

EDITORIAL

Herewith then our first newsletter for 2000. If you are reading this editorial, it means you have survived the turn of the century adequately enough to be declared fit and proper for duties. Many interesting events, people and also judicial activities have entered the arena.

LRG recently bade farewell to Waheeda Amien, our researcher and trainer since February 1998. She is now a gender convenor at the Gender Clinic: Legal Aid Clinic, University of Western Cape. Her enthusiastic voice and warm presence at LRG will be missed, despite her willingness to continue involvement in LRG activities.

A big welcome to Rashida Manjoo, an attorney who first worked with us in the 1998 National Conference. Rashida's impressive list of achievements in both the world of civil society as well as the international arena has made LRG very proud to have her onboard. She was a member of the drafting team of the new Domestic Violence Act, and is part of the international task team on the International Criminal Court.

Last but certainly not least, we say welcome home to LRG's traveling director, Prof Christina Murray, now back after a year in Wisconsin, USA. At the beginning of a vibrant new funding cycle for LRG, and as newly appointed Deputy Dean of the Law Faculty (University of Cape Town), she is already engulfed in a whirlpool of activities. What is it that they say about a wing and a prayer...

And maybe a prayer is what we will need to survive the official response in an official memorandum (Re: The White Paper on the proposed Single Judiciary) from our brothers at the Pretoria High Court. This 21 page document is not exactly going to contribute constructively to the already complex relationship between the lower and high courts (other than reinforcing the walls of the ivory towers). Are these lessons about competency really appropriate so soon after the judiciary's (High Court included) well-documented hiding in Volume IV of the TRC's report?

If you have any views on this highly contentious issue, let us hear from you.

FRANCOIS BOTHA

BRING DOWN THE WALL: A UNIFIED JUDICIARY

When the first draft of the White Paper on the Judicial System, released in August last year, proposed a 'unified judiciary' the bar, the press and the high court bench responded with horror. 'Laugh it out of Court' cried a *Mail and Guardian* editorial.

But this debate needs to be seen in context. Over the past century, the South African legal system erected a firewall between magistrates and 'judges'. It is a wall that is carefully guarded and maintained by many sectors of the legal system. It was reinforced each time judges defended their own independence but failed to demand the independence of magistrates; it was reinforced by the tendency of the bulk of the profession to assume their superiority over magistrates; it was secured by inferior working conditions in magistrates' courts, especially in rural areas, and by the iron control that the executive exercised over magistrates. No doubt the system worked to the advantage of the government – a largely compliant magistracy made apartheid that much easier to implement. The victim was justice.

The only contact with the formal legal system of most South Africans is the magistrates' courts. It is on their experiences in magistrates' courts that most people judge the system, and rightly so. So why are the attempts in the draft White Paper to restore the dignity, status and competence appropriate to the magistracy and to give it real independence so controversial?

Perhaps because the White Paper may be perceived to view representivity in the judiciary as more important than establishing an excellent system of justice. Such an approach would misunderstand the need for representivity because representivity is not an end in itself. It is one of the components of a good justice system. The White Paper would be better if it

clarified this issue and set out more fully the reasons for unifying the judiciary.

But the response of many judges to the draft White Paper cannot be fully explained by its perceived emphasis on representivity above justice. The 'views of the JP, DJP and other judges of the Pretoria High Court' are contained in a 20-page memorandum. At the heart of the Pretoria High Court's objections to unifying the judiciary are four points subscribed to by many judges and of direct concern to magistrates:

- A unified judiciary is unconstitutional
- Practising advocates make the best judges
- Judges play a more important role in the administration of justice than do magistrates
- Public interest will not be served by a united bench

Magistrates and many others involved in the administration of justice will disagree with each of these assertions. However, the High Court's denial that magistrates play as important a role in the administration of justice as do judges is probably the most worrying. Arguing about which of the institutions in the justice system is more important is a totally misdirected exercise. It is a little like trying to argue that your kidneys are more important than your liver, or that your heart is more important than your brain. The system is dependent on every component working effectively and delivering justice.

