

BLACK MAN IN THE WHITE MAN'S COURT

By Bob Hepple

Bob Hepple was one of Mandela's underground support team and his legal adviser during his 1962 trial. In this edited extract from his book *Young Man with a Red Tie: A memoir of Mandela and the failed revolution 1960-63*, to be published in 2013, he portrays the character of the man who defied white 'justice'.

There is a sculpture of Nelson Mandela in Parliament Square London, unveiled in 2007, that portrays a kindly old man bending slightly forward with open welcoming arms, a furrowed brow, narrowing eyes and a mouth opening as if to speak words of comfort. That is not the 34-year old Mandela I first saw in 1953. The sculpture represents the icon, an almost mythological character. It is the image of the man the world wants him to be – the great redeemer who emerged from 27 years' imprisonment filled with forgiveness and the spirit of reconciliation. But such a Jesus-like character could not have survived the brutality of Robben Island. Nor could he have been the hard-headed professional revolutionary who sacrificed everything to lead the armed struggle against the apartheid regime: his career as a lawyer, his children, and Winnie the beautiful, intelligent woman with whom he was passionately in love and had married in June 1958.

It was at a public meeting on 28 June 1953 at the Odin cinema, Sophiatown that I caught my first glimpse of Mandela, a tall, good looking, charismatic young man,

who had sprung to national attention the previous year as volunteer-in-chief of the African National Congress and South African Indian Congress' Defiance Campaign against unjust laws. I was a 19-year old pro-ANC student activist, one of a handful of whites at the lively, exuberant meeting among a sea of about 1 200 black protestors.

The banning orders which prohibited Mandela and his close comrade Walter Sisulu from attending gatherings, had expired just a few days before the meeting. Word got around the excited audience that they were going to speak. But the police were determined to prevent this. Major Prinsloo and armed officers stormed into the meeting and dragged Yusuf Cachalia of the Indian Congress, who had begun to speak, off the platform. We all began yelling and booing. Things were looking ugly. The next we knew was that Mandela had jumped on to the platform and started singing a protest song. We all joined in. His presence of mind, pulling the crowd into a disciplined peaceful response, had calmed them down and prevented what could have turned into a riot and shooting by the police.

It was his quick-thinking, calm authority, almost serenity in the face of danger, that impressed me most on that occasion. His speeches were rarely emotional and were never scintillating. In a deep, resonant voice, speaking slowly and deliberately, choosing his words carefully, in a stiff style, he would appeal to reason from a deep sense of conviction of the justice of his cause.

In March 1961, the Treason Trial, which had been running since 1956, ended with the acquittal of Mandela and all the other accused. Encouraged by Sisulu, Mandela decided that he would have to go underground, defying the banning orders and

evading the police, in order to give effective leadership to the three-day stay-at-home that was planned for 31 May in protest against the declaration of a white republic that excluded the majority of the population. He also wanted to make preparations for the new phase of armed struggle. When he went underground, I was asked to join a support team in Johannesburg that moved him around safe houses, took him to secret meetings and carried messages. Since a white man would arouse suspicion if he was seen with a black passenger, Mandela would don a cap and white chauffeur's coat and drive my smart green Wolseley car, with me in the back seat.

Mandela coped with the challenge of functioning in hiding with enormous self-discipline and optimism. I usually found him relaxed and in good humour, and never appearing to be nervous, but it was clear that he was missing Winnie and would speak emotionally when expressing his concerns about her well-being. There were long periods when Mandela was alone, unable to move during daylight hours. He occupied himself with exercise, reading and making extensive notes.

In this period, I was struck by Mandela's natural charm and ability to treat everyone as an equal. Some biographers speak of his 'aloofness' but that is not how I knew him. I came to admire his courage but also sensed an element of bravado. He understood the feelings of ordinary people and could respond to them, as occasion demanded, becoming a symbol of defiance and willingness to sacrifice all for the cause of his people. His optimism inspired others, but it also made him vulnerable. His attitude to his own security was almost careless and infected with romanticism. He revelled in being dubbed the 'Black Pimpernel' – like Baroness Orczy's Scarlet Pimpernel, 'they seek him here, they seek him there, they seek him everywhere.' He

took huge risks and felt the need to keep a revealing diary and notes of his activities as well as his extensive reading on guerrilla warfare, which was later used as part of the evidence to condemn him to life imprisonment.

