

IN THE SUPREME COURT OF SOUTH AFRICA  
(TRANSVAAL PROVINCIAL DIVISION)

THE STATE

against

1. NELSON MANDELA,
2. WALTER SISULU,
3. DENNIS GOLDBERG,
4. GOVAN MBEKI,
5. AHMED MOHAMED KATHRADA,
6. LIONEL BERNSTEIN,
7. RAYMOND MHLABA,
8. JAMES KANTOR,
9. ELIAS MOTSOALEDI and
10. ANDREW MLANGENI.

DE WET, J.P.: The first count alleges that the accused are guilty of the offence of sabotage, in contravention of section 21(1) of Act 76 of 1962, in that during the period 27th June, 1962, to 11th July, 1963, and at Rivonia, Travallyn and Mountain View in the Province of the Transvaal, as well as at other places within the Republic of South Africa, the accused 1 to 7 personally and by virtue of their being members of an association of persons, within the purview of section 381(7) of Act 56 of 1955, as amended, known as the National High Command, the accused No. 8 personally and by virtue of his being a member of an association of persons within the purview of section 381(7) of Act 56 of 1955, as amended, styled James Kantor and Partners under which name he con-

ducted his profession in partnership with Harold Wolpe, and the accused 9 and 10, together with a number of named persons, and organizations did, acting in concert and in the execution of a common purpose, wrongfully and unlawfully, through their agents and servants, commit the following wrongful and wilful acts, namely:

- (i) the recruitment of persons for instruction and training, both within and outside the Republic of South Africa, in
  - (a) the preparation, manufacture and use of explosives - for the purpose of committing acts of violence and destruction in the aforesaid Republic, and
  - (b) the art of warfare, including guerilla warfare, and military training generally - for the purpose of causing a violent revolution in the aforesaid Republic, and
- (ii) the acts particularised and numbered 40 to 193 in Annexure "B", attached hereto,

whereby the accused, injured, damaged, destroyed, rendered useless or unserviceable, put out of action, obstructed, hampered with or endangered

- (a) the health or safety of the public;
- (b) the maintenance of law and order;
- (c) the supply and distribution of light, power or fuel;
- (d) postal, telephone or telegraph services or installations;
- (e) the free movement of traffic on land, and
- (f) the property, movable or immovable, of other persons or of the State.

The named co-conspirators include Goldreich and Wolpe as well as other persons unknown, and also include a number of persons named in a schedule to the indictment. The organizations named as co-conspirators are The South African Communist Party, The African National Congress and the Umkonto We Sizwe (The Spear of the Nation). Annexures to the indictment list a number of further particulars which are relevant to Count 1 as well as to the other counts. Count 2 also charges sabotage in contravention of section 21(1) of Act 76 of 1962 and differs from the first charge only in that it alleges that the accused, together with the named persons and other unknown persons, did wrongfully conspire with each other to aid or procure the commission of or to commit the following wrongful and wilful acts. Paragraph (i) is the same as Paragraph (i) of the main charge except that it deals with further recruitment of persons and Paragraph (ii) charges further acts of violence and destruction of the nature described in Annexure "B" to the indictment. Paragraph (iii) charges a conspiracy to commit acts of guerilla warfare in the Republic. Paragraph (iv) charges acts of assistance to military units of foreign countries when invading the aforesaid Republic, and (v) acts of participation in a violent revolution in the Republic and it is again alleged that these acts would have injured, damaged, destroyed, rendered useless or unserviceable, put out of action, obstructed, tampered with or endangered the health or safety of the public etc. Count 3 charges a contravention of section 11(a), read with sections 1 and 12, of Act No. 44 of 1950, and charges that the accused and the co-conspirators

acting in concert and in the execution of a common purpose did wrongfully and unlawfully, through their agents and servants, commit the following acts, and the acts set out are the same as those set out in Count 1.

Count 4 charges a contravention of section 3(1)(b), read with section 2 of Act 8 of 1953, as amended, and alleges that the accused and the co-conspirators, acting in concert and in the execution of a common purpose, did wrongfully and unlawfully, personally and through their agents and servants, solicit, accept and receive money from various persons or bodies of persons, both within and outside the Republic of South Africa, and give money to various persons or bodies of persons, for the purpose of enabling or assisting the commission of offences, namely, sabotage in support of a campaign against some of the laws of the Republic of South Africa or in support of a campaign for the repeal or modification of such laws or variation or limitation of the application or administration of such laws.

Annexure "B" to the indictment sets out 193 acts of sabotage dating from the 10th August, 1961, to the 6th July, 1963. Annexure "C" sets out particulars which I do not need to deal with at this stage.

At the conclusion of the case for the prosecution I discharged Accused No. 8, Kantor, and undertook to furnish my reasons at the conclusion of the hearing of the whole case. These reasons follow. In the particulars in the indictment it is alleged that the State relies upon certain allegations to establish the complicity of Accused No. 8. These will be considered seriatim.

(a) "Kantor the senior partner in his legal practice took into partnership a named Communist and parti-

participant in the concerted action and common purpose." This allegation is established up to a point. It is conceded that his partner, Wolpe, was a listed Communist and that there is prima facie evidence that he was a participant in the offences charged in the indictment. On the other hand it is common cause that Wolpe is No. 8's brother-in-law and Accused No. 8 stated in an affidavit placed before me in connection with his bail application that Wolpe had undertaken not to indulge in any illegal political activity whilst he was Accused No. 8's partner. Makda, a qualified assistant in the business who gave evidence, said that he was not aware of any illegal conduct on the part of Wolpe except that he on occasions interviewed restricted persons in private, sometimes in his own room and sometimes in Magda's room. He said that it is most improbable that Accused No. 8 knew of these interviews, assuming that they were illegal, as Accused No. 8 had his own office, was very busy and took no interest in the doings of Magda and of Wolpe.

(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 A. N. C. were charged with subversive activities."

No details have been given in evidence as to cases handled by Kantor but it does appear that some persons falling within the general description were clients of the firm both in relation to civil and criminal cases. In my opinion no sinister inference can be drawn from this evidence.

- (c) "The parties and members referred to in (b) immediately above frequently held meetings in secrecy in the office of the partnership".

Except for the word "frequently" this allegation can be regarded as established, except as I have already said Accused No. 8 probably did not know of these meetings nor can it be inferred that these interviews were in any way connected with the offences specified in the indictment.

- (d) "The partnership, and Kantor personally, participated in the purchase of Lilliesleaf farm, Rivonia, in the name of a fictitious person".

It was prima facie established that the property in question was used as the headquarters of one or more of the subversive organizations listed in the indictment and that the purchase of the property was made for this purpose, that the purchase was made by one Ezra, acting for a company which was subsequently incorporated, namely Navian Proprietary Limited. The matter of floating the company and passing transfer to it was originally handled by Wolpe but was later handed by him to another attorney, Furman, and the actual transfer and registration of the company was done by Sepal, a clerk in Furman's office. In my opinion, even if Accused No. 8 knew about this matter, there is no prima facie evidence to indicate that he knew that there was any illegality attached to the transaction which, judging by the papers produced, was a transaction normally entrusted to an attorney.

- (e) "The devious manner of payments in regard to the purchase of the Rivonia property."

This allegation will be considered when I deal with the so-called "Ezra Account".

- (f) "The use of the partnership trust account as a conduit pipe for the receipt of money and the payment out thereof in furtherance of the concerted action and common purpose".

This allegation will be considered in relation to the various accounts which are alleged to establish this allegation.

- (g) "Kantor's visit to Lilliesleaf and statements made by him to the police".

The police raided the property in the afternoon of the 11th July, 1963. A number of persons were arrested and a large number of documents were seized. It is clear from the evidence that the fact of the raid was known to the general public by the early hours of the next morning and that an account of the raid had been published in at least one newspaper. It also appeared that Wolpe did not come to office the next day, that he attempted to flee and was arrested in one of the country districts a few days later. The only evidence against No. 8 is that of Warrant Officer Dirker that No. 8 visited Lilliesleaf on the morning of the 12th and said to Dirker that he had come to feed the dogs and the fowls, that he appeared to know where the fowl food was, that he did in fact feed the fowls. This evidence appears to me to be highly improbable. None of the other police witnesses appear to have any knowledge of the purpose of No. 8's visit whereas it is clear that three children had been left at the house the previous night when their parents had been arrested, that the uncle and

grandmother of two of the children, the Goldreich children, had come to fetch them and their belongings that morning and that these persons and another woman relation had been present on the property at the same time as Accused No. 8. There is also evidence that police were stationed at the gate who had instructions to deny access to all persons who had no legitimate business on the property. The suggestion put in cross-examination that Accused No. 8 in his capacity as an attorney had accompanied the children's relations in order to fetch them seems to me much more probable than Dirker's version. But even if Dirker's evidence is true it seems to me to be of no assistance to the State. If No. 8 had in fact been one of the conspirators the last thing I would have expected him to do would be to put his head into a hornet's nest. Another possibility consistent with his innocence is that he was endeavouring to find out what had happened to his partner, Wolpe.

I come now to the various files and accounts which are relied upon to implicate Accused No. 8. These all relate to matters handled by Wolpe, not by Accused No. 8. It is necessary to mention in the first place that a new system of bookkeeping had been introduced by Wolpe when he became a partner and it is conceded by the accountant Mr. Cox, who gave evidence for the State, that this was a very sound system. It also appears from the evidence of the accountant, who periodically examined the firm's accounts, that it is a better system than that previously employed. I do not propose to explain this system in detail but merely mention that two signatures were required on each cheque drawn, namely

two out of these three: A. Kantor, H. Wolpe and Accused No. 8. At a later stage Makda was also given authority to sign cheques. It was the practice, for bookkeeping purposes, to make out a requisition for each cheque and two carbon copies of each cheque were kept. A ledger card was kept relating to the financial affairs of every client.

The first account relied upon is that in Ledger Card headed A. Letele. This reflects an amount of R8,000-00 received on August 20th, 1962 and 16 withdrawals from this account over the period August 21st to December 12th. The account was balanced on the 28th February, 1963, by transfer of an amount of 75c to "Defence and aid". Peculiarities in regard to this account are that the file relating to this client contains no instructions or information relating to the withdrawals from this account. In the case of seven of the withdrawals the cheques were payable to cash or selves. In regard to the first peculiarity it seems from other files produced that in any case Wolpe did not record instructions in many cases, even in cases of files where there is no suspicion of any irregularity. It is difficult, if not impossible, to ascertain from these files what work was done or what instructions were given by the client. It is also clear from Makda's evidence that Accused No. 8 never interfered with him or with Wolpe in relation to work done by them. It would certainly also, in my experience, be unusual for one partner in a firm of attorneys to check the work done by another, even if he had the time to do this, which would be unlikely in a busy practice. As to withdrawals in cash, a number of cheques were exhibited when Makda

was cross-examined showing that amounts were frequently withdrawn in cash from the Trust Account. Makda explains that this would be done for payments to clients in cash from their own accounts, for disbursements on behalf of clients and possibly for other reasons. Makda says that under the old bookkeeping system described by the firms accountant as unsatisfactory Accused No. 8 was averse to cash withdrawals but under the new so-called mechanical system he did not object. A point is also made that the purpose of the withdrawal is not specified in the cheques made out to cash or selves. Again quite a number of other cheques were exhibited where similar withdrawals were made and the purpose of the withdrawal was not specified but where there is no suspicion of illegality or impropriety in relation to the cheques in question.

