TREASON TRIALS DEFENCE FUND

PRESS SUMMARY

No. 53.

This is the Fifty-third issue of a regular bulletin giving a factual resume of the proceedings of the Treason Trial.

Period Covered: 13th/17th February, 1961.

CROWN ARGUMENT CONTINUES

T. TSHUME

ACCEPTED COMMUNIST THEORIES

Adv. Liebenberg took over the Crown argument on the accused T. Tshume on Monday, February 13th, dealing with the aspect of Communist principles according to the Crown submissions. It was submitted that this accused accepted and propagated the Communist doctrine of the unity of theory and practice and of class divisions and class consciousness, the Communist theory in regard to the need for the overthrow of the capitalist state and its replacement by a Communist state, and also by implication the Communist theory in regard to revolution.

Mr. Justice Rumpff asked, in regard to the fourth submission, assuming that the Crown proved that this man had accepted the first three principles as Communist principles and had propagated them, and seeing that these principles per se did not deal with violence or the violent overthrow of the state, how the Court could come to the conclusion that he had by implication accepted and propagated principles which propagated the theory of violence.

PERSONAL ACCEPTANCE.

Adv. Liebenberg expressed his gratitude to the Court for pointing this out and said that the Crown might be able to show personal acceptance of Communism without the actual propagation of violence, or at least sufficient to infer that this accused must have accepted violence, e.g. he had condemned capitalism and advocated Socialism and had lauded Russia and the Communist revolution. These taken together led to the inference that he had appreciated thatthe transition to communism would be by violent revolution. It might be that, since the four principles stated by the Crown in relation to this accused were so peculiarly Communist, the Court could say that the fifth principle was there. Even if the evidence on these submissions fell short for the inference that Tshume accepted and propagated the theory of violence, it was not without value, and could still be used to determine the presence of Communist theory and knowledge; also the factual evidence on violence might be such that this type of evidence might even be superfluous.

The Crown then stated that it would be shown from documents how Tshume had accepted basic Communist principles and how he sought to implement these theories in his writings. His position must also be seen against the background of the writings of his confederates. Referring to the address by Tshume to the Youth League Conference in Queenstown in 1954, the Crown drew the attention of the Court to the expression, "You have nothing to lose, but your chains". When Mr. Justice Kennedy remarked that he had seen this phrase used in non-Communist papers, it was pointed out that it came originally from the Communist Manifesto. The Accused was the author of this address and this fact, taken together with the origin of the quotation showed a direct Communist line.

Adv. Liebenberg then referred to a statement on Bantu Education, signed by Tshume and bearing the handwritten comment : "Leninism stated this very clearly."

STUDENT OF COMMUNIST THEORY.

The Crown submitted that Tshume's position should not be examined in isolation but in the light of the ideological line followed by the ANC Youth League of which he was a prominent member, which was the propagation and acceptance of the same dialectical approach. He was in fact giving expression to the point of view of his organisation. Moreover he had in his possession certain books and documents containing Communist matter.

CASE AGAINST NDIMBA.

The next accused to be dealt with by the Crown was B.Ndimba. It was pointed out by Adv. Terblanche that this accused had held office only at the branch level and the Crown would rely for the most part on meetings and a few documents. Referring to the longhand reports of the detective Mrodlana, the Court was asked to accept this on the same basis as in the case of Segone, despite the denial by the accused Ntsangani in the witness box that they were fair and accurate reports. The Crown submitted that in certain speeches this accused had advocated the same methods of struggle as were being used in Kenya and therefore was advocating the use of violence. If the Court was to find the ANC policy as the Crown submitted, and not as the defence witnesses had suggested, then the evidence of these speeches which had been made by Ndimba and those to which he had listened would strengthen the Crown submission.

OATH DENIED.

Dealing with the speech made by Ndimba in which he was alleged to have said that if volunteers were instructed to kill, then they must kill, the Crown referred to the denial of the accused Mkalipe that there was any such oath to be taken by volunteers and also to Ndimba's Court evidence when charged with incitement to public violence on this speech. He had then explained that he had added that if volunteers were not to kill then they should not and that it was an instruction to obey. The Crown submitted that the speech of Ndimba was enough to show the mental preparedness to use violence and compared it to the speech of Resha on the 22nd November, 1956 which had been to much the same effect.

HOSTILE INTENT.

The Crown submitted that from the evidence of the meetings, the hostile intent of Ndimba had been shown and his adherence to the conspiracy proved. He had been active in the Korsten branch of the ANC and knew that the struggle was to be carried out by unconstitutional and illegal methods and that the ANC was aiming at the seizure of power throughout the country. From the meetings which he had attended he knew and supported the policy and activities of the ANC and incited the people to the same violent methods as in the struggle in Kenya; he had supported the Western Areas Campaign and knew that the resistance there might lead to violence. He had supported the Freedom Charter and had foreseen the possibility of bloodshed in the struggle and had said that it was "not far off". Adv. Terblanche submitted that the overt acts alleged by the Crown against this accused had been proved and also his adherence to the conspiracy and his hostile state of mind and asked that he should be found guilty.

