Law, Race & Gender

News & Views For Magistrates

September 2005

The Sexual Offences Act and the Capacity of Intellectually Disabled People to Consent to Sexual Relations

Maya Sosnov, LRG intern

In 1996 South Africa committed itself to the creation of a society based upon the constitutional principles of "human dignity, equality and freedom." As part of this promise, the country began to modify laws and policies to reflect new constitutional values. Despite many modifications, some laws continue to perpetuate stereotypes and ignore the needs of intellectually disabled people.

One of the greatest challenges facing the intellectually disabled is legal determination of their capacity to consent to sexual relations. Intellectually disabled people are more vulnerable to sexual abuse than the general population, and less likely to report the mistreatment. To combat sexual exploitation of the intellectually disabled, the current Sexual Offences Act 23 of 1957, s 15 Sexual Offences with Idiots or Imbeciles, makes it a crime for a person to engage in sexual relations with an 'idiot' or 'imbecile'. Regrettably, the law adopts the offensive terms 'idiot' and 'imbecile' to classify intellectually disabled people and "derogates the very population it purports to protect". [1] Use of the terms 'idiot' and 'imbecile' contribute to the negative stereotypes of intellectually disabled people as defective, helpless and backward. Additionally, the Act fails to provide legal definitions for the terms. As a result, courts throughout South Africa have struggled to identify people as 'idiots' or 'imbeciles' unable to consent to sexual activity.

In *S v Katoo*, a recent decision interpreting the Act, Judge Jafta Aja acknowledged that the Act's terminology was outdated.[2] However, the absence of a legal alternative, forced Judge Aja to assess the complainant's intellectual disability according to whether she was an 'idiot' or 'imbecile'.[3] In addition to embracing the need for new terminology, the judge recognized the tension between protecting intellectually disabled individuals from harm and promoting their sexual autonomy[4]. Rather than apply a formulaic approach to assessing capacity to consent, the court advocated individual assessments and emphasized that limited mental capacity does not necessarily equate with an inability to reason.[5] Although the court made substantial steps toward promoting a more individualized evaluation of complainants, free of judgmental terminology, the court relied on evidence of the complainant's low mental age to determine she was an 'imbecile'.[6]

For over 50 years, courts have relied on the mental age and/or the intelligence quota (IQ) of complainants to determine their status as an 'idiot' or 'imbecile'.[7] However, both mental age and IQ have received wide criticism as indicators of mental capacity by mental health professionals. While IQ tests are an easy administrative tool for mental assessment, they have limited ability to predict a person's level of functioning in society or their adaptive skills. Additionally, IQ tests are inherently biased toward white, middle-class people and do not properly accommodate for people from differing cultures, languages and socio-economic backgrounds.[8] Similar to IQ tests, reliance on mental age ignores the impact of education and life experience on consensual capacity.[9] Instead, intellectually disabled people are treated like children. Courts rely on mental age and IQ because the law does not provide definitions for the words 'idiot' and 'imbecile'.

The goals of the Constitution cannot be achieved without the revision or repeal of the Sexual Offences Act. To avoid the pitfalls of current legislation, a new law, in language acceptable to the disability community and accompanied by a clear criterion for evaluating a complainant's consensual capacity, is necessary to provide intellectually disabled people with the dignity and equality they deserve.

Footnotes

1.A.L. Pillay and C. Sargent 'Psycho-Legal Issues Affecting Rape Survivors with Mental Retardation' (2000) 30(2) S. Afr. J. Psychol. at 11.
2.*S v Katoo* 2004 JOL 13265 (SCA) para 11.
3.Ibid.
4.Ibid at paras 11-12.
5.Ibid.
6.Ibid.
7.*See, e.g, Rex v S* 1951 (3) SA 200 (C); *Rex v K* 1951 (4) SA 49 (O); *Williams v S* 2003 JOL 11192 (W); *S v Katoo* 2004 JOL 13265 (SCA).
8.Jeremy Davidson and Beverly Dickman 'Issues in the Assessment of People Regarded as Mentally Handicapped' in Susan Lea and Don Foster (eds) *Perspectives on Mental Handicap in South Africa* (Durban: Buttenworths, 1990) 143.
9. Ibid at 149.

