EDITORIAL

is the last newsletter for the year, a
which has seen many interesting
omenents both in the transformation
in the organisation of the magistracy,
last quarter of the year introduced a
stituted Magistrates' Commission
so virtually all-new membership
ates a determined effort to pay more
lip-service to the notion of represen-
Racially, at least, here's to hoping
the lessons from yesterday will
rather than corrode the decisions
ut tomorrow. We wish the new
mission luck on the long and
ling road ahead.

T

is issue you will see the first of a series
exposures' on interesting or new (or
i) magistrates' courts. The brand-new
istrates' court in Atlantis was maybe a
ricularly appropriate inauguration for
new series, where the luxury of a wel-
saved, modern yet almost Cape-
style building has all but obscured
memories of heat and desperation
pre-fabricated building (where I
tually had my first innings on the
ch).

ew in this issue is the guest column
ne de Jongh, the director of
inance Assistance Services (MAS)
 contribution in terms of moral and
ative input to LRG and efforts to
rove the maintenance system,
ver than just a passing
. Readers are also invited to
ne in to raise questions for
ussion around a topic that can only
f and hopefully lose that unfortu-
inderella tag ) through active
icipation especially by magistrates.
ily we hope you had a fruitful,
fult and productive year - you might
it hard to believe the end of 1998 is
out to be celebrated (or commiserated)
we race towards the end of the
ium. Enjoy the festive season and
ke sure you are heard in our next
.

ANCOIS BOTHA

EXCEPT NO MERCY FROM PERCY

The President

President

Directorate

Organised Crime

Public Safety

The Cape Town-based
Directorate is located in
the Office of the
National Director
Public Prosecutions
and is headed by former
Western Cape Deputy
Attorney-General
Percy Sonn. Wishing
him of LRG inter-
viewed him.

The Directorate is the first of its kind in
South Africa. It has been established by
Proclamation which sets out the specific
organised crime related offences for
investigation. The Directorate is based in
Cape Town because this is where most
organised crime occurs.

The Directorate will consist of Deputy
Attorneys-General, Senior State
Advocates, Senior Public Prosecutors,
attorneys from private practice, police
investigators, members of the National
Intelligence Agency (NIA) and the South
African Revenue Services (SARS), and
chartered accountants. The last two will
manage the financial aspects of the
Directorate's work while legal concerns
will be handled by the lawyers. The
Directorate brings together, under one line of command,
all the different agencies engaged in
the fight against crime. These people will be
expected to devote their time to the work of
the Directorate only. They will be answerable
to Adv Sonn. The work of the
Directorate will be monitored at a national
level by a Control Board chaired by the
National Director of Public Prosecutions,
Mr Bulolani Ngeku. The Board will
consist of the National Commissioner of
Police, the National Commissioner of
SARS and the Director-General of NIA.

Currently, the police start investigations
and open dockets and then prosecutors carry
matters through court. This Directorate will
allow prosecutors, police and other
agencies to be involved together at the
outset of a case. While investigations are
occurring, prosecutors will be able to
determine exactly what evidence is needed
to secure convictions and will prevent
losing cases in court due to lack of
evidence or improper investigations. The
Directorate will begin investigations and
carry the matters through court itself by
instituting its own prosecutions. It will be
able to act without the consent of the local
A-G.

The Directorate has wide powers of
search and seizure. Although searches and
seizures usually occur only if a warrant
has been issued by a judicial officer, this
requirement may be excluded in certain
instances. Through in-camera inquiries
the Directorate will determine whether
or not an investigation is warranted.
Evidence obtained in those inquiries will
not be admissible in court.

The Directorate does not replace
existing structures. It will attempt to
enrich and assist those structures by
taking specified matters out of the hands
of overworked police and prosecutors,
investigating them thoroughly and getting
them to court as quickly as possible. It will
operate in a focused and targeted fashion
with the objective of bringing attention to
the problem of escalating gang violence
dealing with it in a calculated manner.

Adv Sonn emphasises that the success
of the Directorate will depend on great
commitment by and enormous
co-operation among its members and with the
community.

