TREASON TRIALS DEFENCE FUND

PRESS SUMMARY

No. 1.

Issued: August 9, 1958

This is the first issue of a regular bulletin which will contain a factual, week-by-week resumé of the proceedings of the Treason Trial.

DEFENCE APPLIES FOR THE RECUSAL OF TWO JUDGES

Friday, August 1:

When the trial opened in Pretoria's Old Synagogue converted into a Special Court before Presiding Judge Mr. Justice Rumpff, Mr. Justice Kennedy and Mr. Justice Ludorf, Mr. I. A. Maisels, Q.C., (leader of the Defence Counsel) made an application for the recusal of Mr. Ludorf and Mr. Rumpff.

Mr. Justice Ludorf:

Addressing Mr. Justice Ludorf Mr. Maisels stressed that he did not, in fact, suppose that His Lordship would be anything but impartial. There was, however, a principle involved: "It is important that justice should not only be done, but should manifestly be seen to be done... I am not saying in fact you would be biased, but I shall show from certain facts that there is a reasonable fear in the minds of the accused that they will not get a fair trial." The matter had to be looked at from the viewpoint of a layman, and not from that of a lawyer.

Mr. Maisels recalled an application made to court in 1954 to have the police excluded from a conference called as part of the preparations for the Congress of the People in which matter Mr. Justice Ludorf (then a member of the Johannesburg Bar) acted as advocate for the police. Affidavits filed in connection with that matter quoted a number of documents which are Crown exhibits in the present trial; mentioned the then current investigations into alleged high treason, and quoted from speeches made by persons who are presently indicted for high treason. Extracts from these same speeches now form important parts of the present indictment. An affidavit by the then Deputy-Commissioner of Police and head of the Union C.I.D. submitted during these 1954 proceedings stated that after consultations between the Minister of Justice, his legal advisors and senior police officers, it had been decided that it was not in the public interest to reveal the nature of police investigations at the time.

Mr. Maisels summarised his case by submitting that:

> "What has been established in the minds of the accused at least, is that the Minister of Justice (for that was his case) has appointed as one of the judges in this case his advocate in that case ..."

Mr. Maisels then raised a second objection to Mr. Justice Ludorf, stressing that he accepted that when a barrister was elevated to the bench he shed his politics. In a normal case, therefore, Mr. Ludorf's past political activities or opinions would present no issue. Mr. Maisels submitted, however, that the present was no ordinary case, and pointed out that Mr. Ludorf had, during part of the period covered by the treason indictment, had close and active political association with the political party against whom and whose policies the accused are alleged to have directed strong and intemperate attacks, which attacks are alleged to form part of the acts of High Treason... "Your Lordship with the best will in the world, as one actively concerned with supporting this party, may not be able to take a completely dispassionate view of the conduct of the accused."

--- Mr. ---

Mr. Justice Rumpff.

Mr. Maisels then addressed Mr. Justice Rumpff. Mr. Justice Rumpff, he said, had sat in judgment in part of the 1954 proceedings, but the defence made no issue of that. But during the Parliamentary debate on the legislation to validate the appointment of the Special Court for the Treason Trial, the Minister of Justice had been quoted in the press as having said that he had consulted Mr. Justice Rumpff on the further appointments to the Bench, or (according to some press versions) Mr. Justice Rumpff had recommended the further appointments.

> "Bluntly it would appear to the accused that Your Lordship was a party to the appointment of a judge (Mr. Justice Ludorf) in this case of the Minister's advocate in a case in which you presided, in matters where the allegations were the same..."

Mr. Justice Rumpff commented that the newspaper reports were incorrect. "I never recommended the appointment of my two colleagues. I wasn't asked to do so and would never have had the audacity to do so."

The proceedings were adjourned during the morning to enable the two judges to consider the application for their recusal.

MR. JUSTICE LUDORF WITHDRAWS.

BASIS OF RECUSAL.

Monday, August 4:

Mr. Justice Ludorf said that until the matter of the 1954 case had been raised in court it had not occurred to him there was any connection between the two sets of proceedings. Though he believed he had had discussions with the police at the time, he could not recall them and they had in no way influenced his attitude to the trial. But there was sufficient overlapping in the facts of the two cases for the fear of the accused that he could not be unbiased to be reasonable.

On the Defence objection to his past political associations Mr. Justice Ludorf said Mr. Maisels had overlooked that the accused had fulminated with equal vigour against the United Party and even Mr. Paton's Liberal Party. If this had been the sole objection to his sitting in the trial, he would not have recused himself.

Mr. Justice Ludorf then recused himself from the proceedings.

Mr. Justice Rumpff's Account of Court Appointments.

Mr. Justice Rumpff said that if the accused reasonably thought that he had recommended Mr. Justice Ludorf, knowing that he appeared as Counsel for the police in the 1954 proceedings, they were entitled to put the newspaper reports before him and to inform him of their fear.

The facts were that he had never been asked to nominate or recommend, nor did he recommend the appointment of Mr. Justice Ludorf or Mr. Justice Kennedy. "Whatever was said by the Minister of Justice it is my duty to state the facts to the accused. On these facts their fear need no longer exist, as it was based on wrong information."

He had been told some time ago by the Judge President of the Transvaal that he would be appointed to preside over the treason trial, which would be a very long one. He had informed the Minister that in view of its estimated length he might experience difficulty getting barristers to serve as assessors, and might have to call on the services of two senior magistrates of the Department of Justice. The Minister had later told him that a Special Court was to be appointed and that the other two judges would be Mr. Justice Kennedy and Mr. Justice Ludorf. "My attitude was one of indifference. I did not recommend the appointment of these two judges ... I

--- have ---

"have no choice but to follow the dictates of my conscience and refuse the application for recusal."

STATUS OF COURT NOW IN DOUBT.

Mr. Justice Rumpff then expressed the opinion that the court, in view of Mr. Justice Ludorf's recusal, was no longer properly constituted, but Mr. Oswald Pirow, Q.C., leader of the Crown team, submitted that this was not the case. He cited precedents to show that the court was still constituted, and applied merely for a week's adjournment to enable the Governor-General to consider whether he wishes to appoint a new third judge. Special Courts can comprise two or three judges.

After Mr. Pirow and Mr. Maisels had failed, in a half-hour adjournment, to agree on the status of the court, Mr. Pirow renewed his application. Mr. Maisels stressed that the Defence would give the Crown every assistance in expediting the proceedings, but neither supported nor opposed the application. The proceedings were then adjourned until August 11.

1) Ed
2) hib.

TREASON TRIALS DEFENCE FUND

No.2

Issued: August 18th, 1958.

P R E S S S U M M A R Y

This is the second issue of a ~~regular bulletin~~ which will contain factual week by week resume of the proceedings of the Treason Trial.
Period covered: Monday August 11 to Friday August 15.

NEW JUDGE APPOINTED TO THE SPECIAL COURT

When the Treason trial resumed in Pretoria on Monday August 11, after a postponement of one week following the successful Defence application for the recusal of Mr.Justice Ludorf, a notice by the Governor-General announcing the appointment of Mr.Justice Bekker, as the new third judge, was read.

DEFENCE APPLICATION FOR THE QUASHING OF THE INDICTMENT

A Defence notice excepting to the main charge of treason and the alternative charge under the Suppression of Communism Act was handed in to court and the Defence argued that the charges set out in the indictment be quashed.

The Main Grounds:-

Mr.I.A. Maisels, Q.C, leader of the team of Defence Counsel argued the 18 page notice of exception and application to quash on the following main grounds:

1. The charge, read with the particulars did not disclose any offence.

2. The facts did not support the allegation that the accused acted in concert and with common purpose.

3. The joinder of the accused in the charge of Treason was irregular, contrary to law and calculated to prejudice the accused in their defence.

4. The allegations in the main charge were inconsistent with facts in certain parts of the indictment and the particulars.

5. The allegation that all the accused committed certain overt acts referred to in the main charge was inconsistent with the alleged facts given, from which it appeared that not all of the accused were alleged to have committed these acts.

6. The charge did not set out the alleged offences with sufficient particularity to make clear to the accused the case which they would have to meet.

7. The repeated use of the expression "and/or" was burdensome and oppressive and prejudicial to the accused.

8. The charge was prejudicial in that the Crown alleged as one conspiracy what appeared to be more conspiracies than one.

9. The accused were alleged to have committed certain acts which are not acts of high treason.

CROWN/ ----

CROWN OBJECTION OVERRULED

The Crown objected ~~to the notice~~ served on the Crown by the Defence on Tuesday August 5. It was a bad notice because it did not set out sufficiently clearly on what the Defence based its application to Court to quash the charges, and it did not give sufficient reasons. The Crown asked for parts of the notice to be struck out.

Mr.Justice Rumpff refused the Crown's application and the notice became part of the Court proceedings.

THE DEFENCE ATTACK ON THE INDICTMENT

Mr.Maisels said the general attitude of the Crown appeared to have been: "Let's throw in everything the police have been able to find and let's see what comes out at the end". The indictment seemed to have been framed in this way. The object of an indictment was to inform the accused in clear and unmistakable language what charges he had to meet. He should not have to guess or piece or puzzle bits together. It was equally important for the Court to know the charges. The Defence submission was that the elementary rules in framing an indictment had not been complied with.

COMMON PURPOSE

On the Crown allegation that the accused had acted with common purpose the particulars supplied by the Crown expressly disavowed the suggestion that the accused had acted in pursuance of any agreement. Yet the indictment alleged the accused had acted with common purpose, which in itself implied agreement. This made complete nonsense and was contradictory.

Not a single fact alleged in the particulars to the indictment showed that the accused were in contact with one another.

EACH ACCUSED TO KNOW THE CHARGES AGAINST HIM

Each accused had to know what he was being charged with, continued Mr.Maisels. The Crown attitude appeared to be "You ask us to tell you why you have been joined in this trial? You can't expect us to tell you that. You read the whole preparatory examination record (40 volumes of 8,000 pages); and all the exhibits (9 to 10,000 documents), and also all those documents found in the possession of individuals and organisations all over the country, and you will be able to deduce what the charges against you are." The Crown presumably knew why each person had been indicted (and others discharged by the Attorney-General), but this was not set out in the indictment.

Mr.Maisels then quoted examples of documents handed in as exhibits during the preparatory examination, among them a history essay on the Vienna Settlement, a poem by an Indian school boy and a book of Russian recipes. This was the type of material the Defence had to study, he said. It was an abuse of the process of the court.

If the Crown found it too difficult to tell each accused what the case against him was, and could only tell him to read the exhibits and the record to find out, the Crown had no right to bring charges against the accused. It was not complying with the provisions of the Criminal Code. A little less anxiety on the part of the Crown to throw everything into the case, good or bad, and a little more attention to the facts of its case, and a more precise setting out of the charges would have produced an indictment which might have stood scrutiny. "To throw the whole case at us and to tell us 'Sort it out yourselves' was not in the interests of the accused or of justice.

Burdensome/.....

BURDENSOME NUMBER OF DOCUMENTS

During the preparatory examination there had been a large number of objections by defence counsel to the irrelevancy of many of the documents handed in. The defence had been told to "wait and see", and that all would become clear at the end.

It would have been imagined that at this stage the Crown would know what speeches and documents were relevant. But the Crown had not the courage to tell the Defence what documents it relied upon, because it didn't know what its case was.

"They'll keep us here for another 18 months listening to this rot, this rubbish," said Mr.Maisels.

498,015 COUNTS.

Mr.Maisels dealt with the extensive use of the expression "and/or" in the indictment. Three paragraphs alone of a section of the indictment contained this expression 19 times and an actuary had calculated that with each of the charges in each paragraph alternated with each of the others the accused faced 498,015 charges in all. The Crown had also added the words "inter alia" which meant the number of counts was infinite.

"Would it be unfair to say that the Crown appears to be a little uncertain on the terms of its conspiracy?" asks Mr.Maisels.

MORE THAN ONE CONSPIRACY

The indictment was badly framed in that it referred to "the conspiracy" but seemed to refer to more than one conspiracy, said Mr.Maisels. Certain bodies alleged to have taken part in the conspiracy had been formed several years after it was alleged to have begun.

If there was more than one alleged conspiracy the Crown had to have separate charges, and possibly separate trials for each one.

In a trial for treason evidence must be supplied of proof of each overt act. The Crown must establish the overt acts alleged.

The original indictment said each accused acted in concert with each of the other accused and with common purpose.

Now the Crown had become bolder and was alleging that people who had taken part in a meeting some months or years previously and at which some of the accused were not present were also party to the same charge of treason.

IN CONCERT

The Crown was now saying that even people not present but who have done some earlier act were acting in concert with those in a later act.

