

**The Rape of a Trial: Jacob Zuma, AIDS, Conspiracy, and Tribalism in Neo-liberal  
Post-Apartheid South Africa**

by

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*This thesis is dedicated to my father without whom I do not know  
what I would have done. Thank you for everything. I love you.*

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Acronyms used:

ANC: African National Congress  
ANCYL: African National Congress Youth League  
BEE: Black Economic Empowerment  
CBD: Central Business District  
CGE: Commission for Gender Equity  
COSATU: Congress of South African Trade Unions  
DA: Democratic Alliance  
FoJZ: Friends of Jacob Zuma  
GEAR: Growth, Employment, and Redistribution  
GDP: Gross Domestic Product  
HRSC: Human Sciences Resource Council  
IFP: Inkatha Freedom Party  
IMF: International Monetary Fund  
JSE: Johannesburg Stock Exchange  
NEC: National Executive Committee  
MK: Umkhonto we Sizwe  
NGO: non-governmental organization  
NPA: National Prosecuting Authority  
NUM: National Union of Mineworkers  
POWA: People Opposing Women's Abuse  
RCALS: Reconciliation and the Centre for Applied Legal Studies  
RDP: Reconstruction and Development Program  
SACP: South African Communist Party  
SAHRC: South African Human Rights Commission  
SAYCL: South African Young Communist League  
TLAC: Tshwaranang Legal Advocacy Centre

## **Introduction**

### **South Africa's Jacob Zuma and Jacob Zuma's South Africa**

“Jacob Zuma is Mr. Africa. He is everything that is wrong with this bloody continent,” asserted the white owner of Dymot, a small manufacturing company on Johannesburg's eastern end.

The man is my uncle, Martin Skeen, and he is not alone in his thinking. He expressed this between bites of his pizza at Colcacchio's, an Italian restaurant in Sandton, a wealthy suburb on the northern end of the Johannesburg municipality. Like many other restaurants in Sandton, Colcacchio's has a predominantly white clientele that contrasts against its black service staff. These patrons mostly live in and around Sandton; they drive to the restaurant in their own cars that they park in a guarded garage. Its black staff probably cannot afford real estate in Sandton, and it is likely that many live a far commute from Colcacchio's. Public transportation in Johannesburg is scarce; there are just a few irregular public bus routes and notoriously unsafe commuter trains that both fail to cover Johannesburg's enormous city radius. Privately operated “black taxis” instead handle the overflow from insufficient public transport. Called this not because of the color of the taxi but because of the color of the people riding inside them, these are boxy Toyota vans that pack as many as twenty people without seatbelts.

Support for Jacob Zuma, like much of South Africa, is strongly divided along racial lines. Zuma, the former deputy-president of South Africa, and the current deputy-president of ruling party the African National Congress (ANC), is the country's most controversial politician. In December 2007, the African National Congress (ANC) will

meet and just over three-thousand delegates will elect its new president (Laurence 2007: 9).<sup>1</sup> The question of Jacob Zuma is whether he will become the next president of the ANC, and by extension, South Africa's next president.

Since free elections in 1994, the president of the ANC has also been the president of South Africa; the country is governed with a parliamentary system, and the ANC is by far the majority party. Zuma's road to the presidency has been one with far less certainty and far more scandals than his two predecessors, former President Nelson Mandela who held office from 1994 until 1999 and current President Thabo Mbeki who is in his second five-year term that ends in 2009. Mbeki formally released Zuma from his position as deputy president on June 15<sup>th</sup>, 2005, citing "conduct [...] inconsistent with expectations that attend those who hold public office" (Mbeki 2005). Mbeki was referring to the guilty verdict in the corruption trial of Zuma's financial advisor Schabir Shaik. Judge Hillary Squires convicted Shaik of soliciting a bribe of 1 million rands (about \$150,000) on Zuma's behalf from Thales, a French arms company. Thales wanted the business of South Africa's \$6 billion arms procurement deal (African Confidential 2005: 1).

The National Prosecuting Authority (NPA) charged Zuma with two counts of corruption on June 21<sup>st</sup>, 2005, and the trial was planned to commence on July 31<sup>st</sup> 2006. Before it did, however, Zuma faced another challenge to his political viability that threatened him with decades in prison. On November 4<sup>th</sup>, 2006, a woman reported to police that Zuma had raped her two days earlier. The incident, she claimed, occurred in

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<sup>1</sup> Every five years, the ANC holds a national conference where ANC delegates elect its party president. The South African constitution stipulates that the office of president has a five year term limited to two terms. The party held its first conference in 1997, when current South African President Thabo Mbeki assumed the role from party president (and then President of South Africa) Nelson Mandela. 2620 delegates attended the conference. Mbeki became the president of South Africa in 2000. The ANC held its second national conference in 2002, and 3060 delegates attended to reelect Mbeki as president of the ANC (Laurence 2007: 9).

his home where she stayed the evening; Zuma lives in a large mansion located on a sleepy street in Forest Town, a suburb just outside of downtown Johannesburg. The woman declined to publicly expose her identity, and she assumed the pseudonym Khwezi in press coverage and documents released from the trial. She was HIV-positive and worked as an AIDS activist. She was also the daughter of Zuma's friend and comrade during South Africa's struggle<sup>2</sup> for independence from minority rule and grew up outside of South Africa in exile.

On December 6<sup>th</sup>, 2005, Johannesburg prosecutors charged Zuma with rape and his trial began three months later. The Zuma rape trial would make international headlines, absorb South African media and journalism, command the attention and efforts of many HIV/AIDS and women's rights groups, and worsen internal divisions within the ANC. It reflected to Zuma supporters a wider political conspiracy against him, but to his critics it demonstrated precisely how unsuitable he was for the office of president. The trial would utterly consume South Africa, and its verdict – Jacob Zuma's acquittal – hold great repercussions.

### **The New South Africa?**

In over a decade since the end of apartheid, South Africa has made progress but there is much to still improve. When the ANC won the overwhelming majority of seats in the South African Parliament in 1994, it did so with two political partners, the Congress of South African Trade Unions (COSATU) and the South African Communist Party

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<sup>2</sup> The "struggle" is the popular term that denotes the struggle to remove the apartheid government.

(SACP).<sup>3</sup> Both organizations grew in political strength during the apex of the struggle in the 1980s. Unlike the ANC that was forced to operate covertly, neither COSATU nor the SACP were banned, so they could legally recruit new members. These three organizations formed a coalition termed the tripartite alliance, and together they held a left-leaning economic and political agenda. The ANC would act as the political face of the organization.

Indeed, five decades of apartheid had left South Africa “the most unequal country on earth”, and the tripartite alliance responded with the creation of the Reconstruction and Development Program in 1994 (RDP) (Vale 2004: 377). RDP emphasized correcting the economic disparities apartheid had wrought on an ideological level through socialist and redistributive programming (Vale 2004: 377). Within 1.5 years of its inception, the South African government abandoned RDP for a new plan, Growth, Employment, and Redistribution (GEAR). The name is deceptive; GEAR mirrored neo-liberal structural adjustment models and had little emphasis on redistribution. What was once “the call for People’s Power, to recall a popular slogan from the 1980s, [had] turned into the Washington Consensus” (Vale 2004: 378).

Current President Thabo Mbeki’s administration has remained committed to GEAR’s free-market economic policies. South Africa has experienced consistent positive economic growth since the end of apartheid currently averaging about 5% a year. Additionally, South Africa has low recent inflation, large foreign direct investment, a commodities boom, and manufacturing growth particularly in the automobile industry (Cockett 2006: 3). The Johannesburg Stock Exchange (JSE) is one of the ten largest stock

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<sup>3</sup> COSATU is the largest and most politically powerful (the only one aligned with the ANC) of South Africa’s three trade federations. It took an active role in organizing anti-apartheid activism during the 1980s. The three federations act as umbrella organizations for dozens of different unions.

exchanges in the world and the aggregate value of its companies exceeds \$570 billion (CIA 2006a) (Stratfor 2007).

South Africa is classified as a lower middle income country and has a per capita GDP of \$13,000, the second highest in Africa (CIA 2006b). Furthermore, GDP in terms of purchasing parity ranks South Africa 24<sup>th</sup> in the world at \$576.4 billion and places it well ahead of its African peers (CIA 2006c). There are, however, major problems beneath the rosy statistics. “The government is looking politically more vulnerable than at any time since 1994 for a simple reason: little of this growth has benefited its core supporters who are overwhelming poor and black” (Cockett 2006: 3). Juxtapose 5% growth with the country’s appalling unemployment rate: an estimated 30%-40% of the population. What underlies South Africa’s wealth and industry is an enormous disparity in the country’s distribution of wealth that has, in fact, risen since 1994 (Cockett 2006: 3).

Mbeki’s embrace of “International Monetary Fund-friendly economics” came at expense of COSATU and SACP (Africa Confidential 2003: 4). These organizations remain a part of the tripartite alliance, and their membership still constitutes a large part of the ANC support base, but they have little influence on Mbeki’s administration and macro-economic policies. Their voices and opinions have become increasingly ignored in ANC policymaking decisions, most notably lacking support on the party’s National Executive Committee (NEC). Enter Jacob Zuma, who has developed extensive political ties with COSATU, SACP, and also the ANC Youth League (ANCYL), a more left-leaning organization within the ANC. This is a source of his popularity among lower income groups and explains why many better-off South Africans, fearful of socialist and welfare economics, so profoundly disdain him.

Business leaders, in particular, are wary of Zuma and the JSE has shown great volatility and losses when developments or events, like the dismissal of Zuma's corruption case, have shown him more likely to be president (Malitz 2006). Strategy Forecasting, a global intelligence and forecasting company, summarizes these concerns well:

*A Zuma presidency raises fears of reversing the pro-growth economic policies. [...] Zuma has promised greater involvement for COSATU and SACP in ANC decision-making thereby addressing the two groups' complaints. Without this coalition, the ANC's continued ability to dominate the country's parliamentary scene is no longer guaranteed. [...] If South Africa's pro-growth policies were eliminated, the psychological impact on the country's businesses would be economically disastrous [and] [...] the inflow of foreign investment necessary to promote South Africa's economic growth [...] could be threatened. (Stratfor 2007)*

Though Zuma has remained tight-lipped on the specifics of his economic policies and political platform, his increasing rivalry with Mbeki and marginalization from Mbeki's strongholds with the ANC has meant that his closeness with these already disenfranchised organizations only has further increased.

The Zuma rape trial then comes at a very pivotal moment in South African politics. Mbeki had dismissed Zuma in June 2005 following the conviction of Zuma's financial advisor, though Zuma's own corruption trial was not scheduled until over a year later. After the rape trial, which began in March 2006 and concluded in May 2006 with Zuma's acquittal, Zuma returned to his position as deputy-president of the ANC, from which he had voluntarily taken a leave of absence during the rape trial. In July 2006, Judge Herbert Msimang dismissed Zuma's corruption charges, and Zuma was politically resurrected. NPA prosecutors are still investigating Zuma's allegedly corrupt dealings and may file charges at some point in the future.

## **Who is Jacob Zuma?**

Jacob Zuma was born in the small town of Inkandla on April 12<sup>th</sup>, 1942 (ANC 2006). Inkandla is located in a region known as Zululand, the northern part of what was then the Natal Province (now renamed to KwaZulu-Natal). Apartheid began officially in 1948 when the National Party won the majority in national elections and formed a coalition government with the Afrikaner Broederbond. The ANC, formed decades earlier, became active in its opposition to the South African government following 1948. It was made an illegal political organization in 1960, one year after Zuma joined it, and within a few years, Zuma became especially involved in Umkhonto We Sizwe (MK), the armed branch of the ANC (ANC 2007). Zuma supporters are quick to note his impoverished and humble background; his detractors quick to note his lack of formal education. Zuma was sentenced to ten years imprisonment on Robben Island in 1963. When released he worked in Natal for a few years and went into exile where he rose in ANC leadership and became a member of the ANC NEC. He took an important role in 1990 when the ANC commenced negotiations with the apartheid government. He held a number of high level positions within government and the ANC until 1997, when he became the deputy president of the ANC – which led to his appointment as the deputy president of South Africa in 1999 (ANC 2007).

Jacob Zuma is Zulu. Both former President Mandela and current President Mbeki are Xhosa. South Africa's most populated province is KwaZulu-Natal, with nearly 10 million of the country's 47 million people (Stats SA qtd. in Kane-Berman 2005: 12).<sup>4</sup> When Mandela campaigned in KwaZulu-Natal, in 1993 he was frequently flanked by Zuma and other prominent Zulus within the ANC. The Inkatha Freedom Party (IFP), a

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<sup>4</sup> Estimated data from 2005.

political party headed by Mangosuthu Gatsha Buthelezi, the cousin of Zulu King Goodwill Zwelethini, had a history of opposition to the ANC.<sup>5</sup> Of all of South Africa's nine provinces, KwaZulu-Natal, was the only one to have a serious separatist movement. Though fully never acted on, King Goodwill Zwelithini called for an autonomous Zulu state (Piper 2002: 73). From 1991 to 1994, Zuma took part in discussions and negotiations with Buthelezi that helped to ease the transition from apartheid and secure peace in the region (Hawker 2000: 9). He received international accolade for his work (ANC 2007).

Jacob Zuma was the highest ranked Zulu in the South African government until President Mbeki effectively fired him in June 2005. He remains the highest ranked Zulu within the ANC, although his replacement as deputy president is the former Minerals and Energy Minister Phumzile Mlambo-Ngcuka, also a Zulu from KwaZulu-Natal. About 10 million people in South Africa are Zulu, making them the largest "tribal" group in the country followed by the Xhosas at 8 million (Stats SA qtd. in Kane-Berman 2006: 38). About eight million Zulus live in KwaZulu-Natal, with another 2 million living in Gauteng, the inland province that contains the country's most populous city, Johannesburg, and its administrative capital, Pretoria (Stats SA qtd. in Kane-Berman 2006: 33). Zuma commands a great deal of support in KwaZulu-Natal, and there exists a perception amongst some Zuma critics that the Zulus support Zuma exclusively because he is Zulu.

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<sup>5</sup> At the end of apartheid and during transition, KwaZulu-Natal experienced massive amounts of political violence as IFP and ANC supporters clashed in bloody encounters. Official reports estimate that 20,000 people have died in political violence in KwaZulu-Natal since 1987 – and that 2000 of these deaths have been since the end of apartheid in 1994 (Taylor 2002: 473).

## The Rape Trial

The Zuma rape trial was not an ordinary rape trial in South Africa – perhaps, it is South Africa’s most extraordinary and exceptional rape trial. It received an enormous amount of press coverage, filling headlines, editorials, and opinion pieces within South Africa while receiving substantial coverage abroad. According Herman Broodryk, the assistant prosecutor for the case:

*The facts were relatively simple, but the type of pressure it created – I prosecuted in South Africa when there were death penalty cases, I have at least forty death penalty cases in my career – that was nothing, in comparison, the amount of pressure. When you go to court in a big trial [...] you are used to the fact that there will be members of the press, two or three papers and perhaps someone from one of the TV stations, but it was incredible. You saw journalists there who you could not converse with because they spoke other languages which [were] not English. [...] It felt to us, as a prosecuting team, as if there was a massive sort of spotlight on it.*

Broodryk also said that there was not enough room in the courtroom – the largest in the Johannesburg High Court – for all the reporters that wanted to watch the trial. African news stories receive little news coverage in the United States, but the Zuma rape case was also rather exceptional in that regard, receiving mention in major American, Asia, and European papers and periodicals.

Within South Africa, of course, the attention that the trial garnered was enormous. It was a spectacle, one that Broodryk likened to South Africa’s own O.J. Simpson trial. Kwame, a Ghanaian man who is the director of an NGO, came to South Africa shortly before the trial began and was overwhelmed with this amount of interest.<sup>6</sup> “At the time the trial was going on, *this* was the topic of conversation in this country. You sit in the cab, the first word whether you like it or not [was the trial]. [...] This was really a high profile trial in the eyes of the ordinary person.” He further noted that there was a great deal of

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<sup>6</sup> Kwame was my boss at an NGO in South Africa where I worked from June –August 2006.

emotion involved in the trial; he saw many individuals forming what he called “pocket courts”, judging the evidence and the case as it was going along.

Particular incidents, sound bites, and quotations during the trial, coming from both the prosecution and defense became definitional and overtook the larger schema of the trial. Assistant Prosecutor Broodryk commented that “it was strange to us sometimes to watch what sort of things drew [press] attention.” Much of this attention focused on Zuma’s four-day long testimony beginning April 3<sup>rd</sup>, about a month into the trial.

For different individuals, organizations, and institutions both inside and outside South Africa, the rape trial came to represent and manifest issues within South Africa and even Africa as a whole. As such, for many South Africans and associated organizations, the Jacob Zuma rape trial was not so simply about the individuals Jacob Zuma and Khwezi. Rather, the trial represented issues pre-existing the trial itself, and their positions on these issues characterized their positioning during the trial. This only enhanced the trial’s verdict, making it a barometer for social, economic, and political concerns in South Africa.

### **My Research and Limitations**

There is very little academic research or analysis on the Zuma rape trial, and there are no comprehensive or conclusive published books on the trial. I found only one academic article that identifies itself as anthropology.<sup>7</sup> Of the handful of academic papers

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<sup>7</sup> See Robins 2006. This article appeared in *Horizontes Antropológicos*, a Brazilian journal published by the Federal University of Rio Grande do Sol. It does not feature a critical examination of the legal discourse of the rape trial – that is, what actually occurred during the trial, an issue that represents my main criticism of journalism on the trial. It appears that Robbins made no attempt to obtain transcripts of the trial; his accounting of what actually occurred in the courtroom appears to come from journalism written on the trial and make selective use of the trial’s verdict (Robbins 2006: 155-163). Without doing so, he cannot fully contextualize Zuma’s behavior and actions that he so criticizes. The article does not provide any

I found on the trial, most were concerned with women's rights and used the trial as an example of the shortcomings of the status of women in South Africa.<sup>8</sup> There is a great deal of journalism on the trial in the international and South African press. This paper draws on journalism, both as a point of critique and to provide substantive information about the trial and its related issues. This paper also relies on legal documents arising from the trial. I obtained transcripts of Jacob Zuma's testimony and of the trial's verdict; these I use to dispute certain aspects of the press coverage of the trial.<sup>9</sup>

I traveled to South Africa where I researched the trial in the two weeks from late December to early January. I arrived in Johannesburg, where I spent the largest portion of my visit, but also traveled to Umhlanga Rocks, a seaside resort area outside of Durban, South Africa. Admittedly, I encountered some difficulties with my research. The period from Christmas to New Year's is one when many South Africans take an extended holiday, and many of the people I hoped to contact were unavailable. I originally traveled to Durban because I had hoped to visit the offices of Gender AIDS Forum and speak to Zuma's personal attorney, Michael Hulley. Durban is the third largest city in South Africa, and it is in KwaZulu-Natal, the province that holds majority of South Africa's

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particularly insightful critique, properly explain the main thrust of Zuma's defense against the rape accusation, or even introduce any new knowledge to the trial; for these reasons, I never directly address Robins' article.

<sup>8</sup> See Burnett 2007 (Chapter 6), Mofett 2006, Robins 2006, and Hames 2006.

<sup>9</sup> Transcripts of the trial are available in only in a small, obscure office in the Johannesburg High Court where they are sold on a per page basis. Fiscal limitations meant that I could only obtain transcripts of Jacob Zuma's testimony. Though not ideal, this is not a serious methodological concern because transcripts of Zuma's testimony address one of the main concerns of my thesis – press coverage of Zuma's testimony – and therefore aid me in disputing and criticizing this reporting. The press took and highly publicized particular statements and anecdotes from Zuma's testimony unlike any other witness who appeared before the court. With such statements, they applied pre-existing stereotypes and tropes to Zuma, and they created a set of meanings apart from what took place at the trial. I rely on Judge van der Merwe's verdict for the rest of my description of the trial. The verdict includes an extensive, 150-page summary – which Herman Broodryk, one of the two assistant prosecutors assigned to the case, insisted to me was a very good, unbiased review of the day-to-day trial proceedings. No other academic work comes close in providing so lengthy or complete of a summary of the trial.

Zulu population. Neither of these meetings happened, but I used the opportunity to conduct informal conversations with South Africans I met along the boardwalk in Umhlanga Rocks.

My meetings were more successful in Johannesburg. There I interviewed Herman Broodryk, one of three prosecutors who tried the rape case, Kaizer Mohau, the media spokesperson for the Friends of Jacob Zuma (FoJZ) in Gauteng who also holds a high office in the SACP; and Tshipinare Marumo, the resources manager for People Opposing Women's Abuse (POWA), one of the women's organizations that reacted forcefully to Zuma's statements and behavior during the trial. Mohau and Marumo represented organizations that had a very particular interpretation of the meaning of the trial and so sought to influence public opinion. Broodryk had personally participated in the prosecution of the trial and had much to say about how it was represented. Each had radically different perspectives of the trial and also on how the trial was perceived in the public domain; through these interviews, I enhanced my own understanding of their perspectives.

### **My Ethnographic Fieldwork**

I conducted informal conversations about the rape case with about fifty "average" South Africans. My father was born in South Africa, and these South Africans included members of my extended family and friends of my father from when he lived in South Africa. I spoke to my former co-workers from the Solidarity Center, an HIV/AIDS NGO in Johannesburg, South Africa where I worked from June – August 2006. Finally, these conversations also included the ones I did on the boardwalk in Durban. I draw from this

ethnography to enrich news articles on Zuma and the trial and also to aid my own understanding of the event in the context of South Africa.

Doing so, in no place throughout this paper do I make claims from my ethnographic fieldwork that are revolutionary, but I do make some generalizations and draw on recurrent ideas. More than half of the people I spoke to were white South Africans. Because most of this fieldwork occurred in Durban, I had conversations with about ten South Africans of Indian origin.<sup>10</sup> The dozen or so black South Africans I spoke to were equally Zulu and coming from other groups. My informants certainly did not represent a statistical sample of South Africans, and I make no attempt to draw statistical data because it was not within the scope of my research. Though not systematic, however, my fieldwork helped to inform my reading of the trial.

If I can draw on one theme constant to all these conversations, it is this: The Zuma rape trial was not popularly understood as a rape trial. At stake was almost every major social, political, and economic issue in present day South Africa. This is not hyperbole. I typically started my conversations explaining I was researching the Zuma rape trial in South Africa, asking how it was that my informant reacted and related to the trial. These conversations inevitably ended not on the subject of the trial, but on much larger concerns. Conversations drifted to such concerns as HIV/AIDS, corruption amongst politicians, “culture”, tribalism, rape, violence and crime, poverty, capitalist greed, biased media reporting, communism, racism, and sentiments either for or against current President Mbeki.

This is not to say that the rape trial directly affected or altered these issues. The trial did invoke them in the minds of South Africans. Its defendant was a man likely to

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<sup>10</sup> There is a significant Indian minority in South Africa, the majority of which reside in KwaZulu-Natal.

become the next president of South Africa, its complainant had HIV/AIDS, and the charge was rape. The defendant was also charged with corruption; a charge that, when I spoke to my informants in December 2006/January 2007, had been dismissed but with prosecutors promising new charges soon. These conversations took place in a political climate equivalent to that of a presidential race. The end of 2007 would mark the election of the new president of the ANC and, more than likely, the man or woman who would be the new president of South Africa.

### **Not Guilty**

When the verdict for the trial was delivered on May 4<sup>th</sup>, 2006, it lasted several hours and was televised. The trial's judge, Willem van der Merwe, wrote a 175 page judgment that he read to completion (*S v. J. Zuma* [Op.], SS321/05 [2006]). The overwhelming majority of the lengthy verdict constituted a review of the evidence and the trial thenceforth. Judge van der Merwe explained that "it is unfortunate that it was necessary to summarise the evidence as long as I did" and that "because of misconceptions that had arisen as a result of selective reporting it was necessary to highlight certain material facts" (*S v. J. Zuma* [Op.] at 140). The judge was particularly perturbed by "the fact that some pressure groups, organisations and individuals found the accused guilty and other found him not guilty in their comments on the case, without knowing what the evidence is and long before all the evidence was presented" (*S v. J. Zuma* [Op.] at 3).

Indeed, Judge van der Merwe understood the underlying issue with the Zuma trial – he was a likely candidate to become the future president of South Africa, in a trial of

the country's most feared crime, rape, that further incorporated its most feared disease, HIV/AIDS. With the trial's verdict, moreover, lay the power to determine not just Jacob Zuma's political future but that of an entire country. The alleged rape was a matter of Zuma's private life, yes, but inextricably tied to it was Zuma's public life. Zuma is a polarizing figure, South Africa's most loved and most loathed politician, so naturally sentiments toward Zuma's politics carried themselves over to the trial. In that way, the Zuma rape trial un-became itself as a rape trial and became the nation's trial.

## Chapter 1

### The Trial

*You sit there for days and his whole career was on the line so we expected they would go at her. Zuma had an excellent advocate, very able advocate. They went at it and [...] they were very well prepared. And once they were allowed to go at her sexual history [...] the big thing about that, once you cross-examine about that, it puts women on the back foot and it makes them very uncomfortable. Anybody if you cross-examine for four days you don't look the same on the fourth day as you were on the first day. And sometimes you sit there, you feel empathy for her whatever happened. But there's nothing you can do [...] unfortunately with any rape case that's the one thing which they have to go alone.*

- Herman Broodryk, the assistant state prosecutor in the rape case against Jacob Zuma<sup>11</sup>

### The Building at Von Brandis Square, Johannesburg

I scheduled a meeting with Herman Broodryk, the assistant prosecutor in the state's rape case against Zuma. I was to meet him at his offices at the High Court in downtown Johannesburg.<sup>12</sup> I drove to the court after apprehensively plotting my route on a map. I sought out the closest route to the courthouse from the M2 highway and the closest underground parking to the courthouse. Johannesburg, specifically its downtown area, has high crime rates, and I was somewhat anxious as I drove to and from the courthouse.

The Johannesburg High Court occupies a location in the Central Business District (CBD) of downtown Johannesburg that has changed remarkably over the past few decades.<sup>13</sup> The old court building, completed in 1911, has changed little with the exception of a newer office tower on a corner of the property. The High Court is located on the entirety of an oversized city block named Von Brandis Square and it sprawls in

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<sup>11</sup> Herman Broodryk claims, Jan. 7<sup>th</sup> 2007

<sup>12</sup> The larger city of Johannesburg is an expansive low-density municipality; its suburbs are located within the city limits. Its downtown region lies at the center of the municipality, and a building boom during the 1960s and 1970s gave way to the construction of a number of high-rise office buildings there.

