrine that youth must be organised to liberate the world from the banditry of imperialism. 30

When is the concept of liberation - from what do you infer liberation or the concept of liberation

to which you referred now in your statement? --- The phrase "routing the imperialist bandits".

Will you continue to the next point? --- I read the next sentence "Dien Bien Phu is a clear writing on the wall for the Western aggressors". It is an essential part of Communist doctrine that the - that imperialism is an aggressive force and that at the present period in history, imperialism - the countries of the West are the imperialist countries, and therefore the Western aggressors. The argument is here that the imperialists - that the experience of Dien Bien Phu is a sign that Western aggression is being defeated and that is part of the Communist doctrine.

The next point please? --- I read the next sentence. "This victory showed the whole world that no amount of finance and armaments will defeat the just demands of the oppressed people for a better life". The Communist doctrine argues that imperialism uses particularly finance and armaments at the present stage of development, to oppress people, and that at the present stage the proletariat, the working people, have achieved a stage of development where they are able to beat the financial and armament forces of imperialism.

Yes Professor? --- I read the beginning of the next paragraph. "These victories of the people have shattered the dreams of the imperialists, frustrated the war plans of the United States interventionists and warmongers and have paved the way for peace in the world." As regards the phrase "have paved the way for peace in the world", Communist doctrine, from the time of Marx on has taught that to the extent that the imperialists are defeated and capitalism is abolished, to that extent

the profit motive will disappear, the class struggle will disappear and thereafter the world will have peace. That I think refers also to "shattered the dreams of the imperialists". Communist doctrine - I refer to the phrases "frustrated the war plans, " etc. Communist doctrine teaches that the imperialists have at the present moment reached that stage where they entrench themselves, as I said before in finance and armaments, and oppress colonial and semi-colonial people and Communism regards that policy as a policy of war plans, and therefore, it says, these victories have frustrated that e these war plans.

CASE REMANDED TO THE 22ND OCTOBER, 1959.

COURT ADJOURNS.

COURT RESUMES 22/10/1959:

ANDREW MURRAY, still under oath:

EXAMINATION BY MR. DE VOS CONTD.: Professor Murray, you were busy on the document A.9 yesterday, interpreting it in terms of the basic doctrine, as you laid it down before (5 and as far as I remember, the last phrase you were referring to was contained in the sentence "These victories have shattered the dreams of the Imperialists....." -- or had you gone beyond that point?-- I think I stopped there.

Now, I think you explained that passage in terms of (10 what you considered to be the basic dogma underlying the Communist doctrine, underlying that passage, not so; you did comment on that?-- I commented on that.

Before you pass over to the next, I don't think you commented yesterday on the position of the United States (15 as being one of the states accepted in Communist doctrine as being a warmongering power. You did not come to that point again when you began your comments de novo on this document?-- That is so.

Have you anything to add on that particular point?-- (20 Referring to the sentence ...."These victories of the people have...frustrated the war plans of the U.S. Interventionists and warmongers...." the Communist doctrine holds that the world is divided into two camps, and that the United States is an important member of the one camp, antisocialist or anti-(25 Communist camp, and that its policy for its own protection and its international policy is to intervene in the affairs of oppressed colonial and semi-colonial countries, and it is the duty of Communist countries to oppose such intervention.

Now, have you any authority to support you on that (30 opinion?-- I read from a document I have already read from



Professor Murray

A.9 / EPM.12.

"Krushchev, Report to the 20th Congress," Exh. EPM.12, and  
I first read page 29, -

In connection with the radical changes in the world arena  
new prospects are also opening up as regards the trans-  
ition of countries and nations to socialism. As long (5  
ago as the eve of the Great October Socialist Revolu-  
tion Lenin wrote: "All nations will arrive at socialism,  
this is inevitable, but not all will do so in exactly  
the same way, each will contribute something of its  
own in one or another form of democracy, one or ano- (10  
ther variety of the dictatorship of the proletariat,  
one or another rate at which socialist transformations  
will be effected in the various aspects of social life;  
There is nothing more primitive from the viewpoint of  
theory or more ridiculous from that of practice than (15  
to pint, "in the name of historical materialism,"  
this aspect of the future in a monotonous grey. The  
result will be nothing more than Suzdal daubing."

If you wish to put the gloss on what you are saying,  
to explain how to connect ~~up~~ with the opinion, you may do (20  
so from point to point?-- I am reading that paragraph to  
show the Leninist background of the speech from which I am  
quoting. I now read from page 19 -- before that, I should  
like to read another paragraph on this same point, page 7.

It was because the Soviet Union and its friends, (25  
the People's Republic of China and the other people's  
democracies promptly undertook a number of successive  
diplomatic steps, supported by all peaceloving forces,  
that real prospects for improvement opened up in the  
international arena. All this shows that our party (30  
takes due account of the urgent needs of both home and

foreign policy and prepares prompt measures appropriate to these needs. This clearly indicates our party's close, unbreakable ties with the people, the wisdom of its Leninist collective leadership, and the all-conquering power of the Marxist-Leninist teaching upon (5 which it bases its activity.

I should like to stress the word 'activity' there, Milords.

Throughout these years the party has held high the great banner of immortal Lenin. Fidelity to Leninism is the source of all our party's successes. Let us (10 now examine our country's international position and its domestic situation during the period under review.

I then go on to page 19 -

The winning of political freedom by the peoples of the former colonies and semi-colonies is the first and (15 most important pre-requisite of their full independence, that is, of the achievement of economic independence, that is, of the achievement of economic independence. The liberated Asian countries are pursuing a policy of building up their own industry, training their own (20 technicians, raising the living standards of the people, and regenerating and developing their age-old national culture. History-making prospects for a better future are opening up before the countries which have embarked upon the path of independent development. These count- (25 ries although they do not belong to the socialist world system, can draw on its achievements to build up an independent national economy and to raise the living standards of their peoples. Today they need not go begging for up-to-date equipment to their former oppressors. (30 They can get it in the socialist countries, free of any

**Collection: 1956 Treason Trial**  
**Collection number: AD1812**

***PUBLISHER:***

*Publisher:- Historical Papers, The Library, University of the Witwatersrand*

*Location:- Johannesburg*

©2011

***LEGAL NOTICES:***

**Copyright Notice:** All materials on the Historical Papers website are protected by South African copyright law and may not be reproduced, distributed, transmitted, displayed, or otherwise published in any format, without the prior written permission of the copyright owner.

**Disclaimer and Terms of Use:** Provided that you maintain all copyright and other notices contained therein, you may download material (one machine readable copy and one print copy per page) for your personal and/or educational non-commercial use only.

People using these records relating to the archives of Historical Papers, The Library, University of the Witwatersrand, Johannesburg, are reminded that such records sometimes contain material which is uncorroborated, inaccurate, distorted or untrue. While these digital records are true facsimiles of paper documents and the information contained herein is obtained from sources believed to be accurate and reliable, Historical Papers, University of the Witwatersrand has not independently verified their content. Consequently, the University is not responsible for any errors or omissions and excludes any and all liability for any errors in or omissions from the information on the website or any related information on third party websites accessible from this website.