

A case study of aspects of the political life of Advocate Benjamin Magson Kies (1917 - 1979) and of "The Torch" newspaper with which he was closely connected, showing how the criminal justice system in South Africa was employed in an attempt to silence political and ideological opposition to the apartheid regime.

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I am also grateful to friends who supplied me with information, books, pamphlets and photographs and for sharing their memories with me.

Finally my thanks go to my typists, Sybil Abrahamse and Avril Jansen, whose patience was sorely tried by the innumerable additions, alterations and deletions they were required to make to the text.

1. INTRODUCTION

Charles van Onselen(1) writes that in his biography of Nongoloza Mathebula "we can see the story of one man's search for justice within the context of the most important labour repressive institutions that developed during the South African industrial revolution. He states that he has provided a local illustration of the assertion by C Wright Mills that: "the biographies of men and women, the kinds of individuals they variously become, cannot be understood without reference to the historical structures in which the milieu of their everyday life are organised." (2)

This paper is in some respects both biographical and historical. B M Kies was a leading figure in the Anti-CAD (Coloured Affairs Department) Movement, The Teachers' League of South Africa and the Non-European Unity Movement, sectors of the liberatory movement in South Africa. His involvement in the liberatory struggle began in his student days in the late 1930s and continued up to the time of his death at the end of the 1970s. This paper is not a political biography of B M Kies, but the story of his life (which has yet to be written) may also accurately be described as "the story of one man's search for justice".

The focus of this study will be on the contact which B M Kies had with the criminal justice system and the broader legal system in South Africa from 1948, when the Nationalist government with its platform of apartheid policies came to power, to 1963 when that government's repressive measures to enforce its apartheid policies reached new heights. A number of reported Supreme Court decisions will be considered. These decisions all relate to cases in which B M Kies was either directly or indirectly involved as a result of his political activities.

The first of these cases, the train apartheid resistance case in 1948, arose out of one of the first attempts to organise popular resistance to the apartheid measures which

the newly-installed Government had begun to implement. The first railway from Cape Town to Wellington had come into operation in the early 1860s, and by the 1940s the Suburban and Cape Flats railways provided the major form of transport for the working-class of the Cape Peninsula. The introduction of apartheid measures on trains on these lines caused widespread resentment and opposition. Free access to trains which had been customary for generations of commuters was criminalised overnight when as from 16 August 1948, some sectors of the population were by an administrative decree prohibited from using certain railway coaches.

An examination will be made of the response of the Government to opposition to its policy of train apartheid and it will be shown how the Government employed the criminal justice system to intimidate and harass opponents of its apartheid policy.

B M Kies, one of those in the forefront of the move to organise resistance to train apartheid and all other apartheid measures, was prosecuted for his political activities and he appeared on criminal charges in the Magistrate's Court, Cape Town together with a number of other prominent political leaders in 1948. Discussing the number of advantages a political trial has to a regime, Dennis Davis writes:

It not only reconstructs events and processes as they are perceived by the regime, but also reproduces for the public's benefit an image of a just and fair (albeit imperfect) society, threatened by people and organisations who seek nothing more than its violent destruction. By contrast, the official representation is demonstrated to be the only viable reality within society, and thus is reinforced and strengthened by the exercise of political justice. (3)

Charges of inciting public violence and other statutory charges were brought by the State against B M Kies and the 9 other political leaders who had addressed a meeting called to organise resistance to train apartheid. These political leaders were thereafter brought to trial. This is a clear example of how the State used the process of the trial as a weapon against its ideological and political opponents. The political leaders who had been charged and were required to appear in the criminal court were all persons of

standing and repute in their community. Thus B M Kies and 3 others were school teachers, G H Gool was a medical practitioner, Z Gamiel was an attorney, D M Wessels was a minister of religion, H A Naidoo was a trade unionist and Z Gool and R E Viljoen were city councillors.

For these leaders to appear as accused persons in a criminal court was in fact a status-degrading exercise on the part of the State. In addition the trial put them to considerable personal inconvenience and to the expense of engaging defence counsel. The trial in effect became itself a form of punishment for their opposition to the State's policy of apartheid. Their trial also possibly served as a deterrent to other persons who may have sympathised with their political views and who may have been contemplating joining the resistance campaign they advocated. That B M Kies and the other accused were all ultimately acquitted of the charges serves only to reinforce the inference that these charges had been brought against them in order to harass and intimidate them. A E Abdurahman, who was convicted of incitement in 1948, took his appeal to the Appellate Division where he was successful. But the judgment of the Appellate Division in 1950 was of academic interest only. The State had in the interim passed amending legislation which enabled it to enforce segregatory measures on the trains. Thus the State in addition undermined the authority of the highest court in the land.

This study will show that not only the criminal justice system but also the system of civil courts was employed in an attempt to stifle political opposition to the apartheid regime. Thus the action for damages for defamation of character brought by G J Golding, Chairman of the Coloured Advisory Council, against "The Torch" newspaper was characterised by the trial judge as a political issue arising out of a political dispute between the parties. The aim of the Plaintiff in that case was to eliminate the political opposition offered by "The Torch" to his policies. G J Golding sought such substantial damages that had he succeeded in his action in the civil courts, the newspaper would have been

bankrupted and forced to cease publication. Subsequently the State through its criminal justice system attempted to silence "The Torch" newspaper by bringing criminal charges against it, inter alia, for contempt of court and criminal libel.

Other cases deal with the persecution, harassment and intimidation to which B M Kies and his political colleagues were subjected by the State. The State attempted to stifle or eradicate the political opposition which they spear-headed against the increasingly repressive apartheid laws imposed on and enforced against the unenfranchised and disenfranchised majority in South Africa. These cases include the Supreme Court action arising out of the dismissal of B M Kies from his teaching post on politically-motivated grounds and attempts via the criminal courts to silence "The Torch" newspaper which expressed the viewpoint of the Non-European Unity Movement. B M Kies was a political columnist and reporter for this newspaper.

The final case which is examined in this paper is an appeal to the Appellate Division in 1963 which related to the interpretation of a banning order under the Suppression of Communism Act, No 44 of 1950, placed on R O Dudley, a political colleague of B M Kies and a leading figure in the Non-European Unity Movement and the Teachers' League of South Africa. B M Kies was at this time himself subject to a similar banning order as indeed were numerous other figures in the liberatory movement. In addition to the noteworthy effort of B M Kies to attempt to mitigate the hardship of the banning order on his colleague, a significant feature of this case was the appearance of B M Kies as junior Counsel for the appellant in the highest court of the land.

In dealing with these cases I have avoided, wherever possible, detailed analyses of the legal issues involved and how these issues were resolved by the courts. I have attempted rather to place these cases in some historical perspective by relating them to the political background against which they occurred and by providing links so that they form a continuous narrative.

In many instances I have had of necessity to summarise events and to omit biographical details of some of the political and other figures mentioned in this paper. I have nevertheless tried to heed the injunction of Phyllis Ntantala.(4) She says in the preface to her autobiography A Life's Mosaic: "We have here a huge canvas, depicting the mosaic that is South Africa In social life it is people who make up that mosaic, it is they who make things happen. Their actions and interactions determine the course of events A summary of events does not and cannot give the whole picture; the nuances are lost in a synopsis. The whole mosaic has to be seen in its totality, to be appreciated."(5)

I have attempted here also to present real people, to let them speak for themselves as far as possible and to explain why they acted and spoke as they did.

In the train apartheid resistance case in 1948, B M Kies was defended by Adv Gerald Gordon, whose name also features prominently in this paper. Some 30 years later Adv Gordon was to say of his erstwhile client (who had himself become an advocate) in a tribute in the Supreme Court on his death:(6)

My own deep sense of shock and personal loss is I know shared by many colleagues at the Bar and the Side Bar. Ben was a remarkable man and not least of his qualities was the affection he inspired With his great erudition, his impish sense of humour and his ever alert mind, Ben was a delightful and stimulating companion It is a sad commentary on the South African social order that this man was not permitted to contribute the full scope of his talents to the public life of the country. In fact he suffered experiences which would have warped a lesser personality, but he never allowed himself to succumb to bitterness. We are privileged to have been his friends.

In the appeal in the train apartheid resistance case which was first heard in the Supreme Court Cape Town in 1949, one of the judges was Mr Justice Joseph Herbstein whose name is also mentioned frequently in this paper. He presided when B M Kies was admitted as an Advocate in 1961 and he gave B M Kies his first brief, a pro deo defence in a murder trial in the Worcester Circuit Court over which he presided. On the death of B M Kies, Mr Justice Herbstein (who had by then retired and lived in Israel) wrote to a

Cape Town newspaper and paid tribute to B M Kies in the following terms:(7)

May I from distant Israel crave a little space firstly to express my sorrow at the recent death of and to pay a tribute to the late Ben Kies - a man who had not only my admiration and respect but also my affection. His untimely death has deprived so many - his wife, his innumerable friends, his community, his country - and myself - of a man of outstanding sterling quality. Ben held strong political views and in particular resented bitterly the humiliations heaped daily on his people. He gave vocal expression to this and (voiced) his determination to fight to the end to change this It was my cherished hope that, in my lifetime, I would see Ben gracing the Bench of the Supreme Court.

A short biographical sketch of B M Kies follows. A summary of his political career during the period covered by this study is then given.

NOTES:

1. Van Onselen, C "Crime and Total Institutions in the making of modern South Africa: the life of Nongoloza Mathebula 1867 - 1948" in 1985 History Workshop Journal 77
2. Wright Mills, C The Sociological Imagination 175
3. Davis, D "Political Trials in South Africa" in Crime and Power in South Africa (Eds D Davis and M Slabbert) 35. D Davis and C Albertyn elaborate on this theory of the political trial (first formulated by Kirchheimer in 1961 in his book Political Justice) in their recent (1992) study "The censure of communism and the political trial in South Africa" in Censure, Politics and Criminal Justice (Ed. C Sumner) 93.
4. Phyllis Ntantala is the widow of the late Archibald Campbell Jordan (1906-1968), Professor of African Languages at the University of Cape Town where he taught for 16 years before he emigrated with his family in 1961. He was a leading member of the Cape African Teachers Association which was affiliated to the Non-European Unity Movement. Their son is Pallo Jordan a prominent figure in the African National Congress. Phyllis Ntantala shared the platform with B M Kies and others at a protest meeting on 30 March 1952 during a campaign organised by the Non-European Unity Movement against the Van Riebeeck tercentenary celebrations.
5. Ntantala, P A Life's Mosaic viii
6. The Cape Times 25 December 1979
7. The Cape Times 16 January 1980

2. PERSONAL HISTORY

Benjamin Magson Kies was born in Woodstock on 12 December 1917. (1)

He was the second of three children of Benjamin Kies, a factory worker and Ethel Georgina Kies (born Magson). (2)

He matriculated at Trafalgar High School in District Six, Cape Town in 1934. A brilliant student, he obtained a scholarship to the University of Cape Town where in 1937 at the age of 20 years he graduated with a Bachelor of Arts degree. (3) In 1938 the same university awarded him the degree of Master of Arts in English Literature (with honours) and in 1939 the degree of Bachelor of Education, the subject of his thesis being "The policy of educational segregation and some of its effects upon the Coloured people of the Cape." (4)

In 1940 at the age of 23 years he began his teaching career at his alma mater, Trafalgar High School. In 1946 he was granted a British Council Scholarship which enabled him to travel to London to undertake research in comparative educational systems at the University of London. He spent 18 months overseas and during the course of a European study tour he visited schools in England, Scotland, France, Belgium, Yugoslavia and Norway. (5) A script prepared by him on the Norwegian educational system was broadcast by the BBC. He was made an Associate of the Institute of Education of the University of London.

On 10 October 1949 he married Helen Noreen Abrahams, (6) also a teacher, who survives him. They had no children. (7)

He occupied his teaching post at Trafalgar High School for 16 years, becoming Senior English Master. In 1953 a vacancy for the principalship occurred at Trafalgar High School. B M Kies applied for the post of principal and he was nominated to fill the position by the school committee (elected by parents of pupils at the school) who chose

him as the best qualified of those candidates who had applied. Approval by the Superintendent-General of Education of a nominee by the school committee was in such instances usually a formality but in his case the nomination was not confirmed. No valid and satisfactory reason was given by the Superintendent-General of Education for his refusal to sanction the nomination. The Teachers' League of South Africa pointed out that he was fully qualified academically and professionally, that he had the required experience and a satisfactory record of service and that clearly other considerations had influenced the decision of the Superintendent-General of Education. The Teachers' League of South Africa considered the refusal to approve his nomination to be political victimisation. (8)

That the assessment of The Teachers' League of South Africa was correct is borne out by the fact that on 13 February 1956 he was summarily dismissed from his post by the Cape Education Department on political grounds. (9) His dismissal is dealt with fully in Chapter 6. In 1957 The Education Ordinance with Annotations was published of which he was co-author with E L Maurice.

On 1 April 1959 he was served with a notice by the then Minister of Justice, C R Swart, banning him in terms of Section 9(1) of the Suppression of Communism Act No. 44 of 1950 from attending any gathering in the Union of South Africa or the territory of South West Africa for a period of five years as from 12 March 1959. (10) This banning order is dealt with fully in Chapter 7.

After his dismissal he took up employment with Juta & Co, Ltd, the Cape Town firm of booksellers and publishers. He also enrolled as a law student at the University of Cape Town where he completed his studies in February 1961. He obtained the Bachelor of Laws degree which qualified him for admission as an advocate. (11)

On 3 May 1961 he was admitted as an advocate of the Supreme Court in Cape Town by Mr Justice Joseph Herbststein. (12) At the age of 43 years he began his second

career as a junior at the Cape Bar. He soon built up a large and successful practice. He established himself as a human rights lawyer and he accepted briefs to act for the defence in numerous political trials at a time when the repressive policies of the apartheid regime were at their height and there were few who were willing to appear in political cases.

On 27 November 1961, some seven months after commencing practice at the Bar, he was served with another banning order signed by B J Vorster, then Minister of Justice, confining him to the magisterial districts of Cape Town, Wynberg, Simonstown and Bellville for a period of five years. (13) This banning order was also issued under the provisions of the Suppression of Communism Act, No 44 of 1950, and it will also be dealt with more fully in Chapter 7.

W E Cooper, SC (now a Judge of the Cape Bench) acknowledges in the Preface to the first edition of South African Motor Law "advice that was invaluable and assistance in reading and correcting proofs" by B M Kies. (14) Similarly, Gerald Gordon QC in the Preface to the second edition of The South African Law of Insurance states that he owes his "sincere gratitude" to, inter alia, B M Kies for "useful help and discussion". (15)

On 16 November 1967 B M Kies was also admitted to the Lesotho Bar in Maseru by the Chief Justice, Mr Justice Francis Johnston. (16). Some years before his death he was offered, but declined, a senior judicial appointment in a neighbouring State, a former British Protectorate. (17)

B M Kies was elected a member of the Cape Bar Council in which capacity he served for a number of years. (18) He continued to practise at the Cape Bar until his sudden death at the age of 62 years on 19 December 1979. (19) He collapsed while he was addressing magistrate J C Vermeulen in a trial in the Regional Court at Hermanus. The four accused he was defending had been charged under the Terrorism Act, No 83 of 1967. He died in the courtroom. (20) The cause of death was coronary thrombosis.

NOTES:

1. File No. 190/80 Master's Office, Cape Town.
2. File No. 4196/52 Master's Office, Cape Town.
3. File No. M 390/61 Supreme Court, Cape Town.
4. Wilson, M and Thompson, L The Oxford History of South Africa Vol II 552
5. The Educational Journal, April 1948 2.
6. File No. 190/80 Master's Office, Cape Town.
7. File No. 190/80 Master's Office, Cape Town.
8. The Educational Journal, Jan/Feb 1953 11.
9. Meiring NO and Olivier NO v Kies 1958(3)SA 511C
10. The Cape Argus 5 April 1959.
11. File No. M390/61 Supreme Court, Cape Town.
12. File No. M390/61 Supreme Court, Cape Town.
13. The Cape Argus 28 November 1961.
14. Cooper W E and Bamford B R South African Motor Law (1st Ed) v.
15. Gordon, G The South African Law of Insurance vii.
16. The Cape Argus 16 November 1967.
17. The Cape Times 25 December 1979
18. The Cape Times 25 December 1979.
19. File No. 190/80 Master's Office, Cape Town.
20. The Cape Argus 19 December 1979.

