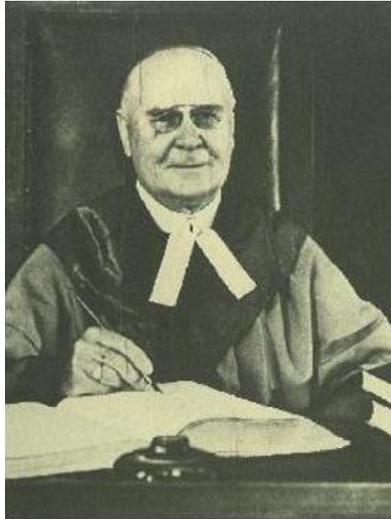


The Life of Judge F E T Krause

The man who handed Johannesburg intact
to
Field Marshall Lord Roberts on May 31st 1900

Mike Alfred



'Krause in later life'

I first "met" Frederic Edward Traugott 'Fritz' Krause in Charles van Onselen's book, *New Babylon*. I learnt that as the newly appointed Chief Prosecutor for the rambunctious Witwatersrand in the mid 1890s, he supervised a crime scene mostly dependent for its high drama on gambling, illicit liquor selling, white slaving and prostitution. Here was our own early cops and robbers thriller on the Highveld. In terms of international crime syndicates, general lawlessness and police corruption, it appeared not greatly different to the events of the present day.

I once again incidentally 'met' Krause in A P Cartwright's *The Gold Miners*, where the author described how in May 1900, appointed by President Kruger as Special Commandant for Johannesburg, Krause prevented the dynamiting of the gold mines. Several days later, Krause surrendered Johannesburg to Field Marshall Roberts and his Chief of Staff, Kitchener, but not before arranging a 24 hour truce which enabled the retreating Boers to regroup and, later, continue fighting the guerilla war. I became intrigued by this man whose entry in the *Dictionary of SA Biography* is so tantalisingly sparse. I set out to learn more about someone acknowledged as a great South African by many in his own times, but whose story is now, in our own turbulent, transitional period, less well remembered.

Krause was known as one of the best criminal lawyers of his time. However, he might not have become famous outside the legal fraternity had it not been for his few years of public service in the South African Republic, which culminated in his masterful performances associated with the fall of Johannesburg. Adding to his historic visibility is the knowledge that of all the judges ever to function in South Africa, he alone experienced the inside of an English jail as a convict.

The official milestones of Krause's career read as follows:

- Member of the Pretoria Bar 1893/6.
- First State Prosecutor in Johannesburg 1896/9.
- Member of the Cape Bar 1904/5.
- Member of the Johannesburg Bar 1905/23.
- Admitted to practice in the High Court of Southern Rhodesia 1910.
- Admitted KC 1912.
- Judge of the Transvaal Provincial Division 1923/33.
- Judge President of the Orange Free State Provincial Division 1933/8

Krause himself, in a autobiographical memo written in 1948, tells us that he was, after his official retirement at the age of 70, for a further ten years (until 1948), appointed acting judge for various periods in the Orange Free State, South West Africa, Natal, Basutoland, and Griqualand West. At the height of his eminence, Krause was formally known as Dr the Honourable Frederick Edward Traugott Krause, Justice of the Peace, Kings Counsel, Judge, Judge President; yet to many people both in and out the profession, he was simply and affectionately known as Fritz, or Oom Fritz, or Fritzie. His early portrait photos show him stern and forbidding, but a later photo shows a different side to him: gently human, with the hint of a smile on his lips. One obtains the impression that he wasn't a tall man, and he became tubby as he aged.

The Krause forebears came from East Prussia where Napoleon's forces confiscated their farmland and killed several ancestors. Krause's father, Carl Johan Gottlieb, came to the village of Bloemfontein in 1848 or 1849, where at first he worked as a medical missionary. Later he practiced as a doctor, becoming the growing town's district surgeon. Patriotic towards his adopted country and extensively involved in the community, he was elected to the Orange Free State Volksraad, on which he served for many years. Fritz's mother was Anna Wilhelmina Kellner, a well-known figure in Bloemfontein society. The Krause parents had eleven children. A silence surrounds the daughters. It appears that they, in the fashion of the day, did not receive the same educational attention as that enjoyed by their brothers. The family was deeply religious and embraced a strong sense of service. Fritz Krause, born in 1868, was schooled - as were his four brothers - at Grey College, that famous, uniquely South African developmental ground for so many prominent achievers.

The family was distinguished, two of Krause's brothers becoming noteworthy in the Transvaal legal profession and another two entering the medical field. The eldest brother, Otto Karl Heinrich, became prominent in Free State medicine and

agriculture. After the Anglo Boer War, Otto Krause received a memorial of gratitude for his services to the inmates of the Bloemfontein concentration camp. An older brother, Dr AEJ Krause, was State Attorney in Pretoria for some years but died young in 1900. It was AEJ who introduced Fritz to the then unknown Mohandas Gandhi who spent his first year in South Africa in Pretoria preparing for the commercial case that initially brought him here. Younger brother Ludwig Krause, or Lodi, as he was affectionately known, worked for many years as an advocate in Pietersburg. He served in the Boer Forces during the War, recording his experiences in the book, *The War Memoirs of Commandant Ludwig Krause*. Lodi was captured in the Magaliesburg and after a short period in Johannesburg, he was shipped off to prisoner-of-war internment in India.

Fritz Krause blossomed early and remained in full flower, virtually to his 1959 death, aged ninety one years. His wife, Annette, who was known to family members as Aunt Nin, writing to her 'Darling Fritzie' on the occasion of his seventy eighth birthday, emphasizes how his brain 'remained clear as crystal, his vocal eloquence as influential as ever.'

