

THE 'FISCHER' TRIAL

Z. Nkosi

ON NOVEMBER 16th, 1964, the trial opened in Johannesburg of fourteen White men and women charged on three counts under the Suppression of Communism Act—that they belonged to the illegal South African Communist Party, that they took part in the activities of the Party, and that they furthered the aims of Communism. On April 2nd, 1965, twelve of the accused were found guilty and on April 13th they were sentenced to various terms of imprisonment.

The case is of significance because it was the first case since the Suppression of Communism Act was passed in 1950 that anybody had been either charged or convicted on account of membership of the Communist Party. Hundreds of people, including many non-Communists, had been convicted under one or other provision of the Act in the preceding fifteen years. Now, for the first time, the State had been able to secure a conviction against people proved to the satisfaction of the court to have been members of the Party and sentenced because they had, as Communists, attempted to 'replace the present state of the Republic of South Africa by a dictatorship of the working class'.

The fourteen originally charged were: Mr. Abram Fischer, Q.C., leading defence lawyer in the Rivonia sabotage trial; Mr. Ivan Schermbrucker, former manager of the banned *New Age* and *Spark* newspapers; Mr. Eli Weinberg, for over thirty years a prominent trade union official until banned by the Nationalist Government, later a professional photographer; Mrs. Esther Barsel, former member of the Friends of the Soviet Union and the Congress of Democrats; Dr. Costa Gazides, former member of the Congress of Democrats; Mr. Lewis Baker, well-known Benoni attorney and secretary of the East Rand Branch of the Communist Party until its illegalisation in 1950; Mr. Paul Trewhela, journalist and former member of the Congress of Democrats; Mr. Norman Levy, teacher and former national executive member of the Congress of Democrats; Mrs. Molly Doyle, former member of the Congress of Democrats; Miss Sylvia Neame, student and former member of the Liberal Party and later the Congress of Democrats; Miss Anne

Nicholson, art student and former member of the Congress of Democrats; Miss Jean Middleton, schoolteacher and former member of the Congress of Democrats; Mr. Hymie Barsel, former secretary of the Society for Peace and Friendship with the Soviet Union; and Miss Florence Duncan, physiotherapist and former member of the Congress of Democrats.

The accused are described as 'former members of the Congress of Democrats', not because they resigned from the Congress, but because it was banned by the Nationalist Government in September 1962.

Of the fourteen originally charged, *Hymie Barsel* was, eventually, found to be not guilty; *Abram Fischer* went into hiding in January 1965 in order to continue the struggle against apartheid from underground; and the remaining twelve were sentenced as follows:

Eli Weinberg and *Ivan Schermbrucker*—three years on each of two counts, one year to run concurrently: a total of five years;

Esther Barsel, *Norman Levy*, *Lewis Baker* and *Jean Middleton*—two and a half years on each of two counts, two years to run concurrently: a total of three years;

Ann Nicholson, *Paul Trewhela*, *Sylvia Neame*, *Florence Duncan* and *Molly Doyle*—two years on each of two counts, the sentences to run concurrently: a total of two years;

Costa Gazides—twelve months on each of two counts, the sentences to run concurrently: a total of twelve months.

The case was heard in the Johannesburg Regional Court before magistrate Mr. S. C. Allen. The maximum jurisdiction of the Regional Court is three years. Two of the three counts on which the accused were charged were eventually ruled to be alternative to one another; thus the maximum penalty the accused could have received was six years. Considering this was the first offence for many of the accused, the sentences must be regarded as undoubtedly severe. A number of the accused are reported to have noted an appeal.

These are the bare bones of a case which contained all the elements of drama and suspense of a fictional thriller, but which at the same time underlined starkly the atmosphere of tyranny and oppression which prevails in South Africa today. It must be stressed that the accused were found guilty of nothing except membership of the Communist Party. They were not alleged to have committed or even planned acts of violence against any person or property

(apart possibly from one case of slogan painting). Had there been any suggestion of such activity, they would have been charged with sabotage and liable to much heavier penalties, including possibly the death penalty. In essence, the accused have been punished for holding opinions which are quite legitimate and normal in any democratic society, but which in South Africa have been outlawed by a Government determined to crush all opposition to apartheid and to maintain White domination by brute force.

STATUE TORTURE

Most of the accused were held for long periods under the ninety-day no-trial Act before being brought to trial, and during their detention many of them were subjected to the most insidious form of torture yet devised by the Security Police—the so-called ‘statue torture’, copied from the Portuguese P.I.D.E. This consists in keeping the victim under interrogation standing within a small square chalked on the floor until he or she either complies with the instructions of the inquisitor, or collapses unconscious from the strain. Ivan Schermbrucker, for example, was forced to stand for twenty-eight hours without sleep at the Grays, Special Branch headquarters in Johannesburg. On August 8th, 1964, he managed to smuggle a note out of police cells describing these torture methods and saying he had been driven to contemplate ‘bloody suicide’ in order to escape from further ‘statue’ interrogation. This resulted in special court applications and widespread publicity in the South African and overseas press. The police chief, Col. George Klindt, denied the torture and the court applications failed to secure Schermbrucker’s release.