The account of Ezra reflects receipts from Ezra in cash and cheques totalling R12,262-60 and expenditure in relation to the deposit on the Lilliesleaf purchase, disbursements in regard to the bond on the property, transfer costs, bank guarantee costs, repairs to car, renovations Lilliesleaf and the costs of transfer paid to Attorney Furman who, as I have already said passed the transfer. In relation to this account there is evidence that Wolpe sent an amount of R5,000-00 in cash to Furman's office at a later stage which covers the balance of the initial payment due. This transaction is not reflected in the records of the firm and there is no suggestion as to how it can be inferred that Accused No. 8 knew about this transaction.

I do not propose to deal with the accounts of

First, Rosenberg, Defence and Aid and Walter Sizulu in detail. In the light of the evidence which has been given there are peculiarities about these accounts and in the cases where files have been found relating to these clients there is the same dearth of information relating to instructions given by clients or reasons for the transactions reflected in their accounts. These matters were all handled by Wolpe and there is no reason to believe that Accused No. 8 at any time examined the files or the ledger cards closely. In fact on the evidence of Makda the probability is that he never examined either. Even if he had examined the accounts I doubt if a cursory examination would have disclosed cause for suspicion. A remarkable feature of these accounts is that in no instance was any fee or charge debited against the client. In effect, as conceded by Mr. Cox, Wolpe in each case merely acted as banker for the client in question except in the case of Ezra where he did portion of the work in connection with the floatation of the company but made no charge. On these facts the questions are posed, firstly, whether the transactions reflected in these accounts related to the activities of the subversive organizations mentioned in the indictment and, secondly, can it be inferred that Accused No. 8 had knowledge of this fact. Even if the first question is answered in the affirmative there seems to me to be no basis on which it can be inferred that No.8 Accused knew at the time that payments were being made by Wolpe to aid saboteurs and the persons who organized acts of sabotage - if this was in fact the case - or that Lilliesleaf was being purchased as the intended head-

quarters of the subversive organization - which prima facie does appear to be the case. To hold that a partner is prima facie deemed to know what his co-partner knows or does would be stretching inference too far.

The alternative case against Accused No. 8 is based on section 381(7) of Act 56 of 1955. Paraphrasing that section the effect is that where a partner has in carrying on the business or affairs of that partnership, or in furthering or in endeavouring to further its interest, committed an offence, any other partner is deemed to be guilty of that offence unless it is proved that he did not take part in the commission of the offence, and that he could not have prevented it.

It is argued in the first place that it is proved on a balance of probabilities that Accused No. 8 did not take part in any of the offences alleged in the indictment and in so far as any of these offences were committed by Wolpe he could not have prevented them. The proof required where the onus is placed on an accused need not necessarily be placed before the Court by the accused himself or by his witnesses. Such proof may be found in the evidence of State witnesses. Compare for instance The State v. Heller, 1964(1) S.A. 524 (W) at pages 539 et seq. Secondly, the question is whether it is proved that Accused No. 8 did not take part in any of the offences which it is postulated were committed by Wolpe. Now it is true that Accused No. 8 counter-signed some of the cheques in relation to the purchase of Lilliesleaf but this offence which it is postulated was committed by Wolpe was to aid and abet the co-conspirators named in Counts 1, 2 and 3 in making the

purchase. Mr. Yutar has expressly stated that it is not alleged that Accused No. 8 in fact took any part in this conspiracy and that the State in fact admits that he took no such part. In view of this admission and in the absence of any evidence of association by him with the alleged conspirators it is highly improbable that Accused No. 8 had any knowledge of the purpose for which the property was being purchased.

If it is postulated that money was being collected for subversive purposes and the collections and payments were channelled through the other accounts I have referred to, it seems that, in the first place, there is evidence that No. 8 Accused did not handle the receipt of such money and if money was in fact paid out to be used for subversive purposes Accused No. 8 could only be said to have participated in this offence if he had known the object of the payment. Here again it seems to me most improbable that Accused No. 8 had any such knowledge.

It has been held in several cases that where an accused person has no knowledge of an offence and cannot reasonably be expected to have such knowledge that it follows that he could not have prevented it. See e.g. Rex v. Kapelus, 1944 T.P.D. 70. It is said at page 71 "One must have regard to all the circumstances and the difficulties that might be created if it were held that, in these circumstances, the appellant could have taken steps to prevent the infringement of this regulation". There an employee committed a breach of a regulation whilst the accused, a director, was serving another customer. This decision was followed in Rex v

Ebersohn, T.P.D., 12.4.49, reported only in 1949(1) P.H. K. 76. In this case offences were committed by an employee of a company in the absence of the accused, a director, and contrary to his instructions. It is said in the original judgment, which I have consulted, that "If it were held that Ebersohn could have prevented the commission of the offence, a director of a company would have to be present at and take part in every transaction, however small, of the company. In a great departmental store this would obviously be impossible. So, too, would it seem to be impossible in a business of the size of the appellant company's butchery".

It would seem from the cases that all that is required of a director is to take all reasonable steps to prevent the commission of offences. In the case of a partnership it is obviously impossible for a partner to keep a check on every act done by his co-partner. A good deal of mutual trust is essential and is in fact one of the requisites of a partnership. Mr. Yutar has referred to cases where disciplinary action has been taken against an attorney and it is said in cases where there has been defalcations or embezzlement of trust moneys, that it is no excuse for an attorney to say that he trusted his partner and left the bookkeeping to him, e.g. Law Society v. W and Another, 1962(4) S.A. 559. These are cases where the partner in question has kept no check at all on the books. The position may very well be different where an independent book-keeper is employed who, as in the present case, is admitted to be competent and efficient and in addition an accountant is employed to make a periodical check on the

position of the trust account as is the position in the present case. In the present case it is noteworthy that the accountant who was employed did not find any cause for suspicion or suspect any irregularities. The suspicion appears to have arisen ex post facto because of subsequent events. Mr. Yutar has also relied upon the decision in Rex v. Kekane and Others, 1953(4) S.A. 376. There members of an association were convicted in relation to offences committed by an employee. The cases of Kapelus and Ebersohn (supra) were not referred to or dissented from. RAMSBOTTOM, J., says in relation to the accused: "There is nothing to show that they took any steps whatsoever to see that the rules of the club were carried out". In the present case it seems to me that the evidence shows that Accused No. 8 took all steps which could reasonably be required of him to protect the partnership trust account and for this reason cannot be held liable for the offences postulated to have been committed by Wolpe. I found it unnecessary to decide whether it was proved that Wolpe actually committed any of the offences falling within the present indictment in relation to his "conduct of the affairs of the partnership." I also found it unnecessary to decide whether the acts alleged fell within the partnership business.

I propose to give a short account of the properties which figure in the evidence as having been used by the alleged conspirators. According to the evidence of Watermeyer, an Estate Agent, a certain Harmel, using the name of Jacobson, inquired about a quiet secluded place for his brother-in-law Ezra who had a nervous breakdown. She showed him a number of places and he eventually agreed to purchase Lilliesleaf farm at Rivonia on the

north-western outskirts of Johannesburg in regard to which Harmel offered an amount of R25,000-00 which was accepted. It is common cause that the property was purchased by Ezra in the name of a company which was about to be formed and which was eventually formed under the name of Navian Proprietary Limited. It is also common cause that the initial deposit was paid by Wolpe to the clerk in Furman's office who dealt with the transfer and the floatation of the company. Also the second deposit of R1,000-00 was paid by Wolpe. According to the evidence of Fenn he was appointed <sup>the</sup> public officer of Navian Proprietary Limited at the request of Wolpe. Ezra was a director of the company. He said he encountered considerable difficulty in getting the necessary details to enable him to write up the books for the company. He testified further that in March 1962 he opened a banking account in the name of the company which at no time had sufficient funds to pay the first yearly instalment due. The evidence of Jelliman is that he was engaged as caretaker of the property and supposed to be manager of the farm. He lived at Rivonia from October 1961 to February 1962. A few days after he moved into the property Accused No. 1 also moved in and occupied one of the outside rooms. In December Goldreich with his family moved into the house.

The property in question is large in extent. On it was situated a normal dwelling house and a large block of outbuildings consisting of ten rooms shown on the map which is produced as an exhibit. These rooms are numbered 1 to 10. Room No. 1 is referred to as the thatched cottage. Certain alterations were made

to this room. A bath and toilet was installed and it was in effect a self-contained flat. As will be seen hereafter most of the accused occupied one or other room in the outbuildings at various times.

The next property to be described is a cottage detached from a house situated on large grounds at 10 Terrace Road in Norwood, referred to in the evidence as Mountain View Cottage. This cottage was hired from the occupants of the house, Mr. and Mrs Kriel, by a person named Bronkhorst. The cottage was occupied during part of May 1963 and during June 1963 by Accused No. 3 and thereafter until his arrest on the 11th July, 1963, by Accused No. 5. It appears from the evidence that Goldreich and Wolpe, who had been arrested and would have been tried with the present accused, managed to escape from prison. They made some use of the cottage, disguised themselves as Roman Catholic priests, made their way to Basutoland and from there by air out of the country. It appears from the evidence that the police only became aware of the significance of this cottage early in September 1963 and that the property was only searched and investigated on the 5th of September. At that stage the only thing of significance found on the premises was a quantity of burnt paper in the backyard which may have consisted of books, pamphlets and documents.

The next property is that referred to in the evidence as Travallyn, which was a dwelling house situated on fairly large grounds some little distance west of Johannesburg. This property was purchased by Accused No. 3 under the name of Barnard during June of

1963 and he occupied this cottage after leaving Mountain View, that is early in July, until the time of his arrest on the 11th of July. This property was first investigated by the police on the 7th of August.

It is conceded that the Umkonto organization directed sabotage operations during the period covered by the charges. It is also common cause that the organization comprised a High Command situated in Johannesburg and four regional commands functioning in the four Provinces. Each regional command selected targets to be attacked and employed various units of members of the Umkonto to do the actual work. The so-called "Technical Committee" of the High Command or members thereof instructed the Technical Committee of the Regional Command in the preparation and use of explosives and the latter manufactured explosives which were then used by the members of the units. A very full account of the way in which explosives were manufactured and used was given by the witness "X" (Bruno Mtolo). He was first taught in Durban by Strachan and later in Johannesburg by Hodgson. According to this witness dynamite was also stolen from a magazine and this was used in some of the acts of sabotage. He was given further lessons in Johannesburg by Hodgson including lessons in how to make handgrenades and landmines. Later another person, Modise, came to Durban and gave the Technical Committee further instruction.

The evidence of the witness "Y" (Abel Mtembu) is that he had been away in Basutoland for some years but had been an active member of the A.N.C. When he returned to Johannesburg in January 1963 he was appointed a member of the Johannesburg Regional Command.

According to him this Regional Command functioned in very much the same way as described by the witness "X" as far as Natal is concerned. There is very little direct evidence in relation to the functioning of the Regional Commands in Cape Town and Durban.

According to the evidence of No. 4 Accused, which in this respect appears to me to be true, it was decided at the meeting of the Executive or Central Committee of the A.N.C. in June of 1961 to "allow" its members to form a body to engineer and direct acts of sabotage against targets described as "symbols of apartheid" which included buildings belonging to the Government and to the Bantu Affairs Department and communications including electric, telephone and railway signal installations. It is also clear from his evidence, considered in relation to the statement of No. 1 Accused and in relation to the documentary evidence, that the latter was the prime mover in forming the organization. The latter had been deputy leader of the A.N.C. prior to its being banned in 1960, but had continued his activities. It appears to me from the evidence and documents that the leader of the A.N.C., Luthuli, was informed about the activities of the Umkonto and consulted from time to time but kept in the background.

