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1990-08
http://hdl.handle.net/10539/9043

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A F R I C A N S T U D I E S I N S T I T U T E

African Studies Seminar Paper
to be presented in RW
4.00pm AUGUST 1990

Title: Black Consciousness on Trial: The BPC/SASO Trial, 1974-1976.

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No. 276

Introduction

On 25 September 1974, the South African Students' Organisation and the Black People's Convention held two rallies to celebrate independence in Mozambique. Within two weeks, 29 black consciousness leaders were in detention, as the state prepared for a major trial of the black consciousness movement which would see nine leaders of BPC and SASO facing conspiracy charges under the terrorism act.1 The state sought to put on trial the actions and ideas of the movement since its foundation, in order to portray it as a revolutionary movement led by self-conscious conspirators. In the state's view, the black consciousness movement sought to go one stage further than the ANC or PAC had. If they had failed, it was because they had reverted to guerrilla movements without preparing the people for mass revolution: it was this that black consciousness would build.2 The state thus charged the accused with a conspiracy to bring about revolutionary change and/or the promotion of racial hostility. A second count charged seven of them with organising the rallies with intent to promote racial hostility. These two counts were mutually reinforcing: the rallies were the confrontational fruition of the conspiracy; the conspiracy explained what the rallies were all about. The conspiracy was to be found primarily in the rhetoric of the organisations, its publications calling on even children to "talk, eat, live, cry and play the struggle for liberation,"3 its language talking of 'infiltration.'4 The conspiracy was to be inferred from the "cumulative effects" of the actions and words of the groups, seen "in conjunction with the nature and activities of the organisations."5

The defendants, from the start, felt they had nothing to defend. "We, the innocent," said Saths Cooper, "are being arraigned before this Court for the crimes perpetrated by the white superstructure in this country."6 This, the biggest political trial of the 1970s, is important from a number of perspectives. First, it tells us much about the level of understanding of both the state, and the white community, about the nature of black protest organisation. As a trial of ideas, it reveals as much about the self-identity of the state as about the organisations being investigated. Second, it enables us to explore the relationship of legality and prejudice in a political trial in a situation where the representatives of one community seeks to judge the values of another. As will be seen, the conspiracy for which the nine were convicted was constructed in the mind of the judge, its foundations resting solely on a partial view of the world.

The Background to the Case: BPC and SASO, 1972-4

If the state saw BPC and SASO as large and well-organised revolutionary forces, it was well wide of the mark, as is evident

from the early history of these groups. This will be seen in three areas. Organisationally, both BPC and SASO suffered from serious organisational difficulties in the period inder review. In terms of ideology, their ideas were not confrontational, lacking a clear strategy of political direction, but being focussed most on community work. Finally, they also suffered set-backs at grass roots level in their community work.

Though the ideas of black consciousness evolved slowly from the late 1960s, it was from 1972 that the movement became more organisationally active7 and more more assertive, both in propagaging the ideology and becoming involved in community issues.8 However, by early 1974, both faced a number of organisational problems. While SASO had mobilised much student support in the university boycott which followed the expulsion of Onkgopotse Tiro from Turfloop9 and in the UWC crisis in 1973,10 these crises also led to a backlash against the organisation on several campuses, which weakened it.11 As SASO's national reputation grew, as a result of its ideology, campus branches faced growing opposition. Local branches, such as those at Maphumulo or on the Reef, faced problems raising funds and maintaining an active membership.12 In 1974, the Western Cape branch reported that active student involvement had "appallingly decreased," a problem that found similar echoes in Durban.13 The President's Report to the NEC in 1974 therefore concluded that there was a tendency among SASO members to form exclusive cliques, giving the impression that it was 'underground:' "This deters potential SASO members terribly." Campus leaders were seen to be too cautious, while the failure of the Head Office to produce a regular Newsletter was seen to add to the damage. Lekota concluded his report with the sobering thought that SASO faced such large difficulties in 1974 as to threaten the very existence of the organisation. "Both in terms of membership and leadership," he concluded, "our resources have waned terribly."14

Similar problems dogged the BPC. At the time its first national congress was held, in December 1972, at Hammanskraal, it was still numerically weak.15 BPC was relatively inactive for much of 1973, particularly after the banning of its leaders in February.16 Throughout 1973, local BPC branches faced problems of apathy. One report to the 1973 congress bemoaned the fact that "People are so brainwashed and indoctrinated that they detest anything that smells of politics." Similarly, there were complaints that people were afraid to become involved, because they "never know how, when, where one qualifies for a terrorist or a communist."17 The local branch reports reflected small scale, very localised action, rather than the high level politicking that seemed to frighten off potential members. The second annual conference in December was therefore a much more modest affair than was anticipated when BPC sent an invitation to Leopold Senghor, president of Senegal, to address their congress.18

If membership was small, BPC sought to give itself a higher profile in 1973, by publicising itself, organising commemorations and becoming more involved with community struggles, most notably the Chatsworth train boycott19 and the 1973 Durban strikes.20 BPC rhetoric was strong, particularly after the bannings: "Black people must be aware that the day of reckoning with the facists is at hand," the organisation declared. "Let [Vorster] be warned that there will never be another Sharpeville but there could be another Vietnam [...] Black majority rule will come willy-nilly."21 The high profile was maintained with the Sharpeville commemoration in 1973: as a result of speeches given here, Mokoape and Singh were prosecuted in Durban, and fined.22 "We are prepared to have our blood spilled," Mokoape had said, "just as much as the blood of our brothers spilled at SHARPEVILLE, at LANGA, at BULHOEK, at BONDELSWARTS and at countless other places in this country, in the liberation movement."23

It was therefore their ideology, rather than their organisational strength, that attracted attention. Nevertheless, their rhetoric was not revolutionary, in the sense taken by the state.24 By and large, they "spoke positively about ourselves and as little as possible about anybody else except existing groups, you know, like White society and its power structures."25 In essence, the movement was not about protest, but about introspection. "The primary form of expression for us," Adam Small wrote, "will be the manifestation of our blackness time and again - and again, whether Whites understand this or not will not be the point at all. We are not there for Whites."26 Because of this, the key forms of action were commemorations and the promotion of black culture for black audiences. Political education would come through a new understanding of history27 and culture.28 While this historical vision could encourage action and be assertive,29 much of the history focussed on the blacks as victims.30 This was also the case with their major political occasions, which sought to commemmorate past outrages, via Days of Compassion or Sharpeville copmmemorations. It is notable that even the Viva Frelimo rallies were celebrating an external event. These symbolic occasions were not particularly challenging, though in some cases the language was confrontational. The rallies and commemorations did not address the whites and their political structure: and to that degree they were unfocussed. In large part, symbolism was the cornerstone of black consciousness: its very existence was its achievement.

Black self-assertion also entailed excluding theoretical constructs used by radical whites to explain oppression. Indeed, activists like Strini Moodley argued that whites should follow paths parallel to the blacks: "Introspection and redirection of themselves are the only steps the `liberal' can take."31 The focus on psychological factors at the expense of theoretical

contructs however led to the problem that the movement lacked specific goals, so that the precise vision of the future remained indeterminate. The vagueness of BPC's ideals is exemplified by the last clause of the membership pledge, where the member undertook "to shoulder my task of making the world a worthwhile place to live in." The ideology had a strategy, but no clear goal32: since the philosophical constructs which interested the ideologues of black consciousness were those concerned with negritude and its psychology, the articulation of the ideas of Black Consciousness tended to become increasingly abstract, descending into a philosophical jargon which was almost completely inaccessible,33 rather than leading to a working out of a political programme.34 For that reason, much of the thinking of the organisations on economic matters often seemed contradictory or undeveloped.35 The ideologues rejected white intellectual constructs of communism or socialism,36 turning instead to a notion of communalism that owed much to Nyerere.37 This vision was based on a conjectural image of the nature and history of tribal culture mixed in with applications to the modern world: "in traditional black society, there was no such thing as the rich and the poor...everybody was a worker."38 "The Black man is an individual who `belongs'; he does not exist in isolation," noted a commission on Black communalism: "He says `Yikithi laphaya' (that is our home) not `that is my home.'"39 In this spontaneous society, the chief function of the headman or chief was merely to allocate collective resources in a fair and even way. From this derived a concept of the state as guardian of welfare and education, the initiator of industry. However, the notion of the state remained unclear, the focus of attention remaining with the individual: "every black man shall be his brothers keeper indeed, and never a small boss and exploiter; but [...] recognising our family bond and common obligations we shall hold our hands in implicit co operation of a free and happy, egalitarian society as an individual and common commitment.40

As with other facets of the philosophy, it therefore lacked a focus. There could be no blueprint in this ideology for a future society, beyond predictions as to how people would behave to each other when once they behaved with goodwill. The ideology was thus revolutionary, insofar as it involved a total rejection of the current system,41 without clarifying the new. However, in action, it was pragmatic and aimed at the poor black, at the mass of uneducated and unenlightened people who stood most excluded from white values. "Black Consciousness," the SASO Manifesto announced, "will always be enhanced by the totality of involvement of the oppressed people, hence the message of Black Consciousness must be spread to reach all sections of the Black Community."42 The just and humane society would not be predefined, but discovered through communities taking responsibility for their own lives, by liberating the mind.43 Political emancipation came therefore less in mass campaigns than in making people at the grassroots level take responsibility for

their own lives, by `conscientizing' them. 44 Faced with "those spiritual corpses who at this moment roam the streets of our slums and ghettoes," and a youth "exiled to skollies and tsotsies and thugs not because they chose it but because they are black,"45 the task was to make people aware of their own situation and their potential.46 Conscientisation involved the inculcation of a critical awareness by the individual of the contradictions of his situation.47

This meant that the focus of the organisations would be pragmatic. From the outside, the activities of those in BPC or SASO may have seemed an intense form of political agitation: but from the point of the community, they looked more modest: "if anything," Mosioua Lekota said, "the only thing that people can say about us is: those guys can really work, they build dams and things like that."48 SASO's work involved spreading a political message, but a message through example,49 assessing the needs of a community, and helping its members isolate their problems and put forward their own solutions. Politicisation came from discussing local problems, not from preaching; so that ultimately, the community would politicise itself. At the same time, the community would solve its own problems and foster its own sense of identity.50 "You are trying to tell the people the values, good values of the community, so that one day they will learn to perceive their situation, they will learn together with the values that are good for any community," Nefolovhodwe said.51

This gave a particular focus to several campaigns, notably the literacy campaign,52 and a number of lesser educative schemes. By 1972, SASO was committed to a full programme of community development in a well co-ordinated manner.53 There was great enthusiasm at branch level to begin such projects:54 Fedsem students paid the fees for a student in Transkei for all of 1973 and also helped initiate a physical project at Kwa Mfenyana to build a community hall.55 In the Eastern Cape, SASO members co-operated with BPC members and other organisations to lay out plots and clean a creche.56 Ngoye students set up an advisory bureau for agriculture; and in a similar way, students helped those communities facing forced removals, such as as Doornkop.57

However, problems dogged the community programmes, particularly after the banning of the Black Consciousness leaders in 1973, seven of whom had been on the Literacy sub-committee.58 The problems faced by SASO were particularly evident in one target area, the Winterveld Community Project, 40 kilometres northwest of Pretoria, near Mabopane,59 an area chosen by SASO as a community where all the key aspects of SASO's projects - health, literacy and conscientization - could come together. Though the project began enthusiastically, in each area there were difficulties. The literacy instructors, university students working in the community during their vacations, were untrained as teachers, and could only stay for limited periods. The

reshuffle of teachers disrupted the teaching and hindered progress. Similarly, the lack of proper facilities hampered the project, the students often failing fully to publicise the projects, being unable to arrange transport for the participants, and then having to teach by candlelight. Finally, there was often a poor response from SASO members, who supported the idea of the project and who volunteered to assist, but who then failed to turn up for the hard graft. The result was that at Winterveld only four pupils became functionally literate to a sufficient degree as a result of the programme to think about assisting in the education of their fellows.60

Similar problems were faced at Winterveld over health education. Often, the problems faced were too large for the students to solve. Advising on home cleanliness was a frustrating task given the slum conditions, while incomes were so low that it was hard to advise meaningfully on family budgeting. A conflict with the sister in charge of the local maternity clinic did not help to improve matters. Some progress was made: for example, in making the local community more receptive to the idea of vaccinations. However, the project was to be seen as a long-term one: "our efforts will not necessarily bring about immediate change but are geared toward them identifying their own problems."61 Yet given the very limited assistance that SASO could give to a huge but local problem, the long term outlook was not too good. Thus, by the time of the fourth GSC in 1973, the project had run aground, the only plans in sight being the opening of a soup kitchen scheme. Yet by the time of the sixth GSC, nothing had been done on this.62