3. POLITICAL BACKGROUND

History is past politics, and politics is present history.

- E A Freeman (1823 - 1892) in Methods of Historical Study (1886) 44.

B M Kies reached his majority in the late 1930s. His teenage years coincided with the period of world-wide economic depression which began with the collapse of the New York Stock Exchange in 1929.

International events during the 1930s had a profound effect on intellectual and political life in South Africa. By the end of the 1930s large parts of Western Europe were under fascist rule. In Germany, Adolf Hitler and his Nazi Party had consolidated the power they had gained in 1933. In Italy, Benito Mussolini and his Fascist Party had been in control since 1922. Italy had invaded and colonised Abyssinia in 1935. In Spain the Fascist Army under General Franco was close to victory in the civil war which had begun in 1936. In the Soviet Union Stalin had purged the Communist Party and the Red Army of potential opposition elements and his dictatorial powers were unchallenged.

In the Far East in the 1930s the Japanese had begun their expansionist programme to establish a New Order for East Asia with Japan as the dominant power. Japan was engaged in a war of conquest in China. In India the Indian nationalists were organising opposition to British Imperial rule.

There was a general feeling that the Europe of the 1930s was heading inexorably towards another major war. By the end of 1938 one crisis after another had followed Hitler's acts of aggression. He had re-occupied the Rhineland in March 1936, annexed Austria in March 1938 and occupied the Sudetenland in October 1938.

In South Africa in the 1930s there was a growing tide of Afrikaner nationalism. One of its main objectives was to acquire political dominance in South Africa. Many of the Afrikaner nationalist intellectuals had adopted nazi and fascist doctrines.

Thus Van Zyl Smit (1) writing on Afrikaner nationalist criminologists says:-

The leading figures of this school, Professors G Cronje and W A Willemse were social scientists who had been trained in Europe and who had been strongly influenced both by the economic determinism of the Dutch criminologist Wilhelm Bonger and by the doctrine of fascism. Their project was to develop a coherent intellectual base for policies which would promote the interests of the Afrikaner nation. Among these interests was the combating of crime and deviance, particularly among those Afrikaners who had been impoverished during the depression. The solution suggested for the crime problem, as for other social and economic ills, was the policy of apartheid which was designed to protect poor Afrikaner Whites from "unfair" economic competition and from crime-related contact with "lesser races".

In 1937 the New Era Fellowship was established in Cape Town. One of the founding members was B M Kies. Another founding member was W P van Schoor who was the principal speaker at its inaugural meeting. He delivered a lecture on "Imperialism".

(2) The New Era Fellowship was one of a number of radical discussion groups or debating societies which flourished in Cape Town in the 1930s. (3) At meetings of the New Era Fellowship matters of political, educational, social and cultural interest were discussed. From the ranks of the New Era Fellowship a young, radical and articulate leadership emerged. In 1941 the executive of the New Era Fellowship was G H Gool (Chairman), Hawa Ahmed (Secretary), B M Kies (Vice-Chairman) and S Edross (Organising Secretary).

The leadership provided by the New Era Fellowship challenged the moderate and accommodationist policies of the leaders of existing Non-White organisations, particularly the African People's Organisation, the Teachers' League of South Africa, the All African Convention and the African National Congress. The new leadership adopted a more militant approach. They demanded full democratic rights for all South Africans and they canvassed the idea of an organisation to represent the oppressed on a national basis. They propagated their views in existing organisations such as the Teachers' League of South Africa and the All African Convention where they gradually began to gain influence and support.

The announcement on 28 January 1938 by H G Lawrence, Minister of the Interior, of the establishment of a Cape Coloured Permanent Commission (later called the Coloured

Advisory Council) and a special Coloured section of the Department of Interior (later known as the Coloured Affairs Department) evoked an immediate reaction from the New Era Fellowship.

A meeting was held on 13 February 1943 at the Stakesby Lewis Hostel in Cape Town by the New Era Fellowship to discuss the implications of Lawrence's announcement. At this meeting B M Kies delivered a lecture entitled "The CAD-the New Fraud". He said "we reject any special CAD or commission because we want full democracy but at the same time we must realise that we cannot be free from such measures until we destroy the whole colour-bar system. Non-European, African, Coloured or Indian will never be safe while there is a single colour-bar law on the statute book. So all Non-Europeans must unite as one oppressed group in order to combat the forces which cause their misery." (4)

On 28 February 1943 at another meeting at the Stakesby Lewis Hostel an Anti-CAD Committee was constituted to oppose the formation of a Coloured Affairs Department and to fight for full political rights for all South African citizens. On the Anti-CAD Committee were G H Gool, H Ahmed, A J B Desmore, B M Kies, E L Roberts, D M Wessels, I B Tabata, S Edross and A Fataar. By 20 May 1943 the Anti-CAD Committee claimed to have 81 organisations affiliated to it. (5) The campaign was organised on the basis that the Commission and the Coloured Affairs Department would be the targets of a boycott and a policy of non-collaboration would be put into effect. Those who co-operated would be condemned as "Judases" and "traitors" and would be ostracised. (6)

In March 1943 the Government appointed eight (of the fifteen) members of the Coloured Advisory Council, of whom five were teachers and also prominent members of the Teachers' League of South Africa. One of them was G J Golding. Another member was F H Gow, president of the African People's Organisation. (7)

In 1943 the All African Convention initiated moves aimed at promoting unity amongst the oppressed in South Africa. A unity conference of the All African Convention

and the Anti-CAD Movement led to the formation of the Non-European Unity Movement, a federal organisation. The moderate leadership of the Teachers' League of South Africa was replaced after 1943 by a radical progressive leadership and the Teachers' League of South Africa became an integral part of the Non-European Unity Movement.

The Ten Point Programme of the Non-European Unity Movement (8) reads as follows:-

1. The Franchise, i.e., the right of every man and woman over the age of 21 to elect and be elected to Parliament, Provincial Council and all other Divisional and Municipal Councils.
2. Compulsory, free and uniform education for all children up to the age of 16, with free meals, free books and school equipment for the needy.
3. Inviolability of person, of one's house and privacy.
4. Freedom of speech, Press, meetings and association.
5. Freedom of movement and occupation.
6. Full equality of rights for all citizens without distinction of race, colour and sex.
7. Revision of the land question in accordance with the above.
8. Revision of the civil and criminal code in accordance with the above.
9. Revision of the system of taxation in accordance with the above.
10. Revision of the labour legislation and its application to the mines and agriculture.

It is not necessary for the purposes of this paper to detail the history of the Non-European Unity Movement from the mid-1940s to the early 1960s. It is against the political background which has been very briefly sketched above, that the political trials in which B M Kies was involved, either directly or indirectly, must be viewed. From the time of the formation of the Non-European Unity Movement in the mid-1940s, to the time of his death in 1979, B M Kies remained a firm adherent to the principles set out in the Ten Point Programme of that movement. He devoted his political life to the achievement of the aims and objectives of the Ten Point Programme.

NOTES:-

1. Van Zyl Smit, D "Contextualizing Criminology in contemporary South Africa" in Towards Justice? Crime and State Control in South Africa (Eds) Hansson, D and Van Zyl Smit, D) 4-5.
2. Van Schoor, W P The Origin and Development of Segregation in South Africa - A Biographical Note.

3. Lewis, G Between the Wire and the Wall - A history of South African "Coloured" Politics 180.
4. Van der Ross, R E The Rise and Decline of Apartheid 174.
5. Mokone, S Majority Rule - Some notes 25.
6. Van der Ross, R E op cit 176.
7. Van der Ross, R E op cit 178.
8. Karis, T and Carter, G M (Eds) From Protest to Challenge Vol II 355.

4. THE TRAIN APARTHEID RESISTANCE COMMITTEE (TARC)

Rex v Abdurahman 1950 (3) S A 136 A

Consider what you think justice requires and decide accordingly.

But never give your reasons; for your judgment will probably be right but your reasons will certainly be wrong.

- Lord Mansfield (1705 - 1793) quoted by Campbell in Lives of the Chief Justices, Ch 40.

In 1948 the Nationalist Party won the General Election and under the leadership of D F Malan took over the reins of Government in South Africa on 26 May 1948. One of the first steps taken by the Nationalist Government to implement its declared policy of apartheid was the announcement by the Minister of Transport, P Sauer, of the intention to apply segregatory measures on Suburban and Cape Flats passenger trains in the Cape Peninsula. Train apartheid was already in force in other parts of the country. The apartheid measures were to come into effect in the Cape Peninsula on 16 August 1948. Some coaches on each train were to be reserved for Whites only.

The Minister of Transport's announcement evoked widespread resentment and opposition amongst the Non-White population of the Cape Peninsula as the vast majority of them commuted to and from their places of employment by public transport. Political parties in the Cape Peninsula sought to mobilise this opposition to the implementation of train apartheid.

The first protest meeting was held on the Grand Parade on 15 August 1948 under the auspices of the Communist Party of South Africa. The speakers were J Laguma, H A Naidoo, J Nkatlo, Fred Carneson, Sam Kahn and Moses Kotane all of whom were prominent members of the Communist Party.

On 16 August 1948, the day of the introduction of train apartheid in the Cape Peninsula, B M Kies and five others, amongst whom was Helen Abrahams, were arrested outside Cape Town Railway Station whilst they were distributing protest leaflets. These

leaflets had been issued by the National Anti-CAD Movement and they read as follows:

Defend the right to sit where you like. Resist train apartheid. Today the Government is beginning its segregation policy on Peninsula trains. Today it is only first class. But if you let them succeed they will go on to the rest of the train. Then the buses. Then you will carry birth certificates and passes. This is a test for you. Form groups. Ride in coaches marked "Europeans Only".

B M Kies and his fellow protesters were released after questioning by the police and no charges were immediately laid against them. (1)

On 18 August 1948 the Local Co-ordinating Committee of the Non-European Unity Movement called a meeting to discuss methods of resisting the train apartheid measures.

Over 100 delegates representing 31 organisations attended this meeting. The organisations included the Communist Party, trade unions, ratepayers and civic associations, The Teachers' League of South Africa, African Peoples' Organisation, church and sports bodies and the Anti-CAD Movement. (2) This meeting constituted a Train Apartheid Resistance Committee to organise resistance to apartheid on Peninsula trains.

The office bearers were R E Viljoen, chairman, A E Abdurahman, secretary and D M Wessels, treasurer. On 20 August 1948 the Train Apartheid Resistance Committee issued its first statement which said that the "Committee believes that the introduction of apartheid on Peninsula trains is a violation of the individual liberty of the Non-European people (and) believing that it is in the interests of racial harmony that these train segregation regulations should be withdrawn and believing further that the Nationalist Government refuses to take into account the expressed wishes of the majority of the population of the Cape Peninsula, the Committee feels itself compelled to direct organised action to make the regulations unworkable."

On Sunday afternoon 5 September 1948 the Train Apartheid Resistance Committee held a protest meeting on the Grand Parade, Cape Town. According to one report (3) nearly 10,000 people attended this meeting while another report (4) called the meeting "one of the biggest mass meetings of Non-Europeans ever held on the Grand Parade, Cape

Town". The speakers at the meeting represented the Non-European Unity Movement, the Communist Party, the Fourth International and the Teachers' League of South Africa. R E Viljoen presided at the meeting and the speakers were H A Naidoo, F Carneson, Z Gool, B M Kies, G H Gool, Z Gamiet, D M Wessels, A E Abdurahman, S A Jayiya and G L Abrahams.

In order to gauge the temper of the meeting verbatim extracts from some of the speeches will be given. All the speakers were at pains to point out that train apartheid was only the first step in the apartheid policy of the Nationalist Government, that resistance to apartheid would require proper organisation and that disciplined action would be necessary.

R E Viljoen opened the meeting and called on the Secretary A E Abdurahman to read out telegrams and messages of solidarity and goodwill received by the committee from numerous individuals and organisations.

The first speaker G H Gool (5) said that: "The Nationalists are merely carrying on where the Smuts Government broke off. The apartheid notices were ready in the railways workshop before the Nationalist Government came into power. (6) Do not think that this is merely a question of apartheid on trains - it is only the beginning. In time apartheid will be applied to all spheres of life. I ask you to stand solidly behind the Train Apartheid Resistance Committee."

H A Naidoo (7) of the Communist Party said that "as a member of the Train Apartheid Resistance Committee I can tell you that this struggle is going to be carried out in an organised and democratic manner. We believe that this demonstration is the beginning of the end of discrimination in South Africa There are great forces at work which the Nationalists must take into account. They must realise that 2 million people in this country cannot ride roughshod over the rights of the rest of the population of this country. We must tell them: 'Thus far and no further'. I say that whatever action is

taken must be taken in a most orderly manner. We do not want this movement to end in a fiasco. We do not want this movement to fall flat. We want to break apartheid but we must be fully organised. This is only the beginning."

Z Gool (8) said: "Today in the Cape we have to deal with an apartheid measure which directly affects you. My advice to you is to fight this measure with all the means at your disposal. What we want you to do is not only to come here and pass resolutions - you must join the groups that are being formed and fight this measure we must not rely on others to assist us in making this measure unworkable. The government has threatened to take drastic action. Well, let them take drastic action. What drastic action can they take? What weapon have they got to fight us? We have an atom bomb - our solidarity. We must stand together and we must not be intimidated. We must make this measure unworkable We must be prepared to go to gaol and even worse for our rights. We must tell the government in no uncertain manner that we are not animals to be herded into (separate) trucks. We consider apartheid an insult to our dignity."

Fred Carneson, (9) also of the Communist Party, said: "Ever since the Nationalist Government came into power there has been a spirit of revolt which I say is good - I say we should see that that spirit of revolt increases and increases until such time as we can say to the Nationalist government - Away with you, we want our own government You will never have your freedom unless you are prepared to die for it. If you are determined to struggle for freedom I say freedom is not far off".

B M Kies in his address said: "For the past two weeks we have been told from the Houses of Parliament in a most brutal manner what they intend doing to us In coming here this afternoon you have demonstrated that we must close our ranks and stand together The Non-European people are the real power of this country We do not want you to go from this meeting and hit the nearest policeman over the head or break a window - that will not help you in any way - it will only do your cause harm. You must

organise in groups and make proper use of the power that you have We do not want individuals to come forward and get their heads broken. We are speaking to the mass of the people. We are calling on you - the mass of the people. We have representatives of many organisations on this platform. We have established a certain measure of unity amongst our organisations and that is a good thing. There is one gap in our ranks and that is the trade unions. It is regrettable that the trade unions are so conspicuous by their absence. We are saying to you that it is a pity that delegates of the trade unions are not here this afternoon. They say they do not wish to mix in politics - well everything in this country is politics. We want to smash the whole system of apartheid or segregation in this country. The real power of the Non-White lies in his labour We must not fight apartheid on the trains only - that is only a first step. We must use our organised labour powers to fight for our rights You can think of a lot of ways in which the Non-Europeans can make use of the power of their labour We must have organised power before we can take action. The government is politically deaf, apart from being dumb There is only one language they can understand and that is the use of our power to bring them to their senses. You may have to bring them to their knees before you can bring them to their senses. We do not come from elsewhere - we belong to this country - this is our country. We will take no action until we know that we are organised and that we have the power. We must do the right thing at the right time."

The final speaker, A E Abdurahman, (10) read the following resolution to the meeting:

This mass meeting of the people of the Cape Peninsula uncompromisingly rejects the train apartheid policy of the government and gives the Train Apartheid Resistance Committee the full right to make this regulation unworkable.

The resolution was passed unanimously and A E Abdurahman then said:

"Finally, when you go home now, go home in an orderly manner. You can get into any part of the trains, first, second or third class".

After the meeting a large section of the crowd went to Cape Town station and boarded the trains, including the coaches marked "Europeans Only". The Railway police present were unable to eject the Non-White passengers from the reserved coaches and after a slight delay the trains left to the cheers of those remaining on the platforms.