Adv. Liebenberg continued the argument on Ndimba by submitting that he had accepted the Communist analysis of the present state in the Union and had propagated Communist methods to achieve its overthrow. He had aimed at the establishment of a Communist state, which he knew would involve violence

Page 3 / ..... against

agsint the present state and had made speeches lauding Russia and China and the overthrow of capitalism by them, and had praised and advocated the acceptance of the Communist system. In all his speeches he had shown that he accepted the inevitability of a violent revolution in South Africa.

KNOWLEDGE LIMITED.

Mr. Justice Kennedy commented that the knowledge of Ndimba of China appeared very limited for he had spoken of Chou En Lai being sent to Formosa. The Crown replied that his knowledge might be limited but he propagated and accepted the theory of violent revolution. His references to Russia, Stalin and Lenin in one of his speeches could be taken to show his attitude towards capitalist oppression. Mr. Justice Kennedy said that if there were any knowledge on the part of this accused, it was elementary in the extreme and continued, "You'll have to convince me, Mr. Liebenberg, that he had any knowledge of the principles of violence. "

Mr. Justice Rumpff commented that this accused, from the evidence, might or might not have had knowledge of Communism; he liked Communism in Russia because there was no oppression and thought that China was free. This took the Crown argument no further and the highest that the Crown could say was that Ndimba referred to China in favourable terms. Adv. Liebenberg replied that the Court might find that violence had been sufficiently proved, "although not ideological violence."

CASE AGAINST NKAMPENI

Adv. Terblanche then began the Crown argument on the next accused, J. Nkampeni , dealing first with the evidence on his membership of the ANC and his attendance at meetings. When asked by Mr.Justice Rumpff where in the evidence of a particular meeting there was proof that the Bantu Education campaign was part of the whole campaign against apartheid, Adv. Terblanche replied that the meetings were organised for the struggle generally and all subjects should be taken note of. This accused was a member of the Executive and would have known that Bantu Education was part of the general campaign and wouldn't have been at these meetings if he had not agreed with this. The Crown conceded that this accused had made very few speeches himself, but relied on his attendance at meetings and that he had heard the speeches of others and had not disassociated himself from what was said. He had been active in arranging these meetings and would have known what was going on. When Mr. Justice Rumpff pointed out that there was no evidence that he had associated himself with what was said, the Crown replied that it could be inferred from all the surrounding circumstances.

JUDGE QUESTIONS CROWN ON SPEECHES

THOUSANDS NON-VIOLENT.

Mr. Justice Bekker asked the Crown what their line would be in relation to the difficulty that these speeches before the Court represented only a fraction of all the speeches that had been made and even if the speeches were proved, it might be argued that neither the policy nor the knowledge of violence had been proved on account of the thousands of non-violent speeches. When Adv. Terblanche said that there was no evidence that the thousands of speeches did not contain violence, Mr. Justice Bekker said that it was the Crown's business to show violence. From the fact that numbers of speeches were not produced, it could not be inferred that they were violent speeches.

SILENT APPROVAL.

Continuing the following morning, Adv. Terblanche repeated that the accused Nkampeni must have attended a number of meetings but when the Court asked if any knowledge of violence could be inferred, said that it could be taken no further. The Crown submitted that although this accused did not

utter violence, he associated himself with the remarks of others; it was not necessary for him to speak himself to associate himself with violence.

The Crown submitted that the act of conspiracy had been proved against Nkampeni and also his hostile intent; he had been a very active member of the active Korsten branch of the ANC and had attended the meetings which were charged as overt acts against him. He had spoken at some of these meetings and had been Chairman at others. From these meetings it was submitted that he knew that the ANC wanted to achieve a new state and he supported the drawing up of a Freedom Charter; the struggle was to be unconstitutional and illegal and he had known that violence might result, but nevertheless they were determined to carry on their struggle; this accused had spoken against Bantu Education and had known from the meetings which he attended that the methods to be used in the struggle would be the same violent methods as were used in Kenya. He also knew that the ANC supported the campaign against the Western Areas Removals and that the decision had been taken that the removals would take place only over the dead bodies of the people there and that the same would happen in Port Elizabeth. The ANC had supported the campaign against passes and had recruited volunteers, administering a pledge to them that they must be prepared to die fighting and must take action at all times as instructed by their superiors. This accused had himself recruited volunteers and had been present when the oath was administered to volunteers.

ATTENDANCE AT ONE MEETING.

After argument on the overt acts alleged against this accused, the Crown conceded that only one had been proved against him beyond reasonable doubt, i.e. the attendance at one meeting and his agreement with what had been said there, and submitted that all other reference should be used to show adherence to the conspiracy and proof of his hostile state of mind.

APPLICATION FOR RELEASE.

At the conclusion of the Crown argument on this accused, Adv. Plewman addressed the Court in an application for his release, submitting that although the Defence did not admit that there was a case against any of the accused the Court should consider whether there was any evidence beyond a reasonable doubt that he had entered in the conspiracy. Mr. Justice Rumpff said that the Defence would have to argue the case of this accused and pointed out that the difficulty was that not all the evidence was before the Court as some of it would have to be related to the credibility of the witnesses, Mr. Justice Kennedy said that speaking for himself the position of this accused would depend on the reliability of the reporters. Adv. Plewman replied that the application had been based on the case as presented by the Crown, but Mr. Justice Rumpff stated finally that the Court preferred not to deal with this accused at that moment.

