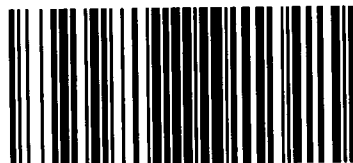


LAW IN THE STRUGGLE AGAINST APARTHEID, 1980 - 1994



CENSORSHIP
AND THE CLOSURE
OF THE NEW NATION

Monograph 5



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MPOPHOMENI AND
THE WAR IN NATAL

CARVING LOOPHOLES
IN THE PASS LAWS

SEEKING RECOGNITION
- MAWU & BTR SARMCOL

STATE TERRORISM:
THE RESPONSE OF LAW AND
MEDICINE TO POLICE TORTURE

WHITE RESISTANCE
TO THE MILITARY

BAKWENA BA MAGOPA:
THE LAST FORCED REMOVAL

THE ALEXANDRA
TREASON TRIAL

CENSORSHIP AND THE CLOSURE
OF THE NEW NATION

DISESTABLISHING OUKASIE

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

**CENSORSHIP AND THE CLOSURE OF
THE *NEW NATION***

RICHARD L. ABEL

CENTRE FOR APPLIED LEGAL STUDIES
UNIVERSITY OF THE WITWATERSRAND,
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FOREWORD

On 1 December 1989 the Appellate Division handed down its judgment in *Catholic Bishops Publishing Co v State President*.¹ This was the final and unsuccessful legal challenge to the closure of *New Nation* under emergency powers. The decision came at a critical time in South Africa's history. Although South Africa was still in the midst of its fifth successive state of emergency, emergency laws were being openly defied at mass public demonstrations. The architect of rule by emergency decree, President P W Botha, had been ousted by F W de Klerk. Chief Justice Rabie, who had presided over most of the legal challenges to the emergency laws, had been replaced by Mr Justice M M Corbett. The political and legal climate in which the appeal was heard had not been as propitious for many years.

Regrettably, the Appellate Division under the leadership of the new Chief Justice had inherited a formidable legacy of restrictive rulings. The damage inflicted by some of the judgments dealing with emergency powers left little scope for legal challenge. In *Omar v Minister of Law & Order*² the Court was called upon to consider various fundamental rights, including the right to be heard prior to an order by the Minister of Law and Order for the further detention of a detainee, the right of a detainee to access to a legal adviser, and the right of a detainee to be informed of the reasons for his or her detention. In a majority decision, described by one commentator as "a political and legal disaster for South Africa, for South African lawyers, and above all for the victims of apartheid,"³ the Appellate Division held that these rights had been lawfully excluded by the emergency regulations. The trend set by this decision was to continue. In *Minister of Law & Order v Dempsey*,⁴ the Court held that an arrest could be justified in terms of the emergency regulations by a mere statement that, in the opinion of the arresting officer, it was necessary for one of the prescribed purposes. In that case, the victim of the arrest was a nun. Finally, in *Staatspresident v United Democratic Front*,⁵ it was held that vague and uncertain regulations were immune from judicial review by

¹ 1990 (1) SA 849 (A).

² 1987 (3) SA 859 (A). The appellant in that case has since become Minister of Justice under the new democratic order.

³ Lawrence Baxter, "A Judicial Declaration of Martial Law," 3 *South African Journal on Human Rights* 318 (1987).

⁴ 1988 (3) SA 19 (A).

⁵ 1988 (4) SA 839 (A).

virtue of the "ouster clause" contained in the Public Safety Act, which provided that a Presidential proclamation could not be set aside or questioned.⁶

These decisions all emanated from the Rabie court. They were heard by an "emergency team" comprising a small number of judges who were seemingly specially selected from the available pool.⁷

The merits of the failure of *New Nation's* appeal are a matter for legitimate legal debate. The manner in which the appeal was dismissed, however, calls for comment. At issue was the closure of a newspaper under sweeping powers, which ordinarily would have been declared void for vagueness. Although the court considered itself bound by the strictures of precedent, one searches in vain to find any expression of disquiet at the result thus dictated. There have been occasions in which South African judges have felt compelled to express their distaste for the laws with which they were confronted. One of the earliest examples, referred to in argument before the Appellate Division (and ironically concerned with an attempt to oust the court's powers of judicial review), was *Shidiak v Union Government (Minister of the Interior)*.⁸ In that case, Innes ACJ observed:

There is, one fears, a growing tendency in modern legislation to clothe with finality the decisions of public officials in matters which seriously affect the rights of the public, a tendency probably due to the increasing power and influence of Departmental officials. The effect is in such matters practically to oust the jurisdiction of the Courts. Attention has been recently called to this question by high judicial authority in England. And it may be permitted here to point out that such legislation, unless carefully safeguarded, may endanger important private rights and

⁶ Section 5B of the Public Safety Act 3 of 1983 provided that "no interdict or other process shall issue for the staying or setting aside of any proclamation issued by the State President and no court shall be competent to enquire into or give judgment on the validity of any such proclamation."

⁷ The term "emergency team" is used by Stephen Ellmann in *A Time of Trouble: Law and Liberty in South Africa's State of Emergency* 64 (1992). In a careful analysis of the composition of the court hearing emergency cases, Ellmann concludes that "the court's emergency jurisprudence was under the control of just five members of the court." "[T]he presence of these judges is so overwhelming that it seems appropriate to call them the 'emergency team.'"

⁸ 1912 AD 642.

become a serious menace to the liberty of the subject. These are considerations to which the courts do well to draw attention. . . .⁹

It may be argued that expressions of this sort are empty gestures. Indeed, in one noteworthy case, Mr Justice Didcott despairingly suggested as much.¹⁰ It is not suggested that the judiciary under a system of parliamentary sovereignty could have effectively prevented the excesses of apartheid. They had the capacity, however, to ameliorate the effects of draconian legislation and on occasion did so. Their failure, on significant occasions, to express their disquiet created the danger that their silence might be interpreted as acquiescence. This, no doubt, could only have served to embolden the legislature.

Professor Abel's account of censorship during the emergency era serves as a timely reminder of the need for the vigilant and scrupulous protection of fundamental rights now made possible with the advent of a democratic order and a constitutionally entrenched Bill of Rights. For those who lived through the successive states of emergency, the details of the abuse frequently became lost, perhaps due to the effectiveness of the system of censorship. The strength of Professor Abel's account lies in his meticulous attention to detail viewed through the eye of a detached and critical observer. His study also reminds us how dangerous and ultimately futile the suppression of ideas can be.

GILBERT MARCUS
MAY 1996

⁹ 1912 AD 642, 653-54.

¹⁰ *In re Duma* 1983 (4) SA 469 (N). The court had occasion to consider one of the most notorious laws of apartheid. Section 29 of the Blacks (Urban Areas) Consolidation Act 25 of 1945 authorised the arrest of any black person thought to be "idle or undesirable." Commenting on this section, Mr Justice Didcott stated:

No counterpart, nothing at all similar, can be found in any system of jurisprudence with which we would like ours to be compared. The section has been amended from time to time, on some occasions in apparent reaction to judicial interpretations of it curbing undue exuberance in its enforcement. The amendments have not relaxed its provisions. Instead these have got progressively tighter. The current version is the toughest yet. There is little our courts can do about legislation of this kind. They can make their distaste for such known, for what they may be worth. It is not a great deal. Parliament seldom takes notice once some policy it considers important is involved.

[T]he publisher is given the opportunity to make representations and even though my decision is not subject to appeal, a court can still review any decision I make if I fail to apply my mind to the matter or act without *bona fides* or if I do not follow correct procedures. . . . I cannot merely say: "New Nation, I dislike you; I now close you down." I must indicate right from the start to the publisher that "that article, and your next one, and your next one incited violent action." . . . If a particular article did not incite violence, and I based my decision on such an article, then he can take me to court. . . . (Home Affairs Minister Stoffel Botha, shortly after issuing the August 1987 emergency media regulations)

[The *New Nation's* real complaint] is not so much the alleged failure on [its] part to understand the thrust of the Regulations, which is anyway irrelevant, but [its] failure to understand that [it] was dealing with the opinion of a politician and not a judgement of a court of law. It is of course clear that censorship on the grounds set out in the Regulations is a political act. . . . [T]he reference to certain cases which laid down that there must be certainty in the regulations is somewhat misplaced. How can there be certainty where the opinion of a politician is involved; the converse would be the case. . . . It is not our function to pass an opinion, favourable or unfavourable, on what the State President appeared to think necessary or upon the Minister's opinion. . . . censorship is very like a guillotine, and there is very little use in growing honeysuckle over a guillotine. (Justice Curlewis denying the *New Nation's* application for an interdict against closure under the August 1987 regulations)

We no longer see the courts as a useful arena in which to fight the state. . . . It is now a question of having a good defence, quick feet and trying to slip nimble punches in between raised fists. . . . it happened this way because, and only because, [Home Affairs Minister Stoffel] Botha decided it *should happen* this way. He has acted as prosecutor, judge and executioner—and the whole case was heard in camera. . . . His action appears to be punitive—the act of a petty and petulant schoolmaster rather than a Cabinet Minister dealing with a total onslaught on his country. . . . Although Stoffel Botha still dresses up his action in legalistic finery, this is only a thin cover for his naked power. The law is now based on his whim, his personal intolerance and his individual narrow-mindedness. (Anton Harber, *Weekly Mail* co-editor, following its one-month closure in November 1988)

No one can permit a publication that systematically publishes subversive propaganda to continue doing so while charges are dealt with by courts over a period of several months, or possibly even years. . . . [If the issue were submitted to the courts,] the high esteem enjoyed by our courts as institutions functioning independently of the legislature and the

executive would be seriously jeopardised. Whether a statement constitutes propaganda or not, whether the publication of material is contrary to public interest and security, is a matter of opinion. If courts of law had to give a ruling on such opinions, the courts themselves would inevitably be drawn into the political arena. The courts would then be attacked on political grounds as being the mouthpiece of some or other political party. (Stoffel Botha defending his media policy before a Joint Meeting of Parliament, February 1989)

If the system was ever abused in the past for political purposes, it will be far more difficult for this to happen in the future and, if it does happen . . . we should very much like to look into the matter because that was certainly not the intention of the Act. (Home Affairs Minister Eugene Louw opposing repeal of the Publications Act or unbanning of all publications concerning recently unbanned organizations, May 1990)

I. CENSORSHIP BEFORE THE EMERGENCY MEDIA REGULATIONS

South Africa operated the most elaborate and oppressive system of censorship of any self-styled "democracy."¹ The government had to approve all movies, many of which it prohibited, and could ban any imported publication.² The South African Broadcasting Corporation dominated television (and to a lesser extent radio).³ The South African Press Association was cautious in criticizing the government. Outdoor meetings were banned after the 1976 Soweto uprising; all meetings required prior permission, which often was withheld. "Listed" people could not be quoted; "banned" people could not participate in gatherings. There were severe restrictions on what could be said about the security forces or prisons.⁴ The government even regulated what might be printed on t-shirts or said at funerals.

Although the Afrikaans press supported the government (except for the *Vrye Weekblad*, founded in 1988), and much of the English press expressed only restrained criticism, there was a courageous tradition of independent journalism by a few dissident newspapers.⁵ (Unfortunately the best known, the *Rand Daily Mail*, was closed for "economic reasons" early in 1985.)⁶ The government attacked them in many ways but directed its most virulent hatred toward the *New Nation*, detaining its editor, Zwelakhe Sisulu, for nearly two-and-a-half years and suspending the paper for three months. Indeed, black journalists and writers suffered disproportionately under government repression.⁷ This Working Paper tells the story of the *New Nation* suspension and the lawsuit brought to forestall it, against the background of the conflict between press and government during the Emergency years.

The 1985 Emergency began ominously. SASPU [South African Student Publications Union] *National* appealed a Publications Committee ban of an issue—the fourteenth banned during its five years of existence (it had won six of the seven previous appeals).⁸ Gary van Staden, senior political reporter for *The Star*, resisted a subpoena asking him to reveal his source of information about a meeting of the Vaal Civic Association the previous September, when the Vaal triangle exploded. Justice H Flemming of the Rand Supreme Court overruled van Staden's objections, denied leave to appeal, and ordered him to appear in the Johannesburg Magistrate's Court on 23 June.⁹ Fritz van Exter of an Amsterdam daily, *Trouw*, was detained after South Africa's raid on Gaborone; his hotel room was ransacked and his notebooks stolen. CBS and BBC television crews were arrested at the University of the Western Cape on 4 September. Journalists Murray Michell and Gideon Mendel of Agence France Presse and Craig Matthew of London World Television News were whipped by the police in Athlone and filed charges of assault. The SADF detained three foreign correspondents filming Winnie Mandela in Soweto on 13 September and confiscated their film and tape. Police searched *Cape Times* reporter Riaan de Villiers while he was covering a rally on 18 September.¹⁰

By September, government statements fueled fears of a crackdown on the press. Minister of Foreign Affairs R F "Pik" Botha condemned foreign television reporters for

presenting a distorted picture of the violence, which the SABC depicted as sporadic and isolated. The Department of Foreign Affairs encouraged local journalists working for foreign media to register as foreign correspondents, which would subject them to state regulation for the first time. The government increased its harassment of foreign television crews.¹¹ The following week Deputy Minister of Foreign Affairs Louis Nel said "it is time the government reconsiders whether its hospitality should be extended to people who share in the organized lying." The government deported *Newsweek* reporter Ray Wilkinson and denied visas to other foreign correspondents seeking to cover the visit of the EEC Foreign Ministers.¹²

On 1 October police arrested eight journalists (six working for foreign news agencies) who were covering unrest at the University of the Western Cape. Three days later the government deported one of them, French reporter Bernard Brisson of Sygma.¹³ The following month it prohibited all photographs of unrest.¹⁴ But some newspapers continued to challenge these restraints. On 4 November the *Cape Times* published a lengthy interview with ANC President Oliver Tambo, a listed person; editor Anthony Heard risked a three-year prison sentence. Although the state prosecuted him, it eventually accepted a R300 fine from his publisher, Saan.¹⁵ The following month three senior reporters at the *Daily News* in Durban resigned to protest the newspaper's handling of the Cosatu launch and its refusal to allow Cosatu to reply to accusations by Buthelezi.¹⁶ Before the end of the year journalists suffered other attacks: Brian Tilley, a television crewman, was shot covering a funeral in Mamelodi; Roger and Patrick Lucey, London World Television News cameramen, were arrested filming the violence in Moutse (see that Working Paper); Cape Town photographer Obed Zilwa was beaten in Nyanga by a crowd of tsotsis; two Sowetan journalists trying to report Chris Heunis's tour of East Rand townships were stopped and detained; and *Argus* journalist Pippa Green was in court for protesting press curbs. More than 100 Cape Town journalists signed a petition condemning the detention of another *Argus* journalist, Vernon Matzopoulos.¹⁷

Minister of Law and Order Louis le Grange began the new year by allowing Oliver Tambo to be quoted for the first time on the 74th anniversary of the founding of the ANC (even though the government still was prosecuting Anthony Heard for publishing his interview with Tambo).¹⁸ Later that month the South African Catholic Bishops' Conference launched the *New Nation*, edited by Zwelakhe Sisulu: first president of the Writers' Association of South Africa (which became the Media Workers Association of South Africa after the Union of Black Journalists was banned during the 1977 crackdown on all black consciousness organizations), former Harvard Niemann fellow, and son of Rivonia trialist and Robben Island life prisoner Walter Sisulu and UDF patron Albertina Sisulu.

Anton Harber (previously a political reporter for the now defunct *Rand Daily Mail*) and Gary van Staden of *The Star* sued the Minister of Law and Order for assault by vigilantes outside a Lenasia polling booth on election day, 28 August 1984. The police had told a hundred demonstrators to disperse within three minutes but charged

before the time was up. Harber saw a man hit van Staden, who fell to the ground. Harber asked if the assailant was a policeman, explaining that he and van Staden were journalists. The man threatened Harber with a sjambok, grabbed a camera from Jo-Anne Collinge (another *Star* reporter), and threw her and the camera to the ground. When Harber tried to intervene the man turned on him, and others joined in with sjamboks and bare hands.¹⁹

In April a magistrate fined *Eastern Province Herald* reporter Juliette Saunders R100 for violating the Police Act because he found errors in two paragraphs of a 1300-word eyewitness account of security forces using sjamboks and firing teargas and rubber bullets during a funeral. The government subpoenaed Koos Viviers, the paper's editor, and Trevor Bissaker, editor of the *Evening Post*, demanding that they produce photographs and notes of an allegedly illegal meeting of 20,000 people protesting the ban on meetings.²⁰ The following month Justice van Dijkhorst held *Weekly Mail* editor Anton Harber and reporter Jo-Ann Bekker in contempt for three articles on the Delmas treason trial (over which he was presiding), fining them R750 and R200 respectively because they described certain notes as "judge's notes" (although the *Weekly Mail* had apologized for the error) (see the Working Paper on the Alexandra treason trial). Nearly two years later the Appellate Division dismissed their appeal.²¹

In April, Deputy Foreign Affairs Minister R B Miller clarified the government's attitude toward foreign journalists.

We realise and accept that at all times a kind of conflict exists in relations between the Press and the Government. But this need not be a hostile relationship. . . . We are prepared to co-operate completely with the Press on condition that it is a free and responsible Press, and that the Press keeps to a specific code of ethics. . . . South Africa is an open community . . . [but] foreign journalists should not become participants in the political processes in South Africa. Neither should they participate in unrest situations. Also, they should not consciously be part of propaganda vendettas which are waged against South Africa from abroad.

To be here is not a right that foreign journalists can lay claim to. Rather, they are here as a result of the grace of the Government. Besides, they are here on the condition that they report fairly on the facts and development in South Africa. . . . The hon the Minister of Foreign Affairs is the person who decides.

He complained about an article in the previous issue of *Newseek*, which reported that "two weeks ago the White regime banned all outdoor gatherings." Miller protested that "there is of course not a 'White regime' in this country." The article continued: "The ban effectively outlawed what has been Blacks' only real forum for political expression," i.e. funerals. But this was inaccurate: "the State President has invited Blacks to come and discuss the future of the country with him"; there was "a system

of local management," and "we also have national states governments which have been democratically elected." He was most upset about the allegation that "police opened fire" on 10,000 mourners, "killing four." "[T]hese kind of reports are untrue." "I cannot really see why we should tolerate it if we do not deserve it." The previous October the "senior editorial board" of *Newsweek* had protested to him the deportation of reporter Ray Wilkinson. One editor declared: "*Newsweek's* reporters should be allowed to report freely from South Africa on facts and developments as they see it, bearing in mind public opinion in America." Miller told Parliament: "We cannot possibly stomach this." "Who is this big bear, 'public opinion in America', which on a regular basis must be fed with only certain kinds of food to be kept alive?" This attitude was "unprofessional" and "dishonest."²²

When debate continued three days later an MP reported Pik Botha's statement that almost as many foreign journalists had been denied entry as had been granted it in the latter half of 1985.²³ Botha himself added: "I will not hesitate for one moment to withdraw the residence or work permits of foreign journalists who misbehave." He had allowed CBS News reporters to stay after they apologized for videotaping unrest scenes, but he noted that "television in particular has given us a terrible image. We have received so many applications from foreign journalists wanting to enter this country that we have had to take some strict measures in order to avoid an overemphasis on unfortunate circumstances." The Media Council, formed by the Newspaper Press Union of South Africa and the Conference of Editors, had promulgated a code of conduct for its members. Botha quoted one rule.

Due care and responsibility shall be exercised by the media with regard to: subjects that may cause enmity or give offence in racial, ethnic, religious or cultural matters, or incite persons to contravene the law; matters that may detrimentally affect the peace and good order, the safety and defence of the Republic and its people, the presentation of brutality, violence and atrocities.

Despite this, however, there was "continually negative reporting in some newspapers. One sometimes gets the impression that those newspapers report from a premise that only that which the Government for some or other reason would not like to see in print, is news." "What we do expect . . . is balanced presentation; which shies away from polarisation."²⁴

In June the government banned a *Newsweek* edition, expelled its South African bureau chief, Richard Manning, and refused to renew the work permit of Israeli freelance reporter Dan Sagir. *Learn and Teach* (a magazine for new adult readers) decided against publishing an issue after having been banned the previous two months. At least nine journalists were in detention.²⁵ On the first day of the second emergency, 13 June 1986, the Minister of Law and Order confiscated thousands of copies of the *Weekly Mail*. When the newspaper sued for damages, the Grahamstown Supreme Court held that Le Grange had improperly delegated authority.²⁶ *The New York Times* entitled

its story on the second emergency: "Tough New Curbs Against the Press." David Stewart, director of the Bureau for Information, told a news conference: "We are not kidding, we will not hesitate to take action" and advised reporters to hire lawyers to interpret the new law. Journalists should not call the government a "white minority regime" because it had two nonwhites (although without portfolio). "Journalists who use this factually incorrect approach will place their position in South Africa in jeopardy."²⁷ Deputy Information Minister Louis Nel answered journalists' questions about what was prohibited. A *Pretoria News* headline that day declaring "Isolation looms" could be subversive. It would be subversive to suggest that the emergency could last 21 years, like that in Rhodesia, and eventually be used by the ANC, or to quote Lord Acton's saying that power tends to corrupt and absolute power corrupts absolutely.²⁸

The *New Nation* began to publish bi-weekly at the beginning of 1986. On 27 June, less than six months later, editor Zwelakhe Sisulu was detained after giving a speech at the NECC conference. This was hardly his first experience in prison. In August 1979 he had been sentenced to nine months for failing to answer questions in the terrorism trial of Thami Mkhwanazi (a reporter for the *Sunday Post*, of which Sisulu was then news editor). In November 1980 the Pretoria Magistrate's Court cancelled the subpoena after the Pretoria Supreme Court set aside the sentence and ordered a retrial. The government responded the next month by banning Sisulu for three years and placing him under house arrest. He was detained again in July 1981 and released after six months. He was then sentenced to 18 months for refusing to testify against Khotso Seatholo and Masabata Loate, members of the exiled South African Revolutionary Youth Council, but acquitted on appeal. His banning order was lifted in 1982.²⁹ By the end of 1986 the *New Nation* had increased its circulation from a target of 20,000 to 50,000 and announced that it would become a weekly the following year.

When the Catholic Bishops' Conference met with government officials, the State President was furious. According to acting editor Gabu Tugwana:

He said that if they want to play any positive role in this country they should do something about the *New Nation* newspaper. Charity begins at home. That newspaper is not worthy of any church belief. It is nothing but communism. . . . The examples [Botha offered] were the carrying out of women's rights . . . the claim of labor rights and the struggle for recognition, as well as having comments about the communist leadership organizations.³⁰

In July several publishers and authors launched the Anti-Censorship Action Group, which criticized bookstores for their reluctance to carry unbanned books.³¹ *Weekly Mail* contributor Mike Loewe was released from detention at the beginning of September but placed under restrictions prohibiting him from writing for publication, being involved in the UDF or ECC, or attending any meeting where the government

was criticized.³² The international *Index on Censorship* carried a detailed account of repression during the first five months of the second emergency.³³

The government boldly attacked other threats to public order. A Publications Committee declared that "Famous Dead Man" at the Black Sun cabaret in Johannesburg was "undesirable" because "Dr Verwoerd [had been] chosen as a symbol of a large section of the Republic in an attempt to insult and degrade them." The Committee had met at the urgent request of Home Affairs Minister J C G "Stoffel" Botha; neither Minister nor Committee had seen the revue, which had run for eight weeks. Following the order three plainclothesmen warned proprietor George Milaris and actors Robert Colman and Matthew Krouse that they would be arrested and the audience dispersed if the show were performed. The next week the two actors, who had suspended performances, received telephone threats and were fired from their jobs selling mock-tile roofs to southern suburbanites.³⁴

A Publications Committee also banned the children's picture book "Two Dogs and Freedom." Maj. John Horak of the security police testified that the book had been prepared at The Open School, "a system of alternate education which endeavoured to break down society's existing structures and values and bring in a new order." It portrayed township children as a "suppressed group" and fostered hostility toward the security forces, seeking to radicalise the situation by promoting a White/Black confrontation. He said its title expressed township residents' feelings they were treated like dogs. (Horak had been the morning group manager of South African Associated Newspapers and had worked for the security police while employed by the *Sunday Times*.) The title actually was taken from a young boy's caption for his pictures: "When I am old I would like to have a wife and two children, a boy and a girl, and a big house and two dogs and freedom. My friends and I would like to meet together and talk." On cross examination Horak acknowledged he had no training in psychology or communications and had urged the Directorate of Publications to ban some 80 publications that year. The Publications Appeal Board appreciated Horak's "frankness and sincerity" but concluded that these did not constitute "sufficient evidence of expertise in the field of media-influence on emotions." As a complainant, furthermore, his objectivity was questionable. Whereas the Publications Committee had regarded black schoolchildren as the likely readership, the PAB felt it was directed at adult readers; some might find it interesting, moving, and optimistic; others would see it as exaggerated and one-sided. The PAB overturned the ban.³⁵

Libel actions also threatened press freedom. Inkatha sued the *Sunday Tribune* and editor Ian Wylie for R20,000 for insinuating that it had attacked the National Education Crisis Committee conference in Durban the previous Easter, intending to kill delegates. Six months later Justice van Heerden dismissed the action, holding that an artificial person could not be defamed.³⁶ Six months into the second emergency even the established papers belonging to the Newspaper Press Union criticized the regulations, although they hastened to assure the government: "[We realize] that South Africa is being subjected to a many-pronged but well co-ordinated revolutionary onslaught . . .

[and accept] the need to do everything in our power to avoid giving support and encouragement to those seeking revolutionary change by overt as well as covert means."³⁷ On 11 December 1986 the government consolidated its censorship laws, broadly proscribing "subversive statements," the description of security action, the deployment of security forces, and security technology, detentions, and setting forth procedures for seizures or banning.³⁸

On 7 January 1987 eleven newspapers carried a full-page advertisement asking the government to unban the ANC. Within a day Police Commissioner P J Coetzee issued an order prohibiting publications from explaining the policies of banned organizations. The *Weekly Mail*, which was to appear on 9 January also contained the ad. SAP Maj. Zaalman telephoned the paper at 9pm on 8 January warning that the order took effect at midnight and threatening to seize the issue if it contained the ad; with the permission of the security police the *Weekly Mail* decided to run the center-spread blank. The *Argus* and *Saan* newspapers immediately filed an urgent application seeking an interdict against the regulations. On 29 January Justice H Daniels of the Rand Supreme Court invalidated them, while upholding others prohibiting anyone from encouraging support for banned organizations. Disregarding the clause ousting courts from reviewing Emergency regulations, he found that the Commissioner of Police was not empowered to make orders for the entire country. By midnight Law and Order Minister Adriaan Vlok had issued additional regulations defining a new category of illegal subversive statement—encouraging support for unlawful organizations. At the same time, the State President empowered the Commissioner of Police to prohibit any publication in the interest of public safety. The next day the *Weekly Mail* carried the ad on its front page. But the Commissioner of Police soon outlawed any advertisement "defending, praising, or endeavouring to justify any of these organisations' campaigns, projects, or actions." The UDF and the Release Mandela Campaign, which had dropped their challenge to the earlier regulation in favor of the *Saan/Argus* lawsuit, now sued to enjoin the new ones. The State President directed Judge President Munnik of the Cape to investigate who had paid for the offending advertisement. He reported in April, criticizing Chris Ball, president of First National Bank (formerly Barclay's), for allowing an overdraft by attorney Krish Naidoo; the R100,000 cost actually was paid by Yusuf Surtee, a businessman.³⁹

While these events transpired press and government continued to spar. The government expelled *New York Times* bureau chief Allan Cowell, the fifth foreign correspondent to be ousted, while giving Michael Parks of the *Los Angeles Times* a three-month reprieve.⁴⁰ The international human rights group Article 19 called for the release of Zwelakhe Sisulu.⁴¹ The government charged *Cape Times* deputy news editor Tony Weaver under §27(b) of the Police Act for giving an interview to the BBC about a shootout in Guguletu in March 1986, nearly a year earlier, in which seven alleged ANC guerrillas were killed. This was the first time a local journalist had been charged for material published abroad. Weaver reported that the mothers of two victims believed their sons had been shot by police, who then planted weapons on them. The women

denied their sons were involved in politics, claiming that they had been on their way to find work.

When the case was heard in May, Weaver's colleague Chris Bateman (a Zulu speaker who understood Xhosa) testified that he arrived at the scene soon after the incident and interviewed three residents of a hostel overlooking the intersection where it occurred. One saw the police shoot a man in the head as he lay on the ground. Another saw the police shoot a man with his hands in the air. The third saw the police grab a man, take a pistol from his belt, knee him in the stomach and knock him to the ground. After another policeman shouted "shoot him" the witness heard three shots. SAP Maj. Dolf Odendaal, by contrast, testified that a hand grenade had been thrown at the police van. He then saw one black fatally wounded, another lying on the road on top of an AK47 with three magazines, the third lying nearby with a hand grenade, and the fourth with a revolver. He naturally denied planting weapons. The defense offered the evidence of trauma expert Dr. Johan van der Spuy, who testified that one man's wounds were vertical (showing he was shot while lying on the ground), another had a flash-burn (although police testified he was shot from a distance), and two were shot behind the ears. Van der Spuy, himself a marksman, said that was "remarkably good shooting on moving targets." The police destroyed shrapnel and bullets found in the men's bodies after the inquest, although they knew this prosecution was pending. The police records concerning the bullets had been amended in a different handwriting.

In September Mag. J M Lemmer acquitted Weaver. He rejected the state's evidence and accepted the uncontradicted medical evidence. He also could not doubt the eyewitness testimony of the three defense witnesses. Even were it false, Weaver had had reasonable grounds to believe it. Seeking to capitalize on his victory, Weaver expressed the hope that the Attorney General would reopen the inquest into the death of the alleged guerrillas, since the presiding magistrate had refused to allow oral evidence or cross examination of the police witnesses. He asked for an investigation of the disappearance of court exhibits and alterations to the police register. And he wanted to know why three other charges concerning *Cape Times* reports of the same incident had been dropped at the start of the trial. Of course, nothing happened.⁴²

During debate on the PFP's no-confidence motion in February 1987, the State President reiterated an April 1979 speech on the media.

I recognised that the Press should be free. I also recognised that in a democratic system, the Press has the right to criticise, the right to serve as a watchdog on behalf of the public. . . . However, a free Press is a responsible Press. . . . And last year I went out of my way to make an appeal to the media and to tell them that South Africa was being threatened. Sons of South Africa are dying on the borders of this country. . . . [W]e invited the Press bosses, the chairmen of the four large Press companies, viz Argus, SAAN, Nasionale Pers and Perskor. . . . I spoke to the heads of these press groups [on 28 November 1986]

and said to them: "Listen, we cannot carry on this way. Wittingly or unwittingly the hand of a diabolical enemy is being strengthened." . . . As regards the bloodshed we have had in the urban area or townships, had we not removed the television networks they would still be continuing to instigate them. . . . [Their removal] brought peace to these Black areas. . . . [On 28 November] we put a suggestion to [the Press bosses.] We would not subject those newspapers belonging to the Press Union to emergency regulations provided the Press Union undertook to implement discipline itself. We furnished them with the guidelines of what we wanted for the sake of South Africa's security. . . . They went back and some of them were unable to stand up against their editors. When on 9 December a Cabinet committee held a meeting with them they themselves stated that we should apply the regulations to everyone.

He reassured the press that they were still free to report whatever was said in Parliament and by Parliamentary candidates.⁴³

PFP MP David Dalling responded.

Until about the middle of last year . . . the Press in South Africa has been regarded as relatively free, certainly in comparison with the Press around the the [sic] rest of Africa. This can no longer be said. . . . The prohibition on the reporting of news relating to the actions of the security forces, restricted gatherings, funerals and boycotts, "people's courts", unofficial civic committees and the arrest and treatment of detainees is virtually watertight. The police have the arbitrary right to censor, seize and even close down publications which they believe are transgressing their regulations.

On pain of very heavy penalties "subversive" statements are banned. "Subversive statements" are so widely defined as to mean virtually any criticism levelled against the Government or the security forces. What is worse is that when the courts do intervene on the application of an offended party or newspaper and set aside some of the provisions, the Government moves swiftly to re-enact the same provisions, making them even more restrictive. So much for our independent courts! . . . The bad news has virtually been wiped off the pages of the newspapers and television screens worldwide. . . . the Press is the street light of society. . . . When the street light is turned off the temptation to behave badly is very strong indeed. . . . [T]hese regulations . . . allow the Government to dishonestly manipulate the news and deceive the public.

After the Speaker made Dalling withdraw the word "dishonestly," he accused the State President of "a serious attempt to smear the character of Mr Chris Ball." Ordered to withdraw the word "smear," Dalling substituted "slander."⁴⁴ When Ken Andrew called

Botha's attack on Chris Ball a "cowardly slander," he was forced to withdraw the "cowardly."⁴⁵

The Newspaper Press Union, representing establishment papers, accepted Botha's invitation to negotiate with the Cabinet about forms of self-discipline that would exempt them from censorship, but Botha cancelled the 13 February meeting at the last moment, reminding the press of its promise not to support those advocating revolutionary change. Nasionale Pers managing director Ton Vosloo responded by criticizing the reluctance of the English press to police itself and its employment of "journalists who have been punished in court for deeds of subversion and terrorism."

The alternative press continued to suffer repression. *Cosatu News*, with a guaranteed circulation of 200,000, saw its first two issues banned.⁴⁶ *SASPU National* and *Free Azania* were ordered to submit all issues to censors before dissemination; only *The Voice*, published by the South African Council of Churches, had ever suffered such treatment.⁴⁷ The police also had detained and then banned the first two *SASPU National* editors and were detaining two of the paper's full-time workers and several distributors and writers; the editorial office and all its equipment had been destroyed by a fire soon after the June 1986 emergency. The government banned an issue of *The Namibian* for a front-page photograph of an SADF military vehicle parading the corpses of two alleged SWAPO guerrillas but then rescinded the ban because the paper belonged to the Newspaper Press Union.⁴⁸ A Publications Committee banned two February issues of the *New Nation* after they had been circulating for a month. The police repeatedly arrested journalists and confiscated film.⁴⁹

In March the police confiscated an issue of *The Star* containing a Detainees Parents Support Committee advertisement calling for observance of National Detainees Day. Later that month attackers petrol bombed Ravan Press, inflicting R20,000 damage and scrawling "communist pigs" on the walls.⁵⁰ Police were considering charges against the *Weekly Mail* for publishing an eyewitness account of a clash between security forces and Mawu at a 1986 Durban rally. Police held and questioned Agence France Presse photographer Walter Dhladhla and freelance journalist Nana Kutumela, confiscating their film. They subpoenaed Jo-Anne Richards of *The Star*, demanding the names and addresses of physicians she had interviewed for a September 1986 report on 40 ex-detainees who complained of torture (see the Working Paper on Wendy Orr).

The government charged reporter Jo-Ann Bekker (who had moved to the *Weekly Mail*) and reporter Debbie March and editor-in-chief Koos Viviers of the *Eastern Province Herald* under the Police Act for a front-page article on 4 February 1985 (more than two years earlier) describing police firing teargas cannisters into a church and throwing stones at houses in Lingelihle township, Cradock. Bekker had won awards in both 1984 and 1985 for reporting on the Cradock conflict. March was acquitted when Mag. Gert Steyn found that she had merely obtained the police response to the allegations and communicated it to Bekker. At the trial in June the SAP press liaison officer, Capt. Peet Grobelaar, initially denied a "gentleman's agreement" with the

Newspaper Press Union allowing a paper to criticize the police as long as it gave them "ample and fair opportunity" to comment. When defense counsel presented the court with two sets of NPU minutes referring to the agreement Grobelaar sought an adjournment and then acknowledged it, after consulting his superiors in Pretoria. Bekker testified that early in 1985 Col. Gerrie van Rooyen, Eastern Cape police liaison officer, suddenly refused to respond when she asked for comment on the events. Prosecutor Hennie van der Walt asserted that the article had been "kindling on the fire" in the township. The magistrate convicted Viviers and Bekker, fining them R100 suspended for a year and R200 suspended three years, respectively. He found some press statements untrue, read the police-newspaper agreement as requiring simultaneous publication of the police version, and concluded that the paper had not made reasonable attempts to obtain police comment.⁵¹

At the *Weekly Mail's* first Festival of South African Cinema the government banned three films at the last minute: "Choosing for Justice" by Hugo Cassirer and Nadine Gordimer, about Alan Boesak; "Reasonable Men" about a confused P W Botha being suffocated by the national flag (with music by the rock group Kalahari Surfers); and "No Middle Road to Freedom," about the ANC. All had been shown at other festivals.⁵²

Other pressures on the media came from non-governmental sources. In April, three *Ilanga* reporters who had written about corruption in the KwaZulu government had to flee with their families to a hotel because of threats. The bi-weekly *Ilanga* was the largest vernacular paper in the country, with a circulation of 105,000 and a readership over 1.2 million. Three days later Natal Newspapers sold it to Inkatha, whose general secretary, Dr. Oscar Dhlomo, became the paper's managing director. Mdu Lembede, father of the *Ilanga* chapel of the South African Society of Journalists, said many of the 20 editorial staff opposed party ownership, feared for their lives, and wanted to move to another Argus newspaper. Natal Newspaper Managing Director Ed Booth told them to resign. Within a week all staff stopped work, even Inkatha supporters. Inkatha brought out the first edition using non-journalist employees of the KwaZulu government. Buthelezi attacked the strikers, calling Lembede the ANC's "fetch and carry boy."⁵³

On election day at the beginning of May the government expelled Australian Broadcasting Corporation journalist Richard Carleton and an assistant for "reports containing gross untruths about South Africa which they wanted to send to Australia." He had taped an interview with Unisa constitutional law professor Marius Wickers, Dr Ian Philips of Natal University (an expert on resistance movements), and journalist Otto Krause, commenting on violence in Soweto, the lack of choice in the impending national elections, and the continuing imprisonment of Mandela.⁵⁴ After the election the government expelled BBC reporter Michael Buerk and ITV News reporter Peter Sharp for covering police action against UCT students. It also denied permanent residence to Jon Lewis, editor of the *South African Labour Bulletin*, ordering him to leave within 30

days. Earlier in the year the government had issued and then rescinded a similar threat to Wits professor Phillip Bonner, also connected to the *Bulletin*.⁵⁵

The alternative press suffered constant harassment. Cape Town journalists Rashid Seria and Mansoor Jaffer, who had founded *Grassroots* in the Western Cape, launched the one-page Afrikaans tabloid *Suidkaap Nuus* in Oudtshoorn in 1983. It was so successful they renamed it *Saamstaan* (stand together) and put out six editions in 1984, dealing with community opposition to elections for the tricameral parliament, housing, and nonracial sport.⁵⁶ In December 1984 the government charged Derek Jackson (a full-time *Saamstaan* organizer) and Humphrey Joseph with attending an illegal gathering; they were acquitted 11 months later. In 1985 the paper's offices in Oudtshoorn's "coloured" township Bridgton were burned three times. In September the government detained Jackson, Joseph, and treasurer Louis Noemdor under Internal Security Act §29. They were acquitted of subversion in February 1986. The next day the government rearrested Joseph and charged him under the Police Act. He was found guilty in May 1987 and fined R100 (suspended for three years) for an article entitled "Children Cruelly Shot," which mistakenly reported three victims instead of two. An inspector from the Department of National Health and Population Development was investigating the newspaper's finances because it obtained support from two Dutch Roman Catholic church groups.⁵⁷

Billy Paddock, a Durban freelance photographer working for Reuters, took pictures of 60 placard demonstrators on 6 May. The police arrested him together with 40 demonstrators and seized two rolls of film. The next day he photographed a march by hundreds of students around the University of Natal-Durban. The police sjambokked them and arrested 18, as well as Paddock, confiscating two more rolls. He was held overnight, charged, and released on R250 bail—without the film. When he challenged the state's actions in court the state counsel conceded that the Emergency regulations promulgated in December 1986 had been held invalid by the Natal Supreme Court and agreed to pay the costs of his application. But the state kept his film as evidence in the prosecutions of the demonstrators and failed to drop the charges against him.⁵⁸

In June, Aubrey Mokoena, Winnie Mandela, and the Release Mandela Committee filed another legal challenge to the new Emergency regulations, including the definitions of a subversive statement and security force action, the power to confiscate publications, and the ban on publishing blank spaces. The underlying argument was legalistic: the Emergency had been renewed before it had expired, and the State President could not have "properly formed" the opinion that the ordinary law of the land was inadequate to deal with the situation.⁵⁹ In August Magistrate W P J Marais, who was conducting the inquest into the first death of a reporter during the unrest, found that cameraman George De'Ath had been killed by an act or omission amounting to an offense and referred the matter to the Attorney General for prosecution.⁶⁰

II. THE 1987 EMERGENCY MEDIA REGULATIONS

This incomplete synopsis demonstrates that the government had ample power to control the media. Arson and bombs threatened the more intransigent. Nevertheless, on 11 June 1987, the eve of the expiration of the first full year of emergency, the State President promulgated a far more restrictive regime.⁶¹ This regulation prohibited the publication of: any information concerning actions by the security forces, any restricted gathering, boycott, illegal organization, people's court, restricted person, or detention or release of a detainee; any blank space; or any subversive statement, including discrediting compulsory military service or encouraging people to

participate in an illegal gathering or attack the security forces,
oppose any member of the Cabinet of the Republic or of a homeland or
any member of the security forces,
take part in a boycott against a business, product, or school,
engage in civil disobedience by refusing to obey any law [such as
conscription] or pay for rent or services,
stay away from work,
attend any restricted gathering,
join or support any unlawful organization or take part in or support the
organization's campaigns,
establish institutions of dual power,
participate in people's courts,
commit any other act named by the Commissioner of Police in the
Government Gazette.

