LAW IN THE STRUGGLE AGAINST APARTHEID, 1980 - 1994



# WHITE RESISTANCE TO THE MILITARY

Monograph 4

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WHITE RESISTANCE TO THE MILITARY

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CENSORSHIP AND THE CLOSURE OF THE NEW NATION

DISESTABLISHING OUKASIE

MOUTSE AND KWANDEBELE ETHNICITY AND GENDER IN THE CHALLENGE TO GRAND APARTHEID

# White Resistance to the Military

Richard L. Abel

Centre for Applied Legal Studies
University of the Witwatersrand,
Johannesburg

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# FOREWORD

Of all white resistance organisations in the final decade of apartheid, the End Conscription Campaign was perhaps the most conspicuously successful. It united within its ranks a seemingly incompatible diversity of interests and beliefs. Covert ANC supporters mingled within the organisation with religious objectors to militarism, anti-apartheid political refusers and all-out pacifists. The ECC's meetings were populated not only by student activists with an urgent motive for wishing to decline conscription but also by pain-furrowed middle class parents, whose memories of the South African Defence Force stretched back to its commitment to the fight against Adolf Hitler.

The ECC skilfully united this disparate assembly into a coherent campaign to halt conscription into apartheid's armed forces. Whites who otherwise may not have deliberated the morality of apartheid were impelled to confront their part in the system upholding it. Young men who would without question have entered apartheid's army were given a reason, and an organisational vehicle, for resisting it. And, most important, the ECC posed a ringing challenge to the total onslaught ideology that suffused white political life and thought in the 1980s. The apartheid government's drive for white solidarity was premised on resistance to an 'unChristian' ideology (Russian-led communism) and to alien forces (Cubans, East German-trained ANC guerillas). In controversion of these claims, the ECC 'domesticated,' and personalised, all the moral issues. It forced many whites to see that the moral crisis of apartheid started in their own homes. Could their sons fight in an army patrolling townships that housed their home employees? Was it right, or necessary, that they should risk family bereavement in a border war that was costing more and more lives to less and less evident purpose?

Of course the ECC was a white organisation. Conscription was a white issue. The Defence Act 44 of 1957 was premised on a racially exclusive call-up. This 'limitation' the ECC accepted and turned into one of its strengths. It was not the ANC; nor was it the United Democratic Front (UDF). It was a strategic alliance, not a mass political movement. It sought no overt political objective other than the abolition of conscription. And it claimed no allegiance or legitimacy other than its struggle over this issue. It drew on its members' and supporters' political impulses as ANC sympathisers, Christians, pacifists, and free-market businessmen, without sapping or diverting them. Whereas other highly effective resistance organisations, such as the Black Sash and its Transvaal Rural Action Committee, were derided by apartheid authorities, and later by 'struggle' activists, for being all-white, or middle class, the all-white definition of the conscription issue was the ECC's involuntary premise. It gave the ECC its berth, and its safety.

Another, associated, limitation concerned the ECC's objectives, and its strategy in attaining them. It was a 'single-issue' organisation. Its campaign was centred on conscription and conscription alone. Its ostensible dedication was not to attaining a new constitutional order but to abolishing a single feature of the present. While its members widely supported democratisation, the ECC did not affiliate with the UDF. This was a

critical decision. It gave the ECC focus and single-mindedness. It gave it a clarity of purpose and definition in a decade whose moral predicaments (the sustainability of socialist transformation, the justification for civilian-targeted guerilla warfare) are perhaps too easily forgotten.

The 'single-issue' focus of white organisational resistance to the military was carefully deliberated. Everything within the ECC—as I, a human rights advocate retained to argue a number of its cases, admiringly discovered—was carefully deliberated. The 'one-issue' campaign was the crux of the ECC's strategic success. It did not come without a cost. As an openly and proudly gay man, I participated with Ivan Toms and his support group (which included long-time anti-apartheid lesbian activist Sheila Lapinsky) in the decision not to make his gayness a frontal issue in the presentation of his case in court. We calculated that a gay-linked campaign would lessen the impact of his stand. This was not because there was still widespread anti-gay bigotry amongst white South Africans—that was a campaign Toms and I, amongst others, were pursuing simultaneously on platforms elsewhere—but because it would divert attention from the compelling focus of Toms's stand on conscription.

The strategic arithemetic was simple, and the calculation probably correct. From the point of view of moral integration, however, our formula may have been oversimple. Toms's stand as a poorly paid township doctor, who preferred to go to prison rather than risk the integrity of his commitment to his patients, sprang in part from his grasp, as a gay man, of the effects of prejudice and oppression. It is black South African's understanding of the same experience, more deeply scarred into South African history as racial discrimination than any other, that has led to the explicit protection of sexual orientation in the new South African Constitution. In our decision, we may for immediate and palpable strategic benefit have disregarded the unavoidable unity of that struggle. And we may, too, have overlooked the point that homosexuality, in the questions it poses to gender preconceptions, underscored the challenge ECC made to white male militarism.

Through Philip Wilkinson, Ivan Toms, David Bruce and many others, the ECC made conscription the most telling suburban issue for whites who otherwise would have supported apartheid or shrunk from open opposition to it. Those refusers around whose stand it rallied support groups, media and poster campaigns, and massed public meetings, showed the apartheid government and, more importantly, their fellow black South Africans, that white men could accept arrest, trial, isolation from their partners and families, job loss, public excoriation, and long-term imprisonment, rather than collude with apartheid.

As Richard Abel demonstrates in this perceptive, meticulous, detail-packed monograph, the ECC's successes were attained by dogged exploitation of the formulae and processes of the law. That was perhaps the most fascinating, and the most enduring, of the ECC's accomplishments. More than any other oppressive system in the modern world, apartheid was described, regulated and enforced through the law. Until its

disintegration into the covert murders of hit squads and third force activities, apartheid depended on the law's minutiae for its coherence. And this enabled its opponents, albeit on limited occasions, and with admittedly limited success, to call it to account in the courts of law. The ECC built its funding sources—based on careful implementation of legal advice—on avoidance of the Fund Raising Act 107 of 1978. It circumvented the emergency regulations with a daring precision that ended only when apartheid's executives (after jailing more than 60 of its members) had to resort to banning it outright.

And, most tellingly, it used the drama and the pathos of the criminal trial to demonstrate to its public that the iniquities at issue were the crimes of apartheid, and not the conduct of the principled young men who refused to take up arms to preserve it. The trials of Ivan Toms, David Bruce and others were carefully scripted within the legitimate space that due process accorded the accused and the ECC support groups that drafted their defence. The result, almost without exception, was a telling public rebuke to the system that sought to imprison them.

Richard Abel has done South African lawyers, and those interested in the survival of the legal system here, an important service in garnering and recording this detailed account of white resistance to the military. The struggles of the young men he recounts, the difficulties of the prosecutors, the ambivalences of the judges and magistrates who heard the cases, and the victories and acquittals sometimes attained, these are a proud and rightful part of the history of the constitutional order whose establishment they helped to attain.

EDWIN CAMERON
MARCH 1996

I take this stand because I believe that in a sense it is the one time that I have a choice as a white South African. I can choose to go to prison . . . rather than to be part of the SADF. (Ivan Toms)

My understanding of what happened in Nazi Germany was that for me to be able to say that what happened there was wrong . . . I had to be able to say to myself that if I had been a German soldier at that time I would actually have taken the stand against what was going on there. . . . [L]eaving the country would be actually running away once again. My mother is a refugee from racism. I am not prepared to be another refugee from racism. (David Bruce)

# I. Historical Antecedents

The struggle against apartheid was waged almost entirely by blacks, who felt its oppression every moment and constantly had to choose how to respond. Whites, by contrast, could passively enjoy the benefits of apartheid—and the vast majority did. The very limited white resistance took a variety of forms: individual acts of kindness and support for blacks (sometimes organized, as in the Black Sash), political activity (UDF, the Democratic Party and its predecessors), some churches, and small minorities within some occupations: journalists on the opposition press, human rights lawyers, educators at nonracial or black schools, organizers within nonracial trade unions. Many emigrated. A handful engaged in guerrilla actions.[1]

Military service, however, posed a stark moral dilemma for whites who questioned apartheid. By its very name the South African Defence Force (SADF) claimed to protect the country against external enemies. But there are none. South Africa possesses greater military capability than the rest of sub-Saharan Africa combined; furthermore, no country has ever threatened it, much less attacked it. Rather, South Africa has been the aggressor, supporting Renamo in Mozambique and Unita in Angola, fighting Swapo in Namibia, and carrying out raids on the ANC in Zambia, Zimbabwe, Botswana, Swaziland, and Lesotho. During the 1985-90 Emergency, the SADF was extensively deployed in black townships to repress political activity.[2]

The very few men who refused military service out of hatred for apartheid were one of the most visible forms of white opposition within South Africa. They displayed great courage and were welcomed as allies and heroes by many blacks. This monograph tells the story of two resisters against the background of the larger movement.

There is a long—if morally ambiguous—tradition of opposition to South Africa's military policies. During World War I the Union government decided to invade German South-West Africa. The Afrikaner commander, Lt. Col. Maritz, refused to seize the colony and instead joined the Germans. Other Afrikaner generals engaged in an insurrection. Although it was quickly suppressed, both the Afrikaner and the English churches refused to condemn it. The Nederduitse Gereformeerde Kerk actually supported conscientious objection against the campaign. In World War II many future Afrikaner political leaders sympathized with the Nazis. B J Vorster (later Prime Minister) was jailed for this. Magnus Malan (Minister of Defence during the 1980s) also refused military service. The Dutch Reformed Church recognized a right to resist, and the Free State synod actually urged civil disobedience in 1944.[3]

South Africa first adopted conscription in 1957: 7,000 white men were selected by lottery to serve nine months. In 1961 the Defence Act was amended to allow members of recognized "peace churches" (Jehovah's Witnesses, Seventh Day Adventists, and Quakers) to serve as noncombatants. Many refused to serve in any capacity, however, and were sentenced to repeated three-month terms in Detention Barracks (DB). Some spent up to four years there, treated more harshly than those who

had gone AWOL or violated discipline. They were kept in solitary confinment; some spent the entire winter in their underwear because they refused to wear military uniforms; others were put in dark cells, beaten, or forced to take cold showers during winter nights.[4]

The government constantly expanded the military. "Coloured" volunteers were accepted to the Cape Corps, a noncombatant unit formed in 1963. The Permanent Force (professionals who enlisted) increased from 9,000 to 15,000 in 1964, while the number of National Servicemen (draftees) rose to 20,000. Universal conscription replaced the lottery in 1967; and the length of service increased to 12 months in 1972. After completing their National Service, conscripts had to serve in annual 19-day Citizen Force camps for the next five years.[5] The government extended military training to schoolchildren. More than 250,000 white schoolboys were required to participate as cadets; they were issued guns and uniforms and instructed in military discipline, intelligence, security, types of warfare and SADF organization. They engaged in drill, shooting, concealment, tracking and survival. White schoolgirls could volunteer to participate in uniform drill, band practice, and sometimes shooting. Youth Preparedness was made part of the school curriculum; pupils were instructed in civic duties, patriotism, and "moral preparedness" through lectures on the flag, the national anthem, and the danger of communism. These programs were in place by 1972; four years later then Defence Minister P W Botha explained: "If we want to oppose the forces of revolution, anarchy and chaos we must begin with our young people at school."[6]

In 1974 the SADF took responsibility from the South African Police for suppressing the independence struggle in Northern Namibia. It also formed an urban unit for African volunteers. When Angola's independence intensified the struggle in Nambia the following year, the SADF instituted three-month operational duty camps in Namibia for National Servicemen. At the same time, the "coloured" Cape Corps (which had been noncombatant) began infantry training, and the SADF formed a naval unit for Indian volunteers.

The first bantustan army was formed in 1976, with SADF assistance. The length of National Service doubled to two years in 1977 and was followed by eight years of annual 30-day Citizen Force camps. In 1980, the SADF created the South-West African Territorial Force to fight Swapo (the South-West African People's Organization); for the first time, SWATF conscripted black Namibians. Two years later Citizen Force camps were tripled in length, to 12 years of annual 60-day camps. At the same time, those men who had been exempt from conscription by reason of age (or chance in the first ten years) were conscripted into the Commandos (or Dads' Army) for one month of training followed by annual 12-day camps until they were 55.

The government proposed extending conscription to "Coloureds" and Indians as part of the plan for the Tricameral Parliament established by the 1983 Constitution. F W de Klerk, then a cabinet minister, made the connection explicit: once Coloureds and Indians had "full voting rights" they would "hold obligations to defend these rights."

Magnus Malan agreed: "It is the privilege of all of us to have a share in the defence of our beloved country. National security concerns all of the inhabitants in this country."[7] "All of the inhabitants," of course, excluded the 85 percent who were Black, whom the government feared to train and arm. In 1984 conscription was extended to white immigrants, and 40 Commando units were deployed over the following two years.

White boys coming of age in the 1980s, therefore, confronted the following situation. They registered at 16 and were conscripted as soon as they left school unless they sought and were granted deferments for further study. They served two years of National Service and then annual camps of up to 90 days each, for a total of 720 days over twelve years.[8] At that point they were transferred to the Active Citizen Force Reserve for five years and then the Controlled National Reserve until they were 55. White women, Indians, Coloureds, and Africans could volunteer. During the height of the Emergency (1985-88) there were approximately 18,000 in the Permanent Force, 58,000 National Servicemen, 140,000 in the Citizen Force, and another 140,000 in the Commandos. The Standing Operational Force was 160,000; the total that could be mobilized was as high as half a million. In 1985, 35,000 troops were deployed in more than 96 black townships. In 1988, ex-conscripts called up for Citizen Force camps were being sent to Angola.

Resistance to military service emerged slowly. At first it was apolitical and virtually limited to the "peace" churches. The 1974 South African Council of Churches annual meeting at Hammanskraal resolved that the SADF was "defending a fundamentally unjust and discriminatory society" and challenged Christians to become conscientious objectors. The state's response was immediate and fierce. Prime Minister Vorster declared: "I want to warn those that are playing with fire in this way to rethink before they burn their fingers irrevocably." The government promptly amended the Defence Act §121(c) to make anyone who encouraged or assisted another to refuse or fail to render military service liable to a R6,000 fine and six years imprisonment. Even the Progressive Party condemned the SACC for "spread[ing] a defeatist spirit towards peaceful change"; and the United Party accused it of "giving terrorism a cloak of sacrilegious respectability."[9] Two years later then Defence Minister P W Botha elaborated the government position: "[I]n recent times there have been cunning attempts to discredit the SADF. One of the arguments advanced is the following one: 'How can you expect people to fight for an unjust society like SA?' However, when we examine the matter closely, the question arises: Where in the world is there a more just society today than South Africa?"[10]

Between 1975 and 1978 (a period that included the 1976 Soweto Uprising) an average of 1,750 men failed to report for each of the twice-yearly National Service call-ups (about 10 percent of the total expected intake).[11] A small number (mostly Jehovah's Witnesses) were charged and imprisoned; the rest evaded military service or went into exile. Anton Eberhard was sentenced to a year in Detention Barracks (10 months suspended) in 1977, Johann van Wyk to 15 months imprisonment (suspended for five years) in 1978.[12] Between 1978 and 1983 fewer than 15 openly objected.[13]

Organizational opposition to conscription intensified, however. The National Union of South African Students (NUSAS) formed a committee (Milcom) in 1978 to explore alternatives to military service and study its effect on conscripts.[14] The same year Quakers in Cape Town proposed a Volunteer Service Group as an alternative; members would become ambulance drivers, community health educators, and hospital attendants in black areas. Deputy Defence Minister Kobie Coetsee harshly rejected the proposal, which would "give each coward and rotter a sanctuary where he could evade his responsibilities to his country." "What we cannot tolerate . . . is for a person who has a religious objection to use that as a pretext to evade national service. An objection of this kind—as was proved in the war in Vietnam—can be used as an excuse for completely undermining national service and frustrating the defence of the country in the long run as a consequence."[15] The SADF Chaplain General, Maj Gen J A van Zyl, denounced conscientious objection in 1980: "It is a question to be asked to those who defend the right of conscientious objection, if they are not playing into the hands of the Marxist powers by way of indirect support."[16] In 1978 the government amended the Defence Act to punish non-members of peace churches who refused to serve with a R2,000 fine and two years imprisonment; they could be called up repeatedly and recharged.

Yet neither rhetoric nor threats silenced opposition. Conscientious Objector Support Groups were formed in 1980 for those who challenged the government. They held two annual meetings and published a journal, *The Objector*. The United Nations passed a special resolution supporting conscientious objection in South Africa. And 3,000 Swapo supporters meeting in Windhoek condemned the conscription of black Namibians.[17] The following year they were joined by the Council of Churches of Namibia. The Lutheran World Federation reported that more than 5,000 Namibians had fled to Angola to avoid conscription. At SWATF's junior leadership school 32 trainees announced their support for Swapo; when they were punished with isolation their parents formed a People's Action Committee. Partly in response, South Africa unofficially stopped conscripting in northern Namibia because of strong Swapo support, but it press-ganged black youth elsewhere. In 1982 Erick Binga was the first black Namibian publicly to claim to be a conscientious objector; he lost his challenge in the Namibian division of the South African Supreme Court in Windhoek and his appeal to the Appellate Division in Bloemfontein in 1988.[18]

Between 1980 and 1983 ten objectors outside the peace churches were charged for refusing to serve. Although some offered religious grounds for their action, all emphasized their abhorrence of apartheid. At the same time, they expressed their willingness to do alternative service. In 1980, Peter Moll, a Baptist, was sentenced to 18 months in Detention Barracks; he served a year—125 days in solitary confinement for refusing to wear military dress. Punished with dry rations 5 days a week, he was constantly hungry. Richard Steele, another Baptist, also served a year in DB and long periods in solitary. "It was far more difficult than I had anticipated. If I had known beforehand how difficult it was going to be, I probably would have opted for leaving the country. It was a place of systematic humiliation, with the intention to dehumanise,

to strip the person of his uniqueness."[19] In 1981 Charles Yeats spent a year in DB for refusing to serve and then another in civilian prison for refusing to wear a uniform.[20] Three more were punished in 1982. Mike Viveiros was sentenced to 18 months and served a year in Pollsmoor Prison. Neil Mitchell, a Catholic, served a year in DB and then six months in a civilian prison. And Billy Paddock, an Anglican, served a year in civilian prison. Asked why he did not emigrate, he replied: "I love South Africa. I love its people. I believe I can contribute more to South Africa from within the country than from outside. I believe the struggle for liberation must be waged through both fronts. I respect those who choose to go into exile to carry on the struggle there [but] I feel that my best contribution can come from within."[21] Adrian Patterson and Steven Granger were charged with refusing to serve in 1983 but escaped punishment on technical grounds. However Peter Hathorn served two years, the first in military prison, including two months in DB and two weeks in solitary. Paul Dobson served 14 months as a noncombatant, teaching at Impumelelo High School, St Francis Mission, at Mahlabatini in KwaZulu under the Natal Command's Civic Action Programme. He was expelled from that position for giving his pupils *Molo Songololo*, a progressive children's magazine. Refusing further service of any kind, he was sentenced to a year in prison.[22]

## II. The Defence Amendement Act 1983

In March 1983, in response to growing criticism of the very narrow grounds for conscientious objection, government introduced the Defence Amendment Bill, extending objector status to universal religious objectors who did not belong to the peace churches—but not those who objected on moral or political grounds.[23] The debate over the bill consumed six days and 600 columns of *Hansard*. PFP defense spokesman P A Myburgh offered several criticisms: arbitrary restrictions on community service, the exclusion of ethical non-religious objectors, and the length of community service (the bill initially proposed twice the military obligation, or eight years). He concluded by objecting to "a gaol sentence for a period of eight years for those who refuse to serve in any capacity whatsoever." It was far longer than the sentences of rapists and not "commensurate with the crime."[24] A Nationalist MP replied that there were three opponents of the proposed bill: "the explicit enemies of the Republic of South Africa" (which he illustrated by quoting from Radio Moscow broadcasts), the "rigorists" and the "humanists." The last "elevate the conscience of the individual . . . above the responsibility of the State, and that we cannot tolerate." He accused Myburgh of urging accommodation of those "who are opposed to an 'unjust war.'"[25]

The Conservative Party sought to "make it more difficult for citizens to evade military service [rather] than make it easier for them to do so." "The man who refuses to participate . . . is the man who betrays his nation."[26] The Nationalist who followed accused the PFP of using the bill "as a means of getting certain of their like-minded friends, people with political objections, out of the Defence Force. . . ."[27] The PFP then proposed that the period of increased service for objectors should be 1.5 instead of 2 times the military obligation.[28] The NP responded that "the subjective nature of . . . ethical or moral objections . . . makes it possible for it to be used as a cloak for political objections."[29] Although the New Republic Party opposed extending objection to ethical grounds, it did favor reducing the period of service for religious objectors to 1.5 times the military obligation.[30] The Conservative Party reasserted its opposition to any recognition of objection because of the "real danger . . . that the morale of the fighting soldiers may be affected, especially if there is an increase in the number of cases of this nature." "[P]eople with well-known, leftist, liberal theological arguments, could possibly pass as belonging to . . . categories of religious objectors." The United States had seen an increase in the number of objectors from 17,900 in 1964 to 40,000 in 1970.[31] A Nationalist MP reiterated that "people who are not prepared to make the supreme sacrifice for South Africa . . . should not be treated leniently." "[S]pinelessness is contagious. . . . It is an offence against the State, which cannot be condemned too strongly. . . ." "There are people in the official Opposition who have become champions of the demotivators. That is unforgivable, because it weakens our Defence Force." "The penalties in this legislation are obviously aimed at controlling a dangerous and growing evil."[32] When a PFP member called the rest of the House a "nest of hungry hawks," prompting an NRP member to call the PFP "a bunch of hon. pansy-pushers," the Deputy Speaker made both withdraw their remarks.[33]

A Nationalist MP then condemned several recent objectors who were serving jail sentences. Peter Moll had refused military service because "in terms of Christian moral standards the South African society is fundamentally unjust." Charles Yeats had stated during his trial that "South Africa's illegal presence" in Namibia made its forces "the criminal element."[34] Another Nationalist reiterated that those objectors who serve on "the home front and therefore do not have to make sacrifices or undergo the severe physical training for the operational area that fall to the lot of the ordinary soldier" must serve twice as long by way of "compensation" and to "serve as a deterrent for those persons who want to take a chance in order to evade military service."[35] A PFP member responded that both the Presbyterian and the Anglican Churches urged the recognition of conscientious objection on moral grounds. He also criticized both the harsh conditions of community service for those recognized as religious objectors and the "unbelievably harsh" eight-year prison sentence for those who were not. "Both of these penalties are unnecessarily severe because these are people who are not criminals."[36] A Conservative MP accused the PFP of "interced[ing] for those who want to evade national service" and was forced to withdraw those remarks.[37] The Defence Minister concluded the debate by dismissing the "feebleness" of PFP criticism, which he attributed to the fact that they had "entered into a compromise in their caucus with the radical leftists." The PFP urged that "ethical grounds should take precedence so that the objector to the 'unjust society' and the 'unjust war' can take refuge behind them and escape his duty to defend his country, to contribute his share towards ensuring the freedom of this country and all its people." The requirement of community service for twice the period of military service was not harsh. The Minister quoted the "top expert in South Africa" "on the question of religious objections." "After many studies he declared that the true religious objector was prepared to serve two and a half times the normal period of service. . . ."[38] The House defeated the PFP motion to refer the bill to a Select Committee, 89-22.[39]

The PFP then moved to define objector as "any person with whose religious, moral or ethical convictions it is in conflict to bear arms or participate in war under any circumstances," but the Chairman ruled that out of order in a Second Reading.[40] After some further attempts to debate the issue, the House adopted the definition of objector as religious, 78-17.[41] In a surprising volte face, NRP MP W V Raw, who had been one of the severest critics of the PFP proposals, moved to reduce the length of community service from eight years to six.[42] The PFP concurred that community service should be 1.5 rather than 2 times military service and added that noncombatant service ought to be 1.25 times combatant service.[43] The debate then veered off into questions of procedure, constantly returning to the definition of religious objections.

At the end, the Defence Minister casually accepted Raw's amendment:

> I am therefore prepared to depart from the twice and accept one-and-a-half times. [Interjections.] In certain cases this will amount to a period of approximately six years. . . . it simplifies the legislation in that we

> will now have the formula of one-and-a-half times throughout. Consequently there will be no doubt in respect of the circumstances.
>
> If it should subsequently appear—this point is very important—that the reduction of the period from twice to one-and-a-half is going to cause us to have a tremendous influx . . . I shall have to reconsider this principle.

He rejected the PFP amendment to reduce noncombatant service to 1.25 times military service.[44] Immediately after this a PFP member noted that religious objectors would now "have to perform one-and-a-half times continuous [community] service for a period of six years."[45] When Parliament reconvened a Nationalist MP reiterated that "the period of community services has been reduced by two years to six years." "The only difference [between the man who does national service and one who does community service] is, therefore, that [the latter] must do his service continuously and that he must do two years compensatory service owing to the fact that he is not exposing himself to dangerous situations."[46] The Defence Minister responded: "We cannot create a situation which would place the religious objector in a more favourable position than the serviceman." He reiterated several times that the religious objector would serve for six years.[47] The relevant clause, as amended, was approved 87-17.[48]

The PFP then moved an amendment to the penalty for a man who had completed his national service but refused to do Citizen Force or Commando camps. The amendment proposed that he

> render community service for a period of service not exceeding one-and-a-half times as long as the aggregate of all the periods of service which would otherwise have been applicable to him . . . or
> (ii) imprisonment for a period not exceeding a period equal to the unexpired portion of service due to be rendered by him. . . .

The proponent emphasized that the

> point is whether the penalty should be mandatory on the courts. In finding a man guilty should the sentence be mandatory or not? Should the court not only have to decide whether a person is guilty but also have a measure of discretion in deciding on the severity of the punishment that should be meted out to that individual? In general terms we in these benches believe that good legal procedure provides that as a general rule it should be left to the court to apply in their discretion, taking the circumstances of each case into account, the penalty. . . . In this particular case we believe that there is every good reason why the courts should have a discretion. . . . Who will [the accused] be? Let us say they will be the ordinary draft-dodgers, the layabouts who just do not want to serve. There will also be people who have some fundamental objection to a particular service and there will also be those people who have

> moral and ethical objections to participating in any form of warfare, those people whom we in these benches have been fighting over the past while. Because the Government has decided to lump all these three different forms of refusers together . . . we think it becomes especially necessary in those circumstances to allow the courts some measure of discretion as to how they apply that sentence.[49]

NRP MP R B Miller interrupted that "you are now trying to come in through the back door." W V Raw, whose amendment reducing terms from 2 to 1.5 times the military obligation had been accepted by the Defence Minister, was equally contemptuous. "It is of course quite obvious that this is simply a back door to achieve what the official Opposition failed to achieve by the front door." The Conservatives agreed. "All one sees here, once again, is how the champions of the people who wish to evade their military service on moral and ethical grounds, are furtively slinking in through the back door."[50] PFP MP Peter Gastrow responded:

> both the NP and the NRP through their attitude are expressing a vote of no confidence in the ability of the judiciary to deal with matters on their merits when it comes to sentencing. . . . it is normally the primitive legal system which provides a standard, prescribed form of punishment, irrespective of the merits of the individual case.

Miller, he said, "does not trust judges when it comes to this sort of punishment. [Interjections.] He says it is necessary for Parliament to tell the judge what he should do. . . ."[51] Miller called this "absolute tripe." "What discretion is left to the judiciary if a man gets up and pleads guilty and says that he is guilty of having made a decision not to serve his country? That is black and white." "Therefore there must be a mandatory sentence. . . ."[52]

> The PFP tried once again.
>
> We believe that the purpose of this kind of legislation . . . ought to be to prevent the S.A. Defence Force from coming into conflict in high profile trials with people with whom we may not agree. . . . [A] tiny percentage is holding the S.A. Defence Force to ransom because it uses the high profile trials.[53]

A Nationalist retorted:

> [W]hat does the official Opposition say to us? They say: Do not be too harsh on the poor little things. Let them do a little community service, let them have a soft job. . . . These are people who deserve punishment. . . . [The PFP amendment] means that if such a person has served one year in prison and he is then released, he walks out exempt from military service for the rest of his life. We cannot accept that amendment.[54]

The Defence Minister agreed. The PFP

> want the group which, for any reason, falls into the ethical, moral and political category to have a lesser offence than the religous objector. . . . I cannot accept these amendments, for that reason. In this particular case a penalty of one-and-a-half times is being proposed. . . . It amounts to more or less 6 years.

The amendment was defeated 16-87.[55]

The Defence Minister introduced the third reading debate by condemning the PFP for trying "to drag the Defence Force into the political arena."[56] The PFP welcomed "the reduction of the period of [community] service from 8 years to 6" but warned that "all the problems will by no means have been solved," in particular "the potential conflict between State and church."[57] Another PFP member objected that all three church representatives on the Naudé Committee (which had proposed the bill) were from the Dutch Reformed Church, even though one out of every three white Christians belonged to the Anglican, Presbyterian, Methodist or Roman Catholic churches.[58] The Defence Minister replied that the PFP amendments would have "destroy[ed] the system of national service." In response to a PFP question he explained the case of Peter Moll. When the Board found that he was not a religious objector, the Minister ordered him into solitary confinement in detention barracks. After 126 days Malan responded to a PFP request on behalf of Moll's parents and released him.

> Then he went to the Netherlands and they then began to issue publications about the "unjust war in South Africa". . . . as soon as he comes out, he says: No, I was there for political reasons and not for religious reasons, and I am now going to talk politics.

The bill passed, 110-20.[59]

The Board for Religious Objection was chaired by Justice M T Steyn and composed of church representatives, SADF officers, and military chaplains. (Steyn subsequently was Administrator-General of Namibia, where he publicly and vociferously coordinated the security force suppression of the liberation movement.) The English churches condemned the reform as too little; Roman Catholic, Presbyterian, Congregational, and Anglican clergy refused to serve on the Board.[60]

The reform seems to have had its intended effect of channeling religious objectors into the new system, thereby lessening pressure to end conscription. Between August 1984 and August 1986, 1,059 members of peace churches applied to the Board (the vast majority Jehovah's Witnesses). It granted 87 percent (123 applications were withdrawn and 16 refused). Of those granted, 70 percent performed community service, and the others were noncombatants.[61] 1985 saw a 35 percent increase in applications over the previous year, perhaps a reflection of the Emergency. Between February 1984

and September 1989, the Board granted 91 percent of the 1,890 applications (124 were withdrawn and 44 denied). Of those granted, 80 percent performed community service, and the rest were noncombatants. Applicants represented only one percent of those called up; 82 percent still were Jehovah's Witnesses, 6 percent Church of God, 2 percent Christadelphians, and 11 percent other churches; only 18 applicants belonged to no church.[62]

Because of the harsh penalty, very few who did not qualify as objectors refused service between 1983 and 1986.[63] Yet 7,589 conscriptees failed to register at the January 1985 intake (up from 1,596 the previous year).[64] In June 1985, Ivan McPhee was sentenced to 2,175 days in detention barracks for refusing to do community work; and a month later a 17-year-old youth received the same sentence for refusing to report for national service.[65]

## III. EXODUS

There also were other forms of resistance. The rate of emigration increased dramatically, while immigration fell (in response to fears about political stability, economic decline, and physical safety as well). The following table presents the data.

| YEAR | EMIGRATION | IMMIGRATION | NET CHANGE |
|---|---|---|---|
| 1983 | 8,247 | 30,483 | +22,237 |
| 1984 | 8,550 | 28,793 | +20,243 |
| 1985 | 11,401 | 17,284 | +5,883 |
| 1986 | 13,711 | 6,994 | -6.717 |
| 1987 | 11,174 | 7,953 | -3,221 |

1986 was the first year South Africa ever experienced a net outflow of registered migrants (almost all of whom were white); informal immigration (almost entirely African) remained substantial, partly because of South Africa's success in "destabilizing" neighboring states. The change appears to have coincided with the declaration of the first Emergency in July 1985. June showed a net inflow of 723, July a net outflow of 299.[66] By May 1986 the *Weekly Mail* regularly was carrying advertisements from overseas moving companies.[67] Thereafter more than 10,000 left each year.

Wits Medical School Professor John Gear expected 100 of the 220 graduates to emigrate in 1988 and believed that 40 percent had left over the previous 20 years. The Centre for Policy Studies at the Wits Graduate Business School estimated that 4,500 graduates emigrated each year (one out of four); conscription was the most important reason for 82 percent. More than half the male students at Rhodes University in 1987 were contemplating emigration.[68] A 1988 survey of 300 white male students at the University of Cape Town found that 60 percent wanted conscription ended and two-thirds planned to leave the country.[69] Between 1984 and 1987 emigrants included 1,651 engineers, 329 doctors and dentists, and 714 accountants.

These emigration figures probably were gross underestimates: between April 1986 and April 1987, South Africa reported only 5,000 emigrants to the United Kingdom, but the latter reported 19,000 South African entrants who declared their intent to stay more than a year.[70] Although a 1984 amendment to the South African Citizenship Act required foreign passport holders to adopt South African citizenship or be denied permanent residence status, 600 men had refused to do so by April of that year, in order to avoid conscription.[71]

Many simply failed to report or serve. In 1983 the SADF created the Army Non-Effective Troops Section to track down draft dodgers and monitor deferments.[72] The following year 378 men were in Detention Barracks, most for going AWOL or refusing training.[73] In 1985 (coincident with the first Emergency) the Minister of

Defence announced that 7,589 conscripts had failed to report for the first major call up after troops were deployed in the townships; this was *half* the expected intake and a 500 percent increase over previous years (1,596 in 1984).[74] Several months later he withdrew these figures, insisting that most men were "accounted for"; thereafter he withheld the number failing to report or refusing to carry out duties in the townships.[75] Nevertheless, the Commanding Officer of the Witwatersrand unit stated in 1986 that one out of four conscripts failed to report for army camps.[76] The SADF revived the Non-Effective Members Unit in January 1987; by July it claimed to have "found" 72,000 missing troops, 80 percent as a result of computer adjustments, reducing absences to 14,000.[77] That year Defence Minister Magnus Malan said that 29.5 percent of Citizen Force and Commando members called up to attend camps had sought deferments, 8.3 percent had failed to report, and 0.4 percent had requested exemption from service in black townships. The next year 24.6 percent requested deferments, 14.6 percent failed to report, and 0.4 percent requested exemption from township service.[78] The rate of suicides in the military, both attempted and successful, also increased alarmingly during this period: 1985—261/16; 1986—362-18; 1987—404/17; 1988—344/21.[79]

## IV. Resistance and Repression

Collective opposition to conscription intensified in 1983. Disappointed by the narrow terms for conscientious objection in the Defence Amendment Act the Black Sash annual conference issued the first call to end compulsory military service.

> South Africa is illegally occupying Namibia and this is cause for many in conscience to refuse military service. When South Africa withdraws from Namibia there would be no need for a massive military establishment unless there has been a political failure to respond to the desires of the citizens, and that army will be engaged in a civil war, which is good cause for many to refuse military service. . . .
>
> Therefore the Black Sash demands that the South African government abolish all conscription for military service.[80]

A few months later, in July, a hundred delegates from a wide variety of anti-apartheid organizations met in Durban at the fourth national conference of the Conscientious Objectors Support Group, reiterated the Black Sash call, and launched the End Conscription Campaign.[81] While trying not to violate §121(c) of the Defence Act, they sought to broaden their movement from the very few willing to face prison terms to the many who opposed conscription. By the end of the year, the ECC had branches in Cape Town, Johannesburg and Durban; within three years it had expanded to Port Elizabeth, East London, Grahamstown, Stellenbosch, Pietermaritzburg, and Pretoria, as well as most English-speaking university campuses. As many as fifty other organizations supported it, including the Black Sash, Catholic Justice and Peace Commission, Catholic War and Peace Group, Methodist Citizenship Department, National Education Union of South Africa, NUSAS, Student Union for Christian Action, and other political, religious, youth, student and women's organizations. Although it did not join the United Democratic Front (UDF), it worked closely with the UDF Anti-Conscription Committees to oppose the threatened extension of conscription to Indians and Coloureds. It sought to bridge religious and political opposition by opposing conscription and urging broader access to alternative service.[82]

The following year the Conscientious Objectors Support Group established the Conscription Advice Service for young men concerned about their obligations and alternatives.[83] A NUSAS survey at the University of Cape Town found that 64 percent opposed conscription, 62 percent opposed the occupation of Namibia, 90 percent felt inadequately informed about SADF activities, and 95 percent did not consider the army politically neutral. Surveys at Wits, Rhodes and Natal-Durban reached similar conclusions. Protests by students and administrators at English-speaking universities prevented the SADF from setting up the Military Units found on Afrikaans-speaking campuses, which had university insignia and colors and performed military drill on sports fields.[84]

In 1985 the Anglican church passed a resolution (128-11) opposing cadets at church secondary schools; it also sought an urgent meeting with the State President about troop misconduct in the townships.[85] The Inter-Church Committee (representing most English-speaking churches) issued guidelines for military chaplains, prohibiting them from wearing uniforms or bearing military ranks and making them responsible to the church rather than the SADF. Namibian churches went further, banning uniformed soldiers from services and ministers from participation in the military chaplaincy program.[86] In May the ECC caught the attention of a Conservative MP, who asked the Defence Minister "who these people are. I also want to ask him whether he is having their activities investigated because one need not set off a bomb to commit sabotage in the country."[87] In August the ECC and the SACC proposed a scheme of alternative service to the Geldenhuys Committee, which was reviewing military manpower needs; not surprisingly, it was rejected.[88] The ECC held a meeting on August 14 in Cape Town to announce a "troops out" of the township campaign. Dr Ivan Toms said conscription was an "issue of conscience."[89]

In September the ECC organized its first mass event, a Stop the Call Up Peace Festival at the University of the Witwatersrand. The government responded by denying a visa at the last moment to Cardinal Paulo Arns, a leading Brazilian civil rights activist. It also searched the homes of 20 ECC members, seizing documents and detaining five leaders: Janet Cherry (Port Elizabeth chair), Michael Evans (Cape Town chair), Richard Steele (a 1979/80 conscientious objector and curator of the Gandhi settlement), and Anita Kromberg and Sue Britton (both of Durban). On September 23, after two weeks in detention, they were released without charges.

