

TREASON TRIALS DEFENCE FUND

PRESS SUMMARY

No. 13

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

Period covered: 4th to 15th August, 1959.

TO READ OR NOT TO READ?

Court initiates moves to facilitate the handling of vast quantity of documents

On Wednesday August 5th, the leading of Crown evidence began with the handing in by former Detective-Sergeant Moeller of a number of documents seized in a raid on the office of the African National Congress on 27th September 1955, and put in by the Crown to show support for the Freedom Charter, the policy of the A.N.C. Youth League; opposition to the pass laws, to the Bantu Education Act, and to the Western Areas Removal. The documents included circular letters to African National Congress branches, draft resolutions for conferences, organisational bulletins, notes for celebration of World Youth Day, and a printed copy of the Freedom Charter. Copies of pamphlets such as "Educating for Ignorance", directed against the Bantu Education Act, were handed in.

When it came to a copy of the Constitution of the People's Republic of China, Mr. Justice Rumpff enquired whether the Crown was handing it in for the title or for the actual constitution, and insisted that it was for the Crown to decide on which portions it wanted to rely. Mr. van Niekerk first stated that the Crown was relying on the constitution, then limited himself to the title only, and finally took his stand on the preamble.

As the many documents were handed in throughout the day, the judges from time to time asked the prosecutor why they had to listen to a particular document.

Mr. Maisels informed the Court that the admissibility of the documents would be argued after the evidence had been led. On the question of language, it had been agreed that although not all the accused understood English fully, the Court would not be delayed at this stage with interpretation, as the accused would assist each other.

After the first fifteen documents had been read, Mr. Justice Rumpff appealed to the Crown for some modification of the method of reading and handing in the documents, as the Court would otherwise sit for months listening to documents not dealing directly with violence.

In reply to a suggestion by the Bench that the Crown might be required to summarise documents or to refer strictly only to the portions of documents on which it would rely, Mr. van Niekerk pointed out that in many cases, such as the African National Congress Constitution, the Crown relied on the whole document.

Mr. Justice Rumpff, addressing himself to Mr. Maisels, suggested that as the Crown had to prove all the facts set out in the First and Second Summary of Facts, the Defence might, after careful study of the Summaries of Facts, consider admitting certain historic assumptions. (At this point Mr. Maisels interjected "Hysterical assumptions") Mr. Maisels indicated that this course appeared improbable and stated baldly "There is no short cut to these documents".

Mr. Justice Rumpff:/.....

Mr. Justice Rumpff: "Oh, well, we may become conditioned in due course."

Document after document followed: Conference agendas, executive committee reports, signed correspondence, unsigned copies of typed letters, fraternal messages to conferences.

Mr. Pirow, replying to the proposal by Mr. Justice Rumpff that certain documents could be summarised, stated that the Crown had seriously considered the possibility, but in the absence of co-operation from the Defence, the Crown could not put any less evidence before the Court. A case of this magnitude lay in the hands of the Defence.

Presiding Judge's Outline of Crown Case.

Mr. Justice Rumpff agreed that any proposal for shortening the handing in of documents could not be dealt with precipitately, but suggested that the Crown case was primarily split into:

- (a) the existence of a number of organisations with membership and officials, and the co-operation between those organisations in matters of policy, apart from the alleged policy of violence. That part of the Crown case appeared, on the face of it, to be mainly historical.
- (b) Violence as the alleged policy of the various organisations. He felt that it would be possible for the Crown to prepare a summary of facts, setting out the allegations of the existence and history of the organisations, facts without disputable inferences, which the Defence might be prepared to admit. Then when documents were led in evidence to show the facts admitted by the Defence, they need not be read.

Mr. Pirow differed with the presentation by Mr. Justice Rumpff that the Crown case fell into two parts, but undertook to consider the proposal, as did Mr. Maisels.

The reading and handing in of documents seized from the African National Congress continued with portions of reports and memoranda relating to the Congress of the People, until Mr. Maisels protested for the Defence that the Crown was reading in only the portions favourable to the Crown case. Mr. Maisels pointed out that the other parts would have to be read.

Mr. Hoexter submitted that, in any case, all documents handed in were introduced to the record and that reading only emphasized certain portions. The Defence could refer to other portions during cross examination, or at a later stage recourse might have to be made to the other portions.

