News & Views

FOR MAGISTRATES **FEBRUARY 1999**

EDITORIAL

Out-of-the-blocks, that time of the year again, and, on top of it all, still as hot as hell here on the brink of the Mother City. Not that soaring temperatures seemed to have had any delaying effect on the LRG's rocket entry into the war-zone of new ventures and training events. And all of this on the eve of the Big Switch, before our Pentiums turn into plastic pulp.

Speaking of tropical temperatures: we say a warm word of welcome to Saras Jagwanth, from the Pietermaritzburg Law School, who will be filling in for our director Christina Murray, at present on sabbatical with her family in the States. Saras is, of course, no new-comer to the LRG, having featured as a facilitator in our National Conference last year. A very appropriate assumption of her new duties is illustrated by her thought-provoking contribution to this issue, on the Magistrate's Court's constitutional jurisdiction. (See page 3)

Other exciting news is that this year (April) will see another historical event, the first official joint project by LRG and Justice College, which will be an intensive two-week social context training course for lecturers and magistrates. This will be the first of a series of courses, which will give recognition to deserving (and discerning) magistrates, and emphasise the importance of a training trend in judicial education that is long overdue. A special acknowledgement and feather in the cap of Justice College, for seizing this opportunity and partnership, to illustrate their commitment to transformation. And last, but most importantly, congratulations to the first 25 successful applicants, who will face the first examinable social context training course in history. Good luck – you might just need it!

And finally, the impressive number of well-motivated applications for this course can only be interpreted as a vote of confidence in the future, from a growing cluster of enthusiastic and modern decision-makers. Watch this space for future courses...

FRANCOIS BOTHA

The Battle of Botswana

Correspondent, Cagney Musi reports:

The Commonwealth Magistrates and Judges Association (southern Africa Region) recently held a conference in Gaborone, Botswana (January, 1999). The theme of the conference was: 'The role of the judiciary in maintaining a vibrant human rights environment in Southern Africa.' The participants ranged from judges, lecturers, registrars and magistrates (not in order of importance!).

Dreyer van der Merwe, Secretary of JOASA (Senior Magistrate: Pretoria) with Asha Ramlal, Senior Magistrate: Vanderbijlpark at the Gaborone Conference.

Prof D Nsereko, of the University of Botswana, delivered a paper on minimum sentences, and their effect on judicial discretion. He argued that there is no constitutional bar on the legislature restricting sentencing discretion. The underlaying motive for minimum sentences is often political, the result of emotional and sometimes ill-informed reactions of the society to rising crime. Nsereko succinctly pointed out that harsher sentences are not the answer to the crime problem, but rather the 'eradication of the social ills... (s)ocial and economic inequality, poverty in the midst of plenty, unemployment and homelessness or squalid living conditions'.

Judge Reynolds of the Botswana High Court delivered a paper on: 'Judicial Accountability – Ethical Code: Is there a need for a written code of conduct?' Judge Reynolds pointed out that there is a need for judicial accountability and an ethical norm. He was, however, strongly against a written code of conduct. He argued that a written code of conduct is neither desirable nor necessary, because it does not cover all eventualities and potential problems. Also, that judicial officers should all have a good idea of principles of ethics, and codes are difficult to interpret.

Botswana does not have a written code of conduct, and the question is why a code for magistrates, but not for judges should exist in South Africa. The CMJA has not yet taken a position on the matter, but that will be debated at the tri-annual conference in Scotland in the year 2000. Mr Ron Laue, Senior Magistrate, Durban, suggested that all transgressions be reported to a body like JOASA, who will assist in deciding whether transgressions are serious enough to be referred to the Magistrates Commission.

Francois Botha, from the Law, Race, and Gender Research Unit (University of Cape Town), delivered a paper on 'The Need for Judicial Education'. He emphasised that judicial officers should be activists in favour of race and gender issues, and not hide behind the cloak of judicial independence to avoid 'open-minded' or informed decisions. He emphasised the need for a representative and legitimate judiciary, but warned that this alone is not necessarily a recipe for failure-proof justice. Justice, says Francois, is sometimes blind to the needs and circumstances of certain people. He strongly criticised the 'artificially non-sensical construction of the reasonable man', and proposed that the legal template should rather be the unemployed African mother with a rural lifestyle. Mr Maumela, Magistrate Mutale, could not resist this opportunity of claiming the title of being the only reasonable man in Africa!