On the 16th December, 1961, a circular or manifesto purporting to be issued by command of the Umkonto We Sizwe was issued and widely publicised. A photostatic copy was published in the Sunday Times which circulates throughout the country. A similar photostatic copy was published in a publication known as The New Age and copies were pasted up in various parts of the

country. I quote only a few passages from this circular "Units of Umkonto We Sizwe today carried out planned attacks against Government installations particularly those connected with the policy of apartheid and race discrimination". "Umkonto We Sizwe is a new independent body formed by Africans. It includes in its ranks South Africans of all races". "Umkonto We Sizwe fully supports the National Liberation movement and our members jointly and individually place themselves under the overall political guidance of that movement". "The time comes in the life of any nation when there remain only two choices: submit or fight. That time has now come to South Africa. We shall not submit and we have no choice but to hit back by all means within our power in defence of our people, our future and our freedom". "The methods of Umkonto We Sizwe mark a break with the past". "We are striking out along a new road for the liberation of the people of this country. The Government policy of force, suppression and violence will no longer be met with non-violent resistance only". "Umkonto We Sizwe will be at the front line of the peoples defence. It will be the fighting arm of the people against the Government in its policies of race suppression. It will be the striking force of the people for liberty for rights and for their final liberation". The circular ends with the slogan "Afrika mayibuye", a literal translation of this slogan is "Africa come back", the significance being to convey the idea that Africa should be given back to the Bantu people from whom it is alleged to have been taken wrongfully or to have been stolen.

A year later a circular was sent to the offices

offices of the Bantu Press. As far as I am aware this was not published. This circular is headed: Umkonto We Sizwe greets the people of South Africa. A message from the High Command. "On this, the first anniversary Umkonto We Sizwe greets the people of South Africa and pays tribute to all in its ranks who have so courageously struck blows at the Nationalist tyranny". "Umkonto We Sizwe an independent body subjecting itself voluntarily to the political guidance of The National Liberation Movement makes a solemn pledge to the nation that, whatever the difficulties and hardships, it will not rest until white supremacy has been wiped off the face of the country. It concludes: "The enemy we face sits in an arsenal surrounded by hostile people and a hostile world. It uses its army and police forces, its Courts and its white commandos to crush even the most innocuous protests by those who face their guns and batons. What would you have us do". (Exhibit "000"). Exhibits "WW" and "AE" are copies of a circular which appears to have been issued in about May of 1963. Copies of this circular were found by Sergeant du Preez in the New Brighton Location, Port Elizabeth and three copies in an envelope were found by Detective Sergeant Twala in a Johannesburg location. The circular is a three page document. The first page headed "The A.N.C. Spearheads Revolution. Leballo? No." I quote only a few lines "What are the instruments of white power? They are the Army, the mines, the railways, the docks, the factories, the farms, the police, the whole administration. How are we to smash them? Well planned strategic violence. Already scared the whites are on the look-out. We must

outwit them. We must hit them when they are not looking. We must strike where they do not expect it. We must hit them hardest where they are soft". The second page is headed: "The Leballo way is useless" and the third page is headed "Umkonto We Sizwe" sub-heading "Army of the Liberation Movement". I quote only one line "Umkonto has no need to boast. The people are with us. We are for the people. Our words are deeds." At the end of the page are the words "Issued by: The African National Congress".

I come now to the police raid on Lilliesleaf on the afternoon of the 11th July, 1963. A number of police hid in a baker's van, drove this van into the property and surrounded the main and outbuildings. When the police arrived there were in Room No. 1 Accused Nos. 2, 4, 5, 6, 7 and Hepple. Three of the accused jumped out of the back window and attempted to escape but were arrested outside. The other four were arrested in the room. Accused No. 3 was found in the main house and was arrested there. I may mention at this stage that Hepple was originally one of the accused at the stage when the first indictment was objected to and later quashed. At that stage the charge against Hepple was withdrawn and he was to have been a State witness but disappeared and is believed to be out of the country. Later on the afternoon of the 11th July Goldreich and his wife arrived by car and they were both arrested. No charge was brought against Mrs. Goldreich and Goldreich, as I have already said, escaped.

A large number of documents totalling about 250 were found at Lilliesleaf, some in the outside rooms,

some in the main house and some in Goldreich's car. These were put in as exhibits and are all numbered with a prefixed "R". When the exact place where a document was found is, in my opinion, relevant I shall specify the place as I consider the document. The Travallyn property appears to have been unoccupied after the arrest of the accused. These premises were only searched on the 7th of August and documents totalling about 82 found there were put in as exhibits. These are also numbered but with a prefixed "T". The exact place on the premises where each of these exhibits was found does not appear to me to be relevant.

According to the evidence Exhibit "R71" entitled "Operation Mayibuye" (Operation come back) was lying open on the table in Room 1 when the accused were arrested. This document is a lengthy one and contains a detailed plan for the waging of guerilla warfare and thereafter a full scale rebellion against the Government of this country. Part I sets out that it is clear that "White supremacy" cannot be overthrown otherwise than by a revolution, that the ingredients of a revolutionary struggle are present. I quote only a few passages from this part "The objective military conditions in which the Movement finds itself makes the possibility of a general uprising leading to direct military struggle an unlikely one. Rather, as in Cuba, the general uprising must be sparked off by organized and well prepared guerilla operations during the course of which the masses of the people will be drawn in and armed" "The absence of friendly borders and long scale impregnable natural bases from which to operate are both disadvantages. But more important than these factors is

support of the people who in certain situations are better protection than mountains and forests. In the rural areas which become the main theatre of guerilla operations, in the initial phase, the overwhelming majority of the people will protect and safeguard the guerillas and this fact would to some measure negative the disadvantages." "We are convinced that this plan is capable of fulfilment but only if the whole apparatus of the Movement here and abroad is mobilised for its implementation and if every member now prepares to make unlimited sacrifice for the achievement of our goal. Thus the time for small thinking is over because history leaves us no choice." Part 2 sets out four areas, three in the Cape Province and one in the Transvaal presumably to be used as the bases for guerilla warfare and Part 3 details the plan which includes the landing of guerilla troops either by sea or by air. Part 4 deals with internal organization and I quote only two passages from this part, "Our target is that on arrival the external force should find at least 7,000 men in the four main areas ready to join the guerilla army in the initial onslaught. These will be allocated as follows: Eastern Cape to the Transkei 2,000; Natal to Zululand 2,000; North-Western Transvaal 2,000; North-Western Cape 1,000". "In order to draw in the masses of the population the political wing should arouse the people to participate in the struggles that are designed to create an upheaval throughout the country". Part 5 is headed: "Detailed plan for Implementation", which sets out the work of various committees. These comprise the Intelligence Department, External Planning

Committee, Political Authority, Transport Committee, and Logistics Department - Technical Supply Committee. Part 6 is headed "Miscellaneous" and I quote the following from this part "Immediate duties of The National High Command in relation to the guerilla areas:

- (a) To map out regions in each area with a view to organizing regional district commands and M.K. units;
- (b) to achieve this we strongly recommend employment of ten full-time organizers in each area
- (c) the organizers shall be directly responsible to The National High Command".

"Special directives to heads of departments: The heads of departments are required to submit not later than 30th May, 1963, plans detailing:-" and then is set out various information which heads of departments are required to submit.

There are a number of documents related to Exhibit "R71" which I propose to mention only in outline. The first is Exhibit "R46" entitled "Outlines for a brief course in the training of organizers". This is a three page stencilled document found in Goldreich's car and identical copies were found in the third and fourth rooms at Lilliesleaf (Exhibits "R58" and "R230"). It is admitted by Accused No. 4 that he drafted part of this document and he says that Goldreich did the rest. The first part of the document deals with the historical background of the "Struggle" of the Bantu people and the birth of the Umkonto, that is, this part deals with political indoctrination of the organizers. Then it deals with guerilla warfare and tactics and recommends

reading up all available literature on this subject with special reference to China, Cuba, Algeria and Vietnam. The last part deals with organizational machinery. Exhibit "R54" is a sixteen page stencilled document entitled "The Speaker's notes, a brief course in the training of Organizers". Fifty-four copies of this document were found in the fourth room and a typed draft copy was found in Goldreich's car ("R142"), another copy was found at Travallyn("T28"). This is an amplification of Exhibit "R46". I quote a few passages: "And so the Organization M.K. is born to wage a revolutionary armed struggle to overthrow white supremacy". "Sabotage on a national scale should be used principally in disrupting communications, transport, railroads, railroad installations etc. It is the civil branch and should be carried out only outside the areas dominated by the guerillas". "The importance of sabotage against communications must be stressed. The great strength of the enemy is his network of communications. His ability to move freely across the country. We must constantly undermine that strength by knocking out railroads, bridges, electric-lights, telephones and in general everything that is necessary for his normal way of life." "Guerilla warfare becomes a way of herassing and wearing down the enemy while developing one's own strength. The guerillas must eventually shift from guerilla operations to regular warfare in order to achieve victory". It is clear from this document that the plan envisages that the guerilla forces will be based in rural areas and particular attention is paid to the organization of guerilla forces in these areas. Exhibit "T28" is a letter from Thunder to O.R., that is from a member of The National Secretariat

to Oliver Tambo one of the A.N.C. leaders operating outside the country. A paragraph from this letter, a copy of which was found at Travallyn, reads "We have drawn up a syllabus as a guide to lecturers for our M.K. men. We have also compiled speakers notes which run into about 20 pages single-spaced cyclostyled, foolscap sheets. We would like to send you a copy of each to reproduce and transmit to Dar for use amongst our boys. Should we send these to this address? Please let us know per return."

Exhibit "R1" is a document consisting of three pages in the handwriting of Wolpe dealing with military matters and a further 24 pages in the handwriting of Goldreich. This deals with guerilla and sabotage tactics, rules on initiative, rules of secrecy, speed, rules of transmission and liaison, etc. Exhibit "R2" was found in Goldreich's studio and is entitled "Some problems of the present phase in the armed struggle". I quote only a portion. "The present phase of our struggle largely consists of creating military bases in the rural areas. The problems we wish to discuss concern the following:

- (1) Selection of base areas.
  - (2) Organization of field intelligence units in rural areas.
  - (3) Establishment of propaganda units in rural areas.
  - (4) Organization of people's militia.
  - (5) Training of people's militia, etc
- and (12) Dealing with and countering anti-guerilla tactics.

According to our information the South African Government has received extensive advice from the U.S.A. and France

on anti-guerilla tactics". I quote this last paragraph because a book was found at Lilliesleaf published in the United States apparently for the use of the Police dealing with the problem of guerilla warfare and how to counter such warfare.

Exhibit "R3" is an exercise book in the handwriting of Goldreich. The heading at the beginning of the document is "Precis No. 1. Introduction to Demolition and Theory of Explosives". The whole document deals with demolition of "enemy" installations in relation to sabotage and guerilla warfare.

Exhibit "R4" is a forty-three page document in the handwriting of Goldreich setting out information apparently obtained in China in relation to the Chinese revolution.

Exhibit "R5" found in Goldreich's car is a ten-page document in the handwriting of Goldreich entitled "Strategic problems of Guerilla warfare".

Exhibit "R8" is a four-page typed document with additional details in the handwriting of Goldreich entitled "Report to Housing Committee" found in Goldreich's car. This relate to the proposed purchase of a secluded property to used as a hiding place and for the manufacture of explosives, etc.

I deal now with certain exhibits in the handwriting of Accused No. 1. In considering these exhibits it must be borne in mind that Accused No. 1 was arrested on the 5th of August, 1962, and was thereafter convicted and sentenced to imprisonment and he has been in prison continuously since the first date mentioned. It follows that the documents in his handwriting must have been prepared before that date.