Fritz Krause ensured for himself the most comprehensive education. One cannot but be impressed by his peripatetic academic industry. He obtained a first class matric and took a BA Honours in Literature and Philosophy at Victoria College, Stellenbosch. In 1890, he obtained his law degree, *cum laude*, from Amsterdam University and from which institution he obtained a Doctorate of Laws three years later. A notable fellow student at the same university was JBM Herzog, a man with whom he would experience future political affinity. In 1890, Krause enrolled in the Middle Temple and spent several months studying law at Christ College, Cambridge. He also managed during this period to pursue six months of legal studies in Paris. Although he successfully completed his Middle Temple exams, which gained him entry to the English bar in 1893, he did not then practice as a barrister in Britain. On the strength of his Amsterdam LLD, Krause was admitted Doctor of Laws (*ad eundem gradum*) at the University of the Cape in February 1905. His family background and European education allowed him fluency in German, English, Dutch and French.

In 1893 Krause returned to work in Pretoria as an advocate registered in the South African Republic. By defending some prominent wrong doers, he quickly moved from general to criminal practice. At the end of 1895, the Jameson Raid plunged republicans into a fury of resentment towards not only Britain, but towards the Uitlanders as represented by the mine magnates of the Reform Committee. Although abortive in itself, the provocative nature of the Raid, which was allied to plans for an Uitlander takeover, allowed many to conclude that a second war with Imperial Britain was inevitable. The Reformers, including ringleaders Lionel Phillips, George Farrar, John Hays Hammond, and Frank, Cecil Rhodes' brother, were placed behind bars in Pretoria. Krause was requested to assist the State Prosecutor, a Hollander, Dr Hermann Coster, at the Reformers' 1896 trial for high treason. Shortly thereafter, Krause was persuaded by Coster to give up his practice in order to take up the dual positions of Attorney

General and Chief State Prosecutor for the Witwatersrand, where crime, abetted by police graft and ineffectiveness, had become an enormous problem.

In Johannesburg, Krause quickly assumed direct supervision of the virtually lawless police and detective forces. When Krause laid the foundation stone for the Marshall Square Charge Office on March 25th 1899, it marked an administrative change in which arrested persons were processed, not by the police, but by independent officials. The idea, of course, was to remove temptation from poorly paid policemen.

Forty four years later, in 1946, at a commemorative dinner for old Johannesburg cronies, some of whom had been present at the opening, Krause was reported in the *Star* as saying that in 1899, police 'salaries were very low. The result was the Liquor kings flourished, with money galore, and it was very difficult for the ordinary policeman to run straight. If a policeman charged a man and brought the bottle of brandy found on him to the charge office, either the charge was withdrawn or, when the day of the trial arrived, the bottle of brandy was found to have reversed the biblical miracle and changed into water.'

Whereas in most of Krause's well-known courtroom appearances he defended the accused, in the 'Baron von Veltheim' trial, he featured as prosecutor. Krause's friend Dr Hermann Coster, conducted the defence. This trial, which engendered much public fascination, took place in Johannesburg in July 1898, before a 'packed house.' Von Veltheim, a man of aliases, and certainly no Baron, stood accused of murdering Woolf Joel, Barney Barnato's nephew and a partner in Barnato Bros. Von Veltheim who had lived by his wits all over the world, was an adventurer par excellence, having operated variously as a sailor, gun-runner, freebooter, spy, lumberjack and inevitably, confidence trickster. Much of this was revealed by Krause during the trial as the State, perceiving him as politically dangerous, had spent a large sum tracking von Veltheim's international career. Johannesburg, 'a boom town *in excelsis*', drew him as honey does a fly. Women were fascinated by the tall, tanned and dashing 'Baron.' In addition to the seventeen reporters covering the event, the drama attracted many female onlookers.

The murder took place after a period of months during which Woolf Joel had received a series of life-menacing letters written by von Veltheim, which contained demands for money, some of which would contribute to a mysterious undertaking, of benefit to the Joels. One of the later letters demanded a meeting. Woolf Joel together with a company employee,

Harold Strange, met von Veltheim when Joel told him that there was no reason to do business with him. However, on the next day in a second meeting, with detectives lurking outside and with Strange again present, Joel was shot in a situation where all three of the main role players were brandishing pistols. Strange, on whose evidence the prosecution relied and who, alas, admitted to spending time under Joel's desk during the incident, was in conflict with von

Veltheim as to who had fired the first shot. Despite Krause's lengthy and detailed closing argument, the nine-man jury acquitted von Veltheim. The verdict was popular; onlookers cheered the free man as he left court. The Judge, in dismissing von Veltheim, told him that he was surprised by the verdict with which he could not agree. Von Veltheim's triumph was short lived as he was immediately booted from the Transvaal. Perhaps this was one of the cases which fashioned Krause's strong disapproval of the jury system. He attributed the verdict to the proletarian public's antipathy towards mine magnates.

Despite his crime fighting successes, Krause used kid gloves to assert his authority over the ex-New York, Bowery Boys Gang and other international white slavers and pimps who ran the town's brothels. Krause pursued the illicit liquor kings with zeal but was more tolerant of prostitution, maintaining that, despite its being a social evil, it was a social necessity and could not be stamped out either by stern morality laws or severe repression. Furthermore, he could not have been unaware that at that time of a renewed gold boom, the town was home to a skewed proportion of woman-starved bachelors. His instructions to the police were aimed at stopping street solicitation and the prostitutes' continental habit of displaying themselves in brothel windows, but his directions only went so far as controlling, rather than eliminating, Johannesburg's numerous bordellos.