An accused was entitled to say at the end of a trial that he had been acquitted or convicted on one or other of the acts of high treason or acts in the alternative charges, which acts had been laid against him, said Mr.Maisels.

Mr.Maisels, in reply to a question by Mr.Justice Rumpff said it was the Defence submission that if there was a charge of high treason, the various overt acts alleged were separate counts of high treason.

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On the basis of the Crown's indictment the case could go on for years, said Mr.Maisels. There was no objection to a mass trial as long as there was a single overt act, but the indictment dealt with hundreds of acts. If the Freedom Charter and the Congress of the People were a conspiracy for High Treason, the trial should be based on that. The Defence would welcome a trial embarked on in that way.

WHAT THE CROWN RELIES ON

Mr. O. Pirow, Q.C. replying for the Crown to a question from Mr.Maisels said that the Crown was relying for its case on one charge of high treason, a number of overt acts and one common purpose.

Mr.Maisels then suggested that there was no reason why the Attorney-Generals of the respective provinces could not have charged the accused in their own provinces, and pointed out that if the Crown held that the creation of discontent by a speech at a public meeting was high treason, "we shall have to abandon what we have learnt over hundreds of years about the principle of free speech."

Mr.Maisels ended his 9½ hour attack on the main charges at midday on Wednesday, August 13.

DEFENCE ATTACK ON ALTERNATIVE CHARGES

Mr.A. Fisher, Q.C. then outlined the defence objections to the two alternative charges framed under the Suppression of Communism Act, following roughly the same lines as Mr.Maisels. Mr.Fisher submitted that the accused should have been charged separately with the numerous acts that had been "lumped together", and that to understand the charges the accused would have to read an immense amount of material. There was an embarrassing lack of particularity, putting "an intolerable burden on the court and on the accused. Much could be taken from the many speeches quoted which could not possibly have furthered the objects of Communism.

On Thursday, August 14, Mr.Fisher concluded his four hour argument by asking for the two alternative charges to be quashed.

CROWN RELY ON MAIN CHARGE

Mr.J.J. Trengove then replied for the Crown to Mr.Maisels' application, submitting that Mr.Maisels had "thrown in everything he has in an attempt to find some weakness in this indictment, in a desperate attempt that some weakness may come to light". In the main charge, Mr.Trengove said, each of the accused was clearly and solely charged with having committed the crime of high treason in his individual capacity. Each of the accused had had hostile intentions, had disturbed or endangered the safety of the State, and had committed overt acts. "In committing these hostile acts the accused were acting in concert and with common purpose."

ESSENCE OF TREASON IS MANIFESTED HOSTILE INTENT

Mr. Trengove then quoted extensively from legal authorities in order to clarify the nature of high treason, which he submitted was generally accepted as "A crime that is committed by those who, with hostile intent, disturb, hinder or endanger the State." "Any act, whatever its nature, may be punishable, provided it is calculated to injure the State." In the nature of the present case, the act may have been purely preparatory - the accused were on trial because their plans had not reached successful fruition. "The essence of the crime is the hostile intent. It is the hallmark of treason alone" but with "this peculiar frame of mind" it was necessary to prove an overt act. Otherwise legal overt acts became treasonable through the presence of hostile intent, as for example writing letters or attending meetings.

REMOTEST/.....

REMOTEST DANGER TO STATE MUST BE NIPPED IN BUD

Mr.Trengove submitted that the safety of the State was so important a matter that even the remotest danger to the State must be nipped in the bud.

A difficulty the State often faced was that isolated acts might appear quite innocent; and it was only at a point of time that these isolated acts exhibited the existence of a scheme or a conspiracy to overthrow the State; and it was only at this point that the State could bring a prosecution for high treason.

WIDE EVIDENCE AS INFERENCES REQUIRED

The Crown was entitled to lead very wide evidence to prove the existence of a conspiracy, because in most cases the conspiracy had to be inferred.

WICKED INTENTIONS

Mr.Trengove submitted that the effect of the principles involved in many authorities, which he had quoted, was that the essence of high treason was the wicked intentions, provided there was manifestation of the wicked mind.

"This wicked intention can be manifested in as many overt acts as can be visualized. The crime is the existence of this state of mind, which is proved and carried over into action by overt acts. There was no question of distinguishing between the wicked intention, the state of mind and the action invalued in the overt acts. Even if a common purpose was never achieved, the overt act represented the crime. There was no question of persons aiding or abetting, being accessories to the crime and no question of organizations."

NATURE OF CONSPIRACY AND RESPONSIBILITY.

The act of joining an organization or group, in whatever capacity, constituted an overt act.

Mr.Trengove compared the crime of treason with a polluted stream. Anybody who entered the stream at any point became polluted, irrespective of where he had entered it. In the present case, the pollution began in 1952.

Acts committed by others who had entered the stream earlier than a particular accused could be proved against him as evidence of the grand design, which was the ultimate object of the conspiracy.

WHEN NORMALLY INNOCENT ACTS BECOME TREASONABLE

All overt acts alleged to be treasonable should be linked with violence or illegality, "but if the accused seek to overthrow the State by illegal or unconstitutional means, it is of no consequence what those illegal or unconstitutional means are". Lord Preston had been convicted of high treason against King James I because he had boarded a boat for France with hostile intent, and one of his co-accused was convicted because he had hired the boat - both in themselves perfectly innocent actions.

Mr.Trengove then outlined the Crown's view on the question of alleging common purpose by the accused. "They must be in agreement in respect of the result - and it is the result they must contemplate. In a conspiracy, one conspirator might not know all the other conspirators, and it might be convenient in a secret society, for instance for a member not to know all the objects. But, even if he did not know the other members or all the objects, he would have to admit: 'I know that I am a conspirator."

CROWN/----------

CROWN MOVE TO LIMIT SCOPE OF TRIAL

Mr.Trengove was due to continue his argument on the main charge on Friday, August 15, after which Mr.G. Hoexter was to reply to Mr.Fisher on the alternative charges, and Mr.Pirow, Q.C. to reply to remarks made by Mr.Maisels regarding the power of the court to order the alteration of the charge.

In a surprise request when the court assembled on Friday morning, Mr.Pirow asked for an adjournment so that he could discuss with the Defence the possibility of "limiting the scope of the trial". After Mr.Justice Rumpff had remarked that such a limitation would be "highly desirable", this request was granted.

The court accordingly adjourned until the morning of Monday, August 18.

TREASON TRIALS DEFENCE FUND No 3

PRESS SUMMARY Issued 25th August 1958

This is the third issue of a regular bulletin giving a week-by-week resumé of the proceedings of the Treason Trial.
Period covered: Monday August 18 to Friday August 22.

CROWN AND DEFENCE FAIL TO REACH AGREEMENT.

The Treason Trial resumed in Pretoria on Monday, August 18, after the surprise postponement requested by the Crown on the previous Friday morning. Mr.O.Pirow, leading prosecuting counsel in the trial announced that the attempt to come to some "agreement" on the limitation of the scope of the Treason Trial had failed, but that the time taken by the discussions had not been altogether wasted. Mr.I.A. Maisels, leading Defence counsel, replied that it would perhaps be a little premature to talk about a limitation of the scope of the trial as there was at present before court an application to quash the indictment. It would, he said, be better to consider the possible limitation of the scope of the trial after the court had given a decision on this application.

PERSONAL OR ORGANISATIONAL CONSPIRACY?

Mr.J.J. Trengove for the Crown then resumed his argument to the defence application for the charges to be quashed. He said the Defence had made the point that the indictment had alleged personal conspiracy on the part of each accused, whereas the further particulars furnished after the Defence request for them had alleged organisational conspiracy. Mr.Trengove said each accused was charged with high treason.

INDICTMENT NOT A JIGSAW PUZZLE.

Mr.Trengove said the indictment was not a jigsaw puzzle. No single accused was left in any doubt regarding the alleged conspiracy and his alleged participation in it. He denied that it was impossible for each accused to know exactly what the case against him was. He agreed, however, that not all the accused were in the conspiracy until June 25, 1955.

NOT NECESSARY TO SET OUT FACTS.

In answer to the Defence request that the Crown set out seperately the facts on which each accused could be expected to prepare his defence, Mr.Trengove said it was not necessary to set out each and every fact. Mr.Justice Rumpff asked if Mr.Trengove accepted that it was desirable to give as much information as possible in relation to each accused. Mr.Trengove said the Crown accepted that and the accused were told to be prepared to defend themselves on the basis of evidence given at the preparatory examination in the light of the summary of facts given in the indictment.

PASSIVE/.....

PASSIVE RESISTANCE - TREASON?

When the Court resumed on Tuesday, August 19, Mr.J.L. Trengove, for the Crown, continued his argument on the Defence application to quash the Main Charge. Mr.Trengove said Hostile Intent in the crime of High Treason was not merely to achieve government or a new government, it was achieving government or a new government by means outside the constitution and which were therefore illegal or unlawful. Mr.Justice Rumpff, the presiding judge, asked whether those means must not be forceful means in one way or another. He asked whether an attempt to force the government by passive resistance would be treason. Mr.Trengove said that it would be high treason. He said that on the authority of the Leibrandt case "There is no intermediate action between the the ballot box and a treasonable action by means of force. No programme aiming at change by other than constitutional means is a lawful programme."

Mr.Trengove said that "If the means were legal it did not absolve the parties to the conspiracy from responsibility if the aim was to achieve a change outside a constitutional sphere."

Mr.Trengove, when he concluded his argument, had been speaking for nearly 12 hours.

WHAT IS ADVOCACY?

Mr.G.G.Hoexter then began the Crown's reply to the Defence exception to the alternative charges and the application to quash.

He contended that Mr.A.Fisher,Q.C. (for the defence) had read into the Suppression of Communism Act words and meaning that were not in the Act. Mr.Hoexter contended that advocacy (of Communism) in terms of the Act did not in so many words stress the necessity for some direct communication between the same encourager and encouraged. Mr.Justice Bekker asked whether it was not a reasonable construction on the Act to suggest that for "advocacy" there must be an audience. Mr.Hoexter said it was a possible construction, but denied that it was a reasonable construction. The question was put as to whether a man who writes a document one day which he intends to publish the next day is guilty of advocating communism in terms of the Suppression of Communism Act if he is arrested before the document can be published.

In reply Mr.Hoexter said the writer had the intention of advocating communism. That he had not yet reached "The circle beyond" - the publication - was fortuitous and irrelevant.

COMMUNISM IN THE KALAHARI.

Mr.Hoexter said that Advocacy did not mean revelation to a defined audience or group of people. Mr.Justice Bekker asked if a man making a speech in the middle of the Kalahari, advocating communism, with no audience to hear him would be contravening the Act. Mr.Hoexter replied that it would not. He said that regard must be had to the policy of the Act and that the danger of communism must be cut out at the root before the literature was published.

ONLY CROWN KNOWS DOCTRINE.

Mr.Hoexter dealt with the Defence complaint that it was not clear on which doctrine or exposition of Marxiam Socialism the Crown relied on in the alternative charges. He contended

that/.....

that the Suppression of Communism Act cited a doctrine and there the matter rested. He agreed that there was no difficulty in telling the Defence what the doctrine was, but that the Crown was not obliged to tell the Defence. He said that the judges had to assume a complete judicial ignorance of the scope of the doctrine. Mr.Justice Rumpff pointed out that the Court was in actual ignorance of the doctrine and that by the same token the Defence was in actual ignorance. Mr.Justice Bekker said that therefore only the Crown knew what the doctrine was. Mr.Hoexter maintained that it was not necessary to go beyond the definition in the Act itself and that the accused have the relevant sub-section and know what to prepare themselves on.

MERE POSSESSION AN OFFENCE.

In reply to the Defence contention that mere possession of a document advocating communism could not be said to be an act calculated to further the achievements of the objects of communism, Mr.Hoexter said that possession was an "act". He said that such possession was an act that could be calculated to further the achievement of the objects of communism.

CROWN APPLICATION TO AMEND.

At the conclusion of Mr.Hoexter's argument, Mr.O.Pirow, leading counsel for the Crown made application to amend the indictment. He said the object of his amendment was to limit the references to the preparatory examination in adducing facts on which adherence to the conspiracy was alleged to be based. His second proposed amendment related to certain documents either found in possession of the accused, or of certain bodies. Some of these documents had been given numbers at the preparatory examination, but had not been handed in. He proposed that these documents be excised.

When Mr.Pirow had finished reading the references to the deletions and the substitutions he wished to be made, Mr.Maisels rose to say that the proposed amendments did not remove the embarrassment in the indictment.

DEFENCE RETURNS TO ATTACK.

