FOUR YEARS OF TREASON

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On Friday, October 9th, 1960, when Professor Matthews concluded his evidence, the Defence case in the Treason Trial ended—fourteen months after the 30 accused had pleaded 'not guilty' and almost four years after they had been arrested. There remain now the arguments for the Crown and for the Defence, and then the verdict.

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". . . *The Defence case will be that it was not the policy of the African National Congress, or any of the other organizations mentioned in the indictment, to use violence against the State. On the contrary, the Defence will show that all these organizations had deliberately decided to avoid every form of violence and to pursue their ends by peaceful means only. The Defence will rely for its contentions as to the policies of these organizations upon their constitutions, the resolutions taken by them at their conferences, and the pronouncements of their responsible national leaders. . . .*"

Thus Mr. I. A. Maisels, Q.C., outlined the case of the Defence when the trial opened on August 4th, 1959. The nub of the Crown case was contained in the long opening statement of the late Mr. Oswald Pirow, Q.C. (only ready to be delivered the week after the case opened—one of the minor Kafka situations in this very Kafkaesque trial):

"*The gist of the Crown's charge of High Treason is that the accused, acting in concert, and through the instrumentality of their organizations, prepared to subvert the existing State by illegal means including the use of force and violence; and to replace the existing State with a State founded on principles differing fundamentally from those on which the present State is constituted . . . The Crown's case is that accused foresaw and were bent upon no legitimate constitutional struggle for political reform but a violent and forcible revolution . . .*"

The Crown, Mr. Pirow added, would prove (1) hostile intent and (2) adherence to a conspiracy.

So the opposing forces deployed for the crucial battle.

All the preliminary legal skirmishing was ended. Of the four indictments successively compiled by the Crown, only one,

against 30 of the original 156 people arrested, was acceptable to the Court. The others were whittled down and away, and with them the alternative charges laid under the Suppression of Communism Act.

The 12 months spent by a large and able Defence team in trying to get the indictments quashed, in challenging aspect upon aspect of the Crown case and the presentation of it with a recurrent refrain of demand for further particulars, in argument with (for the layman) obscure brilliance upon abstruse and highly technical subjects such as misjoinder, the ambit of treason, the need for particularity, was not an exhibition gallop of lawyers with the bit between the teeth, as it must sometimes have seemed from the spectators' enclosure. It was an absolutely necessary and strenuous preliminary effort not only to maintain standards of Justice, but to get proper clarification of the Crown case, without which the accused could not know and so prepare to answer the case against them.

The strategy was in some degree successful. The Crown dropped both alternative charges relating to Communism and based its case solely on proving conspiracy; the originally vast mass of evidence dwindled, more precise particulars were supplied and the total length of the trail, in consequence, reduced.

On August 4th, 1959, the accused pleaded individually: "I plead not guilty to the charge insofar as the overt acts are laid against me."

The next two and a half months were occupied with the evidence of a procession of police witnesses for the Crown, testifying to the raiding of meetings, offices, homes, and luggage at the airport. Endlessly, beneath the dome of the old synagogue converted into a Court for the trial, as the heat of the Pretoria summer approached and jacaranda trees blossomed and shed their bloom in blue pools on the pavements, documents were droned into the Court's recording machine in support of the Crown's allegations of a policy of violence. Cross-examination of witnesses was largely devised to extract admissions that frequently at meetings speakers had emphasized a non-violent policy, and to reading into the record those portions, omitted by the Crown, which urged non-violence or were otherwise favourable to the accused.

The Judges, realizing the potential limitlessness of the case, tried their best to persuade the Crown not to read in repetitious documents and to summarize wherever possible, and to induce

the Defence to make "large historical admissions" on the support given by the Congresses and other organizations to the Defiance Campaign, the Congress of the People, the opposition to various laws and the demands for universal adult franchise and the abolition of race discrimination. But as the Defence had to insist that the accused could not be prejudiced in any way and that the Crown must prove its case, proceedings had to take their laborious course. "Oh well", sighed Mr. Justice Rumpff, "we may become conditioned in due course."