It is envisaged that the Directorate will
work on a number of cases simulta-
ously. As one of its immediate priorities
it will investigate gang-related cases over
the past five years. The Directorate aims
to achieve results and hopes to secure
convictions within the next six months.
YNZE DE JONG ON THE MAINTENANCE AMENDMENT ACT

We all know that the Maintenance System underperforms and is characterised by profound failings. We know that the system in theory is a model of simplicity. It really only does two things: it is designed to establish a quantum and then to police the payment of that quantum. So where lies the problem?

The simplicity of the system’s objectives is undermined by the large number of cases it deals with in a geographically dispersed manner. There are some 500 magistrates courts serving a total population of 40 million people. Naturally not all 40 million people need the service but a significant proportion do. According to Central Statistical Services, 1995 saw 148,000 marriages of which 32,000 ended in divorce with an average of 2.1 children per divorce (excluding customary unions). 840,000 births were recorded during this period. Common sense tells us that a large percentage of these children were born out of wedlock. According to the SABC marketing unit there are currently about 6,800,000 people in South Africa aged between 25 and 40 with children. In addition, all demographic trends indicate that South Africa has an increasing population with more than 50% under the age of 21 years.

What this means is that for our Maintenance System an offer of a child, not the present pool of resources and more than just a gesture.

In some countries, by attempts to contain more straightforwardly, New Zealand, for instance, have handed over to the largely voluntary: Payment Plan, which is incorporated into New Zealand’s statutory system. Making Payments, collecting and maintaining a database of the information, the department of Community Services, an additional-but not Maintenance Amendment Act.

Local courts will now use computer collection systems which will record the proper contact/employment statistics, showing snapshots of our communities.

VOICE FROM J.O.A.S.A. [WESTERN CAPE]

Gelette Burgess once said “If in the last few years you haven’t discarded a major opinion or acquired a new one, check your pulse. You may be dead”.

Prior to April 1997 (when JOASA [Western Cape] formally got off the ground) pulse checking in this province was limited to fruitless meetings while social context education and training, at least that was how I understood it, happened to be the annual “after-meeting get together”!!

Bearing in mind that no significant (if any) major opinion changes have taken place in the past, it came as no surprise that the new executive elected and spent most of their time and efforts on issues such as promoting unity amongst judicial officials, enhancing the independence of the judiciary in lower courts and promoting the conditions of service of magistrates. Although all these issues are certainly the prime objectives of our association, in this process we completely lost sight of the fact that education, training as well as the improvement of our skills, expertise and proficiency also forms part and parcel of our constitution.

Like our predecessors, we were slowly on our way to the ICU. Unlike our predecessors however, we were fortunate to be exposed to a reconstructive experience! Stimulated by the LRG conferences in Caledon (March 1996) and Sea Point (May 1998), we realized the importance of education and training to obtain a better perception and understanding of, as well as a sensitivity to, the society in which judicial officials work.

Time for pulse checking. (It must have been fond memories of the long forgotten TV series “I am Joe’s Lunge, Kidneys, Heart .. etc.” Suddenly it dawned upon us – “I am JOASA’s Heart” and it is time to acquire a new major opinion!”. Social context training and education is to become one of our priority objectives within the Western Cape. JOASA Western Cape represents magistrates most of (not all) magistrates offices in the Province.

Francois Botha immediately seized the opportunity when it was suggested that LRG Research Unit make contact with JOASA National Executive in order to forge links between the two organisations. The results (we only claim fame for acquiring a new major opinion!!!) is another first – the JOASA National Executive being involved in a Social Context Awareness Workshop during 6-8 November 1998.

As far as social context training and education is concerned, we stand for:

- Promoting a human rights culture and upholding the Bill of Rights;
- Organizing, supporting and participating in seminars/conferences for further education of all judicial officers;
- Redressing past imbalances with particular reference to gender, sex, marital status, age, ethnic or social origin, colour, sexual orientation, disability, religion and culture;
- Collecting and publishing information for guidance of judicial officers;
- Promoting a wholesome, frank and amicable relationship between judicial officers, the LRG Unit or other appropriate organisations.

