

## EDITORIAL

Well, we managed to fit this final newsletter in despite major time constraints! It has been a hectic year for LRG with training in the Northern Cape, KwaZulu-Natal, Eastern Cape, Northern Province, Western Cape and, of course, Justice College. Added to this normal load we had the Short Course return weekends, training workshop for Joasa Executive members, a workshop on the International Criminal Court for Women of Africa, a Facilitators Capacity Building workshop and a Family Court conference for all the national role-players.

In our spare time, we have also been involved in planning an Equality Conference for January 2001, an Armsa workshop for 2001 and a trip to Uganda was undertaken to observe a program on the use of international law – this was organised by the International Women Judges Foundation. There will be no prizes for guessing the state of the LRG team on any level be it physical, emotional or mental – however “We will survive...”

On a more serious note, our first edition of the year carried an article by Christina Murray on the debate surrounding a unified judiciary. At the recent Justice Colloquium held in Pretoria in October this topic (amongst others) was a source of heated debate. And guess what... the issue of social context training for judges was raised. The crucial question was – who should conduct the training? Well, to start with, we could provide a list of our wonderful magistrate – trainers!

The workshops this year utilised, to a large extent, the expertise and talent of magistrate trainers in each of the provinces that we covered. This was a wonderfully enriching experience all round, and we are truly grateful for all the time and effort that these trainers expend in meeting our common goal of social justice. So, thank you from the LRG team, we would not be able to function without you.

Finally, from us to you – enjoy the holiday season, re-charge the batteries and put pen to paper in the new year. We need feedback and inputs from you – for your newsletter!

*Rashida Manjoo*

## “GRADE NINE DON’T DO CRIME”

Recently, Rashida Manjoo chatted to Magistrate Jacqueline Boshoff about a community project that she initiated. The focus of the project was crime prevention, community involvement and future planning for youth. A community radio station was identified as the vehicle to reach youth in the region.

The BCR-Spar Edutainment Competition project was aired weekly for 4 months on Barberton Community Radio and was funded by Spar to the tune of R27 000.00. The target audience was the youth of Mpumalanga broadly – with a specific participant audience of 12 classes of Grade 9 youth from 4 schools. (Seven out of the 12 classes finished the project). Bheki Ngosa and Cynthia Sambo of BCR received the support of the Provincial Education Department in accessing the relevant schools and they liaised with the pupils and the schools. Each Grade 9 class also had a matric helper to assist with advice etc. and Jacqueline met with the matric helpers occasionally to inspire and assist them.

BCR presented the weekly radio competition (which included a phone-in component) and covered different topics presented by Bheki, Cynthia or invited speakers. The script for each programme was written largely by Jacqueline and covered topics ranging from thinking of the consequences of crime, alternate options to crime, options to generate a legal income, discussions on responsibility and respect for public amenities (eg. public phones, schools etc.), the role of parents, family violence, HIV, maintenance etc.

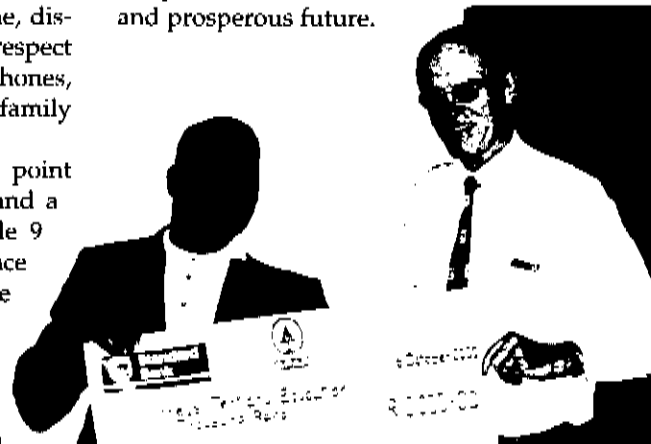
The competition worked on a point scoring system on both a class and a school benefit system. The Grade 9 classes scored points for avoidance of contact with the criminal justice system during the project period. This entailed both an individual and a class policing effort to avoid any form of involvement in crime. Points were also scored for visits to a prison or a police station; for cleaning up their schools; for assist-

ing vulnerable groups eg. the elderly etc. An essay competition focused on future planning and sought views on how one breaks and escapes from the cycle of poverty. These essays were graded by Bheki, Cynthia, Jacqueline and a representative from Spar.

The prizes for scoring the most points included the following: a night at the Kruger National Park for the winning class; a television set for the winning school and a bursary of R10 000.00 for the winning matric helper. The essay competition yielded a reward of a calculator for the writer of the best essay in each class. Soft toys, educational tool kits and Easter eggs were also distributed as prizes to the participating Grade 9 pupils.