Certainly the work of the different courts varies. The High Courts, the SCA and the CC have a role in developing the law, which is not part of the brief of the magistrates' courts. The High Courts and the SCA play a critical role in ensuring that justice is even-handed across the country. With the CC, the High Courts and SCA must

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A FIT AND PROPER PERSON: SELECTION CRITERIA FOR MAGISTRATES

Many new policies relating to the appointment process have recently been adopted by the Magistrates' Commission. One of the most significant of these is the establishment of Regional and District Court Judicial Committees in every province. These bodies will have various functions including shortlisting, interviewing and selection of candidates, as well as making recommendations for transfer and permanent appointment to the lower court benches. They will comprise members of the Magistrates' Commission, regional and district court magistrates, the regional head of the Department of Justice and representatives of the profession, as well as co-opted members of civil society. All magistrates' posts will now be advertised and the Magistrates' Commission will actively recruit appropriate candidates for appointment.

A consultative meeting organised by the Magistrates' Commission was held in February in Pretoria to look at the new selection criteria for district and regional magistrates. These criteria were broadly identified as competence and experience, integrity and, in the case of affirmative action candidates, potential.

There was general agreement that while a basic level of technical legal skills and knowledge was a prerequisite for appointment, other criteria such as respect for the values of the Constitution and an understanding of the economic, social and cultural diversity of our society were of primary importance. It was also essential to transform the existing culture on the lower court bench and provide ongoing training and support for magistrates to develop an understanding of social context and diversity.

It was agreed that the Magistrates' Commission must play an active role in making a career path in the magistracy more attractive to potential candidates from various sectors including the profession and universities.

Remembered: Magistrate Molatlhegi Elias Kgafela

Mr T L Rampe, Magistrate Mankwe, pays tribute to a colleague who recently passed away in tragic circumstances. LRG would also like to pay our respects to the late Mr Kgafela, and offer our sincere condolences to his family.

The Senior Magistrate at Mankwe district court, Mr Molatlhegi Elias Kgafela, who was shot in a ray of bullets at his home on the 5 December 1999, has died.

The deceased, who stayed in Tlhabanc Township, was head of the office of Mankwe. He had parked his car and was closing the gate when he was accosted by a gun wielding unknown person and shot six times. He was hospitalised at Fern Crest Private Hospital and died on 3 January 2000. Except for being the head of Magistrate-Mankwe, the deceased was a representative in the North West Region of the Magistrate Association (JOASA). He was also a member of the Magistrate Commission, and in particular a member of the Sub-Committee: Judicial Training.

He was co-founder of the erstwhile Magistrate Association (MANOWE) in the North West. Mr Kgafela was outspoken in matters that affected the magistracy in general.

His memorial service was conducted on 12 January 2000 at 14h00 at the J.M. Ntsime High School Hall, Mogwase - Rustenburg.

The deceased was buried on the 22 January 2000 at his home town of Moruleng District, Rustenburg, after a protracted legal wrangle between his ex-wife and family over his divorce.

His ex-wife and two suspects have been arrested.

CALLING ALL WOMEN JUDICIAL OFFICERS!

The International Women Judges Association (IAWJ) is an alliance of over 4000 jurists in 72 nations. It was formed in 1989 when 50 women magistrates and judges felt that there was a need to act in concert to seek solutions for problems impeding equal justice for women. They recognised that by speaking with a united voice, they could advance gender justice for all women. The objectives of the IAWJ are, among others;

- * to develop and implement programmes which protect the universal, inalienable human rights of women;
- * promote true equality for all people; and
- * to promote the formation and growth of the Association worldwide.

As women magistrates we are in a uniquely privileged position to influence the lives of women around us. Individually, we can achieve positive results on cases that come before us and collectively we can ensure equal justice for all women everywhere. There are about 10 magistrates and judges in SA who are members of the IAWJ and women magistrates are hereby invited to join the IAWJ.