A panel consisting of, amongst others, Justice Dow (High Court Botswana)

CONTD ON PAGE 6

YNZE DE JONG ON NEW FAMILY LAW INITIATIVES

1999 has commenced on a high note in the Western Cape. Family Lawyers are excited about two new initiatives, namely, the pilot Nyanga Magistrate's Court, and my personal favourite, the Cape Town Family Court Centre.

The Nyanga Court has begun with the transfer of maintenance files from the Department of Home Affairs to the Department of Justice. This effectively spells the end of apartheid bureaucracy in child-support in the Western Cape. It is a signal event in itself, and the many role-players who brought this about should be congratulated. The Nyanga Court is concentrating on maintenance only at present, and it is hoped to add criminal courts at a later stage. As a family lawyer, I would prefer that criminal courts not be added, but realistically these courts are needed by the community. What is encouraging about this initiative is the way that the department has actively encouraged the assistance and support of NGOs and CBOs, in launching and sustaining this project.

The Cape Town Family Court was officially launched on 29 January 1999, there was the usual fanfare of dignitaries, the media and glowing speeches. I normally find such events to be predictable, but I could not help feeling that this is the beginning of a new era in the practice of family law in South Africa. The star of the show was the presiding officer Elizabeth Baartman. Elizabeth told us that the court had opened on January 5, had issued 56 summonses so far, finalised two divorces, and would finalise another three by February 15. Elizabeth pointed out, in her speech, that it was not the aim of the family court centre to divorce as many people as possible, as quickly as possible, but rather to educate the public of their rights, to mediate where necessary and offer other alternatives to divorce where this is indicated. In order to achieve this, volunteers from outside agencies would be used.

There are now 5 such family court centres in operation, namely Cape Town, Durban, Port Elizabeth, Johannesburg and Lebowagomo. The core principle of the centres, is to bring all family law matters under the jurisdiction of one forum. These matters include divorce, custody, maintenance and child care proceedings. The strength of grouping these areas will become apparent in time, but I think that the presiding officers will be in a position to have a more holistic approach than what was previously the case. The centres have also embraced a multi-disciplined approach to family law, which reflects the international trend. In short, 1999 has begun with good news from the south. We wish all the Family Court personnel, strength and good fortune for the rest of the year.

VOICE FROM J.O.A.S.A.

Members of JOASA's Executive Committee attended a workshop presented by the Law, Race and Gender Research Unit in the vicinity of Warmbaths during November 1998.

The topic: 'The Quest for Zero Defect – The Challenge for JOASA"
It was held at the Shangri-La Lodge. Shangri-La means "an imaginary paradise on earth". 'Zero Defect'? 'Paradise'? – Mere coincidence by design?
Shangri-La Lodge *was* in a particular way literally paradise. As it turned out, the social context oriented presentation demonstrated vividly, and often astonishingly, that the quest for zero defect is, perhaps, idealistic – 'paradise' notwithstanding.

In the real world, that quest will require constant vigilance, self examination, education, and adaptation on the part of many a judicial officer, in order to address a variety of attributes such as bias, ignorance, fear, values and so on. My personal response is, that by having subjected myself voluntarily to social context, judicial education, I must inevitably strive towards zero defect – even if perfection is unattainable.

As an organization, JOASA could prove to be a useful instrument in facilitating the quest. JOASA should promote, encourage and assist members to participate in all initiatives connected with judicial education.

Congratulations to the Unit for its enriching presentation.

RE LAUE
DEPUTY PRESIDENT: JOASA

Jodie Kollapen, Human Rights Commissioner, with Ilze Ockers, Chief Consultant (LRG), at the JOASA Conference (Shangri-La, Warmbaths)

Constitutional Jurisdiction: A Must for the Magistrate's Court?

Saras Jagwanth, Senior Lecturer in Constitutional Law at the University of Cape Town

The question of the nature and extent to which magistrates' courts are competent to decide on constitutional issues, remains unresolved under the interim Constitution. In *Qozeleni v Minister of Law and Order* 1994 (1) BCLR 75 (E), and in *Mendes v Kitching* 1995 (12) BCLR 1672 (E), it was held that a Magistrate's Court was not precluded from applying the provisions of the Constitution in the course of its ordinary substantive jurisdiction, except where it was specifically precluded from doing so. Section 103(1) of the interim Constitution did not outline the jurisdiction of the magistrates' courts, outlining only the procedure to be followed in the event of a contention in one of these courts that a 'law or provision of such law' is constitutionally invalid.