"One of the greatest challenges facing the intellectually disabled is legal determination of their capacity to consent to sexual relations"

Inside this issue:

What Would You Do?

Anashri Pillay, Public Law Dept, UCT

The accused was charged with murder and the trial took place in the Durban High Court before Judge Squires and two assessors. As there was a shortage of space in the High Court building, certain facilities in the Pinetown Magistrate's Court were made available for use during the trial. The prosecutor in the trial did not have his own office and used the office being occupied by the assessors in the case to make telephone calls. The investigating officer, who had the relevant telephone numbers, accompanied him on these occasions. The son of the deceased was also sometimes in the room at the same time as the assessors. The gist of the special entry was that the proceedings in the trial had been irregular because of this. In particular, counsel for the accused stressed the negative effect which the appearance of this 'sharing' of office space by state officials and witnesses with the assessors could have on members of the public.

Counsel for the applicant submitted in court that he was not alleging that the assessors discussed the case with state representatives. Furthermore, although asked whether he would like to apply for the assessors to be recused, counsel for the accused did not request this. When the High Court was considering the special entry, the prosecutor explained why he used the office occupied by the assessors and indicated that although he had used the telephone to make practical arrangements with witnesses, he had never discussed the case with them while the assessors were in the room. The Judge reserved his decision as to whether to enter the special entry. He subsequently found the accused guilty of murder. The accused applied for leave to appeal to the SCA and for the special entry to be made. The High Court granted both applications. When the case eventually came before the Constitutional Court, the appeal was made on the basis of the special entry alone. What would you do? Should the trial have been declared unfair?

Answer on page 4

Ensuring Effective Implementation of the *Bhe* Decision

Michelle O'Sullivan Women's Legal Centre

In *Nonkululeko Letta Bhe and Others v The Magistrate Khayelitsha and Others* 2005 1 SA 580 (CC), the Constitutional Court declared the African customary law rule of primogeniture unconstitutional and struck down the entire legislative framework regulating intestate deceased estates of black South Africans. The Court ordered that the Intestate Succession Act should apply to all deceased estates where the deceased died after 27 April 1994, with the exception of cases where there was a valid transfer of ownership of property and the heir was not subject to a constitutional challenge about the discriminatory impact of customary law. The Court also extended the Intestate Succession Act to apply to polygamous marriages. This judgment will apply nationally including in Kwa-Zulu Natal. Although the Kwa-Zulu Act on the Code of Zulu Law (Act 16 of 1985) was not under scrutiny in the *Bhe* case, it provides for succession and inheritance to follow the rule of primogeniture, which has been declared inconsistent with the Constitution. Thus the Intestate Succession Act will now apply

'Recent legislative amendments have stripped magistrates of any authority with respect to estates worth less than R50,000'

Following the Constitutional Court's ruling the challenge now is to ensure effective implementation of the decision. Bearing in mind that the women and girls who are most vulnerable to this aspect of customary law are located in rural areas, it is essential that the judgment is publicised widely and that traditional councils and tribal authorities are made aware of its existence and impact. It is also critical to ensure that the necessary changes are made to the administration of deceased estates. Recent legislative amendments have stripped magistrates of any authority with respect to estates worth less than R50,000 – these now being dealt with by office managers and support staff. If women's right to inherit is not to be treated as a mere paper right, these officials must be appropriately trained. This is especially important as the *Bhe* decision is retrospective to all deceased estates in the past ten years: effective administrative systems will enable women and children to claim back unlawfully lost property.

Making Sense of Magistrates' Disciplinary Process

Ricki Scherz, Public Law Dept intern, UCT

In June this year two magistrates were effectively dismissed from office for misbehaviour. They were the first magistrates ever to be faced with this consequence but a fair number of misconduct inquiries against magistrates is currently pending. Due to this and because the applicable provisions are very complex, this article takes a closer look at the disciplinary proceedings against magistrates.

Since 1993 magistrates have not been considered to be public servants. Now it is the Magistrates Commission and various 'clusters' which are in charge of handling complaints. The matter goes to the latter if the complaint is not considered serious enough to be dealt with by the Magistrates Commission. The clusters and the Commission only have the authority to consider complaints concerning *misconduct*. Complaints concerning judicial decisions by magistrates can only be dealt with by bringing the matter to the High Court for review.