On the following day 6 September 1948 the Cape Argus in an editorial entitled "The Gathering Storm" which referred to the protest meeting and the incidents on Cape Town station said "any government which failed to foresee such plain and obvious consequences of their own actions would show a short-sighted incompetence rendering them totally unfit to rule. Accordingly, it is presumed that the government have worked out their own plans for dealing with the whole matter"

The government did indeed take action. On 11 September 1948 summonses were served on all 14 speakers at the two protest meetings held on the Grand Parade. B M Kies and the other speakers at the second meeting on 5 September 1948 were each served with a summons containing three counts namely (i) inciting public violence (ii) inciting the contravention of railway regulations and (iii) promoting hostility between Natives and Europeans in terms of Sec 29(1) of the Native Administration Act No 38 of 1927. B M Kies and the 9 other speakers at the Train Apartheid Resistance Committee's protest meeting appeared in the Magistrate's Court, Cape Town on 23 September 1948 and the case was remanded to 29 September 1948 for trial. (11)

The trial of B M Kies and others was heard before Mr A V Bird on 29 September 1948. C N van der Walt, the Senior Public Prosecutor appeared for the Crown and all the accused were represented by Adv Gerald Gordon. At the conclusion of the Crown's case the defence applied for the discharge of all the accused on all three counts on the grounds that a prima facie case had not been made out against them. The application was opposed by the prosecutor. The Magistrate reserved judgment and remanded the case to 11 October 1948. (12)

When the case resumed on 11 October 1948 the Magistrate acquitted and discharged B M Kies and his 9 co-accused on the first count of inciting public violence and the third count of "promoting hostility between Natives and Europeans". In regard to the first count the Magistrate held that the words attributed to the accused by the Crown had been taken out of context. He did not doubt that all the speeches had dealt with resistance to apartheid and had called for disciplined action. But none of the speakers had advised or encouraged any act of violence. The speakers had been opposed to violent action and the meeting had been orderly and in fact no violence had occurred. There was no evidence before the Court that any of the accused had incited the crowd to violence.

In regard to the third count the Magistrate said that he was satisfied that none of the accused had any intention of inciting hostility between Natives and Europeans. However in regard to the second count of inciting the contravention of railway regulations he held that the accused had a case to meet and ordered the trial to proceed on this count.

The defence called two lecturers from the University of Cape Town, A J H Goodwin, MA and M Fortes, MA PhD (a visiting lecturer from Oxford University) who gave evidence as to the meaning of the terms "race", "Europeans" and "Whites". They gave as their considered opinion that Europeans were not a race, nor were all whites Europeans, nor were all Europeans white. At the conclusion of its case the defence argued that the regulations were null and void because they were vague in that the terms "Europeans", "Non-Europeans", "Blankes" and "Nie Blankes" had not been defined. In addition Adv Gordon argued that the relevant regulations had not been properly promulgated and that the powers granted under the relevant statute had not been properly exercised. The regulations were not impartial but discriminated against Non-Europeans who were confined to certain parts of the train and therefore only Non-Europeans could commit an offence, under these regulations. The Magistrate in his judgment rejected the arguments by Adv Gordon. He acquitted B M Kies and 8 other accused on the second count but he

found A E Abdurahman guilty of inciting the contravention of railway regulations for having said: "When you go home now, go home in an orderly manner. You can get into any part of the train, first, second or third class". A E Abdurahman was fined £5. Notice of Appeal was given. (13)

The Appeal was heard in the Supreme Court, Cape Town, on 14 and 18 March 1949 by Herbstein and Ogilvie Thompson J J. Adv Gerald Gordon KC appeared for the Appellant and C Norman Scoble appeared for the Crown. After argument by Counsel judgment was reserved. (14) Subsequently the Judge-President ordered that the appeal be argued before a full bench on 21 June 1949. (15) The reason for the re-hearing was not given at the time but it appeared subsequently that Herbstein and Ogilvie Thompson J J could not agree on the merits of the appeal.

The appeal was argued for a second time before a full Bench consisting of De Villiers, JP and Ogilvie Thompson and Herbstein JJ. In October 1949 the majority of the Court (De Villiers and Ogilvie Thompson JJ) upheld the conviction and sentence of A E Abdurahman and dismissed his appeal. Herbstein J delivered a dissenting judgment in which he upheld the appeal. (16)

The case was then taken on appeal to the Appellate Division where it was heard on 23 and 24 March 1950 by Watermeyer CJ, Centlivres JA, Greenberg JA, Schreiner JA and Murray AJA. Adv G Gordon again appeared for the appellant A E Abdurahman and W M van der Berg appeared for the Crown.

The headnote to the law report of the case summarises the issue before the Court as follows:

Acting under para (c) of Reg 20 of the General Railway Regulations (as amended) framed under sec 4 of Act 22 of 1916, the Railway administration reserved a portion of trains for the exclusive use of Europeans without restricting members of that race to the use of that portion: Non-Europeans were not allowed to use the reserved portion and had to share the remainder of the train with members of the race in whose favour the reservation was made. Members of the European race were not subjected to criminal sanctions, while members of the other race were.

(17)

Centlivres JA delivered the unanimous judgment of the Court on 22 May 1950 in which the appeal was upheld and the conviction of and sentence passed on A E Abdurahman were set aside. The Court found that "as the regulation had been applied in a manner which has resulted in a partial and unequal treatment to a substantial degree as between Europeans and Non-Europeans and as such partial and unequal treatment was not authorised by Act 22 of 1916, any action taken under the regulation was void."

But whilst the appeal to the Appellate Division was still pending P Sauer, Minister of Transport had brought amending legislation before Parliament and amendments to the Railways and Harbour Act had the effect of validating the apartheid regulations. The victory in the Appellate Division was very much a pyrrhic one. "The Torch" newspaper commented on the outcome of the case as follows:

So while the people had scored a resounding legal victory over the Government, the Parliament had stepped in and turned that victory into a defeat. This bears out quite clearly that, for the Non-Europeans, the people are not living in a democracy, but in a police state in South Africa.

The campaign against train apartheid was unsuccessful. A report issued by the Train Apartheid Resistance Committee two months after its formation on 18 August 1948 detailed the difficulties it had encountered in putting the campaign into operation. The report stated that "there is no doubt that the TARC has been most enthusiastically received." (19) Well attended meetings had been held all over the Cape Peninsula and at all of these meetings the resolution to resist train apartheid was unanimously adopted and generous donations in money had been made and volunteers had come forward. The report emphasised that the purpose of TARC was "to organise active, disciplined, mass resistance by boarding the marked coaches in trains and making the regulations unworkable." The report gave two reasons for the delay in the campaign. Firstly, only 450 volunteers had been recruited. These volunteers could only offer token resistance

while mass resistance was required. Secondly only nine trade unions had joined TARC.

The majority of organised workers were outside the TARC. The report concluded: "The issue is much too big and much too important for all the Non-European oppressed, for any display of individualistic heroics. And as responsible leaders we can think only in terms of mass resistance." (20)

The members of the Communist Party of South Africa who were on the TARC resigned therefrom arguing that delay would be fatal to the campaign and that the Non-European Unity Movement (whose representatives were in a majority on the TARC) had adopted "false organisational and political concepts." (21)

The failure of the train apartheid resistance campaign raised the question of the desirability of ad hoc committees and ad hoc campaigns against specific apartheid measures. S Mokone (22) summarises the viewpoint of B M Kies and other leaders of the Non-European Unity Movement on this question as follows:

The TARC was an ad hoc committee. The NEUM, opposed in principle to ad hoc committees and ad hoc campaigns which highlighted one or other aspect of oppression and failed to struggle against it as part of the whole system, nevertheless joined TARC. The first reason was to demonstrate that, although it was politically strong in the Western Cape particularly, it was not sectarian and decisive The second reason was that (the NEUM) hoped to be able to broaden the relatively narrow struggle into a mass struggle of an all-embracing nature.

The train apartheid resistance campaign in the Cape Peninsula in 1948 was the precursor of the defiance campaign of 1952. The defiance campaign was organised on a nation-wide basis by the African National Congress. A demand for the repeal of six "unjust laws", which included the pass laws, the Bantu Authorities Act, the Group Areas Act, the Voters Representation Act and the Suppression of Communism Act, was addressed to the Prime Minister who refused to accede to the demand. The defiance campaign which was launched in April 1952 was one of non-violent civil disobedience. During the course of the campaign, during which, inter alia, discriminatory laws were defied by ignoring apartheid notices on trains and by disobeying pass laws and curfew

regulations, some 8000 of resisters were arrested in the major urban centres. The campaign attracted the most support in the Eastern Cape. But by November 1952 the campaign had "virtually ground to a halt". (23) The Government took drastic action under the Suppression of Communism Act against the leadership of the African National Congress. The Government subsequently introduced further harsh security legislation including the Public Safety Act which provided for the imposition of a state of emergency. The Government began systematically to use as weapons against political opponents, police raids, widespread arrests, banning orders and political trials in order to eliminate the opposition they provided to its apartheid policies.

The chapter which follows deals with "The Torch" newspaper of which B M Kies was one of the founders in 1946 and with which newspaper he remained closely connected as a political commentator and reporter until it ceased publication in 1963.

NOTES:

1. The Torch 23 August 1948.
2. The Torch 23 August 1948.
3. The Torch 6 September 1948.
4. Cape Times 6 September 1948.
5. Goolam Hoosen Gool (1905 - 1962), a medical practitioner, was a prominent political figure in the liberatory movement from the early 1930s. He was connected with the Anti-CAD movement and the Non-European Unity Movement from their inception. He was the brother-in-law of Z "Cissie" Gool. The extract of his speech (and the extracts of other speeches) at this meeting is taken from a roneod document entitled "Transcript of speeches made at a mass meeting under the auspices of the Train Apartheid Resistance Committee held on the Grand Parade Cape Town on 5 September 1948" (In the writer's possession).
6. R E van der Ross writes: "During the closing months of its government the United Party had taken steps to introduce racial separation on the Cape Peninsula lines, and in preparation for this it had notice boards made. But the Coloured Advisory Council had discovered this and had prevailed on the government not to implement this separation, certainly not just before the general election." (The Rise and Decline of Apartheid 252)
7. H A Naidoo was born in Durban in 1915 and died in exile in 1971. He became a member of the Communist Party of SA in the mid-1930s. He was an active trade unionist. He was on the staff of the Guardian newspaper. He left South Africa in 1951. (From Protest to Challenge Vol IV 109)
8. Zainunnissa "Cissie" Gool (1897 - 1963) was the daughter of Dr Abdulllah Abdurahman a prominent moderate political leader in Cape Town and president of the African People's Organization from 1905 to 1940. His daughter who was

active in politics from the early 1930s opposed her father's moderate policies. She obtained the BA and MA degrees from the University of Cape Town. She married Dr A H Gool, brother of G H Gool. In the 1930s she joined the Communist Party of SA. She represented District Six on the Council of the Municipality of Cape Town from 1938 into the 1950s. She was jailed for participating in the passive resistance campaign in 1946. She was detained in 1960 under the emergency regulations. In 1962, a year before her death, she obtained the LLB degree. (From Protest to Challenge Vol IV 34)

9. Fred Carneson was born in 1920. He was a leading figure in the Communist Party of SA. He was an accused in the Treason Trial in 1956. He was banned, detained and jailed for 5 years for his activities on behalf of the Communist Party of SA. Upon his release in 1972 he went into exile to Great Britain. (From Protest to Challenge Vol IV 17)
10. A E "Sonny" Abdurahman, a teacher, was the nephew of Dr A Abdurahman. He was a prominent member of the Teachers' League of SA and of the Anti-CAD Movement and Non-European Unity Movement. He was also at one time General Secretary of the African People's Organisation.
11. The Torch 27 September 1948.
12. The Torch 4 October 1948.
13. The Torch 18 October 1948.
14. The Torch 13 June 1949.
15. The Torch 20 June 1949.
16. The Torch 29 May 1950.
17. R v Abdurahman 1950(3)SA 136A
18. The Torch 29 May 1950.
19. The TARC Reports issued by the Train Apartheid Resistance Committee (October 1948).
20. *ibid.*
21. Simons, J and R Class and Colour in SA 600
22. Mokone, S Majority Rule: Some Notes 64
23. Lodge T, Black Politics in SA since 1945 45

5. "THE TORCH" - A WEEKLY NEWSPAPER

"The Torch", a weekly newspaper, was published in Cape Town from February 1946 to December 1963. (1) It was the mouthpiece of the Non-European Unity Movement.

"The Torch" newspaper was published by Torch Printing and Publishing Company (Pty) Ltd, a limited liability company with offices at 196 Hanover Street in District Six, Cape Town. The Company had a nominal share capital of £2000 divided into 200 shares of £10 each. The Company was a non-profit making one and it depended for its resources on the sales of its weekly newspaper, advertisements and public donations. (2)

In the 1950s "The Torch" was said to have a circulation of 10 000 copies. (3) In 1946 "The Torch" sold for 2d per copy. The first directors of the Company were R O Dudley, H N Jacobs, J M Joshua, B Magan, E Ramsdale, W S Rule and W B Schlosz. (4)

"The Torch" proclaimed each week that it was "the only independent Non-European newspaper" for it had no connection with any other newspaper group or publishing concern. The responsibility for the production of the newspaper in the late 1940s and 1950s was in the hands of B M Kies, R O Dudley, G H Gool, E Ramsdale, Halima Gool, J Meissenheimer and S Edross.

"The Torch" was run on a completely voluntary basis and its production was a team effort. In its tribute to B M Kies "The Educational Journal", of which he had been the editor for 20 years, states inter alia: "Through "The Torch" Ben Kies and his fellow political journalists maintained a constant flow of reports, comments and political education that was to have a tremendous impact upon the whole (liberatory) movement. It kept vital political, economic, educational and other issues before its leaders and brought to them a regular

report on the political work of the movement." (5)

Hommel writes of B M Kies that "his incisive and penetrating analyses of and commentaries on events in South Africa appeared regularly in the weekly "Torch" newspaper, the mouthpiece of the NEUM and the only genuinely radical newspaper, during the 1940s and 1950s." (6) Lodge calls "The Torch" "a well-produced, if acerbic, newspaper." (7)

Expressing then current sociological theory Sheila Patterson writing in 1953 states: "A good deal of verbalised political aggression finds an outlet in the Coloured press Such verbalised aggression has therefore the advantage of being apparently overt, while avoiding any major repercussions. "The Torch" in particular is filled with attacks on the "white fascists" and "Herrenvolk" (8) and rather spiteful and belittling remarks about prominent white personalities which must afford considerable satisfaction to both writers and readers without producing any immediate adverse consequences." (9) That the policies advocated by "The Torch" did in fact have "major repercussions" and "immediate adverse consequences" for it will be demonstrated in this chapter.

NOTES:

1. Switzer, L and Switzer D The Black Press in South Africa and Lesotho.
2. File No. 4196/52 Master's Office, Cape Town - Auditor's Share Valuation Certificate dated 11 March 1953.
3. Patterson, S Colour and Culture in South Africa 160.
4. Switzer, L and Switzer, D op cit.
5. The Educational Journal, Jan - Feb 1980.
6. Hommel, M (Ed) Contributions of Non-European Peoples to World Civilization 47.
7. Lodge, T Black Politics in South Africa since 1945 87.
8. "Herrenvolk" is the German word for "master race". The concept of the Aryans as racially superior and thus constituting a "Herrenvolk" was propagated in Nazi Germany by Adolf Hitler and his followers who came to an ignominious end with the German defeat in the Second World War in 1945. The term "Herrenvolk" was used by the writers of "The Torch" newspaper in both an ironic and contemptuous sense to characterise the white ruling class minority in South Africa. But a Nationalist Government spokesman regarded the term "Herrenvolk" as appropriate. Thus P Sauer, Minister of Transport who was responsible for the introduction of segregatory measures on trains in the Cape Peninsula, said in Parliament on the 22 January 1948: "I consider that the European position in South Africa vis-a-vis that of the native. is that of a Herrenvolk. We are the superior race in South Africa.

We have 2000 years of civilisation behind us. We have the Western Civilisation and the Western way of life. Does not that in itself constitute us the Herrenvolk in South Africa?" (quoted in Lewsen, P Voices of Protest 283)

9. Patterson, S op cit 189 - 190.

5.1. DEFAMATION OF CHARACTER

Golding v Torch Printing and Publishing Co (Pty) Ltd
and Others 1948(3) SA 1067 C and 1949 (4) SA 150 C

Reputation, reputation, reputation!
O, I have lost my reputation.
I have lost the immortal part of myself,
and what remains is bestial.
- Shakespeare : Othello II : iii.