Belinda Molamu is the contact person, and can be contacted at Justice College: 012-334 7700

ACTING JUDGE AWIE KOTZE: FROM A JACK TO A KING

Interviewed by Francois Botha

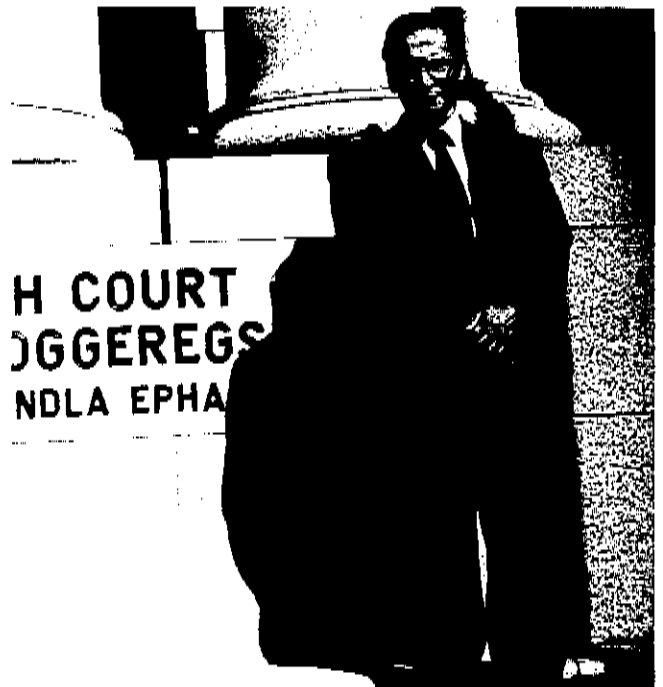
Until fairly recently Regional Magistrate Awie Kotze was presiding in the Wynberg Magistrates' Court. Since January, he has been an Acting Judge, at the High Court in Cape Town. Could this elevation mean more than a just a nod of approval from the higher court? Francois Botha spoke to Acting Judge Kotze in his chambers to find out more about the man and his appointment.

AJ Kotze has a long history with the Department of Justice, going back as far as 1964, when he was (on own request) transferred from the Provincial Administration to the Department of Justice. While studying through UNISA, he worked as a prosecutor in Worcester, and then Wynberg, where he in fact resigned. After he completed his articles, he joined Justice again, this time in Ceres, shortly after the earthquake, which he describes as 'difficult times'. He was subsequently transferred to Wynberg, this time as magistrate. After ten years on the bench he decided to face the notorious regional court test, and has since then spent 16 years on the Regional Bench.

He has also filled in as Regional Court President of the Western Cape, on two occasions in the past, and indeed applied for the post currently occupied by Gadija Kahn. He is quite frank about how he dealt with the fact that he was overlooked for this position. Instead of viewing this as a set-back, he accepted that his calling was probably on the Bench and not as administrator. Not too long after Ms Kahn's appointment, she made representations to the Judge President, and after recommendation to the Minister, Mr Kotze was destined for higher grounds. In fact, he was suppose to start at the High Court in October of last year already, but part-heard matters kept him busy until January.

AJ Kotze is impressed with a number of things in the new work environment, one being the many duties of a judge (even in so-called recess period), and the other most poignant feature is the luxurious library and excellent research facilities. He laments a little about the poor facilities magistrates (and especially regional magistrates) have. He makes no secret that these research facilities will be missed the most, when his stint as an Acting Judge is over.

AJ Kotze, true to his reserved nature, and maybe as a result of an environment of almost intimidating judicial constrain, is tight-lipped about controversial issues. He feels, however, that the idea of a single judiciary is a 'step in the right direction' and an incentive for those who have proven themselves. On the matter of stress control for magistrates, he feels that the solution is the proper use of the existing 'long leave' provisions, rather than the



proposed recess for lower courts. He strongly supports the notion of ongoing legal education and periodical refresher courses for judicial officers, and a stronger emphasis on social justice. A broader spectrum of information and an understanding of the social context in which the law operates is necessary to improve oneself as a judicial officer.

With regard to the 'lows' in life (more specifically, judicial life) he reminisces about the strong hand the bureaucracy has had, particularly in the lower courts, and the fact that magistrates were not looked after. He feels that even the new Magistrates' Commission is hampered by too much red tape and too few resources to make a substantial difference in the plight of magistrates. He is also concerned about the fact that regional magistrates only earn 47% of the salary of a judge.

