

EDITORIAL

And herewith, a little unexpectedly, the last delivery from me as editor of News and Views. By the time you read this, I will probably be buried under work in the rather grim surroundings of my new home, the Sexual Offences Court in Wynberg Magistrates' Court.

Not that going back to the Bench has been an easy decision, but sometimes there is nothing like a new challenge to open new perspectives. The almost three years at LRG have been the single-most important learning curve in my career. I can only salute the small band of incredible individuals that has added so much mileage to my odometer of personal growth and empowerment. It has been an unforgettable experience to work with people who truly care about the state of the judiciary, access to justice and the relentless pursuit of the (often-elusive) concept of fair and equal justice. That they will continue this battle without missing a stride is not only what I wish – it is what I know.

By returning to the once familiar 'scene of the crime', my intentions are to maintain close contact with LRG, and to remain involved in as many training activities as time will allow. Contact and unequivocal support of this cutting-edge programme in the tempestuous seas of unpredictable politics and withering funding is not so much a gesture of goodwill, but a constitutional and on-going responsibility of all magistrates. And, it may very well be the kind of legal sustenance without which, to quote Judge Patricia Williams in her reflections on our National Conference in May 1998, 'your country cannot survive'.

And so to all the magistrates that have participated so enthusiastically in the training interventions that I have presented or co-presented, to the wonderful individuals that we call 'resource-facilitators', and mostly, to that brave little army of magistrate-trainers that I so admire: a huge lump-in-the-throat thank you. Here's to the baggage of our past that made us become involved in the first place...

Francois Botha

A NEW SENTENCING FRAMEWORK?

*By Dirk van Zyl Smit**

The South African sentencing system faces various problems. There is a perception that like cases are not being treated alike; that sentencers do not give enough weight to certain serious offences; that imaginative South African restorative alternatives are not being provided for offenders that are being sent to prison for less serious offences; that sufficient attention is not being paid to the concerns of victims of crime; and that, largely because of unmanageable overcrowding, prisoners are being released too readily.

The government has been aware of these problems and has taken steps to combat them. As a temporary measure it introduced the 1997 Criminal Law Amendment Act to ensure that some serious offences were punished more severely and also to bring a measure of uniformity to the sentencing process. At the same time it requested the South African Law Commission to come forward with long-term proposals for fundamental reform.

The Commission began by conducting research. It found that the mandatory minimum sentences introduced by the 1997 Act had effected some changes. Sentences for some crimes, most prominently rape, were now longer than they had been before. However, difficulties remained. The Act dealt with only some of the crucial issues. Only a limited number of crimes was covered while other serious crimes are not dealt with at all (kidnapping, for example, is not included), thus disturbing the proportionality between various types of crimes. Most importantly, judges were interpreting inconsistently the "substantial and compelling circumstances", which have to be found before departure from the prescribed minima is allowed. Where they have thought that the prescribed sentence would be too severe they have sought to find that "substantial and compelling circumstances" were present. In the



process they have incensed the public and defeated the legislative objective of consistent toughness.

When the 1997 Criminal Law Amendment Act was passed no thought appears to have been given to what impact it would have on the prison system that has to implement the longer sentences. The problem was not picked up immediately as the Act only came into force on 1 May 1998. Only in the latter half of 1999 were the minimum sentences prescribed by the Act regularly being imposed. Nevertheless, the impact of a significant increase in the number of life sentences, for example, will be felt for many years to come.

