

RIVONIA TRIAL

The original indictment in this trial was quashed for want of particularity but an application to quash the second indictment or to order further particulars was refused by the Judge. The principal difference between the two indictments was that in the second a list of some 193 cases of sabotage were given (placing burning cigarettes in a post box to explosions damaging electrical sub-stations). These particulars give the date and place. There was also supplied a list of 169 persons who were alleged to be agents and servants of the accused, but no particulars were given of how the cases of sabotage were to be attributed to the accused or how the servants and agents were related to the accused or any of them.

The trial Judge held that as Parliament had decreed that the trial was to be tried summarily without a preparatory examination the Defence were not entitled to any detailed particulars of the charge. The indictment itself alleges that the accused and others including the South African Communist Party, the African National Congress and the Spear of the Nations through their agents and servants recruited persons between June '62 and July '63 for training in the preparation and manufacture and use of explosives and in the art of warfare and also that they did some of the acts of sabotage set out; and secondly that they conspired to procure recruitment etc. and acts of violence, of guerilla warfare, of assistance to military units of foreign countries when invading the Republic, and acts of participation in a violent revolution

Although it is not known what caused the police to raid Rivonia - some stories say that the neighbours complained or became suspicious of the number of "natives" visiting there - it is apparent that they were surprised with the haul they got, papers, type writers, duplicators and a wireless transmitter (I do not think it worked properly). It does not seem to me that intelligent conspirators would have let themselves get into this position.

in the Republic; and thirdly between June '61 and July '63 in addition caused through their servants and agents further acts of sabotage; and fourthly did-,acting in concert, wrongfully and unlawfully solicit and accept and receive money from various persons both within and outside the Republic and give money for the purpose of enabling or assisting the commission of sabotage.

The particulars did not say which of the accused or co-conspirators is alleged to have done what. It gives no particulars of meetings of who instructed who or when or where. Although it gives some particulars of monies in an account it gives no details of why these monies are alleged to be improperly obtained or used and in fact the only particulars are so general that they do not, in my opinion, enable a proper defence to be prepared.

I awaited the opening address of the Prosecutor with interest as I imagined this would outline the case against the, accused, but it did no more than give a very general view of the case and some examples. In fact there appeared to be a deliberate withholding of information as for example when Dr. Yutar said with significance that code names were used and "letters will be produced signed 'Thunder' - your Lordship will be told who it is". The result is that as each witness comes to give evidence the Defence is taken by surprise and has to ask for an adjournment which is in fact granted. To put it mildly I regard this as a highly unsatisfactory manner in which to conduct a case of this importance.

One other point on the indictment is the inclusion of an additional allegation regarding the complicity of the accused James Kantor who was a partner with Harold Wolpe in the firm of James Kantor and Partners as follows:

"(a) Kantor, a senior partner, in his legal practice took into partnership a named communist, and party to the concerted action and common purpose.

(b) The partnership, and Kantor personally, handled many cases in which parties to the concerted action and common purpose, as well as members of the banned South African Communist Party and the African National Congress, were charged with subversive activities."

This appears to include an innuendo that by defending a person charged with subversive activities a lawyer is in some ways guilty of complicity in the subversion.

There is also an attempt to prove criminal liability against James Kantor under Section 381 (7) of Act No. 1956 of 1955 which places an onus on a partner to disprove his criminal responsibility if another partner does a criminal act of the firm. In this case it is alleged that because the partner Harold Wolpe purchased the Rivonia Farm through his firm of attorneys, this gives the firm a profit and, therefore, the onus is on James Kantor to disprove criminal liability because the Rivonia Farm was found to

be the centre of the major conspiracy. This is rather like asking one partner to show his innocence when the other partner purchases a spade from the common business with the intention of using it to hit his wife over the head.

In addition to the fact that there are no real particulars, there are in this case very many documents and these are only supplied to the Defence when a witness produces them. Many of these are alleged to be in the handwriting of an accused or of an absent co-conspirator, and of course, particularly in the latter case, it must take a considerable time for the Defence to investigate them.

The majority of the witnesses so far produced have at least at some stage been under "90 days" detention. Section 17 of the General Law Amendment Act 1963 permits this detention without any charge, the purpose being to obtain information. The detention is solitary, without any reading or writing material save the Bible, with one hours exercise a day and without visits or conversation with anybody - even the warders are ordered not to speak to the detainees. The 90 day detention has been described by sixty leading psychiatrists, psychologists and medical specialists in the Cape and Natal as "inhuman and unjustifiable". They also say "we also wish to draw attention to the existence of scientific evidence which suggests that prolonged isolation may cause a disturbance of judgment to the point where the individual's testimony is no longer reliable, because the mental deterioration of the person may

not be obvious either to himself or to those in charge of him. The results of interrogation of detainees in this state may well be untrustworthy". (Rand Daily Mail, Tuesday December, 17th 1963.) The witnesses appear in Court from "protective custody" and are to be released after giving evidence. Some of the witnesses have said in evidence that they originally refused to agree to the suggestions put to them by their interrogators but they finally agreed. In the case of the accomplices they, are warned in the terms of the South African Law that they need not incriminate themselves but they will be released and not charged if they give satisfactory evidence. All of them must be aware that they are liable to be detained again under the 90 days clause at any moment.