With regard to advice and lessons from the past, AJ Kotze points out that judicial duties entail more than just the hearing of evidence and passing of judgements. The example set by the magistrate in court can go a long way to creating the right kind of atmosphere, and to convince the accused that he or she is going to get a fair trial.

When we talked about his hobbies and interests, AJ Kotze mentioned in passing that he is a keen runner, although he does not run competitively anymore. Only upon further prodding did it emerge that he has completed the Two Oceans Marathon no fewer than six times! At the conclusion of the interview, it was clear that the High Court's search amidst the magistracy for a fit (and proper) person is likely to be a successful one. . . .

NEWS FROM THE LAW REPORTS EDITORS

By David Fisher, Senior Law Reports Editor

The burial of the dead often causes some of life's most difficult legal questions. The Law Reports reveal that over the years cases regularly come before the Courts in which the issues relating to burials are debated. The parties are often emotional and factions within families are at loggerheads with each other.

Two recent cases have highlighted these problems once again, but have added to these problems questions about the right to freedom of religion and the right to family life in accordance with the culture of that family. In *Serole and Another v Pienaar* 2000 (1) SA 328 (LCC) Gildenhuys J held that the right of occupiers under the Extension of Security of Tenure Act 62 of 1997 to establish a grave was different in nature from the specific use rights listed in s 6(2) of the Act. The establishment of a grave was not the kind of right which the Legislature intended to grant to occupiers under the Act. Such a right could constitute a significant inroad into the owner's property rights. A Court would not interpret a statute in a manner which would permit rights granted to a person under that statute to intrude upon the common-law rights of another, unless it was clear that such intrusion was intended. It was possible that the right to bury family members on a farm could be one of the services agreed upon between the owner and the occupier, whether expressly or tacitly, as envisaged by s 6(1) of the Act. Such an agreement was protected by the Act. The Court therefore held that the Serole family had not established the right to bury a family member on Pienaar's farm.

The same issue again came before a Full Bench in *Bührmann v Nkosi and Another* 2000 (1) SA 1146 (T). The majority (Du Plessis J and Sachwell J) held, after balancing the rights of occupiers under Act 62 of 1997 with the rights of property enshrined in s 25 of the Constitution of the Republic of South Africa Act 108 of 1996, that in its contextual setting the right to use land in terms of s 6(1) of Act 62 of 1997 could only mean the right to use land in relation to the occupier's residence on another's land and that that did not ordinarily include the right to bury one's dead there because the right to bury necessarily entailed the permanent use of an additional portion of the land. The majority also held (Ngoope JP dissenting) that the respondents' submission, based on ss 5(d) and 6(2)(d) of the Act, that, if it was part of a person's religious belief that deceased members of his family had to be buried where he lived, that belief formed an integral part of his family life was not correct. The word 'family' was used in s 6(2)(d) in its ordinary meaning of members of a household, parents, children, servants etc living together. In the sense in which it was used, 'family life' ordinarily denoted the day to day lives of the members of the family. The phrase 'family life in accordance with the culture of that family' in s 6(2)(d) included certain religious practices associated with the household, but it would be strained to include in the phrase the location of graves of family members. Furthermore, the occupier's right to freedom of religion and belief in s 5(d) of the Act did not extend the meaning of the phrase 'family life in accordance with the culture of that family' in s 6(2)(d) to include such rights as the right to bury family members. While freedom of religion and belief ordinarily obliged others to respect that religion and belief and not to interfere with it, it

did not ordinarily entail that others were obliged to perform a positive act to promote the practice of religion and belief. Granting an occupier the right to bury people on the land amounted to obliging the owner to set aside land for the purpose of burials. There was no indication in the Act that occupiers were to receive real rights not directly linked with their residence on the land. On the contrary, the Act clearly intended to strike a balance between the rights of residence and those of ownership. In that context, occupiers' rights in terms of the Act could not be interpreted to extend beyond residence and use directly linked with residence.

