Who determines when a child is ‘in need of care’?

In terms of Section 14 of the Child Care Act (74/1983) a Children's Court is empowered to hold an enquiry whenever it is alleged that a child is in need of care. Section 14(2) provides that the Court must require a social worker's report detailing the circumstances of the child, parents and custodian. Section 15 gives the Court three options when it finds the child to be in need of care: The Court may return the child to the original custodian subject to conditions; the child may be placed in foster care under the supervision of a social worker; or the child may be placed in a children’s home or school of industries.

Although the Court ultimately makes the decision (1) whether the child is in need of care and (2) what the most appropriate placement should be for the child, the report of the investigating social worker invariably contains a recommendation in respect of both enquiries. A tendency has developed in certain jurisdictions to regard the social worker's report as gospel, resulting in the Court merely rubber stamping the social worker's recommendation. This practice is especially evident in respect of presiding officers who do not sit regularly in the Children's Court.

The following case study demonstrates that there should be a thorough hearing of the evidence of the social worker, beyond the ambit of the statutory report if necessary. The UCT Legal Aid Clinic was approached by Mr X, the father of an 8-month-old daughter born out of wedlock. His instructions were that for more than 4 months the child had been cared for by the paternal grandparents. In addition, on two previous occasions the child had been left in the custody of the grandparents by the mother, Ms Y, who was a minor. Both parents consented to the adoption of the child by the grandparents. The mother subsequently withdrew her consent after an argument with the grandmother. As the grandmother did not have legal custody of the child a meeting was arranged with the social workers. Prior to this and on two occasions, an unknown couple arrived at the grandparents' home demanding to see the child. During the appointment with the social worker, the grandmother informed the social worker that she feared for the safety of the child. The social worker did not consider the circumstances of the mother adequate and the child was placed in emergency care with an unrelated third party.

In the statutory report the social worker failed to disclose the reason for opening the matter. She recommended that the child be found in need of care and placed into foster care. The report alluded to the fact that the child had at some stage been in the care of the grandmother but failed to mention that she had been the primary caregiver for more than half of the child's life. The report also did not contain any discussion of the circumstances of the grandparents.

Under cross-examination the social worker revealed that she was opposed to a foster placement with the grandparents. Her reasons were that there was a dispute between the mother and the grandmother and that the child's life was in danger because of visits by an unknown couple. It emerged that the social worker had little first hand knowledge of the matter. Moreover, the proposed foster mother (a single person with no children of her own) was a fellow employee of hers who had never fostered a child, nor was she on the agency's panel of screened candidates. Cross-examination of the mother also revealed that the dispute referred to had been a disagreement and that she enjoyed an excellent relationship with the grandmother. After hearing all the evidence, the Court placed the child into the foster care of the grandparents.

This case illustrates that the Court dares not shirk its responsibility especially to children whose lives are profoundly affected by court orders. I would submit further that Children's Courts should in the light of this responsibility make greater use of the various services offered, such as UCT's Legal Aid Clinic, which offers specialised child advocacy projects.

Loko's ike 'you're right-
up of our frequent phone hits has a new winner this week! Implications of the new Telephone Bill for Magistrates.

See the article on the Interception and Monitoring Bill on page 2

[Image: Cartoon depicting a judge and a telephone]
Interception and Monitoring Bill: Implications of telephone tapping

By Flora Marutle
Candidate Attorney, Donays Reitz (Sandton)

The Interception and Monitoring Bill (50/2001) makes provision for e.g. police and intelligence agencies to intercept and monitor any form of communication, including telephonic conversations, e-mails, databases and postal articles. The Bill repeals the Interception and Monitoring Prohibition Act (127/1992) almost in its entirety and will soon be passed.

The Bill gives a wider definition to telecommunications to keep up with rapidly developing changes in the digital age. As a result interception is no longer restricted to voice communications but includes a multi-media range of communication such as graphics, email, postal articles, video materials and SMS.

The Bill is controversial as it infringes the constitutionally guaranteed right to privacy. It is regarded as an inroad to media freedom and free flow of information. Some would argue that the objectives of the Bill seem to justify the limitations on these rights and freedoms. These objectives are to protect national security and obtain evidence to combat crime.