The Minister of Home Affairs and the Commissioner of Police were authorized to seize any issue violating these regulations; the Minister also could ban the publication for three months if "necessary in the interest of the safety of the public, the maintenance of public order, or the termination of the state of emergency." In order to do so, however, he had to follow strict procedures: give warning in the Gazette; find a subsequent issue in violation of the regulations; give notice in writing to the publisher that he was contemplating suspension and state the grounds of his proposed action; and give the publisher an opportunity to reply in writing within two weeks. Violation of the regulations was punishable by a fine of up to R20,000 or imprisonment for up to ten years. At the end of July a Conservative MP condemned *The New York Times* for articles about Moutse and Oukasic (see those Working Papers) entitled "Uprooting of Blacks Resumes in South Africa" and "South Africa apparently reviving its policy on forced removals of Blacks." He asked "why the Government did not place an embargo on the whole lot [of foreign correspondents] in South Africa."⁶²

Two months after promulgating the Emergency media regulations, Botha addressed Parliament, dwelling on "the negativism which is being fostered in many parts of our country."

I am being called names about actions against the Press and the media. From the very start I tried to do my share. We held frank discussions, and are still doing so. There was no shortage of goodwill on the part of the Government. . . . I have never feared justified, well-founded criticism from the Press. . . . My problem was, and is, that some Press organisations, and some members of the Press, disregard their obligations and responsibility to a large degree.

As far back as nine years ago, some tragic evidence of decay was visible in a section of South African political journalism. It was as if a devil of political devastation had taken hold of sections of our journalism. In recent times we have seen a repetition and an aggravation of this phenomenon.

He had invited NPU members to Tuynhuys after arranging "for them to be informed in the greatest detail on the nature, extent and tactics of the forces of revolution that were unfolding against the country." But they "refused to co-operate voluntarily with the Government to avert a threat against the entire community." Indeed, "some sections of the newspaper industry in South Africa have continued as if their aim were to urge the spirit of revolution along. Through their actions a large part of the Press has brought South Africa into disrepute."

They indulged in "blatant distortion and stage-setting . . . misrepresentation and the creation of negative perceptions." The "so-called 'alternative media' . . . unashamedly support the leftist radical groups and views in the country." He deplored "the sudden increase in so-called alternative news agencies . . . [which] supply what they call 'news reports' to existing and alternative newspapers, but which in fact amount to nothing but propaganda." Their tactics included "the conspicuous omission of positive events or negative reporting on positive events . . . repeated use of old examples and archive material of the most negative examples on record . . . careful selection of news events, statements and photo material which benefit leftist and radical organizations and trends and put them in a positive light . . . the selective application of facts that are not incorrect in themselves, but which create an incomplete and distorted image as a result of their selectivity . . . the calculated use of editorials in an attempt to subtly violate the truth and to propagate a leftist and radical message on an almost continuous basis." He cited an article alleging that Pretoria backed Renamo. "This is a lie. It is a deliberate, miserable lie, and yet a newspaper in South Africa is allowed to print these lies!" He cited another condemning the Government for seeking to discredit contacts with the ANC. "I say that this is another lie. It is a deliberate lie, written by a man deliberately trying to lie to the people of the country."

Botha ended his speech by trying to strike an upbeat note but inevitably revealed his anger at the same time: "With all due respect and apologies to the late Sir Winston Churchill I should like to say: Never in the history of a country did so few do so much for so many without acknowledgment by the international community."⁶³

The following week Home Affairs Minister Stoffel Botha restated "the standpoint of this Government" on freedom of expression during the debate over his departmental budget.⁶⁴ He quoted and endorsed the Code of Conduct adopted by the NPU Media Council.

Recently, however, a completely new and different kind of publication has appeared. These publications appear as newspapers or newsletters that are served by their own news agencies. They are easily recognised by their total contempt for the high Press norms that have been laid down over the centuries. They support a specific matter and display no qualms of conscience at the use of dishonest and deplorable methods in order to promote their dubious objectives.

This sector of the press was "revolution-supportive." They sought "radical change in a political and social system by means of violence"—the very aims of "our enemy the ANC." "A political revolution is always synonymous with violence."

Unfortunately, it was "not so easy to determine exactly which actions are deliberately of [sic—read "or"] inadvertently directed at the furthering of revolution." "Revolution is a process; it results from the implementation of a revolutionary strategy. In implementing the strategy, elements of the media play an extremely important role." "On 7 May this year the editor of the official ANC mouthpiece, *Sechaba*, said the following in a broadcast on *Radio Moscow*":

The press is one of those weapons we are using in the struggle against apartheid. We can also, through the press, mobilise the international community. And with regard to the question of the isolation of apartheid; the question of sanctions; the question of direct material and moral assistance to the ANC; the diplomatic isolation of apartheid at the United Nations and such forums, we feel that the press is as important as the gun. The one who is wielding the gun is playing the same role as the one who is holding the pen.

The ANC youth wing magazine, *Forward*, said in 1983: "we must campaign that the local newspapers and our own civic papers publish the profiles/biographies [of jailed leaders] so that they get the widest publicity." ANC Secretary General Alfred Nzo said on the organization's 75th anniversary in 1987: "Organise with the mass media to highlight the struggle of the people of South Africa." The danger, Botha said, was that

any responsible government, like ours, will naturally allow lawful actions to alienate support from it. . . . The critical point in the promotion of revolution lies in the building of support for the revolutionaries by way of praising its leaders, its flag and other symbols. . . . Certain elements of the media are assisting the enemy in this regard. . . . Mao Tse Tung made the well-known statement that the masses are to the terrorist as the

ocean to a fish. . . . Support such as that which the revolutionaries expect of the media can also lead to the recruitment of terrorists. . . . to be successful on a violent level the revolutionaries rely on the masses being mobilised in a subtle way, *inter alia* by the media. Their attempt at revolution can therefore not be successful without this support-generating propaganda. . . . elements of the media are generating support for the revolutionary organisations by dealing with the revolutionary organisations and their symbols in an ennobling and propagandistic way. . . . The Government is not going to allow this sector of the media . . . to continue unchecked. . . .

The subtle forms taken by revolutionary propaganda are legion. I am going to refer to only a few. The existing order is condemned as being repugnant; however, nothing bad is said about the revolutionaries, although a great deal is said about them. . . . A whole string of negative appellations are associated with the Government and its leaders. Detestable key words and slogans are repeatedly used in the process of negative association and conditioning. This kind of reporting boils down to atrocious support-generation and image-building for the violent movement.

The law was insufficient to deal with this threat. "The existing emergency measures in regard to the media are primarily aimed at controlling and prohibiting certain defined offences. . . . They are not intended to restrict propaganda. . . . It has become clear to the Government that this propaganda and resultant actions must now be controlled."⁶⁵

PFP MP S S van der Merwe responded: "We have witnessed this afternoon a performance by the hon the Minister which I must frankly describe as no less than bizarre." His tirade "on revolutionary strategy . . . [was] a lecture which we have heard *ad nauseam* from the hon the State President, the hon the Minister of Defence, the SABC and many other sources." He attacked Stoffel Botha for failing to inform Parliament of the content of the regulations. In a "normal democratic society" these would have to be approved by Parliament. Instead, Botha "denies this House the common courtesy of expressing its views. It shows nothing less than contempt for Parliament, which that hon Minister shares with the hon the State President. . . ."

Van der Merwe told "the Minister quite frankly that I reject his Government's 'commitment' to Press freedom with contempt. I believe it is a lot of hogwash—mere empty words. And when they talk about the loss of Press freedom they shed crocodile tears." "[T]he performance of the hon State President a few days ago in this House was quite a lot worse when he too dealt with the Press." The statements from the *Cape Times* he called a lie were "clearly an expression of an opinion." "[T]he State President has shown signs of having reached the stage at which he can actually no longer stand criticism, of whatever nature. . . . He has reached a degree of intolerance which makes it impossible for a man like him to function sensibly within a democratic system."

Stoffel Botha asked the PFP position on "certain propaganda that was being disseminated by a certain section of the Press." Van der Merwe replied bluntly: "if there is freedom and there is democracy, one must be prepared to tolerate that kind of propaganda."⁶⁶

A Nationalist asked van der Merwe "where in the councils which enjoy the support of the ANC does he find this form of press freedom?" The alternative media were "guilty of the grossest forms of exaggeration. They are guilty of conduct which can sow ever-increasing suspicion among the people of this country and consequently they are threatening the whole substructure of South Africa." As evidence he quoted anti-Semitism from *Die Stem* and the ECC's *At Ease*.⁶⁷

PFP MP David Dalling criticized Stoffel Botha for failing to allow members to read the forthcoming regulations and asked "whether this method of introduction was a means to prevent a debate on the very points he was about to make. . . . Is this not a kind of junior school debating trick which he is perpetrating upon the Parliament of this country?" Dalling saw no reason to apologize for the fact that the alternative newspapers, most of whose journalists were black, "do not claim to be unbiased. They are strongly anti-Government in both their reporting and their content." But this did not justify new curbs. The alternative press, "rooted in its community, provides a very real safety-valve for the rising temperature of its readership. . . . the Press does not create grievances. It merely reports on the grievances and highlights them. . . ." If the newspapers presented such a grave threat and broke the law, why had it not been used against them?

If the report we read, is correct, it is clear that the Government is once again bypassing the courts of our country, allowing of a politically motivated subjective ministerial opinion to hold the power of life and death over the Press in a manner in total conflict with natural justice.

The Star was to celebrate its centenary in two months. "Visiting publishers, editors and newsmen from all over the world are going to be here. . . . the Minister will spark a media outcry such as he has not seen before. We might as well close all our embassies around the world. . . ." ⁶⁸

A Nationalist MP responded that "an estimated two million people in the Republic of South Africa read this left-wing radical Press reports . . . [and] are brainwashed in turning their back on the state order in South Africa." He quoted an article entitled "Moscow youths—they will never face unemployment," in the June issue of *New Era*. "Capitalist economies put the profits of the bosses before the needs of the people. A socialist society like the Soviet Union will not retrench workers. There are no bosses in a socialist society." He urged that "the funding of these publications be investigated." "Licensing or registration of news agencies must also be introduced." Quite a few had emerged, "manned by retrenched left-wing reporters." "They are in contact with the hostile world and continue without any control being exercised over

them, to disseminate their articles on South Africa." "[M]echanisms must be created to bring freelance journalists under control. . . . there are people in South Africa posing as journalists who are intent upon and whose greatest task is that of bringing this country to its knees." Just a month earlier *South* had published an article headlined "The true face of the ANC" about the meeting with South African leaders in Dakar.⁶⁹

Only at the end of the debate did Stoffel Botha offer any account of the regulations to be published the following day. They would allow him to suspend newspapers that systematically or repeatedly published material promoting revolution, uprisings, or the breaking down of public order, stirring up feelings of hatred or hostility towards a local authority or security force, or promoting the public image of unlawful organisations, the activities of unlawful structures, or boycotts or civil disobedience. He reassured Parliament, however,

that the enforcement of the regulations will be aimed at the optimum maintenance of democratic practices. The rules of natural justice are duly taken into consideration. The *audi alteram partem* rule, *inter alia*, is respected. A comprehensive administrative process is being created.

Based on a series of issues, publications would be notified in writing, "the grounds being stated," and given two weeks to submit written representations. Thereafter he could gazette a warning that continued publication of such matter would lead to suspension for up to three months. He expected the "organised, conventional media" to respect the regulations, which therefore would apply only to the "unconventional, revolution-serving media."

All interested parties should be assured that my office and I shall be available at all times for discussions on the many issues that could result from the implementation of this measure, and we shall welcome open discussions.

AN HON MEMBER: So the door is open?

BOTH: The door is open

P G SOAL: The door is open but your mind is closed.

Botha reminded members that the communists "follow the strategy that democracy should be used to destroy democracy, and the church to destroy the church. Does the same principle not apply in using the free Press to destroy the free Press? This appears to be the case, if we look at the rest of Africa." "[F]reedom of the Press is not absolute. In the United States of America the courts have consistently and repeatedly held that the Government may place limits on the Press." A "most eminent Supreme Court judge" had said that First Amendment rights were "subject to restriction, if the particular restriction proposed is required in order to protect the State from destruction or serious injury, political, economic or moral. . . ." Therefore, "what we are doing here is not something that is unknown in the rest of the so-called civilised world." He assured Parliament "that our system of publications control is one of the best in the

world." "To prove how quick and up to date the Publications Act and the Publications Directorate are," just the previous day it had found the August 1987 *Die Stem* undesirable and prohibited it. Nevertheless, the Publications Act "does not have any potency. . . . all that is happening is that the newspaper may not be distributed. It is not prohibited and consequently we need more legislation. . . ."70

The next day Botha gazetted regulations allowing him to suspend a daily newspaper on the basis of six issues, a weekly on three, and a less frequent publication on two. They added new grounds for a warning leading to suspension, namely material which has or is calculated to have the effect of:

promoting or fanning revolution or uprisings or other acts aimed at the overthrow of the Government,
promoting, fanning, or sparking unrest or the breaking down of public order,
stirring up feelings of hatred toward a local authority, security force, or any population group,
promoting the public image or esteem of any unlawful organization.

The Minister had to issue a warning, give the publisher two weeks to reply in writing, and then find a further violation. In each instance, it was sufficient that he hold the opinion based solely on an examination of the publication; this appeared to eliminate any objective criterion and thus any possibility of judicial review. Both sets of regulations were made retroactive—publications could be suspended on the basis of matter that had appeared *before* the regulations had declared it illegal. Once the Minister found a subsequent violation he could either suspend the periodical for up to three months or order it to submit all issues during that period to a designated person for prior approval.⁷¹

Botha elaborated the government's motivation in a contemporaneous interview. Asked whether it would not be better to allow courts to review offensive material, he conceded that "this is a very sound statement in normal circumstances."

But we are not living in normal circumstances in South Africa at the present time. Since 1985 we have experienced severe uprisings; we have experienced a sustained propaganda campaign. And the fact that the government only recently took measures to try to curb the propaganda which is emanating from certain publications . . . does show that it tried to follow the normal procedure of courts. . . .

But in considering the realities, our courts will be overcrowded if we follow this particular procedure. . . . the very reason why the legal system is such a sound one, makes it also a very drawn-out system. From the moment you start investigating, until the time when the judge decides on his judgment, there are many months lapse of time. And that will not meet the situation which the government has to face.⁷²

The regulations provoked much criticism. The Black Sash demonstrated against them, declaring: "The Press is threatened, the universities are threatened, the Government's own severely flawed constitution is threatened, the funding of the opposition organisations is threatened, the organisations themselves are threatened and we seem to be sinking into a dark age of ignorance and mailed fist control." The South African Catholic Bishops' Conference agreed.

We advise those taken in by the Government's propaganda and the use of the communist bogeyman not to rejoice, but rather to mourn over these measures against the media. For it is . . . the people of the country themselves who are being deprived of a most important means of being informed about the other side of the story.

The Government, which is running scared, is fitting larger and tighter blinkers over the eyes of the white electorate to shield them from the ugly realities of South Africa today.

They will know even less of what their black compatriots experience and feel about those realities.

. . . the new measures will prevent the oppressed from making their voice heard as they cry out against the injustice and inhumanity to which they are subjected by the structures and agents of the apartheid system.

The Labour Party condemned the regulations: "It is clear that the government is not sincere in regard to negotiation and reform, but has rather chosen the path of repression." The Anti-Censorship Action Group declared that Botha's purpose was not to avert "revolution" but "to prevent criticism both of himself and his government." It denounced the Publications Control Board banning of particular issues of *South and New Nation* and the Directorate's demand for free copies of the alternative press as attempts "to muzzle and intimidate editors." The U.S. Embassy was "saddened to see that the South African Government does not trust its own citizens with information about the happenings in their country. We are sorry to note the action further removes South Africa from the code of Western values to which it professes to adhere." The International Press Institute in London called the regulations "a slap in the face" of free speech and "a total violation of human rights." Even the chairman of the South African Media Council acknowledged that the regulations would have "an additional inhibiting effect on the free flow of information reaching the public," although he welcomed the "safeguards against arbitrary banning" and the invitation to discuss.⁷³

In the beginning of September Stoffel Botha gave a lecture to 31 editors, explaining how to comply with the new censorship regime. Publications could promote the overthrow of the existing order by lawful means and criticize local authorities as long as the article "in its whole context does not propagate the violent overthrow of the State." But "if at the same time you praise the existence of an extra-parliamentary committee, say they are doing a good job and are better, if you praise the illegal organisation that is part of the revolutionary process, then you are in hot water." "I will watch closely what is being said about the revolutionaries." The government would act

to prevent "the free play of revolution-mongering." "It is not difficult to know which reports go over the bounds of strong and acceptable criticism." But he conceded it might be hard to determine the "fine distinction between general democratic criticism and that which is subtly part of the revolutionary process." "I realise I have to distinguish between criticism which is fully justified against existing government and existing order, which I must allow and in no way contain, and between the other criticism which entails the overthrow of the existing order by way of violence." He distinguished between the ANC, for instance, and Inkatha, which did not condone violent revolution. However, he refused to define what was outlawed: "That is something you cannot pinpoint by way of describing it in legislation." The government would favor newspapers that gave both sides of the story. Botha told the editors that he had created a new Directorate of Media Relations headed by Andries Engelbrecht, who had an M.A. in "human motivation" from the University of Pretoria. The Directorate would make "scientific evaluations," advised by a panel of experts in law, communications, psychology, sociology, political science, and journalism. He would not name them but promised that "they will not be fly-by-night and prejudiced experts." Although these regulations (unlike the Publications Act) covered the established newspapers belonging to the Media Council, Botha did not expect to have to act against them. His decisions would be "reviewable" by the courts, which could overturn them if he acted in bad faith.⁷⁴

Engelbrecht saw his new job as "definitely a hot seat." His staff of 5-10 would be mostly lawyers, although he planned to add sociologists, psychologists, and communications and journalism specialists. "The whole idea is to give as objective a view as possible." He acknowledged that discretion was unavoidable and would be seen as subjective. He did not view himself as a "super censor" but rather as "establishing good media relations."⁷⁵ A month later he offered a further justification.

If anybody thinks that South Africa has developed to that extent of intellectual development whereby we can say the majority of people in South Africa are so informed that we can afford the luxury of absolute freedom of the press, then they should look again at the realities.

South Africa is a country where you have a very small input of Western values, but by and large the Third World is with us. They are among us and live with us.

Those [journalists] dedicated to and qualified for their mission and profession now have to suffer a measure of statutory control, not only on account of the state of emergency but also on account of the hijackers of the journalistic profession or the newspaper method for their partisan objectives; the protagonists of subversive propaganda; the manipulators of copy, headings, captions and camera material; the instigators and promoters of a revolutionary climate by publicising acts of terrorism, intimidations by stage managing if they can't get their material any other way, biased highlighting and misinformation; by bias and band wagoning—in short, the abuse of communication in order to further

their own digressive views or the views of their misguided mentors. . . . If I read of intimidation I feel intimidated as well. . . . the Media Council in its present form proved incapable of adequately dealing with the subversive revolution-supporting periodicals, many of which are funded very far from the South African scene. These sprang up like toadstools after reform came into being.

No government can be expected to accept that freedom of speech goes that far that freedom of speech be totally ruined by the misuse of freedom of speech.

The emergency regulations . . . proved to be insufficient to curtail the subversive propaganda. . . . The question is why?

The answer is simply in the diversity and scope of the manifestations of relevant printed propaganda and publicity and the frequency of volume of same.

Propaganda and publicity *per se* cannot be adequately dealt with in terms of definitive criminal law and criminal law procedures during a state of emergency.

Finally it is [the Minister's] decision, and his decision alone. If the Minister decides to take action, it is done in the prescribed manner.⁷⁶

The Citizen, a pro-government paper, naturally endorsed the new censorship criteria: "There had been scientific studies which enabled one to determine whether criticism was permissible or whether it was part of a multifaceted plan to overthrow the government by force and to encourage violence." However, even *Die Burger* editor W. Beukes feared that decisions would be ideological.⁷⁷ The head of the Rand Afrikaans University Department of Communications found the "clampdown on the alternative media" very ominous. "It is only if the Government does not plan any change at all . . . that any changes which are advocated by the media will be perceived by it as 'revolutionary' in nature." Prof. Nina Overton warned that "things on which a people are forbidden to speak, become impossible for people to keep silent about."⁷⁸

One of the first people publicly named to the advisory panel was Dr. Isaak de Vries, an RAU political scientist who had been an expert witness for the state in 20 political trials, specializing in the "revolutionary onslaught." The failure of his testimony in the Pietermaritzburg treason trial had significantly contributed to the collapse of the state's case (see the monograph on the Alexandra treason trial). Others included Attie Tredoux (Botha's chief legal adviser) and Koos de Vries (a state legal adviser).⁷⁹ *Business Day* ridiculed the new Directorate's "selected list of publications on relevant aspects of revolution, communication and social research methodology," which would guide its actions. Rhodes University professor Peter Vale said it contained "outdated" theories and a "simple communications methodology" that "has been largely discredited." Wits political science professor Tom Lodge was scathing: "The list confirms the blinkered ideological and pseudo-intellectual character of what passes for

expertise with SA's civil service. It confirms the appalling philistinism upon which Ministers and policy-makers evidently prefer to rely when formulating decisions."⁸⁰

In a roughly contemporaneous interview Botha claimed to be a "media man" because he had been legal adviser to the Afrikaans Pers in the 1960s. (His firm, Van der Merwe, Hoffmeyer and Botha, were also the attorneys for the National Party.) "I know exactly the way media people think, and I have much sympathy for the difficult task they perform. I am not one of those who believe the Press is always wrong."

[Because] South Africa, in its demographic makeup, clearly falls within the Third World category, it is remarkable that it does conduct a very lively partial democracy and that its Press enjoys a considerable degree of freedom. . . . South Africa's developing people do not share a tradition of representative democracy . . . such people are also exceedingly vulnerable to simplistic ideology, agitation, inflammatory speech and pamphleteering. Critics of the government conveniently forget that most of the countries of today's industrialised West were themselves most undemocratic in their earlier development. . . . the people who wish premature full democracy and all its freedoms upon the country, must be considered to be either naive, or they must have other motives. The leftist radicals want a total takeover of power. . . . That is not to say that the government does not believe in Press freedom. The fact is, it does. And those who doubt that commitment need only read the opposition newspapers to see how government is constantly under attack and endlessly criticised for almost every deed.

[I]n any profession, there are restrictions on the way people may practise. A lawyer also has to act within certain confines, so does a doctor, and so forth. Certainly, in view of the State of Emergency, more restrictions have been placed on the Press in the past 18 months, but I maintain that you are still able to publish facts and comments which you obtain independently.⁸¹

He passed the buck to the Ministers of Defence and of Law and Order concerning restrictions on press reports about the security forces but added:

The police at times do not want people to be at particular places and they do not allow journalists into the townships during unrest.

[Q. So journalists are not free to report on what is happening?]

That is correct. And the reason is that it has been found that newspaper reporting, and particularly television reporting, does not simply involve reporting on events, but in fact stimulates the unrest situation.

Botha sought to explain and justify his newly acquired power to close newspapers.

[T]he publisher is given the opportunity to make representations and even though my decision is not subject to appeal, a court can still review any decision I make if I fail to apply my mind to the matter or act without *bona fides* or if I do not follow correct procedures. . . . I cannot merely say: "New Nation, I dislike you; I now close you down." I must indicate right from the start to the publisher that "that article, and your next one, and your next one incited violent action." . . . If a particular article did not incite violence, and I based my decision on such an article, then he can take me to court. . . .

In response to the suggestion that he had such broad discretion in construing "subversive statement" that the press had to steer clear of controversy, Botha quoted the regulations at length and added:

It is a fact that we are in a revolutionary state. It came to the boil about 18 months ago and various measures were taken to control it. But some publications—mainly the so-called alternative press—have been publishing propaganda of a revolutionary nature . . . promoting the violent overthrow of the existing order, not the evolutionary replacement of government by constitutional means.

When Schneider asked how those without political power could seek evolutionary change, Botha replied:

Government has already created various forums in which black people can enjoy the vote. The National States and township boards are examples, and now government is planning the National Council. . . . The media regulations are part of our efforts to stabilise the situation so that we can carry on with our reform programme.

Botha explained why the government needed to augment its already expansive powers under the Internal Security Act.

Existing laws and regulations do not cover the field of "revolutionary" propaganda. . . . I know it is an extraordinary measure. As a lawyer I do not like it, as a media man I do not like it. The procedures required, in terms of the Internal Security Act, to close down a publication on account of its subversive propaganda activities are laborious.

He justified the continued detention of Zwelakhe Sisulu, who had been in prison for more than a year.

Every country has a set of laws, whether you like them or not. . . . I am sure that very careful consideration has been given to his case. There are many countries with similar rules and regulations. But nevertheless, we

have more democracy here than, for example, Zimbabwe. . . . we know what the situation is in Africa. There are forces intent on destroying the whole system here, and we have to use measures which are not necessarily the ones we would prefer. I would much rather use the courts in order to obtain action against the Press. But we will flood our courts. You know how long it takes and what procedures are involved to prosecute a transgression by a newspaper. It will take six months and, meanwhile, that newspaper can continue doing the things which we judge not to be proper. . . . the media have become more than observers of the scene. They have become participants, as someone said . . . "on the great battlefields of perceptions where modern conflicts rage as much as they do in steamy jungles or shantytowns". They are the field commanders.

Schneider's efforts to get Botha to define the kinds of articles he would find objectionable prompted the following exchange.

I cannot go into that at this stage. What I want is that a balanced view should be presented. You cannot present only one side of the story.

Q: If I interviewed Oliver Tambo, if I critically examined him on such issues as Press freedom under another government, and I then went to the State President for his comments and I wrote a balanced story, would that be acceptable?

A: No, it will not be. It will elevate Tambo to a status he doesn't deserve.

Q: Have you not already given him that status by devoting so much of our law and effort to curbing him?

A: I will certainly not give him more than he already has.

Botha concluded as he as he had begun.

Government does not want to prescribe unnecessarily what people may read, see or say. . . . Some journalists and editors tend to lay claim to the sole right to prescribe what people may read and what not, even if it favours self-acknowledged revolutionaries. They are quick to voice the people's right to know. Surely, if the alleged right to know rests with the readers, they should have a say in what is not printed. This would mean a representative readers' body in every editorial office. Democracy cannot thrive without a responsible Press. However, Press freedom must be earned by an honest Press. Those sections who do not earn it must be curbed. In present circumstances, only government is capable of deciding on and enforcing the necessary curbs.

The campaign against the alternative press intensified in the wake of these regulations. An advocate who often represented those papers commented:

There's a common denominator in the Minister's attitude to all five newspapers [*New Nation*, *Weekly Mail*, *Sowetan*, *South*, and *Work in Progress*]. Highest on his list of priorities was what he called positive publicity for the ANC. And I would say that probably second on his list of priorities was matter which he said brought the security forces into contempt or into disrepute.

Botha appointed an Interdepartmental Monitoring Committee to oversee the press and ensure compliance with the hundred odd laws but refused to disclose its membership. A Publications Committee banned two issues of *South* (30 July-5 August, 6-12 August), although it lifted the ban pending an appeal. It also banned a third issue of the *New Nation* (27 August), which planned to appeal as well. UDF President Albertina Sisulu, mother of detained *New Nation* editor Zwelakhe Sisulu, condemned the banning.⁸²

If Publications Committees generally did the Government's bidding, the Appeal Board consistently demonstrated its independence. It reversed a decision that 7(1) *South African Metal Worker* (11-12/86) was undesirable because it described a police attack on the Annual General Meeting, which left one dead and 20 injured.⁸³ It also permitted publication of the three issues of *South*. Criticism of the "cumulative effect" of a publication had to be documented in detail. A "brief biographical sketch of Nelson Mandela" could not be said to constitute "support for the objects of the ANC." It was entirely acceptable to praise the Freedom Charter. Exposition of the views of Sam Nujoma did not amount to "a scarcely disguised call to terrorism and violence." Calling a terrorist a "guerilla" did not "further the aims of the ANC." Nor did a call for clemency for 32 convicts, or a description of the Dakar meeting with ANC officials. "[M]uch as this newspaper is one-sided, biased and would be regarded by many as deplorable journalism, it can, nevertheless, not be concluded to be prejudicial to the safety of the State. . . ." ⁸⁴ It reversed a finding that *Learn and Teach* (No 4 of 1987) was undesirable. An article describing the speech in mitigation of a convicted terrorist "does not seek to eulogize or improve the image of the ANC." "In interpreting a publication, the adjudicator must be careful not to draw the most sinister inferences from the articles. . . ." ⁸⁵

At the same time, it upheld a Committee finding that 2(1) *Isizwe*, a quarterly journal of the UDF, was undesirable because it offered "clear support" for "street committees."⁸⁶ It reached a similar conclusion about 4(2) *UDF News* because the article "Nation Salutes Courage of Youth" was so "defiant and aggressive" that it would "incite and inspire a substantial number of its likely readers to act undesirably."⁸⁷ It showed no more sympathy for 1(5) *Azanian Focus*, reading the invocation "Now Let's Make Revolution!" as a call to violent overthrow.⁸⁸ It agreed that *Cosatu Workers Diary 1987* was undesirable because its cumulative effect was "a readable history of political agitation, subversion and the successes of communism and revolution." "[A] substantial number . . . are likely to make use of this publication as a time-table to evoke feelings of severe discontent as well as contempt for state authority."⁸⁹ Although it found two issues of *New Era* not undesirable, it limited their distribution to bona fide

bookshops and lending libraries. The Board was prepared to countenance sympathy for the ANC and revolutionary struggles in other countries, remembrance of important dates, and criticism of the government and its officials but warned against support of "street committees" or "alternative structures."⁹⁰

Police warned the *Weekly Mail* about alleged violations of the Emergency regulations in its publication of an insert by the End Conscription Campaign and an article about the denial of psychiatric treatment to Emson Banda, a detainee in Port Elizabeth. The newly-established Directorate of Media Relations instructed *South, Work in Progress*, the *Weekly Mail*, *Learn and Teach*, and *Upbeat* to send it free copies.⁹¹

The government had detained almost all the staff, contributors, and associates of *Saamstaan*, the black community newspaper in Oudtshoorn; Mbulelo Grootboom, one of the few full-time workers, was released after 15 months on 11 September. Other journalists had been in detention just as long: Zwelakhe Sisulu of the *New Nation*; Phila Mgqumba and Mxolisi Jackson Fuzile, freelance journalists for Veritas, a small news agency in King William's Town; and Brian Sokutu, a freelance journalist from Port Elizabeth.⁹² Mgqumba and Fuzile (among others) applied to the Grahamstown Supreme Court for release in October, stating that they did not intend to use "Inyaniso Media Skills and Research Project to propagate consumer boycotts, civil unrest or any ideas or ideologies." They argued that the police could have taken less drastic action to prevent publication without detaining them. But Major Andre Nel, security police branch commander in King William's Town, replied that Veritas had "undertaken to publish a publication containing, inter alia, the viewpoints and strategies of all radical political organisations in the East Cape and Border area and to distribute this publication. This publication would also be used to give prominence and to propagate the consumer boycotts and civil unrest in the Eastern Cape area." The court refused to release them.⁹³

In September Justices Allan Howard and John Broome of the Pietermaritzburg Supreme Court gave judgment on the application by the *Weekly Mail* and the Release Mandela Campaign to interdict the Emergency regulations. The court invalidated the power of the Police Commissioner to gazette new definitions of subversive statement or prohibit publication of any newspaper or sound or film recording, the ban on encouraging attendance at restricted gatherings, the retroactive ban on publication of news comment or photographs of security action before 11 June, and publication of the date and place of any restricted gathering. But it upheld the new definitions of unrest and security action and rejected the arguments that a new emergency could not be declared before the old one had expired and that the regulations were unnecessary because of the adequacy of other legislation.⁹⁴

III. STOFFEL BOTHA WARNS THE *NEW NATION* AND OTHER ALTERNATIVE PAPERS

On 1 October Stoffel Botha informed the *New Nation* that he had examined three recent issues (27 August-2 September, 3-9 September, and 17-23 September) and concluded that they represented "systematic and repeated publishing of matter which has or is calculated to have one or more of the effects contemplated in regulation 7A(1) [the August regulation]." He found that those issues constituted: "a threat to the safety of the public, to the maintenance of public order and . . . a delay in the termination of the state of emergency"; "promoting or fanning revolution or uprising in the Republic or acts aimed at the overthrow of the Government otherwise than by constitutional means"; "promoting or fanning the breaking down of the public order"; "stirring up or fomenting feelings of hatred or hostility in members of the public towards a security force . . . or towards members of the Afrikaans population group"; and "promoting the public image or esteem of an unlawful organisation, to wit the African National Congress and the South African Communist Party." He advised the paper that he was considering issuing a formal warning in the Government Gazette and gave it two weeks to reply. I discuss below these articles, the government's objections, and the *New Nation's* reply.

Although several papers reported the warning, it received little coverage.⁹⁵ Even the *New Nation* only mentioned it briefly.⁹⁶ Four years later editor Gabu Tugwana recollected the paper's response:

We knew that they were going to close us but we were determined to make it as difficult as possible. We had taken many precautions. For instance, our lawyers will tell you that all the stories that went into our paper—be they concerned with culture, sport, or news—they were extremely careful. They had to look at the stories and show that we are not breaking any principle in the laws of the day. . . . they would come back to us and say: look, we know you feel very strong about this story but we think there is trouble or would create problems. And half the time we disputed with them and we would say we want to take a chance. Therefore you as lawyers can tell us how we can reduce the risk. . . . we saw ourselves as a bridge where people can vent out their frustration, where they can control frustration and expose it so the government can have an opportunity to address these issues. . . . [After the first notice] we went out of our way to try and please the government. If we had the facts we double checked them.⁹⁷

Soon thereafter Stoffel Botha issued similar notices to the *Sowetan*, *South*, *Work in Progress*, *Die Siem* (a right-wing journal), and the *Weekly Mail*. *South* editor Rashid Seria denounced the warning—"the superficial case being cited against *South* is ludicrous to say the least"—and noted that established papers had published similar articles—for instance about the United Teachers' Association adopting the Freedom

Charter.⁹⁸ Nevertheless, the paper submitted a 38-page response on 25 November, defending eight articles about Oliver Tambo, Nelson Mandela, the ANC, the PAC. *Work in Progress* replied on 11 December, justifying 14 articles about Oliver Tambo, the Dakar conference, the ANC, the SACP, Cosatu support for death row prisoners and rent boycotts, street committees, school boycotts, stayaways, and the police. It emphasized that publication was unpredictable (rarely more than once every two months), its small readership was intellectual and hence skeptical, and the articles "highly theoretical and analytical."

Botha approached the *Sowetan* with greater restraint. It had a much larger circulation than the *New Nation*. More important, it was owned by Argus, one of the two largest English newspaper groups in the country. It also supported a black consciousness perspective rather than the UDF and ANC. Botha had objected to an article quoting an ANC leader condemning necklacing because it "tends to legitimise a revolutionary leader . . . and to promote his and his organisation's image." *The Star* asked rhetorically whether Botha "would have been quite happy had the paper quoted the ANC in support of such acts?" He granted an audience to editor and lawyers and the *Sowetan's* took no further action.⁹⁹

Within days after writing the *New Nation*, Botha used the 9 October centennial celebrations of *The Star* to reiterate his views on the press.¹⁰⁰ Hurrying through the preliminaries of welcoming the "auspicious occasion" and adding his "heartiest congratulations" for a hundred years of "valued service to South Africa," he promptly launched into a justification for censorship.

[T]he Government and the press are not ends in themselves—they both have to serve people. Both of them are in positions of power. . . .

I was asked to reflect on the "line" between government interest and public interest and the question of who should draw it. This theme presupposes that there is a difference of conflict between government and public interest. That however, is not necessarily the case.

When a government acts in the interest of the state in the context of ensuring the state's existence for the common good, then the interest of government and the public is indivisible. . . .

The press should have the right to act as a watchdog and to focus on government actions. . . . The press's role as one of the watchdogs is therefore a qualified one. It must "watch" how the Government governs, but in doing so, it must accept government's right to govern in the first place.

The global debate on freedom of expression revolves around three main lines of thought. At the one extreme we have totalitarian control over the media, such as behind the Iron Curtain and in many African countries. At the other extreme we have the "all or nothing" liberal press approach, according to which freedom of expression should in no manner whatsoever be curtailed by a government. Between these two extremes

there is the social responsibility concept, which is in line with the principle of the realisation of a duty towards the community.

He quoted from an article by C A Vale of the Department of International Relations at the University of the Witwatersrand: "Without any shadow of a doubt, there is no other state in the world today which experiences as intensive and sustained a global propaganda onslaught as does South Africa." He then asked rhetorically: "How are terrorists to be prevented from using the media as a platform for their views? How can the Press minimise its role as participant in crisis and maximise its role as provider of information?"

The answer suggested at the time, was that ultimately in a free society terrorists would be the cause of their own undoing. That could be the answer in a democratic industrialised First World society, with a large middle class. In South Africa we do not yet have such a sophisticated society.

The unanswered question is: what do we do in the case of developing, largely Third World countries as is the case in South Africa?

I want to appeal to Press leaders to put profound thought into a constructive reply to this question. Instead of all the moralising about issues such as "free-flow of information", "the right to know" and "freedom of expression", humanity can be better served by taking the realities of revolutionary change in Africa into account. . . .

In South Africa's situation we have to deal with a deliberate attempt by declared aggressors to overthrow the present system including the government by violent means. . . .

When the leaders of [such violent organisations as the ANC and its mentor, the South African Communist Party] blatantly admit that they collaborate with the mass media to further their violent struggle for the take over of South Africa, it should be clear to everyone that the role of sections of the local and international Press in this revolutionary process is no flight of the imagination on the part of the Government. . . .

My government will not allow the South African press to be used as a tool of war in the hands of foreign or other aggressors. Freedom of expression will not be allowed to such extent that it fosters chaos, murder, confusion and revolt in South Africa. But even in trying circumstances we will endeavour to maintain civilised values. . . .

We all seem to agree, however, that freedom of expression—freedom of the press—cannot be absolute. There must be boundaries to it.

He noted that the Media Council created by the establishment press in the early 1980s had promulgated a Code of Conduct mandating "due care and responsibility" with respect to "matters that may detrimentally affect the peace and good order, the safety and defence of the Republic and its people; the presentation of brutality, violence and atrocities."

When it became clear that sections of the Press were being used in the process of promoting a revolutionary climate, press leaders were invited by the State President to hold discussions. At issue was not criticism of the Government but subversive and unrest provoking presentations in the media, aimed at the violent overthrow of the entire South African political and socio-economic system. The request was that the Press should effectively implement its Code of Conduct. This was eventually declined. The Government was informed *inter alia* that the Media Council has neither the organised ability nor the financial resources to effectively implement its own Code of Conduct.

No amount of moralising can detract from the hard realities with which the Government was faced. It had to act against the systematic publication of subversive statements and propaganda by radicals on the left as well as on the right. . . .

Instead of opting for a blanket pre-censorship, the Government decided to implement the following procedure.

Botha described the regulations under which he had warned the *New Nation*. He hoped the newspapers represented at this conference would comply. But he concluded ominously.

[W]hatever your reaction may be to what I have said, I must in all frankness add that if I have failed to convey to you a perception of there being substance in South Africa's case, that will not deviate me from my course and my obligation to my country.

Let us be perfectly clear on that point. I am not asking you for your approval of my or the Government's action in the current state of emergency.

Several papers expressed concern that the media would be at the mercy of Botha's "hypersensitive" "subjective judgment."¹⁰¹

About the same time Deputy Information Minister C J "Stoffel" van der Merwe responded to a question by Freek Robinson about Botha's statement.

Well, it is of course a fact . . . that if one would take each of those cases to court it would be long drawn out court cases . . . and therefore it will in fact overburden the court system because one must bear in mind that the court system is created and maintained for the ordinary run-of-the-mill type of cases. . . . the Government has in fact a lot of powers which it could use, powers which are very strong, but the Government is not using those strong powers in the sense that it can close certain publications . . . because it wants to cut a very fine point between legitimate opposition on the one hand, and the propagation of revolution on the other hand. Because we want to retain the right of people to

legitimately oppose the Government of the day. That is healthy for democracy; but we do not want to leave the revolutionary propaganda running wild. We've got an obligation to stop that.¹⁰²

The day before the deadline to reply, Bishop Reginald Orsmond issued a statement on behalf of the South African Catholic Bishops' Conference. Although his tone was placatory, he also ended with a warning.

