

BEYOND THE STETHOSCOPE AND THE SYRINGE

by Meshach Khaile

THE SOUTH AFRICAN MEDICAL AND DENTAL COUNCIL (SAM & DC) must have nightmares about its many tangles with the BCM. The SAM & DC has consistently emerged with egg all over its lily-white face and it seems that this pattern is destined to continue.

On 30 January 1985, Judge President W G Boshoff of the Transvaal Provincial Division (the very same Boshoff who convicted the SASO/BPC Nine) found there was a *prima facie* case (i.e. a case calling for an answer) against the Biko doctors- viz. Drs Ivor Ralph Lang and Benjamin Tucker- of "improper or disgraceful conduct" or conduct which, when regard is had of the professions of these doctors, is improper or disgraceful. The Judge President ordered the Medical Committee of Preliminary Inquiry of the SAM & DC to arrange to have the Biko doctors prosecuted.

This judgement was preceded by the following:

- On 9 January 1978, Chief Magistrate Prins who presided at the Biko inquest, transmitted that portion of the Inquest record which related to Doctors Lang, Tucker and Hersch to the SAM & DC. **The Chief Magistrate and his assessors (both professors of Forensic Medicine) took the view there was *prima facie* evidence of improper or disgraceful conduct on the part of Lang and Tucker. The SAM & DC did not institute an enquiry into the matter.**
- On 20 December 1977, one Eugene Roelofse, of the Ombudsman's Office sponsored by the

South African Council of Churches, directed a letter to the SAM & DC asking them to constitute an enquiry into the conduct of the Biko doctors.

- On 16 January 1978, Roelofse again wrote to the SAM & DC and drew the attention of the Council to press clippings which reported the evidence which the Biko doctors had given at the Inquest. **He also posed 14 questions in respect of Lang and 13 questions in relation to Tucker relating to medical ethics and professional standards.**
- On 24 April 1980 the Inquiry Committee of the SAM & DC resolved that no further action be taken against the Biko doctors. Their press release dated 17 May 1980 indicated that they had found that there was no *prima facie* evidence of improper or disgraceful conduct on the part of the Biko doctors.
- On 17 June 1980 the SAM & DC voted 18-9 to confirm the action of the Inquiry Committee.
- On 17 February 1982 Professors Frances Rix Ames, (head of the Department of Neurology at Groote Schuur Hospital) Trefor Jenkins (of the South African Institute for Medical Research) and Phillip Vallentine Tobias (of Witwatersrand University) amongst others, **lodged a long list of clearly specified, fully detailed and properly motivated charges and complaints running into 88 pages and containing allegations of improper or disgraceful conduct**

against Drs Lang, Tucker, Hersch and Keeley. They emphasized that their charges and complaints were not a continuation of the complaints of Roelofse nor an appeal against the dismissal of Roelofse's complaint, but new and independent complaints which had never been dealt with by the Council.

They also emphasized that the Inquest record did not contain all the relevant evidence and that even that record contained material conflicts between the doctors *inter se* and between the doctors and the police witnesses. (see "Room No 619", Frank Talk Volume 1 Number 4 at pages 12-15) The new evidence before the SAM & DC included evidence given by Keeley to an *ad hoc* committee appointed by the Medical Association of South Africa (MASA) and the rest of the inquest evidence.

- On 18 March 1982 the Health Workers Organisation and certain medical practitioners including Doctors Yosuf Variava (former National Forum Committee Member), Dumisani Mzamane and Timothy Wilson lodged a 26-page list of clearly specified, fully detailed and properly motivated charges and complaints (in substance much the same as the 17 February dossier) against the Biko doctors.
- On 4 March 1983, **the Inquiry Committee of the SAM & DC resolved that no action be taken against Doctors Lang, Tucker,**



Dr Ivor Lang: 'I could find nothing organically wrong with the man'

Dr Tucker and Dr Hersch. Both examined Steve Biko before he died; neither expressed any serious indication of brain damage at that time

Hersch and Keeley. The Inquiry Committee found that all the material evidence had been considered by it when it dealt with Roelofse's complaint and that no new material evidence had emerged from the dossiers before it.

- 29 members of the SAM & DC confirmed this decision of the Inquiry Committee on 25 April 1983.

Doctors Variava, Mzamane and Wilson and professors Ames, Jenkins and Tobias brought an application to the Transvaal Provincial Division to set aside the resolutions adopted on 4 March and 25 April 1983 and to order the SAM & DC to institute an enquiry into the professional conduct of Lang and Tucker.