Exhibit "R11" is a three-page document dealing with military training and is freely illustrated with diagrams and sketches.

Exhibit "R15" is a foolscap exercise book dealing with guerilla warfare and Chinese characteristics of a revolutionary war. On the last page the Bantu locations in the Witwatersrand are zoned in four groups.

Exhibit "R16" headed "Maroc" is a quarto exercise book of 94 pages recording consultations which the writer had with officers in Algeria and North Africa during the period 14th to 21st March, 1962, and deals mainly with guerilla warfare.

Exhibit "R17" is a diary recording certain of his activities. It appears from this diary that he visited Durban on the 8th January, 1962, returned to Johannesburg on the 10th and left for Lobatsi in Bechuanaland on the 11th. Thereafter he visited various countries in Africa and inter alia attended a conference at Addis Abbaba during the 2nd to the 8th of February. During the last few days of his trip he appears to have undergone some military training in Ethiopia. The last entry in the diary is dated 30th June, 1962. Exhibit "R13" appears to be a full report of the Pafmecsa Conference at Addis Abbaba prepared by Accused No. 1. An interesting passage under the heading "Political Climate in the Pafmecsa area" is "Striking feature widespread anti-colonial feeling and strong opposition to anything resembling partnership between white and black. This emerged very clear in speeches at conference and in discussion with various delegations there

and leaders elsewhere". Under the heading "Military training" it is recorded that arrangements were made for the training of recruits in inter alia Ethiopia, Egypt, Algeria and Morocco.

Exhibit "R18" is a foolscap exercise book also in the handwriting of Accused No. 1 dealing with Israeli underground military organization and Exhibits "R19" and "R24" are similar documents dealing respectively with the Philippine and Chinese revolutions.

Exhibit "R25" appears to be a summary of the ideas expressed in the book 'Guerilla Warfare' by Che Guevarra. The book itself ("R6") deals with the Cuban revolution.

There are a number of documents, some prepared by Goldreich and some by Accused No. 3 dealing with the manufacture and acquisition of explosives including landmines and handgrenades. These exhibits include correspondence between Accused No. 3 and timber merchants in relation to the purchase of wooden shooks etc. intended to be used for the manufacture of a large quantity of landmines. Accused No. 3 also obtained a diagram of a so-called cupula, a furnace suitable for melting metal and making metal castings. In view of admissions made by the defence I do not need to consider these exhibits in detail. There is also evidence, which is not disputed, to the effect that Accused No. 3 made inquiries in relation to the purchase of metal castings suitable for use in the manufacture of handgrenades.

Exhibit "R49" is an eleven-page typed document dealing with the collection and evaluation of information. The information called for in this document relates to military and police, typographical and hydrographical

characteristics, economic, communications, transport, power, counter-intelligence and political. It would seem on analysis of the exhibits found at Lilliesleaf that all the information called for in this document had been collected before the arrest of the accused. The exhibits include a large selection of large scale hydrographical and topographical maps covering the whole of the Republic of South Africa and South West Africa, a document entitled "The Supply of Electrical Power in South Africa", supported by some detailed maps ("R59"), a file in the handwriting of Wolpe headed "A Survey of the Rustenburg Magisterial Area in relation to the Reserves" ("R91"); an analysis of the population of South Africa ("R185"); a survey of the Transkei and territory in the handwriting of Wolpe ("R199"), etc. There are exhibits dealing with the organization of the South African Defence Force and Reserves and the Police Force ("R41" and "T33") and on some of the maps all the Police Stations in the country are encircled.

I come now to deal with documents emanating from the Communist Party. These appear to me to be of little relevance and I do not propose to examine them in detail. In some documents the Communist Party is described as the leader of the "Liberation Movement" and in others the A.N.C. is described as the "Spearhead". These documents all appear to me to express strongly approval of the actions of the Umkonto but in as much as it is not proved that any of the accused held any executive position in the party I do not think that any of them can held answerable for incitement or co-operation which <sup>may be</sup> held to bring executive members into the alleged conspiracy. It

does appear to me from the evidence that many if not the majority of members of the A.N.C. and of the Umkonto did also belong to the Communist Party. In fact Accused No. 2 concedes that the A.N.C. co-operated with the Communist Party because their aims were similar, but that the A.N.C. was not prepared to go as far as the Communist Party and was not prepared to approve of converting this country into a Communist State.

I deal now with the general evidence of the witnesses. Much of this evidence is not denied and it is only on disputed questions that I have to decide whether or not to believe their evidence. The material witnesses are all accomplices and it is well established that such evidence must be regarded with great caution especially evidence implicating an accused. It is a rule of practice that such evidence implicating an accused should not be accepted unless corroborated. Corroboration can be found in circumstantial evidence and if the accused is found to be a lying witness this factor can be regarded as corroboration. In addition all the material witnesses were detained for questioning under the provisions of section 17 of Act 37 of 1963 and were kept in solitary confinement until they were prepared to make a statement. The possibility must be borne in mind that suggestions made by the questioners were accepted and that evidence was concocted to satisfy the questioners. Another factor which I have had to bear in mind is that most of the witnesses appeared to fear reprisals. There is evidence before me, both written and verbal that "traitors" should be suitably dealt with. Many of the witnesses appeared to me not only to

minimise the part which they played in the illegal activities but were also inclined to say as little as possible about their leaders and were inclined to get confused under cross-examination and in some cases to retract or water down statements made in evidence-in-chief. In the last resort it is my duty to decide whether or not evidence of a particular witness on a particular point is acceptable or not.

Dealing now with the acts of sabotage alleged in the indictment. Practically all these acts are proved to have been committed. It is conceded that 19 of the acts committed in Natal and deposed to by the witness "X" were in fact committed under the direction of the Umkonto organization and that one in Pretoria relating to the special criminal court building also complied with the directions of the Umkonto organization. The evidence of the accused who gave evidence in this connection is that the instructions were that care should be exercised that no person was injured or killed. Most of the State witnesses agree that such instruction was given. It is argued that a number of acts deposed to by witnesses fall outside this instruction and that the leaders of the organization cannot be held responsible for these acts. For the purpose of my decision I accept this contention although I have some doubt whether the leaders should not have contemplated that the saboteurs employed would probably get out of hand. As I have already said the A.N.C. in a pamphlet issued in May 1963 claimed that Umkonto was responsible for 70 such acts up to that date. I am not able to fix the number of acts for which the Umkonto is responsible because it

seems that other organizations also committed acts of sabotage and used similar methods, but I am satisfied that the Umkonto is responsible for a good many more than the 20 conceded.

\*It is also conceded that recruits were sent for training in other African countries. The only direct evidence in regard to the place and method of such training is that given by two witnesses who were trained at Dabrazid in Ethiopia, namely Alfred Jantjies and Isaao Rani. Their course of training which lasted three months included the following subjects: First aid, swimming, map reading, compass reading, handgrenades, bazookas, demolition, roadblocks, Molotov cocktails, ambush, rope-climbing, hand-combat, obstacle-crossing, Jerry-can bombs, mine-bombs, bootytraps, rangefinding, use of pistols, light machine-guns, carbines, sketch-drawing, broadcasting, construction of bridges, signals and use of bayonets. Both these witnesses on passing out were complimented by members of the A.N.C. en route back to South Africa and were reminded that their task on returning to South Africa was to teach others what they had been taught, so that all of them could combine in their fight against the white man. The witness Harry Bambani together with 36 others was en route to some training camp but they were arrested at Lusaka and repatriated to South Africa where they were arrested. The evidence of these three witnesses was not denied and I accept their evidence.

The witnesses Suliman and Coetzee state that they transported a number of batches of recruits to the border near Lotatsi from where they walked over the border

en route to a training camp somewhere in Africa. The last batch transported by them was arrested before it reached the border. The total number transported by these witnesses are estimated to be over 300. The evidence of the witnesses on this point is not disputed and is accepted.

There is also a good deal of documentary evidence relating to the training of recruits, some of which I have already mentioned. Some of the correspondence found at Travallyn relates to these trainees. I

mention two letters. Exhibit "T19" is a letter dated 17th May, 1963, admittedly written by a member of the A.N.C. Secretariat and addressed to Gambu. The latter is a pseudonym and his identity is not disclosed in the evidence. Paragraphs 4 and 5 of this letter read as follows: "We would now like you to arrange to collect these consignments on following dates: 28 parcels on the 4th June, 1963, 28 parcels on the 11th June, 1963, 28 parcels on the 18th June, 1963, 28 parcels on the 25th June, 1963. We have no money at all to run the organization. In the last three months we have relied on loans. At present we are unable to meet our expenses and the work is being held back. Please send about £10,000 immediately". The portion quoted fits in with the evidence which is to the effect that recruits were transported in batches of 28 because the aeroplane in which they were taken from Lobatsi only holds 28 passengers. Exhibit "T21" dated 26th May, 1963, is a letter addressed by Jack Molobile to "My dear Uncle". It cannot be ascertained from the evidence who the parties are. The letter reads: "I am writing to inform you that of the 19 parcels you sent me 12 had

been confiscated by the Department of Excise and the other seven were captured but were later returned to me. Kindly treat this matter as urgent. My friends here are battling hard to get these parcels not to be sent back but to be kept here until sufficient funds to pay for their release is found." This letter clearly refers to recruits who were arrested in transit in some other country and presumably steps were being taken to prevent their being repatriated or sent back here. Where necessary I shall deal with further exhibits when I deal with the case as it relates to the respective accused. At this stage it is sufficient to say that all the exhibits conform to the pattern which emerges from what I have already said, but before I deal with the separate accused it is necessary to deal with paragraphs 3, 4 and 5 of Count 2. It is alleged in this count that the accused conspired, committed<sup>or</sup>/procured the commission of acts of guerilla warfare, acts of assistance to military units of foreign countries and acts of participation in a violent revolution. Mr. Yutar contended that the documents show that the plan contained in Operation Mayibuye had been adopted by the leaders of the Umkonto. Accused 2, 3 and 4 in their evidence state that the plan was under consideration but was never adopted and all expressed the opinion that the plan was impracticable. I indicated during the course of argument that in my opinion it had not been proved that the plan had progressed beyond the preparation stage and I adhere to this view. It follows that paragraphs 3, 4 and 5 of Count 2 fall away and the only difference between Counts 1 and 2 is that in Count 1 it is alleged that the accused as leaders and/or as members of the Umkonto

and allied organizations are responsible for acts committed by their agents or servants as alleged in paragraphs 1 and 2 of this count. As far as Count 2 is concerned this only alleges that the accused are liable for further similar acts which were contemplated but had not yet been performed on the basis of a conspiracy.

Accused No. 1

This accused did not give evidence but made an unsworn statement. He admits that he was one of the founders of Umkonto, that he was deputy president of the A.N.C. and as such a member of the Executive Committee, that he toured Africa during the first half of 1962 and (a) underwent military training, (b) made arrangements for Umkonto recruits to receive military training and (c) solicited and received financial help for the Umkonto. He further admits that at his request the National Executive authorised its secretariat and external missions to assist Umkonto in the transportation of recruits for military training and that on his return from his trip he reported to his colleagues in the A.N.C. and Umkonto on the results of his trip. He also admits that he made a report to the Regional Command in Natal.

