

# THE WEEKLY MAIL

LEAVE to appeal has been granted in the action against the Weekly Mail.

## Death squads: Momentous issue still to be faced

**ANTHONY S. MATHEWS, Professor of Law at Natal University and author of *Law, Order and Liberty in South Africa*, analyses the wider implications of the Vrye Weekblad judgment.**

IN October 1989, a policeman and deathrow prisoner named Almond Nofomela, in an effort to ward off his impending execution, provided a startled world with the first statement from inside the security forces that death squads existed and had carried out murderous missions against political opponents of the government. He declared on oath that the Durban lawyer Griffith Mxenge, who was found brutally murdered late in 1981, had been eliminated by him and a number of his colleagues on account of his ANC connections on express instructions from security police captain Dirk Coetzee and another high-placed officer of the same branch.

These allegations soon triggered the flight of Dirk Coetzee and contemporaneously with it the publication in *Vrye Weekblad* of wide-ranging claims of a similar sinister kind of the operations of a death squad under Coetzee's control known as the Vlakplaats unit. The tale told by Coetzee was a frightening one of official hit-squad activities against the "enemies" of the state involving the

whole range of dirty tricks from theft and abduction through to cold-blooded murder.

In the course of these allegations Coetzee spoke of attempts to drug and poison some of the victims and identified the South African police forensic laboratory under Lieut-General Lothar Neethling as the source of the drugs and poisons. This led to a defamation action by Neethling against *Vrye Weekblad* and the *Weekly Mail* (which had also published allegations of his involvement in the supply of drugs and poisons).

On January 17, 1991, Mr Justice Kriegler handed down a judgment in which he dismissed Neethling's claim against the two newspapers. This judgment, the full text of which has just become available, is one of the most dramatic and significant documents of contemporary legal and political history to see the light of day.

The matters canvassed in it are of far greater moment and import than the issue of whether Lieut-General Neethling was correctly or incorrectly identified as the source of the drugs and poison and whether he was or was not therefore defamed by the defendant newspapers.

Since Lieut-General Neethling is to appeal against the dismissal of his claims, this discussion will avoid any comment on the narrower issue. It will focus on the wider implications of the court's finding on the government's anti-subversion campaign, and on the legal and moral implications of that operation.

The *Vrye Weekblad* judgment (as we shall call it) was preceded by the publication of the Harms Commission report on political violence against the opponents of the apartheid system. It is not too strong to say that the Harms Commission is now widely seen as a huge waste of public money. Its publication did nothing to satisfy the public clamour for an enquiry that would pare to the bone the truth about the clandestine operations of the state security machine.

After Harms these operations seemed to recede more deeply into cloud and darkness

except for some largely unsuccessful stunts that were admitted to by agents of the Civil Co-operation Bureau.

It is true that Mr Justice Harms became the victim of a barely concealed cover-up operation by members of the CCB. Though in his report the judge seemed somewhat pained by the concealment (which appears to have included the large-scale destruction of documents) he is clearly far removed by nature from the Anton Mostert who, confronted by the post-Muldergate concealment, blew the state's cover by going direct to the Press.

The effect of the Harms report may be summed up in one word: anodyne. With Coetzee branded as a liar, the Vlakplaats unit as non-existent and allegations of state-directed killings as unproved, it seemed that the public concern about death-squad and like activities was little more than the mental meanderings of an overheated liberal conscience. And so it was that the Commissioner, though invited to do so in at least one memorandum submitted to him, made no proposals for the wide-ranging reform of public law and government practice to counter the abuse of power implicit in counter-insurgency of the dirty tricks variety. It appeared, therefore, that what Coetzee described as the Eleventh Commandment in security force operations — thou shalt not be found out — had triumphed even after a public enquiry.

The *Vrye Weekblad* judgment has broken the spell of complacency and unconcern that had settled over the death-squad issue. Mr Justice Kriegler found it necessary to place the specific matter before him — the allegations about the source of the drugs and poison — in the wider context of Coetzee's evidence about the security police counter-insurgency campaign. A large part of his judgment is concerned with whether this campaign was of the kind described by Nofomela and Coetzee.