Dr. Gazides was given the ‘statue’ torture for forty hours. Lewis Baker, fifty-four years old, was made to stand for seventeen hours, Paul Trewhela for 110 hours, Norman Levy, despite a heart condition, for 104 hours.

Not even the women were spared the ‘statue’ torture. Ann Nicholson, for example, was made to stand without a break for eight hours. Nor should one overlook the ‘simple’ torture of solitary confinement under ninety-day detention. Sylvia Neame, who had two periods of ninety-day detention, the first for forty-five days and the second for fifty-four days, made a statement from the dock in which she described her detention as ‘the most grueling experience of my life’.

She said: ‘I was held *incommunicado* in a cell six paces by four paces, with an hour out a day. Except for weekly interrogations

which lasted from one to two hours, I had no other contact whatever during my period of detention.

'Food was brought by wardresses who refused to talk at all. During these periods of prolonged solitude I was completely battered emotionally. I developed an intense feeling of being cut off. I no longer belonged. I couldn't recognize any continuity with my past, my present and my future. When I was released after forty-five days (her first period) into a strange world the reaction was even more severe. I could not adjust myself to a strange environment of people, faces and places. I mistrusted everybody, recoiled from all human contact.'

In her second period of detention, Sylvia Neame grew so desperate that she tried to escape—an offence for which she was sentenced to two months' imprisonment.

When Norman Levy was describing his experience of 'statue' torture, he said that a chair was placed behind him 'but it was made clear that if I sat down I would be assaulted'. Levy said he had a weak heart and felt the police were taking advantage of this.

The prosecutor, Mr. Liebenberg: 'I suggest the whole lot of you got together and fabricated a case against the police.'

At this pandemonium broke out amongst the accused and the prosecutor's voice was drowned by repeated cries of 'liar' and 'no, no' from those in the dock. There is no doubt whatsoever that all the accused were subjected to torture of one form or another before they were brought to trial.

Main evidence against the accused was given by two men—one, Petrus Beyleveld, a former ninety-day detainee who broke down under ninety-day detention; the other a police informer, Gerhard Gunther Ludi, who was recruited into the Security Police in 1960 and succeeding in worming his way into the underground Communist Party in 1963. Both gave evidence of meetings of Communist Party committees and groups and details of Communist Party discussions and activities.

THE TRAITOR BEYLEVELD

Beyleveld, who claimed he was a member of the Communist Party's Central Committee, District Committee and Area Committee, presented a pathetic spectacle in the witness box. Looking thin and haggard, he stumbled over words and tired very quickly, his mouth hanging open, his face distorted by a nervous twitch. He seldom glanced at the accused, and when he did his eyes flitted away again quickly.

Beyleveld's character was revealed in the following passage of cross-examination by the defence counsel, Mr. V. C. Berrange:

Berrange: You joined the Communist Party because it seemed the one organisation which had a chance of setting right the people's grievances?

Beyleveld: Yes.

Berrange: You were a dedicated Communist in a high position of power?

Beyleveld: I was. I would like to withdraw from politics. (At this stage several of the accused laughed, remembering a previous statement of Beyleveld's that 'I was and still am' in favour of Communism.)

Berrange: Mr. Beyleveld, if your evidence is true, the arrests that have taken place, if they lead to conviction, must be a shattering blow to the South African Communist Party?

Beyleveld: True.

Berrange: Are you going to find it easy to live with yourself, your wife, your son, your friends?

Beyleveld: It was not an easy decision. It is not easy now.

Berrange: That is not my question.

Beyleveld: Once you have taken a decision it is easy to live with it.

Berrange: I put it to you that you will find it easy to live with yourself if you have been loyal.

Beyleveld smiles wryly, shrugs: I have failed.

Berrange: Without any pressure from the police?

Beyleveld: Yes.

Berrange: Will you agree that you are either a perjurer or a traitor?

Beyleveld: No. I'm not a perjurer. There is a third position. I admit I have been selfish.

Beyleveld was then cross-examined by Mr. Hanson, Q.C., appearing at that stage for Mr. Fischer.

Hanson: Fischer was respected by all sections of society and revered by some? He was revered by you?

Beyleveld: Yes.

Hanson: I don't like to put this in my client's presence, but he carries something like a saint-like aura?

Beyleveld: Correct.

Hanson: And this saint-like man, you are prepared to put him in jail?

