

\*\*\*\*\* UF-250 \*\*\*\*\* -JOURNAL- \*\*\*\*\* DATE 25-AUG-1992 \*\*\*\*\* TIME 16:17 \*\*\*\*\*

NO.	COM	DOC	DURATION	X/R	IDENTIFICATION	DATE	TIME	DIAGNOSTIC
28	OK	01	00:01'09	XMT / T	046125049	25-AUG	16:15	64044090800

\*\*\*\*\* -NATIONAL- \*\*\*\*\* 021 222727- \*\*\*\*\*

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**FAX COVER SHEET**

**DATE** : 25 AUGUST 1992  
**TO:** RHODES UNIVERSITY  
DEPARTMENT OF JOURNALISM  
**ATTENTION** : DON PINNOCK  
FAX NO :0461-25049  
**SUBJECT:** RUTH FIRST  
**FROM** : ALBIE SACHS  
**TOTAL NUMBER OF PAGES (INCLUDING THIS PAGE):** 1

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Dear Don

We lived through all that stuff. It was a time of constant raids, harrassment and protect, but all within a context of a kind of legality. It was important that "respectable" persons in society such as lawyers and bishops rallied round the Treason Trial accused. We had a very up-market auction of high quality art at the St George's Cathedral Hall organised by Ronald Segal and the then Archbishop of Cape Town.

The highlight of the Treason Trial, or perhaps its lowlight, was when the defense counsel asked the judges in Pretoria if the court could adjourn early so that the accused could stand on street corners with collection tins to raise funds for the Treason Trial Defense Fund. Something that you should perhaps bring out is the impact that the Treason Trial accused had on all those who came into contact with them. Not just defense counsel like Sydney Kentridge but the judges and even the prosecutor, Trengrove, (who today is a retired Judge of Appeal and is supportive of change in the legal profession and a human rights advocate.

On the question of language, there is a point that is so direct as to be intellectually uninteresting for you discourse experts, namely, that the Suppression of Communism Act prevented the Left from using tried and even rather worn out Party style language. We had to use plain English to express our ideas. To that extent the Act did us a favour. This fitted in with Ruth's intellectual approach. She hated people using quotations or simply repeating formulations of others. She used to tell her students "Don't end your paper with a quotation from someone else, take responsibility for your own ideas." I might add that she was not a great fan of the writing style of the African Communist and nothing made her more furious/depressed than to see an article concluding with a quotation from Brezhnev or some other Soviet leader. You will notice that Joe Slovo's writing contains very few quotations. Occasionally there will be a short extract from Lenin but basically he argued a case on its merits and did not rely on authority to justify it. I am sure that Ruth had a strong influence in this respect as she did on all of Joe's writing and thinking.

Regards.

  
ALBIE

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For attention  
Albie Sachs  
Fax 021-222626

Dear Albie,

Thanks! You're wonderful.  
This is positively the quickest  
response I've ever had to  
a request for comments.  
All points taken and  
useful.

Regards,

Don Pinnoch

# Writing Left

The South African Journalism of Ruth First

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Still to do

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Albie,  
Could you cast an eye over this  
chapter sometime. It's on the  
language (struggle over) used  
in the 1956 Treason Trial.

To  
Don

10  
10  
Don Pinnock  
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## Word Wars

While communist discussion clubs were hammering out a new policy on non-racial co-operation in the wake of the Defiance Campaign, the National Party was consolidating its power for the next assault on integration. When the new government was voted into power in 1948 it found itself in a politically weak position. It had won with a small majority of seats but only 39.4% of the votes. During its first term of office it had passed several key apartheid laws but remained cautious in their implementation. However, in 1953, the National Party was returned with an increased majority and it took this as a mandate to tackle the race question with a vengeance. During the 1953 session of Parliament it passed laws which gave control of African education to the Department of Native Affairs, prevented the Indian dependents of South African residents from joining their husbands, reserved public amenities (including 200 miles of Cape beaches) for whites, outlawed strikes by African workers, prescribed severe penalties for breaking the law as a political protest and provided for rule by decree in an emergency. From this date the pace of social restructuring accelerated, measures enacted earlier were implemented with greater alacrity and the Security Police moved to smash the Congress Alliance.

From the perspective of the political police, the situation in the country since the Defiance Campaign must have seemed ominous. The campaign, even though it had failed in its final objectives, had made the African National Congress enormously popular. And within eight months of the formation of the 'communistically inclined' South African Peace Council, no fewer than five left-wing organisations had sprung up.<sup>1</sup> Then, in 1955, the Congress Alliance had set up an 'army' of Freedom Volunteers to assist in the election of a 'People's Parliament' and the creation of a Bill of Rights.<sup>2</sup> In considering the rise of the extra-parliamentary opposition, the defenders of apartheid inevitably turned their thoughts to treason. In broad Nationalist Party terms treason was simple to define; it was committed by

those who did not support their views. For the editor of Inspan it was even

<sup>1</sup> These were the SA Peace Council, SACOD, SACPO, SA Indian Youth Congress and the SA Federation of Women. These organisations were all cited in the 1956 Treason Trial as being contributing organisations to acts of treason

<sup>2</sup> The Freedom Charter has come to be seen as the key focus of the Congress of the People. When the campaign was conceived, however, it was merely seen as a necessary addition to the convening of a People's Parliament at Kliptown. ZK Matthews' original idea had been to run a multi-racial, extra-parliamentary national election

those who did not support their views. For the editor of Inspan it was even closer to home:

every time an Afrikaner supports a stranger, rather than a fellow-Afrikaner, he commits treason.<sup>3</sup>

In law, the definition was equally vague:

High treason is committed by those who with a hostile intention disturb, impair or endanger the independence or safety of the State, or attempt or actively prepare to do so.<sup>4</sup>

It was, however, going to prove difficult to catch the Congress Movement in the treason trap. Early warnings of the state's attempt to do so took place during the planning stages of the Freedom Charter. As a result of a court interdict, police were expelled from a SACOD meeting about the Congress of the People at the Trades Hall in Johannesburg during July 1954. In reply to the interdict which expelled them, Major Spengler of the Security Police said it was the duty of the police to 'know what was going on at the meeting in order to protect internal security'. The police were, he claimed, 'investigating a case of high treason'.<sup>5</sup> In September 1955 hundreds of homes and offices were raided by police searching for 'evidence of an alleged design to overthrow the Government by force'.<sup>6</sup> A few months later, when police confiscated forms from activists campaigning for a million signatures in support of the Freedom Charter, they claimed they were investigating a charge of suspected treason. But for three years talk of treason had gone on and nothing beyond the irritating police raids had happened. By the time the Minister of Justice, 'Blackie' Swart, announced in Parliament that 200 people would soon be arrested and prosecuted for treason the question of treason was beginning to be forgotten. The dawn raids in December 1956, therefore, shocked Congress activists. New Age editor Lionel Forman, one of the accused, was to document the moment dramatically:

At dawn one morning in 1956, twenty days before Christmas, police knuckles and police batons hammered at the doors of one hundred and forty homes all over the Union of South Africa; the doors of luxury flats and the tin entrances of hessian shanty pondokkies, the oak of a parson's manse and the stable openings of farm labourers; doors in comfortable white suburbs, in grim African locations, in Indian ghettos, in cities, in villages and on farms far out on the veld.

