

Foreword: Helen Joseph's – *If this be Treason* – by Benjamin Trisk

I was unaware of Helen Joseph's memoir of the Treason Trial (1956 – 1961) until I came across a letter to I.A. Maisels QC (Isie), who was my father-in-law. I was helping him tidy up some old papers around 1991 or 1992 (he died at the end of 1994) and I found a hand-written letter among his papers. It was addressed to him in an unknown hand and dated 22<sup>nd</sup> February 1961. A facsimile of the letter is included in this book. Among the signatories to the letter was Helen Joseph. She was one of the activists who was detained and charged with others in December 1956. Between December 5 and December 12, 1956, 156 people were arrested. The charge was High Treason.

In those days, there was first a preparatory examination (which concluded in January 1958) and 92 of the 156 were then committed for trial. The others were free to go. The Treason Trial, as it is known, commenced in August 1958. This was known as the First Indictment and the State quickly realized, as a brilliant Defence team first dissected and then destroyed the State's argument that it would have to withdraw the charges- which it did in October 1958. The State, however, was not giving up and the trial commenced again in January 1959 (the Second Indictment) with a further reduction in the number of the accused. 30 of the original 156 then faced charges from High Treason.

Until the time when I found the letter, I had known very little about the Treason Trial. I knew that Isie had led the Defence team but he had never spoken of the letter or the plaudits that it contained, to his family. This much was confirmed to me by both my late mother-in-law and his daughter, Helen whom I had married in 1990. Moreover, when I asked him some further questions about the letter and its provenance, he pushed it aside as though it was of no matter at all. Interestingly, this is borne out in Helen Joseph's recollection of the moment he received the letter in Court and, by the way, the letter is signed by all 30 of the accused, among whom was Nelson Mandela.

Helen writes in this memoir as follows: "*He reads our letter – it seems as though he reads it two or three times. Then he looks at us for a brief moment, deeply moved. He takes off his spectacles and puts his head in his hands, and thus he remains for a little while, before folding up his letter carefully and putting it away in his breast pocket*". The letter was an extraordinary tribute because it sums up so clearly the true role of the defence in the Treason Trial. The accused write to him, *inter alia*, "... we have been proud to have been defended by you ... proud because we know of the magnificent legal battles that you have fought to preserve the rule of law, to prevent it from being whittled away by the unscrupulous maginations of the Government." Although written directly to Isie, there is no question that the tributes belong to all the legal team. Moreover, it is surely ironic that even today, in the new but still flawed South Africa, we, the people, depend so much on our courts to ward off predations of a greedy and often unscrupulous Government.

Ultimately, the trial ended rather abruptly and on March, 23<sup>rd</sup> the Bench, which consisted of Justices Rumpff, Bekker and Kennedy, cut Bram Fischer short in his closing arguments and the Court adjourned. The accused, as Helen recounts were flummoxed by this turn of events until their Counsel told them that the adjournment

could only have one meaning: they would be acquitted. On March, 29<sup>th</sup> 1961 the Court reconvened. There is one last attempt by the State to amend the indictment. The judges are not interested and they proceed to tell the accused, "You are found not guilty and discharged and you may go".

The Trial is an enormously important event in the annals of South Africa's liberation history. If these men and women had been found guilty, the alternative would likely have been execution. It would have cut the leadership heart from the African National Congress; people of the ilk of Nelson Mandela, Ahmed Kathrada, Duma Nokwe, Walter Sisulu, and others would have perished. The Trial is important because it allowed the leadership group of a dispossessed and oppressed people to have a voice in open court. The quality of the defence was extraordinary. They have been described to me as the "A" team: the towering figure of Isie Maisels, the clinical skills of Bram Fischer, of Sydney Kentridge, of Chris Plewman and other remarkable advocates, combined to convince an Apartheid Bench that the law must ultimately prevail.

Indeed, Isie told me that there was great debate, when he was approached to lead the Defence team in 1958, as to whether legal argument was the right approach. Many of the accused wanted to make a political statement. Isie stood fast. If that was what they wanted, he said, they would all hang and "they would have to find another jockey" (his words). He was certain that he could use the law to protect them: and this is what he did. Some years ago, Sir Sydney Kentridge wrote to me and said that only Isie could have delivered a not guilty verdict for these outstanding men and women.

However, Helen's memoir is important on another level altogether. It is not a legal exposition on the merits of the defence and she made no claims to understand the complexities of the trial; it is, rather, an inspiring account of the personal relationships between the accused and also between the accused and their Counsel. She writes with great humanity about these relationships. Outside the world of the court and the daily grind backwards and forwards from prison in Johannesburg to the hastily assembled court in Pretoria, events were moving quickly. Resistance to a heinous system engineered by brutality and disregard was becoming more and more pronounced. Sharpeville and the State of Emergency happened in February 1960, the Alexander bus boycotts had sparked a show of unity between some white South Africans and black workers shortly after the December 1956 arrests. The trial was watched by many overseas observers, including Gerald Gardner, who later became Lord Chancellor of Britain and Thomas Karis, an American academic who was an outspoken critic on America's policy towards Apartheid South Africa. Another who visited in 1958 was Erwin Griswold, a Harvard academic and Dean of the Harvard Law School, who was later to become the United States Solicitor General under Presidents Johnson and Nixon.

Helen Joseph's memoir is a unique book. The Apartheid State hoped to make a man guilty of treason purely by his thought and his words. It would have been a devastating blow to the Aspirant; seeking nothing more than a democratic and humane solution to South Africa's problems. What the memoir does do is to tell us in a plain, simple and poignant way how the accused felt at that time. It tells of their personal struggles, their relationships, the extraordinary bond that existed between

them. The memoir, by itself, is something of a monument. It is a rare portal into the hearts of those who fought for South Africa's freedom and it is an incisive window into the lives of ordinary men and women who were made great by their circumstances and who rose so magnificently to the occasion.

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