Ngoope JP took a different view, holding that the occupier had the right under s 5(d) of the Act to bury the deceased family member on the landowner's farm. Citing the provisions of various international instruments, Ngoope JP said that the 'right to freedom of religion and belief cannot therefore be interpreted as merely enabling the holder to choose a particular kind of religion. The content, as apparent from the international instruments referred to above, entitles the holder of the right to actually manifest it; to put it into practice. Of course, this must be with due regard to the competing rights of others. . . . But no right can be said to be meaningful if the holder is prohibited from practising it out or materialising it. . . . To acknowledge the respondent's right to practise and manifest her religion, but bar her from interring her son at a place and in a manner that would give meaning to her right of religion and belief could amount to no more than paying mere lip service to such a right. The difficulty in the present case is that the manifestation of the respondent's religion and belief, in the form of the burial of her son on the farm, would constitute an encroachment on the owner's right of ownership. But ss 5 and 6, as well as other sections of the Act, are specifically aimed at making some inroad into that right. The parties competing rights must therefore be weighed against each other. . . . I am not persuaded that the loss of a 1 m by 2 m area (the grave) constitutes such a drastic curtailment of the appellant's right of ownership as to justify denying the respondent the right to bury her son on the farm.

Whilst one might say that the learned Judge-President was oversimplifying the matter by viewing the curtailment of the owner's right as no more than the loss of a piece of land of 1 by 2 metres, the issues raised by the Judge-President are worthy of consideration. I am not sure whether there will ever be a satisfactory solution to the problems raised by these two cases on the legislation as it stands at present (including the Constitution). Legislation dealing with these matters in more detail is surely necessary, and such legislation should be preceded by research and study into ways in which the competing rights of occupiers and their families and landowners can be accommodated.



NEWS FROM THE MARKETING DEPARTMENT OF JUTA LAW & PROFESSIONAL PUBLISHERS

Dear Magistrates

NEW PUBLICATION

Juta & Co, Ltd has recently published **Presumption of Innocence** by P J Schwikkard. The presumption of innocence is a fundamental principle of criminal justice and in some countries, such as South Africa and Canada, it is a constitutionally guaranteed right, subject to a general limitation clause. There is, however, little consensus regarding the exact contents and scope of this principle, which creates considerable confusion about its practical application. This book presents constructive solutions to the various practical problems which exist in respect of the presumption of innocence, and analyses its application by the courts.

Soft cover • 215 pages
Price: R165,00*

The second edition of **Computers and the Law** by Professor Dana van der Merwe discusses the legal implications of this technology. The publication can also be read online at www.jutastat.com.

Subjects discussed include patent, copyright, trade secrets and unfair competition, computer crime and evidence, contract and delict.

Soft cover • 320 pages
Price: R225,00*

CLASSIC WORKS REVISED AND UPDATED

Jones & Buckle: The Civil Practice of the Magistrates' Courts in South Africa - Erasmus & Van Loggerenberg

Published in two volumes, this work contains the full text of the Magistrates' Courts Act and Rules, with commentary.

Useful features added to this well-known work include:

- Schedule of statutory limitations on civil proceedings, indicating expiry periods in respect of actions *ex delicto* against state organs, as provided for in various statutes.
- Discussions of:
 - Recusation
 - Non-joinder and misjoinder
 - Costs in general
 - Scale of costs and fees
 - Parties

Loose-leaf

Price: Volume I – the Act: R415,00*
Volume II – the Rules: R485,00*
Both volumes: R850,00*

Commentary on the Criminal Procedure Act – Du Toit, De Jager, Paizes, Skeen and Van der Merwe

There have been enormous changes in this field of the law arising from provisions contained in the new Constitution. The law relating to bail is one example. With its section-by-section commentary, the work provides quick access to the information you require.