The spin-offs of this initiative (apart from an elated but exhausted magistrate) are: the pupils, the organisers and the community benefited in terms of knowledge and skills development; the radio station became a crucial resource used by the youth; Bheki was offered a position in an NGO which focuses on youth and Spar is so impressed that it has offered to fund a similar project on a larger scale.

So, Jacqueline, Bheki and Cynthia are plotting to expand their project, take over more schools and use them as community liaison centres which focus on the youth and a crime-free and prosperous future.



Winning matric helper Sydney Modipani receiving his bursary cheque.

# SOCIO-ECONOMIC RIGHTS: HOW FAR WILL THE COURTS GO?

By Karrisha Pillay

Researcher at the Socio-Economic Rights Project, Community Law Centre, University of the Western Cape

## Introduction

The limits of certain socio-economic rights in the South African Constitution were put to test in the *Grootboom* case.<sup>1</sup> The groundbreaking Constitutional Court decision is likely to have a profound effect on the realisation of many other socio-economic rights and, ultimately, on the lives of the poor, disadvantaged and vulnerable in South Africa.

## The Constitutional Framework

The Constitution includes a wide range of legally enforceable socio-economic rights. There are rights relating specifically to children as well as rights applicable to everyone. Section 28(1)(c) provides that every child has the right to basic nutrition, shelter, basic health care services, and social services. The right to shelter can be contrasted to the general right of access to *adequate housing*, provided for in section 26. Unlike the right to *shelter* which is a children's right, the right to access to housing applies to everyone but it is qualified by the availability of resources and is subject to 'progressive realisation'. Both these rights were tested in *Grootboom*.

## Facts of the Case

The respondents in *Grootboom* were 'squatters' (390 adults and 510 children) who initially lived in Wallacedene. Poor living conditions made them move to vacant, private land in the Oostenberg municipality, from which they were evicted in May 1999. In the eviction, their structures were demolished and building materials destroyed. The homeless respondents then attempted to erect temporary structures on the Wallacedene sports field. These, however, proved to be wholly inadequate, providing no protection against the elements, particularly for their children. They applied to the Cape High Court for an order requiring the government to provide them with adequate basic shelter or housing until they obtained permanent accommodation. The Court ordered the appellants to provide the respondents who were children and their parents with shelter. The order noted that "tents, portable latrines and a regular supply of water (albeit transported) would constitute the bare minimum".<sup>2</sup>

After the matter was heard in the Constitutional Court, the appellants made an offer to address the desperate living conditions of the respondents. However, four months later the appellants had still not complied with the terms of the offer. On 21 September 2000, the Constitutional Court made an order putting the municipality on terms to deliver services agreed to in the offer. Nevertheless broader issues raised in respect of housing rights still needed to be addressed. The Human Rights Commission and the UWC Community Law Centre were admitted as amici curiae.

## The Constitutional Court's Decision

**Analysis of section 26** The Court found that the extent of the State's obligation is defined by three key elements in section 26: reasonable legislative and other measures; progressive realisation; and resource availability.

In determining whether the measures adopted by the appellants meet the test of reasonableness, the Court made the following observations:

- A wide range of possible measures could be adopted by the State to meet the requirement of reasonableness (para 41).
- Measures must be reasonable both in their conception and implementation (para 42).
- In assessing the reasonableness of the measures, housing problems must be considered in their social, economic and historical context and in the light of the capacity of institutions responsible for implementing the programmes (para 43).
- If measures fail to respond to the needs of the most desperate, they may not pass the test of reasonableness (para 44).

**Evaluation of State housing programme** In assessing the reasonableness of the measures adopted by the applicants in relation to section 26, the Court accepted that they represented a systematic response to a pressing social need. In particular, it noted that there was a sound legislative framework at both national and provincial level. However, the Court decided that the measures

adopted by the applicants fell short of section 26(2) as no provision was made for relief to the categories of people in desperate need, such as the respondents in the present case (para 69).

**Analysis of section 28(1)(c)** The Court resolved that the section 28(1)(c) obligation to provide shelter for children is imposed primarily on the parents or family and only alternatively on the State. Thus the State's obligation comes into play only when, for instance, children are removed from their families. However, the Court accepted that the State must provide the legal and administrative infrastructure necessary to ensure that children are accorded the protection contemplated by section 28.

The respondents in this case were children being cared for by their parents and not in the care of the State, or abandoned. In the circumstances, the Court concluded, there was no obligation on the State to provide shelter to the children, and through them their parents.

**The Court order** The Court ordered the State to act to meet the obligation imposed upon it by section 26(2) of the Constitution. It emphasised that the State's programme must include reasonable measures to provide relief to persons living in intolerable conditions or crisis situations – at the date of launching the present application the State housing programme fell short of this obligation.