George John Golding was born at Ladismith in 1906. He trained as a teacher at Zonnebloem College and in 1943 he was principal of the Ashley Street Primary School in District Six, Cape Town. (1) In March 1943 he was appointed Chairman of the Coloured Advisory Council. (2) He was a moderate, accommodationist politician favouring methods such as petitions and deputations to the Government in order to secure political concessions or reforms. He was at this time a prominent member of the Teachers' League of South Africa which was then in the control of the "moderates" or "Old Guard". At its conference in mid-1943 Golding was elected editor of its official organ "The Educational Journal", defeating his rival for the post, B M Kies, by 440 votes. (3)

R E van der Ross, Golding's friend and colleague describes him thus: "a flamboyant person given to eye-catching personal habits of dress and bearing he had already achieved prominence as a tennis player and a participant in conferences where he spoke with feeling on the disadvantages to which Coloured people were subjected" and, says Van der Ross "politically, he favoured the path of compromise and co-operation with the authorities". (4)

Golding was also the founder and first and only president of a political organisation, the Coloured People's National Union (CPNU) formed in 1944. (5) He was editor of "The Sun" a weekly newspaper which was backed financially by "a group of liberal white sympathisers". (6) Lewis (7) writes "Golding, on behalf of the CPNU rejected calls for black unity, on the grounds that Coloureds shared a "very close affinity" with Whites, and

differed "ethically, socially and culturally from the native". He welcomed Smuts's statement in 1947 that the Coloureds were "an appendage to the European population" And Golding urged Coloureds to take pride in their identity as Coloureds and suggested that Coloured writers "immortalise and idolise qualities intrinsically Coloured."

Golding therefore personified the political policies to which the Anti-CAD Movement, in which B M Kies was a leading figure, was totally opposed. In the language of World War II, which was then still in vogue, Golding was branded by the Anti-CAD Movement as a Quisling, a traitor and a collaborator (the present-day equivalents being "sell-out", "puppet" and "stooge"). Golding's avowed policy of compromise and co-operation with the authorities placed him on a collision course with the Anti-CAD Movement. The Anti-CAD Movement had adopted a policy of protest, demands for full political rights and of boycott and non-collaboration with the dominant ruling group and its supporters in the ranks of the oppressed.

The growing strength of the Anti-CAD Movement and the effectiveness of the boycott in the political and social spheres resulted, inter alia, in Golding breaking away from the Teachers' League of South Africa to form, with a minority of like-minded teachers, including R E van der Ross, The Teachers' Educational and Professional Association and The Coloured Peoples National Union.

It is against this background that in 1948 Golding issued summons against the Torch Printing and Publishing Co (Pty) Ltd, the editor of "The Torch" and its printer for damages for defamation of character. He claimed damages totalling £4500, a considerable sum at that time.

Golding complained that he had been libelled in reports and cartoons which had been published in issues of "The Torch" between June and September 1946. In order to identify himself as the figure depicted in one of the cartoons he pleaded that he "was a keen tennis player, habitually wore a buttonhole and was in the habit of smoking

cigars". The cartoon referred to, in the words of Ogilvie Thompson AJ depicted "a top-hatted individual of enormously protuberant stomach - with tennis-racquet under his arm (the latter lettered CAC), outsize buttonhole, and large cigar protruding from the mouth of distinctly porcine features." (8) The cartoons by BESK were drawn by Salie Edross (ES) and the captions and labelling were provided by B M Kies (BK) - note the literary allusions in his titles: "The CAC through the Looking-Glass of the Ruling-Class" and "For Whom the Bell already Tolls."

Golding objected to being called "a Quisling" and to reports that he collected "slum rents", tried to slip into a White cinema and that he was well-known for giving "riotous parties". The trial came before Herbstein J in the Supreme Court, Cape Town on 7 June 1949. A H Broeksma, K C led L de V van Winsen, K C for the Plaintiff. D M Buchanan K C with him F P Rosseau appeared for the Defendants.

At the commencement of the hearing Herbstein J addressed Counsel as follows:

"I have read and re-read the papers and I have gained the impression that what is really involved in the dispute is not so much whether Mr Golding has been defamed or not, but the correctness or otherwise of two differing points of view on what is no doubt a very important political issue involving the Coloured community of the Union." (10)

The judge went on to say that the Court would not concern itself with politics and that if the trial lasted 10 to 14 days (it did in fact last for 10 days) it would cripple both parties financially. He suggested that the parties reach an out of Court settlement for which purpose he then adjourned the Court.

However a satisfactory settlement could not be reached and when the trial resumed the next day a motley collection of witnesses were called on Plaintiff's behalf, including H G Lawrence MP, a former cabinet minister in the Smuts government.

Plaintiff's witnesses did not find favour with Herbstein, J who said of the first witness, F P Joshua, Secretary of the CAC and also a teacher, that he was "on the whole

an impressive witness but he could hardly be called a non-partisan witness. Joshua's evidence on this aspect of the case (the defamation) is so confused and illogical as to make it quite impossible for the Court to consider him a "reasonable man." The Judge went on to say: "The next witness Mr Edgar Arthur Deane proved an even less reliable representative of the "reasonable man." Although he found that the following witness, Marthinus Frederick Pietersen, made "a most favourable impression on the Court" he stated that Pietersen also could not be described as a "reasonable man". The following exchange took place between Herbstein J and Pietersen who had said in his evidence-in-chief that he was a regular reader of "The Torch":

Herbstein J: Does "The Torch" appear monthly or weekly?

Pietersen: I don't know.

Herbstein J: Does it appear monthly?

Pietersen: I think so.

The Judge remarked shortly thereafter that it was quite clear that this witness had no independent recollection of the articles in question.

Mrs M Carelse, who was also called by the Plaintiff, let him down badly as this extract from her evidence demonstrates:

Adv Buchanan (cross-examining): Now, Mrs Carelse, a woman of your intelligence.....

Mrs Carelse (interrupting): I am afraid I'm going to disappoint you, Mr Buchanan. I am not as intelligent as I look.

Herbstein J said in his judgment: "Mrs Carelse can be dealt with shortly. She was an indignant witness but not an intelligent person". The final witness for Golding, Pieter Gabriel Damons, the judge found to be "pompous and somewhat anxious to impress the Court with his importance and cleverness" and he added "to sum up, the evidence of these witnesses did not persuade me that they could be taken as reasonable people in the sense

that they read the article in question with reasonable care and gave its meaning some thought."

Insofar as the political background to the case was concerned the defence elicited all the evidence it required from H G Lawrence and F P Joshua. The defence did not call any witnesses, closing its case after Golding's final witness had given evidence.

In his judgment Herstein J said "these actions (for defamation) are one of the consequences of the establishment of the CAC by the Government of which Field Marshall Smuts was Prime Minister and Mr Harry Lawrence a member of the Cabinet" and he then detailed the political background to the action.

Herstein J found that Golding had indeed been defamed when he had been reported as giving "riotous parties" and where an article had imputed dishonesty on his part. He was awarded only nominal damages of £150 and costs on the basis of a six-day trial and he was ordered to pay defendant's costs of the other four days.

This judgment cannot be construed as a victory for Golding. It seems apparent that Golding's intention in instituting action against "The Torch" was to eliminate his political opposition on one front, that is by attempting to silence its mouthpiece. Had Golding's action for damages been successful and had he obtained an order for payment of £4500 against "The Torch" it would undoubtedly have been placed in liquidation and it would have been closed down. That this was a politically motivated action was perceived by the trial judge from the outset. Golding attempted to use the civil court under the pretext of protecting his good name and reputation in order to deprive his political opponents of their freedom of speech and expression. I have not been able to ascertain whether the "group of liberal white sympathisers" above referred to financed Golding's action - but his costs must have been considerable.

"The Torch" appealed throughout the trial to its readers for financial support in terms such as: "The Torch is your paper. Defend it"; "Your part in the fight is to send

donations"; "Send money now. Defend the voice of the oppressed"; "The People's paper must go on". That these appeals were heeded appears from a notice in the issue of 20 June 1949 reading as follows: "Thanks to the People. The Torch wishes to thank all those people, many of them anonymous, who have rallied so magnificently to the defence of our paper. Official receipts are issued to list holders and individual donors.... with the people beside us, we are strong." B M Kies and the other journalists of "The Torch" newspaper saw the defamation action instituted by G J Golding against the newspaper as an attack on one of the "weapons of defence" of the oppressed. An article entitled "Defend The Torch" (11) which dealt with its fund-raising efforts said: "Many people do not realise how important a role "The Torch" plays in the struggle against oppression Let us not delude ourselves that the Herrenvolk will not attack us again. They tried once and failed but they will try again Our defence against last year's attack has not yet been completed. "The Torch" Defence Fund still has to find almost a quarter of the total expenses incurred in the case brought against it by Golding We need your help to complete this task before the Herrenvolk attack again. Remember that "The Torch" is your paper."

Golding's attempt to crush "The Torch" was a signal failure. However further tribulations lay ahead for "The Torch". Nevertheless "The Torch" continued to voice the sentiments of the Non-European Unity Movement, a part of the liberatory movement in South Africa, until December 1963, when at the height of the repressive actions of the apartheid regime, it had no option but to cease publication. The case of *Golding v Torch Printing and Publishing Co Pty Ltd* has become one of the leading cases on the law of defamation in South Africa.

NOTES:

1. Karis, T. and Carter, G M From Protest to Challenge Vol IV 32.
2. Van der Ross, R E The Rise and Decline of Apartheid 178.
3. Van der Ross, R E op cit 189.

4. Van Der Ross, R E op cit 206.
5. Van der Ross, R E op cit 206.
6. Hommel, M Capricorn Blues 90.
7. Lewis, G Between the Wire and the Wall 237.
8. 1948 (3) SA 1067 C at 1071.
9. Vide appendices 1.6 and 1.7 which reproduce these cartoons.
10. The Torch 13 June 1949.
11. The Torch 13 February 1950

5.2. "PROMOTING HOSTILITY BETWEEN NATIVES AND EUROPEANS"

Regina v Torch Printing and Publishing Co (Pty) Ltd
Magistrate's Court, Cape Town, February 1954

On 26 February 1954 Clifford Ernest Kies, (1) in his representative capacity as Chairman of Torch Printing and Publishing Co (Pty) Ltd, appeared before Mr G S Frank in the Magistrate's Court, Cape Town on a charge under the provisions of the Native Administration Act, No. 38 of 1927. (2)

He pleaded not guilty on behalf of the Company to an allegation that it had contravened Section 29(1) of the said Act, which section reads as follows:-

Any person who utters any words or does any other act or thing whatever with intent to promote any feeling of hostility between Natives and Europeans shall be guilty of an offence and liable on conviction to imprisonment for a period not exceeding one year or to a fine of one hundred pounds, or both.

The charge arose out of the publication in "The Torch" of 9 June 1953 of an editorial headlined "Against this Background". The editorial referred to the forthcoming conferences of teachers and the vital bearing they had upon the political future of the oppressed and it continued:

Two important lines of the Herrenvolk attack against the Non-Whites are aimed at both teacher and child. There is little doubting the fact that our teachers - who form the larger section of the intelligentsia - have made a substantial contribution to the implanting of new ideas, ideas of equality, freedom and struggle and nationhood, in the generation now coming to the fore..... The Herrenvolk know this full well and throughout the Union have attempted to intimidate and terrorise or bribe the teachers into silence or collaboration..... The second line of attack which is really a part of the first, is against the children of the oppressed people. We refer, of course, to the slave education plans put forward by the Eiselen Commission and soon to be taken over by the Du Plessis Commission. This attack upon our children is a long-range attack on the liberatory movement. It aims so to enslave the minds of our children that they will not accept the ideas of equality, freedom and struggle which we now hold dear and which so many of our teachers are instilling into the rising generation.

The accused was represented by Gerald Gordon QC who applied for his client's discharge at the conclusion of the Crown's case. The Magistrate granted the application

and acquitted the accused. The Magistrate found that the article in question did not refer to Africans only but to all Non-Whites and that it did not have the intent to promote hostility towards Whites. The article attacked the educational policy contained in the Eiselen Commission's Report. (3)

This criminal prosecution by the State against "The Torch" newspaper was the first of a series in which the State sought to use the criminal justice system to stifle political opposition. This action represented a form of harassment in which the newspaper and those connected with its production and publication were obliged to appear in the criminal courts to defend their political viewpoint. By imparting criminality to its viewpoints the State through this prosecution sought to bring the newspaper into disrepute generally and particularly in the eyes of its readers. The newspaper was obliged to expend its funds on legal representation and its representative faced the inconvenience and humiliation of appearing in the criminal court to answer a spurious charge.

"The Torch" itself said "We did not seek to go to Court. We were taken to Court. We won the case - but we have to meet the legal expenses. We cannot obtain costs against the Crown in the Magistrate's Court. We have to work very hard to meet the normal expenses of running the paper. These extra expenses tax our resources very severely. We need your help. Please send all donations to The Torch, 196 Hanover Street, Cape Town". (4)

NOTES:

1. C E Kies is the brother of B M Kies.
2. The Torch 2 March 1954.
3. Ibid.
4. Ibid.

5.3. CONTEMPT OF COURT

Regina vs Torch Printing and Publishing Co (Pty) Ltd
and Others 1956(1)SA 815 C

The path of criticism is a public way : the wrong headed are permitted to err therein: provided that members of the public abstain from imputing improper motives to those taking part in the administration of justice and are genuinely exercising a right of criticism and not acting in malice or attempting to impair the administration of justice, they are immune. Justice is not a cloistered virtue: she must be allowed to suffer the scrutiny and respectful, even though outspoken, comments of ordinary men.

- Lord Atkin in A P T Ambard v The Attorney-General of Trinidad and Tobago 1936 (1) All ER 704 (PC).

One year after its acquittal on the charge of "promoting hostility between Natives and Europeans" "The Torch" was again prosecuted on this occasion in respect of charges of contempt of court.

On 23 February 1955 Torch Printing and Publishing Co (Pty) Ltd, represented by Cecil Carelse Cooper (1) (who was also charged in his capacity as secretary of the company), Clifford Ernest Kies and Richard Owen Dudley in their capacity as directors of the company and Joyce Meissenheimer as editor of "The Torch", appeared in the Regional Court, Cape Town on three charges of contempt of court. At the trial the accused were all represented by Gerald Gordon QC. The Crown called as its only witness Captain F J Rossouw, the head of the Political Branch of the Criminal Investigation Department in Cape Town. Rossouw read into the record articles which had appeared in various issues of "The Torch" and which formed the basis for the charges of contempt of court.

The first charge of contempt related to reports which were brief and factual and contained no comment and which had appeared in "The Torch" of 24 August 1954 in adjoining columns. The first column contained a report of a case in which a Coloured male, Daniel Lindeboom had been sentenced to death for raping a 52 year-old White woman and the second column carried a report of a case in which a White male Sarel Lessing had received a sentence of nine months imprisonment with compulsory labour for

raping an 11 year-old Indian girl. The reports appeared under a common headline: "Rape of Justice".

The second contempt charge referred to a report in "The Torch" of 20 July 1954. This report stated that an African woman had been jailed for 4 months after her conviction under the Immorality Act No. 21 of 1950 while the White farmer with whom the offence had been committed, was acquitted one month later in a separate trial. In its comment on this case "The Torch" said that "justice was allowed to take strange and unique courses in South Africa" and that the case was "a shocking revelation of what is politely referred to as an anomaly of South African justice".

The third contempt charge related to a leading article in "The Torch" of 12 October 1954 headed "Hose-pipe Justice". (2) The article commented on the Snyman case in which two white farmers, the Snyman brothers, and their African labourer, who were charged with the murder of an African convict farm labourer who they had beaten to death, were found guilty of common assault by a jury.

At the conclusion of the Crown's case Adv Gordon for the defence applied for the discharge of all the accused on all three counts. The accused were discharged on the first two counts of contempt but the court ruled that they had a case to meet on the third charge.

The defence called as its only witness R O Dudley who stated in his evidence-in-chief that he did not know the judge in the Snyman case. The purpose of the article was to criticise the legal system which permitted of inequality. The legal system was the system of laws as passed by Parliament. The legal system in the country admitted of inequality. The court had to administer the law. The judges and other judicial officials had to administer the laws as they found them whether they liked them or not and to that extent they were at the mercy of the law. Judges had expressed disfavour with laws they had to administer particularly in cases of compulsory sentences of whipping and the

imposition of indeterminate sentences.