The Court found that the Inquiry Committee and the Council failed to appreciate the nature of their respective function viz to determine whether the evidence furnished by Variava, Ames et al to them supported the charges and complaints disclosed prima facie evidence of improper or disgraceful conduct on the part of Lang and Tucker. The Inquiry Committee & the Council chose merely to consider whether the evidence submitted by Variava, Ames et al was the same as evidence submitted by Roelofse. Even in performing this limited function, they erred in finding that no new evidence was placed before them.

Of course, the Court was not concerned about the merits of the charges and complaints and directed that the SAM & DC hold a proper inquiry into the professional conduct of Lang and Tucker. A special meeting of the SAM & DC ON 16-17 February 1985 resolved not to appeal against the decision in *Variava v SAM & DC* and the inquiry into the conduct of Tucker and Lang will begin in June 1985.

CONTRAST

In grotesque contrast to the foot-shuffling of the SAM & DC in the matter of the Biko doctors, the SAM & DC displayed inglorious haste in prosecuting Dr Maitsho Nchaube Aubrey Mokoape who was Accused Number 4 in the "SASO-BPC Trial" (widely known as the Trial of Black Consciousness). Much as Boshoff's judgement in the SASO-BPC Trial was epoch-making- it convicted nine leaders of the BCM for writing speeches, poetry and plays and organizing rallies to celebrate the accession of Frelimo to power in Mozambique (obviously, the SAM & DC has not yet heard of the Nkomati Accord!) the case of the SAM & DC versus Mokoape was poised to make medical and legal history. It was the the first inquiry into the professional conduct of a medical practitioner for his political beliefs held anywhere in the world!

MOKOAPE.

Dr Mokoape obtained the degrees MB, CHB and registered as an intern with the SAM & DC on 5 July 1974. He was detained during September 1974 and underwent the marathon SASO-BPC Trial. In December 1976, he was sentenced to six years imprisonment on Robben Island. He was convicted of two counts under the Terrorism Act, Act Number 83 of 1967.

On the main count, Boshoff found that the **"the common method or means employed to accomplish total liberation of the Black people" (viz BC) was designed "to create amongst the Blacks a hostile power block orientated for action, more particularly political violence."** (*Judgement* at 241). It can fairly be said that the Nine were convicted for their belief in the BC ideology as the following passage indicates: **"(L)anguage was used by the conspirators to condemn whites as the oppressors of the Blacks . . . In the process language was used which caused and encouraged feelings of hostility . . . between the Blacks and the whites . . ."** (*Op cit* at 240).



Aubrey Mokoape (far right) during the Sharpsville uprising. On the extreme left (face partly obscured) is the late comrade Mangoliso Robert Sobukwe.

On the second count, Boshoff found that by organising Viva-Frelimo rallies, the accused intentionally endangered the maintenance of law and order. A rally planned for the 25 September 1974 was banned at the eleventh hour and the Court found that the accused were guilty of proceeding with the rally "notwithstanding" (the) real danger of violence." (*Op cit* at 252).

Dr Mokoape's name was deleted from the Register of Interns in 1978 as letters sent to him were returned undelivered. On the 28 August 1978, the SAM & DC was informed by the Prisons Department that Mokoape was convicted under the terrorism Act in 1976. **In an affidavit submitted to the SAM & DC by Mokoape asking for his housemanship to be restored, he made full disclosure about his convictions (26 July 1982). Mokoape's name was restored to the Register on 6 September 1982.**

On 20 October 1982, the President of the SAM & DC instructed the Registrar to refer the matter of Mokoape to the Inquiry Committee.

In December 1982, Mokoape was released and began serving his internship at the King Edward VIII Hospital in Durban. The period of housemanship completed in 1974 was recognised by the SAM & DC. Mokoape completed internship in December 1983 and then started a private practice in Umlazi Township which adjoins Durban. He was placed on the register of medical practitioners by the SAM & DC. The council made numerous attempts to get the judgement in the SASO-BPC trial between February 1983 and August 1984. **On 28 August 1984 the Inquiry Committee resolved that there was a prima facie case of improper or disgraceful conduct or conduct which, when regard is had to of Mokoape's profession, is improper or disgraceful. It should be emphasized that the SAM & DC knew no more on 20 August 1984 than it did on 28 August 1978, and that the Council had still not succeeded in obtaining a copy of Boshoff's judgement in the SASO.BPC Trial.**

It should also be emphasized that there was no written charge, complaint or allegation against Mokoape but the SAM & DC had decided to institute proceedings on the basis of Mokoape's own disclosures.