<sup>13</sup> The CBD brings together large and small business, retail stores, and governmental institutions including the official ANC headquarters.

between busy Jeppe and Pritchard Streets. Its direct surroundings are a mix of low-rise and mid-rise buildings with exception of the Carlton Centre, a striking white office tower designed by the prestigious American architectural firm, Skidmore, Owings and Merrill. When completed in 1975, the Carlton Centre stood as the tallest building complex in the southern hemisphere.

The character of downtown Johannesburg began to experience great changes in the 1980s. This coincided with the height of the struggle, as restrictive racial laws like the Group Areas Act, were relaxed, repealed, and abandoned.<sup>14</sup> These changes extended through the 1990s as the black “township” of Soweto expanded, but it lacked retail stores because of restrictions imposed under apartheid. Thus, more and more South African blacks did their shopping in downtown Johannesburg. Most of the stores began to cater to these new customers while the traditional “posh” department stores relocated to the suburbs (Olufemi 1998: 226). Some of the most prominent white-owned industrial and financial businesses started to relocate their headquarters operations as well, many to an area called Sandton, north of Johannesburg. Symbolically, the Johannesburg Stock Exchange was one of the movers (Olufemi 1998: 225).<sup>15</sup>

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<sup>14</sup> The Nationalist Party and Afrikaner Broederbond won control of the parliament in 1948 and formed a coalition government. This event marks the official beginning of apartheid, and the new government fast began imposing racial and tribal categorizations (Moleah 1993: 409). The South African parliament passed the Group Areas Act, the legal basis for apartheid’s infamous forced removals, in 1950. With it began a long and painful process of racial and tribal territorial division within South Africa (Moleah 1993: 410). The legally designated categories of Africans, Whites, Coloureds, and Indians were to live in separate areas. Later acts severely restricted African movements into urban areas – Africans who stayed in urban areas longer than 72 hours were subject to possible imprisonment (with the exception of those who had lived/worked in the area either since birth or for a period of 10-15 years). These urban Africans were still subject to removal to rural areas or homelands (rural areas that were designated as African only and ungoverned by the apartheid government) at any time (Moleah 1993: 411).

<sup>15</sup> Downtown Johannesburg was always predominantly a commercial and business-based area, but it has two residential regions, Joubert Park and Hillbrow. Demographics here too have changed; between 1996 and 2001, the population of whites living in the inner city dropped nearly 40% while the population of Africans increased by over 50%, and these statistics come in the years after the most dramatic demographic changes (van der Walt 2001). Both Joubert Park and Hillbrow were once populated by “a shifting

Many of large commercial banks have committed to keeping their headquarters in downtown Johannesburg. They are heavily guarded and have designed secure driving routes for their employees. The area that was a shining example of the divided society under apartheid now forms a strange interface. South African white workers, those who remain with the banks or with other institutions and businesses that are still downtown, drive into the city to work and drive out to their homes in the suburbs.<sup>16</sup> They park their cars in secure underground lots so that they need never leave their office building. The city streets, in contrast, are bustling with South African blacks and a new population of African immigrants. There are many markets, hawking everything imaginable, including two that sell *mula* (Davie 2002).<sup>17</sup>

I took part in this strange interface. I was late to my meeting with Broodryk because we struggled to find a parking garage near the High Court. There was one attached to the courthouse complex, of course, but it was reserved for employees of the court. I found a garage, finally, across from the courthouse. I climbed up the ramp from the basement level garage, clutched my purse, and entered onto the street.

### **The Prosecution Speaks**

Herman Broodryk appeared to be in his early fifties. He is a large man with a booming guttural voice. His office is a large, sparse room within the courthouse building complex. We spoke for about an hour, and I did not need to ask Broodryk many questions

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population of young whites and a sedentary set of poor whites of all ages” until the 1980s which marked large movements of blacks into the area and the movements of whites, who could afford it, outside of the area (Olufemi 1998: 225). Hillbrow in particular has gained a reputation as one of Johannesburg’s most unsafe regions, associated with crime, prostitution, and drugs (Olufemi 1998: 226).

<sup>16</sup> Much of the previous description of Johannesburg derives from conversations with my father, Charles Skeen, who grew up there in the 1940s and 1950s.

<sup>17</sup> *Mula* is a term for traditional medicine and cures.

at the start of our meeting. He immediately commenced into an explanation of the case.

Disappointment tinged his voice:

*I had a professor at university say I never want my students to say I won a case or I lost a case. Its all in the interest of justice and all those nice buzzwords which you people learn at university. But this out here is the real world. And prosecutors, it's a natural thing, it's like playing a match of rugby. We don't like to lose. I haven't lost a case in the High Court in ten years, and this wasn't nice for me. But I accept this wasn't the first time and it probably won't be the last.*

Broodryk emphasized the immense and unusual amount of work he and the two other state prosecutors put into the trial. He related that because it was such a high profile trial and because of the press coverage, “you prepare triple than what you normally prepare. You want to be absolutely sure. [...] Where you would write heads of argument<sup>18</sup> in a normal criminal trial 30 [or] 40 pages, in this case the heads of argument for the state was 412 pages.” Though Broodryk wanted a guilty verdict, he expressed no regrets for the case that the state led at any point during our meeting.

“These cases are never easy.” Broodryk said that he had consulted with the complainant on many occasions, that he got to know her, and he seemed upset that the state could not better “protect” her during the defense’s cross-examination. This he meant not in a legal sense, but on a personal level. “One has experience in the legal field, you have an idea of what you think happened [...] and once she’s in that witness box and cross examination commences you cannot help her anymore.” He expected that she personally would be attacked because in rape cases like this “it’s all about credibility so almost anything is admissible.” He said that Zuma’s own defense team was incredibly well prepared and had done significant research into the background of the complainant. There was a certain inevitability to what happened.

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<sup>18</sup> Heads of argument are the legal document where the prosecution or the defense lays out their case.

What had happened? Judge Willem van der Merwe had permitted Zuma's defense to interrogate Khwezi's past sexual history and lead evidence that related to this history. This decision was incredibly damaging to the state's case, and it is here that Broodryk references his failure to protect Khwezi. She had to endure four days of cross-examination on her past sexual relations, and when the defense brought forth its witnesses, several men and women took the stand to call her a liar. Why was Khwezi a liar? Because the cumulative effect of these witnesses was to say that Khwezi had falsely accused six men before Zuma of either rape or attempted rape.

### **The Judges**

Though the rape trial was scheduled to begin on February 13<sup>th</sup>, three judges had to recuse themselves from the case for varying conflicts of interest (*S v. J. Zuma* [Op.], SS321/05 [2006] at 2). Judge President Bernard Ngoepe, the most senior judge in the Transvaal Provincial Division that had jurisdiction over the case, was the first to be assigned (Mabuza 2006a). After the Zuma defense team put forward an application to have Ngoepe recused, Ngoepe said that it would be difficult for him to remain impartial – essentially, he recused himself because of the highly politicized nature of the trial (SAPA 2006a).<sup>19</sup> Judge Jeremiah Shongwe, the next judge assigned to the case, recused himself when Zuma's defense opposed his appointment because Shongwe's sister was the mother of one of Zuma's children (Carroll 2006: 16). Judge John Mojapelo, who would have been subsequently assigned to the case, declined to hear it because he had a personal relationship with Zuma dating from having served together in the ANC during the

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<sup>19</sup> The Zuma defense team wanted him recused because of his involvement with warrants relating to Zuma's corruption trial, but Ngoepe did not enumerate this when he stated his reasons for stepping down from the trial (Robinson 2006a).

struggle (Moya 2006a). The fourth-most senior and final judge to be assigned to the case was Judge Willem van der Merwe (Moya 2006a).

### **The State and the Defense**

When Zuma was charged with rape on December 6<sup>th</sup>, 2006, his indictment included a “summary of the substantial facts” (IOL 2005). The following are the basis of the state’s charges laid against Zuma:

- 1. The accused is a family friend of the 31-year-old complainant.*
- 2. On Wednesday afternoon, 2 November 2005, and following on an invitation by the accused, the complainant went to visit him at his residence in Forest Town.*
- 3. During the course of the evening he invited her to stay over for the night and indicated a room to her where she could sleep.*
- 4. Later that evening she retired to the bedroom to sleep.*
- 5. After some time, and whilst the complainant was sleeping, the accused came to her room and offered her a massage.*
- 6. After she declined the offer, he removed the duvet that covered her and proceeded to have sexual intercourse with her against her will and without her consent..(IOL 2005)*

Heading the prosecuting team of three was advocate Charin de Beer, the director for public prosecutions at the Johannesburg High Court. Her co-counselors were advocates Herman Broodryk and Mutuwa Nengovhela (Gifford 2006).

Zuma’s defense team included advocates Kemp J. Kemp, Jerome Brauns, and Thandanani Mbongwa, and his personal attorney, Michael Hulley.<sup>20</sup> Kemp would act as the head of his legal team. When Zuma pled not guilty, he stated the following:

- 1. The complainant visited my home in Forest Town, Johannesburg on 2 November 2005 and stayed over for the night. This was of her own volition.*
- 2. Late on that evening of November 2005, we had sexual intercourse which lasted for some time. This was consensual. At no stage did the complainant say no to any of the actions we performed.*

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<sup>20</sup> There are two categories of lawyers in South Africa, advocates and attorneys. “Attorneys are the business managers of cases and they decide when an advocate is or is not necessary to be engaged to act for the clients. Advocates have no direct contact with clients. For this reason advocates are said to be in a ‘referral’ profession” (GCB: 2007). Attorneys consult with clients, but only advocates can represent a referred client in the court of law.

3. *At no stage did I believe that the sexual intercourse was against the will of the complainant. She was at all times at liberty to say so and voice her disapproval.*
4. *My daughter Duduzile, who is in her mid-twenties, was in the house and a policeman was on premises outside at all relevant times during the incident.*
5. *The complainant had a cellular phone on her and could leave the premises at any time.*
6. *Enquiries have revealed that the complainant has made similar false allegations of rape against a number of persons, some of which had been alluded to in a statement of a witness provided by the prosecution. (S v. J. Zuma [Op] at 6)*

The last point would become most critical in the defense's argument, as they sought to destroy the credibility of Khwezi as a witness to her own rape. These two statements reveal the key differences between the state's version and that of the defense. The state maintained that Zuma raped Khwezi, while Zuma said that sexual intercourse was consensual. Zuma and Khwezi both told very different stories of intentionality. While Khwezi would maintain that she never had nor would ever consider Zuma in any way sexually, Zuma maintained that Khwezi hinted about her sexual attraction to him and was the one who made sexual advances at him. Khwezi would say that Zuma invited her to his home on November 2<sup>nd</sup>, further invited her to spend the night, and then came to the guest room where she was sleeping and subsequently raped her. Zuma would say that Khwezi invited herself to his home, invited herself to spend the night there, told him to come to her guest room when he finished his work from the evening, and went with him to his bedroom where she had consensual sex with him.

### **The Trial Begins: Khwezi's Story**

With the appointment of Judge van der Merwe in place and no objections from the Zuma defense, the trial began on March 6<sup>th</sup>, 2006, when Khwezi took the stand for the state. Khwezi testified that on November 2<sup>nd</sup>, 2005, the day of the alleged rape, she learned that the son of Nokoloza, her sister's daughter, though Khwezi refers to her as her

own daughter, had been bitten by a snake in Swaziland. She sent SMS messages to various friends and relations, including Zuma.<sup>21</sup> Khwezi tried to call Zuma repeatedly throughout the day, and finally getting in touch with him, she claimed that he encouraged her to stay overnight at his Johannesburg home before leaving for Swaziland (*S v. J. Zuma* [Op.] at 12). She said that when she arrived at his home, Zuma greeted her as his “daughter” and following the evening meal, told her to stay overnight (*S v. J. Zuma* [Op.] at 13).

Khwezi said that they had a conversation, which he initiated, about why she did not have a boyfriend. She said that there “were no good ones left”, and Zuma said that she must lower her standards and that despite her HIV positive status, she deserved to have a companion (*S v. J. Zuma* [Op.] at 13). Khwezi said that Zuma led her to the guest room and said he would return when he finished his work to “tuck her in” (*S v. J. Zuma* [Op.] at 15). She took a shower and put on a *kanga*.<sup>22</sup> Then she went to his daughter Dudizile’s room when she heard noises, thinking that Dudizile had returned home for the evening (*S v. J. Zuma* [Op.] at 15). Together Khwezi and Dudizile went to Zuma’s office to say goodnight to him. Khwezi recounted that she stayed longer than Dudizile in Zuma’s office and that he said that as soon as he was finished with the night’s work, he wanted to tuck her in his bed. She asked him what he meant, and he laughed (*S v. J. Zuma* [Op.] at 16).

Khwezi returned to the guest bedroom, and Zuma arrived shortly after, asking if she were already asleep. She said that she was not, but would fall asleep soon. He said that he would return later. Khwezi fell asleep and awoke to Zuma telling her that he

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<sup>21</sup> SMS’s are cellular phone text messages. Khwezi admitted during her testimony that she frequently used her cellular phone to send SMS messages.

<sup>22</sup> A traditional African garment, based on a colorful, rectangular piece of cotton cloth.

wanted to “tuck her in and massage her” – she said no, that she wanted to sleep (*S v. J. Zuma* [Op.] at 16). Zuma responded saying that he could massage her in her sleep, and Khwezi said no again (*S v. J. Zuma* [Op.] at 16). Khwezi said that he climbed into the bed, began to massage her, and she said no again. She saw that he was naked, became very confused, realized he was about to rape her, and froze in fear (*S v. J. Zuma* [Op.] at 17).<sup>23</sup> Zuma removed her *kanga*, began to have intercourse with her, and “held her hands with his hands” (*S v. J. Zuma* [Op.] at 17). When Zuma finished, he left, and Khwezi stayed on the bed motionless (*S v. J. Zuma* [Op.] at 17). Zuma did not use a condom.

Khwezi left early the next morning and went to work. She talked to a friend on the phone, told her that she had been raped, went to see a doctor and had a rape kit performed (*S v. J. Zuma* [Op.] at 20). She made the rape charges on November 4<sup>th</sup>, 2005, two days later. Two women who Khwezi knew from when she lived in exile came to visit her later that week. They suggested that she should drop the charges because of the damaging effect it would have on the ANC. It appeared to Khwezi that they were “pro-Zuma and anti-Mbeki supporters” (*S v. J. Zuma* [Op.] at 21). Khwezi’s mother met with Zuma and though “there was talk of compensation for the alleged rape”, Khwezi pursued rape charges against Zuma (*S v. J. Zuma* [Op.] at 22).

### **Khwezi’s Cross-Examination: The Rape**

Zuma’s lawyers began cross-examination of Khwezi on March 7<sup>th</sup>, 2006. They sought to dispute the father-daughter relationship that she claimed with Zuma. The defense brought to light the fact that after 1985, she had had no contact with Zuma for

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<sup>23</sup> Judge van der Merwe explains: “The complainant did not scream or try to attract anybody’s attention before or during the rape. She explained that by saying she was shocked, in a total daze and could not move or do anything” (*S v. J. Zuma* [Op.] at 19).

fourteen years, and that she had not spoken to him at all when she was abroad in London (*S v. J. Zuma* [Op.] at 39).

Khwezi said that she spoke to Ronnie Kasrils on November 3<sup>rd</sup>, 2005, the day before she filed charges, out of concern for her safety (*S v. J. Zuma* [Op.] at 41).<sup>24</sup> Kemp asked Khwezi why she had called Kasrils before reporting the Zuma case to the police, implying that her decision was politically motivated (Mabuza 2006b). The idea of conspiracy, however, did not form a significant part of Zuma's defense, and neither the state nor the defense called Kasrils as a witness (*S v. J. Zuma* [Op.] at 41). The defense questioned Khwezi on some inconsistencies between the statement that she made to the police and the statement that she gave in court to the prosecution (*S v. J. Zuma* [Op.] at 43-48).<sup>25</sup> Khwezi also conceded on several key points: She was within easy access of a home telephone or cell phone, she could have left Zuma's house at any point; Zuma "could not have foreseen that she would freeze if he attempted to have sexual intercourse with her"; she could have removed Zuma's hands from her and pushed him away; and she could have told Dudizile or the policemen guarding Zuma's home about his undesired sexual advances toward her (*S v. J. Zuma* [Op.] at 47-48).

### **Khwezi's Cross-Examination: Her Past Sexual History**

The defense produced a copy of sixteen-pages of Khwezi's written memoirs, a document that she had kept hidden and did not expect to be brought out in court.

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<sup>24</sup> This conversation is of particular concern to Zuma supporters who believe there is a conspiracy against Zuma. They see Kasrils, the Intelligence Minister in Mbeki's government, as intimately connected to this conspiracy, and believe that it is incredibly suspicious that Khwezi had a conversation with him the day before she filed rape charges. Zuma and his supporters see the conversation with Kasrils as part of a set-up, created to make false charges against Zuma (ARB 2006: 16710) (Kaizer Mohau claims, January 8th 2007).

<sup>25</sup> In particular, the position in which she laid on the bed had significant differences (*S v. J. Zuma* [Op.] 2006: 46).

Reference in the document was made to three different rapes and one attempted rape that occurred during Khwezi's childhood and adolescence while living in exile; these began with one that happened at age five that she denied being true but said that she was raped when she was five in a different incident (*S v. J. Zuma* [Op.] at 50-52). The attempted rape, that Khwezi testified was a true account, involved a man named Mashaya who would later testify for the defense. Khwezi said that the other two incidents, with men named Godfrey and Charles, referred to in the document were rapes that did happen to her as described. She said an investigation that was led by two female ANC party members also living in exile found both these men guilty, and she denied telling the investigators that Godfrey and Charles were her boyfriends. The defense said that one of these women was present in court and was prepared to testify that both these men were her boyfriends. Khwezi recanted on her testimony and said that Godfrey was found guilty but that Charles was not (*S v. J. Zuma* [Op.] at 51). When the defense said that Charles would tell the court he did not have sex with her, she insisted that he did (*S v. J. Zuma* [Op.] at 52).

This concluded the cross-examination of the defendant on her memoirs, but the defense still had much to question about her sexual behavior after returning to South Africa. Khwezi denied being raped by or even knowing a man named Sandile Sithole, a man that the defense said was involved with her in the Council of Churches (*S v. J. Zuma* [Op.] at 53). The defense would later bring forward a witness who testified that she made a false accusation against Sithole (*S v. J. Zuma* [Op.] at 122).

Khwezi did say she was raped once since returning from exile, in 1995 by a fellow theology student. She admitted that following this incident, she suffered from

attacks and psychological problems. “She described herself as being really disturbed” (*S v. J. Zuma* [Op.] at 54). In 1994, Khwezi accused a man named Nestor of attempted rape, but another man, Mbambo had walked in on the rape and stopped it (*S v. J. Zuma* [Op.] at 55). Mbambo would testify this had not happened – and that he saw Khwezi sleeping together on a bed with Nestor naked and Khwezi fully clothed (*S v. J. Zuma* [Op.] at 56). Khwezi also denied that she had ever accused Mbambo of rape, and like Sithole, the defense would bring forward a witness who testified that she made a false accusation of rape against him as well (*S v. J. Zuma* [Op.] at 57, 122). Khwezi finally denied that she had ever been raped at theology college, and the same witness who said she accused Sithole and Mbambo of rape would say also that she accused another man of raping her at the college (*S v. J. Zuma* [Op.] at 57, 122). The cross-examination of Khwezi set her up against four defense witnesses who would seriously question her credibility.

### **The State’s Witnesses**

Khwezi’s mother testified next, followed by Dr. Merle Friedman, a clinical psychologist with an expertise in trauma (*S v. J. Zuma* [Op.] at 63). She examined Khwezi twice and said that Khwezi’s behavior during and after the rape was consistent with her experience and the literature on rape. She concluded that Khwezi had likely “frozen” during the rape, explaining her lack of resistance to Zuma, and was suffering from post-traumatic stress disorder (*S v. J. Zuma* [Op.] at 65-66). The prosecution’s next witness was Dr. M. L. Likibi who examined Khwezi on November 3<sup>rd</sup>, 2005, the day after the alleged rape (*S v. J. Zuma* [Op.] at 68). He said that he found a small tear along her vaginal opening that was not necessarily indicative of rape; it could have been caused

by the fact that, as Khwezi said, she had not had penetrative intercourse in the seven months before the alleged rape, or from lack of lubrication during intercourse, or from “passionate intercourse” (*S v. J. Zuma* [Op.] at 69).

Two friends of Khwezi, known as Pinkie and Kimi, testified next – both of whom Khwezi contacted in the days after her alleged rape. They said that they understood Khwezi and Zuma to have a familial relationship. Both remarked on the strangeness of her behavior in the days after she slept at Zuma’s home, unaware of its cause until Khwezi told them that she had been raped (*S v. J. Zuma* [Op.] at 70-72).

Commissioner Norman Taioe, who investigated Zuma’s home after the rape, testified next (*S v. J. Zuma* [Op.] at 76). Zuma, he said, indicated nothing happened in his bedroom, that intercourse occurred in the guest bedroom – contradicting Zuma’s version of the events (*S v. J. Zuma* [Op.] at 78). Kemp’s cross-examination of Taioe made note of two problems with his investigation and resulting testimony. The first was that Taioe had not properly read Zuma his rights, and the second was that he failed to reference Zuma’s statement that intercourse occurred in the guest bedroom in his own police report (*S v. J. Zuma* [Op.] at 79. 168). Superintendent Bafana Linda, another police officer who was the last witness called by the state, also testified about the initial investigation. There would be differences in the testimonies of Linda and Taioe (*S v. J. Zuma* [Op.] at 83).<sup>26</sup> Judge

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<sup>26</sup> Before Linda testified, a cellular phone technology expert also testified, and he discussed the content of the SMS’s sent between Khwezi and Zuma. His testimony was not particularly controversial and it would end up being a matter of common cause between the prosecution and the defense (*S v. J. Zuma* [Op.] at 81). A virology professor specializing in HIV/AIDS also testified and discussed the virus, placing the risk for a male contracting HIV from “a single case of [vaginal] unprotected sex at .03% to .1%” (*S v. J. Zuma* [Op.] at 82). He testified about the dangers of “super infection” – what happens “if a HIV positive person has unprotected sex with another HIV positive person” (*S v. J. Zuma* [Op.] at 82). He confirmed that a circumcised man’s risk of contracting HIV is less than that of an uncircumcised man, but also said that having sex without lubrication or with someone who has a vaginal tear will increase the risk of contracting the virus (*S v. J. Zuma* [Op.] at 82).

van der Merwe would later rule that their evidence was inadmissible. Linda's testimony closed the state's case.

Judge van der Merwe considered two applications before the defense called its witnesses. Three organizations filed a joint application to lead evidence on the state's behalf as *amici curiae*. The defense filed an application to have the case dismissed. Judge van der Merwe denied both applications. The defense would begin its case with Jacob Zuma in the witness stand.

### **Day One of Jacob Zuma's Testimony: What makes a "traditional Zulu male"?**

Zuma took the stand on April 3<sup>rd</sup>, 2006, and he testified for just over four days. The specter of Zuma's testimony, despite his acquittal, still reverberates on his political career today. Zuma said much in those four days, but only a handful of statements and concepts were heavily reported on and dialogued in the media and in South Africa. Journalists wrote that Zuma placed heavy emphasis on his Zulu identity. *The New York Times* reported:

*Taking the stand for the first time this week in the rape trial, Mr. Zuma cast himself as the embodiment of a traditional Zulu male, with all the privileges that patriarchal Zulu traditions bestow on men. [...] That he is making a political appeal as well as a legal one seems indisputable. [...] During the trial last week, he pointedly testified entirely in Zulu, although he speaks fluent English, the usual courtroom language. His remarks had to be translated for the English-speaking prosecutors. (Wines 2006: A3)*

Indeed, there was a very heavy cultural content to Zuma's testimony. This was not wholly on Zuma's side – de Beer too made use of "Zulu culture" to forward the state's version of what had happened on the night of the alleged rape. De Beer is white Afrikaans, not Zulu, but she stated understandings that she had about Zulu culture and related inquiries to Zuma based on these understandings. Zuma did not use Zulu culture

as the main line of his defense against the rape allegations. He would often criticize suppositions that de Beer would derive from Zulu culture – and she would too criticize his reliance on Zulu culture to explain certain actions. Both Zuma and de Beer would oscillate from making logical explanations to cultural explanations. At varying points, both would define Zulu culture in a very singular, bounded way and also in flexible and open terms.

The first questions Kemp asked Zuma were about the role that he played in the struggle, and Judge van der Merwe interrupted to ask how he knew the complainant's father, Judson Kuzwayo. Zuma said that he and her father had known each other as members of Umkhonto we Sizwe (MK), the militant arm of the ANC; both were arrested in 1963 and served ten-year sentences at Robben Island (*S v. J. Zuma* [Tr.], SS321/05 [2006] at 877). Upon release, Zuma and Kuzwayo returned to the MK. While Zuma began training recruits in Mozambique, Kuzwayo was arrested and detained in Natal, then left South Africa for exile in Swaziland. From Mozambique, Zuma helped to direct Kuzwayo's work (*S v. J. Zuma* [Tr.] at 878).

Kemp asked Zuma to elaborate on his relationship with the complainant. Zuma had made acquaintance with Khwezi when he traveled to Swaziland during the 1980s to oversee the MK. Kuzwayo died in 1985, and Zuma saw Khwezi in Zambia a few times after her father's death (*S v. J. Zuma* [Tr.] at 884). Khwezi, during her testimony, had used the Zulu word *malume* to refer to Zuma – and the prosecution, in arguing the charge rape, emphasized the point that it was improper and unusual to have sex with one's *malume* because it signified a familial relationship. Zuma said that even though *malume*

literally translates “the brother to your mother”, that among families in exile, children called the older “comrades” *malume* (*S v. J. Zuma* [Tr.] at 887).

Khwezi had testified that she had a conversation the night of the alleged rape, where Zuma suggested she find a boyfriend to fulfill her sexual desires. Kemp asked if Zuma had ever had similar conversations with his own daughters: Zuma said he had not because “Zulu tradition does not prescribe it” – females discuss sexual issues amongst female family members but not males (*S v. J. Zuma* [Tr.] at 880).<sup>27</sup>

Zuma explained how it was that Khwezi came to see him and stay at his home on that evening of November 2<sup>nd</sup>, 2005. She had called him during the day, distressed about her relative, and said she wished to visit him at his Johannesburg home to tell him something. Zuma said he neither asked Khwezi to his home in the first place, nor invited or even expected her to stay the evening (*S v. J. Zuma* [Tr.] at 896). Zuma testified that when he talked to her at his home in the evening, *she* brought up the issue of not having a boyfriend<sup>28</sup>, concern about her relative, and distress caused from having HIV (*S v. J. Zuma* [Tr.] at 897). During this conversation, he asked if she had the number for a taxi to take her home, and she replied that she planned to stay the evening (*S v. J. Zuma* [Tr.] at 898).<sup>29</sup> Zuma went to his study to do work, and Khwezi bathed and changed into a *kanga* – Zuma observed that she had never dressed that way before in front of him. He suggested that a *kanga* was a sexually provocative outfit (*S v. J. Zuma* [Tr.] at 903).