<sup>3</sup> Inspan 8,1, October 1948, quoted in John Lazar 1987

<sup>4</sup> FG Gardiner & CWH Lansdown: South African Criminal Law and Procedure (Cape Town 1957)

<sup>5</sup> Len Lee-Warden, unpublished autobiography, p88

<sup>6</sup> Counter Attack, October 1955

<sup>7</sup> Counter Attack, November 1955

One hundred and forty families were wakened that morning - Africans, Indians, Europeans, Coloureds, doctors and labourers, teachers and students, a university principal, a tribal chief...Those who asked were shown warrants of arrest. The crime charged in every single case: HIGH TREASON - HOOGVERAAD.<sup>8</sup>

Houses were searched and people were bundled into police vans and military aircraft on route to The Fort in Johannesburg. Bail was refused, visitors were denied access to the arrested and Die Transvaler regaled readers with an account of the old penalty for treason - the tearing of a man's limbs apart by four horses, or burning at the stake.<sup>9</sup> Eleven days after the first arrests Ruth First and Joe Slovo were detained. Slovo had been briefed by the defense to appear at the preparatory examination. He had visited Public Prosecutor van Niekerk soon after the arrests to see if there were any outstanding matters to attend to before the family left for a holiday in Cape Town. 'Sure,' said van Niekerk. 'Go ahead and take your holiday. Have a good rest'. At 4.30 the next morning the police banged on their door with a warrant for their arrest.<sup>10</sup>

According to Drum editor Anthony Sampson

the whole spectacular manner of the operation - the arrests at dawn, the military planes arriving secretly at a military airport, the barred police vans rushing the prisoners straight to the jail, and the reiteration of the sinister phrase 'allegations of high treason' - all this, coming in the wake of the Suez crisis abroad, suggested that a most dangerous plot had been uncovered in the nick of time.<sup>11</sup>

Lionel Forman was to observe that 'in his younger days, (Prime Minister) Swart had worked as an "extra" at Hollywood and now he combined the ideas of Hitler with the technique of Hollywood to produce a spectacular, dramatic, stupendous, staggering plot'.<sup>12</sup>

While the white population remained divided in its reactions to the arrests, the African people were galvanised by the state's action. The breadth of the arrests - which included members of the most respectable professions and several moderate and cautious leaders - ensured that the prisoners would be regarded as genuine representatives of the people. By assembling leaders of all the Congresses in one place and keeping them there day after day in confinement, the Government was not only trying the opposition, it was creating it. People from a broad spread of political tendencies had been

<sup>8</sup> Forman & Sachs, 1957, p11

<sup>9</sup> Sampson, 1958, p7

<sup>10</sup> Forman & Sachs, 1957, p43

<sup>11</sup> Ibid p7

<sup>12</sup> Foreman & Sachs, op cit p184

suddenly locket together in the embrace of the law and pressed into a single force. New Age (which was owned by the only company listed as one of the accused) printed the names of those detained under the headline: Roll of honour.

The Preparatory Examination began in a converted drill hall in Johannesburg in December 1956 as a huge crowd of Congress supporters gathered outside. The gist of the Crown charge, on 53 typed pages, was that treason took place at meetings held all over the Union at which the accused

advocated, instigated and preached a Marxist-Leninist account of society and the state, a Marxist-Leninist interpretation of history and contemporary politics, and called for the establishment of a people's democratic state based on the principles of the system in the Soviet Union, the People's Democracies of Eastern Europe and in China.<sup>13</sup>

The Crown, however, declined to define what exactly constituted the charge of treason. In rebutting the charge, Vernon Berrange for the defense said the accused openly admitted supporting the ideals expressed in the Freedom Charter, and would 'endeavour to show that what is on trial here are not just 156 individuals but the ideas which they and thousands of others in our land have openly espoused and expressed'.<sup>14</sup>

We will endeavour to show that these prosecutions, and the manner of their presentation, are for the purpose of testing the political breezes in order to ascertain how far the originators thereof can go in their endeavours to stifle free speech, criticism of the Government and...democracy.<sup>15</sup>

Berrange said the Security Police had set out to deliberately create a fantastic atmosphere of treason around everything that the accused had worked for. They had done this by attempting to intimidate the public with their attendance at open public meetings, by conducting mass raids and countryside searches, and by flourishing sten guns, fixed bayonets and truncheons. The trial, he said, was instituted in an attempt to silence and outlaw the ideas held by the accused and the thousands they represented:

A battle of ideas (has therefore) been started in our country; a battle in which on the one side...are poised those ideas which seek equal opportunities for, and freedom of thought and expression by, all persons of all races and creeds and, on the other side, those which deny all but a few the riches of life, both material and spiritual, which the accused aver should be common to all.<sup>16</sup>

<sup>13</sup> New Age 27.12.56

<sup>14</sup> Foreman & Sachs, op cit, p66

<sup>15</sup> Ibid

<sup>16</sup> Ibid p69

From the opening speech of the Defense it was clear that it was more than the accused who were on trial:

The accused had decided without hesitation that they were going to go on the attack. Their aim was not only to prove that they were not traitors to their country. They wanted to prove who the real traitors were.<sup>17</sup>

The Treason Trial, which was to last four years, was therefore, in Berrange's words, 'no ordinary trial'. Year after year the accused and their defense team were to engage the state in a battle over the definition of only three words: communism, treason and violence. And in each exchange in the battle over language both sides were to find themselves on trial. The trial records include printed books and pamphlets, magazines and newspapers, mimeographed reports, bulletins and circulars, typewritten and handwritten documents and a miscellaneous assortment of flyers, memoranda and official and personal letters. These had been found in offices and homes and at meetings, on open tables, in bookshelves, in desks and briefcases and in the possession of individuals during more than a thousand searches and raids. The thousands of documents provide the researcher with an extraordinary record of the political assumptions of the main protagonists.

At one level the trial was a battle of ideologies between the Congresses and the state, but at another level it was also a war between state spies and the journalists of the Left. The early proceedings would have left Ruth First in no doubt that her writing was on trial. For the first six weeks of the preparatory examination the prosecution did nothing but hand in thousands of documents seized in the many raids, most of which were newspapers, magazines and books. And the process was maddeningly slow, fuelling fears among the accused that the purpose of the trial was to keep them in the dock forever.<sup>18</sup> When, for example, a two-year series of Fighting Talk was dealt with, instead of having the whole collection identified as a single exhibit, the prosecutor handed them in one by one:

The prosecutor doggedly maintained the pace of an ox...

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<sup>17</sup> Forman & Sachs, op cit p57

<sup>18</sup> The trial structure was complex and can be broken into a number of phases: Phase 1: Preparatory examination - 156 accused (December 1956 - January 1958). Phase 2: First indictment argued - 92 accused, 152 alleged co-conspirators (August to October 1958). Phase 3: Second indictment argued - 30 accused, 129 alleged co-conspirators (January to June 1959). Phase 4: The trial begins. Arraignment and evidence (August 1959 - March 1960). Phase 5: Trial during the State of Emergency (March to July 1960). Phase 6: Defense back to normal. Evidence concluded (August to October 1960). Phase 7: Closing arguments and judgment (November 1960 - March 1961). Ruth First was discharged after the Preparatory Examination but remained an alleged 'main co-conspirator' throughout the trial and therefore continued to face a charge of high treason.

Is that Fighting Talk dated January 1954?

It is, your Worship.

Do you hand that in?

I do, your worship.

Across the court walked the orderly to the magistrate. Across the court walked the prosecutor to collect another Fighting Talk. Across the court he walked and handed it to the witness.

Now is that Fighting Talk dated February 1954?

It is, your Worship...<sup>19</sup>

The purpose of this chapter is not to document the long and complicated trial.<sup>20</sup> It is, rather, to analyse the Crown's changing position on communism, treason and violence in order to understand the ideas which formed the dialectical opposite of Ruth First's journalism and against which she would do battle for her entire life.

## In search of a communist conspiracy

The Broederbond, which masterminded Afrikaner strategy, and the Communist Party shared a dislike for imperialism and, at different times, they both saw nationalism as the engine of political change.<sup>21</sup> In the 1950s they were also both secret organisations. Perhaps for these reasons, because the two organisations utilised similar tactics for opposing goals, and because in Calvinist thinking the Devil is not that which is furthest from you but that which is closest, the Broederbond took it upon itself to excommunicate the Party and to torch it out of every crevasse of society.