Anton Harber, co-editor of *Weekly Mail*



From Page Four

After a lengthy analysis of Coetzee's testimony, of the weight of his evidence, of the relative credibility of witnesses who testified before him, and of inherent probabilities and improbabilities, the judge answers that question with a resounding yes.

His judgment is a superb example of qualities not usually found together — a keen analytic power, profound appreciation of character and human motivation and expression, and a style of expression that is lucid, logical and lively. These are fused together in an intellectual tour de force that sweeps before it the subtle evasions, half plausible justifications and the elaborate obfuscations that have characterised the official response to Nofomela and Coetzee.

In answering the question why Coetzee — "n rampokker van Olympiese aard" — should be believed Mr Justice Krieger cites the following; the absence of major deviations between his various accounts of what happened, the inexplicability of his flight from South Africa if the allegations were false, the fact that much of his story quite unnecessarily puts him in a bad light, his failure to settle old scores in his testimony, and the contrary that he implicates many of his old working friends and, above all, the correspondence between the dirty-tricks missions which he describes and the known indisputable facts.

With regard to this last point it is noteworthy that in many cases where Coetzee describes the involvement of individual security officers in a mission, the documentary evidence confirms their presence there at a particular time. The judgment finds that the substantial truth of Coetzee's allegations lies in their coherence with a great web of surrounding fact and circumstance.

The implications of the *Vrye Weekblad* judgment are clearly momentous. The arm of state entrusted with the duty to uphold and enforce the law, systematically violated it. In the course of the counter-insurgency programme, agents of the state committed heinous crimes and carried out dark and dastardly deeds of revenge and retribution.

By these actions they discredited not just themselves but the entire legal system. The casualties of the programme were not just its pitiful victims but justice itself and, in fact, the entire tradition of decent and moral government which the government claimed to represent.

These issues are so momentous that Mr Justice Krieger found that the public interest in the report overrode any individual interest not to be defamed by them.

The compelling need to have such matters publicly aired and debated has the effect of depriving defamatory statements of the element of unlawfulness upon which their actionability depends.

This point, however, may well be argued if there is an appeal.

The *Vrye Weekblad* judgment reopens the question that the Harms Commission report prematurely and unwisely sought to put to rest: what should be done to purge our legal and political system of the cancerous growth that has been shown to lie at the very centre of its being?



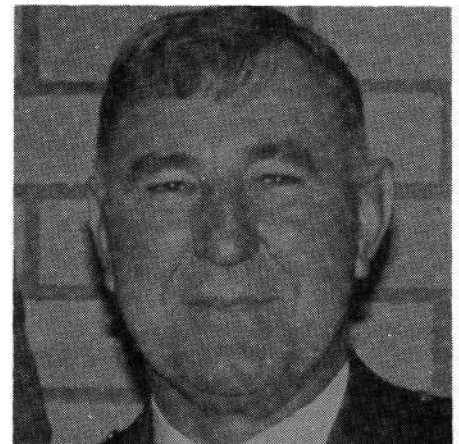
Max du Preez, editor of *Vrye Weekblad*

What reforms and actions are needed to ensure that government agents will not in the future pervert the ideals of justice and arrogate themselves above the law?

The *Vrye Weekblad* judgment warns us of the urgency of seeking sound answers to these questions, and of the cost of failure to act upon them.



Mr Justice Louis Harms



Lieut-General Neethling

# Vrye Weekblad

LIEUTENANT-GENERAL Lothar Neethling applied for leave against the Court's finding in the action against the *Vrye Weekblad* that he had supplied poison for political assassinations. Mr Justice Krieger decided after a three-day hearing that there was no chance the Appeal Court would overrule in favour of Neethling in his bid to sue the newspaper for R1 million for defamation. The general issued a statement later in which he said he would instruct his legal representatives to petition the Chief Justice for leave to appeal.