ARGUMENT ON NTSANGANI

PROMINENT ANC MEMBER.

Adv. Trengove took the argument on the next accused, F. Ntsangani dealing first with his membership, submitting that he was a prominent member of the ANC. In his evidence he had adopted the attitude that he knew the policy of the ANC and had said that he used National and Provincial Executive reports. The Crown submitted that this accused was an intelligent person who knew and understood English very well and would therefore have understood the full import of what was contained in these reports. Dealing with his attitude towards the state, the Crown submitted that he regarded it as the enemy and oppressor of the non-white people.

INSOLENCE.

After reading extracts from the evidence of this accused, the Crown submitted that one of the factors to be taken into consideration inter alia was his demeanour in the witness box; he had given his evidence with studied insolence and impertinence, just as Resha had done. The Crown also referred to his insolent attitude in replying to questions "that could have been answered in one sentence.. " It was quite clear, the Crown submitted that from his speeches, that his attitude was that the constitutional government was vicious, unjust, brutal and irresponsible. He had accepted the Freedom Charter and that the struggle should be directed towards achieving a State based on the principles of the Freedom Charter.

On his own admission, Ntsangani had accepted the 1949 Programme of Action and the methods set out therein as the means of achieving his political ends. Notwithstanding his professed ignorance of strike action, it was submitted that he fully realised the implications of the Programme of Action. He had been a prominent volunteer in the Defiance Campaign. The evidence showed that he had supported the Western Areas Campaign, fully realising what it involved and notwithstanding the fact that in the ANC view the Government was becoming more vicious and more hostile as the campaigns progressed. His view that the ANC kept on the non-violent plane and avoided a bloodbath in the Western Areas was untenable.

HOSTILE.

The Crown submitted that Ntsangani's state of mind in relation to the Western Areas Campaign was undoubtedly hostile to any constitutional action. The government would resort to violence to enforce the laws, yet he still supported the campaign to make the laws unworkable. His attitude was the same as that of the ANC and the Court would not accept that the ANC was trying to avoid a bloodbath; it was trying to create a bloodbath and knew that it was a probability.

The Crown submitted that Ntsangani was actively and intimately associated with the training and recruiting of volunteers in his area. He assisted with the training of volunteers in the Eastern Cape, but he denied that he had used the three lectures, The World We Live In, etc. The Crown submitted that Ntsangani was not ignorant of the position, he was too well informed, and he was misrepresenting the facts about the lectures because he knew that they were subversive documents. His evidence on the lectures and the extent to which they were used in the Eastern Cape should be rejected.

SPEECHES TO "ILLITERATE MASSES".

The Crown then referred to speeches made on a number of occasions when the illiterate masses were told that in the liberatory struggle they must expect bloodshed from the police who had been told by the Minister of Justice to shoot first and ask afterwards, and that rivers of blood would flow before the African people would get freedom. The Crown submitted that such speeches would build up a state of mental hatred in the minds of illiterate people; the Government was always held out as brutal and vicious.

Replying to a question by Mr. Justice Bekker referring to an explanation given by Chief Luthuli, Adv. Trengove replied that whether it was Luthuli or Ntsangani who over a period of years, in their speeches from public platforms to illiterate masses over whom they had no control, encouraged them to join the liberation struggle, and to fight a government prepared for violence, that was creating a state of mind in the people, which was consistent with coercion by force and not with mutual agreement.

CROWN'S SUBMISSION.

BUILDING HATRED.

When Mr. Justice Bekker said that Chief Luthuli had said that the people must be informed and asked whether that would be a warning or mental hatred, Adv. Trengove said that would be for the Court to decide.

Mr. Justice Bekker : "What is your submission?"

Adv. Trengove replied that the Crown submitted that it was building up a mental hatred. From the witness box, the witness had shown his attitude that the people were entitled to struggle against duly constituted authority, notwithstanding the situation created when the government had to resort to force to crush unconstitutional and illegal action. These statements had been made over and over again to inspire mental hatred in the minds of the people and the Court would hold that the Government was in duty bound to take the necessary steps to enforce the laws and ensure the safety and security of the state. These statements were indications of a treasonable state of mind

REPORTERS WEAK.

Continuing the submission on the meetings attended by Ntsangani, Adv. Trengove asked the Court to find that even though the reports of the speeches at certain meetings might not be reliable owing to the inherent weaknesses of the reporters, the topics discussed and the attendance of this accused should be considered.

On Wednesday February 15th, the Crown continued its submissions on the accused Ntsangani dealing with the analysis of his evidence and contending that whatever the Court might find on the reporting of the witness Segone, the facts relating to Ntsangani's state of mind stood and would not be affected by the evidence of Segone. In his references to the incident of the tin of paint and the riot following this incident, and reference to the river of blood, inter alia, there was always the idea of unconstitutional action and no thought of constitutional reform. The Crown submitted that the Court should find from all the evidence that there was proof of the hostile state of mind of the accused. In the light of what he had said and done, it was clear that he wanted to undermine the state and this was proved beyond all reasonable doubt. On his own evidence and admissions the overt act of conspiracy had been proved beyond any doubt.