Given such leeway, the foreign pimps, madams and brothel owners of Frenchfontein, Johannesburg's extensive red light district, bribed the police virtually unto blindness. Krause himself appeared not beyond suspicion. In 1898/9, newly appointed State Attorney, Jan Smuts, with whom Krause had been in competition for the position, was clearly desirous of loosening the strangling grip of organized crime. He tackled the problem posed by Krause's worldly liberality by appointing his own prosecutor in Krause's office. Despite Krause's unhelpfulness, the zealous young advocate, Mostyn Cleaver, working independently, achieved some success in prosecuting several bosses including the criminally talented, Polish American, Joe Silver. Cleaver's intense efforts were unfortunately somewhat nullified by the start of the Anglo Boer War, which brought many Johannesburg activities, including large scale prostitution, to a temporary halt. After a spell in Johannesburg's Fort, the incorrigible Silver escaped custody from a prison in Potchefstroom and made his way to the Cape. The zealous young Cleaver joined the Boer forces, was captured, and died of disease in a prisoner-of-war camp in Ceylon.

Krause spent the first months of the war organising the guarding of the mines, which were partially paying for the Boer war effort. His other main task involved maintaining law and order in a Johannesburg emptied of both Boer policemen and Brits who were fighting one another in far off battles. Later, he joined the Boer forces in the field and served in Natal, at Colesberg and Modder River. Lodi Krause, serving with a Free State Commando, learnt that his brother Fritz was visiting Boer forces engaged in the siege of Ladysmith, but despite Lodi's attempt to find his brother, the two did not meet.

When, in April 1900, Commandant Schutte was dismissed for negligence after the explosion at the Begbie Engineering Works turned Boer munitions factory, Kruger recalled Krause and installed him as Special Military Commandant for the Witwatersrand. Both Kruger and General Louis Botha charged Krause with preventing the possible destruction of the gold mines and with handing the town intact to the British forces who by then, were rapidly advancing.

On May 29th, 1900, encouraged by a Volksraad faction supportive of dynamiting the gold mines and laying waste Johannesburg in the manner of 'Moscow burning,' a Judge, now self-styled General, Antonie Kock, arrived at the Robinson Mine with a band of mounted wreckers. There he discovered a substantial amount of gold, which had not yet been delivered to Pretoria. Fortunately thus diverted, he rode with his men to Government House where he confronted Krause who had just returned from arranging the defence of Johannesburg's southern hills. Kock, alone in Krause's office, demanded an explanation for the undelivered gold whereupon Krause, assisted by Police Chief van Diggelen, disarmed and arrested Kock. Then, demonstrating inventiveness under pressure, Krause went outside brandishing several papers, to inform Kock's waiting horsemen that they were needed to divert a British advance column at Geldenhuys Mine, nearby. Leaderless, they galloped off, posing no further threat. Kock was secretly delivered to the Fort, from where, later still, he was delivered to Pretoria - where he was released by sympathisers to enjoy a brief, heroic hour.

The above story is often told. As a significant and dramatic episode in the history of Johannesburg and its gold, it has found its way into many accounts. But there was a preface and a sequel, less often told. Krause and Kock were good friends. Indeed, Kock had stayed overnight with Krause and his mother some ten days before the incident.

Johanna Brand, in her book *Petticoat Commando*, relates: 'In a burst of confidence, he [Kock] produced a letter signed by a very high-placed official of the Executive Council, whereby he was empowered, in indefinite terms, to call for the cooperation of any military officer whom he pleased. He showed Dr Krause this letter and requested him to instruct the police and certain other mine officials to assist him. He was met with a blank refusal and a threat that if he persisted in this undertaking he would be arrested.'

Kock's father had died in the battle of Elandsplaagte [Oct 1889], and Kock himself had served in the field. Not long after his impotent dynamiting adventure, an embittered Kock began showing signs of mental disturbance and ended his life in a mental institution.

After the war, when Krause started his criminal practice in Johannesburg, he told a colleague, H H Morris KC, who agreed to share rooms with him, that they would never receive any business from those firms run by former Reformers, that is, the Randlords. The truth of this prediction in no way prevented Krause's

astounding later success, which focused to large degree on defending underdogs. It seems ironic however: inasmuch as he 'saved' the mines from being destroyed during the war, it could also be claimed that he saved Johannesburg.

Indeed, Field Marshall Roberts wrote Krause, "Thanks to your energy and vigilance, order and tranquility have been preserved, and I congratulate you heartily on the result of your labours."

By May 30th, Johannesburg was beleaguered east, south and west by British troops. Field Marshall Lord Roberts set up his headquarters in a house adjacent to Victoria Lake in Germiston. From there, under a flag of truce, he sent Major Francis Davis, accompanied by two local 'guides' to call for the surrender of the town. One of the guides was John Douglas Forster, lawyer, virulently anti-Boer, and an inflammatory propagandist in the pay of British Intelligence, who had already provided Krause much trouble, and who had recently avoided Krause's warrant of arrest by fleeing to the Cape. J D Forster was to feature as a diabolical instrument in Krause's immediate fate.

Major Davis, in soldierly manner, addressed Dr Krause by saying that he was commanded by Lord Roberts to demand the immediate and unconditional surrender of the town, in the name of Her Majesty, Queen Victoria.

Dr Krause's reply was very short: "No, sir, not immediately and not unconditionally."

Major Davis thereupon said that Lord Roberts expressed a desire that the Commandant should grant him an interview at which the matter could be discussed. Dr Krause assented to this proposition.

What the Boers wanted was delay – and if Commandant Krause could delay the forward advance of the British troops a great advantage would be gained.

Deneys Reitz, in his book *Commando*, describes the scene around Johannesburg at that crucial time. "General de la Rey had his Lichtenburg men there, (Doornkop, on the western edge of today's Soweto) but although they are reputed the best fighting men in the Transvaal, they were overborne by weight of numbers and were soon riding back in full retreat. This was the last effort to defend Johannesburg.

All semblance of order or resistance now disappeared. Wherever one looked, men were departing wholesale, and the universal cry was: "Huis-toe, the war is over." Next morning (about the 1st or 2nd of June) we saw the British feeling their way into Johannesburg, so we followed the drift of men going round by the eastern side of town. As we passed the gold mines that lay on our route, there was a small column of cavalry drawn up watching us go by, who made no

attempt to interfere with us, probably thinking we were refugees and not worth bothering about."