The examination-in-chief continued as follows:

- Adv Gordon: What is the central idea in the article?
- Mr Dudley: It is summed up in the sentence: There is no justice for Non-Europeans under the law.
- Adv Gordon: Did you intend to attack the judge in this case?
- Mr Dudley: No. In the news columns "The Torch" had given publicity to and commended the judge's comments on the case.
- Adv Gordon: What were you attacking?
- Mr Dudley: In the opinion of "The Torch" other newspapers and sources of opinion had acted wrongly in canalising criticism against the jury, they were misdirecting the attention of the public.
- Adv Gordon: And "The Torch"?
- Mr Dudley: "The Torch" held that the fundamental cause lay not with the jury, but in the legal system itself.
- The Magistrate: Including the judges?
- Mr Dudley: No. The judges are there to administer the law as they find it. They cannot be blamed for the inequalities which exist in the law. "The Torch" did not have any intention of reflecting upon the judges as such.

Under cross-examination R O Dudley said that "The Torch" reflected the opinions of Non-Europeans interested in the struggle for their democratic national rights. It was the view of "The Torch" that the primary cause for what had happened lay in the very legal system of the country itself. The laws were a result of the economic, political and educational policies of the State, and they, the Non-Europeans, had to face a legal system legislating for inequality. It was the purpose of the article to show that these very laws,

which the courts had to administer, were the primary cause. The persons who administered the laws could not be blamed for the laws. They had to administer the laws whether they liked them or not.

In his judgment the magistrate rejected the evidence given on behalf of "The Torch". He found that contempt of court had been committed and that the article was a slur on the whole judiciary of the country. The company was fined £40, its directors and editor £35 each (or two months imprisonment) and its secretary £5 (or seven days imprisonment).

An appeal was noted. The appeal was heard by Ogilvie Thompson and Van Winsen JJ on 13 December 1955. Gerald Gordon QC appeared for the Appellants.

One of the grounds of appeal related to the fact that the article complained of had been abbreviated in the charge sheet (3) (by the omission of the second and fourth paragraphs of the relatively short four-paragraph article) and that the whole article should have been incorporated into the charge sheet.

Adv Gordon for the Appellants argued that the running together of the first and third paragraphs of the article brought about a distortion of the article as published and that therefore the charge sheet was defective. This argument was rejected by the court. The court held that the charge sheet was not defective by reason of any distortion of the article as published. The court held further that what had been set out in the charge sheet must for the prosecution's purposes constitute the crime charged and the prosecution could only therefore rely on those extracts to establish the charge against the accused. The court also found that any divergence which might have existed between the article published and the extract given in the charge sheet had not prejudiced the accused.

It was further argued on behalf of the Appellants that it had to be shown that the passage complained of necessarily violated the dignity and respect of the judges in the eyes of any reasonable person and that the contempt must be intentional. The accused

was entitled to show from the circumstances or context or otherwise an absence of intention i.e. his bona fides or that the passage was the truth. Adv Gordon contended that the passage was no reflection on the judges.

In dealing with the argument that "the article was merely an attack upon the members of the jury at that trial and upon the newspapers and that it revealed no contempt of the particular court which heard the trial" Ogilvie Thompson J said: "Assuming that to be so, it in no way concludes the matter; for if, when rightly construed, that portion of the article which appears in the charge sheet amounts to an improper reflection upon the judges and magistrates administering justice in our courts, it will, in my judgment, constitute the crime of contempt of court to have published it." (4)

Ogilvie Thompson J then went on to consider what constituted contempt of court in our law quoting with approval the test laid down by De Villiers CJ: "whether the words are calculated to bring the administration of justice into contempt". (5)

Ogilvie Thompson J then proceeded to deal with the article itself and noting the writer's "somewhat intemperate language" found that paragraph 3 of the article was the critical passage. This passage reads as follows: "Most non-Whites have had too much experience of law courts both high and low, with or without juries, to be deceived by such patent falsehood" (that the explanation for the jury's verdict lay in the jury system and in the inadequate control of convict labour). He ruled that to say that "in cases where Whites and non-Whites are involved travesties of justice are frequent in our courts, is in my judgment, calculated to bring the administration of justice into contempt." (6) He found further that the passage must, "inevitably, undermine the confidence of the public in the impartiality of our courts which in turn operates to the grievous disadvantage of all who are subject to the jurisdiction of those courts." (7)

Ogilvie Thompson J referred to the context in which the remarks had been made, since, he said, "it is essential to distinguish between legitimate criticism and contempt of

court." (8) He then quoted the famous dictum by Lord Atkin (*supra*) but, he pointed out that: "It is however equally important and unquestioned that freedom to criticise cannot be permitted to degenerate into licence." (9) He then continued with what to my mind is a remarkable admission having regard to the general tenor of his judgment: "I imagine that no fair-minded and adequately informed person would assert that injustices, or what appear to persons not knowing the full facts to be injustices, never occur in our courts - magisterial or Supreme - in cases where Whites and Non-Whites are involved. That juries cannot always be relied upon to do justice in such cases has indeed received a measure of legislative recognition in the recently amplified provisions of sec 111 (h) of the Code (Act 56 of 1955) whereunder the Minister of Justice may direct a trial before a judge without a jury when the indictment charges an offence "towards or in connection with a Non-European if the accused or any of the accused is a European or towards or in connection with a European, if the accused or any of the accused is a Non-European." He found further that the "sweeping statements" in the article were a "wholly unwarranted imputation against judges and magistrates in their administration of justice" and such statements constituted contempt of court. (10) He then commented that had the writer of the article expressed his views on the Mpikwa trial "by way of fair and temperate criticism" an offence would not have been committed.

In his judgment Ogilvie Thompson J also rejected the argument on behalf of the Appellants, and the evidence led at the trial, that the article complained of had been an attack upon the legal system in the country and had been mere comment upon "the indisputable fact that quite independently of social distinctions, there exist in our statute book certain measures which differentiate between Whites and Non-Whites and which therefore accord legislative authority to colour discrimination." (11) He found that the phrase "legalised tyranny" (which in my opinion, in the context of the article complained of clearly refers to apartheid legislation which the judge prefers to describe as "certain

measures which accord legislative authority to colour discrimination") was not adequately explained or sufficiently related to the Mpikwa case.

Having ruled that the article exceeded the bounds of fair and honest criticism and that it constituted the crime of contempt of court, Ogilvie Thompson J still felt constrained to refer to two decisions relied on in argument by Adv Gordon for the Appellants, namely Nyikila's case (12) and Sachs' case (13) both of which cases he ruled were distinguishable from the case with which he was dealing.

In Nyikila's case (supra) the accused told the magistrate "because I am a native I am always considered guilty. If I was a European the matter would be different." He was convicted of contempt in *facie curiae* but his conviction was set aside on review, the court holding that in the context the words were merely a reflection on the methods of the police or upon the general administration of justice and it was no insult or reflection upon the court. Ogilvie Thompson J commented that in Nyikila's case Graham JP had only been concerned with the question of whether or not the accused had intended to insult the presiding magistrate.

In Sachs' case (supra) the accused had said during the course of a speech in which he referred to the conviction of one Miller "this is what you call justice in these courts. You have no justice in this country" and Greenberg J had ruled that the remark had been made against the police for allegedly obtaining Miller's conviction on perjured evidence rather than a reflection on the court which would amount to contempt of court. Ogilvie Thompson J said that in Sachs' case although the remark when taken by itself appeared to be derogatory of the courts when such remark was taken in context it would not constitute contempt.

Ogilvie Thompson J (14) dismissed the appeal in "The Torch" case and confirmed the convictions and sentences imposed therein.

NOTES:

1. C C Cooper, the brother-in-law of B M Kies, died in August 1992.
2. Vide Appendix 2 where this article is reproduced in full.
3. Vide Appendix 2.1 where the abbreviated article is set out.
4. 1956 (1) SA 815 C at 819.
5. In re Neethling 1874 Buch 133 at 134.
6. 1956 (1) SA 815 C at 821
7. Ibid 821.
8. Ibid 821.
9. Ibid 821.
10. Ibid 822.
11. Ibid 823.
12. R v Nyikila 1931 EDL 175.
13. R v Sachs 1932 TPD 201.
14. Ogilvie Thompson J was also connected with the earlier case involving "The Torch" newspaper. In 1948 he delivered judgment in the Plaintiff's favour on exceptions to a plea and applications to strike out in the defamation action brought against the newspaper by G J Golding (1948(3) SA 1067C). Van Winsen J who heard the appeal with Ogilvie Thompson J in the contempt of court case was also connected with the earlier case against "The Torch". He had been junior counsel for the Plaintiff Golding who was awarded nominal damages in that case. In 1971 Ogilvie Thompson JA was appointed to the country's highest judicial office, Chief Justice. In 1972 he gave judgment against the appellant in a celebrated case of contempt of court involving Professor Barend van Niekerk of the Department of Law of the University of Natal (S v Van Niekerk 1972(3) SA 711A). His judgment in this case is critically examined by J Dugard in (1972) 89 South African Law Journal 282. He retired as Chief Justice in May 1974 and he died on 30 June 1992.

5.4. CRIMINAL LIBEL

Regina v Torch Printing and Publishing Co (Pty) Ltd
and Others. Regional Court, Cape Town, 3 July 1957.

Libel holds the scales of justice between the protection
of private reputation on the one hand and
public freedom of speech on the other.
- Joseph Dean in Hatred, Ridicule or Contempt
(1953) 10.

In May 1957 the Torch Printing and Publishing Co (Pty) Ltd represented by its secretary C C Cooper, who was also charged in his personal capacity as an officer of the Company, C E Kies and G W Maurice as directors of the Company and J Meissenheimer, editor of "The Torch", were served with summonses to appear in the Regional Court, Cape Town on 3 July 1957 on charges of criminal libel. (1)

The charges related to a report in "The Torch" in October 1955 concerning four African teachers who had replaced four other African teachers who were officers and executive members of the Cape African Teachers' Association and who had been dismissed from their posts by the Native Affairs Department when it took over control of schools for African children. (2) The Crown alleged that "The Torch" had published "false, scandalous, malicious and defamatory libel with intent to injure and insult or maliciously contriving and intending to injure the said teachers in their good name, credit and reputation and to bring the one or the other or all of them into public contempt, ridicule or disgrace." The charges were brought under Section 1 of Act 46 of 1882 of the Colony of the Cape of Good Hope.

Once again the State had seen fit to take action against "The Torch" on the basis of a report which had political implications. "The Torch" was again obliged to appeal to its readers for financial support and it did so in the following terms:

TORCH DEFENCE FUND - URGENT APPEAL.

The Torch Funds Committee makes an urgent appeal to all well-wishers and supporters of "The Torch" to make a generous contribution to its Defence Fund to meet the heavy legal costs defending "The Torch" against charges of criminal libel

brought against it by the Crown. All contributions will be sincerely welcome and may be sent to the Secretary, Torch Defence Fund, Box 3837, Cape Town. Please give generously. Send your donations along now. DEFEND THE TORCH.

The Company, its directors, secretary and the editor instructed Attorney C M Kobus (3) to act for them and Adv I J Bleiman was briefed to appear at the trial.

When the case came up for trial on 3 July 1957 the prosecutor informed the Court that the Crown was withdrawing the charge against all the accused as charges under the Criminal Libel Law, Act 46 of 1882 had to be brought against the publishers of the alleged criminal libel within six months of date of publication thereof. (4)

Again "The Torch", its producers and managers had been put to considerable inconvenience and expense for expressing political opinions which did not find favour with the State. It is not now possible to establish precisely which of the articles which formed the basis of the various charges of defamation of character, contempt of court and criminal libel were penned by B M Kies but some of them certainly bear evidence of his distinctive literary style.

"The Torch" on 9 July 1957 published the following notice:-

THANK YOU.

"The Torch" wishes to thank all its readers, well-wishers and the many organisations in the Liberatory Movement, who so readily and generously responded to the appeal to pay the heavy legal costs incurred in the defence of "The Torch". The assistance is deeply appreciated, more so since "The Torch" is well aware of the constant and exacting demands made on all organisations in these times to keep the liberatory movement healthy, vigorous and alive."

"The Torch" was of course not the only radical newspaper which was subject to harassment and intimidation by the State through its criminal justice system. Livingstone Mqotsi, secretary of the All-African Convention and Joint-Secretary of the Non-European Unity Movement and a secondary school teacher who had been summarily dismissed by the Native Affairs Department, had similar experiences with his newspaper in the 1950s:-

"Meanwhile Mr Mqotsi started a subsidiary paper Indaba Zase Monti (East London News) a Xhosa-English weekly in which he lashed out at injustices against black oppressed in South Africa. The police instituted prosecutions for criminal libel. He was acquitted in every case, but this was an unbearable financial drain which was what the police reckoned on." (5)

Another radical newspaper, "The Guardian", mouthpiece of the Communist Party of South Africa which was first published in 1937, was banned in May 1952 under the provisions of the Suppression of Communism Act No. 44 of 1950. Its successors suffered a similar fate-"Advance" was banned on 22 October 1954 and "New Age" was temporarily banned in April 1960 and finally banned on 30 November 1962. (6) Issues of "The Torch" were banned in 1960 under the Emergency Regulations on the grounds that "The Torch" contained "a systematic publishing of matter which is of a subversive character." (7) There was thus a sustained and deliberate assault on the freedom of the press by the apartheid regime during the 1950s and 1960s.

NOTES:

1. "The Torch" 14 May 1957.
2. loc cit.
3. Cadoc Mngweno Kobus, a graduate of the University of Fort Hare, had been a teacher at St John's College, Umtata. He qualified as an attorney in 1954. He was a leading figure in the Cape African Teachers' Association and in the All African Convention, both affiliates of the Non-European Unity Movement. He was the first African attorney to practise in Cape Town. He had offices at 52 Caledon Street, District Six, Cape Town. In the early 1960s he was forced by the authorities to leave Cape Town when the provisions of the Group Areas Act were enforced against him. He is now in his 80s and he lives in the Transkei.
4. The Torch 9 July 1957.
5. Mqotsi, L M The House of Bondage 233.
6. Karis, T and Carter, G M (Eds) From Protest to Challenge Vol III 806.
7. Extraordinary Government Gazette No 6410 dated 5 April 1960 (Application of Regulation 9 of the Emergency Regulations Proclamation No 91 dated 30 March 1960)

6. SUMMARY DISMISSAL

Meiring N O and Olivier v Kies 1958(3)SA 511 C

Meiring N O v Van Schoor 1955(3)SA 511 C

Van Schoor v Meiring N O 1959(2)SA 413 A

Yes, you have ravish'd justice;

Forced her to do your pleasure.

John Webster: The White Devil (1612) 11.i.92

The General Secretary of the Teachers' League of South Africa, A Fataar, (1) issued a statement in 1955 on proposed amendments to the Cape Education Ordinance then being considered by the authorities. The opening paragraph of this statement spells out the political motives behind the proposed amendments:-

The Education Amendment Ordinance, 1955, presently passing through its various stages in the Provincial Council, represents a direct attack on the rights and privileges of teachers in the Cape Province. Its provisions are purposely calculated to deny to the Coloured teachers, in particular, the opportunity to engage in the struggle for the educational advancement of the Non-European people and to participate in the movement of the people against oppression and the colour bar. Moreover, the terms of the ordinance are directed especially against that section of the Coloured teachers organised within the Teachers' League of South Africa, which has identified itself completely with the struggle for liberation and freedom. (2)

In an address he delivered on 29 May 1943 B M Kies said on the question of leadership of the liberatory movement: "It is a known historical fact that the emancipatory theory and the practical leadership always come from the intelligentsia. Our intelligentsia has sprung straight from the loins of the working class..... They belong to the people and the people are all around them. I refer of course, mainly to the teachers. For almost the only persons amongst the Non-Europeans who have had more than just a mere smattering of education are the teachers..... The leadership will come mainly from them." (3) This indeed proved to be the case during the 1940s, 1950s and early 1960s.

By 1955 B M Kies had been on the teaching staff of Trafalgar High School for 15 years and he occupied the post of Senior English Master. He was a leading figure in the

Teachers' League of South Africa and he was editor of its official organ "The Educational Journal".