What we won’t stand for is passivity and resistance to social context training and education based on any other motives or grounds than maintaining and enhancing the independence of the judiciary in the lower courts.

In our endeavours to achieve our objectives, we invite all other roleplayers to join forces and contact us.

Andre Dippenaar
06 October 1998
New Legislation on the Implementation of Punishment

Professor Dirk van Zyl Smit of the University of Cape Town writes:

The new Correctional Services Act is the culmination of a major process of overhauling the law on the implementation of punishment in South Africa. Change in this area is now necessary although the current law dating from 1959 has been amended many times, it still embodies an approach to the treatment of prisoners and offenders serving sentences in the community that does not reflect the constitutional and the ethical realities of the new South Africa.

This law will be substantially different. It emphasises the rights and duties of all prisoners and persons subject to community sentences (the latter includes parole and correctional supervision and all the conditions set for both). The Bill of Rights is the front line of the new Bill. The new Bill therefore sets out the rights of all prisoners and limits them where appropriate. Thus, for example, it affirms that prisoners have a right to adequate medical treatment. It also specifies that this does not include treatment of a cosmetic sort.

The Bill clearly indicates that sentenced prisoners have certain rights, that unconvicted prisoners and other members of the public not have. Sentenced prisoners must work and participate in signing and planning the programmes that they are to follow during their time in prison. The Department has specific obligations to provide programmes and services for such prisoners. Underlying these mutual obligations is a clear philosophy gained in clause 36:

"With due regard to the fact that the deprivation of liberty serves the purposes of punishment, the implementation of a sentence of imprisonment has the objective of enabling the sentenced prisoner to lead a socially responsible and crime-free life in the future."

The carefully formulated provisions dealing with prison labour are a good illustration of the balance that the Bill seeks to achieve. It duty on sentenced prisoners to work is clear but not unrestricted. All labour must be related to the objective of implementing the sentence of imprisonment. The Bill specifically provides for "a prisoner may not be instructed or compelled to work as a form of punishment". However, as far as practicable, sufficient work must be available to keep prisoners occupied for a normal working day. Prisoners also have a choice of work limited by the needs of their vocational programmes. But much is left to the discretion of the correctional system because only they can ensure that work and other programmes are available. Legislation can provide the framework for equitable distribution of sources that must come from elsewhere.

The provisions dealing with prison discipline are also new. New duty have the definitions of disciplinary infringements been simplified but the procedures have been revamped too. Heads of prisons will be able to try petty cases but more serious disciplinary infringements will be heard by specially designated disciplinary officials who will be able to impose more severe sanctions such as loss of amenities, fines and solitary confinement. These actions will ensure a stricter but fair disciplinary regime to void order being maintained by illegal informal forms of punishment.

The Bill emphasises the vital role of community corrections in the development of the new South African correctional system by including the implementation of parole and correctional supervision in one chapter that addresses all the various forms of sentences supervision which are dealt with in the community. The objectives of community corrections encompass both the penal element and the wider objective of community corrections to enable the offender eventually to lead a crime-free and socially useful life. The key clause listing the conditions relating to community corrections will enable the court or some other body responsible for imposing community corrections to select an appropriate regime for the particular offender. Further clauses spell out what each of these conditions entail. Thus, for the first time a serious attempt is being made to meet the requirements of legality in respect of community-based sentences. The list of options is long but not open-ended.

The Bill also incorporates a number of legislative innovations that were introduced in 1997 and adjusted them to fit the new framework. Those include the new supervisory mechanisms of the judicial inspectorate supplemented by lay independent prison visitors. They are designed to provide the essential 'outside' monitoring of the prison system as a whole while also monitoring the way in which officials deal with the complaints of prisoners. Furthermore, the privatization of prisons in the form of 'contracted out prisons' has largely been retained and will be known as 'joint venture prisons'. Safeguards will be included to ensure that the profit motive does not result in prisoners' rights being undermined. Finally, community-based parole boards which have not yet been implemented will be called Parole and Correctional Supervision Boards. Their decisions will be subject to review by a national Parole and Correctional Supervision Review Board which will develop a degree of uniformity in the decision of the local boards.