Mr. Maisels indicated that he took his stand on Section 157(ii) of the Criminal Code, that nothing not read is evidence. This was particularly important in this case where many documents were heard by the accused for the first time. Mr. Hoexter: "The documents are introduced in their entirety as evidence and are not qualified by any failure to mouth the words in open Court".

Reading of documents continued with reports of the African National Congress Youth League, of Colonial Youth Day, draft resolutions of Youth League Conferences, minutes of executive committees, and branch meetings.

Mr. Justice Rumpff/.....

Mr. Justice Rumpff requested the Crown to prepare short notes at the end of each day, labelling the documents in respect of co-operation between organisations, capacity of the accused, etc. etc.

When Exhibit A83, the massive Agenda of the 21st Conference of the South African Indian Congress was produced, the Crown stated that this would be handed in to prove that the Conference was attended by other organisations, that the policy declared was as much that of the African National Congress as the South African Indian Congress; that the documents contained in the Agenda Book dealt with the liberatory struggles, the Congress of the People, Communist influence, the part played by the African National Congress and the S.A. Indian Congress in the Defiance Campaign of 1952, and the campaign against the Western Areas Removal Scheme.

The Judges protested at the proposed reading of this massive volume, both at the outset and intermittently during the many Court hours taken up by the reading, but the Crown insisted on the importance of the Agenda Book, which included fraternal messages and greetings from individuals and organisations all over the world; the welcome address was omitted, but introduced by the Defence later during cross examination. The Minutes of the previous Conference in 1952 were read, dealing with the 1952 Defiance Campaign and resolutions taken at that conference. When the Court adjourned on August 7th, the Crown was only part of the way through the Agenda Book for the 1954 Conference.

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On Monday August 10th, the trial recommenced with the opening address by the Crown, (see Summary No. 12 for full text), and then continued with the reading of the Agenda Book of the 1954 Conference of the S.A. Indian Congress.

When Mr. Liebenberg for the Crown began to read the Secretarial Report to this Conference, the judges protested anew, and Mr. Justice Rumpff asked whether the Crown had made the suggested approach to the Defence concerning the admissions on historic facts. On being informed that the approach had been "drafted in writing" and had been sent to the Defence that morning, Mr. Justice Rumpff said: "The Court's view is this. The Crown must draw up a list of facts - and the sooner the better - which the Defence might admit. It is a summary of facts that is required - not correspondence!"

Mr. A. Fischer, Q.C. informed the Court that the Defence had been approached by the Crown as to what admissions the Defence was prepared to make, but Mr. Maisels had asked the Crown for specific information; the Crown had scattered allegations of violence over a very long period. Until the Crown would define what it sought from the documents, it would not be possible to shorten the present procedure. The letter mentioned by Mr. Liebenberg had not been received by the Defence.

The Crown was then asked what estimate of time it had for the Crown case, to which Mr. Liebenberg replied: "It should not take more than 6 months".

At this stage Mr. Pirow handed a letter to the Defence with a list of admissions which he claimed would pave the way, but he stated also that if the Defence would not accept this suggestion, there would be no purpose in meeting further.

Mr. Fischer/.....

Mr. Fischer rejected the Crown proposals, pointing out that the admissions sought were of no assistance whatever to the Court, and did not include any of the points discussed by the Court.

Mr. Justice Rumpff pressed again for a summary of facts for admission to be submitted to the Defence, and the Court adjourned.

New Suggestions by Presiding Judge

When the Court resumed on the following day, August 11th, Mr. Justice Rumpff proposed a new possibility which might prove workable. The Crown should first put in documents relating to each organisation and the persons. After that the Crown should (without prejudice to the Defence) deal with the documents and read out the portions set out in the latest Summary of Facts supplied with the Further Particulars; that reading MUST be done. During this time, the Crown should prepare a summary of facts, appearing ex facie in other documents not in the Summary of Facts, for possible admission by the Defence. Thus the Court could start off with the work which had to be done.

In reply, Mr. Pirow agreed as to the value of the suggestion, but expressed doubt as to the practical difficulties which might arise. He reiterated that "The Defence has no say in how we lead our evidence" but agreed to consult the Defence.