Despite these disruptions, several hundred people attending the Festival heard speeches by Denis Hurley, Desmond Tutu, Beyers Naudé, Richard Luyt, Nadine Gordimer, Cheryl Carolus, Murphy Morobe, Mokganedi Thlabane (Swapo), and Carole Tongue (EuroMP). 150 foreign organizations sent statements of support. David Pijpers described his experience of joining the Cape Corps because it was a family tradition, serving in Namibia, being challenged by the anti-apartheid community in his home at Oudtshoorn, repeatedly deserting, and doing time in the Detention Barracks.[90]

On International Peace Day, September 16, the ECC launched a "Troops Out of the Township" campaign with a three-week fast in support of the demand that individual soldiers be able to refuse township service. Harald Winkler and Ivan Toms, both refusing call-ups, fasted the entire time, as did Richard Steele in prison. Many others joined for a day or two—1,000 in Johannesburg, 140 in Pietermaritzburg. Toms said he was fasting from a "Christian perspective" and as an ECC member "to highlight issues for people." Although he had been a noncombatant military doctor for two years, his current work as director of the Empilisweni SACLA Clinic in Crossroads had made this role impossible. In 1983 he saw "riot police and Administrative Board people ripping up shelters and leaving people in the rain. It would be crazy for me to leave work in Crossroads and then come back and shoot the people living there." Toms's parents thought he was "a bit crazy" but supported him "in their own way." "They can't

understand why I studied to become a doctor and then instead of making money I went to work in a poor clinic. . . . My parents are working class, my father is a municipal meter reader. Their attitude is why get involved, why draw attention to yourself." About 20 national servicemen, uncomfortable with their role in the townships, had visited him, as had 40 men just called up. During the fast he spoke at the University of Stellenbosch. Jewish, Hindu and Moslem groups became involved for the first time. The protest was supported by Quakers in Britain and the United States, the Norwegian division of the International Fellowship for Reconciliation, the Student Christian Movement of the Philippines, Diakonisches Werk (a German evangelical church), the Dutch Bishops' Lenten Campaign, and Jubilee (an American Christian organization).

The events received extensive newspaper coverage, including a precis of Toms's diary. *The Argus* called Toms's action "a courageous and genuine expression of protest" and "the flood of support . . . evidence of wide empathy from a concerned community." But two days later it opposed a call for a national stayaway because of its "potential for disruption." The night before Toms broke his fast a rally was addressed by Beyers Naudé, Molly Blackburn, Archbishop Philip Russell and Michael Evans. 4,000 attended the final day of the fast in Cape Town, 250 in Port Elizabeth, 100 in Grahamstown. Toms told supporters: "As a Christian I am obliged to say no, to say never again will I put on that SADF uniform. To put on that uniform again will be to identify with the apartheid system." Mike Evans, just released from detention, declared: "There is no place for the SADF as it presently exists in the peace process. The defence force is one of the major obstacles to peace in South Africa." UDF senior vice-president Christmas Tintokagwas asserted: "the blood of those killed by the army and the police will water the tree of freedom." Molly Blackburn stated: "If you are black and living in the Eastern Cape, you can honestly say you are living in a state of civil war." United Women's Organisation representative Noma India Mbeketo told conscripts to refuse to serve in the townships: "We do not want you there. . . . People are angry. Every day they are getting more angry." Bishop Trevor Huddleston sent a message from London: "Those who are forced to enlist must resist at any cost. . . ." [91] The Committee of South African War Resisters, formed by exiles fleeing the South African invasion of Angola in 1975 and the Soweto uprising the following year, held a vigil outside South Africa House in London in support of the fast.[92] A weeks after ending his fast, Ivan Toms and UDF representative Andrew Boraine met with white secondary school students who had formed the Pupil Awareness and Action Group to counsel them about cadet programs.[93]

These activities stimulated an angry response. On September 7 Deputy Defence Minister Adriaan Vlok accused the ANC of using the ECC to "achieve evil goals." Two weeks later Defence Minister Magnus Malan condemned the ECC at the Transvaal National Party conference, and Maj Gen van Loggerenberg did the same at a passing out parade. On October 6 the conservative National Student Federation took advertisements in two Sunday newspapers condemning the ECC. Its meetings were banned in the Western Cape on October 25. The Afrikaans Sunday newspaper *Rapport* published two articles on October 27 attacking the ECC, entitled: "Onslaught on White

Boys . . . To Cause the Government to Fall" and "The ECC's Politics Reveal Red." The ECC complained to the Media Council, with the result that *Rapport* conceded distortions the following January and gave the ECC space to state its case. On November 2 the police briefly detained Ivan Toms.[94]

In February 1986 the ECC held its second national conference and launched an alternative service campaign, "Working for Peace: Construction not Conscription." During the course of the year it organized more than 600 volunteers in a wide variety of projects: children's centers, old age homes, medical aid centers, environmental clean up, gardens and parks, community resource centers, and first aid classes. It joined with the Committee of Concerned Social Workers to train 35 volunteers from Soweto, the affluent white northern suburbs, and the coloured township of Bosmont.[95] It worked with Shifty Records to produce "Forces' Favourites," the first collection of anti-apartheid rock music.[96] Other groups added their voices. The South African Catholic Bishops' Conference called for an end to conscription in June.[97] The Conference of Headmasters and Headmistresses of Private Schools also called for alternatives to military service.[98] The Methodist synod went further, declaring that members who entered the townships under SADF orders violated church principles.[99]

In March the NRP introduced a Parliamentary motion in "Defence of South Africa's Sovereignty and Territorial Integrity," reaffirming "the need for compulsory military service." W V Raw, the proponent, denounced the ECC as "close to being treasonable." "[A]nyone who supports the cause of the terrorist against South Africa and its people and whose sympathy lies with the ANC and with Swapo does not deserve to be a South African." He wanted "to see them court-martialled, convicted and treated as they deserve to be treated."[100] A Nationalist MP quoted a letter to the *Sunday Times* describing the ECC as "a movement in which innocent people are manipulated by activists who carry out the aims of the Soviet Union" and the PFP as "what Lenin called 'useful idiots.'" The Chairman of the House, however, made him withdraw the word "idiots."[101] Another Nationalist condemned the PFP youth wing for associating themselves with UDF, who conducted "funerals of the ANC Terrorists" in which "the red flag with the hammer and sickle was draped behind the speakers."[102] The Conservatives followed by condemning "the policy of the hon powerless (magtelose) Minister [a pun on his given name, Magnus] [that] any Black solider may attain any rank, and may consequently also become the head of the SA Defence Force." They objected to "the Government's glaring injustice towards the White national servicemen. The Government only compels White boys to undergo military training and not Coloureds or Indians."[103]

In May, the House of Assembly debated the report of the Geldenhuys Committee, which recommended the continuation of national service. PFP defense spokesman P A Myburgh used the opportunity to reiterate his party's belief in "exemption from military service for those who can advance moral and ethical reasons for it, provided they are believed in with the same conviction as a conscientious objector and provided they are not politically selective." Although he wanted "to make it very

clear that I am not a supporter of the End Conscription Campaign," he endorsed "the people's right to operate politically" and urged the Minister against "overreacting to a small group of young people who are playing a political game for their own ends."[104] A Nationalist responded that "the young Progs and the End Conscription Campaign, the ECC, are hand in glove" and again opposed objection on ethical grounds. He condemned the ECC for accepting external funds, as well as support from "the Unit on Apartheid of the UNO." The motives of the ECC were "extremely suspect. . . . it is actually concerned with support for an onslaught with the aim of overthrowing the Government of South Africa by means of violence."[105]

More of those outside the peace churches began refusing to serve. David Hartman, a Cape Town photographer and Theravadan Buddhist, had applied to the Board for Religious Objection and been rejected in November 1984 because he did not believe in a supreme being. In March he asked the Orange Free State Supreme Court to order the Board to grant him conscientious objector status; the full bench acceded in August.[106] Philip Wilkinson, an unemployed Port Elizabeth butcher, had completed his National Service and several camps when he refused further military service in June 1985. He also was turned down by the Board because his universal pacifism was not based on religious grounds, and he rejected the noncombatant status offered.[107] Dr G M Winkler of Johannesburg, a member of the Evangelical Lutheran Church and Harald's brother, was allowed to do community service; both had participated in the three-week ECC hunger strike the previous year.[108] Donn Edwards, a student at the University of Durban and ECC member, was denied CO status as a "political objector who was trying to theologise his beliefs."[109]

Again there was a strong backlash. The right-wing *Aida Parker Newsletter* issued an enlarged special issue, with a press run three times the usual size, linking the ECC to a "vast Soviet active measures apparatus" and denouncing it as part of a "foreign subsidised, tele-guided psychological warfare weapon aimed at gutting our defences and delivering us, bound, to our foe." Donations allowed extra copies of the newsletter to be sold for R1, and copyright restrictions were waived. The National Student Federation sent 1,300 copies to white school principals, and the SADF distributed it among soldiers. The ECC challenged it before the Media Council, which found that the newsletter had "failed to report news truthfully and accurately" and was guilty of "distortion, misrepresentation and omissions." But it could take no action, since the newsletter did not belong to the Newspaper Press Union.[110] Furthermore, schools continued to distribute it.[111]

The ECC had succeeded in establishing branches at two Afrikaans universities, Pretoria and Stellenbosch. At the latter, 50 conscripts in Kerk Jeugaksie (Church Youth Action), the student wing of the Dutch Reformed Church, had signed a petition opposing troops in the townships. But Stellenbosch responded by banning the ECC and threatening students who organized meetings or distributed its literature with a R1,000 fine and expulsion. 500 students and staff signed a petition supporting the ECC, but 402

signed a counterpetition, asserting that the ban "in no way threatens or hinders the free expression of opinion by individuals."[112]

The government also was angry (and may have been behind the *Aida Parker Newsletter*). In March it arrested Dominique Souchon and Janet Cherry (Port Elizabeth chair) on charges of possession of Mandrax, just before Cherry was to leave for a conference in France of SOS Racisme; they claimed that the police had planted the drug in an outside bathroom of their house. Neither was charged, but the government unsuccessfully sought to deport Souchon, who had been born in Mauritius but had lived in South Africa since he was 10 months.[113] In May the police arrested Philip Wilkinson while he was speaking at a Johannesburg ECC rally and charged him with failing to report for a camp; after detaining him for seven weeks they dropped the charges but kept him in detention under the Emergency until October and then served him with a restriction order.[114] When the government declared the second Emergency on June 12, it passed regulations making it illegal to "incite the public or any person . . . to discredit or undermine the system of compulsory military service." The ECC immediately challenged them for vagueness, but Justice John Didcott was unable to find them insufficiently precise to be enforced.[115] Furthermore, the Western Cape police commander, Brig. Chris Swart, used his Emergency powers to prohibit the ECC (and 118 other organizations) from publishing pamphlets or posters and its officials from being publicly quoted in six magisterial districts around Cape Town.[116] Nevertheless, activists continued to find ways to counsel and support individual objectors and oppose conscription.

Under the second Emergency the government detained at least 75 ECC activists; 30 others went into hiding; those released from detention were served with restriction orders. Offices and homes were raided and documents confiscated.[117] On September 13 Defence Minister Malan denounced some ECC members as disloyal foreigners and said that others "are political agitators and are possibly unconsciously being used by the ANC."[118] The Cape Town Commissioner of Police banned the ECC "Arts Festival '86: Towards a People's Culture" a few days before it was to begin.[119] The government proposed to amend the Defence Act to require pacifist "convictions based on faith in a Supreme Being or Beings of a divine nature only," in order to prevent others from invoking the Orange Free State Provincial Division judgment in favor of David Hartman; but the bill was never enacted.[120] ECC activists also were the victims of covert violence: obscene telephone calls, death threats, assaults, petrol bombs; tires were slashed, wheel nuts loosened and brake fluid drained from their cars.[121]

Throughout 1987 the ECC was largely dormant or defensive. In January, the Chief of the Defence Force took a full-page advertisement in two Sunday newspapers, reassuring conscripts about military service. The ECC sought to reply but was unable to publish its full statement because of the Emergency regulations.[122] In February a Nationalist used the budget debate to denounce the "connection between the ANC and the End Conscription Campaign." His evidence was Tambo's speech on the ANC's 75th anniversary congratulating the organization, the fact that both groups received funds

from the same sources, and an ANC pamphlet exhorting "white youths" to "refuse to be conscripted into the SA death forces. . . . [but rather] join the anti-conscription campaign and the democratic struggle in South Africa." Furthermore, the ECC had "forged open personal links with the Helsinki-based War Resisters International," which "has been identified as a component of the Moscow strategy of 'active measures'." He concluded by asking "what is the connection between the PFP and the ECC?"[123] The PFP objected vehemently to this as "an impertinence and an absolute abuse of the rules of this House" and eventually convinced the Chairman to rule him out of order.[124]

In March, Laurie Nathan addressed the UN.[125] In April the ECC presented a card and cake at the Wits Command on the occasion of the SADF 75th anniversary; embarrassed, the Command accepted the gifts because they attracted too much attention from passersby. The ECC also sent call-up papers to Defence Minister Magnus Malan under the "Peace Act of 1987."[126] On April 14 Defence Minister Malan accused the ECC of being "a direct enemy" of the SADF and called on the Progressive Federal Party to repudiate it. The ECC responded that it had never urged conscripts to refuse military service. A month later Malan declared in Parliament that South Africa could not allow the ECC to break down its ability to fight communism. The next day Conservative Party defense spokesman Koos van der Merwe said ECC members should be "thrashed."[127]

On May 23 a helicopter dropped smear pamphlets from the "Anti-Liberal Alliance" (with a false address) on an ECC fair in Cape Town. Two days later the SAP received two complaints about the incident. In response to Parliamentary questions the following month, Law and Order Minister Vlok denied that it was an SADF or SAP helicopter. A month later Vlok refused to answer a similar question by Peter Soal, claiming an investigation was in process. He reiterated this in October, adding that the helicopter identified by complainants had been at an aviation company at the time for routine service. In February 1988 he said the investigation had been completed the previous November.

> The discrepancy in the information supplied by the complainants and that which was made available to the SAP through their investigation, could not be clarified. The responsible person/s or instances/s has therefor not been identified by the SAP. The helicopter was, at the time of the incident, at an aviation company for a routine service. I am not prepared to furnish the name of the owner because he was apparently not responsible for the distribution of the pamphlets.

A month later he refused to elaborate and would not tell PFP MP D J N Malcomess why no flight plan had been filed. He responded to a subsequent question that there were 26 helicopters and 2 service companies in Cape Town and pilots had to file flight plans. The following August Defence Minister Malan refused to say whether the SADF had produced the pamphlets because the matter was sub judice. In March 1989 he

claimed that he had only learned in June 1988 that the SADF was involved in the incident and then informed his Deputy Minister and Law and Order Minister Vlok.[128]

## V. The Defence Amendment Act 1987

In June the House of Assembly debated a Defence Amendment Bill dealing with conscientious objection. Deputy Defence Minister W N Breytenbach noted that the 1983 Act mandated that objectors perform community service in "a single continuous period . . . one-and-a-half times as long as the aggregate of the maximum of all periods of service" they owed. The "period of imprisonment . . . is based on the same one-and-a-half formula." In S v Lotz, however, Justice Stegmann had misinterpreted this in ordering "community service over a much shorter period than was originally intended"—1.5 times the period for which the serviceman had been called up—"which period would probably never exceed three years." This Bill would "rectify the situation and bring it in line with Parliament's original intention." It would also rectify "the position regarding the period of imprisonment which has to be served by objectors to military service who are not classified religious objectors." And it would be retroactive.[129] The Conservatives supported the bill.[130]

PFP MP P H P Gastrow began by criticizing the haste with which Government had (unsuccessfully) sought legislation the previous August to overturn the OFS Provincial Division decision extending religious objection to nontheistic religions (such as Buddhism). He maintained that "the purpose of providing alternative service for conscientious objectors is not to 'straf' [punish] them . . . [but] to serve as a deterrent. . . ." Only about 40 men a year (other than Jehovah's Witnesses) were being classified as religious objectors. Instead of amending the Defence Act, "which removes all flexibility from the existing section," he urged that the SADF "fix a period for which the person called up was likely to serve," which the judge could then multiply by 1.5. In practice, "very, very few servicemen ever serve the maximum period for which they can be called up." The Geldenhuys Commission found in 1985 that the average man serves only "48% of his camp liability after having finished his two-year period." Indeed, the SADF Chief of Staff had to approve any call-up to a fifth cycle and the Defence Minister any call-up to a sixth. "I am told that this happens very seldom, if at all." Gastrow also objected to the "extremely harsh sentence" of six years, "a sentence imposed on people who have been convicted of murder, rape, sedition, etc." "In order to find some form of comparison we have to look to the Eastern Bloc countries, because in none of the Western countries will we find anything that comes close to this." The PFP also opposed making the legislation retrospective.[131]

The National Party supported the Bill because it was "directly concerned with the ability of the Defence Force to function effectively. . . ." The PFP was "soft on national security." Failure to pass the bill would be "the thin end of the wedge, and we shall be allowing the white-anting activities aimed at undermining our Defence Force to gain momentum and eventually succeed. . . . [T]his loyal effort on the part of thousands of young men will have suspicion cast on it and will even be made ridiculous." The PFP "is opposed to national service as such. . . . They are elevating resistance to national service to the status of a principle." "[E]veryone who refuses to

perform national service for his fatherland is behaving like a parasite towards those loyal people who do their share for their country."[132]

PFP MP N J J Olivier replied:

> [I]n the times in which we are living there is always the possibility that our children will say to us: "Dad, I do not see my way clear [to national service], whatever the circumstances may be." I do not then want to place that son of mine in the position of either having to go to jail for six years or having to do community service for six years of his life.[133]

A Nationalist responded that those terms were "punishment for those who want to do nothing at all." Without it, "one is specifically going to have a deluge of applicants, because then one is opening the gate to all the end conscription campaigners and similar people who, for all kinds of negative reasons, amongst them communistically inspired reasons, do not want to do national service." He reminded the House that the Defence Minister had accepted Vause Raw's amendment to reduce the term of community service or imprisonment from 2 to 1.5 times the outstanding obligation.

> The hon the Minister said here that that period of one-and-a-half times the length would mean a period of approximately six years. With all due respect to the court, which decided otherwise, those of us who do not understand the law all that well say that we cannot quite understand how the Supreme Court's decision could be the very opposite of that of the others. As politicians, however, we go according to what the hon the Minister said, and that was approximately six years.[134]

The PFP retorted that the question was "how stiff the penalty should be, ie what is appropriate, fair and equitable." The 755 men categorized as religious objectors from 1983 to July 1986 were 0.2 percent of those called up, "an absolutely insignificant number." Of the 21 European countries, eight had no conscription and all the others recognized conscientious objection on far broader grounds. Only in Greece and Denmark was the penalty for refusal more than three years.[135] A Nationalist responded that extending the grounds of objection would "surely be giving the End Conscription Campaign a blank cheque." He quoted the *Aida Parker Newsletter*, which called the ECC "potentially the most dangerous political movement to emerge in the current crisis." It was "heavily foreign-financed." "[P]eople who refuse to perform [national service] for reasons other than religious beliefs, should definitely be penalised."[136]

The Deputy Defence Minister concluded the debate by reiterating that "the Bill is necessary for the creation of uniformity and to remove the possibility of differing interpretations. . . ." It dealt with "a technical point." "It is our interests, South Africa's interests, that are at stake and our freedom that is being threatened. This country's survival is at stake." He promised that the Minister would "consider with great

compassion cases of religious objectors in so far as community service is concerned. He will consider the circumstances to see whether the religious objector's period of community service could not be curtailed." Such service "should not be regarded as a punitive measure" but rather as "a compensatory measure." The Bill passed 122-18.[137]

## VI. Resistance Intensifies, 1987/88

In August the ECC achieved a major success when 23 men announced at a Cape Town church that they would not serve in the SADF. Mark Behr, a Stellenbosch student, had received basic training five years earlier as a prefect of cadets, during which he had joined in singing "I'm gonna go into Angola, I'm gonna kill old Sam Nujoma." He had been taught that all Swapo members were communists, without any local support. Glenn Goosen, another resister, had been president of the University of Cape Town Student Representative Council. Many of the 23 were subsequently invited to speak at student and religious meetings.[138] A Nationalist MP demanded in the House of Assembly that "an urgent investigation please be taken into the activities of the ECC."[139]

Others engaged in individual acts of resistance. Dr Leslie London was the first Jew to be granted noncombatant status, with support from rabbis in Cape Town and Bloemfontein.[140] Rashid Rooinasie, 26, of Katatura township, Windhoek, refused conscription into the SWATF, invoking Islam. He announced a national campaign to inform Muslim youth that military service was "haraam," quoting Imam Al-Ghazzali: "He who associates with tyrannical rulers commits sin for, by his activities, silence, words and invocations, he commits disobedience to Allah." Imam Rashid Omar, president of the Muslim Youth Movement, warned the government against conscripting Muslims: "Islam views apartheid and the present government as an embodiment of evil and immorality."[141] At the end of the year the ECC counterattacked government repression with its "Let ECC Speak" campaign, endorsed by clerics, academics, writers, journalists, businesses, and politicians.[142]

For most of the year, however, government had the upper hand. Some of the nearly 100 ECC activists detained under the Emergency remained in prison: Janet Cherry had spent 212 days in jail by March 20.[143] However, the state decided not to prosecute nine charged with disseminating subversive statements.[144] The *Aida Parker Newsletter* resurfaced when it was distributed by cadet master A B Crankshaw at St Andrew's College, Grahamstown.[145] A later edition contained documents the police had confiscated from the ECC, including a diary of executive committee member Gavin Evans's American tour.[146] Many attacks were anonymous or conducted by shadow organizations: the End the End Conscription Campaign, Veterans for Victory, and the Support National Service Campaign. They scrawled graffiti on walls—"Moscow's puppets," "yellow bastards"—and put up bogus ECC posters.[147]

The Defence Minister complained in Parliament that expenses incurred in handling religious objectors increased from R2,440,434 in 1986-87 to R3,599,904 in 1987-88 and were expected to rise further to R9,730,000 in 1988-89. Furthermore, "the utilisation of these people is a real problem because . . . no one wants them . . . because they do not render military service. There is a very strong feeling against these people. . . . I am not going to go out of my way to comply with their wishes because personally, I am not very sympathetic towards such people."[148]

## VII. Dirty Tricks Exposed, 1987/88

At the end of 1987, just hours before they would have completed their two years of National Service, three soldiers were arrested for allegedly disclosing military secrets. Heinrich Johannes Mönnig, 23, Peter Reinhard Pluddemann, 25, and Desmond William Thompson, 20, were good friends who had served at the Western Province Command Headquarters in Cape Town Castle. Their lawyers, John van den Berg, Reid Corin, and Willie Knoetze, insisted that the military could not give them a fair trial, but Colonel Manie Dempers, court-martial president, rejected this argument. They were accused of violating the Protection of Information Act §4(1)(b) by obtaining classified documents between December 11 and 14 with intent to disseminate them.

They were tried in secret beginning January 12, 1988, having spent 21 days in solitary confinement, and were convicted on February 4 of conspiring to disseminate information. Colonel J J Claassen, commanding officer of Communication Operations at Western Province Command Headquarters, conceded during cross examination that the SADF had sought to discredit the ECC. Jannie Swart, a fourth "friend" who was arrested but not charged, had taped their conversations. He testified that Pluddemann was outraged by the SADF campaign against the ECC and wanted to warn it; Pluddemann agreed. Mönnig said he only wanted to expose lax security within the SADF and had intended to denounce the others. Thompson denied ever having decided to act. Dempers rejected Pluddemann's defence of necessity and disbelieved Mönnig and Thompson. He denounced their "despicable act of undermining the SADF in a time of crisis. It's a sad day when employees of the SADF conspire against it." Their actions came close to "mutiny." He rejected the arguments in mitigation and sentenced them to 18 months in Detention Barracks. He ordered them into immediate custody but was overruled by Brigadier A K de Jager, Commanding Officer of Western Province, who released them pending confirmation of their sentences on condition that they speak to no one. The ECC held a press conference on February 27, in which chairman Crispian Olver condemned the smear campaign.

The sentence was confirmed on March 4 and the men ordered to report to the military police at 4 pm. Hours before they were to enter Detention Barracks the three brought an urgent application in the Cape Town Supreme Court and obtained a stay of execution from Justice E L King, who also gave them access to the court martial record.[149] *The Cape Times* made it a front page story on March 5, detailing the allegations of dirty tricks, and the Sunday papers followed suit the next day. On March 23, the Ministry of Defence applied for an order that the record be restricted to the court and the lawyers.[150]

The record disclosed more of Claassen's testimony. He had acknowledged that the SADF viewed the ECC as a hostile organization and had sought to discredit it in Cape Town, under cover of the fictitious Anti-Liberal Alliance, by manufacturing and distributing posters ("ECC Does It from Behind," "ECC—Every Coward's Choice," "ECC Members Are Yellow," "ECC Believes in Fairy Tales," "ECC's Rautenbach

Exposed as Branch Informer," "ECC Probes Gay Membership," "ECC Talks with Irish Guerrillas Refreshing"), pamphlets (the ECC is an "extension of Moscow's web" and helps Umkhonto we Sizwe), and t-shirts ("End Communism Campaign," "I Love SADF"). An army helicopter had dropped the leaflets on an ECC fair. False number plates were affixed to vehicles used to distribute anti-ECC propaganda. Dr Ivan Toms had witnessed this and reported it to the police, who naturally failed to arrest the disguised soldiers.

In June the SADF review council upheld the convictions but reduced the sentences to eight months for Pluddeman and Mönnig and six for Thompson. The three continued to seek judicial review. A full bench, consisting of G Friedman, C T Howie, and J H Conradie, heard the case in camera on June 1-2, 1989. On August 16 the court held that the military tribunal could not pass judgment on the SADF's own misconduct because it was not sufficiently unbiased, and it awarded all costs against the state. It rejected the SADF claim that civil courts lacked jurisdiction because the country was in a state of war; such a conclusion would "have had a dramatic, if not devastating, impact on the rule of law in this country." It found that the SADF had entrapped the three by wiring a fourth man, Corporal Jannie Swart, who encouraged them to discuss disclosing information. Swart then met the accused outside the Castle on December 14 and offered them military documents provided by his superiors, at which point they were arrested. When the judgment revealed Swart's identity for the first time, he turned out to be a senior organizer for the Democratic Party! Swart claimed to welcome the decision and wanted to express his regret to the accused for actions that had caused him "much torment." Party leaders declared they were satisfied with his explanation.[151] The state appealed the judgment, but in May 1992 the Appellate Division affirmed that the court martial had been "fatally flawed" and a "nullity."[152]

The evidence uncovered by the court martial led the ECC to instruct attorneys to investigate and seek to halt the SADF "dirty tricks" campaign. On March 25, 1988 it applied to the Supreme Court for an interim order restraining SADF harassment.[153] Five hours after the ECC served papers on the SADF, the latter applied to the Supreme Court to hold all hearings in camera. Four days later Justice C T Howie, proceeding in camera, granted the ECC an interim interdict but prohibited it from publicizing the victory! He also extended the interim secrecy order until the substantive hearing, scheduled for August 2.

The ECC and SADF met in June to resolve their differences. But Malan replied to Olver on July 7, rejecting the ECC representations, refusing to consider changes in conscription, and concluding that "it would therefore serve no purpose to continue further discussions on the matter." Justice Nel heard the ECC application on June 23, issued an interim interdict, and postponed a full hearing to August. The founding affidavit by Dr Crispian Olver, ECC chairman since November, chronicled its growth to ten regional and five university branches and up to 4000 participants in Cape Town rallies before the Emergency. Neither the organization nor any speaker had ever been prosecuted.

A ten-page annexure detailed some 70 incidents. These included damage to property (sometimes endangering lives), burglary and robbery, assault, defamatory and homophobic graffiti, harassing and obscene telephone calls, counterfeit posters and pamphlets, false advertisements offering ECC members' property for sale, and death and bomb threats. On April 26, 1987 Ivan Toms complained to the police, who apprehended four young white men with short haircuts putting up anti-ECC posters. After one suspect had a secret conversation with the police, the three cars left for the police station, during which trip the suspects were allowed to escape. Although Toms reported the license plate number to the police, there was no follow-up. On May 23, 1987 a helicopter dropped anti-ECC pamphlets on an ECC fair; its registration number was noted. Fifteen other affidavits were filed.

Defence Minister Malan's reply insisted that the campaign was "necessary for the efficient defence and protection of the Republic of South Africa." These were "necessary military measures" that did not aim to threaten life or damage property. Augustinus Koch de Jager, the Officer Commanding, Western Province Command, admitted five incidents: soldiers joined an ECC fun run wearing hostile t-shirts; they twice put up posters saying "ECC members are yellow," "ECC does it from behind," and "ECC believes in fairy tales"; the suspects apprehended by Ivan Toms and the police were soldiers; and the helicopter did belong to the SADF.

> [T]he ECC has seen fit to wage a propaganda campaign directed at discrediting the SADF. This propaganda effort has reduced the effectiveness of any overt counter-measures which may be taken by the SADF. It has accordingly become necessary for the SADF to resort to covert measures in order to meet the propaganda threat.

The ECC had not shown that these "legitimate counter measures" caused it any harm.

The affidavit of Lt Gen Jan van Loggerenberg, former Chief of Staff Operations and now Chief of the Air Force, denied that the civilian courts had jurisdiction, and alternatively asserted that the acts were lawful, because "a war in which the RSA is engaged actually prevails within the territory of South West Africa and elsewhere in Southern Africa." The SADF was on a "war footing," with leave restricted, operation centers manned around the clock, and senior personnel on call. It was preparing for immediate enemy engagement and was already using airplanes and tanks. In response to increasing terrorism, the SADF had taken over some of the responsibilities of the SAP. Even if the ECC failed to discourage conscripts there was a "real danger" they would be demoralized and demotivated, especially since support from "the people back home" was an essential incentive. The ECC sought "to weaken the will to war not only of the conscripts engaged in active service, but also that of the population as a whole." He accused the ECC of "sympathy with, if not allegiance to, at least some of the forces with which the SADF is currently involved," noting ANC approbation for ECC campaigns.

The government submitted an affidavit by Craig Michael Williamson, now a member of the President's Council, who had joined the SAP as an officer in 1968 and become an undercover security branch member in 1971. Having been elected to the NUSAS National Executive in 1974 and as Vice President in 1976, he then infiltrated the ANC-SACP abroad, meeting leaders like Mac Maharaj, Joe Slovo, and Ronnie Kasrils.

> Maharaj explained to me that the ANC-SACP alliance strategy in this instance was to develop a "resistance movement" amongst the youth in order to persuade an increasing number to refuse national service on the grounds that they refused to participate in an "unjust war." . . . some youth should be persuaded to make an issue of their refusal to do national service on political grounds and even be prepared to go to prison. Maharaj said that he needed such martyrs in order to create a world-wide propaganda outcry against the S.A. Defence Force.

He quoted from the May 1979 issue of *Dawn* (the MK journal): "Enemy soldiers must be demoralised, neutralised and where possible won over to our struggle." Williamson worked for the International University Exchange Fund, which was the single largest donor to the Committee on South African War Resistance. "I was told that the campaign to encourage young whites to avoid military commitments was to be the 'leukaemia' of the armed forces." He also quoted an article on "Marxism and Violence" from 2(1) *Umsebenzi* (1986): "White youths still make up the majority of the SADF—and we must demoralise and neutralise them, and organise them within their ranks."

The applicant's answering affidavit reiterated the ECC's goals and methods. There was extensive evidence of SADF responsibility for all the dirty tricks. The SADF had, and used, ample means to counter the ECC. Indeed, its manpower requirements were being met, and there was no sign of disaffection among the troops. Even war would not justify these actions; but no war had been declared. Williamson's affidavit made no mention of the ECC. The government displayed a "totalitarian inability" to distinguish between a loyal opposition and violent struggle. "The ECC has chosen a path of peaceful opposition, which is fundamentally different to the path chosen by Swapo and the ANC." Keyan Gray Tomaselli, Director and Professor of Contemporary Cultural Studies at the University of Natal, Durban, submitted an affidavit in reply to Elizabeth Magrietha Pepler (who had no academic position or publications), rebutting her misinterpretations of ECC literature. She offered a single interpretation of the motivation and reception of that literature without interviewing either its authors or readers. He responded that "ECC's posters are virtually all flawed pieces of communication that never manage to succinctly bring across a central message . . . [They display] a lack of even rudimentary strategic communications thinking."

Sydney Kentridge SC argued for the ECC that "these are the pretensions of a junta of South American generals in a country in which the army acts as an independent force. . . . [Generals] have declared martial law by means of an affidavit in this case—a

case which they took every step to keep secret. It is quite unconstitutional." Justice S Selikowitz ordered the application heard in open court but kept secret certain documents relating to the court martial. He found that war did not actually prevail, nor had martial law been declared. It was "not at all clear" to him "what the purposes or objectives are of the South African Defence Force's involvement" in South West Africa. "The [ECC] is a lawful organisation. It has a legal right to recruit members and to canvass for funds without unlawful interference." "The deliberate use of false statements of a type calculated to cause harm is an abuse of the right to criticise and is *prima facie* unlawful." He accepted Kentridge's contention that "it hardly lay in the mouths of the respondents to question the harm they avowedly set out to create." The Defence Act did not confer on the SADF the power to act illegally. He made the interdict permanent on October 14. Although Kentridge sought attorney and client costs on the ground that the respondents' defenses were "if not frivolous, then impudent," and they had tried to "brazen out their unlawful acts," the judge rejected these contentions, awarding only party and party costs to the ECC.[154] In November 1991 Justice Selikowitz awarded costs against the Minister of Defence and Brig A de Jager for asking the court to hear the ECC application in camera. They had acted "vexatiously"; the brigadier's "unrepentant attitude" moved the court to express "disapproval" of the "unnecessary trouble and expense."[155]

## VIII. Challenge and Suppression, 1988/89

In 1988 the ECC also protested a Veterans for Victory booklet entitled "The Rape of Peace," which was being distributed to teachers, school principals, student representative councils, organizations, and church members with a cover letter claiming that the booklet "detail[s] the links, affiliations and inner-workings of the Soviet backed 'peace' movement." The ECC denied any links to the World Peace Council.[156] A Nationalist MP again sought to smear the PFP by association with the ECC, claiming that PFP MPs and youth branch members had attended ECC events.[157] Deputy Defence Minister W N Breytenbach thanked his colleague for exposing the ECC "as it has not been exposed for a long time." Although its members sought "to wrap themselves in a cloak of peace," the SAP had just arrested "four suspected White terrorists" in Broederstroom, two of whom were "national service evaders." They had "one of the biggest consignments of arms the Police had ever seized . . . the kind used to commit acts of terror among innocent civilians." "[T]hey were clearly members of the ECC." Furthermore, the War Resisters' League "with whom the ECC . . . has close moral and financial ties" had drawn a distinction "between the violence of the current regime in South Africa, which is criminal, and that of those struggling against it, which, by contrast, is tragic."[158]

In early August 1988 the ECC took the offensive. At simultaneous news conferences in Johannesburg, Cape Town, Grahamstown, and Durban 143 men publicly declared their refusal to serve in the SADF. To protect the ECC, they claimed to be acting as individuals. The objectors, 18-36 years old and both English- and Afrikaans-speaking, included the grandson of a former cabinet minister and a Rhodes scholar. 105 had done no military service and were liable to six years imprisonment; ten were SADF officers. They sought the option of non-combatant service. The Johannesburg contingent included seven doctors, five clerics, nine university lecturers, six teachers, four engineers, two architects, two physicists, and four lawyers.

Andre Zaaiman, 28, who had been a captain in Namibia and Angola, underwent a transformation as a result of the death of a good friend in Angola, intellectual debate at the University of the Orange Free State, and a two-week encounter abroad with an exiled South African academic, Vernon February. He quoted a statement by General J B M Hertzog opposing conscription during the 1915 occupation of South-West Africa, adding that the SADF "is executing political decisions which have no bearing on security, such as the way it encircled the University of the Western Cape during the Nelson Mandela 70th birthday celebrations. I do not believe this Government knows what is best for South Africa." The SADF "has become an instrument of deliberate and large-scale repression, serving narrow political ends in the name of democracy and freedom. I, and many other young South Africans, are not prepared to sacrifice our lives in the defence of tyrrany."

Wilhelm Liebenberg, a Wits lecturer in Afrikaans, spoke for the Johannesburg group: "The role of the SADF in the townships, the JMCs [Joint Management

Committees] in breaking rent boycotts, makes us question whose interests it serves. . . . it is important to show that not all whites are for the activities of the SADF." Etienne Marais, 26, a former Wits SRC president, described his experience as a rifleman in Namibia and Angola in 1980-82. "The SADF's presence is a brutal and unpopular one." He saw soldiers stealing beer, exposing themselves to Ovambo women, tearing down fences, and shooting rifle grenades into villages. He witnessed the shooting of a 13-year-old Namibian girl in cold blood and the eight-hour torture of a 16-year-old Angolan girl. "Collecting ears and fingers as souvenirs happens quite often on the border." He had seen a soldier "use the corpse of a Swapo guerrilla as a pillow." He participated in Operation Protea in 1981. "The sight of hundreds of refugees plodding north from the wrecked town of Angiva (in Angola) and the fact that all the fighting I was aware of involved attacks on Angolan soldiers made it far more than a 'hot-pursuit' operation." The war in Angola was increasingly unpopular for another reason as well: in May 1988 the SADF announced that 31 had died in combat; other death notices brought the total to 51. Stephen Louw, 23, a political science student at Wits, had been stationed in townships near Port Elizabeth and Uitenhage, as well as in Tembisa. As a Buffel driver he had been instructed to drive "into a crowd of people to provoke them to offer resistance." He often saw soldiers sjambok small boys. ECC National Secretary Alastair Teeling Smith explained: "Potential conscripts never had much problem with the idea of going to the border to fight the unknown enemy. But now they are faced with the prospect of fighting in the townships where their maids and gardeners live, and for many it has become a personal and emotional issue."