## Conclusion

Although the judgment can be criticised for the extremely limited role it accords the State in relation to children's right to shelter, its interpretation of "reasonable measures" in section 26 is laudable. But, the Court warned that reasonableness must be determined on the facts of each case.

*Grootboom* marks a significant milestone in the advancement of socio-economic rights through its particular emphasis on people in desperate need.

## Notes

- 1 *The Government of the Republic of South Africa, The Premier of the Province of the Western Cape, Cape Metropolitan Council and Oostenberg Municipality v Grootboom*.
- 2 *Grootboom v Oostenberg Municipality and others* 2000 (3) BCLR 277 (C) at 293 A.

# Back on the beat

● *For some of us your decision to return to the 'scene of the crime' came as a bit of a surprise. Any comments on this sudden change in direction?*

**FB:** For some time now, I have felt that my court-experience (constituting such an important component of my work at LRG), was running out, and perhaps now is a good time to re-charge the batteries.

● *How do you find life at court, after almost a three-year absence?*

**FB:** Very different, but more interesting than I could ever have imagined! The wheels of justice still turn slowly, perhaps more slowly than when I left in 1997, but life at the Regional Court has been an amazing experience, and a completely new learning curve. I'm not sure if this is the right thing to say, but I almost enjoy the isolation of being a magistrate again, after the hectic life as a trainer.

● *Tell us about the court and project that you are currently involved in.*

**FB:** My court is part of a concerted effort to respond to the bottle-neck around crimes of a sexual nature, where the continuous load has been clogging the machinery of justice. Rape makes up the majority of cases, with here and there a trial under the Sexual Offences Act, and the occasional male victim.

The Sexual Offences Courts were established in 1992, with the goal of providing a specialised forum and court officials with the necessary training, awareness and sensitivity to meet victims' expectations. Victims have been at the lower end of the gratification scale in justice for far too long – this project was specifically designed to address some of the more contentious flaws in the system. The obvious distinguishing factor is the victim-friendly environment. An effort has been made to ensure that waiting-rooms for children are safe and well-equipped to ease the discomfort of the long wait: a television with seemingly non-stop cartoons, curtains (not to be taken for granted!), pillows, decorated walls and teddy bears are standard features on the fifth-floor in Wynberg.

A further improvement in the system is the presence of a social worker, specifically assigned to assist victims, espe-

**Offences courts in Wynberg's Magistrates' Court. Here Francois responds to some questions.**

cially young children. The social worker is present a couple of times per week, with the ultimate goal of a full-time presence at court. This social worker does counselling and referrals to agencies specialising in court preparations of victims. Two prosecutors have been assigned to each court (three permanent courts, and one rotating). This contributes to a much higher level of preparation, victim consultation, and ultimately, prosecution.

● *Is the project any better now and is it really making a difference?*

**FB:** Some of the criticism levelled against the project seems to have emanated from the accepted practice in magistrates' court known as drawing cases. So, at times carefully prepared cases were drawn by prosecutors from other courts, who did not have the same level of training, or who did not consult with the witnesses as comprehensively as the Sexual Offences Court prosecutors. Now only the specialised prosecutors will draw cases.

According to the statistics, almost 800 cases were on the roll of the four courts, in March 2000. This figure dropped to below 700, during mid-August, with indications that this noticeable decline might continue. This is telling in the light of the fact that the number of reported cases is also increasing.

My court is doing all the cases referred by the Thuthuzela-project – a co-ordinated effort to fast-track the entire process of finalising rape matters which occur in areas with high rape statistics, such as Manenberg, Guguletu and Khayalitsha. The idea is to get the matter to court as soon as possible, eliminating the 'normal' postponements caused by further investigations, legal representation and other delays. A spe-

cial clinic with a counselling unit has been set up in the C F Jooste hospital, where doctors have been specifically assigned to deal with all rape victims. Investigating officers from the SAPS have also been assigned to this project, and these matters have been prioritised. The results are noticeable: at the moment I am hearing a case where the alleged rape has been committed less than two months ago. By Regional Court standards, this is pretty impressive!

● *Do you feel that the stint at LRG has prepared you for this new environment, or completely jeopardised your objectivity?*

**FB:** I am well-recorded as a cynic of that great judicial illusion, "objectivity". Of all the lessons learnt at LRG, this remains perhaps the most important one. And, of course, to be informed: not only about one's own likes, dislikes and peculiarities, but also empathy and understanding for the reality of others. This little judicial skill is hardly achieved by clinging to the notion of objectivity. I do believe that the explosion of knowledge I experienced at LRG has empowered me to cope with this new environment.