All the subsequent cases dealing with the issue rejected the approach adopted in *Qozeleni* and *Mendes*. In both *S v Scholtz* and *Bate v Regional Magistrate, Randburg* 1996 (7) BCLR 974 (W), the Court held that no inferior court had any constitutional jurisdiction, unless a statute expressly vested it with that jurisdiction. (See also *Municipality of the City of Port Elizabeth v Prut* 1996 (9) BCLR 1240 (E), and *Walker v Stadsraad van Pretoria* 1997 (3) BCLR 416 (T))

The Constitutional Court in *City Council of Walker v Pretoria* 1998 (3) BCLR 257 (CC) noted that, in the absence of an appeal against the findings by the High Court that a magistrate lacked constitutional jurisdiction, it was not appropriate to express any opinion thereon.

The 1996 Constitution does not shed any further light on the matter. Section 170 provides that 'magistrates' courts and all other courts may decide any matter determined by an Act of Parliament but a court of a status lower than a High Court may not inquire into or rule on the constitutionality of any legislation or any conduct of the President'. 'Jurisdiction' consists of the 'power vested in a court of law to adjudicate upon, determine and dispose of a matter'. It could thus be argued, that without the power to adjudicate a constitutional matter pertaining to a case otherwise within its jurisdiction, the ordinary civil and criminal jurisdiction of magistrates would in many cases be rendered nugatory. However, the decisions of the courts under the interim Constitution shows that without specific enabling legislation conferring constitutional jurisdiction on magistrates, this view is not likely to be followed by our courts. Many of the rights contained in the Bill of Rights are more applicable to cases heard in the magistrates' court than in any other court. This includes the rights of arrested, detained and accused persons in s 35, as well as rights relevant to civil litigation. Many of these would be rendered meaningless if magistrates' courts could not consider them due to lack of jurisdiction. It is clear that it is crucial for an Act of Parliament to be enacted under s 170 of the Constitution, as soon as possible to remedy the situation.

Section 170, in providing that magistrates' courts may not enquire into or rule on the constitutional validity of 'any legislation', is an extremely broad limitation on the jurisdiction of these courts. This is because national legislation is defined in s 239 as including subordinate legislation made in terms of an Act of Parliament. This would cover a statutory provision of any kind, including by-laws, orders and regulations. Section 170 obliges a litigant who challenges the constitutionality of a municipal by-law, to incur the expense and to suffer the practical difficulties attendant upon appellant proceedings, in what is often a geographically remote high court. Raising a constitutional issue for the first time on appeal has obvious hazards: no evidence, or inadequate evidence may have been adduced, and the result may either be to stultify the adjudication of the constitutional issue, or to oblige the appellate court either to resort to referring the matter back for evidence to be led, or to hear it itself (which is invariably a matter of difficulty).'

The South African Law Commission has made a range of proposals to amend both the Constitution and the Magistrates' Courts Act, to confer constitutional jurisdiction on magistrates' courts. A summary of the proposals are:

(1) The amendment of s 170 of the Constitution, to allow an Act of Parliament to empower magistrates to decide on the constitutional validity of legislation, with the exception of national legislation, provincial legislation passed by a province after 27 April 1994 or any conduct of the President.

(2) The amendment of s 172 of the Constitution, to provide the requirement that a full Bench of a High Court of competent jurisdiction must confirm any order of constitutional invalidity made by a magistrate's court before that order has any force or effect.
This proposal mirrors the confirmation order required by the Constitutional Court when an order of invalidity is made by the High Court. Orders of validity will be subject to appeal in the same way as the High Court to the Constitutional Court. It would appear that this requirement applies to statutory enactments only, as the common law is developed incrementally, and not normally declared invalid.

(3) The amendment of the Magistrates' Courts Act, to provide for the competence of magistrates to rule on the constitutional validity, or for any other reason on administrative action, rule of the common law, customary and customary international law.

The safeguard inherent in the confirmation order of constitutional invalidity by a full Bench of the High Court is an important one, and will ensure uniform application of the law. These proposals, if implemented, will serve to broaden access to justice, and will make the Constitution and its principles a reality for most South Africans, who come into contact with the law. Magistrates have a responsibility to rise to this new challenge.