The Bill makes it illegal to intercept communication without a court order. A court order may be obtained on the grounds that a crime has been committed or there is reasonable suspicion that a crime is about to be committed. These requirements must be satisfied for the judge to issue a certificate, which is valid up to 3 months. However, there will be no violation of the right to privacy where a party to a communication consents to the interception or monitoring concerned. (See Tap Wine Trading v Cape Classic Wines (Western Cape) 1999 (4) SA 194 (C))

Once the certificate is obtained it must be issued to the service provider such as Telkom or a cellular network. The role of the service provider is to upgrade their equipment and software, at their own expense in order to enable interception. However, the government still bears the costs of the actual interception. Provision is made for the remuneration of any costs incurred on the part of the service provider relating to the interception process. Non-compliance with any of the requirements of the Bill is a punishable offence. Penalties include imprisonment, heavy fines and the suspension or revocation of the service provider's licence.

The Bill allows for any evidence obtained through interception and monitoring to be admissible in a court. This presumes that correct procedures have been followed and that a valid certificate is in place. Notwithstanding the satisfaction of the requirements stipulated in the Act, magistrates retain their discretion regarding the admissibility of the evidence. A cursory look at the various approaches of the courts indicates that the notion of justifiable limitations on privacy is in dispute. In S v Duube 2000 (2) SA 583 (N), there had been large-scale thefts in one of Toyota SA Manufacturing's plants by the company's own security staff. Toyota had trapped its employees in order to accumulate evidence through telephone tapping and photographs. The court discarded the argument that the interception was in contravention of 2(1)(b) of the Interception and Monitoring Prohibition Act 127 of 1992 and an infringement of appellant's right of privacy and that the trial was rendered unfair as the evidence had been unconstitutionally obtained. The prohibition in the Act, according to the court, applied only to third party monitorings and did not cover participant monitorings. It was held that to entertain the section 14 violation argument would be alluding to an 'extravagant notion of privacy'.

In Lenco Holdings v Eckeinstein 1996 (2) SA 693 (N) evidence had been gathered through telephone tapping to illustrate a breach of restraint of trade agreement. This was done in contravention of the existing Act. The court was of the opinion that it would not associate itself with the illegal tactics employed to obtain the evidence. It held that the evidence in question would not be admissible simply because it was relevant.

A related issue is what happens in situations where one's claim to legal professional privilege is compromised e.g. the telephones and computers of an attorney's offices are bugged in order to obtain certain information and evidence? What becomes of the attorney-client privilege? These and other related scenarios are questions the courts will be called to answer.

What would you do?

A 20 year old male was first arraigned in the district court on 6 October when the case was postponed for investigation and legal representation. The case was postponed a number of times and eventually on 25 January the case was remitted to the regional court for summary trial on 7 March.

All the postponements were at the request of the state and in preparation for the regional court. The accused appeared in the regional court on 7 March with his attorney who informed the court that he intended to withdraw because the accused had not paid his fees. When the court asked the accused why he had not paid the fees he gave no answer. The accused asked for a postponement in order to obtain funds for his defence. This was refused and without legal representation the accused pleaded and the trial began. He tendered a plea of guilty which turned out to be an admission of assault GBH but not murder. The prosecutor refused a lesser plea and a plea of not guilty was entered.

Two state witnesses were called and documentary evidence was handed in. The state witnesses testified at reasonable length and the accused's cross-examination of them was superficial. He called three witnesses for the defence all of whom were thoroughly cross-examined by the prosecutor. The court convicted the accused and he was sentenced to 10 years imprisonment. What do you think? Was the trial fair? (For the answer, see page 7)
AIDS and courts

By Paula Soggot
Law, Race and Gender Research Unit

Courts in South Africa are attempting to play a crucial role in realising constitutional rights. This approach to the realisation of socio-economic rights is reflected in the Grooteboom case and more recently between the Treatment Action Campaign* (TAC) and the Minister of Health in the Pretoria High Court. TAC has sought for anti-retroviral drugs to be provided to all pregnant HIV positive mothers in the public health sector to reduce the chance of mother to child transmission. The case raises a number of questions such as:

- Can Welfare, Justice, Health, and other sectors unite effectively in the fight against AIDS and can this be reflected in everyday work e.g. in relation to foster grants for AIDS orphans?
- What role can the magistrates courts play in fighting the scourge of HIV/AIDS e.g. in the functioning of the courts and in reducing discrimination against HIV positive people or their families?