If a misconduct complaint is brought to the Commission, the Commission will first allow the magistrate to be heard. He or she is allowed legal assistance from the very beginning of the proceedings. After the hearing, the matter goes to the Ethics Committee, a subcommission of the Magistrates Commission. If there is no *prima facie* evidence, the Committee appoints a magistrate or an "appropriately qualified person" to conduct a preliminary investigation. If there is *prima facie* evidence before any investigation has taken place, the Commission may charge the magistrate without conducting a preliminary investigation.

After the investigation is concluded, the conducting officer recommends to the Commission whether the magistrate should be charged or not. The recommendation will lead to an official misconduct charge if the matter is of such seriousness that the Commission finds it can justify an official misconduct charge.

Once the Magistrates Commission decides on instituting such a charge it will grant the magistrate a misconduct hearing. The Commission therefore establishes a tribunal which consists of either one or three magistrates (usually Chief- or Senior magistrates, preferably from a different province) chosen by the Commission. According to the Secretary of the Magistrates Commission, Mr. Danie Schoeman, the number of tribunal members depends on the seriousness of the matter. The Commission is furthermore likely to appoint just one magistrate for the hearing if the matter is clear (e.g. if the magistrate was already found guilty of a crime). At the hearing the magistrate has, amongst others, the right to remain silent, and to either personally or through a representative have access to documents produced in evidence and to call witnesses.

If the tribunal finds the magistrate guilty, he or she may lodge representations with the Commission in writing within 21 working days after the findings of the presiding officer have come to his/her notice. The presiding officer may recommend to the Commission that the magistrate is dismissed. The Commission's course of action will again depend on the seriousness of the matter: if it finds the matter not serious enough to justify a dismissal, it can impose various sanctions. There are cautions, simple reprimands, warnings as well as suspensions to mention just a few.

If the Commission is of the opinion that the matter warrants a dismissal, it recommends to the Minister that the magistrate should be dismissed from office. For reasons of security of tenure and judicial independence, the final decision vests with Parliament. As stated by the Constitutional Court in *Van Rooyen and Others v S and Others* 2002 (8) BCLR 810 (CC) paras 207 – 211, the Minister *in cases of impeachment* may neither make a decision herself nor withhold the Commission's recommendation from Parliament. Furthermore, in cases short of dismissal, she may not impose sanctions on the magistrate herself (para 199).

'The legal regime governing complaints against magistrates is very difficult to pin down.'

Access to Information

The legal regime governing complaints against magistrates is very difficult to pin down.

Regulations are difficult to follow, for example

Leave: Section 38 of the Regulations of the Magistrates Act 90 of 1993 says that leave for magistrates is governed by Chapter C of the Public Service Regulations. But the Regulations have no Chapter C any more. Do they mean Chapter I Part 5 F of the Public Service Regulations 2001?

The Regulations also refer to the Public Service Staff Code in relation to leave – but after 2 weeks of searching we could not find it. We *did* find the Code of Conduct for Public Servants, however, it does not deal with leave.

The Complaints Procedure Regulations (GN 19309/ NN 1240) which have been in effect since 1 October 1998 have not been used because complaints committees have not been set up.

There may be easy explanations for the difficulty we experienced but we have been unable to find them.

So what about a friendly guide for busy magistrates?

What would you do ?

THE ANSWER!

The Constitutional Court noted that, due to the weight attached to public perceptions of the administration of justice, appearances were extremely important: the public must be confident that courts operate impartially and independently. This importance of a perception of impartiality and independence applied to assessors inasmuch as it applied to other judicial officers. The Court found that there was indeed an irregularity in the trial.

The prosecutor, investigating officer and witnesses should not be in an office being used by assessors. However, as to whether this amounted to a failure of justice, the Court placed emphasis on the fact that assessors, unlike members of a jury, for example, determine questions of fact with the judge and have significant legal experience. Furthermore, reasons for their decisions are made public. The potentially damaging public perception of the 'shared' office space in this case was further mitigated by the explanation given by the prosecutor in open court and by the fact that the accused did not ask for the assessors to be recused, despite having had the opportunity to do so.