The Crown would rely on two meetings for overt acts and not five as shown in the indictment, and submitted that the first had been proved against him by his own evidence. The speeches of Mayekiso and the co-conspirator Ngota were submitted to have been made in pursuance of the conspiracy and with hostile intent and could be held as overt acts against this accused, for his association with them. The Crown informed the Court that there would be no further argument on Ntsangani and asked the Court to find that the case had been proved against him.

SUBMISSION ON MKALIPE.

Adv. Trengove then made the Crown submissions on the accused Mkalipe who had also been a Defence witness, referring to the attitude of the accused in saying in evidence that he was ignorant and stupid and did not always know what was going on in the ANC. The Court would argue that this was feigned ignorance, feigned because he could not give an explanation. The Crown submitted that he had been too modest;in his position he would have known much more. He had from time to time been prepared himself to defy laws and had taken part in the Defiance Campaign, and he had accepted the position that the Government would become more ruthless. Referring to the

example quoted by this accused from the Bible, the Crown pointed out that the Bible did not advocate mass unconstitutional action, so his example of the change of heart did not hold, he was trying to coerce the government into changing its mind.

The evidence of this accused on the riots in Port Elizabeth was unsatisfactory and evasive. He had agreed that the ANC was engaged in a liberatory struggle but had said that he did not know the ANC attitude towards the struggles in other countries. His evidence on this point had been evasive and unsatisfactory and the Court should not accept it. It had been a constant theme at ANC meetings. Mkalipe had said that his utterances on the struggle in Kenya and elsewhere were his own, but the Court would not find that his speeches were frolics of his own, but that he knew and expressed ANC policy. On the question of the state, this accused had said that he did not know the meaning of fascist and "was lost, at sea", but the Crown submitted that he would have known. He had maintained that it had always been his view that the Government would ultimately "turn" but he had been present at Conferences when ANC reports were read and the Crown submitted that the Court could not accept that he had never thought that the Government would go to the point of blood flowing.

RADICAL CHANGES NECESSARY.

The Court submitted that Mkalipe had accepted the Freedom Charter and supported it, realising that radical changes would have to take place before it could be implemented. He had accepted that this would be brought about by unconstitutional action such as boycotts, resistance movements and strikes on a mass scale, and the Crown submitted that he appreciated that such action would result in bloodshed, because it was directed against a brutal government. In his attitude on strikes he had conceded that the state might have to intervene and would use the army and the police, and when pressed conceded that there might be the possibility of mass retaliation; the Crown submitted that he had been aware in fact of this possibility and that it might lead to violent conflict. No group was more aware than the Port Elizabeth people that riots could arise from minor incidents. He said he did not have it in mind, but the Crown submitted that he reasonably foresaw the possibility of violence.

ACCEPTED POSSIBILITY OF VIOLENCE.

Mkalipe had known, the Crown submitted, of the campaign against the Western Areas Removal and had accepted that the people would not move except at the point of a gun. He accepted that armed police or armed soldiers might be used to force the people out of their homes and he accepted that if one resisted the laws of a government, which he described as a brutal elephant, it would trample him. He had been a member of the Volunteer Board in Korsen, and had said that it had recruited volunteers as a part of the organisation for the Congress of the People. He had said in evidence that there had been no particular enquiry in his area into the political or religious background of recruits for the volunteers. He had said that he himself had not been politically trained, but the Crown submitted that his evidence on the lack of political training for volunteers should not be accepted.

On the overt acts of this accused, the Crown submitted that if the Court found that there was a conspiracy, then this accused had the hostile intent and there was sufficient evidence to find that he was a party to the conspiracy. The Crown was relying on only one overt act for this accused, other than the conspiracy, that of his association with the speeches made at one meeting, but the other meetings would have to be taken into consideration for his mental attitude.

The Crown then made the general submission on the accused from Port Elizabeth that the Court should have regard to all the evidence on the ANC in that area for the positions of the accused and what they should have known.

STANLEY LOLLAN

SUBMISSIONS ON SACPO.

Adv. van der Walt then addressed the Court on the accused Stanley Lollan referring to his membership of the S.A. Coloured People's Organisation from March 1954 and his position on the various Congress Consultative and Action Committees. The Crown submitted that SACPO had urged its members to read the journals "Fighting Talk", "Liberation" and "New Age", etc. He had admitted that the National Action Council for the Congress of the People had prepared the three lectures and that it had also been responsible for the Memorandum of the Anti-Pass Campaign. The Crown submitted that this accused knew that SACPO was part of the Congress alliance and part of the liberatory struggle in South Africa. He had attended very many meetings and had heard many speeches; he had also attended meetings of the S.A. Society for Peace and Friendship with the Soviet Union and Peace Council meetings, though there was no evidence that he attended these as a representative of his organisation.

The Crown submitted that the accused Lollan was aware of andsupported the attitude of SACPO towards the condemnation of the State and the necessity to replace it with some other form of state based on the Freedom Charter. His evidence showed, inter alia, that he was aware of and supported the attitude of SACPO towards the liberation movement and accepted that it would be waged by mass action including unconstitutional and illegal action which might involve the use of violence by the state. He had admitted that he thought that the possibility of violence was always there.