News from the Law Reports I

MAINT

After years of hardship and frustration, it appears that the plight of the many individuals who have to brave our country's maintenance system each time they need financial assistance is finally being addressed. Whether the grave problems experienced in the past will actually be solved in the future will however remain uncertain until the new maintenance laws come into operation and are actually implemented.

The Maintenance Act 99 of 1998 was the long-awaited product of many calls to deal with the inadequacies of the existing maintenance system (published in *Government Gazette* 19513 of 27 November 1998, date of commencement to be announced). The preamble to the Act states that the recovery of maintenance in the past has fallen short of the obligation to give high priority to the rights of children, their survival, protection and development and has failed to recognise that every child has the right to a standard of living which is adequate for that child's physical, mental, spiritual, moral and social development. As the Law Commission is investigating the reform of the entire maintenance system, not only the recovery of maintenance for children, it was deemed necessary, pending the implementation of the Law Commission's recommendations, to effect certain amendments to the existing laws relating to maintenance as a foundation to the reform of the entire maintenance system in order to secure a sensitive and fair approach to the determination and recovery of maintenance.

One chapter of the Act which begs special attention is chapter 5 dealing with civil execution. Anyone who has had any contact with the maintenance system knows that the most frustrating part of the procedure is the enforcement of the order. Section 26(1) of chapter 5 of the Act provides that:

'Whenever any person —

(a) against whom any maintenance order has been made under this Act has failed to make any particular payment in accordance with that maintenance order; or

(b) against who any order for the payment of a specified sum of money has been made under s 16(1)*(a)*(ii), 20 or 21(4) has failed to made such a payment,

such order shall be enforceable in respect of any amount which that person has so failed to pay, together with interest thereon —

(i) by execution against property...;

(ii) by the attachment of emoluments...;or

(iii) by the attachment of any debt... .'

Although the obvious problems experienced in the execution of civil judgments which will impact negatively on the efficiency with which that system can recover maintenance, the section does go a long way to address the need for a more organised and powerful method for the enforcement of maintenance orders. Only time will tell however whether the foundation which the Act seeks to provide has been firmly laid.

A recent maintenance appeal matter heard by the Cape Provincial Division may be of interest to those dealing with

News from the Marketing Department of Juta Law & Profcssional Publishing

Dear Magistrates,

In November 1998, Juta published *Truth, Reconciliation and the Apartheid Legal Order* (ISBN 0 7021 4905 5), an account of the special hearing held by the Truth and Reconciliation Commission (TRC), calling to account the lawyers who had been crucial participants in the apartheid legal order. Not only an account of those hearings, this book attempts to evaluate, in light of theories of adjudication, the historical role of the judiciary and bar in the apartheid years.

Written by David Dyzenhaus, a well-known commentator of the South African legal system and Professor of Law and Philosophy at the University of Toronto, Author of *Hard Cases in Wicked Legal Systems: South African Law in the Perspective of Legal Philosophy* (Oxford University Press, 1991). Dyzenhaus was the first witness to give his testimony at these hearings, and reveals in the course of this book, and often in the words of those who testified, how the judges failed in their duty to uphold the rule of law. The few notable exceptions amongst the legal community serve to illustrate the potential for lawyers to have done more and to serve as examples for the respect of the rule of law.

Priced at R125.00, this softcover book offers the spectacle of an entire legal system on trial, and by virtue of its content, will be of particular interest to the legal community in South Africa.

The second edition of *The Bill of Rights Handbook* (ISBN 0 7021 4923 3), authored by Johan de Waal, Iain Currie and Gerhard Erasmus, has recently been published. This work has now firmly established as the premier guide to Bill of Rights litigation for candidate attorneys,

Editors by Glenda Bedwell — Law Reports Editor

NANCE

maintenance issues (see *Van Eeden v Van Eeden* case No A376/98, date of judgment 18 November 1998, to be reported).