It is conceded by his counsel that on the admissions he is guilty on Counts 2, 3 and 4. It is contended that he is not guilty on Count 1 because he was in prison from August 5th, 1962, that it has not been proved that any act of sabotage was committed between this date and the first date in the charge, namely 22nd of June and that therefore he cannot be held liable for acts of sabotage committed by agents or servants. Reliance is placed upon the decision in Mouton

and Others v. Beket, 1918 A.D. 181. At page 192 of this judgment the position is considered of a Vecht-Generaal during a rebellion. The following is said: "He had been absent on a special/<sup>mission</sup>for about ten days. Had he divested himself of his command during that time, then clearly he would not have been responsible for what happened while he was away". The conclusion arrived at was that the person in question had not diverted himself of his command. In the present case Accused No. 1 was one of the leaders of the Umkonto. He had set certain machinery in motion. In my opinion he at no time disassociated himself from the acts of the Umkonto and in fact does not say so. He was and presumably still is regarded as one of its leaders. In my opinion he cannot escape conviction on Count 1.

The only question of fact at issue on the evidence which merits consideration arises from the evidence of the witness "X". The latter said that when he addressed the Natal Regional Command Accused No. 1 said that persons of the A.N.C. and Umkonto who visited other African countries should be careful not to admit that they were Communists or sympathised with the Communists and instanced the case of one Mtchali who was cold-shouldered because he said he was a Communist. Accused No. 1 was at great pains to deny that he was a Communist, had Communist sympathy or that he had said this, but it is interesting to compare what he writes in his report on the Pafmecs Conference under the heading "Political Climate" namely "Clear that in this area there are great reservations about our policy and there is a widespread feeling that the A.N.C. is a Communist dominated organization". I may add that I

share this feeling after hearing all the evidence in the present case. In addition there is a lengthy exhibit in the writing of Accused No. 1 entitled "How to be a good Communist". I have no doubt that the evidence of the witness "X" is correct. Another minor dispute concerns a visit of Accused No. 1 to Port Elizabeth in 1961 and the question is whether he made use of a taxi belonging to the witness Tshingana or not. This appears to me to be such a minor question that I do not propose to give any decision thereon.

Accused No. 2.

Counsel for this accused conceded that the following admissions appear in the evidence given by this accused: (1) that he was at all material times a member of the National Executive of the A.N.C.; (2) he was consulted on and approved of the decision to allow members of the A.N.C. to set up Umkonto; (3) he agreed with the decision of the Executive to allow its Secretariat and external missions to co-operate with Umkonto in the transportation of recruits; (4) he was a member of the National Secretariat of the A.N.C. which attended to the Umkonto external correspondence; (5) he was not on the High Command but was kept informed of its decisions and <sup>on</sup> occasions attended its meetings and participated in its deliberations. This took place when there were discussions of a political nature, for instance the policy of guerilla warfare, etc. It is conceded that on his own evidence he is guilty on Counts 2, 3 and 4. Issues which fall to be determined according to his counsel are (1) whether he was on the High Command; (2) whether he gave instructions to a meeting at Ladysmith to commit sabotage; (3) whether

he gave instructions to the witness "X" as testified to by the witness. In regard to the first issue it seems to me to be unimportant whether he was a member of the High Command or not. It is stated by both this accused and Accused No. 4 that the Executive Committee "allowed" its members to form the Umkonto. In actual fact it seems to me that a better expression is that the Executive sponsored the Umkonto. It is clear from the evidence of this witness and that of Accused No. 4 that the A.N.C. Executive still retained the "political guidance" of the Umkonto and authorized its members with its approval to embark upon a policy of terrorism and also authorized its Secretariat to assist them. Under these circumstances it seems to me reasonable to contend that the Umkonto and its members were not agents or servants of the National Executive. Under the circumstances it seems to me that Accused No. 1 must take full responsibility for the actions of the Umkonto and must be convicted on all four counts. On this view it seems to me that the other disputed issues are of little importance and I do not find it necessary to give any decision thereon.

In case the matter goes further it is advisable that at this stage I give my impression of the witness "X". This witness spent the best part of five days in the witness-box giving his evidence-in-chief, that is on December 10th, 11th, 12th, 13th and 17th. After an interval of almost a month he was cross-examined for more than two days, that is on the 15th, 16th and 17th January. Thereafter he was recalled for further cross-examination on the 28th February and spent, I think, a full day in the witness-box. This witness appeared to

me to be highly intelligent and to have a remarkable memory. In particular I was impressed with the fact that he did not appear to minimise his own guilt in relation to the part he played in the illegal activities. My impression is that on the whole he is an honest and truthful witness. As is only to be expected there are discrepancies in his evidence in relation to details and in relation to the sequence of events covering eighteen months or more but I do not regard these discrepancies as material. In his evidence-in-chief he did not draw a distinction between acts of sabotage falling within the "mandate" of the High Command and those which did not, but in this respect I did not anticipate that such a distinction would be drawn and I presume that the Deputy Attorney General in leading his evidence-in-chief did not anticipate this distinction. The fact that the witness was persuaded under cross-examination to make this distinction does not, in my opinion, affect his credibility, nor do I consider that the other criticisms made by counsel, which I do not propose to detail affect his credibility.

Accused No. 3.

This accused admitted in his evidence (1) that he undertook inquiries in regard to matters dealt with in the production requirements, that he prepared sketches and reports in connection with the erection of a furnace in connection with castings suitable for handgrenades and in connection with boxes suitable for land-mines and also sketches of a workshed; (2) that he had purchased and furnished Travallyn knowing that this property was purchased for the Umkonto organization; (3)

that he purchased a Kombi vehicle for the use of people who were in hiding at Travallyn. Disputed issues are in relation to a camp at Mamre when he is alleged to have trained young men for use as guerillas and whether he gave a sketch-map to a saboteur or suspected saboteur Looksmart Ngudle in Cape Town. It is conceded by his counsel that on his admission and on the State evidence he is guilty on Counts 2 and 3.

In regard to the activities at Mamre the main State witness is Cyril Davids, a coloured man from Cape Town. According to his evidence he was asked by No. 3 Accused to attend a camp at Mamre and to lecture to the campers on the use of a field telephone and on Judo. He says that he had met Accused No. 3 at various parties and early in December at the home of one Pillay this request was made to him and repeated later at the house of one Desai. No. 3 Accused told witness that the object of the camp was to teach young guerillas. The witness says that he had made a study of electricity and electronics and knew something about Judo. Telephone equipment was supplied by Accused No. 3. On the 26th December the witness and other left Cape Town and camp was pitched after midday in an isolated part of the country at Mamre. There were a number of tents. The camp, he says, was run on military lines under the charge and supervision of Accused No. 3, who was known as Comrade Commandant. The camp was divided into various groups each with its own sergeant who was to be addressed as Comrade Sergeant. A series of lectures was given at this camp during its duration. He himself lectured on the field telephone for use in case of a

revolution as well as on Judo. Goldberg lectured on first aid while others gave lectures on the petrol engine, the roneo machine and physical exercises were done by the campers. In the course of these lectures use was made of charts, the human body, a specimen petrol engine, charts of an internal combustion engine, field telephones and a roneo machine. Around the camp fire in the evenings freedom songs were sung, news over the radio was listened to and notes made followed by discussions. There was a reading from a text-book by Gueverra (Exhibit "R6"). Looksmat Mgudle, a sergeant, acted as interpreter. The camp lasted about two days, from midday on the 26th to some time in the morning of the 28th. It was to have lasted much longer but on the morning of the 28th an Advocate Sacks from Cape Town gave a lecture on political economy. Shortly thereafter the witness Louw, Superintendent of Coloured Affairs at Mamre, arrived on the scene and told Accused No. 3 that the campers were trespassing. He left and later came back with police officials and the campers were told to leave. In the meantime the campers were told not to give any information to the police except to say that the camp was for health and spiritual purposes. The witness Caswell Mboxela gave substantially the same evidence. The latter appeared to me to be a nervous and frightened witness. There are many contradictions in his evidence. If the evidence of these witnesses is accepted it is clear that the object of the camp was to train the young men there for use as guerilla fighters. Accused No. 3 denies this object. He says that the object was political and general education but admits that the political education was the anti-Government

ideology deposed to by all the accused who gave evidence. It is interesting to compare the evidence of the State witnesses with the plan set out in Exhibit "R1" which deals with the recruitment of persons for instruction and training. Excerpts read "Every member (i.e. presumably of training camps) shall obey and carry out the orders given by a member of a higher rank". Under "General" is found (a) use of telephones and (g) production of propaganda. Under "Equipment" is found inter alia roneo and stencils and under "Physical" appear manual exercises and Jude training - hand to hand combat. Under "Tactics" appear "Training in two sections (1) ideological, (2) physical . I believe physical secondary to ideological. Gueverra best training in field."

I do not believe that the coincidence between methods indicated in this exhibit and the methods employed at Mamre is accidental. Quite apart from this my impression is that both the State witnesses on this aspect of the case are substantially truthful in their evidence. Accused No. 3's evidence in this regard is rejected.

The evidence of van Zyl, a former sergeant in the police is that about 9 p.m. on the 4th December, 1962 he saw Accused No. 3 near a road in Rondebosch in suspicious circumstances talking to a Bantu named Looksmart Ngudle who is a suspected saboteur. When he questioned Accused No. 3 the latter said "I cannot afford to say anything." He says that on the previous night a telephone booth had been blown up in that vicinity. Detective Sergeant van Wyk says that about 9 p.m. on the 5th December he saw Accused No. 3 in a motorcar near the Mowbray Police Station and near him was Looksmart on a

scooter. No. 3 gave something to Looksmart which the latter put in his top jacket pocket. Accused No. 3 drove away but Looksmart was stopped and searched and in this pocket was found a piece of white paper Exhibit "BN". This is a sketch map of certain streets with asterisk marked in the vicinity of Kennilworth Station. It seemed that this witness was somewhat confused in regard to the names of the relevant streets and the exact position of the asterisk. From a suburban map put in by the defence it seems that the asterisk would be some little distance, that is, some 200 yards from the railway line. I do not think that this makes much difference to the inference to be drawn from the evidence of the two lastmentioned witnesses, namely that Accused No. 3 was associated with the sabotage activities in Cape Town and possibly a member of the Cape Regional Command.

Accused No. 3 admits that he met Looksmart on the two occasions referred to but says that the meetings were to discuss arrangements for the Mamre camp. He denies giving a sketch to Looksmart. I reject his evidence and accept that of the State witnesses.

It follows that Accused No. 1 must be convicted on Count 1. In regard to Count 4 it seems to me that when No. 3 Accused associated himself with the Umkonto organization he associated himself with all the objects known to him. He must have known that money was collected and used for subversive purposes and in particular the money given to him by Goldreich for the initial payment on Travallyn must have been known to him to have been collected for that and similar purposes. I find him guilty on all four counts.

Accused No. 4.

This accused admits in his evidence (1) that he was at all material times a member of the A.N.C. Executive, (2) that he agreed with the decision of the Executive to "allow" the formation of the Umkonto by its members and to "allow" its Secretariat and external mission to co-operate with Umkonto in the transportation of recruits and the collection of funds, (3) that from December 1962 he was a member of the National Secretariat, (4) that from January 1963 he personally attended to correspondence, (5) that from April 1963 he was a member of the High Command.

It is conceded that he is guilty on all four counts. In view of his admissions the disputed questions are of little importance. The accused was resident in Port Elizabeth until he came to Johannesburg in 1963 and was well known as a leader of the A.N.C. I find his evidence that he had nothing to do with the Umkonto Regional Command in Port Elizabeth and with the acts of sabotage in that area difficult to believe, but find it unnecessary to make any definite finding in this respect. In the light of his admissions and the State evidence he is clearly guilty on all four counts.

Accused No. 9.