When Mr. Justice Rumpff asked how the Crown arrived at the submission that the liberatory struggle was to be waged by violence, Adv. van der Walt said that perhaps it was not a happy expression.

Mr. Justice Rumpff: "Well, make it happy".

The Crown then corrected the submission to indicate that mass action would lead to unconstitutional and illegal action.

SUPPORTED STRUGGLE AGAINST PASSES.

On the Freedom Volunteers, the Crown submitted that Lollan knew that the volunteers were being recruited for the purpose of carrying out the work of the Congresses in the campaign of resistance to the Western Areas Removal.

He had admitted that he and his organisation gave unqualified support to the ANC in its struggle against the passes. Lollan had stated that his organisation had taken very little part in the campaign against Bantu Education, but they had been extremely interested in it; he thought that SACPO was fully aware of the form of opposition that was being planned in the Western Areas, although it did not really participate in this campaign. He admitted that the possible consequence of this campaign might be not merely the arrest of the leaders but also the commision of acts and violence, though not by the Congresses.

OVERT ACTS AND HOSTILE INTENT.

Dealing with his overt acts, the Crown submitted that Lollan had attended the meeting of the Freedom Charter Committee where he had associated himself with the speech of Sejake, since he spoke after him and had not dissociated himself from the speech. He had also attended the Congress of the People. The Crown submitted that these overt acts had been proved against this accused and also his hostile intent.

CROWN ON INDIAN CONGRESSES.

FARID ADAMS

Adv. van der Walt continued with the Crown submissions, dealing with Members of the Indian Congresses. The first Indian accused was No. 1 Farid Adams. The Crown referred to his membership of the Transvaal Indian Congress and the Transvaal Indian Youth Congress and to the active part he had taken in its activities; he had at times worked full time for the Transvaal Indian Congress. He was the author of articles and letters dealing with the activities of the liberatory movement and had signed documents on behalf of some of the organisations. In a letter he had addressed to a friend, "Miriam" he had expressed himself in favour of the Communist Party and on a Christmas Card to the same person had written, "Forward to World Communism".

Referring to meetings, the Crown submitted that Adams had been present at a number of meetings of the Congress organisations and had expressed the view that the Western governments were causing the cold war. He supported the Peace Council and had signed a press statement on behalf of the S.A. Indian Congress congratulating China on establishing a People's Republic, and also a letter on behalf of the Transvaal Indian Congress protesting against the closing of the Soviet Consulate.

LETTER ON COMMUNISM.

Adams had expressed the view in his letter to "Miriam" that it was a great and honourable thing to belong to the Communist Party and he held the view that world Communism would mean a world free from exploitation and misery. He had attended the Congress of the People meeting in September 1955 and had heard Massina say that Freedom Fighters had died in the past for freedom and had also heard Sejake's speech in which there was reference to the "armed clash". He was aware of the campaigns and was a clerk in the offices of the Congress at that time. He had heard Congress speakers at the meetings which he had attended explain the duties of volunteers and the significance of the Congress of the People. They had dealt with the liberatory struggles in other countries and had lauded the achievements of Russia as a country fighting for peace; the Crown submitted that these speakers were preparing the people for violence in the course of the struggle. This accused had condemned the Government and expressed his view that he was sure they would one day get a government in South Africa which would take the Freedom Charter as its constitution; they would have to fight and die for the Charter.

JUDGE QUESTIONS CROWN.

Asked by Mr. Justice Bekker whether this accused was aware of the campaigns and also the methods, the Crown replied that he was aware of the campaigns, as he was a full time clerk in the Congress office at the time. Mr. Justice Bekker asked whether the Crown submitted that his knowledge of these campaigns made him a member of the conspiracy to overthrow the state by violence. The Crown replied that it could not take the submission any further.

Adv. de Vos addressed the Court on the Communist aspects of the case in relation to this accused, submitting that Farid Adams had expressed explicit praise for the Communist Party and had supported the world revolutionary movements, which he must have known, from the extensive Communist library found in his possession, included the doctrine of violence. He had given active support to the World Federation of Democratic Youth and the World Peace Council and had expressed support for the journals "Advance" and "New AGE"; he had adopted a partisan attitude in favour of Russia and China and knew the Communist trend of the Congress movement and supported their policies.

Page 10. / ..... ADOPTED

ADOPTED COMMUNIST ATTITUDES.

The Crown submitted that this accused adopted the Communist attitude towards the state and adopted and propagated Communist tactics to change the present state aimed at the establishment of a Communist State; he was so closely linked with Communism that he must have accepted the Communist doctrine of violent revolution.

Mr. Justice Bekker asked whether, even if it could be assumed that he knew the theory, that could be enough or would the Crown have to show that he had the intention? Adv. de Vos replied that this accused had said "Forward to World Communism", but agreed that the Crown must go further than merely to prove that he knew the theory of revolution, it must show intention. But it was submitted that he must have known; he couldn't have had so many books and not have known and there was also his lauding of Communism. In the Union he could not be expected to do more than he did; the Crown would not be able to say that he had actually said, "I propagate Communism".