There was other evidence of army brutality. The SADF had 500-800 troops at 14 temporary military bases constructed at a cost of R5.75 million. Civilian claimants won substantial awards for attacks in Orlando township and in Eastern Transvaal in 1986. In 1987, 97 civil actions were filed against the Minister of Defence for injuries inflicted by soldiers in the townships: 22 shootings, 40 assaults, 3 thefts, 4 malicious damage to property, 1 indecent assault, 20 unlawful arrests, and 7 attachments of property. Only 18 had been resolved by the end of the year: one withdrawn, one settled, and 16 barred by the statute of limitations. During the year the SADF had killed 460 people. Seven more complaints were filed in early 1989.[159]

Magnus Malan announced that he had "broken off relations with the ECC" and accused it of threatening state security, calling it "the vanguard of those forces who are intent on wrecking the present dispensation and its renewal." "No citizen can decide of his or her own free will which laws to respect." "Any person or organisation disrupting and undermining the responsibility entrusted to the SADF is acting in conflict with the constitution. No self-respecting state can tolerate such subversive action." *The Citizen* urged strong action against the ECC and individual objectors: "The government will have to act firmly to prevent the rot spreading and it will have the support of most [sic—i.e. white] South Africans."[160] ECC National Secretary Alastair Teeling-Smith criticized Malan for this rebuff. "By not granting alternative service, many thousands of skilled professionals will continue to leave the country, while others will choose to waste away in jail. South Africa cannot afford this loss."[161]

On August 22 the government invoked its Emergency powers to ban the ECC—the first white organization to be suppressed since the Congress of Democrats in the early 1960s. Minister of Law and Order Adriaan Vlok stated:

> The ECC is attuned to discouraging the citizenry from supporting the SADF and from doing national service in its true sense. These activities of the ECC are a link in the so-called struggle against apartheid and the so-called national liberational struggle undermining an existing state structure. The ECC attempts to create an impression of political neutrality, but it is not difficult to see the organisation's role in the revolutionary onslaught against South Africa. . . . As a result of the ECC's campaigns, many liable for national service are influenced to refuse to do military service. Their refusal is not necessarily founded on political conviction. The result is that such persons are tried and sentenced in terms of the ordinary laws of the land. This would probably not have happened had it not been for the ECC's campaign against military service. It is also known that the ECC actively assists service dodgers who leave South Africa to acquire residence permits in the UK.
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> . . .
>
> The dangers posed by the activities and acts of the ECC to the safety of the public, the maintenance of public order and the termination of the State of Emergency, leave no other choice than to act against the ECC and to prohibit the organization from continuing any activities or acts.

The ban elicited widespread anger. Six students at the University of Cape Town added their names to the list of resisters during a protest meeting attended by a thousand. Prominent figures denounced the ban, including Mervyn Shear (Wits Deputy Vice Chancellor), Dr Crispian Olver (Western Cape chair of the ECC), Moulana Faried Esack (national coordinator of the Call of Islam), and Joe Mashibo (Namibian Students' Organisation). Labour Party leader Allan Hendrickse declared his party's opposition to conscription until everyone had equal political, economic and social rights. "We therefore believe that the ECC is entitled to oppose conscription while the army is seen as undergirding and supporting the unjust apartheid policies of the National Party government."

The Defence Minister lashed back:

> The outburst of Mr Hendrickse over the evasion of national service, similar to that propagated by the ECC, is a reckless and irresponsible way to deal with the problems relaying [sic] to security and the SA Defence Force. It is an emotional outburst that fails to take into account the threat against South Africa and all of its people. [His standpoint] boils down to condoning those who break the country's laws. . . . He does not distinguish between his own political views and the interests of national security.

> By coming down on the side of those wanting to evade national service and against the SADF, he plays right into the hands of terrorists, who maim and kill our people in the name of their ideological enslavement of these very people. [Terrorists'] landmines and their limpet mines are aimed at everyone who is working for prosperity, progress, and peace. [There was an "over-subscription" of coloured military volunteers.] These soldiers serve South Africa with great courage, dedication and distinction, shoulder-to-shoulder in the operational area with all other population groups.
> Mr Hendrickse's statement is a slap in the face of all South Africa's soldiers. It is also a slap in the face for his own people.[162]

The following month Deputy Minister of Defence Wynand Breytenbach told the South African Legion that the ECC and like organizations supported the evil of communism by undermining national service.[163] But even with the ECC dormant, Defence Minister Malan acknowledged that more than 39 percent of Citizen Force and Commando members called up for camps in 1988 did not attend.[164]

With the banning of the ECC others took up the struggle. Black Sash convened a meeting on conscription on September 3, calling for alternative forms of national service. In October the United Congregational Church of Southern Africa condemned the SADF for harassing the ECC and the government for banning it. On call-up day in February 1989, groups representing 800 mothers held simultaneous press conferences in Johannesburg, Durban, and Cape Town under the demand: "Give Our Sons a Choice." That same month Women Against War was launched in Durban; one of its leaders was Millicent Toms, mother of prominent objector Ivan Toms.[165] That month supporters of Charles Bester launched a campaign in the UK to secure his release. In May the National Campaign on South African Conscientious Objectors to Military Service was launched, headed by the Conscientious Objectors Support Group. Protestors marked International Conscientious Objectors' Day, May 15, with meetings in eight South African cities focusing on the three COs then in prison. These included a rally at UCT addressed by Deputy Vice Chancellor John Reid and Black Sash President Mary Burton, picketing, a press conference by the Conscientious Objectors' Support Group, and a petition signed by 5,245 presented to the office of Justice Minister Kobie Coetsee by DP MP Ken Andrew, Ivan Toms, and the mother of jailed objector Charles Bester.[166] Democratic Party MP Pierre Cronjé told a "Release Objectors" meeting that the DP supported alternative service.[167] Outside South Africa, objectors in England burned their call-up papers, the European Parliament sent messages of support, and demonstrations were held at South African Embassies in 12 European and American cities. In June the Grahamstown Synod of the Methodist Church and the Anglican Church both asked for alternative service for conscientious objectors.[168]

The government was embarrassed by several scandals at the end of 1988 and beginning of 1989. The SADF dismissed Andre Malan, Commanding Officer of the Outeniqua Commando, for riding a horse in George to welcome the right-wing

Afrikaner Volkswag ox-wagon parade.[169] Lt Olivia Forsyth was exposed as a failed infiltrator of the ECC, NUSAS, Black Sash, and the Johannesburg Democratic Action Committee.[170] PFP MP Tian van der Merwe accused Deputy Defence Minister Wynand Breytenbach of lying to Parliament in June 1987 when he denied that an SADF helicopter had dropped leaflets on an ECC celebration in Cape Town as part of the dirty tricks campaign. "Parliament was ridiculed with repeated provision of false information. It is difficult to determine who knew precisely about these actions and who lied, but as it goes with this government's style, we will surely never know."[171] When the Defence Minister claimed a month later that he had not known about SADF involvement for a month, van der Merwe declared in Parliament: "General Malan and his deputy, Mr. Wynand Breytenbach, should resign because they refuse to accept any responsibility for this incident. South Africa cannot afford to have people of their ilk in highly responsible positions." And a week after that he asked Malan whether it was SADF policy to attack individuals or organizations.[172] Later that month former ECC members were touring Europe to seek support for their movement and meeting high ranking ANC members.[173]

The right did not abandon its attacks. The *Aida Parker Newsletter* sought to link NUSAS to both the ECC and ANC in an obvious effort to have it banned as well. It warned fellow rightists not to take a copy of the SADF journal *Paratus* on campus: "You are not allowed to display or have in your possession anything which is 'pro-military,' a state of affairs which means that the anti-militarists are given a free reign [sic] while patriots 'get chopped.'"[174]

## IX. The Beginning of Reform, 1989/93

Following the August election of F W de Klerk as State President, the ECC wrote to Law and Order Minister Adriaan Vlok on the anniversary of its banning to ask that the restrictions be lifted. The plea was supported by Roman Catholic, Methodist, and Anglican church leaders, Black Sash, Lawyers for Human Rights, and the Port Elizabeth Action Committee. At the University of Natal-Durban students unilaterally declared the ECC and the South African National Students Congress unbanned. A similar meeting took place in Johannesburg as part of the Mass Democratic Movement's defiance campaign, despite searches of the homes of several ECC members. At the University of the Western Cape the unbanning was welcomed by Nusas, the Conscientious Objectors' Support Group, Young Democrats, Women's Movement for Peace, Black Sash, and Cape Democrats. The government arrested some ECC leaders for "furthering the aims of a banned organisation." At the Voortrekkerhoogte on August 14 Defence Minister Magnus Malan attacked the MDM, UDF, Jodac, Idasa and the ECC for supporting the "ANC-SACP alliance" morally and financially and committing internal acts of terror. Threatened with court action, he undertook not to repeat such comments. Days earlier Adriaan Vlok apologized to Cosatu for accusing it of planning violence and petrol-bombing. But Malan immediately disavowed his undertaking, telling a National Party meeting at Louis Trichardt that Jodac was a "front for the SA Communist Party" and linking it, the UDF and the ECC to the ANC.

On September 21, 771 men—the largest group ever—publicly refused to serve by signing a National Register for Conscientious Objectors. They were a diverse group. Of the 280 who signed up in Johannesburg and Pretoria, 130 had not yet entered the military, 134 had completed National Service, 40 had attended some camps, and 10 were liable only for the reserves. They included 93 students, 23 academics, 15 journalists, 14 artists and musicians, 12 clerics and religious workers, 10 physicians, 10 school teachers, 10 film and video producers, 9 businessmen, 9 voluntary organization employees, 7 trade union organizers, 5 actors, 5 lawyers, 4 scientists, and 4 accountants. Several prominent clerics took responsibility for recording additional names: Peter Storey (Methodist), Beyers Naudé (Dutch Reformed), and Reg Orsmond (Catholic); so did Prof Philip Tobias of the Wits Medical School. Soon afterwards Trevor Huddleston launched the International Register of South African War Resisters for those in exile, with an initial 162 signatures. *The Citizen* responded with a comment on "Conchies," whom it characterized as dupes of the ANC-SACP. It conceded that some form of alternative service might be appropriate but concluded: "That does not mean the SADF should be less powerful. It is our bulwark against a hostile world. . . ."[175]

Although the government briefly detained four of those who organized the Johannesburg meeting and kept one in jail, its attitude toward conscription had already started softening. In April 1989 it reduced the maximum length of camps from 12 years to 10; and in December it halved the initial period of National Service from two years to one (partly because it had withdrawn from Angola and Namibia). The Conscientious

Objectors' Support Group and the ECC responded by asking de Klerk to make these changes retroactive and release jailed objectors, who otherwise would be serving sentences three times the length of national service. Give Our Sons a Choice Campaign reiterated the necessity of alternative service. Even Justice Edeling, chairman of the Board for Religious Objectors, said that six years of alternative service was "too much to ask in virtually any circumstances" and "smacks of punishment."[176]

In January 1990 the government also halved community service for recognized objectors from six years to three and allowed jailed objectors remission of sentence for good behavior.[177] The ECC responded by asking that this be applied to Bester, Bruce, and Batzofin and that all objectors be offered alternative service.[178] Within a day Brendan Moran, who had left the country in 1986 to avoid conscription but returned in 1989, declared that he refused to serve because of the "politics of the country." He had returned because of "the feeling of being distanced from home . . . and feeling that I wasn't really achieving anything." While awaiting trial he was teaching at a school for the deaf, being paid the same salary by the church he would earn in the army.[179] On January 19, General Kat Liebenberg promised that all SADF troops would be out of the townships by the end of the year.

In February, the ECC was formally unbanned (together with many other anti-apartheid organizations). It immediately reestablished branches in Johannesburg, Cape Town, Durban, Pietermaritzburg, East London, Grahamstown, and Stellenbosch. It launched a Release Objectors Campaign (emphasizing Bruce and Bester, who were still in jail) and held candlelight marches nationwide in February and March. The constitution of newly independent Namibia explicitly recognized a right of conscientious objection. Revelations of earlier dirty tricks emerged from hearings by the Harms and Hiemstra Commissions. The CCB had targeted Gavin Evans for assassination, vandalizing his motorbikes in March, July, and October 1987 and July 1988. Johannesburg City Council employees spied on the ECC. Council agent 1 JHB/7 (Anthony Bennett, alias Dick Botha) was paid R1569/month plus his university costs of R1800 to spy on Wits students; however, he failed his examinations and learned nothing about the ECC. John Egan, while a Citizen Force member, monitored ECC officer Ian McKenzie.

The ECC said it was "shocked at the news that a secret SADF cell has the task of infiltrating and attacking groups opposed to apartheid." The "wanton abuse and illegal operations" of the SADF and CCB was "a gruesome example of the pivotal role of the SADF in the defence of apartheid." It demanded that General Magnus Malan resign and be prosecuted, calling a demonstration in support.[180] In July the ECC blamed the CCB for a bomb attack on its meeting in East London, demanded abolition of the CCB, and planned a protest march in Cape Town on July 28.[181] Johannesburg Town Clerk Manie Venter, implicated in espionage, returned to work in November.[182] In response to increasing violence in Natal, however, the ECC reversed its previous position and *supported* military deployment. But it opposed the resumption of 60-day camps and urged that a neutral body monitor any SADF peace-keeping activities.[183]

In October it appointed Haydn Osborn, a former SADF "recce" in Namibia, to observe SADF activities in Natal.[184] A year later he returned to his legal studies, deeply depressed and disillusioned.[185]

An objector won political asylum in the United States. Craig Demmer entered the U.S. on a tourist visa in 1985, was ordered to report for military service on July 1, 1986; and applied for asylum the following month. On September 15, 1989 he was rejected; since the penalty for draft evasion was six years in South Africa and five in the United States, he would not face persecution; furthermore, he was not being singled out on the grounds of race, religion, nationality, membership in a social group, or political opinions. On April 6, 1990 the decision was reversed. One other white South African had obtained political asylum during the Carter administration; 23 applications were filed between October 1989 and January 1990.[186]

Presaging the new South Africa, Defence Minister Magnus Malan announced in May that the government was considering extending conscription to all races and established the van Loggerenberg Committee to restructure military service. The South African Chamber of Business and the Wits Centre for Policy Studies urged the Committee to decriminalize conscientious objection and reduce the number conscripted and the number of camps to the minimum needed for defence. The CPS estimated that a quarter of all university graduates left the country each year to avoid military service.[187] ANC Southern Natal Convening Committee chair Patrick "Terror" Lekota told the ECC AGM in Durban in May that the ANC opposed conscription. "In 1955 when our people drafted the Freedom Charter, it included a commitment that the South Africa under the ANC would be committed to peace. I can find no group of men and women who have taken more seriously that clause than the ECC."[188] Laurie Nathan, Cape Town ECC chair, began sketching a vision of a demilitarized future.[189]

An increasing number of men applied for exemption. Louis Bredenkamp based his request on membership in the ANC; when he told the press about his success, the SADF turned around and conscripted him. The Deputy Defence Minister declared on April 17, 1990 that SACP and ANC members would be called up. A week later he reversed himself.

> When any person applies to join the SA Defence Force, the application goes through a selection board and security procedures. In this procedure an applicant's bona fides are naturally investigated, and because the SA Defence Force is an instrument of the government of the day, such persons' political feelings . . . [Interjections.] I don't really mean political feelings. They must support the underlying principles of policy and the Constitution of the Government of this country. . . .

Confronted with his self-contradictions, he retorted that the questioner "is twisting my replies of last week completely" but was forced to withdraw that. He then dismissed the questions as "this kind of rubbish." Asked if David Bruce or Charles Bester could have

avoided jail by claiming allegiance to the ANC he said the question was not relevant. Asked if Mandela's family could serve, he retorted that "the Conservatve Party is advocating the case for the ANC today in the House of Assembly to become members of the SA Defence Force." He refused to answer a question about MK members serving. A Conservative MP called him "papbroek," which he had to withdraw, then called him "coward," which he had to withdraw, and finally threatened to "get him in Kroonstad" (the Deputy Minister's electoral constituency).[190]

The ECC reported in August that the number who had publicly declared their intent to refuse military service had increased from 23 in 1987 to 143 in 1988, 771 in 1989, and more than 1300 in the first seven months of 1990. The Minister of Defence disclosed in May that 38 percent of Citizen Force and Commando members had sought deferment and 9 percent had simply failed to report.[191] The ECC joined Actstop (which opposed the Group Areas Act and sought better housing) in encouraging those rejecting conscription to render service in cleaning up communities.[192] In July, for instance, it issued a "Notification of Allotment for Peace Call-Up," a one-day "Clean up and Maintenance Campaign" in Johannesburg on August 11.

More than 20 exiled objectors planned to return home following the release of Mandela and others and the unbanning of the ANC and the SACP.[193] The ECC urged that they be included in the indemnity being considered for political exiles.[194] Ten returned on December 1. Matthew Temple, the London administrator of Cosaw, declared: "It is a publicity stunt. We're an advance party for other resisters. This is a sort of upping of the tempo. . . ." Dorian Love added: "You can't try to bring about reconciliation if you are walking around with a gun in your hand carrying out the orders of the state." ECC national organizer Roddy Payne insisted: "despite the group being so small in number its significance lies in the fact that it represents a hidden section of the exiled community . . . that has a vast array of skills but that at the same time has a strong objection to serving in the SADF."[195] One of those returning after six years in exile was Fritz Joubert, whose father, deputy editor of *Die Burger*, refused to see him.[196] Recognizing that struggle within South Africa more important, Cosaw closed its magazine *Resister* after 12 years.[197]

At the January 1991 call-up 30,000 conscripts began military service. But three publicly refused (including one returnee from exile), and the ECC claimed that its Register of Objectors had grown to 1300. Furthermore, only 30 out of 400 had shown up at one year-end camp and 10 out of 75 at another. Chris de Villiers welcomed the decline in SADF suicides and attempts, attributing it to the reduction in military activity.[198] At the end of April one man obtained exemption by arguing he worked for a rural relief organization.[199] In June Telford Vice refused a call-up for a camp in July.

> The SADF is the army of apartheid and also of the legacy of apartheid. As I am a member of the ANC it is impossible to justify being a part of your organisation. Obviously my personal feeling is also that I do not

> want to be associated in any way with the SADF. The community I work in has harsh memories of experiences gained at the hands of your organisation and your lackeys in the Ciskei. [He mentioned the statutory uncertainty and the outcome of recent cases.]

The Commanding Officer of the Kaffrarian Rifles cancelled the call-up.[200] In June the ECC declared that the government decision to withdraw charges against Rev Alan Storey and businessman Wally Rontsch rendered conscription unenforceable.[201] Government withdrew charges against Wayne Bashier and Clyde Winter in the same court later that month.[202]

Later that month the ECC obtained an advocate's opinion that repeal of the Population Registration Act had rendered conscription invalid.[203] It promptly issued a press release declaring that "any person refusing to render service in the SADF on the basis of such a call-up will have a valid defence if he is charged with refusing to serve" and gave pamphlets to that effect to mid-year recruits.[204] It claimed that many young men failed to respond to the call-up.[205] It applauded the demotion of Magnus Malan to the Department of Water and Forestry in August and hoped his replacement, Roelf Meyer, would enter "a constructive dialogue."[206] But in December Meyer reasserted his commitment to whites-only conscription. DP chief Zach de Beer called this "ridiculous." Conscription Advice Service spokesman Richard Steele said Meyer was "in cloud cuckooland"; as few as 20 percent of conscripts had reported to some camps. Although Meyer had committed the SADF to help the SAP preserve order in Natal, this "was not the ideal role for a defence force."[207]

Conscription Advice Service counselor Sue Brittion told the ECC Durban branch that 150 out of 600 Citizen Force members reported for the Transvaal Light Horse Brigade in August, 32 of 320 to the Sandton Commando, 20 of 300 to the Randburg Commando, 125 of 1000 in Durban, 73 of 750 to the University of Pretoria Unit, and 28 of 220 to the Wemmer Pan Commando. Only 3000 of 7000 men reported to the Lohatla military exercise in October. At the August call-up, only 800 of 7200 reported to the 5 SA Infantry at Ladysmith; only 37 percent of the Medical Corps reported, and only 17 percent of the Personnel Service Corps. The seven CAS offices were receiving an unprecedented 150 calls a month, mostly from Citizen Force members. SADF spokesman Maj Charl de Klerk seemed to concede defeat: "The Defence Act is still applicable to every white male. But we are looking into each case individually regarding the granting of possible deferment and if the person has a valid excuse then the Exemption Board will look into that. For a person to threaten not to go is not an offence." While refusing to talk about numbers, he conceded that the number reporting was low but attributed this to the "economic situation."

The ECC felt the government was evading its efforts to test the legality of conscription. Although the Gleeson Committee on conscientious objection reported in August, its findings remained secret. An LRC attorney said the government rarely prosecuted for failing to report and, when it did, first and second offenders were only

fined.[208] Indeed, the Attorney General had stopped prosecuting objectors in July. Boerestaat Party leader Robert van Tonder also condemned the racial draft and supported those who resisted. The Conservative Party Youth Wing and the Aksie Volkseie Weermag told members not to report unless they served in white communities; AVW spokesman Christiaan de Jager declared his intention not to report.[209]

At the beginning of 1992 the ECC wrote an open letter to Defence Minister Meyer, estimating that only 30 percent of national servicemen were reporting for camps and predicting that only 50 percent of the semi-annual intake would report for duty. It was getting 600 calls a month from men who had decided not to go and wanted to know the consequences. "We believe that your government will try everything its power, every devious manoeuvre, and every dirty trick, to delay relinquishing power to a democratic government. Who better to ensure, by fair means or foul, continued white minority domination of the 'new' South Africa?"[210] A Ministry spokesman rejected the ECC's "impatient and hysterical reaction" but said a new constitution would eliminate existing anomalies in national service. In the meantime conscripts had to report or face discipline.[211]

The war of words continued. Chris de Villiers called Meyer's response "pathetic and an apparent attempt to draw attention away from the real issues," which were "the legal invalidity of the call-up." Meyer responded to the AVW that individuals could not determine where they would serve. The Eastern Province Command claimed that 95 percent of new recruits reported. The Western Province reported 2000 out of 3000 recruits, which its media liaison officer called a "very good call-up." The SADF said overall 90 percent reported—in some instances more than were called up, because of unemployment. The ECC called this mere propaganda, a "face-saving exercise." Last year the SADF had made the same claims but only 70 percent reported. The Wits Command senior public relations officer called the recruits one of the most highly motivated groups in many years. The Transvaal AG denied any moratorium on Defence Act prosecutions. The Conservative Party Youth Council urged members to report but insist on doing military service only in their own communities; it called for Meyer's resignation. The Boerestaat Party supported any "Boerseun" who refused to serve. Its leader, Robert van Tonder, said "the watershed was the events at Ventersdorp where army units were deployed to act against Boere and when Government forces shot at Boere." It supported men who refused to serve on grounds of Christian conscience, because they were discriminated against (since blacks were not conscripted), because they did not want to act as referees in black townships, or because the government was negotiating to hand over to "Marxists and terrorists." The Democratic Party opposed conscripts taking the law into their own hands.[212]

*The Argus* called for a volunteer force incorporating former MK guerrillas.[213] *The Cape Times* urged the same, arguing that this could simultaneously solve the problem of unemployed black matriculates.[214] *The Citizen* condemned both left and right; in the face of threats of insurrection and civil war "national service is thus still unavoidable."[215] Calling the ECC "frenzied" and the rightwing "petulant," *The*

*Pretoria News* nevertheless supported a volunteer army.[216] *The Daily News* criticized the ECC for "asking young men to offer themselves as legal guinea pigs." Although even those who did not agree with its attitude toward military service respected its "principled position as well as the courageous stand of conscientious objectors," the ECC now was taking "an inflexible, doctrinaire attitude" and "using extravagant language."[217] The *Financial Mail* hedged: the SADF was necessary to help the police, but the "racist call-up" impaired its "professionalism and impartiality."[218] The *Sunday Tribune* questioned the credibility and motives of the ECC but also called for a non-racial volunteer army.[219] *The New York Times* headlined "Whites Defy Pretoria's 'White' Draft."[220]

Two weeks after the call-up Deputy Minister of Defence Wynand Breytenbach announced a Cabinet decision not to prosecute those who failed to report but added that conscription would have to be retained. The ECC welcomed the statement, whose implication was that "any further call-ups are effectively unenforceable." The next day Breytenbach said he had been misinterpreted; he had only meant it would be unfair to prosecute conscientious objectors before the Gleeson Committee reported to Parliament. And Meyer added that anyone failing to report "without legitimate reason" would be prosecuted. Chris de Villiers called the conflicting statements "hot air," reiterated ECC endorsement of a nonracial volunteer force, and noted that the Attorney General had not initiated or proceeded with any prosecutions since the previous June.[221] In February the SADF attached to its registration form (for secondary school pupils) the definition of a white person from the repealed Population Registration Act: a person who in appearance obviously is a white person and not generally accepted as a coloured person, or a person generally accepted as a white person and is not in appearance obviously not a white person. The ECC urged young men not to register, arguing that a magistrate had held this not to be an offense.[222]

Because the SADF would not expose itself to judicial scrutiny by prosecuting those who failed to report, the ECC and conscript Richard Rule applied to the Supreme Court in March for a declaratory judgment that conscription was illegal because of the repeal of the Population Registration Act the previous July.[223] At the same, the SADF court-martialled 50 Hillcrest Regiment Citizen Force members later that month for failing to report to camp, fining 23 of them R400 each while dropping charges against those who sought legal representation. And Meyer reintroduced 60-day camps in response to escalating unrest, denouncing "outright lies, distorted facts and rumours spread by anti-Defence Force organisations and people." Chris de Villiers replied: "Either Breytenbach misled the public in making his original statement [that prosecutions would be unfair] or he is being made a fool of by the SADF, which scarcely conceals its contempt for Defence Minister Roelf Meyer and his non-military officials."[224]

A regional court upheld the objection by former Inkatha spokesman Peter auf der Heyde that the Defence Act specified no penalty for failing to register (although it did for failing to produce a certificate of registration at the request of a military policeman),

and the Rand Supreme Court dismissed the state's appeal, Judge G Leveson criticizing the "clumsiness" of the Defence Act. The ECC called the decision "another nail in the coffin of whites-only conscription."[225] When Meyer said the decision could be rectified by a "minor" amendment, the ECC called on Codesa and Parliament to end whites-only conscription. But passage of the Defence Amendment Act 132 of 1992 in July effectively overturned the auf der Heyde decision.[226] It also recognized conscientious objection based on moral as well as religious grounds. When the 32 Battalion raped four women, killed one, and shot others in Phola Park, the ECC used the incident to call for reform.[227]

At the beginning of May the ECC repeated its prediction that those being called for the 60-day camps would fail to appear. The 8 SA Division acknowledged that 47 percent applied for deferment, and 74 percent of those applications were granted.[228] Later that month the government tabled a Defence Amendment Bill, retaining white conscription but allowing conscientious objectors with a sincere ethical belief that military service would be "ruinous to the spirit" to perform three years alternative service. Those who refused military service after being denied objector status were subject to 18 months imprisonment, with no discretion in sentencing.[229] The bill was promptly condemned by the ECC, ANC, DP, Labour Party, and South African Council of Churches. Some feared the new bill would allow prosecution of all those who had failed to report since July 1990.[230] Under pressure, government dropped mandatory sentencing, nullification of CO status in wartime, and unilateral conscription into the police, and the Act was passed.[231]

As the mid-year call-up approached, conscription lawyers were besieged by hundreds, even thousands, of men seeking to avoid service. A Johannesburg "conscription consultant" charged R500 to seek a deferment, R3000 for an exemption. An East Rand attorney asked for a R8000 retainer: "You pay for the consultation, the cost of the application to the Exemption Board in Pretoria, and for the privilege of using another lawyer who's very high up and well connected with the Board. Come back with a good story and we'll see what we can do." A Cape Town attorney charged R20 000 for an exemption. The ECC again predicted that more than half the recruits would fail to report. Chris de Villiers said that only 8 percent of those refusing call-ups and only 6 percent of those refusing camps were follwed up. Solidarity Party MPs were told by the SADF in June that only 30-40 percent of the January call-up had reported but no one had been prosecuted. The ANC called on all whites to defy the call-up. The new Defence Minister, Gene Louw, condemned criticism of the SADF as expressing "a desire to seize power." Two weeks after the call-up the SADF Chief of Staff Personnel declared that conscription would continue; he claimed that 97 percent of conscripts had reported, although 58 percent had applied for exemption or deferment.[232]

The government continued to engage in selective prosecution. It charged Merrick Douglas with refusing to serve, possibly because he had quarreled with his Commanding Officer. Nelson Mandela and Nadine Gordimer wrote letters in his support. The SADF then announced that it would not prosecute those who had failed to report before August

28 if they applied to the new Board for Conscientious Objection. Although Douglas refused to do so, the Attorney General dropped the charge. Government prosecuted religious objector Luis Mitras for failing to complete community service. ECC spokesman David Bruce said about half a dozen cases were being prosecuted in Johannesburg each month. An SADF spokesman insisted that "each failure to report is being investigated and the normal procedures are being followed." In Cape Town the SADF court martialled four Commando and three Citizen Force members for failing to report, fining them R100-500. The ECC announced the formation of a panel of 35 lawyers willing to defend conscripts without charge.[233]

On September 23 Judges Eloff, van der Walt and van Dyk denied the ECC application for a declaratory judgment, finding the whites-only call-up valid, and denied leave to appeal.[234] *The Daily News*, while declining to support a stayaway, urged the SADF "to turn a Nelsonian eye to those who have strong objections to taking up arms."[235] The ECC responded by urging conscripts to refuse to serve, seek deferments, or apply for conscientious objection. David Bruce announced that it would launch a Non-Co-Operation Campaign" in October. The pamphlet for its "End Racist Conscription" campaign showed black and white hands tearing a call-up paper. The ECC was advising the hundreds who inquired that the maximum fine for failing to report was R600. It was also seeking leave to appeal the dismissal of its action. The SADF asked the ECC to stop, threatening prosecution.[236]

Instead, the ECC opened its "Register of Non-Co-Operation" in October and issued a pamphlet entitled "Wanted—Gene Louw, Minister of Defence—for failure to provide a single good reason why anyone should report for a call-up." This explained how to apply for deferment or exemption and challenge the validity of a call up; it advised men not to sign for registered post, to request an interview with the Commanding Officer, and to tell the SADF they planned to apply to the Board for Conscientious Objection. It urged men not to register or notify the SADF of changes of address; it suggested falsely reporting emigration. In Grahamstown, 76 people signed the register and burned their call-up papers; others did so in Johannesburg. The SADF again threatened prosecution of both individuals and the ECC, which had come "close to breaking the law."[237]

Defence Minister Louw issued a stern statement:

> South Africa cannot afford the disappearance of national service. Next year the same system as this year will still be in force.
> Furthermore, stricter measures will be taken against draft dodgers.
> This will apply to those who refused to do service in 1992 as well. Those who believe 1992 brought with it a national service holiday are living in a dream world.

There had been a slight reluctance to act during the previous year because of pending court cases. The ECC aimed at "destroying the country's preparedness." "You ask me

why the continuing annual call-up [for camps]? The expertise which is attained during the basic period of training must be kept sharp and shining, ready for any unexpected moment or event." He conceded the need for change, however, because it was "unreasonable to discriminate against Whites." Despite the diminished external threats, 10,000 men were deployed in South Africa, more than had been in Angola and Namibia.[238]

Threats of prosecution did not frighten the ECC. Chris de Villiers dismissed them as "cynical bluster." It would welcome prosecution. "To even talk of prosecutions while the Government is scrabbling like ants on a hot-plate to get an indemnity for their own thugs and murderers is outrageous." He denounced Louw's characterization of the whites-only call-up as a "life insurance policy"; the implicit threat was a Rhodesia-style military coup to preempt negotiations.[239] In December the Appellate Division also denied the ECC leave to appeal the dismissal of its challenge to conscription.[240] At the end of the year the SADF conceded that 1993 would be the last all-white call up.[241] It also launched the Voluntary Period Service System, open to all races.[242] The ECC, ANC, DP and CP criticized this plan to recruit 6000 2-6 year volunteers of all races to replace a similar number of white Citizen Force and Commando members, while the Afrikaner Volksunie and Boerestaat Party welcomed it. David Bruce denounced the decision to retain conscription, noting that fewer than 700 of 3000 called up to 1 SA Infantry Battalion in July reported, and only 6 of 150 Citizen Force members called to a camp in Germiston in December. While acknowledging that white conscripts were disadvantaged in the job market, he also noted that unemployed blacks who wished to volunteer were more disadvantaged.[243] A week later 21 men publicly stated their refusal to serve, sending their names to the State President and Defence Minister. The SADF reiterated its threat to prosecute.[244]

As conscription became ever more obviously anachronistic, the ECC estimated that the proportion responding to the January 1993 call-up declined to 30 percent.[245] The SADF continued to deny this and threaten prosecution for non-appearance, but it proceeded against only a few of the thousands involved. Despite a January announcement that conscription would end, another cohort was called up in July.[246] Nevertheless, Defence Minister Louw conceded in February: "There can be no national service for whites only in a multiracial non-racist system of government."[247] Yet as late as March 1993 SADF chief Gen A J "Kat" Liebenberg still favored conscription and wanted to integrate the TBVC armies and the AWB into the SADF before incorporating MK.[248] On 25 August the new Defense Minister, Kobie Coetzee, declared: "In view of constitutional developments, it is clear compulsory military service in its present form cannot continue and has to be replaced by an amended and more representative system."[249] The Defence Second Amendment Act 134 of 1993 provided for a volunteer non-racial force. But the ironies of the "transition" proliferated. The SADF now sought to *exclude* gay volunteers, apparently forgetting it had prosecuted the openly gay Ivan Toms for refusing military service.[250] The ANC denounced such homophobia.[251] The *Weekly Mail*, which had always supported the ECC, now editorialized for nonracial *conscription*, fearing the destabilizing effect of a

volunteer professional military.[252] And the ECC now *urged* whites to volunteer, while black township residents welcomed the SADF as a safeguard against violence.[253] But the ECC also urged the ANC to include conscientious objection in its draft bill of rights. The ANC endorsed a volunteer force, with an assurance that conscientious objection would be respected if a national emergency ever required conscription.[254] Recognizing that the fight had been won, the ECC disbanded.

## X. Individual Objectors

This account focuses on Ivan Toms and David Bruce, whose appeals transformed the 1983 Defence Act. More than a dozen others, however, were prosecuted under that Act. Sketches of their experiences place the other two in context.

### *A. Harald Winkler*

Harald Winkler, 21, a Wits student facing a January 1986 call-up, was the 758th applicant to the Board for Religious Objection. Justice Willem Edeling rejected his request to do community service (while offering him noncombatant status) on the ground that he was not opposed to all forms of violence. Winkler said he could not disentangle his political and religious objections.[255]

### *B. Philip Wilkinson*

Philip Wilkinson a 21-year old unemployed butcher, had completed National Service in 1983, rising to Lance Corporal, and had reported for three camps. He refused further service in June 1985, when the SADF was deployed in the townships. He became an objector after visiting Port Elizabeth townships with his workmates. The Board found that he was a universal pacifist but not on religious grounds. He was deferred from a camp in February 1986 but called up again on April 28 (one of 14 call-ups he refused over 15 months). He was arrested during an ECC rally at Johannesburg City Hall in May 1986 and put in Detention Barracks in Boksburg. Although initially treated with hostility and suspicion, he won the right not to perform any tasks and eventually secured the friendship of other prisoners. He was charged in the Port Elizabeth Magistrate's Court with *failing* to report for military service (rather than the more serious count of refusing to report) and released on R100 bail. He was detained at the beginning of the Second Emergency in June 1986; the charges against him were provisionally dropped after 111 days in detention. They were subsequently refiled, however, and he was arrested in January 1987 and tried—the first prosecution under the new legislation. State attorney Simon Stewart was unable to prove that the call-up papers had been issued to Wilkinson. Commandant Basil Turner, chief administrative officer at the Piet Retief Regiment, had not seen the notice. He testified, however, that the SADF informally excused from combatant positions those denied religious objector status and said Wilkinson would have been made a chef. Stewart sought to call as a witness Wilkinson's attorney, Norman Manoim, who had sent a telex to the SADF announcing Wilkinson's refusal to serve. Wilkinson's advocate, Edwin Cameron, invoked the attorney-client privilege and asked Magistrate Christo Schutte not to "fiddle" with the law. The magistrate gave the state an adjournment to prepare its case better; this was the seventh postponement.[256]

Since Wilkinson explicitly refused to serve, guilt was not an issue. He offered extensive evidence in mitigation, however, including testimony by Archbishop Denis Hurley of Durban. The information secretary of the Namibian Students Organisation

told how he and 15 fellow pupils fled to Angola after the SADF established a camp near their school. On May 4, 1978 he had been at a camp 60 km inside Angola protected by 20 Swapo soldiers when the SADF attacked with 30 minutes of bombing and then a troop assault. 100 civilians died. He was captured and detained six years in Mariental Camp in southern Namibia. Once when he complained about camp conditions he was forced to dig a hole 1x10 meters. When he got thirsty, soldiers poured water on the ground. Later 15 of them kicked him about like a football, so that he could not move for two days.[257]

Steven Louw, 22, had served three tours of township duty as an SADF driver between 1984 and 1986, in the Eastern Cape between June 1985 and June 1986. Troops blackmailed shebeen owners into giving them liquor, broke up residents' fences for firewood, and teargassed a congregation leaving Sunday church services.