This accused did not give evidence but made the following admissions in his unsworn statement: (1) that he joined the Umkonto towards the end of 1962, (2) that he was on the technical committee of the Johannesburg Regional Command, (3) that he knew of acts of sabotage committed by Umkonto units and reported some results to Hodgson from information received

from the persons who committed the acts, (5) that he assisted in accommodating recruits in transit. It is conceded by counsel that he is guilty on Counts 1, 2 and 3.

In view of the admissions made by this accused which are substantiated by the State evidence I need not consider evidence which he disputes. Some of the evidence which is disputed will be considered when I deal with the case against No.10 Accused. As regards Count 4 it seems to me that in associating himself with Umkonto the accused associated himself with all its activities which were known to him. I find it impossible to believe that he did not know that money was being collected and used in connection with the activities of this organization. I find him guilty on all four counts.

Accused No. 10:

This accused also made an unsworn statement. He admitted that (1) he agreed with one Modise in March 1963 to act as a messenger carrying messages and instructions for Umkonto, (2) he delivered a message from Modise to Hodgson, (3) he arranged with Suliman to bring two Kombis to a garage at Orlando and drove Modise to this garage (the garage named the Morabi Garage is one where trainees were loaded to be taken to Lobatsi), (4) he assisted "X" to get in touch with Modise through the witness "Y" and gave "X" money obtained from Modise for food and train fare, (5) at the end of April 1963 he went to Durban to carry a message from the High Command to the Regional Command, (6) in June 1963 he obtained a false certificate describing himself as a minister of the

Apostolic Church in order to facilitate his travels and (7) that he brought a motorcar from Durban to Johannesburg. This car was obtained from one Naicker and presumably brought for use of the Umkonto.

It is admitted that this accused is guilty on Counts 2 and 3 but I do not think that this admission goes far enough. According to the evidence of Detective Sergeant Dirker this accused addressed meetings of the A.N.C. before it was banned and must be considered to be one of its leaders in Johannesburg. I propose to consider the evidence of witnesses who implicate him in the activities of the Umkonto.

The first of this is English Tolo Mashiloane, an elderly Bantu who is a herbalist who appears to be carrying on a successful practice. He owns and occupies a double storey building in Orlando Township, known as S.K. Building. I give a short summary of the evidence of this witness in so far as it affects Accused No. 10. He said that he knew Accused No. 9, who was his cousin, as well as Accused No. 10. At some time in 1960 Accused No. 9 in the company of Accused No. 2 came to him advising him that the A.N.C. had been banned by the Government and sought his permission to hold meetings at his place. He agreed and they held meetings at his place. At one stage Accused No. 9 asked him for work and he engaged him as a canvasser. Accused No. 9 said he was teaching people and that there were four people running the organization. He pointed out No. 10 as the big boss. At one stage a number of young Bantu were assembled at his building for - so he understood - schooling in Basutoland and Bechuanaland. Accused No. 9 asked that they

be temporarily housed there and that would soon be leaving. In the winter of 1962 a batch of about 30 young Bantu was assembled. They were provided with food by No. 10 and they were in due course taken away in two motor vehicles and a van. No. 9 was present as well as No. 10. About three weeks later a second batch of young Bantu also numbering about 30 were assembled at his premises and again Accused Nos. 9 and 10 were present when they left. One of the young Bantu was ill and made a report to him whereupon he spoke to No. 9 who confirmed that these young Bantu were assembled at his premises and were being sent across the border in order to train as soldiers, and that on the completion of their training they would return to South Africa in order to participate in the fight against the Government in order to achieve their freedom. About three weeks later a third batch of young Bantu were assembled at his house but there was no transport to take them away. Thereupon he spoke to No. 9 and told him to remove them. No. 9 pleaded with him and assured him that these young Bantu had passes. He further told him that in the event of the police coming to his premises he was to say that these young natives were customers of his. They stayed there until the Friday of the following week, No. 9 providing them with food. It was roundabout this stage that No. 9 introduced No. 10 to him as "our big boss". It was then that No. 10 apologised for the long stay that these young men were making at the house and asked him if he would continue to help until other suitable arrangements were made. He did not agree. About December 1962 or possibly

January 1963 No. 9 arrived one evening at about 7 o'clock with a parcel which he took to the garage at S.K. Buildings, enjoining him that he was not to allow anybody else to enter the garage; that he was not to handle the parcel nor allow any fire to come anywhere near it. No. 9 then left and later returned accompanied by No. 10 and another Bantu. They then opened the parcel that had been left behind in the garage and No. 9 said that the parcel contained dynamite. The contents of this parcel were divided between Nos. 9 and 10 and the third man and they walked towards the railway line. The following Friday No. 9 reported to him that he had brought more dynamite and left it at his garage. Later the same three divided the contents of the parcel and then left. The following day No. 9 said that the dynamite was to be used in their fight against the white people and to enable them to blow up Government property such as Post Offices, factories and other places. He says that on the occasion when No. 9 introduced No. 10 to him as the big boss he questioned No. 10 and asked him what his name was. Thereupon No. 10 replied "I have been introduced already leave it at that". The next witness is Suliman who, as I have mentioned before, transported trainees to Lobatsi. He says in regard to the third batch which he transported some time during September to October 1962 that he met No. 10 at the Morabi Garage and then proceeded to pick up 20 trainees at a house near the Morabi Hotel. These were conveyed to the border, ten travelling separately in a motorcar. No. 10 told him that the trainees were being sent across the border to be trained as soldiers in Kenya and Tanganyika. With regard to the fourth batch

some time during October to November 1962 he proceeded to the Morabi Garage in order to pick up No. 10. They then proceeded to S.K. Buildings where they picked up about 20 trainees who were taken to the border. No. 10 accompanied them across the border. With regard to the ninth batch it was No. 10 and one Mbatha who requisitioned for two Volkswagen Kombis for transport purposes. Finally, with regard to the tenth batch, it was again No. 10 and Mbatha who arranged for two Volkswagen Kombis for similar transport of trainees. It was on this occasion that the convoy was intercepted before reaching the border.

The witness "X" says that on an occasion when he came to Johannesburg by train he stayed at the house of one Siloro. The following day No. 10 arrived together with the witness "Y". He was told that the pseudonyms of No. 10 were "Percy" and "Robot". No. 10 gave him money to return to Durban.

The witness "Y" says that when he attended the second meeting of the Regional Command in Johannesburg, which was held after he had joined this command, No. 10 also attended the meeting and was introduced by Hodgson as the transport officer elect of the organization. No. 10, he says, on that occasion drove a Peugeot motor-car. In Exhibit "71" Operation Mayibuyi under the heading "Personnel" names are listed under each committee. These all appear to be pseudonyms. Under "transport" appears "Percy, Secundus Mbatha". This appears to me to mean that the head of this committee is Percy and the alternate or deputy is Mbatha.

In his statement No. 10 denies that he had anything to do with the transport of recruits and says that

he left Johannesburg on the 31st October, 1961, and only returned on the 20th February, 1963. During this time he was helping his mother-in-law in Francistown. Two witnesses were called by the defence who were neighbours of this accused in Dube Village. Both say that No. 10 was away for a long time, about two years, and only returned in 1963. Neither appears to have taken very much interest in the movements of No. 10 or of his family and their evidence does not assist No. 10 materially. If he did assist in transport of recruits he need not necessarily have stayed with his wife in Johannesburg. He may have operated from Lobatsi or from some other place in Bechuanaland. Even if he did visit his wife his neighbours need not necessarily have seen him there.

I accept the evidence of the State witnesses and am satisfied that No. 10 Accused was implicated in the transport of trainees and in sabotage activities. I find him guilty on Count 1 and on Count 4 I find him guilty for the same reasons as those applying to Accused No. 9.

Accused No. 7.

This accused gave evidence but denied all complicity in the affairs in the Umkonto. He was in Room No. 1 at Lilliesleaf when the police raid took place and where the document "R71" was lying open on the table. When arrested he was wearing overalls and in the pocket was found two documents. I attach no significance to these documents and do not propose to discuss them, or his explanation that he had borrowed the overalls and that he had no knowledge of the documents.

There is evidence that Accused No. 7 stayed at Lilliesleaf from time to time and at Travallyn during

the last week before his arrest. This is admitted so I need not mention the State witnesses in this regard. There is evidence that he was regarded as one of the leading members of the A.N.C. in Port Elizabeth where he lived. This is also admitted and the witnesses in this respect need not be mentioned. The only direct evidence against him in regard to the sabotage is that of the witness John Shingana, who has been mentioned before. A summary of the evidence of this witness is as follows. He says that on some occasions he conveyed Accused No. 7 in his taxi and also Accused No. 4 and others. On one occasion he called for Accused No. 1 and conveyed him to the house of Dr. Pather together with Accused No. 4 and No. 7. On the evening of the 16th December 1961 Accused No. 7 together with a Bantu Silas, Joseph Jake and two young Bantu boys from the Transkei and Mbatha came to him. They hired his taxi and went to Rink Street, Port Elizabeth. They stopped there. All the passengers got out and returned shortly afterwards accompanied by a European named Strachan. They were carrying cartons, sugar pockets with sand and a plastic bag. The cartons contained pipes with some black powder. All these articles were put in the boot of the car. Strachan went back and the other six got into his car and he drove off. On the way Mhlaba said that the goods in the car were dangerous, that they got them from Strachan and that it was bombs. They stopped at a plantation near Framsby where Silas and the two young Bantu boys got off taking with them portion of the goods. Mhlaba's, that is Accused No.7's, parting words were "work nicely". When they continued their journey Mhlaba remarked "I hope they do good work there. The

witness took the remaining three passengers to the Labour Bureau where he stopped the car and his passengers took the remainder of the goods from the boot of the car. He went home after Mhlaba had said to him that he was not to tell anyone what happened that evening. He arrived home at about 9 o'clock and heard a noise from the direction of the Labour Bureau which sounded like a shot from a gun. He later went to the house of No. 4 Accused who paid him for the transport and remarked that the work was well done. On a subsequent occasion he says he met Mhlaba who said that the work had proceeded well and he was satisfied. The reference in the evidence of this witness is to sabotage Items 14 and 16, which were proved by independent evidence to have been committed. On later occasions the witness says he conveyed Mhlaba and Mbeki as well as others to further meetings of the organization.

The witness Bennett Mashiane who gave evidence in relation to events in East London says that he was introduced to Accused No. 7 some time in 1962 as a member of the High Command. He was referring to the Port Elizabeth Regional Command of the Umkonto which he named Regional High Command.

I now give a summary of the evidence of Accused No. 7 in so far as it is relevant.