The Bill is also noteworthy for what it does not include: provisions dealing with staff matters and the quasi-military disciplinary code to which correctional officials were subject (now to be dealt with in collective bargaining arrangements); and references to circumstances under which juveniles may be detained in prison while awaiting trial (to be addressed in an amendment to the Criminal Procedure Act). The Bill does contain special safeguards to ensure that juveniles who are admitted to prison are treated appropriately.

The Bill thus creates a comprehensive framework for the implementation of sentences in South Africa. It should make an important contribution to legal certainty. Correctional officials will know the rights and duties of the offenders in their charge. This should ensure that prisoners' rights are not abused through official ignorance and that appropriate steps are taken with the necessary firmness without the unfounded concern that they may be 'unconstitutional'. Sentencing officers will be able to form a clearer legal picture of how the sentences they impose will be implemented. No law is self-implementing, but the various supervisory mechanisms created by the Bill should go a considerable way to ensure that the standards set both for offenders and officials are met.
The Namibian High Court was last year faced with a problem which will no doubt raise its head in the South African magistrates' courts, if it has not done so already. A businessman, Mr Garces, was arrested by the police. He wished to bring an urgent bail application, after hours. Mr Garces suffered from various medical problems. A magistrate was prepared to hear the matter. The only catch was that the prosecutor refused to attend the bail application, as it was the policy of the prosecuting authorities that the prosecutors could not be obliged to attend after hours hearings. This approach was founded in the Namibian Labour Act.

South Africa obviously faces a similar problem. Prosecutors in the magistrates' courts are members of the civil service and as such are covered by the Labour Relations Act 66 of 1995 and, more importantly, will be covered by the Basic Conditions of Employment Act 75 of 1997, when it comes into force, in its entirety in December 1998. Of particular reference is chapter two of this Act, where the conditions applicable to work hours are set out.

Faced with this problem the magistrate declined to hear the bail application in the absence of the prosecutor and Mr Garces was forced to remain in custody. However, an urgent application was made to the Namibian High Court on his behalf for a rule nisi compelling the prosecuting authorities to attend the hearing. Mr Garces' bail application was then heard later that night and he was released on bail. On the return day the prosecuting authorities opposed the rule being made final. Amongst the defences which they raised were that a person could be detained for 48 hours prior to being brought before a court. The Court reaffirmed the rule that the 48 hours provided for in the Criminal Procedure Act 51 of 1977 is the maximum period of time before a person must be brought before a court and did not prevent that person approaching the court before that time in order to apply for bail.

The Court went on to find that there is no rule of law that a lower court could not be convened without a prosecutor being present. Whilst a trial could not take place in the absence of the prosecutor, who had to put the charge to the accused and present the case for the prosecution, it did not follow that merely because there is no prosecutor present when an application for bail is brought, a magistrate cannot sit and enquire into the matter.

Although the prosecutor had to be given an opportunity to attend, if, having been given such an opportunity, he or she declined to attend (on the ground that the application was being brought outside his or her normal working hours) justice must be done without him or her. In these circumstances there was nothing to prevent the investigating officer entering the witness box and informing the court whether the police opposed bail or not, and if they did, what were the reasons. The Court commented adversely on the commitment to justice of a prosecutor who declined to attend such a hearing. The Court did, however, discharge the rule against the prosecuting authorities as it should have been made against the presiding magistrate, given the Court's finding that it was not necessary for the prosecutor to be present when the bail application was heard.