Literacy projects continued to function in each area, albeit on a small scale. The biggest problem they faced was apathy.63 Mosioua Lekota told the organisation at Alice that many people who were trained took the project no further, which rendered the project useless. "I want to stress," he said, "that seminars and formation schools are designed for a certain purpose and not merely as a social gathering."64 Gradually, SASO began to concentrate on two projects, at Dududu and New Farm, the former the location of a building project, the latter in need of a water supply. Despite the enthusiasm of those who set out to work there, these projects also encountered problems from apathy.65 By May 1974, the New Farm project had been abandoned, after an unsuccessful approach had been made to the Phoenix Settlement Trust, which refused to co-operate with SASO.66 In 1974, SASO's attention turned to the plight of the Rooigrond community, which was being forcibly resettled. Given the deprivation and starvation that accompanied this, the fifth GSC resolved to raise funds to set up a soup kitchen,67 but this project, like the others, did not fulfil its intentions. In May 1974, then, Lekota ruefully reported, "One only need look through past physical projects reports to see how many of our projects have been annulled."68 BPC had even less success with its

projects, which tended to have a more overt political focus:69 since BPC was still having problems raising funds, few projects stood much chance of getting beyond the planning stage.70

In early 1974, both organisations seemed at a low ebb, in need of action to revive themselves.71 The revival, however, was only just beginning on the eve of the rallies. SASO's main area of revival was at Turfloop, where SASO supporters engineered the resignation of the old SRC and the election of a new, SASO dominated one.72 This region soon became active, holding both a SASO week in September on the theme of 'Building the Nation for the Struggle' second a regional Formation School was held, attended by 80 students. This Formation School, held the weekend before the rally, attracted the attention of the state for its confrontational views, for much discussion seemed to focus on armed struggle.73 Since the was a general talk-shop for students, it told little about the organisation: what it showed above all was the radicalism of the students on that campus and the potential support for the type of rhetoric used by SASO. Thus, at the time of the Turfloop rally, SASO was still organisationally weak, but showing signs of gaining support.

BPC similarly sought a recruitment drive in 1974, seeking to use the vehicle of mass rallies, where national council members could address the meetings to help recruit.74 20 mass rallies were planned for 1974, but in the event, none were organised before the Durban rally. A newsletter was planned, entitled Inkululeko Yesizwe, but this too took a long time getting off the ground, and the first issue, which was eventually to come out in August, and whose contents were drawn together, was never published.75 Nonetheless, the drive towards expansion was continued in September, when BPC held what was called a 'Semicon' at Hammanskraal, on "the inevitable liberation by seizure of power," to be open to the general public.76 Later that month, a symposium was held at the Kajee Hall in Durban, where the speakers included Manas Buthelezi, Harri Singh, Nkomo, Zephania Mothopeng and Gerald Phokojoe.77 At these events, the language of BPC was becoming more aggressive, and the organisation was beginning to recover from the blows it suffered in the 1973 bannings. However, even in September 1974, BPC was not yet a strong national force, and was only beginning to organise more events, and of these, the Viva Frelimo rallies were the most important.

These rallies were perceived by the state as the key moment when the organisations were to move from mobilisation to confrontation. However, a glance at the background to the rallies shows how ill organised they were. The very idea of holding rallies to celebrate FRELIMO's victory was not raised until the BPC symposium at Kajee Hall on 15-16 September 1974,78 and initially there seemed little chance of getting it organised in time.79 At Turfloop, where the SRC had taken a separate decision

for a rally, the organisation was similarly ad hoc.80 Here, the bulk of the organisation of the rally was undertaken by SRC members Ledwaba and Ratlagane,in the full knowledge of the university authorities. There was thus a gap between the reality of chaotic organisation and what seemed from the outside to be a direct challenge to the state.

What attracted the most attention and caused most fear was the rumour that FRELIMO speakers would attend the rally. On the Saturday before the rally, the organisers, only just starting their publicity,81 decided to try and arrange FRELIMO speakers, and so Harri Singh, Nkwenkwe Nkomo and Haroon Aziz were sent to Lourenco Marques to arrange it. The trip, in fact, was a fiasco,82 and they returned empty handed back on the morning of the rally. In the meanwhile, however, the press had got to hear of the coming of Frelimo speakers, thanks to a particularly confrontational pamphlet issued by Muntu Myeza. By Monday, the papers carried stories that SASO were smuggling Frelimo speakers into the country,83 something bound to inflame white opinion, which perceived the new government of Mozambique as nothing more than a set of terrorists.84 "South Africa has the right to insist Frelimo does not preach revolution or become involved in potentially inflammatory situations," the Johannesburg Star wrote on the day before the rally, "which is what the ban on the SASO meeting is all about." It was Frelimo, not SASO or BPC, that caused the white panic. yet, as time passed by, it looked less and less likely to the Durban organisers that any Frelimo speakers would arrive.85 Myeza was hence unable to fill the press in on who the speakers would be at the rally, but on Tuesday, The World carried a report saying that a SASO spokesman in Durban had claimed that four Frelimo leaders were already in South Africa. Indeed, Myeza was at this point intentionally vague in his dealings with the press, implying they were there.86 Rumour fanned the flames of fear.

Thus, when one outraged citizen of Durban, Cornelius Koekemoer, wired to the Minister of Justice, Jimmy Kruger,87 that "Thousands of whites ready to take steps to prevent demonstration," Kruger announced he would be banning all BPC and SASO meetings in a Government Gazette to be issued the following day.88 However, the organisers refused to believe it, leading them into a game of bluff and counter bluff. At first, the organisers took legal advice,89 which convinced them that the rally had not been banned.90 It seemed as if the press, not the Minister, was banning the meeting; and Myeza was aware that the credibility of the organisation might be severely damaged if they cancelled a rally that had not been banned.91 For that reason, much rhetoric was directed at the press. A joint BPC-SASO statement put out on Tuesday night read, "We are not aware of any banning. We couldn't care less if it is banned. We are going ahead at all costs with all the rallies nationally. The People's will shall not be suppressed by a foreign settler regime."92 Later, Myeza told Nat

Sarachi of the Rand Daily Mail that they were going to "bullshit them" - "these fools, they cannot tell us what to do, man." Myeza was very assertive. "Shit, Nat, we're going to have a, a very big thing tomorrow," he said, "And of course it means I'll, I'll have to go to gaol for a year or something like that." The principle was clear, that if they were to retreat, they would lose face:

MUNTU: So we just take it to the final end.
NAT: Ja, exactly.
MUNTU: Um, to see what is, is, we want to see exactly, we want to call their bluff, you see...They must come out clearly, their true colours.
NAT: Ja.
MUNTU: We want to see them shooting us."93

However, by Wednesday morning, it became clear that the rally had indeed been banned, and theorganisers were faced with the problem of what to do with the people who turned up at Curries Fountain.94 Initially, the leaders ought legal loopholes. Myeza told Tom Manthata, a former Vice President of SASO, that "If we hold it and the people that address it do not belong to either BPC or SASO and that's a very high thing to prove,...the onus of proof is so high that these people cannot prove for instance ...that you have not resigned from SASO."95 Clearly, no one envisaged the real possibility of dramatic confrontation at Curries Fountain, for the plan was to have a full press conference after the rally. Indeed, to some degree, they still paradoxically saw the potential presence of Frelimo speakers as a guarantee of safety, for the government had declared it was not hostile to the new Mozambican government.96 Ulitimately, the organisers, after a stormy meeting at Mokoape's room at the King Edward Hospital, decided to play it by ear.97 If the rally was cancelled, it would be because they wanted no confrontation, that they suspected the authorities of planning another Sharpeville.

Mokoape's attitude was clear: "nobody must put themselves in a position where they have to be the recipients of drastic action."98

In the end, however, the rally turned out to be a non-event, for the police charged the crowd just after Myeza's arrival, dispersing the crowd. Col. Jordaan had ordered the crowd to disperse just before Myeza arrived to an enthusiastic welcome. According to Myeza, and a number of eyewitnesses, he then sought to lead a good-natured crowd away from Curries Fountain; according to the police, there was an aggressive attempt to enter the stadium.99 In any event, Myeza was at Curries Fountain for less than five minutes, and the crowd dispersed quickly once the police took action.

If in Durban, it was the anticipation of the rally that caused the problem, at Turfloop, it was events subsequent to the rally that caused alarm. On the morning of the rally, the campus was

covered with posters, some of which used extreme language.100 However, the mood on campus seemed normal, and the Rector, J. L. Boshoff, decided to ignore them, saying, "I don't want to start a war over placards."101 That morning, he was informed by the police that SASO were planning an illegal rally at 2 pm, but after checking with the students, and finding it was an SRC rally, the Rector deemed it safe. 102 For the rest of the day, the Rector played almost no part in controlling the situation- indeed, at the time of the first clash with the police, he was playing golf with the Registrar.103 Clearly, the university authorities were not worried by the rally: indeed, according to Nefolovhodwe, the Rector told them that the rally could go ahead, provided there was no interference with morning lectures.104

However, when the meeting began, the police arrived, assuming it must be a SASO meeting designed to inflame the relationship of blacks and whites.105 The police ordered the meeting to disperse, but when students gathered on the grass outside, they charged. The students responded with throwing stones and thus the conflict grew. The police claimed that the stones were thrown before the police charge, yet it was clear that when they charged, the SRC was trying to get the students to return to their hostels as well as negotiating with the police.106 In any event, the police were fully prepared for trouble, having collected a force at Mangkoeng police station drawn from as far afield as Messina and Phalaborwa, and arming the white policemen with service revolvers or shotguns. and their charge was swift and effective. Three people were arrested, and others were injured.107 The situation seemed very inflamed, but after a discussion between the SRC, the Black Staff Association, the Rector and the police, the latter agreed to withdraw.108

By 3 pm, the trouble seemed over. However, not all the crowd dispersed and when, later in the day, various white staff members arrived on campus, they were attacked by students. C. C. Straub, lecturer in zoology, faced a large hostile crowd blocking his path when he arrived at roughly 4.30, who smashed the window of his car and who punched him through the window. Two other cars were attacked at the same time, and one lecturer got a bad gash on his face. The Turfloop conflict continued, reflecting campus tensions as much as national ones. The day after the rally, the Disciplinary Committee of the university met, at which the SRC disclaimed responsibility for the violent posters, the graffitti on the walls and the attacks on white staff. BASA passed a resolution which denied that students had thrown stones at the police, and laying the blame for the trouble on the police: "it is our belief that the presence of the police on campus was, on that occasion, and will always be provocative."109 BASA condemned the action of the students who assaulted members of staff, but noted that the SRC could not be held directly responsible for their actions. BASA also criticised the white staff who "deemed it necessary to intimidate students in lecture halls" at the time

that Black lecturers were trying to calm the situation. Straub was singled out for particular criticism, since he had insulted and abused various members of staff. As a result of the black votes, the Disciplinary Committee absolved the SRC from all blame. On the 27 September, the university closed for a short vacation, which was extended to the 15 October because of a threatened student sit-in over the disciplinary issue. In the meantime, however, arrests had been made - Nefolovhodwe on the 27th and Sedibe on the 11 October - and this escalated tensions. On 15 October, 1000 students handed a petition in at the Mankoeng police station demanding the release of the SRC President, and threatening a sit-in; but as the petition was delivered, one of the leaders of the march, Ramaphosa, the SASO local chairman, was himself arrested under the Terrorism Act.110

The rallies must be put in perspective. Neither one, after all, came fully to fruition, and such ugly scenes as there were were caused by police attacks on the crowds. In themselves, the rallies were unimportant: what they stood for was what most alarmed white opinion. 111 The alarmist response was shared in government circles, for not only were all the Black Consciousness leaders arrested, but they even prosecuted a Durban newspaper editor, J. M. W. O'Mally and his assistant for 'advertising' the illegal gathering in the Daily News. Despite the absurdity of this prosecution, and widespread condemnation of it in the English language press, the prosecution continued and a conviction was obtained under the Riotous Assemblies Act in the regional magistrates court, which was upheld in the Natal Provincial Division.112

We have seen, therefore, that BPC and SASO were both relatively weak in 1974, and that the rallies they staged were trivial. Yet in the eyes of the state, the ideology was revolutionary, and the rallies represented a trigger being pulled.113 We must turn now to see how this conspiratorial vision was constructed in the mind of the prosecution, and how it was secured by the court.