After Mr.Pirow's short address, Mr.Kentridge for the Defence, replied to the contentions advanced by Mr.Hoexter on the alternative charges in the indictment.

Mr.Kentridge said that "advocacy" could mean only one thing and that was that "persuasion" was directed to the minds of other persons. Possession of documents in itself was not the performance of any act. The documents as such were not advocating anything; in any case it was the persons who were on trial for "advocacy" and not the documents.

Mr.Kentridge said that the alternative charges under the Suppression of Communism Act were "beyond surgery", i.e. amendment and should be "quietly buried". Mr.Justice Bekker asked whether there was not still movement from them at this stage. Mr.Kentridge said it was function of the bench to put the alternative charges out of their misery. The alternative charges were fatally defective and should be quashed.

INDICTMENT/.....

INDICTMENT, CONFUSED UNMANAGEABLE MESS.

Mr.H.Nicholas characterised the indictment in the Treason Trial as a confused unmanageable mess. He quoted numerous cases to show that the indictment should have set out separate overt acts or counts against each accused.

OVERT ACT IS OFFENCE.

Mr.Nicholas also dealt with the principles governing liability in cases of Treason and said these were exactly the same as those which obtained in respect of any crimes. He pointed out that the basic difference between the Crown and the Defence was that the Crown said that High Treason was committed when the hostile intent became manifest and that the Defence said that no crime was committed until an overt act - accompanied by a hostile intent - had taken place. Mr.Nicholas referred to numerous Roman and Roman Dutch authorities in support of his contentions.

Mr.Maisels then summed up the argument on behalf of the Defence. He dealt at length on the question of mis-joinder that had taken place in the case. He gave examples to show how persons who are alleged to have joined the conspiracy in 1955 were made liable for acts which were completed before they joined.

Mr.Maisels said the Crown had conceded that it could not claim retrospective liability for any accused for acts committed before he entered the alleged conspiracy. This is contradicted in the present indictment which was for that reason a graphic example of mis-joinder of persons.

Mr.Maisels then gave figures to show what a monumental task the Crown set the accused when it asked them to look at the preparatory examination to find the case against them. He revealed that those documents alone, in which photostatic copies were available, reached a height of 17½ feet when piled up.

On Friday the 22nd August, Mr.Maisels continued his address. He dealt with the powers of the Court in regard to indictments. At the end of his argument he submitted that the Court should quash the indictment. If the application to quash was not successful he would make application for further particulrs on behalf of the accused.

COURT ADJOURNS UNTIL WEDNESDAY, AUGUST 27.

At the end of the 10 days of argument on the Defence motion to quash the indictment the Court adjourned on Friday, 22nd, until Wednesday next, August 27th. The Presiding Judge, Mr.Justice Rumpff, advised that the Court would give its decision on the application on that day even though it might not be ready with the reasons for judgment.

TREASON TRIALS DEFENCE FUND No.4

PRESS SUMMARY Issued 1st September 1958

This is the fourth issue of a regular bulletin giving a week-by-week resumé of the Treason Trial.

Period covered: Wednesday, August 28, 1958.

JUDGEMENT ON THE DEFENCE EXCEPTIONS TO THE INDICTMENT AND APPLICATION TO QUASH

After 12 days of involved legal argument on the Defence application to quash the indictment, the Court ordered the Crown to supply the Defence with a large number of further particulars and quashed one of the two alternative charges under the Suppression of Communism Act.

The Court ordered that the particulars be served on the Defence by September 15, and the court was adjourned to September 29, giving the Defence two weeks to study the further particulars.

The Court's judgement said that should the Crown decide not to furnish the particulars as ordered, or not to amend the main charge or the second alternative charge to avoid any embarrassment the Defence is entitled to renew the exception and the application to quash the indictment.

The possibility of separation of trials during the course of the proceedings could also not be excluded, should it transpire that the accused might suffer prejudice as a result of a joint trial.

The full text of the reasons for the Court judgement is still to be filed, but below is the text of the judgement delivered on August 28:

The Text of the Judgement

Mr.Justice Rumpff said that the main charge of high treason should not be quashed on grounds of alleged misjoinder. A 1956 reported decision supplied authority which permitted a joinder of persons whose participations in an alleged criminal course of conduct had not covered precisely the same period, provided that particulars were supplied informing them of the extent of their alleged participation in the course of conduct, and provided that they suffered no prejudice.

The court found that the accused had not been supplied with such particulars as the substantial justice of the case required.

Further Particulars to be Supplied

The main charge should not be quashed for want of particularity. The application by the Defence for further particulars should be granted, however, in this way.

Each/.....

Each accused must be told in respect of which alleged overt acts committed by a co-accused he is not to be held liable.

As far as the Crown alleges that the objects of the alleged concert and common purpose referred to in three parts of the main charge were the same as the alleged conspiracy in another part of the charge, and as far as the Crown sought to rely on the same facts to prove the alleged conspiracy and the concert and common purpose, the Crown should supply the accused with particulars telling them what it says is the difference between the alleged conspiracy and the concert and common purpose,and in what way the difference affects the liability of each accused.

The Crown must supply particulars to each accused to indicate from which documents, speeches and resolutions - or the parts of these - referred to in the indictment, the existence of the conspiracy is sought to be inferred and the adherence by each accused to the conspiracy is sought to be inferred; and

The Crown must give particulars asked by the Defence in 12 paragraphs of the Defence request for further particulars,dated July 4.

Crown Order.

The exception to the main charge would therefore be dismissed, and the court would make no order on the application to quash the main charge. The application by the Crown to amend the main charge would be granted, and the Crown would be ordered to supply the particulars referred to earlier.

First Alternative Charge Quashed

About the applications on the alternative charges, the Judge said that the first alternative charge would be quashed.

No order would be made on the Defence application for the quashing of the second alternative charge,but the Crown would be directed to supply the following particulars:-

The Crown must indicate whether, where it said "all acts taken together" in giving particulars of the charge,it referred to the totality of the acts of an individual accused,or the totality of the acts of all the accused;

If it was referring to the totality of the acts of each individual accused,it must tell each accused in respect of which act performed by a co-accused he is not to be held liable;

Full Information on the Doctrines

The Crown must give full information of the doctrine or doctrines set out in the Suppression of Communism Act on which it relies for securing a conviction against each of the accused; and

The Crown must tell each accused in what manner the performance of his act was calculated to further the achievement of the doctrine or doctrines relied upon.

Separation of Trials

Mr.Justice Rumpff said that the Court wished to observe that it was not at present within the Court's powers to assess whether prejudice might be suffered by any accused solely through a joint trial.

"If during the course of the trial it should transpire that such would be the case, the possibility of a separation of trials is, of course, not excluded".

TREASON TRIALS DEFENCE FUND

PRESS SUMMARY

Issued: December, 1958.

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

The publication of this bulletin has been delayed until details of the Crown's fresh indictment, which are given on p. 5 became available.

Period covered: September 29; October 2; October 13; November 22.

TRIAL RESUMED WITH AMENDED INDICTMENT

When the trial resumed in Pretoria on September 29, the Crown made formal application for the withdrawal of the second alternative charge of contravening the provisions of the Suppression of Communism Act. The first alternative charge, also relating to this Act, had been earlier quashed by the Court, and the Crown withdrew the second charge in response to the Court's direction that it supply the Defence with more particulars.

CROWN TO RELY ON CONSPIRACY

Mr.Oswald Pirow, Q.C., leading for the Crown, then announced that the Crown would rely cnly on conspiracy in the sole remaining charge of treason, and not on the alternative of "concert and common purpose." "The Crown", Mr.Pirow said, "stands or falls by a conspiracy. If the Crown fails to prove a conspiracy then all the accused go free."

Their Lordships allowed Mr.Pirow's applications to withdraw the second alternative charge and to exer cise the sections of the indictment relating to common purpose.

Mr.Justice Rumpff, presiding, and Mr.Justice Bekker then questioned Mr.Pirow on the implications of the latter change.

Mr.Justice Rumpff asked: "What sort of case is this that the Crown can say: We have proved all the elements of a criminal case but we do not ask for a conviction because there is an element, by which we have bound ourselves, which we have not proved?"

Mr.Justice Bekker asked if the Attorney-General was permitted to follow such a course.

Mr.Pirow said it fell within the Attorney-General's discretion. There were certain overt acts which he considered flowed from a conspiracy and he had chosen to indict only on overt acts which he felt he could prove as part of the conspiracy.

The matter rested there for the time being, but as to be raised again later.

DEFENCE/.....

DEFENCE EXCEPTIONS TO AMENDED INDICTMENT

The Defence signified that it would except to the charge of high treason and alternatively that it would apply for it to be quashed on the following six grounds:-

1. (a) That the Crown has failed to furnish a proper and sufficient reply to the request for further and better particulars; and that

   (b) The Crown has failed to comply with part of the order of the Court made on August 27.

2. The main charge is defective and bad in law and is calculated to prejudice or embarrass the accused in that one or all of the accused are misjoined.

3. The main charge discloses no offence cognizable by the Court; alternatively, the acts set out in certain parts of the main charge are incapable in law of constituting overt treasonable acts.

   Thus the main charge is prejudicial and embarrassing to the accused.

4. The Crown has failed to furnish the particulars asked for on September 3.

5. The indictment is bad in law and discloses no offence; alternatively, it is prejudicial because the allegations it contains in a "summary of facts", read with certain schedules to the further particulars do not support the allegations of a conspiracy.

6. The accused are prejudiced in that "one or more of all the speeches, resolutions and documents enumerated in certain schedules of the further particulars are incapable of bearing the meanings assigned to them in the schedules."

FAILURE TO ALLEGE VIOLENCE

Launching the Defence attack, which continued until October 2, Mr.H.C. Nicholas argued on September 29, that many of the acts alleged by the Crown were not capable of being treasonable acts. Violence was an essential attribute of any treasonable act. A conspiracy to overthrow the State could could not be treasonable if the means agreed upon involved the use of force.

The Crown had alleged numerous alternative conspiracies, many of which contained no element of force. For instance, a conspiracy "to set up a communist state or some other state to replace the existing state" was not treasonable if peaceful means were envisaged.

Furthermore, the Crown had charged numerous speeches and writings as overt acts of treason. Treason could not be committed by means of words, unless the words amounted to an incitement or agreement to use force. The great majority of the speeches and writings set out in the indictment were simply expressions of political opinions and beliefs.

POSSESSION OF DOCUMENTS

Mr.S. Kentridge then attacked those parts of the indictment which charged possession of documents as a species of treasonable act. He submitted that there was no precedent in the Roman Dutch or English law for such a charge, but that it was contrary to the elementary principle that possession is not an act at all, but merely a static situation.

PARTICULARS

Mr.A. Fischer, Q.C., argued for two full days that the Crown had not presented a proper indictment, but had thrown "the whole archives" at the accused. The Crown had not carried out the Court's to supply particulars properly.

There/.....

There had not been a genuine attempt to carry out the Court's order. There had been no attempt to remove documents which are ambiguous. An accused could not tell whether the Crown was relying on mere possession of a document, or its contents. He would have to look at thousands of documents.

The Crown had been instructed to indicate what passages it relied upon and the meaning it attached to passages. But all it had done was to hand back to the accused the original indictment with a new indexing system.

Lengthy documents were simply labelled as probative of "incitement to violence" or some similar category and the defence was required to read through pages and pages in the attempt to puzzle out which passages the Crown considered could be so interpreted. Other lengthy documents were simply listed as being proof of existence of the conspiracy and the defence were left completely in the dark about how they could be said to prove this.

DEFENCE ATTITUDE TO CROWN'S INTENDED RELIANCE ON CONSPIRACY

Mr.A.I. Maisels, Q.C., told the Court the defence could not rely on Mr.Pirow's statement earlier in the week that if the Crown failed to prove a conspiracy the accused would go free. In spite of this undertaking the indictment provided for the conviction of the accused as individuals, if the acts they committed were treasonable acts. The Defence had to meet the charge as set out in the indictment and not in the way Mr.Pirow chose to interpret it. If Mr.Pirow stood by his statement that the Crown would fail entirely unless it proved conspiracy the indictment could not stand and had to be put in a completely different form.

The accused were embarrassed by the conflict between the indictment and Mr.Pirow's announcement.

The Crown had been invited to state its case unequivocally but had refused. The time had come for the Crown to be put in its place.

Mr.Pirow's statement revealed that the Crown had charged numerous overt acts merely in order to evade the rule that two witnesses had to be produced if only one overt act was charged. If the Crown adopted this ruse the Court should quash the indictment and leave the Crown to reframe it, preparing it as it should have been done originally, before the accused were arrested.

MISJOINDER.