Perhaps the AIDS pandemic together with crimes against women and children, present the greatest challenge to our courts. Pre-existing problems with regard to functioning of the courts can only be exacerbated, e.g. backlogs will only be increased by AIDS related cases. The need for inter-sectoral co-operation and dedication is more urgent than ever. Foster care and adoption cases can be delayed and prejudiced by medical delays. For example, at present, determining the status of babies in need of adoption or foster care is delayed by testing that takes months to yield results. This delay often prejudices the babies' chances, as prospective parents are reluctant to take in a baby of 3-5 months. Results of tests can be obtained within weeks rather than months with more expensive tests. These faster, expensive tests can be vital in securing babies a home.

What experiences and difficulties have you had in your work in relation to HIV/AIDS and children?

Please let us at LRG know by emailing or writing to us.

* See judgement of TAC v Minister of Health at TAC’s website: www.tac.org.za

What I envisaged as a sedate introduction to social context issues was not to be. My contact with the working lives of magistrates turned out to be a roller coaster ride of confrontation with my own biases towards magistrates, my stereotyping of certain members of the judiciary, my sense of being overwhelmed by the pain of the voiceless in our country. I believe 'my group' was the kindest bunch ever. They indulged me and allowed me to ask questions, which indicated a lack of insight of their daily struggles. I intend to remedy this.

We had the opportunity to learn from other cultures by visits to the Jewish Synagogue and the Muslim Masjid in the Bo-Kaap. A visit to Robben Island and the Holocaust Museum made us mutter 'Never again!' While the story of Amy Biehl and the forgiveness of her parents left most of us feeling unable to fathom such human kindness.

The group became excited about the demands of being part of the new judiciary. The notion of delivering justice taking into account all the possible pitfalls presented by race, language, sex, religion, gender, age, disability, was embraced by participants. Well, roll on March for the report back and dreaded exam, to be tackled with the same spirit, no doubt.

Happy survivors of the Intensive Course,
January 2002
Judge Fairgrieve was grievously unfair  
– racism in a Canadian court

A former Toronto Raptors basketball player, Mr Brown was driving a Ford Expedition slightly over the speed limit on Toronto’s Don Valley Parkway. During his trial Mr Brown could not help feeling cheated as he sat in the courtroom for his two-day trial and watched his defence treated with peremptory disdain from the outset by Ontario Court Judge Fairgrieve. The crux of the defence was that Mr. Brown was stopped arbitrarily based on a stereotypical view that black men in big cars must be criminals. The defence evidence included the arresting officer having run a licence check before stopping Mr Brown. The defence also pointed to a police videotape that depicted what appeared to be a second police notebook, allegedly created to help justify stopping Mr Brown.

On appeal Mr Justice Brian Trafford said the trial was destroyed by apparent judicial bias and racial insensitivity. Striking Dee Brown’s conviction and ordering a retrial, Trafford of the Ontario Superior Court rebuked the trial judge for prejudging the case by impeding defence attempts to prove Mr. Brown, a black American, was a victim of racial profiling.

‘Judge David Fairgrieve revealed a closed mind, effectively undermining the confidence of minorities and tampering with the justice system,’ Trafford said. During the trial, Judge Fairgrieve criticised the allegations of racial profiling as ‘distasteful’ and ‘really quite nasty, malicious accusations based on, it seems to me, nothing’. He also recommended that defence counsel apologise to the police for his audacity.

However, Judge Trafford noted that there was a great deal of evidence that racial factors were at play when Mr. Brown was stopped by the police on Nov 1, 1999.

The defence counsel applauded the ruling for extending judicial recognition to the concept of racial profiling. ‘Racial profiling is real, it is ugly, and it scars people it affects,’ he said.

Judge Trafford said that it is extremely difficult to prove that a judge has displayed bias – largely because the finding is so grave. He said it ‘calls into question not only the personal integrity of the trial judge, but the integrity of the entire administration of justice.’

We have crossed the threshold into the new millennium but it is clear that we have brought along with us the plague of domestic violence.

So we have come back to work after the holiday break renewed in our determination to join hands with all of you to take up our task again and work towards the goal of finally getting a handle on this persistent problem.