Defence Prepared to Make Large Historical Admissions

Mr. Maisels: then said that it was better to have agreement initially than eventually. The Court has made suggestions re reducing the volume of the documentary evidence, it means of a formulation of facts which the Defence might be able to admit. The Defence would consider any further suggestions made by the Crown, particularly substantial admissions of historical fact on the Defiance Campaign; support for the Freedom Charter; the collection of demands for the Freedom Charter; campaigns against the Bantu Education and Group Areas Acts; the Western Areas Removal Scheme and Passes for African women; denunciation of the present government in some of the ways alleged by the Crown; the recruitment of the Freedom Volunteers; the acceptance of extra-parliamentary activity as necessary and inevitable; opposition to apartheid policy and legislation; the policy of opposing all forms of racial discrimination; criticism of the colonial system and sympathy with efforts of the colonial countries to seek self-government.

There would, however, be no reason in the Defence making these admissions unless the case were substantially shortened.

Mr. Pirow protested in reply that the Defence admission would lead nowhere, for the Crown would not be able to abandon any significant number of documents. There was in fact hardly a document which did not deal with anything up to 30 factors! For example, the abuse of the government alone is not a sin, it is one only if it leads to other consequences. The Crown could not agree to bind documents for use only for certain purposes. The suggestion by the Court would be seriously considered, but the Crown would need time before giving its reply.

Mr. Maisels: "If the contents of any document are required, then in any case the document must be read. The Crown must prove its case. The Defence will not prejudice its clients in any way whatsoever."

The Crown resumed the reading of the S.A. Indian Conference Report; dealing with the establishment of the National Action

Council/.....

Council for the Congress of the People; certain annexures were omitted.

The Crown then commenced reading the series of lectures, the World We Live In, The Country we Live in and a Change is Needed.

When the Court resumed after the lunch break, Mr. Maisels offered certain admissions (see separate sheet) as a voluntary act by the Defence towards the shortening of the case. The Crown requested time to study the admissions, and resumed the reading of the series of lectures. These were followed by eighty documents dealing with organisational matters, circulars, letters, memoranda, drafts of memoranda, bulletins, etc., put in by the Crown to show anti government policy, anti imperialism, the Congress of the People, the Liberation Movement, the positions of the accused within their organisations and various campaigns.

On August 12th, the sixth day of reading the documents, the judges again queried the length of the procedure. After discussion, it appeared that the Crown had misunderstood the suggestion by the Court on the previous day and had therefore prepared its work differently.

Mr. Justice Rumpff: "The Court wants to get on with the essential documents while an arrangement is being made concerning the balance. The time may come when portions are read which appear to be unnecessary in view of the admissions by the Defence."

After a number of documents had been read in which the Crown alleged related to the class struggle, Mr. Justice Rumpff suggested that these also could be incorporated into a statement of fact for admission.

Mr. Hoexter objected for the Crown that the Court would appreciate that although the organisations had admitted working for a change of government, that was not enough for the schedule; the Crown would have to show the complexion of the desired new State.

When a critical report on the campaign against the Western Areas Removal Campaign was read, Mr. Justice Rumpff asked: "Where does this post mortem report take the Court?" Mr. van Niekerk replied for the Crown that it showed violent opposition to the government e.g. in the use of the phrase "the Waterloo of Apartheid!"

On August 13th the Crown continued with the handing in of documents seized at the African National Congress office. The Defence objected to translations of a few documents from an African language, because these had been made by an African detective of the Special Branch and these documents were handed in without translations, pending a translation acceptable to both Crown and Defence.

At one stage, when envelopes and contents were handed in together, Mr. Maisels objected that the Crown was not drawing attention to the fact that some of these had been sealed when seized, and that the contents bore dates long previous to the date of the seizing. Detective Sergeant Moeller then classified these exhibits as opened or unopened at the time of their seizure by the police.

After 290/.....

After 290 documents in all hand been handed in, the Crown led evidence by the same witness as to the documents found at the Congress of the People on the person of one of the accused, C. Mayekiso, including the delegage card, a letter of nomination as a speaker, the draft of a speech, and the agenda of the Congress of the People, listing all the speakers and their subjects.
"*****"

Early on the following day, August 14th, the Crown indicated that the witness, Detective Sergeant Moeller, was available for cross examination by the Defence.

Mr. Kentridge, for the Defence, first queried the admissibility of two documents on the grounds of irrelevance, submitting that this section provided only that documents found on the premises of, or in the possession of, any servant of any organisation could be led as evidence of membership and identification. Mr. Kentridge argued that in the case of A.14, the Constitution of the People's Republic of China, since the indictment went much further than a mere interest in other countries, the mere possession of a constitution would be inadequate. The position would become intolerable if this procedure continued.