On 23 November 1984, Mokoape was served with a summons to appear before the SAM & DC. The charge proffered against him read:

"THAT you, being a registered medical practitioner, are guilty of improper or disgraceful conduct, or conduct which when regard is had to your profession is improper or disgraceful, in that during or about 1976 you were convicted in the Supreme Court on two charges of contravening Section 2 (1) (a) of Act No 83 of 1967."

THE HEARING

Counsel for Mokoape (Ismail Mahomed SC assisted by Imrann Moosa and Edwin Cameron) contended that:

- The Medical, Dental and Supplementary Health Service Professions Act No 56 of 1974 (the Act) confers a jurisdiction to the Council to institute an inquiry if and only if it is triggered by a written complaint (Sections 41 read with 45 and Regulation 2 of Government Notice R 2268 of 3 December 1976). The Council lacked the jurisdictional fact (namely the written complaint) required to catalyse the inquiry.

- The case against Mokoape was that he was convicted nearly a decade ago of contravening an Act which has since been repealed. In law and in fact to argue

that a mere conviction under the terrorism Act constitutes improper or disgraceful conduct without regard to the motive of the offender, the circumstances under which the offence came to be committed, the actual conduct constituting the offence and whether guilt was affirmatively or presumptively established is untenable. **There may be convictions which contain inherent moral turpitude, but terrorism is not one of them.**

The representative for the *pro forma* (i.e. nominal) complainant argued that Section 45 of the Act only required proof of the conviction and the opinion of the Council that this conviction constituted improper or disgraceful conduct. Section 45 does not require a written complaint, but allows the Council to take cognizance of the conviction of a medical practitioner.

Mokoape replied that **the formalistic approach suggested by the complainant would make a doctor's traffic offences or his failure to pay his dog licence the concern of the SAM & DC.** The *pro forma* complainant had to go further and suggest how the conviction constitutes improper or disgraceful conduct. For example, while a speeding offence *per se* might not show improper or disgraceful conduct, the fact that a doctor endangered the lives of twenty people might show a *prima facie* case of improper or disgraceful conduct.

The Disciplinary Committee appointed by the SAM & DC granted the application for Mokoape's discharge without enunciating any reasons.

It may be added that the Act makes no provision for this kind of discharge: the Committee's decision was decidedly uncharacteristic.

ISSUES RAISED

On the other hand, the Committee clearly chose the way of least resistance. Had it decided to hear the full defence case in the *Mokoape* episode, the following issues would possibly have been thrown full square before it:

- **Does the medical practitioner's commitment to healing end with his stethoscope and syringe or does it extend to dealing with the problems of suffering humanity and helping to weed out oppression, exploitation and dehumanization?** In September 1948, the General Assembly of the World Medical Association passed the following declaration to bind all medical practitioners:

"I solemnly pledge myself to consecrate my life to the service of humanity."

It is noteworthy that the WMA pub-

lished this Declaration after the horrors of World War II. Amongst the barbaric deeds of the Nazi regime were various crimes committed by medical men relating to human experimentation: the excuse that they were ordered to perform these by the state was not enough. **Medicine can no longer restrict itself to symptomatic relief, to the treatment of specific organs and to the care of the individual person it must assess its goal within the total context of human society.**

- Accepting that a medical practitioner has to have a social conscience, the medical practitioners who acquiesce in the genocidal practice of apartheid medicine and who do nothing to alleviate the lot of the oppressed, exploited and dehumanized in South Africa are the ones who are really guilty of improper or disgraceful conduct. Mokoape helped initiate and actively participated in the Dududu, New Farm, Wintervelds and Zanempilo health and community projects of SASO and the BCP.