NEW PARTNERSHIPS

On the basis of these findings and of earlier research the Commission has published a discussion paper containing its proposals for a new sentencing framework. The key recommendation is that the different arms of government enter into a new partnership on sentencing. To limit sentencing

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CONTD ON PAGE 2

contd from page 1

disparities there must be more guidance for the courts. This will take the form of normative sentencing guidelines that may be modified by guideline judgments. These guidelines will be set by a Sentencing Council in the light of clear sentencing principles that place primary emphasis on the seriousness of the offence and the social harm it causes. Guidelines will be developed further on the bases of information on sentencing patterns, the efficacy of various sentences and the capacity of the State to implement such sentences. The judiciary, key criminal justice departments, sentencing experts, and civil society through representatives of victims' organisations will be represented on this Council. Once a guideline has been set for a particular offence the courts will have only limited powers to depart from it. The Supreme Court of Appeal will be able to modify a guideline in the course of a 'guideline judgment' that it may deliver in the course of the normal process of appeal against sentence.

In addition to setting guidelines the Sentencing Council will have to collect and publish comprehensive sentencing data on an annual basis. The proposed combination of a Sentencing Council and the Supreme Court of Appeal (SCA) in the creation of guidelines has important structural advantages:

- a) The guideline judgements of the SCA will allow senior judges to retain a key role in sentencing decision-making, while provision for the Court to have placed before it information from the Sentencing Council will allow it to take into account factors that cannot normally be entertained when single cases are considered in isolation.
- b) The Sentencing Council will have an overall view of the entire system and make recommendations based on requirements of principle in that light. Its information function will both assist the courts and help shape public perceptions about the reality of sentencing options.
- c) The Sentencing Council will not be isolated from public opinion, as it will have a duty to consult widely. In addition, both cabinet ministers and Parliament will be able to ask it directly to consider the development of guidelines for a category of offences that the public might regard as not being penalised adequately.

A new sentencing framework requires not only a new partnership amongst the different arms of government. It requires also a new partnership between the State and the public in general and victims of crime in particular. The key to this partnership is improved provision for victim involvement in the sentencing process.

Restitution and compensation are key elements of the proposed comprehensive new restorative sentence of community corrections, which also allows victims to benefit from other orders such as the community service by the offender and victim-offender mediation. Sentences may also be suspended on condition that restitution or compensation is paid. In every case where neither of these sentences is imposed the court must consider whether a separate restitution or compensation order should be made.

Procedural innovations designed to benefit victims of crime include a requirement that prosecutors must consider the interests of victims in every sentence. Victim impact statements may be presented to the courts to show what effect the crime had. Victims must be told when and how they may be involved in the eventual release of sentenced offenders from prison. Detailed rules will ensure that victims are told of their rights.

The changes that are proposed will be combined in a Sentencing Framework Act. The discussion paper includes a proposal for such an Act. The Law Commission hopes to refine the proposals in the next few months, and then to present them to Parliament.

KwaZulu-Natal Workshop on Domestic Violence

The Law, Race and Gender Research Unit held 2 focus day workshops for prosecutors and magistrates in KwaZulu-Natal. Many concerns were expressed about the implementation of the Domestic Violence Act. The concerns of prosecutors included: being unclear about their roles (e.g. at which stages do they get involved and can they unilaterally withdraw breach of protection order cases); dealing with bail applications (in light of the bail schedule not addressing this in respect of the Domestic Violence Act); problems with police (a lack of dockets, no appointed investigating officers); problems with clerks who are territorial over files and are unhelpful.

The magistrates' problems included: after-hours application (especially in light of no after hours pay); jurisdiction (i.e. it is wide at application stage, but once breach it is narrowed down to 'where the cause of action arose'); problems with clerks (i.e. a lack of training and the screening process carried out by clerks who are untrained and insensitive); concerns over incarceration as a sentencing option; concerns over what message is sent out when breach hearings take place in chambers as opposed to in-camera court hearings; lack of knowledge of remedies for breach of financial orders, the unwillingness of some judicial officers to treat domestic violence as a legal problem (and not a social one).

The concerns raised by the KZN prosecutors and magistrates have been forwarded to both the Minister of Justice and the Director of Public Prosecutions.

P.S. LRG would be happy to run similar focus day workshops, on request, in other regions: contact Rashida Manjoo (rmanjoo@law.uct.ac.za).