At the time of the parties' divorce, they had signed a consent paper in terms of which the appellant husband had undertaken to maintain the respondent wife until her death or remarriage. The consent paper had provided further that the appellant's financial assistance would cease should the respondent cohabit with another man on a permanent basis as man and wife. Being of the view that the respondent had formed such a relationship with one C, the appellant had written to the respondent informing her that he would, and in fact did, cease paying maintenance. The respondent had laid a complaint with the maintenance officer which had prompted the appellant to bring an application in the maintenance court for a declarator that his obligation to maintain the respondent had fallen away and ceased. The magistrate had refused the application finding that while the respondent and C were living together as husband and wife, this was a temporary arrangement as the evidence suggested that their ways would part late in 1997 of early in 1998. The appellant appealed against this finding and at the hearing of the appeal, the appellant's counsel moved an application for the hearing of further evidence by way of the re-opening of the trial enquiry in the court *a quo*. The further evidence sought to be heard was relevant to the extent that it contradicted the prior evidence regarding the intentions of the respondent and C. It suggested that the evidence given regarding the lack of permanence of the relationship was false and that the respondent and C's relationship was a permanent one.

The Court held that it was well established that the Court's power to re-open on appeal, as derived from s 22(1)*(a)* of the Supreme Court Act 59 of 1959, should be exercised sparingly. In the present matter the additional evidence related to facts and circumstances which had arisen after the judgment of the court *a quo*. The section did not include any express limitation which would exclude the reception of the evidence now sought to be tendered and accordingly a limitation or exclusion, if there were one, would have to be implied by way of a restrictive interpretation of the language of the section. The significance which attached to the finality of a judgment was not a sufficient reason for adopting a restrictive construction. The Court exercising appellate jurisdiction had a discretion whether or not to allow the evidence to be re-opened to receive evidence of facts, which had come into existence after the judgment appealed against was given and which were material to the facts which existed at the time of the judgment, which discretion had to be exercised sparingly and only in special circumstances. The circumstances of the present matter were very special and presented all the standard requirements for a re-opening on appeal. The respondent's version in the court below was tied to promised events in the near future which could not be tested at the trial. The new evidence would be admissable to show that the respondent and C's cohabitation was permanent at the time of judgment or at some earlier date. The judgment of the court *a quo* was set aside and the matter remitted to the magistrate for reconsideration after the hearing of further evidence as specified.

LETTERS TO THE 'T'

Dear Mr T

I am an attorney from a small town and trust that your advice and usual kindness will also extend to include this whimpering from the Side-Bar. Some time ago, I appeared for a client in a civil matter where action was instituted against the Board of Trustees of a certain financial institution. My client pointed out that the magistrate might not be free of bias, being implicated in a salacious affair with a Boardmember. How does one apply for recusal without creating an awkward situation?

Mr G RvD

Dear Mr G. RvD

Moved as I am by your passionate plea for ostensible procedural justice, I find it difficult to contain my disgust for your moral arrogance (and, I must confess, my dislike for attorneys, advocates, and non-returnable cool drink bottles) in general. Your total failure to appreciate the situation and to respond appropriately might be understandable, but does nothing to contribute to the broader debate. One is reminded of the dictum in the oft-quoted *Midrand Insurance v Escort Brokers Inc.* 1986 (3) TPA SA 566, at D:

"Attorneys, in relation to other court officials, are sometimes not unlike out-of-season mangos. Difficult to afford, impossible to maintain, and a best-before date that has expired long before its destined use."

(See also further down at F-G, for the judge's delicious pickled fish recipe)

My ability to advise objectively is unfortunately not only tainted by my own prejudices and misgivings against members of your profession. The mere suggestion that a financial interest in the outcome of a matter is inappropriate and grounds for recusal is simply preposterous. Not only is it permissible; it is essential in providing for a healthy distribution of power, and a system of 'cheques' and balances; a golden opportunity for the underpaid decision-maker to at least cover out-of-court expenses.

Why not simply follow a well-established practice and present the magistrate with a standard questionnaire, now fairly common in the urban courts, along the following lines:

1. Do you have any direct financial interest in the outcome of the matter? (Tick the appropriate block)

* Yes, but not substantial enough to justify real concern (yet) ☐

* No, but I might have. My bank account number is ..... ☐
(post-dated cheques will not be accepted)

2. Do you have any relations with any of the witnesses in the matter before you?

* Yes, but only of a sexual nature ☐

* No, but I'm not seeing anyone at the moment ☐

3. Would you like to recuse yourself now or later during the trial?

* Now, and my commission is 15% as agreed ☐

* Just say when ☐

(There are many other indiscretions that are catered for in similar roneos, all of which are, of course, contributing to the smooth running of our justice machinery.)

