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THE CHRISTIAN
INSTITUTE
OF SOUTHERN AFRICA

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NAUDE WINS APPEAL

Charges against five dropped

The director of the Christian Institute, Rev Dr C F Beyers Naudé, yesterday won an appeal to the Supreme Court against his conviction late last year for refusing to testify before a parliamentary commission of inquiry.

Mr Naude refused, with his entire executive staff, to co-operate with the Commission of Inquiry into Certain Organisations (Schlebusch Commission), in September last year. The commission is investigating the aims and activities of the Institute and three other organisations - the National Union of Students (NUSAS), the Institute of Race Relations and the University Christian Movement.

He was subsequently convicted of contravening the Commissions Act, by making his refusal without sufficient cause. Mr L M Kotze imposed a sentence of R50 (about \$35) or one month's imprisonment, with an additional sentence of three months suspended conditionally for three years.

This sentence has now been set aside.

Dr Naude's appeal was upheld in the Pretoria Supreme Court by Mr Justice Bekker and Mr Justice Botha. The judges accepted the appellant's submission that the commission was not properly constituted when it compelled him to testify.

Because the appeal was successful on these grounds, they declined to give judgement on another submission that Dr Naude was entitled to refuse under the Act, because he had sufficient cause to do so.

DROPPED

Now that Dr Naude's appeal has been upheld, similar charges against three of his staff members have been dropped. This was confirmed by the Attorney-General yesterday. They are: The Rev Brian Brown, administrative director; the Rev Roelf Meyer, editor of Pro Veritate (the Institute's monthly magazine) and the Rev Danie van Zyl, of the Programme for Social Change.

Charges against two staff members of the Institute of Race Relations, Mr Dudley Horner and Mr Clive Nettleton, have also been dropped.

Judgement must still be given in those cases relating to Schlebusch Commission offences which have been postponed but partly heard, or postponed for judgement, Mr Moodie said. Those affected by this statement are the Rev Theo Kotze (Cape director of the Christian Institute), Mr Peter Randall and Mr Horst Kleinschmidt (both of the Programme for Social Change).

Two defiers of the Schiebusch Commission are awaiting appeals against their convictions in Magistrates' Courts. They are Mrs Dot Cleminshaw, a former Spro-cas 2 assistant and Mr James Moulder, a philosophy lecturer at Rhodes University.

JUDGMENT

In their judgement on Dr Naude's appeal, the judges found that a commission in terms of the Act meant "a commission consisting of all its members".

They said the legislature could never have intended that a commission carry out its duties with, for instance, only the chairman present. At least for the purposes of summoning witnesses, all the members of the committee had to be present.

(It had been argued that for other purposes the commission could split up its members and delegate tasks to them.)

The general working of the commission was one thing, the judges said, but the criminal punishment legislated in section 6 of the Act was another.

They added: "For the sake of argument it can be accepted in the State's favour that the validity of a commission's report and recommendations are not affected by the fact that not all the members of the commission were present at every stage in the previous activities, even where evidence was heard."

SOURCES: The Argus 12.2.74.
Cape Times 13.3.74.

COMPILER'S NOTE

While it might be appropriate to present editorial comment on the success of Dr Naude's appeal in this Newdigest, certain cases are still pending on which the Supreme Court judgement is likely to have an effect. Any comment we might make, therefore, could be held to be in contempt of court.

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COMMISSION REPORTS ON UNIVERSITY OF THE WESTERN CAPE

Saso blamed for disruptions

After the dismissal of the entire student body at the University of the North in May, 1972 (following the "Tiro affair" outlined in the Newdigest of 12 February), strikes were sparked off at all black universities falling under the Departments of Bantu Education, Coloured Affairs and Indian Affairs.

Strikes at the "Coloured" University of the Western Cape were followed by disciplinary action being taken against the Student leader at that university, Henry Isaacs. (Mr Isaacs has since been banned by the government.)

In response to this, a series of mass student meetings were held, and following negotiations with the Rector of the time, Prof Neels Sieberhagen, students walked off the campus.

The University Council then decided to close the institution, and expel all students. Students who wished to return to the university were made to sign undertakings to obey its rules and regulations. It is unclear how many students did re-apply for admission, but certainly a number refused to do so.

A one-man judicial commission of inquiry was set up to investigate matters relating to the university and the causes of the "unrest". This article from the news columns of the Cape Herald outlines the findings of the commission.

The Cape Herald is a Cape Town weekly of the Argus group, aimed at "Coloured" people .

The main cause of the unrest at the University of the Western Cape (UWC) in the middle of last year stemmed from the activities of the South African Students' Organisation (SASO), according to the Van Wyk Commission.

Mr Justice J T van Wyk, Judge President of the Cape, recently reported the findings of his one-man commission of inquiry into matters relating to UWC.