COURT BY SURPRISE: TSOLO MAGISTRATES' COURT

By Shaheena Karbanee

Tsolo, a tiny town, is hardly known outside the Eastern Cape for anything other than high levels of violence. The people served by the Tsolo Magistrates' Court are very poor and mainly engaged in small-scale agriculture. There is no bus service in the area, making access to the Courthouse difficult. Those who can afford to, use taxis, others must walk. This article describes some conditions and events the Tsolo Magistrates' Court has faced as a result of the violence and poor socio-economic conditions. It is based on telephonic interviews with Magistrate Conjwa, Head of Office, and Magistrate Zola Mbalo.

In 1996 violence in the area drove a number of families from Tsolo and its surrounding areas. They were resettled in Port St Johns but were not welcomed there. Amidst allegations of theft, the 'Tsolo refugees' turned to the police for assistance and asked to be returned to their magisterial district. The police summarily dumped them at the Tsolo Magistrates' Court. The resettlement of the Tsolo refugees was difficult because they were not welcomed either in Port St Johns or in the areas from which they had originally come. The immediate burden of solving the Tsolo refugee problem was placed on the magistrates.

While the issue of their resettlement was being determined the Tsolo refugees took up residence in the Courthouse. Whole families moved into the already dilapidated structure. There was neither electricity nor running water. Magistrates, prosecutors and staff worked during the day and at night the courthouse turned into a kitchen, bedrooms and home to many. Personnel had to contend with structural difficulties, limited resources, a lack of basic amenities, refugees loitering within their workspace during the day and taking over completely at night. Yet, the wheels of justice kept turning.

After more than six months the Tsolo refugees moved out of the courthouse and were resettled. One of the advantages of the awful situation that had held was that the government became aware of the conditions under which the Tsolo Magistrates' Court was operating.

With support from USAid the Tsolo Court was razed to the ground and a new one built in its place. The replacement was completed in 1998. The Tsolo Magistrates' Court now



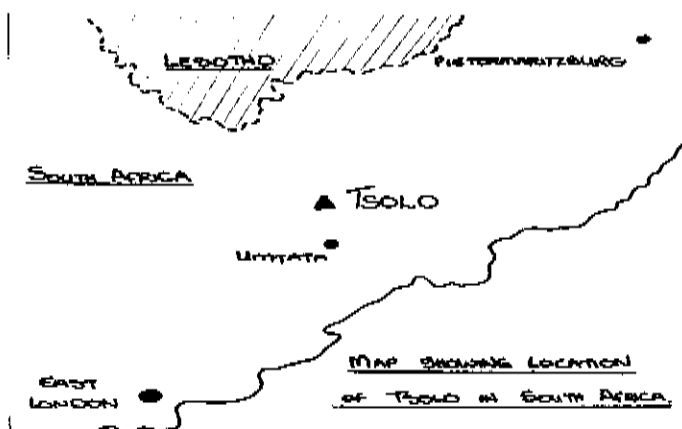
has ample space, a comparatively well-stocked library, a child witness room, running water and electricity. More improvements are still required such as a communications system for the child witness room and recording machines. However, as the Head of Office Mrs Conjwa stated, they are now able to dispense better justice. At the very least they need not postpone cases for lack of daylight.

Matters involving murder, unlawful possession of firearms, armed robbery and assault GBH are heard most frequently. Civil matters form the minority of cases and are handled by the Head of Office. Allegations of stock theft and witchcraft are rife yet the magistrates point out that there are few of these cases on the roll. Much of the violence is associated with migrant labourers and pre-meditated contracted attacks. It is suspected that people from outside the area are hired by Tsolo people to enter the area and dispense a violent and unsanctioned forms of justice.