On the 6 September 1955 the Secretary of the Cape Education Department addressed a letter to B M Kies charging him with misconduct under para (a) of Sub sec (i) of Sec 377 bis of Ordinance 5 of 1921 (as amended by Sec 6 of Ordinance 6 of 1955). It was alleged that he, as editor of "The Educational Journal", had published the presidential address given by W P van Schoor at the annual conference of the Teachers' League of South Africa during June and July 1955. He was alleged to have propagated ideas or actively calculated to promote antagonism amongst the Non-White population of the Union against the White population and to have impeded, obstructed or undermined the activities of the Provincial Administration and Department of Native Affairs. (4)

A formal enquiry into these charges took place in Cape Town on 1 and 8 November 1955 and 19 December 1955 at which B M Kies was represented by Gerald Gordon QC. Advocate A P Burger acted as prosecutor on behalf of the Education Department. J G Meiring, (5) Superintendent-General of Education presided. At the close of the enquiry B M Kies was found guilty of the charges brought against him.

On 13 February 1956 the Secretary of the Cape School Board addressed a letter to B M Kies in terms of which he was summarily dismissed from his teaching post at Trafalgar High School. (6)

W P van Schoor, a teacher of 21 years standing, was likewise summarily dismissed from his post as Senior Method Master at Sohnge Teachers' Training School, Worcester where he had held this post for the previous 14 years. The basis for his dismissal was the address he had given at the said conference.

The Teachers' League of South Africa, in a statement dated 18 February 1956 (7) condemning the dismissal of B M Kies and W P van Schoor declared:

Both these teachers have devoted themselves with skill to the service of education,

are widely esteemed for their professional ability, and have contributed in no small measure to the maintenance of the highest professional standards in the schools.

The dismissal of the two teachers who not only have outstanding professional records but have also played a leading part in the life of the community and especially in the struggle of the Non-Europeans for democracy and for a democratic system of education for all, irrespective of race, colour or creed, follows upon the dismissal last year of several of the foremost teachers belonging to the Cape African Teachers' Association. For years Non-European teachers have provided informed leadership in the organisations of the people, and it is clearly one of the consequences of the ordinance that, not only will the Non-European peoples be decapitated of this progressive leadership, but the schools denuded of the most open, active and enquiring intellects for the education of the children. We cannot warn strongly enough against the irreparable damage pupils, parents and the Non-Europeans as a whole, must suffer as a result thereof.

The Cape Town - Woodstock Parent - Teacher Association also protested against the dismissals and demanded the unconditional re-instatement of the teachers, adding:

Both these teachers have given years of outstanding service to the students placed in their care. They are men of the highest professional standing and integrity. The high positions they held for many years at the respective schools bear sufficient testimony to their sense of duty and self-discipline as teachers and educationists..... The Cape Town - Woodstock PTA rejects the allegations of "misconduct" brought against these two teachers. At all times they have opposed antagonism engendered by a colour bar system of education. They have consistently condemned chauvinism - White or Black - and have striven at all times for equal educational opportunities for all sections of the people. The accusation of "promoting antagonism" against such teachers is a travesty of the principles of truth and justice. (8)

In its statement protesting against the "victimisation of teachers" the Forum Club issued a statement on 19 February 1956 which said, inter alia,

We reject with contempt the outrageous slander in the Administration's charge that Messrs Kies and Van Schoor are guilty of stirring up racial antagonism against their White fellow-countrymen. In the face of the well-known democratic views of these two teachers, this vulgar bureaucratic vilification in our view amounts to no less than a crude frame-up which will deceive only ignoramuses, half-wits and children. It is, to say the least ironical that Olivier and Meiring, leading spokesmen of the Nationalist Party - a party notorious for its racialist policies; a party abhorred, despised and rejected throughout the world for its utterly shameless racialism and which dedicates itself to the perpetuation and entrenchment of racial discrimination throughout our country, thus stirring up racial antagonism to a degree unprecedented in this race-ridden society - should attempt to besmirch with a charge of racialism, men, whose whole lives have been devoted to the extirpation of the canker of racialism from our entire national life, particularly in the field of

education. (9)

At a public meeting held in the Drill Hall Cape Town on 26 February 1956 a resolution was passed protesting against the dismissal of B M Kies and W P van Schoor, demanding their immediate and unconditional re-instatement and commending "the high professional standards that have always been maintained by the two teachers" and affirming that "in the eyes of the Non-European people they have committed no offence to warrant their dismissal from the profession." (10)

The Teachers' League of South Africa had pledged that it would "struggle for the reinstatement of the two teachers" and B M Kies and W P Van Schoor both contested their respective dismissals in Supreme Court actions. These were heard together in Cape Town on 23 September 1957 and 26 May 1958 before Van Winsen and Watermeyer J J when exceptions to Plaintiffs' declarations were argued by D P de Villiers QC (with him A P Burger) for the excipients and Gerald Gordon QC (with him I J Bleiman) for the respondents, B M Kies and W P van Schoor.

Watermeyer J giving judgment on 23 June 1958 summarised the address by W P van Schoor, which had led to the dismissals, as follows:

It is sufficient to say that in it (the published address) Van Schoor strongly criticised the implementation of the Bantu Education Act, 47 of 1953, expressed sympathy with the Cape African Teachers Association in their struggle "for a democratic system of education" and condemned the system of separate education of the Non-White peoples of South Africa. (11)

Watermeyer J found that the Defendants had the power in law to dismiss W P van Schoor and they succeeded substantially in their exceptions, with B M Kies and W P van Schoor being ordered to pay costs. W P van Schoor's case was taken on appeal to the Appellate Division, but the appeal was dismissed. (12) In the final analysis B M Kies and W P Van Schoor were deprived of their livelihoods because of the political views they had expressed.

The education authorities had brought about amendments to the Education

Ordinance for the specific purpose of gaining legal power to dismiss teachers who espoused political causes opposed to the apartheid policies of the regime. The State, through its agency, the educational authority, employed quasi-judicial forms (formal written notices, a board of enquiry where legal representation was permitted) to achieve its objectives. The amendments to the Education Ordinance were couched in such broad and vague terms as to preclude interference by the Courts. The objections of their colleagues and the community which they served were totally ignored by the apartheid regime. Their appeal to the Courts for relief was unsuccessful and in the event B M Kies was forced to seek another means of livelihood. W P van Schoor, in poor health, harassed by the Special Branch of the South African Police (he was also served with banning orders in 1959 confining him to the Cape Peninsula and prohibiting him from attending any gatherings) left the country in the 1960s to go into exile in England where he died on 17 March 1971 at the age of 58 years. (13)

NOTES:

1. Alie Fataar (born in 1907) a graduate of the University of Cape Town, was a high school teacher in the Cape Peninsula. He was a prominent member of the Teachers' League of South Africa, the Anti-CAD Movement and the Non-European Unity Movement. He was banned in 1961. He left South Africa in 1965. He taught in Zambia. Subsequently he moved to Zimbabwe where he worked in the Ministry of Education and Culture. He still resides in Zimbabwe.
2. "Statement on the Education Amendment Ordinance 1955" issued by the General Secretary on behalf of the Action Committee of the Teachers' League of South Africa.
3. Kies, B M The Background of Segregation 14 - 15.
4. 1958 (3) SA 511 C at 514.
5. J G Meiring was the father of the present Administrator of the Cape, Kobus Meiring.
6. Ibid 512.
7. "Statement on the dismissal of Messrs W P van Schoor and B M Kies" issued by the Executive Committee of the Teachers' League of South Africa 18 February 1956.
8. The Torch 21 February 1956.
9. "Protest against Victimisation of Teachers" issued by The Forum Club 19 February 1956.
10. "Teachers' League of South Africa - Peninsula Council of Parent - Teacher Association. Resolution of Public Meeting held in the Drill Hall, Cape Town on 26 February 1956".

11. 1958 (3) SA 511 C at 514.
12. 1959 (2) SA 413 A.
13. Van Schoor, W P The Origin and Development of Segregation in South Africa - A Biographical Note.

7. **ARBITRARY BANNING ORDERS**

Dudley v Minister of Justice 1962(4)SA 293 C and 1963(2)SA 464 A

Toute loi qui viole les droits imprescriptibles de l'homme, est essentiellement injuste et tyrannique; elle n'est point une loi.

(Any law which violates the indefeasible rights of man is essentially unjust and tyrannical; it is not a law at all.)

Maximilien Robespierre (1758-1794) in Declaration des Droits de l'homme, 24 April 1793, XVIII.

The Suppression of Communism Bill was read for the first time in the House of Assembly on 4 June 1950. On that occasion Sam Kahn, the Natives' Representative and himself a leading member of the Communist Party of South Africa (against which party the Bill was ostensibly aimed) made the following prescient statement:

Knowing the appetite for wide-reaching powers which members of the (Nationalist) Government possess, it is possible that the measure goes beyond the suppression of the Communist Party and interferes with the rights and liberties of others. It is a dangerous practice which comes very close to government by decree or edict. (1)

In its issue of 17 June 1950 "The Torch" newspaper devoted its front page to reports on the Suppression of Communism Bill. The newspaper gave prominence to a statement on the Bill issued by the Johannesburg Bar. The report was headlined "Rand Lawyers oppose legal principles of Anti-Red Bill" and "Freedom of South Africa in Jeopardy".

The statement by the Johannesburg Bar said, in part,

That no man should be punished or otherwise made to suffer by the State except for a distinct breach of law, provided in the ordinary legal manner, is a principle upon which all freedom is founded. Tamper with this foundation and the whole edifice falls down. (2)

The statement said that the Bill did tamper with this principle and it enabled the Government of the day "to punish persons, to take away their freedom and property without a trial in court and it does not allow these persons to go to court to defend themselves."

"The Torch" reported that the statement also said that "A person may be banished from his home, not because he has committed any offence, but because the Minister of the day believes that he is likely to advocate communism. The Government of the day is empowered to suppress newspapers, books and other publications without having to prove any charge in the Courts." The statement concluded that the Bill was an attack upon fundamental rights and liberties and upon the rule of law which was based on those rights and liberties.

"The Torch" commented on the Bill in the following terms:

Sweeping powers are given to the Minister of Justice and the Governor-General Powers which go beyond the law and the law courts expose every Non-European and sympathetic European who speaks of democracy for Non-Europeans, to the terror of being seized, declared a "communist", stripped of his property and livelihood and thrown into gaol for 10 years. (3)

B M Kies was one of the first of the leading figures in the Non-European Unity Movement to be subjected to a banning order. On 1 April 1959 an order under Section 9(1) of the Suppression of Communism Act No 44 of 1950, was served on him. The banning order was signed by C R Swart, Minister of Justice. B M Kies was prohibited from attending all gatherings in the Union of South Africa and South West Africa for a period of 5 years as from 12 March 1959.

The banning order came at a time when B M Kies, having been dismissed from his post as a high school teacher, had seen the action instituted by him in the Supreme Court challenging his dismissal end in failure. The banning order brought to an end his overt political activities. He was obliged to give up attendance at meetings of movements and associations with which he had been connected for the previous decade and more.

On 5 April 1959 the President of the Teachers' League of South Africa, issued a statement rejecting the banning order on B M Kies as "the dictatorial and arbitrary decree of a Minister of State" and demanding its immediate and unconditional withdrawal. The statement said that the banning order was "another example of the extent to which the

term "communist" is being employed to cover all persons and activities opposed to the concept of Herrenvolkism prevailing in the country and the extent to which the Suppression of Communism Act is being used as a political instrument to silence all opposition to the State ideology".(4) B M Kies had never been a member of the Communist Party of South Africa. A protest meeting against the banning of B M Kies was held in the Banqueting Hall, Cape Town on 12 April 1959. The meeting was called by the Anti-CAD Movement. This meeting passed a unanimous resolution condemning the "Hitlerite ban" placed on B M Kies and calling for the repeal of the Suppression of Communism Act and the lifting of all bans imposed under that Act. The resolution declared that:

- (i) This fascist decree preventing Mr Kies from attending any gathering in the Union or South West Africa for a period of five years is not only a gross violation of the personal liberty and fundamental rights of Mr Kies, but is a direct assault upon the organisations of the people in their struggle for full citizenship.
- (ii) This ban and the bans placed on all other democrats in the liberatory movement, are part of the ruthless attempts by the Herrenvolk to paralyse and immobilise the struggles of the oppressed for freedom, and to crush all opposition to the despotic rule by special State Departments and the State Police being enforced in Group Areas, Reserves and locations. (5)

On 18 December 1959 similar banning orders were served on three other leaders of the Non-European Unity Movement, namely, W P van Schoor, R E Viljoen and N A Murison. In addition W P van Schoor and R E Viljoen were served with notices under Section 5(3) of the Riotous Assemblies Act of 1956 confining them to the magisterial districts of Cape Town, Simonstown, Wynberg and Bellville on the grounds that the Minister of Justice, F C Erasmus was satisfied that they were "promoting feelings of hostility in the Union of South Africa between the European inhabitants of the Union on the one hand and the Non-European section of the inhabitants on the other hand". (6)

The National Anti-CAD Movement issued a statement entitled "Why were these men banned?" which said, inter alia,

The Herrenvolk attack the oppressed people's organisations by banning the leadership. They hope that the organisations will collapse; they hope that the people will be left disorganised and terrorised so that they may be oppressed and exploited more easily. The Herrenvolk hope, further, that with those who lead the struggle for full equality out of the way, with the progressive organisations destroyed, the quislings and collaborators will be able to work, without opposition, to betray the oppressed people and to work machinery by which they are oppressed and exploited, so that Herrenvolkism can go on for another 300 years. THAT IS WHY THEY HAVE BEEN BANNED.

In September and October 1961 a further spate of banning orders under the Suppression of Communism Act and Riotous Assemblies Act were issued against the leadership of the Non-European Unity Movement. In Cape Town banning orders were served on R O Dudley, G L Abrahams, A Fataar, V Wessels, E L Maurice, C Pieterse and J Gool, all of whom were teachers. They were all active in the Teachers' League of South Africa. J Meissenheimer, the Editor of "The Torch" newspaper was also banned under the Suppression of Communism Act.

A statement addressed to students by the President of the Teachers' League of South Africa and the Secretary of the Anti-CAD Movement was issued on 18 October 1961 and asked "Why have these teachers been banned?" The statement gave the following reasons:

They are opposed to slave schooling that is being prepared to you. They are fighting against the transfer of schools to the hated Coloured Affairs Department. They are fighting for a full equal democratic system of education for all children of this land. (8)

On 27 November 1961 a further banning order was served on B M Kies. The order was signed by B J Vorster, Minister of Justice, and confined him to the Magisterial districts of Cape Town, Wynberg and Simonstown for a period of 5 years. The order was made under the provisions of the Suppression of Communism Act No 44 of 1950, after the Minister of Justice had considered a report on B M Kies made by a committee appointed in terms of the Act. (10)

At the time of the second banning order, B M Kies had only been in practice as an

advocate for seven months. The banning order affected not only his right of freedom of movement but also his livelihood. He was now obliged to first obtain permission before he could accept a brief to appear outside of the magisterial districts to which he had been confined.

He applied to the authorities for a blanket permit to enable him to appear in his professional capacity where he was briefed in matters to be heard in courts outside the areas to which he was confined. His request was turned down and he was informed that he should apply for permission whenever it became necessary. (11)

In August 1962 B M Kies was briefed to defend a Coloured taxi driver who was charged with the rape of a White woman. The case was to be heard in the Circuit Court at Oudtshoorn. B M Kies applied to the Minister of Justice for permission to travel to Oudtshoorn for the purpose of conducting the defence in this trial. But a few days before the trial was due to commence he received a telegram from the Minister turning down his application. But only a short while before he had obtained permission to appear in a case in Somerset West. (12)

In March 1963 he was granted permission to defend 20 accused persons in Paarl. The accused were facing charges of sabotage which arose out of a riot which had taken place at Paarl on 22 November 1962. Two whites had been killed and three others injured. Six Africans had been killed and five others injured when the police opened fire on a crowd of about 100 persons in the central shopping area.

There seemed therefore to be no particular logic in the granting or refusal of permission to B M Kies to leave the magisterial districts to which he had been confined.

In June 1962 B M Kies was briefed as junior to G Duncan QC to appear in the Supreme Court Cape Town to argue an application brought by R O Dudley against the Minister of Justice. R O Dudley was a high school teacher in the Cape Peninsula and a part-time lecturer in mathematics and applied mathematics at the Cape Technical College,

Cape Town. He had been banned under Section 9(1) of the Suppression of Communism Act, No 44 of 1950, from attending any gatherings in the Republic of South Africa, or the territory of South West Africa, for five years as from 9 October 1961. He was specifically permitted to teach at the high school at which he was employed. He sought a declaratory order to the effect that he was not precluded by reason of the banning order from teaching at the Cape Technical College. He had applied to the Minister of Justice for such permission which had been refused.