Loose-leaf

Price: R485,00*

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Regards

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Removing barriers: Deaf people accessing the justice system

by Ruth Morgan

A Deaf black minor is a complainant in a rape case. She is allocated a male white interpreter who does not understand her. It is decided that the case should proceed in-camera with a white intermediary. The one that is found knows sign language. However, she still cannot communicate with the child who uses a different dialect of sign language. A black Deaf relay interpreter is found who can communicate with the child. However, the magistrate states that a relay interpreter cannot be used with an intermediary and the case must proceed in open court. The child's mother objects to her daughter appearing in front of the alleged rapist. When the court date arrives, the chief interpreter holds up the proceedings for over an hour as nobody knows how to swear in a Deaf relay interpreter. (excerpt from fieldnotes).

At the end of last year I conducted research for the Law, Race and Gender Research Unit in order to identify barriers that prevent Deaf people accessing the justice system. To understand what constitutes a communication barrier for Deaf people it is necessary to first understand how Deaf people construct their identity and how they communicate. Sign language is not universal and each country has its own sign language with its own vocabulary and grammar. Deaf people who use sign language see themselves as a linguistic and cultural minority group. Consequently they do not put great emphasis on the fact that they have a hearing impairment. They also do not see themselves as pathological and reject labels such as "deaf mute" and "deaf and dumb". They prefer to be referred to as Deaf with a capital "D" which signals cultural Deafness in the same way that people who speak Portuguese refer to themselves using the proper noun "Portuguese".

Natural Sign Language vs Total Communication

It is important to differentiate natural sign language from other systems of signing such as total communication which involves signing and speaking at the same time. It is impossible to use two languages simultaneously, e.g. isiZulu and South African Sign Language (SASL). When a hearing person is trying to do this, they generally say all the spoken words and leave out signs producing an incoherent and incomplete message. Important grammatical information that is signalled on the face cannot be included when simultaneously speaking. Teachers in schools for Deaf learners and court interpreters most often use total communication instead of using natural sign language, SASL.

Sign Language variation

Due to the history of apartheid in this country, Deaf schools are still largely segregated according to racial, language and ethnic factors. This resulted in different sign language varieties or dialects emerging according to racial and ethnic factors in different geographical regions. Current research in progress indicates that linguistically there is one SASL with dialectal variation on the vocabulary level. The grammatical structures do not change according to the dialect but remain consistent. However, urban schools such as St Vincents in Johannesburg are attended by children of all races and a common sign language is shared by all the children. A Deaf person's ability to communicate with someone using a different dialect depends on their exposure to Deaf people using other dialects. Most children do not understand the sign language dialects used by other groups but there is more chance that an urban-educated Deaf adult working for a Deaf television company understands other varieties.

Research findings

There were two aspects to the research: (1) Participant-observation

of eight cases concerning Deaf people appearing in magistrates' courts in and around Gauteng. (2) Six in-depth interviews with court interpreters. The findings from the cases and the interpreter interviews overlapped, revealing different kinds of communication barriers.

- The most important issue concerns the language barriers that confront Deaf people in police stations and at court due to the lack of skilled interpreters. The majority of the present court interpreters are untrained and do not use SASL. They frequently use total communication or signed English/Afrikaans.
- Another problem exists concerning dialects. The few interpreters who are proficient in SASL, may use only the dialect used by the community in which they work. When confronted with a Deaf person from a different cultural group, communication becomes more problematic. A way to overcome this problem is to use Deaf relay interpreters who are fluent in multiple dialects of SASL as well as being literate. However, at present, some courts are reluctant to swear in Deaf people as court interpreters. Concerns ranged from the efficiency of the method to the extra costs involved and the problem of how to swear in a Deaf person. None of these concerns was borne out in the cases in which relay interpreters were used.
- When police take statements from Deaf people, this is frequently done without an interpreter. Due to low levels of literacy, the Deaf person often signs the statement without understanding the content. When the case comes to court, the Deaf person's testimony often contradicts the information contained in the police statement. The evidence they give is then called into question. Therefore relay interpreters need to be used in police stations in conjunction with hearing interpreters.
- It is difficult to find hearing interpreters with the relevant sign language skills who fulfil the requirements stipulated in the Criminal Procedure Act of 1977 (s 170A (4)(a)) concerning who is competent to be appointed as an intermediary. In two cases involving black Deaf minors the hearing teachers and social workers could not communicate in SASL with the children and it was necessary to use a Deaf relay interpreter. However, some magistrates interpreted ss (2)(a) as prohibiting the presence of any additional relay interpreter when an intermediary is being used. This places Deaf children at a distinct disadvantage when a hearing intermediary cannot be found who is fluent in the sign language dialect that the child uses. The Deaf minor then needs to appear in open court with an interpreter and a relay interpreter. This violates the rights of a minor who has been raped and has the right to testify in a different room from the alleged rapist.
- The final barrier that confronts Deaf people concerns the fact that sign language interpreting does not form part of the official court record because video cameras are not allowed in court. The audio recordings that form the basis for the official court transcript do not contain any record of anything that has been signed and therefore it is impossible to ascertain if the communication between the Deaf person and the interpreter is accurate or not.