"When we got to the main road leading to Pretoria we found it crowded with mounted men, wagons and herds of cattle and we had to make our way through dreadful confusion. . . . I believe that the English could have ridden in amongst us that day without firing a shot, so strong was the conviction that our army was disbanded and the war was at an end."

Krause negotiated a twenty-four hour armistice. He gave as a major reason his wish to avoid the destructiveness of street fighting. Roberts, who had experienced bloody street fighting in Afghanistan, and who had been instructed to take Johannesburg intact if possible, was amenable to Krause's argument. Thomas Pakenham in *The Boer War*, observes, "It was probably the most serious strategic mistake of his career. . . . The war was nearly over, so Roberts believed. So why waste British lives by attacking the Boers now?"

Johanna Brand in *Petticoat Commando* continues: "At about 10'0 clock [May 31st] Commandant Krause received a message from Lord Roberts announcing his presence on the outskirts of the town [at Denver] and expressing the desire that the commandant should personally come and meet and conduct him to the Government Offices, there to hand over the 'keys' of the city."

Lord Kerry, ADC to Roberts, described the scene in a letter to his father (see Thomas Pakenham, *The Boer War*): "Formal surrender of town brought in early so started off at 10-0clk riding right along Rand Ridge with 11th and 7th Divisions following, met Dr Krause who accompanied the procession outside Jeppestown then all down Commissioner St, to the Law Courts; a good many people all along the road chiefly niggers and Jews, and a big crowd waiting outside law courts, unattractive looking people speaking with tongues, mostly friendly and wearing red white and blue badges but an occasional groan could be heard. . . . The vierkleur flying on flag staff on the square was then pulled down and Union Jack hoisted in its stead, Royal Salute, God Save the Queen and three cheers called for Queen by Chief . . . Dr Krause sat on his horse next to the Chief and apparently thought the whole show was partly in his honour as he, as well as Lord R took all salutes."

So are history's turning points created. Between them, a battle-hardened Field Marshall, Peer of the Realm, and a young Republican Doctor of Laws, both acting with humane intentions, they set the conditions for the war to continue in guerilla mode for another two increasingly horrifying years. Who, on that bright and silent autumn day might have envisaged the bitterness, which consequently pervaded white South African politics.

Krause became a prisoner of war on parole. He was initially allowed to practice his profession in the Johannesburg Magistrate's Court and before the British Military Tribunal. He was bitter to find that Forster, a qualified barrister, had been

appointed as legal advisor to the occupying force. When he refused to take an oath of allegiance to the Crown, permission to practice law was withdrawn. He perceived Forster's hand in this. Stressed and suffering from asthma, he was released to proceed on parole to England where, as a member of the Middle Temple, he might work. In Britain, he traveled about, observing the war-induced, heightened public emotions, both pro- and anti-Boer. He acted as a conduit for information about the Concentration Camps, which he fed to friendly British publications. He reacted strongly and probably unwisely to an article written for the *Pall Mall Gazette* by their South African stringer, his nemesis, Forster. Describing a battle field incident of Boer brutality, proven later to be quite unfounded, Forster concluded his article with these words: "If this war is to be ended once and for all, all the Boers now in the field must be treated as robbers and bandits and not as belligerents."

Incensed, Krause wrote several letters to his former colleague, Cornelis Broeksma, whom, he believed, was still working in the Johannesburg Prosecutor's Office, urging him in seemingly ambiguous terms to have Forster disposed of. One letter reads, "It is your duty to inform our people of its contents [abovementioned article] so that they can deal with him in a lawful manner and either shoot him or otherwise make him harmless."

Unfortunately, Broeksma had been arrested in Johannesburg for treason (he was later tried and executed by firing squad in the Fort), and Krause's letter was intercepted by British Intelligence. Krause was arrested for high treason. There was talk of returning him to South Africa to appear before a Military Tribunal but the charge was withdrawn and he was released. In a war atmosphere of public excitement exacerbated by strident and emotional press debate, however, he was arrested again and charged with a lesser crime: incitement to murder.

He was tried at the Old Bailey, found guilty of inciting Broeksma to murder Forster, and sentenced to two years behind bars at Wormwood Scrubs. An additional humiliation was bestowed in the form of disbarment from the Middle Temple. In prison he worked in the laundry where he kept the books, and lived a somewhat less than brutal life.

Krause smarted in the belief that he had fallen victim to false justice. 'My Counsel realised that the struggle was hopeless and I nerved myself to suppress my sense of just indignation at this travesty . . . even the "Goddess of Justice" must perforce at times, bend her knee to the "God of War."'

Having served nine months of his sentence, Krause was released on probation in 1904 but his troubles were not over. He returned to South Africa where Milner, calling him 'a political firebrand,'¹ barred him from practicing in the Transvaal. His application to the Cape Bar was accepted however and he practiced there for a short while before being granted re-entry to the Johannesburg bar by a notable group of Transvaal judges including Chief Justice Sir James Rose Innes. They deemed his conduct to have been based on political rather than criminal motives,

and in the court's discretion he would be allowed once again, to practice law. But four years were to elapse before Krause was fully vindicated when pardoned by King Edward VII in 1909. Despite a journey to London in December 1904, he was not granted an audience at a meeting of his peers at their January meeting to consider his reinstatement, and it was not until 1921, that he was readmitted to the Inns of Court.

What was the scene in Johannesburg halfway through the first decade of the 20th Century? The mines were experiencing recovery based on the sweat of indentured Chinese labourers. White miners were protesting the mine owners' stringent cost-cutting measures, which nibbled away at their wages and working conditions. They also feared losing their skilled jobs to 'lesser' races. Trade union membership and resistance strengthened. Fiery Mary Fitzgerald was stirring up miners and perturbing the authorities with her invective and activism.