*Francois Botha – empowered to cope with his new environment*

# NEWS FROM THE LAW

By David Fisher, Senior Editor

Two important decisions on the question of unfair discrimination will be published in the January 2001 issue of the *South African Law Reports*. The first, *Hoffmann v South African Airways* 2001 (1) SA 1 (CC), concerned a person (Hoffmann) who applied to the Airways (SAA) for the position of cabin attendant. At the end of the selection process Hoffmann was one of 12 selected as suitable candidates for appointment. Although he was, on medical examination, found to be medically fit, a blood test showed him to be HIV positive. His medical report was thereupon altered to read 'HIV positive' and 'unsuitable'. He was informed by SAA that he could not be employed as a cabin attendant because of his HIV positive status. It was SAA's practice to exclude from employment as cabin attendants all persons who were HIV positive, a practice which it justified on safety, medical and operational grounds.

Hoffmann challenged the constitutionality of SAA's refusal to employ him. He failed in the Witwatersrand Local Division (see *Hoffmann v South African Airways* 2000 (2) SA 628). On appeal to the Constitutional Court it was held (*per* Ngcobo J) that an asymptomatic HIV-positive person (as Hoffmann was) could perform the work of a cabin attendant competently and that any hazards to which an immunocompetent cabin attendant might be exposed could be managed by counselling, monitoring, vaccination and the administration of appropriate antibiotic prophylaxis if necessary. The risks to passengers and other third parties was therefore inconsequential and, if necessary, well-established universal precautions could be utilised. After finding that SAA was an 'organ of State' and thus bound by the provisions of the Bill of Rights by virtue of s 8(1), read with s 239, of the Constitution of the Republic of South Africa Act 108 of 1996, the Court held that SAA was thus expressly prohibited by s 9(3) from discriminating unfairly. The Court went on to hold that there was no doubt that SAA had discriminated against Hoffmann because of his HIV status and that neither the purpose of the discrimination nor the objective medical evidence justified such discrimination. Its practice judged and treated all persons living with HIV as unfit for employment as cabin attendants on the basis of assumptions true only for an identifiable group of HIV-positive persons. SAA's practice of excluding from employment as cabin attendants all HIV-positive persons meant that persons who were HIV positive would never have the opportunity to have their medical condition evaluated for a determination to be made as to whether they were suitable for employment as cabin attendants. They would be vulnerable to discrimination on the basis of prejudice and unfounded assumptions – precisely the type of injury which the Constitution sought to prevent. Furthermore, the Court held, although legitimate commercial requirements were an important consideration in determining whether or not to employ an individual, to allow stereotyping and prejudice to creep in under the guise of commercial interests had to be guarded against. The greater interests of society required the recognition of the inherent

dignity of every human being and the elimination of all forms of discrimination. The need to promote the health and safety of passengers and crew was important, as was the fact that if SAA were not perceived to be promoting the health and safety of its passengers and crew the public's perception of it might be undermined. This notwithstanding, fear and ignorance could never justify the denial to all people who were HIV positive the fundamental right to be judged on their merits and on the basis of reasoned and medically sound judgments. The Court accordingly held that the denial of employment to Hoffmann because he was living with HIV had impaired his dignity and constituted **unfair** discrimination: it violated his right to equality guaranteed by s 9 of the Constitution. The decision of SAA not to employ Hoffmann was set aside and SAA was ordered to offer employment as a cabin attendant to him, provided that should he fail to accept the offer, the order would lapse.

The second of the two cases, *Louw v Golden Arrow Bus Service (Pty) Ltd* 2000 (1) SA 219 (LC), was an action in the Labour Court for compensation arising out of a 'residual unfair labour practice' as intended in item 2(1)(a) of Schedule 7 of the Labour Relations Act 66 of 1995. Louw claimed in the Labour Court that his employer, Golden Arrow, had committed an unfair labour practice in terms of item 2(1)(a) in that (i) at all material times the work performed by him and one Beneke was of equal value; alternatively (ii) the difference in their salaries was disproportionate to the difference in the value of the two jobs. The Court (Landman J) held that an employee who complained that an employer had committed an unfair labour practice in terms of item 2(1)(a) did not have to prove *culpa*, although the act in question might, in the ordinary course of events, be accompanied by intention, negligence and motive. It was not a valid defence to such a claim to aver lack of intent or motive. Landman J held further that it was not an unfair labour practice to pay different wages for equal work or work of equal value. It was, however, an unfair labour practice to pay different wages for equal work or work of equal value if the reason or motive, being the cause for doing so, was direct or indirect discrimination on arbitrary grounds or the grounds listed in item 2(1)(a), for example race or ethnic origin. An employer could discriminate, even unfairly, on any grounds or for any reasons which were not proscribed by item 2(1)(a). It was necessary, the Court held, to distinguish clearly between discrimination on permissible grounds and impermissible grounds. An unfair labour practice was only committed (even by omission) if the impermissible grounds were the cause of the discrimination. Discrimination on a particular 'ground' meant that the ground was the **reason** for the disparate treatment complained of. The mere existence of disparate treatment of people of, for example, different races was not discrimination on the ground of race unless the difference in race was the reason for the disparate treatment. There would be unfair discrimination to the extent that the discrimination in the case under investigation was caused or contaminated by it. Although