Mr. Hoexter: for the Crown, replied that the Defence was confusing cogency with relevance. The Peoples' Republic of China was achieved as a result of revolution and the African National Congress may have been aware of this. The Court will not at this stage, seek to determine the measure of cogency!

Mr. Justice Rumpff: announced that the Court would give its decision on the matter on the following Monday.

First Cross-Examination

Mr. Maisels: then began the cross examination of the former detective sergeant of the Special Branch, Mr. Moeller, establishing through questioning that the documents seized had been found in an office open to the membership and that although a large number of documents and periodicals had been handed in, and also a large number seized and not handed in, there had been also a large number of periodicals such as copies of Time, The Observer, The Listener, the New Statesman, the Bantu World, etc., that had not been taken. Mr. Maisels emphasised that all documents seized had been kept openly in an office.... "If this is a cloak and dagger conspiracy, then it seems all dagger and no cloak!"

Mr. Moeller: "At times the Congress held public meetings, but at other times there were Conferences from which the public were excluded".

Mr. Maisels: then reminded the witness of an occasion in 1954 when police were excluded by a Court Order, as the result of a complaint that the police were coming to all meetings for no reason. The police had alleged that all sorts of crimes were committed behind closed doors, When ordered by Mr. Justice Rumpff, who at that past time heard the application, to lead relevant evidence, the police had not accepted the invitation. The African National Congress had held meetings in accordance with the normal procedure of a political party; at conferences other political parties, representatives of the Churches, etc., were invited. The public was not usually admitted in such cases.

When Mr. Maisels asked the witness whether the practice, admitted by the police at the trial of Dr. Moroka and others in 1953, of infiltrating/.....

infiltrating policemen and informers into the Congress organisation had ceased, Mr. van Niekerk objected that the Defence was trying to make the witness testify to the practice of the police. Mr. Maisels protested that he had not sought knowledge of the informers; the 'practice' was relevant to the allegation that the Congresses were doing violent things behind people's backs, through a secret revolutionary organisation. Mr. Justice Rumpff queried the necessity for the witness to answer the question.

Mr. Maisels then put in one of the documents omitted by the Crown, the message from A.J. Luthuli, President General of the A.N.C. to the Natal Provincial Conference in 1954. Mr. Maisels drew attention to the paragraphs showing the opposition of Church leaders, both in South Africa and the U.S.A., to the Western Areas Removal Scheme; the strikes of African workers for legitimate demands; and the Bantu Education Act. The message stressed that the only worthwhile objective was full citizenship rights, the vote was the fundamental key issue in any democratic state, citing the clash between the Boer republic and the Uitlanders which led to the Boer War. "Congress does not advocate a bloody struggle but has wisely chosen the non-violent way of struggle." Asked if this were Congress policy, Mr. Moeller admitted that he had often heard it said.

Referring to the Agenda Book of the 21st S.A. Indian Congress Conference in 1954, Mr. Maisels pointed out the omission by the Crown of the portion laying down the policy of the A.N.C., as well as of the Memorandum on the Nature and Effects of Racial Discrimination submitted jointly to U.N.O. by the A.N.C. and the S.A. Indian Congress.

Mr. Maisels read from this Agenda Book certain sections of the introduction showing the objects of the A.N.C. and the S.A.I.C., illustrating "principled opposition and the policy of non violence"

Mr. Maisels then dealt in cross examination with the constitution of the African National Congress, signed by Dr. Xuma and the Rev. J. Calata, which he submitted was the constitution at all times relevant to the charge, since the new constitution was adopted only in 1957. The aims of the A.N.C. according to the constitution was read out, including "to attain freedom from discriminatory laws" and "to strive and work for the unity of the people". Mr. Moeller agreed that the various pieces of paper, unsigned, and the pencil notes attached to the signed constitution might be workings for proposed amendments.

The witness was requested to read the welcome address by Mr. Laurence, forming part of the Agenda Book, but omitted by the Crown, in which he said, inter alia, "Our chief aim is to provide peace, concord and goodwill among the component parts of S.A."

Dealing with the messages, Mr. Maisels referred the witness to a number of messages omitted by the Crown which came from non-Communist countries and individuals from the Philippines, Canon Collins, various M.P.'s in Britain, including H. Creech-Jones, the former Secretary for the Colonies.