The application was argued before Beyers JP on 8 June 1962. On 31 August 1962 Beyers JP ruled that the applicant was precluded from teaching at the Cape Technical College since assemblies of students or personnel at the college constituted "gatherings" in terms of the Act. (13)

An appeal was noted. The matter was argued before the Appellate Division on 26 February 1963 by G Duncan QC (with him B M Kies) for the appellant. J A F Nel appeared for the Respondent. On 12 March 1963 Steyn CJ delivered judgment in which he found that an assembly of students did not constitute a "gathering" in terms of the Act and that the applicant was therefore not precluded from teaching at the Cape Technical College. However, the Appeal Court did not grant the declaratory order sought in respect of assemblies of personnel of the college holding that whether such assemblies would constitute "gatherings" as defined in the Act depended on the nature of the proceedings. The judgment of Beyers JP was therefore confirmed in part and reversed in part. (14)

"The Educational Journal" (15) in its tribute on the death of B M Kies referred to his role as an advocate and said that he had filled this role "with great skill and resourcefulness, for it meant working in an arena where the very legislation he so strongly opposed was being interpreted and applied. But it gave him a great opportunity to assist the oppressed through the minefield of legal problems that beset them". The involvement of B M Kies in the matter of *Dudley v Minister of Justice* is perhaps a good example of the

point made by the writer of that tribute. As already mentioned B M Kies was himself at this time subject to a similar banning order to that which had been placed on R O Dudley, his friend and colleague in the Teachers' League of South Africa and the Non-European Unity Movement for the previous two decades.

NOTES:

1. Joyce, P The Rise and Fall of Apartheid 19.
2. Ibid.
3. The Torch 12 June 1950.
4. "TLSA Statement on the Banning of its Editor, Mr B M Kies" issued by the President of the Teachers' League of South Africa on 5 April 1959.
5. "Banning of Mr B M Kies - Anti-CAD meeting Resolution" issued by the Secretary, Dr N Murison, P O Box 12, Athlone, Cape on 12 April 1959.
6. "Statement on the banning of the President of the Teachers' League of South Africa and the Chairman and the Secretary of the National Anti-CAD committee". Issued by the Teachers' League of South Africa, Woodstock (1959).
7. "Why were these men banned?" issued by the National Anti-CAD, P O Box 12, Athlone (1960).
8. Statement dated 18 October 1961, issued by the President of the Teachers' League of South Africa and the Secretary of the Anti-CAD.
9. The Cape Argus 28 November 1961.
10. The Cape Argus 28 November 1961.
11. The Cape Argus 28 August 1962.
12. The Cape Argus 22 August 1962.
13. 1962 (4) SA 293
14. 1963 (2) SA 464
15. The Educational Journal (Jan - Feb 1980) 8

8. CONCLUSION

It is submitted that the political trials in which B M Kies was either directly or indirectly involved, and which have been described in some detail in the previous chapters, in many respects seem to bear out the theory of political trials formulated in 1961 by Kirchheimer. (1)

Cathi Albertyn and Dennis Davis (2) summarise this theory as follows:

Kirchheimer attributes a political role to law by addressing the central question of the role of the courts in the fight for political domination. The thrust of his argument is that the courts play an important political role in the ideological fight for domination over the masses of the citizenry. The trials of political opponents "serve to authenticate and thus to limit political action (and) have become a new dimension through which many types of political regimes, as well as their foes, can affirm their policies and integrate the population into their political goals. (Kirchheimer, 1961:17) the trial is seen to play a specific role in the authentication of political repression, operating as a political weapon in the struggle for "spontaneous consent" to the political programmes of the State by selection of suitable targets for public degradation and criminalisation.

The political cases examined in this paper demonstrate how the criminal justice system was employed by the apartheid regime to stifle and eliminate its political and ideological opponents. These political trials show also how the State initially used "the cloak of legality" (Kirchheimer's phrase) when acting against political opponents. Thus the earlier cases involve charges of well-defined and recognised criminal law offences such as incitement, contempt of court and criminal libel. As opposition to the apartheid regime increased, its measures became more and more repressive and "the cloak of legality" was shed as it resorted to banning orders, and then detention without trial and finally, declarations of states of emergency.

The case of *Golding v Torch Printing and Publishing Co (Pty) Ltd* (described in Chapter 5.1) illustrates another interesting feature, namely, the employment of the system of civil justice to attempt to eliminate political opposition.

NOTES

1. Kirchheimer, O Political Justice, Princeton, NJ, Princeton University Press.

2. Albery, C and Davis D, "The Censure of Communism and the Political Trial in South Africa" in Censure, Politics and Criminal Justice (Ed. C Sumner).

APPENDIX 1

LIST OF ILLUSTRATIONS

- 1.1. B M Kies - a photograph taken in 1945 (Photo: The Cape Standard 16 January 1945).
- 1.2. A E "Sonny" Abdurahman - the successful appellant in the train apartheid case (Photo: The Cape Standard 17 July 1945).
- 1.3. Resistance to Train Apartheid - protesters on Cape Town Station on 5 September 1948 after a meeting on the Grand Parade (Photo: The Cape Times Collection S A Library).
- 1.4. Hanover Street in District Six, Cape Town. The Torch newspaper had its offices at No. 196 (Photograph taken by the writer).
- 1.5. G J Golding - the plaintiff in the defamation action against The Torch (Photo: Drum March 1960).
- 1.6. A cartoon published in The Torch and to which G J Golding objected (The Torch 17 June 1946).
- 1.7. Another cartoon which appeared in The Torch and which G J Golding also found objectionable (The Torch 14 October 1946).
- 1.8. B M Kies - a photograph taken in the 1950s (Photo: Drum March 1960).
- 1.9. W P van Schoor - President of the Teachers' League of South Africa who was summarily dismissed from his teaching post in 1956 (Photo: The Torch 17 June 1958).
- 1.10. A photograph taken at a meeting on 26 February 1956 to protest against the dismissal of B M Kies and W P van Schoor (Photo: The Educational Journal March 1956).
- 1.11. A pamphlet advertising a meeting at the Drill Hall, Cape Town on 30 March 1958 by the National Anti-CAD Movement with B M Kies billed as one of the speakers (From the writer's collection).
- 1.12. A photograph taken at the meeting at the Drill Hall, Cape Town on 30 March 1958 (Photo: The Torch 1 April 1958).
- 1.13. A cartoon published in the Golden City Post on 10 May 1959 depicting B M Kies as an "armchair politician" (Golden City Post 10 May 1959).
- 1.14. B M Kies photographed after his admission as an Advocate in the Supreme Court,

Cape Town on 3 May 1961 (Photo: The Cape Argus 3 May 1961).



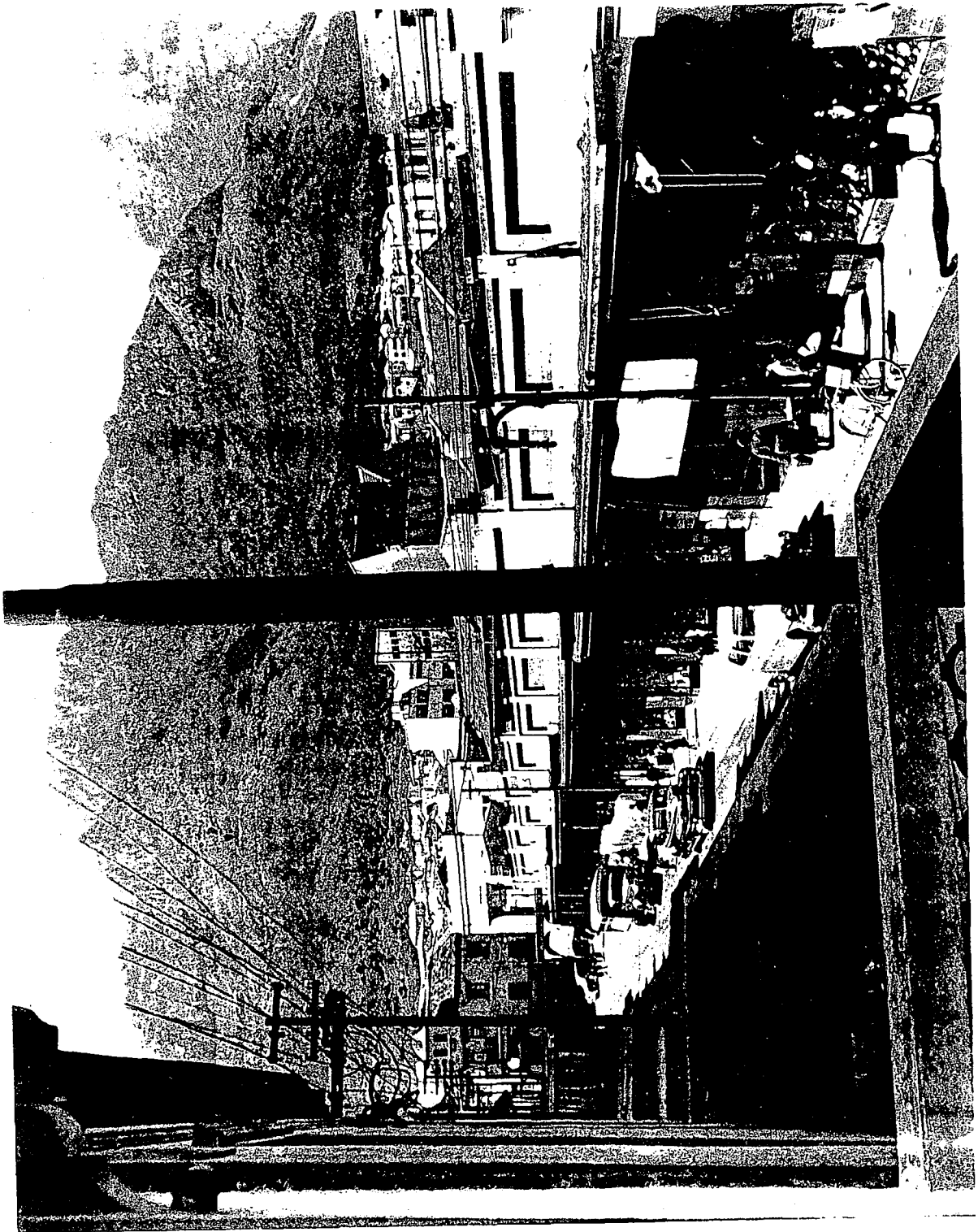
Mr. B. M. KIES

Mr. B. M. Kies, M.A., B.Ed., who has taken a prominent part in the Anti-C.A.D. and Unity Movements. He was one of the leading speakers at the Unity Conference held in Cape Town a week or two ago.



**“SONNY” ABDURAHMAN,
SECRETARY OF THE T EACHERS
LEAGUE**



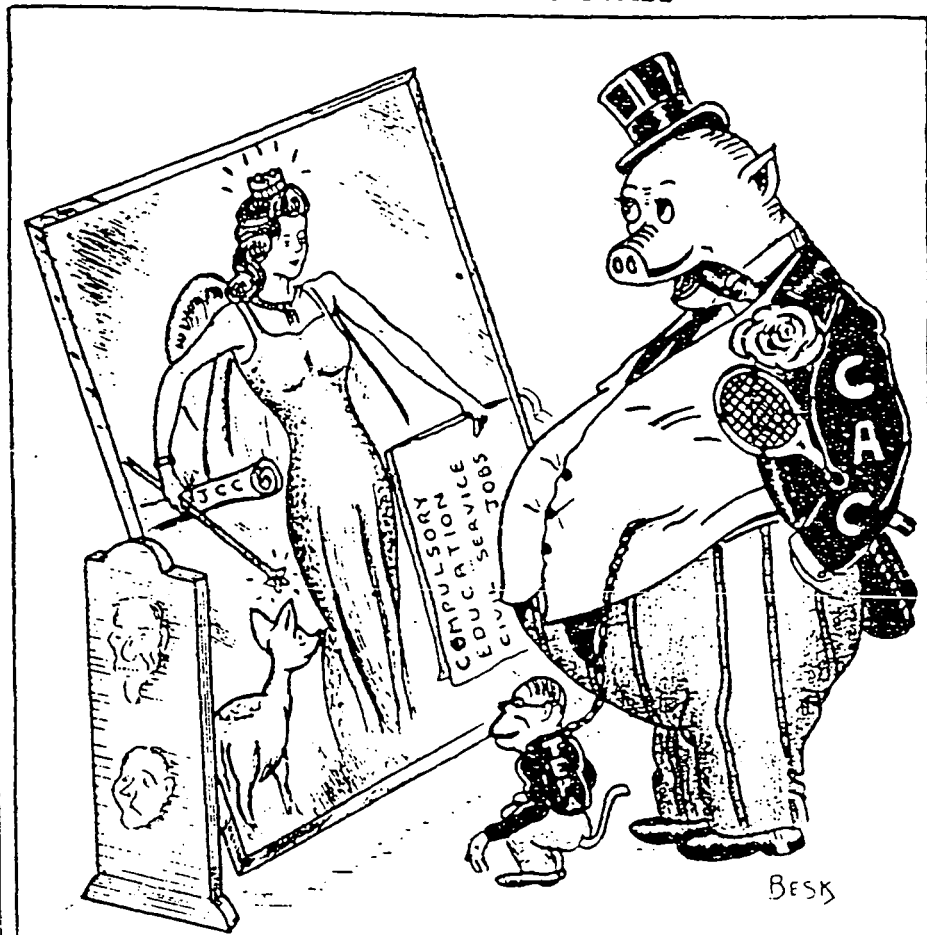




GEORGE GOLDING

THE TORCH. MONDAY, JUNE 17, 1946

THE C.A.C. THROUGH THE LOOKING GLASS
OF THE RULING-CLASS



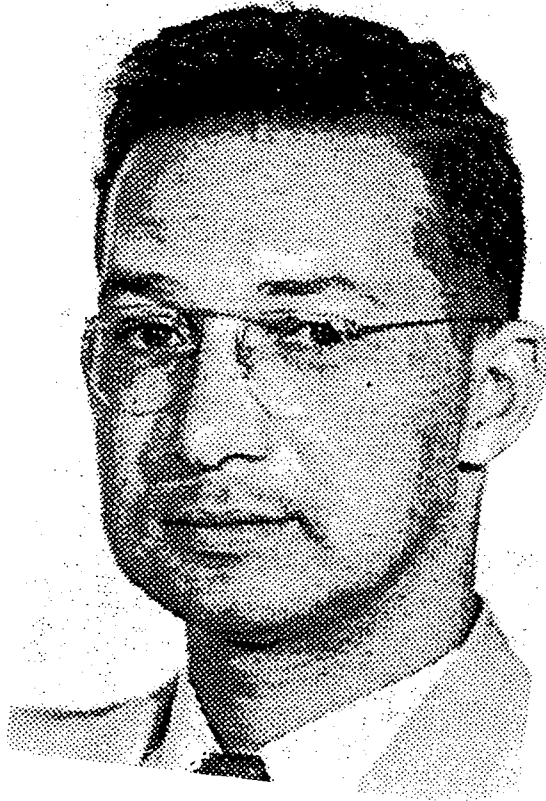
Senators Brookes and Hennessy, Mr. H. Lawrence and the ruling-class Press have been outshining Alice in Wonderland in the wondrous achievements with which they have credited the C.A.C.

THE TORCH, MONDAY, OCTOBER 14, 1946.

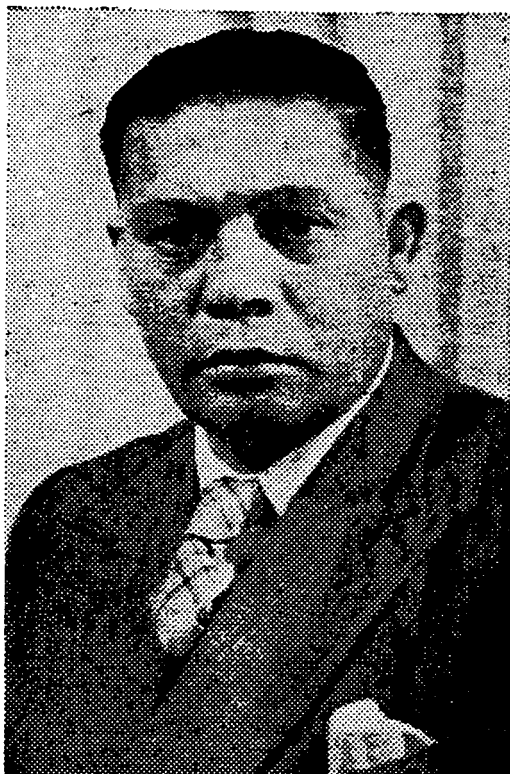
"For Whom the Bell Already Tolls"



Judging from the remarks made at the last performance of the Coloured Advisory Council concerning the coming film on the life of the "Coloured People", the above is one of the ways in which it will have to be advertised.