The SACBC is concerned with a peaceful resolution of the conflict which pervades South Africa. It sees negotiations as the way to a peace based on justice, and for this reason defends the right of existence of a free press. . . . The *New Nation* does not have any sinister aims of fomenting revolution or encouraging uprising or in any way threatening public safety. It proposes merely to outline the harsh realities experienced by people in South Africa. . . . The proposed action against the *New Nation* will serve only to create new tensions and the hardening of attitudes in a situation requiring circumspection and tolerance. . . . We firmly believe that the banning of *New Nation* will inevitably lead to frustration and anger.

Having been denied an extension of the two-week period to reply, the *New Nation* sent Botha an 88-page letter on 14 October and sought a meeting. It made a number of legal arguments. The notice was ineffective because the Minister had to be satisfied that the publication "is causing a threat to the safety of the public or to the maintenance of public order or is causing a delay in the termination of the State of Emergency." The Minister had not properly exercised his judgment. "No person honestly applying his mind to the matter could conceivably have come to the conclusion that the *New Nation* falls foul of the regulations." "The Minister is obliged to make an assessment of the actual or probable effect of matter contained in the publication in question. In making that assessment, it is obviously incumbent upon the Minister to make a determination as to who will read the publication in question and how it is likely to be understood." The regulations required that the *New Nation* be given an opportunity to submit representations before the warning was issued. The regulations themselves were vague and uncertain. The first of the three issues to which the Minister objected was published *before* the second set of regulations was promulgated.

The newspaper offered its editorial policy in defense: "*New Nation* is completely committed to a peaceful resolution of the conflict which besets South Africa." "We find it highly significant that the Minister has not questioned the factual veracity of a single article to which he has taken objection." It reviewed at length the South African approach to press freedom. "We do so because we firmly believe these principles have been lost sight of by the Minister. We cannot believe that any reasonable person, conversant with the attitude of the Supreme Court to the freedom of expression, even in times of emergency, could conceivably have concluded that *New Nation* constitutes a threat to state security."

It referred to leading cases upholding freedom of expression. In the 1930s, *Usembenzi* had published an article entitled "Who is King George Anyway?"

Who is this King George?

Remember the blood that was shed at Cartwright's Flats? We the Bantu people and workers of Durban have been asked to celebrate the Silver Jubilee of King George V on May 6, the 25th Anniversary of his Access to the throne.

Who is this King George and why should we celebrate his jubilee?

King George is the figurehead of the English and Boer Imperialists whose local representatives are Hertzog and Smuts. These oppressors are robbing and exploiting the poor people and workers of South Africa, in particular the Bantu people. [It then enumerated atrocities.]

Workers and oppressed people of Durban: Do not be bluffed by this King George nonsense. Do not kiss the boot that kicks you. Refuse to worship King George, he is not our King but the King of our oppressors. Unite in protest against pass laws, liquor laws and all other forms of oppression.

Demand freedom in our land of your fathers. . . .

A native miner on the Rand Gold Mines nets 1s6d for a day's labour, digging out gold at the risk of his life (50 African miners were drowned at the Machavie Mine a few days ago). He would have to work for over 20 000 years to earn for his family what George's family gets in one year for doing nothing.

The publisher was found not guilty of *crimen laesae venerationis*.¹⁰³

In 1950, the government lost two prosecutions for language far more inflammatory than anything in the *New Nation*. The first was based on a speech at an ANC meeting.

White civilisation is bound to go down—that is a certainty. . . . The day will come when we will simply defy the discriminating laws of the land . . . and those unfortunate enough to have White skins will suffer, because people will not choose in their blind fury. . . . The only people who can fight by constitutional ways are those people who have the vote. But we have no vote. The only way we can get our freedom is by revolution. But we cannot do that if we are not organised. We must be strong enough to meet force by force. . . . If we all stand together I tell you it will only take us 24 hours to change the present state of affairs.¹⁰⁴

The second attacked a cartoon captioned "Won't you come in?"

On the right are two natives in tribal dress representing the Protectorates; the central figure is that of the Prime Minister, Doctor Malan. He is

bowing to the two natives representing the Protectorates and indicating a portal on his right. He is clearly extending the invitation to come in. Within the portal, which represents the Union, are depicted a European with his left hand gripping the throat of a native; in his right hand, which is raised high in the act of striking, there is a heavy blunt instrument. The native has his left hand flung high and there is a look of terror in his face. Clearly the European is in the act of brutally assaulting him. Immediately to the rear of the European there is the prone figure of a native who has either been killed or rendered insensible.¹⁰⁵

In the 1960s a speaker was acquitted of inciting an audience of 200 Indians to defy the Group Areas Act.

Is it any wonder that there is developing among our people in different parts of the country a feeling that they should refuse to obey the orders to quit, no matter what the consequences? [Nana Sita, former president of the Transvaal Indian Congress, who was ill and elderly, had refused to move from Pretoria to the Indian group area.] He threw up a challenge to the perpetrators of this crime. The end of October has passed and Nana Sita is still in his old house. . . . We have no doubt that the cruel arm of Nationalist persecution will come down heavily on Nabhay. Fascists know no respect for any moral standards recognised in the civilised world. . . . But the question is: Are we, the rest of the Indian people, going to remain silent when this happens? . . . Basic laws of human behaviour require us to stand and fight against injustice and inhumanity. . . . The nationalists must be made aware of the fact that the attack against these people is an attack against the Indian people as a whole and will be met by the organised strength of the entire community.¹⁰⁶

Nearly a month after the *New Nation's* reply Botha wrote its attorneys, Cheadle, Thompson & Haysom, that "your clients did not appreciate the true import of regulation 7A. . . . Consequently they appear to have misunderstood important aspects of my notification to them." The issue was "systematic or repeated" publication of objectionable matter. "Your clients, however, dealt with the matter on the basis of a separate response in respect of each individual article. . . ." Because of the "gravity of the matter" and the possibility that this omission was due to a misunderstanding, Botha allowed the *New Nation* another two weeks for a further reply.¹⁰⁷ To assist them he offered a "prima facie evaluation" of the offending material, which concluded by reminding the newspaper that "the articles referred to above should be read in conjunction with one another and regard should be had to the cumulative effect of the contents thereof. . . ."

The paper offered a 25-page response on 18 November. It objected to the Minister looking at the articles as a whole, noting that the Publications Appeal Board

had said: "The cumulative test is one to be applied only in extreme circumstances. . . ." Again it sought (in vain) to present its case in person.

The following are a synopsis of the objectionable articles, the *New Nation's* first attempt to justify each (often stressing that much of the material was indistinguishable from matter tolerated in other publications), Botha's "prima facie evaluation," and the *New Nation's* rejoinder.

1. An advertisement by the Release Mandela Campaign, UDF, Cosatu, and Sayco calling for the release of all political prisoners who had served more than 20 years and prisoner of war status for Umkhonto we Sizwe combatants. It quoted at length from the Freedom Charter.

New Nation response: "The matter contained in this advertisement is part and parcel of the general political debate for at least the past five years." *The Sunday Star* had reported that Tom Boya (mayor of Daveyton and vice-president of Urban Councils Association of South Africa) made these the preconditions for participation in the National Statutory Council.¹⁰⁸ *Beeld* had said that the government should talk to the ANC.¹⁰⁹ The Progressive Federal Party had urged the government to unban the ANC and release Mandela.¹¹⁰ In any case, the Freedom Charter was a lawful document, and it was not an offense to call for unbanning the ANC. "Indeed, to call for the unbanning of an organisation so that it may operate lawfully, could hardly be thought to be subversive of state security." There was ample historical justification for the call for clemency in the pleas not to execute Boer rebels at the beginning of the century.

[Botha's evaluation:] It promotes the public image or esteem of *inter alia* the ANC and PAC which are unlawful revolutionary organisations. Positive support is created by claiming *inter alia* that ANC and PAC leaders are "our leaders". It further tends to promote legitimization of violence, revolution and the participants therein; and it brings into disrepute the existing judicial order which is a mainstay of the public order by attempting to create the impression that certain political activists were unjustly sentenced to death merely because of their political opposition to the Government and not because of the fact that they were convicted and sentenced to death by an independent court of law having committed violent capital offences. This can be seen as part and parcel of the "campaign" to label these people as "patriots" and claiming prisoners-of-war status for them.

[*New Nation* rejoinder:] This country has in its history had many famous people who attained high office despite their association with organisations that regarded violence as a means to their political ends. We refer, for example, to Mr BJ Vorster and General Hendrick van den Bergh. . . . Similarly we respectfully suggest that Nelson Mandela, for example, is regarded among many South Africans as their leader. [It presented opinion polls documenting this] . . . Many Afrikaners today

still regard Jopie Fourie as a true patriot and hero. They do so not because they emulate or sanctify his acts of violence, but because they regard him as a person who made great sacrifices for the cause of freedom. . . . The regulations have nothing whatever to do with bringing the judiciary into disrepute.

2. A photograph of 32 people on death row under the caption "Save These 32 Patriots." It named them and called for an end to hanging political prisoners.

The *New Nation* doubted whether the Minister could consider photographs in reaching a decision under the regulations. There had been numerous other calls for clemency (e.g., *Rand Daily Mail*, 10 June 1983). Just two months earlier (25 August 1987) the *Sowetan* had reported a strong statement by the South African Catholic Bishops' Conference.

[Botha's evaluation:] [It] reinforces the campaign with regard to the so-called patriots sentenced to death for deplorable capital offences linked with unrest and ANC terrorism. This forms part of the systematic or repeated attempts . . . to fan revolution or uprising and the breaking down of the public order.

[*New Nation* rejoinder:] This does not appear from the photo or the caption. Indeed, whilst some of those sentenced to death were members of the ANC this is not true of all of them. We further submit that it is a well documented fact that the death penalty, wherever it exists in the world, generates deep emotional reactions in people who regard the taking of life as a barbaric form of punishment.

3. A subsequent report on "'Save the 32' launched in W Cape." The launch, organized by Sayco, had been scheduled for the UWC campus but had been banned and transferred to Kismet Cinema in Cape Town. The declaration was signed by UDF patron Allan Boesak, lawyer Dullah Omar, Nusas official Kate Savage, Cape Action Housing League representative Wilfred Rhodes, Call of Islam representative Mastoera Sadan, and women's activist Mama Mahlangu. A letter from death row prisoner Robert McBride was read. Police patrolled the venue and took pictures of participants, refusing to comment because it had been "a routine police operation."

New Nation reply: "The report is purely factual and unemotional. The statement from the SAYCO representative reflects the spirit and motivation for the campaign."

Botha's evaluation contended that this is "part of the systematic or repeated publishing of matter."

The *New Nation's* rejoinder conceded that the articles dealt with the same topic but not that they threatened public safety.

4. A poem entitled "To My Son" by the pseudonymous "Ndukuzakhe."

This son I dedicate
 To the soil of his grandparents;
 This son I undertake
 To teach the blessedness
 Of the black skin;
 This son I will tell
 The meaning of the clouds
 That he sees on the horizon;
 This son's nose will be
 Baptised by the sweet
 Smell of teargas
 The healthy odour of Gunpower, Ai! the
 Caress of the sjambok.

His relief from bitter winters;
 From muddy summers will
 Be the sanctuary of this
 Perforated mkhukhu.

My son will sing
 Nkosi Sikelel' iAfrika
 Ai! With vigour.
 I will teach him
 Ukungeweka
 His fingers will be glued
 Never to be parted.

This son will know
 Of the days he will
 Spend in the state-owned
 One-roomed buildings reserved
 For those selfless sons
 Of the soil.

The *New Nation* replied: "We cannot believe that the security of the South African state is so fragile as to be incapable of tolerating a poem of this nature."

[Botha's evaluation:] It fans the uprising in the Republic in that people who have partaken in resistance are *inter alia* depicted as "selfless sons of the soil"; and a further attempt is made to stir up or foment feelings of hatred towards security forces if the purport of the poem is taken into account.

[*New Nation* rejoinder:] We submit, with respect, that the Minister's interpretation is exaggerated and hypersensitive and not borne out by the text. [It quoted the Publications Appeal Board]: "care must be taken not to over-react to opposite points of view . . . the very act of over-reacting that leads to a finding of undesirability would, as a result of its illegality, cause so much unhappiness that it would lead to or contribute to subversion or even violence."

5. A long report on the third national consultative conference of the National Education Crisis Committee, entitled "Crisis After Crisis." It criticized the amendments to the Education and Training Act, warning that they could lead to another protest campaign. It surveyed the history of the "struggle on the education front." (Botha particularly objected to the statement that in 1955 the ANC had contemplated but postponed a school boycott.) It noted that despite the Emergency, the NECC had made progress in developing alternative curricula, completing a history book and continuing work on mathematics and English. It quoted Eric Molobi, the only member of the national leadership not detained:

We are searching for an alternative curriculum for the whole of South Africa. We have drawn participants from Cosatu, liberal universities, students and parents who have engaged in intense workshops to develop the curriculum. The curriculum will also have to unite people who have been divided by an apartheid society.

[The NECC had rebuilt structures to replace those detained.] The most encouraging progress since the last consultative conference in March last year has been made in the Western Cape where there were no structures at all. They are currently highly organised and won one of the NECC's most important victories in recent months when they forced open a school that had been shut by the government.

The government invitation to comment on the proposed amendments to the Education and Training Act of 1979 put the NECC in a quandry. It feared that the purpose was to elicit a violent and radical response. "But we are a non-violent organisation and this is known by the formations of the democratic movement and all South Africans." The NECC criticized the government for failing to keep its promise to introduce compulsory education and free tuition and schoolbooks everywhere. It distrusted the National Minister of Education's new power to close a school without consulting the school committee or board. The article concluded:

While the proposed amendments failed to spark off another boycott of classes, it is certain to become the focus of a national campaign. But it is not clear what form the protest action will take. What is certain is that it will be an "agreed form of action", according to Molobi. Mass-based organisations like [Cosatu, Sayco, and the UDF] will be consulted on any form of action

[*New Nation* response:] We are astounded at the suggestions that this article, which is merely a restatement of historical and notorious fact, could be thought to constitute a threat to public safety. The advent and activities of the NECC are matters of historical record. We find it difficult to believe that any person can be ignorant of the problems associated with black education. That education for blacks is historically unequal and grossly inferior surely permits of no doubt. . . . To suggest that the article could conceivably have or be calculated to have the effect of promoting the public image or esteem of the ANC borders on bad faith. By this we do not suggest that the minister acted deliberately dishonestly. We merely suggest that he has utterly misconceived the nature of his powers and the parameters of his discretion. . . . We regard it as inconceivable that a factual and historical reference to an event which occurred more than thirty years ago could constitute a threat to state security. [Furthermore, the *Sowetan* had dealt with similar issues the previous month (15 and 16 September 1987).]

[Botha's evaluation:] [The article] promotes the public image or esteem of the unlawful ANC by giving credit to the ANC's attitude to education. Reference to the student uprisings like those in June 1976, supported in this case by an action provoking photograph, tends to create the perception that breaking down of the public order is necessary to achieve these goals.

[*New Nation* rejoinder:] The article does not give "credit" to the ANC's attitude to education. It is a mere statement of a historical fact which occurred in 1955. [The same is true in the account of 1976.] We submit that notorious historical facts not coupled with any suggestion of incitement cannot threaten public safety. Were this not so, it would preclude references to such facts in public debate or even in educational institutions and texts on history. [The photograph was not mentioned in the Minister's first letter.] We do not understand what is "action provoking" about it nor, we respectfully submit, is it clear what goals are referred to by the Minister. Because the article deals with education it was thought appropriate to have a photograph of school children which was acknowledged to be taken from a book by a well known South African photographer which has been freely available in reputable bookshops for many years.

6. "Lift ban on Cosas." The Natal Student Congress called on the government to unban Cosas.

[Botha objected to Nasco's allegations that] there are still detentions, harassment of progressive organisations and death of students and community leaders by vigilante hit squads, while the SADF is still occupying our schools. We want to warn that there will be no peace in South Africa until the people govern and the principles of the Freedom

Charter are implemented—with the result that the doors of learning and culture shall be opened to all.

He also objected to the reference to the Freedom Charter as promoting the "image or esteem" of the ANC.

The *New Nation* responded that this was entirely factual and noncontroversial. The Nasco statement showed its concern for the peaceful resolution of South Africa's problems but predicted that peace was impossible without fundamental change.

Again this is the rhetoric of politics. A prediction of further violence should not be confused with a threat or incitement to violence. . . .

It cannot seriously or properly be contended that a factual statement of this nature [about SADF occupation of schools] could have the effect of stirring up or fomenting feelings of hatred or hostility to the SADF. We regard this suggestion as preposterous.

[Botha's evaluation:] A categoric statement is published that *no peace* will exist until certain conditions are met, thereby implying that the acts aimed at the overthrow of the Government otherwise than by constitutional means are warranted; the article also refers to the *occupation* of schools by the SADF and this seems to be an attempt to stir up or foment feelings of hatred or hostility in members of the public towards a security force; and propagation of the unbanning of unlawful organisations promotes the image of such organisations, in this case Cosas.

[*New Nation* rejoinder:] The Minister must be well aware that individuals and political organisations to the left and right of the government have repeatedly made statements to the effect that no peace will exist until certain conditions are met. The mistake, it is suggested, made by the Minister is to confuse a prediction of violence with a threat of violence. [The SADF occupation of schools is a highly controversial issue, much debated in Parliament. Calling for the unbanning of an organisation does not promote its public image.]

7. "Crazed 'Omie' Is reality of SA," a review of Ian Fraser's one-man show "Bring me Gandhi."

The fat slob is slumped carelessly over his chair on the stoep. A foul-mouthed, arrogant bigot. . . . "I hate the kaffir", the oom confesses. "I hate his nation. And I'm proud of that." . . . There are such omies all over the country. And they are just as twisted and dangerous. . . . "Passive resistance?" the brute snorts. "Bring me Gandhi, and we'll f—him up faster than we f—ed up Biko." The underlying message is that violence can only be met by violence. This does not escape the oom. In

fact, he welcomes it and would relish a full-blown confrontation. This is the reality confronting South Africa.

[*New Nation* response] We are at a loss to see how the review of a play could conceivably constitute a threat to public safety or be construed as matter which has or is calculated to have the effect of stirring up or fomenting feelings of hatred or hostility to (presumably) members of the Afrikaans population group. . . . In any event, the review, far from fomenting racial hostility, warns of the dangers of racial intolerance. [There was a similar review in *The Citizen* (3 September 1987).]

[Botha's evaluation:] The purpose and effect of the article . . . hardly needs elaboration. . . . The "omie" is linked to the SAP having the effect of stirring up or fomenting hatred towards a security force.

[*New Nation* rejoinder:] We submit that the play is a piece of fiction and that it is concerned about the racist attitude of an ex-policeman. . . . no reasonable person could conceivably suggest that a review of a fictitious work could have the effect of fomenting hostility towards a security force. . . . it is quite incongruous to take exception to a critic's view of a play, when the play itself is permitted to be enacted for the entertainment of the public at large. [*The Citizen* review said that the character is a "universal type."]

8. "Victory for Potwa," describing the pay raises ending a one-month strike by the Post & Telecommunication Workers Association.

Botha objected to the account of police action:

The PTTI [Postal, Telegraph and Telephone International] also condemned police actions against striking Potwa workers, saying it "protested vigorously" against an incident this week in which several strikers were injured. It said in a telex to President PW Botha that it demanded "strict orders that such attacks should not be perpetrated again."

The *New Nation* responded that "the only reference to the police is at the very end of the article. . . . No particularity whatsoever is given of the police action." The strike also was covered in *The Citizen* (3 September), the *Sowetan* (4 September), *Beeld* (4 September), and *City Press* (6 September).

9. "Arsonists strike at UDF offices," describing attacks on the East London offices of the UDF and the South African Allied Workers Union.

Botha objected to the statement by Sebenzile Mdyogolo, Saawu branch treasurer, that the union did not plan to report the incident to the police because it had done so in the past and "police tell us they are still investigating. Nothing ever happens."

The *New Nation* denied any intent to malign the police:

The article makes it clear that the police were on the premises when the fire broke out. Indeed, the police arrived before the owner of the building. This suggests efficiency and commitment on the part of the police force. . . . At the very worst the statement by the Saawu treasurer expresses a lack of confidence on his part in the police. This cannot be elevated into a statement which has the effect of fomenting hostility towards the police. . . .

The Citizen gave similar coverage to a different incident (19 September 1987).

10. "Cosatu offices broken into," describing burglaries in Vereeniging.

Botha objected to Cosatu's statement: "We have come to learn that we can expect no protection from the authorities, despite being a legitimate organisation working within the law."

The *New Nation* responded that the article "amounts to nothing more than the view of an individual who lacks confidence in the 'authorities.'"

11. "New fear grips Hambanathi," describing anxiety about a repetition of the violence that occurred when the government first proposed to transfer the Natal township to KwaZulu two years earlier.

Botha objected to statements by Sam Haas, a spokesman for a delegation of residents from Uitenhage townships who met with police and town council officials, that

the community had organised itself into street and area committees to protect itself, but the police had often taken action against these residents. "This is why we informed the council and police about our plan. When you mention street and area committees, the police see red and think it's the M-plan. We'll give the defence units a different name, but we'll use the same tactics we used in the past."

[The *New Nation* responded that the portion to which Botha objected] is manifestly concerned with the vigilante phenomenon and attempts by the community to deal with the problem. The article makes it perfectly clear that there is indeed cooperation with the police and that this is why a delegation from the community met with the police as well as town council officials to discuss proposals to deal with the problem.

[Botha's evaluation of the last four articles, 8-11:] [They contain] systematic or repeated publishing of matter having the effect of stirring up or fomenting feelings of hatred or hostility towards a security force (the South African Police) . . . [and] derogative or negative statements with regard to the Police.

[*New Nation* rejoinder:] It is invalid to suggest that derogatory or negative statements with regard to the police can be interpreted as having the effect of fomenting hostility towards a security force. With respect, the Minister's criticisms if taken to their logical conclusions mean that no newspaper may publish matter which reflects "negatively" on the activities of the SAP regardless of the truth of such statements.

12. An advertisement paid for by 530 co-workers of Catholic Services in West Germany, with an epigraph: "The Lord does not forget His people in Prison." It urged an end to detention without trial.

Botha objected that the exhortation that the government "abolish torture throughout the country" implied that the police engaged in torture.

The *New Nation* protested that the Minister was displaying unwarranted "hypersensitivity."

The ad must be read in context. It displays a concern for violations of human rights in South Africa and ends off by stating: "We are praying for non-violent change in South Africa." It is difficult to believe that the call for the abolition of torture can be thought to constitute the fomentation of hostility towards the perpetrators of such torture.

There had been explicit allegations of torture in *The Star* (28 June), the *Sowetan* (26 August), and the *Sunday Tribune* (9 September).

13. "Youth: 'Church is bogged down by tradition,'" quoting SACC youth division director Rev. Joseph Tshawane as saying "if you want to communicate easily with the youth, do it through relevant music."

Botha objected to Tshawane's statement that "detentions, harassment and imprisonment of young people have become the order of the day in South Africa."

The *New Nation* asserted that young people *are* detained and imprisoned, giving numbers.

[Botha's evaluation of the last two articles, 12 and 13:] [The first] infers that there is torture throughout the country. This statement read in context, is clearly aimed at the security forces and is made without any facts to substantiate it. [The second] refers to "repressive violence, detentions, harassment and imprisonment" and tends to reflect negatively in certain legitimate police actions. [It] further reflects negatively on the SADF.

[*New Nation* rejoinder:] The advertisement is not aimed at the security forces but is aimed at the system which allows for detention without trial and the arrest of persons for political reasons. . . . while these violations of human rights continue in South Africa there will always be allegations of torture and other forms of abuse, some substantiated and others unsubstantiated. . . . proper substantiation can only take place in a court of law, the access to which is called for in the advertisement. . . . there have been many cases which have come before the Supreme Court in which interdicts have been obtained restraining the security forces from assaulting detainees. Taken to its logical conclusion, this [interpretation of the regulations] would mean that one may only report on police actions or actions of the SADF insofar as they reflect positively on those institutions. This could scarcely have been the intention of the legislature.

14. "Church's duty to oppose system in SA," describing the reply by Frank Chikane, SACC general secretary, to Defence Minister Malan, "who remarked that clerics, artists and writers were part of a joint campaign by the outlawed SA Communist Party (SACP) and African National Congress."

Botha objected to Chikane's reference to "victims of the unjust system that Malan's forces are defending."

[*New Nation* response:] That the SADF is perceived by many to be defending the apartheid system is surely a matter of historical record. . . . Properly understood the article reflects the views of an individual. Those views are by no means controversial and have been articulated in many guises by a wide variety of people.

15. A photograph of Oliver Tambo with the caption:

African National Congress (ANC) president Oliver Tambo (above) has secured another office for the organisation—this time in Nairobi. The announcement was made by Kenyan president Daniel Arap Moi during Tambo's visit to his country. Moi was personally responsible for inviting Tambo to Kenya. In a speech before the official talks, Tambo commented on recent announcements by the SA president PW Botha on the possibility of agreeing to meet the ANC.

Tambo's response may not be published, however, because he has been 'listed' by Botha's government—meaning he may not be quoted.

[The *New Nation* responded with amazement:] It is inconceivable that the Minister could honestly have concluded that the mere publication of a photo could have or be calculated to have the effect of promoting the public image or esteem of the ANC. The practice of publishing photos of prominent political figures is well established in all countries, including South Africa. [The caption was entirely neutral. Other

newspapers had published similar photographs: *Sowetan* (28 and 30 August 1987) and *The Star* (7 October 1987).]

[Botha's evaluation:] The photograph and caption of the ANC's revolutionary leader promote the image of the ANC.

[*New Nation* rejoinder:] We submit that the public of South Africa would not be influenced in favour of the ANC or hold it in greater esteem merely because of a publication of a photo of Mr Tambo whatever his pose may be in such photo.

16. "ANC women hold major conference," describing a forthcoming meeting of some 250 delegates. A "huge gathering" of the ANC Youth Section had been held in Tanzania earlier in the month. Five Radio Freedom stations had been broadcasting special programs on women's issues. And the ANC Working Committee had issued "a lengthy call to all South African women, outlining their tasks in the struggle against apartheid."

[*New Nation* response:] The underlying assumption by the Minister . . . is that the mere mention of the ANC, its activities or office-bearers have the effect . . . of promoting its public image or esteem. This approach is self-evidently incorrect. The ANC is one of the facts of political life in South Africa. There is constant mention of the ANC by government spokesmen on a daily basis. . . . Usually as far as government spokesmen are concerned mention is made of its acts of violence. . . . The ANC is mentioned in objective terms and there is no attempt to enhance its standing or reputation in the community.

[Botha's evaluation:] [The article] further tends to promote the image of the ANC by publishing the activities of this unlawful organisation and its symbols in such a manner.

[*New Nation* rejoinder:] The article in question does nothing more than give a factual, unemotional news report of the event in question. . . . To object to mere reportage of the activities of the ANC would render reports of acts of sabotage by that organisation out of bounds. It is equally arguable that publicity given to such acts (which the government is continually at pains to do) would have the same effect of promoting the image of the organisation.

17. "'No' to offer," describing the NUM turndown of the Chamber of Mines last offer. Botha objected to two sentences (perhaps five percent of the text) referring to a pamphlet issued by the South African Communist Party.

The *New Nation* responded that "communism is incompatible with the Catholic views upheld by the SACBC." The NUM strike was of national interest and covered by many other papers (e.g., "ANC, UDF support strike," *City Press*, 16 August 1987). "No attempt was made to glorify the SACP or to enhance its prestige or standing in the community."

[Botha's evaluation:] Further promotion of the image or esteem of an unlawful organisation. . . . Mention is made of a pamphlet *said to be issued* by the SACP to salute the striking workers.

[*New Nation* rejoinder:] We notice that the Minister has seen fit to underline the words "said to be issued" by the SACP. We fail to see the significance of this. If a pamphlet was in fact issued and it purports to have been issued by the SACP then it is "said to be issued" by the SACP.

18. "Tambo visit," describing a three-day visit to Yugoslavia and an ANC campaign to persuade the forthcoming francophone and Commonwealth summits and the UN General Assembly meeting to intensify sanctions.

The *New Nation* replied that the article contained "merely a mention of the ANC and its president in a purely factual and objective manner."

[Botha's evaluation:] [M]ore publicity is given to the revolutionary leader Tambo. Furthermore certain campaigns and aims of the ANC are depicted, thereby reinforcing the promotion of the image of an unlawful organisation.

[*New Nation* rejoinder:] [M]ere publicity and the depiction of campaigns and aims of the ANC is not sufficient to bring a publication within the ambit of the regulations. Once again, we point out that it is the public image which must be enhanced.

19. "'Sellouts' offered new IDs," describing mysterious advertisements in a Swaziland newspaper offering political refugees a new life, good job, and new identity if they returned to South Africa.

Botha objected to the reporting of a statement by an ANC spokesman that the advertisement was the work of South African agents who

intended to put the refugees in Swaziland under pressure and possibly act as a recruitment vehicle for agents serving the Pretoria government. The ANC trusts that the Swazi government will take note of the new provocation and continue to protect refugees.

The *New Nation* responded that it had sought to establish the origins of the advertisement and had merely printed a number of responses, including those of the ANC.

[Botha's evaluation:] [The] public image or esteem of an unlawful organisation is further reinforced . . . insofar as a spokesman of the ANC is quoted.

[*New Nation* rejoinder:] We submit that the regulations do not prohibit quoting a spokesman of the ANC.

20. "No' to council," reporting that the ANC rejected a proposal to the South African Parliament that would allow blacks to elect nine members of an advisory "National Statutory Council."

The *New Nation* responded that many legal organizations within South Africa also had rejected the National Statutory Council.

[Botha's evaluation:] ANC commentary on the National Statutory Council is a further example of a tendency to reinforce the ANC's image.

[*New Nation* rejoinder:] [A] mere ANC statement on the National Statutory Council cannot conceivably have the effect of "reinforcing the ANC's image" (a concept not covered or even implied in the regulations) let alone threatening public safety.

The *New Nation* ended its rejoinder with a ringing peroration:

We are constrained to conclude that some of the objections border on the frivolous. . . . It appears that the Minister has failed to appreciate that he was obliged to form the opinion that the effect of the articles in question must have . . . the effect of causing a threat to the safety of the public or to the maintenance of public order or to causing a delay in the termination of the emergency.

One of the *New Nation's* advocates recollected: "there was no contrition expressed on behalf of the papers I acted for. . . . [The representations] were designed, let me put it bluntly, to embarrass." Contemporaneous with these representations, Gabu Tugwana recalled,

we decided to launch a local campaign by calling all mass-based community organizations in the trade unions, the community, the churches. We even went to the foreign ambassadors. We held a press conference. . . . If they think this paper should continue they should rally around us. Then we addressed meetings through the . . . Five Freedoms Forum, here in the local church.¹¹¹

During these legal exchanges repression and resistance continued by other means. Ravan Press suffered its fifth break-in by four men who left three petrol bombs on the premises. A watchman recorded their license plate, and his security company intercepted the get-away car and called the police. The men apprehended claimed to be security police patrolling the area because of a tip that it was to be hit. But John Vorster Square disowned them; the police card they carried was false, and so was the license

plate number. The opposition also evaded the law, if less violently. On 9 November the Anti-Censorship Action Group organized a public reading entitled "Quoting the Unquotable," taking advantage of the anomaly that a banned book, though illegal, could still be read out loud.¹¹²

Botha responded to the *New Nation* by telex on 26 November. Since he had given it two opportunities to submit written representations and it had taken full advantage, he declined to grant a personal audience. He was now in a position to take further action. The *New Nation's* attorneys telexed back the next day, protesting his decision not to meet them:

The denial of an opportunity to canvass detailed particulars of the minister's objections has severely prejudiced our client, as the basis for the minister's complaint has not been clearly expounded in the correspondence received to date.

Our client wished to avail itself of the opportunity, during a personal audience with the Minister, to clear up the many areas of difficulty we have encountered in making representations. . . . we wish to point out that the Minister gave a public undertaking to entertain verbal representations.

Our client is of the view that the Minister's lack of particularity has not enabled it to respond adequately to the issues at hand.

We therefore urgently request the Minister to reconsider his refusal to grant our clients a personal audience.

But it was too late. The same day Botha issued a formal warning "that the matter published in [the *New Nation*] or the way in which matter it is published in this periodical, in my opinion, is causing a threat to the safety of the public or to the maintenance of public order or is causing a delay in the termination of the state of emergency."¹¹³ The paper appeared defiant, criticizing Botha's objections as "vague and unsubstantiated."¹¹⁴ *The Cape Times* noted that it and other established papers frequently published similar matter and thus were threatened as well.¹¹⁵

On 5 December Botha wrote the *New Nation* again, reminding it of the warning just gazetted and stating that he was considering issuing an order of suspension. As required by the regulations, he had examined another issue (3 December) and again enclosed a "prima facie evaluation," to which he invited representations within two weeks. Again he urged that "the reports or articles referred to above should be read in conjunction with one another and regard should be had to the cumulative effect of the contents thereof in order to ascertain whether they constitute a continuation of a systematic or repeated publishing . . . [which] is causing a threat to the safety of the public or to the maintenance of public order or is causing a delay in the termination of the state of emergency. . . ."¹¹⁶ The *New Nation* warned readers to "brace themselves for possible suspension of their favourite newspaper—or the appointment of a government censor to vet its contents."¹¹⁷ Several days later it published a full-page

advertisement by Japanese anti-apartheid organizations, media unions, and parliamentarians declaring that "the South African State has declared war on the South African Press and on Press freedom" and urging the release of Zwelakhe Sisulu and other detained journalists.¹¹⁸ *The Star* carried a denunciation of press censorship by Joyce Harris of the Black Sash:

What gives this Government the right to constitute itself the sole arbiter of what is best for this country we all share? . . . What entitles it to the arrogance of deciding what we may or may not read. . . ?¹¹⁹

The Sunday Star expressed sympathy for the *New Nation* and editor Zwelakhe Sisulu, who had just completed nearly 18 months in detention.¹²⁰

The *New Nation* sent further representations on 21 December, two weeks after receiving Botha's letter, and reiterated the request for a personal audience. It argued that "the last paragraph of the annexure to the Minister's latest letter makes it clear that the requirement of 'public safety' has once again been overlooked." It also contested his insistence that the articles should be read in conjunction with one another. Under the regulations, the only question was "whether there has been a continuation of a systematic or repeated publishing. . . ." If the Minister intended to rely on the articles' cumulative effect he had to explain it so the newspaper could respond. "Although the annexure to the Minister's latest letter is described as a 'prima facie evaluation of the matter published', in fact, it amounts to little more than the Minister's conclusions without an adequate statement of the reasons underlying such conclusions." The Regulations required the Minister to specify the actions he was contemplating so that the *New Nation* could make representations. The paper also noted that the Publications Appeal Board had granted its appeal against the banning of three issues, one of which (27 August) also was the subject of the Minister's objections. "We submit that the approach of the PAB, as a specialist tribunal concerned with threats to State security, will be relevant to the matters upon which the Minister has to exercise a discretion. We accordingly request the Minister to await the judgment of the PAB before taking action against the *New Nation*."

Fearing the worst, however, it made three other requests. It wanted time to seek Supreme Court review of the regulations and notices. It invited pre-publication censorship: "Mr Botha said he was willing to take advice from editors on how the system of pre-publication vetting—as an alternative to closing newspapers down—should work."¹²¹ And, noting that Botha had promised that newspapers subscribing to the Media Council Code of Conduct would not be punished, "we hereby unreservedly submit ourselves to the jurisdiction of the Media Council to adjudicate the Minister's complaints against us in order to determine whether there has been a violation of the Code of Conduct. In addition, we unreservedly submit ourselves to the disciplinary jurisdiction of the Media Council and will accept any penalty imposed by it."

Editor Gabu Tugwana later recollected the paper's strategy:

[W]e were seen as a wild bull with horns and we thought we would look for certain compromises. . . . The name of the game is to continue to exist. We were still going to fight the government. If those people tried to dictate what we are supposed to write then we would let the world know it. Before approaching them we were told that they tried their best not to control the media so we thought this was a good concession and we were also waiting for the moment when they tried to interfere with us.¹²²

The following are the Minister's further objections and *New Nation* responses to each article.

1. "What Govan Mbeki Would Have Said." The government had banned the rally to welcome Mbeki on his release from prison. "The government has banned publication of his utterances because of his commitment to communism." The *New Nation* reconstructed what he would have said and what Albertina Sisulu planned to say by way of welcome.

[Botha's objections:] [It] promotes the public image or esteem of unlawful organisations by depicting one of the leaders (symbols) of the ANC and SACP in a positive light.

[*New Nation* response:] Mr Mbeki's release dominated the headlines of every major South African newspaper and received prime coverage on radio and television. [The *New Nation* noted the] press conference organised by Mr Mbeki and the granting of permission by the Minister of Law and Order for Mr Mbeki to be quoted. It was at this press conference that Mr Mbeki told the world that he remained a member of the SACP and the ANC. Mr Mbeki's words were given prominent publicity throughout South Africa. Responsibility for this lies with the government. . . . To the extent that the Regulations prohibit the depiction of "one of the leaders (symbols) of the ANC and SACP in a positive light", the lead has surely been given by the Government itself. Indeed, we submit that it would not be unfair to say that the Government went out of its way to give publicity to Mr Mbeki's release and to his comments at the press conference. [Many other newspapers had similar articles. Mbeki's speech, which the government allowed to be quoted, was considerably more controversial. The *New Nation* did not understand how Mbeki could be considered a symbol of the ANC and SACP.] It is well known that Mr Mbeki had been imprisoned for 23 years before his release. We regard it as far-fetched to suggest that his release has elevated him to the status of a symbolic figure. . . . He is more accurately described as a former leader. [Because this is the first article mentioning him, there is no systematic or repeated publication.]

[Furthermore, the Regulations make no reference to "positive publicity." . . . the term "positive" is a relative one, which is largely dependent

upon subjective perceptions. . . . we wish to emphasise that the employment of such concepts only serves to create confusion and the spectre of an unequal and inherently vague application of the Regulations.

2. "Clemency plea [for the Sharpeville Six]."

"As church leaders, we cannot condone the taking of life," a SACBC statement said. "But in the present political climate in South Africa, killing people who are perceived as collaborators with apartheid is seen as a political, not a criminal act."

[Botha's objections:] [Y]our publication stir up or foment feelings of hatred or hostility in members of the public towards a section of the public referred to as "collaborators."

New Nation response: The article "does not condone the taking of life." "Collaborators" are not a "section of the public." Since this is the first occasion the subject was discussed, it is not systematic or repeated.

3. "Rent raids give lie to boycott flop claims." The UDF condemned joint operations by the SADF, the SAP, local councils and their police against rent boycotters.

[Botha's objections:] [You] stir up or foment feelings of hatred or hostility in members of the public towards the security forces by *inter alia* referring to security action as raids.

[*New Nation* response:] [T]he term "raid" is almost universally used to describe police action. [The *New Nation* gave examples of such usage by the South African Broadcasting Corporation, police, judges, and the Oxford English Dictionary. It is] inconceivable that any hostility is stirred up or fomented towards the security forces by the use of ordinary commonplace English usage. More particularly, such could never pose any threat to public safety.

4. "Anti-Apartheid Movement plans huge offensive against Thatcher," describing a meeting of more than 500 representatives in Sheffield, England to force Thatcher to sever links with South Africa. "The anti-apartheid organisations plan to hold a number of meetings and demonstrations in 1988 during the 70th birthday anniversary of Nelson Mandela, the jailed leader of the ANC."

[Botha's objections:] [F]urther positive publicity to an unlawful organisation and a leader (symbol) thereof is given which promotes the public image or esteem of this unlawful organisation.

[*New Nation* response:] [T]he reference to Mr Mandela is entirely factual and unemotional. There can surely be very few South Africans who have

not heard of Nelson Mandela. Most people know that he is a "jailed leader of the ANC". We accordingly submit that the bland statement of notorious facts cannot promote the public image or esteem of the ANC let alone constitute any threat to public safety. The reference to the ANC is equally innocuous and states simply that representatives of the ANC attended the conference in question.

5. "CPSA [Church of the Province of South Africa] stand 'a move to just ministry,'" describing acceptance of the Lusaka Document of the World Council of Churches, which "recognises that the liberation movements are 'compelled' to use force as a means of achieving political change in South Africa."

[Botha's objections:] [It] promotes or fans revolution or uprisings in the Republic by legitimising the use of force to achieve political change.

The *New Nation* responded that "the Minister had not read the article in its proper context. It is a report concerning a significant development in theological circles, namely, the acceptance of the Lusaka Document by the Church of the Province of South African Bishops' Synod." The establishment press also reported it. The *New Nation* article made three references to the commitment to peaceful change: the compilers remain "committed to peaceful change"; a standing committee of the CPSA "implored members to explore non-violent strategies for change—despite their high cost"; and the Acting Secretary General of the Institute for Contextual Theology was reported as saying that "the church's plea for non-violent strategies was 'highly commendable.'" An article in *Beeld* (26 September 1986) reported that Chris Heunis, Minister of Constitutional Planning and Development, said in a speech to the Centre for Research into Revolutionary Activities at Rand Afrikaans University that ANC violence in the 1960s was understandable (begryplik) because there was no outlet for black political participation.