> The general policy was that we should try and punish the people in the townships rather than arrest them. On one occasion we were given an order by the major that we should beat up black people and we should drop them off on the other side of the township, rather than actually arrest them. And the reason given for this was that the police weren't able to fully handle the influx of people that had been arrested and punish them effectively, or what the SADF decided to be effectively. They also felt that the township people would call in lawyers who would get them dismissed on a technicality. So they felt that we should rather punish them ourselves. . . . [In Port Elizabeth] the same major took us into the townships . . . and he got the people [troops] on the vehicle to disembark and hide in the street. My job was to drive up and down the street for a length of time hoping to provoke the [black] people into throwing a stone or taking some sort of action against us. And then the theory was that the major and his troops would apprehend this person. And I remember thinking that this wasn't possibly the best way of trying to keep the peace. . . . On one occasion we were driving on a patrol and somebody waved a fist at us. I was asked to stop the vehicle, people [troops] got off the vehicle and they apprehended the person. What they did is hit him several times and then at the back of the vehicle is a bin where the people [troops] put kits in etc., and this man was shoved into the bin and I was asked to drive, to take him on what people [troops] call a "joy ride" and I remember at that time that it was—I think it was the first instance that I was really horrified in the townships and I personally tried to drive as well, as slowly and as carefully as I could so as not to hurt the person. . . . We were driving a vehicle and a little kid shouted something at us and waved his fist, and he must have been about 10 years old. And we stopped and people [troops] apprehended the boy and they hit him a couple of times . . . and I remember the little child was crying quite badly . . . and then we stopped somewhere and they took the kid out of the vehicle. . . . So what happened is that the corporal got

> a stick and he hit him several times, and then released him. And I think the importance of this really is that I don't think I'd ever seen anyone more terrified than this little boy. . . . most people [troops] were very keen to get involved in action, to fight against the people in the townships. . . . they were very envious of the South African Police because they thought that the police had considerably more legal protection in their action and they didn't have to provide as much of a justification for what they did.[258]

Wilkinson also testified about his motivation for refusing service.

> When travelling by road or train past the townships I often wondered as to the purpose of the fences and concrete walls which surrounded them. I was stunned when I found out. It was like what I had read about in all those books about the Nazis suppressing the Jews. The area bore a resemblance to what I would perceive to be a massive camp or compound. There was no activity or building which gave the impression that it was a suburb. Compared with your average white area or suburb it was underdeveloped and overcrowded. There were no swimming pools, parks, playgrounds, cinemas or theatres. There were no beautiful buildings. Instead I saw many matchbox-like shelters and shacks. Despite all this suffering I did not get a "knife in the back," robbed or insulted. In fact I was greeted with embarrassing friendliness. In the army, however, all I heard from "Christian soldiers" fighting a "Christian war" against the "anti-Christ" was talk about their (and other) women, their drinking exploits and "kaffirs," all peppered with much swearing. . . . I knew that a majority of the people identified the "security forces" as a threat, furthering and maintaining the interests of the apartheid system. My experience of the army, and the racist attitudes within it, backed [this] up. I believe the role of the army is to legitimise the use of violence and to dehumanize "the enemy." Essentially it is a killing machine. . . .
>
> Your Worship, I have stated my reasons for refusing to be conscripted into the SADF clearly and honestly. If this court should choose to punish me on account of them, so be it. I have in my heart an absolute conviction that what I am doing is right. I will not sacrifice my life or lend my body to the defence of apartheid. As I stand before you, I stand for peace and justice. I stand here in the spirit of the South Africa we have yet to build.[259]

The magistrate passed sentence after a two hour adjournment. He took account of the mitigating evidence but could not allow Wilkinson to "disrupt the SADF and the entire administration of the country." He fined him R600, R200 immediately and R100 in monthly installments.[260]

*C. Charles Bester*

Charles Bester grew up in a liberal English family with a strong Christian tradition. His father stood as a PFP candidate in 1981, when Charles was 11. He attended Grey College, Bloemfontein and the multiracial St Martin's School. He became a committed Christian when he was 14, joining the Student's Christian Association and the Scripture Union. He began to question military service the next year. After his matric he volunteered for Africa Enterprise, an anti-apartheid religious organization. He refused military service at the age of 18, two weeks after the August 1988 banning of the ECC (to which he did not belong), not as a universal pacifist but on the ground that South Africa was engaged in an unjust war. He explained his decision in a September 1988 interview covered by several newspapers.

> First of all, I think that our education distorts the picture of life in South Africa, and it teaches us not to think. Also, all the alternative media is restricted, and so much general media is simply Nat propaganda. Within this context, my peers are asked to give up their lives or to take someone else's without ever knowing what they're fighting for. More importantly, evil is manifesting itself in a political system, and the government of the day is using the army and people of my age to implement policies, which I believe are in no way Christian. I have a particular concern with the townships. That's where it most clearly shows that we're in a civil war. Whites and blacks are kept apart. The only time that they're together in the townships is when whites are on the back of military vehicles. Furthermore I think that South Africa is exporting the civil war to neighbouring states. There will be no peace until the apartheid system is gone, and apartheid must go because it is wrong, and wrong in God's eyes. . . .
> Apartheid laws such as the Group Areas Act, the Population Registration Act and other laws that curb people's freedoms are in no way just. I believe it would be very arrogant of me, as an 18-year-old, to go into a township on the back of a military vehicle and impose law and order. . . . I don't see the war in Namibia as my war.[261]

After being charged he engaged in a country-wide speaking tour.

> I have decided not to serve because it is God's calling. Most of my school friends who went into the army thought I was mad at first. But now many have come to realise why I took such a stand. . . . I cannot go into the townships on the back of a Casspir and say as a Christian, I have got good news. . . . [Although he might have been exempted by the Board on religious grounds] they would not recognise my political or moral objections to serving in the SADF. I believe I am taking the firmest possible stand against conscription.[262]

At the end of November a bogus pamphlet purporting to come from the Charles Bester Support Group smeared both him and David Bruce.[263]

Bester was tried in the Potchefstroom Magistrate's Court in December 1988. He offered testimony in mitigation by his uncle, Michael Cassidy, an evangelist with Africa Enterprise, and Rev Robin Briggs (dean of the Anglican Church). Nevertheles he was sentenced to six years. When his attorney, Kathleen Satchwell, argued that that the term was not mandatory, Magistrate J van der Merwe snapped "I did not ask for your comment." Journalists wept openly when sentence was pronounced. Ivan Toms, free on bail, was in the gallery, as were others of the 143 conscripts who had publicly refused military service. The audience rose to sing Nkosi Sikele' iAfrika and shout Amandla and Viva. The magistrate, who had earlier forbidden the public to wear yellow flowers, locked the courtroom and threatened them all with contempt.[264]

*The Times* of London recorded the sentence under the headline "South Africa jails youngest conscientious objector" and a photo of the gangly adolescent with his parents.[265] Under the headline "Conchie's mum says he's not a criminal," *The Citizen* reported a press conference organized by the Conscientious Objectors Support Group the next day at Johannesburg's Central Methodist Church. Charles's father Tony said: "For an individual to stand up for his convictions and principles, no matter what the odds against him are, and no matter what the cost, shows a rare and admirable character. To find that our own son possesses this exceptional quality, makes us proud and privileged to be his parents." Archbishop Tutu made a written statement: "We believe your cause to be right, be strong and of good courage. We are certain that justice and righteousness will overcome evil oppression and we will all be free, Black and White together."[266]

Bester entered Kroonstad prison on December 5, 1988. He reported "I find that I get on fairly well with everyone, but developing a friendship beyond a very basic friendly association is difficult as no-one trusts anyone else." He was framed once when stolen property was put in his cell. He was initially assigned to prison stores, then carpentry, and finally allowed to teach math and English to prisoners. He was studying for a degree through UNISA.[267] In October 1989 he became a Category 4 prisoner, which allowed him 30 contact visits and 40 letters a year.[268] In February 1990 his father reported that a petition signed by 70,000 people calling for his release had been submitted to the British Parliament.[269] With credit for good time, he was eligible for release in December 1990. *The Star* urged that he and other conscientious objectors be included in the Christmas remission.[270]

On August 13, 1990, in light of the Appellate Division decision in *Toms* and *Bruce*, Justices D S Levy and S W McCreath found that the magistrate had failed to exercise his discretion. Rather than detain Bester further and remand the case to the magistrate they determined the appropriate sentence themselves. They found the evidence he had offered in mitigation "no less worthy a character than the court found in the cases of Toms and Bruce" and freed him after 20 months. As he left Kroonstad

prison, two township activists waved down the car. "One of them gave me a great big hug and sent me on my way, which I really needed." Bester said he was "unbelievably relieved, incredibly happy . . . overjoyed." He gave "a dubious yes, but yes" to the question whether he would do it again.

> I was unbelievably encouraged by the other objectors, especially David Bruce. Knowing David was with me was incredibly important, even though we were never actually together. And when the 771 objectors made their stand, I was just so happy I was in a daze.

He had made friends with many of the 25 ordinary criminals in his prison bungalow. Three weeks later he expressed no regrets: "Whatever small part of my life that I've lost in prison, I've regained and multiplied many times over." *The Daily Mail* called his imprisonment "an indictment on all of us" and welcomed "the discretion [the *Bruce* and *Toms* appellate decision] now allows magistrates in passing sentence." *The Star* called his "wasted months" a reminder that "society has need to evaluate its own code of conduct." *The Argus* found it "comforting to know that in punishment the final word rests with the judges." ECC representative Roddy Payne saw this as a turning point: "There are hundreds more who are eligible for call up but have not been summonsed by the state or have not been charged for defying the call." But Defence Ministry chief communications officer Dr Das Herbst insisted: "An Act of Parliament cannot be changed at a stroke of a pen."[271] By December 1991 Bester had finished his BA.[272]

*D. Saul Batzofin*

Saul Batzofin performed his National Service in 1980-81, 18 months of it on vehicle patrol with an infantry battalion HQ unit in Ovamboland, northern Namibia, where he saw civilians abused by the SADF.[273] Nevertheless, he completed six subsequent camps. He received a business degree from Wits and worked for Liberty Life as a career development officer. He later joined the ECC and was one of the 143 who publicly refused to perform further military service in August 1988. He would not apply to the Board for Religious Objection because he was not a "total pacifist . . . so it would have meant compromising myself too much." He felt he could not go underground because he worked in large corporations.

> I seriously thought about going into exile in Botswana or Zimbabwe. Then David Bruce decided to go to jail. I didn't know him then. . . . But I saw this person standing up and saying, "No, I'm not going into the army, and six years in jail is a viable alternative." That put jail on the agenda for me.

For Batzofin, Ivan Toms "was a big politico and 'way above my head. I couldn't relate to it. But David Bruce was just a student, just one of us." Batzofin got to know Charles Bester during Bester's trial.

> That was the clincher. I saw this young man eighteen years old facing six years in jail, and I thought about our two cases: [me] facing eighteen months in jail, and Charles facing six years. And it just wan't right. And I thought we might turn the state around by a couple of us going to jail, and it was time for people facing short sentences to go.

His visit to David Bruce in jail "was a reaffirming experience. He told me jail was really, really terrible, but that it was manageable." His family did not endorse his stand, rejecting his analogy to Jews under Nazism.[274] However, some 20 supporters polled 400 corporate executives about whether a non-military alternative should be offered and found significant support.[275] And his own company promised to rehire him.

Charged with refusing to report for a three-month camp, he pleaded guilty in March 1989.[276] In mitigation, he described the atrocities he had witnessed as a national serviceman in 1981. His patrol stopped at a kraal in northern Namibia. Although an old woman told the corporal there were no Swapo members present, he assaulted everyone, including women and children. The officer in charge did nothing. When Swapo members were killed, the corpses were left in camp for soldiers to kick or buried in a few inches of sand outside the camp for wild dogs to dig up and eat.[277] Other conscripts and township residents told him about SADF atrocities and support for vigilantes.

The prosecutor, Mrs T Rossouw, dwelt on the length of time he had served without objecting and questioned the empirical basis of his belief: "then we get back to the question for the umpteenth time that [your] perception is only based on your views after speaking to 53 people?" *The Citizen* focused on this cross-examination. Batzofin had never been sent into combat. He refused to acknowledge the prosecutor's list of "good deeds" performed by the SADF: assisting Lesotho in a snowstorm and Natal in floods, providing teachers to South West Africa and eye clinics to the homelands. It protected people against Swapo land mines, and "the older generation in the townships have welcomed the more peaceful way of life which came about with the SADF presence."[278]

The defense called Jan van Eck, an independent MP, who testified about his experiences working in the townships, whose residents believed that the SADF was the political arm of the National Party.[279] David Frank Chandler of the Wits Graduate School of Business Administration testified that a 1988 survey of final year male students at UCT found that 66 percent were planning to leave the country, 51 percent to avoid military service. The prosecutor called this "hearsay," attacked the sample size (300), and insisted that the only valid methodology would be to question those who actually left. The deputy general manager at Liberty Life called Batzofin an asset to the organization and a man of high moral integrity. Elizabeth Raath, of the National Institute of Crime and Rehabilitation Organisation (Nicro), testified that 1950 hours of community service would be the equivalent of 6 months more than the 18-month maximum sentence and argued that the prison subculture would hurt Batzofin. The

prosecutor replied that "a very low percentage of people who are being sent to jail would like to be part of the sub-culture and . . . what is valid for them is also valid for the accused." In May 1989 the magistrate, P H Bredenkamp, sentenced Batzofin to the full 18 months.

> It was not the purpose or duty of the court to judge the political structure in this country but to consider and impose a sentence in accordance with the limits of the relevant Act. . . . Said words in respect of sentence are clear and unambiguous and makes [sic] it absolutely clear that in respect of sentence no discretion whatsoever remains with the presiding officer (as confirmed in the unreported decision of S v Bruce. . . .). . . . Consideration of a sentence involving community service would have absurd consequences, in that a great number of potential trainees would try to use it in order to avoid rendering the required service. That will therefore prejudice the whole intention of the legislator, to wit to constitute an effective defence force.[280]

On April 28 his attorney filed a notice of appeal, arguing that the magistrate had failed to exercise his discretion to consider community service.

Batzofin described his experience in prison, first in Diepkloof and then at Zonderwater, where he shared a cell with 20 others and polished the dining room floor every day.

> Zonderwater is a long-term prison. I was the first short-timer they'd seen. It's scary, the violence, the knifings, threat of rape, are on the surface. . . .
> The thing is, there is no trust in prison. People do favours for others because they want something back—that's how they get wives—they manipulate each other. I did have some friends by the end though. . . .
> [His study leave was arbitrarily suspended 2 weeks before exams and restored only through outside pressure.]
> I was lucky in escaping that first bungalow, or I might have been raped. This whole sexual thing showed me the importance of the feminist struggle. I wouldn't have called myself a feminist before. But people who harass women sexually should do time in jail. I was approached by 15 different men in my first few weeks in Zonderwater. It really clarified my ideas on this. They showed that film "The Accused" once and the prisoners were really sick and cheered the rapists on.

Despite these experiences, he continued to resist. "I shall not be forced into exile or emigration by the repressive laws imposed by the Nationalist government on our people. I have therefore decided to stay in my country and have refused to serve in the SADF in spite of the consequences. . . ."[281]

On January 30, 1990 his attorney telexed the Ministers of Defence and Justice in response to the announcement that objectors' sentences might be reduced by half. The next month Defence Minister Magnus Malan released Batzofin from prison after nearly 10 months of his 18-month sentence, since a 50 percent general remission in military service had been adopted.[282] He called jail "useless" and "really unpleasant" but said he would do it again. "While even one political prisoner or conscientious objector is in jail changes can only be called cosmetic."[283] He returned to his job at Liberty Life.[284] He described with surprised pleasure the close relationship he had formed with three other objectors. "I'm an atheist and David [Bruce] is an agnostic, yet we're very close to Charles [Bester] who is a Christian and Ivan [Thoms][sic] who is a very *staunch* Christian."[285]

*E. Douglas Torr*

Douglas Torr, a 25-year-old Anglican priest who had joined the 143 opposed to conscription, also declined to apply to the Board because it distinguished between religious and moral or political objectors. He repeated his refusal to serve when called up on July 30, 1989 but heard nothing for five months. He was arrested on January 4 and pleaded guilty on January 14. In the Johannesburg Magistrate's Court the next day Magistrate H Verhoef postponed the trial to May 14. By then the Appellate Division had ruled in *Toms* and *Bruce* that six years was the maximum, not the mandatory, sentence. Nicro also had reported that Torr was a suitable candidate for community service. He had taken a principled stand and risked imprisonment, which was not a "viable alternative" because it would expose him to "a subculture of violence which is contaminating in its effects." A number of agencies sought his skills; Nicro recommended that he perform 800 hours of service in the AIDS Centre.

At the sentencing hearing Torr testified that he had been raised in an Anglican church-going family, attended Sunday school and youth groups and served as an altar boy. He studied church history at Rhodes University and then spent two years at St Paul's Theological College, being ordained as a deacon in 1987 and a priest on January 20, 1990. He was now chaplain to the St Joseph's Children's home in the "coloured" township of Triomf and assistant curate to Christ the King church in Coronationville.

He could have emigrated "but I have chosen to stay in South Africa because I believe this is the place God has called me to minister in." Two years of work in the Grahamstown Black Sash office in Raglan Road

> exposed me to a number of the injustices of apartheid and the harshness of life in the black township of Grahamstown. . . . I also became conscious of the role that the SADF was playing because the SADF manned watch at both points of the township and it was a constant presence within Raglan Road and in the townships themselves. . . . Grahamstown between the years 1982 and 1986 became quite a siege town. . . . the church called upon people to seriously consider whether

> they could in conscience go into the SADF, given the fact that the church regarded the SADF as upholding the system of apartheid. . . . As a celebrant [of the Eucharist] . . . as a person who represents Christ and who speaks the words of Christ to the congregation I believe it would be very hypocritical of me, having then pronounced those words of peace, love, unity, to then actually go and be a member of the SADF. . . . I have long been involved with conscientious objectors and I find that I cannot separate myself from those who refuse to serve, having very genuine moral or ethical reasons. . . .
> I developed quite close relationships with a number of black friends who live within the township. They are subjected to things like door-to-door searches by the SADF at all hours of the night and I once actually watched from a hill-top . . . a peaceful funeral procession which was being conducted by clergy whom I personally knew . . . who were teargassed.

The prosecutor, Miss M T van der Merwe, elicited Torr's agreement that he qualified as a religious objector and knew that he might be sentenced to six years. When she inquired "what sentence would you ask from the court today," he replied: "it is up to this court to make up its own mind." She argued that the SADF protected township residents from violence by the "Young Comrades," maintained the peace in Natal, and were necessitated by terrorist bombing. When she turned to the nature of his objection, the magistrate joined the colloquy. He got Torr to assert that he would have refused to serve in the UK and asked why it was "necessary to name the injustices of the society"? He argued that the "factual basis" for Torr's scruples was only the two incidents he observed in Grahamstown. When Torr quoted John: "a new commandment I give unto you. Love one another as I have loved you," the magistrate wanted to know what a Christian should do "if a country is attacked by forces of evil or the devil." Torr resisted the notion of anonymous enemies. "It is not like if I have a personal conflict with somebody else . . . I have a whole variety of strategies open to me." When the magistrate invoked the Old Testament's "commands to attack the enemy," Torr replied that "the Scripture is a progressive revelation." Although he might resist a direct attack on himself, he insisted that no country should have an army. When the magistrate asked whether warfare did not derive from original sin, Torr replied "Man is a sinner . . . but that does not mean to say that man should remain always in that state."

This led to an unusual exchange:

> MAGISTRATE: I am also a Christian, by the way, that is why I can talk with you. I am not ashamed about it. I am very serious about that. That is why I am discussing the matter with you. We live in a broken world, never mind, society.
> TORR: Right.
> MAGISTRATE: Right. We all believe that Christ, not all of us, but me and you believe that Christ is Our Saviour.

TORR: Correct.
MAGISTRATE: Now, there are millions of people who do not believe that. . . . The devil is present in our midst.
TORR: OK.
MAGISTRATE: Shouldn't the Christian in order to uphold Christianity take a defensive action against the evil forces. . . . ?
TORR: My Christ is the Christ that takes the suffering of the world into himself. . . . I was always told that communists were evil. In fact, I was sent in my call-up papers a picture of a troopie holding South Africa in his hands, on one side the South African flag proudly displayed and it was said on that little piece of paper that I received "The future of your country is in your hands." In other words, that is the evil and this is good, and then it becomes complicated when the SACP is unbanned. . . . Now my understanding is that Christ himself does not actually need to be defended. Christ will speak for himself and Christ did not speak by military might. . . . the Church has always been persecuted and in its persecution the church has not offered violent resistance . . . good always triumphs.

When the magistrate asked about Ireland, Torr responded that the conflict reflected politics and history as well, and he mentioned the crusades. Asked whether South Africa no longer had enemies, Torr answered that it was "very interesting that the enemies we considered we have are now the people we sit at the negotiation table with." The magistrate insisted that Torr benefitted from the existence of the SADF; but Torr denied that attacks in Angola or Namibia helped anyone. The magistrate concluded: "ultimately I with my conscience have to sentence you."

The director of the St Joseph's Home said of Torr: "the children all love him to bits." The Anglican Bishop of Johannesburg repeated his church's criticism of apartheid and the narrowness of religious objection, confirmed Torr's bona fides, and added "many if not most of the bishops of the Church of the Province would support him."

The magistrate found insufficient evidence about community service and adjourned the trial until May 28. On May 25 C Vorster of the Department of Health Services and Welfare submitted a presentence report.

> [Torr refused to apply to the Board for Religious Objectors because it was] narrow-minded and that no justice is served through this alternative. [Furthermore, the church had declared apartheid a heresy in 1982.] It is therefore clear that, beside religious objections, the accused's actions are also inspired by political factors. . . . The accused further regards community service in a Government institution as compromising of [sic] too many punitive measures such as limited salary and the non-utilization of skills. . . . [he] has brought forward a number of conditions [for

> performing community service] . . . [but] a community service sentence is under no circumstances to be a sentence of convenience. . . . Religious and political convictions such as displayed by the accused is a result of personal consideration and cannot be evaluated in terms of societal influence or social background, hence focusing this investigation on the accused's personal convictions and not on social factors that may or may not explain criminal behaviour. [The accused possesses skills useful to the community.] Nevertheless, if the Court is prepared to accommodate the accused regarding community service of choice, an inevitable precedent will be created regarding the punitive measures imposed on future conscientious objectors. . . . it is therefore clear that sentence in terms of Section 72(i) of the Defence Act, Act 44 of 1956, which prescribes a term of imprisonment is the only appropriate sentence.

On May 28 the magistrate granted a further postponement to July 4 to allow both sides to seek additional information and prepare argument about sentencing. In response to a Nicro inquiry on June 26, the Director General of the Department of National Health and Population Development wrote the prosecutor on July 3 about the "potential threat that AIDS poses to our country" and urged that Torr be assigned to the Centre.

The hearing resumed on July 24 with testimony by Yasmin Firmy of the Community Service Organisation, who recommended that Torr perform 800 hours of service at the AIDS Centre, one day a week for two years, which she characterized as a severe sentence. The probation officer reiterated that Torr's objections were political as well as religious and he was seeking a "convenient" sentence. While conceding that Torr's skills were well suited to the AIDS Centre, Vorster worried that "if the accused is indeed placed within an organisation where he could use his skills all the time I am not very sure how the accused will in fact interpret the element of punishment." Although the accused did not display a "criminal inclination," he was concerned about the precedent and the "fact that the accused refused to serve in a government department." "The elements of punishment must still be there as well as the accused experiencing a degree of discomfort in rendering that service." The defense attorney argued that Torr was a religious objector. It was appropriate to sentence him to less than the maximum prison term (now three years) because community service would not immunize him from possible imprisonment or further prosecution. The state opposed community service, which would not finalize the matter. If courts granted a shorter sentence than the community service performed by religious objectors recognized by the Board, there would be an incentive to avoid the Board.

On July 31 the magistrate sentenced Torr to 12 months imprisonment. He began his 55-page opinion by commenting repeatedly that people like Torr were "normally not in court." He was troubled that Torr appeared to call the "judge and other clerics" on the Board for Religious Objectors unjust, a description the magistrate did not accept and found "rather arrogant." He criticized Torr for condemning the SADF on the basis of

two instances. "I want to make it clear I am not referring to the contents of his perception, whether that is right or wrong . . . I will not partake first of all in expressing political opinions. That is not my job first of all. I do not want to do it and I flatly refuse to do so." But he returned to the issue later:

> [I]f one arrives at the perception or forms a perception on two or three incidents in the past, one can for sure be sure that that perception will be totally inadequate and most probably wrong. . . . he must have witnessed some other aspects too. I am not taking judicial notice of such aspects and I am not praising it and I am not promoting anything. I am merely trying to explain that there is another side. . . . who will deny that up north in Namibia, at that stage South West Africa, schools were erected by the SADF. I am not taking judicial notice of it. Whoever wants to criticise me for mentioning this should say first of all that I am a liar. It is also so that the people there had been taught how to farm properly. . . . there was a whole involvement of the SADF in trying to uplift the position of the local population. . . . One cannot argue away when there were floods in Natal, that the army promptly acted. The same happened in the Orange Free State. . . . We can also not deny that more often than not people are rescued from mountains by helicopters. . . .

He acknowledged that the Bishop "loves the accused" and was "an honest witness who came to give the court the whole picture of what the attitude of the church is . . . on apartheid. I am not going to say it is a well-founded or an ill-founded one, and I am not going to promote or criticise apartheid." It was not clear that Torr would qualify as a religious objector. "It is again not for me to say whether that is right or wrong . . . the court should interpret the law and not make the law."

> I still do not understand [his] philosophy. In fact I think Mr Torr also is not a true pacifist . . . [which is] a refusal to do military service in any army in the world. If that is so, first of all it is not necessary to refer to the SADF. . . . [W]hen he was questioned on whether he would serve in any army in the world, he was very hesitant, and in fact he circumvented the questions by the court. . . . the big question in this case . . . is, should there be an army or not . . . and why, if there should be an army, this particular person does not want to render service. . . . See again a gesture of circumventing the question . . . he took a long time to come to this conclusion . . . I got the impression that the accused was here in trouble. . . . One would have rather expected evidence with more or less the following context. . . . I am a Christian. I love Jesus Christ so dearly that I cannot lift my hand on other people. . . . [I]t it is totally not necessary to refer to specific instances. Accused is an intelligent person . . . a person studying. He has an Honours; he is a priest. He is not a stupid person. One can expect from him to put

> him in a theoretical factual situation and let him then judge how he would respond, but he elects not to answer that.

The magistrate concluded the Torr was not a religious objector, which disqualified him from community service. He noted that since the declaration by the 143 men (including Torr) refusals to serve had increased 20 percent. Hence "the problem of people refusing to do military service is quite bigger than the one case before the court." He decided to ignore the announcement that the length of military service would be halved "because a court is bound by the law, and this act has not been changed yet." To underline his scrupulousness, he noted that he had listened to the tapes of evidence four or five times!

He rejected a suspended sentence because Torr was committing a continuing offense by refusing to serve and could have been reprosecuted or called up again. He rejected community service because Torr would have had to agree not to commit the offence again. "I find no pleasure in finding that the only sentence I can impose is imprisonment." Going to jail was

> plainly stupid and a waste of his talents. This is the first time in my career . . . seven to eight years on the bench . . . that I have before me exactly the kind of person who does not belong in prison. But there is an Act passed by Parliament and the court has to obey that Act and to invoke the provisions of that act. . . . if a person with the qualities of Mr Torr and his background . . . elects to go to prison for six years because of a conviction that he based in a way on perceptions which are really not scientifically, I do not think even generally spoken accurate, then I think he is really wasting his talents. I think he is very stupid not to go to the board. . . . now he is faced with imprisonment and he is not a person in my view that can benefit whatsoever with imprisonment. But it is so that . . . the country apparently must have an army. . . .

The *Bruce* judgment "will be widely appreciated and accepted as being a relief for the courts because there is no more dissatisfying part of a criminal court magistrate's work, and is to be a rubber stamp when it comes to sentence." Although the sentence would have no effect on Torr, it "should serve to an extent to coerce other people . . . who think that they can come and take a chance not to do so" unless they are "very, very sure about their views." "[T]his sentence is one of a symbolic nature . . . to impress on others that they should do military service unless they want to face the music—bad music." "If somebody thinks that this is a precedent that the court is creating here, they make a mistake."

Duncan Buchanan, Bishop of Johannesburg, expressed surprise and anger at the sentence. David Bruce called Torr "a courageous person." EEC spokesperson Chris de Villiers commented on the irony that Torr, who opposed violence, was going to jail the same day the leader of the CCB was appointed chief of the SADF.[286]

When Torr appeared in court the next day to seek bail pending his appeal he was handcuffed and shackled. Magistrate Verhoef adjourned the proceedings and ordered the warder to remove the shackles. "I find it totally unacceptable that a man like Mr Torr should be in chains." However, the key was back at Diepkloof Prison. Torr indicated his preference to proceed, and Magistrate Verhoef heard the application in camera and set bail at R100. Leading lawyers and politicans denounced the shackles, and Justice Minister Kobie Coetsee expressed regret and ordered an investigation "to ensure that insensitive and injudicious application of handcuffs and fetters is eliminated." But the prison authorities explained: "For security reasons, certain measures can be used when a prisoner is taken out of prison to public places. This is to ensure the safe custody of the prisoner as well as the safety of the public. The use of chains is determined by various factors."[287]

Torr's lawyers filed heads of argument on April 19, 1991, contending that a sentence of community service was appropriate and could be ordered by the Supreme Court, whether or not Torr was a universal pacifist. The state replied on May 8, conceding that the magistrate's decision was in conflict with *Toms* and *Bruce* and urging the court to sentence Torr itself. On May 20 the Supreme Court suspended imprisonment on condition that Torr perform 800 hours of community service at the Johannesburg AIDS Advice Centre.[288]

*F. Gary Rathbone*

Gary Rathbone, 28, served four years in the Permanent Force between 1979 and 1982.

> Like all white South African males, I was conscripted into the SADF after completing school, aged 17. At the time, the only option open to me was that of going to either university or college, neither of which I was prepared for at the time. Like most young boys being conscripted straight from school, I was far too naive to question what was happening to me at that time.

Six months after leaving the military he received a call-up for a camp.

> I couldn't face the whole military issue all over again, and decided to leave the country. However, I found myself incredibly homesick and returned to South Africa after 3 months. Returning meant leading a half life—one in which I had to be careful who I spoke to, what jobs I could do, and who I gave my address out to. I knew that the SADF were searching for me. It made life very difficult, but for me it was the only option at the time.

He became the lead guitarist of The Spectres and enrolled at Wits. The military eventually tracked him down in 1986. He received two deferments but was told not to

expect a third. Called up for a one-month camp in December 1989 he refused to serve and was arrested the next week and charged. He faced an 18-month sentence. At his trial in the Johannesburg Magistrate's Court in May 1990 Prosecutor Maggie van der Merwe offered the testimony of military policeman Warrant Officer Johan Flattery that Rathbone had completed his military service in the Permanent Force but still owed 420 days of camps. Magistrate Hein Verhoef found this testimony unreliable, nonexpert, incomplete, and hearsay and dismissed the charges at the end of the prosecution's case.[289]

*G. André Croucamp*

André Croucamp, a Johannesburg theologian, refused a camp call-up on December 18, 1989. He was charged and appeared in Johannesburg Magistrates Court on January 1 and March 26, 1990. However, the case was postponed to June to give him an opportunity to appear before the Board. His application stretched the boundaries of the legal definition of religious objector.

> I do not belong to any formalised religion and I do not believe in a Supreme Being in a conventional sense. . . . My life has been committed to searching for the Truth no matter what the cost. . . . I have assimilated and tried to integrate the insights of mystics, psychologists, historians and scientists alike. Apart from the accepted experiences of "receiving the spirit" and "speaking in tongues" I also experienced premonitions, dreams, visions and insights. [Through meditation he had experienced death and resurrection.] After such an experience I can never take sides in any objective sense. . . .

His application was supported by affidavits concerning his religious beliefs and social service activities. The Board recognized him as a religious objector.[290]

*H. Michael Graaf*

Michael Graaf was an activist with Durban ECC. He had a conservative middle-class upbringing, attended government school, and was conscripted to do National Service in January 1980. He volunteered for Junior Leadership training at Infantry school and was commissioned a second lieutenant, serving the last 13 months of his tour with the 101st Battalion at Ondangwa, Namibia. At the University of Natal between 1982 and 1989 he became involved in campus politics and joined the ECC. He saw the underdevelopment of black communities while working for the Rag Allocations Committee. He obtained deferments from camps but attended a leadership seminar with his regiment in 1987. In early 1989, hoping for an informal deal with the army, he approached his commanding officer, who told him to apply to the Board, which he did. In the meantime he went to Namibia as a media monitor for three months. "Meeting Namibians who would only months earlier have been 'the enemy', and revisiting places I had served at, and seeing the last SADF forces withdraw, were powerful experiences

which made me respond to my call-up with determination to resist." He therefore reported to camp on December 15 but refused to serve.

> My main motive is a wish not to compromise myself. For me, maintaining a lifestyle of evasion has become a compromise, so I tried to persuade the SADF that it was in our mutual interest for them to leave me alone. However, I have a secondary motivation, namely a wish to stand witness to a range of experiences which are normally hidden from public view, in order to help prevent these from continuing. . . . The first category of injustice I wish to highlight is the treatment of conscripts in the SADF. . . . Authoritarian upbringing and education lead many conscripts to accept abuse but this abuse is ultimately channeled into society at large. My second area of protest concerns the SADF's role. While the Namibian war is over, we cannot forget it; the people responsible for it are by and large still in positions of power. My experience of the dirty side of that war leads me to believe that similar strategies are being used to manipulate the situation in SA. Thirdly, I believe that conscription, as such, is wrong. In a truly democratic society, self-defence would follow automatically from the self-interest of the populace. . . . Lastly, I demand better treatment for objectors.[291]

He was tried in the Pietermaritzburg Magistrate's Court in October 1990. He testified that service in Namibia in 1980-81 had disillusioned him; he no longer believed the official version. Once his 101st Battalion received a report that the gatekeeper of their base had been abducted from his home by Swapo. Graaf arranged for vehicles to go on a rescue mission. The soldiers returned with the gatekeeper, alive but badly beaten, and two attackers, whom they had killed. It turned out that the "attackers" were members of the SADF "Takkie Squad" dressed up as insurgents, who committed acts of terror against the local population.

After a month-long continuance Magistrate Johan Grebe found Graaf guilty and sentenced him to a year in prison, suspended for four years on condition that he perform 2400 hours of community service, making Graaf the first objector not sent to prison. He was allowed to work in King Edward VIII Hospital.[292] On November 8 he applied for the indemnity granted political prisoners but missed the deadline by a week. He stopped performing community service when his appeal was heard on June 15, 1991; the Natal Supreme Court referred the case back for re-sentencing. But in August, de Klerk granted him indemnity, the first time it was extended to objectors.[293] The following December he was voluntarily working with street children in Durban.[294]

*1. Other objectors*

Several others refused service and were charged. Richard Clacey, a rural development fieldworker in Pietermaritzburg, was willing to do community service. His trial was scheduled for May 28, 1990. Cobus de Swaart, 28, was a lecturer at the

University of the Western Cape. Brendan Moran went into exile in London for three years to avoid military service. His step-father was a former National Party MP for Ladybrand, his mother a former National Party member of the Cape Provincial Council for Malmesbury. He returned to South Africa in August 1989 and began teaching as a Catholic community worker at a school for the deaf in the Valley of a Thousand Hills, between Durban and Pietermartizburg. He refused military service on January 30, 1990.[295]

David Schmidt was recognized as a conscientious objector in September 1984. During the first two years of his community service he taught secondary school at Hanover Park; then he was transferred to the Cape Town City Council as a committee officer. His service was due to end on November 30, 1990. But he objected to the fact that reductions in military service had not been extended to those performing community service and that CO status was limited to religious believers. On October 31, 1989 he declared his intention to discontinue community service.[296] Rev Alan Storey, 22 (son of Methodist Bishop Peter Storey), refused induction in January 1991 and refused to apply to the Board because it would not consider non-religious objectors. He was promptly charged, but his trial was postponed three months at the request of the Attorney General. When the trial resumed the state provisionally dropped the charges pending an investigation into conscientious objection by former SADF chief of staff Lt Gen Ian Gleeson.[297]

The state failed to charge two other men who refused induction at the same time: François Krige (Potchefstroom) and Warren van Rooyen (Uitenhage).[298] In June it dropped charges against Alan Storey and Wally Rontsch, a 40-year-old businessman who refused to continue serving in the Commandos.[299] Chris de Villiers said conscription had "a powerful political aspect and it was possible that the authorities hoped if they did not prosecute they would avoid unpleasant trial publicity. We want to call the government's bluff."[300] It withdrew charges against Wayne Boshier and Clyde Winter for failing to report.[301] Inkatha spokesman Peter auf der Heyde, who was acquitted of failing to register in 1989, was acquitted again by Mag. Hein Verhoef in May 1991 on the ground that the offense was failure to produce proof of registration. "If the legislature intended to make it criminally liable, they should have said so in plain words so there could be no mistake."[302]

*J. Jehovah's Witnesses*

Jehovah's Witnesses were the original conscientious objectors, and they continued to constitute the vast majority during the period when a small number of men objected on other religious or ethical grounds. Although they qualified as universal pacifists—indeed, the statute was amended to accommodate them—they would not request alternative community service. Instead, they engaged in a highly legalistic ritual in which they refused to serve, were convicted, and then were paroled on condition that they perform community service. More than a thousand went through this procedure between 1985 and 1990. To ensure uniform processing, cases throughout the country

were sent to the Bloemfontein Magistrate's Court (where the Board for Religious Objectors sat).

The Appellate Division decision in *Toms* and *Bruce* unsettled this arrangement, however, by granting magistrates discretion to sentence objectors for less than 1.5 times their outstanding military obligation. The sentences of some 403 Jehovah's Witnesses were in jeopardy. One of the first new cases to be heard thereafter involved Colin James Sangster, who was convicted on April 19, 1990 and sentenced to what the magistrate believed was the mandatory 2175 days. After the Appellate Division judgment, the Chief Magistrate referred the matter to the Free State Supreme Court, where a full bench set aside the sentence on September 13.[303]

Magistrate H Landman reheard the disposition on September 26.[304] Sangster, who was unrepresented (commonplace in magistrate's courts), described his religious beliefs (quoting from the Bible) and religious activities (preaching door-to-door and attending church meetings every weekend). He had already completed five months of his sentence (at the Department of Water Affairs) and requested more time for his religious activities. The prosecutor called Major Dawid Stefanus Fourie, secretary of the Board for Religious Objectors, who described the above procedure and its disruption. He feared that individual magistrates might impose divergent sentences, some of which might be so short that objectors would choose jail over community service. Questioned by the magistrate, he responded that the Minister of Defence had halved the period of military service (on February 1), making the maximum sentence three years instead of six.