He ignored the warnings to take care when he visited the province of Natal in August 1962, after his return from an extended trip around Africa to gather support for the armed struggle. On Sunday 5 August, travelling with the well-known theatrical producer, Cecil Williams, in a conspicuous new car, he was arrested on his way back to Johannesburg. Some biographers have detected a wish for martyrdom in his apparently rash indifference to being captured. But he was not an immature, ignorant Joan of Arc claiming divine will for his cause. He was a man of action, impatient to awaken the sleeping giant of his people's anger and frustration with white domination. His attitude was 'who dares, wins.'

I was shocked and upset to hear the news of Mandela's arrest, although it had been half-expected ever since his return from abroad. At this time I was practising as an Advocate at the Johannesburg Bar. Advocate Joe Slovo, a leading communist and co-founder with Mandela of *Umkhonto we Sizwe* (MK) the ANC's armed wing, told me that there were plans for Mandela to escape from the Johannesburg Fort where he was held, but these came to nothing. I later learned from Mandela that he had considered the plans seriously, and had smuggled out a sketch of the prison, including the prison hospital where he was being lodged by a friendly commanding officer. However, he had ruled out an escape attempt at that time because the high degree of police vigilance while he was awaiting trial made it likely to end as a dangerous fiasco. The

venue of the trial was moved, at the last moment, to the Old Synagogue Pretoria which had been converted into a court for the earlier treason trial.

There were two charges against Mandela. The first was that between 1 April and 31 May 1961 he had incited workers to stay away from work illegally as a means of protesting against the (apartheid) laws. The second charge was that he had left the country without a valid passport for his visit to other African countries. Mandela was proud to admit that he had organised the stay-at-home by way of protest against a law in which neither he nor his people had any say in making, and he also admitted that he had no passport because the Government would not grant him one. He decided to conduct his own defence because, as he told the court, 'this is a case of the aspirations of the African people.' As the trial would be conducted on a political basis it was obvious that such a defence could not be put forward by lawyers. The services of counsel were, however, required to assist him with various aspects of the trial. When Slovo was refused permission to leave Johannesburg, to which he was confined by a banning order, Mandela asked me to step in as his legal adviser. In his memoir, written in prison, Mandela recalls: 'Joe Slovo was replaced by Bob Hepple, a member of the Congress of Democrats and in whom I had the fullest confidence. He was able and dedicated and this made the task of conducting the defence comparatively easy for me'.

When I arrived at the Old Synagogue, I was taken aback to find Mandela wearing tribal dress, a *kaross* (cloak), with a wide bead necklace in the gold, green and black colours of the ANC. I cannot recall whether this was a leopard skin, the traditional garb of a Xhosa chief, or jackal skin, the dress of a commoner. Mandela himself

indicated years later that it was a leopard skin, while Winnie who brought it to him, says it was not. The different recollections are symptomatic of the attempts to portray Mandela as a ‘royal freedom fighter’ (as *The Observer* described him on 19 August 1962) rather than as a man of the people. I was used to seeing him in court dressed as a lawyer in suit and tie. My reaction was that of a white left-winger who viewed tribal dress with suspicion: this, I thought to myself, is how the Afrikaners want to portray Africans, as still living in a tribal state and not as citizens of a modern, industrial society. Mandela could sense my surprise. ‘I want our people to see me as a black man in the white man’s court,’ Mandela said to me. In his autobiography he explained, ‘that day I felt myself to be the embodiment of African nationalism...the *kaross* was also a sign of contempt for white justice.’

After I had heard his opening application to the magistrate I realised that my instinctive reaction to his dress had been wrong. During the hours that we discussed the case I came to appreciate that Mandela was anxious to embrace the image of a proud African nationalist, to counter the claims of Sobukwe’s breakaway Pan-Africanist Congress (PAC) that they alone were the true patriots. On his recent trip around Africa Mandela had been alarmed to find that leaders of independence movements in other African countries pictured the ANC as being under the domination of white communists and not as a genuine African organisation.

Mandela and I walked together into the court. The black spectators were thrilled by his *kaross* and defiant manner. They rose as he entered and shouted *Amandla Ngawethu* (‘power is ours’) and *Shosholozza Mandela* (‘struggle on, Mandela’).