6. "A lifetime in the struggle." This biography of Govan Mbeki, adapted from the *Weekly Mail*, was the reading passage in the "Skills for Learning" section.

[Botha's objections:] [It] further promotes the public image or esteem of unlawful organisations by giving positive publicity to a leader (symbol) of such revolutionary organisations by *inter alia* using this article for educational purposes.

[*New Nation* response:] The Minister seems to make a causal connection between the promotion of the public image or esteem of unlawful organisations and the fact that this article appears in the education section of the newspaper. We submit that this is an irrelevant consideration. . . . The article is a factual and bland biographical sketch of Mr Mbeki. The facts of his life are stated tersely and unemotionally. The article makes it perfectly clear that he was convicted and sentenced for serious offences. [The press has an obligation to publish controversy. Zillie v

Johnson 1984 (2) SA 186 (W). Similar articles appeared in *Beeld* and *The Citizen*.] [I]t is unrealistic to regard Mr Mbeki as "symbolic" of either the ANC or SACP.

Editor Gabu Tugwana later commented on the government's objections:

They did not select the entire article. The entire article meant something different. They selected paragraphs in articles. I can find fault, if I can do that, to any of the innocent statements. . . . We were not surprised. And we knew that there was nobody that could escape that selective out-of-context editing.¹²³

At the beginning of December, the Publications Appeal Board overturned the ban on the three *New Nation* issues, the last of which was also the first cited by Stoffel Botha.¹²⁴ The Publications Committee had objected to the *New Nation's* criticism of government for raising the specter of the "rooi gevaar" (red menace), which the Committee found to be real. Furthermore, to accuse government of propagating a "swaart gevaar" (black menace) was a "filthy lie which led to racial animosity."

The PAB began by noting that it could consider the cumulative effect of the articles but was required by the Supreme Court to give comprehensive reasons for its decisions. It could not decide on the basis of vague or speculative views or draw conclusions that were "too remote" or based on trivia. If more than one interpretation were possible, the most sinister should not be adopted. Since the ordinary reader absorbed only the broad picture, the Board should not engage in a microscopic or hyperanalytic investigation. Publications should not take sides against the police but were entitled to expose alleged grievances against them and irregularities by them, even if that included some untruths.

The *New Nation* was sharply critical of the government. It often published sensationalistic accounts of the unfair treatment of blacks. Although it quoted cabinet ministers and the commissioner of police, it never supported them. "Blatant partiality, however, is typical of the press and politics and not, as such, undesirable." But partiality could not be tolerated when it contributed to endangering the existence of the state.

The PAB turned to an examination of the individual articles.

1. A story about street committees did not support the forces of anarchy but presented different perspectives about vigilante attacks on street committees.

2. A story about an application for an interdict against violence to detainees at Diepkloof prison clearly stated that it was reporting allegations that had been denied by officials.

3. Another story described allegations of police misconduct in the Eastern Cape; the police had declined comment while the allegations were being studied.

4. The Board was more critical of an article defending the ANC and SACP against government charges that they planned a blood bath in 1986 but concluded that it did not promote the aims of a banned organization. It noted that courts had permitted all of the following: calls for the legalization of the ANC and PAC, propagation of black consciousness, a tea mug with the words: "Amandla gowethu, release Nelson Mandela. Remember our leaders; those who are trying to destroy apartheid in our law. Umkonto we siswe? PW we want our land back"; a calendar highlighting June 16, illustrated with a photo of Nelson Mandela and words from the Freedom Charter; a t-shirt with "Iswe laho baba nkulu mandla," "Cry for our beloved country," and "Forward forever, backward never, Black man keep up," together with a black fist on one side, and on the other "Africa was born Black and it will remain Black," and "Viva ANC" with another clenched fist.

5. A cartoon depicted a white man holding a black infant seemingly being born out of a black man falling backwards; the infant is saying: "Please, I am terrified of what I may be forced to become." The caption read: "Exit the human being, enter the zombie who will ask no questions." The Committee found that it represented the white man as a "zombie" who wants to murder a black infant. A few Board members feared it would disturb relations between blacks and whites, but a majority felt that it was primarily symbolic and did not endorse racial conflict. They interpreted it as saying that the State is turning people into instruments, against their will.

6. An article entitled "How the ghettoes began," describing the death in Swaziland of Gert Sibande, who campaigned for better conditions for farm laborers. Because the description was general, it could not incite people. Since he was praised as a "working class leader," the article did not promote the aims of the ANC.

7. A front-page three-column color photograph of Miriam Makeba. The Committee objected that she was an active ANC supporter. The *New Nation* retorted that the article never mentioned such support. The Board said it was "mere speculation" that the caption showing her as being "in full cry" in Harare indicated her firm stand against South Africa. Both the photograph and the report merely stated that she lived in exile and participated in the Paul Simon concert in Harare. "To read undesirability into this amounts to mere speculation."

8. The Publications Committee found that the report of an ANC appeal to the United States government illegally quoted the ANC. But there was no restriction on quoting the ANC. Furthermore, appeals to the U.S. to oppose apartheid were commonplace and often made by organizations other than the ANC.

9. The exposure of a plan to thwart the sports boycott against South Africa. Although the article was negative, that alone did not make it undesirable.

10. The Committee objected to the fact that the first eight pages of the 19 February issue contained 16 captions expressing grievances or hatred, 8 neutral captions, and no positive ones. But the PAB had repeatedly held that one-sided reporting was not itself undesirable. "The law does not require a newspaper focusing on politics to contain 'positive' material. The PAB cannot clutch at straws in order to find a newspaper undesirable."

11. The Committee objected to the advertisement entitled "Stop the Hangings." The Committee had called the use of the word "patriots" a justification for violence. But the Board agreed with the *New Nation* that it was a call for clemency. Such petitions were commonplace in South Africa. It might be confusing that the six people mentioned were convicted of political crimes. But the clemency decision ultimately rested with the State President. Many legal organizations made such appeals. The Committee also objected to the mention of Azaso (Azanian Student Organisation) because it had clashed with the law. But Azaso was a thoroughly legal organization.

12. The Committee objected to the two-page advertisement entitled "We Remember Rivonia and Life-Serving Political Prisoners" because it had been found undesirable earlier. The Committee found it more objectionable than the ad calling for unbanning the ANC. The *New Nation* responded that newspapers carrying the latter had not been prosecuted. The Board agreed that "it would have contributed to legal certainty should the previous reasons have been applied." It found that the call for prisoner-of-war status was not itself treasonous; furthermore, it was addressed to officials and did not call for seditious action by readers. Such appeals were common and part of contemporary political debate. The reference to "comrades and compatriots," although resented by some, had lost its power to incite through overuse. The four organizations that placed the advertisement were legal and had not been found to espouse violence. It was permissible to request clemency even for those convicted of terrorism. That the ad used typically strong language, including "demands," did not justify banning.

The PAB concluded by warning the *New Nation* about the cartoon and use of the word "patriots" to refer to those sentenced to death by the Supreme Court.

Shortly thereafter Gabu Tugwana gave a press conference in London, criticizing the established press in South Africa and the foreign media for inadequate coverage and courage, predicting that Botha would suspend the *New Nation* or impose an in-house censor, and fearing that this was "just the beginning of the blacking out of all the news about South Africa."¹²⁵

In a later decision, the Board also reversed a Committee finding of undesirability with respect to the 3-9 December issue of *New Nation*, which had triggered Botha's further notice. Govan Mbeki's release and speech were extensively covered by other media; his biography and views were well known. Although Albertina Sisulu used "emotionally loaded words" like "fighting ranks" and "oppressed and fighting people,"

these were not undesirable per se. The reference to "martyrs who have fallen in the fight against injustice" did not necessarily refer to the ANC. The Committee mistook the word "resolution" for "revolution." However, the Board again warned the *New Nation* against using the word "patriot."¹²⁶

In order to appear evenhanded, Botha also issued a warning to the right-wing newspaper *Die Stem*, the organ of the Boerestaats Beweging. Robert van Tonder, group leader and editor, responded impatiently: "I'm not wasting my time with the government. If they come with such silly objections it shows they have ulterior motives." He rejected the offer to make representations because the government "appoints their own judges and they tell them beforehand what to decide." If Botha banned his paper, he would simply bring it out under another name. Aside from this token attention to the right, however, Botha continued to focus on the left, informing *Work in Progress* that its September and October/November editions were being scrutinized for promoting and legitimizing the SACP, ANC, and street and area committees, legitimizing violence and revolution, causing public hostility against security forces, and promoting school, rent, and consumer boycotts and civil disobedience.¹²⁷

In mid-December Botha sent formal warnings to the *Weekly Mail*, *South*, *Work in Progress*, and *Die Stem*.¹²⁸ He found that the last six issues of the *Weekly Mail* promoted the public image or esteem of unlawful organizations and promoted or fanned revolution by: reporting Tambo's 70th birthday and the celebrations at Khotso House, publishing an advertisement by the Release Mandela Campaign welcoming the release of Govan Mbeki from prison, describing changes in the hierarchy of Umkhonto we Sizwe, and reporting the recollections of Govan Mbeki and John Nkosi (misidentified as ANC rather than PAC) about Robben Island. He also complained that the newspaper had stirred up feelings of hatred toward security forces by an article entitled "A message from the Angolans: Stop the war now" and another describing SADF harassment of the Soweto rent boycott.

The *Weekly Mail* prepared a 174-page reply in early January but had a "genuine problem and a genuine dilemma" understanding and complying with the regulations. The objectionable articles constituted less than 5 percent of its total pages. It urged the government to consider the effect on

a reasonable, rational and balanced reader . . . [who] reads the newspaper as a whole, absorbing in a relaxed way the totality of the news. . . . To such a reader must not be attributed a myopic and obsessive and stuttering attention on some phrase in the middle of a lengthy analysis through which obsession everything else in the newspaper dissolves from his brain and his mind becomes singularly concentrated on the manner in which he could endanger the safety of the public.

The reply appended 55 similar articles from other papers, about which the government had not complained, including "two very positive descriptions of an ANC camp" in *Beeld* and *Rapport* (pro-government Afrikaans newspapers).¹²⁹

The Boerestaat Movement carried out its threat to close *Die Stem* rather than respond to the government but immediately launched a new paper, *Die Volkstem*. Although the latter denied any connection with Robert van Tonder, it planned to support the Boerestaat Movement, the Conservative Party, and the Afrikaner Weerstandsbeweging.¹³⁰

On 23 December 1987, the *New Nation* anticipated its imminent closure in a long front-page article describing the government's actions as "not entirely unexpected, given its 'proud' record of media bashing" and prior closure of seven newspapers. "The attack on the media in general must be seen against the background of the suppression of broad democratic activity at every level." "Not only has [the government] restricted the reporting of events but it has also outlawed large sections of the English vocabulary." The paper claimed that it "provides a crucial source of information, not only concerning factual incidents which do not tend to receive prominence in the commercial press, but also a vehicle for reflecting the hopes and aspirations of the black community."¹³¹ But the paper saw farce as well as threat, noting that Botha had renewed his subscription for 14 months, although Law and Order Minister Vlok allowed his to lapse.¹³² On 10 January Gabu Tugwana declared: "the only way to keep going is to carry on as though the threat did not exist, or we would start missing deadlines and so on. We are still trying to see the Minister."¹³³

IV. THE *NEW NATION*'S LEGAL CHALLENGE

Three days later the *New Nation* applied to the Supreme Court for an interdict against closure.¹³⁴ The paper announced the action the next day in a front-page editorial promising readers "that their favourite newspaper will continue to uphold the highest standards—despite the concerted efforts by various Government officials to phase us out." It boasted of awards from the South African Society of Journalists and Harvard University.¹³⁵ An advocate who worked on the case explained:

The name of the game quite honestly was staying alive. And we felt that we wanted to adopt legal strategies which were designed to achieve that result. To allow the newspaper to remain on the streets for as long as was humanly possible, in the knowledge that we were up against very drastic emergency powers coupled with an immensely restrictive interpretation, which had been placed on those powers by the Appellate Division. . . . we launched the application at what we thought was the last possible minute . . . the Minister had already made up his mind to close down the newspaper . . . two days previously. . . . we bought something like six months of time for the *New Nation*. . . .

Several days later the government issued additional regulations (backdated a year) explicitly relieving the Minister of Home Affairs of any obligation to meet newspapers affected by his warnings or to "disclose any grounds for such action to any person."¹³⁶

Bishop Reginald Orsmond signed the founding affidavit, outlining the above history. He feared that closure would have disastrous consequences and might well become permanent. The *New Nation* was "completely committed to a peaceful resolution of the conflict which besets South Africa." Bishop Wilfred Napier, president of the SACBC, had stated in the 23 July issue: "the editorial content of the *New Nation* is not fabricated in order to create a climate of unrest. Rather, what is reflected in the newspaper is the stark reality of life in South Africa, particularly in the townships." It printed 60,000 copies of each 24-page issue, which sold for 30 cents. The articles provided in-depth coverage, requiring lengthy and concentrated reading. They focused on the black community but also contained national and international news as well as an educational supplement and coverage of entertainment, religion, and sports. If the paper were closed for three months, as threatened, it would either have to pay the full complement of editorial and printing staff or lose them. During that time it would lose advertising revenue and readership, which might never be recovered.

The *New Nation* made several legal arguments. The first issue criticized appeared *before* the regulation it was alleged to have violated. Public Safety Act §3(2)(b) allowed the State President to make regulations retroactive to the beginning of the emergency but not to "make punishable any act or omission"; closure would constitute punishment. The 11 June regulations were invalid because the State President delegated more power to the Minister than he himself enjoyed, and the Minister's

discretion was so grossly unreasonable that the President had acted in bad faith or for ulterior motives or failed to apply his mind. The regulations were so vague and uncertain that it was impossible to know what was prohibited: "if the person responsible for the implementation of the regulations is unable to provide clarity and definition as to the precise parameters of the regulations, it is plainly impossible for those bound. . . ." "Fanning" revolution was inherently ambiguous. "Other acts" aimed at the overthrow of the Government had no meaning. The paper made the same objection to such phrases as "stirring up or fomenting feelings of hatred or hostility" toward population groups and "promoting the public image or esteem" of unlawful organizations.

The *New Nation* challenged both notices for failing to allege and offer evidence of a "threat to the safety of the public or to the maintenance of public order or a delay in the termination of the State of Emergency," as the regulations required. The warning in the Government Gazette was inadequate because the Minister had delegated authority to make that judgment to the Directorate of Media Relations. He also had refused to grant the audience he had promised. Because the regulations proscribed conduct "calculated to have" undesirable results, it was insufficient to find that they merely "tended" to do so. The Minister made many objections that had no basis in the regulations: the use of "derogative or negative statements" about the security forces, failure to substantiate, giving "publicity," and unbalanced perspectives.

The *New Nation* could not wait for the closure order before contesting it. The Minister's actions under the regulations

make a radical inroad into the rights and freedom of expression enjoyed by the citizens and the ability of the publishers of *New Nation* to keep their readers informed and enlightened on matters which affect their day to day existence. The application of the regulations has the effect of depriving readers of the information necessary to make informed and educated choices about their lives and their future. In these circumstances, the role of newspapers in providing unsanitized information becomes virtually impossible.

Since most of the contested issues were questions of law the application for an interdict should be granted.

The state responded with affidavits by the State President, Stoffel Botha, and Andries Johannes Engelbrecht (all in Afrikaans). P W Botha simply asserted that "at the time of issuing the proclamations and regulations mentioned, I was convinced in good faith that the said measures were not only advisable but necessary to make provision for the security of the public and the maintenance of order and to make satisfactory provision for the termination of the state of emergency. . . ." Stoffel Botha indicated that he had intended to close the *New Nation* for three months on 15 January and would proceed unless the court stopped him.¹³⁷

Stoffel Botha's affidavit appended a pamphlet, introduced by a covering letter from a Rev. G Blanchard of St Joseph High School in Maseru, Lesotho, who described the *New Nation* as "a tendentious repetition of the leftist, and often the Marxist-Leninist, slogans" rather than the "teaching of the Catholic Church." The pamphlet by the Commission of Studies of the Youth South Africans for a Christian Civilization-TFP [Tradition, Family and Property] was entitled "The 'New Nation' and Liberation Theology: The sad journey of a reader of the newspaper published by the Catholic Bishops' Publishing Company: Uneasiness, Perplexity, Disconcertedness, Anguish." It made clear its own political stance by praising recent reforms of apartheid (such as repeal of miscegenation laws) and describing the homelands as "self-governing territories within the Republic of South Africa, inhabited by the same Black race-group. Four of them were granted the status of independent states by the South African government which entailed full autonomy."

The pamphlet devoted nearly 40 pages to a diatribe against the *New Nation*,

a newspaper affiliated, in our opinion, to a well-characterized ideology, namely that form of Liberation Theology censured by the Vatican for its acceptance of criteria of analysis borrowed from Marxism. . . . [T]he newspaper shows unveiled sympathy towards Frelimo, the MPLA, SWAPO and the ANC, all of which movements constitute the "long arm" of Russia in this region. . . .

In Angola, the Marxist Government of the MPLA has been confronting the resistance of pro-Western Unita, which today controls about one third of the country's territory. In this conflict, the newspaper takes the side of the MPLA, and Unita is treated as "South Africa's Angolan surrogate." . . . *New Nation* does not appear to have any reservations about the communist ideology or the political objectives of Mugabe. We insist: would an article about Mugabe in Moscow's Pravda read differently? . . . *New Nation's* first issue carries a story by reporter Sarah Crowe presenting the marxist dictatorship of Burkina Faso . . . as a "fascinating piece of New Africa that would hold dear to most South African hearts." . . . Frequently, the focussing of African historical subjects by *New Nation* coincides with those of communist theoreticians. The newspaper's distortion of historical reality is manifest. . . . The treatment that the newspaper gives to work/capital issues and social problems in general, is in our assessment, consistent with the revolutionary line described so far. . . . *New Nation* promotes certain poets whom it describes as "cultural leaders of the people." We consider heavy doses of the spirit of class struggle to be apparent in the following lines. . . . [I]t is common for modern journalism not to limit itself to the academic presentation of theses and arguments but to present its own views in a variety of ways. These stretch from the way the news items are selected for publication, to the manner of placing them on the printed page, always aiming at producing a certain and intended effect on the

reader. a) in the headlines. . . . b) in poetry. . . . c) in the formulation of questions for an interview. . . . d) in the ease with which the term "comrade" is used to designate worker leaders. . . . e) in far-fetched affirmations from readers, printed uncritically. . . . f) even in sports.

Bishop Orsmond filed his 24-page reply affidavit on 24 January. He argued that much of the material in the answering affidavits was inadmissible because irrelevant or hearsay, a point the applicants would develop in argument. The Home Affairs Minister's motives for issuing the regulations were irrelevant. His reference to information he refused to disclose "serves only to highlight and to compound the applicant's difficulties. It makes it plainly impossible for the applicant to know the case it has to meet and to make representations in connection with the proposed action." The Minister also refused to reveal the members of the sub-directorate of experts advising him, which "serves only to create suspicion and mistrust and undermines what confidence there may be in the entire process."

The Minister complained that the *New Nation* never considered that its actions might be wrong and was insufficiently conciliatory. "This is alleged more than once. With the greatest respect, the applicant finds this approach highly objectionable. It suggests that the [Minister] would have been satisfied had the applicant acknowledged some form of wrongdoing and adopted an apologetic and subservient approach." The Minister had "determined in advance that a personal audience with the applicant would serve no purpose because the tone [trant] was not conciliatory [toenaderend of versoenend] but was a detailed setting out of why the applicant was in each and every respect correct." He "regards as significant that other publishers who had made representations to him had made concessions and had given undertakings and because of the general tone [algemene trant] he had decided to grant the publishers a personal audience."

The *New Nation* disagreed that the concept of promoting or fanning revolution must be considered against the background of the Emergency. "The regulations in question must be self-sufficient and intelligible on their own without the necessity to have regard to the background of the existence, nature and scope of the emergency." The existence of other regulations concerning public safety, promulgated before 28 August, was irrelevant.

The regulations required the Minister to give newspapers the opportunity to make representations. In order to do so, they had to be acquainted with the charges. The first notice failed to communicate them. The Minister urged that it be read with the supplemental notice. But the two were inconsistent; the first dealt with content and the supplemental with the manner of publication. Even together they did not reveal the grounds of the proposed action. They failed to show the articles' cumulative effect. Perhaps recognizing their insufficiency, the Minister insisted that the *New Nation* knew what his grounds were even if the notices did not state them. "This suggests that it is not necessary for the [Minister] to set out with sufficient clarity the ground of the

proposed action because the applicant knows what it has done wrong. This is surely fundamentally unfair and not in conformity with the requirement to state the 'grounds of the proposed action.'

"It is not competent now for the [Minister] to give details of the nature of his complaint" since the *New Nation* can no longer respond. "In particular, it is self evidently impossible for the applicant to respond to matters such as the 'symbolic representation' of the noose unless one is acquainted in advance of the significance which the [Minister] perceives in such matters." The Minister's notices failed to state the basis of his conclusion that the *New Nation* threatened public safety or order or delayed the termination of the emergency. He now told the *New Nation* how it should have read the annexure to his first notice. But that was not the issue; the question is whether the notice complied with the regulations. "It is simply not sufficient for the [Minister], in these proceedings, to explain what he meant, when, what he said explicitly bears a different meaning." The matter cited in the second notice had to be a continuation of that cited in the first; the Minister could not identify new matter for the first time. The first notice ascribed a particular effect to each article. The Minister "now suggests, however, that it must have been clear that what he had in mind was the cumulative effect of all the articles." But the court could not speculate on what he had in mind. The notices failed to allege that the *New Nation* had promoted the "public" image or esteem of unlawful organizations. The first said nothing about the image of the ANC, and the supplemental failed to use the word "public."

In order to bolster his case, the Minister now noted that all members of the NECC were in detention. "The significance of this statement eludes the applicant but is nevertheless the cause of grave concern. If this was a relevant consideration in [his] mind, then the applicant ought to have been informed thereof and given an opportunity of responding thereto." The Minister also complained that "as far as he is aware *New Nation* had never acknowledged that the government had committed itself to improving Black education." But the significance of that allegation is unclear, and *New Nation* has had no opportunity to respond.

The *New Nation* repeatedly requested a personal audience, which was particularly important because the Minister said its representations were based on a misunderstanding. The Minister "gave a public undertaking to follow a certain procedure. . . . once the undertaking was given and once the undertaking was clearly not in conflict with the [Minister's] statutory duties, as is admitted by [him], he was not at liberty to break this promise. Ministerial undertakings are surely given seriously and are intended to be binding."

The Minister appended to his affidavit a publication he presented as a version of the *New Nation* published abroad. This was the first time the publication had been mentioned. "[T]he publication makes clear that it is published by the Catholic Institute for International Relations, an organisation which is based in London. The CHIR has

nothing to do with the applicant nor with the publication of *New Nation*." The regulations confine the Minister to the four issues cited in the notices.

The *New Nation* objected to the Minister's reliance on the pamphlet "The *New Nation* and Liberation Theology." "The document contains scurrilous and unsubstantiated attacks upon the Catholic Bishops' Conference and upon *New Nation*. The document can only be described as a 'smear' intended to discredit and undermine the work of the CBC and *New Nation*." If it was to be considered it should have been shown to the *New Nation* in time to allow a response.

The Minister accused the *New Nation* "of the grossest opportunism for assuming that [he] did not dispute the factual accuracy of the articles specified by him. [He] concludes that it is this sort of observation which is the unmistakable hallmark of the spirit in which the so-called representations were made." He also felt that the *New Nation*'s reference to the "real reasons for the Minister's objections to the articles in question" insinuated an improper motive. The *New Nation* denied both accusations. In response to its complaint of having been singled out, the Minister noted that he had taken action against five other publications. But the *New Nation* was the first and, at the time of its representations, the only one.

Argument originally had been scheduled for 26 January before Justice van Niekerk, but he sought and obtained the appointment of a full bench. Stoffel Botha agreed not to close the paper before the court's judgment. Jules Browde SC, who had been chair of the Johannesburg Bar Council and sat as a judge, appeared for the *New Nation*.¹³⁸ An advocate familiar with the litigation said that Browde

is taken seriously by judges because he has an unbending rule of not arguing rubbish. So that when he stands up, there is no judge that will not listen to him and will not listen to him seriously . . . [H]e is also a phenomenally energetic and hardworking advocate, and . . . he was ideal to argue the case.¹³⁹

The paper did not allow the pending litigation to alter its tone. On 17 February it published a cartoon by a reader showing Botha as a traffic cop stopping a car labelled *New Nation*, with the caption:

He is there for nothing but to stop that *New Nation* volunteer from collecting and spreading the truth in and about South Africa and its homelands. He wants [the people] to be fed with his propaganda only. If that volunteer was not threatened and stopped from collecting and propagating truth, you would be able to compare it with what Fatty says in his sources of information. Then, between them and the *New Nation* you would know which is dirty propaganda.¹⁴⁰

The government's efforts to repress dissent continued much as before. In January, *Contact/Kontak*, a magazine for young people published by the SADF Western Province Command, called the UDF a front organization for the ANC and SACP, linking it to violence.¹⁴¹ Later that month the government detained Allie Parker, a Cape Town printer who had produced pamphlets for the NECC attacking registration procedures at black schools.¹⁴² In February it tabled the National Supplies Procurement Amendment Bill, which would allow the Minister of Economic Affairs to control information about "any goods and services"—i.e., ban reports of the economic effects of sanctions.¹⁴³ Brian Sokutu, a free lance reporter in Port Elizabeth and staff member of the Media Workers' Association of South Africa, was hospitalized for severe depression and ulcers in his twentieth month of detention.¹⁴⁴ Derek Jackson, Reggie Oliphant, and Mbulelo Grootboom of *Saamstaan* were banned, effectively preventing them from working.¹⁴⁵ Botha threatened action against the South African Council of Churches for refusing to submit *Ecunews* to his Department; the previous October it had resolved "not to comply with the order because any compliance with this State of Emergency proclamation would negate and militate against the very mission of the church in South Africa."¹⁴⁶ Jackie Seroke, director of Skotaville Publishers and member of the African Writers Association, was charged with terrorism together with two others.¹⁴⁷ Stoffel Botha reported that 186 applications by foreign journalists had been rejected the previous year.¹⁴⁸ In May the government banned a Market Theatre production of Kurt Weill's satirical opera "The Rise and Fall of the City of Mahogony" on grounds of obscenity and lack of redeeming moral or literary merit. After protests, the Publications Appeal Board agreed to allow the performance, which would also constitute an appellate hearing.

On 8 March the U.S. State Department and a group of Senators called for the release of Zwelakhe Sisulu.

We see no justification for Mr. Sisulu's detention. He has been a leader in efforts to resolve South Africa's political problems peacefully. He's the type of black leader the South African Government should be talking to, not repressing.¹⁴⁹

The same day Justice Curlewis, the senior judge, delivered an oral opinion on the *New Nation* application (Justices Spoelstra and van Niekerk concurring). An advocate who observed the proceedings remarked that Curlewis, who had a reputation for being "intemperate on the bench, or of being short-tempered, of constantly interrupting counsel, listened with interest for two days. Hardly interrupted Jules in argument at all. He was actually in his conduct of the case the model of courtesy."¹⁵⁰ Jules Browde argued that the regulations delegated vast discretionary powers, exceeding those possessed by the State President; were intolerably vague, failing to communicate what was prohibited; and were so grossly unreasonable as to display bad faith or ulterior motive or indicate that the State President had failed to apply his mind. The notices did not conform to the regulations. The Minister's actions were so grossly unreasonable that he must have acted in bad faith or from ulterior motives or failed to

apply his mind. He also cited an issue published prior to the regulations; it could not be considered, and three issues were necessary.

Justice Curlewis found the last argument "attractive, indeed, as far as my colleagues and I are concerned, the most attractive of all the arguments advanced by Mr Browde, but upon a consideration of it we are satisfied that it cannot go up." The Minister had not made punishable an act or omission that occurred prior to the regulations. "If after the warning or before it the publication of *New Nation* were to cease or to continue with innocuous material, then the Minister could not act in terms of s 7A(3). . . . the objection against retrospectivity is based in essence upon fairness. It is not unfair in my view to tell a person that what he has heretofore been doing innocently is now considered offensive and that if he continues to do so he will be punished."

The Supreme Court was unconvinced that the grant of discretion was too broad: "Regulation 7A was considered expedient by the State President. That is of paramount importance. . . . [Furthermore, it] sets out in some detail what the Minister must form an opinion about." The court accepted the Minister's argument that it was grossly unreasonable and unfair to limit his attention to the three issues, disregarding other facts and circumstances. "In the first place there is no bar placed upon the Minister taking other matters into account. . . . To suggest that the words of the regulation make him read the article as if he were sitting on Mars is absurd."

The court was unpersuaded that the *New Nation* could not tell whether the Minister objected to each individual item or the totality.

I must point out that this last point about confusion did not seem to be of overpowering difficulty to [the *New Nation*], and one only has to see [its] affidavit in that regard and the representations [it] first put up. . . . the articles constituted a systematic publishing of offending matter. This is made abundantly clear in the regulation and is stated in the notice on paragraph 1. . . . I hasten to add that there is no reason at all why the Minister should give the relevant Editor "Evaluations" or advice on how the regulations or the articles should be read. The printed articles speak for themselves . . . as do the Regulations.

The court concluded that the Minister could find "systematic or repetitive publishing of offensive matter" in two articles in a single issue or in different issues, whether they violated the same or different sub-clauses of the regulations. "[W]hether there has in fact been systematic publishing in the periodical is a matter of the Minister's opinion, whatever anyone else's opinion may be."

Browde had complained that the regulations did not require that the effect of publication be unlawful. The court responded:

There is no reason why the acts complained of should be unlawful, in the opinion of the Minister, as long as they have the effect in [his] opinion of provoking revolution, et cetera. . . . the real deficiency in part of Applicant's representations . . . is not so much the alleged failure on [its] part to understand the thrust of the Regulations, which is anyway irrelevant, but [its] failure to understand that [it] was dealing with the opinion of a politician and not a judgement of a court of law. It is of course clear that censorship on the grounds set out in the Regulations is a political act.

The court asked Browde why the applicant's affidavit had referred to articles in other newspapers that resembled *New Nation* articles to which the Minister objected.

[T]he most he could say was it indicated a certain lack of consistency in that the *New Nation* was being penalised for what appeared to him and to the Bishop to be similar articles in other periodicals or other newspapers. However, that is not something that this court can deal with. If it be so that the Minister has taken the *New Nation*'s articles and found them offensive and had not done so for articles in *The Star*, that does not affect the Regulations or the bona fides of the Minister in regard to *New Nation*.

The court was unimpressed by the *New Nation*'s objection to the vagueness of the regulation's language. "Fanning" might be a clumsy translation of "aanblaas"; perhaps "foment" would have been better. "But this is a mere semantic quibble." The "concept of promoting revolution is perfectly clear." The reference to "acts" was very wide "but that is because there are innumerable ways in which a person can promote the overthrow of a government."

It is said that the words "fomenting" and "feelings" and "hatred" and "hostility" make it impossible to know what cannot be done. That is not so. The meaning of these words are clear to any person, and there is no difficulty at all in giving them a meaning. In my opinion a person, whether it be an editor or anyone else, could tell whether an article or articles which he proposed publishing might be construed as contravening this.

The judge also disagreed with the *New Nation*'s contention that "collaborators" could not be a "section of the public."

I fail to see the difficulty. We are not engaged in compounding a dictionary or in a lecture on semantics. The word "collaborator" is known to many in South Africa to have a particular connotation in a particular context: those who are "collaborators" can form a section of

the public just as those who play rugby or who are conscientious objectors.

He also felt that "public image" and "esteem" had a "perfectly clear meaning. Indeed, nowadays we are told that 'image' is everything and that 'perceptions' are all important." He summarily rejected Browde's inquiry into what particular organizations stood for and his list of other organizations.

[A]s long as the article, in the opinion of the Minister, puts the organisation in a favorable light, that is enough. . . . let me say as shortly as possible what applicant's real complaint is. The deponent would have no difficulty in giving his opinion as to whether or not an article fomented feelings of hatred against blacks, or put the "kits constables" or the security forces or the A.W.B. in a favourable light, or fomented feelings of hatred against conscientious objectors. . . . The problem for deponent is not the words used in the Regulations but that he does not know what will be the opinion of the Minister. Or, if he suspects what it will be, it will appear to him totally unacceptable and indeed unreasonable. . . . the problem arises out of the nature of censorship and the granting of such wide discretion to the Minister by the State President.

Although the *New Nation* complained that it could not know, and thus anticipate, the Minister's opinion, its real objection was that it disagreed with him.

It is obvious that where there are opinions to be formed about matters of this nature the opinion that is formed will be dependent in the first place, [on] where the person stands in the political spectrum, and whether he is black or white. Many utterances or articles will be considered by one person as being [a] legitimate matter of public debate, matter that requires to be brought to public attention, and this is particularly so in a publication like *New Nation* which speaks (largely) for and to persons who have no say in the passing of laws and regulations such as we are considering. The Minister of course will see things from a different perspective and will have different priorities. It is unlikely thus that their opinions will agree. But this is not something that arises out of any ambiguity or vagueness as to the object of the opinion. It arises out of the nature of censorship and the giving of the discretion that I have mentioned.

The court refused to engage the more fundamental question whether "so unfettered a discretion . . . should not be given, and particularly should not be given by regulation when it cannot be debated in Parliament. . . ." Nor would it expose the Minister's subjective opinion to any test.

It is no use asking rhetorically, would the call for the release of Mandela constitute promotion of the public image of the ANC. I decline to give any view on it because whatever I said or anyone else said, would be entirely irrelevant. If the Minister's opinion was in the affirmative, then that is enough and it would be offensive. . . . That is the reason why the reference to certain cases which laid down that there must be certainty in the regulations is somewhat misplaced. How can there be certainty where the opinion of a politician is involved; the converse would be the case. Mr Browde says, precisely because it is an opinion that is involved, the more so should there be exactness in what can or cannot be done. This is a paralogism.

Browde argued that the failure of the Minister's notices to give reasons prevented the *New Nation* from making objections, violating the rule of audi alteram partem. The court corrected him.

This is of course not really the way to phrase the objection. The only objection that could be raised is whether the Minister has or has not "given notice in writing that action is being considered, stating the grounds of the proposed action." The short answer is that the Minister does not have to give "reasons" why he formed an opinion that certain matter offended. He is not obliged in other words to give a judgment in this regard. The "grounds" for the proposed action . . . are precisely what it says—his opinion that certain disclosed matter offended. . . . That is all. . . .

If deponent did not agree with the opinion of the Minister, all he could do is say so. If there was a factual error . . . he could say so. It might be said, if this is the whole purpose of the representations then very little can come out of it. Well, I am inclined to agree. I must point out that has got nothing to do with the wording of the Regulations; that arises because of censorship and the discretion of someone, in this case, a politician. And of course, censorship is very like a guillotine, and there is very little use in growing honeysuckle over a guillotine.

The court rejected Browde's argument that the Minister's offer to meet with publishers created "reasonable expectations." "[I]t is quite impossible to elevate whatever words were used to a binding and solemn undertaking, the breach of which would nullify anything properly done under the Regulations."

Although the judge occasionally revealed doubts about the wisdom of the government's approach to the media, he loyally suppressed them and did his duty.

The fact that one may be somewhat astonished by the vast apparatus that has been put up to deal with this matter has no bearing upon the legal aspect at all. So I leave that there. . . .

It is not our function to pass an opinion, favourable or unfavourable, on what the State President appeared to think necessary or upon the Minister's opinion. On the other hand, it need only be said that as far as the first is concerned, lack of bona fides has not been established.

The Supreme Court dismissed the application with costs.

Jules Browde immediately applied for leave to appeal.¹⁵¹ The court acknowledged the urgency of the matter. But J D M Swart, the state's advocate, argued that there was no reasonable prospect of reversal. A lengthy, confused, but illuminating colloquy ensued. Swart insisted that the Supreme Court (rather than the Appellate Division) should grant leave to appeal only if that would prevent an order of suspension, "but the practicalities and the time limits are such that it would not seem to have any practical effect whatsoever." The court, however, confessed uncertainties it had previously suppressed: "We are satisfied—subject to your argument—that we think another court might come to [another conclusion]—you know on words and phrases. . . ." The test for issuing a stay was the balance of convenience. The court mused aloud that denying the stay "would . . . put [the *New Nation*] out of production for three months, and the financial consequences would be enormous, whereas what would happen if they were to continue [publishing] until the appeal?"

Swart replied that the Minister had intended to issue the suspension order on 15 January and delayed only because this action had been filed two days earlier. He continued to restrain himself, although technically not obliged to do so.

SWART: But the point is that the minister . . . does regard it as a matter of urgency—he wants the matter disposed of, and as a matter of fact he reserved his right to proceed with an order should there be any undue delay. Now let me make it quite clear that this was in no way intended as any (inaudible) of contempt of the court at all.

COURT: No, no.

SWART: But it does illustrate that in his opinion the matter had progressed to the stage where, from a viewpoint of the public safety, general order and terminating the state of emergency, that something should be done.

The court adjourned for lunch at this point, urging Swart to take further instructions from the Minister (which he did not obtain).

After lunch the court indicated its willingness to hear and decide the application for leave to appeal on the present papers in order to avoid additional costs. Under pressure from Swart, the court conceded that it could not simultaneously grant a stay but noted that the same bench probably would hear that application. Browde then sought a temporary stay pending his application for a permanent stay.

COURT: No, there I cannot help you unfortunately. I know that it is very difficult for you.

BROWDE: Well my lord, otherwise it could be rendered [inaudible—probably "moot"] tomorrow by an extraordinary gazette, and that would put us out of business for ever, my lord.

He argued that the court had inherent jurisdiction. When the judge wondered aloud when the gazette was published, Browde said it appeared on Fridays, but the government could produce an extraordinary gazette any time.

The judge's anguish vividly emerged through his incoherence:

COURT: You see, my trouble is, that as far as I know the law, one—I do not know that I have the right to—well I suppose there will be no harm [inaudible]. Well you know we are anxious not to of course—because, let me put it this way. We are anxious of course, because of what will happen, if it just comes out tomorrow.

Noting that the Minister had not been in a hurry to issue the warning notices and that other newspapers were publishing similar material, Browde sought a week to ten days to prepare his application for a stay.

COURT: You see this is the problem. I know—yes, Mr Swart, you must try and assist us here.

SWART: [opposed the stay] That brings us to what I consider to be an insuperable difficulty, and I am also going to argue it, in case an application is brought. The applicant now has to apply for an interdict—not a stay, an interdict. . . .

COURT: Well, whatever you call it, yes.

SWART: Yes, but the big point is, it is not the same interdict with which we have been involved here. That matter has been disposed of. This court is *functus officio*. He has got to come with an application for a new interdict. Now, even if he intends doing that on the basis of balance of convenience, he at least must make out that he has got a *prima facie* right, even though open to some doubt.

COURT: Well, he will have that, by us giving him leave to appeal.

SWART: But at this stage he has got no right.

COURT: No, no, look, I do not know if you want me formally to give leave to appeal first?

SWART: No. But no, if leave to appeal is given, it means that there is a [inaudible—probably "reasonable prospect"] that a different court may find that he is right—has a right, but at this stage, the only judgment standing, the only judgment relating to the relationship of the parties, is the judgment of this court, which has found that he has not got a right.

The court seemed inclined to grant a temporary stay, noting that a hearing on a permanent stay could occur in two days and reiterating the permanent damage to the *New Nation* were it to be closed in the interim.

COURT: I do not know if I am making bad cases make hard law or hard cases make bad law, but it sounds to me a practical matter.

SWART: Yes. I am willing to go along as far as that. [But he immediately reversed himself.] I have a very grave difficulty in principle. And the principle is very shortly this. If this had been an application for the setting aside of the order of the Minister, say even on the same grounds, I could have understood an interdict pending the implementation of that order possibly coming into play. But the application was brought at a stage before the Minister made his order, with the result is [sic—read "that"] all this bruhaha is now about an appeal. . . . The effect, therefore, of even this very short stay your lordship has in mind, is that the Minister, while the court has found he had got the right to act, is now going to be prevented, whether on the short term basis or the long term basis, from exercising the discretion with [sic—read "which"] has been entrusted to him by law. . . . The Minister has gone along with that, on our advice, he has not jumped the gun, has not issued any order, but he has made himself clear on record, that he regards this as a matter of the utmost urgency, in the interests of national justice.

COURT: safety

SWART: . . . what it really boils down to, is you cannot interdict somebody against exercising his discretion unless he has in fact acted unlawfully.

The court interrupted Swart to insist that this did not matter. The *New Nation* had applied for an interdict before the Minister acted in order to prevent him from acting. The paper had just as much right to that interdict now as it had had previously.

COURT: You see the problem I have is just this, if we believe, as we do, that the Appellate Division could come to a different conclusion, it is not going to help them an awful lot if they have already then gone bankrupt.

SWART: [quibbled about the difference between bankruptcy and closure, reiterating that his client viewed the matter as of the utmost importance.]