The magistrate postponed the case, and Edwin Cameron represented Sangster when trial resumed on November 19. He called Melvin John Raubenheimer, an elder in the Bloemfontein congregation, who advised the Board, which had heard 1400 cases since 1985 (80 percent of them involving Jehovah's Witnesses). He restated the church's belief that their primary obligation was to God. "We believe that we will not do military service and we will not accept any alternative to military service [but] should we be sentenced by a court of law to perform the community service . . .we no longer view it as alternative service, but as a prison sentence. . . ."

The magistrate concluded: "This is one of the most difficult sentences I have ever been called upon to pass." In addition to the usual factors "there is also the element of mercy." Notwithstanding the Appellate Division decision, he was not convinced that the legislation left him any discretion. "[T]he sentence should be such that it it does not provide for the accused to make a farce of the intention of a legislator." He noted that National Servicemen had to continue serving in camps for six years. He believed "that the principle of uniformity must receive preference. . . . it is not really possible to individualise although therefore in theory the court does have a discretion." He took into account that the infraction "is not regarded as a particularly reprehensive [sic] offence." He therefore sentenced Sangster to 1087 days (half the original time), with credit for time served. Sangster appealed that day, and the next day his attorney, Michael D

McMullin, sought the intervention of Justice Edeling (who also chaired the Board for Religious Objectors), who refused to intervene. McMullin tried to involve the Orange Free State Provincial Division Registrar on November 23 and the Judge President's registrar on November 26 and 29, to expedite the appeal, but once Sangster was released on bail this became less urgent. Van Coller (with Malherbe) heard the case on February 18 and decided it on March 14.[305] Both sides agreed that the magistrate had erred. Although the defense urged a second remand, the state persuaded the court to pass sentence itself. Cameron observed that the magistrate appeared to have followed Edeling's dissent, lifting whole passages without change or credit. The court rejected the state's contention that three years remained the ordinary sentence unless the accused presented evidence in mitigation. It noted the "undesirability of a practice of standard sentences becoming established" and invoked *Toms* and *Bruce* for the proposition that "the court is not a rubber stamp." In the end, it halved the sentence once more, to 850 days.

# XI. IVAN TOMS

Dr Ivan Toms was called up for a camp beginning July 1, 1987. He responded during a national tour against conscription by publicly stating his unwillingness to serve. "I feel there is a need to strengthen non-racialism in a small way by showing that whites can also make a costly commitment to the struggle for justice." His visible resistance had led to numerous previous attacks. In 1986 the wheel nuts of his car were loosened and a wheel came off while he was driving. In 1987 the car was advertised for sale without his authorization, magazine subscriptions were taken in his name, and a load of pig manure was dumped on his doorstep. In June he received up to 25 obscene phone calls a day, graffiti were sprayed on his house and car, and his tires slashed. Hundreds of fake ECC posters appeared throughout Cape Town, one reading "Toms AIDS test positive."

When the call-up was cancelled five days before it was to begin he reiterated his intention not to serve at the next call-up on November 12. Interviewed a week before then, his parents expressed their disagreement with his position but their pride in his actions. Millicent Toms said: "I think he is doing good work for the community and surely that's what they are after? He's not like other doctors who are earning a lot of money working in private practice or in hospitals." Edward Toms, a World War II veteran and meter reader, added: "I don't agree with what Ivan is doing but I admire how he stands out.

Toms addressed an ECC meeting in Port Elizabeth days before his next call-up. The press announced his intention to report for camp and refuse service. Although he found the repeated call-ups and cancellations "disruptive, practically and psychologically," he insisted: "I know what I'm doing. I have thought hard and prayed about my decision and it is not something I'm doing lightly . . . nor do I consider myself a martyr." A meeting of 500 people on November 10 gave him three standing ovations. Typically modest, he replied: "We are all struggling in our small ways for a new South Africa. I unfortunately just often get pushed to the front, but we are all part of that growing group." UDF Western Cape chairman Dullah Omar and Claremont independent MP Jan van Eck saluted him.[306] At 6:45 am on November 12 Toms attended a prayer service at St George's Cathedral, where he thanked the 200 participants for their "incredible support." According to *The Argus*: "Members of the congregation were called to lay their hands on Dr Toms . . . and tears streamed down his cheecks as he was given a prolonged hug by Moulana Faried Essack of the Call of Islam."

When he reported to 3 Medical Battalion in Goodwood at 8 am he was arrested for refusing to serve in the military (Defence Act §126A). Toms admitted it was "a bit scary. I've never stood in the dock of a magistrate's court before." Wearing an ECC tie, he carried his military uniform and kitbag: "I no longer need the uniform and kit which I used during my national service in places like Namibia because it's an identification with the apartheid system and I want to be rid of it."[307] Several months

later he called for alternative service in meetings of students at the Universities of Natal and the Witwatersrand. He already had received support from the South African Council of Churches, the South African Catholic Bishops' Conference, the Methodist Church of South Africa, the European Parliament, and the Australian Board of Missions. The day before his trial an open-air inter-church service in his support was addressed by Moulana Essack and Archbishop Tutu.[308]

Toms pleaded not guilty at the beginning of his trial on February 29, 1988 before Wynberg Magistrate A P Kotze.[309] The courtroom was too small for all his supporters, who had to take turns. Toms was interviewed by foreign reporters at each recess. Although most regional court prosecutors do not have an LL.B. degree, the Attorney General specially assigned P J Marais, who had a law degree from UCT. He began by submitting a certificate by Lt Gen R F Holtzhausen, the Adjutant-General, that Toms was liable to render 480 more days of service and had been called up for a camp from November 12 to December 1, 1987. The first prosecution witness, Dr Nikolaas Dreyer Liebenberg, took over command of the Third Medical Batallion, in which Toms served, on May 1, 1987. Toms had been called up for a July camp but was excused just days before it was to begin because the SADF said enough other physicians indicated their readiness to serve. Liebenberg subsequently received a letter from Toms's attorney, A C Dodson, dated August 19:

> It was widely known at the time that our client intended to report for the camp and to refuse to render the service for which he had been called up on 1.7.87 and it is our client's belief that the real reason for the cancellation of the camp was the negative publicity which the SADF would have received as a result of his actions.
> Prior to this, our client was called up for a 30-day camp which was to commence on 27.5.84. Before receiving the call-up, our client had made it quite clear that he intended to refuse to perform the service for which he had been called up. Again, the call-up was cancelled shortly before the camp was due to start. . . .
> With respect, it should now be clear to you that our client is not prepared to perform any form of service in the SADF whatsoever, and is prepared to face whatever consequences the adoption of this stand might entail. In fact, as long ago as 28.9.83, our client's attitude was outlined in a letter addressed to you. . . .
> In the circumstances, our client cannot help but gain the impression that you will persist in your pattern of calling our client up and cancelling the call-ups shortly before they are due to commence. This is a source of considerable inconvenience for our client and, if it were to happen again, would be indicative of a campaign simply to harass our client.
> In the circumstances, our instructions are to request an undertaking from you, as we hereby do, that our client will not be subjected to any harassment of this or a similar kind in the future. We also place on record that we have been instructed that should our client be called up

> again, only to have the call-up cancelled before it takes effect, we are to seek appropriate Supreme Court relief.

Liebenberg replied two months later (October 20), explaining the practice of calling up more men than needed because of uncertainty about who would be available. He urged Toms to apply for classification as a religious objector. And he categorically denied any intent to harass. But a week before Liebenberg's belated answer Michael Evans, another of Toms's attorneys, sent Liebenberg a registered letter (October 14).

> We have been instructed by our client that on the 13th instant he received a call up from yourselves to attend a camp from 12th November 1987 to 1st December 1987. Our client instructs further that as we stated in our letter of the 19th August he is not prepared to perform any form of service in the SADF in any capacity whatsoever. . . . In the circumstances . . . we wish you to be advised that should our client's call up again be cancelled we are constrained to conclude that the intention is to harass our client.

Liebenberg acknowledged the letter without comment. Evans wrote again three days before Toms was due to report that he would appear with his attorney and refuse to serve. A lawyer familiar with the case later recalled that the defense had deliberately "forced the issue" by writing these letters.

Cross-examined about the cancellations by Edwin Cameron, Toms's counsel, Liebenberg denied that Toms's known refusal to serve had been relevant. He maintained that Toms was the first person who ever expressed reluctance to serve in the townships. He also resisted Cameron's suggestion that military service might endanger what he acknowledged was Toms's excellent medical work in Crossroads. "I can state from personal experience in the north of Southwest, where we work in our uniforms amongst the local population, and there is no animosity whatsoever." However, he admitted he had not asked Namibians about their attitudes toward the SADF. He displayed some familiarity with the obligations of the Geneva Conventions but confessed he had never seen them, did not know where they were kept, and had never instructed his subordinates about them. Col Johan Theron Nel, Toms's commanding officer until May 1987, said that the unit used to have a book describing the Geneva Conventions, but it may have been misplaced. Because the unit had 1800 members "it is obviously impossible to have every fine detail carried over to all members."

Liebenberg said that some members of his unit had been killed and he carried a side-arm in the operational area but otherwise left it in his luggage. Nel testified that, although weapons were voluntary, "there had been a previous episode on the border where a whole truck full of doctors who were not carrying arms were ambushed and several of them were killed and after that it was felt that it was necessary that doctors should carry arms for self defence, but it was forced on nobody."

Capt Stanley Russell, personnel officer of the Third Medical Batallion, was waiting on November 12 when Toms appeared in civilian clothes (carrying his uniform), accompanied by his attorney, and refused to serve. He also declined to apply as a religious objector. Russell handed him over to Lt Phillipus Viljoen Ellis, the law officer (who confirmed this episode).

Russell described for the court the obligations of military service, noting that deferments are simply postponements but service for even one day can fulfill that year's 60-day camp. Toms performed two years of National Service in 1978-79. On October 30, 1978 he applied for noncombatant status:

> I have been a committed Christian trying to follow the teaching and leading of Jesus Christ for seven years. In the last year and a half I have been challenged as to what following him means especially in the case of loving one's enemy. I could not avoid this issue, knowing that I was committed to perform my national service in the Defence Force for two years as a medical doctor. Though I do not feel called to refuse all military service, I believe I can only fill a non-combatant role. The Minister of Defence has stated that "it is customary procedure apart from referring to the doctrine of various churches, to assign individuals who come forward with real conscientious objections to non-combatant posts." In the light of the above statement I must inform you that on grounds of Christian conscience I will not be willing to carry a weapon in the operational area or elsewhere. My period of duty begins on 1st January 1979. I have delayed writing this letter until I knew of my Border placement as I have no wish to have this placement changed.

A month later the Senior Medical Officer of the Eastern Province Command replied.

> Your conscientious objection to do combatant duty and your personal convictions are respected by this headquarters and it is advised that at no stage will it be necessary for you to carry a weapon. The fact that you communicated with Surgeon General direct and thereby deviated from the normal service channels is viewed in a serious light. Should you have any further problems you would wish to discuss kindly communicate with this headquarters who will present your case to higher authority.

Toms completed his second year of national service as a noncombatant. The following year (1980) he was not called up and therefore received credit for 60 days of camps. He sought and received a deferment from a February 1982 call-up.

> I am presently the only doctor in charge of the Empilisweni SACLA [South African Christian Leadership Assembly] Clinic. This is a private clinic recognized and subsidized by the Cape Provincial Administration

> Hospitals Department which provides primary medical care for Xhosa speaking blacks in the squatter camp of Crossroads near Cape Town. Unfortunately the situation is such that we have no doctor who could work in my place. If I had to do this camp we would have to close the clinic which has a staff of one sister, one staff-nurse, one nursing assistant and three administrative/cleaning staff. We see approximately 90 patients per day six days a week.

He was called up again that year for a one-day shooting parade but refused on May 16, noting "I am a recognized non-combatant and at no stage am I willing to carry a weapon or load ammunition." He obtained deferment from a February 1983 camp on the same grounds as the previous year:

> The clinic is a Primary Health Care facility that is community based and offering medical treatment in the name and as service to Jesus Christ. The South African Christian Leadership Assembly . . . met in 1979 and was addressed amongst others by Dr Koornhof. It is the only curative medical service in the Crossroads squatter camp with a population of approximately 30,000 Blacks (African). It is also involved in dental, nutrition and relief work and Christian outreach.
> I hold the position of Principal Officer (who is the Chief Executive Officer) as well as being the Doctor-in-Charge.
> Our total staff is 17. This is made up of 3 Whites (the others being part-time) and 14 Blacks (of which 2 are part-time).
> There is no suitable replacement. The Clinic receives a subsidy from the Cape Provincial Administration and financial support from churches. (Patients pay 75 cents per visit.) Therefore to be able to employ all the auxilliary staff needed to run a total health care programme, my salary is R575 per month. I do not know of a doctor who would work for this salary as a locum with all the other responsibilities as well.
> I would not be able to train other employees to fulfill both the medical and administrative positions that my post involves. The other two doctors are both married women and are on a sessional part-time basis. . . . They specifically want sessions so that they are not responsible for administration or supervising and disciplining staff. As three of our staff are Black males this would create a problem especially in the Xhosa culture.
> Unfortunately the Clinic cannot function effectively to be able to meet the demands made on it if I am absent for a month. Thus the consequences are that the Clinic would have to close and leave the medical needs of the Crossroads squatter camp unmet for a month. We presently see on average 2,500 patients each month.
> I definitely believe that I will work harder and be of greater service in Crossroads than at a camp. As a Christian I seek to live by the Bible and

> see this community as the place where God has called me to serve at present.

Colonel Johann Theron Nel (who had been Toms's commanding officer but had left the Citizens' Force at the time of trial) explained the 1983 deferment: "I felt that at that stage his duties were more needed there [in Crossroads] and we did have enough doctors in other places at that stage."

Although Toms had been classified a noncombatant and twice deferred from camps, he felt compelled to confront his service obligations directly. On September 28, 1983 he wrote to Nel.

> After prolonged prayer and seeking God's guidance I regretfully find that my Christian conscience will not allow me to continue to serve in the SADF, even as a non-combatant Medical Officer.
> I have not come to this decision lightly or easily, but I am convinced that in the light of the Gospel of Jesus Christ this is the only option open to me.
> I have been doing "National Service" to the nation of South Africa by serving the squatter community of Crossroads as the only Medical Doctor at a salary of R661 per month for over three years. I long to continue serving my fellow man in this way.
> I am more than willing to enter into dialogue, sir, but will wait your response.

Toms was called up for another one-day shooting camp in December and again invoked his noncombatant status. He went to see Nel on December 20, continuing their dialogue in a letter dated March 30, 1984.

> I have thought and prayed much about my decision but cannot in a clear conscience continue to serve in the SADF. I would be going against what I truly believe is the will of God, at least for me personally.
> I still believe that the work I am doing and have been doing for almost 4 years now in the squatter camp of Crossroads is true "National Service" and should be considered as an alternative to serving in the SADF. I am more than willing to continue to serve this community as a Christian doctor and as a patriotic South African.

He asked for advance notice of the army's decision so he could plan accordingly.

> Nel responded on April 17.
>
> This Unit is compelled by law to call you up—and you will therefore be called up for duty in June 1984. I sincerely hope that you will be able to do this one month of duty, as I honestly believe that it will be in the best

> interest of the community you are serving at present, as I have already explained to you.

Nel also testified about his December 1983 conversation with Toms.

> I had some sympathy for his viewpoints because I could see that he was quite convinced in what he was wanting to do and it was really a religious thing with him. . . . But I tried to advise him that in the end it will be better for the community that he was serving at that stage and for himself if he does do the few camps of the unit, that only being about . . . one month camp a year, some years nothing and sometimes border duty, and it has always been the policy in the unit that where somebody is required for something more urgent or where he is the single doctor in a community as he was for one stage, that one would try and be lenient in that type of case. . . .

In cross examination Nel reiterated: "I had no doubt about his sincerity."

Toms was called up for a Border camp from May 27 to July 5, 1984, but the call-up was cancelled at the last minute by telephone, followed by a confirmation letter dated May 29. Nel explained that there were more physicians than needed and some were excused based on "merit." Toms had "merit . . . in our Command Group's eyes. We felt that he was working in a community where there was an urgent need of a doctor. . . ." He was not called up in 1985 or 1986.

That was the end of the prosecution's brief case. Since Toms openly declared his refusal to serve, guilt was not in issue. The defense offered no evidence and declined to address the court. The magistrate's judgment was equally brief.

> I must say I am quite surprised the matter took an unexpected turn [no defense evidence]. It is as the prosecutor has indicated that the record speaks for itself. The evidence before the Court is undisputed evidence which clearly proves the commission of the offence charged with. In the circumstances then you are found guilty as charged.[310]

The court then heard evidence concerning the appropriate sentence. Now it was the prosecutor's turn to be silent. The defense offered five witnesses: Toms, Bishop Russell of Grahamstown, Rev John Freeth (rector of Toms's church), Professor John Dugard of the University of the Witwatersrand School of Law, and Oswald Shivute (secretary of the Ovamboland Legislative Assembly).[311] Yet the defense strategy was a long shot: the law seemed quite clear that the penalty for refusing to serve was 1.5 times the length of the unexpired service obligation, which in this case would be nearly 21 months. The goal, therefore, was to put the SADF in the dock in place of Toms.

Defense counsel began by eliciting Toms's biography. He was 35 at the time of trial. He grew up in Durban and was deputy head prefect in his final year at Glenwood High School, 1968-69. He spent a year in the United States as an exchange student and then five years at the University of Cape Town, from which he received his medical degree at the end of 1976, having been chair of the house committee at his residence, Smuts Hall.

> I was brought up in a Christian home, although it was not very meaningful to me at that stage and it was in August 1971, soon after I had come back from America . . . that I was very much challenged by a friend of mine who had been at school with me, who had . . . played rugby and "jolled" around . . . he was changed by a conversion experience and that was a real challenge to me and then personally I looked at the whole Bible afresh and was involved in a deep personal commitment in August '71. . . .

He joined the YMCA and served on its committee for three years; he also headed the Christian fellowship in Smuts Hall. At the same time he became involved in political activity. In 1972 he joined 100 students demonstrating on the steps of St George's Cathedral in Cape Town to protest Bantu education. Some were dragged from behind the altar, and many were beaten. Toms's nose was broken, and he had baton weals on his back. "That had quite a politicising effect on me as a young student."

> He did his internship at Kimberley Provincial Hospital.
>
> [F]or the first time I met blacks who were my equal or my superior. . . . [T]he best physician in the hospital by far was an Indian doctor . . . also seeing the disparity between the white side of hospital where there were many empty beds and lots of nurses and the black side of the hospital which was overcrowded, understaffed and pressurised.

Through the Nomad Programme of the Anglican Church he became a close friend of Pakamile Majebe, who was subsequently detained by security police and "fell" to his death from a sixth-floor window during interrogation.

Toms was very unhappy about his call up for national service beginning in 1978. He considered emigrating to the United States, telephoning the family with whom he had been an exchange student. He consulted Archbishop Denis Hurley in Durban and attempted to contact the Quaker Church to become a conscientious objector. He even booked a flight to London, which he canceled the day before reporting.

> I went in confused and unhappy but feeling that I did not really have any voice. Most folk had advised me not to leave the country and rather to stay and use my skills in this country. I have gained them in this country and I really want to use them in service to this country.

He did three months basic training at Voortrekkerhoogte in Pretoria. "I was very confused and unsure of what I should be doing and so at that stage I was a combatant and learned to use a rifle and to use a pistol." Commissioned a full lieutenant he spent six months at Mount Coke Hospital and three at Cecilia Makawane Hospital (both in Ciskei).

> I had come in hoping to really use my medical skills because there is a massive need for doctors in the Ciskei Homeland but a disturbing factor for me was that I was briefed by a major in military intelligence who told me as he perceived it my role was to gather information from the patients that I saw. He went so far as to say that if teachers and doctors and development officers in the civic action programme had done their work properly they would have known about Soweto '76 before it happened. And that really disturbed me as it was in conflict with my medical ethics which called me to not divulge any information about my patients to others.

Between April and September 1979 he served at 2 Military Hospital in Wynberg (Cape Town). Whereas there had been one physician for 10,000 people in Ciskei, his new pediatrics ward had more doctors than patients.

He applied for noncombatant status in anticipation of being transferred to the operational area "because I could not reconcile killing my enemy with loving my enemy in my Christian conscience plus by that point I was unsure that Swapo was the enemy and I think my time in Namibia confirmed that, in the sense that there was massive local support for Swapo." He spent the first and last three months of 1979 in Sector 20 around Rundu and Kavangoland, on the Angolan border. Although Toms, unlike the others, was excused from carrying a gun, he felt isolated by his uniform.

> [I felt from] the black people in the hospitals and in the clinics that there was this coldness, this sense of being rejected. . . . Perhaps even more or just as disturbing for me as a Christian was that the missionaries who worked in the Lutheran hospitals there, they are nursing sisters from Norway and Sweden, were also cold and rejecting towards me because I wore that uniform. . . . by the time I had completed my six months in the operational area . . . for me and my conscience being a noncombatant was a compromise and it was in conflict now with my conscience. I had felt that I was just part—a cog in that machine, the military machine. . . .

Toms's only further military service was two lectures at his unit headquarters, one on geopolitics and the threat of Soviet domination in Southern Africa and the other a graphic demonstration of the reasons for switching to the newer R4 rifle, whose high projectile bullet "tumbles and then loses all its power in the body and damages people and kills much more readily than the old R1."

Eighteen months into his military service he obtained leave to attend a meeting of the South African Christian Leadership Assembly Conference in Pretoria in July 1979.

> There were 3,000 Christians, both black and white, meeting in Pretoria for a week trying to discern the way forward for the church in South Africa, to be true to God, and in that time I got quite depressed and disturbed by what I was hearing. We had many speakers, including people like Dr Koornhof and Chief Gatsha Buthelezi, and [I] felt very first of all depressed and confused and then felt challenged to actually, if I was going to be a white South African Christian doctor in this country then I needed to really do something positive to change things, rather than to just be at a hospital or working in private practice. . . . [I] looked at the medical needs close at home, close to Cape Town, and Crossroads at that stage had 30,000 Xhosa-speaking blacks and no permanent medical facilities, only a mobile clinic that came in twice a week run by the medical students from the UCT, SHAWCO [Students' Health and Welfare Committee] medical students. And I spoke to the government to ask them if they planned to put up a day hospital there and their response was that Crossroads was a temporary phenomenon and it would go away and so they had no intention of putting in any permanent structure. So I talked to the 25 people from Crossroads who had gone to the SACLA conference and with Rev David Russell about the needs there and the possibility of a Christian clinic that would really be expressing Christ's love to the poor and the oppressed and they were very excited about that and from those small beginnings the clinic opened in June 1980.

Toms directed Empilisweni Clinic (Xhosa for "the place where people are healed") for six years, until the SADF closed it in June 1986. During this time he became deeply involved in Anglican activities, serving as an associate member of the staff at St John's Parish, sharing in Holy Communion every Wednesday morning, chairing its social responsibility committee from 1981, serving as a member of the Parish council from 1982, the Missionary and Training Committee for five years, and the Diocesan Council. As a delegate to the Cape Town Diocesan Synod in 1983 he seconded a motion to establish an alternative form of National Service; as a delegate to the all-South Africa Provincial Synod in 1985 he seconded a motion to end conscription and proposed a motion on conscientious objection. He also began studying theology at Unisa, expecting to earn a B Th at the end of 1988.

He became active in ECC in 1984. In September-October 1985 he joined the three-week "Fast for a Just Peace, Troops Out of the Township" in St George's Cathedral, taking only water. During that period he spoke to nearly 3,000 people who visited the Cathedral. "There were Muslims, Jews who came to join me and fast for a day or longer in the cathedral and just confirmed for me I think that you cannot separate

unifrone's faith from one's politics and one's action. . . ." The fast ended with a peace rally at City Hall, attended by 4,000 people. His political opposition to SADF activities intensified.

> [S]ince October 1984 the SADF have been actively involved in the black townships of South Africa . . . what was a border war in Namibia thousands of kilometres away has now become effectively a civil war in the black townships of our country. . . . It just suppresses people and oppresses people and actually has now become the ultimate pillar of apartheid rather than in any sense a shield behind which political change is taking place.

During his years at Empilisweni three events convinced him to refuse further military service. In September 1983

> there had been a severe drought in the Homelands of Ciskei and Transkei and many black Xhosa-speaking people had come into Cape Town and they had nowhere to live, so they had built little shelters of branches and black plastic on the periphery of the squatter camp of Crossroads and unfortunately the South African government's approach was to class them as illegal immigrants and their structures as illegal structures, and day in and day out for three weeks the Administration Board officials and riot police would come into Crossroads, break down those shelters, burn the plastic and branches and stand around till half past four, leaving mainly women and young children in the rain and cold of the Cape winter, and we in the clinic were treating numerous cases of bronchitis and people who were sick from this result. That only ended on the one Friday when some of the women tried to hold onto those branches, they were tired of cutting more branches from the forest and to the riot police that constituted a riot and they used teargas, sneeze machines, rubber bullets and police dogs to quell the riot and we in the clinic treated the injuries, a woman with a fractured skull from a rubber bullet, another with a ragged dog bite of the calf muscle, children with an allergic response to the teargas. . . . [U]p till that point I had had an intellectual problem with going into the army, and now having seen the realities of apartheid and the viciousness of apartheid and seeing black people treated as if they were a non human people, as if they were animals, meant that I could not be part of that system. The court might think that that was the riot police, not the SADF, but to the people in Crossroads and to the children in Crossroads they were all seen as the "amajoni," the soldiers, to be feared and to be hated. . . .
>
> [To] the black communities that I work in at present . . . if I put on that uniform and especially to the youth in that community I would be identified with the enemy. It is not just my perception . . . it was told to me by a 70-year-old woman in New Crossroads recently who said just

> that, that the youth know me as their friend and the community know me as their doctor and if I put on that uniform and was in a Buffel then the youth would see me as the enemy.

The second event occurred in February 1985. The government had decided to move all Blacks to Khayelitsha, 32 km from Cape Town, in order to improve security, not housing. They planned to start with Crossroads.

> On the Monday morning of the 18th the men in Crossroads had decided not to go to work because so often . . . the women and children and the shacks are moved while the men are at work. . . . [W]hen we came to work at 8.30 in the morning the riot police had already cordoned off the whole of Crossroads because there had been some stoning of vehicles that had come in to pick up labourers. They would not even allow us as doctors and nurses to go into Crossroads. We had to park our cars on the national highway and get in through the bush and then in the next two days the police moved in to restore law and order and in those two days they killed 18 people from Crossroads and we treated in the clinic alone 178 injuries. . . . The majority were shot in the back when they were running away, with birdshot and buckshot. We had one man brought in shot in the groin with buckshot with a severed femoral artery and even though we put up two drips we could not save his life and he bled to death in front of us and the clinic was like a field hospital with bleeding people all around. We had five bodies in the clinic. Ambulances would not come into the community to pick up the injured, we had to ferry them in a kombi [minivan] from a church to the highway and even then we could not make normal medical decisions about our patients because those that were sent into hospital were being arrested and charged with public violence and the proof of their public violence was their injuries and the hospitals were marking the folders so that the police would be able to go through the folders and work out who were so-called unrest or gunshot injuries. This was confirmed later in November 1985 when the army and security police actually surrounded the clinic and asked us for information about shot patients that had been involved in February. . . .

The third event was the use of witdoeke (vigilantes—literally "white headbands" worn for identification) to destroy squatter settlements in 1986.

> Our black staff were threatened because the clinic is in the centre of the Witdoeke area and they live in New Crossroads, which was a more progressive area. The clinic was closed because of those threats to the black staff and within a week, very symbolically on June 16th, the tenth anniversary of the Soweto uprising, the very unit that I belonged to, the South Africa Medical Service Corps, moved into our clinic, took it over,

> and army doctors in uniform and with pistols on their belts started treating patients there and medics with rifles in the corner of the dressing room [were] doing dressings, and a clinic that had been a community based clinic, controlled by the community, was now taken over and used by the SADF.

The army takeover of the clinic stimulated Toms to shift his energies to preventive health, launching the SACLA Health Project in December 1986 to train community health workers in Khayelitsha, New Crossroads, Montagu, and Ashton. He also taught part time at UCT:

> Because of the work that I do and the unique exposure it gives medical students to the real primary health care needs in our country, especially considering that their training is at Groote Schuur Hospital, which is a tertiary hospital and a teaching hospital . . . once a month I give [the fourth-year medical students] a lecture and they are shown round our project by our community health workers and we talk about the implications of health and the apartheid policies and the realities in the Black townships.

Anticipating prison at the time of trial, however, Toms had transferred professional responsibility for the SACLA Health Project to the other doctor and administrative responsibility to the black administration.

Toms concluded by explaining why he did not apply for community service as a religious objector.

> I feel, as does the church that I belong to, that the provisions of the Board for Religious Objection are too narrow, that you cannot separate religious objectors from political objectors or moral objectors, that is an incredibly arrogant decision that implies that non-Christians . . . or non-religious people do not have a conscience. . . . Also the Board effectively punishes people for being true to their conscience in giving them a punitive community service of six years at very low pay, the services only within the government structure and therefore . . . I personally feel that then one is still compromised. . . .
> I take this stand because I believe that in a sense it is the one time that I have a choice as a white South African. I can choose to go to prison . . . rather than to be part of the SADF. I also hope that . . . in some small way by the symbolic stand and as others who might follow me in this stand, that that might as in the past where the previous 12 COs brought about a change in the Defence Act allowing community service for religious objectors.

Finally he explained why he viewed the repeated call-ups and cancellations as harassment.

> There had at that time been a serious smear campaign and a campaign to threaten me. . . . [M]y house was graffitied, my car was graffitied, my car was advertised for sale so that I got numerous phone calls. For about two to three weeks before my call up I used to get threatening or abusive phone calls every day. It got to a point where . . . I received up to 25 threatening or abusive phone calls in one day; and what to me indicated that this was a campaign of harassment and not just a few loony right wingers was that the morning that my call up was withdrawn, before I had received the phone call, that Friday morning, these threatening phone calls stopped suddenly and never reoccured. . . .

Toms's cross-examination was almost as long as his direct testimony. State prosecutor P J Marais began by asserting that Toms believed conscientious objection ought to be available on political as well as religious grounds. When Toms readily agreed, Marais asked how the Board would assess political beliefs. Toms suggested that a psychologist might evaluate sincerity but admitted he had not really thought about it. Although Marais pushed Toms to define himself as a Christian, he refused to separate his religious and political beliefs. Marais asked why Toms performed his National Service despite his doubts. Toms reminded him that before 1983 men could be called up repeatedly and punished for each refusal. Marais got Toms to admit that he had accepted a commission as lieutenant but not that he had sworn an oath of allegiance. Toms agreed that he had remained true to his beliefs in the army: "when propaganda lectures—well, should I say lectures that were of a political nature, were given, and I disagreed with them, I would actually voice those [disagreements]. I would stand up and say I did not think that there was a communist behind every bush but that actually the problem was related to blacks within our country. . . ." He conceded he was not forced to carry weapons or violate the Geneva Conventions and had performed a valuable service in the Ciskei.

Nevertheless, Toms insisted, wearing a uniform "made me feel unpopular with my patients, although that was not always that clear, but I felt for myself compromised. It was advertising who I was in the performance of my medical duties rather than allowing me to be independently a doctor just serving people who were sick." Toms agreed he would be a noncombatant doctor in a just war: "if a situation is such that to defend the country one has to resort to war then there are certain criteria, moral criteria, that you would use. Just cause, just intent, possibility of success, the last resort, and initiated by a legitimate authority."

Toms said he opposed all apartheid institutions: the Group Areas Act, South African Police, Administration Boards, separate medical facilities, and tricameral parliament. The prosecutor asked whether he advocated black boycotts of the election. But Toms saw the trap: "in the present emergency regulations as I understand it I

cannot really answer that question." Toms also was able to turn against the prosecutor the question whether he would work in a segregated government hospital: "I think I would have moral problems with that. I have not fully thought it through because I have been actively involved in medical work for eight years now outside of the government structures. . . ." The prosecutor raised the question of moral scruples against paying taxes.

> PROSECUTOR: The point I am trying to make [is] that living in South Africa it is very difficult to isolate one institution such as the Defence Force and say I am not going to comply with the needs of the Defence Force, but I am prepared to compromise myself regarding all other government institutions. . . .
> TOMS: I think one does live a life of compromise in South Africa. . . . But . . . I felt that this was one choice that I had. . . .

Marais turned to what he described as Toms's insistence on "confrontation."

> [U]p till now the Defence Force has always been sympathetic . . . to your situation in Crossroads. . . . Now why did you decide to not apply for a deferment regarding this particular camp, when you must have had a pretty good idea that the Defence Force would probably grant you deferment in the circumstances?

Toms replied that he was no longer the only physician in the project, was getting older, and "wanted to deal with the issue rather than have it hanging over my head ad infinitum."

Switching tactics, the prosecutor accused Toms of being "melodramatic" in characterizing the two cancelled camps as "harassment."

> TOMS: [I]t is incredibly psychologically disturbing. I remember with the May 1984 call up of actually having nightmares about going to prison and then ten days before I was due to report it was withdrawn. And it was in a sense worse in July [1987], it was five days before I was due to report that it was withdrawn and interestingly enough the major who phoned me when my legal adviser asked her if she had cancelled anybody else's call up she said no. . . .
> [T]he fear of the unknown is often greater than what you actually deal with . . . once I finished my potential time of imprisonment, I will no longer be liable for call up to the SADF and then will be able to continue my medical work and the service to the community without interruption.

Having characterized the cancelled camps as a mere "inconvenience," Marais insinuated that they were an

> inconvenience to the campaign, the lecture tours, the support groups, the pamphlets that get distributed. . . . one of the aims of the ECC at that time was to publicise your stance . . . as extensively as possible . . . and a cancellation at the last minute is inclined to let the whole publicity fizzle out a little bit and it has to be built up with the next call up.

But once again Toms turned the strategy against him.

> TOMS: Well on a certain level the opposite actually happened. We received a lot of press coverage for those call ups and the fact that they were cancelled.
> PROSECUTOR: Although that was not anticipated, I presume.
> TOMS: One never can anticipate what the press will do.

Marais sought to embarrass Toms in several ways. Having secured an admission that Toms thought his work in Ciskei was worthwhile, the prosecutor asked why he had requested a posting to 2 Military Hospital after his first tour of operational duty. Toms first explained that after the SACLA conference he had wanted to plan the Crossroads clinic. (In fact he requested the transfer before the 8/79 conference; he was in Cape Town 4-9/79.) Then he admitted that his social support system—including his church—was in Cape Town. Marais reminded Toms that his application claimed he was specializing and wanted to be near Cape Town and Stellenbosch medical schools and use the Unisa library facilities. Toms maintained that he had applied to be a registrar in psychiatry and had registered as a Unisa student but admitted he had not told the SADF the real reasons. Marais persisted: when Toms's application for transfer was rejected he reapplied on February 19 on other grounds: that his fiancée was in Cape Town and he wanted to set a wedding date—a reason the military usually accepts. Toms admitted this but added:

> TOMS: At that stage I was involved in a relationship with a certain woman and it was a serious relationship.
> PROSECUTOR: Were you trying to set a marriage date?
> TOMS: In a relationship one never knows where it is heading, it is always potentially heading towards marriage.

Marais noted that when Toms learned of his second operational tour he wrote a third time (on August 7), now asking to remain at 2 Military Hospital because his work in pediatrics was preparing him for general practice in Cape Town after national service. Toms explained that he meant his plans for the Crossroads clinic. Why, Marais asked, did he not want to return to Ciskei? "Well, the need in Crossroads was actually greater than the Ciskei. The need in Crossroads was 30,000 people with no medical facilities and no doctor." Marais claimed that Toms had misled the court by suggesting that the army transferred him out of Ciskei against his will.

> MARAIS: Is it possible that you did not want the Court to see you as any other person that would use—do things for his own selfish needs and not some or other altruistic end?
> TOMS: No, I would like the Court to see me as an ordinary person, a person like anybody else who tries to be true to what he believes.

Marais's second stratagem was to question Toms's relationship to the Crossroads community. He began by suggesting that Toms's discomfort in wearing a uniform showed that he allied himself with the youth, or comrades, against the established leadership, especially Johnson Ngxobongwana, mayor of Old Crossroads. Toms denied this. He had discussed his 1984 call-up with Ngxobongwana and the Crossroads Executive Committee, who supported his refusal to serve, although "that same leadership did later move in its own political understanding, became, were part of the Witdoeke who attacked the peripheral squatter communities." But Toms insisted that the clinic had not taken sides in the internal conflict.

> I remember a Witdoeke . . . who had been shot in the foot and who came for treatment to the clinic. . . . I was very, very concerned and I made a point of following his process through the clinic to the dressing room and so forth [so] that there was no prejudice [in] treatment against him by anyone on the staff. Many of our staff were young people whose sympathies probably lay with the Comrades . . . but as I say we were very careful always to offer equal medical treatment to both sides.

Marais suggested that Toms had actually closed the clinic when threatened with a Witdoeke attack.

> TOMS: [I]t was about lunch time that the clinic was actually closed, yet there was a very strong rumour that the Witdoeke were going to attack New Crossroads where most of [the staff] lived and where their families were, so we closed the clinic so that they could go home to be with their families and to protect their property.
> MARAIS: And you feared that the community would attack their own clinic?
> TOMS: I do not think it would have been that they would have attacked the clinic so much as our staff had to go through from New Crossroads . . . what was a kind of barricade really of initially Comrades and then through a barricade which would be of Witdoeke.

Toms agreed that the SADF reopened the clinic a few days later. Marais claimed this was at the instance of the community. Toms conceded only that it had been requested by the Crossroads Executive Committee "which is the Witdoeke leadership in Old Crossroads, who may or may not represent the wills of the majority in Crossroads." He admitted he felt angry and compromised. Marais asked why, if his own staff were unable to render care. Toms replied that he never intended to close the

clinic permanently; he had tried to negotiate with Ngxobongwana three times, but the Executive Committee refused to meet. Toms had two conditions for reopening: the clinic would treat all patients, not just Witdoeke; and all staff would return. He admitted that the Witdoeke were happy to have the SADF running the clinic. He and his staff had removed some equipment from the clinic—quite fortunately, it turned out, since the building burnt down in 1987. He agreed that some in the community resented this and the Witdoeke had threatened to sue, but none of the equipment had been bought with community funds—40 percent came from local government and the rest from churches.