(Beyleveld appears upset and tries to hedge.) Not when I made a

statement. I did not expect to give evidence.

Hanson: Do you think of nothing else except your own liberty?

Beyleveld: I'll concede that.

Hanson: It is so important that you are prepared to go back on the principles of a lifetime?

Beyleveld: Yes.

Hanson: You are a freedom fighter for your own liberty.
(Laughter from the accused.)

There, in a nutshell, is the difference between Beyleveld and the accused. Unlike these men and women, who stood their ground and defended their principles despite all the pressures brought to bear on them, Beyleveld was prepared to bargain away his conscience to win his freedom. In addition to blasting the lives of the accused (against whom, he said in justification of his treachery, there was in any case plenty of other evidence), he named people not previously known to the police, some of whom were later arrested, some of whom will perhaps still be arrested. He also gave evidence which helped convict the accused charged with sabotage in the Mkwayi trial, and it is now reported that he is to tour South Africa giving evidence in other political trials.

Beyleveld said he was overwhelmed while under ninety-day detention when he realised that the police knew everything about the Communist Party, and it was this which decided him that 'the game was up'. Yet the case against five of the accused rested on his uncorroborated evidence. These five were Ivan Schermbrucker and Eli Weinberg, said by Beyleveld to be members of the Central Committee; Norman Levy, said to be a member of both the District and Area Committees; and Esther Barsel and Lewis Baker, said to be members of the Area Committee.

Beyleveld was the *only* witness against Schermbrucker. He was also the only witness to say that the activities of the other four, about which other evidence had been given, were conducted in their capacities as members of the Communist Party.

For example, a crucial piece of evidence was given by a police Captain Schutte, who said that on the night of June 16th, 1964, he kept watch in the shadow of a lamp-post in Bayne Street, Cyrildene, on a house on the opposite side of the road. Beyleveld, Esther Barsel, Norman Levy, Middleton and Lewis Baker came out of the house and drove away in a car parked some distance from the house.

What happened in the house? Captain Schutte of course did not know. Nor did the owner of the house, who also gave evidence. It

could have been a tea party. Ludi, the police spy, said Jean Middleton, who was a member of his group, had told him she was going to attend a meeting of the Area Committee on that date. But was this the meeting? It was conceded that she sometimes attended several meetings on the same day. The accused said it was a meeting to discuss defence and aid for accused in political trials. Only Beyleveld said it was a meeting of the Area Committee of the Communist Party.

Schermbrucker denied any acquaintance with the Communist Party, and there was nobody and nothing apart from Beyleveld to contradict him. Weinberg admitted having borrowed a flat from a friend (who gave evidence to this effect, but did not know what Weinberg wanted it for). Weinberg said he wanted the flat so that he could meet African trade unionists secretly because he was banned from attending gatherings. He admitted a contravention of his banning order, but denied it was in furtherance of Communist Party activity. Only Beyleveld claimed he had in fact been present at a Central Committee meeting in the flat.

Although there were many discrepancies in the State evidence to which defence counsel drew attention, and although the five accused gave evidence which was not destroyed in cross-examination, three of them corroborating one another, the magistrate found them guilty, accepting the evidence of Beyleveld, even though Beyleveld conceded under cross-examination that he *could have* given evidence 95 per cent true while lying convincingly about the rest, substituting false names and meetings for real ones. He denied, of course, that he had done so. But it was his word against that of the accused. Was the case against them proved beyond all reasonable doubt, as required by law?

Or take the case of Molly Doyle, who has already served six months for furthering the aims of the banned African National Congress and, in addition to her present two-year sentence, may have to serve an additional year suspended from her previous sentence if she loses her appeal. Molly Doyle is alleged from secret tape recordings to have taken part in Communist Party activities and to have hired a room for the Party. She admitted hiring the room, but denied knowing that it was for the Communist Party. She again was convicted because of Beyleveld's say-so.

The evidence against the remaining accused is more detailed. Confirmation of some of Beyleveld's accusations against them was provided by secret police agent Ludi, who was in a Communist Party group with them. Meetings held by the group in Jean

Middleton's flat were tape-recorded by a police constable Schroeder who had hired the flat next door and kept a nightly vigil there. Schroeder also installed a one-way mirror above his front door so that he could observe all visitors to Middleton's flat without himself being seen.

DEVICES

The police refused to give details of the manner in which they had obtained recordings of meetings, but the case revealed extensive use by the police of the latest devices. On one occasion, on March 1st, 1964, Constable Schroeder saw a woman place an envelope under the door of Jean Middleton's flat. Another policeman, warrant officer W. O. J. Kruger, testified that he saw Molly Doyle going into the building on that evening. Shortly afterwards, Kruger received a radio message from Constable Schroeder from within the building. Schroeder also telephoned his Chief, Lt. Broodryk, at Security Branch headquarters, and was given instructions to enter Jean Middleton's flat and recover the envelope she had pushed under the door. As a result of this bit of housebreaking, the police obtained a soap impression of a key found in Jean Middleton's flat which fitted the lock of a room which the police knew, through Ludi and one of the recordings, the group intended hiring. The room was raided several times, but no one and nothing was ever found in it, yet this was the evidence on which Molly Doyle was convicted.