Driven by platteland drought, cattle disease, and the depredations of the War, more Afrikaners were coming to town, many finding employment in the mines, sometimes as scabs. These, together with many unemployed, gave rise to a significant Boer, urban, struggling proletariat.

Alfred Lord Milner earned widespread Boer hatred for his Anglicization policy, which, among other measures, emphasized English at the expense of the Dutch language. However, Milner's plan to swamp the Boers with large-scale immigration from Britain failed. By inducing Asians to burn their passes, newly arrived Mohandas Gandhi began developing his Satyagraha [passive resistance] technique which, decades later, was to drive the British from India. The western side of town housed several squatter slums where blacks and Asians found rudimentary shelter. The first 'removals' to what was to become Soweto, took place. Prostitution and its attendant crime once again began to flourish but the authorities were uncompromising in their attempts to eradicate it. Lionel Curtis, Johannesburg Town Clerk and one of Milner's famous Oxford educated 'kindergarten,' drew up the guidelines for municipal government which endured for many decades.

Lionel Phillips, now heading the Rand Mines Group, built a third Corner House, the city's first steel-framed skyscraper, on the corner of Simmons and Commissioner Streets, opposite the Stock Exchange. Rand Mines was well on its way to becoming the richest gold mining group in the world. In 1907, Johannesburg's horse drawn trams were replaced by those electrically driven. The posh suburbs expanded north beyond Parktown Ridge, resulting in a reduction of social status if one remained in Doornfontein or Belgravia.

In 1907, the Liberals, who had been against the war, came to power in Britain and quickly granted self-government to the former Boer Republics. Botha's and Smuts' Het Volk Party grew rapidly in popularity but many Boers saw the former war heroes as being too forgiving of their conquerors. Indeed, it later became

clear that Krause perceived them both as Imperialist stooges, but he was more tolerant of Botha than of Smuts.

Into this milieu came a 'battle scarred' Fritz Krause. In what must have been a great surge of energy, perhaps making up for lost time and opportunities, perhaps also delighted to be home and reveling in freedom, the 37 year old Krause not only re-launched his criminal practice but entered public life with a vengeance. He also met, and in 1907, married Annette Wallis, a divorced Englishwoman with two daughters.

In his book *Judges I have known*, Isaac Goodman writes about Annette Krause: "Petite, possessed of a charming personality, and a brilliant speaker, the Johannesburg Hospital was among the institutions which were always dear to her heart." Annette was one of three women elected to the Johannesburg Council in 1916 and played a strong role in obtaining the vote for South African white women.

In his memo, *Careers and Public Service of the Hon FET Krause and Annette Krause*, Krause said about his wife: "Mrs. Krause, apart from her individual services to Johannesburg and to the public, has supported her husband most ably in his public work." A dry but telling tribute.

Many of Krause's admirers extol his steely courage. Neither was Annette averse to flouting convention. Given the political and moral climate of the times, it undoubtedly took more than affection to cement the bond between Fritz and Annette. Ignoring Political Correctness and Victorian attitudes towards divorce, the two set out upon the journey of marriage. How did it turn out?

In the commemorative *Penal Reform Newsletter*, issued several months after Krause's death, Henry Junod writes: "For over fifty years he had the great privilege of the constant companionship, the graceful presence and the very able brain of his wife. She was as ardent a royalist as he was an ardent republican . . . But she loved Fritz Krause completely and absolutely; indeed it was one of the great joys of his friends to witness the devotion she had for him, and in response, the devoted love he had for her . . . In daily life, the occasion of deep conflict in our tense South African situation was ever present, ever menacing, but never at any moment brought any shade over their profound love for each other . . . When death took her away from him, as the French song puts it so well, the sun of his life went with her; he never entered her room again. He was like an old tree struck by lightning, still alive but only just so."

Krause was widely acknowledged as the finest criminal lawyer of his time. One wonders why some lawyers become criminal lawyers. Certainly Krause had defended lawbreakers before he worked in Johannesburg as Prosecutor. And we remember that during his term as Prosecutor, his attitude towards certain transgressions was tinged with a degree of human permissiveness, as shown by his conflict with State Attorney Smuts over the prostitution problem. Perhaps the

sense of service inculcated into the Krause children played a role in his choice of career directions. But also, he was so obviously an extrovert showman, whose quick brain was not beyond testing every limit of legal convention. Krause would appear to have reveled in courtroom obfuscation and manipulation. With his capacity for extended presentations and summations, he might well have rendered a jury somewhat groggy and possibly more malleable. His sense of being bullied as a result of his brush with British 'justice' might have stiffened his resolve to protect those who were facing the considerable power of the State. While in prison he certainly enjoyed many opportunities to assess the criminal mind. Some aver that criminal lawyers display an easy conscience. But it appears that his motivation stemmed from deeper considerations.

AA Roberts, in the commemorative *Penal Reform Newsletter*, gives a picture of the man: "One cannot help feeling that his reactions to the years of adversity and hardship from 1900 to 1905 show a certain strength, if not greatness, of character, and that this experience materially contributed to the development of that sympathy for and deep understanding of the underdog . . ."

In the same article, Roberts describes his "...first experience of Krause's methods in criminal trials . . . The evidence for the prosecution was overwhelming, but it was a jury trial and the accused was the son of a farmer in the district. Krause avoided high-lighting the main facts which showed the planning for, and the execution of the killing, but he elicited various little incidents in the life of the accused which seemed to me in my innocence trivial, if not irrelevant." With an accumulation of those incidents, Krause managed to suggest to the jury that the man was suffering from post-epileptic blanks and the result was that he was sentenced to a spell in an institution rather than a gallows death.