Magistrates face a backlog of cases which is exacerbated by postponements due to incomplete police investigations. Justice Forum meetings attended by police, magistrates and representatives from the Area Commissioner's Office have been held in an attempt to solve this problem. Court proceedings take place in English and as the main language in the area is Xhosa there are two interpreters. In virtually all cases, all parties are Xhosa speaking. English is used for the purposes of the record only.

The Tsolo Magistrates' Court is run by Ms Nolutando Conjwa (Head of Office), Ms Zola Mbalo, Ms Jejane, Ms Rati, Ms Xabendlini, Ms Nondabula, Ms Nhantsi, Ms Fetile, Mr Sigau, Mr Luwaca, Ms Nabi and the two prosecutors are Ms Fikeni and Mr Jumba.

The Tsolo Magistrates' Court exemplifies the symbiotic relationship between the justice system, the people and the prevailing socio-economic circumstances. Without considering the poverty, violence and deficient resources it would be difficult to fully appreciate the centrality of the Tsolo Magistrates' Court in people's lives and the importance of the improvements it has recently undergone.



NEWS FROM THE LAW

By James Evans,

Of all the pieces of legislation passed during the last ten years, nothing seems to have been nearly as controversial as ss 51 and 52 of the Criminal Law Amendment Act 105 of 1997. Section 51 provides for minimum sentences to be imposed for certain offences in certain circumstances, except where the sentencing court is satisfied that substantial and compelling circumstances exist or where the accused is under the age of 16 years. The section further makes it impossible for a court to alleviate the severity of the sentence (obviously other than life imprisonment) by suspending a portion of it. Further, the court cannot antedate the imposition of the sentence.

Section 52 provides for a regional court to refer a case to the High Court where it is of the opinion that the sentence it must impose in terms of s 51 exceeds its jurisdiction.

Section 53 of the Act makes ss 51 and 52 applicable for a period of two years (from 1 May 1998), which can be extended by the President for one year at a time, with the concurrence of Parliament. The period has been extended for a further year.

An example of the poor drafting of the sections is the problem which confronted the Court in *S v Zitha and Others* 1999 (2) SACR 404 (W), namely what happens where the accused is convicted of numerous offences, only one of which requires referral to the High Court. In *Zitha* the Court held that one Court should sentence the accused and the regional court should refrain from imposing any sentence at all.

Various Provincial Divisions have differed as to whether the High Court has the jurisdiction to sentence an accused where the regional court was the one which dealt with conviction. In *S v Mangesi* 1999 (2) SACR 570 (E) and *S v Budaza* 1999 (2) SACR 491 (E) the Eastern Cape Division held that s 52 did not confer upon the High Court the jurisdiction to sentence an accused who has been

convicted in a regional court. The Cape, in *S v Ibrahim* 1999 (1) SACR 106 (C), and the Transvaal, in *S v Mdatjee* (unreported, 30 September 1998), have held that the High Court is empowered by s 52 to sentence an accused referred to them by a regional court. It is submitted, however, that to make any sense of the section it is necessary to follow the route taken in *Ibrahim* and *Mdatjee*. After all, a regional court cannot hand down a sentence of life imprisonment. If the approach in *Mangesi* and *Budaza* is followed, the accused could never be sentenced to life imprisonment, even though it is required by s 51(1). In such cases the trial in the regional court would become invalid and would have to recommence *de novo* in the High Court. That could never have been the intention of the Legislature.

The regional court must undoubtedly warn the accused of the existence and impact of s 51. A failure to do so would amount to an irregularity, especially where the accused is unrepresented. See *S v Rapoo en Andere* 1999 (2) SACR 217 (T) and *S v Mbambo* 1999 (2) SACR 421 (W). See further *S v Dzukuda*; *S v Tilly*; *S v Tshilo*, a judgment in the Witwatersrand Local Division handed down on 17 May 2000 (see the July edition of the *South African Law Reports*). In *S v Ndlovu and Another* 1999 (2) SACR 645 (W) the Court went as far as to find that the charge sheet should mention an enactment prescribing the imposition of minimum sentences (such as s 51). *Sed contra S v Blaauw* 1999 (2) SACR 295 (W).