Constructing the Conspiracy

In the case, the state sought to secure its vision of BPC and SASO as revolutionary conspiracies by using the testimony of two key witnesses. The first was to be a view from the inside from a co-conspirator, the second an objective view from the outside by an expert witness. It is these we must first examine to give a view of what the state thought the organisations were.

(i) Harri Singh

The lynchpin to the case was the concrete interpretation given to the intentions behind the documents given by Harri Singh. Singh

entered the witness box as an accomplice, the chairman of the BPC Overport Branch since September 1972, and since August 1974 the acting PRO of the organisation. He was a man with a pedigree in politics, but also a man who had suffered psychological problems in the past.114

Singh's attempted to show that there was a secret group within BPC which aimed to turn the organisation towards mass confrontation with the state, and which sought to recruit people for military training. Singh argued that the masterplan had been revealed by Mashwabada Mayathula on a drive from Durban to Hammanskraal for the national council meeting in August 1974, where he had apparently spoken of a three way phase programme for the organisation. The first phase was the drive to get one million members, the second phase was the conscientisation phase and the third was the phase of violent confrontation. BPC, he said, which had hitherto been wasting its time, now had to turn to sending people out of the country for military training.115 This policy, Singh claimed, was evolved by a supreme command, which consisted of Mayathula, Cooper and Mokoape.116 It had, moreover, taken steps to recruit people for training.117

There was also a second public prong to confrontation, according to Singh. Singh claimed that at the inaugural convention of the BPC at Edendale in July 1972, various commissions looked at ways to promote itself to encourage conflict. The economics commission, he said, "reported on ways and means in which BPC could use the Black worker to cripple the economy of the country". The Planning Commission urged the organisation to build up unions and make workers receptive to the confrontational ideas of the BPC. After the initial three years period of raising membership, BPC would launch a nationwide labour strike.118 The confrontational policy was to come to fruition at Currries Fountain119. In this way, Singh wove together a cloth of the secret aims, public policy and concrete actions of the two organisations, which showed the organisations as being bent from the outset on conflict leading to the violent overthrow of the state. It was through the prism of secret intentions and hidden conversations that all the ideas and literature of BPC had to be interpreted. Revolution, which was implicit in the documents before the court, could be made explicit via Singh's explanations.

Clearly, a great deal hinged on Singh's credibility as a witness, and his testimony was therefore heavily scrutinised. Ultimately, much damage was done to his credibility. First, the notion of the conspiracy to recruit military trainees was shown to be built on insubstantial foundations. Singh could not point to a single individual who had been sent abroad for military training,120 though he had claimed Buthelezi had gone on a tour of branches telling chairmen that they would soon have to select people to go for training. Under cross examination, the discussions that Singh

had told the police were BPC policy were admitted only to be the informal ruminations of certain individuals.121 Thus Buthelezi's contention that the time would come to send people abroad for training turned out to be the latter's personal opinions. The position was therefore less clear cut than he had initially implied: there were no simple decisions of policy taken, nor were these alleged changes in policy reflected in any actions. Singh was similarly vague on Mayathula's role, admitting, for instance, that the Reverend's language and propositions were often extravagant and not always taken very seriously. Second, Singh's version of events in the Kombi seemed highly suspect, being plagued with inconsistencies.122 Thirdly, Singh was unclear on the precise status of the supreme command, for Singh said both that it was the ultimate governing body, and that it was advisory to the NEC and did not take decisions.123 All that was clear was that Cooper and Mokoape, the banned activists, were consulted for advice and opinions on matters that came up, something that should not really have seemed surprising given their role in the movement. However, to prove the conspiracy, Singh attempted to turn informal advice into a formal supreme command which was to plan the general strike. Finally, Singh seemed to be claiming that BPC was at the same time planning a mass strike and abandoning mass action in favour of military recruitment.124

Singh's evidence was also seriously weakened by the fact that his interpretation of the nature of BPC as a revolutionary group was based on his precise memory of detailed events in the past, yet his memory was repeatedly flawed when he discussed details of BPC politics that could be checked against the minutes of the organisation.125 In themselves, these lapses of memory seem trivial, yet given his precise claims about secret plots evolved at these meetings (particularly at the inaugural Edendale convention), they assumed greater significance. As David Soggot suggested, it was highly suspicious that Singh's memory seemed crystal clear whenever there was hostility or violence involved, but was very vague on other matters.126 This was true indeed: Singh's evidence-in-chief and his comments to the police about the Edendale meeting were confined to the issue of the revolutionary strike, but omitted entirely the major theme of the meeting, the philosophy of black consciousness.

In a number of other ways, Singh's evidence seemed improbable. As one example, he claimed that when BPC took the decision to resort to violence, he had been non-committal on it.127 Singh both claimed not to have made up his mind on the matter, and not to have discussed it with anyone;128 and to have decided himself to go for military training, without discussing it with his wife and with only casually mentioning it to Cooper.129 Momentous decisions, even the most personal ones, were hence seemingly treated as trivial: which they would have been if they were only trivial flights of fancy. The sole evidence for a secret conspiracy thus collapsed under scrutiny.

(ii) Stoffel van der Merwe

If Singh provided `inside' information, an `objective' view of the nature of BPC and SASO was to be provided by an expert witness, Stoffel van der Merwe, Senior Lecturer in Politics at RAU. Van der Merwe sought to establish a framework of theory which would identify features of black consciousness ideology likely to lead to revolution, which could be used to measure the revolutionary nature of BPC and SASO. However, his testimony was similarly flawed, collapsing into an inarticulate expression of white fears.

Van der Merwe began by outlining the necessary features of a revolutionary group. The basic theory had four stages. (1) there had to be a nucleus leadership group - a kerngroep. (2) It had to have a binding ideology. (3) It had to seek to weaken support for the established system, both internally and externally, and thus to delegitimise the system. (4) It needed at the same time to build support for the revolutionary idea, so that a stage could be reached where the state could no longer withstand the revolution. This needed organisational strength. Revolution thus involved both the moral and physical undermining of the existing system and the construction of an apparently viable alternative.130 Having set up this model, van der Merwe proceeded to interpret the actions of BPC and SASO in light of this view.131

The biggest claim in van der Merwe's argument was that his theory had diagnostic value to predict and identify a revolutionary group. This was the necessary crux of his evidence, insofar as the black consciousness organisations had not engaged in any recognizably revolutionary acts.132 However, it was a claim that could not be sustained, for he had derived his model from a set of secondary sources on revolutions none of which claimed that prediction was possible.133 This led to a major problem, for, as Ted Robert Gurr testified for the defence, van der Merwe's model became a mere list of what revolutionaries might do, as ooposed to what they actually did.134 Because of this, van der Merwe's model failed to show a prima facie difference between revolutionary and non-revolutionary groups.135
Faced with this, van der Merwe was forced to modify his claims, altering his ingredients, saying his theory was not necessarily predictive of revolutions, but only determined whether pre-revolutionary circumstances existed.136 The key adaptation to the model was this: the essential difference between revolutionary and non-revolutionary groups was that revolutionary groups contained all the elements alluded to and that their demands, being incompatible with existing channels, could only be brought about through revolution.137 A much more important feature of the diagnosis now was that their goals were revolutionary. The only conceivable way in which one could, by this model, predict if a

group were revolutionary, was if one thought that their demands were too much for the system to bear: but even then one had to assume that they would succeed in mobilising for revolt. The definition thus became circular: what distinguished the revolutionary nature of words spoken by the members of BPC and SASO was that they were words spoken by revolutionaries, whose vision of the future was unthinkable.

The problem this posed was how to judge black consciousness against other protest groups. The defence sought to test this by comparing the language of the trialists with phrases used by Chief Buthelezi and the Coloured Labour Party. This posed a problem insofar as Inkatha's constitution spoke of rejecting racism, expoitation and oppression. In answer, van der Merwe claimed the difference was that Inkatha was attacking not the whites, but the relics of colonialism. Since whites were not directly asttacked, this was less of an attack on the legitimacy of the system.138 This was reiterated in discussing the Labour Party documents which accused the whites of being motivated by racism.139 Van der Merwe's explanation here was that the Labour Party talked of change through dialogue. However, the more Soggot questioned, the less clear the division was. Van der Merwe had to look ever more closely at the way the ideas were expressed rather than the ideas themselves. Ultimately, he had to concede the difference was one of degree:

> "Dit is 'n graad verskil, Edele, in die sin dat hier word gese `White people will find that Black people will not be prepared to integrate with them on White terms,' aan die anderkant word daar gese in SASO dokumente dat die Witman sal hier bly op die Swartman se voorwaardes. Nou ek wil toegee dat daar 'n sekere mate van ooreenstemming daartussen is, maar 'n belangrike verskil."140

In terms of the broad concepts van der Merwe was using- delegitimation, the unification of a group, counterideology- there was no clear differentiation between the two examples. The difference, where it existed, lay in the precise language used on either side, so that the revolutionary impact or potential of the group was to be found less in their ideas or even action but in the linguistic expression of them, as identified by political scientists. Yet the problem with this precise linguistic analysis was that it required a systematic examination of the nature and authority of each document assessed; something that van der Merwe omitted to do.141 In fact, the most violent dramatic language in the documents came from those with the least representivity.142

The most obvious difference was that the black consciousness groups refused to participate in existing political channels. While other groups might say the same things, it was in a different context.143 This argument presented two problems. Firstly, it assumed that the CPRC, SAIC and bantustans were valid

channels of constructive protest and an integral part of the system. This was challenged by the defence, which contended that since these institutions had no power nor effect, it made little difference where the same words were said. Secondly, van der Merwe made large assumptions about the nature of protest outside these channels. While admitting that universities - where SASO worked - were part of the system, he denied that the students worked through normal university channels.144 These comments were based on an excessively narrow interpretation of Eastonian concepts, ignoring how protest outside formal structures could still be a form of dialogue with the system; so that channeling protest could be as much a counterrevolutionary as a revolutionary force. He thus failed to show why working outside the system of bantustans was necessarily revolutionary: yet assumed that it was.

Ultimately, the key point that made them revolutionary was their ambition to see a future not controlled by whites. For when David Soggot wondered what was revolutionary about the aims of black consciousness - the rights of blacks to run their own lives - van der Merwe saw the biggest threat lying in what would happen to the whites, involving not only the fear of what might happen "na die revolusie" but also the fact that in a new society dominated by blacks, whites would be considered irrelevant.145 When added together, the fact that black consciousness sought not to co-operate with whites, that it sought to espouse distinct values and that it saw whites as irrelevant all made for revolutionary potential. When van der Merwe seemed unable to prove that the post-liberation society would necessarily be antagonistic to whites, Rees, the prosecutor, interjected that the issue was not what would occur after the revolution: it was over the revolution being sought.146 This comment encapsulates the paradoxical nature of the case. For the attempt was being made to infer a revolution or a revolutionary method from the ultimate goal's being sufficiently alien as to be incompatible with the current system of values, but then being unable to show in detail how the ultimate goal would be revolutionary, in precise terms. This was hardly surprising given the undefined goals of the movement.

Ultimately van der Merwe's predictive model of revolutionary change collapsed under the expert battering of the defence witnesses. Ultimately, he had to concede that revolutions were born of frustration, not conspiracy.147 Given the battering the model received from the defence, Boshoff in his judgment had to conclude that it could neither predict revolutions nor show that revolutionaries actually did what was claimed. The very same actions by the defendants "could equally lead to a mere change in the type of political system and not necessarily to system-failure."148 Indeed, in his judgment, Boshoff undertook a long survey of political science to show that political system had to have a capacity to respond to stresses,149 "acting constructively

to prevent disturbances in the system's environment." For systems to persist, they had to change. Boshoff applied all this to South Africa. "In our country," he said, "we have democratic regime norms, and freedom of speech and assembly play an important part in our party system which is based on opposing views and consequent dispute of ideas. It may best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger."150 Importantly, he added that "[i]n the case of the blacks we must remember that if they use language which may seem to be unnecessarily strong, they have no effective voice or vote in the authoritative allocation of values and can only protest against what may be regarded by them as grievances." This seemed a very balanced view of things, and led the judge to conclude that all these factors made it impossible for political scientists to propound rigid theories about the future course of events in political life. Following Gurr, the judge distinguished between revolutionary and protest groups, which might overlap in respect of objectives, organisation and tactics, but which differed in strategies and demands: "Revolutionary groups demand the destruction of the existing political, economic and social system and sometimes demand the escape from the political system and increased autonomy for their own group."151 They worked secretly, rarely using rallies, demonstrations or strikes.