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<sup>27</sup> From there, Kemp continued questioning whether *malume*, as per the exile definition, meant that Zuma and Khwezi had a “father-daughter relationship” like Khwezi had asserted. Zuma thoroughly denied any such relationship (*S v. J. Zuma* [Tr.] at 894).

<sup>28</sup> Recall that in Khwezi’s testimony, she said he had initiated the conversation.

<sup>29</sup> Recall that in Khwezi’s testimony, she said Zuma had invited her to his home and also invited her to stay overnight.

Khwezi expressed that she still had more to talk about with him. When he said that he had still more work to do, she said that she was going to bed, but to wake her when he was done (*S v. J. Zuma* [Tr.] at 902). When he awoke her later, she came to his room still in the *kanga*, climbed under his duvet covers, and talked further about the Swaziland incident. Zuma changed from his office clothes to his pajamas in front of her – he got the sense “that she did not have any problem if [he] took off [his] clothes” (*S v. J. Zuma* [Tr.] at 905). She did not express disapproval and subsequently asked him if he would give her a massage (*S v. J. Zuma* [Tr.] at 905).

While he was massaging her, Zuma said that Khwezi exposed herself. Then after his massage, she touched him suggestively while she still remained partially naked. He took his clothing off, kissed her, and asked her if she had a condom. She said she did not, and Zuma “hesitated a bit” and considered the risks (*S v. J. Zuma* [Tr.] at 907). Khwezi responded negatively to his hesitation, Zuma said, encouraging him to proceed: “She then said you see you cannot just leave a woman if she is already at that state [...] and I said to myself I know as we grew up in the Zulu culture you do not just leave a woman in that situation because she may even have you arrested and say that you are a rapist” (*Zuma, S v. J. Zuma* [Tr.] at 907). After Khwezi said this, Zuma had sex with her. Afterwards he got up and took a shower, and seeing that she was no longer in his room, he went to the guest room and bade her goodbye (*S v. J. Zuma* [Tr.] at 908).

Kemp asked Zuma to elaborate on his HIV/AIDS background – what it was that he knew about the disease and why he had chosen to have sex with someone he knew was HIV positive. Zuma explained that he had headed a government initiative on AIDS and that he had a relatively high level of knowledge about the disease. “I had knowledge

that as a male person the chances were very slim one would contract the disease, just because you had intercourse with a woman you would [not] automatically be infected,” (*S v. J. Zuma* [Tr.] at 911). He added that he did not have HIV or any other sexually transmitted infections so would not have put Khwezi at further risk (*S v. J. Zuma* [Tr.] at 912).<sup>30</sup>

Kemp finished questioning Zuma early on the second day with a series of questions that emphasized how her behavior was different on the night of November 2<sup>nd</sup>, 2005 than in the past – she was more sexual in how she dressed and what she said.

## **Day 2: Cross-examining the Events Leading to the Alleged Rape**

Advocate de Beer began her cross-examination asking, “When you had sex with the complainant you did not use a condom, is that correct?” which Zuma affirmed (*S v. J. Zuma* [Tr.] at 931). She asked several more questions, focusing on why Zuma had taken the risk of having unprotected sex with someone who he knew to be HIV positive. He restated that he knew there was a risk, although he thought it was very small, and said that he had tested negative a month prior to his testimony (*S v. J. Zuma* [Tr.] at 932). De Beer observed that regardless of his status one month ago, Zuma still endangered his wives (with whom he does not use condoms). De Beer added that Khwezi, as an AIDS activist would never have sex without a condom, and that by extension, sex must have not been consensual (*S v. J. Zuma* [Tr.] at 938). De Beer also asked Zuma about his role in the government-sponsored Moral Regeneration Movement; he agreed that “the

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<sup>30</sup> Zuma finished his first day of testimony explaining how the rape accusation came to his attention. He learned about it two days later when investigators came to his home (*S v. J. Zuma* [Tr.] at 915-915). Zuma said that he did not understand how what had happened could be construed as rape, so he tried to contact Khwezi’s friends and relations. They suggested that Khwezi was upset because Zuma did not phone her the day after she stayed at his home (*S v. J. Zuma* [Tr.] at 917).

movement was about bringing back the morals, the values, [and] the traditions”, with a particular emphasis on HIV/AIDS and condom use, and that he “many times said that the leaders must take responsibility in that regard” (*S v. J. Zuma* [Tr.] at 940).

De Beer moved from Zuma’s leadership position on HIV/AIDS to the relationship he had with Khwezi and her father. Zuma agreed that he and Judson Kuzwayo were best friends, but resisted the prosecution’s efforts to say that they were “figuratively speaking [...] twin brothers” (*S v. J. Zuma* [Tr.] at 944). De Beer returned to the question of the meaning of *malume* and asked why Khwezi called Zuma *malume* – not by his first name Jacob. Zuma said that “according to Zulu tradition a child will never call you by [your] name” and repeated that Khwezi called him *malume* because she knew him from exile (*S v. J. Zuma* [Tr.] at 949).<sup>31</sup> Khwezi had testified that Zuma had called her *ndodakazi*, the Zulu word for daughter, which Zuma denied; he did admit that he did call her *nthombi*, *nthunkulu*, and *nthombizana*, Zulu words that he used with his own daughters that loosely translate to girl (*S v. J. Zuma* [Tr.] at 953). De Beer closed this line of inquiry emphasizing the “massive power imbalance between” Khwezi and Zuma, that as a much older man who was the former deputy-president of South Africa, sexual intercourse with Khwezi was necessarily coercive (*S v. J. Zuma* [Tr.] at 956).<sup>32</sup>

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<sup>31</sup> From there, de Beer still sought further to establish the familial closeness of Zuma’s relationship with Khwezi. Zuma repeatedly denied that their relationship was in any way unique:

*DE BEER: And as in the malume role that you have described here with the respect and the fact that she is not calling you by your name, is it safe to say that you played a supportive and advisory role towards her?*

*ZUMA: Yes if she comes to me needing some help or advice I would [give] that not to her only, but to all the children of comrades. (S v. J. Zuma [Tr.] at 951)*

De Beer asked if, when Khwezi came to Zuma, did they not often share stories about her father? Zuma said “Yes it is true, [but] not to her only” and again mentioned that he acted similarly with other children of comrades in exile whose parents had passed away (*S v. J. Zuma* [Tr.] at 951).

<sup>32</sup> De Beer posited, “as her *malume* and as well knowing in the back of her head that you are from this background, I put it to you indeed that she never expected you to be interested in her sexually.” Zuma counter-posed her cultural claim with his own cultural claim. Having already said that it was unusual in Zulu culture for daughters to talk to their fathers about sexual issues, he responded in the negative, saying:

De Beer moved onto communications between Khwezi and Zuma in the two months before the alleged rape. Khwezi called Zuma fifteen times during that period and sent him 54 SMSes (*S v. J. Zuma* [Tr.] at 958). Zuma said he could not recall their content in great detail, but that they expressed “longing for him” (*S v. J. Zuma* [Tr.] at 959). Zuma said that she started to “end the conversation maybe by those words love, hugs, kisses” which she had never done in the past (*S v. J. Zuma* [Tr.] at 961).

Khwezi stated in her testimony that she considers herself a lesbian. De Beer asked Zuma if he were aware of her lesbian status, and he said that prior hearing her testify, he was not.<sup>33</sup> De Beer invoked Zulu culture to suggest the veracity of Khwezi’s sexual orientation – Zulus, she implied, were generally intolerant of lesbianism. The issue at hand was whether Khwezi’s sexual orientation precluded her from having sex with Zuma; as a lesbian, she had stated that she did not want sexual relations with men. De Beer suggested that Zuma should have known this and once again invoked Zulu culture:

*DE BEER: In the Zulu tradition, would you agree with me that it would raise an eyebrow if a 31 year-old female is not married and does not have children?*

*ZUMA: That is not true.*

*DE BEER: What did you think why she was not married and why she did not have children?*

*ZUMA: M’Lord I would not know what the reason was but during the discussion she told me that she did not have a boyfriend but that she would like to have one. (S v. J. Zuma [Tr.] at 969)*

This moved de Beer to discuss the issue of Zuma’s conversations with Khwezi about her male troubles.<sup>34</sup> De Beer reflected on the testimony of a previous witness who said it was

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“I do not agree with that. She would not really start discussing with me about sexual issues if [that] is true” (*S v. J. Zuma* [Tr.] at 956).

<sup>33</sup> De Beer said “And you will agree with me that it is not something that a female from the culture of the complainant will admit lightly” to which Zuma opposed, saying “I would not agree [...] because now of late so many people come up and declare their sexual orientation [but] in the past it was amazing” (*S v. J. Zuma* [Tr.] at 963).

<sup>34</sup> Khwezi had said Zuma initiated these whereas Zuma said that Khwezi initiated them, and both differed on the content of these conversations.

not typical for Zulu females to discuss their boyfriend problems with other males and suggested that Zuma had initiated the conversations, asking “Now what is the difference between you and other men, why can females discuss boyfriend problems and issues with you but not with other men?”, a question which Zuma said he could not answer (*S v. J. Zuma* [Tr.] at 970). She also asked why Zuma thought Khwezi “would lie about the fact you asked her about the boyfriend”, a question which Zuma again said he could not answer (*S v. J. Zuma* [Tr.] at 972).

De Beer posited that Zuma had brought up the boyfriend discussion to see if Khwezi were available, that he invited her to the home, wanted her to sleep over there, and most importantly, wanted her to sleep with him (*S v. J. Zuma* [Tr.] at 972). “And I put it to you specifically that she was not interested in you because number one you are this father *malume* figure to her and she is also of a lesbian orientation” asserted De Beer. Khwezi, according to her testimony, had no sexual interest in Zuma for these reasons and de Beer argued that Zuma’s sex with Khwezi could *not* have been consensual.

De Beer queried the nature of Khwezi’s sleeping arrangements, supporting her questioning through a particular reading of Zulu culture:

*DE BEER: And the custom, I believe is that if there is a female visitor that such a visitor will sleep with the daughter or the other females in the house, [is that] not so?*

*ZUMA: No, that is not so according to Zulu custom. M’Lord what happens is according to custom, depending on the lay-out of the house, if there is a room for visitors, be it female or male visitors, when there is room then they will normally go to sleep in that particular room, but if there is no special room in the case of females that female visitor will have to sleep with other females in one room. The same with males. (S v. J. Zuma [Tr.] at 976-7)*

De Beer insisted that Zuma had taken Khwezi to the guest room personally, which he denied, to be sure that she did not sleep in the same room as his Duduzile.<sup>35</sup> While Zuma

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<sup>35</sup> De Beer had probed further, unsatisfied with Zuma’s answer:

is a Zulu man, he lives in a large modern home in Johannesburg that likely has many guest bedrooms. The idea that a female guest should stay in the room of other females or that a male with other males (if a guest bedroom is unavailable) is certainly not uniquely a Zulu custom but is common in many households.

De Beer cross-examined Zuma on his belief that Khwezi's behavior in the months prior to the rape and specifically on the night of November 2<sup>nd</sup> had changed, and showed increasing sexual interest in him. Zuma's responses here would prove particularly controversial.

*DE BEER: And if you say she acted that way what do you mean by that?*

*ZUMA: M'Lord, [...] she used to come to my place dressed in pants but on this occasion she came dressed in a skirt. And the way she was sitting in the lounge was not the usual way that I know her to be sitting. That was not usual of her, that is why I say the way she acted was not similar to the way that she used to be. And at the stage when she came to me in the study dressed only in a kanga that also indicated to me, because she has never done that in the past. (S v. J. Zuma [Tr.] at 982)*

De Beer asked Zuma for greater specificity, first whether the skirt was a "mini skirt", and how Khwezi was sitting that was so unusual. Zuma said no, that it was a normal knee-length skirt and that wearing it, Khwezi had not kept her legs crossed together but they were open. She returned to the issue of the *kanga* and proposed it was not a suggestive garment (*S v. J. Zuma* [Tr.] at 983).

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*DE BEER: If that is the tradition that I have put to you, why did you allow her to sleep in the guest bedroom?*

*ZUMA: Yes M'Lord I said depending on the [...] nature of the building if there is a room for visitors be it male or female, then they sleep in that special room. [...] If there is not an extra room, [...] a female visitor will have to sleep in the same room with other females, the same with males, but nowadays we even have guest rooms where visitors sleep in guest rooms. [...] In the case of my visitors, be it male or female, they will not go to sleep with my other children, they will sleep in a guest room that is provided for that purpose. (S v. J. Zuma [Tr.] at 977)*

*DE BEER: I put it to you that you told her to go sleep in the guest bedroom and that you indeed took her to the bedroom. [...] You furthermore went into the room with her and you actually indicated a specific bed to her. [...] And she was in no position not to listen to what you say to her or to go against your will. (S v. J. Zuma [Tr.] at 977)*

### **Day 3: “I wished to take a shower.”**

De Beer began her cross-examination on the third day looking at the sequence of events that led to the rape itself (*S v. J. Zuma* [Tr.] at 988). Zuma had testified on the first day that Khwezi told him to wake her up when he finished his work, and came with him to his bedroom where they had sex.<sup>36</sup> She asked why it was so necessary for Zuma to take Khwezi back to his room, could he not discuss with Khwezi whatever it was she needed to discuss in the guest bedroom? De Beer posited throughout that Zuma had a particular agenda – the rape was not a crime of passion but was a sexual encounter that he deliberately planned and executed against the complainant’s wishes (*S v. J. Zuma* [Tr.] at 991).

Zuma’s choice to proceed with sex with Khwezi despite not having a condom – the point on which de Beer began her first day of cross-examination – concerned much of the early part of her second day of cross-examination. She asked: “You have explained that the way you grew up or in the Zulu culture you do not leave a woman in that situation. She will have you arrested as a rapist?” (*S v. J. Zuma* [Tr.] at 1006). Zuma agreed and explained, as on the first day, that “in my tradition”, were he to get to “that stage with a woman” and not have intercourse, she might press false charges of rape (*S v. J. Zuma* [Tr.] at 1007). Responding to Zuma, de Beer made a logical appeal against the existence of any sort of cultural expectations that Zuma should have sex with Khwezi. “I want to put it to you that I cannot imagine that it is in any culture a rule that you have to continue with sex for that reason, and I want to put it to you that it can never be the

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<sup>36</sup> Recall that per Khwezi’s account of the events, Zuma woke her up in her bed unexpectedly, made sexual advances she did not anticipate and objected to, and raped her there. She had not gone back to his bedroom, and when he started to have sex with her, after giving her an unrequested massage, she froze, unable to scream or resist in any way.

reason to proceed with condomless sex with an HIV positive person” (*S v. J. Zuma* [Tr.] at 1007). Zuma responded that if two people wanted to proceed in doing something and both were aware of the risks involved, then it was their own decision to make (*S v. J. Zuma* [Tr.] at 1007). Zuma’s initial explanation about why he did not use a condom rested on what he identified as Zulu culture – if a man did not have intercourse with a woman who wanted intercourse, the woman might become so angry that she might falsely accuse the man of rape. De Beer pressed the absurdity of such a cultural principle, and Zuma finally abandoned his cultural explanation. He said that he did it because he did it.

Zuma had testified that subsequent to having intercourse, he took a shower. De Beer inquired about this, leading to what, of all of Zuma’s testimony, would cause for him the most ridicule. De Beer asked Zuma, “Why did you take a shower then?” (*S v. J. Zuma* [Tr.] at 1007).<sup>37</sup> Zuma explained, “I wished to take a shower because it is one of the reasons that would minimise the risk of contracting the disease” (*S v. J. Zuma* [Tr.] at 1007).<sup>38</sup> Zuma’s testimony thereafter proceeded normally. No laughter or disruption from the audience is noted in the court records; neither de Beer nor Judge van der Merwe responded immediately to his statement. The controversy that would ensue is not evident from the record of the trial proceedings.

### **Day 3: Lobola**

De Beer moved to the events following the alleged rape, and how it was that Zuma tried to keep Khwezi from pressing charges against him. Zuma said he was

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<sup>37</sup> De Beer wanted to know why a shower so immediately after sexual intercourse.

<sup>38</sup> The disease Zuma refers to is HIV/AIDS.

immediately suspicious when he heard of the rape allegations, thinking someone had convinced Khwezi to make false charges, but he was loathe to contact her directly (*S v. J. Zuma* [Tr.] at 1014). He did make contact with her friends and relatives to see how the situation might be settled amicably.<sup>39</sup> While de Beer implied that Zuma's attempts to prevent Khwezi from pressing rape charges against him demonstrate Zuma's cognizance of his wrongdoing, Zuma said that attempting to contact her family and friends to resolve the issue was a matter of Zulu custom (*S v. J. Zuma* [Tr.] at 1020).

Zuma explained to the court that he was prepared to negotiate *lobola*, paying Khwezi's family for the right to marry her, but that attempts to negotiate failed (*S v. J. Zuma* [Tr.] at 1022).<sup>40 41</sup> De Beer asked if *lobola* negotiations were not indicative of a love relationship; Zuma's attempts to negotiate *lobola* with a woman who he had not even courted was a tacit admission of his wrongdoing. Zuma disagreed and said that de Beer did not understand that "lobola comes in many different ways" (*S v. J. Zuma* [Tr.] at 1023). De Beer questioned what he meant:

*DE BEER: Well the only way I am aware of is that there is a love relationship, then there is negotiation and the lobola gets paid. It seems like you are talking about another way now and I want to know what is that way.*

*ZUMA: Well I accept that the learned counsel will not know Zulu tradition, to say that. M'Lord it happens in our custom that even if you do not know a girl from anywhere, she*

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<sup>39</sup> De Beer inquired if these sorts of family negotiations were a practice of Zulu custom and what resolution meant, was it really "the end of the matter" (*S v. J. Zuma* [Tr.] at 1020). Zuma replied said that was a traditional response to family conflict. "If a certain agreement is reached that would mean then the end of the matter and decision will be taken as to do what next. But if the matter is already in the hands of police, discussions are held to see how the police can be approached in connection" (*S v. J. Zuma* [Tr.] at 1020). Zuma's response shows an entanglement between the family and the police, two different authorities, in present day South Africa. The idea of having conflict settled amongst families, even conflict that might hold legal repercussions, is certainly not uniquely Zulu. Legal systems under apartheid functioned far more for the purpose of South African whites and not South African blacks – meaning that family-based resolution like this had a structuring purpose.

<sup>40</sup> *Lobola* is the exchange of cattle or money for a bride. It is still practiced in South Africa, particularly common among traditional Zulus, and is a practice that many women's activists decry for equating women so directly with property (Kim 2002: 6). (Geisler 2000: 625). The idea of Zuma taking on another wife is not, in itself, an unusual practice for him. Zuma had four wives in 1999, and he will not publicly state the number he has today (Bisetty, Jayiya et al 1999) (Trovato 2006).

<sup>41</sup> Zuma was unable to give any reason why *lobola* negotiations did not progress.

*drops off at home and there she is, you have to pay lobola for her or initiate lobola proceedings for her. You just have to do that. (S v. J. Zuma [Tr.] at 1023)*

Zuma's comments here indicate an ongoing conflict between him and the prosecution. It is the only time in the trial that Zuma so clearly asserts his authority, as a Zulu man, over de Beer, an Afrikaans woman. It is his second day of cross-examination, and de Beer has made persistent inquiries to Zuma about Zulu culture. De Beer has proposed a particular reading of certain Zulu customs and traditions that Zuma has mollified and outright denied. Similarly, de Beer has mocked and called illogical Zuma's own statements about Zulu culture. Zuma notes the irony that, at least in his mind, the "learned counsel" knows nothing about Zulu culture. To attain the position of advocate at the Johannesburg High Court, she had to complete two law degrees. Zuma, however, has no formal education beyond primary school. How it is that de Beer is learned, Zuma implies, does not pertain to Zulu tradition.

De Beer recounted the State's version that Khwezi did not want *lobola* negotiations. Zuma had claimed that Khwezi's friends and family related that she was angered with him, not because he raped her, but because he had not called her following their sexual encounter. De Beer asserted that Khwezi never was interested in *lobola* because she had no interest in marrying Zuma, reminding him of Khwezi's lesbian orientation (*S v. J. Zuma* [Tr.] at 1025). Zuma acknowledged the prosecution's argument that Khwezi's sexual status precluded romantic or sexual interest in him, but said that what the complainant had told him about wanting a boyfriend contradicted that. He had heard nothing of her lesbian orientation until the rape trial had commenced (*S v. J. Zuma* [Tr.] at 1026).

### **Day 3 and 4: Cross-Examination Concludes**

After the heated *lobola* debate, the court took a recess and the remainder of the day's cross-examination focused on Zuma's behavior during the investigation of the rape allegations. De Beer grilled Zuma on his behavior leading up to the public announcement of the charges against him, why he called Khwezi and her mother repeatedly after hearing she had pressed charges with the police (*S v. J. Zuma* [Tr.] at 1029).<sup>42</sup> She said that Zuma wanted to persuade Khwezi not to pursue the rape charges, and Zuma disagreed, saying that he called to see why she made the charges in the first place (*S v. J. Zuma* [Tr.] at 1028-9).

De Beer's cross-examination concluded on the morning on April 6<sup>th</sup>, 2006, the fourth day of Zuma's testimony. De Beer restated the State's account of the rape and also brought up an issue she had yet to examine Zuma on, that of the violent and threatening public reaction Khwezi faced when she pressed rape charges. Why would Khwezi press these charges, knowing the large amount of public support for Zuma and violent acts that his supporters have so committed, unless she had been raped? Why put her life at risk to make false charges? Zuma said he had no answer but speculation (*S v. J. Zuma* [Tr.] at 1048-9).<sup>43</sup>

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<sup>42</sup> De Beer made note of Zuma's eight failed phone calls to Khwezi's mother on November 9<sup>th</sup>, 2005 (*S v. J. Zuma* [Tr.] at 1029).

<sup>43</sup> Zuma's testimony concluded with advocate Kemp's brief re-examination of Zuma. Kemp addressed the prosecution's suggestion that Zuma might have had HIV or an STI prior to November 2nd, 2005, meaning that he threatened Khwezi's health from having intercourse with her. Kemp again asked about the sixteen month period where Khwezi was in London without contact between her and Zuma – reemphasizing that was inconsistent with the prosecution's position that Zuma and Khwezi had a father-daughter type relationship. He asked Zuma two questions that did not pertain directly to de Beer's cross-examination: What his weight was, and whether he was circumcised. The implication of the first was that his weight was not much more than Khwezi's, so she would have been able to resist his advances had she not consented to intercourse, and of the second, that despite the state's implications that Zuma either had HIV prior to

## Rape Trial?

Much of Zuma's testimony concerned facts not directly related to the rape event. On the first day of Zuma's testimony, his lawyer, Kemp J. Kemp, allotted him ample time to talk about his political accomplishments. Zuma discussed extensively his leadership roles in the MK and the ANC (*S v. J. Zuma* [Tr.] at 875-882). These questions were wildly off topic, and even Judge van der Merwe had to curtail Kemp's questioning.

Similarly, not all of de Beer's questions pertained directly to the question of rape itself. According to the state's version of the alleged rape, Zuma had not asked Khwezi if she had a condom – Khwezi, as an AIDS activist, would never sex with someone without a condom. That said, de Beer placed particular emphasis on why Zuma had not used a condom, questioning him on it repeatedly. Specifically, on the first day of her cross-examination, de Beer asked several pointed questions after Zuma tried to play down the risk of his decision to have intercourse with Khwezi without a condom:

*DE BEER: Maybe I should break the question down into little pieces, whether it is one in a thousand or one in a hundred there was a risk [...]?*

*ZUMA: Yes that is true.*

*DE BEER: Good we are making progress now. Now the question is why do you, a man [who] could still be president of this country, why were you prepared to take that risk that night?*

*ZUMA: Yes I have answered that question. [...] I had to take a decision to continue and I gave my reasons.*

*DE BEER: You dealt with that decision a huge blow to the Government who try to encourage people to use condoms with somebody who is not their regular or spouse, not so?*

*ZUMA: Is that a question?*

*DE BEER: I would like your comment on that.*

*ZUMA: I know for that fact that the Government has a certain stance with regard to with this disease and I also believe the stance and have preached it many times to people. I knew for a fact that when I had intercourse with the complainant that I myself was taking a risk, that was due to the situation that was prevailing then and whilst I knew what the*

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intercourse with Khwezi or contracted the disease from intercourse with Khwezi, his status as a circumcised man afforded him some protection from contracting the virus (*S v. J. Zuma* [Tr.] at 1050).

*stance of the Government was I did not by so doing think I was actually giving a blow to the Government by so doing. (S v. J. Zuma [Tr.] at 934-5)*

According to the state's version, Zuma proceeded with forced intercourse without asking Khwezi for a condom. De Beer does more here than to advance this argument – she accuses Zuma of hypocrisy and foolishness for his version that he chose *not* to use a condom. It is not just on a personal level that de Beer accuses Zuma of irresponsibility, but as a political leader of South Africa. At another juncture, de Beer made note of Zuma's involvement in the government-sponsored Moral Regeneration Movement, juxtaposing this with his sexual behavior with Khwezi. What was moral about a 64-year-old man with more than one wife having sex a woman three decades his junior? This exchange articulates a central issue during the Zuma trial, the conflict between his public life and private behavior. Zuma's testimony would prove highly controversial, but much to do with these peripheral issues – Zuma's failure to use a condom and Zulu cultural traditions that Zuma referred to during his testimony – than those that concerned the rape event itself.

### **The Defense's Witness**

Dudizile, Jacob Zuma's daughter, testified next. She denied the father-daughter relationship and said she hardly even knew Khwezi. When Dudizile saw Khwezi at her home on November 2<sup>nd</sup>, 2005, she said that she felt "irritated" because she thought Khwezi's visit was just to get money from her father. Dudizile thought that it was "inappropriate" for Khwezi to dress in a kanga and was "convinced that the complainant was trying to entice her father" (*S v. J. Zuma [Op.]*, SS321/05 [2006] at 115).