"I must confess [continues Roberts] that my reaction was not one of admiration for Krause's skill but one of complete disillusionment about our jury system, from which I have never recovered. But in the course of time I began to appreciate the quickness of his mind, the extraordinary ability to understand the feelings of accused, of witnesses and particularly of juries. In my youthful idealism I had imagined that the duty of an advocate was to approach every case with intellectual integrity and an open mind in the search for truth, the whole truth and nothing but the truth. I found that Krause was there to secure well-paid results for his clients."

"The more I learnt about him, however, the more I was compelled to admire his courage and his contemptuous disregard for convention or formalities which delayed or interfered with the end result which he considered desirable; and this even though I could not approve either of his methods or his objectives."

"I met Krause a number of times thereafter and appeared before him on occasion, but never was there any difference in his attitude towards me. I always found him casually friendly, very quick and decisive in his reactions, but with the

bland condescension of one who knew and took for granted his superiority. He was always a good showman, but eventually it seemed to me that this pose of a prestidigitator who could, at will, produce the rabbit from the hat, became his natural attitude."

Whatever his motivation, Krause's reputation blossomed. In 1908, in a well-known case, Krause was retained to defend Harry Epstein, one of the more notorious members of the Bowery Boys Gang, which was once again well established in providing 'sexual services' in Johannesburg. Charles van Onselen in *New Babylon* takes up the tale:

"Right from the outset Krause distinguished himself in defence of his pimp client. By constantly seeking remands – and being granted at least eight such requests he managed to drag out the preparatory examination from mid- February to early April 1908. Then, when Epstein's trial finally commenced, . . . Krause managed to employ successfully the same delaying tactics on a further six occasions." The prosecution used prostitute witnesses. Krause maintained that "... all evidence which emanated from prostitutes was by its nature suspect and therefore inconclusive." Krause found himself pleading before a former colleague in the pre-war Prosecutor's Office, Magistrate W G Schuurman. "The result of all this was that Epstein was eventually found not guilty on 17 June 1908. . .". Shortly after, Epstein visited Krause's chambers where he stole the trial documentation and almost immediately left South Africa. Krause's victory, however, did little to stem the power of the law in ridding the town of its more overt 'skin trade'.

Krause rapidly became a prominent Johannesburger. He was elected to the Town Council almost immediately and later, from 1907, was returned as the Het Volk member for Afrikaner Vrededorp, in the newly constituted Transvaal Provincial Council. Anna Smith, in her *Johannesburg Street Names*, tells us that Krause St, in Vrededorp, is almost certainly named after our hero. Another Johannesburg memorial comprises the Krause Library housed in the Magistrates Court, which once contained his extensive bequest of law books. A blue plaque on Gandhi Square, previously van der Bijl Square, originally Government Square, remembers his handing the town to Field Marshall Roberts.

Krause donated a sum of money towards the establishment of another Krause Library at Grey College in Bloemfontein, a memorial less personal than familial.

Krause joined the Johannesburg Hospital Board and chaired the Hospital Enquiry Commission. One cannot help wondering whether he there developed a relationship with Julius Jeppe, the well known, eponymous citizen [Jeppe St, the Jeppe Schools, etc.] with whom he also served on the Witwatersrand School Board. Speculating further, one is intrigued by the thought of Krause's courtship of Annette Wallis, perhaps beginning as a result of their both serving on the Hospital Committee. From 1907 to 1909, Krause chaired the Mining Regulations Commission responsible for, among other modifications, reducing the scourge of miners' Phthisis by improving underground ventilation and dust control. Krause

would have encountered Randlord Lionel Phillips during his many years on the executive of the Witwatersrand Agricultural Society, but, remembering their early encounter on different sides of the Reformers' Treason Trial, one cannot easily guess the nature of their interaction.

One knows that Annette Krause was acquainted with famous 'Pickhandle' Mary Fitzgerald. Both were caught up, not only in suffragette activities, but welfare work for the working class. Both served on the Johannesburg Council. One learns that Krause defended Mary Fitzgerald after her arrest following the Market Square confrontation of June 1913, between striking miners on one side and police and dragoons on the other. In 1915, Krause became involved with a trial highly significant in South African white politics: he defended Boer hero, General Christiaan de Wet after the failed rebellion of 1914.

His last historically famous trial, before being appointed to the Bench, found him defending 1922 Rand Rebellion strikers, including Taffy Long, accused of murder. After two trials before a special court comprising three judges, the case went to appeal but Long was sentenced to death and hanged in Pretoria Central. We learn in Douglas Herd's *1922*, that Krause accompanied Long's young widow Ria to the prison to help her claim her husband's body for what turned out to be a huge and defiant public funeral.

Round about the formation of Union, Krause's direct political activities waned as his legal practice expanded. However, he attended the 1911 Bloemfontein congress at which the South African Party was formed and which he joined; one of his main reasons being that they adopted a 'South Africa first' policy. Although he sought no further parliamentary election, he became the party's Vice Chairman in the Transvaal. In May 1915, during the First World War, and after the harsh anti-German riots in Johannesburg and other towns, he wrote a letter to the Rand Daily Mail protesting that the rioters went unpunished while de Wet's rebels, who had refused to invade South West Africa, were dealt with more severely. The implication was clear: those with British affiliations went free while Afrikaans South Africans, more patriotic, also deserving of leniency, were severely dealt with. He saw this dynamic as a direct contradiction to a united South Africa and called upon English and Afrikaners to unite for the country's benefit, although he accepted the reality of separate cultures. The letter created an angry reaction from what Krause called the 'Jingo-Imperialist Press,' particularly as it was published over his name and office in the South African Party. Krause believed he was advocating a One Stream policy [Afrikaners and Brits united] while Smuts, who had read the letter before publication, maintained that it would engender 'Two Stream' antipathies.