Whilst s 22 of the Constitution of the Republic of South Africa Act 108 of 1996 provides that everyone has a right to fair labour practices, this is counter-balanced by s 33(1)(d), (e), (f) and (2)(d). Can the rights of an arrested and detained person be frustrated by the unwillingness of a prosecutor to attend court? There are further questions this matter raises. For example, s 6 of the Attorney-General Act 92 of 1992 provides that the prosecutors appointed in the lower courts are the personal representatives of the Attorney-General. Is it the concern of the court whether the Attorney-General is able to ensure that his or her representative arrives at court? It should be noted that the Attorney-General Act has been repealed in its entirety by the National Prosecuting Authority Act 32 of 1998, but that only ss 9, 10, 12 and 17 of Act 32 of 1998 have become operational as from 1 August 1998.)

The court may, in any event, designate any competent person to conduct the prosecution in any criminal proceeding (s 5 of Act 51 of 1977). It has also been held that legal practitioners cannot dictate and determine when court proceedings should commence (see S v Moalusi en Andere 1994 (2) SACR 604 (O)).

It would appear that a pragmatic answer to these questions is to be found in the Namibian High Court decision in Garces v Fouche and Others which is to be reported in a forthcoming edition of the South African Criminal Law Reports.
Today, South Africa has a Constitution which insists on the equality of all people, and which prohibits discrimination on the grounds of sex and gender. As a result, women’s rights have received much attention and while women now have equality on paper, many women do not know it. It stands to reason that if they don’t know that they have rights, women cannot exercise those rights and therefore remain powerless as they always have been. Women & the Law in South Africa seeks to remedy that situation.

Women & the Law in South Africa is not the usual kind of text book for practitioners or students, but addresses itself to every woman. It looks at the law through women’s eyes and explains those legal issues which are most important to women, issues such as:

- what the new labour legislation has done for working women;
- what the consequences are of the different types of marriage accommodated in South African law;
- how victims of violence may seek help; and
- what the latest legal developments are in topical areas such as assisted reproduction, abortion and AIDS.

Throughout the book, a very practical approach is adopted, with case studies highlighting the issues and an illuminative glossary to facilitate the understanding of legal terms which may not be common knowledge.

Written by the Unit for Gender Research at UNISA, Women & the Law in South Africa is indispensable to women who seek information on their legal rights and should be recommended to all South African women.

Extent 267pp * ISBN 07021 4536X* Price R120 (inclusive of VAT)

The TRC Report

The long-awaited report is finally out in 5 volumes, detailing the facts, findings and recommendations of the Truth and Reconciliation Commission. Juta & Co was awarded a distribution and marketing tender earlier this year and are thus the official distributors of the official report of the TRC.

This historical manuscript chronicles this unique historical process, the purpose of which was to achieve national reconciliation and unity in South Africa.

- Volume 1 outlines the background of the TRC, including its history, mandate and methodology
- Volume 2 introduces the various roleplayers
- Volume 3 tells the story of the victims in each of the five TRC regions
- Volume 4 deals with the responsibility and accountability of the various institutions, such as Business, the Media and the Judiciary
- Volume 5 comprises the findings and conclusions, including a list of names of perpetrators of Human Rights violations and the recommendations of the Commission

The TRC Report can be obtained at leading booksellers or through our representatives and is only available as a 5 volume set.

ISBN Complete set — 0 6202 3078 9 * Hard Cover * 3500 pages * R750.00 incl. VAT

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Dear Mr T,
I want you to convey my enquiries to Dr Jeremy Seekings. I studied his article in the News & Views of July 1998 and his book on the lay assessor system. I am very disappointed in him for not doing research in the Eastern Cape and am of the humble opinion that there is a deficiency in the research. I was unable to find any discussion of my biggest problems with the lay assessors in the small town where I am the only magistrate.

1. What do we do when the lay assessor insists on making and serving tea to the staff while the tea girl is either absent or too slow for her liking? (He may discuss preparing toasted sandwiches as well.)
2. How to prohibit the assessors from assisting the cleaning lady with cleaning the offices whilst waiting for trials?
3. How to get lay assessors to supply messages and information to the public? (That is applicable to those who cannot be contacted by means of mail or telephone.)
4. How to prevent lay assessors from becoming familiar faces and part of the staff and to stop staff members from regarding them as part of the staff?