Up until the 1950s the struggle between the Communist Party and Afrikaner

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<sup>19</sup> Forman & Sachs, op cit p70

<sup>20</sup> For a description of the trial see, particularly, The treason case by Anthony Sampson, If this be treason by Helen Joseph, The South African Treason Trial by Lionel Forman and Solly Sachs, and The Treason Trial in South Africa by Thomas Karis

<sup>21</sup> The Broederbond is a secret Afrikaner cultural organisation dedicated to Afrikaner power and the unity of the folk. It had (and still has) links into the highest echelons of Afrikaner power. See The Super Afrikaners by Ivor Wilkins and Hans Strydom (1978) and Volkskapitalisme by Dan O'Meara (1983).

nationalists had a practical foundation - both were competing for the heart of the Afrikaner working class. For the Afrikaner intelligentsia in the Depression years it was clear that Afrikaners were disadvantaged, poor, disunited and generally perceived to be 'burning in hellfire'. The only route to self-respect and power lay in uniting all stray Afrikaners into a national *volksseenheid*.<sup>22</sup> The Communist Party, particularly through the mine, garment and railway unions, was seen as a threat to this process. Nico Diederichs, who was later to become State President, wrote in 1937 that

there are forces at work in the bosom of the People which seek to unite our workers with the proletariat of other lands...the headquarters of this movement is in Moscow...If the worker is drawn away from our nation, then we might as well write Ichabod on the door of our temple.<sup>23</sup>

Increasingly, Deiderichs began to speak and write against communism and was ably assisted by Piet Meyer, who was later to become chairman of the South African Broadcasting Corporation. For Meyer the two most serious threats to *volksseenheid* were the conciliatory party politics of the United Party, particularly on racial affairs, and the divisive effects of 'communist-inspired' class conflict.<sup>24</sup> He proposed that the Federation of Afrikaner Cultural Organisations (FAK), of which he was a leader, together with the Afrikaans churches become involved in organising Afrikaner workers into 'Christian National' labour unions in order to reintegrate them into the organic unity of the *volk*. To this end the National Council of Trustees was formed and it backed successful struggles for control of white railway and mine workers. Meyer also became leader of a Labour Front started by the militarist organisation Ossawa Brandwag which, according to OB leader Hans van Rensburg, was intended to 'cement urban and platteland Afrikaners, through the OB, into an effective bastion against communism and other insidious foes'.<sup>25</sup>

The struggle for Afrikaner workers found its martyrs when Afrikaans garment workers at a Germiston factory discovered that coloured women were being employed and called a strike. The Clothing Workers Union under Solly Sachs refused to consider the strike and dismissed the two white workers who had led the racist rebellion. The Ossawa Brandwag and Dutch

22 'Volk' is a cultural term which implies more than merely 'people' or 'nation'. Eenheid means unity.

23 Die Oosterlig, 8.11.47.

24 Die Republieken, May 1 & 8, 1936. See also T Dunbar Moodie: The rise of Afrikanerdom (1975).

25 Wapenskou, September 1944. Quoted in Dunbar Moodie, op cit.

Reformed ministers rallied behind the two women and the affair became a national issue. On the insistence of the National Party it was debated for several days in Parliament.<sup>26</sup> The Dutch churches called protest meetings and the Broederbond established the White Workers' Protection Society 'to fight the Communist evil within the trade unions'.<sup>27</sup> The issue, which had been largely manufactured, was clearly seen by the Broederbond as an issue which could unite the *volk* on the behalf of the Afrikaner 'wife and mother' in opposition to communist racial equality. The issue was kept alive within the Dutch churches and in 1946 a large congress was called by the Dutch Reformed churches at which all Christians were called on to fight communists 'with all permissible means'.<sup>28</sup>

From the 1930s, therefore, fear of a 'red threat' provided a basic exigency in attempts to unite Afrikaners. And since communism advocated racial equality and was envisaged as the inevitable concomitant of British imperialist liberal capitalism, anti-communism combined both anti-British and anti-black sentiments. Each ideological strand within Afrikanerdom was able to employ its own logic and discourse in defining communism as a major threat. For the Dutch churches communism represented 'atheistic materialism', an 'idoltrous attempt to transcend the separate spheres of authority laid down in the ordinances of creation'.<sup>29</sup> For Afrikaner politicians and intellectuals the communist disregard for racial differences was a thrust at the very heart of their ethnic existence.<sup>30</sup>

In uniting the *volk* around the 1948 election, the National Party linked the anti-communist discourses in Afrikanerdom with the 'black threat' and was thereby able to identify its major parliamentary opponents - particularly the government of General Smuts - with the communist threat. The unity of these two ideas was to emerge in the Report of the Commission on the Colour Problem of the Herenigte Nasionale Party (Saur Report) in 1948 which was to be the foundation of the new government's racial policies. The brief of the commission was 'to develop on the basis of apartheid a comprehensive policy for the National Party with regard to the colour problem in general...' According to the commission there were two schools of thought on the policy of racial equality:

The one school, communist-orientated, denies the fundamental nature of existing differences between white and non-white and therefore deliberately and openly drives towards the establishment of one mixed

26 Die Vaderland 4.3.44, and Volkstem 22.3.44.

27 The executive committee included Hendrik Verwoerd, Nico Diederichs, Ben Schoeman, Jan de Klerk and Albert Hertzog.

28 Dunbar Moodie, op cit, p255.

29 Kerkbode, 29.9.43 and Dunbar Moodie, op cit, p251.

30 See Eric Louw's National Party pamphlet: Die Kommunistiese Gevaar (nd).



people in South Africa where colour apartheid and colour dividing lines are summarily and totally eradicated. The other school of thought is not exactly in favour of miscegenation nor does it openly advocate social equality but refuses to take active steps against miscegenation and advocates equal rights and opportunity for all developed persons, irrespective of race or colour.<sup>31</sup>

According to the commission it was 'crystal clear that both schools of thought are heading for eventual equality' and must 'inevitably lead to the undermining and eventual annihilation of the white race as an independent and governing folk'.<sup>32</sup> It therefore recommended the elimination of racial mixing, the development of 'Native Fatherlands', the formation of labour bureaux to prevent 'wastage', the implementation of 'Bantu education', the repatriation of 'as many Indians as possible' and an attack on communism.

Most of these ideas were implemented after 1948, but the elimination of communism was to be first on the list. Early in 1949 the Minister of Justice, CR Swart, told Parliament that

shortly after assuming office, the Government took steps to institute an exhaustive enquiry into the extent to which Communist activities had penetrated the Union...Evidence already available showed that Communist activities had already poisoned the national life in many respects in an alarming way and had given rise to a condition of danger in the country.<sup>33</sup>

A few months later Die Vaderland found 'proof of a Soviet Plan against us' and said Swart was likely to take 'exceptionally drastic action' at the next Cabinet meeting.<sup>34</sup> By November of that year newspapers were reporting 'strong indications that the government will shortly outlaw the Communist Party of South Africa and its Press'.<sup>35</sup> The Suppression of Communism Bill was introduced at the end of the Parliamentary session of 1950 and rushed through its readings. The scope of the Bill was so wide that Opposition MPs claimed it would change the nature of the State:

This is not the Suppression of Communism Act. This is a Bill for the suppression of the rule of law and a Bill for the destruction of one of the main pillars of democracy...this is a Bill for the corruption of justice.<sup>36</sup>

When this Bill becomes law we will be ruled by something very

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31 Saur Report, private translation

32 Ibid.

33 Daily Dispatch 17.2.49.

34 The Guardian 11.7.49.

35 Natal Mercury 7.11.49.

36 L Lovell, Benoni, in Hansard, 1950 at 9551.

different from the principles of freedom and justice.<sup>37</sup>

A central problem in the parliamentary sessions was to be the definition of communism itself, a debate which was to re-emerge at length in the Treason Trial. Mr L Lovell of Benoni complained that

the crime called 'communism' remains undefined. It can mean anything. The hon. Minister can give it any meaning he likes...No one can question his interpretation. The courts are banished. The Minister reminds me of Humpty Dumpty in *Alice in Wonderland* and I quote: 'When I use a word', Humpty Dumpty said in a scornful tone, 'it means just what I choose it to mean - neither more nor less'.<sup>38</sup>