And, yes, there are many other uncloistered virtues safeguarding our legal system from the scrutiny of criticism. It is, however, suggested that we embrace the two most proud traditions so strongly rooted in the legacy of our Anglo-Saxon heritage, those proud values that spearhead appropriate decisions in all justiciable matters, namely sex and money. Ok?

[Each published letter receives R50! – Editor]

Pearl Holanda (Registrar Industrial Courts: Botswana), discussed the topic: 'Taking women's rights seriously'. Justice Dow pointed out that both South Africa and Botswana are signatories to the Convention of the Elimination of All Forms of Discrimination Against Women. She emphasised that the judiciary should be sensitised on gender issues and proposed ongoing training. Ms Holanda discussed the admissibility of evidence of previous sexual history of a complainant in sexual cases, and argued that there is no justification for admitting such evidence on the basis of relevancy.

Mr P Britz of the Legal Aid Board delivered a paper entitled: 'The lack of legal aid in criminal matters – Does it hamper the dispensation of justice?' After explaining the history of the legal aid system and the means test, he discussed the strengths, weaknesses and challenges facing the Legal Aid Board, and some reformative measures that might be taken. It was clear that the major point of concern was the budget allocation, and that the cost of providing legal aid is astronomical. He also suggested ways to curb spending.

Mr Andrew Burger from Justice College delivered papers on default judgment, and costs in the lower courts. Questions whether magistrates should apply the law of the land, irrespective of its consequences on an indigent and uneducated defendant, contextualised these papers.

The conference ultimately resolved that:

- Judicial officers in Commonwealth jurisdictions should be guided by the Convention on the Elimination of All Forms of Discrimination Against Women, when interpreting and applying the provisions of the National Constitutions of laws, including the common law and customary law, when making decisions.
- Judges and lawyers have a duty to familiarise themselves with the growing international jurisprudence of human rights, and particularly with the expanding material on the promotion of human rights of women.
- Minimum sentences are unacceptable, and member states should request their respective governments not enact such laws, or where they exist, to repeal them.
- Botswana should implement a legal aid system.

This issue: Hankey Magistrate's Court

by Una Rens, Magistrate: Hankey

Hankey originates from the previous century where the Hottentot slaves were relocated by the London Missionary Society. The secretary was Mr Hankey, hence the town's name. It is a small town situated in the fertile Gamtoos Valley of the Eastern Cape. Famous for agricultural produce which are transported to Port Elizabeth's market, Hankey has earned itself the name "Port Elizabeth Pantry".
The locals speak Afrikaans, and enjoy an uncomplicated lifestyle of working and living in farms, exploiting the natural heritage of fertility, generation after generation.

Amidst the tranquility of this valley enfolded by mountains, the Cockscomb being the predominant, lies a courthouse situated in a house especially renovated to accommodate the Magistrate's Office.
The staff consists of a magistrate, a public prosecutor, an interpreter, a control officer and two clerks. A fair representation of the races and genders exist in Hankey, except for white males!
Hankey has one periodical court in Patensie that tends to crimes from the jail at Patensie, and to the matters of the people in a nearby town. The jail is situated in a farm and supplies produce to many other prisons as well. It has its own subculture and terminology generated from prison life. An example would include, 'Frenchman' who would be a person who does not belong to a gang. Even the community has an authentic language that is the result of words derived of old Hottentot terms, or a mixture of that and the modern Afrikaans.
Serious misunderstandings have occurred in court, due to words like "curry", "lying" and "flooring" which respectively mean, "a home brewed alcoholic beverage", "having sexual intercourse" and "passing out in a drunken stupor". (I do intend compiling a "Hankey Dictionary" especially for court purposes.)