As the case is continuing it is impossible to state what value the Judge will give each of these witnesses, but in view of the circumstances in which they give evidence it is hard to see that their evidence is of any value at all. One example may be significant. One witness at the end of his evidence volunteered the fact that he had been beaten up by the police, the Judge first asked him whether his evidence was true and was told by the witness that it was. He was then asked if he had complained to the police. Naturally he replied no and the prosecution was asked to investigate the matter. After an adjournment was announced that he had withdrawn his complaint.

Mr. Justice De Wet does not give the impression of partiality and I would expect him to administer the law according to the high traditions of the South African

Bar but it is almost impossible for any Judge almost any where in the world not to absorb the general atmosphere of the country and I had the feeling that because of this and the absence of a jury he will find it easy to believe the Prosecution witnesses. I am sure he will give every opportunity to the Defence and he has already allowed adjournments so that Counsel could take instructions from their clients and he also, at the request of the Defence, withdrew his consent to the presence in Court of a microphone belonging to the South African Broadcasting Company which was there to record the Prosecutor's opening statement.

It is perhaps odd that the Prosecution thinks it necessary to call these rather dubious witnesses as they allege that they have some hundreds of documents, many in the handwriting of the accused or co-conspirators, that completely involve them in the conspiracy. But it is clear that the Prosecution wish to "expose" this plot to the full - and in particular wish to emphasise the communist influence behind it. Dr. Yutar, who is prosecuting, has an almost pathological feeling about this. He is a Jew and so are most of the European accused, and it is suggested that he aims to show himself as the representative of the "good" Jews who support the Government. It is also said that as a child he was present when his sister was attacked by an African and that this has produced a warped mind. Whatever the reason it is clear that he intends to make a great case out of this and I believe will attempt to smear every liberal or progressive cause particularly with a connection with Red money. From what he said to me

Defence and Aid is one of the objects of his attack. When I explained who I was observing for his words were "You know how much Defence and Aid is involved in this". In Court he attempted a smear on Canon Collins. A witness gave evidence about the purchase of Rivonia Farm and had said that Ezra, the purchasers, held shares in a Company, which was final purchaser, as a nominee for a foreign shareholder but he did not know or remember who the foreigner was. Dr. Yutar then asked "Does the name Canon Collins mean anything to you?", and was answered, "not in this context". In cross-examination it appeared that he had been asked this question before by the police and had given the same answer although this was not included in his statement. If Dr. Yutar knew this it was a gross breach of professional conduct. If he did not know, it is still difficult to see why he should ask this question in view of the previous answers.

The accused looked well. James Kantor has been released on bail during the Christmas adjournment. The relatives are allowed visits to those who are in prison on different convictions to whom the normal prison rules apply. The relatives attend Court regularly and cheerful smiles and waves pass between them and the dock, in spite of the fact that very heavy precautions are taken to prevent the escape or rescue of the accused with an individual guard behind each accused in Court. They are brought to Court in a small procession consisting of police out-riders, a police jeep in front and another behind the van carrying the accused. With head lights on they drive fast through the streets rather like a dictator in fear of assassination. Mrs.

Sisulu and her friends appear in Court in the green and black blouses of the African National Congress and wearing Mandela badges. One unfortunate incident occurred when Mrs. Sisulu's fifteen or sixteen year old son was arrested outside the Court for failing to have a pass (this in fact is unnecessary for a school boy). He was released after some hours at the intervention of Defence lawyers. It is an example of South Africa that one wonders what would have happened if he had been alone when the arrest took place - actually he was with Nelson Mandela's son who had a valid pass and who immediately told Mrs. Sisulu. If he had been alone it might have been days before it was discovered where he was. The boy looks young and we were told had been in tears in the police station.

The Defence team consists of Bram Fischer Q.C., Vernon Berange, George Bizos and Arthur Chaskelson with John Coaker for Kantor. Bram Fischer is an extremely capable lawyer who I am certain will use every legal answer and ammunition particularly on the technical side. Vernon Berange is one of the ablest cross-examiners I have ever heard and has already rendered some of the Prosecution evidence pretty impotent. George Bizos, playing a smaller part, is a careful and through

Advocate showing a real grasp of his case and a necessary caution. Arthur Chaskelson has played the least part in Court, but is clearly very bright and I am told he has a great future if it is not ruined by his participation in political cases. John Coaker, playing his separate role, is undoubtedly an experienced and capable Advocate. Perhaps greatest credit should go to Joel Joffe, an Advocate who was on the point of emigrating to Australia when the case opened, but

postponed his departure and turned Attorney to prepare the Defence. His work and energy are endless and he certainly stimulates the defence team if they need it. There is apparently a risk to be watched that Berange, who lives in Swaziland and is a British subject although a member of the South African Bar, might be prevented from re-entering the Union if he visits his home as he intends doing during the trial.

There is one point I should like to emphasise and it was made to me by various people. It is to my mind a mistake to attack the Government of South Africa for arresting these people. The evidence that they were planning a major campaign of sabotage, guerilla warfare and general armed uprising will almost certainly be overwhelming. It appears that the accused were careless enough to leave large quantities of papers outlining their plans in their own handwriting in Rivonia for the police to seize. Any Government anywhere in the world would be forced to prosecute on this evidence. It is the conditions and laws that make people act in this way that must be attacked. The recent demand from the United Nations to release these prisoners looks rather stupid in this light. It is certainly a mistake to represent them as innocent victims of a persecuting Government. They must have known that they were running the risk of a trial of this sort. In my opinion, for what it is worth and of course I have not heard all the evidence or heard the Defence, the accused seem to have carried out their conspiracy with remarkable stupidity.

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