According to the report, the unrest on the campus must be seen against the background of general dissatisfaction among Coloured people over certain attitudes, practices and laws which differentiate between White and Coloured.

Dissatisfaction that Whites and not Coloured people were in control of the university also played a role, the report said.

The immediate causes of the disturbances at the university were, according to the report the following:

- The activities of SASO, including their plans to encourage confrontation with the authorities.
- The ignorance of the majority of students as to the real intentions of SASO.
- The fact that the Students' Representative Council consisted largely of members of SASO.
- The deadlock over the constitution of the Students' Representative Council (SRC) and the resultant break in communication between students and the authorities.
- The false belief that sufficient qualified Coloured people were available to fill posts at UWC.

NO GROUNDS

The commission found that there were no grounds for grievances against the rector of the university, the University Council or the Senate.

The commission recommended that Coloured people be appointed to the staff as far as possible and that the wage gap between White and Coloured be erased.

It was advisable, the commission said, that students ought, by no means, to be prevented from discussing political affairs but it was 'necessary that they devote the maximum time to their studies.'

The commission found it to be 'essential' for an effective communication to be established between students; lecturers; the administration; the rector; the Senate and university Council.

CONSULTATION

To achieve this, Mr Justice van Wyk recommended regular consultation between the rector and the SRC. Minutes should be kept and made available to Senate members.

The Commission recommended strict measures against students or members of staff who caused or encouraged unrest.

Mr Justice van Wyk recommended that disruption of classes or interference with the activities of members of staff, conduct aimed at disruption of the normal functions of the university or incitement by anyone towards disrupting classes or preventing the staff from carrying out their duties, be made punishable by law.

FOOTNOTE

We hope to print in the next edition of Newsdigest a commentary on the question of "tribal universities" (with "Bush colleges" a favourite derogatory term for the government's blacks-only universities) by a former student at the UWC.

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STATE LAW AND THE CHRISTIAN CONSCIENCE IN SOUTH AFRICA

by
Anthony Allotte

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The trial just concluded in Pretoria of the Rev Beyers Naudé represents a new and sharp confrontation between the oppressive legalism of the South African government on the one hand, and the witness of those Christians who do not accept the apartheid society as being either Christian or unchallengeable on the other.

It is clearly the Pretoria government's intention to extend the systematic silencing of the opponents of racial injustice to the Christian churches themselves. One recalls the recent actions against the Anglican Dean of Johannesburg and Father Cosmas Desmond. Now it is the turn of the non-conforming members of the Dutch Reformed churches, represented pre-eminently by Dr. Naudé, and of those associated with him - Methodists, Anglicans and others - in the work of the Christian Institute (CI).

"Afrikaner of Afrikaners"

Beyers Naudé is a remarkable, indeed unforgettable, man. He is an Afrikaner of Afrikaners; himself the son of a Dutch Reformed preacher, he too was a minister of the Dutch Reformed Church (DRC) and rose to become a moderator and leading spokesman, nationally and internationally, of his church.

At the same time he was a member of the secret Afrikaner society, the Broederbond. His work, and that of the Transvaal synod of the DRC in which he played a leading role, greatly influenced the final text of the Cottesloe Declaration issued by all the Christian churches in South Africa in 1960, in the aftermath of Sharpeville. In that Declaration, the rights of all races to participate in government, to own land anywhere, and to intermarry, were spelt out.

When the DRC resiled from the commitment of their official representatives at Cottesloe to work for a juster society in South Africa, Dr. Naudé was one who stood his ground. An ecumenical Christian Institute was being established to explore and work for the application of the Christian ethic to South African society and particularly to the racial system; Naudé was asked to be its first Director. His DRC co-religionists, however, made it clear to him that he must choose: to be forced to leave the ministry if he assumed the directorship, or to abandon his pursuit, through the CI, of his biblically inspired vision of the just social order. It was an agonising decision; to carry on as Director but thereby to isolate himself from the religion and community from which he sprang, or to be untrue to his conscience and inner convictions. His conscience prevailed, and in a moving farewell sermon to his congregation in 1963 he explained the grounds of his decision.

Since then Dr Naudé has in effect been an outcast from the DRC, harried by his religious and political (the two terms are almost interchangeable) opponents. He won a prolonged libel action against a Professor Pont, obtaining the largest damages awarded up to that date in a South African defamation suit; but for the last year or two it has been the government which has been the principal aggressor.

Commission

In July 1972 the government established the mysteriously named Commission of Inquiry into Certain Organisations (popularly known, from the name of its chairman, as the Schlebusch Commission), specifically to report on the objects, organisation and financing of named organisations, including the CI, and their activities. Unlike normal commissions of inquiry, this one consisted entirely of practising parliamentarians, meeting and interrogating witnesses in secret.