Dr Seekings is welcome to complete his research here in Stankey. Due to unforeseen periodical floods of the Stankoos river he may be unable to make use of ordinary modes of transportation to reach Stankey. When confronted with that he is to make a fire (with wood) on the bank of the river and use five smoke signals, first two short ones and then three long ones. Our tame toothless crocodile (TTC) will then make haste to fetch him.

UN from Stankey

Mr T directed the query to the co-author (Prof. Murray) of the latest LRG publication and here's what she says:

Dear UN,
Dr Seekings is in the Australian outback so I must answer your questions. I am sure that he will put in his research in the order of questions of Stankey (sorry Stankey, you've got to wait). Meanwhile, I am concerned that you're not getting full benefit from your assessors. While you do the donkey work, you should prepare lunch. If you have a long trial within a trial, polishing the brass seems a good occupation. Perhaps your next assessor should have painting skills - I am sure the Stinky court could do with a good lick of paint. You will just have to ensure that the Union does not complain - you do not want a strike on your hands. (Of sensitivity to your position I shall comment on the fact that the assessor seems to have an impressive work ethic - perhaps not shared by the rest of Stankey staff.)

If your lay assessors are good at sending smoke signals I would encourage them to use them. After all, the information is still shared between court and community. I did the Department know that I really needed was the assessor list!

The familiar face of a lay assessor is indeed a distressing thought. It needs to be resisted at all costs. And beware of the end of the line for all attempts by assessors to unionise.

Another danger signal is an assessor who carries a copy of Zeffert's Evidence. Assessors have no business pretending to be lawyers and, anyway, magistrates don't need to consult books why should assessors?

[Each published letter receives R50! - Editor]

BRAINTEASER SOLUTION

From an experiment conducted by an English professor. The male students wrote: "Woman, without her man, is nothing." The female students wrote: "Woman! Without her, man is nothing."
Court by Surprise!
This issue: Atlantis Magistrates' Court

On a recent visit by Francois Botha and Waheeda Amien to the outskirts of Cape Town, they found tucked away along the west coast of the Western Cape a little town called 'Atlantis'. Certainly not the legendary lost city, but one with its own charm. For years this poverty-ridden community had to endure a courthouse situated in a tiny pre-fab surrounded by a prison-like fence and containing two little courtrooms with a teeny sized area for the clerk of the court. Witnesses had to huddle together in a corridor, barely big enough for a medium-sized animal, while accused in custody had to suffer either unbearable heat or biting cold in two disgusting aluminium shacks.

At long last, the closely-knit community of Atlantis can proudly boast their latest symbol of justice in a new South Africa: a brand new court. This beautifully-furnished building with a wide variety of plants, spacious corridors and huge reception area is probably one of the biggest and most accommodating courts in our country – certainly in stark contrast to the old dreary mouse-sized predecessor.

The new Atlantis court has three district criminal courts, one district civil court, two regional courts and a high court and staff. In addition, it has a sexual offences court equipped with a one-way mirror, TV camera and television. It also has a child's court which the staff plan to brighten up, a separate mother's room, a room for the probation officer, a maintenance office, a correction services office, sexual prosecutors' offices, a control office and a tea-room. It also has a comfortably-sized conference room, a messenger's room, a store room, several rooms for typists, several private consulting rooms for attorneys as well as a Legal Aid office. Atlantis has now also entered the technological age including a library with Jutastat and a librarian who can actually use it!

Atlantis falls under the district of Malmesbury with Mr. Steyn as the cluster-head. As with all other impoverished areas, Atlantis has its fair share of crime involving dishonesty and violence such as domestic violence, murder, theft, housebreaking etc. The court normally has about 119.5 cases on the roll per month – above the average norm of approximately 80 cases per month. There are three magistrates: Mr. Kriel, Mr. Tjula, Mr. Albertus and one vacant post as well as three prosecutors and ten administrative people. The community is sorting out the lay assessors programme by handing the process entirely on their own without any court interference. At the same time the court staff is willing to make the new court as accessible to the community as possible by allowing numerous NGOs such as the Gender Advocacy Program (GAP) and NICRO to visit and conduct programmes at the court. Court staff visited high schools in the area to talk to the youth about human rights and other related issues in celebration of June 16 (Youth Day). Furthermore, the prosecutors at Atlantis court are involved with community work and they attend numerous workshops with NGOs and CBOs. Liesl America (control prosecutor) was recently on the Planning Committee for 'Whistle week' organised by NICRO. The underlying notion is for the court to reach out to the community and to allow the community to take ownership of the court itself and to use the facilities available at the court. This has been achieved, among other ways, by allowing university students to use the library and through the business community donating various items to the court.