Magistrate's Court, Hankey

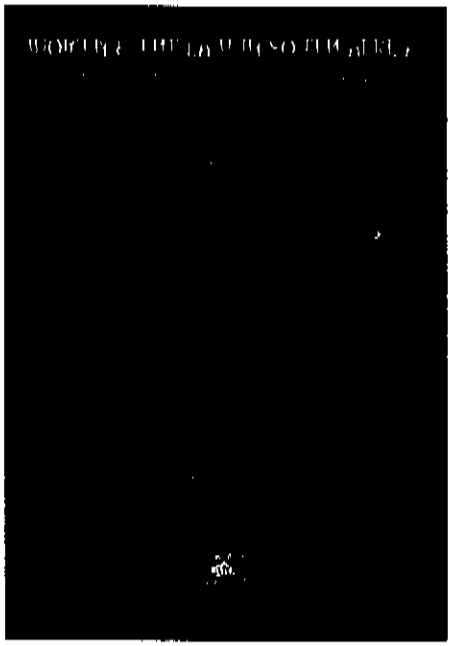
The people of the Gamtoos Valley are unspoiled, and enjoy the simple things in life. They easily plead guilty, and mock themselves and each other in court. The easy nature of people manifests itself in simple ways, as in the habit they have of nicknames. In fact, even the writer of this article has a nickname. It is apparently connected with the colour of the lipstick that is worn when the most severe sentences are passed. The name: "THE RED DANGER". (Ever heard of Poison Ivy, here you have it!)

Court in the Act

Created by Patricia Miller Text by Francois Botha

Women and the Law in South Africa: Empowerment through Enlightenment
(Juta 1998)

This recent publication by the Unit for Gender Research at UNISA, seeks to empower women by informing them about their rights. The book addresses all women, and explains issues which are most important to women. It adopts a practical approach, and looks at the law through women's eyes. Case studies are highlighted, and an illuminative glossary is provided, to facilitate an understanding of legal terms which may not be common knowledge. The book covers various aspects of relevance to women including, family law, violence, employment, health, human rights and democracy. Copies are available, on request, from the Juta Bookshop, Cape Town, at R120,00. For further information, contact their Academic Department at (021) 418-3260.



Nat-agter-die-ore
Congratulations to Andre Le Grange (Bellville Magistrate), who claims, at 35, to be the youngest ever candidate to be appointed regional magistrate, here in the Western Cape. Maybe nationally? Who was it again that sang, 'Blame it on my youth'? Way to go, Andre!

Professor Raulinga?
And well done to Joe Raulinga, for being appointed honorary member of that illustrious and esteemed association, The Society of Law Teachers of Southern Africa, at its annual meeting in Bloemfontein in January 1999.

Quote of the Day
'Social context training is not a frenzied outburst of emotion, like popcorn waging war against a lid, but the tranquil and steady dedication of a lifetime, by committed judicial officers.'
Andre Dippenaar, Magistrate - Vredenburg

ON THE CUTTING EDGE

Welcome back to Bruce Langa, Magistrate: Bushbuckridge, from his recent visit to Lund, Sweden, where he attended a conference on 'Equal Status and Human Rights of Women.' As a seasoned LRG facilitator, he assures us that South Africa still has some way to go to match the Norwegian model on gender equality. (Although it does seem rather odd, if not inappropriate, for Oslo to still refer to the (female) head of that office as 'ombudsman'!)

OF INTEREST...

***S v Schietekat* 1998 (2) SACR 707 (C)**
In an appeal against a refusal of bail by the magistrate, the Court held that section 35 of the Constitution did not allow the accused an unqualified right to freedom – the accused had the right to be released from detention only if the interests of justice permitted it. The Court also held that section 60(4)-(9) and section 60(11B)*(c)* of the Criminal Procedure Act was unconstitutional. The Court held further that section 60(4) did not place an onus on the accused, whereas section 60(11) did. Finally, the Court found that section 60(4) offended against the doctrine of separation of powers, because the Legislature cannot set out in peremptory terms, the circumstances in which refusal of bail should be deemed to be in the interests of justice.

***S v C* 1998 (2) SACR 721 (C)**
Section 60(11)*(a)* of the Criminal Procedure Act requires that those who are detained on suspicion of having committed offences listed in Schedule 6, must establish 'exceptional circumstances' before they can be released on bail. The Court found that this provision should not be interpreted as a punitive procedure, because all that the Legislature enacted is that a court must exercise exceptional care when considering the usual circumstances – the court must be able to hold with a greater degree of certainty that the detainee will comply with all of the bail conditions. The Court also added that if this interpretation is incorrect, serious reservations then exist about the constitutionality of the section.

***S v Abrahams* 1998 (2) SACR 655 (C)**
The Court found that a tent does not comply with the arbitrary principles, which determine what has to be broken into, in order to constitute the offence of housebreaking (with the intent to commit a further offence). Therefore, if a tent is not used as a residence or as a storage space, and the accused enters it and steals property, the Court held that other than a conviction of theft, the accused should not be additionally convicted of housebreaking with intent to steal.

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