Mr.Maisels dealt further with the question of misjoinder, pointing out that as the charge now stood, there were numerous acts for which only one accused was being held liable. The other accused should not be joined in these charges.

CROWN REQUEST FOR ADJOURNMENT GRANTED

At the end of the Defence argument on October 2, the Crown applied for an adjournment until the 13th, to prepare its reply. This was opposed by the Defence, but granted by the Court.

DETAILS/.....

DETAILS OF FURTHER CROWN ADMENDMENTS

During the adjournment, the Crown informed the Defence that a further very drastic amendment to the indictment would be sought. The main features of the proposed amendments were:

(a) the elimination of the words "and/or" at a number of points, thus reducing the numerous alternative conspiracies to one

(b) the complete elimination of documents as overt acts of treason.

(c) the abandonment of all but 20 of the speeches which had been charged as overt acts

(d) the introduction of a new allegation to the effect that the doctrine of communism necessarily involves the use of violence.

MR. PIROW MOVES NEW AMENDMENT

When the trial resumed on October 13, Mr.O. Pirow, Q.C., leader of the Crown team, formally moved these amendments. The Crown, he said, was anxious to proceed with the trial proper as soon as possible. The points taken by the Defence were an "afterthought" and had in effect prevented the plea from being taken. He was not suggesting that Mr.Maisels had manoeuvred to put off the pleading but this had been the effect. The Crown was so anxious to have the case dealt with and disposed of that if the amendment to the indictment were not acceptable the Crown would withdraw the indictment and immediately re-indict all the accused.

Mr.Justice Rumpff asked whether the amendments did not constitute a concession to the validity of the Defence arguments.

Mr.Pirow said they did not. The Crown wanted to eliminate the arguments without conceding their correctness.

Asked by Mr.Justice Rumpff if the amendments did not remove nine-tenths of the Crown case by removing most of the overt acts, Mr.Pirow said that was so but it was a concession, not an admission, and the object was to make it unnecessary for the Crown to deal with the arguments of the Defence. He repeated that if the Defence persuaded the Court not to allow an amendment to the indictment the Crown would withdraw it and re-indict.

The amendments to the indictment would make a great deal of the argument for the quashing of the indictment redundant. Mr.Pirow asked that references to Marxist-Leninism to be followed by the words "and in which doctrine there is inherent the use of violence to set up any form of Communist state." The Crown would argue that the preaching of communism involved the violent subversion of the State.

COMMENT FROM THE BENCH

Mr.Justice Rumpff interjected to say that it appeared that the Attorney-General had not fully considered the nature of treason in the absence of a state of war or rebellion. This amendment asked for by the Crown was at comparatively short notice. It would seem the Attorney General had not given full consideration to the implications of a treason charge in peace time.

Mr.Pirow said not only the Attorney General but a legal team of 8 had worked extensively on the case and had fully considered the question.

The Crown asked the Court for a decision on the amended indictment before the motion to quash was considered.

DEFENCE/.....

DEFENCE OBJECTION TO THE NEW AMENDMENTS

Mr.Maisels for the Defence said the Defence was not concerned whether the Crown was conceding the Defence case or making a virtue out of necessity. The Defence was also not concerned with the threat to re-issue an indictment if the amendments were not granted. The Defence knew the powers of the Attorney-General.

MISJOINDER ARGUMENT AGAIN

The Defence objection to the amendment being granted was that a misjoinder of the accused would result. The proposed amended schedule listed 16 meetings at which 20 speeches were made, 8 of them by non-accused. In all 51 accused are alleged to have participated in the commission of overt acts, and a further 19 to have attended the Congress of the People. This left 20 accused against whom no overt act other than joining the alleged conspiracy was alleged.

Mr.Maisels then argued that the indictment did not disclose that the acts alleged against the accused constituted a course of conduct which would justify the joining of all 91 accused in the same trial. The acts alleged took place over a period of 3 years with an interval as long as 7 months between some of the speeches which were widely distributed geographically. If the Crown wanted to allege a course of conduct it was not entitled to make a selection of acts and call those the course of conduct.

This was a clear case of misjoinder and the amended indictment was not good in law. The Court should quash the indictment.

Mr.Trengove then commenced the Crown argument on the Defence attacks on the indictment. He had barely commenced when Mr.Pirow rose to announce that the indictment was being withdrawn by the Attorney-General.

Mr.Justice Rumpff then adjourned the Court.

THE NEW INDICTMENT

On the 14th November an announcement in the Government Gazette gave notice that the 91 men and women accused in the treason case will be re-tried in two separate groups. The first group of 31 will be put on trial in Pretoria on the 19th January. The trial of the second group of 61 will begin in Pretoria on 20th April. Both groups will be tried by Mr.Justice Rumpff, Mr.Justice Kennedy and Mr. Justice Bekker, the three judges who constituted the first Special Court for the case.

The appointment of the Court was announced in two separate Notices, each saying that the Court is constituted by the Governor-General 'with jurisdiction to try without a jury any charge which may be made in the indictment to be lodged by the Attorney-General in the Transvaal in respect of the accused persons mentioned in the schedule who were committed for trial by the Magistrate's Court in Johannesburg on 30th January 1958 and whom the Attorney-General had decided to indict on a charge of treason.'

On the 22nd of November the new indictment was served through their lawyers on the 30 accused in the first group.

SUMMARY OF THE NEW INDICTMENT by A LAWYER

The general scheme of the new indictment is much the same as before. It alleges a conspiracy between the accused and goes on to say that speeches were made, documents published and the Congress of the People convened "in pursuance of the conspiracy."

There are, however, a number of important differences. The number of the accused has, of course, been reduced from 91 to 30. The number of speeches and documents quoted has been even more drastically reduced. In the old indictment the total of speeches and documents came to about one thousand. The present total is just over fifty. All the speeches quoted are now taken from the years 1954 - 6, whereas in the old indictment they began in October 1952.

More important than these statistical differences is the greatly increased emphasis placed by the Crown on the element of violence. For example, in the old indictment it was alleged that a special corps of Freedom Volunteers was recruited and organised. To this is now added the allegation that the Volunteers were to be "prepared for acts of violence." To the allegation of advocating the Marxist-Leninist doctrine are added the words "in which doctrine there is inherent the use of violence to establish a communist state." In the section of the indictment dealing with the Congress of the People and the Freedom Charter, it is now alleged that the achievement of the demands in the Charter "would necessarily involve the overthrow of the State by violence."

It would therefore seem that the Crown has accepted the contention that violence is an essential element in the crime of treason, and this will apparently be the central question in the forthcoming trial.

Though the advocacy of communist doctrine is one of the points mentioned in the treason charge, there is no longer any alternative charge in terms of the Suppression of Communism Act.

DEFENCE TEAM.

The Defence Team will again be led by Mr. I. A. Maisels Q.C., who will be supported by Mr. A. Fischer Q.C., Mr. H.C. Nicholas, Mr. R.S. Welsh, Mr. S. Kentridge, Mr. A. P. O'Dowd and Mr. C. Plewman, all instructed by Mr. Michael Parkington, of Messrs. A. Livingstone and Co., of Johannesburg.

PROSECUTION

The Crown Team is expected to consist of Mr. O. Pirow, Q.C., Mr. Jacob de Vos Q.C., Mr. J. Trengrove, Mr. G. Hoexster, Mr. S.E. Terblanche, Mr. J.C. van Niekerk, Mr. J. H. Liebenberg and Mr. C. van der Walt.

VENUE

The trial will again be held in the converted Old Synagogue in Pretoria.

TREASON TRIALS DEFENCE FUND

No. 6

PRESS SUMMARY

Issued: 2 February 1959

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

Period covered: 19 and 20 January 1959

APPLICATION FOR CHANGE OF VENUE

When the Court sat on 19 January, to begin the trial of the first batch of 30 of the accused, an application was made by the Defence for the trial to be transferred from Pretoria to Johannesburg. Argument continued on 20th.

The case did not in fact begin until afternoon, an adjournment being ordered as only 9 of the 30 people indicted were present when the Court opened. The Attorney-General, Mr. W. J. McKenzie Q.C., appearing for the first time, explained that there had been a breakdown in the Government's transport arrangements to bring the accused from Johannesburg. "Nevertheless," he said, "the accused should have been here at 9.45...When they realized that the bus had not arrived to pick them up (at 8 a.m.), they should have made their own arrangements. It is not the duty of the prosecution to arrange transport for the accused. This is a mere act of grace on the part of the Department of Justice."

Hardship for the Accused

The grounds of the application submitted by Mr. I. Maisels Q.C., were set out in an affidavit by Mrs. Helen Joseph, one of the accused. Firstly, the normal rule is to have a trial at the place where the crime was committed. In the present case the acts charged were committed at numerous places, but the great majority at Johannesburg and none at Pretoria.

Secondly, it was argued that the convenience of the accused ought to be considered. Twenty-one of the present accused live permanently in Johannesburg and the remaining nine (who come from the Eastern Cape and Natal) have found accommodation in Johannesburg. None of the accused was ordinarily resident in Pretoria. Mr. Maisels said that if the application were not granted there would be a likelihood of the accused not receiving a fair trial.

> "By that I mean", he said, "a possibility of the accused not being properly represented. I do not suggest that they would appear before a partial Court. But with having to travel six hours each day to and from this Court, it would make it almost impossible for them to follow what is going on or to give proper instructions to their defence attorneys."

It sometimes happened that some of the accused missed the bus, as the record of the previous trial showed. Discussions by counsel with the accused would be difficult. They would have to consult on the day's evidence and there would be no special bus to take them home perhaps as late as 11 p.m. These difficulties, however, did not face the Crown. The preparatory examination was held in Johannesburg, the bulk of the witnesses, apparently, came from Johannesburg or the Rand, and Crown facilities in Johannesburg were as adequate as in Pretoria.

Thirdly, Mr. Maisels submitted, though he agreed that the Drill Hall was not suitable for a Special Court trial, that there were two courts in the Johannesburg Supreme Court fully large enough to accommodate the 30 accused who were now on trial, together with counsel and public, without an extra penny having to be spent.

Mr. Maisels also quoted authorities to show that the Special Court, as a Superior Court, had jurisdiction to change the venue.

CROWN OPPOSES THE APPLICATION

In reply, the Crown filed several affidavits. The grounds of the Crown's opposition (as they appeared from the affidavits and from argument by Mr. McKenzie and Mr. O. Pirow in Court) were:

i. That the Court had no powers to change the place of its hearings, which had been fixed by the Governor-General. The power to fix a venue for a trial, because of the political aspects of crimes such as treason, had been deliberately taken out of the hands of the Attorney- General.

ii. That there was a danger of disturbances if the trial were to be held in Johannesburg.

"These big cities are nothing short of dynamite. We are not dealing with the type of people you get at Hyde Park Corner," argued Mr. Pirow, for the Crown.

iii. That it would be difficult to find a suitable place for the trial in Johannesburg.

APPLICATION DISMISSED

On 20 January Mr. Justice Rumpff, the presiding judge, said that the Defence application was refused and the Court's reasons would be given at a later date.

AMENDMENTS

Mr. Pirow then applied for some amendments to certain wording in the indictment.

POSTPONEMENT

After the indictment had been served in November, the Defence had asked for further particulars, which were received in mid-January. The Defence now applied for a postponement in order to study the further particulars supplied by the Crown, and to prepare its argument on an exception to the indictment and a motion to quash the indictment.

"It is most unfortunate that the impression is created that this case cannot get started," said Mr. Justice Rumpff, appealing for co-operation between the Crown and Defence.

The postponement was granted and the attack on the validity of the new indictment will begin on Monday, 2nd February.

