

The State vs Nelson Mandela

Talk at the Festival of Literature, Edinburgh

At The RBS Main Auditorium, Edinburgh

On Wednesday 19 August 2009 at 8pm

Good evening

As a back drop to the story of Nelson Mandela's trial, I would like to show you an unusual 15 minute film by the Canadian film Director, Peter Davis which traces Mandela's life from his youth growing up in the rural Transkei, to the time his daughter Zinzi announced to the people of South Africa her father's rejection of an offer by the Apartheid Government to release him from his 27 years in prison, because the Government was unwilling to agree to simultaneously unban the African National Congress.

I hope the film has given you a sense of the personality, the courage and the integrity of Nelson Mandela.

It was on 24 November 1963 that Mandela, who at the time was serving a prison sentence of 5 years for inciting African workers to strike and for leaving South Africa without a passport, was brought from Robben Island Prison to the Palace of Justice in Pretoria, to stand trial for his life together with eight of his fellow leaders of the African National Congress.

The Trial had been moved from Johannesburg to Pretoria the centre of rabid Afrikaner Nationalism. The Square in front of the Court was packed with police. At the Court's entrance was a contingent of policemen carrying satchels of tear gas bombs as well as Sten guns, scowling at the black crowds, who had somehow breached the cordon set up by the police to keep them out of Pretoria. Inside the position was no different. The police were everywhere, in every lobby, corridor and doorway.

The Courtroom itself, the white public benches were filled by plain clothed policemen from the security branch and warders in civilian clothes, almost to the exclusion of any white spectators.

The Court was rigidly divided down the centre, the white seating separated from the non-whites side where every seat was filled with relations and friends of the Accused.

The police, the Prosecutor Dr Percy Yutar, the Government and some of the media had already proclaimed the Accused guilty of treason before the Trial had even begun. There was much talk in public and apartheid circles of death sentences for the Accused and every effort was being made by the authorities to intimidate and demoralise them.

The case was called and the Judge President Mr Quartus de Wet entered the Court. There was a silence as the 9 leaders of the African National Congress climbed up the steep steps from the cells below on the way to their specially constructed dock. As Nelson Mandela's head and shoulders appeared above the level of the dock, there was a ripple of excitement among the public. He turned to face them and with his right fist clenched, his deep voice boomed out the African National Congress battle cry "Amandla" (power) to which the African audience replied immediately in chorus "Ngawethu" (it shall be ours). Accused Number 2 Walter Sisulu followed him with the ANC salute and so did the other Accused

The Registrar of the Court read out the charge against the Accused of sabotage under the new Sabotage Act, which allowed a sentence of death by hanging if found guilty. It was alleged that the Accused had taken part in a political campaign, which was designed to bring about the violent overthrow of the Government.

The Registrar concluded with "Accused Number One, how do you plead to the indictment served upon you?" Nelson Mandela rose and calmly responded "The Government should be in the Dock, not me. I plead 'not guilty'" This caused consternation amongst the police and the Prosecutor, Dr Yutar looked absolutely horrified.

The question was then put to Walter Sisulu. "How do you Accused No: 2 plead?" "It is the Government which is guilty, not me." Mr Justice De Wet said sternly "I don't want any political speeches here. You may plead guilty, or not guilty. But nothing else."

Walter, unmoved by the Judge's remarks, went on calmly "It is the Government who is responsible for what is happening in this country." "I plead 'not guilty.'" And the other Accused pleaded in the same way. So the scene was set for what was to be the Accused's Trial of the Government.

The Accused had settled on this strategy in response to the Apartheid Government's attempt to make the trial, a show trial by creating an atmosphere of fear and paranoia, so that the white population would be persuaded that the leaders of the ANC had been preparing for some time to take over the Government of South Africa by military means, for their personal benefit, with a view to stripping the minority white population of all their wealth and privileges.

The Government boasted that by apprehending the leaders of the ANC and Communist Party it had destroyed both organisations and that once these leaders had been charged, found guilty and sentenced to life imprisonment or execution, the Government assured its white electorate that South Africa would become secure for the white population, and that the non-whites who had been stirred up by these trouble makers, would contentedly revert to their former pre-ordained role of serving the white population.

Faced with this, the Accused led by Nelson Mandela formulated their own strategy. It would be a show trial indeed, but one in which they would put the Government on Trial in the Court of World Opinion, and the Trial would become a trial of the appalling system of apartheid and of the Government which enforced it.