Prior to commencing with the sentencing procedure in *S v Dzukuda*; *S v Tilly*; *S v Tshilo* Lewis J called for argument on the constitutionality of s 52. The Court found that the referral of the accused to another court for sentencing, in more cases than not, involves a lengthy delay. For this reason and for the fact that the Court imposing sentence was not steeped in atmosphere of the trial

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Law Reports Editor

and was faced with little other than the bare record of the proceedings Lewis J held that s 52 resulted in unfairness and, accordingly, an infringement of the accused's right to fair trial. She also held that the fragmentation of the trial, coupled with nature of sentence that may be imposed by High Court, which may be life imprisonment, infringed this right. She then found that this infringement, even viewed in its social context, was not proportional to the purpose for which it has been designed and that less restrictive means existed to achieve objects of the Legislature which s 52 sought to achieve. As the infringement could not be justified in terms of s 36 of Constitution of the Republic of South Africa Act 108 of 1996 she declared s 52 invalid. Accordingly, the Constitutional Court will be required to rule on this aspect of the minimum sentencing regime.

What constitutes compelling and substantial circumstances has still not been decided with any clarity, although the Courts inherent distrust of and opposition to any attempt by Parliament to interfere with a sentencing court's discretion is evident. Parliament has not helped the situation by neglecting to provide any form of guidance on what compelling and substantial circumstances are. What are not would appear to be a lack of previous convictions and youthfulness (*Zitha*, although s 51(3)(b) provides that a court imposing a minimum sentence on a child between the ages of 16 and 18 at the time of the commission of the offence must enter the reasons for its decision). Although the Courts in *S v Shongwe* 1999 (2) SACR 220 (W) and *Zitha* held that ordinary mitigating circumstances did not qualify as substantial and compelling, other Courts have held that they must be taken into account cumulatively with all other factors (see *S v Jansen* 1999 (2) SACR 368 (C); *S v Swartz and Another* 1999 (2) SA 380 (C); *S v Homareda* 1999 (2) SACR 319

(W); *S v Dithotze* 1999 (2) SACR 314 (W); *Blaauw*). 'Substantial' and 'compelling' is not the same as 'unusual' and 'exceptional'. The Courts have held that where the mandatory sentence deviates markedly from the sentence the court would ordinarily have imposed, that must constitute a compelling and substantial circumstance (see *Homareda*; *Dithotze*; *S v Khanjwayo*; *S v Mhlali* 1999 (2) SACR 645 (O); *sed contra Zitha*; *S v Segole and Another* 1999 (2) SACR 115 (W)).

Until this debate has been resolved by the Supreme Court of Appeal it is unlikely that there will be any uniformity in the interpretation of s 51. What is apparent from the judgment of Lewis J in *S v Dzukuda*; *S v Tilly*; *S v Tshilo*, is that the Courts appear to quite prepared to find substantial and compelling circumstances, especially where the potential sentence is the ultimate sentence which can be imposed, namely life imprisonment.

Despite the apparent judicial unease about minimum sentences, s 51 has not yet fallen foul of attacks on its constitutionality. (See, in this regard, the comments of Davis J in *Jansen and Swartz*, where he states that s 51, because of the limited scope for individuality in sentencing, is not *per se* unconstitutional.)

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The Magistrates' Commission

by Seena Yacoob

The Magistrates' Commission is an independent body and was established to oversee the appointment, promotion, transfer, discharge and discipline of magistrates. It ensures that these processes are carried out fairly and uniformly in accordance with the law. The Commission took over this role from the Department of Justice and Constitutional Development in 1993, to ensure the independence of the bench.