JG Strauss, United Party MP for Germiston, pointed out that according to the Bill

a Communist is a person who professes to be a Communist (but) the Minister decides whether a man has professed or not to be a Communist. And if he is deemed to have professed he cannot have recourse to the courts.<sup>39</sup>

Nationalist MPs responded by digging in behind the tabled definition and attempting to demonise communism and the Communist Party. The Minister of Justice, CR Swart, claimed to have information that a secret military branch within the Johannesburg Communist Party was preparing to poison water supplies and food and to take over power stations on a particular day. He told Parliament that 'people are taught to be in such a position that they can murder people whom they want to get rid of on that day'.<sup>40</sup> According to Nico Diederichs

every Communist Party organisation has imposed on it the task of working consistently to bring nearer the moment when by means of violence, by revolt and by revolution it will cause its own country to collapse and thus make it the prey of another...Everything is permissible for that purpose of the world revolution, even high treason, theft and murder.<sup>41</sup>

'Communism', said Swart, is an undermining, devilish evangelism'. Indeed it was the 'religion of revolt...devilish work in the sphere of internationalism and part of the 'sinister, eerie, silent process' of Cold War.

The effect of the passing of the Suppression of Communism Act was to excommunicate former members of the Party. Communists were excluded

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37 LC Gay, South Peninsula, in Hansard, 1950 at 9577.

38 Lovell, op cit.

39 Hansard, op cit at 9510.

40 Hansard, June 17 1950.

41 Hansard, Ibid at 8961.

from further meaningful discourse and projected by the State as being depraved, traitorous, alien, and even insane. Legally they were condemned to ideological non-existence. People on the 'list' of communists set up under the Act were not to be listened to, they were the target of vilification and their utterances were to be treated only as symptoms of a slavish adherence to Moscow's depravity. In terms of a later amendment to the Act, a person deemed to be a communist and who was not a South African citizen by birth or descent, could be deported. In terms of the law listed communists had less rights than a pickpocket. They could be questioned, searched without a warrant and were guilty unless they could prove themselves innocent. If caught 'furthering the aims' of communism they could be jailed for up to 10 years.

In terms of the Act communism was described as

the doctrine of Marxian socialism as expounded by Lenin or Trotsky, the Comintern or...the Cominform or any related form of that doctrine expounded or advocated in the Union for the promotion of the fundamental principles of that doctrine and includes, in particular, any doctrine or scheme -

(a) Which aims at the establishment of a despotic system of government based on the dictatorship of the proletariat...or

(b) Which aims at bringing about any political, industrial, social or economic change within the Union by promotion of disturbance or disorder, by unlawful acts or omissions...or

(c) Which aims at bringing about any political, industrial, social or economic change within the Union in accordance with the directions or under the guidance of or in co-operation with any foreign government or any foreign or international institution (which aims to promote dictatorship of the proletariat), or

Which aims at the encouragement of feelings of hostility between the European and non-European races of the Union the consequences of which are calculated to further the achievement of any object (in (a) or (b) above)

A communist was someone who professed to be one or who was deemed to be one by the State for advocating 'any of the objects' of communism.

An Act of Parliament is essentially a speech act, a written statement which performs an action ('I deem you to be a communist...'). Acts are written in a particular parliamentary language which appears to be value-free, seeming to be pronouncements of fact and direction. However, they disguise the messy, self-serving Party processes of their initial drafting and rely on the formal dignity of Parliament to perform the task of ideological legitimation.

The practical effect of the Suppression of Communism Act's vague, value-laden definition was to make it possible for the Minister of Justice to

declare almost any political activist to be a communist. But the ideological implications went further. Communism is generally defined in relation to an economic arrangement where property and other means of producing livelihood are held in common, or where ownership is confined to the means of consumption and is excluded from the means of production and exchange. The Act was to define it, rather, as a doctrine (the held beliefs) of Marx, Lenin, Trotsky and (by way of the Comintern) of Stalin. These 'beliefs' were contained in hundreds of books, commentaries, articles and documents in many languages and throughout many countries, as well as in the public pronouncements of the geographically largest country on earth. By a process of hyponymy - where the meaning of one word was included in the meaning of many others - the Act connected these 'beliefs' with dictatorship, disorder, lawlessness and the encouragement of racial hostility in South Africa. The phrase 'promotion of...' gave no guidance on what physical, verbal or mental act would constitute a breach of law. The authoritative word 'means' in the Act's expression 'communism means...' hid a subjective, ideologically-laden discourse which demanded of anyone deemed communist a defense they were virtually unable to give.

The effect of the Act was to colonise legal discourse and to restructure the subject position of political opposition in South Africa. It could be seen, in words of French anthropologist Pierre Bourdieu, as an attempt to bring about the 'recognition of legitimacy through misrecognition of arbitrariness'. p91

The immediate consequences of the Suppression of Communism Act was to provoke the dissolution of the Communist Party and the establishment of a list of communists. The practical implications of the definition of communism, however, was to await the Treason Trial where it was to face its test of fire.

The prosecution for the trial was led by Oswald Pirow QC, who was brought out of retirement for the occasion. He was not an unbiased public servant. He had been a Minister of Defense in the Smuts government and was well-known for his

Nazi sympathies. After meeting Hitler in 1938 he had described him as 'the greatest man of his age, perhaps the greatest of the last 1 000 years'.<sup>42</sup> A member of the far-right New Order movement, he was on record as having said that 'if every Jew could vanish from the earth, the world as a whole would be a better place'.. During the war he had published a pamphlet claiming that 'no influence which might create the possibility, even in the remotest future, of any form of equality between European and

<sup>42</sup> New Age, 11.7.57.

non-European will be tolerated'.<sup>43</sup> And if 'non-Europeans' intruded among Europeans this was an occasion 'when a blow of the fist is a sign of vitality and not a lack of refinement...throw them out on their necks'.<sup>44</sup> An ardent supporter of an Afrikaner republic, he had claimed in 1945 that the 'new order' would abolish all other parties (but his own). 'We can dispute the actual form of the republic, but he who wants to strike a compromise over its nature commits treason'.<sup>45</sup>

Pirow and his Crown team were to accuse the Congress Movement of advocating treason, communism, and violence. However, on the matter of communism, they were to find their task complicated by the description of communism as a 'doctrine' in the 1950 Act. To prove that the 156 accused adhered to a doctrine, it would be necessary to spell out that doctrine and then prove that each of the accused adhered to it. To do this the Crown required an expert in 'Marxian socialism as expounded by Lenin, Trotsky, the Comintern and the Cominform'. They produced what New Age was to describe as a 'star witness': Professor Andrew Murray, a former Rhodes scholar and a lecturer in political philosophy at the University of Cape Town. Murray had spent many years arguing that Calvinism was a liberal philosophy based on pluralism and that in South Africa racial groups should have separate social existences and separate education.<sup>46</sup> He was, he claimed, an expert on communist doctrine.

Murray found himself in the unfortunate position of having to give substance to the statutory definition of communism. Both in the preparatory examination and, later, in the trial itself, he ploughed his way through expositions of communist doctrines and lengthy extracts from communist classics. For weeks the court echoed to definitions, theories and quotations. The Professor's evidence covered a wide field. According to Helen Joseph, 'we found ourselves travelling from Africa to China, from the USA to North Korea'.<sup>47</sup>

His definition of communism was that it was 'a doctrine which criticises the western system - the capitalist system - and bases its criticism on the philosophy of dialectical materialism'.<sup>48</sup> He did not describe what he meant by dialectical materialism, and gave as the rest of his definition a list of standard communist objections to capitalism. On this definition Murray devised four tests in his 'analysis' of documents and reports:

1. Does it preach direct communism by quotations from the

<sup>43</sup> Ibid.