THE ACCUSED (First Trial)

The 30 accused are:-

Faried Adams, Helen Joseph, A.M. Kathrada, Leon Levy, Stanley Lollan, Nelson Mandela, Leslie massina, Philemon mathole, Patrick Molaoa, Joseph Molefi, Moosa Moolla, E.P. Moretsele, Phineas None, Lilian Ngoyi, John N. Nkadimeng, P.P.Duma Nokwe, Robert Resha, Peter Selepe, Walter Sisulu, Gert Sibande, Simon Tyiki (Johannesburg). C. Mayekiso, S. Mkalipi, W. Mkwayi, B. Ndimba, J. Nkampeni, F. Nteangani, T. Tshume, T.E. Tshunungwa (Eastern Province) W.Z. Conco (Natal)

TREASON TRIAL TIME TABLE

December 6 and 13, 1956.	156 South Africans of all races are arrested in Union-wide dawn raids, on allegations of high treason. No bail allowed.
December 19	The accused are brought to the Fort, Johannesburg and from there to a specially constituted court in the Drill Hall for the opening of the preparatory examination.
December 20	All the accused are released on bail.
December 21	The Court adjourns.
January 19, 1957	The preparatory examination resumes and continues with some brief adjournments, to
September 11	The Court adjourns.
December 17	The charges against 61 of the accused are dropped.
January 13, 1958	The preparatory examination resumes and continues till
January 30	95 accused are committed for trial.
February 2	The charges are withdrawn against a further 3 accused.
July 3	The indictment is served on the accused. It alleges high treason, alternatively contraventions of the Suppression of Communism Act.
April 1	The trial opens in Pretoria before a Special Court of three judges. The Defence applies for the recusal of Mr.Justice Rumpff and Mr.Justice Ludorf. One more accused is discharged, due to his serious illness.
August 4	Mr.Justice Ludorf recuses himself.
August 11	The Special Court resumes with Mr.Justice Bekker on the Bench in place of Mr.Justice Ludorf. The Defence argues its notice of exception to the indictment. Argument lasts from August 11 to 15, and then from August 18 to 22.
August 27	The Court judgment orders the quashing of the first alternative charge under the Suppression of Communism Act, and the supply of further particulars to the Defence. An adjournment of one month is ordered to enable the Crown to conform with the judgement.
September 29	The Crown serves an amended indictment that deletes the second alternative charge. The Defence lodges new objections to the indictment and the arguments lasts to
October 2	The Court is adjourned to October 13 after an application by the Crown for time to prepare its arguments in reply to the Defence application for the quashing of the indictment.
October 13	The Crown (without replying to the Defence arguments) applies for the further amendment of the indictment, but faced with further Defence objections to these amendments, the indictment is withdrawn.

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TREASON TRIALS DEFENCE FUND

No. 8

PRESS SUMMARY

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

Period covered: February 6,
February 9 - 12.

COURT GIVES REASON FOR REFUSAL OF JOHANNESBURG VENUE

On February 6 the three judges of the Special Court gave in writing their reasons for their previously announced refusal to move the Treason Trial from Pretoria to Johannesburg. They had come to the conclusion, they now explained, that even if this Court were entitled to order the removal of the trial to Johannesburg it should not do so.

They were not concerned with the accommodation of the Court but felt that if the case were to be heard in Johannesburg there would be large crowds not only at the commencement of the trial, but also when important Crown witnesses were put under cross examination and when the accused gave evidence. Such a congregation of large numbers of people, their lordships felt, would be not only a possibility but a likelihood, in Johannesburg.

A concourse of people, even if there were no active demonstrations, would place under strain everybody concerned with the trial and might also call for the intervention of the police. Such intervention might cause disturbance and unrest.

"We realise", their Lordships added, "that although the State has supplied transport free of charge, the accused will suffer considerable inconvenience." It seemed to them, however, that in the circumstances the transfer of the trial to Johannesburg would not be conducive to the proper administration of justice. As far as consultations were concerned the Court would always afford the accused reasonable opportunity to confer with their Counsel or with the alleged co-conspirators.

DEFENCE REPLIES TO COURT'S QUESTIONS

The Ambit of Treason.

Replying on February 9 to a question by the Judge President at the Court's last adjournment, Mr.H.C. Nicholas submitted that the soliciting of assistance at a meeting by a party to a treasonable conspiracy would not be treason, even if the announcement had been made that there would be an attempt to overthrow the State by violence. It would, however, be an incitement to conspire, a separate act, and Mr.Nicholas argued that incitement to conspire was beyond the ambit of what is laid down as High Treason. Certain acts have been laid down by law as punishable, but a separate act must be considered as an act of violence before it could be established as treason.

Lack of Authorities

Mr.Nicholas stated, in reply to further questions from Mr. Justice Rumpff, that no authorities could be found for establishing a request for assistance as a treasonable act and argued that the very fact that no authority could be found was the most powerful argument against its being a treasonable act. The Crown must draw the line somewhere and this must be where no authority could be found.

The Proving of Violence

Mr.Justice Rumpff then put to the Defence that the Crown allegation was that the accused entered into an agreement to overthrow the State by violence; other agreements following concerning the means that were to be used. The Crown claimed that it need not show more than the main agreement to use violence, and need not prove any form of violence. Mr.Maisels had submitted that the documents, speeches and events were innocent in the primary sense and that therefore the Crown must go further and say why it relied on them. "Does this argument mean that on the facts in the indictment and the further particulars, the facts do not disclose an agreement to violence?", asked Mr.Justice Rumpff.

Replying, Mr.Maisels submitted that the Crown sought to give a blanket answer to the facts from which it inferred both the main and the ancillary agreements: "It is vital for the defence to know from where or what the Crown infers violence. The task cannot be evaded even if it can be postponed, and in fairness to the accused, it should not be postponed." If apparently irrelevant facts were to be held relevant, then the special circumstances should be pleaded to establish the relevance.

FURTHER AMENDMENT GRANTED

Mr.O. Pirow, Q.C., applied for an amendment to the further particulars to the indictment relating to the date on which the accused were alleged to have joined the conspiracy. Although the indictment itself specified the period October 1952 to December 1956, in the further particulars the Crown had indicated that the alleged conspiracy might have been established before October 1952. The amendment to the particulars would restrict the period to that alleged in the indictment.

Mr.Maisels objected to the proposed amendment on the grounds that this appeared to indicate a change of facts and suggested that it might be intended as a safeguard against the exception taken by the Defence to the indictment. If the facts were different, the Crown should explain that difference, for the effect of the amendment appeared to be that the Crown did not in fact know when the accused had joined the conspiracy.

Mr.Pirow protested that it was most unusual for the Defence to query the motives of the Crown. The Crown's object was to ensure that even if people had joined the conspiracy before October 1952, they would be covered.

In granting the amendment Mr.Justice Rumpff assured the Defence that if it became apparent at a later stage that the accused were prejudiced by this amendment, a further submission could be made.

Crown's View of Court's Indictment Duties

Mr.Pirow then addressed the Court on the duty of the Court in relation to the indictment. He submitted that if in S.A. law the indictment were held to be defective and could be cured by amendment, the Court was bound to make an order that the indictment should be amended.

"The Court has the power to quash, to order an amendment or to refuse to make an order," and the Crown submitted that in this case the Court ought to refuse to make any order to amend.

The Court would, of course, order any amendment as it thought fit. In reply to a question by Mr.Justice Kennedy, Mr.Pirow denied that the Court could order any part of the indictment to be struck out, but asserted that the Court could order the Crown to do so, and suggested that there was a clear duty on the Court to assist in formulating the indictment, provided that both sides were given the opportunity to express their views.

Soliciting of Assistance for Conspiracy

Mr.Pirow then addressed the Court on the attitude of the Crown to the soliciting of assistance for a conspiracy by a speaker at a meeting. The Crown held that such a meeting would be held, not for discussion but for the furtherance of a conspiracy already completed, and that the purpose of addressing the crowd would be to enlist their support for the conspiracy. The state of mind of the crowd was of no importance,all that mattered was the state of mind of the speaker, and if the speech was i in furtherance of treason, then it must be an overt act and therefore a treasonable act.

CROWN REPLY TO QUASHING APPLICATION

Passing to the Defence submission for the quashing of the indictment, Mr.Pirow argued that in their application for the quashing of the first indictment the Defence had neither requested the Crown to supply facts relating to the conspiracy or the adherence to the conspiracy, nor had they done so for the second indictment, but that the Defence were now pressing for the particulars relating to violence. It was then apparently perfectly clear that the facts supported the conspiracy to overthrow the government. But how could the government be overthrown without violence? The Crown submitted that the facts could not be split up; that the facts had been given for the establishing of the conspiracy and thus also for the establishing of violence.

Role of Apparently Irrelevant Documents

In reply to questions relating to apparently irrelevant documents (including a street map of Bucharest), Mr.Pirow explained that the Crown had supplied a list of documents found in the possession of the accused on which it relied for associations, not exclusively on contents. The accused were not entitled to know how the facts would be used; if the documents were innocent the accused could supply the explanation.

Mr.Pirow disagreed with the suggestion that the number of documents and speeches were excessive; of the 5,000 documents relied on, at least 2,000 were duplications. It was unavoidable that the Defence must read and study all the documents - including the parts no longer relied on by the Crown. The use of the documents and facts might well vary at the trial and the Crown could not bind itself to any particular use of any particular document or speech.

Background of Inherently Violent Creed.

The Crown had given all the facts but the Defence now wanted an explanation of the facts; a construction of the evidence. Mr.Pirow illustrated for the Court how the documents and speeches could not be taken in isolation but must be related to the background of the conspiracy. The demands of the Freedo[illegible]rpreted on a multi-racial Socialist state could be obtained by peaceful means, but in the speeches and documents there was no suggestion of constitutional methods, in fact just the opposite. The Crown alleged that shortly after the outlawing of the Communist Party, former leading Communists were to be found in high places in some of the organisations listed in the indictment; inherent in the Communist doctrine was the resort to violence. The Crown alleged also that the so-called Liberation Movement in South Africa was linked to a world-wide movement of violence. The campaigns against passes and Bantu Education, the bus boycott - all these were not isolated from the campaign to overthrow the government. "The accused say so!", said Mr.Pirow, "The references in speeches to 'fighting ... blood ... death' - are these mere rhetoric? No, not as far as the non-European accused are concerned. All this is part and parcel of the background to the conspiracy and the Crown cannot give details .... Mr.Maisels asks what the indictment means. The Crown will not interpret it. The Court may. The Defence can't sit and wait for the Crown to put the interpretation and then say 'This is not so!'."

Invalid Defence 'Concertina' Tactic

Continuing the Crown argument Mr.C. Hoexter submitted that the Defence had tried to concertina the three related but distinct elements of treason:

The hostile intent,
The overt act,
The ultimate violence against the State,

and had called upon the Crown to produce acts "which ooze blood and reek of gunfire in peacetime!" But the real test of the indictment was whether it alleged a determinable treasonable purpose and disclosed overt acts in pursuance of the treasonable design; and whether those overt acts were reasonably referrable.

New Class of Treason Urged

Mr.Hoexter then argued that a fourth species of treason should be added to the three classes distinguished by Mr.Nicholas, the stirring up of hostility within the State by attempts to oppose and to resist the authority of the government. Any attempt to change the Government by extra-Parliamentary methods must lead ultimately to violence, but it was not essential that each overt act of treason must in itself be forceful.

Mr.Nicholas had claimed that the speeches were still in the realm of discussion and could only become treasonable when they constituted incitement to action and had quoted the case of Labuschagne in support of his contention, but Mr.Hoexter claimed that careful analysis of this case did not support the Defence, because in that case the three accused had not been the prime movers of the conspiracy.

Intention of Words rather than Effect

Mr.Hoexter disagreed with Mr.Nicholas' argument on the importance of the effect of words on the audience and argued that if "the speech were in furtherance of the conspiracy the contents would not matter in principle; the Court must look at the intent of the perpetrator of the speech and disregard the effect. Mr.Justice Bekker commented that if Mr.Hoexter were wrong, the Crown would be in difficulty, but if he were right, the speech itself need not be directly or indirectly related to the overthrow of the State. The Crown would not need to plead how and why the speeches were in furtherance of the conspiracy; the Crown averrment would suffice.

To Mr.Justice Rumpff's suggestion that the Crown would have to indicate some innuendo for the accused to know what they must prepare for, Mr.Hoexter replied with a vehement "No!" and continued that it was an essential part of the Crown case that if words meant nothing to the person incited, there could be no incitement, but the Crown disagreed with this contention and submitted that the only test would be that the speeches must be referrable to treasonable conspiracy and claimed that this had been established by the Crown. Mr.Justice Bekker objected that this approach appeared to be in conflict with the submission that the contents of the speeches did not matter.

Referability Established as Criterion

Mr.Hoexter replied that the test should be whether the speech was referrable, i.e. "intended by the accused thereby to further or carry into effect the means of the conspiracy", and illustrated his point with several speeches from Schedule C of the indictment, pointing to one speech in particular as being "emotional, demogagic, impulsive." Mr.Nicholas had claimed that this speech did not come within the principles necessary for an overt act of treason, but the Crown would give it high marks! It was certainly not the language of constitutionalism, but of revolution.

After Mr.Hoexter had given several illustrations, Mr.Justice Rumpff

assured the Crown that their broad submission of the referability of the speeches had been accepted and suggested that there was no necessity to continue with these examples.

How "In Our Lifetime" is Equated with Five Years

Mr. Jacob de Vos, Q.C., then addressed the Court for the first time in the trial, dealing with the submission by the Defence that the failure by the Crown to furnish the resolution adopting the Freedom Charter constituted a formal defect in the indictment. Mr.de Vos argued that this had not been a material defect but had now been complied with. Passing to the phrase "in our lifetime" appearing in Part E of the indictment, Mr.de Vos claimed that it was an objective statement by the Crown of an inference of a "tacit term of Agreement" as to the fulfillment of the demands of the Freedom Charter.

