



LAWYERS' COMMITTEE
FOR CIVIL RIGHTS UNDER LAW

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Minutes of Africa Subcommittee Meeting
(March 7, 1977, Washington, D.C.)

Persons Present: George Lindsay, Chairman;
Goler Butcher, Peter Connell, Robert Kapp, Michael Peay and
Marcia Ellis, administrative assistant to Africa Project
Director.

1. ACOA et al. vs. The New York Times. The Subcommittee members were familiar with the holdings and the reasoning of the New York Court of Appeals by the time of our meeting so the discussion primarily concerned the issue of whether further legal action in this matter is warranted. George expressed the view that a petition for a writ of certiorari to the United States Supreme Court would probably not be granted inasmuch as the Court of Appeals had decided the case on state rather than federal grounds. He was joined in this view by Peter and Goler, who had participated in a legal strategy session the preceding week to evaluate legal options in the wake of the decision.

Mike mentioned that seeking reargument before the Court of Appeals was not likely to be granted because of the difficulty in fashioning a tenable argument that some point of law had been "overlooked or misapprehended," as required by New York law. George stated that we had given this case our best effort and that the Court of Appeals decision was wrongly decided and poorly reasoned, but that we may as well accept the fact that we had gone as far as we could go in this matter. Goler agreed, saying that it was useless to pursue litigation simply for the sake of pursuing it, especially when there are other important cases that should be absorbing the Project's limited time and resources.

Peter also agreed, saying that when we began this case a principal reason for our involvement was to restrain the emigration of skilled American talent to help shore up South Africa's management and skilled manpower deficiencies. Under present circumstances, Peter said, it is unlikely that there is any significant American emigration to South Africa, but

that we should check with the African-American Institute (AAI) or some other resource organization to get current figures on such emigration. Peay agreed to do so, although noting that AAI's information would not have any significant bearing upon the Subcommittee's consensus to discontinue further legal activity in this case.

Peay interjected one caveat, however: that before this case was put to rest, the Africa Project would complete a thorough research effort on the "adequate and independent state ground" principle governing the availability of Supreme Court certiorari review under 28 U.S.C. §1257(3). This was felt to be imperative, since the Lawyers' Committee, as the principal lawyer in this case, has an obligation to its clients to be sure that all relevant case law has been evaluated before advising them that we have exhausted all of our legal remedies. The Subcommittee members expressed their agreement with this view.

2. Export of Special Nuclear Material to South Africa. The Subcommittee was informed that no ruling has yet been rendered by the Nuclear Regulatory Commission (NRC) on the question of the "standing" of the Project's organizational and individual clients, and Mrs. Butcher's congressional clients, to intervene in this export license proceeding and to be given a hearing as of right. It was noted that attorneys for the export license applicant, U.S. Nuclear, Inc., have recently requested the Commission to expedite its review of the pending license application. They have premised this request upon the unconfirmed assertion that the Department of State has reached the conclusion that shipment of the special nuclear material would not be inimical to the common defense and security of the United States.

Further, the Subcommittee was told that interrogatories to the Nuclear Regulatory Commission staff and to the Department of State have been served. Peter Connell suggested that Goler and Mike consider asking the State Department to reconsider its negative position as to our clients' standing to intervene, in view of the Carter Administration's public pronouncements encouraging public participation in foreign policy making forums. Peay and Butcher agreed to take this suggestion under advisement, although it was generally agreed that it would be inappropriate to approach the Legal Adviser-designate and Board member of the Lawyers' Committee, Herb Hansell, about this proposition.

3. South Africa Labour Bulletin Censorship Appeal. The Subcommittee was informed that the Project was asked to assist financially in this administrative appeal to overturn a lower administrative ruling banning as dangerous to the State three back issues of the Bulletin. The Bulletin is a publication that appears to be in strong sympathy with the black labor movement that seeks to obtain for blacks the right to unionize, collectively bargain and generally enhance their rights as

laborers. The Bulletin is also an important source of information, analysis and comment about "bantu" labor legislation and labor developments generally. Peay stated that he would check with Frank Ferrari of AAI to find out what, if any, additional information he has about the Bulletin and its editors.

