Public Sector - Govt. - Justice

1982

Jan. - Dec

Community service as alternative to jail

Cape Times 18/1/82

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By FANNY A GROSS

A CASE has been put for more extensive use of community service as an alternative to imprisonment.

What is community service? It is the system which allows a judicial tribunal to suspend a sentence on condition that the offender agrees to perform a prescribed number of hours of unpaid service for a non-profit agency which exists for the benefit of the community, it being understood that such services are to be performed after his normal working hours and during weekends so as not to interfere with his full-time occupation.

Our average daily prison population, having reached the inflated figure of more than 100 000, the need to ensure that people who do not belong there are kept out of prison becomes of paramount importance Through the medium of a non-custodial sanction, like community service, this objective can be achieved with the help of a well-informed, positive and approving reaction by the public to the scheme, which has been found to be more constructively rehabilitative and far less costly to the taxpayer

Shift in West

Indeed, the shift in criminal policy in most Western countries has been away from sanctions involving the deprivation of liberty, especially where minor offences are concerned, to treatment within the community It is generally agreed today both here and elsewhere that imprisonment should be reserved for the relatively small, hardened core of criminal elements against whom society needs to be protected

One of the reasons why community service in this country has not as yet been put into operation is the fact that the infrastructure for the scheme is lacking To implement this project the co-operation of service organizations, like Rotary Clubs, is required Voluntary service being deeply rooted in the social fabric of the Rotary Movement, it can provide the necessary supportive service

Community service means involving the community — using men and women who are prepared to give of their time without remuneration to a project which they believe can be of benefit not only to the offender but also to the community at large This has been the case in many countries overseas, where volunteers have been associated with penal problems and their attempted solutions for many years In England and Wales, for instance, there are at present said to be approximately 200 voluntary organizations dealing with the aftercare of offenders For reasons of cost as well as on other grounds, it is virtually impossible for the state to do everything Therefore, volunteers have become involved in almost all aspects of the treatment of offenders abroad

Volunteer social workers can and do act as an important link between the general public and the transgressor Those volunteering to help in the penal field must, however, not just be do-gooders, but must also be realistic and able to relate to the people with whom they have to deal Indeed, some of them may even have greater empathy with and be able to reach the offender more readily than a probation officer or a fully qualified social worker, especially where the voluntary worker may in the past have had problems similar to the ones the offender is currently experiencing

Moreover, by involving itself in the problems and challenges that face the law-breaker, the public gets to know and understand the full import of the dictum "There but for the grace of God go I" Instead of the community ignoring its failures who are offloaded on the other side of a prison wall — out of sight, out of mind — community service orders have demonstrated that it is possible to establish rapport between many sections of the community and develop links of many kinds which can help offenders in their efforts to become rehabilitated because of the better understanding and tolerance shown towards the transgressor by people in the community It is, undoubtedly, to the offender's advantage, wherever possible, to work alongside normally recruited accredited voluntary associates This could be achieved by those under community service orders being grafted into existing schemes of service run by voluntary bodies

Probably the greatest obstacle to the successful implementation of the community service scheme is that of control and supervision, because of the limited number of fully qualified and trained personnel This could, however, be overcome by the use of voluntary unpaid staff who have been given an initial orientation course and would be working under the guidance of the professional staff Their task would be to supervise the actual performance of the work set the offender and to satisfy the court that its sentence was being effectively carried out

If community service were seriously and conscientiously tackled, recidivism could be kept at bay and our prisons would not have to be filled to overflowing with short-term offenders — 77,87 percent in prison in the Republic had sentences up to six months, 10,73 percent had sentences of longer than six months and under two years, while only 8,26 percent had sentences of two years and longer, according to the latest report for the Department of Prisons

If we wish to shed the uneviable reputation of having the largest *per capita* prison population in the Western world, we must aim to make greater use of Section 297 of the Criminal Procedure Act with its provisions for community service orders, which have recently been put into operation in Cape Town as a pilot scheme

With will and determination it can be made into a viable reality for adoption throughout the country, bearing in mind that to contain crime calls for more than the arrest, trial, sentence and imprisonment of the law-breaker, and the herding together of inadequate personalities often with pronounced difficulties of social adjustment in an unnatural environment, one "where their chances of deterioration are at least as great as those of reform", in the trenchant words of Sir Rupert Cross

◆ The writer is the author of "Crime — A Universal Problem".