The next series of witnesses testified about Khwezi's past sexual history; the first was Ntswaki, a woman who investigated and headed a tribunal addressing the allegations of rape that Khwezi made against Godfrey and Charles when she was thirteen. One was found guilty of rape, the other not, but Ntswaki's testimony indicated that there was a lot of ambiguity with regard to their relationship to Khwezi and as to their guilt or innocence. "Rape", in this instance, is not unwanted sexual intercourse but an unwanted sexual act – because Ntswaki said that Khwezi was examined after both accusations, and it was clear that she had never been penetrated. Ntswaki was also aware of Khwezi's situation with Mashaya, who Khwezi had accused of unsuccessfully trying to rape her, and Ntswaki said that seemed very unlikely (*S v. J. Zuma* [Op.] at 117). Mashaya testified next, denied any attempted rape, but said they were in a relationship and had consensual sex (*S v. J. Zuma* [Op.] at 119). What did come from these testimonies was the idea that Khwezi likely had sexual experiences at a young age; though unclear if and how they were coercive, it was also probable that her accusations were not entirely truthful.

After Mashaya, four witnesses testified regarding the three rape accusations she made while a student at a theological college in South Africa. This testimony was much less ambiguous – each portrayed Khwezi as a liar who made up rape accusations that either never happened or were consensual sex (*S v. J. Zuma* [Op.] at 119-132). One witness even remarked: "I pity the poor complainant. She is sick, and she needs urgent attention, medical attention otherwise many families will be destroyed by her" (*S v. J. Zuma* [Op.] at 129). Cumulatively, these testimonies suggested that Khwezi had serious mental disturbances.<sup>44</sup>

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<sup>44</sup> The final two witnesses about her sexual history testified about the consensual sexual relations she had with men during the late 1990s (*S v. J. Zuma* [Op.] at 132-134). Van der Merwe, in his decision, said that

Dr. Louise Olivier, a clinical psychologist, testified for the defense. She had no access to Khwezi, so she raised questions about the work of Dr. Friedman, the clinical psychologist who had testified for the state.<sup>45</sup> Dr. Olivier testified that Dr. Friedman's work was highly insufficient for a psychologist doing forensic work; Dr. Friedman had not conducted appropriate tests and had enough consultations with Khwezi (*S v. J. Zuma* [Op.] at 136). Dr. Olivier disputed Dr. Friedman's conclusions on procedural grounds: Dr. Friedman's consultations lacked the substantive conditions that could allow her to testify so certainly in a court of law (*S v. J. Zuma* [Op.] at 137-138). This closed the defense's case.

### **The Verdict**

Judge van der Merwe had difficulty in establishing the plausibility of the state's arguments and the consequence of their witnesses. Emphasizing long periods with no contact between Khwezi and Zuma, he rejected the state's claim of a father-daughter relationship. The term *malume*, he said, was not proof in itself of such a relationship (*S v. J. Zuma* [Op.] at 152). The prosecution argued that since Khwezi was lesbian, she would not want to have consensual sex with Zuma. As with the term *malume*, van der Merwe found that the term lesbian was inconsistent with the reality. Two witnesses had testified to her past sexual behavior with men in the 1990s, and for Judge van der Merwe, she was at the very least bisexual (*S v. J. Zuma* [Op.] at 170-171). Van der Merwe largely dismissed the testimony of Khwezi's mother and her two friends, Pinkie and Kimi.

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these consensual sexual experiences meant that she "is bisexual with a lesbian orientation" and by extension, disregarded the state's argument that as a lesbian there was no way that she would have consented to sexual relations with Zuma (*S v. J. Zuma* [Op.] at 49).

<sup>45</sup> Recall that Dr. Friedman testified that Khwezi exhibited psychological conditions consistent with being rape and that Khwezi likely froze during the rape.

Khwezi's mother was an elderly woman and van der Merwe called her testimony incoherent. Though Pinkie and Kimi supported the state's version, their testimony contributed nothing to the rape event (*S v. J. Zuma* [Op.] at 158).

Van der Merwe had difficulty accepting Khwezi's version of rape. She weighed five kilograms less than him – why had she not fought back? Why had Zuma chosen to rape a woman thirty feet from a policeman and not far from his own daughter? Why had Khwezi let her clothing be removed and not said no – not once – during ten minutes of intercourse (*S v. J. Zuma* [Op.] at 160)? Conversely, van der Merwe had no reason to doubt the witnesses who testified to Khwezi's past sexual history. They convincingly demonstrated her history of making false accusations of rape or attempted rape (*S v. J. Zuma* [Op.] at 165).<sup>46</sup> The defense had made a compelling argument that Khwezi had a history of lying about such accusations.

The state's case lacked forensic evidence to support its charge of rape. Between the two psychologists, van der Merwe agreed with Dr. Olivier's position that Dr. Friedman had not adequately consulted with Khwezi to make the conclusions that she did (*S v. J. Zuma* [Op.] at 170). Khwezi had no bruising on her body and the vaginal tearing that she did exhibit did not necessarily indicate rape. The case rested largely on the credibility of the complainant's testimony, and the defense witnesses gave evidence that suggested she was not credible. The state did not have convincing evidence and arguments to support a guilty verdict.

With these points in mind, van der Merwe found Jacob Zuma not guilty of the crime of rape.

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<sup>46</sup> Van der Merwe writes: "It cannot be said that all these witnesses conspired against the complainant. There was not even an attempt to suggest that the witnesses were part of a conspiracy" (*S v. J. Zuma* [Op.] at 166).

## Chapter 2

### Whose Rape? Whose Rapist? The Contributions of Women's Organizations

*In the Zuma case we have witnessed many of these myths and misconceptions being used as part of the defence's strategy. We have heard these echoed outside the court and even in the media. It is critical that if we are to reduce levels of secondary victimization and violence and increase reporting and conviction rates that we challenge these myths and misconceptions. We need to remind a victim of a crime is never responsible for the actions of the perpetrator.*

*This case underlines the need for us as South Africans to interrogate our understanding of good leadership and the kind of accountability we expect from them. We pride ourselves on having structures – such as the South African National AIDS Council – to what extent do we interrogate the views of those we elect / appoint to those positions?*

*[...] The One in Nine Campaign urges women who have experienced rape to continue to report cases of rape, to contact specialized gender violence organizations and remember that a acquittal does not mean that the rape didn't happen and that the accused is innocent.*

- One in Nine Press Media Release on Judgment in *State vs. Zuma*<sup>47</sup>

The most forceful detractors of Zuma's political ambitions are often not his political opponents, but organizations and individuals in South Africa who are closely associated with women's rights. They attack Zuma not directly as a politician, but as an individual who has dreadfully harmed the status of women. The opinions of such groups were frequently quoted in the press during the trial and also in literature currently produced on women's rights in South Africa, deriding Zuma for having set back progress on these issues for years to come.<sup>48</sup> Many of these organizations, however, were less concerned with the facts of the case than with actively promoting their existing agendas.

Women's rights fall into a strange paradigm in South Africa. South Africa has one of the world's most liberal constitutions, granting women full and equal rights to men and

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<sup>47</sup> See One in Nine 2006.

<sup>48</sup> See Dixon 2006a, Goering 2006a, Enwemeka 2006a, Enwemeka 2006, Green 2006, and Terreblanche 2006a for journalism that focuses on the opinions of women's groups. In addition to these articles, many more make significant references to such opinions. For literature on that includes the Zuma trial to illustrate the general situation of women's rights in South Africa see Hames 2006, Burnett 2007, and Robins 2006.

endowing the government with substantial legal and organizational support for the rights of oppressed groups.<sup>49</sup> These liberal laws and supporting agencies contrast against the reality for many women in South Africa. The country has high levels of domestic violence and abuse, the world's highest recorded rate of rape, and "cultural" rituals that many NGOs and government-affiliated organizations like the CGE and SAHRC say denigrate the human rights of women (UNODC 2003: 41) (Hofmeyr 2004: 8) (Skeen 2006).

Much of the blame for South Africa's rape crisis is directed toward the government. Only one in nine rapes is even reported; an issue that women's advocates link with poor public support for rape victims. Women's advocates also identify the generally poor quality of investigation and prosecution of rapes – only 7% of rape cases are successfully prosecuted – as causal reasons for the low reporting rate. Many victims fear that they will risk personal safety and become social outcasts in their communities if they pursue rape charges (One in Nine: 2007).

### **Women's Organizations Respond to Zuma**

The situation accounts for the proliferation of organizations committed to improving women's rights and justice in South Africa, many of which took an active role in the rape trial. A group of representatives and volunteers from women's organizations often gathered along with the Zuma supporters outside the Johannesburg High Court.

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<sup>49</sup> The Constitution creates six state institutions to support constitutional democracy; two of these are the Commission on Gender Equality (CGE) and the South African Human Rights Commission (SAHRC). Both the CGE and the SAHRC have advocated for the rights of women in South Africa. They act as pseudo-independent government agencies, making policy recommendations and often criticizing government and politicians (Hofmeyr 2004: 1).

They held signs about rape and sexual assault in South Africa and many times faced harassment from the much larger crowd of Zuma supporters (Mail and Guardian 2006a). A recently-founded NGO was instrumental in coordinating these protests and the efforts of varying women's groups: One in Nine was founded on February 13<sup>th</sup>, 2006 ostensibly "in response" to the Zuma rape trial.<sup>50</sup> It represented a consortium of nine NGOs whose work concerned gender-based violence (One in Nine: 2007).<sup>51</sup>

In the weeks leading to the Zuma verdict, women's organizations publicly speculated as to what effect the outcome would have on South African women. Were Zuma acquitted, women's organizations asserted that already low rape reporting rates would become worse, because "many more women will [...] say that they have seen what went on in this trial, with particular regard to the vilification of the complainant, and that they are not prepared to put themselves through that" (Green 2006: 3). On the other hand, were Zuma found guilty, "it would send out a very strong and stern message that the state is serious about addressing sexual violence and that no one is above the law" (Green 2006: 3).<sup>52</sup> Judge van der Merwe's decision to allow the cross-examination and evidence of Khwezi's history was a critical issue for women's activists – how could any woman

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<sup>50</sup> The organization's name arises from an HRSC report that found only one in nine South African women who were raped reported their rape to the police (Tshipinare Marumo says, January 10<sup>th</sup> 2007).

<sup>51</sup> The organizations that make up the One in Nine consortium are the Gender Aids Forum, People Opposing Women's Abuse, Positive Women's Network, AIDS Consortium, Forum for the Empowerment of Women, Gender Links, Tshwaranang Legal Advocacy Centre, Women's Net, and Men as Partners (One in Nine: 2007). One in Nine includes one organization, the AIDS Consortium, whose work is focused on HIV/AIDS law and the rights of individuals who have HIV/AIDS. It is a consortium of "1000 AIDS service organizations" (The AIDS Consortium). Although the organization's work does not so directly relate to the issues of rape and rape reporting in South Africa, its inclusion in the One in Nine consortium acts as a representation of the interconnectedness of HIV/AIDS and rape in South Africa.

<sup>52</sup> The first quotation is attributed to Lisa Vetten, a policy and research analyst at TLAC, the same organization that put forth the *amici* application. The second is attributed to Sam Waterhouse, the advocacy manager at Resources Aimed at the Prevention of Child Abuse and Neglect. Both quotations were published in an article in *The Star*, a Johannesburg daily, in days prior to the verdict.

ever come forward with a rape accusation after seeing Khwezi's four-day ordeal and then seeing Zuma go free?

### **The Problem of Rape**

Rape is a problematic crime because falls into a unique dichotomy. South Africa's South African Bill of Rights grants the defendant the right "to be presumed innocent [...] during the proceedings" (Skeen 2004: 513).<sup>53</sup> Yet a new era of progressivism has defined rape unlike other crimes: Organizations committed to women's rights promote a public discourse of unconditional support and belief for those who make accusations of rape. This position necessarily finds the defendant guilty before his trial in a court of law.

The progressive discourse on rape recalls an ongoing history of the re-victimization and social marginalization of rape victims. Specifically, it makes a judgment against judges who have permitted the admission of a complainant's past sexual history as evidence to discredit her charge of rape. Because rape cases so often lack forensic evidence and place one story of consensual sexual intercourse against another story of forced sexual intercourse, judges have held this 'credibility' of the complainant as legally relevant to whether she gave consent. The most frequent method to deride a woman's credibility? Proving the complainant's promiscuity, parading her sexual history before the court, and thereby demonstrating past instances where she gave consent (SA Law Commission 2002: 52).

A report recommending revisions for South Africa's laws guiding evidence admissibility observes this conflict inherent to the proceedings of rape cases:

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<sup>53</sup> South African criminal law of procedure is largely English in its origins, including the concept of presumption of innocence, as in many other countries (Skeen 2004: 521). The problematic dichotomy of rape, therefore, is certainly not unique to the South African situation.

*Because absence of consent is difficult to establish, there is frequently a contest of credibility between the complainant and the accused. The accused seeks to show, on the basis of the complainant's sexual behavior on other occasions, that she is more likely to have consented. [...] As a result, complainants in sexual cases often feel they are on trial, not the defendant. (SA Law Commission 2002: 52-53)*

Allowing evidence of a complainant's past sexual history blends the distinction between the accused and the accuser and often ignores the facts of a given rape event in light of unflattering information about a woman's sexual past (SA Law Commission 2002: 52).

Who, then, is the victim? When ever is such evidence appropriate? South Africa's Constitution enumerates rights to dignity and to a fair trial for its citizens. Do these come in conflict in rape cases?

### **Khwezi's Past Sexual History: Section 227**

One of the most controversial aspects of the Zuma trial was Judge van der Merwe's decision to allow the defense to cross-examine and lead evidence concerning Khezi's past sexual history. Van der Merwe reserved the right to later rule this evidence inadmissible in his final ruling but he stated that he wanted to see the arguments that the defense would lead. The hearing for the defense application was held *in camera*, with no journalists or supporters permitted to watch. Van der Merwe stated that he would not publicly explain his reasoning for approving the application (or its admissibility) until he ruled on Zuma's guilt (*S v. J. Zuma* [Op.], SS321/05 [2006] at 23).

Because this decision produced much ire from women's groups and criticism from South African and international journalists as the trial was ongoing, Judge van der Merwe responded extensively to such criticism in his verdict. He chided organizations and individuals "who commented on the ruling without having been in court or knowing

anything about the contents of the application of the provisions of section 227 of the Act” (*S v. J. Zuma* [Op.] at 24).<sup>54</sup>

Section 227 states that a complainant’s past sexual history can only be brought into trial with the permission of the court and if it is deemed relevant.<sup>55</sup> According to van der Merwe: “The difficulty is in determining when sexual experiences are relevant, either to the issues or to the general creditworthiness of the victim” (*S v. J. Zuma* [Op.] at 30). The defense application included a few different arguments for why Khwezi’s past sexual history was relevant to the proceedings. First, aspects of Khwezi’s own testimony introduced her past sexual history and made it relevant to question her history from 1999 and from 2004.<sup>56</sup> Second, the defense had a witness statement from the state that referred to three past rapes where they argued that Khwezi’s behavior directly and indirectly related to her allegations against Zuma.<sup>57</sup> The crux of the defense application was the

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<sup>54</sup> “The Act” is the Criminal Procedure Act that guides admissible evidence in court cases.

<sup>55</sup> Section 227 reads:

*Evidence as to sexual intercourse by, or any sexual experience of any female against or in connection with whom any offence of a sexual nature is alleged to have been committed, shall not be adduced, and such female shall not be questioned regarding such sexual intercourse or sexual experience, except with the leave of the court, which leave of the court shall not be granted unless the court is satisfied that such evidence or questioning is relevant: Provided that such evidence may be adduced and such female may be so questioned in respect of the offence which is being tried.* (*S v. J. Zuma* [Op.] at 24-25)

<sup>56</sup> Khwezi had testified that since April 1999, when she learned that she was HIV positive, she neither would consent to unprotected sex nor have unprotected sex. Kemp argued that if questioned on it, Khwezi would necessarily say that every time she had sex since April 1999, she had used a condom (*S v. J. Zuma* [Op.] at 26). “The question posed by Mr. Kemp was this: How can the credibility of the witness on this aspect be properly tested without going into her sexual history since April 1999?” (*S v. J. Zuma* [Op.] at 26). Kemp observed that because of the evidence the state had provided, that Khwezi would not have consented to sex without a condom with anyone – including Zuma – thereby substantiating her allegation of rape, it was necessary to question her on her sexual history during this period. Kemp also made note of the state’s application to ask Khwezi when was the last time she had intercourse prior to November 2<sup>nd</sup>, 2005 and her answer of July 2004. “That in itself, so it was argued, entitled the defense to ask questions about the complainant’s sexual history” during that period (*S v. J. Zuma* [Op.] at 27).

<sup>57</sup> In this witness statement “reference is made [...] to an incident of rape where the complainant had fainted”, and Khwezi had “hinted to the witness [...] the same had happened” with Zuma (*S v. J. Zuma* [Op.] at 27). The statement also alluded to two other instances where Khwezi had been raped, but had not pursued charges. Kemp argued that these references made in the witness statement thus required him to scrutinize these matters in court. Considering the two rape allegations that Khwezi had not pursued, Kemp

crux of their defense against Zuma’s charges – both Zuma and Khwezi had understood sex as consensual. Khwezi’s accusation of rape was false: They had evidence that she suffered from some sort of sexual pathology where she falsely accused men of rape. The defense had obtained an unfinished copy of Khwezi’s memoirs where she wrote of three rapes when she lived in exile during her youth (*S v. J. Zuma* [Op.] at 27, 50). The defense also had a witness who would testify to the falsity of two incidents in her book, and several other witnesses who would testify that she had made several false accusations of rape and attempted rape (*S v. J. Zuma* [Op.] at 27). Her accusation of rape against Zuma, Zuma’s legal team argued, was therefore part of a larger pattern.

Judge van der Merwe’s decision on the section 227 application references cases and admissibility laws from Britain, the U.S. and Canada and reflects on past judicial errors (*S v. J. Zuma* [Op.] at 29-36). “(Male) common law judges have allegedly been all too willing to allow the (female) victim’s previous sexual character to be revealed” and thereby intimidating many females into not pursuing rape charges for fear of “humiliation or embarrassment”, he writes (*S v. J. Zuma* [Op.] at 30). Van der Merwe stresses at great pains that he, however, is not one of those judges and draws two distinctions: If evidence is merely to establish that the complainant has a past sexual history, then evidence should be excluded; if evidence is relevant to “the way the case is being run, for instance [...] the issue of consent”, then evidence should be admitted (*S v. J. Zuma* [Op.] at 31). He admits that between the two, there is often a “grey area” (*S v. J. Zuma* [Op.] at 32).

Van der Merwe felt compelled to permit the cross-examination of the complainant’s past sexual history and allow the defense’s evidence concerning this

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asserted that “it was necessary to investigate [...] to find out why the present incident is hotly pursued but the two others [...] not” (*S v. J. Zuma* [Op.] at 27).

sexual behavior because its intentionality was not to debase her. He approved it, writing: “It was aimed at the investigation of the real issues in this matter and was fundamental to the accused’s defense” (*S v. J. Zuma* [Op.] at 37). Even though the defense application did not intend to debase the complainant, it necessarily did. And in the words of assistant prosecutor Broodryk, it was “not nice” to watch.

### **Whose Friends of the Court?**

I had planned a meeting at Tshwaranang Legal Advocacy Centre (TLAC), a member of the One in Nine Consortium, while I was in Johannesburg. TLAC had applied, along with the Centre for the Study of Violence (CSV) and Reconciliation and the Centre for Applied Legal Studies (RCALS), to be admitted as *amici curiae*, friends of the court. The morning of the meeting with TLAC, which the organization later canceled, I spoke on the phone to deputy prosecutor Herman Broodryk. I mentioned to him that I was planning on meeting with representatives from the women’s groups who had involved themselves with the Zuma trial. He chuckled and said that he did not much like them, but that I could make my own opinions.

The three organizations submitted an application for admission as *amici curiae* on March 25<sup>th</sup>, 2006, after the prosecution had called all their witnesses and completed their case, but before the defense’s case was to begin. The *amici* application is an unusual request for a criminal case in the South African judicial system, and this instance was especially unusual because it was for a case held in the High Court (Brickhill 2006: 393) (Maughan, Gifford, and Gordin 2006a). Prior instances when *amici* were admitted in South African criminal cases were tried at the level of the Constitutional Court,

“concerned constitutional challenges to criminal offences or sentences”, and the *amici* evidence concerned arguments that the court had not already addressed (Brickhill 2006: 393).

The law guiding the High Court allows it only to admit *amici* when their evidence concerns a constitutional issue (Brickhill 2006: 392). TLAC, CSV, and RCALS stated their position that the prosecution had not adequately handled the complainant’s case and that their particular expertise as organizations dedicated to sexual violence and assault made them especially qualified to assist (TLAC, CSV et al 2006: 6). They enumerated a number of reasons why they should be admitted as *amici*, which included:

*The case raises constitutional issues that go to the heart of women’s enjoyment of a range of constitutional rights, including the rights to freedom and security of the person, equality, privacy, human dignity, and fair trial right; [...]*

*The proposed intervention [...] will enable substantial issues of social and legal significance to be properly ventilated in the interests of a fair trial*

*[Because] rape of a woman is unlikely to be an issue within the general knowledge or experience of judicial officers. Rape has frequently been described as a crime that seldom sees the light of day, let alone comes under the scrutiny of our courts. Rape victims and rape survivors have usually endured their experience in silence, and the particular and somewhat unique character and features of rape have long gone unstudied. (TLAC, CSV et al 2006: 7)*

Their evidence, they explained, would aid understanding of the rape event and on a larger level, pertained to Khwezi’s constitutional rights and the rights of other rape victims to dignity, privacy, and a fair trial. The three organizations wanted to lead the evidence of two expert witnesses on “the specific effects of childhood sexual abuse on the psyche of an adult survivor; [...] the likelihood of re-victimisation of childhood victims of sexual assault; [...] the creation of circumstances of coercion and control” (TLAC, CSV et al 2006: 8-9). The application emphasized the error of Judge van der Merwe’s decision to allow the cross-examination of the complainant’s past sexual history, implied its

mishandling by the prosecution, and said that their evidence could disallow the relevance of this testimony (TLAC, CSV et al 2006: 10).

TLAC, CSV, and RCALS found themselves in a peculiar position when Judge van der Merwe ruled on their application on March 27<sup>th</sup>, 2006. Neither the state, nor the defense, nor even the complainant herself supported their application. They applied for admission as *amici* ostensibly to fulfill Khwezi's constitutional rights, addressing "substantial questions" needing "to be properly ventilated" (*S v. J. Zuma* [Hr'g], SACR 257 [2006] at 257). None of the organizations had consulted with Khwezi before making their application, and they still pursued it despite her expression in court that she did not support it (Daniels 2006a: 4) (*S v. J. Zuma* [Hr'g] at 257).

Judge van der Merwe not surprisingly denied the application.<sup>58 59</sup> He stated that the prosecution had already adequately presented Khwezi's case and that the additional evidence that the *amici* wanted to lead would not contribute to any understanding of the rape event itself. What the *amici* might contribute, witnesses who sought to undermine the significance of Khwezi's testimony on her past sexual history, would likely result in an application by the defense that might then require Khwezi to testify again (*S v. J. Zuma* [Hr'g] at 257) (Maughan, Gifford, and Gordin 2006b: 1).

It is impossible to say, retrospectively, whether the admission of TLAC, CSV, and RCALS as *amici* would have so influenced the case. Van der Merwe made note in his

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<sup>58</sup> Van der Merwe wrote in his decision:

*None of the three applicants could contribute any fact relevant to the incident in question. [...] Allowing the applicants to intervene would also result in a further delay in proceedings that had already been delayed more than once. The State had already put forth a case for the defence to meet and, if further evidence was now to be allowed, it could mean that the whole defence strategy might change. This, in turn, would in all probability mean recalling the complainant, which was not desirable. (S v. J. Zuma [Hr'g] at 257)*

<sup>59</sup> *The South African Law Journal* published an article that several months later than concurred with Judge van der Merwe's decision (Brickhill 2006: 391-399).

ruling that had he admitted these groups as *amici*, the evidence that they called would have likely resulted in Khwezi's having to take the stand again as a witness. He uses the passive voice to call this possibility "not desirable" – but not desirable for whom (*S v. J. Zuma* [Hr'g ] at 257)? For the state, in all likelihood, because having Khwezi testify again would again allow the defense to question her past sexual history extensively in light of whatever issues and evidence the *amici* brought forth. Judge van der Merwe maintained the right to rule evidence of Khwezi's past sexual history inadmissible in his ruling, but were Kemp to cross-examine Khwezi again, more inconsistencies might ensure the evidence's admissibility.

### **Past Sexual History**

Why had TLAC, CSV, and RCALS applied for admission as *amici*? Why had they pursued them, without consultation with the complainant, and then knowing about her opposition? When I met with Broodryk, he related his dismay with the women's groups. In general terms, he felt that women's groups did good work in South Africa, but did not share that view in terms of the Zuma case. "What the people didn't understand is that took away so much energy of us that we had to deal with that while we could have concentrated on our case [...] I accept that their intentions were good but it was most unfortunate it happened at the time that it happened." Broodryk explained that the state knew that following the close of their case, Zuma's defense would apply for a discharge, and he had been preparing to argue the state's position on such an application. "I wanted to start and then suddenly these people stand and wanting to upset your whole

equilibrium in the case.” He had not expected having to address the *amici* application first, and during our meeting, it still visibly annoyed him.

What Broodryk did not say directly, but likely perturbed him, was also the fact that the TLAC, CSV, and RCALS were essentially basing their *amici* application on the incompetence of the prosecution. Arousing the ire of these women’s groups was Judge van der Merwe’s decision to admit the defense’s section 227 application. These groups, by extension, blamed the prosecution for failing to prevent Khwezi’s past sexual history from becoming evidence against her and for not calling forth witnesses that discredited the defense’s use of that evidence.

“Sometimes [women’s groups] get the message all wrong. This whole thing with the sexual history, they got it all wrong. They didn’t understand the ruling; there was all this criticism” Broodryk told me. Zuma’s defense against the accusation of rape was consent, and the evidence uncovered on Khwezi’s past sexual history, Broodryk told me, went to the “heart” of their defense. Broodryk also noted the state’s surprise, not with the section 227 application itself, but with extent of evidence that the defense had to support it. “We are experienced prosecutors [...] and it’s not as if we did not expect that there would be some attack like this but we didn’t know [her writing] fell into the wrong hands.” Still, the state did try desperately to argue against the admission, asking what was the relevance of evidence that dated to her childhood.