Victims of domestic violence from diverse backgrounds face many obstacles in accessing the help they need. It is worse for rural women who are not only disadvantaged economically but also face the various cultural inequalities inherent in patriarchy.

The Mount Frere Community Justice programme has joined hands with the Lungisa Community Service programme, a local NGO and has put in place counselling services and victim support for families affected by domestic violence. We have converted a room at the courthouse previously used to store coal into a counselling centre with the goal of improving communication, understanding and respect among people of different ethnic and cultural backgrounds.

We have secured assistance from three social workers who have volunteered their services as well as three administrative assistants who are working on a voluntary basis. This we would not have achieved without the help of the local business sector who have pledged support for the programme.

The administrative assistants help the victims complete the forms and provide information needed in a culturally competent way. They receive informal training from the three qualified social workers.

Our long-term goal is to establish a domestic violence shelter for battered women and children. Our centre has been visited by two Canadian journalists who will raise funds to make us realise our goals. The National Development Agency has been to our Counselling Centre with a United Nations Representative and was delighted with our Intervention programme.

Ideas, advice and assistance of any nature would be most welcome.
Court by surprise

Part one: Beaufort West

By Zanele Ntambo, LRG

Beaufort West is in many ways a huge traffic intersection in the central Karoo. It houses the Chris Barnard Museum. The Central Karoo is primarily a stock-breeding and meat-producing region where small stock such as merino sheep and Angora goats predominate. The Beaufort West district is responsible for the largest wool production in South Africa, while meat is the second largest contribution to the economy of the region. So Beaufort West is the main town in this part of the Karoo. Because of its central situation in the Karoo and location along the major traffic arteries, the town is an administrative centre as well as a centre for tourists and private carriage contractors.

Despite its importance there are few employment opportunities, and many people leave the town in search of greener pastures while others turn to violent crime. Beaufort West has a magistrate's office where two district courts sit. Each court has a magistrate and a prosecutor. Each year approximately 2500 criminal cases come before these courts. There are only 24-30 civil cases a year. All kinds of criminal cases are heard but Schedule 5 and 6 offences and other cases falling within the jurisdiction of the Regional Court go to the Regional Court.

A magistrate and prosecutor hold periodical court in Murrayburg and Merewetherville once a month. These are both approximately 150 kms from Beaufort West. There is currently a vacancy for a magistrate in this office and to improve representivity the court would like an African man or woman. The Regional Court from Oudtshoorn sits in Beaufort West once a month for 14 days. After the 14 day period it will stop proceedings irrespective of how far the trial is. Because this is disruptive the head of office is having talks with the Regional Court President to extend Regional Court sittings to three weeks.

Amongst the cases coming before the Beaufort West district court are breaches of protection orders. The magistrates take these seriously. They will send first offenders to prison if serious injuries were inflicted. This is possible with the help of various NGO's such as Diakonale Dienste, Beaufort West Baarmagjtige Dienste and Christelike Maatskaplike Dienste. Social Workers help with writing of reports, assessments as well as correctional supervision. They all work together with the Department of Health and Welfare to make this possible and share amongst them the different areas concerned.

The community served by this court is mainly Afrikaans, some are Xhosa speaking.

Thanks to Beaufort West's office head and Court manager for sharing their knowledge.

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Part two

By Paula Soggot, LRG

This half of this edition's column sees a departure from looking at a particular court. We reflect on getting caught by surprise in the group of 31 participants of the joint Justice College and LRG Intensive Course in January.

Despite our new Constitution and far-reaching legislation such as the DVA, traditional beliefs often dominate. From within a traditionalist worldview it was contended that:

- there cannot be rape in marriage - "a woman must offer her body anytime to her husband";
- a girl child, informally adopted should not have the same legal rights as an adopted child in the event of intestate succession and she should not inherit. The reason: one day she will marry, but a boy child in the same situation should inherit;
- severing the lower membrane of a dog's tongue, resulting in infection and death of the dog does not amount to cruelty to animals. The reason - it is an age-old custom to make the dog live longer or to make it more vicious.

- Then there was the unforgettable story of Vido's birth. It was Pondoland in 1960. The army was suppressing the first armed uprising. His pregnant mother, with other villagers tried to avoid helicopters circling overhead and sought refuge in the bushes. There in the sand with bushes for 'protection' she gave birth to Vido and four hours later to his twin.