Last but not least, Atlantis court has certainly joined the transformation process with 100% black staff and 70% women on board!

We welcome the new court and wish its staff every success in their future endeavours to administer fair and equitable justice.

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Court in the Act

Created by Patricia Miller  Text by Francois Botha
BOOK REVIEW

On the Cape Flats generations of boys are born and bred to become the footsoldiers of an urban war between rival gang formations. Wherein lies the attraction of gangs for such adolescent boys? How do gangs offer meaning and a sense of belonging in an otherwise fractured world? What are the principles which should guide interventions to divert from the clutches of the brotherhood those most "at risk"? Such are the issues addressed by Don Pinnoch in his recent publication on gangs in the Western Cape entitled 'Gangs: Rituals and Rites of Passage' (1997). This book published by African Sun Press and the Institute of Criminology is of interest to scholars and criminal justice and welfare practitioners. Copies are available at R49.00. Contact the Institute of Criminology for information (tel: 021 650 2983; fax: 021 650 3790; or e-mail: crimatk@protcm.uct.ac.za)

OF INTEREST...

Sv NAIDOOR 1998 (1) BCLR 46 (D)
A recording of telephone conversations involving the accused was the focus of a trial-within-a-trial regarding inadmissible evidence. The Court held that noncompliance with the procedure for obtaining a valid direction from a judge to monitor telephone conversations constituted a violation of the accused's constitutional right to privacy: the admission of the evidence would render the trial unfair since it would breach the accused's right against self-incrimination.

Sv DAVIAD 1998 (2) SACR 313 (C)
The appellant, a prison warden, agreed to accept a bribe from a prisoner as quid pro quo for assisting the prisoner to escape. The appellant was convicted on two separate charges: a) aiding a prisoner to escape and b) receipt of or agreement to receive a bribe. He was sentenced to three years' imprisonment on each count running concurrently. On appeal it was held that a duplication of convictions had occurred because the two acts had been done with the single intent to carry out the appellant's side of the bargain. That single intent constituted one continuous criminal transaction. The Court upheld the conviction of assisting a prisoner to escape but set aside the conviction of agreeing to accept a bribe (since the actual escape of the prisoner was considered a more serious offence). The Court reconsidered the sentence and imposed two years' imprisonment.

IN THE FAST LANE

Congratulations to our Western Cape aspirant Regional Magistrates who passed the notorious test en masse! Let's not allow the rumour that some have already opted for greener pastures outside the magistracy dampen the spirit of celebrations....

A big cheer for one of our star trainers, Asha Ramjal (Roodcoport) on her promotion to Senior Magistrate. Another star trainer, Bruce Lang (Bushbuckridge) was elected from a hot list of contenders to represent South Africa at the Raoul Wannenberg Institute on International Human Rights Conferences (Lund, Sweden). What did we say about LRG magistrate-trainers?

While we're on the subject of handing out bouquets, a special one for Elizabeth Baartman (Wynberg, Western Cape newly-appointed presiding officer of Cape Town's Family Court.

ON THE CUTTING EDGE

André Dippenaar (see p2), recently clamped down on maintenance defaulters by imposing reviewable sentences including correctional supervision (s276(1)(i) of the CPA) because he thought usual arguments against imprisonment did not hold. Of two almost identical cases, one was given the High Court's blessing while the other failed to get the stamp of approval. What to do? Anyone whose wisdom teeth have also been knocked out by a similar experience?

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