Broodryk could fully “see what the reasoning is behind [the decision to approve the section 227].” He was not critical of Judge van der Merwe. Rather, Broodryk seemed regretful that the case almost necessarily had to take this turn. He felt that the public and press never fully understood the rationale for the section 227 admission. The defense,

Broodryk said, “didn’t lead that evidence to come and say or prove that she was promiscuous. They said that M’Lord, we are saying that this complainant is lying. We don’t know why she is lying, but we are saying that this is what she does. I mean, I would have been surprised if a judge did not allow that.” The admission of Khwezi’s sexual history, in his opinion, represented no incompetence on the part of the state or on the part of Judge van der Merwe. It was unfortunate for the state to watch, but the evidence was critical to Zuma’s defense.

### **One of the Nine**

One organization that is part of the One in Nine consortium is People Opposing Women’s Abuse (POWA). I visited their headquarters in January 2007 where I met Tshipinare Marumo, POWA’s Information and Resources Manager. These offices are located on a property in Berea, a run-down residential area north of Johannesburg, and are hidden from the street with high walls. The complex has two large houses and several smaller buildings.<sup>60</sup> Their work includes advocacy, education, and counseling; it is unified by their mission to end violence against women (POWA 2006: 1-2).

I asked Marumo in broad terms to explain the organization’s support for Khwezi. He said that few women “speak out” when they are the victims of rape. POWA, he explained, understands that rape is more than a “social issue” but also a “human rights” issue. Khwezi’s “right to lead a safe life [...] was violated”; it was POWA’s role to stand up for her and against this violation. The trial provided POWA with an opportunity to publicly “challenge misconceptions about rape”, particularly the set of “cultural beliefs

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<sup>60</sup> The organization has five other branch offices in townships in and along the periphery of Johannesburg, and they run two shelters for battered women and their children (POWA 2006: 28).

that violate women's rights." Zuma had used Khwezi's style of dress and the way she sat in a chair, Marumo said, to justify rape. Doing so, Zuma represented "a general patriarchal system" that violates women's sexuality.

Marumo emphasized the non-political stand that POWA took during the trial. "We did not want to engage in politics." Some people within the organization are strong supporters of the ANC, others not, but the foremost issue was "supporting a woman who has been raped." Marumo criticized the South African government for failing to pass rape legislation that would better support Khwezi. The current sexual offenses bill dates from 1957 and in his opinion, imposes weak requirements for the admission of a complainant's past sexual history. New guidelines for this issue had been proposed several years ago and still were never voted on in Parliament. These guidelines, an amendment to section 227, Marumo said would have prevented the admission of Khwezi's past sexual history.<sup>61</sup> POWA believed that such evidence has no relevance to rape and decried its admission in the Zuma case as evidence of the law enabling Judge van der Merwe's own misogyny. Marumo said it was unfortunate that the South African judicial system lacked female judges and magistrates who could recognize and act more sensitively on legal issues that arise during sexual assault cases. Gender, in his opinion, undoubtedly made a profound difference in the court proceedings and final verdict.

When I asked why it was that POWA decided to support Khwezi so actively, making their presence known at rallies outside the courthouse and contributing to the formation of One in Nine, Marumo initially seemed surprised by my question. He

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<sup>61</sup> There is a fair amount of ambiguity as to whether this amendment would have prevented the admission of Khwezi's past sexual history. Judge van der Merwe said that he examined the guidelines in approving the defense's application, but that his decision is based on the existing section 227 law (*S v. J. Zuma* [Op.] at 33).

explained that POWA believes and advocates for all victims of rape regardless of the specificities of their cases. For POWA, the Zuma rape trial was not about Khwezi or Zuma, rather it was about the problem of rape in South Africa.

### **Whose Rape Trial?**

The rape trial, One in Nine declared, “embodied what we as women's rights organizations and HIV activists are aware of: Reporting rapes, getting fair treatment and representation in rape trials and being respected for women's fight for their right against sexual violence is no less than an uphill battle” (One in Nine: 2007). For One in Nine, it also illustrated precisely why the rate of rape reporting was so low in South Africa.

Outside the court, Khwezi faced verbal and physical threats from Zuma’s supporters. Inside the court, the defense humiliated Khwezi because Judge van der Merwe allowed Kemp J. Kemp’s “invasive” cross-examination of her past sexual history (One in Nine: 2007). The One in Nine consortium, including POWA, harnessed the Zuma rape trial to advocate for a new sexual offenses bill that afforded complainants greater protections and rights.<sup>62</sup>

One in Nine saw themselves as a part of Khwezi’s rape and rape trial. The organization was born of the rape trial; it came into existence two weeks before the rape trial began. They assumed Zuma’s guilt before any evidence was formally brought before the court. This is not a criticism of One in Nine, but it is a statement on their positionality and that of other women’s groups. They all presumed Zuma’s guilt as a matter of practice and thus, had really no interest in any of the facts of the case, except those that supported

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<sup>62</sup> One in Nine contributed to a national working group on a new sexual offenses bill where they emphasized that courts did not understand that a complainant’s past sexual history had “nothing to do with rape” (National Working Group on the Sexual Offenses Bill 2006: 2).

their existing work and causes. The case became a vessel for promoting various agendas concerning women's rights and abuse in South Africa.

This is similar to the involvement of the Friends of Jacob Zuma (FoJZ), an organization that publicly coordinated support and raised funds for Zuma. FoJZ acts as an organization committed to defending Zuma's reputation and promoting his political ambitions – positions that presume Zuma's innocence in any allegations of criminal behavior. They used the case as an outlet to forward their theory of a political plot against Zuma. Not only was sexual intercourse consensual, but Khwezi was acting on behalf of larger conspirators. The enormous amount of press attention enabled these organizations to publicize their positions and hyperbolize the individual issue in relation to larger events.

What is problematic about the involvement of women's groups is that their organizational stance necessarily presumed Zuma guilty. Were Zuma found not guilty, as he was, this stance necessarily made the verdict illegitimate – particularly in light of the admission of Khwezi's past sexual history. Judge van der Merwe's *in camera* ruling on the admissibility of Khwezi's sexual history meant that his reasoning was known only to the state and the defense. Women's groups, however, commented on his ruling frequently in the press as the trial was ongoing. The press heard no other legal argument or counterpoint to the opinions of women's groups.

Women's groups were not especially concerned with the facts of the case; Zuma was guilty the moment that Khwezi laid her accusation against him. The Zuma trial was the most high profile rape case since the end of apartheid, and their involvement was tied to the idea that the trial itself stood to decisively influence the rates of reporting and

prosecution of rape in South Africa. The actions of women's groups throughout the trial and during its aftermath represent this wider focus not on the individual Khwezi (although done in her name) but on behalf of a problem afflicting a nation. Zuma became de-individualized, and the trial became a means to gain publicity, advocate, and represent the problem of rape in South Africa.

## Chapter 3

### The Conspiracy in Johannesburg

*Prior to [the rape trial], there was already a view that says Jacob Zuma has not been treated fairly. And that view was itself concretized by the rape charge itself. This is part of an ongoing onslaught on Jacob Zuma. So we viewed it in that context.*

- Kaizer Mohau, Gauteng Spokesperson for the Friends of Jacob Zuma and South African Communist Party Media Liaison<sup>63</sup>

### The Crowd at Von Brandis Square

It is often said that present day downtown Johannesburg is an African city, a seemingly apparent statement but that holds great implication. Yes, Johannesburg is a city in Africa. But with the people on its streets almost entirely black, filled with markets, hawkers and minibus taxis, it looks like a city in Africa. It contrasts with Johannesburg before the flight of business in the 1980s and 1990s – a white city that sought to imitate those in Europe and the U.S. (Davie 2002). Throughout the trial large crowds of South African blacks gathered on the streets of Johannesburg outside the courthouse. They asserted their presence and control of a city that had once banned the entrance of “Africans” without a pass. These were Zuma supporters, and Zuma often led them song, speech, and dance at the close of each day’s trial proceedings.

These rallies received immense press coverage.<sup>64</sup> “South Africans have been assaulted by nightly images of Zuma toying his way through the waving cardboard cutouts of AK-47s and singing the lyrics to his ‘song’, ‘Awuleth’ umshini wami” remarked a columnist for *The Financial Mail* (Fane-Hervey 2006).<sup>65</sup> *Awuleth’ umshini*

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<sup>63</sup> Kaizer Mohau claims, Jan. 8<sup>th</sup> 2007

<sup>64</sup> See BBC News 2006, Moya 2006c, Wines 2006.

<sup>65</sup> *The Financial Mail* is a weekly business and finance magazine published out of Johannesburg.

*wami* and the dance *toyi-toyi* come from another era: They are relics of the struggle and were popular in protest gatherings during the 1980s. *Awuleth' umshini wam* in particular has taken on new meaning since the struggle – it is deeply connected to Zuma himself.<sup>66</sup> He has led the crowds at many public gatherings, particularly those related to his political and legal problems, for as long as ten minutes in its rendition (Majova 2006) (Madlala 2006a).

Journalists have usually reported that the song's title translates from Zulu to English as "Bring me my machine gun" and that members of the crowd held cut-out paper or wood machine guns (Madlala 2006a) (Tolsi 2006).<sup>67</sup> One South African journalist observed the song's reported translation, "Bring me my machine gun" was not entirely correct. The word *umshini* has phallic implications and its literal translation "means bring me my machine, [...] not gun or machine gun, just a machine" (Madlala 2006b).<sup>68</sup> *Awuleth' umshini wami* therefore becomes a song that holds much transitive meaning. What is literally machine can also denote machine gun and symbolize the phallus. What once was a song protesting apartheid now protests the maltreatment of Zuma; a song of the struggle is now song of Zuma. Transitivity, however, is not necessarily arbitrary. Perhaps, in the mind of his supporters, Zuma provides a corollary to the struggle and represents a form of its continuation. Zuma, with his alliance of COSATU, SACP, and ANCYL, might fulfill the promises that Mbeki had left unfulfilled.

His supporters also made signs and wore t-shirts dedicated to Zuma. They sold them with the profits going to his legal defense fund (Mail and Guardian: 2006a). One

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<sup>66</sup> Journalists have called "Awuleth' umshini wami" "the revolutionary song that has become synonymous with his tribulations", "the rousing song that has become the Zuma camp's anthem", "his trademark song", and "signature tune." (See respectively Madlala 2006b, BBC 2006, News24 2006, and Majova 2006.)

<sup>67</sup> The song is also reported to have few lyrics beyond its title phrase (Madlala 2006a).

<sup>68</sup> This is correct; a Zulu-English dictionary reports the translation as "machine, engine" (isiZulu.net 2007).

common t-shirt design read “100% Zuluboy” (a popular nickname for Zuma) and another had the image of former Mozambican (and Marxist) President Samora Machel (Wines 2006: A3) (Fane-Hervery 2006).<sup>69</sup> The image of Machel, a Marxist whose demise likely came at the hands of South Africa’s apartheid government, imprinted on t-shirts of Zuma supporters is a significant one. It illustrates the parallel associations of Zuma and a politician who likely suffered at the hands of a conspiracy against him and parallel political expectations of Zuma and the former president of Mozambique who made socialist reforms during his tenure in office. Likewise, “100% Zuluboy” represents support for Zuma’s cultural and political commitment to the Zulu people. Both t-shirts have little to do with the rape event itself – they invoke broader but nonetheless peripheral issues. Though anecdotal, they further illustrate that at stake was not just a rape trial but also an event that interacted with and became part of the larger fields of culture and politics.

### **Writing the Crowd**

Media attention given to the protests reflected negatively on Zuma, highlighting the crowd’s most ignorant and offensive behavior.<sup>70</sup> Journalists widely publicized that his supporters burned women’s underwear and images of the victim. What is problematic about this coverage is that though there were members of the daily crowds who acted in

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<sup>69</sup> Samora Machel was President of Mozambique from 1975 until he died in a mysterious plane crash in 1984 (Baker 1986: 515). Machel was an ardent Marxist, and he allowed liberation fighters fighting South Africa’s apartheid regime and those fighting the white minority rule in Rhodesia (which would become Zimbabwe) to conduct training exercises in Mozambique. South Africa and white leaders from Rhodesia set up and funded Renamo, a rebel movement dedicated to overthrowing Machel’s party, Frelimo. Since his plane crashed over South African territory, there has been yet unproven suspicion and allegations of South African involvement (Baker 1986: 517).

<sup>70</sup> See BBC News 2006, Dixon 2006a, Enwemeka 2006a, Wines 2006, and Financial Mail 2006.

that way – reporting made it seem as though the entirety of the crowd shared in such violent sentiments and behavior.

Obviously, this media portrayal characterized the Zuma supporters in a particular way that reflected back onto South Africans, and for those already critical of the man, it did not reflect back well. Many of my informants who disliked Zuma mentioned these rallies and expressed their distaste, specifically the song *Awuleth' umshini wami* that he and his supporters would sing. They said that it showed a commitment to violence and militancy. Why was there such fear of the Zuma protests? The crowd had united around a new populist leader. The protests were highly representative – they recalled the militancy of the 1980s, but no longer in the context of apartheid. It was in the context of Zuma the politician, and the protests were about politics of dissatisfaction with the current Mbeki order, not the charge of rape.

Whether or not Zuma had so intentionally constructed his testimony as that of a “traditional Zulu male”, whether or not he was trying to make an explicitly political or cultural statement with his testimony in the court, the media would report that he had. Indeed, the rallies that Zuma held outside the court showed that if nothing else, the streets of downtown Johannesburg were a political stage where he resonated. Johannesburg, the city in Africa that became an African city only when white business fled, played excellent host to South Africa’s only political hope for communist change. As these protests illustrate, the fields of representation and meaning that the trial touched and influenced extended well beyond the issue of rape.

## What is the Conspiracy?

Among those that stood with Zuma, the rape trial was not a legitimate event. Instead, it was one that represented a larger conspiracy against Zuma so as to ensure he did not become South Africa's next president, one which his supporters saw coming from within the inner structure of the ANC itself. The official voice of Zuma supporters is the Friends of Jacob Zuma (FoJZ), an organization dedicated to promoting Zuma and raising money for his legal defense. It is the of FoJZ position, shared by substantial portions of the leadership within COSATU, ANCYL and SACP, that anti-Zuma ANC operatives and politicians have allied with other elements committed to leaving South Africa's capitalist structures in place. The rape charge and the corruption charges were thereby both part of the same continuum. Since one path to preventing Zuma's ascension to the presidency involved using the South African legal system, the investigatory and prosecutory aspects of the legal system itself became instruments against Zuma, not for the general public good. Zizi Kodwa, the spokesperson for ANCYL and a vocal Zuma supporter, expressed such dissatisfaction in *The Mail and Guardian* after Zuma was found not guilty<sup>71 72</sup>:

*We are disturbed and disappointed at the National Prosecuting Authority's (NPA) reported expression of disappointment with the verdict, because the NPA has unmasked itself as an agent of factionalism instead of respect for the rule of law. Did the NPA seek a guilty verdict against all odds as opposed to seeking justice? Then we must be afraid, very afraid, of those who wield state power. (Kodwa 2006)*

The hypothesis of conspiracy runs deeply through the structures of government and party. Since elements of the ANC are involved in the conspiracy against Zuma, it meant that portions of the political organization are corrupt and contaminated; they have knowingly betrayed Zuma. For FoJZ and their supporters, the rape trial diagnoses the malaise of the

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<sup>71</sup> *The Mail and Guardian* is a Johannesburg-based weekly newspaper.

<sup>72</sup> Kodwa's commentary published in an extended form on the FoJZ website.

ANC and of South Africa. It demonstrates the commitment, stemming from within the ANC itself, to abusing South Africa's legal system in their ends and thereby preventing a leftist politician from becoming the country's president.<sup>73</sup> It further demonstrated South Africa's inability to make fundamental economic and social changes, to fulfill the people's promises of the Struggle.

### **Who are the Friends of Jacob Zuma?**

FoJZ is the organization that has acted to solidify and publicize the 'official' theory of a conspiracy against Jacob Zuma. It acts as a trust to assist in payment for Zuma's legal bills and also to provide public support for him through campaigns and news releases. Its three board members are Don Mkhwanazi, a businessman from KwaZulu-Natal who runs his own investment company (Naidoo 2005); Fikile Slovo Majola, a leading member of the SACP who is general secretary of NEHAWU, the health workers' union (Robinson 2007b); and Sizwe Shezi, the chairman of the South African Youth Council (Robinson 2007a). A key component of this support is their well-maintained website.<sup>74</sup> It features biographical information on Zuma, legal documents on the rape and corruption trials, a message board with over 6,000 posts since August 2005, and over 250 "news" articles that represent FoJZ opinions. The site encourages Zuma supporters to donate money to his legal fund and lists FoJZ trust bank information. The

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<sup>73</sup> Zuma has never explicitly committed himself to socialist or communist views – he has been incredibly reluctant to set forth a political platform. His association, however, with leftist groups in the ANC has meant that he is most often perceived as espousing these views.

<sup>74</sup> The website appears to be quite popular. It claims that in the year since its founding (between August 2005 and August 2006) it received 3.6 million hits, including over 700,000 during the rape trial (FoJZ 2006b).

organization itself has received a great deal of press attention from the South African press and even in the BBC News (Robinson 2006a) (BBC 2005).

### **The Conspiracy in the Trial**

The idea of conspiracy made only intermittent appearances during the rape trial, and it was not central to Zuma's defense against the allegations.<sup>75</sup> Kemp asked Khwezi why she had contacted Minister of Intelligence Kasrils before reporting her rape to the police. Conspiracy also appeared in a brief interaction between Kemp and Zuma early on the first day of his testimony, and the prosecution did not cross-examine Zuma on the issue. Kemp posited the existence of pro and anti Zuma camps, and Zuma demurely responded that he had "read about it in the media" (*S v. J. Zuma* [Tr.], SS321/05 [2006] at 883). Kemp questioned whether there were people with "political agendas" against Zuma, and Zuma said that yes, he was aware of such people. Kemp then asked if perhaps Zuma could give an example. Zuma identified Bulelani Ngcuka, the former director of the NPA (*S v. J. Zuma* [Tr.] at 883). Zuma said that Ngcuka "summoned some of the editors of newspaper[s] to a secret meeting where he asked those editors to support him in this attempt of fighting against me. He even said that he would not take me to the court but he would give me to the world" (*S v. J. Zuma* [Tr.] at 883). This happened while Ngcuka was investigating corruption allegations against Zuma, but before such charges were already made.<sup>76</sup>

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<sup>75</sup> Press reports indicate that the notion of conspiracy is integral in the Zuma legal team's defense against the corruption charges (see Brown and Mde 2006 and Le Roux 2006). A detailed analysis of how exactly the legal team has addressed the conspiracy allegations in regards to Zuma's corruption charges is, however, outside of the scope of this thesis.

<sup>76</sup> This incident is a watershed in the conspiracy theory against Zuma; it represents the beginning of joint NPA and media endeavors to slander Zuma's reputation. While I found information that restated this allegation coming from Zuma attorneys in the proceedings leading to the corruption trial (see Brown and

In his closing argument, Kemp did propose that a conspiracy against Zuma could explain Khwezi's false accusation (Evans and Musgrave 2006: 3). That said, never was such a possibility a crux of Kemp's defense against Zuma – rather, the crux was an attack on Khwezi herself, not on larger forces behind her accusation.<sup>77</sup> Judge van der Merwe's judgment (including both summary of the trial and an explanation of his verdict) makes no mention of conspiracy as either evidence that the defense led or as critical evidence he used toward his verdict (*S v. J. Zuma* [Op.]). That said, FoJZ makes frequent reference to the conspiracy in its official commentary and description of the trial rape found on the organization's website<sup>78</sup>, and on the website's message boards, conspiracy too dominated discourse.<sup>79</sup> Almost all of my informants who supported Jacob Zuma, moreover, cited the conspiracy as a reason for the rape charges arising. Little of the legal discourse on Zuma's defense concerned conspiracy, but amongst his supporters, it lay at the center of the public discourse and gave explanation for his innocence.

### **Entering Cosatu House**

I had an opportunity to interview one of the individuals most tied to the publicity associated with the rape trial. Prior to my arrival in South Africa, I had emailed FoJZ's webmaster and asked for relevant contacts who I could meet with about the Zuma rape

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Mde 2006 and Le Roux 2006) or restatements from FoJZ (see Nyanda 2006, published on FoJZ website and in *The Sunday Times*), I could find nothing that directly addressed its veracity. It is, however, understood as fact amongst many Jacob Zuma supporters.

<sup>77</sup> The defense's Section 174 application, where they tried to have the rape trial dismissed after the prosecution closed their case, makes no reference to the allegation of conspiracy. The basis of such an application is that the state has not provided sufficient evidence to reasonably convict the defendant. The thrust of the Zuma defense's application rests on the Khwezi's lack of credibility – inconsistencies in her testimony and her behavior before, during, and after the rape – as indication that she did in fact consent to sexual intercourse. Additionally, the defense's heads of argument makes no mention of a conspiracy against Zuma (*S v. J. Zuma* SS321/05).

<sup>78</sup> See Qwelane 2006a, Qwelane 2006b, Qwelane 2006c, Nyanda 2006, YCLSA 2006a, and FoJZ 2006c for accounts that emphasize or reference conspiracy as a reason for Khwezi's rape accusation.

<sup>79</sup> See FoJZ Messages of Support.

trial.<sup>80</sup> One of the people he suggested to me was Kaizer Mohau, the spokesperson for FoJZ for the Gauteng Province. I met Mohau at his office on January 8<sup>th</sup>, 2007. Mohau's primary work responsibilities are as the media liaison for SACP, and he works in Cosatu House, a building that holds the headquarters of COSATU and the SACP. Cosatu House is located in Braamfontein, a section of downtown Johannesburg that contains office buildings, the facilities of the University of the Witwatersrand, and the Constitutional Court of South Africa. It is located about 0.5 kilometers north-west of the Johannesburg High Court and an even shorter distance north of the ANC headquarters.

On the outside, Cosatu house is a boxy mid-rise building, built in a minimalist style that lends itself to the 1960s or 1970s. The city of Johannesburg has targeted Braamfontein in its recent attempts to revitalize the downtown area, but at the intersection of Loveday and Leyds Street where Cosatu House stood, their intervention appeared to have done little or not yet reached it. Very few cars were parked on the street; the sidewalks were dark colored and dirty; nearby buildings appeared to be boarded up and abandoned; and with the exception of a small crowd immediately outside Cosatu House's entrance, the streets were almost empty of people.

When I arrived at Cosatu house, Mohau met me outside the building where he directed me to park in a group of designated parking spots on Leyds Street. Mohau led me inside Cosatu house to the reception where I needed to give my name and reason for coming. I passed through a revolving metal gate that guarded the rest of the building from the outside, and I went with Mohau to the third floor of the building that housed the offices of the SACP. Mohau looked like he was in his mid to late twenties, and he wore a

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<sup>80</sup> Of the dozen or so organizations and people who I attempted to contact, the webmaster from the FoJZ website was undoubtedly the most helpful, rapid, and polite in his responses.

green Brazilian soccer shirt. I talked to him about the Zuma rape trial and related issues for about an hour in a large conference room. I introduced myself to him, and I explained that I was interested in understanding the Zuma trial, both in terms of how the trial actually happened and how it was perceived in South Africa. I asked him first about how it was that he came to be involved with the FoJZ. Mohau explained that as a member of both the ANC and the SACP “there was a call made to rally behind the deputy president of the ANC in these trying times, sad days”, a call that resulted in the formation of FoJZ. “Sad days” refers to Mbeki’s dismissal of Zuma in June 2005.

I then asked Mohau to explain the conspiracy against Jacob Zuma and its relation to the rape trial. “Everything seems to point to a conspiracy rather than an actual crime committed.” First, during the media sought “to create a bad impression about him as a person and a leader, that he should not contest for the presidency of the ANC or this country.” Second, “there was nothing to the rape itself”; Judge van der Merwe found that Zuma was not guilty and called Khwezi “a liar.” Third, “if you look how the case was reported to the police, it is really problematic. You do not report a rape case or any crime to the Minister of Intelligence. You do not do that unless of course it is the conspiratorial protocol that once you did the mission you report to the minister.” Finally, Mohau had deep reservations in the police investigation of the matter. The police, he said, did not follow proper protocol or make inquiries at all into Zuma’s side of the story. The conspirators, he concluded, had employed a false allegation of rape so as to discredit Zuma as a person who “does not have morals.”

Mohau was careful to note, when he finished enumerating the key components of the rape conspiracy, that it was “impossible for one to talk about the rape trial without

linking it to earlier events which were unfolding”, identifying previous incidents where South African prosecuting authorities had also sought to slander Zuma. First, the NPA director Ngcuka implicated Zuma in the Shaik’s corruption case before Shaik even went to trial and well before charges were brought against Zuma. Ngcuka publicly announced that though he had *prima facie* evidence of Zuma’s guilt, he would not charge Zuma along with Shaik because the case against Zuma was “unwinnable.”<sup>81</sup> Then, Mohau said, the NPA staged a private briefing with South African newspaper editors to enlist their support in his campaign against Zuma.<sup>82</sup> Mohau said that these two events illustrated earlier efforts from both the NPA and journalists to systemically discredit and incriminate Zuma without any trial. Zuma supporters viewed the rape charges in the context of past attempts to improperly disgrace him. The rape trial was therefore not understood as a rape trial but as a new episode in the story of conspiracy.

What struck me most from my meeting with Mohau was his fervor and sincerity. Mohau was deeply committed to working toward a Zuma presidency, and he fully believed that Zuma was victim to a conspiracy against him. Mohau was wholly outraged by the conspiracy against him. “The uniqueness of the South African revolution” Mohau said, “is the alliance of nationalist, communist, and workers. For a long time after the death of Oliver Tambo<sup>83</sup>, there was a need for a unifier in the ANC who would be able to unify the entire alliance. Jacob Zuma does that.”

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<sup>81</sup> *Prima facie* evidence is evidence sufficient to prove a particular cause.

<sup>82</sup> Zuma testifies to this same meeting during his testimony.

<sup>83</sup> Oliver Tambo was a former president of the ANC during the apartheid era.

## The Media of the Friends of Jacob Zuma

Over 250 news articles and opinion pieces appear on the FoJZ website, and Mohau has authored a number of these. News articles include press statements from Zuma and supporting organizations like ANCYL and COSATU; responses from FoJZ to what they view as incorrect or biased journalism; commentary on the proceedings of the rape trial and other legal proceedings that concern Zuma; and articles published in a range of South Africa publications.<sup>84</sup> FoJZ, despite the claim of media bias against Zuma and the inability of the South African press to represent their position, have several columnists from major South African papers who they frequently publish on their website, and FoJZ members have also made contributions to several such papers.<sup>85</sup> FoJZ also published summaries of the day-to-day proceedings of the Zuma trial on their website, and not surprisingly, these summaries are heavily biased toward Zuma and against the complainant.<sup>86</sup>

Mohau had stressed during our meeting that “the media found [Zuma] guilty of rape in the court of public opinion” – emphasizing *why* (because the media were part of the conspiracy against Zuma) but not *how* journalists had made him complicit in the act of rape. How was it that the media misrepresented Zuma? The answer is unclear. FoJZ’s criticism of the South African media’s reporting of the rape trial is overwhelmingly ideological, and its assertions of media bias have little empirical or theoretical grounding.