A great deal of the evidence was taken up with criticism of Government policy and explanation of the alleged hardships of the non-European people. He says that prior to October 1961 he was employed as a clerk and messenger in an attorney's office at Port Elizabeth. During 1943 to 1953 he worked for the Trade Union Movement and for the Communist Party, joined

the A.N.C. in 1944 and after 1950 when the Communist Party was banned he devoted his time to the A.N.C. doing organizing work. In 1952, during the defiance campaign, he was convicted and sentenced to 30 days' imprisonment and in 1953 he was convicted under the Suppression of Communism Act and given a suspended sentence. Before the end of 1960, when it was anticipated that the A.N.C. would be banned, he started the "M" (Mandela) plan in the Eastern Cape, that is, dividing the area into zones in each of which A.N.C. groups functioned secretly under a regional or ad hoc committee which was in charge of the district. During October 1961 he received a letter telling him to report to the Executive Committee of the A.N.C. in Johannesburg, but before that was told by Accused No. 4 that he was to be appointed a full-time organizer in the A.N.C. In Johannesburg he was given an assignment by the secretary of the A.N.C., Nokwe, which kept him busy for fourteen months. He refused to tell what this assignment was and whether he left the country in relation to this assignment or not. In December 1962 he returned to Johannesburg and reported to Accused No. 2, was told that the police might be looking for him and went into hiding at Lilliesleaf where he stayed for about eight days. He was then instructed to go to the Eastern Province to check the working of the "M" plan and returned<sup>to</sup> Lilliesleaf at the end of February 1963. He stayed about 12 days and was then again given an assignment. Again he refused to say what this assignment was. Again he returned to Lilliesleaf in June where he remained for about four days and then went to Travallyn where he stayed up to the time of his arrest. He says that he came to Lilliesleaf on the 11th of July

because there was to be a meeting of the general secretariat that evening in one of the Townships and he was required to make a report. He admits he had<sup>been</sup>/told about Operation Mayibuyi and that he and No. 4 Accused were reading Exhibit "71" when the police raid took place. He admits knowing the witness Shingana and the witness Mashiane but says that the former is lying in regard to the sabotage expedition in Port Elizabeth and the latter is mistaken in the evidence which I have mentioned. Under cross-examination he admitted that he knew that Goldreich went to Czechoslovakia in relation to the manufacture of explosives and arms but met the latter for the first time in February 1963 at Lilliesleaf. He was at pains to deny that the organization of the A.N.C. was in any respect bound up with the organization of Umkonto says that he knew nothing about sabotage except what he read in newspapers. He says that Accused No. 2 told him about the Umkonto, that the latter consulted the National Secretariat on political matters. Accused No.2 also told him that Travallyn had been bought for trainees in transit and as a hiding place. He admits discussing guerilla warfare with Accused Nos. 2 and 4 but that they decided that this was not feasible.

I regard No. 7 as an untruthful and unreliable witness. If the alleged assignment from October 1961 to December 1962 related to activities in this country there would have been no difficulty for him to be in Port Elizabeth on the 16th of December as deposed to by the witness Shingana. If he was busy with organising work it is clear that the main need for organization work during October/November 1961 was to establish regional commands and units and to train persons to manufacture

found at Lilliesleaf. The accused admits that he did type and use explosives. The intention, according to the evidence, was that sabotage activities would start on the 16th December, Dingansday. If No. 7 was in this country I cannot believe that he did not take part in such work in his capacity as full-time organizer. If on the other hand he left the country there is no corroboration that he left in October 1961. He might just as well have left after the 16th December and if he was then concerned with organizing work for the A.N.C. this organization must have included inter alia collecting funds for the A.N.C. and the Umkonto and making arrangements for the training of recruits. Although the witness Shingana was severely criticised I am satisfied that he was substantially a truthful witness and I also accept the evidence of the witness Mashiane on the point mentioned above. I am satisfied that Accused No. 7 was implicated in acts of sabotage and in the other activities of the Umkonto. I find him guilty on Counts 1, 2, 3 and 4.

Accused No. 5:

The State evidence against this accused is, firstly, that of servants employed at Lilliesleaf to the effect that he was living at Lilliesleaf for some time prior to his arrest and that he was seen reading, typing and operating a duplicating machine in Room 4. This evidence is not denied. The evidence of the witness "X" is that on the day he spent at Lilliesleaf he saw the accused stencilling a document and running off copies on a duplicating machine. This document was identified by the witness as Exhibit "R10". A copy of the document and wax stencils of the same document were

found at Lilliesleaf. The accused admits that he did type and stencil this document at the request of Accused No. 4. The document is of some importance and I quote some extracts from it. It is headed "JUNE 26th - FREEDOM DAY". The next headings are "FREEDOM IN OUR LIFETIME", "PIVOT OF OUR STRUGGLE" and under the heading "BLOOD BANK" appears the following:

"This year, June 26th, 1963, our Freedom Day will be observed in many parts of the world. In England, in America, in Eastern Europe, in Scandinavia, in far-off Cuba, in many parts of the African Continent, in Asia.

"In Addis Ababa the leaders of free Africa pledged themselves to work hand in hand with freedom fighters to free the rest of Africa from the bondage of colonialism and South Africa in particular from the racial domination of 12 million non-whites by a ruthless white minority.

"At addis Ababa the Prime Minister of Algeria Ben Bella called for a BLOOD BANK to aid our struggle, no longer with words alone but with deeds.

"In Algeria on June 26th, this year, the offices of the African National Congress will be officially opened". The next heading is "ACTION! ACTION! ACTION!" and under this appears:

"Verwoerd's Government is making feverish preparations to crush the peoples' determination and keep the Africans in perpetual serfdom. They are preparing to go to all lengths, even to exterminate Africans in order to ensure that South Africa can remain a white man's paradise.

"For the masses of our people, ours is no longer only a struggle to survive. It is more than that. It is a struggle to stop Verwoerd, to crush white domination and to make South Africa a Paradise for all our

people - where the Africans will take their rightful place in the running of the country and where they will proudly take their places alongside free peoples the world over.

"On this June 26th, therefore, the African National Congress calls upon the masses of the people - men and women, young and old, workers, businessmen, teachers, doctors, peasants, lawyers, to fittingly observe this day.

On this day we must make it clear:-

That we will no longer read poisonous Nationalist propaganda. We will Boycott apartheid newspapers and magazines. We must demonstrate our strength and solidarity by

Not buy anything from any shop on June 26th this year. We must use only candle light and no electricity. Light bonfires and relate story of our struggle."

"Issued by the African National Congress".

The evidence of Suliman is that Accused No. 5 on one occasion hired him to take trainees to the border. This evidence conflicts with evidence which he gave in other cases and I reject this. There is also evidence that No. 5 Accused stayed at Mountain View cottage during July, prior to his arrest. This evidence is admitted and also evidence that he was disguised as a Portuguese and used the name of Pedro which is also admitted. No. 5 Accused gave evidence which I have to deal with rather more fully than with that of the other accused. He says that he was concerned in politics from a very early age. He began to distribute leaflets at the age of 11, attended meetings as well as lectures of the Indian

Congress. In 1942 he joined the Young Communist League and in 1953 the Communist Party. Later he was elected to the Executive Committee of the Transvaal Indian Congress and attended conferences of the South African Indian Congress as a delegate. In his political activities he was also closely associated with the African National Congress. In December 1961 he <sup>met</sup> Accused No. 1, who was a great friend of his, at Lilliesleaf, where he had gone to attend a party. At this meeting Accused No. 1 told him that leading members of the A.N.C. had formed the Umkonto and that he was being advised hereof so that he and others leading members of the National Liberation Movement should be acquainted with the new developments. The purpose of the Umkonto was to engage in acts of sabotage against symbols of apartheid and oppression. Accused No. 1 indicated that units of the Umkonto had been set up in various parts of the country and had recruited members of other racial groups. Also that Umkonto would rely on the National Liberation Movement for political guidance but would nevertheless be an independent organization.

Although he had certain reservations about sabotage he would do nothing to condemn the commission thereof. Guerilla warfare was also discussed with persons at Lilliesleaf whom he believed made a study of it. He believed the South African Communist Party had always made an important contribution to the National Liberation Movement and would continue to do so. In the course of his political activities he became aware of the fact that persons from South Africa were being sent out of the country for the purpose of military training. When the law providing for detention of

persons for questioning was being debated in Parliament he feared that he might be arrested and questioned and decided to go underground. After consulting Hepple, who was a good friend of his, and Goldreich whom he had met at the University of the Witwatersrand when the latter was president of the Students Liberal Association it was decided that he should go into hiding at Lilliesleaf. He duly moved there on the 24th May, 1963, and found Accused No. 4 there. Whilst at Lilliesleaf it became obvious that political work was being done there on behalf of the South African Communist Party, the A.N.C. and the Umkonto. He later got to know that Lilliesleaf was in fact purchased by the Communist Party as a hide-out for leaders of the Liberation Movement who required cover from time to time. He himself did not participate in work connected with the Umkonto on the principle "The less you know, the less you will be asked". He did, however, work on behalf of the South African Communist Party and was closely associated with the African National Congress.

Whilst at Lilliesleaf Goldreich<sup>worked</sup> on a disguise for Accused No. 5 and when this was completed he was re-christened Pedro Perreira. At Lilliesleaf he continued his political activities by writing letters and reports to newspapers, various organizations and persons in other countries. He also did work for the African National Congress such as typing stencils for pamphlets and operating the duplicating machine. Some of the pamphlets he so typed are Exhibits "A10", "A55" and "A60". He also typed part of a manuscript of a book by Accused No. 4 dealing with the Transkei. As far as Operation Mayibuyi was concerned he saw this document for the first

time when it was given in evidence in the present case. Following a speech made by Dr. Dönges calling upon the Indians and Coloureds to stand together with the whites in this country it was decided that he would broadcast a message to the Indian people for which purpose he drafted and typed the proposed broadcast by himself, (Exhibit "R187"). Goldreich was to make arrangements for the broadcast of that message. On the 2nd July, 1963, Hepple took him to Mountain View and the first night he spent there Goldberg was also there. Goldberg also had brought foodstuffs and a refrigerator for him. He continued his political work at Mountain View. On the 8th July, 1963, whilst still at Mountain View he was visited by Goldreich and Wolpe who came there in order to make arrangements to have his proposed broadcast recorded on a tape. This was to be done on the 11th July for which purpose he had to go to Lilliesleaf from where he would then be taken to the place where the recording had to be done. On the evening of the 10th July he went to Lilliesleaf and spent the evening in Room No. 1. The following afternoon a Kombi arrived with Accused Nos. 2, 3, 4 and 7. He spoke to Accused No. 3 outside and then Accused No. 2, who had been to the main house came back and he entered Room No. 1 with Accused No. 2. Accused No. 3 entered soon after and then Hepple. He said that Accused No. 3 had told him of the purpose of the meeting which was to discuss the plight of 90-days detainees, in which subject Accused No. 5 said he was interested and could be of some assistance as he had previous experience. Shortly after the arrival of Hepple the police made their appearance whereupon he, No. 2 and No. 4

jumped out of the window hoping to escape but were arrested. He admitted seeing the witness "Y" at Lilliesleaf but has no recollection of any discussion between this witness and one of the other Accused. He recollected seeing a radio-mast being erected and this regard conceded that the evidence of the State witness was correct, but denied that Accused No. 6 assisted or was present. He admitted that the poles were erected for the purpose of carrying out tests with a view to broadcasting and was aware of the broadcast by Accused No. 2, but denied that the broadcast took place from Rivonia. He was not asked <sup>whether</sup> he had prior knowledge of what was to be broadcast and I shall assume in his favour that he did not have such knowledge.