Mr.Justice Bekker interjected "The preamble of the Freedom Charter doesn't say 'In our lifetime'. Where does it come from? Mr.Justice Rumpff commented "It must be either an express or a tacit term indicating the time fixed by the parties to the agreement. If it is a tacit term, it requires details." Mr.de Vos replied that it referred to the intention of the accused voting in favour of the resolution to work together to achieve the demands of the Freedom Charter "in their lifetime" and submitted that further particulars were not necessary. The accused had used the phrase "in their lifetime" to indicate that their objective would be achieved "within a certain period", i.e. five years.

Mr.Justice Bekker: "The Freedom Charter does not use 'in their lifetime' are the accused not entitled to know how this phrase arrived?"

Mr.de Vos repeated "In our lifetime is an expression used by the accused and accepted by the Crown to mean 5 years".

Mr.Justice Kennedy: "The Defence asks: Where does the Crown get it from?"

Mr.de Vos: "The accused said so on a number of occasions!"

Mr.Justice Bekker: "When?" "Why give years?"

Mr.de Vos remained silent for a few moments and then said, after being prompted by his leader, Mr.Pirow: "These particulars will be available to the Defence tomorrow".

Mr.de Vos then proceeded with the submission that Part E of the indictment (dealing with the Freedom Charter and the achievement of the demands quoted) should be judged according to the criterion put forward by Mr.Hoexter. "Is treason reasonably referable?" and argued that in relation to the conspiracy and the main treasonable intent, and more particularly to the alleged active preparation for the violent overthrow of the State, there could be no doubt that this portion of the indictment was clearly referable. In reply to a suggestion by Mr.Justice Kennedy that although the demands of the Freedom Charter were radical, they might not be treasonable, Mr.de Vos replied that these demands could not be achieved in the lifetime of the accused unless by force.

The "National Liberation Movement" and Alleged International Conspiracy.

Dealing with the complaint by the Defence that the Crown's reply to the request for specific information concerning an alleged international liberatory movement and the "National Liberation Movement" existing in South Africa was inadequate, Mr.de Vos referred to the evidence of Prof.Murray in the record of the preparatory examination and in reply to the complaint that the references to Marxist Leninism were vague and embarrassing, he referred the Defence both to Professor Murray's evidence and to the statement by Professor Bochensky, already given to the Defence.

"In our Lifetime" Schedule Supplied by Crown.

At the commencement of the proceedings on the following day, Mr.Pirow informed the Court that particulars relating to the phrase "in our lifetime" and to the alleged period of five years had been furnished in the form of a schedule of documents and speeches from where the inference had been drawn.

Mr.de Vos continued his submission of the previous day by proposing to quote from speeches and documents to illustrate the type of material before the Court. Mr.Maisels queried this procedure on the ground that if these particulars had not been supplied or requested, the Crown could not at this stage bring particulars to the Court. Mr.Justice Rumpff said he had understood that these illustrations would relate to Schedule C only, but Mr.de Vos said this would not be so, as Schedule C consisted only of overt acts, and not of facts indicating relevance. Mr.de Vos did not proceed further.

Mr.J.J. Trengove continued the argument for the Crown, first drawing the attention of the Court to its powers to strike out portions of the indictment which may be objectionable and then submitting that to strike out any material portion would not be an amendment if what remained would no longer be an indictment.

Turning to the Defence argument that the accused were prejudiced by the allegation of joining the conspiracy and participating, Mr. Trengove submitted that this embarrassment had been resolved by the latest Crown amendment limiting the period of joining from 1952 to 1956. He then referred to the complaint that the Crown had failed adequately to furnish particulars for certain parts of the indictment. Mr.Trengove proposed to argue that the Crown's reply was adequate and supplied the Defence with all the particulars required for pleading and to prepare for trial. The Defence had argued no violence was disclosed in the indictment, to which the Crown's reply was that the violence was intended against the State, and the answers required by the Defence could be found by analysis of the information supplied by the Crown. It seemed that the Defence wanted to know how the mind of the Crown works.

Means and Ends

During a discussion arising from questions by their Lordships on the differentiation between the means and the end, Mr.Trengove disagreed that it was essential that the means used should be violent, submitting that treason was in itself the overthrowing of the State by violence, and thehallmark of treason was the hostile intent.

Referring to Mr.Maisels' objection to the Crown reply that it was "not required to furnish the particulars in the form in which the request was made", Mr.Trengove submitted that having regard to the summary of facts furnished to the Defence the accused had been adequately informed of what the Crown relied on. There was no obligation on the Crown to show that any single fact taken in isolation was the fact relied on. Every portion of the summary of facts was relevant. Mr.Trengove then illustrated his argument by reference to the "Liberation Movement" and the World Peace Council, claiming that "the accused are not lost when they peruse the documents and read them in relation to the Liberation Movement and the World Peace Council." Referring to the large number of documents alleged to be possessed by the accused, Mr.Trengove explained that the Crown relied on these facts to show the association with international organisations such as the World Peace Council, e.g. the documents entitled "The Peace Movement and the Congress of the People".

Mr.Trengove then referred to the Crown's submission that the organisations have been infiltrated by former members of the Communist Party, arguing that it was not impossible that such people had retained their communist tendencies since they had been forced to abandon the Communist Party through legislation, and had not done so through conviction. "Once a Communist always a Communist", he said.

In reply to Mr.Maisels' allegation that the Crown had slipped in reference to the Defiance Campaign on a "side wind", Mr.Trengove argued the relevance of this fact on the ground that the Defiance Campaign was part and parcel of the liberation movement, quoting the close relationship of the African National Congress and the S.A. Indian Congress right up to and after the date when the conspiracy was formed, and the National Planning Council which had been set up to direct the National Liberation movement supported mass action.

It was no part of the Crown procedure to analyse all the evidence to show how the Crown's mind works but if Mr.Maisels felt it was improper to introduce the Defiance Campaign on a "side wind" then the Crown would show the relevance and invited their lordships to study the reference to this campaign in the summary of facts. Mr.Justice Rumpff objected to this, saying that the judges had enough documents already to study!

Objects and Policies

Dealing with the request for the objects and policiesof the organisations, Mr.Trengove argued that these were clearly available to the accused in the summary of facts, where the objects of the organisations were set out as far as they were relevant. The Crown inferred the policy from statements made by responsible A.N.C. speakers at A.N.C. meetings.

When Mr.Trengove proposed to submit to the Court examples from speeches other than that of Dr.Conco quoted by the Defence, Mr.Justice Rumpff ruled that this was unnecessary, but assured Mr.Trengove that the Court would give him the right to argue on additional speeches should any be introduced by Mr.Maisels.

Mr.Trengove then passed on to the complaints by the Defence that certain documents relied upon by the Crown appeared irrelevent, and also certain portions of documents which had been left in, while others had been scored out; and submitted that the Crown relied upon these documents for eveidence of the activities of the organisation, but was not required to say what use it would make of them.

At the opening of the trial on the following morning, Mr.O. Pirow informed the Court that the Crown would lead no further argument, and was satisfied that the Court had noted the Crown case. Mr.Justice Rumpff then assured the Crown that when he had stopped Mr.Trengove on the previous day, it was because he had felt that all the speeches would be the same as that of Dr.Conco and had suggested that the Crown would make a general submission. His sole desire had been to shorten the argument, not in any way to curtail the Crown case. If the Defence were however to argue any further speeches, opportunity would be given to the Crown to reply.

Significance of Street Map, "Conditioning", and Five Years

Mr.Trengove rose to make three further points.

1. (a) The significence of the Bucharest street map was that it was in fact a brochure for the Fourth World Festival of Youth held in Bucharest under the auspices of the World Federation of Democratic Youth (allegedly a world-wide Communist organisati-

   (b) That where one speech contained references to the liberation movement, the Western Areas Removal, Bantu Education, Freedom Volunteers etc., the Crown could not be expected to disintegrate the speeches by taking out portions to relate to special means as requested by the Defence.

2. The attack upon the use of the word "conditioning" was unjustified. The latest edition of the Oxford dictionary showed that the verb meant "bringing into the desired state, to make fit". If the meaning was not clear, the Defence ought to have asked the Crown for an explanation.

3. The period of five years is a proper inference from the speeches and

and documents handed to the Defence the previous day.

Mr.Trengove closed his remarks by quoting from the judgement in Heine's case that "a solid and assiduous application of the particulars" would elicit all the information required by the Defence.

DEFENCE REQUESTS ADJOURNMENT

Mr.A. Fischer, Q.C., then requested the Court to grant a postponement until February 16, so that the Defence could study the new schedules supplied by the Crown, of 145 speeches and documents scattered through the record, submitting that the Defence argument could not proceed before this had been done without upsetting the logic of the prepared argument. The Defence could moreover, only have access to the documents during Court hours. After discussion, the Defence finally conceded that Mr.Nicholas could present his argument first and the Court would then adjourn until February 16.

OPENING OF DEFENCE REPLY

Mr.H. Nicholas openedthe Defence reply by submitting that Mr. Hoexter's postulation of a fourth class of treason was based on a misconception. Arguing that the judgement he had quoted was not dealing with the nature or category of a treasonable act, but with the nature of the hostile intent. The present indictment was dealing with one category of treason only, insurrection and rebellion, and Mr.Nicholas submitted that insurrection and rebellion against the Government are merely non-legal words for sedition. If treason during a period of peace consists in acts of sedition with a hostile intent then the field covered must be co-existent with the field of sedition. The only difference was the hostile intent, the hall mark of treason alone.

Existence of a Enemy

Mr.Hoexter had submitted that the act of assisting conspirators in peacetime was equivalent to assisting the enemy in war time and in reply to a suggestion from Mr.Justice Bekker that the act of conspiracy set up an enemy in peace time,that war had been declared, although there was no formal declaration of war, Mr.Nicholas argued that there could be no enemy without a formal declaration of war or an act of violence. Mr.Justice Rumpff interjected that if there were hostile intent, then an enemy had been created.

Treason Only though Sedition

Arguing from the principle that an overt act of treason must first be an act of sedition, Mr.Nicholas submitted that the indictment contained no allegation of seditious acts, no breach of the public peace, no disturbance of the tranquility of the State. The meetings had not been unlawful, unless it could be proved that they were held in pursuance of the conspiracy. His submission was not that words were on a different plane from deeds; this could only be when the nature of the words differed from the nature of the deeds. Words could only be seditious when their utterance constituted violent action against the State by consequence, that is when they affected the mind of the hearer.

Mr.Hoexter had argued that the effect of words was of no importance; it was only the intention that mattered. Mr.Nicholas suggested that this submission was a "flight from reality".

Mr.Justice Rumpff commented that this was the main point of difference between the Crown and the Defence.

Mr.Nicholas submitted for the Defence that the only referrable means to conspiracy must be violent means, the Crown could not bring in any means and then refer them to the furtherance of conspiracy.

The Ballot Box and Force

Referring to Mr.Hoexter's submission that meetings and demonstrations could be treasonable if the intention was to overthrow the government, because they were not the methods of the ballot box, Mr.Nicholas contended that Mr.Hoexter had misunderstood the judgement of Mr.Justice Schreiner, who had made the point that there were only two effective methods of changing the government, the ballot box and force. Mr.Justice Rumpff suggested however that the vote could be inflated by demonstrations etc.

Mr.Nicholas then submitted that none of the means alleged in Part b(4) of the indictment, except those relating to violence, could be capable of being overt acts of treason. They would not even be acts of sedition.

Test of Crown's Proposition

The Crown's proposition could best be tested by the consequence which would flow from it.

A commits an innocent act with hostile intent, but as the act is unrelated to conspiracy he is innocent.

B commits an innocent act with hostile intent, but related to the conspiracy; he is guilty of treason. The only difference is that he has entered into the conspiracy.

"This just can't be!" said Mr.Nicholas.

Mr.Nicholas submitted further that the difference between treason and sedition is that treason is committed when the step is taken, but sedition is committed only when the act has been committed and completed. The nature of the act is, however, identical. An act falling short of the attempt could be treason, but this would not be the case with sedition.

Mr.Justice Rumpff contended that the law differentiates ... "You can talk sedition, but you can't talk treason!"

In reply to a question from Mr.Justice Bekker, as to whether incitement to join a conspiracy would not be treason, Mr.Nicholas replied that this would be too far away.