Under the regulations issued by the State President, it is a criminal offence for anyone, witness or otherwise, to report what happens upon his interrogation by the Commission, or to publish any statement that may have been submitted to the Commission. Of the organisations investigated, an interim report by the Commission on Nusas (the National Union of South African Students) has already been issued, in February 1973; the same day 8 Nusas leaders were served with banning orders under the Suppression of Communism Act.

It is against this background that officers and members of the CI and the Institute of Race Relations have refused to testify before the Schiebusch Commission. When summoned to Pretoria to give evidence, each refused to take the preliminary oath. Reasoned documents justifying this refusal on moral and religious grounds were handed to the Commission by some of those summoned, notably by Maudé himself.

Attention

Boyers Maudé's trial has excited world attention and concern. The British Council of Churches sent its Vice-Chairman, the Archbishop of Wales (the Most Rev. Dr Gwilym Williams) to observe the trials, while I was asked to observe on behalf of the International Commission of Jurists (a body devoted to upholding the Rule of Law) in Geneva. The trial was sensational in a number of respects, not least because of the eminence of the accused, but also because of its unusual atmosphere and the unconventional form that the trial in practice took.

Courtroom E, one of the smallest courts in the building, was allocated for the trial, and was so full of sympathetic supporters, black and white, that they overflowed into the well of the court. On the third day the presiding magistrate, Mr L.M. Kotze, had arranged for a much larger courtroom to be available; it was full, so far as one could tell, of sympathisers with Dr Maudé (except for a large number of security policemen failing to make themselves unobtrusive).

A gaiety and calm confidence pervaded the courtroom, reminiscent of that which must have prevailed among the early Christians who had to face Caesar or the lions on the morrow.

Challenge

The prosecution thought that this would be a simple open-and-shut case; Dr Maudé had admittedly failed to take the oath when required, and under s.6 of the Commissions Act conviction must inevitably follow. The first challenge came when Mr Prinsloo, Secretary to the Commission, was called to give formal evidence of the refusal, which he did from the transcript of the Commission's proceedings. For the first time part of the proceedings of the Commission were exposed to public gaze.

Defence counsel, Mr J.C. Kriegler, S.C. (who handled the defence brilliantly) then asked Mr Prinsloo to read out to the court in full the long statement submitted by Dr Maudé to the Commission, which, to his great discomfiture, he was obliged to do.

Then, when the defendant himself was called to give evidence, his counsel took him through the whole of his spiritual biography, from the day of his birth to his appearance before the Commission, bringing out in detail the various domestic and international church conferences and synods in which the racial situation in South Africa had been considered, and Dr Maudé's justification, from scripture and from other authorities, of his stand on racial issues and his refusal to testify.

Dr Maudé stated his objections to the Commission and its procedures as being that it consisted solely of parliamentarians, who might be incapable of an impartial judgement, that it functioned in secret, that those summoned before the Commission

had no knowledge of what case or charge they might have to meet, that they were denied the assistance of counsel in testing the evidence against them, and that witnesses were put in peril of banning orders as a result of the Commission's reports.

Under s.6 of the Commission's Act, argued Mr Kriegler, a witness can refuse to testify or answer questions if there is "sufficient cause" for his so doing; in this case, he said, there was ample cause for Dr Naudé's refusal, because the composition and mode of functioning of the Commission made it "humanly intolerable" for him to testify.

Sermon

The highlight of the case came when defence counsel read into the record the entire text of the farewell sermon which Dr Naudé had given to his parish in 1963. Dr Naudé was asked by his counsel to read out the sermon for the record, which - to the background of a dramatic electrical storm outside - he did. It must surely have been unprecedented for a sermon to have been preached in a magistrate's court, though Joan before her accusers, the Catholic and Protestant martyrs at the time of the Tudors, and the Quakers of a later age, spring to mind in this connection.

It was to no avail. The magistrate, who, in his questioning of the accused, seemed at times to step out of his role and to debate with rather than question Dr Naudé, in his judgement found him guilty, rejected the argument of sufficient cause, told Dr Naudé that the law must prevail and that he, Naudé, was more guilty than most as being a leader and not a follower. He sentenced him to a fine of R50, with one month's imprisonment in lieu, together with a suspended sentence of 3 months' imprisonment, which would come into automatic operation if, within the next 3 years, he committed a similar offence. Dr. Naudé's counsel immediately notified an appeal, which will probably be determined in December or early January.

In the debate between a narrow legalism and the duty of obedience to God rather than men, the state had won, as it was bound to do. There is some hope however, that in the appeal court the broader legal argument of justification will prevail. If not, Dr Naudé, and those accused with him, will go to prison, as they have indicated that they will refuse to pay any fines imposed.

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* Prof. Antony Allot, Professor of African Law at the Institute of Oriental and African studies, London University, attended the trial of the Rev. Dr Beyers Naudé last year as an observer for the International Commission of Jurists. We reproduce his report on this trial here because it captures some of its atmosphere and outlines Dr. Naudé's own background. It originally appeared in The Tablet.