JUDGES ON COMMUNISM

Mr. Justice Rumpff pointed out that a Communist Party might say that the theory of revolution depended on the circumstances and on the opposition of the ruling class, and on "our state of mind. We are here following a constitutional line and not revolution, but fighting for seats in Parliament." Then there would be no question of High Treason.

The Crown agreed that would be so in the case of a person not actually engaged in preparing for the violent overthrow of the state. Mr. Justice Rumpff asked what would be the difference between such a member of a Communist Party and this accused, where had he stepped off the constitutional path into the field of High Treason? "Forward to World Communism" could also be aslogan on the constitutional path. Adv. de Vos submitted in reply that the aim of constitutional battle was not the case here. Mr. Justice Rumpff asked how, assuming that this accused was a self-confessed Communist, he had set out on the path of revolution, but the Crown said that it could not take this matter further then the previous argument by Adv. van der Walt. The present argument shed a light on his state of mind and his hostile intent indicated that he must have known the Communist line of his organisation, and that he was in a liberatory movement actively preparing for Communist revolution.

PROFESSOR'S MURRAY'S EVIDENCE

Replying to further questions by Mr. Justice Kennedy, the Crown referred to the evidence of Prof. Murray; Mr. Justice Kennedy said that he was not talking about the classics but wanted to know whether violence would necessarily be part of the dogma in all cases. The Crown replied that there had been no documents found in the possession of the accused to support this. Prof. Murray had taken the statement of Krushchev into account on this point when testifying to the correct meaning of Communism, but he had eventually conceded after further questions that modern Communism in the West might accept that violence was not essential.

When the Crown wanted to refer to a document not in the record, Mr. Justice Bekker pointed out that it was not before the Court. Adv. de Vos said that that seemed a technical point but Mr. Justice Rumpff said that the Crown could not challenge a ruling by the Court by saying that it was merely a technical point. The Crown then indicated that it would not go further with the details of the Communist affiliations of this accused.

ACCUSED KATHRADA.

CONSPIRACY PROVED.

The next accused to be dealt with by the Crown was A.M. Kathrada.

Page 11. / ..... The

The Crown submitted that the conspiracy had been proved beyond reasonable doubt and that his hostile intent and his adherence to the conspiracy could be inferred from his activities. He had been a prominent member of the Indian Congresses and of the Youth Action Committee; he had worked full time for the Indian Congress and had been a member of the Executive Committee for the World Federation of Democratic Youth and had worked at its headquarters. He had been a member of the Communist Party. This accused had heard meetings addressed byprominent members of the Congress such as R. Resha, D.Nokwe, S. Shall, L. Bernstein, P. Nthithe, E.P. Moretsele and others.

THIRTY NINE ORGANISATIONS.

The Crown submitted that Kathrada had taken an active part in the liberatory movement and had worked full time for two years before he was ordered to resign from 39 organisations in terms of his banning order. He held the view that peace was close to the liberatory movement and when they fought against Malan they were fighting for peace. He had expressed the view that the Soviet Union was the greatest friend of the struggle in South Africa and that South African newspapers were spreading lies about the Soviet Union.

He held that the S.A. Government was giving its last kick and that its life was short and white domination coming to an end. This accused was a member of the Volunteer Board and took an active part in recruiting volunteers. He had supported the Congress of the People and was fully aware of and supported the ANC in its campaign against the Western Areas Removal and was also aware of the Campaign against Bantu Education. He had expressed the view that in their struggle people were shot for their demands and in order to make everybody happy in South Africa the people were prepared to do anything. "If death is the price, we must pay it." Dealing with the overt acts of this accused, the Crown submitted that they had been proved beyond a reasonable doubt, and that the hostile intent should be inferred from the activities of this accused. It was submitted also that this accused was particularly intent on preparing the masses for the idea that freedom can only be bought at the price of blood; he was preparing them for unconstitutional and illegal action which would result in a violent clash with the state.

KNOWLEDGE AND ACCEPTANCE.

Dealing with the Communist aspect of the activities of Kathrada, Adv. de Vos submitted that in coming to a conclusion on his knowledge and acceptance of Communism, the following features should be taken into account. He had visited a Communist country where he had been attached to the World Federation of Democratic Youth and it was submitted that he must have gleaned considerable information on Communism. His interest in Communism could also be inferred from the Communist library in his possession and he had in fact been a member of the former Communist Party of South Africa. His attitude reflected what would be expected of an indoctrinated Communist. Amongst the documents found in his possession had been "Politics and Economics". The Crown submitted that it was not coincidence that this document so exclusively and peculiarly Communist had been found with this accused and must be taken into consideration when dealing with his position.

MOOSA MOOLLA

The third member of the Indian Congress to be dealt with by the Crown was the accused Moosa Moolla who the Crown submitted was a prominent member of the Transvaal Indian Congress and the Indian Youth Congress, of which he was the joint Secretary from 1954 to 1956. He had been a volunteer and was the clerk to the National Action Council. He had attended meetings of the Congress organisations and had also spoken at some of

those meetings; he had also been present when leading members of the organisations had made speeches at meetings. He was fully aware of the activities of the National Action Council for the Congress of the People and also the Consultative Committee and as a clerk to the NACCOP he knew that the lectures had been distributed and had been a party to their distribution.