On that basis, Boshoff decided "neither SASO nor BPC has the characteristics of a revolutionary group" wanting revolutionary change by violent means. This ruling attracted much attention, for it seemed to vindicate the organisations at least on one level. In the light of Singh's and van der Merwe's evidence, there seemed, therefore, little of a case to answer. We must now turn to examine how the court rehabilitated Singh's secrets and van der Merwe's fears to secure a conviction on the charge of promoting racial hostility. Here, it will be seen how far the case was determined not by hard questions of law or fact, but by subjective interpretations of South African life.

Securing the Conspiracy

(i) Contending Assumptions

The defence argued that SASO and BPC were ordinary political protest groups, which sought fundamental change, but not by revolutionary or illegal means, but through bargaining. It was the defence's contention that "the language and content of SASO and BPC documents cannot be properly understood without an appreciation of the reality experienced from day to day in the Black community."152 As a background to this, it was pointed out that blacks had no vote, faced daily discrimination, were deprived of land and faced constant harassment. In this section, we will see how the case as put by the defence was attacked by a prosecution which sought to deny these facts, to trivialise them

and to portray a 'different' black world from that described by the defendants. The two sides thus were not so much arguing clear facts to apply to rules determining innocence or guilt, but were competing for the sensibilities and compassion of the judge.

To establish its case, the defence counsel gave as much time as possible to the accused to relate their experiences.153 The inference to be drawn from this was that the ideas put forward by black consciousness were not new but reflected people's common thoughts:154 as Mokoape put it, "it provides a vent for Black people caught up in this morass, and to that extent it provides a hope for black people."155 Against, the court's contentions that they were agitating, Mokoape simply said, "I know of no Black man who can spend one day of 24 hours without discussing the harshness and cruelties of White society. It is just something we live with."156 There was no need to push black consciousness ideas into the forefront. The policy of dividing families and removing people was not just something that SASO members had seen as a result of their community work: it affected their own families as well.157

It was the testimony of Biko and Adam Small that most exposed the court to the thinking of the oppressed black, and the poverty of his existence. The defence case was one of interpretation: the language and content of BPC documents, it was contended, could not be properly understood unless one understood the reality of daily black life.This involved looking at the broader problems of South African society: that blacks had no vote, that they were discriminated against in daily life, that they were deprived of land and labour, that township life was degraded.158 As a result, blacks felt rejected and hopeless and it was as a consequence of this that they spoke of oppression and condemned the whites. Biko was very forthcoming on this, describing the humiliation that blacks were daily subjected to in respect of the pass laws: "you are made in some instances to stand naked in front of some doctors supposed to be running pus off you, because you may be bringing syphilis to the town he tells you ... and as you enter the room where this is done in Durban there is a big notice saying: 'Beware - Natives in a state of undress'."159 As a result of this, every conversation turned on the situation of oppression, with people on buses and in the streets talking constantly of the oppression. Protest talk was everywhere, in daily life, in songs.160

This raised the question of the intensity of language. It was a vital question, given that so much hinged on the precise interpretation and impact of words used in the documents. Two points stood out: first, that the language used in the documents reflected the common talk of township life; and second, that the strength of the language did not carry the same implications for an African as it did for a European. At base, what was said about the whites was true, and reflected what blacks felt about the

whites and their system. 161 As for the language, Biko pointed out it was political, and not to be analysed for fine nuances of meaning in a calm court. More importantly, no one at a meeting would remember specific words, but would only follow the overall

reality behind this is much more important than just phrases like 'oppressors, guerrillas' and these things."163 However, in the minute discussions of the court, even the most frivolous expressions were given detailed scrutiny,164 the prosecution seeking mechanical meanings throughout. Thus, a discussion of Glenn Masekoane's poem 'Black Nana'(one of the items listed in the first indictment)165 with an expert witness, Gessler Nkondo, produced the following comic exchange:

> REES: Isn't the poem merely a setting forth of ideas?
> NKONDO: No.
> REES: What is a poem then? The function of a poem and poetry?166

The prosecution case was based on a number of apparently paradoxical assumptions. On the one hand, it was assumed that a potentially revolutionary situation existed in South Africa between the races. On the other lay the view that all was fundamentally well, and that blacks were contented, only rising to anger if acted on by agitators. These two were resolved by the further assumption that any fundamental change was impossible to achieve, that black participation in white society was unthinkable.

The first assumption could be seen indirectly in the racial antagonism evident in the trial. The divergence of views was evident in debates over some of the flashpoints in South African history. In cross examining Cooper, Rees focussed on a BPC document which listed occasions where the police had shot at blacks, and which stated that the police had never threatened the police.167 Here, Rees launched into a long description of events at Cato Manor, listing the policemen who were killed and itemising their injuries in detail. "That was the type of treatment the police received there just two months before your Sharpeville," Rees commented, "You are not even aware of that."168 For Rees, this incident was a key factor in explaining why the police shot at Sharpeville. The battle fought over history in the court was thus one way of identifying a hidden agenda of black consciousness. Rees' interpretation of Sharpeville must also be seen in light of his vision of the police as vital bastions of law and order. Faced with Mokoape's point that the police guarding the tiny post should have fled rather than guarded it at the cost of human life, Rees said that if the police abandoned their posts - even the smallest - there would be chaos. Mokoape ventured to suggest that the police had other choices besides shooting and fleeing - for instance, they

could have given warning shots first. Rees' response was immediate: "Do you know that that is the most dangerous thing you can ever do is fire over people's heads, it just spurs them on, don't you know that?"169 This was to focus entirely on the police's point of view: after all, firing directly into a crowd also had its dangers. The respective attitudes of prosecutor and defendant resflected their divergent social positions: where the prosecutor saw the security police as necessary to preserve order and prevent crime, the defendants saw them only as harassing blacks and preserving a partial white set of interests.

The nature of the antagonism can be seen in the debate over terms used to descibe other races. Rees referred throughout the trial to Blacks as Bantu, though various witnesses explained to him why blacks found it either objectionable or senseless. The reason for Rees' persistence was brought out in his cross examination of Sedibe. People like Sedibe, he suggested, were touchy about being referred to as Bantu, yet they themselves called the whites enemies, racists and killers.170 This was an interesting illustration of the prosecutor's assumptions. The word 'bantu' described (and defined) the inferior legal and social status of the blacks, and summed up their oppression. The words used against the whites were a political rhetoric that evolved in response. Rees used the former as neutral and the latter as revolutionary: yet the very fact that he was using language to score points showed that the antagonism was two-way.171

The potentially explosive tensions in society were also addressed in the discussion of Mozambican independence. Where the accused claimed that the independence of Mozambique was the product of a change of government in Portugal and its subsequent negotiations with Frelimo, the prosecution retorted that it was as a result of the guerrilla war that there had been a coup in Portugal in the first place. The prosecution saw the new regime in Lourenco Marques as one that chased the whites out. When Myeza said he saw no reason for whites to leave, Rees responded, "Oh, you would like some whites to call you baas, wouldn't you?"172 The discussion came down to white fears and to the inconceivability of blacks and whites coexisting:

REES: The foreign settlers will leave South Africa too, won't they?
MYEZA: No, where have they got to go in the first place? Those people went back to Portugal, where is the white South African going to go?
REES: You realise the whites will have to stand and fight?
MYEZA: Not because of that, no, everybody is talking about living together.173

This was a familiar enough discussion. However, it brought these large speculations into the ambit of court consideration and thereby influenced the interpretation of actions.174

The state's belief in a revolutionary context was raised in the cross examination of Gurr. The background context in which the prosecution felt all BPC and SASO documents had to be interpreted was one of inherent violence.175 The prosecution thus contended that since Gurr' detailed knowledge on South Africa was limited, he could not properly interpret documents.176 This was a key point in the rehabilitation of van der Merwe in the eyes of the court, for in giving judgment, Boshoff pointed out that "Professor Gurr admittedly lacked the necessary South African background to be able to express any reliable views on the meaning of the documents"177 whereas "Mr van der Merwe confined his evidence to the significance of the documents in a revolutionary context."178 Although the court, mindful of the experts, did not fully follow van der Merwe, the social contextualisation of the documents was crucial to understand the true nature of the organisations.

This picture of the potentially revolutionary nature of the South African context contrasted with a totally different assumption over the nature of black life. Both the prosecution and the court felt in essence that there was nothing wrong in society, that blacks were in essence contented. The prosecution could not accept the notion that there were shared <u>black</u> experiences, continuing to conceive of blacks as ethnically divided. In face of defence arguments that SASO ideas merely reflected what went on in the community, Rees countered, "How can a man know? How do you know what the average Zulu in Zululand knows?"179 The ethnicity of a man mattered, and politicised blacks like the defendants could not be relied on to reflect this. Hence, in questioning on the nature of township life, Rees would focus on faction fights and tribal conflicts. The context of African excitability was the context in which to put the agitation of black consciousness.180 Thus, Rees told Gurr that faction fights were the traditional way that Africans settled their disputes.181 These assumptions were shared by Boshoff, who asked Myeza if blacks were not rather touchy and easily provoked, since they fought so readily. Where the defendants claimed that faction fights were the result of a competition for scarce resources, fuelled by the artificial fragmentation of the people, the court saw them as evidence of tribes hating each other. The question of ethnicity was obviously central given the agitation against the bantustans, for the prosecution took for granted among blacks the existence of a full ethnic national pride.

MOKOAPE: Mr. Rees, whatever you may think, whatever the white system in this country may think, these national prides do not exist.

REES: That may be the Aubrey Mokoape concept. [...]

MOKOAPE: [T]his I think is again tied up with this whole question of whites saying they are experts over blacks ... We are not objects of study, to be studied by the white system.

REES: Why not, doctor?182

In this context, the presence of Indians among the leadership could only be seen as the presence of troublemakers. Rees' fascination with ethnicity took root in his cross examination of Cooper. "Are you," he began, "of the group that are now known as Pakistan or Hindustan or India proper?"183 He then sought to establish his position in a caste system, in the hope of finding a caste difference between Cooper and Singh that might explain their attitude to each other. He also laid stress on the racial tension between African and Indian, particularly in the Durban riots of 1949, in an effort to make a clear differentiation of groups. "You are not part of the black races, are you," he asked Cooper, "You are part of the olive-skinned races, aren't you?"184

Boshoff's similarly was essentially convinced that blacks were not at base discontented. This was evident in his examination of Cooper:

COURT: [W]ould you necessarily become aware of [your oppression] unless somebody keeps reminding you of it or reminding you of your grievances?
COOPER: That is the situation and the situation must remind you of that [...]
COURT: Isn't human nature strange in that way? You really accept your position and isn't the black man a fatalist in his outlook in life? Doesn't he accept the position? Unless you tell him, now, your position is very bad.
COOPER: Well, I am a black man and I am standing here [...]
COURT: Yes, but who reminded you of the oppression?
COOPER: Well, I do not think anybody has - everyday experience. The experience of black life.
COURT: Yes, but I have to work, I mean, I am born, I was not born rich, I have got to come here every day and start at ten o'clock and listen to this ... LAUGHTER185

Whereas the ideologues of black consciousness looked to the gap of black and white, Boshoff perceived no essential distance between the individual contentment of the races. Both prosecutor and judge at key moments revealed their failure to understand why a black man might object to the status quo. Rees thus asked Mokoape for a list of his grievances:

MOKOAPE: My grievances are that I have not the right to determine my life. I have been excluded from those structures which govern the lives of the people and that ... (intervenes)
REES: You see, I am in the same boat as you are.
MOKOAPE: No, you cannot be because you vote, after every four years you go and cast a vote.
REES: That vote has not been of much use. Once they go to parliament they do what they like.
MOKOAPE: No, no, it is definitely of use because you can

organise a number of people with similar grievances as you and you can out-vote those other people who are in parliament if you do not want them.

REES: That is just a theory.