Mandela made an application for the recusal of the senior regional magistrate, Mr W.A. van Helsdingen, whom Mandela knew from legal practice. Characteristically, he made it clear that there was no personal reflection on the magistrate's integrity: 'I hold your Worship in high esteem and do not for one single moment doubt your sense of fairness and justice.' He put forward two grounds for recusal which he knew full well had no legal basis, and which I could not have advanced if I was speaking as counsel. Van Helsdingen tried twice to interrupt him, saying that he was going 'beyond the scope of the proceedings' but Mandela persisted and was allowed to continue. His aim was political, to make it clear from the start of the proceedings that he intended to put the white state on trial. The first ground was that, as a black man, he could not be given a fair trial in a white man's court: 'Why is it that in this courtroom I face a white magistrate, am confronted by a white prosecutor, and escorted into the dock by a white orderly? Can anyone honestly and seriously suggest that in this type of atmosphere the scales of justice are evenly balanced?' The second ground was that he considered himself neither legally nor morally bound to obey laws made by a Parliament in which he had no representation. The prosecutor barely bothered to reply, and Mandela's application was summarily dismissed. He had set the tone – white supremacy was on trial. He pleaded not guilty to both charges.

Two incidents during the trial illustrate Mandela's most basic quality – his sense of empathy - the ability to identify what another person is thinking or feeling and to respond to their thoughts and feelings with an appropriate reaction. The first is his attitude to Van Helsdingen. Louis Blom-Cooper QC, a British barrister, was attending the trial as an observer for the human rights organisation Amnesty. Late on the second day he told me that he had seen the magistrate going off in a car for lunch with two

special branch detectives, one of whom was a state witness, while the other had been assisting the prosecution. I told Mandela that he had good legal grounds for asking Van Helsdingen to recuse himself. Mandela was hesitant. He had refused to recognise the authority of a white magistrate, appointed by a government in which as a black man he had no say. His defence was political and not based on accusations of personal bias. He was worried that an attack on the magistrate's integrity might detract from the political nature of his defence. I argued that an exposure of the cavalier attitude of the magistrate to the ordinary proprieties of a fair trial would support Mandela's case that the white man's court was contemptuous of the rights of a black defendant. Mandela was persuaded by this argument, and decided to make an application for the magistrate's recusal. But he said to me: 'I have nothing against Van Helsdingen personally, and I do not want to embarrass him. Please go and see him before the hearing resumes and tell him what I am going to do, that it's not meant personally.' I was astounded that he put the feelings of the magistrate who was about to send him to prison above the advantage which he could gain by taking him by surprise in open court. When I carried out my instructions and spoke to Van Helsdingen in his chambers, he went red in the face and spluttered to me that he had not discussed the case with the officers, and that they were merely escorting him for his protection. When Mandela made the application in open court, he emphasised that he had a high regard for the magistrate as a person but 'I am left with the substantial fear that justice is being administered in a secret manner.' Van Helsdingen refused to step down and the case continued.

The other incident concerned the prosecutor, Mr J P Bosch. On the morning of the day Mandela was to make his closing speech, we were consulting in his room. There

was a knock on the door. It was prosecutor Bosch: 'I'd like a private word with Mandela.' They knew each other from the days when Mandela practised in the Johannesburg magistrates' court. 'Don't be crazy' I said 'you can't speak to him alone in the middle of a trial.' But Mandela intervened and said he did not mind. He asked me to wait outside. I left them. When Bosch came out of the cell about five minutes later, I saw tears streaming down his face. I asked Mandela: 'what the hell's going on?' He replied: 'You won't believe this but he asked me to forgive him'. I exclaimed 'Nel, I hope you told him to get stuffed'. To my surprise, Mandela responded: 'No, I did not. I told him I knew he was just doing his job, and thanked him for his good wishes.'

The qualities of understanding and empathy that Mandela displayed during his trial were to stand him in good stead in the long years' of his imprisonment, and in the negotiations for a democratic South Africa. In those years, he also needed the iron will and unshakeable belief in his cause that he displayed when he went underground.

On 7 November the magistrate found Mandela guilty on both charges. Mandela's closing speech gave him another opportunity to challenge white supremacy. The speech prefigured the more famous statement from the dock that Mandela made in the Rivonia trial in 1964. It signalled that a new type of leader, a professional revolutionary, had emerged for an armed and dangerous phase of the struggle for democracy. Unfortunately, very little of the speech could be published in South Africa. Although general permission had been given to the press to report what was said in court by banned persons such as Mandela, the Government had warned already scared editors 'not to abuse this by creating a forum for such persons' and they were

advised that Mandela's speech fell into this category. After the trial, I sent a copy of the speech to England. An edited version was published in *The Observer* (18 November 1962). Mrs Helen Suzman, the Progressive Party MP, read out part of the speech under the protection of parliamentary privilege and this enabled the South African *Rand Daily Mail* to report its content. A sympathetic British lawyer wrote to me saying that I must have written the speech for Mandela. Nothing could be further from the truth. It was his work alone, save for some minor corrections and phrasing from me.

Mandela was given the maximum sentence on each charge, five years in all. But he was not to re-emerge from prison for more than 27 years.

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