Nelson Mandela explained to us, the five defence lawyers, that the Accused would accept full responsibility for everything they had done, and make it clear that they had no alternative other than to resort to violence. Fifty years of non-violent protest had not only achieved nothing, but in fact during that period what limited human rights their people had, had been taken away from them. They, in their defence, would outline to the world the evil and injustice of the apartheid system, and the suffering that it caused.

Against this background, we had to devise a legal strategy alongside the Accused's political strategy of putting the Government on trial and that was how to save their lives as well, which they regarded as of secondary importance but which was the defence team's main objective. The gravest danger the Accused faced from a legal perspective was a written document called 'Operation Mayibuye'. This document envisaged the organisation of armed insurrection and guerrilla warfare

and the intervention of the military forces of foreign powers against the apartheid government. It was only a preliminary discussion document which some of the Accused happened to be discussing, at the time of the police raid on the Rivonia Farm - hence the name 'Rivonia Trial' - and was found there by the police. We knew that the State would seek to prove that the discussion document had been accepted and that a decision had been taken for it to be implemented.

If the Prosecution succeeded in proving this, death sentences were inevitable as under the recently passed Sabotage Act, a person could be sentenced to death merely for throwing a stone through a window with political intent, let alone starting a revolution. We recognised that the lives of the Accused depended on our establishing that no decision had been taken to implement Operation Mayibuye.

Over a period of five months, the State called 178 witnesses and handed in thousands of documents. Some of the witnesses told some of the truth, some none of the truth and some, held in solitary confinement and knowing that they would be returned to the police after they gave evidence, changed their evidence during the course of the cross-examination to fit in with the prosecution case.

The pressure on the Accused and indeed on the defence team, intensified as the case proceeded:

- Consultations with our clients were extremely difficult because we were certain that the interview room was bugged. Accordingly, our consultations had to be conducted through a laborious code which we devised, which included written notes being exchanged and burnt in ashtrays in the interview room.
- And the on-going attempts to intimidate the Accused continued with the arrests of Walter Sisulu's 15 year old son, Lungi who had come to Court to look at his father from inside the Court and of Caroline Motsoaledi, wife of Accused Number 9, Elias Motsoaledi, who was actually detained in the Court itself and taken into solitary confinement, despite the fact that she had seven young children waiting for her to return from the Court
- And on top of this was the extraordinary conduct of the prosecutor, Dr Percy Yutar which ranged from seeking to ingratiate himself to the Judge, to histrionics, to playing up to the police, to seeking to demean the Accused, to coaching witnesses and to keeping the media far better informed about the prosecution case than the defence team.

Despite the pressures, the defence team, through incisive cross-examination was able to ensure that not one of the 178 witnesses was able to give credible evidence to establish that a decision had been taken to implement ‘Operation Mayibuye’, but the danger to the lives of the Accused was that the Court would infer such a decision from other evidence presented to it.

The prosecution case came to an end after five months and the defining moment in the Trial began as Bram Fischer QC, the senior defence advocate announced “the defence case, my Lord, will commence with a statement from the dock by Nelson Mandela who personally took part in the establishment of

Umkhonto Mswizi (the armed wing of the liberation movement) and who will inform the court of the beginnings of that organisation and its history up to August 1962 when he was arrested.”

Mandela rose – a commanding presence with a natural sense of authority and began very slowly, very quietly, reading the statement which he had prepared in a flat, even voice. At no stage did he raise his voice or change from the slow measured speech with which he had started. Gradually as he spoke, the silence became more and more profound, until it seemed that no-one in the Court dared move or breathe. After 2½ hours he ended thus:

“Africans want a just share in the whole of South Africa; they want security and a stake in society.

Above all, we want equal rights, because without them our disabilities will be permanent. This then is what the ANC is fighting for. Their struggle is a truly national one. It is a struggle of the African people, inspired by their own suffering and their own experience. It is a struggle for the right to live.

During my lifetime I have dedicated myself to the struggle of the African people. I have fought against white domination, and I have fought against black domination. I have cherished the ideal of a democratic and free society in which all persons live together in harmony and with equal opportunities.”

At this moment he paused, a long pause, in which one could hear a pin drop in the court, and then looking squarely at the judge he finished: “It is an ideal which I hope to live for and to achieve.” Then dropping his voice, very low, he added: “But if needs be it is an ideal for which I am prepared to die.”