MOKOAPE: It is not a theory. I cannot even do it and when I do organise I get charged. LAUGHTER186

Boshoff entered this discussion, to reinforce Rees' point that individual votes - or even success in individual constituencies- did not change the political situation much. Good humoured as it was, the discussion revealed the inability or unwillingness of both judge and prosecutor to see the whites as constituting a collective monopoly on power, insisting on looking from the viewpoint of the fragmented voter. The assumption they relied on was that the constant reminder of grievances would turn happy people into violent one. This was one of the central questions of the case, and an issue where Gurr had testified extensively that before people were agitated over a described wrong, they had to see it as a wrong: and even if they did, one could never predict their response.187 At all events, a contented group would ignore attempts to arouse their anger.188

Despite this, Boshoff felt that in essence BPC and SASO were troublemakers, as was evident from his discussion of the homelands. Boshoff pointed out to Lekota that a large proportion of South Africa was about to be granted independence. If BPC existed to bargain with the whites, therefore, it could have no function here. The black consciousness attitude to the reality of bantustanisation imported again their revolutionary aspirations:

COURT: Well now all I want to know is whether you people took into account at the time when you started BPC and you formulated your policy, that you are ultimately not going to bargain with the white man in respect of quite a large area of South Africa, because these countries are becoming Black areas, independent homelands?

LEKOTA: That issue would not feature in the case of SASO, M'lord, in the case of BPC I do not know whether they did think along those lines or not.

COURT: Well now if they did not, doesn't that tend to show that they were not interested in what was happening to the country, they were really just preparing themselves to deal with the white man and the white system?189

For Boshoff, the homeland issue was quite straightforward. "[I]f your policies are only to bargain, well then you are being outwitted by the government if the government is cutting off all these homelands," he said. This debate, on the eve of Transkeian independence, was another example of the judge using contentious policy as inevaitable fact. By accepting the policy of giving independence as uncontentious, the judge made the arguments

against it adopted by the black consciousness organisers seem contradictory and hence malicious.190 The constitutional impossibility of change was also reiterated by the judge, in an argument that the white government had been elected: and that if it tried to reform, the whites would vote them out of office. Even if the government wanted to change, it would not have the authority.191

The key that united the court's attitudes was the fact that ultimately, the type of society envisaged by the black consciousness groups was not a feasible one.192 The bottom line for the judge was that black consciousness entailed a redistribution of wealth and a total change of values, which were unacceptable. The judge was more articulate in his fears than the accused in their aspirations:193

COURT: Now what is to happen if the whites do not want to part with their wealth? ... Mr Cooper, now do you seriously believe that the white man will just say well ... here is my property, now you can distribute it.

COOPER: [...] We haven't formulated the mechanics of how this process is going to take place, but we have got the structure and that structure is unity for the purposes of collective bargaining from a position of strength.

COURT: No, but your purpose is not collective bargaining. Your purpose is total change and total change is that the white man must hand over his property for redistribution, that is how I understand the policies of BPC, because that is total change and the redistribution of power and wealth.194

The problem was that this was something the judge could not see come about peacefully, for Boshoff said, "isn't it just a pipe dream unless there is a violent revolution, because how can you deprive private individuals of their property unless you have a revolution?"195 For Boshoff, the logic of the demands of black consciousness was revolutionary, if only for the reason that the whites would resist.196 In the end, what the black consciousness ideologues wanted was simply impossible; and their offence was to make the blacks anticipate it. This would aim to intimidate the whites:

> "Well, let's cut into the problem, isn't your whole theory based on fear? If you would have a united power bloc then your whole premise is that the white man will fear that bloc and will negotiate with the bloc? If the blacks are divided then there is nothing to fear?"197

Against this, Saths Cooper pointed out that the united bloc aimed to make blacks promote their feeling of worth, and that there was no occasion when they had advocated violence. The latter point was dismissed by the judge, pointing to the fact that if they had advocated violence, "you will have yourself in hot water before

you start."198 The implicit violence lay in telling the people that they wqere unhappy and reminding them constantly of the causes of their oppression. It was therefore significant politically that they sought to begin community projects in deprived areas, where discontent would be most fertile. Boshoff's hunches were uncharitable. "I am not suggesting the black man is not at a disadvantage," he told Mokoape, but "assuming that you are at that disadvantage that you mention, now if you exaggerate it by spreading stories, then there can only be one reason for doing it and that is to make mischief."199 Spreading mischief, as Mokoape pointed out, went wholly against the idea of conscientisation. Clearly, the spirit of van der Merwe was hovering.

(ii) The judgment: securing the conspiracy

However, when judgment was handed down on 15 December 1976, it became apparent that Boshoff's social prejudices on matters of fundamental assumption, had swung the case for the prosecution. Since the charges against the nine were brought under the Terrorism Act, which defined as terroristic any act done with the intent to endanger the maintenance of law and order,200 the judge had great scope to convict: but even given th act, his judgment was remarkable for its minimal discussion of law and its extensives discussion of politics. In this case, since the accused were not charged in the main count with any specific acts, but rather with a conspiracy, the statutory presumption of intent201 did not apply. Hence, the state had to prove an intent to disturb law and order. At the end of the state's case, Boshoff did give a definition of this,202 as well as a definition of conspiracy. Yet in his final judgment, he made no use of these concepts, but sought to infer a conspiracy and intent from an overall political interpretation of their ideas. He made no attempt to make a precise link to show how the acts of the accused would lead to a disruption of law and order. Instead, the conspiratorial claims of both Singh and van der Merwe were rehabilitated via the social prejudices of the court.

The judge's interpretation was deeply indebted to Singh,203 even at its most contentious. Thus, Boshoff accepted Singh's contention that Mayathula had been angry on 25 September because he felt that they were precipitating a violent conflict he felt the organisations were not yet ready for. By accepting one of Singh's contentions, the court used it as confirmation of the second. "This attitude of Mayathula," Boshoff ruled, "confirms Singh's evidence that BPC was against confrontation during the first three years while it was building up a membership of one million and conscientising its members, and that BPC should then work for a national tools down."204 Boshoff similarly believed his version of events at the BPC inaugural convention and the allegations of a national strike plan developed there,205

accepting Singh's evidence on the existence of a supreme command.20 The fact that Cooper also summoned Mayathula to the Durban rally "gives credence to the evidence of Singh that accused numbers 1, 4 and Mayathula formed an influential body referred to by themselves as the supreme command."207 In this way, Singh's commentary was used to knit together disparate events and influences into a well planned and co-ordinated conspiracy. This was far from reality, for even a cursory glance at the nature of the organisations would have undermined such a view of the organisations.

Boshoff's acceptance of Singh's evidence was legally problematic.208 While accepting that he was not wholly reliable or consistent, he cited a precedent to show that the court was not precluded from relying on this evidence if it was satisfied beyond reasonable doubt that the essential features of the story he told were true.209 The problem was what these essential features were: in Singh's testimony, they were an interpretative gloss on the very details that he was unreliable on. The facts that seemed to prove the conspiracy - the response of the organisations to crisis situations - could equally be seen not to be part of a grand conspiracy. Indeed, the defence argued that the 'essential features' relied on by the state were outside the ambit of admissable evidence for the conspiracy charge.210 The state at no point proved that what Mayathula had said was in pursuance of the common purpose, was relevant to the charges in the indictment, or were even prima facie proof of a conspiracy.211

As the defence tried to pin down the notion of conspiracy, the judge expanded it. Boshoff stated that the conspiracy alleged by the prosecution was to be inferred mainly from basic policy documents and interpretative documents of the organisations.212 Yet little effort was made to assess the status of documents and relate them to the accused, the judge retreating behind the rule that acts of each conspirator were attributable to all the conspirators.213 The reasoning was circular: Singh's allegations about the secret conspiracy gave a sense to the minor documents, which in turn could be used to verify the intentions of the accused.214 Thus, long parts of the judgment involved a recital of dramatic documents with strong language, as if cumulatively they would confirm Singh's contention and the judge's fear.

This meant that, while the judge ruled that the organisations were not revolutionary, he in effect changed the the semantic terms and in effect convicted the defendants of the same thing.215 He interpreted the ideology of black consciousness as trying to overcome the inertness of the blacks, who (the judge noted) had been too afraid to take meaningful action. "They were not yet prepared to sacrifice themselves for their ideals," the judge commented, "[t]he conspirators realised that politial action was necessary of the kind devised by SASO and BPC not to

ameliorate the position of the blacks, but to mobilise and prepare the blacks to involve them in a total struggle for a total change."216 In these sentences, the judge dismissed all the community elements of the black consciousness movement and revived the spectre of revolution. The judgment therefore laid great stress on the violent aspects of black consciousness: the notion of the martyrdom of blacks who had died in the struggle; the portarayal of Christ as a revolutionary freedom fighter; the stress on the violent nature of the whites and the justifiability of the use of force against them.

The conclusion that the organisations were protest groups rather than revolutionary ones thus was merely semantic. SASO and BPC were not normal political organisations seeking peaceful change: "There is nothing in the evidence to suggest that there was any genuine desire to bargain," he said. "The whites were represented as the persons who held all the land and who would not change."217 This ignored altogether the argument of Biko and others that the process of bargaining had already begun and was not something to await formulation. In making his conclusion, the judge was clearly influenced by the nature of the demands put and their unacceptibility in his mind. For the total change, he said, would involve a redistribution of wealth and an expropriation of the whites. Such things were not subjects for bargaining.

In the end, the case turned wholly on the subjective fears of the court. Interpreting Biko's evidence, Boshoff said that at best, blacks saw whiteness as a concept to be despised, hated and destroyed. "At worst, blacks envied white society for the comfort it had usurped and at the centre of this envy was the wish - nay, the secret determination - in the innermost minds of most blacks who thought like this, to kick whites off those comfortable garden chairs that one saw as one rode in a bus out of town, and to claim them for themselves."218 Black consciousness was thus seen to be motivated by greed and envy, and impelled by violence. Boshoff thus listed the most provocative resolutions and the most dramatic poems, regardless of their status.

Boshoff focussed quite strongly on the role of children in black consciousness ideology. He stressed the co-operation that existed between SASO and SASM and laid emphasis on the work that SASO sought to do in schools. The judgment quoted widely from commissions at the Turfloop Formation School, particularly the report on 'Infiltration of the Training Institutions.' Early in his judgment, Boshoff looked particularly at the way conscientisation was directed at children, and he quoted from the SASO Newsletter: "The onus is on the black women to plant this black tree that is going to bear black fruit."219 It was not incidental that he should have laid stress on this, given the Soweto uprising and SASM's involvement in it. This was not made explicit by the judge: but it is clear that events in Soweto were not out of his mind. The judge assumed that all was fundamentally

well in society, but for the actions of these troublemakers.220 Where the accused had said what they felt was true, the judge saw only its impact on creating hostility to whites. The point that the anger already existed, and that the words merely mirrored the beliefs of the blacks, went over the head of the judge. He similarly appeared to ignore the fact stressed by many witnesses221 that the organisations opted for legal action and worked in an open and above board manner as a matter of policy. However, this latter point was crucial in the decision that the organisations wre protest groups, not revolutionary: an organisation could be open and act according to the law, yet still be an unlawful conspiracy. This was to allow the court to marginalise the vast majority of BPC and SASO's work and nature.

Step by step, the conspiracy was built up, using the approach of van der Merwe, which said that a theory of revolution had to be seen as a whole. The state's submission was that men like Gurr missed the point when they tried to undermine van der Merwe's theory bit by bit, for it had to be seen as a whole.222 At its most ridiculous, this seemed to argue that even though all the constituent parts of the structure had been undermined, the structure could still stand. However, it was the approach of Boshoff. Piece by piece, the acts and writings of the organisations were obscure, ambiguous and unthreatening, but seen as a whole, they had effect. "Considered in its totality," the judge concluded, the method used was designed to foster hostility between the races, "and thus to create amongst the blacks a hostile power bloc orientated for action, more particularly for political violence."223 The eight (which excluded Sedibe) charged under the first count were therefore convicted.

All the accused under the second count (the rally count, which excluded Cindi and Moodley) were convicted. A number of features of the judgment stand out. First, the judge sought to obtain clear and unambiguous versions of the events and the intentions behind them, that were wholly insensitive to the context of the events.224 With the Durban rally, he sought precise answers about events covering three minutes; with Turfloop, he was impervious towards the existing tensions on campus.225 For the judge, the police were neutral, and hostility to them was manufactured lawlessness.226 "It is part of the strategy of SASO and BPC to denigrate the police," he said, "The hostility towards the police, therefore, existed, and was not incurred by police action."227 This view was reflected in his reading of the placards: "I think it is fair to say that the placards provided some evidence of SASO and BPC policy coming to fruition."228

The judge concluded that the rallies had succeeded in bringing together a group of persons of sufficient size and cohesiveness, sufficiently orientated towards action, as to endanger law and order.229 These acts, said Boshoff, "had and were also likely to

have had at Durban and Turfloop the result of encouraging forcible resistance to the government on the part of all the persons who attended the rallies [...] of causing serious bodily injury and of endangering the safety of persons attending the rallies, or persons enforcing the law." Seven men were thus convicted of terrorism for planning rallies that never took place, and where the police had always been in full control. Faced with the simple words of the statute, the judge turned the damp squibs of the two rallies into major confrontations. However, what allowed the judge to do this was his certainty of the inherently conspiratorial and confrontational nature of the organisations.