Under cross-examination he was not prepared to agree that Exhibit "R187" was a vicious document but conceded that the language used was somewhat immoderate. He was unable to explain why the tape recording of his broadcast could not have been done at Lilliesleaf or at Mountain View where he had been staying. He had left the text of his broadcast with Accused No. 2 before he went to stay at Mountain View and despite the fact that he had specially returned to Lilliesleaf for the purpose of making the recording he did not make inquiries about it with a view to revising it on his arrival at Lilliesleaf on the evening of the 10th July or even the following day. He was also unable to indicate why this text was found hidden under coal in the roofless coal shed. He stated that should his evidence implicate any person either in Court or outside that he was in honour bound to his conscience, to his political colleagues and to his political organizations

pro-Mandela campaign and stated that the Government should not to isolate such persons, although he was aware that by refusing to answer questions it was not possible to test the truthfulness of his evidence. He agreed that the National Liberation Movement had whipped up a campaign against South Africa, both inside and outside the country, calling for economic and military boycotts, sanctions and political isolation. He admitted the Government had not made any political concessions to the National Liberation Movement which is the pivot of the struggle for the wiping out of the so-called white supremacy and which movement he conceded was led by the A.N.C. He was well acquainted with all the accused, some of whom he had met in his student days and in addition Accused No. 3 had stayed in his flat during July 1962. Although admitting that he was an activist he denied that he had incited others to commit sabotage or that he himself had participated in the commission thereof. He agreed that guerilla warfare could be referred to as an armed struggle or armed revolution. He did not disapprove of acts of sabotage, if the people who committed these acts thought that it was going to advance their cause and achieve their ultimate aims and objects. He agreed that when leading members of the A.N.C. joined the M.K. (the Umkonto) they did not cease to become leaders of the A.N.C. or to forego their allegiance to it and that in that regard the A.N.C. was supporting the M.K. by reason of its leading experienced members being made available to the Umkonto. He admitted receiving by way of cheque from the offices of Kantor & Partners an amount of R205-00 which he explained was for the

pre-Mandela campaign and added that the money was to go to Nokwe who was the treasurer of that campaign. He admits that he was a member of the committee which organized this campaign. He was not asked what his motive was in actively supporting this campaign. He was not prepared to divulge the name of the person who told him that Lilliesleaf had been bought by the Communist Party, or the name of the person who had asked him to re-join the Communist Party. He indicated that Lilliesleaf was used by Accused No. 1, Accused No. 2, Accused No. 4, Accused No. 7 and himself as a hide-out and that all of them with the exception of Accused No. 1 and himself had moved to Travallyn. He went to Mountain View. He could not indicate why then Lilliesleaf was bought and for what purpose. He said that he had only seen one document prepared at Lilliesleaf in connection with the Communist Party, but was not prepared to disclose who it was who prepared it. He himself drafted four documents on behalf of the A.N.C. and saw others working on A.N.C. matters at Rivonia. He was not prepared to disclose their identity.

He also heard discussions at Lilliesleaf in connection with the Umkonto and saw one document of the Umkonto at Lilliesleaf. He stayed at Mountain View for eight days and in reply to the question why then no documents were found there said that he had posted all his works. He denied that any of the documents that were burnt on the premises were his. Finally, he admitted that he was a loyal member and follower of the South African Communist Party whose aim and object it was and still is to secure freedom for the oppressed

people in this country. To that purpose he fully and unequivocally subscribed and is determined to see the fulfilment and aims of the Communist Party whose policy involves the overthrow of the Government of South Africa by force and violence if that should be necessary.

Now it is clear that Accused No. 5 was an active supporter of the so-called Liberation Movement. It is also clear from documents which I have referred to and from other documents emanating from leaders of the Umkonto that propaganda was considered to be an important ancillary to the activities of the Umkonto which consisted mainly of the perpetration of acts of sabotage. The A.N.C. leaders who were not members of the Umkonto were clearly encouraging the latter by means of propaganda. It seems to me that the document "R10" included encouragement of the Umkonto and incitement of readers to support the latter, i.e. by joining its ranks or aiding its members in other ways. This document was intended for distribution and was presumably distributed as the copies made by the accused were not found at Lilliesleaf. I cannot believe that Accused No. 5 was not aware of and did not contemplate the effect this document would have upon readers.

Two further documents stencilled by No. 5 appear to me to stand on the same footing. In each case the stencils were obviously prepared so that copies could be run off for dissemination or distribution. The first is 'R55' headed "The A.N.C. calls upon the Indian People" I quote only one sentence "As in the past, so in the future, together and in greater unity, let us continue this fight against the common enemy. For every blow on apartheid, let us unitedly inflict greater blows". This:

document also says "Issued by the A.N.C." and is dated 3.7.53.

The broadcast on the 26th June, 1963, was not a success according to the evidence of Accused No. 2 and very few people heard it. Obviously the transcription done by Accused No. 5 from the tape recording was intended for distribution. This is Exhibit "R111" and the concluding paragraph reads "In the face of violence, men struggling for freedom have to meet violence with violence", etc.

The question to be considered in the case of this accused is whether he has been proved to have been an accomplice of the other accused. The basis of liability of a socius criminis in our law is laid down in Rex v. Peerkhan and Laloo, 1906 T.S. 798 at p. 802 as follows: "In the case of common law offences any person who knowingly aids and assists in the perpetration of a crime is punishable as if he committed it ..... The true rule seems ... to be that the common law principles which regulate the criminal liability of persons other than acts of perpetrators should apply in the case of statutory as well as of common law offences, unless there is something in the statute or in the circumstances of the crime which negatives the possibility of such an application." In Rex v. Longone, 1938 A.D. 532 at page 537 WATERMEYER, C.J. says: The requirement of knowledge is important because it supplies the mens rea - the guilty mind - required for criminal responsibility. It must also be remembered that the accused's culpability depends upon his own mens rea and when he is charged as a socius in a crime the extent of his criminal responsibility must be judged by his own mens rea. This is clear from the case of Rex v. Parry (1924 A.D. 402) in which INNES, C.J., said (at

page 406; The true position is that though such a socius is equally guilty, his guilt results from his own act and his own state of mind. It is the existence of criminal intent in each of those who jointly committed a crime which entails on each a criminal responsibility.' " I think that his conduct in relation to this document "R10" might be sufficient to justify me in finding that he is an accomplice but there are additional factors. In actively supporting the pre-Mandela campaign the accused must have had in mind that the arrest of Accused No. 1 might have a deleterious effect upon the campaign for which he was working and also on the activities of the Umkonto and the object sought would be to enable Accused No. 1 to be freed and continue the work which he was doing prior to his arrest. I am satisfied that Accused No. 1 knew in essence what this work was. In spite of the fact that the accused was not asked what his motive was I am satisfied that he would not be able to give an acceptable explanation consistent with an entirely innocent motive. In addition during the period 24th May until the date of his arrest the accused was in almost daily contact with Goldreich and Accused 2, 3 and 4 who were actively associated with the affairs of the Umkonto. He admits discussing these affairs with them and must be presumed to have expressed his opinion and given his advice and in this way he associated himself with these activities.

I am satisfied that the State has proved that Accused No. 5 was a party to the conspiracy alleged in Count 2 and I find him guilty on this count. I am not satisfied in regard to his guilt on the other three counts and he will be found not guilty on these three counts.

Accused No. 6:

As I have already mentioned this accused was one of those arrested at Lilliesleaf on the 11th July. The State makes a point of a letter attached to a document, Exhibit "R94". This appears to be a draft of Exhibit "R121B". The draft is headed "Into 1963". The letter reads "I may not be able to get along until after 1 p.m. Please run over this redraft in the meantime. Signed Tony". On this letter is a pencilled note admittedly written by No. 6 Accused reading "Have made a few notes on first copy. Will be back at 1.20 p.m. approximately". Accused No. 6 says he has no recollection of this document and if this was in fact the document submitted to him he cannot say what his reaction was, whether he approved of it or not. It follows that no inference can be drawn against him from the contents of the document.

There is also evidence of a witness, one of the servants at Lilliesleaf, that he assisted with the erection of a wireless aerial at Lilliesleaf on a Saturday afternoon. This witness's evidence conflicts with that of another of the Lilliesleaf servants who says that the European who assisted was not Accused No. 6. The accused says he was under house arrest and could not have been <sup>there</sup> on the Saturday afternoon and I accept his denial.

For the rest the State evidence is admitted by No. 6 Accused as appears from a summary of his evidence which I shall now consider shortly.

He admitted that he was a listed Communist, a Marxist and a pacifist. He joined the Communist Party in 1929 and remained a member until it was dissolved in 1950. He

political purposes. He joined the Springbok Legion and was on the National Executive of that body. He was a foundation member of the Congress of Democrats until it was banned in 1954. The Congress of Democrats stood for equal rights and the total abolition of racial discrimination. He was a member of the convening committee of the Congress of People that met at Kliptown and at which the Freedom Charter was accepted. He was a member of the Editorial Board of Fighting Talk from the years 1958 to 1963. He did a considerable amount of writing of a left wing nature for New Age, Spark and Africa Publications. He had been a Communist for 25 years and never concealed his views. He worked for the lifting of the Colour Bar and the granting of equal rights and opportunity to all. He advocated socialism as a long-term policy. There are circumstances when a non-violent policy is wrong. From 1960 many people advocated violence to which the leaders responded slowly. He held the Government responsible for this because it would not listen to the peoples' demands. He wrote about this in a pamphlet entitled "Face the future" Exhibit "DL". This pamphlet is a criticism of Government policy that cannot, I think, be interpreted as implicating himself in any unlawful violence. He read the manifesto of the Umkonto and regarded it as a responsible and well considered statement of a semi-military nature. He was told that the Umkonto was completely separate from the A.N.C. whose policy was not one of violence. He himself was never a member of either the Umkonto or the National High Command. About the middle of 1961 he was asked by Harmel to inspect Lilliesleaf in a professional capacity. He is an architect. He was told it was to be bought for

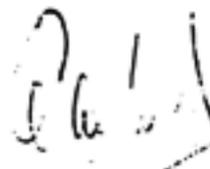
political purposes as a hide-out. In the purchase thereof Hirmel assumed the name of Jacobson. He, the accused, did not ask any questions for the simple reason that he did not want to know. He went to Lilliesleaf to supervise alterations and in the course of such visits he saw Jelliman. On the occasion of his visits to Lilliesleaf he saw Accused No. 1 living there. He knew that No. 1 Accused had been hiding since about June 1961. He spoke to him a couple of times and also gave him books to read. In 1963 Goldreich told him that the people at Rivonia were interested in the border dispute between India and China. He took literature on that subject to Lilliesleaf and gave it to Accused No. 7. He had discussions with Accused No. 7 about this dispute then and also on a later occasion when he called for the literature. He must have gone about four or five times. During April or May he took further material on the Soviet/Chinese dispute out to Rivonia. He met Accused No. 4 and discussed this topic with him on about two or three occasions. Hepple, whom he knew, asked him to go to Lilliesleaf on the 11th July, 1963, for the purpose of attending a meeting in order to discuss the question of the 90-day detention law. He was to attend in order to write for the purpose of making propaganda and giving publicity to this subject. He did not know that Lilliesleaf was used by the Umkonto and he had nothing at all to do with acts of sabotage, although the topic of violence and sabotage must have been discussed by him. He arrived at Lilliesleaf about 3 p.m. on the 11th July and shortly after his arrival the police arrived and he was arrested.

IN THE SUPREME COURT OF SOUTH AFRICA.

Now I doubt, very much, whether the object of the gathering at Lilliesleaf was to discuss the 90-day detention law. In fact a directive had been issued by the A.N.C. dated 10th July (the previous day) which appears to me to deal fully with this subject. But even if, as I consider probable, he went to Lilliesleaf to be consulted on Operation Mayibuyi non constat that he would have approved of the plan or would have associated himself with the conspirators.

It is possible that he gave the conspirators literature and notes in regard to the Soviet/Chinese differences and the Indo/Chinese differences so that the conspirators could decide upon their policy should they succeed in overthrowing the Government and taking its place, but even if this inference is drawn this does not make him a co-conspirator in relation to the charges in the indictment.

In my opinion the guilt of this accused has not been established and he is found not guilty on all the charges.



(Signed) Q. DE WET

JUDGE PRESIDENT

SUPREME COURT OF SOUTH AFRICA  
TRANSVAAL PROVINCIAL DIVISION

Delivered:..... 1964