In 1914, Botha and Smuts secretly agreed to strike a blow for Britain against Germany by invading [German] South West Africa. They commandeered troops and commando members to undertake this mission without at first revealing their hand. Ultimately, De Wet, who had sworn allegiance to the Crown after the Peace of Vereeniging, was not prepared to become involved in an act of extra-

territorial aggression. The Defence Act of 1912 allowed South Africans to serve 'in defence of the Union in any part of South Africa whether within or outside the union.' This was clearly taken to mean external retaliation only if attacked. De Wet, together with former comrades now serving as senior officers in the Union Defence Force, protested the invasion of South West, and then, in the face of Government's unwillingness to desist, started a short-lived and abortive rebellion.

The rebellion, clearly expressing the residual bitterness of many defeated Boers, contained the potential of escalating into serious civil strife. It was nipped in the bud and De Wet and others were charged with treason. However, in terms of ideological conflict, the short uprising signaled, in Krause's words during the trial, 'a clear line of cleavage.' In its simplest form, white South Africans thereafter became divided into out-and-out Republicans and those who were happier to remain within Britain's broad ambit. The most visible manifestation of the divide was promoted by the growth of political parties representing people who for the most part preferred to conduct their lives speaking either Afrikaans or English in institutions organized to promote one language rather than another. The de Wet trial was a harbinger of growing political tensions.

De Wet's trial, in a specially constituted criminal court, was heard by a three-judge tribunal in Bloemfontein in June 1915. The trial was attended by many important political figures. Smuts was called as a witness. He had his clashes with Dr Krause but the judge intervened and limited the latter's cross-examination. Tielman Roos acted as Krause's junior but uttered not one court-floor word. True to his pattern, Krause's closing was lengthy and erudite. He reiterated his submission that "... the Government has not only been guilty of duplicity and treachery, but also of lack of statesmanship, incompetence and even of irregularities and illegalities." He emphasised the state of mind of those accused who retained powerful memories of their involvement in the Anglo Boer War . . . "... they felt that certain acts which were committed during the last war hurt them and cut them to the quick; they felt that certain things that were done, although they might be forgiven, they could not be forgotten, and the national feeling and the national aversion which had been stirred by those acts were still present in their minds." Krause reasoned that de Wet's actions had been motivated not by a repudiation of allegiance but "... by the intention of upholding the rights of the people whom he represented, not against the King and his Flag, but against that Government which he himself, together with his fellow citizens, had put in power."

De Wet, a much loved South African and international hero, who had lost a son killed in the uprising, was found guilty on several of ten counts and sentenced to - a relatively light - six years imprisonment and a two thousand pound fine. Nationwide petitions and resolutions calling for his freedom, caused the Government to bow in releasing him after less than a year in jail. The great guerilla general died in February 1922 and was given a state funeral attended by many former Boer comrades-in-arms. Smuts told those assembled that "... a prince and a great man has fallen today."

Krause had no time for Smuts, "... whose reputation as a great Statesman," he asserted, "... has been created entirely by the Imperialistic press" . . . Smuts was "... a convenient and willing pawn in their game." Of Botha he had a different and more tolerant view: "He was not a politician in the true sense of the term, only in the Kindergarten class of Machiavelli's pupils. I am satisfied that, when he was persuaded to proclaim his 'conciliation policy,' he failed to realize the full implication of that policy . . . It immediately antagonized the Boer (who) could not understand how it was humanly possible for a conquered race, after all that had happened, to go 'on its knees' to its enemy and ask him to shake hands with him. The conqueror, vociferously and repeatedly proclaimed his superiority and looked upon the Boer or Africander as the uncouth savage which the War-propagandists had painted him during the Boer war."

Although Krause remained a member of the South African Party, he was happier with J B M Herzog's preference for republicanism. In elucidating his (in those days were called 'racial') views, Krause writes, "I have a sincere regard for the English people as a people . . . I however most strongly disapprove of British Aggressive Imperialism. I believe that the . . . foreign policy of Downing Street has, for years, been an unscrupulous and ruthless one. Hypocrisy and duplicity have been the keynotes of that policy."

Krause's high profile positions and significant public utterances continued well beyond his seventies. In 1939, his speech to the members of the South African Association for the Advancement of Science was entitled *Crime and its Punishment*. It marked the beginning of a period in his life strongly devoted to the ideal of Penal Reform.

His talk was long and detailed but the principles were clear. Not for him the death penalty even though, or perhaps because, he had applied it on occasion. Nor was corporal punishment for him an option. His years of experience allowed him to assert that hanging had no deterrent effect and that lashes and canings did little to rehabilitate offenders. Not for him a prison service run by law enforcement employees, but rather by a mental health authority. He agreed with criminal incarceration as a public protection measure, but believed strongly that greater attempts should be made to study individual transgressors in an effort to rehabilitate them. During his retirement, when he lived in his house, *Clouds*, in Brooklyn, Pretoria, Krause served for many years as Co-President of the Penal Reform League, started in 1946.

Krause's ahead-of-its-time outlook extended to blacks, whom, he believed, should be relieved of the burden of carrying passes which were directly linked to unfair criminal penalties. He was in favour of a simple identity document. Furthermore he believed that: "The European should recognize the fact that the native is as much a citizen of the Union as the white man, and consequently, his rights as such must be respected and protected." Krause called for an end to colour prejudice. Nevertheless, in 1959, the year of his death, he sincerely

admired the efforts of Dr Verwoerd, then Minister of Native Affairs in the Nationalist Government, in his endeavours to foster separate but equal development.

In July 1946, his Presidential address to the dignitaries of the South African Association for the Advancement of Science outlined his role in finally determining, on the basis of evidence, that George Harrison was the undisputed 1886 discoverer of the Main Reef. In settling this long drawn out controversy, he relied upon the painstaking research of James and Ethel Gray. This factual knowledge led to the erection of the Langlaagte Memorial to the Australian Harrison, who, poor man, having traveled the world's goldfields in a fruitless search for riches, sold his original claim for ten pounds and disappeared, never to be heard from again.