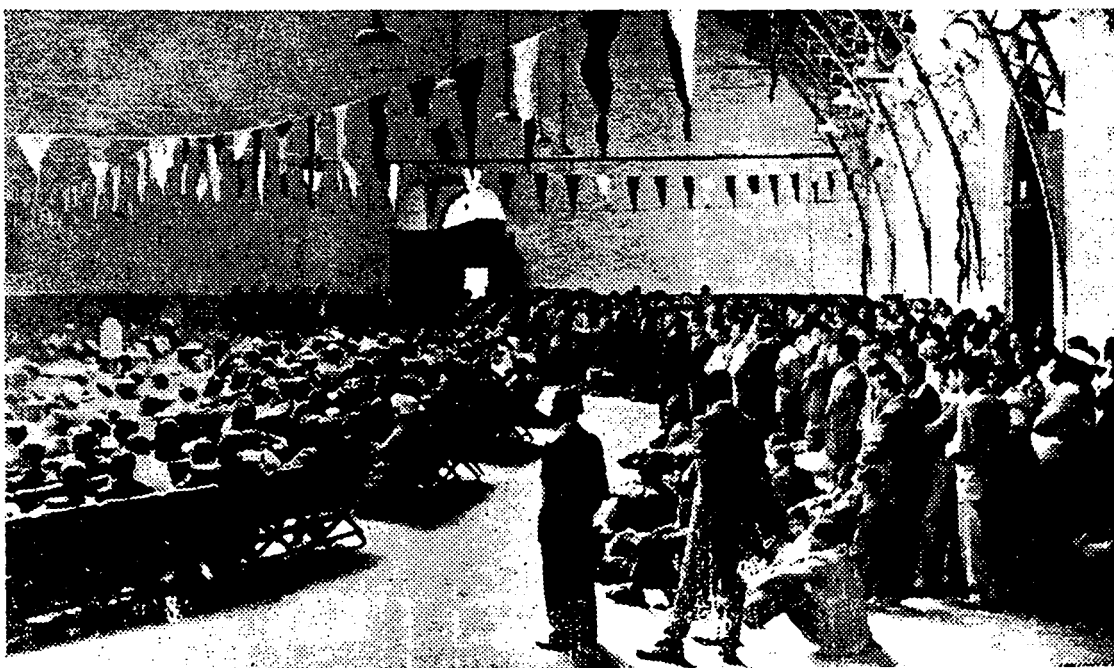
Re-Elected President



W. P. van Schoor

President, Teachers' League
of South Africa, 1951-1958.
Re-elected unopposed, 1958-1959.

Mr. van Schoor will deliver his
Presidential Address in the Grand
Hall, City Hall, Cape Town, on
Monday, June 23rd, at 8 p.m. The
public are invited.



Section of Audience at City Hall Protest Meeting on Sunday, 26th February, 1956

THE NATIONAL ANTI-C.A.D. MOVEMENT

(Affiliated to Non-European Unity Movement)

will hold a

MASS RALLY

at the

Old Drill Hall, Cape Town

Sunday, 30th March, 1958

at 2.30 p.m. sharp

Chairman:

Councillor R. E. VILJOEN

Speakers:

Messrs. W. P. van Schoor, R. O. Dudley, C. M. Kobus, A. Omar,
Ismail Abdurahman, B. M. Kies,

★ **Boycott the Dummy Elections**

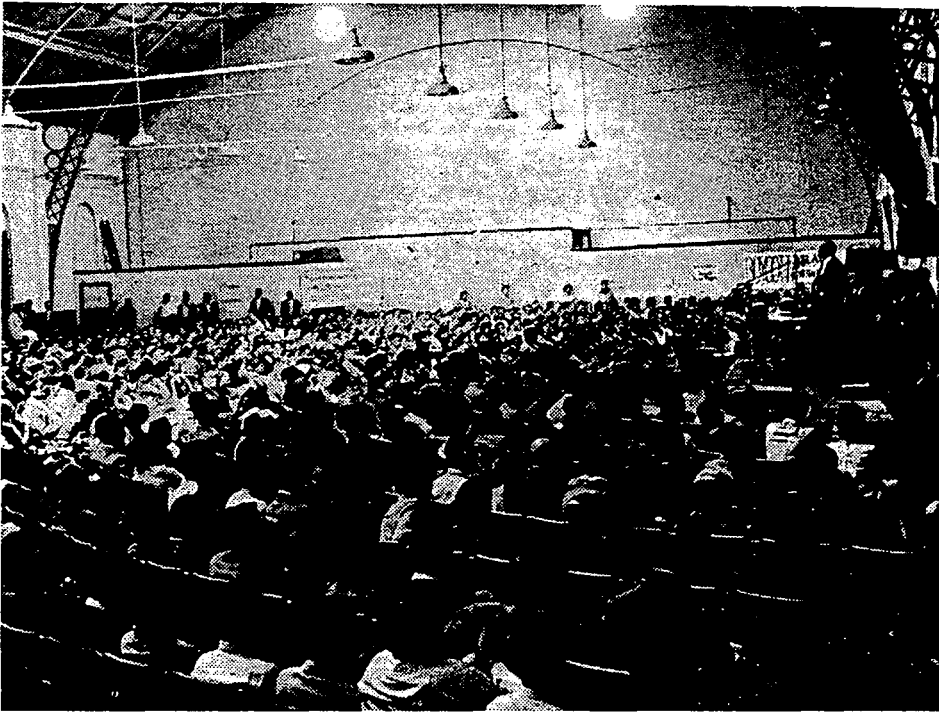
- **What the C.A.D. Means**
 - Inferiority
 - Group Areas Locations and Police Terror
 - Regimented Labour, Job Apartheid, Destruction of Worker Unity and Trade Unions
 - Slave Education for our Children
- **Building Non-European Unity**
 - For the 10-Point Programme of the N.E.U.M.
 - Non-Collaboration and the Boycott Weapon

- ★ The People have NO candidates
- ★ Boycott the Union Council of Coloured Affairs and Other Quislings
- ★ All Candidates are Enemies of the People
- ★ Against the C.A.D. — for FULL Democratic Rights for All

**N.B.—Come Early. Commencing 2.30 p.m.
Closing 5.30 p.m. (Lent & Moslem Fast)**

Issued by the National Anti-C.A.D. Committee, P.O. Box 12, Athlone, Cape.

C.D. Wbr:

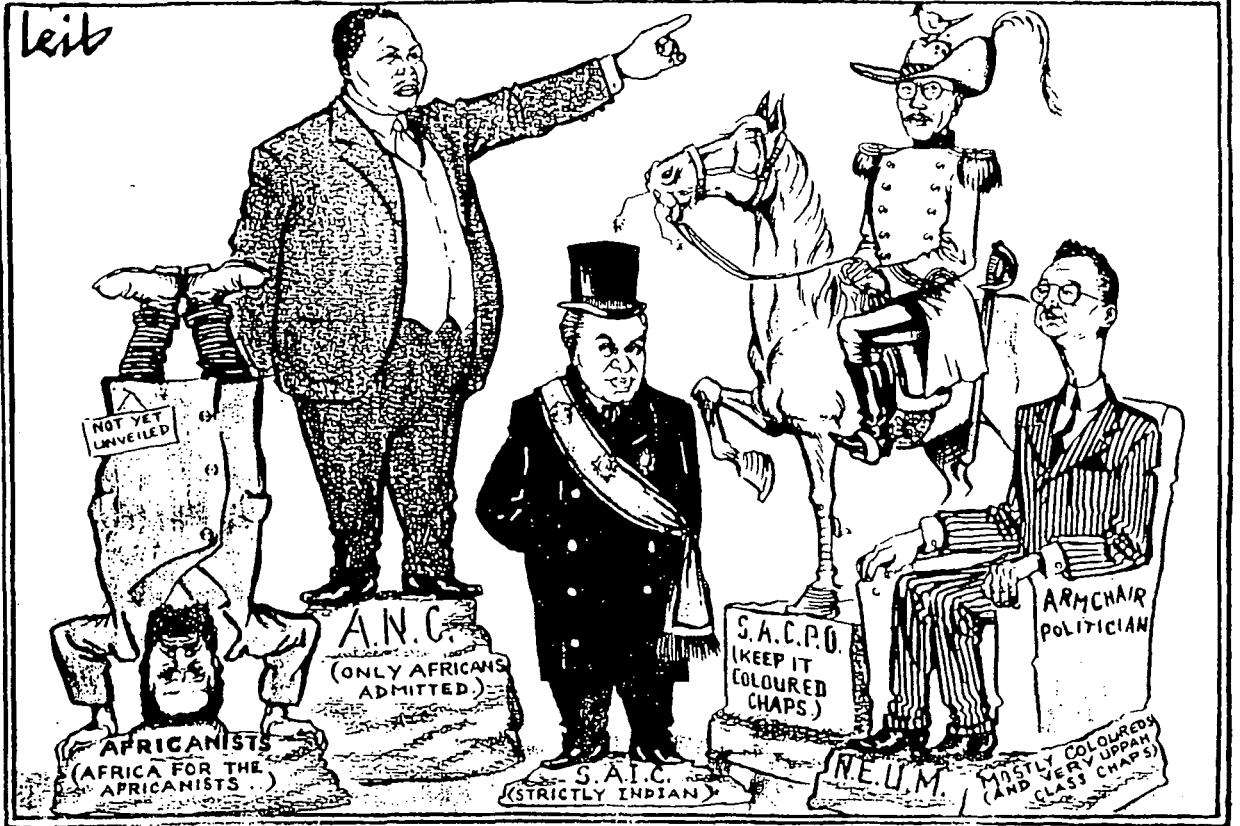


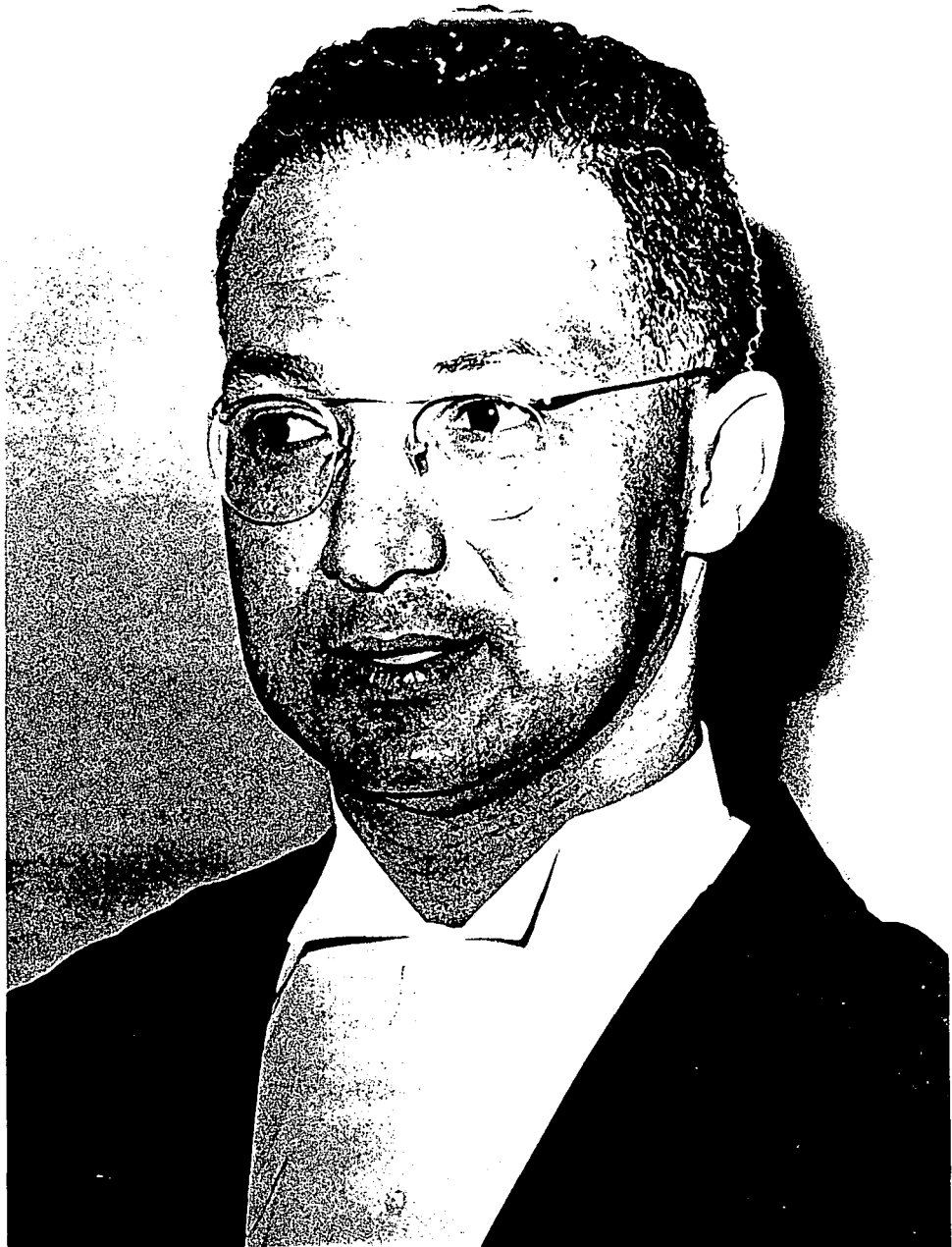
The Chairman, Councillor R. E. Viljoen, opens the Mass Anti-C.A.D. Rally in the Drill Hall on Sunday, March 30th.

GOLDEN CITY POST, MAY 10, 1959.

HOW OUR POLITICAL PARTIES FIGHT RACIALISM

Leib





APPENDIX 2

UNABBREVIATED:

Hose-Pipe Justice

- (1) It would be difficult to decide on the most abominable and revolting aspect of the case in which Mr E Mpikwa, already a victim of South African law, was thrashed to death by two white farmers who legally held him in slavery: The account of the Snymans' bestiality? The verdict of the jury, so obviously persons who shared the Snymans' conception of the worth of a non-white's life? Or the oily hypocrisy of most of the daily newspapers pretending that the explanation of this travesty of justice lay in the jury system and, possibly, in inadequate control of convict labour?
- (2) For our part, we consider the unctuous hypocrisy to be the most sickening feature-and the most dangerous. It seeks to keep up the myth of justice for the non-whites under the law. It pretends that that jury's verdict was an unfortunate lapse of justice and not true to the usual South African pattern. It fraudulently insinuates that justice is provided for, and usually done, in cases of this kind by trial before a judge and not a jury. It professes to be shocked by the sadistic abuse of a convict on this particular farm. In short, it lyingly pretends that the case of Mr Mpikwa was an exception and not the rule.
- (3) Most non-Whites have had too much experience of law courts both high and low, with or without juries, to be deceived by such patent falsehood.
- (4) If this case did have any exceptional feature, it was the fact that it reached the law courts at all. That apart, it was in every way typical of the legalised tyranny under which a whole people has long suffered. To pretend otherwise is to align oneself with those Nazis who, after the exposure of Belsen and Buchenwald, claimed that they had never known what was going on in the concentration camps.

APPENDIX 2.1

ABBREVIATED:

Hose-Pipe Justice

It would be difficult to decide on the most abominable and revolting aspect of the case in which Mr E Mpikwa, already a victim of South African law, was thrashed to death by two white farmers who legally held him in slavery: The account of the Snymans' bestiality? The verdict of the jury, so obviously persons who shared the Snymans' conception of the worth of a non-white's life? Or the oily hypocrisy of most of the daily newspapers pretending that the explanation of this travesty of justice lay in the jury system and, possibly, in inadequate control of convict labour? Most non-Whites have had too much experience of law courts both high and low, with or without juries, to be deceived by such patent falsehood.

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