The centre-piece in the Crown case was the expert witness on Communism, Professor A. H. Murray, of the Chair of Philosophy in the University of Cape Town, who began his evidence-in-chief in the middle of October and continued for more than a fortnight. He gave, first of all, an exposition of the theory of Communism, during which the Defence frequently challenged legal and procedural technicalities. Then the Professor examined about 100 documents—pamphlets, executive reports and presidential addresses, the Freedom Charter—most of them produced by the Congresses and the accused, and also several hundred books and magazines found in their possession. He analysed and commented on words and phrases which he held to reflect a Communist presence. These included such words as "comrade", "national liberation", "fascism", "united front", "imperialism", and "class struggle".

Mr. Maisels began his cross-examination of Professor Murray by enquiring into his qualifications as an expert on Communism. The Professor acknowledged that, though he had made a systematic and intensive study of Communism, had lectured to Cape Town students for many years and had written "odd articles" mostly of a popular nature, his Oxford doctorate was awarded for quite other work. He did not read Russian or any Eastern language, had not visited any Communist country, and did not consider either his own library or that of his University adequately equipped with Marxist-Leninist source books.

Examined next on the "semantics" of Communism, Professor Murray denied that all the passages he had labelled as Communist were *peculiarly* Communist; he did not necessarily mean that the passages, the documents and their authors could not be non-Communist. He agreed that a number of articles *he* had written were, on his reasoning, in line with Communist doctrine. Communist ideas and words could be used by non-Communists.

"The word *comrade*," said Mr. Maisels, "is used frequently

in British trade union documents. What inference would you draw from that?''

''It would appear that where the word comrade is used you have to do with a leftist tendency.''

''Such as Mr. Gaitskell (opening the 1959 T.U.C.)?''

''He might, under those circumstances, want to be popular; he knows *his* Congress.''

He was closely questioned on his interpretation as Communist of such words as ''fascism'', ''police state'', and ''imperialism''.

''I want to show the Court,'' said Mr. Maisels, ''the phrases you have pointed to are the small change of political discussion in South Africa and in the Western world, Communist or non-Communist.''

For the eventual historical record, if not for the legal fighting of the case, the most significant part of the cross-examination of Professor Murray followed.

The Crown had always maintained that bitter speeches attacking discrimination were the speeches of agitators.

Mr. Maisels led the witness, law by law, down the statute book of discrimination—''the melancholy record of successive South African governments''—placing the political programmes, speeches and documents on which Professor Murray had expressed his views into their political, economic and social contexts. ''Political speeches *must* be seen in the context of the situation,'' Mr. Maisels said.

It is impossible to summarize or to convey the flavour of this tour-de-force. The survey covered every resented aspect of non-white life, from the lack of lighting in the townships to the effects of the Group Areas Act, the Pass Laws and disfranchisement, showing all reflected in the demands of the Freedom Charter.

''It is clear, is it not, Professor, that the laws which subject men of colour to inferiority . . . in their own homeland, in the place of their birth . . . laws passed by white persons . . . over which laws and in the making of which laws they have no say whatsoever . . . that the laws themselves and the application of these laws, lead actually—as a matter of fact—to oppression?''

''In cases, yes.''

''And lead, as a matter of fact, actually to exploitation?''

''Yes.''

''Now it is clear, is it not, Professor, to summarize this position, that the laws of the white man—of successive South

African governments—are such that . . . they prescribe . . . (*a*) Where he (the non-white) may live . . . (*b*) Where he may work . . . (*c*) What work he may do . . . (*d*) What he is to get paid . . . (*e*) What schools he may go to . . . (*f*) What kind of education he may receive . . . (*g*) Where he may travel to in South Africa, in his own country . . . (*h*) Even as to how he is to travel . . .?

"Now in these circumstances, do you not think that the native may well regard himself as oppressed and exploited by the white man? . . . And this is so whether he is a Communist or non-Communist?"

"Yes."

Mr. Maisels concluded this section of the cross-examination by saying:

"*We know of course, as a fact, that no single act of violence was committed over the whole period of this indictment by anybody alleged by the Crown—not even alleged by the Crown—notwithstanding all the grievances and exploitation of grievances—you know that, don't you, Professor?*"

"Yes."

Professor Murray further conceded that full political rights would have to be given to the blacks and it would be a bold man who would say whether or not it would happen in our lifetime or that it could not happen by entirely peaceful means.

Mr. Maisels then persuaded Professor Murray to agree that extra-parliamentary and unconstitutional action was not necessarily unlawful action.