- The SASO-BPC Trial did not disclose that the accused committed any acts of violence nor did they incite violence. **The Court found that the accused justified violence. While committing abortion might well be disgraceful conduct, is arguing that abortion is justified also disgraceful conduct?**

- The terrorism Act allowed for a presumptive guilt i.e. the state does not have to prove the accused's guilt but the accused has to rebut the presumption. Although Boshoff mentioned how confused counsel on both sides were about the workings of this presumptive guilt (*Judgement* at 2), he lands himself in the same morass (*op cit* at 250). (Incidentally, this means that the conviction of the Nine is quite questionable in law). To take an example: say the Minister of Finance goes to the Internatio-

nal Monetary Fund and asks that the world returns to the gold standard:- he is attempting to bring about economic change mentioned in Section 2(2) (f) of the Terrorism Act and thus he is presumed to have the intention to endanger the maintenance of the law and order. The Minister must prove beyond reasonable doubt that he did not have this intention.

There is no such presumption to assist the *pro forma* complainant in the *Mokoape* matter. Theoretically, the *pro forma* complainant would have to re-open the SASO-BPC Trial in relation to Mokoape in order to establish whether Mokoape was actually guilty of the offences charged!

- The case against Mokoape in the SASO-BPC trial was confined to membership of and presence at meetings called by the BCM. The Court accepted that **the accused were motivated by a passionate concern for the physical, psychological and spiritual well being of the Black people of South Africa.** Where a criminal offence is committed or is presumed to be committed from motives of high and lofty idealism the inference that the conduct was disgraceful or improper is not a legitimate inference.

- **Medical ethics must distinguish between what is unlawful and what is immoral and between what is immoral *per se* and what is immoral in the sense of being disgraceful.**

- A distinction must be made between a simple intention to promote racial hostility and the BCM's criticism of racist policies.

NUREMBERG

The SAM & DC has conclusively proved itself to be a bumbling arm of the executive. Coming as it does in 1985, when the WMA Congress is due to be held in Cape Town, the

**CONTINUED ON
PAGE 30**



The accused at Nuremberg . . . the greatest trial in history

Footnotes Referred to in CAPITALISM WAKES UP

1. As this is neither a theoretical problem nor a scientific theory or ideology, but rather a real and contemporary problem which deals especially with the fate of the third world in which we live, it must be discussed thoroughly and independently.

2. In other words capitalism is becoming wise. Why? "Because", explains a writer, "as much as Marxism has helped the awareness and self-consciousness of the proletariat it has indirectly helped the awareness and self-consciousness of capitalism."

3. Even though the external factor of the problem of self awareness is objective — the problem of self-awareness is a subjective matter.

4. A friend of mine used to narrate that someone was complaining about poverty, hardships in life, debts, and deprivation. He believed that his life was worsening everyday. Then, he would reflect a moment and say, "We still have to thank God that in this summer heat I am not ill because if I were ill then the doctor would tell me to go and sleep close to the heater then what would I have done! Thank God that I am not ill and I am leading a good life."

5. And to destroy an ideology, he creates syndicalism to protect the worker's profits within his guild than in his society or his class and solve the problem in relation to the capitalist, or to enforce it upon the capitalist. But it will not endanger the capitalistic system. It will rather put so and so capitalist or factory owner under pressure and divert the direction of the flow.

6. The reason I say "no" — in relation to the same ground on which the problem is posed — is because my judgement would then differ, because problems are always to be tackled from all its aspects in order to get the right result, not on the same grounds on which the problem is posed, because then the judgement would be different.

7. The capitalist, in order to make his factory run, would even destroy all or half of the agriculture, the normal life of its people, forest and even the natural resources, water and the animals of that state or country in order to employ a cheap work force for his factory.

8. In order to place 1200 slaves in a vessel with a capacity of 300 men, in order to deliver to the U.S.A. about 650 to 700 living slaves, it would still be advantageous for example to place them in a way that even if 300 out of 1000 of them die, there would still be 700 to deliver alive to the U.S.A.

9. He and his group divorced from the French Communist Party due to the latter's choice of very inhumane and reactionary directions regarding the problem of Algeria and Hungary. The French Communist Party has also compromised with the capitalists and they had all become one. Djimole used to be in a Socialist Party. Maurice Tours was the head of the Communist Party. Djimole was the person who compromised with Israel and hence attacked Egypt. He had compromised with England too. Yet he was a socialist. Also, Maurice Tours owned a Villa and a castle near to Brigitte Bardot's villa. They (Mr Schwartz and his group) left the Communist Party and became Free Socialist and Intellectuals who had no obligation towards the big powers and foreign governments. They formed a very clean and clear-cut intellectual group which had no engagement towards the big powers, but which felt obligation towards the proletarian class.

10. Very well, I give wool and he makes it into clothes. Thank God, he makes us wear new clothes! He is making us civilized!