Through Ludi the group also hired a post box at Mayfair post office which was used for all postal correspondence with the group. Ludi would hand over all post received to police headquarters, where it was photostatted and returned to Ludi for delivery to the group. Ludi himself took tape recordings of group meetings held in his car and at a restaurant, and from the recordings themselves it would appear the transmitting apparatus was small enough to fit into his inside jacket pocket. Ludi also informed his superiors about slogan-painting operations undertaken by the group, the members of which were under observation by the police while they were on the job.

In the main this, together with 'expert' evidence on Communism from red-hunting Professor Murray of Cape Town University, was the core of the State case against the accused. What was the accused's defence?

Ivan Schermbrucker, Eli Weinberg, Esther Barsel, Norman Levy, Lewis Baker, Molly Doyle and Hymie Barsel, while not repudiating

their political beliefs or, in some cases, their membership of the Communist Party before 1950, denied being members of the illegal Communist Party or taking part in its activities. The remaining accused—Jean Middleton, Ann Nicholson, Costa Gazides, Paul Trehwela, Florence Duncan and Sylvia Neame—all admitted being members of the illegal Communist Party and made statements from the dock giving their reasons for joining the Party.

WHY THEY JOINED

Sylvia Neame said she had been interested in politics ever since the age of fifteen. After first joining the Liberal Party, she joined the Congress of Democrats because she regarded it as the most effective organisation fighting against apartheid and she accepted wholeheartedly the aims of the Freedom Charter. With the banning of the Congress of Democrats, she saw no alternative to joining the Communist Party. She considered herself a socialist, and saw the party as the only organization which had strong links with the non-white liberation movement.

Jean Middleton said that politics began in the heart. She had always been distressed and horrified at the living conditions of non-whites. She believed that socialism was the only answer, offering more freedom than the present society.

Ann Nicholson said that freedom of speech and organization was basic to any democracy and both had been destroyed in South Africa. She joined the party to assist the freedom-struggle of the non-whites who were the main force in the liberation movement. Her only crime had been that she did something practical to see that justice was done.

Dr. Gazides told the court how he had been hounded and persecuted ever since he took a stand against the apartheid policies of the Government. He had joined the party because it provided the only answer that he, as a doctor, could see to the poverty of the non-whites. He was in the party barely a month before being arrested.

Trehwela said: 'I am a Communist and a South African.' The youngest of the accused (twenty-three), he had been influenced by the attitude of the Whites that they were entitled to dominate all aspects of society—which they did with arrogance. He believed he was his brother's keeper, irrespective of colour.

A similar statement was made by Florence Duncan.

Finding all the accused except Barsel guilty, the magistrate said he accepted the evidence of Beyleveld and Ludi and rejected that of the accused. He sentenced Eli Weinberg and Ivan Schermbrucker to

five years as members of the Central Committee of the Party; Esther Barsel, Norman Levy, Lewis Baker and Jean Middleton to three years as Area Committee members; Ann Nicholson, Paul Trewhela, Sylvia Neame, Florence Duncan and Molly Doyle to two years as rank and file members. Dr. Gazides was sentenced to a year as 'a new recruit'. The magistrate made no finding in the case of Abram Fischer.

There was pandemonium in the court after the accused had been sentenced. The accused and spectators sang *Nkosi Sikekel' iAfrika*, gave the clenched fist salute and shouted the slogan 'Amandhla Ngawethu' (Power is Ours). Security police had to enter the dock to hustle the accused down to the cells by force.

Six of the accused have since noted appeals against their conviction and sentence. They are Ivan Schermbrucker, Eli Weinberg, Esther Barsel, Norman Levy, Lewis Baker and Molly Doyle—the six who constantly denied throughout the trial that they had ever been members of the underground party. The six accused who admitted membership of the Party are not appealing. They are Jean Middleton, Costa Gazides, Ann Nicholson, Paul Trewhela, Sylvia Neame and Florence Duncan.

Guilty or not guilty in terms of a vicious law, there is no doubt that in the eyes of the majority of the South African people the accused do not appear as criminals, but as fighters for the liberation of the oppressed and for the building of a free South Africa in which people of all races will enjoy equal rights and opportunities. The victims of racialist tyranny today, they will be honoured as heroes in the South Africa of the future. All have played a brave and honourable role in the freedom struggle of the South African people and their sacrifices will not be forgotten.