- Lebhohonolo lives in Hoopstad, a dorp so quiet that he is kept awake by the neighbour's snoring. Before he became a magistrate he studied marine technology and constructed oil rigs in Sweden for 15 years. He speaks fluent Swedish.

- If you thought that the civil servant culture of magistrates undermines all efforts to create judicial independence, think again. In her efforts to secure the rights of women, Sarah* refuses to be cowed. 'I ask myself what's the worst that can happen if this goes on appeal? The judge can't kill me. The worst thing he can do is ridicule me and my judgement. I don't care. I say #* the judge.'

* Name changed for confidentiality.
News from Joasa

Gender Equality Committee – where from and where to:

By Connie Mlwantwa

January 19, 2001 will always be a memorable day for me and all women in the magistracy. It is this day that the President of JOASA, Mr. André le Grange took a leap, without even thinking, to establish a special Presidential Committee: The Gender Equality Committee.

For those who know that there are many other special Presidential Committees in JOASA this may not even raise an eyebrow or be regarded as worthwhile reading. Nevertheless in establishing this Committee the President gave it an unfeathered mandate to, inter alia:

- forge a relationship with the National Gender Machinery
- monitor policies in place aimed at the eradication of gender inequality
- participate in drafting of international protocols.

Since its establishment the Committee has embarked on the following projects:

1. In May 2001, it met with Ms. J. Maluleke the Director of the Gender Directorate to establish exactly what mechanisms are in place to eradicate gender inequalities, to know more about the directorate and its powers.

2. Letters were written informing inter alia the Gender Equality Commission, the Magistrates Commission about this Committee and its objectives.

3. Subsequent to such letters, in response:
   - JOASA was invited by the GCE to a Gender Summit which took place from 05-08/08/2001 in Johannesburg.
   - A Gender Equality Forum comprised of magistrates irrespective of their membership to any Association was formed to take our actions to a national platform.
   - A proposal was made to Canada-South Africa Justice Linkage Project for a workshop to empower women.

Airing from on-going inter-relationship with the Gender Directorate, we hope we will achieve our objectives.

News from Justice College

Farewell Mr Burger

Mr Andrew Burger has resigned from Justice College due to his decision to emigrate to New Zealand. He will be missed by all and we wish him and his family all the best.

Magistrates preside in Misconduct Proceedings

Between 28 January and 8 February 2002 approximately 80 senior magistrates, including chief magistrates and regional court presidents will be trained to preside over misconduct proceedings, as well as initiating disciplinary actions, during two one week courses. The response to this training initiative that was requested by the Magistrates’ Commission from Justice College was so overwhelming that a third course might also be held. These are the first courses specifically for magistrates held at Justice College, though the College had been training officials, mainly from other departments for years as presiding officers and initiators of misconduct proceedings.

Access to Information Act and the Promotion of Administrative Justice

During 2001 approximately 50 magistrates attended the two-week training courses on the Promotion of Administrative Justice Act and the Promotion of Access to Information Act at Justice College. As a follow-up to this initial training, a five day conference for the judiciary on these Acts will be held in February 2002. Several prominent international academics and judges will attend and deliver papers at the conference. As soon as the Rules that must be promulgated by the Rules Board are operational, Magistrates Courts will for the first time be able to hear applications involving these two important rights. This will introduce constitutional litigation to the lower courts.

Where do you live? And what is reasonable?

In September 2001, LRG and Justice College published Ideological Virgins by Joanne Fedler and Ilze Ockers. The following is an extract from page 87

When the lift door opened, the plaintiff stepped backwards into the lift which was not there. He fell down the lift shaft and was injured as a result. He claimed damages. The legal question was whether the plaintiff was negligent. Judge Atkinson (trial court) held that the plaintiff was not negligent, because 'believing as we all believe nowadays, that if the door is open the lift must be there, he (the plaintiff) was entitled so to assume.' As part of his explanation the judge mentioned that he himself lives in a building with a lift.

Judge MacKinnon on appeal stated: 'In the course of evidence he [the trial judge] referred to the fact that he himself lived in a flat and was familiar with the fact that the door would not open unless the lift were opposite it. That may well be within the sphere of judicial knowledge, but personally, as I live in the country and not in a flat, this information as to the ways in which lifts are arranged was novel to me. I knew nothing about it. The question is whether the plaintiff used reasonable care which a reasonable person should exercise...he did not exercise reasonable care which a reasonable person would have exercised and therefore the accident was due to his own negligence.' Kerry v Knightley Electrical Engineering Co Ltd [1940] 2 AER 399 (at 402F-G and 403).