These are the members of the Magistrates' Commission:

Judge Bernard Makgabo Ngoepe is the Chairperson of the Magistrates' Commission and the Judge President of the Transvaal Provincial Division of the High Court. He has been a judge since 1995 and has acted as judge in both the Constitutional Court and the Supreme Court of Appeal. He has been the chairperson of the Council for Review of Capital Offences and the Council for Review of Serious Offences, and a member of the Amnesty Committee of the TRC.

Mncedisi Charlton Bashe is vice-chairperson of the Magistrates' Commission and Chief Magistrate in the Johannesburg Magistrates' Court. He is chairperson of the committee of grievances and complaints in the Magistrates' Commission and is a member of the Commission's Committee on Appointments and Promotions of Magistrates. Mr Bashe has worked for the Department of Justice for thirty four years.

Dr J Tertius Delport is a member of the National Assembly for the Democratic Party. Until 1998 he was a NNP MP. Dr Delport is the justice spokesperson for the DP.

Sango Patekile Holomisa is a member of the National Assembly for the African National Congress and is the Chairperson of the Parliamentary Portfolio Committee on Agriculture and Land Affairs. He is President of the Congress of Traditional Leaders of South Africa and a member of the House of Traditional Leaders of the Eastern Cape.

Priscilla Jana is a member of the National Assembly for the African National Congress. She serves on numerous Parliamentary committees and is the Chairperson of the subcommittee of the Rules Committee on Delegated Legislation. She is especially interested in Human Rights, Gender Equality and Social Justice.

Advocate Dennis Kuny SC practices at the Johannesburg Bar. He is a Human Rights Lawyer who was actively involved in political trials in the 1970's and 80's.

Prof. Cheryl Loots is an Associate Professor at Wits Law School. She has many years of experience teaching Civil Procedure. She is a consultant in the Policy Unit of the Justice Department and also serves on the Family Court task team.

Ron Lauc is a Senior Magistrate at Durban. He is the Vice-President of the Judicial Officer's Association of South Africa and the Chairperson of its Provincial Committee in KwaZulu-Natal. He is a member of the Executive Committee of the Magistrates' Commission as well as Chairperson of the Salaries and Service Conditions Committee.

Trevor William Levitt is a regional court magistrate in Durban. He has worked for the Department of Justice for

thirty-two years, starting out as a clerk and becoming a prosecutor and then a magistrate. He is the Chairperson of the KZN Regional and District Court Judicial Committee.

Evelyn Nompumelelo Lubidla is a Permanent Delegate to the NCOP for the Northern Cape. She has been a Member of Parliament for the ANC since 1994. She has served on the Women for Peace Committee and the Local NAFDOC Committee and is a member of the Board of Trustees of the Helen Joseph Women's Development Centre.

Anson Victor Moyisi Lugaju is the Regional Court President of the Eastern Cape Division of the Magistrates' Court. He is Chairperson of the Appointments and Promotions Subcommittee of the Commission, and feels that his role in the Commission is to ensure that the bench is made more 'gender sensitive' and generally representative, by facilitating affirmative action appointments.

Jabu L Mahlangu is a permanent delegate to the NCOP for Mpumalanga. He was a member of the National Parliament for the ANC from 1994 to 1997 when he became a member of the Mpumalanga Provincial Legislature. He is also a member of the Audit Commission.

Petrus Arnoldus Matthee is the leader of the New National Party in the NCOP. Before becoming a Member of Parliament for the National Party in 1987, Mr Matthee pursued a legal career, and was, in succession, a prosecutor, a magistrate, an advocate and an attorney. Mr Matthee is a director of the Institute for Federal Democracy.

Professor L B G Ndabandaba is a member of the National Assembly for the Inkatha Freedom Party. Before becoming a Member of Parliament Professor Ndabandaba taught at Mangosuthu Technikon in Durban.

Naledi Pandor is the Chairperson of the NCOP. She has been a member of Parliament for the African National Congress since 1994. She joined the NCOP in 1998. Before entering Parliament, Mrs Pandor was a lecturer in education at the Universities of Cape Town and Bophuthatswana. She has a special interest in education issues.