The Constitutional Court also found that there was no reasonable apprehension of bias. The Court noted that, on different facts, similar irregularities may well amount to a failure of justice. Furthermore, the Court acknowledged that adequate protection of the right to a fair trial may require substantial resources. However, even in the context of very limited resources and difficult circumstances, everyone involved in the administration of justice should take 'all reasonable steps to ensure maximum compliance with constitutional obligations'. Resource limitations cannot simply be used as an excuse to avoid these obligations. *S v Jaipal* 2005 (1) SACR 215 (CC)

The new look for *News and Views*

Due to funding constraints LRG's is now producing *News and Views* in a new format to save on costs.

Any suggestions, comments or ideas about the new format would be much appreciated.

Concourt Adopts a Contextual Approach to Gender-Based Violence in Holding the Minister Liable for Police Gang Rape

Hayley Galgut, Women's Legal Centre

On Monday 13 June 2005 the Constitutional Court handed down judgment in the case of *NK v Minister of Safety and Security*. The Court held that the appellant, Ms K, is entitled to damages, as well as her costs of litigating in the High Court, Supreme Court of Appeal and Constitutional Court, payable by the Minister.

The Women's Legal Centre, presented argument on behalf of Ms K in her appeal against the judgment of the Supreme Court of Appeal. The SCA had refused her claim for damages against the Minister for her gang rape by three on-duty policemen in March 1999. The Constitutional Court judgment is a positive step towards state accountability for the meaningful protection of survivors of gender based violence based on the founding principles of dignity, equality and freedom. In deciding whether the case raised a constitutional issue, the Court held that Ms K's rights to security of her person, dignity, privacy and substantive equality are of profound constitutional importance.

The consistency with which the Constitutional Court has adopted a contextual approach to issues of violence against women is celebrated. Quoting from its earlier decision in *Carmichele* the Court reiterated in *K* that "few things can be more important to women than freedom from the threat of sexual violence", that it "goes to the core of women's subordination in society" and "is the single greatest threat to the self-determination of South African women". O'Regan J, writing for a unanimous Court, held that although the policemen's conduct constituted a clear deviation from their duty, there nevertheless existed a sufficiently close connection between their employment and the wrongful conduct to hold the Minister, as their employer, liable. O'Regan J had regard to comparative jurisprudence noting that Courts internationally have been guided by the following principles:

1. "They should openly confront the question of whether liability should lie against the employer, rather than obscuring the decision beneath semantic discussions of 'scope of employment' and 'mode of conduct'.
2. The fundamental question is whether the wrongful act is sufficiently related to conduct authorized by the employer to justify the imposition of vicarious liability. Vicarious liability is generally appropriate where there is a signify cant connection between the creation of a risk and the wrong that accrues there from. Where this is so, vicarious liability will serve the policy considerations of provision of an adequate and just remedy and deterrence. Incidental connections to the employment enterprise, like time and place (without more), will not suffice.
3. In determining the sufficiency of the connection between the employer's creation or enhancement of the risk and the wrong complained of, subsidiary factors may be considered. When related to intentional torts, the relevant factors may include, but are not limited to, the following: the opportunity that the enterprise afforded the employee to abuse his or her power; the extent to which the wrongful act may have furthered the employer's aims (and hence be more likely to have been committed by the employee); the extent to which the wrongful act was related to friction, confrontation or intimacy inherent in the employer's enterprise; the extent of power conferred on the employee in relation to the victim; the vulnerability of potential victims to wrongful exercise of the employee's power." (*Nk v Minister of Safety and Security* para 38)

Ultimately, O'Regan J reasoned that three inter-related factors lead to the conclusion that the State should be liable for Ms K's damages: 1) the policemen bore a statutory and constitutional duty to prevent crime and protect members of the public – a duty which also rests on their employer (the Minister); 2) Ms K accepted an offer of assistance from the on-duty policemen in circumstances in which she was stranded, needed assistance and reasonably accepted it from those duty bound to offer it to her; and 3) the wrongful conduct of the policemen in raping Ms K coincided with their failure to perform their duties to protect her. The Court held that the opportunity to commit the crime would not have arisen but for the trust Ms K placed in them precisely because they were policemen, a trust which the Court stated harmonises with the constitutional mandate of the police and the need to ensure that mandate is successfully fulfilled.