What do you think of the following argument? The plaintiff would have gone home with compensation if the judge on the Appeal Bench had gone home at night to a flat in a building with a lift. The plaintiff was denied a remedy, not because he was negligent, but because Judge MacKinnon went home to a house in the country.
In 1994, like South Africa, Ethiopia adopted a new Constitution, leaving behind almost two decades of communist rule. But, instead of making a Constitutional Court final arbiter in constitutional matters, the Ethiopiaans have made the House of the Federation, the second chamber of their legislature, the only body with the authority to interpret the Constitution. The House of the Federation is made up of at least one representative of each ethnic group in Ethiopia. There are over 50 of these groups and the larger ones are entitled to more than one representative in the House of the Federation (which has 110 members).

What does this mean? This was the main question in a workshop of Ethiopiaan judges in Addis Ababa that I attended in December. Because all the members of the House of the Federation are political representatives, one possibility is that all constitutional issues will be dealt with as political questions. This would mean that the majority party view would prevail. But there is another possibility. That is that the Council of Constitutional Inquiry which the Constitution establishes to advise the House of the Federation will become the real decision-maker. This body has eleven members, five are judges and another three lawyers; the remaining three are members of the House of the Federation. If the Council gives the House convincing advice and establishes respect in the eyes of the public, it may become difficult for the politicians to depart from its advice. Then, in effect, the decision-making would be by a Council dominated by lawyers and judges.

It is difficult to guess how the system will develop. At the moment, the advice that the Council gives the House is not made public because it is considered 'too political'. This contrasts starkly with the approach taken in our Constitution which believes that the more political a matter is, the more important it is for it to be discussed in public. But Ethiopiaan lawyers have not had the opportunities that South Africans have had to discuss rights issues and debate different approaches with their peers and with colleagues from other jurisdictions. Many of the judges attending the workshop in Addis Ababa said that it was the first workshop that they had ever attended.

Ethiopian history is rich and varied. Amharic, one of two official languages has its own script. Some of the oldest Christian churches in Africa, dating back to the 4th Century AD are in Ethiopia. Islam reached Ethiopia in its formative years. Strong Jewish influences go far further back. But the legal system is very young. The judges that I met in December are well aware of the challenges that they face but they are committed to getting the system to work fairly.

What would you do? The answer!
(See the problem posed on page 2)

On appeal the conviction and sentence were set aside and it was found that the accused's trial had not been held in accordance with notions of basic fairness and justice. Conrie J held that the trial court had erred in its exercise of its discretion. It was accepted that the accused had been remiss in not arranging finances in time and that he had advanced an unacceptable reason for his failure to do so but the matter should not have ended there. Since the accused had paid his attorney part of his fee his wish to be represented had to be presumed to be genuine. The court should have ascertained where and how he had proposed to raise the necessary funds and how long it would take. The charge was a serious one that carried a maximum sentence of 10 years imprisonment. The matter was also one that required a measure of forensic skill to present, which the 20 year old accused lacked. Conrie J reaffirmed that the right of an accused person to be legally represented at his trial has long been recognised in our law and that this had been enacted as a fundamental right in terms of the then interim Constitution.

From S v Harris 1997 (1) SACR 618(C)

YOUR VIEWS ON NEWS & VIEWS

There is a great need for such a journal as a means of communicating with magistrates.
Communication within the magistrates' profession and department at large has been identified as a barrier to transparency and openness. This stops rumouring and promotes certainty. Also this journal will serve as the voice of magistrates'.

- Joe Ngelanga, Justice College

"It is a very interesting magazine and helps keep you in touch with what other people are doing."
- Mr EPJ Hall, Estcourt

"Informative" - Mr C Allers, Vanderbijlpark

"Excellent" - Ms Chouthee, Umtshoto

"good advice, worth reading" - Mr Cronje, Pearl

"More attention should be placed on children's rights and courts."
- Mr H Serfontein, Sabie

"Very informative, research on certain projects is very helpful to magistrates and helps to make decisions."
- Mr MC Koster, Dordrecht
EDITORIAL

This is the first edition of News and Views in 2002. We warmly wish you a peaceful new year.