1. The nine were Saths Cooper, PRO of BPC until his banning in March 1973, Muntu Myeza, Secretary General of SASO,Terror Lekota, Permanent Organiser of SASO, Aubrey Mokoape, a founder member of BPC, Nkwenkwe Nkomo, chaiman of the Daveyton branch of BPC, Pandelani Nefolovhodwe, national president of SASO, Kaborane Sedibe, President of the Turfloop SRC, Strini Moodley, former publications director of SASO, and Zithulele Cindi, Secretary General of BPC. Originally, members of the Theatre Council of Natal (TECON) and the People's EXperimental Theatre (PET) were included in the indictment, but charges against them were separated in early 1975, and they never came to trial. A complete transcript of the trial is available in the Department of Historical Papers in the William Cullen Library at the University of the Witwatersrand (AD 1719 Mfm). I am very grateful to the librarians there for their generous assistance.

2. See State Heads of Argument - Introduction, pp. 37-42.

3. Exhibit SASO E1 p. 244.

4. Exhibits SASO G4 p. 166; T1 80-4; M1 44; O1 131.

5. State Heads - Count 1, p. 143.

6. Record, p. 3902.

7. For histories of the movement, see Gail Gerhart, Black Power in South Africa, Berkeley 1978, John D. Brewer, After Soweto: an Unfinished Journey, Oxford 1986, Baruch Hirson, Year of Fire, Year of Ash, London 1979. For the background of SASO, see also SASO 1972 (Exhibit SASO Q1), and Record p. 4342-3; AD 1719 Mfm. II, Minutes of the 2nd GSC held 4-10 July, 1971 (Exhibit SASO A1), Minutes of the Proceedings of the 3rd General Students Council of the South African Students Organisation (Exhibit SASO C1). For BPC, see also examinations of Mokoape, Record 4854, Biko, Record 4432, Minutes of National Organisations Conference held at the Orlando YMCA from 17.12.71 to 19.12.71. (Exhibit BPC A1) (Resolution no. 2), Paper, Black People's Convention. Historical Background (Exhibit BPC R1) p. 1.

8. Contrast SASO's 1971 Declaration of Student Rights which merely declared that education in the university of one's choice was the right of all, with the 1972 resolution which saw this to be misrepresenting the aspirations of the black student and "paying homage to a utopian situation which bears little relevance to our Black experience." Minutes of the Proceedings of the 3rd General Students Council of the South African Students' Organisation, Resolution 50/72. In its place was erected a Black students manifesto which declared the students to be an integral part of the oppressed community "committed to work towards the building of our people and to the winning of their struggle for

liberation and guided by the central purpose of service to the Black Community on every technical and social level." Res 34/72. See further Res 24/72. See also Minutes of the BPC held at the Lay Ecumenical Centre, Edendale, (Exhibit BPC B1) p. 5-6, where it was decided to recruit one million members.

9. See Examination of Lekota. Record 5257. Minutes of the Proceedings of the 3rd General Students' Council, p. 22, Cross-examination of Moodley, Record 7560, Jerry Modisane, 'Why I walked off Fort Hare in Protest' SASO Newsletter May/June 1972, p. 16.

10. See Fact Sheet: the UWC Crisis.

11. At Fort Hare, where the absence of an SRC had given SASO greater importance, the Rector was reported to have said "I want to kill SASO, because of the uncompromising attitude adopted by their national leaders, and now spreading to their rank and file." Branch Report of SASO Fort Hare to Fourth GSC, p. 3. Student leaders at Fort Hare were disciplined for holding 'illegal' meetings on campus, and students were denied the right automatically to affiliate to SASO, a problem also experienced at Ngoye. Report of the University of Zululand for 1973. Harrassment of SASO was a constant feature, with one member of the UNB SRC even being charged after a student meeting with inciting racial hostility. There were similarly problems with student unity: not all the students at Turfloop marched off the campus in the aftermath of the Tiro affair while the UNB branch had to report in March 1973 that "[student] relations on the campus are rather discouraging. The student body has, since the Tiro affair, divided." Report of the University of Zululand for 1973, p. 2.

12. Reports of Maphumulo and REESO Branches to Fourth GSC. REESO members kept in touch with SASO affairs through the Regional Office of SASO in Johannesburg, but found a deafening silence when they called for participants in projects.

13. Reports of Western Cape and Durban Central.

14. Reports presented at the Federal Theological Seminary Alice (Exhibit SASO M1) p 21.

15. 25 branches were represented at this congress, with 200 people attending, rising in 1973 to 34 branches. However, many of these branches had very small membership, such as the Overport branch of which Harri Singh was chairman, a branch which was inactive. Examination of Singh. Record 540.

16. They were Biko, Cooper, Drake Koka, Bokwe Mafuna, Jerry Modisane, Moodley, Herry Nengwekhulu and Barney Pityana. Nevertheless, its activities were sufficient to attract the attention of the security police, the first raid on their

offices coming in June that year, when Mosibude Mangena and Sipho Buthelezi were arrested, the former later being convicted of recruiting for military training,the latter later fleeing the country. See M. Mangena, On Your Own: Evolution of Black Consciousness in South Africa/Azania, Braamfontein 1989 pp 55-75 for Mangena's account of his trial.

17. Exhibit PPP2. Quoted in Record 7673. The Sharpeville branch, which overlapped with the Sharpeville Youth Club, dropped the BPC name for that very reason. Other branches showed independence over their own name, in a way to incur the wrath of head office, such as the 'Amanzimtoti Liberation Front.' Examination of Cindi. Record 7675-68ee also the problems the organisation had in raising funds. Minutes of the Second Annual National Congress, p. 3 (BPC H1).

18. Examination of Cindi. Record 7627. Some delegates were in fact only convenors, because in some areas there was not sufficient support to set up fully fledged branches. Cross-examination of Cindi. Record 7838-9. The congress revealed a failure of communication between head office and local branches, and some tension arose because branches, in seeking to raise their own funds, were undermining head office. BPC Resolution 3/73, in Minutes of the Second Annual Congress (Exhibit BPC H1).

19. In response to this, BPC issued a pamphlet congratulating the 'Brothers and Sisters of Chatsworth' on the train boycott. However, BPC played a far smaller role in the protest than was played by NIC, which had called and organised meetings. Examination of Cooper. Record 3621-2.

20. Pamphlet (Exhibit BPC D2) issued on 23 October 1972.

21. Black People's Convention - Press Release: 3.3.1973 (Exhibit BPC F1).

22. Examination of Mokoape. Record 4890.

23. Transcript of the Tape Recorded Statements allegedly made at Kajee Hall on 21.3.1973, (Exhibit BPC E4) p. 1.

24. Being a new movement, working in a political void caused by the repression of earlier organisations, the black consciousness ideologues were aware of the dangers of operating in an explicitly confrontational way. See the comments of Aubrey Mokoena on the reasons for the failure of the ANC and PAC. Record p. 5235. Such contact as there was with exiled organisations was tenuous and individual and did not translate itself into any aim to relaunch those organisations domestically or to revive their methods or ideology. There was a sense that the old leaders, although heroes, had been defeated. "Right now, there are people who are dying right in Robben Island because of their convictions," Harry Nengwekhulu told a SASO meeting at the University of Natal's Black section, "They are rotting there

because they have been destroyed." Transkripsie van bandopnames gemaak vir SAP veiligheidstak (Exhibit SASO B1) p. 28. See also paper `There is a wave that has been sweeping throughout AZANIA.' Annexure 7 to Indictment.

25. Steve Biko, Record p. 4502.

26. `Blackness v Nihilism' SASO Newsletter August 1971.

27. SASO Resolution 24/74. This resolution provided for the appointment of a research team to look at black history and compile material on the subject. Some sketches had already been put out by BPC. See their papers On the Way to Sharpeville (Exhibit BPC E5) and A Brief Review of the Black Struggle for Liberation in South Africa (Exhibit BPC E6).

28. `Black Consciousness, the black artist and the emerging black culture,' SASO Newsletter May/June 1972. Groups like TECON gave an improvised theatre of revolt, which mixed entertainment, ideology and experience. Thus, in 1971, TECON toured the black campuses with a production of "Into the Heart of Negritude", a piece which mixed jazz and poetry to develop philosophical ideas. While such art articulated the feelings of the oppressed, as an art form it lacked the direction and purpose of political agitation.

29. "We've crossed our Rubicon, we crossed it a long time ago, we crossed it at BAMBATA in 1906, when he declared ... that he was going to fight for the liberation of his country." Transcript of the Tape-Recorded Statements allegedly made at Kajee Hall on 21.3.1973 (Aubrey Mokoape) p.2 (Exhibit BPC E1).

30. Harri Singh told the 1973 Sharpeville Commemoration, that "SHARPEVILLE didn't start 13 years ago. SHARPEVILLE started way, way back when that long -haired pale-faced terrorist by the name of JAN VAN RIEBEECK landed here."Ibid. p. 6. The movement soon had its own martyrs to commemorate, after O. A. R. Tiro had been killed by parcel bomb in Botswana, and Mthuli ka Shezi had been pushed in front of a train by a white railway official after the first BPC Congress. Money was collected for a tombstone for Shezi, which was unveiled in Tembisa in December 1973, when a pamphlet told mourners that the assassination was part of an assault on the whole of the black community.

31. Editorial SASO Newsletter August 1971. See also I write p. 106.

32. See, e.g., `The Definition of Black Consciousness' reprinted in S. Biko, I Write What I Like, p. 65. This was a paper presented at a SASO seminar on Black Consciousness and Community Development held at Edendale on 4-8 December 1971. See also Resolution 42/71 3 (a). Minutes of the Second General Students' Council of the South African Students' Organisation, p. 11 (Exhibit SASO A(1)).

33. See Temba Sono, `Some concepts of Negritude', SASO Newsletter June 1971, p.19: "Negritude by its ontology is a combination of matter and spirit which manifests itself in energy and force, not kinematic as a network of radial forces which are tangential and radial energies i.e. external, material and quantitative on the one hand and internal, psychic and qualitative on the other."

34. The ideology has thus been criticised for being excessively intellectual, for lacking a class analysis and for being by a privileged elite. See, e.g., Baruch Hirson, Year of Fire, Year of Ash. In fact, as can be seen, the error lay in an undeveloped intellectual ideology, so that the main pragmatic concerns of the movement turned to grassroots action more than sophisticated political action.

35. The rhetoric of Black Consciousness was anti-capitalist insofar as it saw capitalism as one of the repugnant elements of Western culture. SASO paper `The Repugnant Elements in Western Culture' (Exhibit SASO R1); Black People's Convention's Policy 9th June '73, by Vice President (Exhibit BPC Q1). Foreign investment was opposed as exploitative since it enriched foreigners, not because it entailed capitalist exploitation of the workers. See Foreign Investment, by Nkwenkwe Nkomo (Exhibit BPC C8).

36. "We regard communism, socialism and other related systems as the results of a white man's frustrations in his capitalism and therefore just as unacceptable as capitalism that has given birth to them."`The Repugnant Elements in Western Culture,' (SASO R1). See also Kgoti Moletsane's comment in his trial, that while communalism and communism both favoured sharing, the former also encouraged self-development and was not against private enterprise. S v Molokeng, Case 30/76 (TPD) Record p. 1025.

37. See Barney Pityana, `Priorities in Community Development - An Appeal to the Blackman's compassion', SASO Newsletter, Septmber 1971, p.13.

38. Inkululeko Yesizwe (draft) August 1974. (Exhibit General G1).

39. Minutes of the Black People's Convention held at the Lay Ecumenical Centre, Edendale (Pietermaritzburg) from 8 JUly, 1972 to 10th July, 1972 (BPC B1) p. 10.

40. Ibid. p. 12.

41. Thus, SASO announced that Black Consciousness "is the preparatory stage of the people's revolution, a precedence to a just and humane society" Or, as Biko put it, "Blacks are out to completely transform the system and make of it what they wish."I Write what I like, p. 63.

72. In effect, this seemed very much like a SASO coup, for Nefolovhodwe was elected SRC President in an election presided over by his successor as chair of the local SASO branch, Cyril Ramaphosa. The first policy of the new SRC was to secure the official reinstatement of SASO on campus. Examination of Nefolovhodwe. Record 5577-8.