The Court specifically noted that one of the purposes of wearing uniforms is to make police officers more identifiable to members of the public who find themselves in need of assistance and emphasised the necessity for society to place reasonable trust in members of the SAPS if their mandate is to be performed efficiently. The Court held further that the principles of vicarious liability and the application thereof were in need of development in this case to accord more fully with the spirit, purport and objects of the Constitution. What this case makes clear, however, is that an intentional deviation from duty does not automatically mean that an employer will not be liable. The matter has been re-referred to the Johannesburg High Court for a determination of the amount of damages payable by the Minister to Ms K.

JOASA Seminar Series

The Role of Judicial Education in the Development of Judicial Independence and Accountability

Tony Sardien, LRG

In July and August of this year, JOASA organised a seminar programme in Johannesburg, Durban and Cape Town. Judge Stanley Moore was the guest speaker. He serves as a judge of the Appeal Court of the Republic of Botswana and is a Senior Justice (Retired) of the Northern Region of the Supreme Court of the Commonwealth of the Bahamas and Senior Resident Judge (retired) Eastern Caribbean Supreme Court British Virgin Islands. Born in Guyana, Judge Moore has had extensive legal experience across the Caribbean and in England as an advocate, jurist, politician and government administrator.

Judge Moore stated that all judicial officers should be valued and respected for the judicial services they deliver, irrespective of the level of the courts in which they preside. In his view, magistrates are possibly more important that constitutional and appeal court judges because the cases heard in those courts originate in the magistrates courts.

"There is no sensible reason for the divide between magistrates and judges. While it may appear to be a tradition, it deserves a decent burial. If there is a gap between judges and magistrates, then the responsibility for the narrowing and the closing of the gap rests on both judges and magistrates. Magistrates can become judges if they work hard".

The Judge also noted that in most countries the judiciary struggles with public perceptions of its role. He argues that magistrates can contribute to the debate by conducting themselves in ways that are, "beyond reproach on and off the bench" while remaining mindful of the dictum, 'innocence is no guarantee against false accusation!' Drawing from his experience, he emphasised that it was critical that judicial officers, especially in cases drawing public and media attention, consider how they manage their relationships with the media. Judicial officers must accept that they cannot defeat the media in a 'writing or speaking match'. Such actions simply provide them with material to sell more newspapers or air-time. Instead, Judge Moore suggested that a judicial officer should recognise the presence of reporters in court and inform them (if necessary) from whom they could get information about the case. When reporters publish stories about a sentence or judgment and it is inaccurate or misleading, arrange to send them copies of the judgment. These measures enhance communication and do not in any way infringe upon judicial independence.

Judge Moore emphasised that judicial officers should not expect special protection from criticism. While judicial officers can expect informed criticism in good faith, they should equally expect criticism that impugns their integrity. He argues that the societal expectations of judges include fidelity to a judicial temper which is informed by scholarship, experience, dignity, rationality, forensic skill, capacity for articulation, wisdom, humility, the ability to distinguish right from wrong and to be able to weigh two wrongs or two rights.

According to Judge Moore, judicial education and judicial independence are inter-related. Judicial education contributes to the independence, competence and effectiveness of the judicial officer.

There is a need for a positive attitude towards learning and the need to know about current developments regarding fields of law, science, technology and culture.

Continuing professional education focuses on how the law operates within a community, and assumes that judicial officers know the rules of procedure and substantive law. Each judicial officer needs to update his/herself on legal developments globally, given the continual growth in the legal field. All judicial officers need access to information technology, preferably in the form of personal laptops, provided by the DOJCD. Self-education is vital and cannot be over-estimated.

Judge Moore suggests that the practice among Canadian judges is worth emulating. A judge posts an email query for advice from other judges on an issue in a case. S/he often receives several replies within the course of a day.

He stated that it is also critical that judicial officers determine whether the support staff in courts are aware of their duties and responsibilities and are able to carry them out effectively. Judicial officers should ensure that ongoing judicial education takes place and working on improved case flow management is one area where this is important. South Africa has made considerable progress with regard to managing cases, for example, through the use of pre-trial conferencing.