Dealing with non-violence, Mr. Maisels reminded the witness that he had investigated the Defiance Campaign case, and asked whether it would be correct to describe the Defiance Campaign as a "well disciplined and non violent campaign for the removal of unjust laws". The witness agreed, and Mr. Maisels continued: "And it was so found by that Court? The judge imposed a suspended sentence on the accused, "because you have consistently advised your followers to avoid violence in any shape or form".

Mr. Moeller: "That was so."

IN THE SPECIAL CRIMINAL COURT

R E G I N A

V.

ADAMS AND OTHERS.

The Defence admits:

1. That during 1952 the A.N.C. and S.A.I.C. decided to conduct a campaign for the Defiance of Unjust Laws, and did conduct a campaign, involving the deliberate contravention of certain laws by way of protest and in order to bring about political and social changes in South Africa.
2. That between March 1954 and July 1955, the A.N.C., S.A.I.C., S.A.C.O.D. and S.A.C.P.O. were represented upon the National Action Council for the C.O.P. and supported the organisation of the C.O.P.
3. That the campaign for the C.O.P., supported by the abovementioned organisations involved the collection of demands for inclusion in a Freedom Charter, and culminated on 26th June 1955, in the adoption of the Freedom Charter at C.O.P. in Kliptown.
4. That after July 1955, the A.N.C., S.A.I.C., S.A.C.O.D., S.A.C.P.O., and S.A.C.T.U. were represented upon the National Consultative Committee and supported the publication and popularisation of the Freedom Charter.
5. That the A.N.C., S.A.I.C., S.A.C.O.D., S.A.C.P.O., S.A.C.T.U., and F.S.A.W., were opposed to the enactment and/or provisions of the Group Areas Act, the Bantu Education Act, the Natives' Resettlement Act and the laws relating to the carrying of passes by Africans.
6. That during the years 1954, 1955, 1956, the A.N.C. conducted campaigns against the Bantu Education Act, the Natives' Resettlement Act and the laws relating to the carrying of passes by Africans, in the course of which it advocated
 - (a) the boycott of Bantu schools by the pupils thereof,
 - (b) that the inhabitants of the so-called Western Areas of Johannesburg should not leave their homes voluntarily,
 - (c) that African women should not voluntarily apply for reference books.
7. That the A.N.C., S.A.I.C., S.A.C.O.D., S.A.C.P.O., S.A.C.T.U., and F.S.A.W. were strongly opposed to the apartheid policy and legislation of the Government of the Union of South Africa and denounced the Government in vigorous terms.
8. That the A.N.C., S.A.I.C., S.A.C.O.D., S.A.C.P.O., S.A.C.T.U. and F.S.A.W. criticised the present constitution of the Union of South Africa.
9. That the A.N.C., S.A.I.C., S.A.C.O.D., S.A.C.P.O., S.A.C.T.U. and F.S.A.W. demanded the substitution of a new and radically different government and in particular advocated
 - (a) a system of government based upon universal adult suffrage,
 - (b) the abolition of all forms of racial discrimination.
10. That the A.N.C., S.A.I.C., S.A.C.O.D., S.A.C.P.O., S.A.C.T.U. and F.S.A.W. accepted the view that extra-parliamentary activity should be resorted to, and advocated and carried on extra-parliamentary activity.
11. That during the years 1954, 1955 and 1956, the A.N.C., S.A.I.C., S.A.C.O.D. and S.A.C.P.O. recruited or supported the recruitment of a body of persons known as the Freedom Volunteers.
12. That the A.N.C., S.A.I.C., S.A.C.O.D., and S.A.C.P.O. criticised the colonial system and sympathised with the efforts of colonial countries to obtain self government.

13. That the expressions by the A.N.C., S.A.I.C., S.A.C.O.D., S.A.C.P.O., S.A.C.T.U. and F.S.A.W. of their admitted policies were often vehement and repetitive.
14. (a) That all the abovenamed organisations co-operated with one another generally in the policies and activities above set forth, in so far as such activities took place during the period and existence of each organisation.
 - (b) That the A.N.C.Y.L. and A.N.C.W.L. similarly co-operated with the A.N.C.
 - (c) That the T.I.C. and N.I.C. were constituent parts of the S.A.I.C.
 - (d) That the T.I.Y.C. and N.I.Y.C. similarly co-operated with the T.I.C. and N.I.C. respectively.