11. Thus they say: the revolution in Europe is destroyed, postponed or deferred due to the fact that the capitalist has become a sociologist, aware, wise, and has understood that he has to share a portion of his profits with the proletariat. He has to create a oriented life and thus change the proletariat to a bourgeoisie as a result of which the workers become conservative and attack and oppose any revolutionary risk and class consciousness.

CONTINUED FROM PAGE 20

anti-BC stance of the SAM & DC must add grist to the mill of those who are arguing for the isolation of white South Africa in the medical world.

The inquiry into the Biko doctors and the promise of the Attorney Generals of the Cape and the Transvaal to open a murder docket for the Biko killings if new evidence comes to light will certainly not take the place of the Azanian equivalent of the Nuremberg Trial. **Colonel Goosen was, after all, promoted to the rank of Brigadier in 1982- we are quite convinced that this was remuneration for the murder of Steve Bantu Biko.**

AZAPO maintains that nothing has changed in racist South Africa since Makana was dragged to Robben Island. Our advice to the South African medical practitioner is:

PHYSICIAN, HEAL THYSELF

which means that any physician truly committed to his profession needs to dedicate himself to the struggle for national emancipation.

CONTINUED FROM PAGE 9

Frelimo represented working class interests and visualised the structuring of a socialist state. Its violent pro-capitalist neighbours — South Africa and Rhodesia — subverted Frelimo's attempts at carrying out its aims. Ever since Frelimo has taken over the country it has never stopped being at war with the counter-revolutionary forces which were backed by Rhodesia and South Africa. Imperialism has had a centuries-old grip on Mozambique, but Frelimo has made honest efforts at trying to get rid of it. Frelimo's association with the 73-year-old African National Congress which claims to be in opposition to the Botha regime, has antagonised South Africa and led to frequent raids by the South African Defence Force (SADF) into Mozambique. In the few years that Mozambique has been in power, it has not been able to establish a socialist structure. It is the height of arrogance to condemn a hard-pressed Frelimo and not give Mozambique a chance.

Zimbabwe is only five years old yet it comes under the wrath of this little intellectual group. If they had bothered to read the history of Zimbabwe before commenting, they would have known that Robert Mugabe's Zanu (PF) was forced by the frontline states to negotiate with the Smith regime and sign the Lancaster House "agreement". That "agreement" has prevented Zanu (PF) from implementing socialist structures in the country from 1980 to 1990. Zanu (PF) leaders have said frequently that they would like to scrap the

"agreement", but cannot because they are bound to their promise to let matters ride for 10 years. Zanu (PF) should be judged by what it does in the years after 1990 and not before. Mugabe is not a populist leader. He was one of the main proponents of working class interests during the bush war and in the years that followed he has sanctioned and established socialist structures in spheres that the "agreement" allowed him to. If you are looking for populist and anti-working class leadership in Zimbabwe you should cast focus no further than Mugabe's political opponent — Joshua Nkomo.

The intellectual attitude that does not take into cognisance the reality of this country shines through in the slogan used by the group: "international working class solidarity". I say so because nowhere in the letter was there reference to the "black" working class. The "international working class" perspective reads that the interests of the white working class and the black working class are one and the same and that the two groups form a monolithic working class entity with common interests. No cognisance is taken of the privileged position of the white working class in this country and the fact that the Botha regime receives much of its support from this class when acting against the black working class.

The intellectual arrogance comes through again with the call for a united workers' front because it is plain to see that from the attitude of this group they want to impose leadership on that front. It seems their arrogance will not allow independent working class leadership to form.

What we need is working class aspirations expressed through a socialist party. Once that party has achieved its takeover of this country, we will establish an assembly, an international solidarity and a workers' front expressing itself through socialist state formations.

PAUL ALBERT

Bosmont, Johannesburg

CAL

• I understood the main impetus of the National Forum to be a united front of Black organizations. It is obvious that the broad liberation movement is riven by hegemonic conflicts and "ideology" is used to mask the attempts by ambitious politicians (as against revolutionaries) to create and fortify their own little fiefdoms.

It is equally obvious to me that every people's organization uses the language and ideas implicit in the BC philosophy while addressing the masses in the ghettos, the factories and the farms although they adopt an apologetic and submissive posture at the tea parties in Lower Houghton or La Lucia or the cheese-and-wine "dos" at Rondebosch or at Sandton.