FORCES OF EVIL.

Hoolla had expressed the view that the forces of evil were preparing to plunge the world into another war and that the colonial powers resorted to force to crush the movements for national liberation. He thought that all the oppressed people should join to destroy the capitalist system and that it was the duty of the working people in South Africa to follow in the footsteps of the people of Korea, China and Russia to liberate themselves from capitalist oppression. In the light of the views he had expressed it was submitted that this accused was aware that the state would endeavour to crush the liberatory struggle in South Africa by violence. He had attended meetings where the imperialist powers were condemned and Russia and its achievements lauded, where it had been said that the struggle in Kenya was part of the struggle in South Africa; and where speakers had prepared the people for acts of violence which might occur in the course of the liberatory struggle. The Crown did not agree that this preparation was in the sense of warning the people to expect violence but submitted that it was in the sense in which Sejake had said that they must be prepared to clash with the State.

KNOWLEDGE AND SUPPORT.

Adv. de Vos then submitted that this accused, Moosa Moolla knew and accepted and propagated the theory of dialectical materialism including the theory of violent revolution. He had accepted the division of the world into two camps and lauded the USSR and China and condemned the USA as an aggressor. He had known and supported the Communist policies of the organisations to which he belonged and therefore supported policies adopting the Communist analysis of the present in the Union, propagating the use of Communist methods and aiming to establish a Communist state, knowing that this would involve the use of violence. The material written by this accused showed knowledge of dialectical materialism and clearly showed knowledge of Communist concepts. He had contact with and supported the World Federation of Democratic Youth.

The Crown submitted that the overt act of conspiracy had been proved against this accused and that his hostile intent and adherence should be inferred from his activities as set out by the Crown.

HELEN JOSEPH

Adv. Terblanche then addressed the Court on the accused Helen Joseph, submitting that she was educated and had great experience and knowledge and therefore understood all the implications of the struggle in which she was involved. Amongst the documents found in her possession were the three lectures, "The World We Live In",etc., and copies of the Journal Liberation. She had said that she was a regular reader of this and the other journals. This accused had also admitted that she had been to the conference of the Women's International Democratic Federation as a delegate and that the document found with her was a copy of her address to the conference. In her evidence she had said that it reflected the position in South Africa as she saw it, but that there was no intention of violent destruction of the state. The Crown submitted that in this document, Helen Joseph foresaw that resistance to the Western Areas might result in violence which might spread throughout the country. Other documents included articles written by her for "Fighting Talk" and the report of

the Federation of South African Women.

ACTIVE SUPPORTER.

Helen Joseph had been a prominent member of the S.A. Congress of Democrats and also of the Peace Council and the Federation of South African women. She had been a member of the National Executives of these organisations and had served on the National Action Council for the Congress of the People and also in the National Consultative Committee. She had been a member of the Transvaal Resist Apartheid Committee and was both Regional and National Secretary of the Federation of South African Women. This accused had attended many meetings and conferences, mainly in the Transvaal but also in other parts of the country and the Crown submitted that from her attendance at these meetings she had full knowledge of the policies and activities of these organisations.

The Crown submitted that this accused was one of the most active members of the liberation struggle and actively promoted that struggle. She had gone on a tour of the whole union to organise women to come to Pretoria for the national protest against passes.

At the Congress of the People Anniversary meeting, Helen Joseph had attacked the pass system and Bantu Education and had said that the march towards freedom could not be stopped by the Government or any power. At the meeting of July 1954, she had been elected to the Resolution Committee. Commenting on the speech of Kathrada she had said that it was completely within the policy of the organisations and that the use of the term "army of liberation" had no military connotation. The Crown submitted that her explanation should not be accepted, the volunteers were intended to be a shock brigade.

When the Crown submitted that by her silence at meetings, by her continuing to attend them and continuing her activities in the liberation movement, this accused had agreed with all that was said at the meetings which she attended, Mr. Justice Kennedy asked whether the Crown submitted that she must have approved of all that was said there. Adv. Terblanche said that was the Crown submission, and Mr. Justice Kennedy asked whether that was not taking it too far, but the Crown repeated that she had continued in the liberation struggle.

NOT TRUTHFUL.

When the Crown submitted that Helen Joseph had not been a truthful witness in her evidence on speeches made at some of the meetings and that this showed her state of mind, Mr. Justice Rumpff asked "What state of mind? Is it an untruthful state of mind?" By her comments in evidence on a number of speeches made at meetings, the Crown submitted that she had foreseen that possible violence might break out, but Mr. Justice Bekker asked how a comment made for the first time in Court could be used for this purpose, since she had not been present. The Crown submitted further that the evidence of the witness on a speech by Resha showed her attitude that anything of that sort that was said did not amount to violence, and that she accepted that the discipline of the volunteers was such that even if given instructions to be violent they would have to be violent.

AWARENESS AND SUPPORT.

The Crown submitted that the evidence of Helen Joseph showed inter alia that she was aware of and fully supported that liberation movement and also the liberatory struggles elsewhere in the world. She supported the policies of her organisations in regard to the new state and her attitude to the present state was that it was not a duly constituted authority because it was not constituted with the active consent of the people.