<sup>44</sup> Ibid.

<sup>45</sup> Ibid.

<sup>46</sup> New Age 30.5.57.

<sup>47</sup> Joseph, 1963, p33.

<sup>48</sup> New Age 30.5.57.

communist masters?

2. Does it do so by paraphrasing the masters?

3. Non deviation. That is, does it support Soviet policy internationally?

4. Aesopism. Is the superficial meaning intended to mean more?<sup>49</sup>

Having established his criteria, Murray then produced a long list of 'communist dicta', phrases against which the confiscated documents could be measured for communist influence. These 33 'dicta' included 'The teaching that parliament as at present constituted should be abolished; a dual authority should be established; that the courts serve the interests of the ruling class and that ownership of property means political power. A tedious process then ensued in which Murray was asked to pass judgment on hundreds of documents which constituted the Crown evidence. Helen Joseph remembered it as

a strange sight to see this man of letters passing his comments on a steady stream of books and journals, some four hundred altogether, pulled from the bookshelves of one hundred and fifty people during four years of police raids. It became monotonous, mechanical, almost hypnotic. (He would open the book) and pass judgment on it with a terse 'Straight from the shoulder of Communism' or 'Contains Communist matter' or 'Communist propaganda'.<sup>50</sup>

Long quotations from New Age and Fighting Talk, many of them written by Ruth First, were read into the court records and declared to be communistically inspired and treasonable.

In December 1957 the Prosecutor outlined the indictment against the accused. He said they had committed treason between October 1952 and December 1956 by secretly plotting a violent revolution which would overthrow the State and replace it with a communist state. They intended to do this by

calling the Congress of the People which adopted the freedom Charter which outlined a communist state,

Inciting people to break the law and to use violence to oppose the government,

campaigning against the Western Areas removals, Bantu Education and the pass laws, and

advocating the views of Marx and Lenin.

<sup>49</sup> Ibid.

<sup>50</sup> Joseph, op cit, p33.

The prosecutor also outlined two 'alternative' charges under the Suppression of Communism Act which would come into force if the Crown failed to prove the crime of treason. These were that the accused advocated, advised or encouraged communism, and that they did things in order to achieve one of the objects of communism. The Crown held the view that although each individual article or speech was insufficient grounds for prosecution, taken as a whole they constituted furtherance of the aims of communism. On the first alternative charge, the Crown had argued that the word 'advocate' in the Act did not require an audience. 'If I write a communist speech down on paper I am advocating, even if no one ever hears the speech', said Prosecutor Hoexter. 'That doesn't make sense', said Sidney Kentridge for the Defense. 'The normal usage of the word must be looked to. If I prepare my argument for a trial on the day before, in my chambers, can I be said to be advocating my client's case? No. I begin advocating when I stand up to argue in court'.<sup>51</sup> When the Judges appeared to agree with the Defense, Mr Hoexter suggested that 'any failings in the indictment could be cured by cutting out the bad parts'.<sup>52</sup> The following exchange then ensued:

**Kentridge:** My learned friend suggests surgical treatment, but the alternative charges are beyond surgery.

**Justice Bekker:** They still seem to show some movement.

**Mr Kentridge:** Then your lordships should be merciful and put them out of their misery.<sup>53</sup>

The Judges did just that, throwing out first one, then the other alternative charge and ordering the prosecutors to revise the main treason charge to show more clearly how each of the accused was personally involved in conspiracy.

In the end, therefore Murray's labours were to come unstuck. His undoing was the result of the definition of communism in the 1950 Act. By dutifully building his evidence around the need to see the hidden red hand everywhere, he ended up convincing the Judges that he was unable to find it anywhere. Under withering cross-questioning he was forced by attorneys for the Defense to concede that nationalist movements in Africa were grievance-based and not products of the hidden hand of Moscow. He was reminded by the Defense that in the preparatory examination he was shown an unidentified statement and had pronounced it communistically-inspired without realising that he had written it himself. Through Murray, the Crown had attempted to link the Congress Alliance to communism and thereby to

<sup>51</sup> New Age 28.8.58

<sup>52</sup> Ibid.

<sup>53</sup> Ibid.

violence, arguing that communism (and the Freedom Charter) envisaged a State so different from that which existed in South Africa that to advocate communism was tantamount to advocating the violent overthrow of the State. In this it had failed, as had its star witness. In their final judgment all three judges were to agree that the Crown had not proved that the ANC, as the primary organisation of the Congress Alliance, was communist or that the Charter pictured a communist State or that the accused could be proved to have broken the law with respect to the two alternative charges.

## Treason, violence and murder

After charges under the Suppression of Communism Act had been dropped, the Crown was left with the charge that those in the dock had conspired to commit acts of treason. 'If the Crown fails to prove conspiracy', said Pirow in a statement which surprised both the Judges and the Defense, 'then all the accused go free'.<sup>54</sup> In the argument which followed, the judges appeared to side with the Defense in its view that in order for the accused to have acted treasonably, they would have to have been planning violence. It was therefore necessary for the Prosecution to provide particulars showing that the accused had indeed planned to act violently. The Prosecution's response was to suddenly withdraw the indictment:

After ten minutes whilst Mr Trengrove (for the Prosecution) was in the middle of a sentence, Mr Pirow suddenly jerked his gown pulling him down into his seat and then jumped up and announced the withdrawal of the indictment. Looks of complete amazement came over the faces of the judges and the Crown advocates.<sup>55</sup>

But the Prosecution insisted on proceeding with the trial and Pirow told the court he would immediately re-indict the accused.<sup>56</sup> Shortly afterwards, the Minister of Justice said 'this trial will be proceeded with, no matter how many millions of pounds it costs...What does it matter how long it takes?'.<sup>57</sup> The essence of the crime of high treason, said prosecutor Pirow, was 'hostile intent'. This intent, he said, was evident in the demands of the accused for full political equality. They knew that to achieve the demands of the Freedom Charter would 'necessarily involve the overthrow of the State

<sup>54</sup> Karis, op cit p13.

<sup>55</sup> New Age 16.10.58

<sup>56</sup> A further indictment against 61 other trialists was quashed.

<sup>57</sup> Karis, op cit, p15

by violence'.<sup>58</sup> The accused, he said, were 'inspired by communist fanaticism, Bantu nationalism and racial hatred in various degrees'.<sup>59</sup> To prove 'intent', the Prosecution said it would look at the circumstances in which words were uttered or written, as well as the intention of the person uttering or writing them. This would involve assessing whether the accused were possessed of a 'treasonable intention', a 'wicked heart' and an 'evil mind'. If the Crown proved that there was a 'treasonable mind', said Pirow, any action done in such a mind, however innocent in nature, could still be an overt act of treason.<sup>60</sup>

The act itself is only evidence of the state of mind...any manifestation of a hostile state of mind renders a person guilty of high treason.<sup>61</sup>

'Treasonable intent', said Pirow, could partly be determined by 'gauging the probable reaction of the people who formed, for example, the bulk of the audience at meetings'. He said the Crown had evidence that 'the country's non-European population is likely to respond more quickly, more irresponsibly, and more violently to illegal agitation than would the case with a group whose general standard of civilisation is higher'.<sup>62</sup>

The Crown's dilemma, following the collapse of the first indictment, was that it could no longer link communist intent (which, for the Crown, equalled violence) with the charge of treason, but it was required to prove that violence was intended in order to ensure a charge of treason. Its solution was to declare calls for political equality to be treasonable because, it claimed, the only route to equality in South Africa was by way of violence. But, because in countless meetings and articles the Congress Movement had called for non-violent methods of struggle, the Crown alleged that the accused had an unwritten agreement to provoke 'violence by retaliation' from the police.