He sat down in a moment of profound silence. From the public benches one could hear people release their breath with a deep sigh as the moment of tension past. We sat like that for perhaps a minute before the tension ended.

Bram then called Walter Sisulu who was our key witness, who gave flawless evidence for no less than six days under vicious cross examination without any hesitation or lapses or apologies

Dr Yutar made the critical mistake of choosing to enter the political fray, instead of restricting himself to the legal terrain. He tried to confront Walter and later Govan Mbeki on the political issues which arose in the Trial, and found himself hopelessly out classed.

The other Accused also turned out to be excellent witnesses and eventually after legal argument Judge de Wet adjourned the Court to consider his judgement.

Three weeks later he delivered his judgment very quickly and found Nelson Mandela and all the Accused with the exception of Rusty Bernstein Accused No. 9 guilty of sabotage, and announced that he would deal with the question of sentence the following morning. Rusty's freedom lasted for 1 minute as he was immediately re-arrested as he left the dock.

On our way back to Johannesburg, we stopped at the jail to talk to the Accused. They were calm, living now in the shadow of death. We told them if the judge decided to sentence them to death, he would ask the first Accused Nelson Mandela "Have you any reasons to advance why the death sentence should not be passed?" Mandela said he would tell the Court that if they thought by sentencing him to death, they would destroy the liberation movement, they were wrong; that he was prepared to die for his beliefs and knew that his death would be an inspiration to his people in their struggle. We pointed out to him that such an address was hardly designed to facilitate an appeal and his answer was simple. If sentenced to death, he, Walter Sisulu and Govan Mbeki would not appeal, as such an appeal might be interpreted by their supporters as an act of weakness. Their main concern was that their behaviour throughout would be such as would inspire their followers and let them understand that no sacrifice was too great to be made in the cause of freedom.

The abiding memory of the Trial for me was of the integrity and courage of Nelson Mandela and his co-Accused and of the many sleepless nights I had worrying about how we could save the lives of

these extraordinary human beings. It was a tension that endured right up to the very last minute of the Trial.

The next day – 12 June 1964 – Judge de Wet abruptly sentenced all the Accused to life imprisonment and swept out of the Court.

He had spoken so quietly that most people in the Court could not hear what the sentence was.

Denis Goldberg, Accused Number 3 shouted from the Dock to his elderly mother looking bemused at the back of the Court “It is life, life for living.” The 8 Accused, who had shown no signs of emotion while De Wet was delivering his judgement, turned to the public galleries and smiled, and then slowly they disappeared out of sight - in Mandela’s case for 27 years - down the Courtroom's steps to the underground cells.

There was another hero in the Trial. Bram Fischer QC, the leader of the defence team, who had been deeply involved in the liberation struggle. He was an Afrikaner, who had he chosen to throw in his lot with the apartheid Government, was so talented and widely loved that he could either have become Chief Justice or Prime Minister of South Africa.

In leading the defence team, he saved the lives of Nelson Mandela and his co-Accused but sacrificed his own life in the struggle for freedom. This is why I have dedicated my book to Bram.

Bram was arrested shortly after the Rivonia Trial. In his own Trial shortly thereafter, he was charged with the same offences as Nelson Mandela. In his statement to the Court, he explained why as a lawyer he was willing to break the law.

“I accept, my Lord, the general rule that for the protection of society laws should be obeyed. But when the laws themselves become immoral, and require the citizen to take part in an organised system of oppression – if only by his silence and apathy – then I believe a higher duty arises. This compels one to refuse to recognise such laws.”

Bram was sentenced to life imprisonment and died in jail.

I would like to end this talk with a quotation from Nelson Mandela’s writings:

“The policy of apartheid created a deep and lasting wound in my country and my people. All of us will spend many years, if not generations, recovering from that profound hurt but the dictates of oppression and brutality had other unintended effects and that is what produced the Bram Fischer’s (and others) of our time – men of such extraordinary courage, wisdom and generosity that their like may never be known again. Perhaps it requires such a depth of oppression to create such heights of character. My country is rich in the minerals and gems that lie beneath its soil but I have always known that its greatest wealth is its people, finer and truer than minerals and diamonds.”

Although in no way intended by Mandela, it is a particularly fitting description of Nelson Mandela himself, of his co-Accused in the Rivonia Trial as well as of Bram Fischer.

Thank you.