COURT: I do not know if he still does. I do not know if he has seen subsequent [issues]—he might be happy with the way they are now publishing?

SWART: I do not know at all.

COURT: Well you see this is what to me is a whole in [sic—read "new"] reality. There were things that constrained him to come to the opinion that there was then . . . Public safety was endangered in August/September, was—how serious that could have been when, on the way the matter is framed, and with no attempt to be dilatory on either

side, by the middle of the end of December there still has not been a conclusion reached. So that what we are concerned about in fact then is those communications, and whether it is his fault or the State President's I am not concerned with, but it does, I must say—extraordinary. The point is that if he now says—and that is gone, it is finished. I do not know whether—there has been no revolution fortunately, so obviously nothing catastrophic has happened. It is a different matter if he now says, that I have taken note—I have no doubt he has, I mean his people have been sifting—of other applications, and really I am not satisfied. He does not have to give detail. He is not going to talk about a banning again—I am not telling him what to do. If he says that look, this is a matter affecting the question of a stay, I am not satisfied with the way they are publishing, and it is in my opinion, and my opinion I have already dealt with—that is a different matter. That is why I felt at the very outset that I cannot just let your client be bound, or just go on these papers. But in the absence of that, if on the other hand he turns round and says to you, that you know really Mr Swart I am satisfied that—like I was—that this matter is not really all that urgent, it is not all that dangerous, then what is the problem? That is why I wanted to know what your instructions—but I suppose you cannot get instructions from him over lunch.

In the end, the court granted leave to appeal and gave the *New Nation* less than two days to file papers seeking a stay until the Appellate Division acted (which could be a matter of years). It interdicted the Minister from suspending the *New Nation* before the Supreme Court could hear that application. All this solicitude was for naught, however. The state submitted an affidavit asserting that, since the paper actually operated at a substantial loss and had to be heavily subsidized, it would not suffer harm from suspension. At the hearing the Supreme Court denied the stay. And the Minister promptly closed the *New Nation* from 22 March to 10 June, when the emergency, and thus the regulations, expired.¹⁵²

Anticipating this, its 17 March issue contained a front page editorial about "The threat facing all of us."

If our [application for a stay] fails, you will effectively be denied your right to know. . . . The interesting coincidence is that the government chose to suppress basic freedoms and silence dissenting voices, while claiming it was in the process of "extending democracy." . . . "Reform", for us, has become synonymous with repression. . . . What credence do the handful of hand-picked pawns, partners of "reform", enjoy in the community?

The *Sowetan* headlined "Nation Is Silenced" and editorialized on its front page: "the Government is not prepared to test the cases it has made out against newspapers

in a court of law, and outside of the media regulations."¹⁵³ The *Weekly Mail* saw the closure as a "warning to all the South African press." *The Star* declared: "The Minister's whim is now mightier than the pen."¹⁵⁴ *The Cape Times* saw "a new phase of authoritarian rule in South Africa in which the entire press, already under siege, is increasingly at risk. . . . it is plain that the government has grown impatient of the judicial process and Western ideas of freedom and democracy."¹⁵⁵ Even the center-right *Daily Dispatch* editorially deplored that "the National Party government has again shot the messenger. . . . The answer is not to ban this left-wing publication . . . but to counter its message of a promise of a better way of life with tangible improvements now."¹⁵⁶ *Business Day* editorialized: "SA can no longer claim to have a free Press and in this respect, as in others, it has left the ranks of civilised nations."¹⁵⁷ *The Leader* condemned "the government action against our contemporary, the *New Nation*, which has been silenced for three long months."¹⁵⁸ *The New York Times* described the *New Nation* as "the most authentic voice of South Africa's blacks" and quoted Archbishop Tutu condemning the closure as "utterly reprehensible": "It is only a Government which is very close to being totalitarian which behaves in this way."¹⁵⁹ The South African Council of Churches denounced the "blatant suppression of the freedom of expression," while the Black Sash called the ban tantamount to a death sentence.¹⁶⁰ Journalists demonstrated, students held a rally addressed by Frank Chikane, the International Press Institute protested, and the United Nations special committee against apartheid expressed deep concern.¹⁶¹ The South African Society of Journalists and the Media Workers Association of South Africa condemned the closure. The *New Nation* promised to pay the full salaries of its 22 full-time employees and 32 correspondents and to run training courses.¹⁶²

Deputy Information Minister Stoffel van der Merwe explained that the government had acted to prevent the resurgence of growing resistance and disorder. It had to prevent the "sort of propaganda" that leads people "to overthrow [the government] by violence." The government had devoted "months and months" to studying the paper and had concluded that it identified itself with communism. The ban had been demanded by Bishop Isaac Mokoena of United Christian Action network, representing 14 organizations and 4 million people.¹⁶³ Trying convey an image of even-handedness, *The Citizen* headline declared: "Govt Monitoring Press: Warns AWB," only indicating in the subhead "*New Nation* Banned."¹⁶⁴

V. THE CAMPAIGN AGAINST CENSORSHIP

Contemporaneous with his March suspension of the *New Nation*, Stoffel Botha asked the *Weekly Mail* to elaborate its 174-page response to his notice, addressing "the accumulative effect of all the articles" rather than any particular one.¹⁶⁵ The paper responded on 5 April that it had taken the Minister's three-month silence as acceptance of its earlier reply. He could not correct the deficiencies of his first notice by *subsequent* regulations, which required a new notice. The paper constantly made clear "its own opposition to violence or to lawlessness. . . ." In its efforts to distinguish admissible and inadmissible publications "it has consistently sought effective dialogue with the Minister of Home Affairs. . . ." Botha also issued a warning to *Grassroots* on the basis of three items: a letter to the editor signed "Football Crazy Comrade," which referred to ANC officials as "our leaders"; a front-page article entitled "ANC calls for unity"; and a plea for an end to conflict in Pietermaritzburg and the KTC squatter camp.¹⁶⁶ *South* denounced the "arrogant Botha regime" and called on EC countries backing the alternative press to put pressure on the government.¹⁶⁷ It declared defiantly: "the bleak atmosphere in which ours may be the next alternative paper to be shut down, does not alter our pledge to tell the truth irrespective of the consequences."¹⁶⁸ But the next month Botha issued a second warning to *South*, two of whose 1987 issues had been found undesirable by a Publications Committee but cleared by the Publications Appeal Board. It had just ended its first year with a loss of R420,000 because its low sales (under 10,000) generated little advertising revenue.¹⁶⁹ Botha's objections included a feature about the book "Who's Who in South African Politics" and a letter from a member of the defunct Liberal Party.¹⁷⁰ Later that month Botha gazetted warnings to *Out of Step* (the publication of the ECC), *Grassroots*, *Saamstaan*, and the *Weekly Mail*.¹⁷¹ A *Daily News* editorial entitled "A threat to all" criticized the government's "failure to recognise that the Press is simply the public's representative, and that curtailing Press freedom is curtailing the individual's right to be kept informed."¹⁷² In May *The New York Times* published an op-ed piece by *Weekly Mail* co-editor Irwin Manoim, entitled "Pretoria Squeezes The Press."¹⁷³

The opposition launched a campaign against press censorship. Sunday newspapers carried an open letter to the State President on 8 May from editors, writers, and media people around the world. The Black Sash circulated 1000 copies of a chain letter. Businessmen, editors, ambassadors, and *Weekly Mail* readers wrote to Stoffel Botha, with whom the *Weekly Mail* also met. In response he issued a statement "in order to alert the general public not to be misled by the hysterical campaign in certain circles against the emergency media regulations."¹⁷⁴

Certain elements obstinately refuse to accept that by means of propaganda, publications are being used to promote the cause of revolutionaries. . . . The false impression is being created that I want to close down or place restrictions on publications indiscriminately; that freedom of speech and the free flow of information are unnecessarily restricted and that the emergency restrictions pertaining to the media

have no other purpose than to shield the government against criticism. All this is untrue.

Hoping to anticipate Stoffel Botha's suspension, *South* printed a special edition on Monday, 9 May, instead of its usual Thursday publication date. It reached the newsstands at noon, but only 20 percent of the press run had been sold when the ban was enforced at 2:30 pm. The government prohibited further publication until the emergency expired on 10 June. The South African Society of Journalists condemned the ban.¹⁷⁵ Editor Rashid Seria asserted: "The issue boils down to three syllables: ANC. The Government believes we are part of a conspiracy to legitimise the ANC in this country."¹⁷⁶ The following week he promised that an underground press would survive repeated bannings.¹⁷⁷ *The Cape Times* declared: "Freedom at risk for everyone."¹⁷⁸ Joe Thloloe's comment in the *Sowetan* was entitled "Death of truth."¹⁷⁹

The government continued its harassment of *Saamstaan*, which served Oudtshoorn's "coloured" township Bridgton and black township Bongoletu. The offices had been set on fire three times. Copy and photographs disappeared on their way to the paper. Because no printer within 500km would handle it, the paper had to be printed in Cape Town and shipped back. One entire edition of 9000 copies disappeared after being signed for by a mysterious "Scarface." Not one of the 20 white lawyers in Oudtshoorn would represent the paper (or any opposition political group or activist). Because no local shops would sell it, the paper was distributed free. Reggie Oliphant, one of its journalists, had been a schoolteacher until he was banished to the North Cape, where he supported himself by selling textbooks. His car was burned, and he received threatening phone calls every night. Umbulelo Grootboom, another journalist and native of the area, had spent most of the previous two years in jail, charged with making subversive statements during a service for four local activists facing the death penalty for necklacing a councillor. He also was arrested for "stealing prize stock for a UDF party." A local farmhand had sought revenge for his recent firing by herding his employer's cattle through town past an empty plot where a party was in progress. Those celebrating slaughtered the cattle. The police arrived, fired buckshot to disperse the crowd, and arrested one person—Grootboom. The charges were later withdrawn. But the government banned him in February, prohibiting him from attending any meeting where it was criticized. Oliphant, Grootboom, and Derick Jackson, *Saamstaan's* coordinator, were under house arrest every night. Jackson's restriction order even prohibited him from playing soccer. Patrick Nyuka, a reporter, covered a party celebrating the release of two local activists from prison. When police demanded his film and notes, he sought to pass them to a young woman. As a result his left arm was badly maimed, his face disfigured, and he was wounded in the back with buckshot; the woman also was severely wounded. Nyuka was charged with public violence.¹⁸⁰ The South African Society of Journalists conferred its Pringle Award on *Saamstaan* for its commitment to press freedom.¹⁸¹

Mbulelo Linda and Mike Loewe had been detained for several months shortly after launching the Port Elizabeth News Agency (PEN). After release their restriction

orders prohibited them from working as journalists, although a court application forced a relaxation. In June 1987 someone broke in through the skylight and tried to steal their teletype. A second burglary occurred in April 1988 and a third in May—during which the recently installed burglar alarm did not go off. No money was stolen, only documents, negatives, and telecommunications equipment.¹⁸²

Because the *Weekly Mail* reached a largely white audience (although its circulation was less than half that of the *New Nation*) it generated the most vocal support: editors from 33 countries, the Inter-American Press Association (representing more than 1300 newspapers), the vice chancellors of the Universities of the Witwatersrand, Cape Town, Natal, and the Western Cape, and editors of 26 South African newspapers, including most of the English press. They declared that no paper had broken the law. The Minister seemed to be "coercing all the media into accepting a uniform attitude—a subservience not in the interest of South Africa." They sought the restoration of the Rule of Law.¹⁸³ Three hundred Grahamstown residents and organizations took a full-page advertisement in the *Weekly Mail*.¹⁸⁴ Co-editor Irwin Manoim declared: "The *Weekly Mail* has wide support—from the business sector, lawyers and other newspaper editors in influential circles." Co-editor Anton Harber asserted that "we have broken no rules because if we had done so, the Government would have prosecuted us." He predicted an "international and local outcry," noting that he had received support from the *Daily Telegraph*, *The Independent*, and the *Guardian* in England, and the *Washington Post*.¹⁸⁵ Soon thereafter present and former editors of *The Times* (of London), the *Observer*, the *Independent*, the *Independent on Sunday*, and the *Mail on Sunday* and the chair of the British Press Council weighed in.¹⁸⁶ *The Cape Times*, *The Star*, the *Daily News*, *City Press*, the *Natal Witness*, the *Natal Mercury*, the *Sowetan*, *Daily Dispatch*, *The Leader*, and the *Pretoria News*, as well as the Media Workers Association of South Africa denounced the warning, although *Beeld* and *Die Burger* had no comment.¹⁸⁷

The Citizen took the government line: the *Weekly Mail* could still "report most of the news honestly and without breaching their own ethical standards." If it was banned and destroyed "it will be because it was too arrogant to save itself."¹⁸⁸ In a speech published in *Business Day*, Manoim said that the warning letters "showed so little sign of a mind actually engaged in examination of the contents of the objectionable publication that they tended to produce guffaws rather than alarm."¹⁸⁹ A *Business Day* editorial offered a mixed defense:

The suggestion that the *Weekly Mail*—circulating mainly among the class of English-speakers who see their increasing cultural isolation and deprivation as a good reason to emigrate—may be stoking up a night of the long knives is quite bizarre. It proves what we have suspected all along: that the Minister and his advisers have neither the general education, nor the wit, to distinguish between revolution and radical chic.¹⁹⁰

Botha vociferously defended himself:

The false impression is created that I want to close down or place restrictions on publications indiscriminately; that freedom of speech and the free flow of information are unnecessarily restricted; and that the emergency regulations pertaining to the media have no other purpose than to shield the government against criticism. All that is untrue. . . . there are certain elements inside and outside South Africa which want to brush aside the existing state of emergency, in an off-hand manner, as being unnecessary. . . . They obstinately refuse to accept that by means of propaganda, publications are being used to promote the cause of revolutionaries and to create a favourable atmosphere for the violent overthrow of civilised standards and good order in South Africa. The end result of what these people are promoting or supporting is the replacement of the existing order by a Marxist/communist regime.¹⁹¹

Tian van der Merwe, PFP spokesman on Home Affairs, said Botha's protestations "could not be taken seriously."¹⁹² The party accused him of "hiding behind a jungle of mumbo jumbo to disguise his intention to close down another newspaper."¹⁹³ The *Sowetan* called his justification "decidedly unconvincing."¹⁹⁴

The *Weekly Mail* editors responded:

[W]e are an independent, critical newspaper, with ties to no organised group. . . . Mr. Botha accuses us of promoting revolution. He cannot, surely, believe this. Our real crime is the telling of awkward truths which the Government would prefer not to hear. . . . It seems he hoped to act against the Press without a murmur of dissent. Instead, a wide range of people, both in South Africa and abroad, have appealed to him to reconsider. These include senior business leaders, editors of major newspapers, professionals and diplomats.¹⁹⁵

On 18 May the House of Representatives debated the budget for Stoffel Botha's Home Affairs Department—this time knowing the content of the media regulations and how he intended to apply them. Botha began by denouncing "resistance art":

plays, popular theatre, recitals and music . . . [whose] purpose is to create a climate which fosters a spirit of resistance and revolt, and which can then lead to labour unrest, civil disobedience, protest marches and, in the final instance, to revolution. . . . Emotion plays a basic role, and consequently the audience finds itself in a particular stage [sic] of agitation. When the show ends, the audience is so emotionally charged that they will not calm down before everything in the vicinity—from buildings to cars and even other people—has been attacked. . . . Another form of resistance art is biting satire in which an attack is launched on

personalities and specific aspects of the "establishment". The purpose is obviously to make the viewer critical of the existing order and to create a spirit of general dissatisfaction and even revolt.¹⁹⁶

The ruling Labour Party ignored this tirade and focused on the media regulations. "Since the imposition of the state of emergency in 1986 the news media have been practically paralyzed by more than 1 000 laws and the whole range of emergency regulations. . . . since the new measures were approved South Africa has had the most sophisticated government-controlled Press in the world." The member questioned the sincerity of the government's attempts at reform. He cited two slogans: "We may be banned, but we will not be silenced" and "The voice of the people must be heard." He declared: "The Press should be freed to inform the overall spectrum of inhabitants about facts of which they have no knowledge." He urged Botha "to lift all these measures immediately."¹⁹⁷

Another Labour Party MP asserted that "the policy of the Government of the day . . . is to eliminate people or newspapers who seem to inform the community of what is happening in South Africa." Botha had banned the *New Nation* and *South* and had threatened the *Weekly Mail*. This member thought "that the newspapers are doing a good job." Why could newspapers like the *Evening Post* or the *Eastern Province Herald* report on Govan Mbeki's release? "[D]emocracy contains certain institutional preconditions; these are: Freedom of speech, freedom of the Press, freedom of movement, freedom of association and academic freedom. These freedoms are basically absolute, intolerant and admit of virtually no compromise." Banning just increased reader interest in the banned paper. "Irrespective of how many newspapers are closed down, people will still search for freedom."¹⁹⁸

Botha denied that he had singled out community newspapers for special scrutiny. "The intention was actually to stem propaganda aimed at the overthrow of a state—not a government or a political party . . . by means of violence." Papers like "the *Cape Times* and *The Argus* lash out at the Government every day. . . . This is right and proper because we need it." "We are all in agreement that the Press should be as free as necessary for the security of the State, as well as for its economic and social structures." Should the Government "simply permit certain publications to fan the flames of hatred, fear, intimidation, murder, mutilation and other evils in the name of democracy"? Describing what the regulations prohibited, he insisted that the objection was not to "the usual sort of criticism, but an active sort of criticism."

He had heard that newspaper editors had written him arguing that the banning of newspapers "is assisting the revolution because it is inciting those who think they have a valid standpoint which is being silenced, to resistance. . . . We do not want to do this! We merely want to prevent them from becoming part of the revolution. The pen is just as mighty as the sword." "I shall not hesitate to take steps against those little papers which want to prevent [us striving for peace and prosperity] and encourage atrocities." They were engaging in "subversion":

casting suspicion on leaders, disrupting and impeding government activity, encouraging a condition of ungovernability and undermining discipline, especially in the security forces. These are the same things on which the ANC and the SACP are intent. . . . They require publicity . . . require henchmen in this process. So-called "media terrorists" are in a position to provide these revolutionaries' causes with publicity . . . by proclaiming the revolutionary message and by providing deeds of terror with publicity. . . . certain newspapers present terrorists as "freedom fighters" or "guerillas", rather than as perpetrators of political violence seeking publicity. . . . revolutionaries are presented in a variety of ways aimed at promoting their acceptance by the public. . . . [P]eople are sometimes indoctrinated in favour of the communist ideology—without all its real implications being spelt out. . . . [F]ear and anxiety have increased as a result of the fact that incidents of intimidation have been given special publicity by newspapers. . . . [T]here are recurrent allegations . . . carrying the false message that the days of the established order in South Africa are numbered. . . .

If members had not noticed this "are they themselves not perhaps victims of the kind of propaganda I have described?" "The Government is not in conflict with newspapers which accept the existing order in South Africa. . . ." "It is the Government's desire that these emergency regulations be lifted as speedily as possible but the Government cannot and will not lift the measures while they are still regarded as essential." With respect, Botha did not think "it is accepted anywhere in the world that the Press should have absolute freedom." The decision whether to ban the *Weekly Mail* was "up to the editor . . . because there are specific prohibitions in regard to propaganda which a newspaper may publish. If the editors decide to continue publishing the matter which is referred to in this document they have taken the decision in their own hands."¹⁹⁹

When debate on the Departmental budget resumed in the House of Assembly Appropriations Committee the next day, Botha initially received support. A Conservative MP agreed that "the State has no choice but to scrutinise" those journals advocating that "South Africa should be made ungovernable" and that "power should be seized by violent means."²⁰⁰ A Nationalist agreed it was "a pity that at times we in South Africa have to take steps against specific sections of the media," but Government ultimately "has the responsibility of keeping the State machine functioning." He maintained, however, that "nothing in South Africa, no law, prevents people from participating in the political debate, from writing, speaking"—unless they "have chosen the path of violence."²⁰¹

PFP MP S S van der Merwe launched the first attack. The media emergency regulations had been promulgated "without reference to Parliament as a democratic institution and they are being exercised without reference to Parliament." As a result of those regulations "the authority to render Press freedom meaningless is given to the subjective opinion of one man." "[O]ne cannot speak of freedom of the Press in respect

of a newspaper that can be closed down on the say-so of one Minister." "I can think of no more devastating way of smashing Press freedom than to ban a newspaper. . . . The hon the Minister would do well to be more frank and honest about the dictatorial nature of his powers. . . ." "We must be one of a few countries in the world where so much pain is taken to clad authoritarianism in the elegance of legalistic jargon." The Government had "after almost three years of emergency rule, obviously learnt some lessons on how to avoid the embarrassment of Supreme Court censure." "Obviously the hon the Minister and his people have been very busy . . . preventing the public from reading news which the hon the Minister thinks they are too immature to digest." Van der Merwe denied "that these publications propagate or foment revolution or violence"; otherwise they would be prosecuted. He had examined Botha's 18 complaints against the *Weekly Mail* and could not find one instance of unfair reporting or provocation. Although Botha accused the paper of "positive publicity," he had not charged it with promoting the aims of a banned organization. His real complaint was that the paper "did not go out of their way to discredit the ANC, as does most of the news that we do get about that organization." The "real reason" for the media regulations was "to prevent the free and open exchange of views, which, after all, is the life-blood of democracy, from penetrating the claustrophobic political atmosphere created by the Government itself. The Government wants its own propaganda not to be challenged by revealing facts and views." Van der Merwe was "an avowed anti-Marxist and anti-communist . . . because they detain people without trial in typical communist regimes . . . prevent people from having political meetings . . . [and] close down newspapers." This Government was "bring[ing] in, through the back door, more and more of the most offensive elements of the typical communist state."²⁰²

A Nationalist replied that "as long as the PFP champions the cause of the alternative media, we on this side of this House are going to distrust them." He was "gratified to hear that since September last year the monitoring of the media has been stepped up to a considerable extent and that since then action has been taken against various newspapers and publications." The last four months of 1987 "produced no fewer than 301 reports with a potential subversive content."²⁰³ Another Nationalist reminded members that "no nation, even the most enlightened, is entirely free of efforts to control the Press and freedom of expression. This was said by none other than the editor of the *Atlanta Journal and the Constitution* at *The Star's* centennial conference on conflict and the press." "[R]evolutionaries attack governments by physical and psychological methods through propaganda and . . . the established media are frequently a target for infiltration. . . ." S S van der Merwe "has no idea whatever of the role which the alternative Press plays in the power struggle. It is also clear that he is extremely soft on the ANC." Recounting regulation of the media since 1977, the MP insisted that "the Government is intent upon the highest possible maintenance of the freedom of the South African Press and the media." In virtually the next sentence, however, he added that "there are still too many instances of unbalanced and incorrect reporting on certain matters and misleading headlines in newspapers" and asked why the Registration of Newspapers Amendment Act had not been put into operation.²⁰⁴

PFM MP Peter Soal offered a rejoinder.

There is a general perception in South Africa that we have a free Press. That is incorrect because what we have is a controlled Press. . . . Until the emergency regulations were promulgated, [the press] had adhered to a proud tradition of the public's right to know. Now they have become grey. . . . I believe it is this Government, and this hon Minister in particular, who indulges in a deliberate strategy to keep the truth away from the public.

He warned Botha that "if he wants further sanctions against South Africa, he must continue to act against newspapers."²⁰⁵

A Nationalist retorted that "there comes a time in the history of any country when the government of the day has to make a choice between being patted on the back for its indulgence of the media on one hand and for the way in which it protects the safety of its citizens on the other." It was "the height of naivety" for members to deny they could "see the method by which propaganda is being disseminated in order to overthrow the existing order." He asked Botha "to institute a serious investigation into the funding of [the alternative] Press. . . . Funding of this informal Press from foreign sources must be brought to a halt as soon as possible." "Has the time not come for us to look at certain measures which can be taken by the State to ensure more effectively that the Press speaks in the idiom of the community and the society in which it has to operate?" "Is it fair that people should be appointed to the posts of newspaper editors and journalists in South Africa, positions in which they are opinion-makers, when they are foreigners and not even South African citizens?"²⁰⁶

Botha replied at length.

[A]t the risk of taxing the patience of those who understand the issues involved, but for the benefit of those who claim that they do not understand them, I want to repeat, for the umpteenth time, my stance on the question of the media in general and the emergency regulations in particular.

I am in full support of the concepts of freedom of expression and a free flow of information . . . [but] freedom of expression—and therefore the press—cannot be absolute. . . . freedom must be looked at in the context of an attempted violent revolution by the ANC and its mentor, the South African Communist Party. . . . these organisations blatantly admit that they collaborate with the mass media to further their revolutionary struggle for the total take-over of South Africa. They cannot be allowed to do that. . . . freedom of expression in South Africa will not be allowed to such an extent that it fosters chaos and revolt in this country. . . . For how long must the Government, and I as responsible Minister,

continue to caution in a friendly way and ask the Press for its co-operation. . . ?

He quoted John Birt, Deputy Director General and Chief Editor of the BBC: "If the media are to avoid impositions which could restrict their legitimate activities, there has to be a determined and radical move towards selfregulation [sic]." In South Africa the "negative Press" indulged in "venomous suspicion-mongering, the over-emphasising here and the under-emphasising there and the creation of a distorted image." He wondered "whether the honest practitioners of journalism in South Africa are not, at some stage, going to dissociate themselves from the negative ones." He contrasted the "free, vigorous and responsible Press" with "emotional reports which, for example, maintain that terrorists are in fact 'freedom fighters' and heroes; reports which, under the banner of Press freedom, are misused to foment confrontation, to try to promote violence and castigate the Government." This "challenging journalism which sometimes seems like a planned strategy to taunt the Government" comes from "the disloyal Press"—a "destructive factor in South African society." The Media Council had totally failed to deal with these threats.²⁰⁷

Jan van Eck, the only independent MP, counterattacked. Botha's speech reminded him "of an exceptionally frightened person—frightened of the future, frightened of everything. Adolf Hitler's erstwhile propaganda chief, Josef Goebbels, would undoubtedly have been very proud today of the way in which the hon the Minister followed in his footsteps." (A Nationalist who interjected that van Eck "was sick" was forced to withdraw the statement.) "Just as Goebbels' censorship and propaganda could not ensure the continued existence of the Nazi regime, so the censorship and propaganda of the hon the Minister of Home Affairs will not be able to ensure the continued existence of the apartheid regime in South Africa either." He expressed gratitude toward the alternative press "for their contribution in revealing those facts which are being actively concealed by this Government." First, "that we in South Africa are engaged in a civil war in which young White men from Claremont, Rondebosch and Kenilworth are shooting at young Black men from Guguletu, Nyanga and Langa. . . ." Second, that the ANC and Nelson Mandela "are not irrevocably committed to violence and . . . resorted to violence simply because all other channels for lawful protest and resistance were closed to them." Third, "that by far the majority of South Africa's population supports the African National Congress." Fourth, "that by far the majority of the Black and Brown communities reject participation in the Government's tricameral Parliament, Brown management committees and Black town and city councils." "[O]ne of the major reasons why the State has moved against the alternative media . . . [is that] they have been encouraging non-participation in those elections for years." "[B]y closing down the newspapers the hon the Minister wishes to prevent the most heinous atrocities that are being committed by this regime from being revealed. I am referring, for example, to the forced removal . . . of thousands of Blacks." "[A]fter creating an information vacuum in this way, the Government will then fill this vacuum with its own misinformation and disinformation provided by the Bureau for Information."²⁰⁸

Nationalist MP J T Delpont replied that "the freedom which the Press has . . . places an obligation upon it. As far as I know only one person in history has had absolute freedom, namely Adam, but that was before Eve came along!" Government had not prosecuted the alternative press because it was "engaged in creating a climate for revolution in an extremely subtle manner. . . . These people are the cowards who are preparing the way for the terrorists. . . ." Van Eck was "also one of the less courageous people." He had associated himself with *South*, which was "unashamed about its political commitment. It makes no claims to objective reporting and sees neutrality as a luxury it can't afford." *South's* editor admitted: "we cannot support the ANC, because of the law." In response, "this Government will take action in the interests of the safety, the continued existence, the orderliness and the very survival of that which these people who are being protected by you wish to destroy." To which S S van der Merwe retorted: "Every tyrant in history has made that statement."²⁰⁹

Botha concluded the debate by responding to the editors' petition, which had taken the same line as van der Merwe and van Eck: Government ought to prosecute newspapers that violated the law, not shut them down. Such papers promoted revolution by giving "positive publicity to the revolutionaries . . . by building up their image and by reporting favorably on someone who plans unconstitutional violence, like Oliver Tambo." Such "one-sided" reports do this

by mentioning how he is honoured . . . on special occasions and by popularising him by publicising slogans and clarion calls such as "Viva Umkhonto we Sizwe" . . . by publishing photo's [sic] of the ANC leaders in such a way as to provoke sympathy for those who seek violence; by publishing reports creating sympathy for ANC detainees and prisoners; and by pointing out, with a great flourish, the recognition which the ANC enjoys abroad . . . by means, for example, of reports in which the security forces are consistently denigrated and made suspect. . . . unfavourable information in regard to these revolutionaries is withheld from the public . . . the Government and its aims are always shown in only a negative light . . . while in the same breath, the revolutionaries are always shown in a positive light. . . . In this also lies the great difference between this type of publication and certain of the responsible, conventional media. The conventional media, in fact, also criticise the ANC strongly so that ultimately the image of the revolutionaries is not generally promoted. This is the sort of balanced reporting which one expects of a responsible Press. . . . [The ANC and SACP] are now being kept alive by being given one-sided, positive publicity.

He reviewed the warnings issued and suspensions ordered during the first eight months of the emergency regulations. He was required to go through "a long drawn out and exhausting procedure . . . in which publications are given a fair opportunity to state their case and to decide on their future course of action."

Of the 188 analysed reports in respect of which notices were addressed to publications, 47% dealt with the promotion of the public image of unlawful revolutionary organisations. . . . The stirring up of hatred or hostility against members of the security forces and sections of the community represent 28%. . . . Reports promoting revolution or uprisings represent 14% . . . while 4% . . . promoted boycott actions and civil disobedience. Five percent . . . promoted the breaking down of the public order by *inter alia* discrediting the judiciary while 2% . . . propagated alternative structures [people's courts and street committees] to the extent that it favoured the revolutionaries.

In response to his notice to the *Sowetan* he "found important aspects of its representations acceptable" and did not contemplate further action.²¹⁰

In the House of Representatives the following day Botha returned to the fray with renewed confidence.

[My critics] have failed to prove me wrong in the other two Houses. . . . The impression may have been created that I am averse to the principle of freedom of expression and that I am anti-Press. . . . [M]edia terrorists . . . are instruments of conflict and destruction. . . . They are the people who do not have the guts . . . to be terrorists themselves as it is too dangerous. They hide behind the protection of an editorial office to motivate others to do the dirty work for the sake of their selfish aims. . . . It is an ego trip by dropouts from other fields of endeavour. . . . [They seek to distract us] from what all decent people are striving for in this country and what this Government is doing its best to bring about: Peace and tranquility where we live; the opportunity to share in what this country has to offer; to use our God-given talents; and—it sounds simple—just to be happy. . . . [I sought to] place on record today the criteria in terms of which the foreign media may operate in South Africa. The admission of any foreigner to any country is a privilege . . . not a right. If a host country, with all the facts and information at its disposal, is convinced that more negative than positive results will be the outcome of admission or continued sojourn of a foreign media representative or even a bureau, it is not only the host country's right but also its duty to act in accordance with the best interests of the country. . . . the foreign political correspondent is usually a nomad with no allegiance, accountability or responsibility towards the host country. . . . there are many communicational or other misdemeanours . . . unbalanced reportage, advocacy journalism, material omissions, failure to obtain the other side of the story before going into print or broadcast, failure to rectify incorrect statements. . . . An aspect to be dealt with when considering the admission or extension of a work permit to a foreign

correspondent, is the attitude and track record of the relevant foreign news medium.

He contrasted the "objective, balanced and informed" journalist with "the emotive moraliser and advocate type." If a foreign correspondent did not comply with the Media Council Code of Conduct "we are not likely to reach agreement on his admission or the continuation of his operation in South Africa." Botha also considered the "number of correspondents of a particular news network." He had complained to CBS News about "Children of Apartheid" and had just issued a press release about the incident. Botha had given CBS News "a severe reprimand" for its "distorted and unfair" documentary. It had agreed "that the circumstances surrounding the making of the programme were such as to give grounds for objection by the South African Government and regretted that it had not been meticulous in complying with South African procedures regarding foreign media."²¹¹

The initial response was surprisingly mild. The first speaker was unprepared to discuss the media. The next simply ignored the subject. The third simply urged Botha to "have second thoughts" about introducing new laws to curb the press.²¹² Only the fourth, from the PFP, confronted him directly, asking when "Cry Freedom" would be shown. "[W]e in the PFP believe in the freedom of the Press and we believe that that freedom is indivisible." He condemned the "pernicious regulations" intended to "knobble revolutionary propaganda in what [Botha] calls 'the alternative press.'" He did not believe "there is such a thing as the alternative Press." *Die Transvaler* under the editorship of Dr Verword "could well also have been called 'an alternative Press' because it served a particular point of view and a particular community." He objected that "action is dependent entirely on the subjective judgment of one individual." He questioned the recent suspension of the *New Nation* and *South* and asked why they had not been prosecuted. "[T]he absence of any such explanation from the hon the Minister could be seen as an authoritarian repression of fundamental liberties such as the liberty of self-expression and access to our courts." This provoked another MP to cry "Hands off the Press!"²¹³

S V Naicker, Minister of Local Government and Agriculture, regretted that "the good side of South Africa, the honest intentions of this Government and the people of South Africa who are well-intentioned as regards finding a new direction for South Africa have not been projected as they should have been." He was "sure that whatever decision this hon Minister and his able department have taken, was taken entirely in the interests of South Africa."²¹⁴

P T Poovlingam, although PFP, "warm[ed] to the hon the Minister, because his nature is such that it produces that response . . . [and] we Natal-people tend to warm towards one another. That is why I am certain that the latest round of Press curbs do not emanate from the hon the Minister himself." Botha "does not look like a Hitler. Hitler banned newspapers. He does not look like a Stalin. Stalin banned newspapers."

"If we remove apartheid and the stench caused by it from this country, there will be no need to ban these newspapers."²¹⁵

A Rajbansi, Chairman of the Ministers' Council, believed "that if newspapers just follow the code of ethics which they themselves have formulated, there cannot be any problems." South Africa allowed "the type of criticism which even Mr Robert Mugabe would not allow." "In certain countries, if one criticises the Government, there is no question of a trial. One's body would be found floating in a river. . . . the Indian government actually locks the doors of a newspaper without any explanations when the only crime the newspaper has committed was to be critical of the government." When "a giant media magnate" criticized Ted Kennedy, he inserted a legislative amendment prohibiting a newspaper from owning a television network in the same district. "I therefore think one should really compare what prevails in certain countries that are very much critical of South Africa."²¹⁶

In reply, Botha explained that the media regulations related to propaganda "and no other law had previously provided for that." "It is true that if, for instance, a particular newspaper propagates sedition, it can be taken to court . . . [but] it would take at least a year before a case was brought to court and a decision was taken." "[A] revolution is being experienced in South Africa . . . and we want to take speedy action in order to ensure security in this country." "The fact is that the Government and I respect the freedom of the press as much as anyone else."²¹⁷

Not surprisingly, the media were not reassured. The *Natal Mercury* warned of the "ominous threat."²¹⁸ The *Natal Witness* deplored "press curbs."²¹⁹ The *Natal Post* proclaimed "Death of the truth."²²⁰ The *Sunday Tribune* offered space to Mansoor Jaffer of the banned *Grassroots*.²²¹ The *Sunday Times* championed the *Weekly Mail*.²²² Responding to the growing threat, 45 organizations launched a Save the Press Campaign in Cape Town at the end of May. And the following month 120 Transvaal journalists from such papers as *The Star*, *City Press*, *Sunday Times*, *Sunday Star*, *New Nation*, and *Weekly Mail* launched the Association of Democratic Journalists to replace the South African Society of Journalists and the Media Workers Association of South Africa. Interim committees were formed in Natal, the Border, Eastern Province, and the Western Cape. Within days, two police posing as plumbers searched the Hillbrow flat of Thami Mkhwanazi, a *Weekly Mail* reporter (and Robben Island alumnus) who had been elected to the ADJ executive.²²³ Sbu Mngadi noted at a rally at the end of July that only Stoffel Botha could have forged unity among such diverse perspectives.²²⁴

The Media Emergency Regulations were reissued when the Emergency was renewed for a fourth year on 10 June. The PFP promptly condemned them for having "nothing whatsoever to do with the truth" but only "with the suppression of news." They also had "nothing directly to do with political violence." "Instead . . . the Government believes it will curb political violence by suppressing political information and political debate." "[O]nly a fool" could "believe that this approach will work in the long term."

Although there were "a myriad of laws in common law and statute law and even emergency powers that allow the Government to deal with illegal or criminal acts," S S van der Merwe asked "when last an editor, a journalist or a newspaper has been charged in a court of law"? The purpose of the regulations "is to create a sufficiently claustrophobic political atmosphere so that Government propaganda can work effectively."²²⁵

Reflecting Stoffel Botha's harsh criticism of foreign journalists, Law and Order Minister Adriaan Vlok threatened to expel the BBC from South Africa for its plans to televise a rock concert in London celebrating Nelson Mandela's 70th birthday. He also attacked "Suffer the Children," its documentary on child detainees. "This film contained extremely biased and slanted criticism, distortions and blatant lies about South Africa and the so-called children in detention. . . . the positive developments, especially in the Black communities, are totally ignored." "The SAP and the Government takes the strongest exception to this film . . . [which] was obviously designed to generate hatred towards the SAP and our other Security Forces." When asked why it had not sought police comment, the BBC told SAP Commissioner Brig. Mellet: "quite frankly, the BBC does not believe the South African government." Vlok commented: "If this is the BBC's attitude, then why should the South African government continue to host their representatives in our country? . . . We will not allow South Africa and especially our Security Forces to be vilified through deliberate lies and slanted distortions."²²⁶

The government instructed officials not to talk to foreign journalists unaccredited by the Bureau for Information and to report all approaches by foreign correspondents. It also planned to inform public officials of the "attitude" of accredited journalists. Information Minister Stoffel van der Merwe wrote to them: "It happens increasingly that foreign journalists and mainly television teams visit the Republic of South Africa under false pretenses to write unlawful reports and compile television programmes."²²⁷ The government gazetted new Emergency regulations, effective 31 July, requiring registration of all "news agencies" except the established ones (listed in the Gazette), those who did such work casually, and an exclusive supplier to a single outlet. The regulations appeared to cover entities like the South African Institute for Race Relations and the University of the Witwatersrand Centre for Applied Legal Studies. Although registration was automatic, the government could deregister anyone threatening public safety and law and order or delaying the termination of the emergency.²²⁸ A J Engelbrecht, Director of Media Relations, sowed confusion by announcing that mainstream papers, which regularly supplied news to others, also would have to register. This produced an outcry from the United States government, the American and German Chambers of Commerce, and the Inter-American Press Association, persuading his boss, Stoffel Botha, to repudiate the interpretation. A week later Stoffel Botha suspended the entire regulations.²²⁹

Soon after the emergency expired (although it was immediately redeclared) and with it the two suspensions, the *New Nation* and *South* reappeared (although the government had promulgated a regulation allowing it to extend *South's* suspension two

months). They were welcomed by many other papers.²³⁰ The *New Nation's* inaugural issue included dummy front pages from the banned issues.²³¹ A front-page editorial declared:

We are back! Back to continue writing about the aspirations and desires of the voiceless majority. . . .

When Home Affairs Minister Stoffel Botha started noting alleged problematic material in our newspaper, we submitted volumes of representations explaining our point of view.

And each time we did this, the secret media "watchdogs" advised Botha to simply write back in a few lines—to say we either misunderstood what was expected of us or we did not address the questions raised.

Botha, who had earlier promised that his doors would always be open to any newspaper needing clarity on the restrictions, went back on his word and shut his door on us when we attempted to arrange such a meeting.

This has been our experience with the Nationalist Party "media hit-man" who has been given power by government to subjectively decide which material in newspapers is a threat to the apartheid system in this country.