We propose to demonstrate that this policy of non-violence is double-talk and a ruse, so that when the fat is in the fire, (the ANC) could stand back and say 'our policy is non-violence'...Non-violence is just a slogan. It is misleading to have a slogan of non-violence when your methods are unconstitutional. This policy of non-violence is unlawful(sic).<sup>63</sup>

Violence, said the Crown, 'ran through the case in an unbroken thread'. And the form of this violence 'was not to be limited to minor street-corner

58 Karis, 1965, op cit.

59 Karis, op cit p19

60 New Age 14.8.58.

61 New Age Ibid.

62 Second Indictment, Treason Trial microfilm

63 New Age 17.11.60

skirmishes or beerhall brawls'. The speeches and writings of the accused 'bristle with references to the spilling of blood'.<sup>64</sup>

When the defense demanded evidence of planned violence the prosecutor simply replied that 17 of the accused had pledged themselves to achieve the demands of the Freedom Charter which implied the violent overthrow of the state 'within five years from 1955'. The Prosecution later alleged that the Freedom Volunteers, set up to mobilise people around then Defiance Campaign, were a semi-military force under oath to carry out orders, even if these were illegal. Conspiracy, said the Crown, was no longer held to be between individuals but between the organisations of the Congress movement. These organisations conspired to set up an illegal extra-parliamentary opposition which intended to overthrow the State.

So the actual trial - which only began in August 1959, two and a half years after the accused had been arrested - was to become a bitter contest between those who advocated a non-racial democracy and those who advocated racial separation. The alteration in the State's focus from charges of furthering the aims of communism to charges of treasonable intent had much to do with the development of the trial itself. But the shift was also influenced by changes in the State's conceptualisation of apartheid.

The construction of apartheid did not unfold, as some writers have suggested, as a 'grand plan' which remained unchanged from the 1940s.<sup>65</sup> It was hammered out in reports, commissions and articles and was to be tested in court during the Treason Trial. Both the Sauer Report and the Tomlinson Commission had categorised State thinking on apartheid and had developed a discourse which attempted to naturalise racial separation.<sup>66</sup> Both were only partially successful. The Sauer Report of 1948, treated by many scholars as the source of apartheid policies, was in fact an internally contradictory document, being unable to choose between the 'purist' position of total economic segregation and the position of Afrikaner capital which demanded the expansion of a cheap African work-force.<sup>67</sup> In 1956 the Tomlinson Commission was to take up Sauer's unresolved themes and attempt a 'scientific' solution. Its central premise was breathtakingly simple: African people were not, in any way, part of the South African State. When the Commission permitted itself a 'prophetic look at the future' it found

64 New Age 13.8.59

65 See Bunting, 1969, W de Klerk, *The puritans in South Africa* (Penguin, London, 1976), TR Davenport, *South Africa: A modern history* (MacMillan, London, 1977), D Welsh, *The growth of towns*, in M Wilson and L Thompson: *Oxford history of South Africa*, Vol.2 (OUP, Oxford, 1971).

66 See Chapter 7.

67 Posal, *The construction of apartheid*, 1987, p9

itself

inclined to regard the proposed development plan as a means to bringing about a degree of political development which might serve as the forerunner of an eventual configuration in South Africa, under which parts of the continent would be reserved for Europeans, and to which Bantu would be allowed entry as temporary migrant workers, without being able to claim political rights here.<sup>68</sup>

The logical conclusion of this thinking was to 'concentrate within one department as many functions pertaining to the Bantu as are practicable (and) proceed with the conception of a 'State within a State'.<sup>69</sup>

Both the Sauer and Tomlinson reports were clearly attempts to map the way forward for apartheid, to legitimize it and embed it in the daily processes of government. Whether the reports were internally contradictory or were not fully implemented did not detract from their ideological work in defining apartheid. These documents which, in a sense, represented the State speaking the 'truth' about itself, were not simply justifications for particular policies, they were frameworks of knowledge which made State action not only capable of being deemed legitimate, but also objectively possible. The Tomlinson Commission, in particular, served its purpose by default: It established the 'scientific' grounds for a defense of the steadily-increasing repression and violence necessary to maintain the existing structure of the State.<sup>70</sup>

The core theme within both documents was the need to produce a blueprint for a docile black labour force and to depoliticise the effects of racism. The Congress Alliance and its Press was seen as working directly against the State's efforts to do this. By the time the actual Treason Trial began in 1959, the Alliance's consistently successful attempts to dig out and make visible the effects of apartheid was held to be treasonable. The three main ways in which the Alliance was seen to have done this was through meetings, media and the Freedom Charter. The entire trial was, in fact, an attempt to re-interpret Congress Alliance discourse and actions in these areas in terms of National Party ideology.

The ANC, said the Crown, supported New Age, Advance, Liberation and Fighting Talk 'without qualification'.<sup>71</sup> Reports in these journals, it said, would be used 'to prove that the policy of the Congress Movement is one of violence' and that the newspapers were involved in 'the incitement of

68 Tomlinson Commission 211;24, quoted in Ashforth, 1987

69 Ibid. The larger recommendations of the Commission were not carried out, mainly because of objections to the plan by Verwoerd and the Native Affairs Department. See Lazar, 1987.

70 Ashforth, op cit, p37

71 New Age 1.12.60

violent policies'.<sup>72</sup> And if reporting was done with a 'wicked heart', with intent to incite an audience, it constituted treason.

The attack by the left-wing Press on State policies has been dealt with in the previous chapter. It is clear that the Prosecution had ample proof that this Press was hostile to apartheid and had supported an oppositional culture during the 1950s. The Crown, however, seemed unclear on how to proceed against the left Press beyond claiming that it was communistically inclined and, through its opposition to apartheid, had incited violence. The battle over words was therefore focussed on the one document which crystallised the beliefs and demands of the entire Congress Alliance: the Freedom Charter.

In the second indictment, the Prosecution said it would prove the existence of treasonable conspiracy by 'an irresistible inference' from the history of the world-wide communist movement and the history of extra-parliamentary opposition in South Africa. Pirow admitted that the Prosecution's case was 'intricate' and included 'voluminous particulars...all kinds of evidence of spoken and written words, attendance at meetings, possession of documents and so on...'.<sup>73</sup> But by 1959 the number of documents submitted as evidence had been reduced from nearly 10 000 to 5 000. With these, said Pirow, the Prosecution would attempt to prove a connection between 'world communism at least since 1949...the extra-parliamentary movement since 1952...the ANC, the World Peace Council, opposition to the foreign policies of Western European countries and the United States...and the entire range of tactics of protest, including agitation over minor grievances'.<sup>74</sup> The 'unifying element' in this was the Liberatory Movement, and the key document was the Freedom Charter. Much of the Crown case, therefore, rested on the Charter and at the close of the preparatory inquiry Pirow had treated it as the cornerstone of the Prosecution's case. In the second indictment Pirow said the Charter was 'a revolutionary document' which made demands involving 'the complete smashing of the entire State apparatus in its present form'.<sup>75</sup> The indictment specified five demands to support this claim - mainly those concerned with public ownership and redivision of land.

Late in 1959 Professor Murray was called back to assess the Charter. In Murray's estimation there were 'no parts of (the Freedom Charter) which could not be interpreted into the Communist doctrine'.<sup>76</sup> As each phrase of the Charter was read out Murray proclaimed: 'Communist doctrine', or 'the word people has two meanings...one of them Communistic', or 'this falls

72 New Age, 24.9.59 & 8.10.59

73 Karis, 1965

74 Karis, op cit, p18

75 Karis, Ibid.

76 New Age 12.11.59

within Communist policy'. However, in questioning Murray, Advocate Maisals for the Defense got him to admit that the Charter could be seen as a detailed statement of human rights. It therefore referred to the removal of grievances:

**Mr Maisels:** It is not necessary therefore to look for Communism. The state of grievance is a natural reaction to a position in which the Non-Europeans find themselves in this country. You may agree with me, is it not? - Yes.