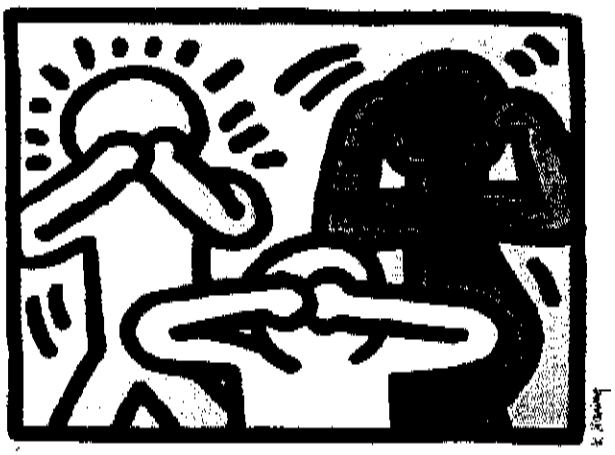
Noting that constraints imposed by a lack of resources for continuing education remain a challenge, the Judge reflected on the experience in the Eastern Caribbean Supreme Court. Here they showed it was possible to improve the administration of justice with very few resources. Agencies in other countries were approached and the Canadian judicial education programme in Halifax was used to train members of the judiciary. The approach used in the Eastern Caribbean was to extend the functioning of judicial education to all levels. Everyone was included in the training programme, including clerks and the cleaning staff. The objective was to ensure that each person understood how their role fitted in with the whole system of the administration of justice.

Some South African judicial officers mentioned examples of how judicial education can compromise judicial independence. Recently, the head of the NPA came to lecture magistrates at Justice College on asset forfeiture. Some magistrates thought that attending the lecture would compromise their judicial independence. Judge Moore responded, indicating that attendance of the lecture would not in itself compromise judicial officers and explained that it was a different matter if the judicial officer subsequently made a decision where the interaction with the head of the NPA is perceived to affect the outcome of a particular case.

The JOASA initiative in organising the seminar series is a strong indicator of the vigour of the judiciary in South Africa and its commitment to self-development and accountability

Comparative Study of the Judiciary in Southern and East Africa

Linda Van der Vijver , DGRU, UCT.



Democratic governance depends for its efficacy on an independent and impartial judiciary which enjoys the respect of both the public and the legislature and executive, without unjustifiably wielding too much power.

The Democratic Governance and Rights Unit (DGRU) based at UCT Faculty of Law undertook a comparative study of the superior court judiciary in the following English-speaking African countries: Botswana, Kenya, Lesotho, Malawi, Namibia, South Africa, Swaziland, Tanzania, Uganda, Zambia and Zimbabwe. The focus of the research has been to assess the levels of judicial independence in each country, with reference to constitutional and statutory provisions affecting the judiciary, the procedure for the appointment of judges, their security of tenure and conditions of service, amongst other issues.

The situation in each country has been described and assessed critically in the production of a discussion document. Some of the countries have been studied in greater depth than others. This is a result of the fact that budget and capacity constraints permitted fieldwork in only three of the countries: Botswana, Swaziland, and Uganda. The studies of Malawi, South Africa and Zimbabwe benefited from research and study previously conducted by a number of individuals. Much of the research conducted in the five remaining countries was of a documentary nature. This has of course led to an inevitable unevenness in the discussion document. However, we regard the document as a resource to stimulate further research and by no means the final word on the subject.

The research project started by reviewing all the research previously conducted in the eleven countries. The amount of work done (or readily available, perhaps) varied greatly: for example, while a great deal of research has been conducted in Kenya and is easily accessible via the Internet, there is considerably less information available about Tanzania and Botswana.

We identified Swaziland, Botswana and Uganda as requiring site visits using a number of criteria, *inter alia*, the availability of information, the amount of research already conducted, and the current state of the judiciary.

Interviews were conducted with a range of people in these three countries: judges, members of the legal professions, registrars of courts and so on. Needless to say, perhaps, they all struggle with a lack of resources - both financial and human resources. Access to legislation and case law is not always possible.

The conditions under which they have to work are frequently not conducive to the best quality work, and delays, backlogs and inefficiency are common. There are allegations of corruption, which cannot always be substantiated. Nevertheless, almost all the people interviewed were dedicated to ensuring the delivery of justice, and it appears that the judiciaries in all these countries are functioning as best they can in their particular circumstances.