As for Krause the Judge, some assessments of his capacity in that role are available. It is generally acknowledged that he was not a law-maker, although several of his judgments were quoted as precedent, many years after his death.

AA Roberts observes, "Although he was an astute and brilliant advocate, extraordinarily successful in his criminal practice, and a good judge of first instance, he was certainly not a great Roman Dutch lawyer . . ."

I. Grindley-Ferris predicted in 1923, that Krause's "...wide experience will enable him to come to a correct conclusion on the questions of pure fact or of mixed law and fact, which the judiciary is frequently called upon to decide."

Justice Bresler notes, "While he was on the bench Krause showed that he had a great knowledge of all shades of humanity and in addition he displayed considerable understanding of criminals and their ways, which was ... perhaps only to be expected. What impressed me was the fact that he never raised his voice, gaining all the effect he wanted by way of quiet intervention, frequently accompanied by a grim humour . . ."

Ellison Kahn writes: "He disliked the jury system and regarded it as an anachronism in this multi racial country . . . An accused appeared before him on an IDB [illicit diamond buying] charge. Every effort had been made by the defence . . . to get certain of the empanelled jurymen removed, and Mr. Justice Krause was quick to realize during the course of the trial that the verdict was most likely to favour the accused regardless of the evidence.

When all the evidence had been presented . . . Krause delivered perhaps the briefest address of its kind ever given in the history of our courts.

"Gentlemen of the jury," he said, "you have heard the evidence for the Crown and you have heard the evidence for the defence. If you believe the evidence for the defence you will believe anything. Please consider your verdict, gentlemen." The Judge was not far wrong in his belief. The jury, without retiring brought in a unanimous verdict of not guilty.

"I regret to say that the jury has found you not guilty," he told the smiling accused, "you may go."

Isaac Goodman, who observed Judge Krause in court on many occasions writes, "He applied the law as a living and growing science, but he showed a certain impatience when listening to an advocate who in examining or cross-examining a witness, wasted the time of the court by putting irrelevant questions or questions which had already been adequately and fully canvassed. I saw Mr. Justice Krause not infrequently take an examination or cross examination out of the hands of counsel and almost conduct the case himself. . . . ,which often had the effect of teaching junior members of the bar the intricate art of cross examination"

How does Krause's work appear to a modern day professional? I asked a Judge acquaintance currently serving on the Johannesburg Supreme Court Bench for his general impressions of Krause's performance as recorded in Transvaal Law Reports. Requesting anonymity, my respondent perceived him to be a substantial judge who, during the twenties and thirties, "... stood shoulder to shoulder with such great names as Solomon, Greenberg and Tindall." He further emphasized that Krause made a successful transition from flamboyant criminal lawyer to careful, sober, well-prepared judge; a move, not all have made successfully. He informed me that several of Krause's judgements have, years afterwards, been quoted with approval.

A retired Free State Judge told me that Krause's spell as Judge President was not greatly popular with members of the Bloemfontein Bar and Bench, mainly because he was seen as a queue-jumper, attaining his position before deserving locals. Feelings ran high towards this controversial interloper from the Transvaal Bench. In Bench folklore, it appears that his retirement in 1938, elicited little public comment let alone acclaim.

During his fifteen years of judgeship, Krause initiated several confrontations with the law, both direct and indirect. Krause gained notoriety by his fruitless brush with the State and its legal authorities in which he attempted to absolve himself from paying income tax. In 1933, he used Bloemfontein's *Friend* newspaper to publish an anonymous protest against the Appeal Court, normally housed in Bloemfontein, removing to Cape Town for a hearing during the holiday period. For his scoffing at the climatic and health reasons given for the move, he earned the editor, T W M Mackenzie, a contempt charge. At the end of Mackenzie's appearance on a Saturday morning before the Appeal Bench, he was ordered to publish a letter of apology and pay a fine of fifty pounds. It later transpired that the Appeal Judges were quite aware that the Free State Judge President was the *eminence gris* and it would appear that their very public treatment of Mackenzie comprised an admonitory slap on the wrist for our shy hero.

Fritz Krause lived in stimulating times. His extensive international education and strong personality allowed him to play important legal and statesmanship roles in the sorely threatened South African Republic. His political views were undoubtedly influenced by his harsh Anglo Boer War experiences, which engendered in him a life-long antipathy towards Imperial Britain and some important South Africans who furthered her aims. His political ideal was a South Africa in which Afrikaners and those with British roots saw themselves as one independent nation. Like so many men of his time he considered the black man as limited, but nevertheless sought greater tolerance and justice for him.

He was a staunch Johannesburger who benefited the city by his many public service roles. He became a famous criminal lawyer defending the mighty and the unknown with equal zeal and skill. Statistics show that he appeared in court as advocate, Judge in the Transvaal Division and as Judge President of the Free State more than a thousand times. He benefited from good health and the love of a devoted and supportive wife who shared his social concerns. These factors, together with significant work beyond retirement, a curious and active intellect showing an interest in history, politics and social reform leading to much writing about the affairs of his country, allowed him to celebrate a 50th Wedding Anniversary and live to the ripe age of 91.

References and thanks:

Most literary references have been mentioned in the main text. I also used the National Archives in Pretoria [in shocking disarray] and also was given access to some of Krause's private papers held by his great niece, Dr Emma Wipkema of Parktown, Johannesburg.

I am grateful to Charles van Onselen who, with his *The Modernisation of the Zuid Afrikaanse Republiek: FET Krause, JC Smuts and the struggle for the Johannesburg Public Prosecutor's Office. 1898 – 1899.* (Law and History Review. Fall 2003, Vol. 21 No 3, University of Illinois) helped me grasp some relationships and advance my narrative.

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