# W REPORTS EDITORS

or, South African Law Reports

such an exercise was unlikely to be easy, it was the only way to give effect to the injunction not to discriminate on impermissible grounds, leaving permissible discrimination intact. The Court went on to hold that, on the facts, Louw had not succeeded in demonstrating that the two jobs (his and Beneke's) were, on an objective evaluation, of equal value and that it was therefore unnecessary to go into the reasons, causes or motivation for the difference in their wages. The Court also held that there was no evidence to support the inference that, from Golden Arrow's subjective point of view, the two jobs were of equal value. Absolution from the instance was granted.

It is important to note that in *Hoffmann's* case the discrimination that was condemned by the Court was **unfair** discrimination. In *Louw's* case the Court was dealing with the question whether the admitted discrimination was **unfair** or not. Although *Louw's* case concerned the Labour Relations Act of 1995, it cannot be doubted that the *ratio* therein will be of interest to those dealing with unfair discrimination in a constitutional law context. Section 9(3)–(6) of the Constitution pointedly uses the concept of **unfair discrimination**, and not merely discrimination.

Section 39(2) of the Constitution provides that, '(w)hen developing the common law . . . every court . . . must promote the spirit, purport and objects of the Bill of Rights'. *Marais v Groenewald en 'n Ander* (to be reported in the February issue of the *South African Law Reports*) is an interesting exercise of this 'power'. A spat between some members of right wing political groups resulted in a former member of Parliament suing for defamation. Van Dijkhorst J, in the Transvaal High Court, had some very interesting things to say about the requirement of fault in the *actio iniuriarum*.

Van Dijkhorst J said this (in translation):

'Traditionally the form of fault required for the *actio iniuriarum* is intent, either in the form of *dolus directus* or in the form of *dolus eventualis*. Intent has two elements: the desire to cause a result (the violation of reputation) and knowledge of wrongfulness (awareness of the unlawfulness of conduct). In our law the publication of defamatory words gives rise to a presumption that the words were published intentionally. This presumption casts a burden of rebuttal upon the defendant, who may rebut the presumption with evidence that he had no such intention. Hitherto an action for defamation could not in our law be founded on negligence.... Negligence ought, however, to be recognised as a ground for liability under the *actio iniuriarum*. It creates a balance between the constitutionally protected personality right to the integrity of one's good name (entrenched in s 10 of the Constitution of the Republic of South Africa Act 108 of 1996) and the right to freedom of speech. It prevents the situation, offensive to one's sense of justice, that a defendant who knowingly violates a plaintiff's reputation, in the grossly negligent belief that his conduct is lawful, escapes liability completely. Accordingly, where a defendant lacks knowledge of unlawfulness as a result of gross negligence (*in casu* a failure to establish the truth or otherwise of false statements), and intent, even in the form of *dolus eventualis*, is therefore lacking, it is essential that the violation of the plaintiff's reputation should result in liability for defamation under the *actio iniuriarum*. In such a case the defendant fails to rebut the presumption of intent.'

These pronouncements should open the door to some very interesting discussions on, and developments in, the law of defamation.

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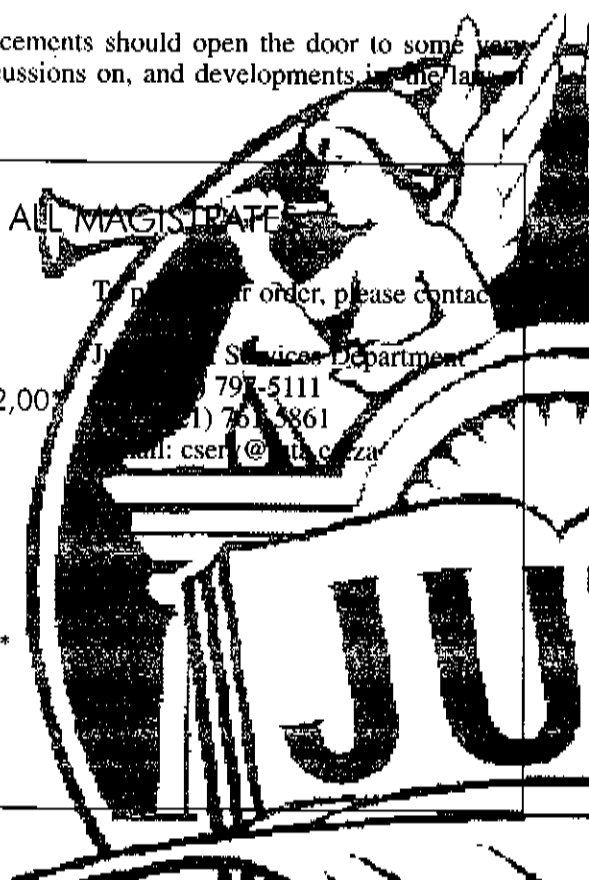
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**O**n 8 September Christina Murray and Rashida Manjoo spent a day with some of the role-players who are involved in the transformation process at the Pretoria Magistrates' Court. The Chief Magistrate, Mr H.W. Moldenhauer, stated in his letter of invitation that "after all, many of the ideas and acknowledgements of the rights of everyone originated from seminars and workshops held by LRG". Social Context Training for all staff, by both Justice College and LRG, is supported and encouraged at this court.