LRG's year began with an Intensive Course from 7-18 January. It was an opportunity for exploring a number of myths and for us to learn, dance and even somersault. If you have ever secretly harboured the stereotype that magistrates cannot party, rest assured that for us that stereotype was debunked. On the last night, our group hit Marco's in Cape Town. It is difficult to know who was more inspired, the band or the magistrates. Even Jimmy Dludlu was impressed. He just happened to be there and was moved to offer the magistrates of South Africa a free, unscheduled number. Thank you Jimmy!

We left the course inspired and humbled in varying ratios. It had the effect of tickling, prodding and sometimes hacking away at notions of 'others'. In addition we now face another less obvious, but nevertheless disastrous form of discrimination. In the context of HIV/AIDS it is the 'infected' and the 'uninfected'. Stigma and discrimination compound the suffering of those affected by HIV/AIDS or infected with HIV.

Like issues of race and gender, HIV/AIDS affects us all, both in our work and private life. LRG will be facilitating a workshop for Children's Court commissioners in March. This will include the impact of HIV/AIDS on the children's courts. On this subject and all others that affect your work as magistrates we would be very keen to hear from you. Please send us a letter, an email or just pick up the phone.

Staff changes

We are very sorry to say goodbye to Waseeda Amien who left LRG at the end of January. Waseeda will be taking up the position of Assistant Director at UWC's Legal Aid Clinic. Congratulations to Waseeda on this wonderful opportunity. We wish her the very best and hope that we will continue to work together whenever possible.

We have four new staff members at LRG. Cecelia Botha has joined the administrative team while Veronica de Beer is in Scotland for six months. The three new trainee/researchers are Pratima Osman, Zanele Ntambu and Paula Soggot.

Monsoon Wedding by Mira Nair

The film portrays the week-long run-up to the Hindu wedding of a noble bride-to-be. Nair's use of colour explodes into one's senses. The heat is almost palpable and decadent as the modern, middle class, mostly English-speaking Indian consumes copious amounts of good whiskey. The exuberance of the family left me nostalgic and longing for a good family wedding, complete with akandaal and tradition. This elaborate wedding was played against the simpler love story that unfolds between the Christian domestic servant and the 'events' organiser who has a penchant for eating margaridos.

Nair touches on an incident of child abuse by a family relative. I think this was tackled without the usual depth of her work. Maybe she was intending Monsoon Wedding to be 'splashy, noisy and downright fun' as it was described by one of the critics. I think, however, that she missed the opportunity to deal with the issue of child abuse in families and this has left me completely ambivalent about the movie.

Nair introduces us to the contrasts that exist between the rich and the poor in Indian society but does not offer much depth here either. She does highlight the cross-cultural interplay that exists among the more financially privileged classes in India.

So, for a couple of hours of in-your-face colour, Indian music, Indian culture and talk, which if you are conversant with the language adds multiple layers of comprehension and understanding to the richness of what is said – this is a good view!

— Pratima Osman

BOOKS

Whistling for the Elephants

by Sandi Toksvig

Published by Black Swan, 2000

There are two basic types of animals in Nature's Kingdom. The first, like lions and turtles, produce many offspring and simply hope that some will survive. The second, like elephants and people, produce one or two at long intervals and make great efforts to rear them. My mother belonged in a class of her own. She produced two at short intervals and made no effort to rear them whatsoever.

Dorothy thanks God for this lack of parental guidance and her adventures begin with a won out zoo and a curious group of women. The book is poignant and very funny.

No brainer

Said to be a true extract from a court transcript

**Attorney:** Do you recall the time that you examined the body?

**Witness:** The autopsy started around 8.30pm.

**Attorney:** And Mr Dennington was dead at the time?

**Witness:** No, he was sitting on the table wondering why I was doing an autopsy.

LRG website: www.uct.ac.za/depts/lrgru/

We have recently updated our website to include reports of recent workshops, with photographs of the participants and activities. There is a new section called 'magistrates in action' which details the stories of some magistrates and their interventions in their communities. There is an order form for all our publications as well as a brief description of each publication. There is also a report and photographs of the Intensive Course that was held from the 7th - 18th January 2002 at UCT.

Please send us any comments or suggestions you may have about the website.

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