73. Most notable was the opening speech by Ruben Hare, Vice President of SASO, who had advocated the use of violence. Other ideas on violence were discussed over the weekend. A discussion on "The Consummation of the Struggle" urged learning the lessons of Frelimo, and the report noted "If any infiltration is to be done, we must infiltrate the tsotsis." Transvaal Regional Formation School Minutes (SASO 01) p. 131. One commission reported that "Areas near the border should be conscientized to identify themselves with freedom fighters - such p[eo]ple should be `prepared'." Ibid p. 137. A discussion on grassroots involvement similarly realised that a resort to arms was "a practical necessity," but that the people needed preparation not to see the guerrillas as terrorists. Ibid p. 142.

74. Exhibit TTT.

75. See Record 3672 ff. This document was cited in the indictment and became a crucial piece of evidence for the state: it is hence important to note that it never even reached the stage of being formally approved by the executive of BPC.

76. The commissions were on 1. Reaching the Masses; 2. Role of Black Man in Present Day Society; 3. Black Solidarity; 4. Workers: Cornerstone of Liberation; 5. Worker - Student Relationship. The advertisement attracted particular attention from the authorities: "Time has come, time is ripe and time is NOW for the Blackman to break the chains and seize the power which he for centuries has been denied ... The burning issue of `THE INEVITABLE LIBERATION BY SEIZURE OF POWER' is long overdue therefore there is need to act, NOW or NEVER. ... Every Black-man, butcher, baker, or candlestick maker who accepts the challenge should attend to voice his say." Semicon advertisement (Exhibit BPC 01). In the end, hwoever, the semicon was not as large as it was intended to be. Though a three day semicon with five commissions had been planned, several key speakers, including Hassan Howa, Manas Buthelezi and Adam Small were unable to attend, and the meeting became a two day one, with only one fully working commission.Examination of Nkomo. Record 8464.

77. At this meeting, Buthelezi asked the question of what the attitude should be towards those whites who were sympathetic to the cause of Black liberation. Nkomo replied at first, "how can you speak to a man who is boxing you at the same time," and then elaborated on a comment made by someone in the audience that if you were faced with a box of snakes, it was impossible to select

the poisonous ones from the harmless ones. At this meeting, someone made the point that all the organisations did was to talk - when were they going to act? Such questions, came the reply from Mothopeng, should not be asked at such meetings. This apparently minor episode became a major bone of contention at the trial, as a being an indication of the revolutionary aspirations of the BPC. See Examination of Nkomo. Record 8575.

78. At the same time, SASO held a staff and executive meeting. Examination of Nefolovhodwe. Record 5589. Examination of Cooper. Record 3694.

79. Examination of Cooper. Record 3699.

80. The SRC took a decision to hold a rally in a general meeting of students on the 5 September, some two weeks before Nefolovhodwe told the local SASO branch of the decision to hold national rallies. Examination of Sedibe: Record 5866; Examination of Nefolovhodwe Record 5597, Examination of Ledwaba Record 273.

81. Examination of Cooper. Record 3700

82. After much waiting, they finally met the Minister of Information who told them the inevitable news that they were unable to send anyone. For Nkomo's version of events, see Record 8580 ff.

83. Monday's edition of Die Vaderland (23 September) therefore urged Frelimo not to accept any invitation and not to attempt to meddle in South African affairs.

84. This situation was exacerbated by the large number of white refugees from Mozambique who were increasingly vocal about their problems. The tension between these Portuguese and the Black Consciousness organisations was already high, given a press statement by SASO issued on 9 September after the White Movement for a Free Mozambique had organised a rally in Johannesburg. Myeza's statement had written that the whites there wanted to fight to preserve slavery and injustice. "The dignity of the Black man has been restored in Mozambique," he concluded, "and the White people are turning out to be what they truly are, violent people."Photograph Rally A1.

85. Myeza called Bokwe Mafuna in Botswana on Monday to see if he had heard any news. Mafuna was not very encouraging. Transcript, pp. 19-21.

86. When he spoke to Nat Sarachi of the Rand Daily Mail on the day before the rally, Sarachi asked him about the Frelimo speakers. "Oh, look, Nat," Myeza replied, "I think, eh, we must keep this very close...you see." Sarachi was told the Frelimo speakers were there, but that he could not report it as yet.Transcript, p. 47. Later in the conversation, however, Myeza said that "we are giving them up" although Sarachi did not pick

up on this. p 51.

87. Koekemoer was a familiar name to readers of the Daily News, his most recent missive having stated that South Africans should "take steps to defend our families and our homes from attacks from murderers, rapists and torturers, mistakenly referred to as freedom fighters."Nat Serache of the Rand Daily Mail read Myeza a report from the Star filling out the detail. See Exhibit C, Transcript of Telephone Conversations (henceforth as Transcript) p. 43.

88. The ban was announced in the Government Gazette 4415 on 25 September 1974.

89. They heard from both Adv. T. L. Skweyiya and Prof. Barend van Niekerk that the rallies had not yet been banned. Examination of Myeza. Record 6317.

90. Saths Cooper described the situation thus: "I did not consider [the Mercury report] a ban, it was not formal, it was not legal, it was not effective. And reporters were hounding the SASO offices."Examination of Cooper. Record 3701-2. See also conversation between Myeza and Gerald Phokojoe, Transcript, p. 35. Later in the day, Nefolovhodwe told Myeza he had spoken at Turfloop, but merely in his capacity as a student, and Myeza told him that if anyone addressed the meeting except BPC or SASO people, it would be legal. p. 86.No chances were being taken, however. As the first alternative, Curries Fountain had been booked in the name of BAWU, so that it could be held under the auspices of a different organisation; as a second, Ahmed Bawa was sent to see Colin Jeffreys, BPC Vice President, to try to secure the Kajee Hall in Durban as an alternative venue.

91. See Myeza to Danile Landingwe, Transcript.

92. Transcript, pp. 32-3.

93. Transcript, p. 51.

94. Examination of Cooper. Record 3703.

95. Transcript, p 76. He similarly told Mohapi in King Williams Town that "our legal experts" had said that the meeting was legitimate provided no SASO or BPC members spoke.

96. Lekota told the court, "I did really think that it would be possible...that the government would decide to ban this rally, because their stated attitude in the press was of cordial coexistence with Mozambique." Record 5318. See also examination of Mokoape Record 4898.

97. Transcript, p. 10

98. Transcript, p. 13.

99. For the accounts of the nature of the crowd, see the evidence of bystanders Harper (7497), Guma (8471), Soni (8378), Tshabalala (8020-44).

100. "Frelimo killed and won. SA Blacks?" read perhaps the most provocative. The posters were, however, makeshift, handwritten efforts, done without co-ordination by SRC members. Some posters were humerous: "White man it is time to proceed to India as you promised," read one: "Get going." Others were more solemn: "This [rifle] my son, I give you. Don't be a coward - Doubly dying shall thou go to the vile dust, unsung, unhonoured and unwept!"

101. Snyman Commission vol. 1 p 75

102. He felt inaction was the best policy, thinking that since all SASO rallies had been banned, he did not have to do anything, for "the police were to decide whether the rally was covered by the ban at all." Snyman Commission p. 78.

103. Snyman Commission p. 90.

104. Examination of Nefolovhodwe. Record 5610.

105. Snyman Commission, p96.

106. Examination of Chikane. Record 8300 ff.

107. In particular, one crippled student, Ishmail Mhkabela, was injured in the baton charge. When Frank Chikane and two others went to help Mkhabela, they were told by the police that they were in breach of the ban. Record 8303, 7101.

108. Snyman Commission p. 80, 104.

109. Snyman Commission, annexure.

110. Snyman Commission 6.5.3.

111. Beeld ran a front page story the day after the rally telling its readers that blood had run in Durban and Pietersburg when crowds and police clashed. By the next day, the newspaper claimed that police dogs in Durban had prevented a bloodbath, its leading article praising the firm action of the police and warning of a dangerous situation in the country. Die Burger was even stronger, comparing SASO's commemoration of Frelimo's victory with the internationalism of the ANC and PAC in the 1950s which led to the `bloodbath' of 1960. The press for the next week was dominated by comparisons with 1960, seeing the Frelimo rallies as the start of a new Sharpeville style of agitation to be nipped in the bud at all costs.(30 September 1974).

112. S v O'Malley and Another 1976 (SA) 1 469 (NPD).

113. See also Snyman Commission p 97.

114. Two other accomplices were called, Ahmed Bawa and Ledwaba. Bawa was a largely tangential figure, while Ledwaba was a disaster for the state, since in his evidence he portrayed SASO as peaceful and restrained. Things were so bad that Rees attempted to discredit his own witness, by showing that in his statement to the police, Ledwaba had said that Hare had said SASO should turn to violence. Yet in reply, Ledwaba told the court that he had told the police that he not been able to hear it properly, and that much of the statement that ensued had been suggested by the investigating officer, Major Strydom. Examination of Ledwaba. Record 332-4.

115. Examination of Singh. Record pp. 580-1. Singh's version of events in the Kombi was in part corroborated by Bawa, though according to Bawa the three phases were the conscientisation phase (now coming to an end), the confrontation phase (divided into non-violent and violent phases) and the rebuilding phase. Judgment p. 147.

116. Examination of Singh. Record p. 593. At other times, however, Singh claimed himself to have been part of the Supreme Com

117. Singh claimed that on one occasion, Saths Cooper had told him that Sipho Buthelezi was to be smuggled out of South Africa,

and that he would channel recruits. Examination of Singh. Record p 560. Other talk of miltary action abounded. When at Hammanskraal, the Secretary General, Cindi, was suspended from his post, Mayathula had told him (according to Singh) that he was not the office type, but should go to the bush and take up arms. Examination of Singh. Record p 580. For other episodes, see Record p. 567, 576.

118. Examination of Singh. Record p. 527.

119. This was found in his interpretation of the Doctor's Quarters meeting. According to Singh, both he and Nkomo were set against holding the rally, but Cooper, Lekota and Myeza were determined to go ahead, irrespective of the ban. As for Mokoape, he "merely laughed at both of us and said that we were scared." Singh claimed that Cooper said there was to be a confrontation that night and that he was prepared to sacrifice himself to address the rally. According to Cooper, it was Singh who was the most pugnacious at the meeting at Doctors' Quarters. Singh was slightly drunk, and argued that after all the planning and organisation that had been done, it would be wrong to drop the issue. Mokoape claimed that it was in response to this tigerish attitude that he made the comment that "we cannot afford a Sharpeville."

120. Cross-examination of Singh. Record p. 716.

135. Gurr argued that any organisation needed a core group at the centre, and pointed out that unifying ideas (like nationalism) could be either revolutionary and or not. Examination of Gurr. Record 8081. For van der Merwe's methodological weaknesses, see the cross-examination of van der Merwe. Record 2362. The irony was that revolutionary groups were more likely to have the reverse features of van der Merwe's model, for the type of mobilisation, unity-building and mobilisation so typical of BPC and SASO were also characteristic of large public protest groups, trade unions and political parties, whereas revolutionary groups usually relied on smaller groups of militants whose loyalty could be relied on. Examination of Gurr. Record 8088.

136. Cross-examination of van der Merwe. Record 2542-3. The new model focussed on the following: (1) The development of an idea which was broad and value orientated; (2) which idea could only be implemented by a radical change of the system; (3) involving a total rejection of existing channels of communication; (4) where there was also allusion to violent action. Examination of Gurr. Record 8066-7. Cross-examination of van der Merwe. Record 2873.

137. Examination of Gurr. Record 8062. Cross-examination of van der Merwe. Record 2901.

138. See Record, pp. 2494, 2469, 2478.

139. Cross-examination of van der Merwe. Record 2574 q it.

140. Cross-examination of van der Merwe. Record 2588.

141. As Gurr pointed out, however, documents were the least adequate type of information on political organisations, particularly in view of the fact that over the previous 15 years there had evolved a common language of political protest. Instead, van der Merwe should have examined what they did, something he eschewed. Examination of Gurr. Record 8096. Van der Merwe told the court it was not his brief to study the organisations, and that he only claimed some of the documents had revolutionary elements (Cross-examination of van der Merwe. Record 2322-3). Going through them all would have taken too much time (Record 2339).