A number of recommendations have come out of this report. The most important concern the rights of Deaf people to competent sign language and relay interpreters. Court officials also need to be trained as to how to use sign language interpreters correctly. Additionally the Acts concerning intermediaries and video recordings in the court need to be amended so that they do not discriminate against Deaf people.

JUSTICE COLLEGE REPORTS

Social Context Web Site

We all want to continue to initiate or take part in social context projects, and keep abreast with social context issues, but these projects can be time consuming. Fernanda Pauer from Justice College, who was on the first intensive short course for magistrates, realised this and created a social context web site. This will feature projects, new ideas, research, information and even a chat room on social context. Visit at: <http://www.justcol.org.za/socialcontext/index.htm>

Three new Acts

Three-day workshops at Justice College have been arranged for: the Promotion of Equality and Prevention of Unfair Discrimination Act, the Promotion of Access to Information Act and the Promotion of Administrative Justice Act. The workshops will be held on the following dates:

Magistrates:	3 - 5 April 2000
Clerks of the Court:	17 - 19 April
State Prosecutors:	10 - 12 May
Deeds Offices:	10 - 12 July
State attorneys:	2 - 4 August
Masters Offices:	21 - 23 August

For information, contact Jakkie Wessels at Justice College 012 334-7755.

Promotion of Equality

In terms of s 24(2) of the new Promotion of Equality and Prevention of Unfair Discrimination Act, all persons have a duty and responsibility to promote equality. Though the Act will only come into operation later in the year, awareness raising should start as soon as possible. This can also lead to important social context projects and initiatives. The effect of the Act can already be assessed by each office, and initiatives should start to ensure that offices do not fall foul of the Act. For example, if an office is not accessible for physically challenged people, it can be seen as a discriminatory practice in terms of the list of unfair practices in the Schedule to the Act.

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develop our constitutional law to secure the human rights culture that the Constitution promises. Magistrates, on the other hand, need to deliver justice in a multitude of cases every day. These cases are frequently badly prepared and people appearing before magistrates are often unrepresented. Accused people may be sentenced to long periods in jail. Very few of the decisions magistrates make are reviewed. So it is crucial that they are able to conduct fair trials and to hand down fair decisions with confidence, independence and speed.

Which is more important? Outstanding and conceptually coherent law expounded in cases reported in the SALR or fair trials in magistrates' courts? Neither, each is as important as the other. The Pretoria High Court does us a disservice by trying to establish the priority of one part of the system over another.

Another fundamental problem with the Pretoria High Court's Memo is its insistence that advocates are the best candidates for the High Court bench. This smacks of protecting a

Case Law on the Web

Roux Krige at Justice College has started a web site for cases on public law. The web site features law of evidence, criminal procedure, criminal law, specific offences and interpretation of statutes. The practical application and effect of the cases on public law will also be outlined. Visit this site at: <http://www.justcol.org.za/rouxk.html>

Learning about Violence Against Women

Last year, the Justice Personnel Training Project on Violence Against Women undertook the task of developing a training course for criminal justice personnel focusing on violence against women. The project was funded by the Royal Danish Embassy, and managed by an Advisory Committee consisting of a group of NGOs and the Department of Justice through Justice College. We tested the course on Magistrates, Prosecutors, Clerks and Interpreters in Gauteng, the North West and the Northern Cape. The external evaluation by Nell and Shapiro Cc, was very positive.