Since December 1996, some of the transformatory changes have included: greater racial representivity of staff; the separation of administrative tasks from judicial tasks; the implementation of management structures and processes which include interpreters and administrative staff; the establishment of a cafeteria for both staff and public usage; community outreach initiatives; the inclusion of NGOs to provide information and support services to users of the court, youth diversion programmes, paralegal and volunteer programmes etc.

The management structure operates at two levels. Level One, comprising the Chief Magistrate, the 4 Senior Magistrates, the Senior Public Prosecutor, the Administrative Control Officer and the Chief Interpreter. This group meets every morning to share information and resolve problems. Level Two consists of the Level One managers as well as the admin control officers from the Maintenance Court, Civil Court and Children's Court, the designated head of the cleaning staff, a union representative and the information desk officer.

Community involvement in the Court has been a regular feature since 1998. The Maintenance Court section is assisted by the Maintenance Forum, a group of citizens from Mamelodi, Atteridgeville and Soshanguve. This group provides assistance and advice to both the public and the staff. The Zizanani Youth Improvement Group and the Laudium Society of Moslem Women assisted with the painting of the Children's Court and Domestic Violence sections respectively.

We also had the honour of meeting a dedicated group of lay assessors who spoke enthusiastically about their work and the supportive environment that has been created to enable them to provide a quality service.

# Court by

## VOLUNTEER & PARALEGAL PROGRAMMES

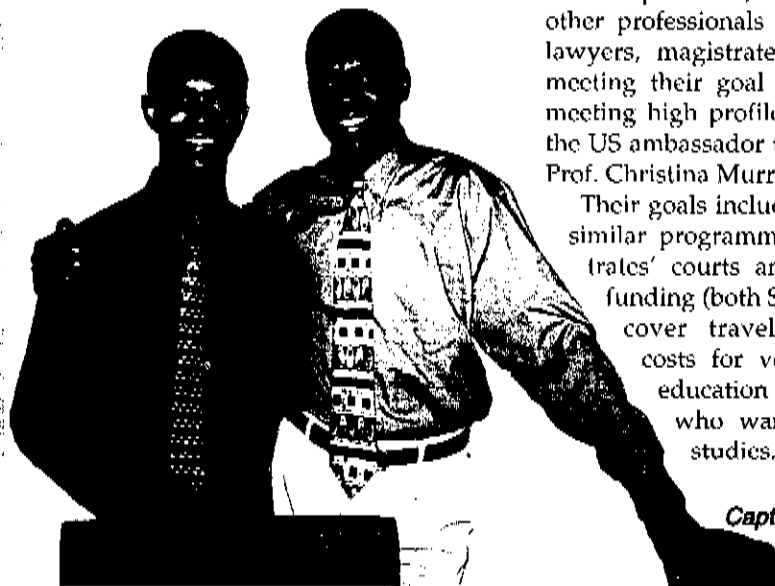
**B**oth the volunteer and paralegal student programmes serve as crucial learning programmes as well as providing much needed administration assistance for the Pretoria Magistrates' Court. The para-legal programme commenced in 1997 with an internship request from the Pretoria Technikon for the placement of 10 students for a 3 month period. These students received training in the different administrative sections of the court under the guidance of the Admin Control Officer, Mrs de Bruyn, and other control officers. There is no remuneration for the internship period but many of these interns have subsequently been employed by the Department of Justice. At present, there are 20 students from the Pretoria Technikon in the para-legal programme. The volunteer programme arose as a result of the para-legal programme i.e. unemployed para-legals began volunteering their services, on completion of the internship programme. At present there are 35 volunteers working throughout the court - providing invaluable assistance with service delivery to the public.