142. As Gurr showed, van der Merwe had cited five SASO documents which foreshadowed violence, a remarkbly small haul from 480 pages of SASO documentary materials. The references included a resolution referring to Christ as a freedom fighter, a document entitled 'Mayibuye', the Tiro commemoration document, the minutes of the Transvaal Formation School, and a document stating that the ballot had never preceded the bullet. The references were in the following documents: Minutes of the Proceedings of the 4th General Students' Council of the South African Students' Organisation Resolution 41/73 (SASO G1 p. 304); Manuscript paper 'Mayibuye' (SASO J1); Notice about Tiro (SASO L1); Transvaal

121. Thus, the conversations he had had with Cooper on guerilla warfare involved at most their turning the topic over in their minds. Cross-examination of Singh. Record p. 720.

122. He claimed he had not been listening too closely to what Mayathula had been saying, since he was already familiar with the ideas. Singh claimed that when Yugan Naidoo had said to him in the Kombi that such talk was unsafe, he had replied that it was safe enough, since all were BPC members. This presented two problems. First, if the agenda was secret, this was to make it public in a very casual way. Indeed, there were people in the Kombi Singh hardly knew, one of whom was suspected of being an informer. Given the nature of the discussion, then, Singh's attitude seemed curiously casual. Record pp. 581-2, 827.

123. Cross-examination of Singh. Record pp. 950-1.

124. Cross-examination of Singh. Record pp 954-5.

125. Singh conflated events at meetings he had not attended with those he had, and interlaced the secret conspiracy into this chronology. For Singh's inconsistencies, see Record pp. 670, 630 ff.

126. Cross-examination of Singh. Record p. 940.

127. Cross-examination of Singh. Record p. 944.

128. Cross-examination of Singh. Record 933, 944-7.

129. Cross-examination of Singh. Record p 957.

130. Examination of van der Merwe. Record pp. 2041-5.

131. Van der Merwe focussed on relatively minor passages to show a delegitimation of the system. Thus, speaking of the Notice about Tiro (SASO L1), he said the implication of the language used "is dat die stelsel aksie neem teenoor 'n groep persone, wat in stryd is met daardie persone se basiese waarde en norme. Daardeur word sowel die spesifieke as die diffuse steun van die stelsel onder daardie groep ernstight ondermyn." Record 2047. Similarly, the BPC Press Release Statement 19 January 1973 (Exhibit BPC D1) which talked of "oppressive and exploitative system" and that urged blacks to join in rejecting that system was portrayed as a revolutionary rejection of the validity of the system. Record 2056-7.

132. Cross-examination of van der Merwe. Record pp. 2415-16.

133. See P. Calvert, B. Moore.

134. Examination of Gurr. Record 8076. Ironically, Gurr was one of the sources van der Merwe had attempted to use.

Regional Formation School minutes (SASO 01); and a paper entitled The Repugnant Elements in the western Culture (SASO R1). Examination and cross-examination of van der Merwe. Record 2077-99, 2721-2. Gurr noted, "I have not found any of them contained in a statement of policy or in a statement of directives, instructions emanating from leaders of the group." These documents had no official validity, their content being imprecise, their origin uncertain in a student organisation of 4000 members. As for the 232 pages of BPC documentation, there were only eight references to violence, five of which were to be found in poems. Of the three direct references - a press release of March 1973 warning of a new Vietnam, a resolution on physical training, and the Semicon minutes - none were unambiguous. The documents were Black People's Convention - Press Release: 3.3.1973 (BPC F1); the handbill advertising the Semicon (BPC 01) and the document entitled Black Peoples' Convention - Historical Background (BPC R1). The few references to violence located by van der Merwe thus were so sporadic and uncertain that they could tell the court little about the organisations. This undermined van der Merwe's testimony in a critical way.

143. Cross-examination of van der Merwe. Record 2627.

144. Cross-examination of van der Merwe. Record 2611.

145. Cross-examination of van der Merwe. Record pp 2337-8. See also p. 2343.

146. Cross-examination of van der Merwe. Record p. 2398.

147. "Dit is basies 'n toestand waar 'n groot gedeelte van die bevolking ontevrede is met die bestaande orde, en nie...die fasiliteite het of sien of die wel het om die ontevredenheid-pouse -as hulle nie die wil het by voorbeeld of die potensiaal of die kanale om daardie ontevredenheid langs die voorgeskrewe kanale uit die weg te ruim nie."Cross-examination of van der Merwe. Record 2363.

148. Judgment 212.

149. Judgment 218.

150. Judgment 223.

151. Judgment 235.

152. Defence Heads of Argument (David Soggot) C p. 1.

153. See Examination of Lekota. Record 5248. Examination of Cindi. Record 7599. Examination of Nkondo. Record 8358 Cross-examination of Mokoape. Record 5239. Examination of Myeza. Record 6282.

154. Cross examination of Buthelezi. Record 3454.

155. Examination of Mokoape. Record 4844.

156. Examination of Mokoape. Record 4829. See also examination of Nefolovhodwe. Record 5656.

157. See examination of Nefolovhodwe. Record 5657-8.

158. Defence Heads C.

159. Examination of Biko. Record 4378.

160. See examination of Buthelezi. Record 3392-3415.

161. As Biko said to Attwell, "I think you cannot possibly default that, it is a racist regime and it is a minority regime." Cross-examination of Biko. Record 4599.

162. Cross-examination of Biko. Record 4666.

163. Cross-examination. Record 3540. This explains in part why Moodley, as Publications Director of SASO, never felt SASO articles were subversive enough to be in need of a legal opinion, and why printers like Bramdaw never referred them to the law.

164. Thus Small was cross examined at length on the revolutionary nature of comic UWC student songs. Record p. 6180.

165. It came from the March/April 1973 edition of the SASO Newsletter.

166. Cross-examination of Nkondo. Record 7C15.

167. BPC E1.

168. Cross-examination of Cooper. Record 4298.

169. Cross-examination of Mokoape. Record 4996-7.

170. Cross-examination of Sedibe. Record 5938.

171. The divergences of assumptions was reflected when Rees accused Cooper of "trying Hitler's tactics on this court." Cross-examination of Cooper. Record 3941. By this, he meant that just as Hitler had justified attacking Poland by claiming that Germany had been attacked by Poles, so Cooper justified revolt by blaming whites. Rees put it to Cooper that the BPC had quite a lot in common with Mussolini's fascists, in their quest for national unity and power. The irony was that Rees, in the polite and detached environment of the court, was using a similar language against the BPC leaders as they were on trial for using. This language acknowledged a racial antagonism to be in existence, the very antagonism that the organisations were said to be fostering. This fact was elaborated by Strini Moodley's explanation ofthe

significance of the rise of the black consciousness organisations: "the emergence of the clear demarcation of the two opposing forces shows up the truth of the already existing polarisation." Cross-examination of Moodley. Record 7578.

172. Cross-examination of Myeza. Record 6614.

173. Cross-examination of Myeza. Record 6615.

174. On occasion, the racial antipathy took a very personal turn, particularly when Saths Cooper was under cross examination:

REES: Now, you have compared [whites] with something that should be destroyed on sight, not so?

COOPER: Your Lordship, there again, if the prosecutor can refer me to anywhere where we say: this must be so, when you meet a white destroy him on sight. I mean if that was so, the first time I saw you I would have attempted to destroy you. [LAUGHTER]

REES: I do not think you had the guts, Mr. Cooper.

Cross-examination of Cooper. Record 3810.

175. See, e.g., cross-examination of Gurr. Record 8206.

176. This was taken up when Gurr showed a lack of knowledge about Nelson Mandela. Cross-examination of Gurr. Record 8250.

177. Judgment 237.

178. Judgment p. 229.

179. Cross-examination of Mokoape. Record 4935.

180. Cross-examination of Mokoape. Record 4950 ff.

181. Cross-examination of Gurr. Record 8240.

182. Cross-examination of Mokoape. Record 5104-5.

183. Cross-examination of Cooper. Record 3733.

184. Cross-examination of Cooper. Record 3852.

185. Cross-examination of Cooper. Record 4147.

186. Cross-examination of Mokoape. Record 4945.

187. Examination of Gurr. The response could be active or passive. Record 8150.

188. Examination of Gurr. Record 8166.

189. Examination of Lekota. Record 5353.

190. See Biko's exchange with the judge on this, <u>I Write what I like</u> p. 145.

191. Cross-examination of Cindi. Record 8010.

192. This was evident at the most fundamental level of theory As was apparent in his exchanges with Biko, the judge found the very notion of full democratic government implausible unless there was a developed political community. See Biko's exchange with the judge I write what I like p. 147. Also see cross-examination of Nkomo. Record 8620.

193. After questioning Cindi in detail on how he would compensate owners of capital and how he would organise productivity if there were no foreign investors, Boshoff exclaimed, "But you are the man on communalism, I thought you were going to give me all the answers?" What Cindi saw as a "starting point" in his philosophy to "work towards a solution" was taken by the judge as a coherent but implausible philosophy. Cross examination of Cindi, Record, pp. 8018-19.

194. Cross-examination of Cooper. Record 4024-5.

195. Cross-examination of Cooper. Record 4027.

196. He pointed out to Mokoape that the ideology was premised on the assumption that white oppressors would only give up as much as it suited them to give: that being so (he went on) the ideology must have envisaged the consequences of the whites refusing to bargain. Re-examination of Mokoape. Record 5241. See also cross-examination of Nefolovhodwe, Record 5789; cross-examination of Myeza. Record 6647-8.

197. Cross-examination of Cooper. Record 4073.

198. Cross-examination of Cooper. Record 4075.

199. Examination of Mokoape. Record 4837.

200. Terrorism Act, 83 of 1967, subsection (1) (a).

201. S. 2 (2) of the Terrorism Act 83 of 1967.

202. "To endanger the maintenance of law and order, an act has ... to be directed either at the constituted authority or the general body of law-abiding members of society in which it exists." 1976 (2) SA 875 (TPD) at 878.

203. "[T]he court rejects versions which are inconsistent with Singh's version." Judgment 147.

204. Judgment 166.

205. Glossing over his inconsistencies, he said that Singh was "corroborated by the action taken by BPC in crisis situations and the policies of BPC in respect of workers." Judgment 86.

206. Singh's contention that he, Mokoape, Cooper, and Mayathula met to plan for a national strike within five years was for the judge corroborated by the fact that Cooper was actively involved in BAWU. Judgment 113.

207. Judgment 167.

208. Courts were not always so careless. In the case against ffrench-Beytagh, which rested largely on the evidence of an accomplice, it wqas held that such evidence could only be relied on when it was clear and satisfactory in every respect. S v ffrench-Beytagh 1972 SA (3) 430 (AD) at 446, following R v Mokoena 1956 (3) SA 81. This was a ruling, however, on s. 256 of Act 56 of 1955 which allowed for convictions on the evidence of a single witness. In the BPC/SASO case, Singh was not the single witness. However, since for many areas of crucial evidence he was the single witness, the court may have been expected to have treated him with greater caution.

209. R v Kristusamy 1945 AD 549 at 556, cited in Judgment p. 11.

210. Thus, Mayathula's alleged comments and his beliefs about a general strike were outside the common purpose of the conspiracy in so far as both Singh and Bawa had testified that the aim of the organisations had been to remain legal and that Mayathula's ideas were never adopted by the organisations.

211. Heads of Argument (David Soggot) Part A p. 76. See R v Victor 1965 (1) SA 249.

212. Judgment p. 13.

213. R v Adams and Others 1959 (1) SA 646.

214. Thus, the judge used the documents from the Turfloop regional Formation School against the accused. Judgment p. 79-80.

215. It might be contended that the accused were convicted not of revolutionary acts, but the vaguer notion of promoting racial hostility, that the Terrorism Act was so broad as to encompass both. However, given that the judge had already given his assent to the notion that the Terrorism Act involved a clear attack on law and order, the hostility that was being charged had to be action-orientated.

216. Judgment 238.

217. Judgment 242.

218. Judgment 44.

219. Judgment 33

220. See, eg Judgment p. 91-2 on the Chatsworth pamphlets, and the Durban strikes.

221. Examination of Biko: Record 4426; Examination of Mokoape: Record 5284; Examination of Nefolovhodwe: Record 5569.

222. State Heads p. 24.

223. Judgment 241.

224. Thus, with Curries Fountain, the judge found it implausible that no one had asked Myeza in the car ride back to the SASO offices what he had done to disperse the crowd, if that had been his aim. This was taken as a reason to disbelieve Myeza's version. Judgment 154.

225. Similarly, the Snyman Commission, while it recognised tensions on the campus, took a conspiratorial view of the organisation of the rallies. see the Report of the Snyman Commission 7.2.1.4.

226. He therefore accepted the police version of events at the two rallies unreservedly. Judgment p 165.

227. Judgment p 201.

228. Judgment p 201.

229. Judgment 256.