Possibly Criminal but not Treasonable

Finally Mr.Nicholas submitted that he had referred to the speeches in Schedule C as being innocent and not treasonable. He was not defending the speeches concerned, some might indeed be criminal, but they were not treasonable. The State, however, protected its people against abhorrent or objectionable ideas through the Suppression of Communism Act and the Native Administration Act. He submitted that this situation did not call for any extensions to the protection afforded by these Acts.

The Court then adjourned until February 16.

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TREASON TRIALS DEFENCE FUND No. 9

PRESS SUMMARY

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

Period covered: 16 to 18 February 1959

DEFENCE CRITICISMS OF CROWN'S FURTHER PARTICULARS

WHEN the trial resumed on Monday, 16 February, Mr.Kentridge began by dealing with the submission of Mr.de Vos that the particulars given by the Crown in relation to the national liberation movement were adequate. Mr.de Vos had drawn attention to the place of the "Liberatory Movement" in the Summary of Facts, but Mr.Kentridge argued that the only inference that could be drawn was that the "Liberatory Movement" was alleged to have avowed violence.

Mr.Kentridge then passed to Mr.Trengrove's submission that the only relevance of the means mentioned in the indictment was that they provided the connection with the overt acts (set out in Parts C,D and E). If so, that must be the end of sub paras (vi) and (vii) of Part IVB which were not connected with the overt acts in C, D and E.

ADVOCACY NOT AN ACT.

Mr.de Vos had submitted that, according to Professor Murray's evidence at the preparatory examination, the establishment of a Communist state by violence was inherent in the Marxist Leninist doctrine; therefore if the advocacy of Communism succeeded, the people would resort to violence. But Mr.Kentridge submitted that the advocacy could not be an act of treason, and quoted from the judgement in the case of Sachs v. Voortrekker Pers: "A philosophic adherence to Communism does not mean necessarily the intention to overthrow the Government by force." Other judgements were quoted in confirmation of this argument. Furthermore, if the accused were inciting the people to establish a Communist state by violence, it might be treason, but that did not necessarily mean that it would be the result of Marxism/Leninism. Mr.Kentridge contended that, in any case, sub para 4b(vi) of Part B did not show clearly the implication of violence and ought not to be in the indictment. This sub-paragraph read:

> "Advocating, propagating or promoting the adoption and implementation in the Union of South Africa of the Marxist/Leninist doctrine in which doctrine there is inherent the establishment of a Communist State by violence."

"CONDITIONING" FOR WHAT?

Mr.Kentridge then turned to sub para (vii) of 4(b) and the use of the word "conditioning", protesting at his "castigation" by the Crown for not knowing what the word meant. But the Defence still asked "What was the 'condition' desired?" And the Crown still had not given the reply.

Mr.Justice Bekker intervened to ask whether this would matter if Mr.Hoexter's submission were correct, that the Crown must look at the intent of the perpetrator of the speech and disregard the effect. Mr.Kentridge replied that even so, this clause still lacked particularity.

NO BASIS FOR CROWN ASSERTION THAT "IN THEIR LIFETIME" MEANT IN FIVE YEARS.

Referring to Part E of the indictment Mr.Kentridge asked the judges "What are the accused alleged to have done?" In the further particulars the pledging of themselves by the accused to achieve the demands of the FreedomCharter had

been explained as meaning voting for the resolution. But the resolution quoted did not refer to "in their lifetime", and the Defence still asked why in their lifetime was taken to mean 5 years. The Crown had stated that it relied on the Freedom Charter and the "resolution", but the Defence was however prepared to accept that the Crown meant the preamble to the Freedom Charter. Mr.Justice Bekker then asked about the last three lines of the Freedom Charter:

" Let all who love their people and their country now say, as we say here:

THESE FREEDOMS WE WILL FIGHT FOR, SIDE BY SIDE, THROUGHOUT OUR LIVES, UNTIL WE HAVE WON OUR LIBERTY."

Mr.Kentridge replied that there was still no reference to in "our lifetime". The words were "throughout our lives" and the innuendo was therefore still an innuendo attached to words not used. The 5 years only existed as an "unspoken intention" of the accused!

Mr.Pirow had submitted that the 5 years was to be inferred from the latest particulars handed to the Defence, but Mr.Kentridge argued that these particulars were irrelevant because "five years" was an unspoken intention and that they were incapable of supporting the allegation. The particulars did not distinguish between in our lifetime and five years. And they also applied to all 17 of the accused who attended the Congress of the People, although the intention was private and unspoken!

INADMISSIBLE AND IRRELEVANT SPEECHES

Mr.Kentridge pointed out that a number of the speeches were made by persons who were not accused and not even co-conspirators; surely their speeches must be inadmissible and irrelevant. In the case of the documents relied on by the Crown, it appeared to be the contents on which reliance was placed, and not possession, authorship or knowledge.

When Mr.Kentridge had read and commented on a few speeches, showing their irrelevance to in our lifetime or five years, Mr.Justice Rumpff asked if it were necessary to read the full speeches but Mr.Kentridge replied that the Crown had not limited itself in the particulars to any portion. He pointed out that several speeches had begun or ended with "Freedom in our lifetime!" and contended that this was a slogan and did not have the meaning which the Crown imputed to it.

He then read from other speeches in which there was reference to Bantu Education etc., but no reference to "in our lifetime" or 5 years. Yet Mr.de Vos had said that the particulars spoke for themselves. In searching for what the Crown relied on, he had come across "Making headway before Malan disappears". Could this be it? If so, it was worthless for the purpose relied on. When asked if any speech had a reference to 5 years, Mr.Kentridge said that he did not want to be unfair to the Crown; there was the situation where someone said "Luthuli will come after Malan". At this point Mr.Justice Rumpff said "Surely the Crown can't be relying on the next election!"

Mr.Kentridge complained that if the Crown relied on only a few speeches it should not have supplied the particulars in this way, forcing the Defence to study all the speeches. Mr.Justice Bekker commented on the phrase "Before we achieve Freedom some of us will have to die". Mr.Kentridge submitted that even so it was not referrable to in our lifetime for it could mean violence. Several more speeches were taken showing that there was no reference to "In their lifetime" or 5 years. Mr.Kentridge then referred to the statement of Mr.Pirow that he didn't want to pick out the speeches because the Crown relied on all this as background. Mr.Kentridge invited their Lordships and go through the speeches and look at them as background, claiming that this would not help to explain how, for instance, Mrs.Joseph had voted at the Congress of the People for the Freedom Charter to be achieved in 5 years. Some of these speeches were in fact made a year previously. "There is no relationship between these

speakers and the people at the Congress of the People", Mr. Kentridge said.

It had been stated by the Crown that 5 years could be inferred from the speeches and the documents, but it was clear that if there were only a few references in all the documents and speeches to five years, that would not be sufficient to say that everything fits into the pattern. "It must either be in the particulars or else it must be self evident". He then quoted a speech made in July 1954, "If we listen to him, (Luthuli) we'll have freedom in five years." This speech had nothing to do with the Congress of the People or the Freedom Charter. "Why should 17 others in June 1955 have a certain intention related to this? Once again the Judges asked Mr. Kentridge to merely refer them to the speeches which contained references to 5 years and said that they would accept the submission that the other speeches did not refer to 5 years.

But Mr . Kentridge objected that the Crown might say that speeches omitted were not irrelevant, and continued withe examination of the speeches in the particulars, pointing out that irrelevance and in some cases their inadmissibility where they were made by persons who were not even co-conspiritors.

Examples of quotations were: "It took China 30 years to achieve freedom; to achieve a lifetime of freedom takes a lifetime of struggle." "Within 5 years we can be in Parliament," (said in November 1956 and by a person not even a co-conspirator). Another man (not even present at the congress of the People): "Luthuli will be Prime Minister in 5 years." "Swart bans people for 5 years! During this time Swart and Donges will be gone." "It is important that the coming generation must enjoy freedom in their lifetime!" "I feel that if more people are called into the struggle we shall get freedom in our lifetime." "Only if we work hard shall we get freedom in our lifetime."

CONTENTS OF DOCUMENTS

Passing to the documents, Mr. Kentr idge submitted that in all the 40 documents nothing relevant had been found and protested that the Defence ought not to have had to go through all the documents searching for relevance.

Mr. Justice Bekker interjected that the Crown must be assumed to be serious in their allegations concerning these documents which they submitted they relied on in toto.

Mr. Kentridge then made the following points relating to the documents in these particulars:

(a) Some documents do contain the phrase "In our lifetime" but not all the documents.
(b) One document relied on actually contained the phrase "It would be folly to minimise our obstacles. It will be a long tough struggle..."
(c) In a report of a conference of the Transvaal Indian Youth Congress, the Chairman quoted "If I don't live to see that day, my son will see it, and if not my son, then his son."

Mr. Kentridge submitted that there was nothing whatever in these documents to support the allegation that the 17 accused had pledged themselves to overthrow the Government by violence in order to achieve the demands of the Freedom Charter within five years.

Reverting to his original argument in the attack on the indictment, Mr. Kentridge complained that there were a number of aspects with which Mr. de Vos had not dealt in his reply, notably the attack on Part E of the indictment and the question whether the 17 accused who attended the Congress of the People there reformulated or reaffirmed in June 1955 the intention to overthrow the government. If the allegation were that these 17 accused had first ente red into an agreement to overthrow the government by violence and had then made an act of reaffirmation in June 1955, the Defence submitted that this was not a second overt act for it was not capable of taking the conspiracy anywhere.

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The question of the pledge appeared to be important, for if the pledge went, then in their lifetime must also go.

Para 4 (b) 1 alleging the Congress of the People to be a means of the treasonable agreement would also be affected by Part E, and the Defence argued that it should in fact have no place in the indictment.

Finally Mr.Kentridge asked their Lordships, when examining the documents and speeches, to ask themselves whether one could reasonably infer from them that these 17 accused had resolved to achieve the demands of the Freedom Charter within five years.

DUTIES AND POWERS OF COURT

Mr.I. Maisels, Q.C., dealt with Mr.Pirow's submission on the duties and powers of the Court. Mr.Pirow had argued that the Court had a duty to remedy an indictment if it were possible without injustice to the accused. This submission was based on the English statute but Mr.Maisels submitted that in S.A. Law the Court could only quash, refuse to make an order to quash, or order the Crown to amend. Mr.Pirow had suggested that the Court should draw the indictment for the Crown, but that would be to bring the Court into the arena of Conflict.

Mr.Maisels then dealt with Mr.Trengove's submission that the Defence was not entitled to the particulars requested, quoting from the Criminal Code "Each count must set forth the events of the charge as may be reasonably sufficient to inform the accused of the nature of the charge" and submitting that there was no basis for the Crown's contention that having alleged overt acts of treason, they were not obliged to give particulars. Mr.Justice Bekker suggested that the Crown might not, in para 4 b (i) to vii of Part B, have intended to set up separate overt acts, but merely explanations. Mr.Maisels replied that this would be putting the cart before the horse as Parts C, D and E of the Indictment alleged acts in pursuance of Part B 4 1, and contended that the allegations in Part B 1 must be taken as overt acts, and that the accused were entitled to the particulars relating to these allegations.

ABSENCE OF VIOLENT ACTS

Mr.Nicholas had argued that, in peacetime, treasonable conspiracy is a conspiracy to commit violent acts, and the Defence still wanted to know what violent acts the accused had agreed to do? The overthrow of the state could not be the act. It is a metaphorical expression describing the consequence of acts. The violent or treasonable acts must lead to it and therefore the accused were entitled to the particulars if the grounds from which the agreement to commit treasonable acts was inferred.

CROWN APPLIES FOR THREE FURTHER AMENDMENTS

On the resumption of the trial the following day, Mr.Pirow contended that neither of the two points raised by Mr.Maisels had been raised before and informed the Court that the Crown had filed three notices of amendments to the indictment.

Mr.Justice Rumpff pointed out that in the final clause of part A and in the contents of part E, the number of overt acts did not appear. Did the Crown intend to rely on one overt act or 9 overt acts? Mr.Pirow replied that he had thought that this had been clear, but that one of the amendments would remedy the difficulty. Mr.Justice Rumpff suggested that the first amendment would affect Mr.Maisels' argument, to which Mr.Maisels added that he might have to start the argument all over again, asking: "Is this the last amendment? If not, let's have them! Days of argument have been wasted." He denied that any new points had been made in his reply to the argument, irrespective of what Mr.Pirow contended.

DEFENCE RENEWS ATTACK ON WHOLE CROWN CASE

After a brief adjournment for the defence to study the effect of the amendments, Mr.Maisels submitted that if the Court were to grant these amendments it might be necessary to request a postponement of the trial for the preparation of further argument, particularly in regard to part E. His present argument would however be only partially affected since even if the separate overt acts in Part B were held not to be overt acts, they were the agreements which were the basis of the acts in parts C, D and E. "It doesn't help the Crown to wriggle as they have been wriggling since last August" said Mr.Maisels, "these agreements are pleaded as agreements to be inferred and once they are pleaded not as express agreements, the accused are entitled to the facts on which the allegations of each of them is based."