Jerry Ledwaba, the paralegal captain, and Bizza Rambau, the volunteer captain, provided further insights into the

programme. According to them, the interns and volunteers faced many fears in an environment that was both alien and intimidating. The challenge of working with the police, prosecutors, attorneys, accused people etc. in the Maintenance, Family Violence, Estates, Inquests, Divorce and Criminal Courts, was met with the strong belief that "they were helping their community" and fulfilling their motto of "Justice for all - we strive for a better service". Some of their duties involved opening maintenance files, assisting with family violence interdicts, advising and directing clients of the court, assisting interpreters, prosecutors, attorneys etc. with relevant information and documentation for court proceedings and occasionally acting as mediators between the court staff and members of the public. Difficulties that had to be faced included: language barriers, disrespectful behaviour from professionals who needed assistance; feelings of inferiority and of being taken advantage of by attorneys/prosecutors etc; difficulties with regard to teaching of peers who were not as committed; and dealing with short-tempered, traumatised, depressed and angry people.

Jerry and Bizza's list of benefits includes the following: work experience gained; increase in self-esteem; future job prospects enhanced by working in a State Department; exposure to work of other professionals eg. social workers, lawyers, magistrates, prosecutors etc; meeting their goal of helping people; meeting high profile people (including the US ambassador to South Africa and Prof. Christina Murray of UCT).

Their goals include the setting up of similar programmes in other magistrates' courts and the securing of funding (both State and private) to cover travel and subsistence costs for volunteers and also education costs for volunteers who want to further their studies.



*Captains Jerry Ledwaba and Bizza Rambau*

# surprise

By Rashida Manjoo

## INQUESTS

The inquest section of the Pretoria Court reflects the values of empathy and sympathy both in the surroundings and in the mode of interaction of the staff. Ms Mpho Monyemore, the Inquest Magistrate, has suffered the loss of a sibling and a subsequent inquest, and her input on how she deals with both formal and informal inquests reflects an understanding of how traumatic an appearance in this court can be for families and friends.



Magistrate Mpho Monyemore

The furnishings make the waiting area warm and welcoming, the clerks are trained to communicate (both written and verbal) in a sensitive manner with witnesses and documentation which is superfluous to the proceedings, such as gruesome photographs, are removed from the inquest file before the hearing (to avoid unnecessary trauma).

There is an on-going reciprocal partnership with "Compassionate Friends" – an organisation that assists families through the loss of loved ones. The court staff conduct training sessions for the staff of Compassionate Friends on the procedures that are followed at formal and informal inquests and they in turn are trained in how to treat people who attend inquest hearings.

## YOUNG OFFENDERS

Another impressive programme based in this court is "Criminon" – a young offenders diversion programme that is run from the basement of the building. Holding cells have been converted into classrooms, a gym, offices etc. The programme includes a detoxification programme, a communication course, a phonics and literacy course, learning skills course and other courses that teach more appropriate life skills. Parents are also put through parts of the programme, for example, the communication course. The mission of Criminon is "to eliminate those factors which produce and precipitate criminal behaviour; to restore commonsense moral values; to provide educational tools and life-skills to those in need so that they

may rejoin society as responsible and contributing members and to assist the criminal justice system to bring about reforms that will help accomplish these aims".

The Criminon Centre receives its cases from the Juvenile Court, Children's Court, Social Workers, Probation Officers and local children's homes. The programme aims to keep children out of prison or houses of safety and restore self respect through many mediums. The last report of Criminon states that there were 30 juveniles on the programme aged from 8 to 18. The offences included assault, housebreaking, theft and possession of drugs. The programme has achieved an 80% success rate with referrals made by the Juvenile Court and social workers.

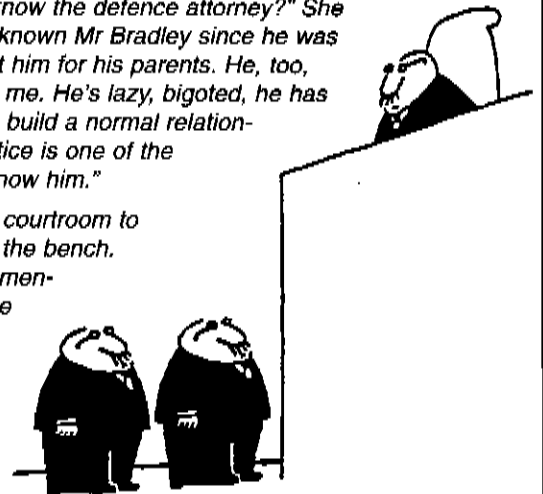
*The initiatives at the Pretoria Court are truly impressive and we salute the individuals who work so diligently to change the status quo and make a difference.*

## Laugh for the day

A small town prosecutor called his first witness to the stand in a trial – a grand motherly, elderly woman. He asked, "Mrs Jones, do you know me?" She responded, "Why, yes, I do know you Mr Williams. I've known you since you were a young boy. And frankly, you've been a big disappointment to me. You lie, you cheat on your wife, you manipulate people and talk about them behind their backs. You think you're a rising big shot when you haven't the brains to realise you never will amount to anything more than a two-bit paper pusher. Yes, I know you."