Takalani Joseph Raulinga is the Chief Magistrate at Bloemfontein. He is involved in various community and professional organisations. Amongst others, he is the President and co-founder of the JOASA and Chairperson of the Task Team on Proficiency of Official Languages in Court in the Department of Justice.

Cecille van Riet is the Chief Director of Justice College and is a member of the faculty board of the UNISA law faculty. She was a senior lecturer at the University of Pretoria before becoming the Director of Education at Lawyers for Human Rights. At Justice College she is involved in training role-players in the legal process.

Peter van Rooyen is a practising attorney. He is an instructor at the School for Legal Practice for Candidate Attorneys of the Law Society of South Africa and at the Night School at the University of Port Elizabeth. He has been a commissioner of the Small Claims Court in Port Elizabeth since it was founded.

JUSTICE COLLEGE REPORTS

Senior Civil Chamber:

In pursuance of a request by our Director General, the viability and necessity of creating a Senior Civil Court Chamber, to operate on a similar level to the Regional Criminal Court, is presently being investigated.

To this end a committee has been formed comprising:

Ina Grobler; Julian Marsh, Lawrence Basset, Reuben Mandelstam, Renier Grobler, Moses Lebaka and Andrew Burger.

At present the committee is developing a working document which will be distributed to all relevant persons (eg Cluster Heads, Regional Presidents, etc) with a view to glean advice with regard to implementation and logistics of this court.

The obvious need for such a court would be to deal with the enormous backlog of civil cases; and through the creation of a career path for civil magistrates, to encourage and promote expertise in the lower courts in civil cases.

Progress in this regard will be reported on from time to time.

Topics for Decentralized courses

Justice College has at its consultative meeting with ARMSA and JOASA again reiterated its commitment to decentralised training. Magistrates are invited to submit topics for discussion at decentralized courses so that Justice College can ensure that it addresses the needs of the magistracy at these decentralised courses.

SHORT COURSE INTERVENTIONS

LRG and Justice College have run 2 two-week courses on social context training for magistrates. At each course, magistrates reported on work that they had done in their courts and in their communities. Starting here and running over the next few issues, *News & Views* will include reports on some of these initiatives so that you can get an idea of what your colleagues are doing – and perhaps you will find that their ideas will work in your courts too.

Renuka Subban, Chief Magistrate, Verulam reports:

In the community: The sheer logistics and cost implications of a community outreach programme can be prohibitive! Not so, when one 'Piggybacks' as I did, on a medical camp. The time: a Sunday morning; The venue: a school, bordering on an informal settlement; and the target group: the poorest of the poor.

The areas of Law dealt with in the doctors' waiting room were the New Domestic Violence and Maintenance Acts

Helen Alman, Magistrate, Wynberg Court, and Elizabeth Baartman, Presiding Officer, Cape Town Family Court adopted a school:

As part of our intensive short course for magistrates, we 'adopted' a school as a social context intervention. The school is in an economically disadvantaged community where crime is rife, and gangsters are an attractive role model for the children in the community. The headmaster of the school responded to our idea with enthusiasm and arranged for us to speak to three Grade 7 classes.

Helen spoke to them about the child accused, and the child witness. The Head Social Worker from Pollsmoor Prison, Christia Nieuwoudt, tried to dispel the myths and 'glamour' surrounding the prison. Elizabeth, who was raised in that area, provided a positive role model and career guidance.

and Sexual Abuse. Pamphlets relating to the above were also handed out.

In the office: A simple questionnaire, in English and Zulu, handed to members of the public with a request to place the completed forms in a box revealed short-comings in our service delivery at the office.

A survey of attitudes towards and perceptions of patriarchy, feminism, polygamy and vulnerable groups including the Gay and Lesbian community, Transvestites, Transsexuals and sex workers has revealed that much work has to be done in the area of social context training amongst clerks, police persons, prosecutors and magistrates.