Mr.Trengove had said that it could take 6 months for the Crown to supply particulars of violence and Mr.Pirow had said it was impossible.

Mr.Maisels submitted that even if it took six months, it must be done. It was a matter of law, and the accused were entitled to it. "Six months is no answer! The Crown has had two and a quarter years! If it is impossible then the Crown has no case."

"WHERE" AND NOT "WHY".

The accuracy of the allegations of violence must be doubted unless there was a serious attempt at particulars and not the type served up for "in our lifetime" and the period of five years. The Defence had listened in vain for any real argument as to why the Crown was unable to put violence - or the case - into the pigeonholes into which they wanted the Defence to put it. If the Crown's case was genuine and bonafide, there should be no difficulty in giving the facts and circumstances from which the agreements were inferred. If the Crown can't do it, then they shouldn't draw the indictment and were not entitled to bring the accused to Court. "We are entitled" said Mr.Maisels, "to know the case we have to meet. How otherwise shall we know what witness we have to cross-examine. The Defence is not interested in the Crown's reasons. We want to know where they put a particular thing, not why they put it there!"

Mr.Justice Bekker: "Is 'where' not dangerously close to why?"

Mr.Maisels: "No. The Crown may be wanting to use a particular speech for a particular purpose, e.g. for 4(b)(i) "to oppose the authority of the State" - does it go only into that pigeonhole? The summary of facts must be pigeonholed and by the Crown, not the Defence. If the Crown wants the accused to be Sherlock Holmes, then this offends the primary principles of law relating to indictments.

Mr.Justice Bekker: "But does not the Crown say, 'Here are the clues for Sherlock Holmes; work it out for yourselves"? Where is the line to be drawn? The Defence cannot find out how the Crown's mind works."

Mr.Maisels reminded their lordships that Mr.Pirow had contended that reference to non-violence in these speeches might be intended to promote violence. This might be so, but which of the speeches gave a basis for this?

DEFENCE DIFFICULTIES BECAUSE OF CROWN'S INSISTENCE ON INFERENCE

Passing to his submission that the Crown had failed to properly inform the accused of the allegations relating to their organisations, Mr.Maisels pointed out that according to the Crown case, each of the fifteen organisations had adopted each of the 8 policies and means outlined in (part B4 of) the indictment. The Defence must therefore look for the adoption by each of the organisations of these 8 policies and means, and then look for the support by each of the accused and co-conspirators for the overthrow of the State by violence. From this point, the defence must go to the summary of facts, for the overt acts in (part B) of the indictment must be inferred from a large number of other facts:-

1. The policy of each organisation
2. The means adopted to carry out the policy
3. The ways of advocating policy
4. The circumstances in which each accused became a party to the policy.

The Crown relied on all the facts in the summary to establish these facts, therefore from this mass of facts (including the facts relating to other organisations) each accused must infer that his organisation adopted a policy and decided on specific dates on the means set out in the indictment. Both the policy and the means must be extracted from a mass of facts. The Defence submitted that this was "a wrong and indefensible approach by the Crown!"

CROWN ACCUSED OF MALA FIDES

Mr.Trengove had suggested that the policy of the organisation was to be inferred by public statements made by responsible members. "Why doesn't the Crown tell us; why keep it secret? Who are the responsible members?" The Summary of Facts did not disclose this. The Defence had found no statements by responsible persons to support the Crown case but exactly the opposite of what the Crown alleged. Were the statements supposed to be double talk? Mr.Maisels referred to the statements of Chief A.J. Luthuli, President General of the African National Congress - a man who said constantly "No violence". He accused the Crown of mala fides and challenged Mr.Pirow to say who were the responsible persons and what they said. It must be done at some time.

Mr.Trengove rose immediately to ask for the Defence allegation of mala fides to be repeated. Mr.Maisels replied "If the Crown persists in this attitude, it is mala fides! It is not a question of what the accused said and what they meant by it, but what the Crown says they meant by it!" He asked "Is it impossible for the Crown to refer us to the speeches by the responsible persons which it relies on for the policies of the organisations? Or is the only acceptable explanation that the speeches don't support the Crown's allegations?"

WHAT EACH ACCUSED IS OBLIGED TO SEARCH FOR - NEW PRINCIPLE OF JURISPRUDENCE

The Crown was saying in fact "It's a jigsaw puzzle. Here are the pieces; you fit them together." Mr.Maisels submitted that this was a new principle in S.A. jurisprudence. Each accused was expected to search for:

a) The policies of the organisation, his own and others, and also indirect proof, which was more difficult.

b) The activities of each organisation in pursuance of its policy, which could include both direct and indirect advocacy.

c) Proof that he knew of and supported the policy of the organisations.

d) The extent to which he participated in the policy of the organisation.

Some speeches would prove all these, some only one or more; it might be a portion only of a document or speech. Some speeches were innocent in themselves but the Crown claimed that all were relevant. Mr.Maisels said: "These speeches and documents can't be used as a vague background to the case or placed next to eachother to make a background of the Crown's own choosing."

MULTIPLICITY OF "PIGEONHOLES"

Mr.Trengove had said that the evidence in the documents and speeches could be pigeonholed provided there was intelligent reading of the Summary of Facts. But when constructing these "pigeonholes" there had to be

(a) Policy pigeonholes
(b) Pigeonholes for speeches relating to the 8 means in the indictment.

c) Pigeonholes for
   (i) Other speeches at the same meetings.
   (ii) Speeches with sinister background, e.g. Mau Mau, Korea, etc.
   (iii) 39 kinds of Communist speeches (according to Professor Murray's 39 tests for determining whether a speech was communist.)
   (iv) Speeches referring
      (1) to the liberatory movement
      (2) the World Peace Council
      (3) the Defiance Campaign etc., etc.

But even then the task would only be half done! Now more sets of pigeonholes must be constructed for the individuals and the organisations! Mr.Maisels maintained that Mr.Trengove's pigeonhole argument could not hold water: it was no pigeonhole but a honeycomb!

Mr.Justice Rumpff: "I am afraid 'pigeon hole' was my word!"

Mr.Maisels: "But Mr.Trengove 'associated' himself with it!"

SUPPLY INFORMATION - OR QUASHING

"What is to be done?" Is the Crown to be given another opportunity to cure the indictment? The Defence says No.... If the Defence argument is correct then the Court must reject Mr.Trengove's claim that the information has been given and accept Mr.Pirow's case that it can't be given. It follows then that the Crown does not have an explicable course of action and can't go to trial on this indictment. It should not be allowed to cast around for another! If the Crown cannot give the information required by the defence, then the Court must quash the indictment."

Mr.Maisels reopened his argument on the twelfth and last day of the attack on the indictment by quoting authorities to support his objection to the Crown's submission that it was the duty of the accused to study a mass of documents and evidence.

DEFENCE OBJECTIONS TO NEW AMENDMENTS

Turning to the amendments brought by the Crown, Mr.Maisels opposed the second and third amendment, particularly that which sought to delete the words "in their lifetime" from the first paragraph of part E and the whole of the following paragraph

> "..... the achievement in their lifetime of the demands set forth in the said Freedom Charter, which included, inter alia, the following demands:
>
> 1. Every man and woman shall have the right to vote for and to stand as a candidate for all bodies which make laws;
>
> 2. The national wealth of the country, the heritage of all South Africans, shall be restored to the people;
>
> 3. The mineral wealth beneath the soil, the banks and monopoly industry shall be transferred to the ownership of the people as a whole;
>
> 4. Restriction of land ownership on a racial basis shall be ended, and all the land re-divided amongst those who work it, to banish famine and land hunger;
>
> 5. All shall have the right to occupy land wherever they choose;

which said demands the accused intended to achieve by overthrowing the State by violence."

Mr.Maisels submitted that these were not amendments in form but were based on entirely different facts. The Crown had brought the accused to Court on allegations based on certain facts, i.e. that the accused had pledged themselves to work for the achievement of certain demands in their lifetime and to the overthrow of the State by violence. The facts alleged to support this allegation had now disappeared in terms of the amendment and new facts were before the Crown. Before their Lordships could ever consider granting an amendment, the Court must be satisfied that the amended indictment will be free from criticism. The Defence submitted that the Court could not be so satisfied because the proposed amendment did not deal with the contention of Mr.Kentridge that an unexpected intention cannot make an innocent act treasonable, there was still no indication of any expression of intention "This amendment will create as many problems as those it purports to remove!" said Mr.Maisels.

Mr.Justice Rumpff interjected "That is so!" and continued by saying that the Court must first decide on the rest of the indictment.

JOINT RESPONSIBILITY

Mr.Maisels then pressed for an answer to the question "Is each accused liable for the overt acts of other accused?" The words "in pursuance and furtherance of the said conspiracy" appearing in the preamble to parts C, D and E could be used

a) to taint an innocent act with illegaility; or
b) to impose criminal liability on each accused for the acts committed by other accused; or
c) to achieve both purposes.

If the Crown intended to impose liability on each accused for the acts of all accused, new argument would be required. The Crown had refused to answer this question and if the answer were yes, the position would be that each accused would be charged

a) with the conspiracy alleged in Part B
b) with the number of other offences in parts C, D and E personally
c) with a number of further offences in parts C, D and E committed by others, for which he would be held vicariously liable because they were committed in furtherance of the conspiracy.

If the Crown however were to state that each accused is not liable other than for the acts set out against him or her, then the overt acts must be numbered. For on this would depend the question whether the whole of the proceedings had been properly brought to Court.

CROWN'S REPLY TO DEFENCE OBJECTIONS

Replying to Mr.Justice Rumpff, Mr.Pirow maintained that the acts had been numbered through the division into parts A,B,C,D etc. He repudiated the onus on the Crown to interpret the indictment. "We stand or fall by the interpretation which the Court puts on the indictment."

VIOLENT INTENTIONS STILL PRESENT

Dealing with Mr.Maisels' argument on the amendment, Mr.Pirow submitted that although the question of "in our lifetime" and the inference of five years had been eliminated, the intention to overthrow the State by violence was still there and had always been there. No further particulars could be required as a result of the elimination of "in our lifetime" and the inference of five years.

ACCUSED INDIVIDUALLY COMMITTED ACTS

Finally, Mr.Pirow informed the Court that each accused either alone or together with other accused committed separate overt acts for which no other accused was liable, and the Crown did not allege vicarious liability.

TREASON - OR CONSPIRACY ?

Mr.Justice Rumpff commented that the Crown's attitude towards vicarious responsibility might affect the whole indictment. Mr.Maisels then addressed the Court briefly on misjoinder ... submitting that it now appeared that parts B, C, D and E were the four counts. He pointed out that in part D only 7 of the accused were alleged to have committed an overt act, and in part E only 17 of the accused. The effect of the Crown's amendment made it clear that except for part B, it was clearly a case of misjoinder. The Crown could on this indictment only go to trial on conspiracy alone.

Answering questions by the Judges, Mr.Pirow submitted that treason had its own law of liability, peculiar to treason and the nature of the overt act. All the accused were in the conspiracy and everything every one of them did was for the furtherance of the conspiracy, but the case of the overt act might be regarded as different although only for purposes of proof.

COURT MAY ALLOW EXCEPTION TO MISJOINDER LAW

Mr.Justice Rumpff then indicated that although in law no misjoinder is permitted, the Court might have to consider, in the case of treason where conspiracy is alleged and every one of the accused committed one or more entirely separate acts in pursuance of the conspiracy, whether an exception to the general rule should be made to permit the accused to be charged jointly because of the conspiracy.

Mr.Maisels submitted that although the difficulties of the Court were appreciated, it was not the function of the Court to change the Criminal Code. Why were the accused charged jointly? There was no reason why they should not be charged separately. The Crown must not be allowed by the Court to take advantage of the position to get a conviction jointly which they could not get separately. The question of the convenience of the accused must not arise, if it would deprive them of any statutory rights. A joint trial might be convenient for the accused but it would not be the law.

Mr.Justice Rumpff asked whether the position was that if vicarious liability were alleged, there would then be no misjoinder.

Mr.Maisels agreed, but added that the indictment would still be bad in law.

THE COURT ADJOURNS

The Judge President then stated that the Judges would require considerable time to study the indictment and the amendments and adjourned the Court until March 2, adding that even then there would not be time for the judges to give all the reasons.

Mr.Pirow was given permission to submit a written argument on misjoinder, provided that the submission was first sent to the Defence.

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