The second issue described at length its arguments in appealing the suspension.²³² The third recapitulated the news of the previous three months, as the paper would have reported it.²³³ *Saamstaan* claimed that governmental repression had increased its circulation from 9000 to 17,000.²³⁴

The government also continued to attack particular publications and productions. On orders from SAP Wits Divisional Commander Brig. Ernest Stephen Schnetler, the police raided the offices of the literacy magazine *Learn and Teach*, seizing 14,300 copies of "The Historic Speech of Nelson Rolihlahla Mandela at the Rivonia Trial." They photocopied an invoice book with the names and addresses of purchasers and even detained the employee of an insecticide company who was there to spray the place, taking his name and address before releasing him. They continued the raid at Exclusive Books, confiscating three unsold copies and demanding descriptions of the man who had bought other copies the previous day and the photographer accompanying him.²³⁵ The publisher made an urgent application to the Rand Supreme Court for return of the issue. State counsel defended the seizure on the ground that the speech was unbalanced, incorrect, and placed the South African legal system in a bad light! He also insisted that the applicant had the burden to prove that the police had acted in bad faith or with ulterior motives or had not properly arrived at the decision. Justice G Gordon clearly found the case very troubling:

This kind of legislation excludes the courts from things no court is happy to be excluded from. I am hit by the legislation. . . . [The state was objecting to] a quotation from court proceedings, proceedings that were held in the open. It is disturbing to find these proceedings are now

capable of being restricted. That curtailment in itself is a very drastic one.²³⁶

On 25 July, four men flaunting guns in shoulder holsters bought tickets and watched the play "Shades of Brown" at the University of Durban-Westville cultural festival. The following night five police set up video equipment in the theater. Their leader refused to produce identification but wrote on a piece of paper "Sgt James and four others," with the name of the local police headquarters. The producer said he did not have film rights and could not let them videotape. When the police insisted, he cancelled the performance. Written by South African exile Michael Pickardie, the play had been performed in Johannesburg, Cape Town, New York, and London.²³⁷

The previous December a Publications Committee had approved the movie "Cry Freedom" without cuts, ruling:

The present policy of peaceful reform and negotiation, plus power-sharing needs to be emphasised as being sincere and ongoing. Despite currently having a state of emergency—the unconditional approval of this film despite its one-sided viewpoint, publicly demonstrates that South Africa is politically mature, unbiased and fair by allowing all points of view for public screening.

. . . The fact that the presentation is one-sided, that is brutal police action, does not render it undesirable. The airing of grievances is also legitimate and over-reaction also poses a threat to security!

The black people live with intimidation and violence on a daily basis . . . in fact, they would criticise the fact that so much exposure is given to Woods despite his sympathy for their cause.

. . . The subject and its treatment . . . is not likely to have great popular appeal, especially since it had great public exposure in 1977 and is familiar to many.

The film may create anger or be objected to by some members of the South African public—but by its screening—far more will be achieved in creating a climate of hope, openness, tolerance and objectivity in the minds of the world outside South Africa.

No appeal was filed, but United International Pictures, the local distributor, postponed the opening when it was unable to learn whether the government would accept this ruling. In reply to a March 1988 Parliamentary question, Stoffel Botha revealed he had "received a written complaint from a private individual as well as a number of complaints per telephone." He had "also noted letters and reports in the press with a negative purport towards this film." He could direct the Publications Appeal Board to reconsider the decision but he had "not had the opportunity to view the film."²³⁸

At the beginning of July UIP said it would release the film nationwide on 29 July, booking theaters and advertising widely. Four days before the proposed opening

Stoffel Botha directed the PAB to reconsider the question. In support of a ban he offered the testimony of Justus Tshungu, an SABC employee for nearly 30 years and organizer of Radio Pulpit:

[Youth will] completely lose their heads . . . rivers of blood will flow. . . there will be uprisings. [There] had never been a better recipe for revolution than showing ["Cry Freedom"] to black kids. . . [T]hey would stone every car nearby. And if they saw police—I cannot say what they would do.

The film's portrayal of the police was inaccurate "as I know so many of them who do humane work." Black children would view the film as "gospel," seeing "Biko as Christ, with Donald Woods as John the Baptist." "Black people tend to dramatise, to get emotional." If the film were passed, he urged differential age restrictions: 18 for whites and 30 for blacks. P C van der Byl argued on behalf of the state that the film was politically motivated despite its claim to be based on fact. It portrayed the SAP as callous, inhumane, and brutal and blamed Afrikaners for violence and oppression.

On the morning of 29 July, just minutes before the first screening was scheduled, the Board upheld the Committee decision, while rejecting much of its reasoning. The issue was not South Africa's image abroad but only whether the film would be "harmful to race relations." It found nothing that "might be regarded as an incitement to racial hatred, violence, civil disobedience, and the like." Viewers might well find "the film's heavy accent on the actions of [Donald] Woods . . . questionable or even deplorable," which is "likely to neutralise emotions." The film was "a somewhat mediocre product," which "fails dismally to evoke a revolutionary response." The "slow-moving and rather boring action, often taken up by lengthy dialogue" would discourage all but "the more determined viewer" from enduring its two and a half hours. It agreed with the Committee that "the forces of law and order are depicted as unfeeling, inhuman and brutal," but that was true of many other films. The caricatures were so "blatant" that "even a foreigner would realise, or at least suspect the extent of this bias and 'over-kill.'" The scenes of police violence "are likely to lead to reflection, discussion and questioning and not to actions which might be prejudicial to the security of the state." Furthermore, "the airing of grievances is legitimate and overreaction also poses a threat to security." It limited the film to those over 19.²³⁹ The action prompted death threats against Board Chairman Kobus van Rooyen and bomb blasts at theaters showing the movie. Within hours, however, Information Minister Stoffel van der Merwe banned "Cry Freedom" by decree, arguing that the Board was unable to judge "the situation on the streets." He justified his action by arguing that Donald Woods (acted by Kevin Kline) was a "listed" person, whose words could not be quoted in South Africa. The government had hoped that "the censor board would do its job," but the Board acted as though times were "normal."²⁴⁰ The police confiscated all copies. American studios considered a boycott. (The film was finally shown in April 1990.)²⁴¹

At about the same time a Publications Committee banned the showing of "A World Apart" (about Ruth First) at the *Weekly Mail* "Cinema under Siege" festival, finding it

a very emotionally laden biography of an eulogy to Ruth First. . . . From start to finish it propagates the ANC and the basic message is that there is no alternative to violence for the black man in South Africa. The whites are shown as oppressors and the police as brutal marauders. . . . It will be detrimental to the safety of the state as well as causing friction and distrust between white and black sections of the South African community.

The Board dismissed the appeal because "the film seems to lack the dramatic or artistic merit which one has come to expect of a 'film-festival' film." Although it won a prize at Cannes, the Board was not informed of the basis for that award. It found insufficient "historical and political interest" because the film fell into a well-known genre: "brutal police action, raids, rioting, inflammatory speeches, questioning by the security police and suffering by those affected." This decision was made on the basis of a video; when shown on a large screen, however, the "difference in format" convinced the Board that the film could be regarded as a "docu-drama of some excellence," and it allowed one screening at the Market Theatre.²⁴² It also reversed a Committee ruling that *Work in Progress* was undesirable, finding that it analyzed but did not propagate the views of Sayco and the SACP.²⁴³

The Commissioner of Police seized the 5 August issue of the *Weekly Mail* under Emergency regulation 3(1)(a) for reporting an incident involving the security forces in Soweto. The newspaper immediately brought an action in the Rand Supreme Court, but Justice H C J Flemming ruled against it. The newspaper had the burden of proof; the Emergency regulations only permitted verbatim publication of police reports. "There is no justification to give those words no meaning or an altered meaning. They are clear. They are to the effect that the news may not go further than the disclosure, announcement or release. . . . The object encompasses prevention inter alia of actions inspired by inflamed feelings which are aroused by allegations under the name of 'journalism' which claim what never existed and say what is not true." He also found that an article about conscription violated regulations 5(b) and 5(d). J Swart (who had represented the state against the *New Nation*) argued that the reports would have the effect of "discrediting or undermining" compulsory military service. The judge agreed; the *Weekly Mail* had suggested "that refusal to serve is widely acceptable and is preferable to being a conscript which involves the conscript in the wrong, immoral, the purposeless; that by service it is not the country as such which is being served."²⁴⁴

Journalists continued to suffer from anonymous attackers. *Grassroots* reporter Veliswa Mhlawuli had been interviewed by the BBC documentary "Suffer the Children." In August, two weeks after excerpts were rebroadcast on SABC as part of the government's response, she was shot in the right eye while talking to a friend on

a Guguletu street at 10pm. In October she was detained.²⁴⁵ Inkatha, which had earlier bought *Ilanga*, the largest vernacular newspaper in South Africa, sought to buy the weekly *City Press*, the largest English black-oriented newspaper, but owner Nasionale Pers was unwilling to sell.²⁴⁶ Khaba Mkhize, editor of the Pietermaritzburg *Echo*, fled the country after receiving death threats from Inkatha; reporter Lakela Kaunda had done so earlier.²⁴⁷

At the end of August the police seized the September issue of *Al-Qalam*, a paper with a circulation of 13,000, which had been published by the Muslim Youth Movement for 14 years. The government objected to an editorial (which had appeared in the two previous issues) entitled "You Have the Right Not to Vote! . . . Exercise Your Right." The July 1987 issue had been banned for a story on conscription, and the October issue, criticizing that banning, also was banned. The March/April 1988 issue had been banned for an interview with Jacob Zuma, an ANC executive member, although the Board lifted the ban because the journal only attracted "determined readers" and "fairly sophisticated members of the Muslim community."²⁴⁸ For ten days after the August seizure the police returned to the newspaper office daily to search and confiscate documents, files, and photographs. But editor Faizal Dawjee pledged to continue the call for an election boycott.²⁴⁹

The government issued new Emergency regulations in September, transferring departmental responsibility from Home Affairs to Law and Order. Efforts to suspend newspapers under the old regulations had been very cumbersome. As we have seen, Stoffel Botha had to read multiple issues, give repeated warnings, wait for responses, and anticipate judicial challenges. Furthermore, Andries Engelbrecht, the Director of Media Relations, made inconsistent rulings. Because each Emergency lasted only a year, the process had to begin anew every June. The government next had tried to go behind the newspapers to their sources, the small news agencies, but the regulations were too broad and had to be withdrawn. Now Adriaan Vlok would simply seize individual issues.²⁵⁰

Before abandoning the old procedures, however, the government issued a final warning to the *Weekly Mail* on 12 October (following those of 19 December 1987 and 3 March and 26 April 1988), complaining about "subversive propaganda" "denigrating the security forces and promoting the image of the United Democratic Front, the African National Congress, and the Pan Africanist Congress." Co-editor Anton Harber explained the action in terms of the forthcoming municipal election: "I think Stoffel Botha is trying to win votes." Many other papers protested, as did the Save the Press Committee.²⁵¹ *Weekly Mail* advertisers withdrew in response to the threat, as they had done before.²⁵² The American Society of Newspaper Editors promptly expressed "urgent concern," the International Press Institute telexed a strong statement, and the World Press Freedom Committee and the Committee for the Protection of Journalists protested.²⁵³ The *Weekly Mail* contacted "virtually all the embassies in South Africa."²⁵⁴ Dennis Worrall, former South African Ambassador to Britain, wrote Botha.²⁵⁵ The *Weekly Mail* editors sent representations and asked to meet with Botha

but were rebuffed.²⁵⁶ Archbishop Tutu denounced the threat. The Save the Press campaign organized a Stand by the Mail meeting on 29 October.²⁵⁷ The paper appeared at the end of October, carrying a full-page article entitled "Not Guilty."²⁵⁸

But on 1 November Botha suspended the paper for a month.²⁵⁹ This provoked predictable expressions of outrage from newspapers, church and human rights organizations, and foreign embassies (including the U.S.).²⁶⁰ Days later co-editor Anton Harber told an Idasa conference:

We no longer see the courts as a useful arena in which to fight the state. . . . It is now a question of having a good defence, quick feet and trying to slip nimble punches in between raised fists. . . . it happened this way because, and only because, Botha decided it *should happen* this way. He has acted as prosecutor, judge and executioner—and the whole case was heard in camera. . . . His action appears to be punitive—the act of a petty and petulant schoolmaster rather than a Cabinet Minister dealing with a total onslaught on his country. . . . Although Stoffel Botha still dresses up his action in legalistic finery, this is only a thin cover for his naked power. The law is now based on his whim, his personal intolerance and his individual narrow-mindedness. . . . The fight against censorship is a fight for people to take control of their situations. . . . That is why *Weekly Mail* will be back on the streets on December 2 as strong, as determined and as outspoken as ever.²⁶¹

The same weekend Foreign Minister Pik Botha offered an angry response to journalists' questions after his speech to the Foreign Correspondents' Association.

I am sick and tired of a lot of foreign representatives descending on my country and picking up on all the dirty work instead of all the beauty, promise and goodwill. You don't understand Africa. You don't understand African aspirations. You don't understand African history. I accuse you of being superficial. I accuse you of glibly gliding over the African realities of which you know nothing, absolutely nothing.

Asked about the suspension of the *Weekly Mail*, he called it one of the most "vicious" newspapers he had ever seen and blamed it for contributing to "more violence in this country." He refused to accept the thanks of his host, instead invoking a speech by former president Paul Kruger, whose "opening words were: 'Friends, citizens, thieves and enemies.' And that is how I look at you this evening." When the audience responded with boos, hisses, and shouts of "go home," Botha left.²⁶²

Eight people protesting the suspension were arrested for picketing in Pretoria, held four days, and released with a warning on 8 November. They were required to appear in the Pretoria Magistrate's Court four more times but never charged. At their last appearance on 17 February 1989 the magistrate ordered the prosecutor to lay

charges within three weeks. The state failed to meet this deadline, but six weeks later it charged them with attending an illegal gathering. Finally, seven months after the initial arrest, the state dropped all charges. The eight then sued the Minister of Law and Order, seeking R12,000 damages each. The state promptly refiled the charges. Two months later it withdrew them again but not before the eight were required to make their sixth court appearance.²⁶³ Later in November the chairman of Johannesburg Consolidated Investments criticized the closure, as did *Newsweek* and the Media Council.²⁶⁴ Days after the *Weekly Mail* suspension *Vrye Weekblad* appeared, the first opposition paper directed toward a white Afrikaans-speaking audience; its cover pictured Joe Slovo, the notorious ANC and SACP leader. After three issues the Minister of Justice withheld registration, objecting to the paper's stated policy and articles about the possible release of Mandela and the ANC military campaign.²⁶⁵ The International Press Institute protested.²⁶⁶ In the end, the government demanded a R30,000 deposit, the highest ever required.²⁶⁷ Under pressure from local Moslems, the Congress of South African Writers (Cosaw) withdrew an invitation, jointly issued by the *Weekly Mail*, asking Salman Rushdie to address Book Week.²⁶⁸

Sometimes the government used the ordinary criminal process against the media. It prosecuted Jaki Seroke, editor of Skotaville Publishers, together with Mandla Cele and Thembinkosi Khonongwe. Springs Mag. H Hoffman found that Cele and Khonongwe had received military training outside South Africa and were members of the Azanian People's Liberation Army and Seroke belonged to its propaganda section.²⁶⁹ In December the government released *New Nation* editor Zwelakhe Sisulu after almost two and a half years in detention but imposed such severe restrictions on him that he could not work or be quoted.²⁷⁰

The government began 1989 by issuing a first warning to *Al-Qalam* and final warnings to *New Era*, *Work in Progress*, and *Grassroots*. *Al-Qalam* editor Mahomed Faizal Dawjee denounced the action. "Cowering under the fig-leaf of Emergency regulations, the Minister has again assumed the responsibility for hiding the shame and crimes of the apartheid state. We will not compromise on truth. The limits of what we will or will not report will be determined not by the apartheid state or Stoffel Botha, but by our commitment to the divinely-guided principles of truth and justice."²⁷¹ Botha refused to meet *Work in Progress* to discuss his objections.²⁷² *Grassroots* began in March 1980 as a Cape Flats community paper, distributed door-to-door for 5 cents; circulation grew from 5000 to 50,000 despite continual harassment. Johnny Issel, the first organizer, was banned, its offices were burned in 1984, and virtually the entire staff was detained in 1985. Now the government suspended it for three months, together with *New Era*, a quarterly magazine launched in 1986 with a circulation of 5000. It also issued a final warning to *Al-Qalam*.²⁷³

Having registered *Vrye Weekblad* under pressure, the Government charged editor Max du Preez with violating the Internal Security Act by quoting Joe Slovo, a listed person. In the offending article Mark Swilling, a Wits senior lecturer, had summarized Slovo's contribution to the debate at the Leverkusen Conference in West Germany.

Professor Nina Overton, of the RAU communications department, testified that it was "impossible for any newspaper today to publish articles about South African politics and our political future without referring to the arguments of persons on the consolidated (banned) list or their banned organisations." When du Preez argued that he had quoted Swilling, not Slovo, the prosecutor responded that the Act attempted to "silence the voice of a listed person altogether." Mag. J Bredenkamp said that du Preez had committed "such a serious offence that a sentence had to be imposed." He imprisoned du Preez for six months and fined Wending Publikasies R1000, both suspended for five years. After the hearing the police warned du Preez that they were investigating three other charges.²⁷⁴ A year later (March 1990) the Johannesburg Regional Court convicted du Preez, *Vrye Weekblad*, and its owners of publishing six subversive statements about conscientious objectors. One was the speech from the dock by Charles Bester, which other papers had published with impunity. Although the subversive statement clause had been repealed, this was still an offense under the Defence Act.²⁷⁵

In February Home Affairs Minister Stoffel Botha addressed a joint session of Parliament and rearticulated his media policy.

[T]he conventional Press . . . are doing good work. . . . What the Government does resent is the way sections . . . of the Press at times disregard journalistic principles . . . by not always reporting news truthfully, accurately and objectively. . . . The crucial question . . . [is] whether in fulfilling its function as the "watchdog" of the public interest, it placed South Africa first. . . . Saleem Badat, a *Grassroots* organiser, said . . . "The function that we see the people's press playing in this country is mobilising people and this is very directly aimed at generating action. It is a confrontational sort of thing." . . . What does this lead to? Sophistic journalism, vitriolic journalism, journalism that pays no attention to any code. This is journalism that takes its refuge in unbridled, extravagant, insulting, presumptuous and even slanderous language. . . . [C]ritics insist that it should be left to the courts to decide whether any action should be taken against publications that contain subversive propaganda . . . [but] this is not possible. The impression is created that when action is taken against publications, they have no protection in courts of law. This is not true. No discretion, including my own, is unrestricted. Any publication objecting to my action against it, has the right to test the validity of my decision in court. This has, in fact, happened in the past. The court has the power to set aside my decisions in accordance with established legal principles. I must exercise my discretion honestly and in accordance with the rules of reasonableness and fairness. . . . [T]he Government holds our legal system in the highest esteem. . . . given ideal circumstances, no person, including the State, ought to be prosecutor and judge of his own case. . . . [However,] we live in abnormal times. Revolutionary forces use the power of propaganda. . . . This calls for abnormal measures to combat the

propaganda campaign. . . . What the Government views as propaganda, is often seen by its critics as acceptable viewpoints and criticism. This is a pity. . . . [P]ropaganda cannot be effectively dealt with by means of the normal criminal procedure. Firstly, it is impossible to define propaganda fully. . . . It also does not help to punish propaganda. Propaganda must be prevented. . . . No one can permit a publication that systematically publishes subversive propaganda to continue doing so while charges are dealt with by courts over a period of several months, or possibly even years. . . . [If the issue were submitted to the courts,] the high esteem enjoyed by our courts as institutions functioning independently of the legislature and the executive would be seriously jeopardised. Whether a statement constitutes propaganda or not, whether the publication of material is contrary to public interest and security, is a matter of opinion. If courts of law had to give a ruling on such opinions, the courts themselves would inevitably be drawn into the political arena. The courts would then be attacked on political grounds as being the mouthpiece of some or other political party. [Interjections.] I would like to remind hon members of the wide publicity given to recent treason and terrorism trials which have already unjustly been labelled "political trials".²⁷⁶

A month later PFP MP D J Dalling moved a resolution on "Restrictions on Free Press."

That the House, reaffirming its commitment to the right of the public to be fully informed on events occurring in the Republic from time to time as an essential part of the democratic process, condemns the Government's use of arbitrary executive powers during the past two years to—

- (a) muzzle the free press in South Africa;
- (b) suspend and/or close down publication of newspapers and periodicals opposed to it; and
- (c) harass, restrict and detain journalists doing their jobs.

He described the numerous censorship laws. Journalists were detained without trial, sometimes in solitary confinement; half the country's editors had been convicted for violating media laws, half the foreign journalists who applied were denied entry, *Sowetan* editor Aggrey Klaaste was awakened in the middle of the night and interrogated by police, and more than six newspapers had been suspended. "Perhaps the worst feature of the exercise of this [last] power is that the hon the Minister's decision is not subject to appeal to an independent court. The hon the Minister, God-like, can prosecute, judge, sentence and execute any publication. . . ." "[W]e have in the past two years witnessed a Government orchestrated total onslaught on the freedom of speech and expression in the Republic." Dalling joined the South African Media Council, the Newspaper Press Union, lawyers, Assocom, advocates, the South African Society of

Journalists, religious organisations, university heads, Supreme Court judges, and 26 editors in calling for repeal of the media regulations.²⁷⁷

Stoffel Botha dismissed the speech as filled with the same kind of "generalisations, emotional words, exaggerations and innuendo" as the propaganda he sought to regulate. The Government had "exercised its powers with regard to individual reporters with the greatest circumspection." He moved to amend the resolution to express appreciation to responsible journalists while disapproving "the fact that in these times material which is a threat to the safety of the public or to the maintenance of public order, or is calculated to have this effect, continues to be published. . . ." ²⁷⁸

Conservative MP P W A Mulder paradoxically supported the first clause of Dalling's motion; he even wondered whether Botha was "misus[ing] his arbitrary powers" in demanding the "highest possible deposit" from *Vrye Weekblad*. But he also maintained that "the media do not want to keep the population informed of events in South Africa, but want to intervene and, as it were, cause events to happen." "What mandate do they have to decide for the whole population under the guise of freedom of the press, which path they should follow?" ²⁷⁹

Nationalist MP C J van R Botha said Dalling's motion showed "once again what an erroneous conception the PFP and its allies have with regard to what the concept of freedom in a democratic state really means." The PFP even opposed restricting "subversive elements by means of temporary detention without trial."

[T]he Government is not making itself guilty of authoritarian action. It is, in fact, making use of the emergency measures to protect the basic values of democracy. The very presence here of these hon members of the PFP who are making snide remarks, and the freedom of extra-parliamentary opposition groups proves that the emergency measures make it possible for political parties as well as a legal divergence of opinion to continue to exist within this democratic state.

He contrasted the establishment media, which "play a fundamental role in this community," with the alternative Press, which "is just as much a part of the onslaught as the murderous gangs of the ANC. . . . it is not an informant or watch-dog, but an instigator and advocate of violence." "The fact that any government has the fullest right to take action against this sort of Press, is stated unequivocally in section 20 of the UN's Declaration of Human Rights." Dalling was "simply another one of those 'useful idiots' whom Lenin referred [sic] so contemptuously." ²⁸⁰

PFP MP S S van der Merwe declared that "the Media Emergency Regulations constitute a very serious violation of democracy. It is no longer possible . . . for ordinary South Africans to make political choices on the basis of adequate information." The previous speaker "illustrated very successfully what a weak position the Government is in to talk about propaganda. . . . If anyone were to ask me who the

greatest abuser of propaganda in South Africa was, I would not look outside Parliament; I would look for him in the ranks of the hon members of the NP." Although there might still be freedom to speak in Parliament, "most statutory provisions promulgated in South Africa are no longer promulgated by Parliament . . . [but] by Ministers, officials and policemen, under the emergency regulations."²⁸¹

Nationalist MP F J van Deventer said that van der Merwe reminded him of an old saying: "people hate me, but I ask for it." The media regulations addressed "arguments used in publications to encourage revolution and insurrection in the Republic, the undermining of public order, a feeling of hate or hostility on the part of members of the public toward local authorities or the security force. . . . Anyone with any common sense and a sense of responsibility with regard to the situation in South Africa would realise that we cannot allow this kind of propaganda to be noised abroad." He offered examples: equating "armed struggle" with "disciplined political struggle"; "women serving long sentences for public violence should be saluted" (*Grassroots*, August 1988); "The police attack anything Black" (*New Era*, August 1988); "[The Defence Force] killed hundred of unarmed civilians as a publicity stunt" (*Work in Progress*, August-September 1988). Because newspapers first received a warning "there is consequently a considerable degree of fairness on the part of the Government in its actions in this regard." Closing down a paper took months. Furthermore, "the action taken by the Minister against *New Nation* was tested in a court case. In March 1988 a full Bench of the Witwatersrand division declared that regulation seven of the media emergency regulations and the implementation of the regulation were valid." The Minister's decision not to take further action against the *Sowetan* and *Work in Progress* showed that he "maintains a very high standard as far as the principle of fairness is concerned in his actions against the Press, and all of South Africa should thank him for this." Van Deventer attacked "the perception being created that by means of the media emergency regulations the Government is trying to clamp down on opposition by the Press." There were only about two dozen pro-Government publications and some 3000 anti-Government, of which only 11 were subject to restraint. He concluded: "when it comes to the security of the State, we must take into consideration that the State, with its security and intelligence services, is in a much better position to make judgements."

. . . ²⁸²

Conservative MP S C Jacobs maintained that "there is no such thing as a subjective right to information as a human right which can be enforced by the courts. It does not exist here in South Africa nor in many other Western states. At most . . . [the] so-called political right to be informed, is not an absolute right." He objected that, though it was illegal to quote Oliver Tambo, "the Government and responsible Ministers go ahead and grant *ad hoc* permission to their own press . . . when it suits the Government and the NP." "Perhaps the greatest disgrace in South African political history is the way in which the Government misuses the South African media and the SABC in particular."²⁸³

Nationalist MP J T Delpont sought to answer David Dalling's question "why use cannot be made of the courts of law." He began by distinguishing inquisitorial and accusatorial legal systems (but made nothing of the distinction).

[A]ny statement that is made must be viewed against the broad background of the circumstances in which the statement is made. A particular set of publications could perhaps be harmless under certain circumstances and yet under different circumstances be extremely dangerous and be intent on inciting revolution. Does the hon member expect that a case of this nature should be taken to court every time and that the entire background of the South African political climate, state security and so on should first be submitted to the court by way of evidence? It then becomes a point at issue and the defence could submit that it is not true at all that South Africa is being threatened. . . . that is why we have a system in South Africa in terms of which a responsible person, namely a Minister and not an official, may take decisions. The hon member may come and challenge the Minister's decision in this House, in public, and expose him.²⁸⁴

PFP MP P G Soal described being in the United States when the *Weekly Mail* was banned: "this did more damage to the image of South Africa than any other single act of oppression this NP Government has indulged in over the past 40 years." He also detailed the harassment of *Saamstaan* journalists. "Their offices have frequently been firebombed and Reg Olifant's post has been doctored with pornographic phrases. Reg Olifant's friends in the USA have been phoned to be told that he is dead. . . . Derek Jackson's wife was recently in hospital and he was phoned at three of [sic] four in the morning to be told that she was dead." Journalists were denied access to news and prevented from reporting what they learned. Many were detained, most notably Zwelakhe Sisulu and Brian Sokutu.²⁸⁵

Nationalist MP Brig J F Bosman declared that "South Africa is proud that it has one of the freest media interests in the world." He noted that during the Falklands War, Britain "exercised [strict] control over the flow of information to the British public." "There is not a single hon member of this House who can state that . . . the emergency regulations inhibit him in any way from impressing his message on the public by means of the media." "To my knowledge not a single journalists [sic] is in detention at the moment in terms of the emergency regulations." "Sizulu's [sic] detention had very little to do with his journalistic activities. He is an activist who is especially involved in the so-called circles of alternative education." Bosman actually had the nerve to invoke the International Covenant on Civil and Political Rights, which expressly authorized restrictions on "any advocacy of national, racial, or religious hatred that constitutes incitement to discrimination, hostility or violence." He also quoted "that revered man Abraham Lincoln," "one of the world's greatest champions of democracy," for the proposition that "every government when driven to the wall by a rebellion will trample down a constitution before it will allow itself to be destroyed." He contrasted the

"responsible media" with the "alternative media which frequently publish their work in dark and devious ways."²⁸⁶

Stoffel Botha responded that "hon members used this debate to raise what were perhaps personal grievances." "[M]atters cannot possibly be remotely as bad as they are made out to be in this particular motion." An article in this day's *Cape Times*, headlined "Secrecy and corruption: Role of the Press in SA," "illustrates that persons wanting to criticise the Government for the imposition of so-called restrictions . . . are having a field day doing precisely that." He cited a British article describing "36 modern constitutions in which a wide diversity of threats to the body politic requiring emergency measures are recognised." "[T]he declaration of the state of emergency and the regulations which were promulgated to contain the violence and other acts which necessitated those regulations, represent an earnest attempt to restore peace and stability and to enhance the prospects of, *inter alia*, economic growth and the further democratisation of the South African society in the interests of all South Africans."²⁸⁷

PFP MP J B de R van Gend was concerned that Botha "almost appears to believe that he believes in Press freedom." The "subversive propaganda" government sought to restrict included "all publicity, news and views which may influence people against the NP Government and its policies."

Defending his right to be the prosecutor and judge in his own case, the hon the Minister argued that propaganda was so subtle that efforts to define it rendered court decisions futile. What he really should have told us, was that he and his party would not be able to stop anti-NP propaganda if they had to rely on due process of law as no court would construe information of public concern as subversive merely because that information painted the NP Government in a bad light.

They cannot take this sort of thing to court. They have to take the decisions themselves because only the NP will apply those regulations in such a way as to achieve their purpose. . . .

He wondered "whether freedom of speech is today still a valued commodity. . . . After a decade and more of turning the screws on legislation aimed at controlling and limiting the Press, culminating in the Media Emergency Regulations, most South Africans seem reasonably content to be blinkered and gagged."²⁸⁸

Dalling, who had moved the resolution, concluded that Stoffel Botha

believes it is his, the Minister's opinion which is important in deciding to what extent the Press may go in reporting what is happening in this country. . . . [He] denies the right of the Press—and . . . the right to the public of South Africa—of testing his subjective opinion objectively in the courts. . . . If the hon the Minister is so sure that these newspapers are fomenting revolution, why has there been no prosecution of those

newspapers? . . . [Although a Nationalist Party MP] mentioned that question of the banning of *New Nation* was tested in court[,] all that was tested in the court was the hon the Minister's power to act as he does in terms of the regulations. The merits of the hon the Minister's action and the merits of his opinion were never and was not capable of being tested in the courts. . . . [Another Nationalist MP] refuses to allow an aggrieved person whose newspaper is either about to be closed or whose report is about to be censored or stopped, to test that in court. I believe that the greatest guardian of democracy in South Africa and the only major and important guardian of democracy in South Africa is a free Press coupled with the independent courts of our country.

Once the resolution had served its purpose of permitting this debate, Dalling withdrew it.²⁸⁹

A month later Botha was before Parliament again, this time its Public Committee on Home Affairs. He sought to provoke Peter Soal by asking his

reaction . . . to the following statement. ["]In principle the Government endorses freedom of the Press["]. I had expected some reaction from the hon member. . .

SOAL: I am laughing!

BOTHA: . . . and I think I am making some progress. Just like other freedoms, freedom of the Press is not an unbridled freedom. As soon as freedom is expressed in the wrong way, the necessity for control emerges.²⁹⁰

Peter Soal deplored the fact that the government planned to spend more than R1 million to monitor the media.²⁹¹ Nationalist MP J G van Zyl condemned foreign correspondents as "traders in second hand journalistic scrap, which they come and exhibit here with no other purpose than to unleash revolution." The fact that only 18 had been denied admission in 1988 compared to 218 in 1987 showed that "the discipline we enforced worked." He deplored, however, that

some of these people no longer entered our country under the banner of the media, but came here as tourists who enjoyed the freedom of our country, who enjoyed its hospitality, who enjoyed its attractions, and who enjoyed its food and drink. They then collected material from surrogate film makers, knocked it together overseas with distorted soundtracks and marketed it as the truth about our country. It is execrable defrauding of the hospitality of a country if someone comes here as a tourist and then abuses the freedom he enjoyed here in this way.²⁹²

Without directly replying to van Zyl, DP MP M Rajab questioned the denial of a visa to Prof. Thomas Karis to complete his "widely acclaimed" documentary history "From Protest to Challenge."²⁹³ A Freedom Party MP thanked the Director-General "for having so speedily banned the devil-written book *The Satanic Verses*."²⁹⁴

Independent MP J van Eck dismissed as "absolute nonsense" "the argument that the Government only acts against the revolutionary elements in the Press." "The Government acts against all papers that mobilise opposition against the State in the oppressed Black communities." He deplored that

everything depends on the opinion of the Minister . . . [and] after the Minister has decided to suspend or shut down a newspaper, there is no recourse to law or to the courts. . . . The powers which this hon Minister has are indeed awesome and would have made that master of propaganda, Nazi minister of propaganda Goebbels, green with envy. I want to warn this hon Minister and his Government that by suppressing the free flow of information, they are, firstly, creating a dangerously uninformed White electorate and, secondly, forcing the oppressed people, prevented from airing their grievances and aspirations in an open way, to look for other ways, including less peaceful ways of venting their feelings.²⁹⁵

Botha concluded the debate by assuring Parliament "that in administering and implementing the media emergency regulations, I take the utmost care, and the process which I devised and which I am obliged to adopt, is a pain in the neck. I have to give so many notices and listen to so many representations . . . I rather feel inclined to throw them away, but I think that after a couple of years of administering these regulations, some success has been achieved."²⁹⁶

In May Dalling used a Parliamentary question to ask about warnings and suspensions. Botha replied that he had sent written warnings to 12 papers, gazetted warnings against 11, and suspended five. Ten sent representations: *Al-Qalam*, *Die Stem*, *Grassroots*, *New Era*, *Out of Step*, *South*, *Sowetan*, *New Nation*, *Weekly Mail*, *Work in Progress*. He took action against all but the *Sowetan* and *Work in Progress*.²⁹⁷

The government continued to use its broad panoply of powers against media critics. It demanded a R20,000 deposit from *The New African* (a Natal weekly), warning that the Home Affairs Minister was likely to take action against it for consulting with UDF and the *New Nation*.²⁹⁸ It subpoenaed *Business Day* editor Ken Owen and *Star* editor Harvey Tyson to compel them to disclose their sources for articles on the unsolved murder of four mineworkers at Western Holdings in June 1986 and the state of extractive industries.²⁹⁹ It seized the South African Council of Churches *Crisis News* and the book "Culture in Another South Africa," published by David Philip.³⁰⁰ It seized 1340 copies of "Comrade Moss," a *Learn and Teach* biography of Moses Mayekiso (just acquitted of treason nearly three years after being detained), and 300

copies of a *Saamstaan* issue reporting the prosecution of three policemen for beating to death George activist Ace Kobe; one accused was sentenced to 12 years and another to 2-7 for attempted murder.³⁰¹ In July the police raided Ravan Press, The Other Press Service, Learn and Teach Publications, Skotaville Publishers, the South African Research Service, and AD Donker Publications, claiming to be looking for "Comrade Moss," Nelson Mandela's speech from the dock in the 1961 treason trial, Francis Meli's "The Land Belongs to Us," and a Dutch publication on the South African Youth Congress.³⁰²

For years the government had warned critical publications they were being investigated but failed to prosecute (fearing it might lose); the *Natal Witness* had received 14 warnings in the previous two years, eight of which were withdrawn; the *New Nation* had received seven, none of which was prosecuted; *The Star* received three and the *Weekly Mail* 11.³⁰³ Now, however, the government began filing charges against: *Weekly Mail* editor Anton Harber and reporters Jo-Anne Bekker and Franz Kruger for describing the treatment of detainees two years earlier; the *Weekly Mail* for publishing a photograph of unrest; Aggrey Klaaste of the *Sowetan* for quoting Harry Gwala (a listed person); Rashid Seria, former editor of *South*, for an article on the schools boycott entitled "It's 1985 in the schools again"; Harber and Thami Mkhwanazi, also for quoting Gwala; Tertius Myburgh of the *Sunday Times* and Gabu Tugwana of the *New Nation*; and *The New African*.³⁰⁴ The *Sunday Times* editor and reporter were acquitted, but the paper was convicted and fined R2000, despite the facts that the South African Press Agency had misinformed it that Gwala was not listed and that Gwala was released from Robben Island two weeks after the story.³⁰⁵ The government dropped the charges against Rashid Seria; Anton Harber, Jo-Anne Bekker and Franz Krueger of the *Weekly Mail*; and the *Sowetan*.³⁰⁶ The police gave warnings of ongoing investigations to editors Harvey Tyson of *The Star* and Andrew Drysdale of *The Argus*, and three Durban papers—*Daily News*, *Sunday Tribune*, and *Natal Mercury*.³⁰⁷

Vrye Weekblad cleverly took advantage of a National Party error to obtain free publicity. The paper had published a photograph of Democratic Party co-leader Wynand Malan and economic adviser Sampie Terreblanche meeting with SACP general secretary Joe Slovo and ANC international affairs director Johnny Makhatini in 1988. Seeing an opportunity to discredit the opposition, the National Party reproduced the photograph in full-page advertisements in the Sunday newspapers. *Vrye Weekblad* sued the National Party for breach of copyright and won, compelling the party to republish the advertisement, replacing the photograph with the words: "This picture has been withdrawn due to court action by *Vrye Weekblad*."³⁰⁸

The government sought to infiltrate the media, as it did all opposition organizations. Gregory Flatt, a "coloured" Standard 9 pupil twice arrested for helping Elsie's River youth organizations lead school boycotts in 1985, fled toward Botswana in 1986 but was caught at the border. Cape Town police interrogated and assaulted him. Threatened with indefinite detention, he began spying in January 1987, earning about R500/month. He became a freelance photographer for *South*, giving him a cover for

attending political meetings and press conferences. He was ordered to learn the methods and sources of reporters and their computer systems so the police could interfere and copy their disks. He gave police the photographs he took at rallies and identified those pictured. He attended a Cape Town church service on 20 August 1989, at which organizations declared themselves unbanned, an action Law and Order Minister Adriaan Vlok used in the National Party's election campaign. Information he supplied led to the detention of Call of Islam organizer Ebrahim Rasool. When activists seemed to doubt his bona fides, his police handler told him to become an agent provocateur, inciting crowds to throw stones. He also told of a "Jump Street" squad of young police who posed as pupils in order to initiate school unrest. Nevertheless, Flatt was eventually expelled from his Cape Youth Congress branch. When he tried to stop informing, his handler threatened to give his file to the UDF, who would kill him. It was the election night violence and Gregory Rockman's criticism of the police that convinced him to break cover. Brig. Leon Mallet of the Department of Law and Order confirmed that Flett had been a paid informer since 1987.³⁰⁹

VI. THE *NEW NATION* BEFORE THE APPELLATE DIVISION

While these events transpired, the *New Nation* prepared its appeal from the Supreme Court's refusal to interdict the 1988 suspension, hoping to invalidate the Emergency regulations, which still threatened it and other opposition papers. It filed its 104-page heads of argument on 1 December 1988, reiterating the objections it had raised below. The Appellate Division heard oral argument on 29 August 1989; Chief Justice Corbett gave the unanimous judgment dismissing the appeal on 1 December.³¹⁰

After reviewing the declaration of successive emergencies and quoting at length the 1987 media regulations he rejected the *New Nation's* argument that the Home Affairs Minister's citation of the 27 August issue retroactively made "punishable" an act occurring the day before promulgation of Regulation 7A, in violation of §3(2)(b) of the Public Safety Act 3 of 1953. He quoted a number of legal dictionaries, concluding that "the term 'punishment' has reference to some penalty imposed by a court of law for the commission of a criminal offence. . . ." He was "doubtful" whether "a temporary prohibition on the publication of the periodical would constitute a punishment. . . ." Furthermore, the 27 August issue was not punishable unless followed by a warning and further issues that failed to heed it.

The *New Nation* argued that the State President had delegated more power than he possessed, unlawfully subdelegated powers, and granted unfettered discretion to a public officer. Chief Justice Corbett cited extensive authority holding that the Public Safety Act "confers upon the State President powers of the widest possible character and leaves it to him to decide what methods to follow in order to achieve the purpose stated in the subsection. . . ." The State President, who enjoyed a "legislative" competence, had conferred on the Home Affairs Minister only "executive, or administrative, perhaps quasi-judicial [powers], but certainly not legislative." The State President could himself have promulgated Regulation 7A. It required someone to determine whether a periodical was publishing offensive matter. The State President could do this himself, "but obviously this is not a practical proposition. . . ." Therefore, he delegated that responsibility to the Home Affairs Minister. In doing so, he did not unlawfully subdelegate his own legislative powers because "the powers, and the procedures for their exercise, are specified in detail. . . ."

The *New Nation* objected to the Regulation's insistence that the Minister base his opinion "solely" [bloom] on a series of issues. The court did not interpret this to "mean that in evaluating the matter contained in these issues . . . the Minister must close his eyes to relevant facts and surrounding circumstances." The *New Nation* criticized the vagueness of certain key words but acknowledged that the Appellate Division had held in the UDF challenge to the Emergency that the ouster clause precluded it from evaluating the validity of a regulation issued by the State President.³¹¹ Although the *New Nation* urged the Appellate Division to overrule that precedent, it declined.

The court also rejected the challenge to the Minister's delegation of censorship to a subordinate (the Director of Media Relations). There was no reason why the State President (rather than the Minister) had to name that person; and the censor's powers were adequately constrained by the Regulation.

Having found that the Regulations themselves were not ultra vires, the court turned to their implementation. The *New Nation* complained that the first notice had failed to state the "grounds" of the proposed suspension, denying it a meaningful opportunity to make representations. The Appellate Division held that *Nkondo's* case, which required a statement of the reasons for detention, did not impose an equally extensive "duty to state grounds."³¹² True, the first notice simply listed the offending articles, grouping them under the relevant subregulations. But the supplementary notice included prima facie evaluations, "which elaborate substantially upon the grounds set forth in the first notice." Together, they were sufficient.