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<sup>84</sup> See FoJZ 2005, Nzimande 2005, Kodwa 2006, YCLSA 2006b and FoJZ 2006a for a range of examples of FoJZ commentary and articles.

<sup>85</sup> See Qwelane 2006a and Qwelane 2006c, both originally published in *The Sunday Sun* but available on FoJZ. Qwelane is a weekly columnist with *The Sun*. Also see Kodwa 2006, published in *The Mail and Guardian*, a scathing criticism of the South African press’s coverage of Jacob Zuma.

<sup>86</sup> See FoJZ 2006a and FoJZ 2006c.

Zizi Kodwa authored a vicious attack on the media in the aftermath of the rape where he implied that the conspiracy against Zuma seriously tainted his media coverage.<sup>87</sup> Kodwa asserts that journalists never afforded Zuma the opportunity to defend himself in the media – but even he does not concretely identify what aspects of Zuma’s defense journalists did not include in their coverage. Kodwa alternates such strong assertions with little explication. He scorns journalism’s false presumption of objectivity, comparing “the mass media” to a “brood of fangless vipers”, but then fails to deviate from such irate rhetoric (Kodwa 2006). Kodwa’s critique resembles other articles published on FoJZ’s website and much of my conversation with Mohau; they all lack specific analysis of the faulty and biased reporting from the rape trial.<sup>88</sup>

FoJZ extends such harsh words not just to the coverage of the rape trial, but to all coverage of Zuma. The organization is convinced of the media’s complicity. The media is intent on manipulating public opinion to destroy Zuma’s political career because they hold a vested interest in seeing that he not become the next president of South Africa. Journalists do not act as individuals, but as pernicious representatives of profit-making media corporations. An article titled “Conceptualizing the Media Institution” invokes its readers to understand the media’s “scathing venomous attack on Jacob Zuma” with the following analysis (Khubone 2006):

*If profit maximization is the guiding principle in the existence of the organization, journalists must gather news that attest to that reality. Owners of media organizations belong to a certain class, namely, the ruling class. They will stop at nothing in manufacturing and propagating public perceptions whose proliferation will protect the class interests. After all, no one can afford not to control such a powerful institution of public influence in a quest to dominate and control the society.* (Khubone 2006)<sup>89</sup>

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<sup>87</sup> Kodwa is the spokesperson for ANCYL and an avid collaborator with FoJZ. This is the same article as was earlier quoted by Kodwa. Recall it was published in both in *The Mail and Guardian* and on FoJZ’s website.

<sup>88</sup> See Nyanda 2006, Qwelane 2006a, Qwelane 2006b, Qwelane 2006c, and YCLSA 2006a.

<sup>89</sup> This article was published only on FoJZ website.

A sort of Marxist ideology guides this criticism. Media bias against Zuma derives not from individual journalists or paper, but from a system that is fundamentally biased against Zuma. A Zuma supporter, a Zulu man in his thirties who I met along the beach in Durban, made a similar remark: “Because the media is actually owned by these big capitalist guys who happen to be white and they have the support of the big business guys from all over the world, big companies from overseas, they are involved.”

### **Media Bias?**

FoJZ are not wrong to say that the South African media convicted Zuma of rape outside of the courtroom. There is justification for criticism of the press, but FoJZ’s denigration of the reporting on the Zuma rape trial is overly abstract and misguided. Substantive criticism should be made of the large discrepancies between what went on during the trial and what the South African and international media covered. To start, Zuma’s testimony received more coverage than that of Khwezi’s or any other witness, but it was not his testimony as a whole – rather it was particular aspects of his testimony. Journalists focused not on his overall defense, the arguments presented by Zuma and his lawyers that he had not raped Khwezi, but on controversial statements that came up during this defense. Many journalists reported that Zuma used culture as a defense for his actions, implying that Zuma’s entire understanding of the sexual encounter as consensual was because of his Zulu notions of patriarchy and female entitlement, and that had Khwezi resisted in any way, Zuma would have disregarded this behavior and so forced the sexual encounter. There was a heavy cultural content to Zuma’s testimony, but never was it explicitly used as his primary defense for the sexual encounter.

During his testimony and throughout the trial, Zuma and his defense advocates maintained that sex was consensual. His story of the sexual encounter makes that quite clear: Khwezi came with Zuma to his room, he changed into his pajamas in front of her, she lay on his bed as he massaged oil on her back and front, Zuma removed his clothing, they established that neither party had a condom, and he had sex with her. When the prosecution questioned further how he knew that Khwezi wanted to have sex with him – what other indicators he had that sex was consensual – he called on her behavior, specifically noting her style of dress when she came to stay at her house, what she changed into in his guest bedroom, how she sat, the sexual content of and the content of text messages she sent to him. This is what was represented as the “cultural” aspect of his defense.

What gained more press attention and caused more public outrage was not Zuma’s account of the sexual encounter itself, but rather the more peripheral issues like the ‘indicators’ of Khwezi’s sexual interest in Zuma; the fact that he had not used a condom with a woman he had known to be HIV-positive; and the protests outside the courtroom that terrified many South Africans. Journalists constructed these issues as diagnostic of the larger situation in South Africa and also as the meaningful issues of the trial. This is an interpretation – not an objective fact – and doing so, journalists negated and distorted coverage of Zuma’s defense, the validity of the not guilty verdict, and the cross-examination and evidence against Khwezi.

## Chapter 4

### Reaction, Representation, and the Diagnostic Event

*The man charged with rape testified that he had known his HIV-positive accuser wanted sex that night because she had worn a knee-length skirt to his home and crossed her legs suggestively.*

*He hadn't bothered to wear a condom because he didn't have one handy and considered the odds of catching the virus from her very low. And besides, he said, afterward he showered to "minimize the risk of contracting the disease."*

*In a country that has battled to cut violence against women – South Africa has the world's highest rate of rapes – the trial will probably set back efforts to prosecute rape by "about a hundred years," said Charlene Smith, an [anti-rape] activist.*

*"I'm convinced we'll see a drop in reported rapes next year," she said. "Women won't lay charges. They'll say, 'Look at what happened to her'<sup>90</sup>!" [..]*

*In some respects, the Zuma trial, which began last month, has been a primer on HIV transmission in a nation whose political leadership has long been reluctant to focus on the country's AIDS crisis. [...] But HIV activists say Zuma's testimony – particularly his lack of worry about risky, unprotected sex – has undermined any positive AIDS messages [...].*

*Zuma, for instance said on the stand that he knew the risk of having sex with an HIV positive partner was minimal because he headed the National AIDS Council, which he described as being at the forefront of the fight against HIV. [...]*

*Zuma's testimony, particularly that he didn't use a condom during sex with someone he knew carried the AIDS virus, "shows contempt for messages on HIV prevention" Heywood<sup>91</sup> said. "If the head of the AIDS Council hasn't heard one of the most uncontroversial messages of HIV prevention, then heaven help us."*

*And if such a popular national figure isn't worried about contracting AIDS, he said, other South Africans won't be either.*

*-Laura Goering in *The Chicago Tribune*, April 6<sup>th</sup> 2006*

Laura Goering was assigned to write a news article, not an editorial or journalistic commentary, on the Jacob Zuma rape trial. Though her language is technically neutral and accurate, what she writes is journalism that deeply misrepresents Zuma. Goering explains the trial in stark and abridged terms. Her first two paragraphs summarize the

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<sup>90</sup> In reference to what *The Chicago Tribune* describes as the victimization and maltreatment of Khwezi.

<sup>91</sup> Mark Heywood, head of the AIDS Law Project (Goering 2006a: 16).

lengthy testimony of the unknown man in three sentences. Only thereafter does Goering explain that the accused is South Africa's former deputy president.

Contrary to Goering's suggestion, Zuma did not cite Khwezi's matter of dress as the primary reason why he knew that sex was consensual; he enumerates this and other behavior to explain what led him to think that Khwezi was sexually interested in him in the first place. Goering reads Zuma's statements and behavior not through Zuma's eyes, but through the eyes of biased parties interpreting his behavior. Smith, the anti-rape activist, and Heywood, the AIDS activist, accuse Zuma of setting back women's rights and HIV/AIDS prevention, respectively. Smith says that Zuma alone has pushed back progress with rape accusation by 100 years, and she asserts that fewer women in South Africa will come forward in the future. Heywood makes a similar empirical assertion, arguing that Zuma's flippancy on the issue of contracting AIDS will cause greater numbers of HIV infections. Consider even the article's title: "Activists Fear Rape Trial Sends Deadly Message: Testimony of South African Politician is Called Setback to Education Efforts against AIDS and to Campaign to Reduce Violence against Women" – it focuses not on Zuma, the man being tried for rape, but on activists. Zuma's behavior does not belong to him alone but it is determinative of that of an entire nation.

Goering's article is not a fluke – it characterizes journalism on the rape trial. Both the international and South African media, as well as many South African organizations and individuals, approached the Jacob Zuma rape trial as a diagnostic event: It brought out particular ills within South Africa's politics – HIV/AIDS policies, and treatment of women (in turn, rape laws). In that way, coverage of the Zuma rape trial was less about the rape trial itself than it was a larger societal exposé into the problems of modern South

Africa. The press would contend that not only did Zuma's actions and words so represent these crises, but also they would substantially worsen them.

Whether or not this was a true depiction was another issue altogether.

Organizations and individuals who stood against Zuma were prominent in press coverage of the trial; conversely, less press was accorded to Zuma supporters and their positions. Newspapers published extensive criticism of Judge van der Merwe's section 227 ruling, emphasizing Khwezi's victimization, but excluded speculation on why van der Merwe had ruled in favor of the defense. Journalism therefore failed to provide a balanced account of Zuma's defense, why the judge ruled that the sex was consensual, and then significantly distorted Zuma's own testimony. Doing so, the press made Zuma the embodiment of stereotypical aggressive masculinity, victim-blaming, and ignorance. They reported little legal debate that actually took place in the courtroom of Judge van der Merwe, but extrapolated larger issues affecting South Africa.

### **Representing Jacob Zuma in the Media: What Media?**

Obviously within South Africa coverage of the trial was enormous, but outside South Africa, the trial also received substantial press attention. In the United States, major papers including *The New York Times*, *The Los Angeles Times*, *The Chicago Tribune*, and *The Washington Post* each published two or three articles on the trial – leading up to it, during the proceedings, and after the judge reached a verdict. *USA Today*, the largest circulating paper in the U.S., published an editorial on the verdict and also had a syndicated Associated Press news article in the world affairs section of its website. U.S. papers are not known for substantial foreign coverage – a recent study

showed that “only 2% of total newspaper coverage focused on international news” (Shaw 2001). That said, the Jacob Zuma rape trial was one of the few international stories to get widespread US coverage. The trial generally received greater coverage in England. BBC News, in particular, featured a number of articles on its website.

South African newspapers were understandably prolific in their coverage of the trial. They published dozens of articles and editorials that reached much of the population: 40% of South Africans are estimated to read a newspaper at least once a week (Milne 2006: 42). South African newspapers are a big and growing business, and their circulation has increased almost 40% in the past five years (Milne 2006: 39).<sup>92</sup> These newspapers are generally not independently owned or operated; most city dailies are owned by large media corporations.<sup>93</sup> This consolidated ownership of the print media corresponds with the notion of a conspiracy against Zuma: South African print newspapers form a part of the capitalistic scheme itself.

### **The Admission of Khwezi’s Sexual History**

Judge van der Merwe, when he granted the section 227 application allowing evidence about Khwezi’s past sexual history, explained that he would withhold his reasons for doing so until the trial ended and would reserve the right to rule the evidence, after the fact, inadmissible. Most women’s advocates and organizations had an existing organizational stance against the admission of a complainant’s past sexual history in rape

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<sup>92</sup> South Africa has 28 daily newspapers and with total circulation amongst them of 1.57 Million, and there are 7 national weekly newspapers (Milne: 2006: 39). Of these, most are published in English with the exception of a handful of Afrikaans papers and one Zulu-language paper (IMCSA 2007). Growth of South African newspapers is in defiance of worldwide trends of a slowing print media industry (Milne 2006: 39). The five papers with the largest revenues together gross about \$125 million (Milne 2006: 44).

<sup>93</sup> There are four companies, all publicly traded, that own most of the nation’s newspapers (Milne 2006: 42).

proceedings. Understandably, they criticized and protested van der Merwe's decision heavily, and their opinions were well publicized in the press.<sup>94</sup> They depicted the admission of Khwezi's sexual history as typical of the re-victimization that rape victims suffer in court, but did not consider the specifics of the Zuma case. For example, *The Mercury*, a Durban daily, quoted a women's activist and spokesperson for an NGO who said Khwezi's cross-examination and experience in court was hardly unique. In South Africa, she observed "rape survivors get battered by the defence" (Smillie 2006b). The admission of such evidence, by implication, was to vilify Khwezi.

Women's groups heavily influenced press opinion. In the days following Khwezi's cross-examination, an editorial published in *The Financial Mail* heavily criticized van der Merwe's approval of the defense's Section 227 application, averring that Khwezi's past sexual history should be completely irrelevant to the trial proceedings (Financial Mail 2006: 14). The paper asked:

*Why has the judge allowed evidence to be led, and to be widely and salaciously reported under the umbrella of shedding light on the accuser's sexual history when it pertains to incidents of alleged abuse in her childhood? Why has he allowed the general dissemination of events and lurid details that, even to a lay person, can have no bearing on the veracity of the women's claim that she was raped by Zuma?* (Financial Mail 2006: 14)

The problem with their opinion is that it is simply incorrect. Though van der Merwe may not have so explicitly enumerated his reasoning, it was reasonably clear from Kemp's line of questioning that he wanted to prove Khwezi had a very specific and pertinent history of lying. He was not trying to make her tell "salacious" stories about her sexual past. The editorial carries the title, "An Accuser Guilty of Being a Woman", and it leaves no space for disagreement – clearly articulating the paper's position in sympathy to

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<sup>94</sup> See Zeninor 2006b, Green 2006, and Terreblanche 2006a.

Khwezi (Financial Mail 2006: 14). *The Financial Mail* is a Johannesburg-based business newspaper, and though the paper's general focus is on what the paper's title so suggests – financial and business related news – the Zuma trial was of such importance that the paper takes an official position; it identifies Judge van der Merwe's approval of the section 227 application as an example of damaging and outdated judicial incompetence.

Fikile-Ntsikelelo Moya, a columnist at *The Mail and Guardian*, authored a commentary on the same issue shortly after *The Financial Mail* editorial. Addressing journalists and other such critics of van der Merwe, Moya posited that “some of my colleagues have [...] allow[ed] for ideological considerations to colour the court process” (Moya 2006b). He criticizes the press for attacking Judge van der Merwe's ruling on the defense section 227 application:

*They conveniently ignore that Khwezi's sexual history was not raised as a matter of course but that the judge heard arguments from both counsels before deciding he would allow her past to be part of the record.*

*Since the judge said he would not publicly make known the reasons for his judgment until after the trial, it is speculative at best and contemptuous at worst to suggest he was off his rocker for doing so. (Moya 2006b)*

Moya's article is a rarity because it considers the possibility that Judge van der Merwe had reason to approve the section 227 application – that he was not acting on latent misogyny. The South African and international press, however, judged the admissibility of Khwezi's sexual history with no knowledge of the evidence that the defense led *in camera* and gave little consideration to opinions like that of Moya. This is not to criticize the reporting of the feminist position in the Zuma case as incorrect, but to

say it was not counterbalanced with alternate positions of why van der Merwe had allowed the defense to bring evidence of Khwezi's past sexual history into court.<sup>95</sup>

Press coverage of the trial suffers from a large absence of coherent explanation of the crux of the Zuma defense – that there was reason to doubt the rape accusation against Zuma because she had a history of lying about being raped. The South African press obviously covered Khwezi's cross-examination and the testimony of the witnesses against her, but these were generally short, factual articles summarizing the day-to-day proceedings with little analysis or sense of the wider intentions of the Zuma defense team.<sup>96</sup> When van der Merwe finally explained the admission in his judgment, it was drowned out by news of Zuma's not guilty verdict and made little impact.

### **Of Zulu Culture**

The press first mischaracterized the reasons for admitting Khwezi's past sexual history, ignoring and distorting evidence that was central to Zuma's defense against the rape accusation. Then, several individual statements that Zuma made during his testimony gained enormous press attention, and they took on meaning outside their context in court. Journalists reported that Zuma had testified to Zulu culture as his defense against rape.<sup>97</sup> This completely misrepresents Zuma's testimony. Undoubtedly, Zuma did fall back on Zulu culture to explain certain actions, and de Beer herself used her understanding of Zulu culture to construct a more plausible scenario of rape. That

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<sup>95</sup> See Moya 2006b for an excellent summary of the witnesses who the defense called to testify about Khwezi's past sexual history and false accusations of rape.

<sup>96</sup> See Maughan and Gifford 2006a, Musgrave 2006 most syndicated stories from SAPA – including SAPA 2006c for examples of day-to-day summary. The international press, by contrast, offered even less explanation of Khwezi's cross-examination and the evidence led against her.

<sup>97</sup> See Breytenbech 2006, Moya 2006c, Wines 2006, and Terreblanche 2006a.

said, Zulu culture did not form the main basis of Zuma's explanation or understanding of consensual sexual intercourse with Khwezi.

Zuma said during his testimony that he did not use a condom during sexual intercourse because neither he nor Khwezi had one. He explained Khwezi encouraged him to go forward without a condom, and he could not leave a woman "in that stage" because in Zulu culture she might accuse him of rape for not having sex with her (*S v. J. Zuma* [Tr.], SS321/05 [2006] at 1007). Zuma used Zulu culture not to say that he was obliged to have sex with Khwezi or that Khwezi had consented to sex, but as a reason why he had sex with her without a condom. In the press, however, it became the former. Consider this selection from an article on Inkandla, the village where Zuma was born, appearing in *The Mail and Guardian* during early April 2006. They quote from an interview with a Zulu man residing in this village:

*[Biyela] does not buy Zuma's claims that not having sex with his accuser after giving her a massage was tantamount to denying his Zulu culture.*

*"I don't think that's Zulu culture, I think that is more Zuma culture," [he said]. (Tolsi 2006)*

Zuma did not make the claim as asserted in the article. The idea of Zuma's male entitlement, that he sexually desired Khwezi and would therefore take her behavior as his right to force the unwanted sexual encounter, underlay media coverage of Zuma's testimony.

Zuma also testified to how Khwezi's behavior had changed in the months before the rape, becoming more sexually suggestive, and how she had behaved arriving at his home in the hours before the alleged rape. As the entirety of Zuma's story made clear, these "signs" are what led him to believe that Khwezi was sexually interested in him. According to Zuma, Khwezi appeared to be making sexual advances toward him; he

responded to her advances with his own which she was receptive to; she came to his bedroom where she took part in loosening her *kanga*; finally, she was the one who persuaded him to have sex with her despite his reservations about not having a condom.

The press, when reporting Zuma's testimony, emphasized how it was that Zuma said he knew that she was sexually interested in him. Most publicized were three items from Zuma's testimony on Khwezi's manner of dressing/appearance on the night of November 2<sup>nd</sup>, 2006: the fact that she wore a knee-length skirt, crossed her legs, and changed into a *kanga* later in the evening all represented sexually provocative behavior and "signs" of her sexual interest in him.<sup>98</sup>

But Zuma never said that her manner of appearance entitled, justified, or dictated – through Zulu culture or whatever else – that he must have sex with her. What he did say is that her dress and crossed legs, in addition to a number of other factors the press did not so well publicize, led him to think that she might want to have sex with him. The press did not report stories with this nuance. *The Cape Times* published "Zuma Case 'Highlights Misogynistic Culture'" in the days before van der Merwe came to a verdict.<sup>99</sup> The paper quotes South African women's activist and researcher Nomboniso Gasa chiding Zuma:

*"Zuma has managed to feed into the worst stereotype of African masculinity by what he said in court. [...] I find myself in a position of having to tell people I am not that kind of African. Bloody hell, Zuma put me in this situation. We are face to face with a man who picks and chooses from his culture with a cavalier attitude." [...]*

*Gasa said Zulu culture was one of great respect for life and women's bodies. By claiming that the accuser was asking for sex by wearing a skirt, Zuma showed "a chauvinistic interpretation of Africanness." (Breytenbach 2006)*

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<sup>98</sup> Recall that Zuma testified Khwezi had never visited him wearing a skirt. It appeared to him – coming from Khwezi who only wore pants – as sexually suggestive behavior.

<sup>99</sup> *The Cape Times* is a Cape Town-based daily.

This article comes a few weeks after Zuma’s testimony, and it shows the focus changing from pasted together excerpts of Zuma’s testimony to a distorted picture of not only his testimony, but the man himself. Zuma is a bad African, a Zulu who clings to dated cultural understandings of male superiority and entitlement. An editorial published in *USA Today* after the verdict shares the same misinformation. It angrily accused Zuma of committing a serious “outrage” against women for testifying that: “He had felt obliged to have sex with his accuser for ‘cultural’ reasons: She was at his house in a skirt that, he said, indicated she wanted sex — and Zulu tradition dictated that he oblige” (USA Today 2006: 17A). Nowhere in Zuma’s testimony did he directly connect Khwezi’s style of dress with a cultural obligation to have sex with her, but *The Cape Times* and *USA Today* exemplify a press all too willing to believe it.

Zuma’s never used the words “oblige” or “obligation” in his testimony.<sup>100</sup> What begins to emerge is a set of analogous language and discourse shared amongst the English-speaking press media. Perhaps the attachment of this vocabulary to Zuma begins with an article appearing on the front page of *The Star* on April 4<sup>th</sup>, 2006.<sup>101</sup> The headline reads “Zuma: I Had to Oblige”, and the article reports Zuma’s first day of testimony (Maughan and Gifford 2006e: 1). It implies that he did say those words, as its first paragraph reads “Jacob Zuma claims his rape accuser had given him every indication that she wanted to have sex with him and that, ‘in Zulu culture’, he had no option but to oblige” (Maughan and Gifford 2006e: 1). The rest of the article then demonstrates coverage that emphasizes a handful of Zuma’s “indications” over a more full account of his testimony.

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<sup>100</sup> The words never appear in the official court record, which shows the English translation of Zuma’s Zulu testimony.

<sup>101</sup> *The Star* is a Johannesburg-based daily.

‘Oblige’ also appears in *The New York Times* coverage from early April. The paper reports that “Zuma was actually obligated to have sex” because of Khwezi’s manner of dress, and the article repeats Zuma’s oft-quoted line that “in the Zulu culture, you cannot just leave a woman when she’s ready” (Wines 2006: 3). Then, *The Times* writes: “To deny her sex, he said, would have been tantamount to rape” (Wines 2006: 3). The sentence employs the word “tantamount”, also used in *The Mail and Guardian* article on Inkandla, to make an analogous logical bridge from Zuma’s understanding of Zulu culture to his behavior with Khwezi. The implication is that Khwezi had no choice in Zuma’s mind – that her resistance and her denial were irrelevant in this context. But if the idea of Zulu culture is overblown, then the portrayal lends itself to the implication of rape, with Zuma convicted by his own testimony.

This is not to say that Zuma’s testimony lacked a cultural content. Nor is it to say that Zuma did use his conceptions of Zulu culture to elucidate the reasoning for certain of his actions; most notably, these formed part of the explanation for why he did not use a condom. This, in itself, is an outrageous reason for unsafe sexual behavior, and it is the issue that journalists rightly should have publicized. Certain journalists correctly made the distinction.<sup>102</sup> Most journalism, however, concerned itself with an alternate version: Zuma called on Zulu culture as his defense, what had so obliged him to rape Khwezi. It is here where the media shows its true bias against Zuma. During the trial, Khwezi told her story of rape, and Zuma told his story of consensual sex. Both stories had differences, and both stories were true to their fundamental divergence: the former was unambiguously a story of rape and the latter unambiguously a story of consensual sex. The media, through

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<sup>102</sup> Jeremy Gordin writes in *The Pretoria News* that Zuma “trying to explain why he had not desisted from sex with the complainant, although he knew she was HIV-positive and he was fresh out of condoms, said that in terms of Zulu ‘culture’, he could not leave a primed woman unsatisfied” (Gordin 2006: 4).

emphasizing selective anecdotes from the Zuma testimony, portrayed his story as otherwise.

Journalists, women's activists, and other critics of Zuma promoted this as popular understanding and public discourse of Zuma's testimony. It deviated significantly from the courtroom discourse. Zuma's account of consensual sex became a disjointed series of de-contextualized and thereby deeply inappropriate statements. The implications of these statements dominated the public sphere. Zuma was tribal African male – holding to customs that amounted to misogyny and that justified his criminal behavior. Zuma became a cultural rapist.

### **Of Showers and Condoms**

The press would also seize on Zuma's testimony about his HIV/AIDS prevention efforts. First, he testified that he had not used a condom with a woman who he had known to be HIV positive. Then Prosecutor de Beer, in establishing the course of events that occurred the night of the rape, asked Zuma why it was he took a shower after having sex. His infamous answer? "I wished to take a shower because it is one of the reasons that would minimise the risk of contracting the disease" (*S v. J. Zuma* [Tr.], SS321/05 [2006] at 1007). Neither Zuma nor de Beer had prior knowledge that journalists would quote Zuma's statement here, specifically the phrase "minimise the risk", far more than any other from the trial. Since Zuma did not clarify it, and the prosecution did not ask him for clarification, the South African and international media would themselves interpret, restate, reinvent, and most importantly apply his words.