Peay argued that the government's accusations of improper political speech contained in the Bulletin's articles and editorials constitute a serious challenge to the continued viability of this publication and the various services which it performs for the black labor movement. It was noted that although the chances for prevailing on the merits are difficult to quantify, the cost of this appeal would be minimal, amounting to not much more than \$1500. The U.N. Trust Fund for South Africa has already approved the Project's use of Trust Fund money for this purpose. After taking all of these factors into account, the Subcommittee approved the Project's financial assistance in this appeal. Finally, there was a Subcommittee consensus that the black labor issue is a good one for the Project to pursue in its overseas litigation.

4. State v. Harry Gwala and Nine Others. The Subcommittee was informed that, after consulting with the Subcommittee Chairman and with officials from the Trust Fund for South Africa, the Project undertook the expense of sending Dr. Louis J. West to Durban to testify in this trial as to the unreliability of the testimony of State witnesses who had been subjected to physical and psychological torture while in detention. Dr. West is respected internationally as an authority on the subject of psychological torture.

Peay reported that West undertook this service without a fee and informed us that he considered it to be among the most worthwhile professional ventures he had ever undertaken. Also, a letter of appreciation from all the defendants to the Lawyers' Committee and to Dr. West that had been drafted by one of the defendants was read to the Subcommittee.

5. Inkatha Publication Censorship Appeal. The Subcommittee was informed of a meeting that had occurred a few days earlier between Chief Gatcha Buthelezi, (Kwazulu homeland leader and outspoken critic of the government), Tyrone Brown, Goler Butcher and Mike Peay to discuss the possibility of Lawyers' Committee financial assistance in an administrative appeal to reverse the banning of Inkatha, a publication of Buthelezi's cultural organization which bears the same name. The cost of the appeal would be between R14,000 and R22,000, considerably above the cost of the South African Labour Bulletin appeal.

The government seized 8,000 copies of the first issue of this pamphlet and declared it to be "undesirable" under the Publications Act, thereby banning the publication from distribution, possession, etc. The pamphlet was said to be harmful to race relations within South Africa and harmful to the security of the State.

Among the major considerations raised were 1) whether the case was winnable and 2) whether it would be useful to take this case, even if it is a loser, in order to dramatize the fact that not even a moderate government-selected leader (i.e., Buthelezi) can speak critically, with impunity, about government policies in the spirit of debate. This was a consideration which had been expressed by Ty Brown following the Buthelezi meeting.

However, all Subcommittee members present (George had left to catch a plane by the time we reached this agenda item) expressed the view that we should be wary of giving financial assistance to a government-supported organization and official. Peter Connell expressed the point of view, shared by Bob Kapp and Goler, that the Project's funds were limited and that we should confine ourselves to defending persons and groups that are truly poor and nameless, unlike Buthelezi who has international contacts that could come to his assistance. In this connection, it was suggested that perhaps we could approach Wayne Fredericks of the Ford Motor Company, who is a close friend of Buthelezi's, and explore the possibility of Ford's stepping in to help finance this appeal.

Peter said that if we became hard-pressed in trying to locate a funding source he might be willing to approach Aetna Life and Casualty. However, he expressed reservations, strongly shared by Mike Peay, about soliciting funds from Aetna for this purpose when those funds might otherwise be diverted to support the Project's administrative budget. In any event, it was felt that the Project's decision not to fund this appeal did not give rise to any obligation on our part to locate alternative funding sources.

6. Miscellaneous Matters. Peay reported that the Ford Foundation had given a grant of \$100,000 to the Project to be divided equally over two years. Peter Connell recommended that the Project should exploit the current prominence of southern Africa in the news by intensifying its efforts to educate the private bar through such means as: a) encouraging Lawyers' Committee branches in other cities to become more aware of the human rights situation in southern Africa; b) getting the president of the A.B.A. more involved in the Project's southern Africa activities; and c) writing an article for the D.C. or other bar journal on the efforts of U.S. lawyers to utilize the legal process to affect the human rights injustices prevailing in southern Africa. Copies of the article would then be reprinted and disseminated to lawyers around the country.

Mike Peay expressed strong approval of these ideas and indicated a willingness to implement them as soon as feasible.

T. Michael Peay
Project Director