The *New Nation* argued that because the first notice required by the Regulation was insufficient and thus a nullity, "the supplementary notice has no legal status." The court rejected this as "an unduly technical approach." Any defects in the first notice could be remedied by the supplementary notice: "the subregulation does not appear to preclude or forbid the notice being contained in more than one document. Nor . . . does appellant appear to have been prejudiced in any way by the issue of a first notice and a supplementary notice." The *New Nation* made a number of specific criticisms: the Minister's failure to state that he had formed the requisite opinion; uncertainty whether he objected to the content or the effects of the matter published and whether the articles were to be read separately or together; and his failure to state that he had formed an opinion about the publications' effects or to give reasons for that conclusion. Conceding that the notices "are not models of lucid draftsmanship," the court still found the criticisms insubstantial. It was sufficient that "the publisher concerned is adequately apprised of the 'case' against him so that he can make appropriate representations. . . ." The Minister clearly told the *New Nation* that he had formed the opinion that the matter published had or was calculated to have the prohibited effects. Although he did not always give reasons for the conclusion, they were "self-evident." The court found no abuse of discretion in the Minister's use of words such as "tends," "derogative," and "negative," even though they did not appear in the Regulations. Whatever the Minister may have said to the editors in September 1987, he was not obligated to give the *New Nation* a personal interview. The *New Nation* had failed to show that the Minister had relied on extraneous information in forming his opinion.

At the beginning of November 1989, after the appeal had been argued but before it was decided, the new Home Affairs Minister, Eugene Louw, warned the paper again for promoting the image of the ANC and threatened immediate suspension. The *New Nation* called a press conference to condemn the action, and the following week journalists and media workers marched to the Department of Home Affairs in Johannesburg in support.³¹³ But the paper also sent an 111-page reply, noting the changing political climate. "Given the fact that displays of support and solidarity for the

ANC have been portrayed on television, it is difficult to understand why these portrayals, which apparently received government approval, do not, for example, 'promote the public image or esteem' of the ANC." It also responded to the government's complaints about 28 articles in 11 issues.

An advocate familiar with the case commented on the issues to which Louw objected:

I could not believe what that newspaper was publishing. The closure of *New Nation* had precisely no effect whatsoever on the editorial content of the newspaper. What I saw . . . displayed to me an attitude of what I can only describe as open defiance of what had previously transpired. [Nevertheless,] the nature of the representations was not as aggressive [as they had been two years earlier]. I think that they were more subtle, but designed really to embarrass the Minister and to create a tension between the new Minister and the old Minister, and really to expose at every available opportunity the arbitrary nature of what was being proposed and to contrast it with what was permissible in some cases and not permissible in other cases.³¹⁴

VII. THE CHANGING CONSTRAINTS ON THE MEDIA

This was the high point of censorship in South Africa. The selection of F W de Klerk as State President in August 1989 initiated a gradual loosening of control. The opposition anticipated this by launching the Campaign for an Open Media (a revival of Save the Press), which included all the alternative papers, as well as Black Sash and Cosatu.³¹⁵ The *New Nation* had recommenced publication on 12 June 1988 and quickly surpassed its previous circulation, growing from 34,000 in January 1989 to more than 62,000 in December and an unprecedented 73,000 when it celebrated Mandela's release in February 1990 with a front page containing the ANC and SACP flags and the slogan "Long live the people's alliance" and a back page declaring "Freedom Now" above the ANC flag and emblem. In January 1990 it published a survey by Market Research Africa, which found that it "provided vital information in as far as politics was concerned; printed reports about struggles in the townships, industry and the whole country; was perceived as the mouthpiece of the masses and made people aware of the cause; educated black people and was committed to instilling pride and hope in black people."³¹⁶ As editor Gabu Tugwana remarked: "It is the government's action that gave more credence to our ability to fight against our government."³¹⁷

In his February 1990 address to Parliament announcing the freeing of Nelson Mandela and the unbanning of the ANC and other organizations, de Klerk also lifted most Emergency media regulations (thereby nullifying Louw's November 1989 warning to the *New Nation*). The day the restrictions were lifted Zwelakhe Sisulu resumed his editorship of the paper. Although he had been released after two years' detention on 2 December 1988, his restriction order (the harshest ever imposed) barred him from giving interviews, participating in the activities of ten organizations, being in a room with more than ten people, entering any educational institution, or attending any gathering where the government was criticized; he had to be inside his home from 6pm to 6am and report to the police twice daily.³¹⁸ In his speech on being released from 27 years in prison Mandela praised the alternative press: "the courageous stand all of you have taken is to a very large extent responsible for the changes that are taking place today." Two weeks later the state abandoned two judgments upholding the Emergency regulations against Sisulu's challenge (two days before the AD was to hear an appeal) and agreed to pay his costs, estimated at R100,000. It also withdrew charges against the *New Nation* for quoting Harry Gwala.³¹⁹ Yet though it now was legal to issue written reports and sound recordings of unrest and police action, photographs still could not be published. Riot squad police beat *Vrye Weekblad* reporter Charles Leonard, who was covering student celebrations. Security forces excluded reporters from observing the unrest in Tembisa. The government expelled two foreign reporters accompanying the rebel cricket tour.³²⁰ It continued to investigate civil and criminal charges against *Vrye Weekblad*.³²¹

In March Young South Africans for a Christian Civilisation, linked to South African Tradition, Family and Property (whose attack was part of the Government's

justification for its closure of the *New Nation*), distributed an 11-page open letter "Is It Licit for a Catholic to Support the Communist Party? Perplexities of the faithful regarding *New Nation's* editorial policy." It demanded that the SACBC disavow its organ. "*New Nation* has lately become the internal champion of the SA Communist Party." It offered 20 examples of support for communism and condemned "the scandalous complicity with the Communist Party itself on the part of a weekly belonging to the Church."³²² A month later Simon Barber, *Business Day's* Washington reporter, condemned the *New Nation* for reporting a Sayco meeting: "This is not journalism. It is a trumpet call to action, subsidised by the Catholic Church."³²³ In June the Young South Africans for a Christian Civilisation-TFP sent a second open letter to the church, deploring its silence and pointing to a subsequent interview with Joe Slovo and a history of communism in the "*Learning Nation*."³²⁴ In January 1991 the SACBC announced it would transfer its ownership interest to an independent company. The European Community's Special Program would still subsidise the paper, which continued to operate at a loss despite a circulation of 80,000. The SACBC acknowledged it had sponsored the paper originally to protect it against government censorship.³²⁵

Although government had unbanned 32 organizations and released most political prisoners, it seemed in no hurry to lift media censorship. In reply to a Parliamentary question in March 1990, Home Affairs Minister Louw explained that the Directorate of Publications could reconsider banning orders after two years but would only act on applications by others, not on its own.³²⁶ Three days later, during the debate on Louw's budget, an MP urged that "the process through which banned publications are taken off the list of undesirable literature needs to be looked at urgently. In order to facilitate negotiations Parliament considered and approved the Indemnity Bill. Could we not consider blanket removals?" His motive soon became clear. "With the emergence of a new South Africa and the expectation—quite rightly—that apartheid will be relegated to the scrapheap, the question may well be asked whether the publications which advocated the separation of people on the basis of colour are not those which should be banned. My plea is for the accessibility of all political literature to all South Africans."³²⁷ A Nationalist responded that the Publications Board "still looks at the influx of publications into South Africa with the same conscientiousness and integrity as it always has over the years."³²⁸ PFP MP S S van der Merwe called for repeal of the Publications Act of 1974, which authorized prohibition of material "prejudicial to the safety of the State, the general welfare or the peace and good order." "Nobody would suggest that it is easy to give a sensible and objective interpretation to a description such as that." It had "been applied in a biased manner against opponents of the Government disregarding completely the extent to which publications emanating from the NP has endangered our country." About half of all banned publications fell within the "political" category. In 1988, for instance, it accounted for 415 items, compared with 246 for obscenity and indecency, 21 for blasphemy, 11 for bringing a section of the population into disrepute, and 35 for harming relations between sections of the population. Four of the six appeals concerning the banning of political material that year were successful. It was "a costly and tortuous bureaucratic process" to have publications unbanned individually.³²⁹ Home Affairs Minister Louw replied that a

"blanket removal" of the ban on publications referring to the ANC was "not quite possible" because they "may still contain matters of a nature that is dangerous to the State." Only "hundreds" of publications were involved, not thousands. The Department could not initiate the unbanning process because it "does not have copies of the books in question, nor has it been able to built [sic] up a library of such books." Louw rejected van der Merwe's call to repeal the Act because a "sophisticated" country like South Africa could not "risk having no control . . . of the morals and such aspects as . . . violence, pornography and similar things." "If the system was ever abused in the past for political purposes, it will be far more difficult for this to happen in the future and, if it does happen . . . we should very much like to look into the matter because that was certainly not the intention of the Act."³³⁰

As Professor Kobus van Rooyen's term as chair of the Publications Appeal Board ended there was speculation about his replacement. The first name floated, Professor Pieter Oosthuizen, vice-rector of the University of Pretoria, was seen as a move to the right. When this evoked protest, the government appointed Louis Pienaar, an attorney and the former Administrator General of Namibia; he left after seven months. "Cry Freedom," "A Dry White Season," and "A World Apart" were unbanned, as were other films and plays.³³¹ But state control of the media certainly had not ended. When violence on the Rand prompted de Klerk to reimpose the Emergency in September 1990, security forces barred the press from Vaal and East Rand townships because people were inclined to "give a show for journalists." Police arrested Worldwide Television News sound recorder Brian Greene in Vosloorus for violating the regulations.³³² Censors banned four movies at the annual *Weekly Mail* film festival.³³³ As state censorship diminished, informal violence increased, with threats and attacks on journalists associated with the alternative media and bombings of *Vrye Weekblad*, *The Namibian*, and the movie theater hosting the *Weekly Mail* film festival.³³⁴ *Vrye Weekblad* editor Max du Preez was fined R2000 and Wending Publications R5000 for violating the Protection of Information Act by summarizing a National Intelligence Service document about recruiting informers among Stellenbosch University faculty and students.³³⁵

Press freedom was a central issue in the disclosure and investigation of the "Civil Cooperation Bureau" hit squads. The *Weekly Mail* and *Vrye Weekblad* reported confessed assassin Dirk Coetzee's allegations that General Lothar Neethling, SAP Deputy Commissioner of Scientific Technical/Services and head of its forensic laboratories, had provided poison to kill the dogs of Griffiths Mxenge and knockout drops to abduct victims. In December 1989 Neethling sued both papers for libel, claiming R1 million for the two articles in *Vrye Weekblad* and R500,000 for the one in the *Weekly Mail*; they refused to retract.³³⁶ Transvaal Attorney General Klaus von Lieres also sued *Vrye Weekblad* for R35,000 for accusing him of conducting "a petty vendetta" against the paper and engaging in "selective prosecution; and Law and Order Minister Leon Mellet sent a letter demanding R200,000.³³⁷ *Vrye Weekblad* settled Mellet's claim for R15,000 in April 1991 and won the case against von Lieres in February 1992.³³⁸

Justice Johann Kriegler presided over the Neethling trial, which began in the Rand Supreme Court on 11 November. The government paid the costs of Neethling's legal representation. Distinguished Afrikaners testified to his standing. Dr Daniel Geldenhuys of the Afrikaans Academy of Arts and Sciences said he was one of the most important and honored members of the Pretoria Institute. He listed Neethling's medals and decorations, including the SAP medal for faithful service and combatting terrorism and two medals from Taiwan. Dr Matthys Pieterse, director of the Water Research Commission, said he was shocked and filled with disbelief at the accusations. Neethling sought to rebut Coetzee's testimony to the Harms Commission, insisting that Coetzee was "short of brainpower" or suffered from hallucinations. He offered evidence that Coetzee had modified the account of the poison dosage, from grams to milligrams. Coetzee had claimed to notice two Dobermans when he allegedly visited Neethling's house with Koos Vermeulen, but Neethling had a single Rotweiler, now dead. Coetzee had mentioned wooden floors, but Neethling had fitted carpets. Neethling offered expert testimony that Coetzee's notebook, allegedly containing Neethling's private work telephone number, had been "steamed or fogged" so that it could not be studied forensically. Bobby Levin SC, defense counsel, was furious about this. Coetzee had sent the notebook from London in a sealed package, which the defense had given to the court registrar. The plaintiff then obtained the notebook and subjected it to tests without consulting the defense. As a result the plaintiff agreed to withdraw the expert testimony.³³⁹

The defense offered a mystery witness, Leslie Lesia, 54, who claimed to have been recruited by Military Intelligence in October 1986. In April 1986 he had written to the United States Consulate seeking financial assistance for "Leslie's Performing Arts and Cultural Institute." Two representatives visited him in Bloemfontein and paid for two trips to the Jan Smuts Airport Holiday Inn. A Mr Ernest Becker (actually Kobus Potgieter, a former member of special forces) and an American named Brown asked whom he knew among the ANC in exile and recruited him as an agent, paying him R1600/month plus R1500-2000 in expenses. They pointed out Neethling to him on one of those trips, which enabled Lesia to identify Neethling in court. In September he and his sister-in-law flew to Tanzania for the funeral of his nephew, Tebogo Lesia, an MK soldier; he had told the Bloemfontein security police about this trip, and an official had offered assistance with travel documents. He made several trips to Mozambique, which he documented. After repeated contact with the ANC in exile they asked him to set up a cell in a rural area.

The police then provided him with four bottles of poisoned liquor from Neethling's laboratory, detonators, and explosive television sets, and ordered him to eliminate ANC activists in neighboring states. He testified to killing ANC member Gibson Ncube, who died after drinking a can of Castle lager laced with poison Lesia had smuggled into Mozambique. In May 1987 he also murdered Tsitsi Chiliza, the wife of an ANC member in Zimbabwe, by providing her with an exploding television set. And he sent a poisoned gift box to the Russian Embassy in Botswana. When he visited the SAP forensic laboratory in early 1987, his handler told him that Neethling helped

prepare the poisoned liquor. Lesia was imprisoned in Zimbabwe in May 1987, when his car was stopped and the police found a secret compartment containing a bottle of poison, two syringes, a ring for putting poison into drinks, a pistol and silencer, and a biscuit tin with detonators. Zimbabwe dropped the charges of murdering Chiliza in October 1988 but detained Lesia until the emergency was lifted on 25 July 1990. The defense substantiated this testimony with photographs of the secret compartment and its contents, air tickets, hotel registrations, and a diary and passport.

In his closing argument Willie Oshry QC, 84, Neethling's lawyer, asserted that the only poison in the case was the "poison pen" of *Vrye Weekblad*. Justice Kriegler reprimanded Oshry for relying selectively on Coetzee's testimony, asking: "Why would this man tell a tissue of lies [about men with whom] he had no axe to grind?" Oshry responded: "That is the nature of the beast. He is a psychopath, not a normal person." Kriegler refused to admit the findings of the Harms Commission and accepted Coetzee's testimony on critical issues where the Commission had rejected it. He noted that the Natal Attorney General must have believed Coetzee or he would not have issued an arrest warrant for the murder of Griffiths Mxenge. Furthermore, Coetzee's account of Neethling's office was accurate, and his telephone book had been found on the scene 10 years later with Neethling's number. Coetzee also knew of the release of one Vusi from the Brits police station before this had been disclosed at the Harms commission.³⁴⁰

Summarizing the evidence, Kriegler credited Coetzee's claim that he received 60mg of poison from Neethling to murder Vusi Mavuse and Peter Dhlamini. When it had no effect, Neethling doubled the dose; when this still did not work, Neethling increased it sixfold (to 360mg)—without any discernible consequences. Finally, Coetzee took them to a farm in the Northern Transvaal, gave them sleeping pills, shot them at close range, and burned their bodies.³⁴¹ On 18 January 1991 Kriegler found for both defendants, awarding them costs. "The articles were published against the background of a public debate about the misuse of power by public servants and the public had the right to be informed about this." *Vrye Weekblad* editor Max du Preez called the judgment "the biggest victory that the press has seen in decades." Neethling sought leave to appeal on the ground that Kriegler misconstrued the newspaper's burden of proof and should not have believed Coetzee. There were calls for Neethling's suspension.³⁴² Nearly two years later the Appellate Division reversed, rejecting Coetzee's evidence before the Harms Commission and calling him "an amoral person."³⁴³ The following month the *Vrye Weekblad* closed.³⁴⁴ Neethling asked the AD to determine the quantum of damages. In September 1994 it remanded to the Supreme Court and ordered Neethling to bear the costs of his second AD application. But these substantial costs—senior and junior counsel—had been borne throughout by the state.³⁴⁵

Inkatha made the fullest use of defamation law against its critics. In July 1990 the Supreme Court ruled that the organization could sue for defamation for a *Sowetan* article alleging it had incited members to attack the NECC meeting in Durban in March

1986.³⁴⁶ The following year Chief Buthelezi demanded that libraries (including those of nine South African universities) remove a biography by Mzala (a deceased pseudonymous ANC official), entitled "Gatsha Buthelezi: Chief with a Double Agenda," published by Zed in London in 1988. Several did so. His lawyer, Jenny Friedman, said Buthelezi was committed to "genuine academic freedom as well as open and honest political debate."³⁴⁷

With the decline of censorship, the government harassed the press in other ways. It subpoenaed Patrick Laurence of *The Star*, ordering him to identify the source of his articles on the abduction of witnesses summoned to testify in the Winnie Mandela trial. He was jailed for 10 days for refusing and threatened with further sentences (but quickly released on bail). The government also subpoenaed Z B du Toit, editor of the *CP Patriot*, Andries Beyers, Conservative Party general secretary, *Weekly Mail* editor Anton Harber and Sapa reporter Joan Fubbs.³⁴⁸

But the press was throwing off the state's shackles: in March 1991 the establishment press unanimously withdrew from agreements governing their relationship with the security forces, which had given them preferential access in exchange for self-censorship.³⁴⁹ When the police warned the *Weekly Mail* they were investigating a 15 March report by Gavin Evans on the violence in Alexandra, which quoted Moses Mayekiso accusing the police, Anton Harber refused to cooperate: "The Police Act is a throwback to the dark days of the State of Emergency. The government itself has admitted that this law needs review and we expect it to be changed soon."³⁵⁰ In July it achieved a major journalistic coup by disclosing that the Government had paid hundreds of thousands of rands to Inkatha, boosting its circulation from 25,000 to 35,000.³⁵¹ That month the SABC took its first token steps to open the airwaves to opposition voices by giving the *New Nation* a half-hour educational forum and agreeing to broadcast programs developed by Cosatu.³⁵² One indication of the new dispensation was the acquittal of *Weekly Mail* reporter Karen Lotter, who had been charged with prostitution when she went undercover to investigate police abuse of prostitutes.³⁵³ Yet a *Weekly Mail* reporter and photographer who entered Leeuwkop Prison to investigate allegations that the prisoners had been forced to make weapons for hostel-dwellers were charged and convicted of violating the Prisons Act.³⁵⁴ And the government admitted it had secretly spent R12 million rand funding *Newslink* in Gaborone to propagandize against the ANC.³⁵⁵ In March the government failed to renew the 15-year ban on outdoor meetings.³⁵⁶

Ironically, de Klerk's decision to free Mandela, legalize the ANC, and open negotiations also threatened the alternative media—perhaps even more than censorship.³⁵⁷ The establishment press, endowed with far greater resources, began to court black readers. According to *New Nation* editor Gabu Tugwana:

The mainstream newspapers have moved more like opportunists or hawks. Given the conditions now they are the ones that want to be seen as this big human rights paper. Particularly to our big black political

organizations. . . . our market has been sort of eaten. . . . Big business could actually support our existence through advertising. But they seem to be very, very reluctant. For good reasons . . . because we stood through thick and thin to our policies and principles and they were one of the people we fought for exploitation.³⁵⁸

The Newspaper Marketing Bureau confirmed that potential advertisers refused to buy space in the *New Nation* because it had supported the ANC.³⁵⁹ The external anti-apartheid movement began to reduce funding of the *Weekly Mail*, *New Nation*, *Umafrika*, *South*, *Vrye Weekblad*, and *The New African*, all of which operated at a loss.³⁶⁰ In December the *New Nation* announced that the end of all European funding would require it to lay off at least three of its 27 employees.³⁶¹ Yet in the second half of 1991 the *Sowetan*, *New Nation*, and *Weekly Mail* enjoyed circulation increases of 13, 15 and 6 percent, while *The Star* declined 6 percent. Nevertheless, *The Star's* advertising revenues remained six times those of the *Sowetan*.³⁶² The economic threat was particularly poignant since it had killed the *Rand Daily Mail*—the government's strongest critic—in 1985. *Grassroots* ceased publication following the 1989 Defiance campaign and *Work in Progress* soon thereafter.³⁶³ *Vrye Weekblad* closed in January 1994 because its small readership could not generate enough advertising. Mergers occurred elsewhere in the industry. The *Saturday Star* and *Sunday Star* became the *Weekend Star*. Irish press magnate Tony O'Reilly bought controlling interests in *The Star*, the *Argus*, the *Sunday Tribune*, *Diamond Fields Advertiser*, the *Daily News*, the *Cape Times*, *Natal Mercury*, and *Pretoria News*. As a result, there were two groups of English-language newspapers, O'Reilly's *Argus* and Anglo-JCI's Times Media Ltd.³⁶⁴

The ANC displayed its own intolerance of criticism, initiating a boycott of the *Eastern Province Herald* and *Evening Post* by burning old copies of those papers outside Newspaper House. ANC spokesman Phila Nkayi accused them of waging "malicious" attacks, "reserving the paper for whites only," and distorting information from township organizations. "The media is at liberty to criticise the ANC-led alliance, but we could not take the vilification and bossy stance that appears to have been adopted by the *Herald* and the *Evening Post*." He demanded an end to "continuous ANC bashing," restructuring of the papers, and greater representation of women and blacks on the staff. Editor Derek Smith said the *Herald* had a tradition of opposing apartheid but would "not become an ANC paper" or be dictated to. The Campaign for Open Media denounced the boycott, as did Cyril Ramaphosa. Boycott leaders met with the newspaper manager and announced the end of the *Evening Post* boycott once it stopped publishing a "township" edition.³⁶⁵ In July IFP protests against a television series about Inkatha violence on the Reef temporarily halted the broadcast.

In July 1992 the ANC disclosed that it was investigating the feasibility of establishing a daily newspaper in conjunction with the SACP and Cosatu.³⁶⁶ The following February a rumor surfaced that the Nigerian press magnate and presidential candidate, Chief M K O Abiola, was considering backing the proposed ANC paper.³⁶⁷ The ANC tried but failed to buy the *Sowetan*, which it planned to merge with the

Sunday Nation, then being edited by Zwelakhe Sisulu. Instead, the *Sowetan* was bought by Corporate Africa, headed by Nthatho Motlana.³⁶⁸ In September it was rumored that the ANC's Thebe Investment Corp. had joined with Macmillan Boleswa of Swaziland to buy the anti-apartheid publisher Skotaville. The latter replied that it was discussing a partnership with the other two.³⁶⁹ Political involvement in the press was a particularly sensitive issue in light of the 1970s "Muldergate" scandal, in which government money launched and supported *The Citizen* to compete with the critical *Rand Daily Mail*.³⁷⁰

A new danger threatened journalists—mob violence. SABC TV newsmen Calvin Thusago was stabbed to death in Sharpeville in April 1993, and his colleague Dudley Saunders critically injured. In separate incidents Worldwide TV News cameraman Sam Msibi was shot five times in Katlehong, Radio 702's Brett Hilton-Barber was struck by a rock at Chris Hani's funeral, *Daily Dispatch* journalists George Galanakis and Mkhululi Bolo were stoned by a crowd attacking the South African embassy in Umtata after a memorial service for Hani, *Eastern Province Herald* journalist Jack Dewes's car was stoned in Uitenhage while he was driving to an ANC media conference, and Visnews journalist Mike Vincent was harassed in kwaZakhele.³⁷¹ Several months later three *Daily Dispatch* journalists sought protection from death threats by the PAC, which was angered by their estimates of crowd size at an APLA rally and references to apparently contradictory statements by leaders about participation in the election. PAC publicity secretary Waters Toboti warned: "When we talk of freedom of reporting we are not giving the press a blank cheque to lie. If the *Daily Dispatch* continues to provoke the PAC and the African people, they will have a conflict. This is not a joke. We won't tolerate being insulted." At the beginning of the year the PAC had invaded the *Daily Dispatch* office in Umtata and overturned a newspaper delivery van; it had also disrupted Radio Transkei and threatened to prevent distribution of the *Sunday Times*.³⁷²

As part of the negotiations to transfer power, the government appointed four judges, two magistrates, and two lawyers to a multi-racial panel to nominate the 21-member board of the SABC, which controlled all but one television channel and all but two radio stations.³⁷³ Shortly thereafter the far-right Boercommandogroup established Radio Pretoria and forcibly resisted government efforts to close it.³⁷⁴ The new SABC chairperson, Dr Ivy Matsepe-Casaburri, criticized the South African media for giving too much coverage to violence and ignoring the "good" news.³⁷⁵ Zwelakhe Sisulu became assistant to group chief executive Wynand Harmse, prompting the Media Workers Association of South Africa (which Sisulu had once headed) to comment: "Broadcast experience and a track record of impartiality in the handling of news were definitely not a consideration in these appointments."³⁷⁶ In July 1994 Sisulu was appointed to head Television News Production.³⁷⁷ However, an attempt by former Delmas treason trialist and now North-West Premier Popo Molefe to appoint former ANC information and publicity official Solomon Kotane as director general of Bophuthatswana Broadcasting Corporation led to a staff revolt and the intervention of central government Broadcasting Minister Pallo Jordan. The Freedom of Expression

Institute denounced the action as "characteristic of a totalitarian regime" and a "mockery of the government of national unity's professed commitment to the independence of the broadcast media." Fellow accused Patrick Lekota, now Free State Premier, was also criticized for asking that Sesotho Stereo be moved from Johannesburg to Bloemfontein.³⁷⁸

Shortly after the new constitution took effect the distributors of two safer sex education videos appealed to the Supreme Court to overturn a PAB affirmation of a Publications Committee ban. Although the court could only review procedural matters, it reformulated the substantive standard: "whether the reasonable man would find them indecent or offensive having regard to all relevant factors, inter alia the fact that the films would be viewed by the likely viewers." Contemporaneously, the Board reconsidered and reversed a ban on *Hustler*, while the SABC refused to air three videos: Pearl Jam's "Jeremy" because it contained "disturbing images," scenes of South African Police beating protesters because they were "too violent," and an American public service video on runaway children, which portrayed child prostitutes.³⁷⁹ But the new administration displayed traits common to all governments. The new Defence Minister, Joe Modise, sought to interdict the *Weekly Mail & Guardian* from publishing information about the Directorate of Covert Collections (the reincarnation of the Civil Co-operation Bureau).³⁸⁰

VIII. ANALYSIS

Two of white South Africa's proudest boasts have been a free press and the rule of law. The events described above tested both pretensions and found them empty. The government attacked and ultimately suspended those few papers with the temerity to assert their freedom. And the judiciary offered little protection against this assault.

The government constantly reaffirmed its solicitude for the media. Stoffel Botha insisted: "I am in full support of the concepts of freedom of expression and a free flow of information." A Nationalist backbencher boasted that "South Africa is proud that it has one of the freest media interests in the world." But both before and after the government used the 1987 Emergency regulations to close the *New Nation* and other opposition papers (the *Weekly Mail*, *South*, *Grassroots*, *Work in Progress* and *New Era*) it controlled and mercilessly harassed the opposition media in myriad ways. It banned and seized individual issues, books, movies, and plays. It compelled authors and publishers to make excisions and changes. It threatened publishers, editors, and reporters with prosecution under the Police and Prisons Acts, sometimes convicting them for truthful descriptions of prison conditions and police actions. It prosecuted the press for quoting "listed" persons. The government, of course, owned almost all the television channels and radio stations. It sought to influence or control both domestic and foreign newspapers through investments. Inkatha bought *Ilanga*, thereby muzzling a critical black voice in Natal. The government extended the range of its control—to printers and news agencies. Foreign journalists had no "right" to be in South Africa but were there "as a result of the grace of the Government," which had a "duty" to exclude such "nomad[s] with no allegiance, accountability or responsibility towards the host country." It even punished readers for possessing banned literature. It banned, detained and restricted domestic writers, editors and reporters. It required shoestring operations like *Vrye Weekblad* to post large bonds. It subpoenaed journalists to disclose confidential sources and held in contempt those who refused, fining or imprisoning them. It trumped up charges against others. Government officials sued for defamation. And when all else failed, there were mysterious attacks, condoned by security forces whether or not conducted by them: arson and burglary on *SASPU National*, the *Weekly Mail*, the *New Nation*, *Grassroots*, Ravan Press, *Saamstaan*, and the Port Elizabeth News Agency. The ability of the press to resist was undermined by deep divisions: Afrikaans papers backed the government; established English papers hoped to avoid repression by embracing moderation; and the alternative press was split by geography, race, ideology, political affiliation, style, and audience. (The *Weekly Mail* was able to mobilize greater support than the *New Nation*, both inside South Africa and abroad.)

Censorship, like taxation and other forms of government regulation, often assumes the form of a game, if one with unusually high stakes. Every time the government clamped down, the alternative media sought a loophole. And each successful evasion prompted more oppressive restrictions. The government's goal was clear. It could not reach the banned organizations—the ANC, PAC, SACP, and MK. Hence it had to attack the internal opposition through treason trials—the UDF, Cosatu,

Azapo—and the media that supported them. Although these latter groups were legal (despite the partial ban on the UDF), they were just as anathema because they embraced the same revolutionary end—democracy—if not the means—violence. Furthermore, if the ANC claimed to be using the press, then the press must be complicit with the ANC. They were "the disloyal press," "media terrorists," "the people who do not have the guts . . . to be terrorists themselves." They were "as much a part of the [total] onslaught as the murderous gangs of the ANC . . . an instigator and advocate of violence." Those who championed them, like David Dalling, were Lenin's "useful idiots."

The government was determined to silence the alternative press, either by cowing it into submission or bankrupting it through suspensions. Botha acknowledged that the principal target of the emergency media regulations was the *New Nation*. "I shall not hesitate to take steps against those little papers which want to . . . encourage atrocities." He assured members of the National Press Union that observance of the Media Council Code of Conduct would protect them from government action. He wondered "whether the honest practitioners of journalism in South Africa are not, at some stage, going to dissociate themselves from the negative ones." But this divide and conquer strategy, which worked elsewhere, paradoxically forged stronger alliances within the media.

The government responded to the Vaal uprising and persistent unrest, the growing strength of the UDF and Cosatu, and intensified international condemnation and isolation by changing the rules of engagement (although the alternative press did not immediately understand, or perhaps credit, this shift). P W Botha assailed the alternative press for "the conspicuous omission of positive events or negative reporting on positive events." Stoffel Botha attacked the "revolution-supportive" press; his objection was not to "the usual sort of criticism, but an active sort of criticism." Working two variations on the maxim "de mortuis nil nisi bonum," the government's new rules for the press were: about living opponents say nothing unless evil; about the security forces say nothing unless good. Just as prosecutors and judges in the treason trials characterized the defendants' failure to condemn violence unequivocally as tacit condonation, so the government insisted that every mention of the ANC express unqualified revulsion. The "conventional media" properly engaged in "balanced reporting" by "criticis[ing] the ANC strongly." Even neutral description constituted endorsement, and predictions about what might eventuate were equivalent to exhortations that it should occur. The opposite applied to the security forces. The press could say nothing negative, even by implication. The *New Nation* got into trouble for calling massive police searches and arrests a "raid." Like the question "when did you stop beating your wife?" the call to end police torture implied its occurrence. The press should limit itself to repeating the security forces' own publicity—and a little praise for "our boys" would not go amiss.

The government seemed to believe that if the media did not report the anti-apartheid struggle, it would fade away. Coverage of organizational launches,

demonstrations, funerals, boycotts, and stayaways encouraged them. P W Botha maintained in February 1987 that his ban on television cameras in the townships "brought peace to these Black areas." Government portrayed blacks as politically unsophisticated, overly emotional and easily misled. To reinforce this point it exaggerated the press's influence.

The alternative press responded to these attacks with justifications rather than apologies, thereby aggravating its offense. The *New Nation* repeatedly protested it was just telling the simple unadorned truth. But just as "the greater the truth, the greater the libel," so "the greater the truth, the greater the subversion." The media's real crime was *lèse majesté*. The government wanted—demanded—a confession of error, an acknowledgement of its authority, and a promise to behave in the future. Stoffel Botha explicitly complained in his reply affidavit that the *New Nation* was insufficiently conciliatory and would not admit it might have been wrong. Again there are parallels to the treason trials: the accused insisted they were just seeking democracy; exactly, the government responded, that was the problem.

The government offered numerous rationalizations for censorship. It suggested that the appropriate standard with which to compare its civil liberties record was not the advanced capitalist world (to which it aspired) but nineteenth century Europe—or contemporary Africa. Indeed, it characterized western liberalism as no less extreme than communist totalitarianism; by contrast with both, South Africa took a "moderate" position. At the same time, it stressed its reformist aspirations. Refusing to see the contradiction, it claimed to champion democracy while simultaneously denying it to blacks, who were unrepared.

It claimed to dislike the Emergency powers it had been forced to assume by opposition violence and anarchy. (One of its more illogical arguments contended that if the opposition would only stop violating the laws the government could repeal them. The media regulations prohibited anything that might prolong the Emergency—which the government itself had declared!) It had "exercised its powers with regard to individual reporters with the greatest circumspection." Botha's decision not to suspend the *Sowetan* showed that he "maintains a very high standard as far as the principle of fairness is concerned in his actions against the Press, and all of South Africa should thank him for this." He showed great forbearance in not closing the *New Nation* until after the Supreme Court decision, although he could have acted earlier. He justified his power to suspend newspapers by claiming to be subject to judicial review; but then he rejected such review because it took too long and consumed too much judicial time (as though the obstinacy of the press explained judicial backlogs); and, as we have seen, the review was an empty form.

The government sought an image of apolitical evenhandedness by threatening one rightwing paper (*Die Stem*) as well as seven anti-apartheid papers. A Nationalist MP observed that there were only two dozen pro-Government publications and 3000 anti-Government (but failed to report their circulations). Botha inverted the media claim to

represent the public interest against an oppressive government; instead, government represented the public interest against an irresponsible press. Government was "doing its best to bring about: Peace and tranquility where we live; the opportunity to share in what this country has to offer; to use our God-given talents; and—it sounds simple—just to be happy." Only the responsible newspapers (by which he meant the establishment press) had earned their freedom—by demonstrating that they would not use it. The press could not hide behind the public interest unless it was prepared to create an editorial committee of readers, whose censorship would surely be worse than that of the government. (Somehow he overlooked the discipline of the market, which the Nationalists claimed to be defending against communism.)

Today the last refuge of a scoundrel is as likely to be science as patriotism. Botha described the Directorate of Media Relations and its advisory panel as a scientific mechanism for identifying what should be censored. He presented its statistical analysis of objectionable items in the alternative press. But the facade convinced no one. The directorate relied on incompetent Afrikaans academics like Isaak de Vries, whose incoherent testimony for the state had contributed to acquittal of all those accused in the Pietermaritzburg treason trial (his teacher at Rand Afrikaans University, Stoffel van der Merwe, had been a more persuasive witness in the Saso trial a decade earlier). The government was too insecure about the advisory panel to reveal its membership; the names that emerged were government yes-men. Botha seriously undermined his own credibility by presenting the TFP smear as an objective analysis of the *New Nation* (thereby confirming his laager mentality and undermining his profession to be scientific). And the government repeatedly made a fool of itself: banning the children's book "Two Dogs and Freedom" because of a ludicrous misreading of the title and seizing copies of Mandela's speech from the dock in the Rivonia trial (a matter of public record) because it was one-sided! (What else did they expect from a man facing the death penalty for seeking democracy?)

Sometimes the government's justifications deteriorated into pure nonsense. Stoffel Botha declared: "Every country has a set of laws whether you like them or not." "In any profession there are restrictions on the way people may practise." The question, of course, was whether these were the right laws and the right restrictions. Suspension of the *Weekly Mail* was "up to the editor . . . because there are specific prohibitions in regard to propaganda which a newspaper may publish." But Botha had unlimited discretion in interpreting those prohibitions.

The *New Nation's* responses to Botha's warnings only intensified his determination to close the paper. The paper's actions were partly deliberate: as a leader of the alternative media it could not publicly capitulate to threats. Indeed, it sometimes was consciously provocative, ridiculing Botha—the Nationalist Party's "media hit-man"—for citing a picture of Oliver Tambo, which could not enhance the ANC's image "whatever his pose may be." Botha's interpretation of the regulations was "far-fetched," "self-evidently incorrect," "inconceivable," "frivolous," "hypersensitive," "exaggerated," "preposterous," "incongruous," "invalid"; it "borders on bad faith." He

returned the compliment: its "sophistic journalism," "vitriolic journalism" indulged in "unbridled, extravagant, insulting, presumptuous and even slanderous language."

But the alternative media's behavior also may have reflected incomprehension of Botha's motives. The *New Nation* may not have understood that government policy toward the media changed in August 1987, that what had been tolerated now was prohibited. It was incredulous that accurate factual reports about the ANC were no longer permitted. If newspapers could not cover the central issues of the day, what was the point of publishing? Where Botha portrayed himself as moderate and the alternative press as extreme, the *New Nation* saw the mirror image: it was moderate (unlike the ANC or MK it did not advocate or engage in violence), and Botha was extreme.

The paper acted as though Botha were open to persuasion. (What choice did it have?) Its reports were truthful and eschewed emotive language. South African courts had upheld press freedom. Government should be consistent: other papers were allowed to print articles similar to those for which the *New Nation* was being punished. It defended each article on the merits, oblivious to Botha's complaint about their cumulative significance. After all, how could articles that were individually innocuous become obnoxious merely through grouping, sequence, or repetition? It urged, with some logic, that the government focus on the publication's *effect* and insisted, accurately, that none had been demonstrated. Words were inherently ambiguous and consequences unpredictable. Even an establishment press report of an ANC "atrocities" might provoke the opposition to rejoice rather than recoil. Surely Botha would look beyond his own response for evidence of public reaction.

As we know, however, the *New Nation* badly misjudged the government's intent. Botha's repeated refusal to meet should have signalled his determination to close the paper. Thus, when it finally made conciliatory noises—offering to submit to pre-publication censorship or join the Media Council and respect its Code of Conduct—the concessions were too little too late. The rightwing Boerestaat Movement, by contrast, chose defiance and evasion, closing *Die Stem* and re-opening it as *Die Volkstem*, without provoking further repression.

The government would not tolerate the freedom of the press to criticize. Would the "rule of law" and the "independent judiciary" protect a critical press against an autocratic executive and complaisant legislature? (Stoffel Botha showed his "contempt for Parliament" by concealing the text of the August 1987 media regulations until *after* the debate. Since the State President already enjoyed ample authority to promulgate regulations, Parliamentary action was unnecessary and the Houses of Representatives and Delegates impotent.) Tragically, legality offered no protection. There had been reason to hope. Courts had interpreted the Police, Prisons, and Defence Acts narrowly, acquitting journalists of charges. They had quashed subpoenas to reveal sources and limited the right to sue for defamation. The Supreme Court had invalidated other Emergency regulations as overly broad, *ultra vires*, or vague, even circumventing ouster clauses. Both the press and the PFP constantly took the government to task for

"bypassing the courts." David Dalling asserted that "perhaps the worst feature of this power [to suspend] is that the hon the Minister's decision is not subject to appeal to an independent court. The hon the Minister, God-like, can prosecute, judge, and sentence and execute any publication." If a newspaper had broken any of the myriad of existing laws, it should be prosecuted. Jan van Eck deplored that "after the Minister has decided to suspend or shut down a newspaper, there is no recourse to law or to the courts. . . . The powers which this hon Minister has are indeed awesome and would have made that master of propaganda, Nazi minister of propaganda Goebbels, green with envy."

The government revealed its guilty conscience by protesting too much. Nationalist Ministers and MPs invoked the most surprising authorities to justify censorship: "that revered man Abraham Lincoln," a "most eminent [U.S.] Supreme Court judge," the editor of the *Atlanta Constitution*, the Deputy Director General of the BBC, "36 modern constitutions," section 20 of the UN Declaration of Human Rights, even the International Covenant on Civil and Political Rights. Presenting the August 1987 media regulations, Stoffel Botha promised "the optimum maintenance of democratic practices," "consideration" for "the rules of natural justice," and respect for "the *audi alteram partem* rule." He would state the grounds of his objection. He promised that "my office and I shall be available at all times for discussions" (leading Peter Soal to remark: "the door is open but your mind is closed").