“Minimise the risk” went from what was likely an off-handed statement to an indictment of Zuma’s ability to lead the country. De Beer had wanted to know why Zuma had left the bed immediately after intercourse – why had he not “cuddled” with the complainant (*S v. J. Zuma* [Tr.], at 1007)? Zuma’s answer came to represent a deeply incorrect form of pseudo-science; the idea that a shower after sex was a sensible alternative measure to using a condom. Press coverage berated Zuma for not only his own ignorance, but worse – for setting back South Africa’s HIV/AIDS prevention and education campaigns.<sup>103</sup>

The shower controversy arose from Zuma’s testimony but was largely unrelated to the accusation of rape and Zuma’s defense. Still, criticism leveled against Zuma outside the court obliged Kemp to make an appeal inside the court, and he broached the issue of the shower again during his closing arguments. A news release on the FoJZ website represented the defense position:

*[Kemp] then went on to the issue of the shower Zuma took after intercourse and the hullabaloo created by his testimony that he had done so to minimize the risk of infection. Kemp said the criticism was mindless as this as the best he could do to minimize the risk after having unprotected sex. He said if there was a bucket of contaminated HIV fluid with a Kruger Rand at the bottom, only a “complete moron” would not take a bath after reaching in to retrieve it.*

*Doctors who come into contact with HIV substances wash it off at the first opportunity whether the contact was deliberate or not. For Zuma to wash after unprotected sex was therefore not “silly”, said Kemp. (FoJZ 2006a)*

Kemp posits a disconnect between Zuma’s testimony and what was reported in the media. Press reports of Zuma’s testimony implied that through taking a shower after sex, Zuma seriously believed he was able to prevent virus transmission.

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<sup>103</sup> Eetgerink 2006, Goering 2006a, Green and Gordin 2006, and Wines 2006 are some of the many news articles that condemn Zuma’s irresponsibility.

It is impossible to know what Zuma *really* meant, what his understanding of HIV/AIDS was. What can be said is this: Zuma headed a government committee on the HIV/AIDS, and it is doubtful that he believed that a shower seriously prevented contraction of the disease. Because he had sex without a condom, Zuma was physically dirty – he had fluid contaminated with HIV on his body and taking a shower would cleanse this fluid. This is not to defend Zuma’s incredibly risky behavior or to lessen the risk that he took. It is to say that the press sensationalized his statement and that Zuma never equated a shower with an HIV panacea.

### **The Media Judgment**

Upon Jacob Zuma’s acquittal, not just South African papers, but international as well, published editorials that condemned Zuma. They implicated Zuma as an aggressive, tribal African male who could not control his sexual impulses, who was so appallingly ignorant on the consequences of his sexual behavior to himself and others. They read the trial (and by extension, its verdict) as a setback for action against both rape and HIV/AIDS and cast doubt on the future of South Africa. In fact, since the trial, these problems have not perceptively become any worse. There is neither empirical nor anecdotal data showing that South Africans are now taking showers after unprotected sex or that rape defendants are saying that culture compelled them to have sex. What overtook coverage of the trial was the sensationalism and hyperbole surrounding the admission of Khwezi’s past sexual history, the cultural content of Zuma’s testimony, and his confession that he had not used a condom.

## Chapter 5

### HIV/AIDS, Rape, and the Afflictions of the Post-Apartheid State

*I have a pretty good idea why things went wrong, and it all began with 'transformation', a euphemism for ridding the Civil Service of whites, especially white males.*

*Under apartheid, those chaps ran everything. Clearly this had to change, but white males carried the institutional memory in their brains, and the blacks who replaced them tended to flounder. This led to what we call 'capacity problems', a euphemism for blacks who couldn't or wouldn't carry out the jobs for which they were paid. Capacity problems in turn led to crises in electricity supply, refuse removal, road maintenance, healthcare, law enforcement and so on. [...] In short, we're in crisis. Everyone acknowledges it, but somehow we never see firm corrective action. [...]*

*Back in April [...] I dined with a bossy American woman who bit my head off when I opined that our recently deposed deputy president, Jacob Zuma, would one day step into Nelson Mandela's shoes. For a foreign feminist, it was unthinkable that a man with four years of schooling and rape and corruption charges pending should become president of anything. [...]*

*What can we do? Some in the ruling party have a peculiar view of democracy. They see it as a system designed to put themselves in power. If voters fail to understand this, their mistakes must be corrected by fiat.*

*No, there won't be civil war. Whites are finished. According to a recent study, one in six of us has left since the ANC took over, and those who remain know their place.*

*- Rian Malan in *The Spectator* (London) on October 14<sup>th</sup>, 2006*

South Africa's greatest public health crisis is HIV/AIDS, and the disease has generated massive economic and social devastation. It causes hundreds of thousands of deaths annually, and has destabilized many families and communities; joblessness, homelessness, and abject poverty have become the reality for many of its victims. The disease is inextricably connected with another crisis in South Africa: rape. Both share astronomically high statistics: South Africa has the world's highest recorded rate of rape and has more people with HIV than any other country in the world (Avert 2006). South Africa is informally termed "the rape capital of the world" and rape is an incredibly emotionally charged issue (Jones 1999: 20). It is a rallying point of fear; South African

newspapers highly publicize the most shocking rapes, especially of children and white women.<sup>104</sup> The rapists are inevitably violent black men and likely to be HIV infected. The terror of rape comes not only from the act itself, but also from the possibility that the victim may have to live with HIV/AIDS after the attack.

These afflictions of HIV/AIDS and rape, coupled with South Africa's extraordinarily high rates of violent crimes, have produced many critics of the post-apartheid state. They attach blame to the South African government. Many of these critics, though certainly not all, come from South Africa's white population. Some go as far as to call the new South Africa a failure and an embarrassment and they attach heavy blame to the South African government for its role in ignoring or even exacerbating these crises. They identify the current South African state in a place of denigration. For these critics, Jacob Zuma is anathema, and his rape trial the stage of South Africa's decline.

### **HIV/AIDS: Escalation and Government Inaction**

Until the early 1990s, South Africa actually had much lower rates of HIV infection than other African countries (Chirwa 1999: 63). Then the disease spread exceptionally fast and now South Africa has more people infected with HIV than any other country in the world. Although over five million South Africans carry the virus, only 225,000 of this group are receiving anti-retroviral drugs (The Economist 2006: 5-6). Worse, an estimated of 350,000 people died from AIDS in 2006 (Avert 2006). About 10% of the population in aggregate has HIV, but this increases to 16% amongst the

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<sup>104</sup> This statement derives from reading South African newspapers while a student at the University of Cape Town and working at an NGO in Johannesburg. It is much rarer to read of the rape of a black woman living in a township than a white woman living in the suburbs. Reports of child rape, similarly, frequently break first page headlines on the major South African newspapers.

population aged 15- 49, and nearly doubles to 30% of pregnant women testing at antenatal clinics (Avert 2006).<sup>105</sup>

Why did HIV/AIDS take hold in South Africa in such a short period of time?

There is no single answer; HRSC has conducted a number of large-scale surveys on HIV in South Africa and posits that HIV's spread is "embedded in historical, socio-cultural and psychosocial factors" (Brooks 2002: xiii, 10).<sup>106</sup> These include:

*The policies of separate development [...]; high levels of untreated STI's; a low level of condom usage; and social norms that permit and encourage high numbers of sexual partners. Widespread unemployment, poverty [...] among certain demographic groups are the driving forces behind the commercial sex industry. Lack of adequate education [...] further entrenches gender and race inequality. The system of migrant labour, which encouraged men [...] to leave their communities, countries, and families [...] was another compounding factor.* (Brooks 2002: 10)

As the HSRC conclusions suggest, many factors have led to South Africa's high level of HIV seroprevalence. An important aspect, however, that the HSRC ignores is the role of South Africa's government in the spread of HIV/AIDS.<sup>107</sup>

### **South Africa's HIV/AIDS Unorthodoxy**

The Jacob Zuma rape trial comes at this key juncture. The South African government is especially notorious for its inaction on AIDS prevention and treatment. Its political leaders have gained a reputation for endorsing unorthodox, damaging views about the causes of the disease. In 2000, South African President Thabo Mbeki famously authored a five-page personal letter to U.S. President Bill Clinton where he sided with

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<sup>105</sup> Ante-natal testing of mothers in public health clinics offers probably the best estimates of the country's HIV seroprevalence rate. At these clinics, mothers are given the option of being tested for HIV before labor so they can take Nevirapine, a medicine that greatly reduces mother to child transmission of HIV during labor. Because very few HIV-positive people are aware of their condition and because of the high level of stigma for those who are HIV positive, more generalized surveys are difficult to conduct. Very little precise data therefore exists outside of ante-natal clinic statistics.

<sup>106</sup> HRSC is South Africa's official social science research agency.

<sup>107</sup> This paragraph and the previous are loosely based on a similar discussion in my junior paper. See Skeen 2006.

unorthodox AIDS scientists and posited that HIV did not cause AIDS (Daley 2000: A4).<sup>108</sup> This was one of a number of incidents that stirred enormous international and domestic criticism of Mbeki and of his administration's position on the virus.<sup>109</sup>

Although more recently Mbeki has avoided discussion on HIV/AIDS, critics still find fault with the effects of his past comments and ambiguous policy decisions: Mbeki's endorsement of unorthodox medical views on the transmission of HIV and reluctance to provide anti-retroviral AIDS medications for impoverished South Africans has meant many unnecessary deaths.<sup>110</sup> That said, his health minister Manto Tshabalala-Msimang still retains her post, despite criticism and calls for her dismissal. She gained particular notoriety for advocating a diet of beetroot, olive oil, lemons, African potato, and garlic as a potentially curative treatment for the virus (Specter 2007: 33).<sup>111</sup>

### **The Judgment *against* Jacob Zuma**

Jacob Zuma's testimony therefore enters into the intense and highly publicized history of the political mismanagement and outright denial of HIV/AIDS in South Africa.

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<sup>108</sup> The letter defended American scientists Peter Duesberg and David Rasnick who question the connection between HIV and AIDS. It was so bizarre that the Clinton administration originally thought it was a hoax (Daley 2000: A4).

<sup>109</sup> Among other such incidents, Mbeki asserted in 1999 that neverapine, a drug given to pregnant women with HIV/AIDS to prevent mother to child transmission at birth, was too dangerous (Wakin 2000: A4). Then in 2003, the *Washington Post* published an interview with Mbeki where he was quoted saying: "Personally, I don't know anybody who has died of AIDS. I really honestly don't" (Slevin 2003: A18). It took two lawsuits from the South African NGO the Treatment Action Campaign (TAC) to force the South African government to first begin providing Neverapine, a drug that prevent mother to child transmission of the virus during childbirth, and then later to offer anti-retrovirals to AIDS patients who could not afford them (Mbali 2005: 20).

<sup>110</sup> Critics still fault Mbeki for not doing more to prevent and treat the epidemic in South Africa and also for doing little to dispel myths in the efficacy of traditional cures (Specter 2007: 33).

<sup>111</sup> At an international AIDS conference in August 2006, Tshabalala-Msimang's health ministry sponsored a table that testified to the virtues of such a diet (Specter 2007: 33). This nutritional emphasis seems to originate with Duesberg and Rasnick, the two scientists who Mbeki defended in his letter to Clinton and with whom Tshabalala-Msimang has maintained strong relations. They argue that good nutrition can cure AIDS (Specter 2007: 35). Tshabalala-Msimang has also supported remedies like *ubhejane*, a mixture of herbs prepared by "traditional" healers, while deriding the "toxicity" of anti-retroviral medicine (Specter 2007: 32-33).

Now the story includes Jacob Zuma: The “anti-AIDS shower” will forever tarnish his reputation, no matter how much he apologizes for his statement or even promises to improve South Africa’s HIV/AIDS policies (Kruger 2006).

The rape trial made Zuma a part of this history, but he was unlike his predecessors. It was Zuma’s personal behavior with regard to HIV/AIDS, not any decision he made as a matter of public policy, that Zuma’s detractors said made him unqualified to lead South Africa. Zuma admitted that he had not used a condom with a woman he knew to be HIV positive, called the risk of getting the virus from her minimal, and (at least as the media reported it) stated that by taking a shower after having sex, he seriously meant to minimize the risk that he might contract HIV. Because the trial was a public spectacle, judgment happened both inside and outside the courtroom, and the judgment outside the courtroom was not of a singular form. It applied not only to the charge of rape, but also to his ability to lead South Africa.

Could Jacob Zuma, having admitted to such reckless behavior, ever lead the country? The international and South Africa press stated their case against Zuma. South Africans too would illicit reactions: among my informants, Zuma supporters were most likely to shrug, and dismiss his statement as overanalyzed, while Zuma critics would often say it showed his irresponsibility, and stupidity. If he could not manage simple affairs like this in his own household, how could he be expected to run South Africa?

Many of my informants who did not support Zuma politically also believed that he should have been found guilty of rape. Others made two judgments of the trial, one with Zuma’s innocence and one with his political incompetence. I had a conversation with Beth, a white woman in her 60s who was power walking along the boardwalk in

Durban before I stopped her. Beth told me that she did not believe that Zuma was guilty of rape, but that the trial was more than enough reason for him to never be South Africa's president. "I think he's a disgrace to the country, to himself, and as a South African, he is an embarrassment," she said. I met Alex, a white man in his fifties, also in Durban where he was vacationing. He lives in Johannesburg, and we spoke for almost forty minutes – he had a lot to say to me. The irresponsibility of Zuma's remarks on HIV/AIDS astounded him:

*How ignorant can you be? If you're in that position, you must have some sort of education behind you. To say flat out to the public that I took a shower afterwards so I thought it would be fine, that's just absolute hogwash, I mean really. And the problem with have in Africa, in South Africa with AIDS, how can a man that's second in charge of the country make a statement like that? What is the man on the street supposed to think? [...] You know there's a lot of uneducated people in our country.*

By implication, Zuma's comments on HIV/AIDS had not affected Alex directly because Alex did not judge himself as 'uneducated.' Indeed, the people who judged against Zuma's remarks did less for how Zuma had affected them, but for how damaging his views were for "ignorant" South African blacks. Conversations with my informants too indicated that lack of political support of Zuma and criticism of his HIV/AIDS remarks came in tandem.<sup>112</sup>

## **Rape and Violence in South Africa**

Alex spoke to me for a long time because the Zuma affair reflected many of his frustrations with the governance of the post-apartheid state. Much of our conversation concerned his anger over corruption and bad leadership in the South African government.

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<sup>112</sup> Those informants who politically supported Zuma generally did not bring up unprotected sex or the shower unless I asked them so directly, and their response generally dismissed the importance of such statements.

Zuma epitomized these criticisms. Alex observed that Zuma set an unbelievably poor example for the people who needed and followed his leadership. “The guy in top is doing exactly what we’re trying to educate the people not to do. [...] What must they now [do], label the clothing the clothing wear this at your own risk because you could liable to be raped? [...] That’s how uneducated people think.” Zuma’s statements and poor behavior had, in Alex’s mind, exacerbated rape and HIV/AIDS in South Africa. Apart from corruption and bad leadership, Alex also faulted the South African government for its inability to stop violent crime.

In 1999, the London paper *The Daily Mail* derided South Africa as “the undisputed rape capital of the world” (Jones 1999: 20). The article painted a horrific picture of South Africa and connected its high rape rates with the country’s overall moral demise since the end of apartheid. It heavily racialized the issue of rape in South Africa. According to *The Daily Mail*: First, white women were suffering inordinately per their representation in the population; second, black men were responsible for virtually all these rapes; third, the South African police refused to even consider race as a motivating factor or issue when investigating and processing rape cases (Jones 2007: 20). *The Daily Mail* posited that blacks might be using rape (against white women) “as a way to reassert their position” (Jones 1999: 20), though this statement seems more a matter of opinion than of documented fact. *The Daily Mail* called on South African politicians to focus less on reconciliation and more on the rape crisis, which it asserted would make reconciliation impossible to achieve (Jones 1999: 20).

The phrase that the article introduced, “the rape capital of the world”, has since repeated and become a part of the discourse on rape in South Africa. The statistics on

rape in South Africa are indeed horrifying: the country has the world's highest recorded rate of rape, and one estimate posits that as many as 1 in every 3 women in are raped (BBC News 1999). There are approximately 55,000 cases of rape reported to police every year, at a rate of 114 per 100,000 – a statistic that has increased from 45,000 at the end of apartheid (Kapp 2006: 718). Almost 24,000 of these 55,000 rapes concerned victims who were younger than 18 (Powell 2007: 3).

There is an enormous amount of coverage on the problem of child rape in South Africa. An article published in late March 2007 in *The Cape Argus* began recounting incidents of rape of children 3, 8, and 11 years-old that had occurred in the outlying areas of Cape Town (Lockwood and Peters 2007: 9). The article reported an 'expert' opinion on the reasons behind this behavior:

*Dr. Marcel Londt, founder of a sexual offenders rehabilitation programme [...], said South Africa was a "fertile breeding ground" for violent men. [...] She said that there were commonalities between them and their backgrounds that pointed towards a bigger problem within South African society." The vast majority come from backgrounds of poverty, neglect, and sexual violence. They live in a terrifying world where violence and sexual assault are sadly all too common. They become conditioned to the idea of violence; start to see it as a normal way of relating to people and of gaining control."* (Lockwood and Peters 2007: 9)

Londt said that the only way to end sexual violence was to address its root causes, change the social and economic conditions that produced such a "culture of violence". Another expert faulted the government for not directing enough resources to eradicating sexual violence (Lockwood and Peters 2007: 9). The idea of innate violence appears throughout reporting and discourse on rape in South Africa and becomes a way of explaining rapes that arouse great public disturbance and anxiety.

## Who is Raping Whom?

*The Daily Mail*, in its article on “the rape capital of the world”, faulted the South African police for being colorblind for their failure to collect the racial statistics of rapists and their victims. The paper asserted that there was a discernable pattern in the targeting of white women by black male rapists – but that the police neither appreciated nor acted on this pattern because they were too clouded by the race-less vision of the new South Africa. (Jones 1999:20).

*The Daily Mail* was not the first to associate the end of the apartheid era with the rape of white women. J.M. Coetzee, the most internationally lauded author to have emerged from South Africa in the past few decades, did too.<sup>113</sup> He won the Nobel Prize shortly after publishing his most critically acclaimed work *Disgrace* in 1999. In South Africa, however, the novel received a conflicted response because it conveys a potent and controversial vision of the post-apartheid nation. The South Africa that Coetzee conceives is not one of reconciliation or of national unity. It is precisely the opposite: “Coetzee has openly cast doubt on the possibility of achieving closure on a painful past, of ever adequately saying sorry. Instead, he proposes the far more painful process of enduring rather than transcending the degraded past” (Boehmer 2002: 343). *Disgrace* is in that way an allegory, a story that deploys its characters and its plot to achieve a specific end.

Coetzee’s protagonist, David Lurie, is a white professor who feels out of place in the new South Africa. The novel’s climax is the rape of his grown daughter in her home. Three black men gang-rape the white woman; her father is incapable of defending her

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<sup>113</sup> The following four paragraphs on the novel *Disgrace* are based on a paper written for Princeton University course ENG 383. See Skeen 2005.

from these attackers and is unable to convince his daughter to even report her rape to the police. The irony is that Lurie would not have been staying at his daughter's had he not been dismissed from his professorship for the same crime – the rape of a colored student. The black man's rape of the white woman is a trope, having a long presence in the canon of colonial literature. Therefore, Coetzee's use of the rape trope in post-apartheid South Africa, where colonial traditions of racism, minority governance, and subjugation have finally been abandoned, is very significant. Through Lurie's dismissal and his daughter's rape, Coetzee illustrates a situation of instability, unwanted change, and intractability for South African whites.

### **The White Rape**

Jacob Zuma was not accused of raping a white woman. He was accused of raping a Zulu woman. *The Cape Argus* reported that “women [were] the losers in the Zuma case” (Terreblanche 2006: 6). The counterpoint to this claim then asks: Were men the winners? No, not just any men, but men like Jacob Zuma; men who were misogynistic, patriarchal, and aggressive in pursuing their sexual desires. Jacob Zuma continued the story of a very particular kind of African rapist, a stereotype that originated with colonization and still persists. The rapists in *Disgrace* are its modern incarnation.

The SAHRC held hearings on the subject of racism in the media in 2000, the year after the publication of *Disgrace*, and the ANC included the novel in its submission. They argued that: “J.M. Coetzee makes the point that five years after liberation white South African society continues to believe in a particular stereotype of the African which defines the latter as immoral and amoral, a savage, violent” (Atwell 2002: 334). Does the

Jacob Zuma rape trial not illustrate this point? Zuma, through the fact that he was even accused of rape and then through the reporting of his rape trial, has come to represent the individual and the larger problems in the new South Africa. He is the amoral African HIV positive rapist and he is also the South African government's failure to combat escalating rates of HIV/AIDS and rape.<sup>114</sup>

Zuma evokes utter despondency amongst South African whites. I recall one of my informants, an elderly white South African woman, who expressed enormous hatred for Jacob Zuma. She stared at me sternly and said "we are the minority now." My father's friend, a classmate from his high school, sadly remarked that Jacob Zuma's political support comes from his appeal "to the black youth who like the idea that they could run the show. They're not too worried about us whites." My own friend, a young woman who I met when I studied for a semester in South Africa, asked me how it was the ANC might pick Zuma as its next president. As I started to explain that the party's delegates vote on it, she interrupted and said pointedly: "And you know they are all black."

Many South African whites have left the country since the transition from apartheid, and I have met others who threaten to leave if Zuma becomes the country's next president. I had a conversation with John, a white father in his mid-forties. His small boy clung to his legs as he spoke to me. I asked him what he thought of Zuma's presidential ambitions, and he said:

*If I see any rumblings of Zuma making it as being somebody with substantial power I will leave this country post haste. I am a South African born and bred. I have been here for generations but I will tail ass my bloody butt out of here so quick that the world will spin in a different direction. Guys like Jacob Zuma, they trade really on their popularity and that's all. People should become popular because of what they have to offer and not simply popular because of their ethnic leaning or whatever it might be. And it's just*

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<sup>114</sup> Zuma denied repeatedly being HIV positive, both during and outside of the trial. He said that he had been tested for the disease, but he never produced records that showed his negative status.

*unfortunate that our political landscape is as such and somebody who is not well-educated can become popular on those grounds, because they're not well educated, the voting public.*

What struck me was John's vehemence – mention of Zuma made him so irate that he cursed loudly in front of his young son.

These intertwining stories of rape, AIDS, and decline inform the sense of utter desperation in much of the trial's commentary. Christopher Hope, in the London paper *The Guardian*, wrote that "the Zuma trial in these past weeks has laid bare, again, the awful underside of what passes, terrifyingly, for 'normal' life" (Hope 2006: 10). Hope's article, titled "State of Terror", recalled such issues as Mbeki's HIV/AIDS denialism; the country's high rates of HIV infection, rape, and violence against women; and the perverse nature of South African politics. Hope relates several statistics on rape but calls them "hopelessly inaccurate" with the truth probably much worse. Though such statistics "may be terrifying [...] all they do is to feed the general feeling of helplessness in the face of the seemingly insatiable energy in and among South Africans for violence in all forms" (Hope 2006: 10). Zuma's acquittal is neither "at the end of the story" nor at "the beginning" because Hope's story of South Africa is one of its degeneration and utter insanity since the end of apartheid (Hope 2006: 10).

Christopher Hope's article, like the Rian Malan excerpt at the beginning of this chapter and the article on the "rape capital of the world", was published in a London newspaper. The British press is an exceedingly virulent critic of the current state of South Africa – possibly because Britain is the new home of many South African white expatriates. Hope currently lives in France, Coetzee has taken citizenship in Australia, and Malan remains in South Africa. These three authors comprise the "literary elite of white South Africa", and they describe a South Africa gone from one form of bad to

another (Otton 2007: 9). Their writing represents the anxieties and fears of many South African whites, their new minority status in a country that was once wholly their own. For these South African whites who feel utterly isolated, completely disenfranchised from the consequences of a country's political process, Zuma is their ultimate villain. In effect, the possibility of Zuma becoming South Africa's president is the rape of a nation, the ultimate culmination of retributive violence against South African whites.

## Chapter 6

### The Ethnic and the Political

*The SACP [...] characterizes current state as a parasitic state. Parasitic precisely because you have, for example, the emerging black capitalists who are using their political affiliation and relationship to particular powerful individuals in the ANC to acquire more wealth at the expense of the majority of our people. For me, the roots of this conspiracy could only be found at the level of government and within in the ANC itself. And mainly conspirators are people who are business minded, capitalists themselves, the bourgeoisie themselves because [...] they think that Jacob Zuma's relationship to SACP and COSATU might lead to a situation where we would begin nationalization, we would take a socialist root in terms of taking forth our freedom.*

*So for me, yes it true that conspirators are partly business people [...] who are very concerned about acquiring more wealth at the expense of the majority of our people. And even if there were no relationships between SACP, COSATU, and Jacob Zuma [...] quite honestly Zuma is not a capitalist person, he is not pleasing capitalists. He always goes to the villages; he does not have the banquet in the suburbs all the time. He knows that his roots are within the masses so clearly that must be concern for [the conspirators]. I think it is legitimate that they have such concerns. What is not legitimate is to conspire against other people in the manner that they do.*

- Kaizer Mohau, Gauteng Spokesperson for the Friends of Jacob Zuma and South African Communist Party Media Liaison<sup>115</sup>

*Alas, poor Thabo. I'm no great fan of our remote and autocratic president, but the charges emanating from the red brigade 'betraying the poor' and 'tolerating inequality' are asinine. A former communist, Mbeki saw the light in the late 1980s and cajoled his comrades into a historic compromise with capitalism. His saturnine manipulation of business and labour led to a massively increased tax harvest, which in turn financed the creation of a welfare state, with 11 million poor now receiving subsistence grants of one sort or another. This is amazing. A welfare state in Africa!*

*Unfortunately, such goodies are the fruits of gradualism, and I can't see us staying the course. Jacob Zuma wants the big job, so he promised to resurrect the ANC's revolutionary tradition, whereupon the movement's most dedicated activists immediately rallied to his standard. As I see it, the only way for Mbeki loyalists to block Zuma is by promising even more loot to the masses, and once they do that, Zuma will surely move even further leftward.*

- Rian Malan in *The Spectator* (London), October 14<sup>th</sup>, 2006

### Welcome to Johannesburg

When I landed in Johannesburg on December 29<sup>th</sup>, 2006, Zuma was all over the headlines. This was not unusual. What was unusual was that the impetus was neither a

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<sup>115</sup> Kaizer Mohau claims, Jan. 8<sup>th</sup> 2007

scandal, nor allegations of criminal behavior, nor news on an upcoming trial but the South African presidency. The ANC has its party elections in less than year. Presidential politics were now deeply entangled with previous investigations and charges laid against Zuma. Chapters 2, 3, 4, and 5 demonstrate precisely how the rape charges against Zuma and his actions during the trial interacted with the fields of politics, culture, and society, because of his political significance as the second highest ranking man in the ANC. Zuma's political future, and the possibility that he would assume office as the next president of South Africa, was what lay beneath all his previous coverage on the rape trial and corruption scandal.