Finally, once the research was completed, a chapter was written for each country. Each chapter commences with a table of statistics, a few paragraphs on the country's historical and political background, and some general background information. This information is essential for establishing the context for the state of the judiciary. This is followed by a brief overview of the court structure in the country, and then by an evaluation of the country's compliance with the main principles of judicial independence. A discussion of significant cases follows, then a review of the current situation, and finally some recommendations are made.

It is anticipated that this discussion document, once finalised, will be widely circulated for information and discussion, as a means to assess whether representivity, excellence and independence are being achieved.

'The conditions under which they have to work are frequently not conducive to the best quality work, and delays, backlogs and inefficiency are common.'

bi/S & PIECES

Book Review
Blink: The Thinking Behind First Impressions

By Rebecca Rosenberg, Public Law intern

Bestselling author, Malcolm Gladwell, has released his second book, *Blink*, which explores the rapid cognition behind first impressions. Gladwell refers to this as thin-slicing or "the kind of thinking that happens in the blink of an eye." Through a wide range of anecdotes and stories drawing from the disciplines of psychology, art history and medicine, Gladwell defines the practice of thin-slicing and illustrates its many flaws. Many of his most intriguing examples reflect the way bias, particularly in terms of race, gender and appearance, interferes with people's ability to rely on first impressions.

This review will look at only one of his many examples: gender bias. The classical-music world, Gladwell writes, once the preserve of white males, believed that "women simply could not play like men," because when auditions were held the men always sounded better. Then, the classical-music world underwent a revolution. When orchestra musicians began to organize into unions, the members pushed for fairer hiring practices. This resulted in committees, instead of conductors, making hiring decisions. Screens were erected between the committee and auditioner, who was identified only by number. "And as these new rules were put into place, an extraordinary thing happened: Orchestras began to hire women," Gladwell explains. Conductors truly believed that they could hear whether a musician was female from the fragility of her playing. They thought that they could rely on their expertise to determine the quality of a musician when, really they did not realize that their ability to perceive talent was blocked by a subconscious gender bias.

The book is a highly entertaining series of intellectual and scientific stories. For the sake of smoothness and brevity, however, Gladwell tends to oversimplify extremely complex research and characterize the results as either "conclusive" or "inconclusive." Research, especially in fields like psychology, rarely emerges in such definitive terms. Despite this shortcoming, Gladwell's approach makes *Blink* as easy to read as a beach novel and more accessible to a wide-ranging audience. Accessible to a wide-ranging audience. *Blink* presents research in a thought provoking and mentally stimulating manner without requiring the reader to labor over dense material and scientific intricacies.

Dynamic case-flow management discussions at a February workshop held in Rustenberg!

Shock report on unsolved rape cases

A survey has found that gross inefficiencies in the investigation and prosecution of rape cases in the Western Cape have allegedly been suppressed by the National Prosecuting Authority (NPA).

According to a Mail and Guardian report, the NPA withheld the public release of a 102-page report containing information about r ape cases that are dismissed without being properly investigated. But the NPA said the report was never intended to be released to the public and that it would be presented to prosecutors once it had been reviewed by the Danish Government.

A child is raped every 24 minutes in SA, yet according to the damning report based on research conducted by UCT's Gender Health and Justice Research Unit from January 2001 to May 2003, 31% of rape cases in Khayelitsha are filed as unsolved, while 33% of rape cases in Gugulethu are closed without ever being solved.

Legalbrief Today , 6/09/2005

Of the 65 837 prisoners released this year 157 prisoners were re-arrested, including two for alleged rape, and are awaiting trial. Deputy Correctional Service Minister, Cheryl

Hundreds of dockets lost, stolen

Safety and Security Minister Charles Nqakula told the National Assembly this week that 343 case dockets were lost between April 1, 2003, and the end of March 2004, including 19 dockets stolen from police stations. The Minister, reports The Herald, said that statistics indicated that 155 dockets were lost at court and 188 from police stations, including the 19 that were stolen. Nqakula said that 23 of the lost dockets were connected with 'high-profile' cases: with 15 of these being lost at court and eight at police stations. He said in all instances duplicate dockets had been opened and the suspects charged.

Legalbrief Today, 7/09/2005

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