Marais's third strategy was to portray Toms as a dangerous radical. Toms readily admitted his activity in the ECC and the Board of Social Responsibility and the Social Responsibility Committee of St John's Church. He travelled for seven months during 1986, visiting the United States as a guest of the State Department but also France, the Netherlands, England and Nicaragua. Naturally, Marais was most interested in the last.

> TOMS: In Nicaragua I visited, because it was a post-revolutionary society. I wanted to see what the medical facilities were like there. The way that they were going to cope, were they going to be doctor orientated or were they going to be more orientated at a community level in terms of health care, and also to look at church/state relations which were quite complex and involved at that time and I felt . . . had an important bearing on the South African situation.

Toms also attended the conference on apartheid and violence against children in Harare in 1987. He had been asked to be on a panel, but two other physicians were present and time was short, so he stood down. Marais pressed this issue, getting Toms to admit that 13 members of the ANC executive were present and he had spoken to Ruth Mompati and Joe Slovo.

Marais left for last what he hoped would be his most devastating blow—an attempt to smear Toms in the mind of the Magistrate and the public by playing on anti-gay bigotry—a tactic reminiscent of Senator Joseph McCarthy's worst offenses.

> MARAIS: To what extent do you consider yourself to be a champion of gay and lesbian rights?
> TOMS: I do not consider myself to be a champion, but it would be an issue that I am concerned about.
> MARAIS: You have mentioned a large number of communities and organisations and committees in your evidence in chief of which you have been members or in which you have been involved, but you never dealt with any of your involvement in this particular issue, and you were also involved in . . . the Lesbians and Gays Against Oppression Committee, you were a founding member, were you not?

TOMS: I was not a founding member, but I was involved in that organisation.
MARAIS: [asked about the aims]
TOMS: The organisation has since [become] defunct, but the aims of the organisation were to work towards a non racial, a non sexist, democratic non heterosexist . . . South Africa, to support lesbian and gay activists who were working in the struggle in South Africa and to raise the issue of lesbian and gay rights within the broader democratic movement.
MARAIS: . . . did you also enjoy the full support of your church in this particular line of activities?
TOMS: I received the support of my parish priest and of the majority of the staff. . . .
MARAIS: How would you anticipate . . . the Synod of the Province would have reacted?
TOMS: I know of many bishops who would be supportive of my involvement and many priests but I would not like to know what the vote would have been.

Defense counsel did not re-examine Toms. But he took responsibility for not asking Toms about his actions on behalf of gay and lesbian rights: "the whole issue of the accused's involvement in certain organisations which had no relevance to the issues of this trial were extensively discussed between him and me and I advised him that it was not relevant to this Court to discuss those issues which My Learned Friend has raised." Cameron later recollected that Marais had approached him before the trial to warn that he had a lot of damaging information he had decided not to use. Cameron thought it might be an attempt to prove links to the ANC or raise the fact that Toms was gay. The defense had deliberated in advance about airing the issue themselves. Some gay activists urged this strategy. But in the end the defense decided to make it a "single issue case" in order to focus the publicity. The Organisation of Lesbian and Gay Activists (OLGA) supported this decision. Toms was not scared, nor was he in the closet; on several university campuses he had identified himself as gay. The defense felt that Marais had played the homophobic card because Toms's testimony had gone so well. Cameron was "absolutely livid," feeling that Marais had reneged on an implied undertaking. It is noteworthy that a scurrilous pamphlet later appeared attempting to provoke anti-gay prejudice against David Bruce and Charles Bester by (falsely) labelling them gay.

Bishop Patrick David Roland Fitzjames Hamilton Russell was the second defense witness. He had been a priest for 22 years, then suffragan bishop of St John's, and was now diocese bishop of Grahamstown. He wrote his Ph.D. dissertation on "A Theological Critique of the Christian Pacifist Perspective with reference to the position of John." He met Toms in 1974 when they were praying in St George's Cathedral for those who had been arrested. They had a long conversation after the SACLA conference; Toms was seeking his calling and thinking about a clinic in Crossroads.

> I was . . . full of admiration for the tremendous work which he initiated there with the help of others. . . . I think it was a most wonderful witness of missionary involvement in a great area of need. I was very proud to be associated with it as a colleague. . . .

Russell spoke about the November 1982 resolution of the Provincial Synod on religious objectors. It began by denouncing apartheid as totally unchristian, evil, and heretical. It noted the war in Namibia and growing internal conflict.

> [T]he essential nature of the conflict stems from the determination to maintain by force a structure of society in which the majority of the people of this land suffer gross oppression and exploitation . . . as a result, a vital function of the SADF has become the protection of these unjust structures. . . .

The Church felt compelled to address the dilemma of those confronting military service.

> [A]llegiance to Christ demands of every Christian that before he takes up arms for any purpose, or enters the Military, he should face our Lord and ask him whether this is truly what he should do. . . . Given our understanding of the Christian faith and its implications for our life in South Africa, we feel bound to express our serious doubts about the legitimacy of a military system whose role is increasingly seen as the protector of a profoundly immoral and unjust social order in which the majority of the people suffer gross oppression and exploitation.

The Church decided to offer ministry to all those engaged in or anticipating military service. It also urged the government to recognize conscientious objection on both moral and religious grounds and to provide alternative forms of service.

Russell helped draft a further resolution, passed by the July 1985 Provincial Synod (147-1), criticizing the 1983 Defence Amendment Act for failing to follow the earlier recommendation. He explained his own views.

> [T]he Act in fact does make criminals out of a very large number of people who believe their call to renounce violence. . . . there is a profound theological confusion in the whole Act actually because it is . . . somehow attempting and claiming to separate the idea of religious convictions from ethical convictions as if this is a matter easily separated out. . . . It is a fundamental challenge to all Christians that this is the evangelical value of the Gospel that we must seek to love our enemies. . . . The starting point is that one should not enter any army. And that no Christian should need to justify any decision in conscience not to fight. It is cardinal to our belief that it is others who need to justify going into the army.

He also criticized the punitive length of alternative service and the narrow options permitted. The Synod passed another resolution (147-8) on "The Role of the SADF and the Crisis of Conscience." It deplored the deepening involvement of the SADF in supporting apartheid, recognized the crisis of conscience of conscripts, and urged pastoral assistance to young men and their parents "as they seek God's will for them in this matter." Russell characterized this as "a resolution in which we noted the stand that Dr Ivan Toms was taking and not only noted it but gave him full support. . . ." The Synod passed a third resolution (150-6) on conscientious objection. It condemned apartheid and the occupation of Namibia, again urged the government to recognize those with ethical scruples and objections to this war, and gave "its general support to the ECC."

Although Edwin Cameron tried to get Russell to pledge Church support for Toms's activities on behalf of gays and lesbians, the bishop clearly was uncomfortable, evading the issue by talking about the constantly changing nature of Church doctrine, citing slavery, the ordination of women, and abortion. (Because Russell testified immediately after Toms, whom he had not heard, defense counsel had no chance to discuss the issue with him.) Cameron persisted.

> CAMERON: Can you tell the Court whether the church adopts an attitude of censure towards an individual who belongs to an organisation which tries to change legal and social attitudes towards gays?
> RUSSELL: I am not conscious of any such attitude of censure . . . if any decision was to be made I believe there would be support . . . it is my opinion that in fact there would be general sympathy concerning the right of such people to seek rethinking and reunderstanding on these matters.

The prosecutor cross-examined briefly, seeking to show that the Anglican Church did not instruct Toms to refuse military service.

> RUSSELL: The church does not prescribe what his attitude must be, but the church does offer certain ethical teaching which it expects this member to consider very deeply and carefully. . . .
> MARAIS: If he decided to serve, would the church respect that choice?
> RUSSELL: Yes.
> MARAIS: Many do decide to serve and the church provides for spiritual needs within the military context?
> RUSSELL: Yes.
> MARAIS: There are chaplains?
> RUSSELL: There are chaplains but the policy concerning the chaplains is under a very definite review.

The defense also called Reverend John Stanton Freeth, who had been rector of St John's Parish and a friend of Toms since 1980. Even though Toms was not ordained and devoted most of his time to medicine "he is officially described as an associate

member of staff. . . . More importantly, he shares with us at a profound level in worship weekly and in the context of the eucharist we share our lives as honestly and openly as we are capable with one another." Freeth testified that Toms was thoughtful and deliberate in making decisions (such as refusing military service). He also praised the clinic's ability to render medical care impartially in the deeply divided Crossroads community.

Freeth counselled many people facing conscription and often testified before the Board for Religious Objectors. He criticized the law, however, for its false distinctions.

> The usual question that is asked by the Board seems to be would you be prepared to be a member of a peacekeeping force at any time anywhere in the world? . . . all the time the trap is, your conclusion is simply based on political considerations of the role of South Africa in Southern Africa. . . . to try and cut someone into religious bits or political bits or ethical bits or moral bits really at the end of the day does not do justice to the truth, the complexity, or above all the God-given dignity of a human being.

The Parish Council issued a statement of support for Toms on February 22, 1988, affirming "that his Christian faith is the mainspring from which his action is taken." Freeth also quoted Archbishop Desmond Tutu, who had said just the previous Sunday that: "he was privileged to belong to a church which produced people of the calibre of Dr Ivan Toms."

Cameron returned to the question of Toms's involvement with gay and lesbian rights groups. Freeth's response was unequivocal.

> I personally do not see why there should be any distinction drawn between someone who is a member of a gay or a lesbian organisation seeking to bring about change and equal rights and so on.
> I encourage and support him in those organisations.
> We have in fact discussed it and therefore I can tell you quite specifically that the executive of the Parish Council is supportive of Dr Ivan Toms in his membership of those societies.

The defense called Professor John Dugard as an authority on international law. He testified that South Africa was one of 147 countries to sign the four Geneva Conventions, thereby undertaking to educate soldiers about their obligations. As evidence of its failure to do so he quoted Acting Justice Hendler passing sentence on SADF soldiers for raping a 24-year-old Namibian woman:

> In the about 18 months that I have been in Windhoek I have dealt and am increasingly dealing with many crimes committed by servicemen against inhabitants from especially the northern regions. I have been imposing

> heavy sentences, perhaps heavier than other judges, but still the situation does not seem to have improved and I just wonder if these men are told they have no right to molest people even if they were armed and wore uniforms.

Dugard also described the attitude of international law toward conscientious objection. Hugo Grotius, a founder of Roman-Dutch law, wrote in 1625 that men should refuse military service "if it is clear to them that the cause of war is unjust." South Africa elevated domestic legislation above international law, however, creating an acute moral dilemma for those confronted with war crimes and crimes against humanity. Yet even South Africa might be changing, as shown by its treatment of crimes like hijacking. Furthermore, South African domestic law refused to recognize obedience to authority as a defense.

The conflict between domestic and international law was most unambiguous in Namibia.

> [I]t is quite clear under international law that South Africa is in illegal occupation of Namibia . . . there is support for the view that South Africa's occupation of Namibia is an act of aggression and so any member of the SADF who undertakes military service in Namibia finds himself in that conflict situation . . . the Security Council of the UN, which does make decisions in this case, has repeatedly labelled South Africa's intervention in Angola as acts of aggression.

Dugard listed the raids on Mozambique, Lesotho, Botswana, Zimbabwe, and Zambia and the intervention in Bophuthatswana as additional violations of international law. He conceded, however, that only soldiers who actually committed war crimes could be held responsible under international law.

A greater danger was complicity with apartheid. The International Convention on the Suppression and Punishment of the Crime of Apartheid, drafted in 1973, had been signed by 81 states. Because it made individuals criminally responsible "it is arguable that the conduct of members of the SADF would fall within the ambit of this convention. . . ." Consequently, someone serving in the SADF could be prosecuted by a signatory state. International law was an essential safeguard because South Africa withheld information about human rights violations by soldiers and failed to prosecute them under domestic law.

The prosecutor sought to undercut Dugard's evidence by showing that it reflected his position as "an opponent of the government in a number of fields." Dugard acknowledged writing that "international law perhaps more than any other branch of the law is affected by the jurisprudential and political outlook of its interpreter" but denied that politics was determinative.

> [T]here are traditionalists in the international law who like to cling to the belief that international law is a system of law governing relations between states only and that it does not concern itself with human rights. Ironically, that is a point of view which seems to be supported in the international community by two states only, namely South Africa and the Soviet Union.

Marais and Dugard continued an inconclusive exchange over whether Namibia was an internal conflict (as South Africa insisted) or an international conflict (as the UN and all other countries maintained). Marais also attacked Dugard's invocation of the 1973 protocol. Marais said it was retroactive. No, replied Dugard, it was prospective. Marais maintained that it was proposed by communist countries. No, replied Dugard, African and Asian countries had sponsored it. Marais criticized it as too vague. Dugard replied: "I cannot say that it is too vague, I mean if one compares this with our own Internal Security Act it is a model of clarity." But Dugard was forced to admit that it had not become part of customary international law and no one had been prosecuted under it.

The last defense witness was Oswald Shivute, secretary of the Ovamboland Legislative Assembly, who testified that during six years he had received 632 complaints of SADF mistreatment of civilians. His evidence was supported by nine affidavits. Portus Blasius had his face burned by being pressed against the exhaust pipe of a Casspir while white soldiers revved the motor. Titus Paulus, 13, was blindfolded, kicked in the genitals, burned with cigarette lighters, and held over a fire. A woman nine months pregnant was raped twice and stabbed when she refused to perform oral sex.[312] Cameron later remarked that Shivute gave the best performance of any witness he had seen in seven years of practice. "The effect was electric on the audience, on the public, and on the magistrate . . . [who] listened with great consideration and attentiveness." The prosecutor's efforts to undermine this account had no effect.

Magistrate Kotze passed sentence at 3:45 pm on March 3, immediately after hearing the last witness in the four-day trial. He agreed with Marais that the Defence Amendment Act imposed "a mandatory or a compulsory sentence" and "a specific period of imprisonment." He read §126A(7), which allowed a convicted offender to be exempted from further imprisonment if he agreed to serve, as further evidence that the statute envisaged no other discretion.

He understood that Toms was adamant, supported by the church and friends, and aware of the consequences.

> [I]t is indeed a pity that you went so far as to refuse to render service. . . . [I]t is clear that the other members of your unit . . . understood your position, that they at all times were sympathetic towards you and they always adopted a very lenient approach. In the second instance you obtained noncombatant status and it was never required of you to carry a gun or to shoot anyone. You were able to render your service in a

> protected environment as opposed to the young soldier who is in the front line. Thirdly, you are a professional man, a medical doctor, who if sent to jail would be lost to the community and to your profession and this, of course, would be counterproductive. I am sure that there is substance in the evidence of Mr Shifite [sic] regarding the atrocities in the SADF. . . . it would appear that you are more needed up on the Border than down in Crossroads. But be that as it may, in the fourth instance you are not a criminal. Our jails are there for people who are a menace to society, you are not a menace to society. In fact you are just the opposite, you have always been an asset to society in the services that you have rendered.

In calculating the sentence, the magistrate acknowledged that Toms ought to be given credit for the erroneous 1982 call-up and reduced the outstanding period of service to 420 days. He sentenced Toms to 1.5 times that period, or 630 days. Finally, Kotze urged Toms to reconsider, giving him a copy of §126A(7) and urging him to invoke it: "you will find that you yourself have the power to terminate your imprisonment at any time you wish." The magistrate reiterated these reasons in writing on May 26. Toms embraced and shook hands with many supporters and hugged his father, saying "Cheers Dad, see you," before being led away.[313]

The conviction and sentence received extensive newspaper coverage, most of it explicitly sympathetic. *The Cape Times* front page headline deplored "Maximum sentence for Toms." Several days later it ran a cartoon showing an armed prison guard looking into Toms's cell, while a companion said: "Dangerous customer in there, Van der Merwe . . . stands for peace and justice and refuses to take up arms."[314] *The Star* declared: "'Angel of Crossroads' chooses to follow his conscience."[315] The *Sunday Times* headlined "'Good Samaritan' is sent to jail" and noted that the Very Reverend Edward King, Dean of Cape Town, had called the jailing "preposterous," evidence that "our system of values has become perverted," while Amnesty had adopted Toms as a prisoner of conscience.[316] *The Natal Witness* called the sentence "severe" and "excessive." "Surely the court could have exercised its powers of discretion in such a case? Justice has not been seen to be done."[317] The *Weekend Argus*, *The Cape Times*, and *The Daily News* highlighted the plight of non-religious objectors and those who were not universal pacifists.[318] *The Star* published a letter from eight conscientious objectors performing alternative service and *The Cape Times* a letter from six, both expressing support for Toms and calling for reform of conscription.[319] Several papers focused on South Africa's violations of international law.[320] *The New York Times* featured Toms in a long article declaring: "More Whites in South Africa Resisting the Draft." It documented the rising levels of emigration and evasion and the anguish experienced by young conscripts.[321]

The ECC held a press conference and asked the government to release Toms, a call endorsed by PFP MP Ken Andrew.[322] Students at the University of Natal-

Pietermaritzburg held a silent vigil.[323] The Black Sash passed a resolution in support of all conscientious objectors, with particular reference to Toms.[324]

As some indication of SADF efficiency, Toms received a call-up from his unit while in jail.[325] In what appeared to be yet another homophobic attack (following the posters, graffiti and prosecutor Marais's gratuitous slur) Toms was subjected to a sexual assault by another Pollsmoor prisoner at the end of June. He shared a bathroom with Daniel Knipe, 26, known to have severe personality problems manifested in violent behavior. Knipe once was removed from a psychiatric hospital for ripping all the doors off the hinges. On two occasions, Knipe made sexual advances to Toms. The second time this occurred, Toms punched him—the first time he had ever struck anyone. Knipe beat him severely before being pulled off by other prisoners. Toms required stitches for a wound under his eye. Knipe was isolated in chains. Ten days later Knipe returned and was put in the same bathroom for 12 days before the incident was publicized. Toms sought a transfer to Pretoria Central Prison.[326]

When Knipe was prosecuted for the assault the following year a psychiatrist testified that he had been assessed several times at Valkenberg Hospital and hospitalized at Stikland and Weskoppies maximum security hospitals: "All the admissions have been related to seriously aggressive behaviour. Reports of street fighting and sexual promiscuity are present with repetitive assaultive behaviour directed at his parents and family members. He is severely personality disordered with a low-normal intelligence." He had shown extreme strength and "should be considered highly dangerous."[327] Knipe was convicted of assault, and the Department of Prisons later paid Toms R10,000 to settle his civil claim. The Justice and Reconciliation Committee of the South African Council of Churches responded with a call to reclassify conscientious objectors as political prisoners.[328] In October, two doctors in the University of Cape Town Department of Pediatrics wrote a letter to the *South African Journal of Medicine* expressing support for Toms and deploring the country's loss of physicians unwilling to serve in the military.[329]

Toms filed a notice of appeal on March 14 and 39 pages of heads of arguments on September 16. Since he had been granted deferments in 1981 and 1983, his failure to render service was not "due to" an act or omission "on his part" under Defence Act §21(10), nor was he "liable" to render service under §22. If he were given credit for those two years, his remaining obligation would be only 300 days; since 1.5 times that period (450 days) was less than the 18-month minimum, he should serve only 18 months.

Alternatively, the defense argued, the sentence was not compulsory. Parliament used more explicit language when it wished to impose a mandatory sentence. Penal law should be interpreted for the benefit of the accused.

> It is inconceivable that the legislature could have wanted to punish such an accused with a compulsory sentence of one-and-a-half times as long

> as the aggregate of the maximum of remaining possible periods of service during which he could still have been called up.
> A court may well wish, in the exercise of its discretion in the matter of sentence, to differentiate between an accused who acts out of pure self-interest and an accused who acts on the basis of deeply-held moral and spiritual convictions.

In oral argument on October 24, D P "Lang Dawid" de Villiers QC called the case "a Greek tragedy" and urged the court to find that Toms had been imprisoned long enough. The work he had done at the Sacla clinic in Crossroads was equivalent to community service. He asked that Toms be released or allowed to serve in several shorter periods or that the sentence be suspended while he did community service.[330]

Justice J G Foxcroft (with Justice H C Nel) decided the appeal on November 17.[331] He began by echoing de Villiers: "this case . . . has in a sense some of the elements of a Greek tragedy. It does go to the core of the stresses and strains of the South African situation." He agreed with the magistrate's laudatory portrayal of Toms. And, like the magistrate, he blamed Toms for his own predicament.

> It is of course always a matter for regret when the provisions of a statute compel a Court to impose imprisonment upon a person whom it does not regard as a criminal. However, it is the onerous duty of the Court to apply the law. One may express the hope that the lawgiver will ameliorate the harshness of the compulsory provisions of this statute by allowing a discretion to the Court. It is a matter for regret that a person of the undoubted quality of the Appellant should have had to serve imprisonment at all.
> On the other hand he is an intelligent man and must have been aware of the consequences of his election not to serve in the SADF as required by the Act. The path which he has taken is not an easy path but it is one which he has himself chosen.

The judge refused to find that the statutory penalty was a maximum rather than a mandatory fixed period, noting that a companion section used the words "not exceeding" when imposing a maximum for failure to report. He also concluded that it would be inappropriate to suspend part of the sentence since the statute conditioned suspension on willingness to perform military service. He agreed, however, that Toms deserved credit for the 30-day camps for which he was not called up in 1981 and 1983. This would lower his service obligation from 420 to 360 days; the court therefore reduced his jail sentence from 630 to 540 days.

On November 29 Toms sought leave to appeal to the Appellate Division on much the same grounds; it was granted the following day. Although the state did not oppose his bail application, Magistrate Kotze said he had the burden of demonstrating that he would serve the rest of his sentence if his appeal failed. Kotze noted that the

sentence was mandatory and could not be suspended, but the nine months Toms had already served was "a fairly severe sentence for a man of your standing and must have been traumatic for you." He released Toms on November 30 on R1000 bail.[332]

Toms was welcomed at the home of Rev Freeth by Archbishop Tutu: "You don't know how proud you make us through the stand you have taken . . . each person can make a difference by taking a stand—it encouraged the more timid." Toms was "incredibly joyful" to be out. "I am so hyped up about being out that I don't think I will be able to sleep for a week." "But the important thing is that I went in on my own and now we have a real peace movement going." He expressed solidarity with David Bruce, who was in the fourth month of his six-year sentence, and Charles Bester, facing a similar sentence.[333]

Toms spoke of the horrors of prison. For five months he was locked up for 22.5 hours a day in a cell eight feet by six without any daylight. "You can smell C section as you go in." He received no current newspapers and only one letter a month. "Late at night I felt incredibly lonely and alone. After 10.30 when they switched the lights off it was totally dark, quiet. . . . I would lie on my bed and the tears would just run down my face." Only after the assault on him was publicized was he moved to B section, but he still had no access to newspapers or television. Some of his fellow prisoners "were told not to talk to me because they said I was a communist. Some thought I was a terrorist." He had been able to cope because "I felt there were hundreds of people supporting me." Although Helen Suzman had asked Justice Minister Kobie Coetsee to allow Toms to work as a doctor within the prison, that was forbidden by prison rules. Authorities even deleted "Dr" from the return address of his letters. Once, however, a prisoner had tried to hang himself. The warder summoned Toms, who managed to resuscitate the man.

> I got a taste of what happens to blacks in South Africa, how people are dehumanised by the system. Possibly it is the only time a white person feels what it is like to have the system dehumanise him and treat him as less than a person.

Nevertheless, the experience had made him "twice as committed to working for a new South Africa."[334]

The following year Toms wrote:

> For me the most disturbing aspect of prison life is the total lack of trust. Nobody inside can be trusted. Prisoners will inform ("pimp") on you for the smallest privilege and naturally the prison warders are effectively the enemy and never to be trusted. It is all the more difficult to handle this when you are used to the trust and support that we often find in progressive organisations who are all working for a just and democratic future.

> The Prison authorities and prisoners treated me differently and to them I was a "Politico", a "terrorist" and a "communist". Initially most of the other prisoners would not talk to me as they were warned that I was a "terrorist". . . . But interestingly, as time dragged on and some of the prisoners began to see me as "the doc", there developed an insight that ran something like this. I had stood up to the system that had unjustly (they thought) put them in prison. Therefore I was OK and later on some of the prisoners wanted to know how they could help fight the unjust system when they came out of prison.[335]

In March 1989 he addressed the launch of the South African Health Workers' Congress.[336] In October he spoke at a rally of the Save The Patriots Campaign on the occasion of International Political Prisoners Day.[337] In December the *Daily Dispatch* carried a long feature story about him. "Although I am really scared about going back to prison, I believe my stand and the stand of my fellow objectors has challenged people making them more comfortable about considering the prison option. People are so used to corruption in the government that they are surprised by people who stand by their principles."[338] Toms hailed the government's reduction in the length of national service that month as "a great victory for the anti-war movement" but did not expect it to affect his own sentence if his appeal failed.[339] The following month he received a telephoned death threat.[340]

## XII. David Bruce

In July 1990 David Bruce remembered that when he had been 16 in Standard 8 (the year schools registered boys for military service) he said to himself some nights: "I'll never serve in the SADF."[341] There were three or four other boys in his class of about 150 who were politically conscious. One went straight to the army; one secured repeated deferments; one objected to military service on religious grounds but stopped doing community service after a year and went into the army; and one dropped out of university, entered the army and "came back a complete fascist . . . completely so brainwashed, hating Swapo." When Bruce entered university in 1982 "it was with this understanding that I was going there not because I had any particular interest in pursuing any particular course of study, but just because I mean, I wasn't prepared to go into the army." He naturally became involved with the left, where it was "virtually unacceptable to be in the army." He worked in the Nusas Projects Committee for one and a half years and then on the student newspaper for three. But he had been alienated by left factional fighting in 1986 and distanced himself from organized political activity. He associated the ECC with one of those factions. "I just find it difficult to cage myself in political organizations."

He remembered that, sitting at his desk of an evening, writing an essay, he would find himself "going over this issue again and again . . . I don't know however many times." "I was basically in a continual state of uncertainty and indecisiveness and confusion about the whole thing . . . that's one of the most destructive states of mind that a human being can possibly be in." Although he asked others what they planned to do, he rarely told them his own plans because when he said "I'm going to go to jail, people would say: 'Oh, you're ridiculous, you're an idiot, you're a fool, completely crazy.'" At the end of 1986 he failed African Politics 2, the only requirement remaining for his B.A., and was excluded from the university. As a result he received a call-up in February 1987. "This was the first time in my life that I'd ever actually had to make a decision about what I was going to do about my call-up." "I prepared myself to confront this decision . . . making the effort to get physically fit . . . and to avoid drinking." "If I hadn't received a permit by the Friday before that call-up I was going to go to Zimbabwe. And from Zimbabwe I was going to write a letter saying that I was out of the country at that stage and therefore not available to do my military service, and then I would have intended to return to South Africa." Instead, the university readmitted him and he obtained a further deferment. Bruce felt "this incredible sense of relief at not having to confront this decision."

This was "the time when the South African government was coming down on the democratic movement in the severest kind of way." He remembered the picture of trade unionists besieged in Cosatu House. "I just had the sense of them coming and hauling us out of our houses and shooting us on the pavement outside." The government "was very definitely on a course which would have involved intensifying military conflict in Southern Africa . . . bloodshed and hatred and racism and madness. . . ." He had "absolutely no interest in being at University." The following year, therefore,

he decided not to apply for further deferment but rather confront the SADF. He experienced a temporary "euphoria . . . this burden of decision at least was off my shoulders." The first people he told were his parents. His father said he would have advised David to leave the country, but both parents supported him throughout. Through a friend who was an articled clerk for Kathleen Satchwell, Bruce arranged for her to get him out if the army sought to keep him when he refused induction.

The armed guard at the induction center commented that his short haircut showed he was ready for military service. The man's face dropped when Bruce said: "You know, I've decided I'm not prepared to serve in the army. Who should I speak to?" Bruce did fear that they would suspect him of being an ANC member and torture him. But it was all over in 10-15 minutes. Bruce did not hear from the SADF until January, when he was told to explain his reasons for refusing service. He failed to respond. In February the ECC was organizing what became the public refusal by 143 men, and Bruce had to decide whether to join. But "that would have been pretty much putting myself on the line. I still had a hope that they would choose to steer clear of the issue." Kathleen Satchwell, misunderstanding the law and the implications of Toms's sentence, told Bruce that he might be sentenced to less than six years. But he said "I didn't anticipate being out of jail prior to the time that I was say, thirty years of age."

He was charged with refusing to serve on August 5, 1987. He had been called up for the 7 South African Infantry Training Unit at Phalaborwa. He appeared in the Johannesburg Magistrate's Court for the first time on February 25, 1988.[342] A support group was formed, which retained contact with him after he was jailed. But he refused to allow it to influence his decisions. Bruce went through "internal agonizing," "fear and anxiety," "continual uncertainty." He told the press shortly before his trial that he refused to serve "because I'm very strongly opposed to racism and as I understand it, the SADF is directly involved in upholding a racist political system." He had been touring South Africa to publicize his case.[343] The trial was scheduled shortly before the August call-up and was followed by the refusal of 143 to serve, but Bruce "wasn't really involved in those kinds of things." The hearing began on July 19 before Additional Magistrate P H Bredenkamp. The prosecutor, Louisa van der Walt, introduced affidavits by Capt James Thomas George Petite and Victor Everice Coetzee as evidence of Bruce's refusal to serve.

The first state witness was Staff Sgt Johan Flattery, an investigator for the Military Police at Witwatersrand, who had been in charge of the intake of national servicemen at Milpark showground that day.

> A youngster was brought to me, that was called up for his national service. [H]e stated to me that he is not prepared to do national service. I explained to him, your worship, that there were other avenues of doing national service without the combat units, such as the medical sections, alternatively the administration side of it, or as a chef where he will not be required to do actual fighting. He could not accept that, your worship.

> He stuck to his original statement that he was not prepared to do national service. . . .
> I then explained to him again that the military set-up in South Africa was not one where we go out and fight battles. We are for the safekeeping of the country.

The courtroom audience of ECC supporters and Wits students erupted with laughter. The prosecutor interjected:

> VAN DER WALT: Your worship, with due respect. . . .
> BREDENKAMP: [to Flattery] Just a moment please. [to audience] If anyone wish to attend this hearing, it will be appreciated if you remain silent and if any of the members of the public cannot behave themselves, they will be ordered to leave the court immediately. The court hope that this warning is quite clear to everybody. Thank you.

Cameron remembered that he "actually squirmed" when the audience jeered because the young, inexperienced, Afrikaans-speaking prosecutor used an ungrammatical English expression.

Flattery warned Bruce that he would be prosecuted. After he received instructions from Defence headquarters to institute this prosecution he called Bruce, invited him for an interview, and urged him to get legal assistance. Bruce arrived at the interview with Kathleen Satchwell, his attorney, but maintained his refusal and was formally charged.

Bruce's counsel, Edwin Cameron, cross-examined Flattery about the powers of the statutory Exemption Board (not the Board for Religious Objection but the process by which the military assigned conscripts to units). "I am not aware of all the powers of the board, your worship, but if he has got a strong case to put to the court, it will be considered on merit, that I can assure the court." Flattery mentioned "medical disablement, study purposes" but conceded he did not know whether Bruce could have invoked either. He added that he previously had dealt with conscripts seeking noncombat alternatives.

> I refer them to the Exemption Board, with advice from the military police side that we consider him not fit for combat. . . .
> It does not happen very often, but we do find people that are scared of a rifle and they cannot handle it. Those people we do refer and where there is a physical disablement that prevents him from handling a fire-arm, we also refer him to the other side, where there is no combat situation for him

But Bruce was not expressing fear; his objections were political. This was the first time Flattery had encountered such a view. "To my knowledge, your worship, the Exemption

Board will not consider political objections as a reason." Cameron then asked Flattery about the Board for Religious Objection.

> FLATTERY: [T]hey get referred to a special court-martial where they go on trial and they get treated totally different as to the normal soldier. They serve with the Department of Manpower after sentence had been passed on them.
> CAMERON: But that did not apply in this case, did it?
> FLATTERY: Not at all, sir.
> CAMERON: Did you discuss that with the accused?
> FLATTERY: I did, your worship. He was still very serious about his situation as far as refusing to serve under the present government. [They had quite a long conversation.] He said that he was not going to support the government in their effort to suppress the other side of our nation. He was not prepared to support apartheid was his distinct words, your worship.
> CAMERON: Did he say that the SADF was being used to uphold a racist system?
> FLATTERY: Those were of his words, your worship. . . . My advice to him was to join the defence department and that way stay out of prison.
> CAMERON: Did you respect him though for his moral and political decision in not doing that?
> FLATTERY: Yes, your worship, I did.

The only other state witness was Staff Sgt Stephanus Johannes Nieman, of the Military Police in Pretoria.

David Bruce was the first defense witness. He was born on June 15, 1963 and grew up in Johannesburg, attending Michael Mount Waldorf School and then the Parktown Boys' High School. He registered for the SADF on February 3, 1979, when he was only 15 and in Standard 8. He received his BA from Wits at the end of 1987. During university he had partly supported himself by working in a shop in Hillbrow for four and a half years. He had been involved in the Projects Committee of the SRC from the beginning of 1982 to the middle of 1983 and worked on the *Wits Student* (a newspaper) for three years.

> From when I was in primary school I just say became aware of the kind of thing that happened in Germany during the period of the holocaust and say became aware that my own family or my mother's family had suffered as a result of those things and as a result of racism. . . . I sort of had a Jewish upbringing in the sense that I went to say a Jewish school . . . on Saturday mornings . . . up to the time that I had my Bahmitzvah [sic] . . . I would not call myself an observant Jew, for quite a long time I regarded myself as an agnostic, someone who believed in God [sic]. . . .

> I was aware that in some ways my mother's family had suffered as a result of the things that happened [in Nazi Germany] but it was not actually something that we used to talk about very much at home. . . . So in some ways I actually saw racism itself as something that actually personally threatened me . . . not just something that . . . threatens other people in this country.

For Bruce "the basic function which the SADF plays in this country is one of upholding and defending a racist political system." He described its intervention in Cape townships and its "occupation" of Namibia. He conceded, however, that it sometimes did valuable things, like assisting people affected by floods. He objected to the fact that he was being asked to fight, perhaps even die, for a country that systematically deprived him of truthful history and accurate news reports.

Bruce had entered Wits less in pursuit of a specific career than to avoid military service. He received regular call-ups; his high school dealt with these in Standards 8 and 9; he applied for deferments at university. In November 1986 he received a call-up for February 1987. This time he was uncertain whether he would be granted a deferment and became very anxious; it arrived just a week before he was due to report. "[D]uring the course of the next few months I realised that there was not much point in my trying to stay at university," although he originally had intended to remain a student as long as possible. Having finished his B.A. at the end of 1987, he had been accepted by the Wits Law School for the following term and had already accumulated some credits towards an LL.B. during his six years of work on his B.A. Sgt Nieman indicated he would have been deferred for another four years. But by May 1987 Bruce had decided that he would neither apply for further deferments nor serve. At the end of June he received a call-up for August 5.

Bruce appeared at Milpark showgrounds that day and declared his refusal to the MP at the gate. He was taken to Maj van Niekerk, who just recorded his SADF number and said he could leave. Another MP intervened, however, taking Bruce to a senior officer. He said the boy was just being disobedient and should be sent to Phalaborwa to get him in line. Staff Sgt Flattery overheard this and offered to sort out the situation.

They went and sat in Flattery's bakke (pick-up truck) for a friendly conversation. Bruce answered that he was not afraid of combat situations. He also was not a universal pacifist. Flattery inquired about his religion but only to explain that the army provided pastoral care for Jewish national servicemen. When Flattery asked about physical disabilities Bruce mentioned a slight knee problem. Flattery responded: "something like a knee is no problem. We can find you a job behind a desk." He assured Bruce that a noncombatant position was possible and asked if he was afraid. "I said to him that . . . anyone who is not afraid of those kind of situations is quite stupid, but if I was prepared to fight for the particular political system, then I would." When another soldier interrupted, saying they had reported this to Pretoria, Flattery told Bruce he could go.

Bruce heard nothing for five months. In January 1988 a military policeman left a message with his mother that Bruce should explain his position in writing. He did nothing. The SADF telephoned again on February 17,; this time Bruce phoned back, spoke to Flattery, and agreed to meet him at MP headquarters on February 24 to make a statement. At that meeting Flattery said Bruce would be called up again in August. When Bruce reiterated his refusal to serve, Flattery placed him under "summary arrest."

> He and some of the other[s] . . . doing their national service in the MP spent the day sitting there, talking to [me], and most of them thought that what I was doing they did not understand. They just sort of said to me why do you not go there and get it over and done with that that is not actually such a big deal to do that. And basically during the course of the day I was . . . offered any posting which I would have chosen in SADF.

Bruce was actually arrested at 9 pm and held overnight at the Brixton police station; he appeared before a magistrate the next morning and was warned and released.

Although aware of the provisions for religious objectors he did not apply. "I am not a pacifist . . . my objection is based on my understanding of the situation in this country rather than on particular religious beliefs that I have." He rejected entreaties to join close friends who left the country rather than serve.

> I was born in this country and I have always sort of regarded myself as in some way being committed to this country and to the future of this country and I also see myself as being particularly committed to opposing racism and finding some say kind of future for this country without racism.

The prosecutor began her cross-examination by trying to categorize Bruce as a political objector, but he resisted the pigeonhole: "I feel personally threatened by racism and so I feel it is in my own personal interests to . . . oppose racism." She then initiated a dialogue that sought to convince Bruce of the error of his ways. According to Cameron, she conducted a "very fiery and rather passionate cross-examination."

First she argued that Bruce's behavior was pointless. He had violated the law and the consequences were inevitable.

> BRUCE: I do not regard it as an offence.
> VAN DER WALT: But by law it is an offence?
> BRUCE: I understand that.
> VAN DER WALT: And you also knew exactly what the consequences were?
> BRUCE: Well, I am still waiting to see what the consequences will be.
> VAN DER WALT: But you know what the penalty clause provides for? You know what the maximum clause can be?