After suspending the *New Nation* Botha still claimed that he took "the utmost care, and the process which I devised and which I am obliged to adopt, is a pain in the neck. I have to give so many notices and listen to so many representations." Even when the Supreme Court had declined to review his suspension of the *New Nation*, Botha continued to insist that "no discretion, including my own, is unrestricted. Any publication objecting to my action against it, has the right to test the validity of my decision in court. This has, in fact, happened in the past. The court has the power to set aside my decision in accordance with established legal principles. I must exercise my discretion honestly and in accordance with the rules of reasonableness and fairness. . . . the Government holds our legal system in the highest esteem. . . . no person, including the State, ought to be prosecutor and judge of his own case." A backbencher concurred: "the action taken by the Minister against *New Nation* was tested in a court case. In March 1988 a full bench of the Witwatersrand division declared that regulation seven of the media emergency regulations and the implementation of the regulation were valid." But Dalling replied that "all that was tested in court was the hon the Minister's power to act as he does in terms of the regulations. The merits of the hon the Minister's action and the merits of his opinion were never and was not capable of being tested in the courts."

The legal outcome often seemed to turn on judicial personality (and the judges in this case saw the struggle through the government's lenses—as a total onslaught). Occasional victories did not alter the fundamental facts of parliamentary supremacy and no bill of rights. The government simply promulgated new regulations—often within 24 hours. And ultimately it devised an ouster clause to which the courts submitted,

precluding any possibility of judicial review on grounds of vagueness. It even retroactively relieved Botha of any responsibility to meet with newspapers or give reasons for his actions. The very subtlety of propaganda precluded legal regulation. "[I]t is impossible to define propaganda fully. . . . It also does not help to punish propaganda. Propaganda must be prevented." Furthermore, the censorship process itself was much of the punishment: enormous energy was diverted into fighting the suspension; all journalists engaged in self-censorship; and some, like treason trialists, were forced to disavow their political loyalties. The central virtue of the judiciary—deliberation—became the reason courts could not be allowed to review censorship. Botha explained that "it would take at least a year before a case was brought to court and a decision was taken. . . . we want to take speedy action in order to ensure security in this country." A Nationalist backbencher was more candid. Did David Dalling "expect that a case of this nature should be taken to court every time and that the entire background of the South African political climate, state security and so on should first be submitted to the court by way of evidence? It then becomes a point at issue and the defence could submit that it is not true at all that South Africa is being threatened. . . . that is why we have a system in South Africa in terms of which a responsible person, namely a Minister and not an official, may take decisions." A PFP MP retorted that what Botha "really should have told us, was that he and his party would not be able to stop anti-NP propaganda if they had to rely on due process of law as no court would construe information of public concern as subversive merely because that information painted the NP Government in a bad light." Empty legal forms preserved a facade of procedural fairness.

Lacking both political power and substantive arguments, the *New Nation* had no choice but to make highly legalistic objections to the suspension (such as the overlap of emergencies and inconsistencies between the two notices). Neither the Supreme Court nor the Appellate Division was persuaded—although there were ample grounds in administrative law for overturning the suspension. The *New Nation* argued that existing legislation was adequate? It was enough that the State President deemed the Emergency regulations expedient. The *New Nation* claimed inability to comprehend the Minister's objections? Its detailed representations belied this. It criticized the vagueness of the regulations? "[H]ow can there be certainty where the opinion of a politician is involved?" The *New Nation* objected that the Minister treated the alternative and establishment press differently? The courts could invoke Emerson: a foolish consistency is the hobgoblin of little minds. Botha could emulate Whitman: do I contradict myself? Well then, I contradict myself. I am great; I can contain contradictions. The Appellate Division concluded that closure was not punishment and, in any case, was not retroactive since the *New Nation* had ample opportunity to correct its error. By relying on technical arguments and procedural issues, the *New Nation* relinquished the moral high ground of a frontal attack on censorship.

The Supreme Court seemed uncomfortable in its role as rubber stamp (as other judges have been when denied the right to grant bail, determine evidentiary rules, or pass sentences). Having given the government what it wanted, Justice Curlewis tried to

evade responsibility. He asked the state's advocate to seek further instructions—perhaps the Minister no longer wanted to suspend the *New Nation*. He immediately granted leave to appeal—perhaps the Appellate Division would have the courage to resist the government. And he flirted with granting a stay until the appeal was heard—which would have given the *New Nation* almost as much protection as the interdict he denied. But though he expressed sympathy for its plight (like the judges sentencing conscientious objectors to long prison terms), he ultimately lost his nerve, accepting the government's flimsy argument that public safety and general order would be endangered by continued publication.

The failure of judicial review by the Supreme Court and Appellate Division contrasts sharply with the protection sometimes extended by the Publications Appeal Board, despite the fact that its members lacked the lifetime tenure and high status enjoyed by judges. The difference is particularly striking since one *New Nation* issue was the subject of both procedures. Unlike the courts, the Board gave reasons for its actions. It sought consistency, predictability, and certainty. It accepted the defense of truth. It would tolerate bias and criticism, declining to insist on the worst possible interpretation. It looked at effects rather than potential. (Of course, this raises the question why a government committed to censorship created the Board and staffed it with moderates.)

In the end, however, the government always worked its will. When both a Publications Committee and the Board approved "Cry Freedom," the government simply seized all prints of the film. Stoffel Botha did not wait for the Board to pass on the *New Nation* before issuing warnings. He certainly did not wait for the the Appellate Division judgment before suspending the paper. And the judges accepted their powerlessness. The rule of law was form without content. Like a priest or lawyer, the State President had merely to utter certain magical words according to a precise formula. Once that ritual had been performed, he could do whatever he wanted. He could also confer some of that magical power on his Ministers. If Stoffel Botha stated that he had formed the requisite opinion, no one could question him. His words did not reflect or describe reality—they constructed it. "Whether there has in fact been systematic publishing in the periodical is a matter of the Minister's opinion, whatever anyone else's opinion may be." Justice Curlewis correctly characterized the issues as turning on "the opinion of a politician and not a judgment of a court of law." "It is not our function to pass an opinion . . . upon the Minister's opinion." The Minister's decision to suspend was political; the *New Nation's* objections were political. "[T]he opinion that is formed will be dependent in the first place, [on] where the person stands in the political spectrum, and whether he is black or white." The courts could not choose between political opinions. "The Minister does not have to give 'reasons' why he formed an opinion."

Stoffel Botha turned this around: allowing courts to review government censorship would irreparably politicize them. "Whether a statement constitutes propaganda or not, whether the publication of material is contrary to public interest and security, is a matter of opinion. If courts of law had to give a ruling on such opinions,

the courts themselves would inevitably be drawn into the political arena. The courts would then be attacked on political grounds as being the mouthpiece of some or other political party." In other words, the courts had to be rendered impotent to preserve their authority. Form (procedural regularity) triumphed over substance (meaningful freedom of the press). The Appellate Division concurred: there was no need to evaluate the adequacy of the notices; since the Minister could ignore the newspaper's representations, the opportunity to make them was virtually meaningless. It sought to preserve the pretense that Stoffel Botha's "powers and procedures for their exercise, are specified in detail." As S S van der Merwe decried: "We must be one of the few countries in the world where so much pain is taken to clad authoritarianism in the elegance of legalistic jargon." Justice Curlewis's metaphor captured the situation perfectly: "there is very little use in growing honeysuckle over a guillotine."

NOTES

1. For decades, no newspaper has done anything without consulting the comprehensive *Newspaperman's Guide to the Law* (Stuart, 1986). For the earlier history of censorship, see Silver (1979; 1983; 1984); Kahn (1966); Grogan (1986); Haysom & Marcus (1985); Marcus (1985; 1988b). For accounts of censorship from the perspective of opposition journalists and editors, see Hachten & Giffard (1984); SAIRR (1985: 882-93); Human Rights Commission (1989); Sperling & McKenzie (1990); Louw & Tomaselli (1991a); Jackson (1993); Tyson (1993).
2. On the activities of the Publications Committees and Publications Appeal Board, see Silver (1984), Cheh (1986). On the control of libraries, see Merrett (1990). On the additional restrictions imposed during the emergency, see Armstrong (1987; 1989). See generally 1(14) *SA Barometer* (1987); 2(8) *SA Barometer* 119 (1988).
3. Hachten & Giffard (1984: chap. 9).
4. A journalist could also be banned for violating these rules, as Donald Woods was for reporting on Steve Biko. Suzman (1993: 223-25). The *Rand Daily Mail* was prosecuted for reporting on prison conditions. Id. 136-38.
5. On the Afrikaans press, see Hachten & Giffard (1984: chap. 8). On self-censorship by the establishment press, see Id. chap. 3. On the alternative press, see Tomaselli & Louw (1991a).
6. On the changes in the South African press in 1985, see Raymond Louw, "Remember the days when a newspaper told us the news?" *Weekly Mail* 9 (20.12.85).
7. See Hachten & Giffard (1984: chap. 6); Moseki (1988); Marcus (n.d.); Finnegan (1988); Mkhondo (1993).
8. *Weekly Mail* 5 (21.6.85).
9. *Weekly Mail* 15 (21.6.85).
10. *Weekly Mail* 2 (18.10.85).
11. *Weekly Mail* 5 (6.9.85).
12. *Weekly Mail* 2 (13.9.85).
13. *Weekly Mail* 11 (4.10.85), 2 (11.10.85).
14. *Weekly Mail* 1 (8.11.85). On television coverage of the unrest, see Posel (1990).

15. *Heard* (1990: 185-219).
16. *Weekly Mail* 3 (6.12.85).
17. *Weekly Mail* 5 (20.12.85).
18. *Weekly Mail* 1 (10.1.86).
19. *Weekly Mail* 9 (17.1.86).
20. *Weekly Mail* 3 (18.4.86).
21. *Weekly Mail* 4 (9.5.86), 6 (31.3.88). *S v Harber* 1988 (3) SA 396 (A); see *Burchell* (1988).
22. *Hansard* cols. 3858-62 (21.4.86).
23. *Hansard* col. 4119 (24.4.86) (332 rejected, 350 granted, 274 pending).
24. *Hansard* cols. 4144-46 (24.4.86).
25. *Weekly Mail* 3 (27.6.86).
26. *Weekly Mail* 3 (1.8.86).
27. *The New York Times* 4 (14.6.86).
28. *Mufson* (1990: 261).
29. *Weekly Mail* 14 (4.7.86), 4 (18.7.86); *The New York Times* §1 p1 (29.6.86).
30. Interview July 1991.
31. *Weekly Mail* 2 (11.7.86).
32. *Weekly Mail* 5 (12.9.86).
33. *Stewart* (1987).
34. *Weekly Mail* 3 (3.10.86), 8 (9.10.86).
35. *Weekly Mail* 5 (3.10.86); Directorate of Publications and Ravan Press (Pty) Ltd v The Committee of Publications, Case No. AP 129/86 (11.10.86).
36. *Weekly Mail* 5 (5.12.86), 3 (22.5.87).
37. *Weekly Mail* 3 (12.12.86).

38. Armstrong (1987: 206-08).
39. *Weekly Mail* 3, 6 (16.1.87), 2 (30.1.87), 2, 15 (6.2.87), 6 (13.2.87), 2 (30.4.87); *ACAG Update* 4 (6.87); Munnik Commission (1987).
40. *Weekly Mail* 6 (16.1.87).
41. *Weekly Mail* 4 (23.1.87).
42. *Weekly Mail* 13 (6.2.87), 6 (22.5.87), 5 (7.8.87), 1 (18.9.87).
43. *Hansard* cols. 256-60 (4.2.87).
44. *Hansard* cols. 323-26 (5.2.87).
45. *Hansard* cols. 413-14 (6.2.87).
46. *Weekly Mail* 13 (6.2.87), 1 (13.2.87), 3 (27.2.87).
47. The Publications Appeal Board lifted this requirement.
48. *Weekly Mail* 3 (27.2.87).
49. *ACAG Update* 4 (6.87).
50. *Weekly Mail* 6 (13.3.87), 11 (27.3.87).
51. *Weekly Mail* 2 (20.3.87), 7 (3.4.87), 3 (12.6.87), 7 (26.6.87).
52. *Weekly Mail* 2 (10.4.87).
53. *Weekly Mail* 1 (16.4.87), 11 (24.4.87).
54. *Weekly Mail* 3 (8.5.87).
55. *Weekly Mail* (15.5.87).
56. For the history of *Grassroots* and *Saamstaan* see Johnson (1991); Louw (1991).
57. *Weekly Mail* 6 (15.5.87).
58. *Weekly Mail* 10 (15.5.87), 7 (29.5.87).
59. *Weekly Mail* 2 (26.6.87).
60. *Weekly Mail* 2 (August 14, 1987).

61. Procl No. R.97 (GG 10772); on the effect of the Emergency on the press, see Armstrong (1987); Tomaselli & Louw (1991b).
62. *Hansard* cols. 2611-12 (T Langley) (29.7.87).
63. *Hansard* cols. 3949-53 (17.8.87); see also *Weekly Mail* 3 (21.8.87); *Natal Mercury* 1 (18.8.87); *Business Day* (24.8.87).
64. He gave an advance briefing to *The Citizen* 1 (26.8.87).
65. *Hansard* cols. 4678-84 (27.8.87).
66. *Hansard* cols. 4696-700 (27.8.87).
67. *Hansard* cols. 4701-05 (27.8.87).
68. *Hansard* cols. 4713-16 (27.8.87).
69. *Hansard* cols. 4746-49 (F J van Deventer) (27.8.87).
70. *Hansard* cols. 4750-57 (27.8.87). The debate was reported in *Weekly Mail* 1 (28.8.87); *The Citizen* 1 (28.8.87), 13 (29.8.87).
71. Procl. R.123 (GG 10880) (28.8.87); see Grogan (1988).
72. Tyson (1987: 144-45).
73. *The Citizen* 13 (29.8.87), 13 (2.9.87); *Sowetan* 4 (1.9.87); *The Star* (15.9.87).
74. *Weekly Mail* 3 (4.9.87); *The Citizen* (3.9.87); *Pretoria News* (3.9.87); *Sowetan* (4.9.87). The contrast between "positive" and "negative" reporting may have derived from a 1981 paper by the Law and Order Minister Louis le Grange. See Tomaselli & Louw (1991b: 183 and n.40).
75. *The Star* (4.9.87).
76. *The Star* (7.10.87).
77. *The Citizen* (3.9.87).
78. *The Sunday Star* (13.9.87).
79. *Weekly Mail* 1 (11.9.87); *The Star* (3.9.87).
80. *Business Day* (15.9.87), (21.9.87).
81. Schneider (1987).

82. *The Cape Times* 3 (14.9.87).
83. *South African Metal Worker*, Publications Appeal Board, No. 112/87.
84. *South* (23-29 July, 30 July-5 August 5, 6-12 August), Publications Appeal Board, Nos. 114/87, 115/87, 110/87.
85. *Learn and Teach* (No. 4 of 1987), Publications Appeal Board, No. 121/87.
86. *Isizwe The Nation*, Publications Appeal Board, No. 118/87.
87. *UDF News* (Vol. 4, No. 2), Publications Appeal Board, No. 133/87.
88. *Azanian Focus* (Vo. I, No. 5), Publications Appeal Board, No. 130/87.
89. *1987 Cosatu Workers Diary*, Publications Appeal Board, No. 176/87.
90. *New Era* (Vol. 2, No.1, April 1987; Vol. 2, No. 2, June 1987), Publications Appeal Board, Nos. 177/87, 178/87.
91. *Weekly Mail* 5 (18.9.87).
92. *Weekly Mail* 4 (9.10.87).
93. *Weekly Mail* 5 (30.10.87).
94. *Weekly Mail* 8 (25.9.87).
95. *The Star* 13 (8.10.87); *The Leader* 26 (9.10.87); *The New York Times* (14.10.87).
96. *New Nation* 2 (14.10.87).
97. Interview July 1991.
98. *The Cape Times* 2 (19.11.87); *The Star* 11 (19.11.87); *Sowetan* 1 (19.11.87).
99. Interview with an advocate; *The Star* (17.11.87), quoted in Jackson (1993: 148).
100. *Botha* (1987).
101. *The Sunday Star* 16 (1.11.87); *Sowetan* 6 (2.11.87).
102. Interview with SABC *Network* (11.10.87), also quoted in Marcus (1988: 85).
103. *R v Roux* [1938] AD 271.

104. R v Nkatlo, 1950 (1) SA 26 (C).
105. R v Sutherland, 1950 (4) SA 66 (T).
106. S v Nathie, 1964 (3) SA 588 (A).
107. *The Cape Times* 7 (16.11.87).
108. *The Sunday Star* (19.9.87).
109. *The Star* (12.12.84).
110. *The Star* (8.2.85).
111. Interview July 1991.
112. *Weekly Mail* 2 (6.11.87).
113. R.2676, GG 11049 (27.11.87).
114. *The Cape Times* 3 (28.11.87); *Sunday Times* 2 (29.11.87).
115. *The Cape Times* 10 (2.12.87).
116. *Sowetan* (8.12.87); *The Star* 11 (9.12.87).
117. *New Nation* 3 (9.12.87).
118. *The Citizen* 4 (11.12.87).
119. *The Star* 12 (9.12.87).
120. *The Sunday Star* (13.12.87).
121. *The Star* (3.9.87). An advocate familiar with the case explained that the *New Nation* believed such a scheme would be unworkable in practice, while offering valuable opportunities to challenge the government censor in court.
122. Interview July 1991.
123. Interview July 1991.
124. Publications Appeal Board, Nos. 95, 96, and 143 of 1987 (in Afrikaans); at the same time it reversed the ban on two issues of *South*. *The Cape Times* 4 (7.12.87). For an account of the arguments on appeal, see *Weekly Mail* 4 (27.11.87). For an analysis of the PAB by its chair, see van Rooyen (1991).
125. *Sowetan* 1 (22.12.87).

126. *New Nation* (Vol. II, No. 47, 3-9.12.87), Publications Appeal Board, No. 173/87.
127. *Weekly Mail* 5 (4.12.87).
128. "Press Gag Threat," *Sowetan* 1 (22.12.87); *Cape Times* 11 (22.12.87); *The Star* 1 (22.12.87); *The New York Times* (7.1.88).
129. *City Press* (17.1.88).
130. *Weekly Mail* 1 (18.12.87), 2 (24.12.87), 2 (15.1.88).
131. *New Nation* 1 (23.12.87).
132. *Cape Times* (9.1.88); *New Nation* 3 (13.1.88).
133. *Sunday Tribune* 5 (10.1.88).
134. Catholic Bishops Publishing Company v. State President and Minister of Home Affairs and of Communications, Witwatersrand Local Division, Case No 421/88; *Natal Post* 5 (23.1.88).
135. *New Nation* 1 (14.1.88), quoted in *Sowetan* (15.1.88).
136. *The Star* 4 (23.1.88).
137. *Weekly Mail* 5 (29.1.88); *New Nation* 1 (3.2.88).
138. *The Star* (28.1.88); *The Sowetan* (2.2.88); *Weekly Mail* 4 (5.2.88).
139. Interview July 1991.
140. Rob M. Ntsuku of Umtata in *New Nation* 9 (17.2.88).
141. *Weekly Mail* 6 (22.1.88).
142. *Weekly Mail* 5 (29.1.88).
143. *Weekly Mail* 1 (5.2.88).
144. *Weekly Mail* 4 (12.2.88).
145. *Weekly Mail* (26.2.88).
146. *Weekly Mail* 4 (4.3.88).
147. *Weekly Mail* 4 (31.3.88).

148. *Hansard* Questions and Replies col. 91 (Reply to P G Soal, PFP) (24.2.88).
149. *The New York Times* A13 (March 9, 1988).
150. Interview July 1991.
151. *Business Day* 4 (14.3.88).
152. *City Press* 2 (27.3.88); *Weekly Mail* 1 (25.3.88); Government Notice No. 570, GG 11210 (22.3.88).
153. *Sowetan* 1 (23.3.88).
154. *The Star* 1 (23.3.88).
155. *The Cape Times* 10 (23.3.88).
156. *Daily Dispatch* 18 (24.3.88).
157. *Business Day* 6 (23.3.88).
158. *The Leader* 6 (1.4.88).
159. *The New York Times* A13 (23.3.88).
160. *The Citizen* 3 (24.3.88).
161. *The Cape Times* 3 (25.3.88).
162. *Business Day* 1 (23.3.88).
163. *Business Day* 1 (23.3.88); *Sowetan* 8 (12.4.88).
164. *The Citizen* 1 (23.3.88).
165. *The Citizen* 9 (26.3.88).
166. *Weekly Mail* 2 (25.3.88); *The Cape Times* 1 (23.3.88); *The Citizen* 3 (24.3.88).
167. *Sowetan* 9 (28.3.88).
168. Shaun Johnson, "All's quiet at New Nation," *Weekly Mail* 7 (31.3.88).
169. *The Cape Times* (1.4.88), 7 (21.4.88) (loss of only R310,000); *Sowetan* 3 (1.4.88); *Natal Post* 2 (9.4.88); *Weekly Mail* 11 (15.4.88).
170. *Sunday Tribune* 9 (24.4.88).

171. *Weekly Mail* 3 (22.4.88), 1 (29.4.88); *The Citizen* (29.3.88), 9 (27.4.88); *Sowetan* 2 (29.3.88); *The Star* (29.3.88); *Sunday Tribune* 7 (17.4.88).
172. *The Daily News* 12 (30.3.88).
173. *The New York Times* (16.5.88).
174. *Weekly Mail* 1 (5.5.88).
175. *Natal Witness* 3 (12.5.88); *Weekly Mail* 1 (13.5.88).
176. *City Press* 7 (8.5.88); *The Citizen* 1 (10.5.88); *The Star* 1 (10.5.88).
177. *Sunday Tribune* 7 (15.5.88).
178. *The Cape Times* 8 (10.5.88).
179. *Sowetan* 6 (13.5.88).
180. *Weekly Mail* 20 (13.5.88).
181. *The Cape Times* 1 (14.5.88).
182. *Weekly Mail* 21 (13.5.88).
183. The papers were: *The Star*, *Argus Community Newspapers*, *Diamond Fields Advertiser*, *Financial Mail*, *The Argus*, *Daily News*, *Finance Week*, *Saturday Star*, *Weekly Mail*, *Sunday Star*, *Sowetan*, *Natal Mercury*, *Ilanga*, *Sunday Times*, *Business Day*, *Post Natal*, *City Press*, *Times Media Ltd*, *Eastern Cape*, *Natal Witness*, *Pretoria News*, *Cape Times*, *Daily Dispatch*, *Evening Post*, *Sunday Tribune*. *Sowetan* 9 (11.5.88); *The Star* 9 (11.5.88); *The Cape Times* 7 (11.5.88); *Natal Witness* 3 (12.5.88); *Weekly Mail* 20 (13.5.88).
184. *Eastern Province Herald* 2 (14.5.88).
185. *Sowetan* 1 (27.4.88); *The Cape Times* 2 (27.4.88); *The Star* 3 (27.4.88).
186. *The Cape Times* 7 (9.5.88); *The Star* 3 (9.5.88).
187. *The Cape Times* 4 (28.4.88); *The Star* 4, 10 (28.4.88); *Sowetan* 4 (28.4.88); *Daily News* 20 (28.4.88); *Natal Witness* 13 (28.4.88), 8 (6.5.88); *Daily Dispatch* 16 (3.5.88); *The Leader* 6 (6.5.88).
188. *The Citizen* 6 (9.5.88).
189. *Business Day* 10 (28.4.88).

190. *Business Day* 10 (28.4.88).
191. *The Star* 4 (2.5.88); "Govt unyielding on press action," *The Cape Times* 3 (2.5.88). For some reason *The Citizen* 5 (21.5.88) decided to reprint this more than two weeks later.
192. *The Citizen* 12 (3.5.88).
193. *The Star* 4 (3.5.88).
194. *Sowetan* 6 (3.5.88).
195. "Weekly Mail editors respond to Minister," *The Star* 1 (2.5.88); *Sowetan* 6 (3.5.88).
196. *Hansard* cols. 10179-81 (18.5.88).
197. *Hansard* cols. 19181-83 (S K Louw) (18.5.88).
198. *Hansard* cols. 10184-87 (C E Green) (18.5.88).
199. *Hansard* cols. 10203-10 (18.5.88).
200. *Hansard* cols. 10308-09 (J H van der Merwe) (19.5.88).
201. *Hansard* cols. 10309-12 (A E Nothnagel) (19.5.88).
202. *Hansard* cols. 10312-17 (19.5.88).
203. *Hansard* cols. 10317-18 (W T Kritzinger) (19.5.88).
204. *Hansard* cols. 10330-33 (P A Matthee) (19.5.88).
205. *Hansard* cols. 10333-38 (19.5.88).
206. *Hansard* cols. 10338-41 (F J van Deventer) (19.5.88).
207. *Hansard* cols. 10347-53 (19.5.88).
208. *Hansard* cols. 10368-72 (19.5.88).
209. *Hansard* cols. 10372-75 (19.5.88).
210. *Hansard* cols. 10375-82 (19.5.88).
211. *Hansard* cols. 10786-91 (20.5.88).

212. *Hansard* cols. 10791-95 (Y I Seedat, PPSA; A Khan, NPP; T Palan, S) (20.5.88).
213. *Hansard* cols. 10797-99 (M Rajab, PFP; M S Shah, NPP) (20.5.88).
214. *Hansard* col. 10800 (S V Naicker, NPP) (20.5.88).
215. *Hansard* col. 10803 (20.5.88).
216. *Hansard* col. 10805 (A Rajbansi, NPP) (20.5.8).
217. *Hansard* cols. 10810-11 (20.5.88); see also Marcus (1989: 132-33); *The Citizen* 2 (20.5.88); *Business Day* 4 (20.5.88).
218. *Natal Mercury* 8 (21.5.88).
219. *Natal Witness* 6 (21.5.88).
220. *Natal Post* 11 (21.5.88).
221. *Sunday Tribune* 10 (29.5.88).
222. *Sunday Times* 22 (29.5.88).
223. *Weekly Mail* 13 (27.5.88), 2, 3 (10.6.88).
224. Tomaselli & Louw (1991b: 182).
225. *Hansard* cols. 14348-50 (17.6.88). For more detailed criticism, see Anton Harber, "The Licensed Truth," *Weekly Mail* 14-15 (17.6.88).
226. *Weekly Mail* 3 (10.6.88); *Hansard* Questions and Replies cols. 1973, 1975 (Law & Order Minister Adriaan Vlok to J van Eck, Ind.; S S van der Merwe, PFP) (28.6.88).
227. *Weekly Mail* 1 (17.6.88).
228. *Weekly Mail* 1 (24.6.88); *The Star* (19.7.88), (22.7.88).
229. *Weekly Mail* 1 (22.7.88), 3 (29.7.88); *Evening Post* (27.7.88); *Business Day* (28.7.88); *The Cape Times* (29.7.88); *The Star* (21.7.88), (23.7.88).
230. *The Cape Times* 5 (14.6.88); *The Citizen* 11 (15.6.88); *The Star* 4 (15.6.88), 3 (16.6.88), 3 (29.6.88), 11 (1.7.88).
231. *New Nation* (30.6.88).

232. *New Nation* 5 (7.7.88).
233. *New Nation* (13.7.88).
234. *The Sunday Star* 12 (24.7.88).
235. *Weekly Mail* 5 (22.7.88).
236. *Weekly Mail* 2 (26.8.88).
237. *Weekly Mail* 2 (29.7.88).
238. *Hansard Questions and Replies* col. 407 (Reply to M Rajab, PFP) (10.3.88)
239. *Cry Freedom*, Publications Appeal Board, No. 93/88.
240. *Natal Witness* (30.7.88), quoted in Tomaselli & Louw (1991b: 187).
241. *ACAG Update* 5 (2.90).
242. *A World Apart*, Publications Appeal Board, No. 96/88; *Weekly Mail* 3 (29.7.88), 16 (5.8.88); *Sunday Times* (31.7.88).
243. *Work in Progress* (Number 53, April/May 1988), Publications Appeal Board, No. 67/88.
244. *The Sunday Star* 1 (7.8.88); *Weekly Mail* 4 (19.8.88).
245. *Weekly Mail* 6 (26.8.88), 6 (2.12.88).
246. *Weekly Mail* 2 (2.9.88).
247. *New Nation* (27.10.88).
248. *Al-Qualam* [sic] (March/April 1988), Publications Appeal Board, No. 98/88.
249. *Weekly Mail* 4 (9.9.88).
250. *Weekly Mail* 11 (September 16, 1988).
251. *The Star* 3 (13.10.88), 5 (14.10.88), 15 (21.10.88), 10 (26.10.88); *Pretoria News* 18 (13.10.88); *Business Day* 1 (13.10.88), 3 (27.10.88); *The Cape Times* 2 (13.10.88), 6 (14.10.88), 6 (25.10.88); *Sowetan* 8 (14.10.88); *The Citizen* 9 (14.10.88); *Diamond Fields Advertiser* 11 (14.10.88), 6 (27.10.88); *Eastern Province Herald* 6 (14.10.88); *City Press* 2 (16.10.88); *New Nation* 3 (13.10.88); *Natal Witness* 8 (25.10.88).

252. *The Star* 12 (15.10.88).
253. *Natal Witness* 5 (20.10.88); *The Star* 2 (21.10.88); *Business Day* 3 (21.10.88); *The Cape Times* 2 (22.10.88); *The Citizen* (22.10.88).
254. *The Cape Times* 7 (24.10.88).
255. *The Cape Times* 11 (26.10.88).
256. *The Star* 3 (28.10.88); *New Nation* 3 (27.10.88).
257. *The Cape Times* 7 (28.10.88), (29.10.88); *Sowetan* 6 (31.10.88).
258. *The Star* 3 (31.10.88).
259. The same day he issued a first warning to *Free Azania*. *The Star* 15 (2.11.88); *Weekly Mail* 1 (2.12.88); *The Citizen* 4 (14.10.88).
260. *The Cape Times* 6 (2.11.88); *The Star* 1, 12 (2.11.88); *Pretoria News* 12 (2.11.88); *Eastern Province Herald* 8 (2.11.88); *Daily Dispatch* 16 (3.11.88); *Sowetan* 8 (3.11.88).
261. *Sunday Tribune* (6.11.88); *The Sunday Star* (6.11.88). Shortly after reappearing, co-editor Anton Harber offered a detailed critique of media censorship, "Always the first curb: The camouflage of censorship," *Weekly Mail* 14 (10.12.88) (Human Rights Focus supplement). Two weeks later it carried an advertisement by Index on Censorship denouncing the State President for suppressing the media. *Weekly Mail* 15 (23.12.88).
262. *The Star* (7.11.88).
263. *Weekly Mail* 5 (26.5.89), 3 (2.6.89), 8 (30.6.89), 4 (22.9.89).
264. *The Cape Times* 5 (11.11.88), 5 (15.11.88); *Natal Post* 9 (9.11.88); *Newsweek* 27 (14.11.88); *The Citizen* 16 (15.11.88); *Eastern Province Herald* 8 (16.11.88).
265. *The Sunday Star* 2 (20.11.88); *Pretoria News* 3, 8 (21.11.88); *The Cape Times* 7 (21.11.88), 2 (22.11.88); *Sowetan* 3 (21.11.88), *The Citizen* 10 (22.11.88); *The Star* 6 (22.11.88), 3 (24.11.88), 1 (25.11.88).
266. *The Cape Times* 3 (23.11.88).
267. *The Star* 16 (5.12.88); *Weekly Mail* 8 (2.12.88); see also *Hansard Questions and Replies* col. 28 (Stoffel Botha to S S van der Merwe) (14.2.89). It was returned two years later, with R9,000 interest. *ACAG Update* 6 (12.90).

268. *The Star* 14 (11.11.88). Rushdie participated in the scheduled debate by telephone.
269. *Weekly Mail* 8 (2.12.88), 2 (9.12.88).
270. *Weekly Mail* 13 (9.12.88).
271. *Weekly Mail* 4 (13.1.89); *The New York Times* A15 (12.1.89).
272. *Weekly Mail* (27.1.89).
273. *Weekly Mail* 11 (24.2.89), 5 (3.3.89).
274. *Weekly Mail* 4 (27.1.89), 2 (23.6.89).
275. *Weekly Mail* 7 (2.3.90).
276. *Hansard* cols. 287-92 (Joint Session) (9.2.89).
277. *Hansard* cols. 2922-30 (16.3.89).
278. *Hansard* cols. 2930-31 (16.3.89).
279. *Hansard* cols. 2931-40 (16.3.89).
280. *Hansard* cols. 2940-44 (16.3.89).
281. *Hansard* cols. 2944-48 (16.3.89).
282. *Hansard* cols. 2949-51 (16.3.89).
283. *Hansard* cols. 2951-54 (16.3.89).
284. *Hansard* cols. 2954-57 (16.3.89).
285. *Hansard* cols. 2957-61 (16.3.89).
286. *Hansard* cols. 2961-65 (16.3.89).
287. *Hansard* cols. 2967-70 (16.3.89).
288. *Hansard* cols. 2970-73 (16.3.89).
289. *Hansard* cols. 2973-76 (16.3.89).
290. *Hansard* cols. 5853-62 (19.4.89).
291. *Hansard* cols. 5862-66 (19.4.89).

292. *Hansard* cols. 5868-70 (19.4.89); the same day Botha replied to S S van der Merwe that of 898 visa applications by foreign journalists, 101 had been withdrawn, 556 granted, 182 refused, and 143 were pending; action took an average of 19 working days. *Hansard* col. 656.

293. *Hansard* cols. 5877-79 (19.4.89).

294. *Hansard* cols. 5881-83 (Mrs S Hoosen) (19.4.89).

295. *Hansard* cols. 5883-86 (19.4.89).

296. *Hansard* col. 5894 (19.4.86).

297. *Hansard* Questions and Replies cols. 1039-40 (11.5.89).

298. *Weekly Mail* 6 (31.3.89).

299. *Weekly Mail* 3 (2.6.89).

300. *Weekly Mail* 3 (2.6.89).

301. *Weekly Mail* 4 (15.6.89).

302. *Weekly Mail* 3 (7.7.89).

303. *Weekly Mail* 8 (30.6.89).

304. *The Star* (17.8.89); *Weekly Mail* 5 (18.8.89), 4 (22.9.89), 3 (24.11.89). For a history of *The New African*, see Ntshakala and Emdon (1991).

305. *Weekly Mail* 3 (1.9.89), 3 (8.12.89).

306. *Weekly Mail* 7 (13.10.89), 3 (8.12.89).

307. *Weekly Mail* 4 (29.9.89), 3 (11.10.89).

308. *Weekly Mail* 8 (11.8.89).

309. *Weekly Mail* 9 (15.9.89).

310. Catholic Bishops Publishing Co v State President and another, 1990 (1) SA 832 (A).

311. Staatspresident v United Democratic Front, 1988 (4) SA 830 (A) (decided after the *New Nation* had filed its heads of argument).

312. Nkondo v. Minister of Law and Order, 1986 (2) SA 756 (A).

313. *Weekly Mail* 3 (10.11.89), 1 (17.11.89), 3 (24.11.89).
314. Interview July 1991.
315. *Weekly Mail* 6 (2.2.90).
316. "Sales rocket," *New Nation* 1 (4.1.90); *The Sunday Star* 8 (4.2.90).
317. Interview July 1991.
318. Sefako Nyaka, "After 3 years in limbo, Sisulu is back at work," *The Sunday Star* 8 (4.2.90).
319. "Mandela praises the alternative papers," *New Nation* 12 (16.2.90).
320. *Weekly Mail* 3 (9.2.90).
321. *Weekly Mail* 7 (2.3.90).
322. "Newspaper accused of promoting Communism," *The Citizen* 13 (8.3.90).
323. Simon Barber, "Way must be found for decent majority to write its destiny," *Business Day* 10 (25.4.90); reprinted in *The Cape Times* 8 (25.4.90).
324. "How to explain that which is inexplicable?" *The Citizen* 17 (13.6.90); *The Natal Mercury* 3 (13.6.90); *The Argus* 19 (14.6.90).
325. "RC Bishops to form company for New Nation," *The Citizen* 26 (31.1.91); "New Nation changes hands," *Sowetan* 8 (31.1.91).
326. *Hansard* Questions and Replies col. 567 (to R M Burrows, DP) (20.3.90).
327. *Hansard* col. 9031 (14.5.90).
328. *Hansard* col. 9035 (F J van Deventer) (14.5.90).
329. *Hansard* cols. 9038-40 (14.5.90). Between June 1985 and December 1988, 1194 of the 2047 publications banned for distribution concerned political matters (58 percent) and 714 concerned indecency (35 percent). Of those banned for political reasons, 98.7 percent were on the left. *Weekly Mail* (13.1.89). This had changed by 1989, when only 136 of 471 banned items concerned politics (29 percent), and 270 (57 percent) were found obscene. *Weekly Mail* 4 (2.2.90).
330. *Hansard* cols. 9087-89 (14.5.90).
331. But not "The Sun Will Rise," about the Sharpeville Six, or "The Shadowed

Mind" or "Natal: South Africa's Killing Fields." *Weekly Mail* 7 (16.3.90), 3 (23.3.90), 6, 21 (5.4.90); *The Star* (4.4.90); *ACAG Update* 4 (8.90).

332. *Weekly Mail* 3 (7.9.90).

333. *Weekly Mail* 3 (14.9.90).

334. *ACAG Update* 4 (2.90), 1 (7.90), 3 (8.90), 4 (9-10.90); Mono Badela, "Threat to editor after blast," *South* 5 (5.7.90).

335. *ACAG Update* 5 (9-10.90).

336. Lothar Paul Neethling v Max du Preez and others, Witwatersrand Local Division No. 24659/89; Lothar Paul Neethling v The Weekly Mail and others, Witwatersrand Local Division No. 24969/89; *Daily Mail* 3 (8.12.90); *Weekly Mail* 5 (5.10.90).

337. *Weekly Mail* 5 (5.10.90).

338. *ACAG Update* 5 (April 1991); *Weekly Mail* 5 (21.2.92).

339. *Weekly Mail* 7 (16.11.90).

340. *Weekly Mail* 10 (23.11.90), 5 (30.11.90).

341. *Weekly Mail* 5 (18.1.91).

342. Christopher S. Wren, "A South African Judge Throws Out Police Suit," *The New York Times* 12 (19.1.91); *Weekly Mail* 6 (25.1.91), 6 (5.4.91), 7 (12.4.91), 5 (21.2.92).

343. *Weekly Mail* 2 (3.12.93).

344. *Weekly Mail* 8 (21.1.94).

345. *Weekly Mail* 9 (30.9.94).

346. Cathy Stagg, "Dhlomo awarded R 7 000 for defamation," *The Star* 8 (11.7.90).

347. *Weekly Mail* 3 (5.4.91), 3 (14.6.91), 11 (19.7.91).

348. *Weekly Mail* 3 (3.3.91); *ACAG Update* 3 (3.91).

349. *Weekly Mail* 2 (22.3.91).

350. *Weekly Mail* 5 (5.4.91).

351. Christopher S. Wren, "Anti-Apartheid Paper: A Scandal Is Its Trophy," *The New York Times* A6 (8.8.91).
352. Sefako Nyaka, "SABC, Cosatu join hands," *The Sunday Star* 4 (28.7.91).
353. *Weekly Mail* 11 (4.3.92).
354. *Weekly Mail* 11 (11.9.92), 2 (23.10.92).
355. *Weekly Mail* 7 (30.10.92), 1 (6.11.92).
356. *ACAG Update* 4 (3.91).
357. See Louw & Tomaselli (1991b).
358. Interview July 1991.
359. Jenny Cargill, "Left outside," *Finance Week* 27 (20.6.91).
360. Mark Suzman, "Alternatives make the hard transition to a new SA," *The Star* 8 (9.5.91); *Weekly Mail* 3 (30.4.91); Mandy Jean Woods, "Victims of success," *Finance Week* 19 (1.8.91).
361. *The Cape Times* 5 (28.12.91); *The Citizen* 11 (28.12.91).
362. Tony Koenderman, "Circulation slide continues," *Financial Mail* 71 (28.2.92).
363. Johnson (1991: 209); *Weekly Mail* 27 (9.9.94).
364. *Weekly Mail* 8 (21.1.94), 2 (11.2.94), 16 (18.3.94).
365. *Weekly Mail* 4,8 (31.7.92), 8 (7.8.92). On the "new censorship" through threats of violence, see Mazwai et al. (1991).
366. *Business Day* 11 (28.7.92).
367. *Weekly Mail* 5 (5.2.93).
368. *Weekly Mail* 8 (21.1.94), 16 (18.3.94).
369. *Weekly Mail* 8 (17.9.93), 5 (24.9.93).
370. Rees & Day (1980); Hachten & Giffard (1984: chap. 10); Heard (1990: 139-44); Suzman (1993: 190-92).
371. *Weekly Mail* 18-19 (30.4.93).

372. *Weekly Mail* 5 (17.9.93).
373. "South Africa Moves to Give Up Control of Media," *The New York Times* A4 (10.4.93).
374. *Weekly Mail* 2 (24.9.93).
375. *Weekly Mail* 6 (24.9.93).
376. *Weekly Mail* 10 (10.12.93).
377. *Weekly Mail* 3 (1.7.94); *Business Day* 3 (25.7.94).
378. *Weekly Mail* 6 (12.8.94).
379. *Weekly Mail* 5 (3.6.94), 3 (24.6.94).
380. *Weekly Mail* 6 (10.6.94), 6 (17.6.94).

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