If you would like more information, or would like to take part in the project, call the Project Manager, Sally Shackleton on 082 703 0036 or e-mail her on sallys@hixnet.co.za

Lecturing at Justice College

The sound of music coming from the lecture rooms at Justice College is quickly becoming an every day experience as lecturers are more and more implementing experiential training techniques in their lectures, and moving away from the old formal lecturing method. The integration of social context issues, not just into individual lectures, but co-ordinated throughout the whole course, is currently a project all lecturers are involved in. The reaction of students has been overwhelmingly positive.

National Referee

One of the magistrates at Justice College, Basil King, has proved that he is not only a 'judge' of the truth. In 1998 he received provincial colours as a 8-ball pool referee and, in 1999, his national colours.

professional elite. Magistrates have massive experience in doing just what all judicial officers must do: judging. And good magistrates do this very well. Certainly, the experience of most magistrates is relatively narrow, limited to criminal matters. But the draft White Paper envisages changes to this – and correctly so. The White Paper also builds on changes to the magistracy that are already under way, aimed at separating the magistracy from the civil service and securing the independence of magistrates. So long as being a civil magistrate is a dead-end job, magistrates will not acquire the breadth of experience that we might wish our judges to have; until the separation of judicial officers in the lower courts from the executive is complete, magistrates will battle to assert independence. But so long as judges resist the enhancement of the status of the magistracy and fail to support moves to remove obstacles in the way of appointing magistrates to the High Court bench, the High Courts will be the poorer.

CHRISTINA MURRAY



SHOULD MAGISTRATES MARCH?

9 August, Women's Day, is approaching and the community which the Brakvlei Magistrates' Court serves, is planning to hold a march as part of their campaign to end violence against women. The marchers are to present a petition to the Mayor. You, a magistrate, are asked to join the march, wearing a gown to signal the support of the court system for the cause.

Should you agree to march? Magistrates (and members of LRG) are divided on this question.

- Some believe that to march would compromise a magistrate's impartiality in the eyes of the community. Men would assume that a magistrate who marches to demand an end to violence against women will be biased against men who are charged with domestic violence.
- Others point out that no one can

support violence against women. It is wrong and every opportunity must be taken to demonstrate both that violence against women is wrong and that the law is opposed to violence against women. Therefore, magistrates have an obligation to march with the community.

What do you think? Write or email your views to *News & Views*.

Your Honourable Dr Magistrate...

Congratulations to Regional Magistrate Marthinus Jacobus Langenhoven (Regional Court, Parow), who recently obtained his doctorate on the admissibility of unconstitutionally obtained evidence. What makes this achievement even more interesting, is the fact that the father of the promoter of this thesis (Prof Steph van Der Merwe, University of Stellenbosch) was the head of office (Worcester), where magistrate Langenhoven (as he then was!) was based way back in the seventies.

Regional Magistrate Langenhoven has been on the Regional Bench since 1982, and obtained his Masters in 1996, also at

Stellenbosch, on the accused's right to silence.

Well done, Dr Langenhoven!

Shaking and Stirring

Western Cape Regional Court President, Gadija Kahne, is leaving no stone unturned in her efforts to make things happen. Her latest recipe to challenge the ever-increasing court roll nightmare consists of six instantly created additional regional courts.

Ingredients? Take six administrative magistrates and place them in magistrates' courts. Take the six 'freed-up' district court magistrates, give them the existing regional roll in branch courts, and allow the regional

magistrates to continue their rolls in urban centers. Use a business plan, available resources, and do not let it simmer later than April 1, 2000. Voila! Instant, accessible and cheap justice with a recipe that allows for easy copying.

Marching? How about running!

On 16 June 1999 Mr Patrick Ross, Magistrate Wellington, ran the Comrades Marathon and not only for himself, but to fundraise for a home for the elderly (Grace Benjamin Abbeyfield Society of Paarl) in the community he serves. In doing so he collected almost R5000 for the project, and he is planning another round this year. Well done, Patrick!

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