BRUCE: I have read the sections of the Defence Act.
VAN DER WALT: What I cannot understand is if you, because of your beliefs, are prepared to go to jail. . . . I mean what is the purpose of that? . . .
BRUCE: [T]he purpose of the decision for me is to resolve this quite major dilemma in my own life as to what I was going to do about military service.

Her next tack was to argue that conditions in South Africa had improved; if Bruce had been willing to seek deferments in the early 1980s, why not continue to do so?

VAN DER WALT: And would you agree that . . . racism is not as intensified as it was ten years ago? . . .
BRUCE: No, it is much more complicated than that. I say that on the one hand there has been some kind of deracialisation in this country, but on the other hand there are people who are now talking about fighting a war for a white future for this country. I mean I went to a BBB [sic—he must have said AWB] meeting a few weeks ago and there was people who are talking about removing . . . black people from this country. . . .
VAN DER WALT: Ten years ago there would not have been a black or coloured employee in the state. . . .
BRUCE: I acknowledge that there has been significant changes. . . .
VAN DER WALT: [I]f you were such a firm believer [in 1979] and if that was really the reason for you not wanting to proceed with your military training why at that stage . . . [did] you apply on the basis that you were a student at Wits. . . ?

The prosecutor dropped that line of questions without any resolution and tried, instead, to get Bruce to admit that the SADF performed important functions. This provoked further laughter from the audience.

VAN DER WALT: Your worship, I would request the court to warn the people who apparently has no respect for the court to behave properly. The state is not preapred to continue whilst the people in court are not prepared to behave themselves.
BREDENKAMP: Thank you, Mrs Prosecutor. The court furnished a warning yesterday to the members of the public inside court. The court will issue this final warning today. If anyone wish to be present inside the court, he is welcome to do so, but then it is expected from such person to behave properly, due to the fact that this is a court of order. It is definitely not a circus. If anyone cannot behave him or herself, that person will be ordered to leave the court immediately.

The prosecutor continued trying to show the logical fallacies in Bruce's position. Did he object equally to the SAP?

> BRUCE: My understanding is that the SAP in say the area where I live they actually might play a quite useful role. . . . But say in the townships their role is basically one of suppressing what are protests against the present system of government. I mean I am aware for instance that 19 people were shot by the SAP at Uitenhage. . . .
> VAN DER WALT: And you base these allegations on what you have heard and what you have read in the newspapers?
> BRUCE: I am fully convinced that 19 people were shot by the SAP at Uitenhage.
> VAN DER WALT: You have never been there whilst they were operating in any of the townships?
> BRUCE: I do not think there is very many people who dispute that fact.
> VAN DER WALT: I am asking you a question, please answer me. I mean you have never been there?
> BRUCE: To Uitenhage?
> VAN DER WALT: Yes, I mean you have never been in a black township where you saw exactly what happened. . . .
> BRUCE: I have been say to some of the townships say during some elections that were taking place. I saw the kind of things that the police were involved in during that.
> VAN DER WALT: And the useful things that the police officers do and the SADF do also include the blacks, not so?
> BURCE: Well, no. What I have heard is that say in the black townships that the police do not actually play such a useful function.
> VAN DER WALT: Now I am sure that you would like to have your mother protected against bombs, terrorism. You would not like one day to come home and find out that your mother were killed in a bomb attack at the station or wherever? [Bruce agreed] And who do you expect has to protect yourself, myself and the whole country against bomb attacks . . . in the suburban areas where hundreds of people are black, white, coloured, Chinese, whatever?
> BRUCE: I think one has to look at why those things are taking place and I do not think that I would be protecting my mother by serving in defence of a racist political system.
> VAN DER WALT: You are not answering the question. You expect protection from the state, but you do not want to assist in giving that protection.

They continued this colloquy for some time; not surprisingly, neither persuaded the other.

> The prosecutor reiterated her bewilderment at Bruce's behavior.

VAN DER WALT: [A]t the outset of the trial, your defence . . . refused to make admissions, and it is quite clear from your evidence that nothing really is in dispute. Now what the state fails to understand is why the trial? Do you want to be regarded as some sort of a martyr for certain beliefs, or what is your problem?
BRUCE: I do not regard myself as being guilty of any kind of offence.
. . .
VAN DER WALT: You told the sergeant, when he asked you whether you are afraid to be in a combatant situation, you said a person who is not is stupid. . . . Now I want to know what do you think a person is that knows he is most probably going to jail and irrespective he puts him in a position where he has no option than to go to jail?
BRUCE: I did not choose the options.
VAN DER WALT: Did you not have the opportunity to serve in any section you wished at the SADF that were not directly linked to any combatant situation or to the promotion of racism or oppressment of blacks or whatever?
BRUCE: I would be part of an institution which is involved very basically in perpetrating the violence of a racist political system. I am not prepared to do that.
VAN DER WALT: You had the opportunity to leave this country and go to Germany or wherever . . . if you are so unhappy about the situation.
BRUCE: My understanding of what happened in Nazi Germany was that for me to be able to say that what happened there was wrong . . . I had to be able to say to myself that if I had been a German soldier at that time I would actually have taken the stand against what was going on there . . . leaving the country would be actually running away from racism once again. My mother is a refugee from racism. I am not prepared to be another refugee from racism.

The last time she asked why he chose jail Bruce's answer resembled one of Toms's themes: "I realised I have a decision about what I am going to do about my service in the SADF, [which has been] hanging over me from when I was in Standard 8."

The prosecutor concluded her examination by trying to shift responsibility for punishment from the law (and by implication herself) to Bruce.

VAN DER WALT: Now lastly I just put it to you that, although you do not agree that you are guilty in terms of your personal beliefs, you are guilty in terms of the section of the act. . . .
BRUCE: That is for the court to decide.
VAN DER WALT: You have already admitted all the elements. What is then left over?
BRUCE: I pleaded not guilty to the charges.

VAN DER WALT: The court has no option. You have already admited each and every element. The court has no option.
BRUCE: That is for the court to decide, that is for the court to decide.
VAN DER WALT: To convict you.
BRUCE: That is for the court to decide. Am I compelled to answer this?
VAN DER WALT: You can just comment, whatever you want to say.
BRUCE: No, I do not have any comment.

Bruce later recalled that he resented the prosecutor's cross-examination but tried to avoid appearing "overly self-righteous, or having an excessive sense of my own moral value."

At the close of the defense case on the second day of trial, Bredenkamp found Bruce guilty of refusing to serve. The very brief judgment concluded: "Accordingly, none of the elements of this offence as set out in the Act had been in dispute and accordingly the court is satisfied that allegements to this offence had been proved and the Accused is accordingly convicted to the main count as charged."[344] Asked what she thought of the proceedings, van der Walt said: "I had no option. He is guilty in terms of the law. Yes, he is not like the criminals I see in this court. His mother is a very intelligent woman. I too know people who died in the Holocaust."[345]

Bruce recalled extensive discussion with his lawyers about who should testify in mitigation of sentence. They said imprisoned MK soldiers would not be accepted by the court, but otherwise they consulted him. The first defense witness was David's mother. David said she had been reluctant to appear for fear of further publicity, and he did not want to involve her. He also did not want to convey the impression that his parents had manipulated him. At the insistence of Kathleen Satchwell, however, David persuaded his mother to testify. Ursula Janette Amanda Bruce told the court that David had lived at home until four years ago and remained close to her. She had been born near Frankfurt, Germany, but fled to South Africa at the age of ten, nearly 50 years earlier.

The pressure on people of the Jewish faith and other people not regarded to be purely Arian [sic] were becoming ominous and very frightening. . . .
I became increasingly aware of a growing sense of fear among the adults, a growing furtiveness, people were afraid of speaking to one another and people in the community at large were avoiding us. We were increasingly being excluded from activities and normal civil contact and access to normal places, entertainment or commerce. . . .
I had been expelled under an act . . . which precluded Jewish children from attending school where they were in contact with Aryan children. . . . One of the children at school, largely prompted by her mother, used to come to us secretly and let me copy the work from her exercise books.
CAMERON: Was this child pressured to stop visiting you?

MRS BRUCE: Very much so by the leader of the female counterpart of the Hitler Youth. She was threatened repeatedly. . . . she was on one occasion called out of our garden and ordered to go home at once. Towards the end of our stay, we had access to practically nothing. My uncle was not even able to visit the barber shop, because it was said that a brush and razor used on a filthy Jew could not be used on Aryan customers.

CAMERON: Did shops, amenities put up signs refusing entrance to Jews?

MRS BRUCE: Yes.

CAMERON: Was there anything from which you as the child were excluded?

MRS BRUCE: Things which were important to me then like carnival parties. On one occasion the opportunity to attend a pantomime in which a child I knew was taking part. I thought it a great tragedy at the time. I became very frightened because I could sense fear and hostility about me. . . .

[Following Kristallnacht, November 9, 1938] the SS presented themselves at our door and commanded that we report to the police station. My mother took me out into the fields to hide. She was afraid I think most of all of being separated from me and also of having her passport taken away, which would have meant that she could not leave Germany to join my father [already in South Africa]. My aunt hid in the garden until they were informed that the people who had come to arrest us and burn the house were in a pub some distance away and had become too drunk to carry out whatever they had in mind. There was a very old synagogue [in the village]. It was not burnt because the street consisted mainly of wooden houses and to start a fire somewhere in the middle of the street would have set the large part of the village ablaze, but on the following morning the headmaster of the local school took the children down and instructed them to break up the synagogue, which they did very effectively.

BREDENKAMP [with great hostility]: Sorry Mr Cameron, just before you continue, can you just indicate to the court the relevance of this evidence in regard to this matter please?

CAMERON: . . . the accused's beliefs are being formed in a close family, most of them who were wiped out in the holocaust, made an impression on his early mind. . . .

Mrs Bruce and her mother were able to join her father in South Africa just before war broke out, and another Jewish mother and daughter with English passports were able to leave; but the other three Jewish families in the village were sent to extermination camps. Two of her aunts were killed at Auschwitz; her grandfather, who was 83, died at Theresienstadt; 12 other members of her immediate family and many more remote relatives were killed.

Cameron asked for her views about South Africa over the last 50 years.

> My views are very ambivalent because obviously I have a deep sense of gratitude and obligation to South Africa and to the South African society who once gave us shelter, but at the same time I cannot avoid being very very aware of certain points of similarity between the system as it was under the Nazis and the system which prevails here. . . . First of all the concept that any group of human beings is different from another group, that generically it is inferior or less reliable or less intelligent, anything of that nature, I think dehumanises and degrades the people who are being perceived in that way, but I think ultimately it also dehumanises the perceivers. . . . The other point of similarity which troubles me very much is the instance of forced removals . . . all right, the army lorries are not cattle trucks, but to take people forcibly from their environment and dump them somewhere in the veld where there are no adequate facilities of food, housing or other basic amenities is not gas-ovens, but it is not dissimilar from the kind of environment to which people were conveyed in a place [like] Theresienstadt, where they were just left to die from lack of food and sanitation. . . . I should like to think that I did not brainwash [David] and make him perceive himself as an avenger of any kind. But I do think that those perceptions and the general value judgments within the family have helped to form his attitudes and opinions. We discussed [David's decision] a great deal ever since he faced us with it, which is just over 14 months ago. And we did point out all the implications and alternatives open to him. . . . but he has decided that he wishes to go through with this and in a way we are proud of him, although we are terribly appalled at the severity of the sentence and also at the lack there seems to be for anybody with strong moral convictions to have an alternative choice.

The prosecution wisely did not cross-examine Mrs Bruce.

The defense also offered the testimony of Dr Nthatho Motlana, who received a B.Sc. from Fort Hare and an M.B.Ch. from Wits, did his internship at Leviton Hospital in the Cape, and had practiced medicine for 30 years. Dr Motlana currently held sessions at the Kotle City Clinic, had rooms in Meadowlands, Diepkloof and Dube (in Soweto), and did voluntary service at the Witkoppen clinic in Sandton. He had been a member of the ANC from the age of 18 until it was banned, a member of the Committee of Ten, and president of the Soweto Civic Association from its founding in 1977. He testified about suffering racism in high school, at university, and as a houseman at Baragwanath Hospital. He led a walkout in 1956 because black physicians were paid 60 percent as much as white. Salaries now were equal, but housing was not, nor, therefore, were the distances white and black doctors had to travel. Baragwanath struggled to cope with three times its capacity of patients, whereas the nearest "white" hospital, South Rand, was less than 50 percent full, and a general hospital in

Johannesburg had closed wards for lack of patients. Motlana also talked about the Land, Group Areas, and Population Registration Acts and the lack of black representation in Parliament.

> Next he described the black community's attitude toward the SADF.
>
> I can never forget my visit to New Brighton, your worship, where I found an army unit sitting atop an old abandoned beer hall with machine gun nests and a nest of searchlights which, I was told, they turn onto the township at night. In addition we are aware as black South Africans that outside every major black township, like Soweto, KwaMashu, New Brighton, there is an army base . . . it seems that the army is out there to protect white South Africa from Black South Africa. And the only danger that white South Africa fears from Black South Africa is that they may claim their heritage, namely the right to vote.

He went on to talk about the role of the army in breaking the rent boycotts.

> I can recall, your worship, sitting in my rooms and being rung up by one woman who says to me—come and see what is happening in Mafolo, where the army has cordoned off a section of Mafolo village. The army units are going from house to house, evicting people and seizing their property.

He concluded with words of praise for David Bruce.

> Your worship, the attitude of the community would be that the accused is indeed a hero, already among my friends the discussion of this case is one of great admiration for a young man who could take such a stand over such a principle.

The prosecutor seemed to have thought it would be easy to discredit Motlana's testimony. Acknowledging his expertise as a medical doctor, she quickly elicited a concession that "legal matters would not really be your cup of tea." Building on his statement that physician salaries had been equalized, she argued that "starting from 1957 up to now, the lives of the black people in South Africa are less affected by racism." Like Bruce, he would have none of this.

> [A]s far as some aspects of our lives are concerned . . . employment practices in the mines, for instance, in health, in the increase of blacks in the civil service . . . in those peripheral areas of our lives there have been some changes, but the racism we are talking about is entrenched in our constitution.

The prosecutor tried another tack, arguing that "racism goes both ways, to a certain extent because a person is white, his life is negatively affected by the fact of being white." Motlana quickly agreed that "you whites are not any freer than other races because of the racism you maintain." That, of course, was not what van der Walt meant. She wanted him to admit that blacks were treated *better* than whites, as shown by the government response to the boycott of rent, electricity and water rates in Soweto. (She seemed unaware that Motlana's SCA had organized that boycott.)

> VAN DER WALT: Now I put it to you that if a white person is R10 behind with his rent or with his water and lights, the service would immediately be cut off whereas . . . there are lots of people in the black townships that owe the board or the municipality there more than thousands of Rands and still the services were extended. What do you call that?
> MOTLANA: Let me address you in this fashion, your worship. The white person who refuses to pay his electricity bill will indeed deserve to be so punished because, let us take a hypothetical case of a resident of a little town called Verwoerdburg. The rates for electricity and water would have been determined by a council that the . . . good citizens of Verwoerdburg had elected. . . . In a place like Soweto or all of the black townships, there would have been a few years back an advisory council or no council at all, some official from the local authority would have determined what they should pay.

Prosecutor and witness then got into an unproductive exchange in which she told him to answer her question and he asked her to stop interrupting so that he could do so. She insisted on defining the question narrowly: How can blacks get away without paying when whites must pay? He kept returning to the larger issues: "I was going to show you that it is because of lack of representation, lack of legitimacy . . . because there is in Soweto a council that was elected on a 6 percent poll through a law in whose framing they had no part." As a landlord *he* would expect a tenant to pay the rent or leave, "but Soweto is a different kettle of fish. Here the South African Government, the state, made itself into the biggest landlord outside Russia."

After several more volleys the prosecutor made the mistake of challenging his factual assertions (blissfully unaware that he was a leading authority on Soweto housing).

> MOTLANA: Let us take one little instance in Orlando East where the people moved in just before the Second World War. 1939. The houses were built for about £100.
> VAN DER WALT: Where did you get this information from?
> MOTLANA: Oh. I have got this information, your worship. If you want it, your worship, I can produce it.

VAN DER WALT: No, just answer my question, where did you get this information from?
MOTLANA: From archives, city council archives, in the Soweto council . . . there was an agreement that the rent would be something like 17 shillings 4 pence in the old currency. There was also an agreement that after 10 years those houses would revert to the ownership of the people. . . . the people on strike . . . do not refuse to pay rent just like that. They say that many of them who have lived in the houses in Mafolo, for instance, for up to 15 years have more than paid the loan from the National Housing Commission, the loan of R450, which is the average for those houses. . . . They said that they are willing to pay rates, water, and electricity but they say they do not pay rent.

The prosecutor restated her position once more, but when the magistrate asked whether she was posing a question she dropped the topic and moved on to the military (where she was no more successful).

VAN DER WALT: Now you said that the attitude of the army can be described as to protect white South Africa against black South Africa for the maintenance . . . of white supremacy. Have you ever served in the SADF?
MOTLANA: Oh no, they would not let me.
VAN DER WALT: How can you then say exactly what the attitude of the SADF is?
MOTLANA: When the South African Government puts their major bases opposite the entrance of black townships throughout the country . . . Diepkloof . . . Guguletu . . . New Brighton, there is only one conclusion that can be drawn from that, and when in any case during times of unrest the army is called out, when the army is supposed to protect us against the Cubans.
VAN DER WALT: Are those the only places—your worship, at this point in time the state again requests your worship to warn the crowd, who apparently cannot behave themselves and apparently have contempt for the court, that if they do not behave with their making remarks and laughing whilst the state is busy, the state is not prepared to proceed. . . .
BREDENKAMP: Thank you, Miss Prosecutor. The court did not overhear any certain remarks at this stage, but the court [would] just like to appeal to the public again in order to maintain proper order in this court and to show respect for the court proceedings as such. . . .
VAN DER WALT: Now the black townships, are those the only places where the SADF render service to the community?
MOTLANA: I do not know your worship if I could answer that question.
VAN DER WALT: Now I find that strange, if you are so up to date as to what the services are of the SADF and what sort of behaviour they make

themselves guilty of. . . . I mean you are talking about all the bad deeds now of the SADF. Why do you not mention some of the good deeds of the SADF? For instance, the flood disaster or even in Lesotho?
MOTLANA: Oh, I am aware, your worship, the news media have told us about the role of the SADF in flood relief.
VAN DER WALT: But you do not believe it because you were told by the news media, is that correct?
MOTLANA: Oh, I believe it must be true. I did not fly there.
VAN DER WALT: But despite, what I find very strange is that you only mention the bad things, but you are not prepared to accept the good things that the SADF do.
MOTLANA: But your worship, we are talking about the maintenance of racism. . . .
VAN DER WALT: [W]hat about the blacks that serve in the SADF and serve in the SAP. What do you reckon their attitude to be?
MOTLANA: I meet a lot of blacks who serve in the SAP, not many in the SADF, and over the 30 years that I have been in practice, your worship, some of those people have been my patients and their attitude generally is one of incredible unhappiness with their role in the police.
VAN DER WALT: How did you assess that?
MOTLANA: Most of them, your worship, join the police because at the time when they could not move from Pampoenstroomfontein [sic] into urban areas and required influx control regulations amended, they joined the police in order to get into Johannesburg. [The second reason was unemployment.] . . . The third reason that they are so unhappy is that up to about 2, 3 years ago a black major . . . could not give orders to a constable who was white and entered the police force three days before. . . . the constable could send the black colonel to go and buy him cigarettes and this is the kind of thing, you know, overt and open discrimination that takes place in the police force everywhere in this sick society, that makes the policemen so unhappy.

When challenged, Motlana conceded that he had not interviewed *all* black police and soldiers but maintained he had talked to many over the previous 30 years.

The prosecutor's last line of attack had already failed on David Bruce.

VAN DER WALT: You are a married man, is that correct?
MOTLANA: Yes.
VAN DER WALT: And I take it that you do expect to be protected against criminals in your daily life?
MOTLANA: Oh, I do.
VAN DER WALT: Now who do you expect should give this protection?
MOTLANA: The police, certainly. . . .

VAN DER WALT: And is that not the same as the position with the SADF as well to protect your family from terrorists coming over the border?
MOTLANA: Oh yes, but particularly coming over the border. I do not expect an army based opposite my township. . . .
VAN DER WALT: But surely you are aware that lots of the terrorists coming over the border have bases in some of the townships. . . :
MOTLANA: No, I have not read about bases in the townships, your worship.
VAN DER WALT: Not really bases, but homes where they stay. . . . Now surely then there should be protection in the townships as well? . . . And that should be rendered by the SADF as well as the SAP.
MOTLANA: When they do that kind of work, your worship, presumably they will be welcomed in that kind of role, but not as people who maintain our racist structure.
VAN DER WALT: So would you in the end then agree that the SADF is not as bad as you want it to look from the outset?
MOTLANA: On balance, your worship, I am afraid that the SADF is regarded in the most adverse light, as an unfriendly force, as a force intended purely for the maintenance of the structure of this country, which is racism.
VAN DER WALT: And that is your personal view?
MOTLANA: And the view of many blacks with whom I come into contact.

The defense testimony was extensively reported in the press, under headlines like: "SADF upholds racist system, says objector," "Objector's mother was a refugee from nazis," "Blind mom tells court of Nazi terror," "Objector Bruce says no to 'racist' army, risks jail."[346] Bruce later recalled that the state prosecutor "brought out my sort of best line"; he found it "satisfying in that we presented ourselves quite well."

Bredenkamp passed sentence after argument and several adjournments. He did not address the political grounds for Bruce's refusal to serve but could not pass up the chance to offer his own (somewhat incoherent) political theory.

> It is not the purpose or duty of this court to consider the political structure in the Republic of South Africa in any way. . . . However, the court must point out that no state exists where the final authority is not vested in an organised defence force. The competence to apply an armed force in order to combat any armed resistance, and thereby securing the maintenance, securing and maintaining state security, law and order results typically from the historical foundation of any state. In South Africa too, the state has the duty to protect all individuals by securing law and order. In that regard the state is competent to compel and prescribe to its subjects in order to compile an effective defence force.

> On the other hand it is also the duty of the subject in return to respect the aforementioned claim by the state. That is the basis of the obligation to render service in the Defence Force.

He then referred to the statutory framework, noting it had been upheld in seven Supreme Court cases.

He claimed that "the attitude by the accused and his motivation for refusing to do national service was carefully considered" (though he never mentioned it). "However, such motivation leads to the compromise of the said legal objects of the State. General indulgence of such motivation can only lead to absurd results." Furthermore, Bruce objected only to serving in the SADF, not to all military service or all combat.

The magistrate was impressed by the severity of the sentence authorized in the "Penalty Jurisdiction." He approached the task of statutory interpretation by looking at the "ordinary meaning" of the words.

> It is clear that due to the seriousness of the offence, the legislator intended to prescribe the longest possible sentence as an obligation. A lesser sentence or a suspended sentence will counterfeit the purpose of the act. And the court studied the structure of the act very carefully in order to come to this decision, or this conclusion.

He also expressed impatience and frustration that David Bruce would not accept a noncombatant role, which would give him "full opportunity to get his personal knowledge of what the real purpose of the defence force is in perspective." He would also "do much better service to the community of South Africa." He quoted §126A(7), which allowed Bruce to leave prison whenever he agreed to enter the military. He concluded by turning to the accused.

> The consequences of serving imprisonment are in your own hands, Mr Bruce. You have the options as set out by the court to avoid it and still be a useful member of the public. The court has given consideration to your personal circumstances as set out in this court. However, as already pointed out, the court is bound to the Penalty Jurisdiction as set out in the act. It is also common cause that you refused to render any service whatsoever in the Defence Force prior to the commencement of your service as such. In that regard the court should consider the maximum period of service as set out in section 22(3) of the act.
> *ACCORDINGLY THE ACCUSED IS SENTENCED TO IMPRISONMENT FOR A PERIOD OF SIX YEARS.*

Bruce formed no strong opinion of the magistrate except as someone who was "glad to be able to sort of hide behind this law." In the course of the trial, however, he felt that

the principal actors had turned into "one big happy family." In later encounters the magistrate was "joking and friendly and all smiles."

The sentence received extensive and critical coverage in the English press.[347] Supporters wearing yellow buttons and flowers wept when it was delivered and sang Nkosi Sikelel' iAfrika with raised fists.[348] (When supporters wore yellow at the trial of Charles Bester before the same magistrate, he ordered them to remove the symbol or leave the courtroom.) The next day Wits students picketed outside the campus.[349] Many told a reporter that they would leave rather than serve in the military or spend six years in prison. At Rand Afrikaans University, white students said Bruce "got what he deserved," but the few blacks saw him as a hero.[350] Many papers reported Helen Suzman's prompt condemnation of the outcome as a "tragedy"—a phrase echoed by PFP MP and justice spokesman David Dalling, and Lawyers for Human Rights chairman Peter Leon.[351] Dr Allan Boesak wrote to Bruce: "Your courage is a shining example for millions. At a time when many are doubting the viability of non-racialism in our struggle you have given me faith."[352] Women for Peace declared their support.[353] Editorials in the *Natal Witness*, *The Daily News*, *The Argus*, *The Star*, *The Cape Times* and the *Pretoria News* urged that non-religious objectors be allowed to do alternative service.[354] Wynand Malan, National Democratic Movement MP and leader, agreed.[355] Khulu Sibiya's column drew parallels between Bruce and Jackie Selebi, just appointed to the ANC National Executive Committee: "One has chosen to go to jail instead of joining what he describes as a racist institution, and the other has decided to join an organisation perceived by the majority of the people in this country to be fighting racism."[356] *The Star* published a long essay by Franz Auerbach praising Bruce, entitled "Racism DOES hurt."[357]

These views did not go unchallenged. Conservative Party justice spokesman Chris de Jager said Bruce's assertion that the SADF upheld a "racist system" could be interpreted as "revolution against the Government."[358] *The Citizen* declared "One can have little sympathy for David Bruce," who was "no hero." "He chosen [sic] not to serve at all. . . ." His convictions "are not shared by the great majority of young South Africans, who accept national service as a patriotic duty or as a necessary obligation." "The true heroes . . . are the young men who fight on the Border or help to bring peace to the townships." "The SADF does not play a political role . . . [or] defend a racist system, as Bruce claims, but defends the people of this country." Objectors were weakening the morale of those who served and thus the SADF itself; the paper called for "severe action against those who are involved." "Bruce defied the law and paid the penalty." But it acknowledged that the sentence seemed long.[359] The paper published a letter by "Candida Pax" praising the Defence Force for being "in the front line of breaking down racial barriers. . . . It is not uncommon to see White, Black and Brown faces in all sectors of the armed services working towards a common case [sic]—the destruction of violence, intimidation and those behind the cowardly deeds of bomb-planting—all of which are financed and promoted by the groping tentacle of the Russian octopus."[360]

Bruce began serving his sentence on July 25, 1988, first in Diepkloof and then in Pretoria Central.[361] The notice of appeal (filed August 5) resembled that in *Toms*, with the addendum that the maximum sentence was 2176 days, not 2191. The magistrate responded to this in his written reasons for sentence, reasserting the care he had devoted to construing the statute and reaffirming the conclusion.

Prison life was structured around movement up from Category One to Category Four, when "your whole life changes." Category Four prisoners could buy food and were allowed 30 forty-minute contact visits annually with two people at a time. It took Bruce over a year to reach Category Four. The prison treated him like any other white male prisoner. But the "prisoners in general treat each other very badly . . . they say very unpleasant things about each other all the time." Bruce, however, was never physically or sexually assaulted. Prisoners were curious about him (as about everyone) and assumed he was a Jehovah's Witness. When he explained that he simply refused "to serve in defense of a racist political system . . . that would just kill the conversation . . . the next question [would be] 'So, you think the kaffir should be equal to the white man?'. . . So I said to him, 'Yah, I think so.' So he said, 'Well, yeah, I agree with you.'" Although people threatened Bruce, it was never clearly political. Kathleen Satchwell was always "incredibly supportive." His family and friends visited often, as did someone from War Resisters International and a conscientious objector from the Netherlands and one from the United States. In December he was a finalist for the Reebok Human Rights International awards (which that year went to Janet Cherry, a leader of the ECC in Port Elizabeth, among other organizations, and Salim Karim, former general secretary of the National Medical and Dental Association.)[362]

Bruce's appeal to the Supreme Court was heard by Justices J H Coetzee and M J Strydom, who had the benefit of the *Toms* judgment. Bruce had a bit of hope. As Judge Foxcroft said of Toms, Judge Coetzee could "also say that this applicant is not a 'criminal' in the ordinary sense of the word. His evidence showed him to be a firm believer in his principles but that is not in issue in this case."

The judgment on March 3, 1989 addressed only two issues: computation of the sentence and whether it was mandatory.[363] The court concluded that the correct sentence was 2176 days, adding: "the deprivation of an individual's liberty for each day beyond that which is allowed by statute cannot be countenanced." It rejected the defense claim that the statute allowed discretion, however, finding that the words "whichever is longer" were "clear and unambiguous." Judge Coetzee expressed his regret at being forced to reach this conclusion.

> Much as one would like to come to the assistance of the appellant this argument is in law untenable. . . . This section shows how the legislature has taken away the court's discretion completely. The basic jurisprudential principles of the ends of criminal justice which are cherished by our common law and which have been eloquently expounded by the highest court in the land are with one stroke of the

> pen, in a case like the present, removed from the ambit of the presiding judicial officer. For a sentence of a convicted person under section 126A(1)(a) the presiding officer requires a calculator and cannot use his innate sense of justice inculcated through the centuries. The sentence may just as well be passed and imposed by an administrative official with a rubber stamp because no legal skill is required.[364]

David's mother, who attended the reading of the judgment, again pleaded for alternative service: "Before David's imprisonment he had been teaching mathematics to children in Alexandra township on a voluntary basis, making a positive contribution to society."[365] Bruce applied for leave to appeal on March 13, obtained it two weeks later, and filed his notice of appeal on April 17.[366] He remembered later, however, that he was convinced there was no chance of success. Several papers noted the end of his first year in prison.[367]

## XIII. APPELLATE DIVISION

The Appellate Division consolidated the two cases and heard argument on February 27, 1990. The ECC held a march in Johannesburg to launch a "Release Objectors Campaign" on the same day.[368] The court gave judgment on March 30, 1990.[369] The five-judge panel could not agree. Smalberger wrote the majority opinion, in which Nicholas concurred; Corbett and Kumleben concurred separately; Botha dissented.

Smalberger began by insisting that "the infliction of punishment is pre-eminently a matter for the discretion of the trial court" partly because of the importance of "the individualisation of punishment, which requires proper consideration of the individual circumstances of each accused person." A mandatory sentence "reduces the court's normal sentencing function to the level of a rubber stamp." "The morally just and the morally reprehensible are treated alike. Extentuating and aggravating factors both count for nothing." The legislature can eliminate judicial discretion, of course, but "must express itself in clear and unmistakable terms."[370]

In construing legislative intent, the court followed the "ordinary, literal, grammatical meaning" of the words unless this would lead to absurdity.[371] Because the court was dealing with a penal provision, ambiguity should be construed in favor of the accused.[372] The Defence Act made no provision for those who objected to military service on grounds other than religion; both accused acted on the basis of other "principles they hold no less sincerely, tenaciously and resolutely."[373]

Once the legislature adopted alternative sentences—18 months or 1.5 times the remaining service obligation—it had to establish a way of choosing between them. The words "whichever is longer" served that purpose and no other. Furthermore, the legislature chose not to use words unambiguously expressive of a mandatory penalty, such as "shall be sentenced to."[374] The presumption in favor of judicial discretion required that it be preserved in the absence of such language. Furthermore, the legislature had made mandatory minimum sentences clear in other acts. Nowhere else had it imposed a *fixed* sentence.[375] The phrase "liable to," according to the dictionary, "would normally denote a susceptibility to a burden of punishment and not that the burden in question is mandatory or compulsory."[376] He rejected the argument that the inclusion of the words "not exceeding" in the next subsection of the act meant that *its* penalty was a maximum, whereas the present penalty was mandatory.[377] He also disagreed that there was a systematic distinction throughout the act between mandatory penalties for refusal to serve and discretionary penalties for failure to serve.[378]

The act's deterrent purpose did not require that every offender serve the maximum sentence, only that those contemplating violation know they were exposed to it.[379] "Rigorous and harsh sentences do not necessarily effect their purpose and they are out of tune with a just society."[380]

Smalberger reached the same result by invoking §283 of the Criminal Procedure Act (No 51 of 1977), which provided that a person "liable to" a sentence of imprisonment for a specified period may be sentenced to a lesser period of imprisonment.[381] He also concluded that §297(1)(b) of the same act allowed the court to suspend part of the sentence. Although it might be inappropriate to condition suspension on military service if the accused had clearly refused to serve, community service might be a proper alternative.[382]

Consequently, he allowed both appeals. He remitted Bruce's case to the magistrate at the request of the accused. Toms asked the Appellate Division to pass sentence.

> The evidence reveals Toms to be a highly principled man of impressive qualities, not least of which is his sensitivity to the suffering of his fellow man, in whose service he so resolutely and compassionately stands. Because he has already served nine months' imprisonment, and because he clearly does not merit imprisonment in excess of that period, I agree with his counsel's suggestion that his sentence should be reduced to that period.

He hastened to add that the original magistrate might have felt that a lesser sentence would have been appropriate had he been aware of his discretion.[383] Corbett reached the same conclusion, but "not without some hesitation."[384]

"After anxious deliberation," Botha felt that the legislature had intended a mandatory sentence.[385] Most of his reasoning simply inverted the majority opinion, though he stressed that he found the absence of the words "not exceeding" to be decisive. He rejected the possibility of suspending the sentence, especially in favor of community service.

> [I]n the case of religious objectors the Legislature has . . . created an elaborate machinery for alternative kinds of service. . . . In view of the Legislature's much harsher treatment of conscientious objectors, it is inconceivable, in my view, that it would have countenanced the rendering of community service. . . .[386]

Botha wished to stress, however, that he had "reached the conclusions stated in this judgment with profound regret." He fully agreed with Smalberger that the statute was "a draconian provision which is not necessary or desirable for achieving the purpose of the Act." He also cherished the "principle that the discretion of the courts in the matter of sentence should not be encroached upon, and that the individualisation of punishment should not be rendered nugatory." And he warned that the statute "must inevitably lead to harsh and inequitable results."[387]

Kumleben agreed with Botha that the sentence was mandatory but shared "all the reluctance and disquiet expressed in his dissenting judgment."[388] He felt, however, that the court could suspend the sentence on condition of good conduct or community service.[389]

Mandy Taylor of the ECC was "certainly surprised" at the outcome. The ECC and most objectors had always assumed that the law was "absolutely clear . . . the value of the appeal was more of publicity and the propaganda side of it." The ECC welcomed the court's "enlightened decision." Ivan Toms declared: "All that objectors and the ECC stood for has been vindicated."[390] David Bruce was "quite surprised to actually hear the result of the appeal," although he added "I was in this state of mind where I thought that I could be released at any time." He was released on his own recognizance shortly after the judgment, having served 20 months.[391]

At the retrial the defense called two witnesses: an SADF commandant and a Prisons Department social worker, who testified that Bruce had matured in prison and would be harmed by further incarceration. When Edwin Cameron urged that Bruce be sentenced to time served, the prosecutor (now Ilse Kloppers) agreed, and Magistrate Bredenkamp did so on June 19.[392] After his release Bruce worked for the journal *Critical Health*. He explained that he was not "fundamentally opposed to conscription . . . I accept this idea that young people can be called on to serve in defense of their country at certain times . . . but . . . there should be freedom of conscience. . . . I don't feel particularly preoccupied with the issue of ending conscription." He was still conflicted about whether to join the ECC, although he worried that he was being too individualistic. Nevertheless, he subsequently became full-time National Office coordinator for the ECC.[393] Exhibiting its renowned efficiency, the SADF sent him a call-up notice in September 1991.[394] Toms became the National Organizer of the Progressive Primary Health Care Network.[395]

# XIV. ANALYSIS

Conscientious objection is an unusual challenge to apartheid—intensely individualistic at the same time that it is the focus for powerful collective action. The dozen or so political objectors exhibited more differences than similarities. Most were English-speaking but not all. Some were intensely Christian, but others showed little religious involvement, and Bruce was an agnostic Jew. Some had completed higher education but not Wilkinson. They differed greatly in age, from Charles Bester, who refused conscription at 18, to Ivan Toms, who was 35 at the time of trial, and Wally Rontsch, who was 40 when he refused a call-up. Some had no military experience, others had completed National Service, one had volunteered for the Permanent Force, and several had served in Citizen Army camps. Some received moral support from their families, others did not. Their careers ranged the gamut from physician to butcher, rock musician to priest, insurance company employee to rural development field worker. The two whose trials received the greatest publicity could not have been more different (although they became friends). Toms was mature, Bruce less so. Toms had a coherent moral argument against conscription, Bruce had equally strong anti-racist convictions but expressed himself like Herman Melville's Bartleby—he just preferred not to serve. Toms was deeply involved in the ECC and planned his refusal with the advice of many others, including gay support groups and lawyers; Bruce was a loner who went to his call-up without a lawyer. The objectors reached their decisions at different times in their life histories and for different reasons: religious belief, opposition to racism, unwillingness to compromise further, the need to end uncertainty, the hope of inspiring others.

The state's response was no more coherent than the challenge. The SADF did not know what to do when Bruce appeared at the induction center and refused to serve: Some officers wanted to punish him, others to dissuade him, and one hoped he would just go away. Some SADF actions displayed incompetence rather than malice: calling up Toms twice for shooting camps, for instance, and calling up both Toms and Bruce after their refusals. Staff Sgt Johan Flattery, although a specialist in reluctant inductees, had only a vague and partly erroneous knowledge of the Board for Religious Objectors.

The state vacillated between systematic repression and ad hoc lenience. The Defence Act initially exempted no one, then limited conscientious objection to members of peace churches, and finally extended the status to universal pacifists. The Act restricted alternative service to government employment and increased the duration by half. Objectors who did not qualify spent that longer period in prison; even for whites, South African prisons are extremely unpleasant. Both Toms and Batzofin had to rebuff sexual advances. The state's approach seems to have had the desired effect: Only about dozen men openly refused service on political grounds, fewer than one out of every 10,000 conscripted.

