

RAND
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THIRD DEGREE AND THE COURTS

IN GIVING JUDGMENT in the Essop Terrorism Act trial this week, Mr. Justice Snyman discussed the admissibility in evidence of statements obtained during detention under Section Six of the Terrorism Act. Although the issues involved in the trial are still sub judice, this comment by the judge does not fall within this ambit and can be debated.

It needs debating: the judge ventured into an important area of personal liberty, and indeed, the thrust of his suggestion was for greater restriction of rights.

The judge argued that it would be in the interests of justice for all the facts of interrogation under Section Six, of accused and witnesses, to be placed before a trial court which would then be able to evaluate them. He spoke of what he viewed as the paradoxical situation where evidence lawfully obtained (that is, in the sense that Section Six, with its provision for incommunicado detention, is lawful because it was enacted by Parliament) is excluded from the knowledge of a court.

At first sight there is sense in this view. It seems so simple. The police have the right to grab anyone and to lock him away from human sight and ken until he gives an answer. Once they get such an answer, why should they be prevented from using it in court to ensure a conviction? Particularly where the safety of the State — the supreme law, as the judge said — is involved?

Faulty argument

The argument, however, is faulty. It was destroyed by the judge himself in setting out his views. He drew attention to the existence of what are known as "Judges' Rules" together with "Cautionary Rules" and other provisions laid down in law. In terms of these an accused may not be questioned by the police unless he has been formally warned and his rights explained to him. If an accused decides to make a confession it must be freely made. Furthermore, it must be made before a magistrate or senior police officer. There are similar precautions concerning the use of statements made by accomplices.

The basic purpose of all these provisions is to give an accused person protection against false evidence by an alleged accomplice, and perhaps even more importantly, against confessions extorted from him under duress. Such safeguards have been built up carefully over centuries to protect the citizen against unbridled authority. Of course it means that, occasionally, the criminal may go scot-free; that is a penalty which any society which regards itself as free has to pay. But in return, each of us can sleep more easily in our beds knowing that we enjoy a measure of protection against the arbitrary use of power.

Maximum force

No one could conceivably deny that Section Six allows for the grossest possible form of duress, of both an accused and an alleged accomplice. And it is worth remembering that the United States Supreme Court has expressed the view that, once the evidence obtained under duress is admissible in court, the temptation for the police to exert maximum force to get their evidence becomes enormous.

Any suggestion, therefore, that the existing rules of evidence should be diluted opens the way to the most dangerous intrusion into personal liberty. For make no mistake: the effect of Mr. Justice Snyman's ideas, if implemented, would be to throw overboard much of the basics of our heritage of Roman-Dutch and English laws dealing with relationships between the individual and the State.

Apologise on Timol—Botha

Own Correspondent

WELLINGTON. — Mr. P. W. Botha, Minister of Defence and Cape leader of the National Party, challenged the English Press and some United Party politicians last night to "apologise for their behaviour" over the Ahmed Timol case.

He was addressing a National Party meeting in Wellington in the Cape.

The judgment in the Timol case proved that Timol was a Communist who went to Lon-

don recently and returned to South Africa to promote communism.

But, said Mr. Botha, when Timol was arrested and committed suicide while in police detention, it was said that the Government was "a dictator" and that it arrested and detained people without trial.

It was even said the police murdered Timol and a certain bishop went overseas and said Timol was tortured.

"And many of the vicious overseas reports got their text from our enemies in South Africa," said Mr. Botha.

The English Press had to apologise to South Africa. If it did not, "then they must not blame me when I say they are so keen to attack the National Party, that they do not hesitate to harm South Africa."

Earlier, the National Party candidate in the Malmesbury Parliamentary by-election, Mr. Eugene Louw, told the audi-

ence: "Your vote on the 8th must establish a firm foundation for the National Party."

The former MP for Malmesbury, Senator Koot van Staden, warned that the National Party could not afford to retreat an inch in the by-election.

(Report by T. I. Ferreira, 77 Burg Street, Cape Town).