Clearly the acontextual approach in the teaching of law does not equip the administrators of justice fairly and equally!

There was an enthusiastic response, and a great deal of participation from the children.

We arranged for them to come to court on a Saturday morning and staged a 'theft'. A mock trial was held with the children starring in the roles of presiding officer, assessors, prosecutor, attorneys, orderlies, accused and witnesses. The highlight of the morning was a visit to the (empty) police cells. This was at the request of the children who had shown a great deal of bravado until faced with the reality of it.

It had not been our intention to 'adopt' the school, but having worked so closely with the children, and having begun to develop relationships with them, it would be irresponsible to abandon them now. We intend to follow up with other programmes and extend our involvement with the school.

BOOK REVIEW

Black Lawyers White Courts: The Soul of South African Law by Kenneth Broun (2000)

It is easy to forget the days when black lawyers could not open offices in the 'central business district' of their town because that area was zoned 'white'; when Godfrey Pitje was convicted of contempt of court for assuming that he could use the table that white defence attorneys used and refusing to take a segregated table in court; and when Ismail Mahomed - our chief justice who died in June - could not spend the night in the Free State although he was counsel in cases before the Appellate Division. *Black Lawyers White Courts* records these stories and much more in a book that captures the extraordinary careers of some courageous lawyers - Godfrey Pitje, Tholie Madala, Fikile Bam, Ismael Semanya, Yvonne Mokgoro, Selby Baqwa, Pius Langa and Ismail Mahomed among others. It is worth reading.

LETTER

The editor, News and Views

The article "Should Magistrates march?" April 2000 refers.

I honestly believe that to participate in a march as described would compromise a magistrate's impartiality in the eyes of the community. To point out that no one can support violence against women is absolutely correct, but no one should support violence against anyone for that matter.

My function would surely be to make certain that justice is administered fairly and justly in my court, and naturally to be sensitive to the outcries from the community. If I do that, I think I fulfill my duty and responsibility as a magistrate.

Jo Els
Magistrate: Tarkastad (Eastern Cape)

COURTS AND THE COMMUNITY: MAKING A DIFFERENCE COFFEE BAY REGIONAL WORKSHOP

The place: Ocean View Hotel in Coffee Bay - a beautiful, unspoilt part of the Wild Coast where the sound of waves lulled one to sleep (it is a pity that there was no time to actually see the waves!).

The participants: A committed group of magistrates who traveled from as far as Mt Fletcher, Maluti, Lady Frere, Bizana, Port Elizabeth and Mqgeleni. The fancy footwork performed by some magistrates (who shall remain unnamed) to demonstrate kwaito, sakkie-sakkie and Salsa/Latin American dance, left many of us speechless (talk about talent and diversity!).

The program: The opening 'Coffee Bay Quiz' perked participants up and by the time we talked about accountability the majority view was that magistrates were accountable first to the Constitution and then to the citizens of South Africa. There was also consensus that magistrates should be responsive to the needs of the community, and be prepared to speak out both in and out of court, but never in a way that discredits the legal system or the administration of justice.

Monwabisi Ralarala took participants on a cultural cruise that ended in an exercise on the duty of support for a child who had been adopted under customary law by an unmarried woman. Here there was no consensus on the validity of the adoption, the duty of support or the source of customary law.

On Sunday morning we saw *A Women's Place* (as screened on e-tv last year). The star of the video, the one and only Magistrate Tandazwa Ndita of Mt Frere, co-facilitated the session. Magistrates Elizabeth Baartman and Helen Alman's input on their projects involving courts and the community was a further example of judicial activism by committed individuals whose goals include social justice (see page 7 for details).

All in all, another successful regional workshop. We invite magistrates who are interested in attending or in helping us plan similar workshops in their region, to contact us.



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