If the state was inclined to tolerate individual objectors, it responded swiftly and harshly when objection was collective. The state (and its private supporters and possible

surrogates) illegally harassed ECC activists through verbal and physical attacks and groundless criminal charges; police refused to investigate "vigilante" violence; the Civil Cooperation Bureau actually planned to murder Gavin Evans. The state detained dozens of activists and eventually banned the organization. This widespread and blatant repression contrasts sharply with the elaborate respect for the rule of law displayed in individual prosecutions. The rule of law was nullified in other ways: Justice Didcott, the most liberal member of the South African bench, upheld the Emergency Regulations against an ECC challenge. The legislature considered amending the Defence Act when a court granted conscientious objector status to a non-theistic Buddhist. The SADF claimed that the "wartime" conditions of the total onslaught justified its disregard of law. The state argued that international law was nothing more than politics. The Supreme Court upheld whites-only conscription after repeal of the Population Registration Act. Those who failed to appear for Commando or Citizen Force camps were court martialled rather than prosecuted criminally.

The state equated the anti-conscription campaign with treason, just as it identified the UDF with the ANC and saw the *New Nation* as the mouthpiece of revolution. It was convenient that the regimes in both Mozambique and Angola called themselves Marxist, and Angola had welcomed Cuban troops to defend itself against the South African-backed Unita. (Few countries have found the courage to tolerate conscientious objection in wartime.) This may not have been mere paranoia. Just as draft resistance helped turn the tide of American public opinion against the Vietnam War, so South African opposition to conscription, together with the body bags shipped back from Angola and the hemorrhage of emigration, contributed to the atmosphere in which de Klerk could propose reform. Many white middle-class young men, especially at the English-speaking universities, were susceptible to moral suasion and often were supported and protected by parents wielding significant political and economic clout. The highly publicized individual and collective acts of resistance do seem to have fueled more. The banning of organizations, detention of leaders, and jailing of objectors just produced increased resistance.

The state sought to avoid confrontation with individuals who refused to serve. Toms's superiors readily granted him noncombatant status well before the Defence Act extended conscientious objection to those outside the peace churches. Sgt Flattery (a bluff, open fellow, reminiscent of Ancient Pistol, Falstaff's companion in "Henry IV"), felt confident he could exempt Bruce from combat duty and also encouraged him to seek a desk job on grounds of physical disability. At virtually every opportunity, the SADF offered objectors an accommodation and persuaded them to accept it. When confrontation seemed inevitable, the state delayed as long as possible. This, not harassment, seems to explain the repeated cancellation of call-ups. Toms clearly stated his unwillingness to serve as early as 1983; the SADF did not insist until 1987; and he was not tried until 1988. Bruce was not tried for nearly a year after he refused induction. The state initially chose to detain Philip Wilkinson under the Emergency regulations rather than prosecute him; it eventually charged him with failing, rather than refusing, to serve; and the penalty was only a fine. The state made no attempt to

discourage dissidents from emigrating; on the contrary, the prosecution repeatedly asked Toms and Bruce why they did not flee the country, implying none too subtly that they should "love it or leave it." The SADF also made little effort to find those who simply failed to report for conscription or camps. Gary Rathbone seems to have evaded detection for nearly four years—and then received deferments for several more! After its defeats in the Toms and Bruce appeal the state floundered without any real policy. It would not amend the Defence Act, but it did not look for violations. It would not countenance open defiance, but it capitulated when the objector showed real resistance. Mere membership in the now-legal ANC was sufficient to excuse a former serviceman from attending a camp.

The state's vacillation reflected fundamental uncertainty about the challenge posed by objectors. They were numerically insignificant. Yet they intended to inspire others to resist, and the increasing numbers demonstrate some success. They exposed the racism of whites-only conscription—a point hypocritically championed by the far right. They also became heroes to many in the black anti-apartheid movement. The magistrate who convicted Bruce may have expressed the state's view most clearly: No matter how well-intentioned the objectors might be, "general indulgence of such motivation can only lead to absurd results." Compulsion brooks no exceptions.

State and objectors continued to talk past each other at the trial. The state ostensibly controlled the proceedings: It enacted the laws, chose whom to charge, when, and with what offense, and scheduled the trial. Yet it seemed to lack direction, perhaps because it could not understand the objectors. How could someone choose jail when the SADF made every effort to meet his special needs? Jail was a waste, not only for the accused but also for society. Furthermore, the state's case was too easy: The accused did not deny his guilt, and the penalty was mandatory.

The state pursued four different trial strategies. First, it engaged the defense on the merits—the justification for refusing military service. This was a surprising choice. A distinctive characteristic of most political trials is the clash between accused who wish to broaden the issues and prosecutors determined to define them narrowly. Yet the prosecution made arguments such as: Race relations are improving; whites suffer from racism as much as blacks; the SADF protects all citizens; it is respected by Blacks in Namibia and the South African townships. Prosecutors unabashedly advanced the oldest argument against pacifism: What would you do if the enemy raped your sister? (This encountered the inconvenient fact that the rapist was far more likely to be SADF than MK.) The only explanation I can offer for this strategic choice is the prosecutors' absolute conviction in the moral rightness of the South African state. The "total onslaught" required national unity. If they could only make this plain, the accused would see the error of his ways. There seems to have been no other audience: The magistrate was already convinced and anyhow lacked discretion; the spectators firmly supported the accused; and most of the media criticized the harsh penalty. Louisa van der Walt, who prosecuted Bruce, seemed particularly insecure about her authority as a young, Afrikaans-speaking woman, and sought to compensate through moral fervor.

(It is surprising that the state did not choose a more experienced prosecutor, as they did against Toms.)

The second strategy was to reveal flaws in the defendant's character—again to redress the moral balance between state and accused. The prosecutors tried to show that the accused were deceitful rather than honest, expedient rather than principled, selfish rather than selfless, compromised rather than pure (Cameron called Toms "morally luminous"), confrontational rather than reasonable. Far from being helpless victims, they actively sought martyrdom in order to publicize their cause. The prosecutors also insinuated charges that were particularly damning in the South African context of 1988: political radicalism, communism, sympathy for the ANC, and homosexuality.[396] (Long before he was prosecuted, Ivan Toms was the target of homophobic slurs; so were David Bruce and Charles Bester and the ECC in general. The homosexual assaults on Toms and Bester in prison may have been orchestrated. The notion that military service and homosexuality are incompatible presaged the homophobic attack on President Clinton's proposal to lift the ban on gays and lesbians in the American military.) If believed by the court, these accusations obviously would go not to guilt but to sentence (although the prosecution maintained this was nondiscretionary). By unmasking Toms as a gay activist, the prosecutor apparently sought to convince the court he was not the exemplary Christian he pretended. Like most prosecution strategies, this backfired. Two distinguished clerics testified to Toms's Christian character. And both the military and all the judges conceded the bona fides of Toms and Bruce.

The third strategy was more conventional: cross-examining the accused and defense witnesses to uncover inconsistent testimony. The prosecutor was most successful in showing that Toms repeatedly changed the reasons he gave the SADF for requesting a posting in Cape Town. In most other instances, however, the witness outwitted the prosecutor. Dr Motlana, for instance, knew much more than the prosecutor about black life in the townships. In any case, this strategy had little apparent relevance to either guilt or disposition.

Finally, aware that the penalty seemed grossly disproportionate to any wrong, the state officials sought to evade responsibility for the sentence. They were only instruments of the law; they seemed to feel that expressions of sympathy for the accused negated their own moral culpability. (This raises Raymond Wacks's question whether they had an ethical obligation to resign.)[397] The accused knew what they were doing when they broke the law and had only themselves to blame. Magistrates and judges reiterated that the accused could free themselves from prison at any time by resuming their military service. Only those intent on causing trouble, or crazy, would refuse the state's conciliatory moves.

The diverse accused had a wide variety of motives and goals. Several seem reasonably clear. They wanted to exercise choice. Toms expressed this in clearly existentialist terms: "it is the one time I have a choice as a white South African. I can choose to go to prison." By attacking the SADF for repeatedly cancelling his call-ups,

Toms effectively invited prosecution. For many, the cathartic decision ended years of painful, ultimately unbearable, uncertainty. Objectors became active subjects rather than pawns of state power. They also cleansed themselves of shameful compromises, bearing witness to whites complicit with apartheid while expressing solidarity with the suffering of blacks. Toms had done this earlier in his widely publicized three-week fast. These objectors could no longer accept the alternatives the SADF offered. They felt tainted by wearing a uniform, carrying a gun, spying on patients, serving those who were not needy. They wanted to disclaim any further association with the SADF and the apartheid state it supported. Bruce sought moral consistency: if he condemned the ordinary Germans who failed to oppose Nazism, he could not be an ordinary South African and fail to oppose apartheid. Prison was costly, to both themselves and others, but it offered moral purification. In staking out the moral high ground, the accused could invoke support from all the major English-speaking churches (not just fringe denominations like Jehovah's Witnesses and Quakers) and, of course, the rest of the world.

This insistence on moral autonomy was visible in their earlier actions: Toms had not requested noncombatant status, he had simply proclaimed he would not carry a gun; and neither Toms nor Bruce applied to the Board. Similarly, the accused eschewed technical arguments (unlike those who resisted removal or censorship). By exercising choice, furthermore, the objector forced the state to choose and take responsibility for inflicting punishment. Every time the prosecutor asked Bruce to admit he was guilty Bruce replied: "That is for the court to decide." He may have hoped for a miraculous acquittal; but I think he really wanted the magistrate (and the apartheid state he represented) to accept moral responsibility. (The response of Bruce, an irreligious Jew, bore a striking resemblance to Jesus' answer to those who accused him of impersonating God: "Thou sayest.")

Political trials often are conceived as opportunities to educate others—particularly in a country obsessed with controlling information. The defense in both cases pursued this goal. Defense witnesses testified about black life in the townships and Namibia, inadequate medical care, racism, SADF brutalities, disregard of the Geneva Conventions and other violations of international law, apartheid and Nazism, and religious objections to warfare and military service. After they were convicted, objectors wrote about prison conditions (in apparent defiance of the Prisons Act). The state's attempt to maintain secrecy in the name of national security (in the dirty tricks court-martial) suggests that it agreed about the importance of publicity. The trouble with this interpretation is the ambiguity of the audience. Who is being educated by the defendants, their witnesses, and their advocates? Prosecutors and judges were impervious to their arguments. Condemnations by the media and foreign dignitaries left the government unmoved. Spectators already were ardent supporters. The only possible audience was the wider public—in South Africa and abroad—who heard of the trial through the media. The defense strategy succeeded in securing sympathetic coverage; there is no evidence of public response.

I have focused on the parties in analyzing this case (and others) because it was they who actively shaped the conflict. Most legal scholarship, however, is preoccupied with judges. What did they contribute? Two things happened during the arguments made to and by the judges. First, the scope of the controversy narrowed dramatically. From my perspective as an American lawyer, South African conceptions of relevance seem extraordinarily broad. One reason is legal: there is no jury in South Africa to be protected from irrelevant, immaterial, or prejudicial evidence. But another, and probably more important reason, was political: these trials represented one of the few outlets for public debate of the issues that were tearing apart South African society. Although their motives undoubtedly differed, defense, prosecution, and judge all wanted the issues aired. The Toms trial gave eloquent voice to the attitude of the Anglican church in South Africa toward military service. The Bruce trial went even further. Although the magistrate asked Edwin Cameron why he was exploring Mrs Bruce's childhood experience in Nazi Germany, he did not stop the inquiry (though he pointedly stopped taking notes). And it was the prosecutor herself who introduced the issue of housing and rent boycotts in Soweto.

If these substantive issues preoccupied the trial, they were largely ignored by the magistrates in giving judgment and passing sentence. And they vanished entirely on appeal. Justices in both the Supreme Court and the Appellate Division and advocates on both sides focused exclusively on statutory construction. All the judges who ruled against the accused took refuge in a narrow legalism. They became preoccupied with the arithmetic of sentencing. The Supreme Court justices reviewing Bruce's sentence sought to show their solicitude by reducing it by 0.7 percent. Many expressed regret about what they were doing but claimed to be compelled by the law: When judiciary duty's to be done, the poor judge's lot is not an 'appy one. Judges joined the SADF and prosecutors in blaming the defendants for their plight, underlining that responsibility by reading the section of the Defence Act that allowed remission of sentence if the accused changed his mind and accepted military service.

The judges' second contribution was the extraordinary outcome. For seven years almost all observers had read the statute as imposing a mandatory sentence of 1.5 times the outstanding military obligation. Two magistrates and four Supreme Court justices concurred. Although South African courts do not consider legislative history in interpreting statutes, the intent of Parliament could not have been more clear. When the Defence Amendment Act was debated in 1983 the PFP proposed rewording the penalty to read "not exceeding" in order to give judges discretion in sentencing. The explicit target of their solicitude was the non-religious objector. They were defeated. During the debate everybody assumed that the statute as passed imposed a mandatory penalty. When the Act was amended in 1987 to overturn a judicial decision sentencing an objector to 1.5 times the call-up period instead of 1.5 times the outstanding service obligation, MPs reiterated that judges lacked any discretion in sentencing.

Despite all this, the Appellate Division found, instead, that the Act established a maximum, within which the court had total discretion. The outcome clearly reflected

politics. The climate had changed dramatically between the time of the convictions and their initial review and the Appellate Division hearing. The bench was chosen by Chief Justice Corbett; his predecessor, Rabie, might have chosen, and voted, differently. Even Corbett hesitated to join the majority opinion. The vote was only 3-2 (although one of the dissenters might have allowed the sentence to be suspended on condition of community service). The dissenters invoked no radically different principles; they simply construed the statutory language differently. This demonstrates the indeterminacy of legal language once again (if further proof were needed).

If any theme unites the eight opinions in this case (four in the Appellate Division, two in the Supreme Court, and two in the Magistrate's Court) it is the judges' deep resentment at legislative invasion of their domain. These judges were angry—but not about apartheid, not about the role of the SADF in the townships or Namibia, not even so much about the harsh punishment meted out to Toms, Bruce, and the other conscientious objectors. (The AD criticism that "rigorous and harsh sentences do not necessarily effect their purpose and they are out of tune with a just society" sounded particularly hollow in South Africa, which no outsider considered a just society and which had one of the highest rates of judicial executions in the world.) The judges were angry that their judicial prerogatives had been limited by the legislature.[398] In 1956 Chief Justice Centlivres objected to mandatory sentences of whipping; Parliament restored judicial discretion nine years later.[399] In 1985 the Appellate Division had expressed its dismay at a five-year minimum sentence for 75-year-old Oscar Mpetha.[400] Concern for the rule of law may be evoked less by state oppression of its citizens than by judges' jealous defense of their authority. Ironically, however, it was the *administrative* reduction in the length of military service that allowed the courts to cut the sentences of objectors. And it was the administrative decision to stop prosecuting objectors that effectively converted conscription into a volunteer force. Furthermore, when judges enjoyed discretion they either exercised it wildly—excusing ANC members from military service, denying that failure to register was an offense—or fled from it altogether, as in the uniform sentences for Jehovah's Witnesses.

## NOTES

1. On the white role in the struggle, see Lazerson (1994); Spink (1991) (Black Sash).

2. Grundy (1983; 1988); Hanlon (1986); Martin & Johnson (1986); Davies (1987; 1989); Cammack (1989); Cock & Nathan (1989). On actions in Namibia, see Weaver (1989); on repression in the townships, see Nathan (1989a); Sandler (1989).

3. CIIR (1989: 77-78); on civil disobedience in South Africa, see Cameron (1988); Trichardt & Trichardt (1986).

4. CIIR (1989: 79).

5. For an overview of conscription, see Forder (1990).

6. CIIR (1989: 20); on the militarization of schooling, see Evans (1989).

7. CIIR (1989: 109).

8. A 1986 Defence White Paper found that they actually served an average of only 362 days. *Weekly Mail* 7 (28.4.89).

9. CIIR (1989: 80).

10. CIIR (1989: 58).

11. CIIR (1989: 61).

12. CIIR (1989: 85).

13. CIIR (1989: 62).

14. CIIR (1989: 80).

15. CIIR (1989: 80).

16. CIIR (1989: 56).

17. CIIR (1989: 110).

18. CIIR (1989: 110).

19. CIIR (1989: 83).

20. CIIR (1989: 85).

21. CIIR (1989: 83-85).
22. CIIR (1989: 84-85).
23. See Winkler & Nathan (1989).
24. *Hansard* cols. 3550-65 (21.3.83).
25. *Hansard* cols. 3565-77 (21-22.3.83) (W.J. Hefer).
26. *Hansard* cols. 3577-86 (22.3.83) (J.H. van der Merwe).
27. *Hansard* cols. 3586-93 (22.3.83) (J.A.J. Vermeulen).
28. *Hansard* cols. 3593-3604 (22.3.83) (B.B. Goodall).
29. *Hansard* cols. 3605-15 (22.3.83) (C.R.E. Rencken).
30. *Hansard* cols. 3615-26 (22.3.83) (W.V. Raw).
31. *Hansard* cols. 3656-63 (22.3.83) (W.J. Snyman).
32. *Hansard* cols. 3693-98 (23.3.83) (G.P.D. Terblanche).
33. *Hansard* cols. 3706-07 (23.3.83) (R.A.F. Swart, PFP; B.W.B. Page, NRP).
34. *Hansard* cols. 3715-23 (23.3.83) (C.J. van der Merwe, NP).
35. *Hansard* cols. 3728-31 (23.3.83) (J.C. van den Berg).
36. *Hansard* cols. 3736-43 (23.3.83) (K.M. Andrew).
37. *Hansard* cols. 3750-53 (23.3.83) (J.H. Hoon).
38. *Hansard* cols. 3788-3802 (23.3.83) (M.A. de M. Malan, Defence Minister).
39. *Hansard* cols. 3802-04 (23.3.83).
40. *Hansard* cols. 3901-02 (25.3.83) (P.A. Myburgh).
41. *Hansard* cols. 3903-13 (25.3.83).
42. *Hansard* cols. 3914-17 (25.3.83).
43. *Hansard* cols. 3917-19 (25.3.83) (G.B.D. McIntosh).
44. *Hansard* cols. 4006-07 (25.3.83).

45. *Hansard* cols. 4017-20 (25.3.83) (N.J.J. Olivier).

46. *Hansard* cols. 4026-28 (28.3.83) (C.R.E. Rencken).

47. *Hansard* cols. 4033-36 (28.3.83).

48. *Hansard* col. 4049 (28.3.83).

49. *Hansard* cols. 4066-70 (28.3.83) (C.W. Eglin).

50. *Hansard* cols. 4070-75 (28.3.83).

51. *Hansard* cols. 4075-76 (28.3.83) (P.H.P. Gastrow).

52. *Hansard* cols. 4076-79 (28.3.83).

53. *Hansard* cols. 4079-81 (28.3.83) (G.B.D. McIntosh).

54. *Hansard* cols. 4081-82 (28.3.83) (J.A.J. Vermeulen).

55. *Hansard* cols. 4082-85 (28.3.83).

56. *Hansard* cols. 4102-06 (29.3.83).

57. *Hansard* cols. 4106-11 (29.3.83) (P.A. Myburgh).

58. *Hansard* cols. 4128-32 (29.3.83) (B.B. Goodall).

59. *Hansard* cols. 4143-52 (29.3.83).

60. CIIR (1989: 82); on the system for conscientious objectors, see Harris (1987); Blaauw (1989).

61. CIIR (1989: 71); *Hansard* qs. 504-05 (11.3.86) (reply by Defence Minister to P.R.C. Rogers, NRP).

62. *Weekly Mail* 2 (20.12.85); *The Objector* (12.89).

63. CIIR (1989: 124).

64. *Weekly Mail* 4 (23.8.85).

65. *Weekly Mail* 4 (21.6.95), 4 (19.7.85).

66. *Weekly Mail* 14 (1.11.85).

67. *Weekly Mail* 28 (16.5.86).

68. *Sash* 40 (30.9.88); *Weekly Mail* 4 (24.12.87). 1,579 surveys were distributed, 476 completed; 19 percent had decided to leave.

69. *Weekly Mail* 7 (14.4.89).

70. CIIR (1989: 62, 73); *Weekly Mail* 4 (18.3.88); *Business Day* 1 (1.11.89) cited in Forder (1990: 45). By 1989 net immigration had returned to 5,947, but there was a net loss of 598 professional people that year. PFP MP Ken Andrew maintained that official figures were meaningless. Home Affairs Minister Gene Louw had told Parliament that 99,541 more permanent residents left South Africa than returned in the years 1984-88. *Weekly Mail* 6 (16.3.90).

71. CIIR (1989: 62).

72. CIIR (1989: 61).

73. *Hansard* q. 778 (19.3.85) (reply by Defence Minister to P.R.C. Rogers, NRP); CIIR (1989: 69).

74. *Hansard* q. 569 (12.3.85) (P.R.C. Rogers, NRP).

75. *Hansard* q. 59 (12.2.86) (reply by Defence Minister to P.A. Myburgh, PFP); CIIR (1989: 61).

76. CIIR (1989: 61).

77. CIIR (1989: 62).

78. *Weekly Mail* 7 (4.3.88), 10 (21.4.89).

79. CIIR (1989: 67); *Weekly Mail* 10 (11.3.88), 13 (21.4.89). 1987 suicide attempts: 225 national servicemen, 57 permanent force, 12 citizen force or commandos; 24 succeeded.

80. Quoted in Spink (1991: 219).

81. On the history of the ECC, see Nathan (1989b).

82. On the birth and organization of the ECC, see the profile of its national organizer, Laurie Nathan, in Jaster & Jaster (1993: ch.3); Nathan (1987).

83. CIIR (1989: 101).

84. CIIR (1989: 104).

85. CIIR (1989: 98).

86. CIIR (1989: 103).

87. *Hansard* cols. 6418-19 (28.5.85) (T. Langley).

88. CIIR (1989: 105).

89. *The Argus* 4 (15.8.85).

90. CIIR (1989: 90); *Weekly Mail* 3 (20.6.85), 4 (13.9.85).

91. *Weekly Mail* 4 (20.9.85), 12-13 (11.10.85); *Sunday Tribune* 7 (22.9.85); *The Argus* 5 (24.9.85), 4 (25.9.85), 6 (6.10.85), 3, 10 (7.10.85), 23 (8.10.85), 6 (9.10.85); *The Citizen* 8 (26.9.85), 8 (3.10.85); *Cape Times* 11 (28.9.85), 3 (7.10.85); *Natal Witness* 3 (5.10.85); *The Star* 7 (8.10.85); *Eastern Province Herald* 2 (8.10.85).

92. CIIR (1989: 74, 94).

93. *The Argus* 5 (25.10.85).

94. CIIR (1989: 92-96); *Weekly Mail* 4 (24.1.86).

95. *Weekly Mail* 2 (7.2.86), 6 (14.3.86).

96. CIIR (1989: 99).

97. CIIR (1989: 96).

98. CIIR (1989: 98).

99. CIIR (1989: 103).

100. *Hansard* cols. 2106-10 (18.3.86).

101. *Hansard* cols. 2118-19 (18.3.86) (J.A.J. Vermeulen).

102. *Hansard* col. 2129 (18.3.86) (W.J. Hefer).

103. *Hansard* cols. 2130-31 (18.3.86) (J.H. van der Merwe).

104. *Hansard* cols. 5512-20 (14.5.86).

105. *Hansard* cols. 5569-72 (14.5.86) (C.J. van der Merwe).

106. *Weekly Mail* 3 (27.3.86), 5 (29.8.86).

107. *Weekly Mail* 4 (14.3.86), 2 (9.5.86).

108. *Weekly Mail* 4 (1.8.86).

109. *Weekly Mail* 5 (19.9.86), 4 (3.10.86).

110. *Weekly Mail* 14 (9.10.86), 3 (7.11.86); *Cape Times* (6.11.86); CIIR (1989: 113).

111. *Eastern Province Herald* (3.3, 5.87).

112. CIIR (1989: 101).

113. *Weekly Mail* 3 (21.3.86), 8 (18.8.86), 4 (20.11.86).

114. *Weekly Mail* 2 (9.5.86), 4 (1.8.86), 4 (24.10.86).

115. *Weekly Mail* 8 (18.7.86).

116. "South Africa Imposes New Curbs on 119 Groups," *New York Times* §I p6 (22.6.86).

117. *Weekly Mail* 8 (18.7.86), 4 (15.8.86); CIIR (1989: 112).

118. *Cape Times* (13.9.86).

119. CIIR (1989: 100).

120. Hartman v Chairman, Board for Religious Objection 1987 (1) SA 922 (O); *Weekly Mail* 5 (29.8.86).

121. CIIR (1989: 112).

122. *Weekly Mail* 6 (16.1.87).

123. *Hansard* cols. 554-56, 1303 (10, 23.2.87) (L.H. Fick).

124. *Hansard* cols. 1304-07 (23.2.87) (H.H. Schwarz).

125. *Weekly Mail* 4 (20.3.87).

126. *Weekly Mail* 3 (10.4.87).

127. *The Citizen* (14.4.87); *Cape Times* (14, 15.5.87); *The Star* (15.4.87).

128. *Hansard* qs. 154-56 (16.6.87) (P.G. Soal, PFP, J. van Eck, Ind), 399 (28.7.87) (P.G. Soal), 1087 (6.10.87) (P.G. Soal), 2-3 (16.2.88) (P.G. Soal), 324 (8.3.99) (P.G. Soal), 536 (16.3.88) (P.G. Soal to E. van der M. Louw, Minister of Transport Affairs), 2210 (30.8.88) (S.S. van der Merwe, PFP to M.A. de M. Malan, Minister of Defence), 249 (7.3.89) (S.S. van der Merwe to M.A. de M. Malan).

129. *Hansard* cols. 1259-60 (11.6.87).

130. *Hansard* cols. 1260-62 (11.6.87) (J.H. van der Merwe).

131. *Hansard* cols. 1264-72 (11.6.87).

132. *Hansard* cols. 1272-75 (11.6.87) (A.L. Jordaan).

133. *Hansard* cols. 1275-81 (11.6.87).

134. *Hansard* cols. 1281-88 (11.6.87) (J.J. Vilonel).

135. *Hansard* cols. 1288-90 (11.6.87) (R.R. Hulley).

136. *Hansard* cols. 1290-95 (11.6.87) (D.P. de K. van Gend).

137. *Hansard* cols. 1298-1303 (11.6.87).

138. CIIR (1989: 126); *Weekly Mail* 3 (7.8.87).

139. *Hansard* col. 5937 (15.9.87) (F.J. van Heerden).

140. *Weekly Mail* 16 (13.2.87).

141. *Weekly Mail* 5 (17.7.87).

142. CIIR (1989: 117-18).

143. *Weekly Mail* 5 (20.3.87).

144. *Weekly Mail* 4 (20.2.87).

145. *Weekly Mail* 5 (6.3.87).

146. *Weekly Mail* 6 (24.4.87).

147. CIIR (1989: 113).

148. *Hansard* cols. 2338-40 (29.2.88).

149. Cape Supreme Court, Cases No. 2170/88, 2173/88.

150. Cape Provincial Division, Case No. 2391/88.

151. *Weekly Mail* 1 (24.12.87), 1 (15.1.88), 3 (29.1.88), 1 (2.2.88), 1 (11.3.88), 3 (24.4.88), 4 (24.6.88), 5 (18.8.89); *Cape Times* 7 (9.6.89), 2 (17.8.89), (18.8.89); *The Citizen* 10 (17.8.89), 10 (18.8.89); *The Star* 5 (18.8.89), 6 (22.8.89); *Natal Witness*

1 (19.8.89), 2 (21.8.89); *Weekend Argus* 5 (19.8.89); *Sunday Tribune* 7 (20.8.89); CIIR (1989: 128-29).

152. *Weekly Mail* 20 (29.5.92).

153. ECC and Crispian Olver v Minister of Defence and Augustus Koch de Jager N.O., Cape Provincial Division, Case No. 2870/88.

154. End Conscription Campaign v Minister of Defence 1989 (2) SA 180 (C); *Weekly Mail* 1 (31.3.88), 3 (24.4.88), 7 (16.6.88), 3 (2.9.88).

155. John Viljoen, "Anti-conscription body wins case," *The Sunday Star* 11 (10.11.91).

156. *Weekly Mail* 13 (13.5.88).

157. *Hansard* cols. 10117-20 (18.5.88) (D.P. de K. van Gend).

158. *Hansard* cols. 10125-29 (18.5.88).

159. *Weekly Mail* 7 (4.3.88), 2-3 (5.8.88) (listing all the names); CIIR (1989: 120-21); *The Star* 2 (4.8.88), 2 (6.8.88); *New Nation* 3 (4.8.88); *The Sunday Star* 13 (7.8.88); *Sunday Times* 19 (7.8.88).

160. *The Citizen* 6 (5.8.88).

161. *Cape Times* 9 (17.8.88); *Pretoria News* 3 (17.8.88).

162. *Weekly Mail* 2 (5.8.88), 8, 14 (26.8.88), 7 (2.9.88); *The Citizen* 3 (23.8.88); CIIR (1989).

163. *The Citizen* 11 (10.9.88).

164. *Weekly Mail* 8 (5.5.89).

165. *Weekly Mail* 7 (2.9.88), 9 (10.2.89); *Sash* 40 (30.9.88); *New Nation* 12 (27.10.88); *Frontline* 6 (31.10.88); CIIR (1989: 127).

166. *Cape Times* 5 (16.5.89).

167. *Cape Times* 5 (11.5.89).

168. *Weekly Mail* 9 (5.5.89), 8 (12.5.89), 9 (19.5.89); *Business Day* (22.2.89); *Eastern Province Herald* (5.6.89); *Natal Mercury* (5, 7.6.89).

169. *The Argus* 5 (28.12.88).

170. *Pretoria News* 1 (6.2.89); *Cape Times* 3 (7.2.89).

171. *Cape Times* 5 (7.2.89), 6 (8.3.89); *Die Burger* 4 (7.2.89); *Weekly Mail* 12 (10.2.89).

172. *Cape Times* 6 (8.3.89), 2 (11.3.89).

173. *New Nation* 2 (22.3.89).

174. *Aida Parker Newsletter* 10 (31.3.89).

175. *Objector* (12.89); *Weekly Mail* 1, 3 (22.9.89), 13 (23.3.90); *City Press* 2 (20.8.89); *Natal Witness* 1 (22.8.89); *Evening Post* 6 (21.8.89), 6 (22.8.89), 3 (28.8.89); *The Star* 4 (23.8.89), 6 (28.8.89), 4 (29.8.89); *Cape Times* 1 (23.8.89); *Pretoria News* 2 (29.8.89); *The Citizen* 6 (23.9.89).

176. *Weekly Mail* 7 (20.4.89), 1 (22.9.89), (3.11.89), 1 (8.12.89); *The Star* 2 (10.12.89); *Sunday Times* 2 (10.12.89); Forder (1990: 42-44); Cameron (1992: 37).

177. *Hansard* q. 30 (13.2.90) (D.J. Dalling, PFP to M.A. de M. Malan, Minister of Defence); Cameron (1992: 38-39).

178. Deon Lamprecht, "Malan halves objectors' service," *Pretoria News* 1 (30.1.90); *Objector* (4-5.90).

179. "Conscription: No half measures," *Financial Mail* 39 (2.2.90); Stephen Coan, "ECC finds it still has a place—then gets down to hard work," *The Natal Witness* 9 (26.3.90).

180. "ECC wants two conchies released," *The Citizen* 20 (8.2.90); "ECC challenges SADF on hit-squad allegation," *The Argus* 5 (19.2.90); John Yeld, "Objectors 'proved right' in SADF bureau exposure," *The Argus* 4 (26.2.90); Monica Nicolson, "ECC to stage march through Jo'burg," *The Star* 7 (27.2.90); "ECC march to call for objectors' release," *The Citizen* 17 (27.2.90); Chris de Villiers, "Letter to the Editor," *Business Day* 4 (5.3.90); "ECC demands Magnus trial," *The Cape Times* 2 (8.3.90); Kitt Katzin and Steve McQuillan, "Council's 007 delivered 000," *The Sunday Star* 7 (15.4.90); Rohan Minogue and Michele Vermaak, "Name of Human Rights 'spy lawyer' revealed," *The Citizen* 3 (19.4.90); Kitt Katzin and Steve McQuillan, "Living in the shadow of death . . . ," *The Star* 6 (26.5.90); Louise Burgers and Helen Grange, "Spying on ECC was for military—Egan," *The Star* 2 (5.6.90); *Objector* (4-5.90).

181. "Hit squads 'a reality till CCB goes,'" *The Cape Times* 3 (19.7.90); "ECC condemns explosion in EL," *Daily Dispatch* 3 (19.7.90).

182. Shirley Woodgate, "Council too soft with town clerk, says ECC," *The Star* 2 (13.11.90).

183. "ECC 'qualified support' for army in Natal," *The Cape Times* 2 (4.4.90); "ECC calls for neutral body to monitor SADF impartiality," *The Citizen* 9 (20.4.90); Grant Sidall, "ECC calls for neutral body to monitor troops," *The Leader* 4 (27.4.90).

184. Brian King, "ECC's 'reece' in the ranks," *Sunday Tribune* 12 (16.12.90).

185. "Middle men," *Sunday Tribune* 15 (15.1.92).

186. *New York Times* A8 (21.11.89), 6 (7.4.90).

187. *New York Times* A1 (17.5.90); *Daily Mail* 8 (1.8.90); *Business Day* (6.7.90); *The Citizen* (6.7.90); *The Star* (6.7.90); *Cape Times* (18.7.90).

188. Grant Siddall, "'No need for conscription in new S. Africa,'" *The Leader* 6 (18.5.90).

189. Laurie Nathan, "The politics of peace," *Sash* 35 (9.90); Laurie Nathan, "What role for armed forces in a new SA?" *City Press* 10 (14.10.90).

190. *Hansard* q. 813 (17.4.90) (J. van Eck, Ind. to W.N. Breytenbach, Deputy Minister of Defence), q. 1007 (24.4.90) (S.C. Jacobs, CP, to Breytenbach; interjections by C.D. de Jager, CP; W.J. Snyman, CP; P.G. Soal, DP, and J.H. van der Merwe, CP).

191. *Hansard* q. 1347 (15:5.90) (R.H.D. Rogers, DP, to M.A. de M. Malan, Minister of Defence).

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306. *Cape Times* 3 (29.6.87), 15 (9.11.87), (12.11.87); *Natal Witness* 2 (4.11.87); *Sunday Tribune* 10 (5.7.87), 7 (9.7.87); *The Star* 4 (3.11.87), 4 (10.11.87); *The Argus* 8, 11 (11.11.87).

307. *The Argus* 1 (12.11.87); *Cape Times* 4 (13.11.87).

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309. *The Argus* 3 (29.2.88); *Cape Times* 3 (1.3.88).

310. The *Cape Times* 1 (2.3.88) appears to have carried the only report of the conviction.

311. *The Argus* 4 (2.3.88) reported Toms's testimony. *The Cape Times* 7 (3.3.88) reported Bishop Russell's.

312. Because Shivute testified in Afrikaans, I have relied on newspaper summaries. *Weekly Mail* 1 (4.3.88); *Cape Times* 1 (4.4.88).

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363. Witwatersrand Local Division Case No. 522/88; *The Star* 6 (10.1.89); *Cape Times* 5 (10.1.89). *The Citizen* 5 (10.1.89) reported the proceedings under the headline "Court hears conchie's plea against jail term."

364. *The Citizen* 8 (4.3.89); *The Sunday Star* 2 (5.3.89); *Business Day* 2 (6.3.89).

365. *The Sunday Star* 3 (5.3.89).

366. *The Citizen* 11 (30.3.89); *The Star* 2 (30.3.89).

367. *Natal Witness* 4 (19.7.89); *The Sunday Star* 8 (30.7.89); *The Star* 16 (1.8.89).

368. Monica Nicolson, "ECC to stage march through Jo'burg," *The Star* 7 (27.2.90); "ECC march to call for objectors' release," *The Citizen* 17 (27.2.90).

369. S v Toms, S v Bruce 1990 (2) SA 802 (A).

370. Id. at 806.

371. Id. at 807.

372. Id. at 808.

373. Id. at 808-09.

374. Id. at 811.

375. Id. at 812.

376. Id. at 813.

377. Id. at 814.

378. Id. at 815.

379. Id. at 816-17.

380. Id. at 817.

381. Id. at 818-19.

382. Id. at 220-21.

383. Id. at 121.

384. Id. at 822.

385. Id. at 823.

386. Id. at 830.

387. Id. at 830.

388. Id. at 831.

389. Id. at 834.

390. "Toms: An 'enlightened decision,'" *The Cape Times* 5 (31.3.90).

391. *Weekly Mail* 1 (5.4.90).

392. *Daily Mail* 3 (20.6.90).

393. *The Objector* 5 (6.92).

394. *Weekly Mail* 4 (27.9.91).

395. *The Objector* 4 (12.91).

396. The prosecutor's strategy resembled that of Joseph McCarthy attacking the character of a young assistant of the Army's counsel, Joseph Nye Welch. See de Antonio (1964). Many in the anti-apartheid movement criticized George Bizos SC for defending Winnie Mandela against charges of complicity in the kidnapping and murder of James "Stompie" Moketsi Seipei by making accusations of homosexuality against Rev Paul Verryn, with whom the victim had been living. See Gilbey (1993: 183, 205-06, 259).

397. Wacks (1984).

398. Lord Atkins noted his displeasure in Liversidge v Anderson [1942] AC 206; see Simpson (1988). U.S. District Judges have expressed similar anger at mandatory federal sentencing "guidelines." See Weinstein (1992). Some have simply flouted the rules, *New York Times* §1 p13 (29.8.93). Lois Forer, a Pennsylvania trial judge for 16 years, refused to hear death penalty cases and resigned from the bench when the state supreme court ordered her to resentence a young robber to the mandatory five years rather than the six months she had given him. Forer (1994).

399. Sachs (1973: 254).

400. S v Mpetha 1985(3) SA 702 (A); noted in *Hansard* cols. 6740-41 (D.J. Dalling, PFP) (4.6.85).

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