The lawyer was stunned. Not knowing what else to do he pointed across the room and asked, Mrs Williams, do you know the defence attorney?" She again replied, "Why, yes I do. I've known Mr Bradley since he was a youngster, too. I used to baby-sit him for his parents. He, too, has been a real disappointment to me. He's lazy, bigoted, he has a drinking problem. The man can't build a normal relationship with anyone and his law practice is one of the shoddiest in the province. Yes, I know him."

At this point, the judge rapped the courtroom to silence and called both lawyers to the bench. In a very quiet voice, he said with menace, "If either of you asks her if she knows me, you'll be jailed for contempt!"



# CONFERENCE REPORT-BACK

by Andre Le Grange (President JOASA)

The International Association of Judges (IAJ) held its 43rd Annual Meeting in Recife, Brazil in September. More than 200 jurists from around the world attended the four day conference at the Blue Tree Park Hotel, about 40km south of Recife, the state capital of Pernambuco. During these four days it was a privilege to discuss and share the jurisprudential developments in South Africa since 1994 with colleagues from around the globe. It was obvious that the international judiciary is constantly watching the jurisprudential and constitutional developments in South Africa.

Four study commissions considered the following issues:

- the independence of judges;
- the duty of doctors to inform patients about the nature and consequences of treatment;
- connections between criminality and national and international criminal law;
- working hours and job flexibility.

The deliberations and findings of these commissions will be made available to all member countries.

The IAJ and all its member countries subscribe to the Universal Charter of the Judge. Judges from around the world have worked on the drafting of this Charter. The Charter was approved by the member associations of the International Association of Judges as general minimal norms and unanimously adopted by in September 1999. A new President for the next two years was unanimously elected at the meeting; Judge Tarek Bennour of Tunisia who was the first Vice-President.

One of the highlights of this gathering was South Africa's admission as a member. JOASA has played a very significant role in this regard. The time has also arrived for our superior court judges to be made aware of these developments. They can no longer ignore the efforts of JOASA to bring the magistracy and judiciary back into the international world of judicial jurisprudence.

## African Regional Meeting

The African Regional Meeting of the IAJ will be held in February 2001 in Lome, Togo. The topics that will be discussed are:

- i) the judge as protector of human rights, and
- ii) corruption within the judiciary.

These topics are of immense importance, not only in the South African context but also in Africa as a region. It is thus important that we, as judicial officers, debate these issues amongst ourselves. We can no longer afford judicial passivism. I am also of the opinion that judicial equality can only be obtained in South Africa if the Universal Charter of the Judge is adhered to.



## The Social Context Curriculum Project: LRG and Justice College

by Fernanda Pauer

Until mid-1998, the only social context training at Justice College was a one-day input in each standard course at Justice College for magistrates and prosecutors. Justice College did not have the capacity to do this training, and so it was done by LRG. To address this lack of capacity, various components of the social context approach were introduced at the College.

To do this, Justice College and LRG formed a partnership and started joint projects. One was the social context curriculum development project.

Justice College felt that its approach to teaching was still formalistic in nature, with an emphasis on "the rule" applied to particular sets of facts. The aim of the 5 workshops was to initiate thinking amongst law teachers about how social context issues (race, gender, sexual orientation, disability etc) impact on the law and on how to teach. The project engaged law teachers across SA in reworking their legal materials to incorporate social context issues.

A key feature of the project is the collaboration which it has established among a range of academic institutions that provide legal training. Participants were not only from Justice College and LRG, but very importantly, also from a range of other institutions teaching law, including the law faculties of many Universities (Durban-Westville, Fort Hare, Natal), and the School for Legal Practice of the Law Society of South Africa.

Further, the workshops helped break down the barriers between Justice College lecturers and lecturers at other legal training institutions. They contributed to the growing awareness of the importance of each respective sphere of work and the need for closer cooperation in the joint effort to produce lawyers and judicial officers who are socially aware.

Five workbooks were created. They are unique compilations of South African and foreign materials on social context and diversity issues pertaining to law teaching. Justice College lecturers are using the workbooks to revise their notes, as well as to redesign their approach to courses.

We now plan to write a culminating workbook/textbook with a social context model appropriate to teaching law in South Africa at its core. It will draw on the materials produced by participants in the workshops. The material will be reworked, adapted and expanded into an original, ground-breaking and theoretically challenging publication.

This project is funded by the Canada - South African Justice Linkage Project.