**Mr Maisels:** It is not unnatural to expect these grievances from the Non-Europeans? - Yes.

**Mr Maisels:** The stress is laid on liberty, fraternity and equality?

**Prof. Murray:** It is on democracy.

**Mr Maisels:** That is not far removed from liberty, fraternity and equality? - Yes.

**Mr Maisels:** The emphasis is in franchise rights and civil liberties? - Yes.

**Mr Maisels:** More sections are on that than anything else? - Yes.

**Mr Maisels:** What I am suggesting is that in this document one hasn't got to look for Communism or non-Communism but one has to understand the position of the Non-Europeans.

In the discussion which followed, Murray conceded that the word 'revolution' did not necessarily mean violence.

**Mr Kentridge:** In other words, professor, if you look at the Freedom Charter of the ANC as it stands, on its face value, there is nothing in Communist theory which says that it can only be attained as far as it goes by violence?

**Prof Murray:** Not as far as the document goes.

With this admission the Crown's case against the Charter, and with it the case against the 'grievance' reporting of the left Press, had collapsed and from this point the Charter was downgraded as evidence by the Crown.

The final line of attack by the Prosecution was against the provocation of violence by way of public speeches. And in this they had what they considered to be a water-tight case. Nine days before the Treason arrests a police detective hiding in a cupboard at a meeting had recorded on tape a speech made by the Transvaal chief of the ANC's Freedom Volunteers, Robert Resha. Resha, a New Age sports reporter, had told the audience:

When you are disciplined and you are told by the organisation not to be violent, you must not be violent. If you are a true volunteer and you are called upon to be violent, you must be absolutely violent, you must

murder! murder! murder! That is all.<sup>77</sup>

Until this point the court had heard endless seemingly reports of speeches made by the accused and taken down in long-hand and short-hand by Special Branch detectives. Many of these were incoherent and the Defense spent months demolishing the credibility of the 'long-hand writers'. The taped speech, however, demanded a different approach, and was the single most damaging piece of evidence produced against the accused. The Defense had only one option open to it: to attempt to separate Resha's 'language of the beerhalls' from Congress policy.

The Crown, in its turn, threw in every piece of evidence it could muster to support its charge of violence. It drew together the evidence of long-hand and short-hand writers on meetings and speeches against passes, Bantu Education, women's rights and the Congress of the People. 'We say', said Mr Trengrove for the Crown,

that although the Congress Movement told the people not to be violent, although this was a general approach, there were instances in which the ANC preached violence at meetings and in their writings, they preached violence in order to test the preparedness of the people for violence.<sup>78</sup>

And the Prosecution produced its evidence. At a meeting at the Trades Hall in Johannesburg in 1954, Elias Moretsele had said: 'We are a non-violent army for liberation'. He was bluffing the people, claimed the Prosecution. 'What he is telling the people is that we are non-violent, but if violence comes it will come from the Government'.<sup>79</sup>

At another meeting Gert Sibande of Bethal had said: 'in the same way that the Afrikaner took this country without violence, we will take away the Government with bare hands. We know the secret, they don't know.' This, said the Crown, did not mean the Congress Alliance was going to negotiate for a future South Africa.<sup>80</sup>

Accused Ahmed Kathrada had talked about police spies at a meeting. He had asked: 'What will we do with people like these?' The crowd had roared back: 'We will kill them'. This speech, said the Prosecution, 'was not inconsistent with the speech of "murder! murder!" by accused Resha'.<sup>81</sup>

The Freedom Volunteers, said Prosecutor Trengrove, preached non-violence and had not committed violence during the period of the

<sup>77</sup> New Age 4.2.60

<sup>78</sup> New Age 1.12.60

<sup>79</sup> New Age, Ibid.

<sup>80</sup> New Age, Ibid.

<sup>81</sup> New Age, Ibid.

indictment. But they were standing in the wings 'to lead the masses into violence' when the time arrived.

The Prosecution again linked this alleged violence with the Communist Party, and police witnesses spent much of February 1960 testifying on Party meetings, despite a Defense argument that this was irrelevant to the charges and would require a second trial on the policy of the Communist Party.

The Defense opened its case in March and called to the stand, among others, the deputy president-general of the ANC, Dr Wilson Conco, its president, Chief Albert Luthuli, ANC executive member Nelson Mandela and Resha. Mandela denied that the Congress view of freedom was a direct threat to Europeans: 'We are not anti-white; we are against white supremacy', he told the court. 'And in struggling against white supremacy we have the support of some sections of the European population'.<sup>82</sup> Conco said the speech made by Resha was outside the policy of the ANC. Resha, who was reprimanded for refusing to address the Prosecution as 'their Lordships', agreed with Conco, but said he had talked this way because a number of things were 'working on his mind'.<sup>83</sup> Among these were

The Western Areas removals...the intensified permit raids in Sophiatown during which men had been killed running away from the raids, women fleeing from raids on their homes giving birth in the streets of Newclare and the veld near Sophiatown.<sup>84</sup>

The Prosecution claimed that the ANC new 'full well that in the situation you were creating in Western Areas it would only need a spark to start off a conflagration:

**Mr Resha:** We knew the Government wanted to start a conflagration because it wants to rob the people of their rights and threatens them with force. The Government sent 2 000 armed police into Sophiatown.

**Adv. Trengrove:** You regarded it as a victory?

**Mr Resha:** Yes. Because 2 000 police went away without shooting one person!<sup>85</sup>

The most impressive claim that the ANC was a non-violent organisation, however, had come from Luthuli. With his slow, erect walk, his large square head with its gray hair and deep, dark lines, his huge laugh and his courteous way of talking in simple, Biblical terms, he summed up everything that was meant by African dignity. He appeared, noted Drum

82 New Age 8.9.60

83 New Age, *Ibid.*

84 New Age, *Ibid.*

85 New Age, *Ibid.*

editor Anthony Sampson,

the perfect, docile Christian chief that missionaries delight to describe in their memoirs...the kind of African of whom Afrikaner officials said: 'That's the kind of Native we like to have, not those half-baked kaffirs in the towns'.<sup>86</sup>

His high moral position confounded the upholders of apartheid. He had once said that he did not hold Whites responsible for racism as individuals:

I don't hate the white man. You see this position of domination has placed him in a position of moral weakness. We must sympathise with him: why should we hate the poor blighter?<sup>87</sup>

When he was elected as President of the ANC in 1952 he asked

Who will deny that thirty years of my life have been spent knocking in vain, patiently, moderately and modestly at a closed, barred door. What have been the fruits of moderation? The past thirty years have seen the greatest number of laws restricting our rights and progress until today we have reached a stage where we have almost no rights at all. It was with this background and with a full sense of responsibility that...I have joined my people in the new spirit that moves them today, the spirit that revolts openly and boldly against injustice and expresses itself in a determined and non-violent manner.<sup>88</sup>

Shortly after Luthuli took the stand the Government declared a State of Emergency following the shooting at Sharpeville. He was imprisoned and assaulted by a warder. Shortly afterwards he became ill and his testimony was restricted to two hours a day. Despite this sage old man was savagely attacked by the Prosecution in a way which shocked the accused. Helen Joseph remembers:

I think that if I had been Trengrove, the Prosecutor, I would have carried with me to my dying day the memory of the look on Luthuli's face. So Christ may have looked, when He stood before His accusers. It was a look of agonized disbelief that his word could be so doubted. I think that in all his life, no one had ever before accused Albert Luthuli of dishonesty. He turned to look at the judges in sheer disbelief, in appeal. Their faces were stony as he protested that this was an attack on his integrity.<sup>89</sup>

Nonetheless, he clearly impressed the judges. He said that non-violence was the basic policy of the ANC and as far as the struggle in South Africa was

86 Sampson, 1958, p185/9.

87 *Ibid.*, p189

88 *Ibid.*

89 Joseph, 1963, p90.



concerned, he thought that violence would be national suicide. He said the ANC stood for an undivided South Africa which would be multi-racial. The call to share the land among those who worked it in the African Claims document and the Freedom Charter was not necessarily a socialist demand, he said.