Now Zuma's presidential ambitions were finally at the forefront of his press coverage. No judge had yet convicted Zuma of any crime, so no legal mechanism had yet prevented Zuma from becoming the next president. As deputy president, Zuma was the most obvious candidate for the president of South Africa, at least, until the corruption allegations and the rape trial. He remained a front-runner despite these scandals, primarily for lack of opposition. There was a serious void of high-ranking officials in the ANC that could successfully challenge him in party elections and would even choose to do so.

My arrival coincided with intense press speculation that either Tokyo Sexwale or Cyril Ramaphosa would stand for president of the ANC. During the struggle, Sexwale worked as an ANC activist until he was caught and imprisoned on Robben Island for his underground activities. He held the premiership of Gauteng province for the four years following democratic transition and left the post to go into business (ARB 2007: 16930). Ramaphosa served as the former general secretary of the National Union of Mineworkers

(NUM), and held high positions in the ANC. He also left politics to pursue business (Ford 2006: 52).<sup>116</sup> Today both Ramaphosa and Sexwale are very wealthy businessmen who have benefited from Black Economic Empowerment (BEE), a scheme that requires white-owned businesses to sell shares to black investors on special terms. Their candidacy is unlikely to bode well with leftist factions of the alliance who are already critical of BEE's failure to redistribute South Africa's wealth more equitably and call the program a scheme to reward the ANC's elite (Herbst 2005: 93). Two female candidates have also been breaking headlines. These include Zuma's current replacement as deputy president, Phumzile Mlambo-Ngcuka,<sup>117</sup> and Foreign Minister Nkosazana Dlamini-Zuma.<sup>118</sup>

### **GEAR, Grievances and Growth**

Thabo Mbeki held a membership in the SACP during the struggle (Taylor 2001: 42). He was not alone among the ANC leaders. In 1990, ANC president Nelson Mandela proclaimed that "the nationalization of the mines, banks, and the monopoly industry is a policy of the ANC and a change or modification of our views in this regard is inconceivable" (Taylor 2001: 37). RDP, the original economic plan of the post-apartheid government, might have made these changes but Mandela abandoned RDP less than two years into his presidency. GEAR, South Africa's new economic strategy was entirely different:

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<sup>116</sup> NUM is the largest union in South Africa and one of the unions that comprises COSATU (Ford 2006: 52). Its current general secretary is "pro-Zuma SACP member" Frans Baleni (Africa Confidential 2006b: 2)

<sup>117</sup> Mlambo-Ngcuka is the wife of Buleleni Ngcuka, the former head of the NPA. Ngcuka was the prosecutor who originally began investigations into Zuma's allegedly corrupt involvement in the arms deal and is a key figure in the theory of a conspiracy against Zuma. Not surprisingly, pro-Zuma factions in the SACP and COSATU have already spoken out against Mlambo-Ngcuka's presidential ambitions (Africa Confidential 2006b: 2)

<sup>118</sup> Nkosazana Dlamini-Zuma is Jacob Zuma's former wife (Terreblanche 2006b).

*Essentially, GEAR privileged the position of capital within South Africa and relied on them – in typical neo-liberal “trickle down theory” – to uplift the disempowered through increased private investment. This would be achieved by cutting back state spending [...]; maintaining a low inflation rate; a reduction of corporate taxes; the gradual phasing out of exchange controls; the promotion of wage demand restraints by labour; the creation of a more “flexible” labour market and an increased push for the privatization of state assets. (Taylor 2001: 82).*

COSATU is a trade union federation and the SACP is a communist political organization. GEAR did everything but support the members and ideology of the ANC's two alliance partners because its fundamental goal was the creation of greater international and national investment in South Africa. It meant incentives like lower taxes on corporations, disempowering labor movements and thereby lowering wages, the devaluation of the South African rand, and serious cutbacks on state social services to maintain larger macroeconomic stability (Smith 2006: 28).

What accounted for the shift from RDP to GEAR? RDP's intended social and economic goals clashed with the hegemonic structures of an integrated global political economy (Taylor 2001: 5). The International Monetary Fund (IMF) and World Bank both intervened in South Africa to prevent the ANC's implementation of RDP (Taylor 2001: 63). South Africa, as a capitalist country, could not ignore their influence or pressure from the world market. The “constraints globalization has wrought on [...] autonomous policymaking” made the implementation of RDP untenable in South Africa and the switch to GEAR was the ANC's necessary response (Taylor 2001: 5).

Since GEAR's implementation South Africa's macroeconomic statistics are impressive. Consider that in 2005 South Africa recorded the GDP growth of 5.5%, its highest in the last forty years (Africa Confidential 2006c: 3). The IMF has called South Africa's economic progress since the end of apartheid ‘remarkable’, and *African*

*Business*, a leading publication on industry and economy in Africa, calls the country an “economic miracle” (Siddiqi 2006: 20).

GEAR did exactly what it intended to do – it encouraged international capital to flow into South Africa and the deployment of capital already in the country. This accounts for South Africa’s stunning macro-level growth. GEAR, however, never directly benefited the 40% of South Africans who officially live below the poverty line (Nevin 2006: 44). Some critics argue that GEAR’s cuts in social services and disempowerment of the labor movement have directly exacerbated unemployment and the gap between South Africa’s wealthy and poor. Indeed, these figures have only worsened since GEAR’s implementation (Andreasson 2006: 308).

### **Strength in Unity, Strength in Division**

COSATU, SACP, and ANCYL are deeply dissatisfied with GEAR and frustrated by their own inability to forward the principles of the New Democratic Revolution (NDR) into political action. The NDR called for massive social and economic change through redistribution, nationalization, and a strengthening of government bureaucracy. RDP had embodied these principles, and leftists lamented that nothing since RDP has come close to imitating these policies (Andreasson 2006: 306). GEAR contradicted the NDR, and it has meant that the tripartite alliance exhibits serious internal conflicts (Andreasson 2006: 313).<sup>119</sup> The most politicized face of its division? President Mbeki and by extension, his former deputy, Jacob Zuma.<sup>120</sup>

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<sup>119</sup> Recall that the ANC is the political face of the alliance of the three organizations and that the alliance came together during apartheid transition and negotiations in the 1990s.

<sup>120</sup> Division even has its own metaphor. Luthuli House is the ANC’s headquarters and Cosatu House holds the headquarters of both COSATU and the SACP. Both located in downtown Johannesburg: Luthuli House

In the past, Mbeki worked to “defuse” tensions with COSATU and SACP through a mix of appointing their key leaders into his cabinet, engaging in informal negotiations (though rarely granting any demands), and heavily criticizing the organizations (Africa Confidential 2003: 4). Leftists are still greatly disappointed with Mbeki’s administration and object to what they perceive as his control of the ANC National Executive Committee (NEC). Blade Nzimande, the general secretary of SACP, observed that a 2005 meeting of tripartite alliance leaders saw “a range of different grievances and aspirations coming together around support for Jacob Zuma” (Nzimande 2006). Why? Because COSATU, SACP, and ANCYL want an economic plan that will focus on government-created jobs, redistribution of wealth, and benefits to “the working class”. Many in these organizations have unofficially retained support for Zuma’s ANC presidential candidacy; their conviction that he is the rightful candidate to succeed Mbeki stems from the hope he will pursue these socialist and redistributive policies.<sup>121</sup> They need Zuma as much as

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is in the CBD and Cosatu House just a kilometer north in Braamfontein. What separates the two buildings is the recently constructed Nelson Mandela Bridge, and Mandela’s legacy is, of course, the reconciliation of South Africa. A journalist from *The Mail and Guardian* observes that the significance was not lost amongst ANC members, writing that the bridge is “metaphorically used as the dividing line in the alliance” between the Mbeki and Zuma camps (Monare 2006b: 9). The paper reported that at a recent conference that drew leaders from ANC, COSATU, and SACP: “every action, pronouncement, dress code, the restaurants, the drinks, the songs and even the toilets [...] were analysed and used to figure out on which side of ‘the bridge’ they belonged” (Monare 2006b: 9).

<sup>121</sup> SACP and COSATU’s support for Jacob Zuma is a rather complicated situation. Both organizations have a number of high-ranking members who strongly support Zuma, as well as other high-ranking members whose opinions on Zuma are more lukewarm. It seems that much of these divisions stem from Zuma’s conduct and statements during the rape trial, although since neither SACP nor COSATU has officially commented on their internal politics, it is hard to identify the direct impetus. That said, the South African press has reported and speculated on such divisions within the organizations. SACP General Secretary Blade Nzimande and YCLSA leader Buti Manamela have shown strong public support for Zuma (Robinson 2007b). YCLSA has publicly declared its organizational support for Zuma and a Zuma presidency (YCLSA 2006b). Jeremy Cronin, the deputy general-secretary of SACP, has spoken out against Zuma and has said he does not want him as the next president of South Africa (Mail and Guardian 2006b). Press reports speculate that most of SACP’s members support Zuma although this will be tested when Nzimande faces reelection in July 2007 (Africa Confidential 2006b: 2) (Monare 2006a). Likewise, Willie Madisha who is the president of COSATU has long been seen in the Mbeki camp, while the general-secretary of COSATU Zwelinzima Vavi is an ardent supporter of Zuma and an rival of Madisha (SAPA

Zuma needs them – the ailing politician has found equally marginalized political organizations.<sup>122</sup>

Division in the ANC is significant because it is the ANC that paves the road to the South African presidency. The vast majority of votes cast in South Africa are for the ANC (Southall and Daniels 2005: 39). Internal divisions on the ANC's espousal of neo-liberal economic strategy have threatened the stability of the tripartite alliance in the past, but the ANC has remained undivided because of "its trump card of membership" (Southall and Daniel 2005: 43). If the ANC stays together, then the ANC wins together. But *who* in the ANC will be the big winner in December 2007? And even if Zuma does win, will history repeat itself with a renewed commitment to neo-liberalism because of transnational forces and the limitations to South Africa's autonomy? Or will South Africa finally embark on its New Democratic Revolution?

### **Mbeki versus Zuma**

However these questions are ever answered, Zuma and Mbeki form polarizing counterpoints in the minds of South Africans. Supporting Mbeki and supporting Zuma are mutually exclusive concepts. I spoke to Lillian, a Zulu woman in her late forties at her offices in eastern Johannesburg where she works as a wine distributor. She liked Zuma, but she made a face when I asked about Mbeki. "Zuma," she said "is associating with people. He can listen to people's view, what people like, don't like. It's not like our president [Mbeki]. He is just there." Mbeki is inactive, hidden away in his offices; Zuma

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2006e) (Monare 2006a). As with the SACP, press reports indicate that most of COSATU's leadership and a preponderance of their membership support Zuma (Monare 2006a).

<sup>122</sup> SACP and COSATU threatened to withdraw support for the ANC in the 2004 national elections. The ANC, however, pulled SACP and COSATU back into the fold when it "hinted" at furthering a redistribution economic plan (Southall and Daniel 2005: 43).

is on the streets and in the villages. These counterpoints extend further: Mbeki is Xhosa; Zuma is Zulu. Mbeki is educated – he obtained a masters degree in economics from the University of Sussex; Zuma lacks education beyond primary school. One Zuma supporter extended this position: “Thabo Mbeki was schooled in England. So he’s black, but he’s British” – meaning, perhaps, that Zuma is black and African? Finally, Mbeki’s presidency has remained committed to structural adjustment and neo-liberalism; Zuma’s presidency, possibly, will be committed to socialist redistribution.

I talked to two young Zulu men, friends in their twenties, who called Mbeki and Zuma “two different people.” They relayed strong support for Zuma because he “thinks for himself” but “promises people stuff but at the end of the day he doesn’t really do the job.” One of them winked at me and asked me if that description did not match the president of my country, George W. Bush. Both men believed that Zuma had neither committed the rape nor was complicit in the corruption allegations. They told me that Thabo Mbeki and the Xhosas were behind the conspiracy against Jacob Zuma. “They don’t want him to be the next president because he is a Zulu. [...] They don’t want Jacob Zuma to rule.” Indeed, there is a “tribal” aspect to the conspiracy against Jacob Zuma. Kaizer Mohau did not mention this in our meeting; nor does the FoJZ website make an official reference to it. It appears, however, in the South African press, and it came up in my conversations.

### **Race and Political Division in the Rainbow Nation**

National politics in South Africa remains racially polarized even though over a decade has passed since the demise of apartheid. “Nationally, almost all white people

vote DA and most black people vote ANC. That leaves Indian and mixed race people as the only floating voters” (Africa Confidential: 2006a: 5).<sup>123</sup> <sup>124</sup> A poll on Zuma published December 2006 in *The Sunday Times* showed that only 2% of South African white voters thought he was the “right man for the job” – compared to 58% of South African blacks. Coloreds and Indians polled at 9% and 6% respectively (Boyle 2007).<sup>125</sup> Conversely, only 15% of South African blacks and 65% of South African whites agreed with the statement “I do not support him. He will make a bad president” (Boyle 2007). The poll also noted strong divisions on Zuma between Zulus and Xhosas: “Nearly 80% of those from Zuma’s home province of KwaZulu Natal want him as president compared with 31% of Xhosa speakers” (Boyle 2007).

My informants tended to reflect these statistics of racial and “tribal” division over Zuma.<sup>126</sup> I distinctly remember Molepe, a young Zulu man, probably in his twenties, who held a surfboard as I spoke to him along the boardwalk. He told me that Zuma “has to be president considering his track record with the ANC. He is the right man.” Molepe was unwilling to take a stance on whether Zuma had or had not committed rape because he said it did not matter to him. “Everyone makes mistakes. [...] The point that he did admit making a mistake makes him one of the best leadership examples we had,” he said, referring to the public apology Zuma made following the rape trial. He called Zuma’s humble background an inspiration and likened him to Gandhi.

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<sup>123</sup> The DA is the Democratic Alliance, the official opposition party to the ANC in the South African Parliament.

<sup>124</sup> Out of South Africa’s population of 47 million people 79% are ‘African’, 9% are ‘white’, 9% are ‘colored’, and 3% are ‘Indian’ (Kane-Berman 2006: 1).

<sup>125</sup> *The Sunday Times* is a Johannesburg-based weekly newspaper.

<sup>126</sup> I cannot say that I spoke to a single white or Indian person who wanted a Zuma presidency. Every Zulu wanted a Zuma presidency; whereas other South African blacks were more mixed in their support.

Toward the end of our conversation, I said something that presumed that my informant *liked* Zuma. He quickly interrupted me. “I don’t like him,” he said. I was surprised – everything he had said in the previous five minutes indicated that he more than liked Zuma. “I don’t like him because I am a capitalist and he is a communist.” What Molepe meant was that Zuma *deserved* to be president, that his political qualifications made him the “right” person to succeed Mbeki. It was Zuma’s turn to be president: “Give the man a chance and if he fails, we will put him out of power.” Molepe really shocked me. He supported the presidential ambitions of a politician with whom he had fundamental political disagreements and cited Zuma’s place in the ANC hierarchy as the sole reason for his support. I wondered, if Zuma had not been Zulu, would Molepe still think Zuma should be South Africa’s next president?

How are the identities of Xhosa and Zulu politically significant? The ANC, in its four decades of existence, has only had Xhosa presidents and a high percentage of Xhosas in its leadership (Terreblanche 2006b: 16). Most Xhosas are from the Eastern and Western Cape Provinces, but the ANC has successfully established itself as a national, non-ethnic political party. This happened as the ANC skillfully fought against apartheid, found itself at the front of the negotiating table during transition, and formed the coalition necessary to capture the country. Though there are more Zulus than Xhosas, the IFP never became a national party in South Africa. The only nationalism it ever invoked was not South African, but Zulu (Piper 2002: 75). The IFP had evolved as the political party of the Zulus and remains the political party of the Zulus. It receives substantial votes only in KwaZulu-Natal but even these are dwindling (African Confidential 2006a: 5).<sup>127</sup>

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<sup>127</sup> In the 2006 elections, the IFP lost even further strength in KwaZulu-Natal to the ANC and new breakaway political parties in the region (Africa Confidential 2006a: 5).

## Perceptions of Zuma and the Zulus

How ‘tribal’ is Zuma’s support base? How ‘tribal’ is Zuma’s support base popularly understood? There is a public perception, amongst some of Zuma’s detractors, that his support is almost entirely Zulu. John, a white father in his forties said that:

*Bottom line is that probably the largest percentage of blacks in this country are Zulus. [...] And Zulus, unfortunately, are loyal to the point of idiocy. They will support somebody purely on the principle he’s a Zulu rather than whether he is good for them or not. And that’s been proven historically, you can look at [...] that IFP guy Buthelezi, he’s done nothing, in fact he’s run the IFP to the ground and yet the Zulu will stand behind them steadfast because again, you do what you know and they don’t know any better. So the fact that he’s Zulu is enough reason to back him on those grounds. If ask to the Xhosas and Sothos and Vendis and all those, they got no time for the guy. They all think he’s the biggest idiot this side of the moon.*

John’s position ties Zuma’s political appeal strictly to tribalism. He accuses the Zulus of “idiocy” because he can identify no other reason for their support of Zuma. Another informant, Alex said, “It’s mostly the Zulu people that are supporting him. With the ANC and [IFP] there is a lot of intimidation, that they go into these rural areas [and engage in] [...] full on propaganda.” The Zulus, he said “don’t know any better. They really don’t.” For John and Alex, their complete antipathy against Zuma colors their understanding of Zuma’s political appeal. What I find to be shocking is that they are completely unable to see any rationality in Zuma’s political support. They do not see that for millions of impoverished South Africans, Zuma is the main hope.

Not every opponent of Zuma perceives his support base as fully Zulu. I spoke to some South Africans who recognize that he taps into an ignored constituency of ANC voters who have not seen much improvement in their lives since the end of apartheid. These opponents of Zuma especially fear what he will do if he ascends to power. White South Africans, in particular, expressed worries of South Africa becoming like

Zimbabwe. They feared that Zuma would turn on the country's white wealth to satiate his "poor" and "uneducated" constituents.

When I asked Kaizer Mohau about tribal and racial divisions in Zuma's support, he did acknowledge that there was a disproportionately large Zulu following for Zuma. That said, he called it "very, very ridiculous" to claim the Zulus were Zuma's only supporters. He said that he was a "Sotho speaking person" and listed a number of instances where ANC members outside of KwaZulu-Natal have shown substantial support for Zuma.

It is unfair to characterize Zuma's support base as entirely Zulu, but it is true that Zuma does gain loyal support from the region. It is difficult to parse where Zuma's constituency of grievances begins and ends (Mail and Guardian 2006b). Zulus are underrepresented in the ANC, and the IFP lacks a substantial number of seats in the South African Parliament. Zuma appeals to sentiment that Zulus deserve more power in the running of South Africa. SACP and COSATU, similarly, comprise two parts of the tripartite alliance but have minimal policymaking roles in the organization. Zuma appeals to their desire to implement the NDR. The millions of impoverished South Africans, moreover, include Zulus and non-Zulus. They elected the ANC, are the constituents of the ANC, but has the ANC acted on their interests? Zuma appeals to their desire for a politician who may finally represent them.

### **The Coalition of Grievances and the Rape Trial**

The rape trial threatened an end to Zuma's political future. The politician who appealed to a large constituency of disenfranchised and impoverished South Africans

might be jailed for rape. The protests outside the courthouse were about conspiracy, culture, and anti-capitalism – everything but the charge of rape itself. Zuma used the trial to engage and consolidate his political support. When Zuma stepped outside of the courtroom, leading protests and singing songs on the streets of Johannesburg, he became both the traditional Zulu man and also the leader of the working class. Why is *Awuleth' umshini wami* Zuma's song? It recalls the struggle – and thereby recalls the unfulfilled promise of social and economic revolution. The song also contains a phallic meaning that invoked Zuma's Zulu masculinity.

Zuma brought Zulu culture into the physical space of the courtroom and into his discursive testimony. Friends and supporters who sat with Zuma in the courtroom often wore traditional Zulu attire. Zuma chose to testify in Zulu despite speaking perfect English<sup>128</sup>, and he would wait for the Zulu translation before he would answer any question posed in English (Moya 2006d). Zulu culture, however, was not Zuma's defense against the rape charges; his defense was consent.

It is from here that we return to Zuma and how he represented himself. He publicly denied he was a rapist, yes – but he offered no public renunciation of Zulu culture, extended no criticism of press coverage that over-emphasized his Zulu identity and Zulu defense. Zulu culture was not Zuma's defense against rape, but it formed a defense of his political identity. Zuma is Zulu, and Zuma comes to represent Zulu. Zulus represent South Africa's largest tribal group, and to be a high-ranking Zulu in the ANC undoubtedly has political currency.

FoJZ, likewise, never disputed the resulting press coverage that over-emphasized his Zulu identity and Zulu defense. They protested Zuma's press coverage on an

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<sup>128</sup> Sometimes Zuma even corrected the court translator's English interpretation of his Zulu (Moya 2006d).

ideological level – the press a part of the massive bourgeois conspiracy against Zuma – but never delving into such specifics. The trial and Zuma’s acquittal was their opportunity to further the notion that Zuma was a victim of political conspiracy. The conspiracy theory itself gave credibility to Zuma’s anti-capitalist leanings – the bourgeoisie plotted against Zuma because they feared him.

## **Conclusion**

### **The Divisive Irony**

Jacob Zuma is the both most polarizing and most evocative politician in contemporary South Africa. Until his corruption scandal, he was second in command of South Africa and the most likely candidate for its presidency. The rape trial threatened to convict him of South Africa's most feared crime. Rape is a powerful symbolic metaphor, and its meaning in South Africa reflects an embedded history of racism and a present fear of violence. His rape trial captured the attention of South Africa in a way that no other legal event has in a long time. Zuma was on trial, yes, but so was his political future – the trial had the potential to destroy his presidential ambitions. The rape trial had much less to do with an individual accusation of rape than with the social, political, and economic afflictions of the post-apartheid state.

For his existing critics, Zuma's statements and actions during the trial only made him more odious. Zuma explained and diagnosed the crises of rape and HIV/AIDS in South Africa. How could a man who said a skirt meant sex and that a shower meant safe sex *ever* assume the presidency of South Africa? Did it not incriminate the country of South Africa that he had attained to such a high-level political position? And would not his reasoning actually worsen already horrendous statistics in the rape and HIV/AIDS capital of the world? Zuma's admission that he had not used a condom with a woman he knew to be HIV positive and his infamous shower made him the biggest buffoon in South Africa and an international embarrassment to the country. Regardless of what he meant to

say, his trial has become an unfortunate event in South Africa's sad history of HIV/AIDS denialism.

What then did the trial change? It does not seem likely that the trial marked a serious set back for HIV/AIDS or women's rights in South Africa. The admission of Khwezi's past sexual history made her the face of women's activism for stronger laws against sexual offenses and the admissibility of evidence. She was more than a complainant, but was also *the victim* of rape in South Africa. The trial gave these organizations an opportunity to publicly air what are very serious problems in South Africa. Rape reporting rates are very low and older laws allow judges much lenience in admissibility. A renewed emphasis on improving investigation and prosecution would at least prevent repeat rapists from committing more crimes. Zuma's "shower theory", moreover, generated such an enormous amount of negative publicity that it may even give way to positive impact. The incident exposed precisely how *not* to have safe sex – with a shower or any other mythical panacea. By extension, it restated how one should have safe sex: with a condom.

It is more difficult to say how the trial has affected Zuma's political supporters. I personally spoke to only one person, Nelly, who identified the trial as significantly damaging to her opinion of Zuma. Nelly and I had worked together when I interned at an NGO in Johannesburg. She is 25, a mother, and Xhosa. Nelly told me that she used to like Jacob Zuma before the rape trial, but that now she does not. "For me, it was so bad because he knew that the woman was HIV positive, because [...] everyone knew the woman was HIV positive, and that as a leader he was not supposed to sleep with someone who was HIV positive" Nelly said. She was not sure if he was guilty of rape,

but she felt strongly that he had done something wrong and should not become South Africa's next president. "Jacob Zuma cannot be a leader, the rape, the corruption, a lot of things that have happened around him, sleeping with a woman who is HIV positive." The spectacle of Jacob Zuma, inside and outside the courthouse, made him guilty of *something*.

I am not sure how many other people are like Nelly. Undoubtedly, for those who were overwhelmingly committed to Zuma, the rape trial made little difference. When I spoke to Zuma supporters, they placed little meaning in the particularities of the trial. What mattered was that Judge van der Merwe had acquitted Zuma and that the charges were nothing but a political plot against him. Khwezi's multiple false accusations of rape and attempted rape thoroughly discredited her amongst Zuma supporters. His acquittal was their vehicle to promote the conspiracy. In that way, it became an opportunity to legitimize Zuma politically. The existence of a conspiracy against him gave credence to the threat that he posed against the bourgeoisie and international capital.

The trial provides critical insight into divisions in South Africa. Critics of Zuma deride him as a populist, while his supporters say that he understands the grass roots. Both positions do acknowledge his charisma. I wonder how much the perception of Zuma's political dynamism is a myth that hides a political vacuum. He fought in the struggle as an ANC member and attained political office as an ANC member. His leftist credentials minimal – that is, until a sudden explosion when Mbeki fired him in 2005 (Africa Confidential 2006d: 7). After his acquittal from rape, his strongest supporters in SACP, COSATU, and ANCYL rushed back to his side and the impending second-round of corruption charges have yet to loosen them. Yes, Zuma courts and

certainly needs these supporters, but they so badly need him. During the struggle, the ANC, COSATU, and SACP all espoused the principles of the New Democratic Revolution. The ANC elite still rely on COSATU and SACP to deliver votes, but their embrace of neo-liberalism has betrayed its two alliance partners. Zuma has the potential to become the next president of South Africa. He has yet to make false promises or scorn the leftist organizations of the ANC. His ousting from the ANC elite has meant that, at least for now, he is not popularly perceived as having extensive connections to the new BEE millionaires, the wealthy white South African capitalists, and transnational hegemonic structures. South African's first free elections were thirteen years ago – and only 20% of the country has benefited from its embrace of neo-liberal economics (Nevin 2006: 45). Poor South Africans who want faster change have an obvious draw to Zuma. Simply, he is all there is.

The trial further offers insight into “tribal” division in South Africa. Zuma's Zulu appeal is unlike the exclusive Zulu nationalism of the past. He is not an IFP member but an ANC member – he is not calling for an independent Zulu state, but he brings the Zulus to call for a Zulu president of South Africa. The ANC's ideology positions itself as a non-ethnic political party. The irony is that Zuma is the same man who campaigned with Mandela in KwaZulu-Natal and who was critical in bringing peace to the violent region during apartheid transition. The second highest ranking member of the party defined by its opposition to apartheid's attempts to tribalize and ethnicize, is now “playing the Zulu card” himself (Africa Confidential 2006d). Doing so, he plays precisely into the structures that he fought for decades to oppose.

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I pledge my honor that this thesis represents my own work in accordance with Princeton University regulations.