Finally, together they examined in detail the Freedom Charter*, in order to refute the Crown allegations that its drafting and adoption were overt acts of High Treason and part of a plot to overthrow the State by violence. On the contrary, quoting concepts expressed by thinkers from the fifth century St. Ambrosio ("Nature creates for the common use of all . . .") to Nehru, John Stuart Mill, Pope Pius XI, and passages from post-war French and South Korean Constitutions, the Magna Carta and the Declaration of Human Rights, the Defence tried to demonstrate that the aims of the Freedom Charter had commended themselves throughout history to people other than Communists.

*See '*Africa South*', *Vol. I No.* 3 for the full text.

Professor Murray's evidence concluded, the Crown then resumed with a further procession of police witnesses who gave evidence on speeches, many concerned with the organization of the Congress of the People, attempting to establish a "blood and violence" content. Defence cross-examination was directed in the main to showing the police reports as inaccurate or unreliable, and pointing to the omission of those references made to non-violence. The Crown case ended on March 10, 1960, after more than 100 days of evidence and three years of trial.

The Defence opened its case on March 14 by calling Dr. W. Z. Conco, Treasurer-General of the African National Congress, who was followed on March 21 by Chief A. J. Luthuli, President-General of the A.N.C. Both testified to Congress policies and the central doctrine of non-violence, denying Crown suggestions that the A.N.C. had, in fact, a *policy* of violence.

Chief Luthuli's evidence was dramatically interrupted on March 30 by the declaration of a State of Emergency and the arrest and detention (along with 1800 others) of the witness and all the accused (except one who, unrecognized by the police making the arrests, was told, "You're another agitator; clear off", and who obeyed to such purpose that he has not been seen in South Africa since).

In Court the Defence argued that the Emergency made proper consultations impossible, and that it could thus lead witnesses to incriminate themselves; adjournments were granted to April 26. Ministerial assurances of indemnity and amended regulations were alike unacceptable to the accused; and, as no further adjournment was allowed, the accused dismissed Counsel to save their time and cost, and for three months struggled on their own, calling upon each other as witnesses to testify to the policies of their organizations.

Despite witnesses' insistence, supported by examples, that references to the shedding of blood meant the blood of the unarmed people shed by others, for instance the police (and this was highlighted by the recent Sharpeville massacre), the Crown laid great stress on suggestions of violence, trying to elicit literal and military interpretations of such words as "army", "struggle", "volunteers". Violence, all witnesses reiterated against intense Crown pressure, was *outside the policy of the Congresses.*

The Emergency eased and detainees were being released. Counsel resumed the Defence, and towards the end of August

a new sensation broke in on this trial of alternate sensation and tedium. Mr. A. Fischer, Q.C. for the Defence, made another application (the first having been at the opening of the trial) for the recusal of presiding Judge Rumpff, this time on grounds that his questions to the accused (120 examples were quoted) were put in a manner which made the accused doubt the fairness of their trial. The Rule of Law means that "justice must not only be done, but must manifestly be seen to be done."

"Patience and gravity of hearing," Mr. Fischer quoted Lord Bacon, "is an essential part of justice and an over-speaking judge is no well-tuned cymbal."

The Court refused the application for recusal, but allowed a special entry in the record against this decision and on other legal grounds, thus giving the right, should the case eventually go to appeal, to argue that the Judge's questions were an irregularity.

The Defence proceeded with the very positive evidence of Congress leaders, including Professor Matthews (until recently Vice-Principal of Fort Hare University), on the programme of non-violence and the absence of any specific Communist influence upon official Congress policy (whatever the views of individual members, which were of course very diverse); and with the testimony of a number of rank-and-filers from all over the country—simple people who said they joined Congress because they thought non-violence was right or because it agreed with their religious principles.

The trial now enters its penultimate stage. The Crown must present its argument against the thirty, which it began on November 7. The Defence will then reply with their concluding argument. There is no knowing how long this stage may take. The present estimate is that it will last until the end of January. Judgment must then be given, probably after an adjournment of some length. The Defence is prepared, if necessary, to appeal.

It is evident that the Minister of Justice was in earnest when he said, some 18 months ago:

"*The Trial will be proceeded with no matter how many millions of pounds it costs. That does not affect the issue . . . What does it matter how long it takes?*"