To us, it is a painful thing and all along the ANC has taken a strong stand in claiming our rights to land. Being dispossessed of land is almost to be dispossessed of life itself.<sup>90</sup>

The ANC was an omnibus organisation and its members might hold different political views, he said. People within the ANC might advocate violence on occasion. But the position of the ANC remained non-violence and 'I have had no suggestion to change that policy, not a whisper'.<sup>91</sup>

In November 1960 the Crown began its final argument. It alleged that all 156 of the accused were engaged in a plot against the State and if they had been left unchecked it would have led to death, a bloodbath and disaster.<sup>92</sup> It reiterated that 'you can only achieve what the Freedom Charter wants if you overthrow the system. You can only achieve this over the dead bodies of Europeans'.<sup>93</sup> The ANC, said Trengrove for the Prosecution, 'must be judged by what it says':

If you embark upon a programme which has certain probable consequences then in law you intend those consequences.<sup>94</sup>

The Crown divided the accused into two camps: 'those who have knowledge of the violent doctrine of Communism and those who have no knowledge'. Heading the list of those who 'knew' was Robert Resha, who 'conspired to propagate Marxist-Leninist doctrine and knew that violent revolution was a principle inherent in Communism'.<sup>95</sup> The Crown also revised its list of co-conspirators, and Ruth First, together with Lutuli, Oliver Tambo and ZK Matthews, were included in a special list of 26 people deemed the 'real co-conspirators'.

On March 6 the Defense opened its final argument. It rejected the charge of treason and denied that Resha's speech reflected ANC policy. For the Prosecution, African grievances had been exploited by agitators. For the Defense, African grievances were to be expected in the circumstances of South Africa, and it was realistic to accept the fact that moderate and responsible African leaders saw in the Freedom Charter a vision of the

90 New Age, 31.3.60.

91 New Age, Ibid.

92 New Age, 10.11.60

93 New Age, 17.11.60.

94 New Age, Ibid.

95 New Age, 16.2.61.

future. Where the Prosecution stressed the power of the accused to start a conflagration, the Defense stressed the belief of the accused in the possibility of peaceful change in response to non-violent pressure. In short, the Defense denied that the ANC was a conspiracy motivated by hostile intent. It denied the prosecution's contention that no middle ground existed between the ballot box and treason. Maisels posed to the judges some major legal questions. What are the essential ingredients of treason in peacetime? Can there be constructive treason? In other words, can one commit treason (as the Crown alleged) if one performs a non-violent act whose probable consequence is the use of violence by the State?<sup>96</sup>

On March 29 1961 the judges announced that there was no necessity for the Defense to continue with its argument. Justice Rumpff said the incitement to violence was the cornerstone of the case, but the prosecution had failed to prove that the ANC had acquired or adopted a policy to overthrow the State by violence. Nor had it proved 'a case of contingent retaliation' in which the ANC planned to provoke the State into committing violence and thus provoke retaliation from the masses. The Crown had also failed to prove that the ANC was a communist organisation, or that the Freedom Charter pictured a communist state.<sup>97</sup> The drama of the final judgment was captured by Helen Joseph:

The Judge President begins to read the judgment. It takes forty long minutes. 'Silence in court!' Six times a day we have heard it, rising to our feet as the judges come in or go out. On this last day, when Judge Rumpff himself tells us to stand, we hear it again. 'Silence in...' the Sergeant at the back of the court begins to shout when he sees us getting to our feet for the last time. But his voice dies away. I am not sure what to do with my hands, so I put them behind my back. Judge Rumpff is speaking now, in a low voice, but very clearly, leaning forward a little, 'You are found not guilty and discharged and you may go'. The court is hushed... We stand motionless, stunned. Then I see that Council is smiling and I know I am not dreaming.<sup>98</sup>

## The trial's aftermath

There is a supreme irony about the conclusion to the Treason Trial. In March 1960, while the Congress Alliance was on trial for violence, nervous, trigger-happy policemen killed 71 Africans protesting against the carrying

96 Karis, op cit, p22.

97 New Age, 30.3.61

98 Joseph, op cit, p141.

of passes in Sharpeville and Langa and injured 229. A form of martial law was declared, several thousand people were arrested (including most of the trial accused) and the ANC and Pan Africanist Congress were banned. So the conclusions of Justice Rumpff in reaching a verdict of 'not guilty' were clearly out of step with the objective conditions of the time. The twelve months between Sharpeville and the treason judgment represented a critical change in the tactics of both the State and the Congress Alliance. In a sense, the logic of the trial was derived from the early years of Nationalist rule. The trial, it was hoped, would restrict the movements of the accused, intimidate others who might be similarly accused, and demonstrate at home and abroad, to a world immersed in the Cold War, that it was fighting communism by way of a highly-respected judicial system. The Government would be vindicated if it won. And if it lost it could blame defeat on the law's inadequacy and extol the meticulous standards of the judiciary. On the final decision it could base either further prosecutions (of the co-conspirators and others) or the need for tougher new legislation.

However, the trial had unintended consequences. It boosted the prestige of the ANC, further cemented the alliance between nationalists and communists, and vindicated the call of the Congress Alliance and the Freedom Charter. The trial was of little value to the Government in its appeal to the white electorate, who were simply confused by the endless wrangling and received little clarification from the mainstream Press. The trial also failed to promote acceptance abroad, where an interest in de-colonisation in Africa had overtaken fears of Soviet intervention. Foreign reports on the trial mainly impugned the Government's motives and sympathised with the tribulations of the accused. However, none of these consequences alone serve to explain the State crackdown on the Congress Movement. The crisis, for the Government, needs to be understood on another level.

The trial had failed to install apartheid as 'common sense', and served simply to highlight the differences between Nationalist doctrine and non-racialism. Attempts to excommunicate the ideas embodied in the Freedom Charter by due legal process proved to be unsuccessful, and by the late 1950s this failure appeared to have opened a breach in the power matrix which thousands of pass-burners seemed to symbolise. The centrality in the trial of newspapers, reports, journalists and speechmakers - essentially of language - was not without good reason. Language is not merely a reflection of social practices, it is not about politics, it is politics. Ideological struggle preeminently takes place in language. We can think of such struggle as not only in language on the obvious sense that is contained in reports and speeches, but also over language. It is over language in the sense that language itself is a stake in the social struggle as well as a site of

social struggle.

The trial has been cited as an example of the excessively legalistic approach of both the Congress Alliance and the Government.<sup>99</sup> However, this misses an essential point. At root, the trial was a test-case for the apartheid discourse of the newly-elected Nationalist government and an attempt to ghettoise and excommunicate the ideas of the Alliance. In this it failed, and the banning of the ANC was inevitable in that the failure of the trial - even before it had ended - to stigmatise Left discourse was a serious danger to the State's ideological dominance. As accusations of communism, violence and '@@@?' lost their power, the protective shielding of the State's discourse began to crumble. In the State of Emergency and the banning of organisations, the State therefore dispensed with the legal ritual. By then, the National Party had a larger white mandate, was in control of an independent republic and had much more self-confidence than when the trial began. In the aftermath of the trial penalties for dealing with 'troublemakers' were increased by the Sabotage Act, traditional places for outdoor meetings were closed, detentions were increased in time and frequency and both organisations (including SACOD) and people were banned with increasing regularity. Fighting Talk, New Age and their successors were shut down and the charge of treason pervaded political discourse.

After the trial the Congress Alliance also changed its tactics. In 1961 Umkonto We Sizwe (the Spear of the Nation) was formed in order to undertake acts of sabotage and a new era of political struggle had begun.

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<sup>99</sup> Turok interview, Sampson, op cit, Karis, op cit.