Page 14. / ..... She

She was in favour of a people's democracy based on the Freedom Charter and agreed that the changes were to be brought about by unconstitutional and extra-parliamentary means and by mass action, because she could see no hope of the white electorate voluntarily conceding the rights of the non-white people. She foresaw that the Programme of 1949 could result in violence and that no guarantee could be given that any major campaign could be peaceful. She had supported the Western Areas Campaign although she had known that the state was determined to proceed and she feared a violent clash, she had also supported the campaigns against Bantu Education and the passes. She also accepted that peace and liberation were indivisable; that Russia was a peace-loving country and that the S.A. Government was committed to preparing for war.

The Crown submitted that the overt act of conspiracy had been proved against this accused and the hostile intent and the adherence to the conspiracy had been proved by the facts set out against her.

OVERT ACTS.

Dealing with the overt acts, Helen Joseph had admitted attending the Congress of the People and the Crown submitted that the meeting she had attended on 7th November, 1954 had been convened in pursuance of the conspiracy and was part and parcel of the active preparations for the violent overthrow of the state and substitution of another state. This accused had proceded to this meeting with the same purpose and the intention of participating; she had associated herself with the speech of Resha, which was made for the same purpose; she had given evidence on this speech and had said that the "major clash" was not necessarily violent and she didn't agree that "to die like men" was a reference to a violent clash. The Crown submitted that her evidence of what was meant was not to be accepted. This accused had stated that she was present at the time of the speech of Sejake at the Congress of the People Committee meeting in September 1955, and she had given her explanation of his speech and also that of Lilian Ngoyi; the Crown submitted that this meeting was held in pursuance of the conspiracy and that this accused had attended for that purpose and had associated herself with the speeches made there.

ADVOCATED ILLEGAL ACTION.

Dealing with the fourth overt act against this witness, the Crown submitted that her article in "Fighting Talk" - "Women against Passes" had been written in pursuance of the conspiracy and that the Court should find that this article did contain advocacy of illegal action; the decision not to carry passes had already been made and "the action to be decided upon" could only mean unconstitutional and illegal action.

This accused had admitted her presence at the Congress of the People and the Crown submitted that from all the evidence the charge had been proved against her.

Adv. De Vos informed the Court that the Crown did not allege that the accused Helen Joseph was a Communist in the sense that she understood Communist doctrine or the doctrine of violent revolution in particular, but on the questions of policy of the organisations dealt with by her in her evidence, the Peace Council and the S.A. Congress of democrats, there were points that should be noted.

PEACE COUNCIL.

Helen Joseph conceded that the Peace Council regarded the USSR as a peaceloving country and not the western powers, and that the Peace Council

regarded every conquest won in the course of the struggle for national liberty as an advance of the peace forces over the forces of agression. She had conceded that the Peace Council had judged issues between the East and the West. This accused conceded that the SACOD had held out China to the oppressed people as a country which had reached the highest stage of liberation and that she knew of no documents which referred to any country in the non-Communist bloc as a people's democracy, though she herself did not accept that term as peculiar to the Communist bloc. She conceded the SACOD did not criticise Communism and admired its achievements as improvements and that the SACOD had never praised any facet of capitalism. The Crown submitted that this bore out the Crown submission on the Communist orientation of the Peace Council and the S.A Congress of Democrats.

ADV. HOEXTER ON MANDELA

ANC EXECUTIVE.

Adv. Hoexter continued the Crown argument with submissions on the accused Nelson Mandela, showing that this accused had been a member of the ANC from 1944 and had been on the Transvaal Executive since 1946 until 1953. In October 1953 he had become Transvaal President and his presidential address had been issued as "no Easy Walk to Freedom". He had been a foundation member of the Youth League and had helped to draft the Basic Policy of the Youth League. The Crown submitted that his activities and knowledge of the ANC had continued after his banning, and he had taken a lively interest in its affairs. It had been the practice of the ANC to keep its prominent members well informed even after their banning.

The Crown submitted that Nelson Mandela showed awareness of and support for the ANC attitude towards the liberation struggles in South Africa and elsewhere; understood and supported fully the demand for a new state based on the demands of the Freedom Charter and possibly a Communist State similar to those of the USSR and Peoples China. Referring to the three lectures, the Crown submitted that he had said that he found nothing in them inconsistent with the policy of the ANC and the Crown also submitted that in his address "No Easy Walk to Freedom" he had propagated the idea of a substantially, entirely different state.

ATTRACTED TO SOCIALISM.

Nelson Mandela had said that he had studied Marxism and formed his own views; if to be a member of the Communist Party would mean strict adherence to Marxism-Leninism, then he would certainly not be a member. He was very much attracted to socialism and the ideal of socialist society; he did believe in a classless society but he was not prepared to work for a leftist ascendency in Congress. He had explained his own ideal and wanted the rule of class to go, no matter what the Soviet Union wanted; the state he wanted could be on the lines of the USSR or China, but would not be a copy. The Crown submitted that this accused knew and approved of the pamphlet "South Africa's Way Forward".

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