Bar acts over 'quick justice'

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Mercury 18/1/82

Mercury Reporter

THE Society of Advocates in Natal passed a resolution at the weekend that it make representations to the Minister of Justice to have the law changed to prevent summary passing of sentences

This was confirmed yesterday by society president Brian Law, who says the Bar Council is concerned at the circumstances surrounding the arrest and trial of Peter Esterhuizen of Pinetown

Esterhuizen was convicted and sentenced to six years' imprisonment last Wednesday, less than five hours after he robbed a bank in Florida Road, Durban

In a statement made on Saturday, the Bar Council said that it was, in principle, opposed to a trial being held immediately after the commission of an offence 'because it appears probable that an accused person in such circumstances would not be able to conduct his defence properly'

The council says it feels that in all cases, particularly where the accused may be imprisoned, he should be given time to decide whether he wishes to consult a legal adviser before pleading

The statement said that 'the passing of a proper sentence was one of the most difficult tasks performed by a judicial officer

'It is essential that the accused be given every opportunity to place all the facts, which may affect sentence, before a judicial officer

'Judicial officers should be fully informed of all factors personal to the accused, including any which may have affected his judgement, his blameworthiness or be relevant to the sentence

'It appears to us unlikely, in the circumstances of the Esterhuizen case, that the magistrate could have been in possession of all such facts when he passed sentence'

Judge calls for Police Act to be changed

RDM 19/1/82

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A SUPREME Court judge has recommended that the law be changed.

By JO SHALLIS

Mr Acting Justice J C Kriegler was deploring a section of the Police Act in a case involving a Robben Island prisoner's attempt to sue the Minister of Police, which ran aground on a law which says he must bring the action within six months — his deadline expired while he was in detention and deprived of legal counsel.

The technical hitch prevented Daniel Montsisi from bringing a Supreme Court action against the Minister of Police, Mr Louis le Grange

Mr Justice Kriegler recommended that it would be, "highly desirable" that Section 32 of the Police Act should be amended

Daniel Montsisi, former president of the Soweto Students Representative Council was sentenced to four years imprisonment on charges of sedition and sent to Robben Island in 1979

In his action Montsisi claimed that he was assaulted by security policemen on June 13 and October 27, 1977

His claim, filed in February 1980, was dismissed in December last year by Mr Justice Kriegler, who upheld the special plea entered by counsel representing the Minister, that the action was contrary to Section 32 of the Police Act

Section 32 states that no claim can be brought against the State or any person if not entered within six months of the alleged action

Priscilla Jana and Associates, representing Montsisi, told the court that it had been impossible for Montsisi to file an action as he was in detention and consequently had no contact with his lawyers.

In his judgment, Mr Justice Kriegler stated that he found this argument "appealing emotionally"

He added that though he found it "deplorable" that the State, which had Montsisi "incommunicado" in its power for months after the alleged assaults, "seeks to rely on a statutory provision which was intended to protect it against stale claims", he was still bound to follow, "the dictates of the law"

The case, according to Montsisi's lawyers, will now go on appeal to the Appellate Division

Lawyers warn on danger of hasty trials

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Mail Reporter

CDM 20/1/82

TOO hasty a trial could lead to a miscarriage of justice and jeopardise a person's legal rights, lawyers warned yesterday.

Last week a Durban bank robber, Peter Esterhuizen, was brought to trial five hours after a R25 000 armed hold-up and sentenced to six years in jail

Esterhuizen is to appeal against his conviction and will be assisted by the Organisation of Lawyers for Human Rights

And the Natal Bar Council is to petition the Minister of Justice to change the law to prevent such rapid passing of sentence

Lawyers in Pretoria and Johannesburg said yesterday that such a speedy trial was "exceptional" and "a bit horrifying"

It probably did not give the accused person, possibly already under stress and strain, adequate time to consult lawyers, think out his defence, and offer circumstances in mitigation of his offence, a lawyer said

However Brigadier Tertius Wium, Divisional CID chief for the Witwatersrand, said it was "not unusual" for a person to be brought to trial the same day as he was arrested

"All arrested people must appear in court within 48 hours after being detained. But whether it is advisable that the trial proceed immediately, is not a police matter"

Frustrated

"All of this could be frustrated if the trial is too hasty

"I would certainly welcome any change in the law to prevent this situation

"I know of no other case where such excessive haste in bringing a person to court in such a serious matter has taken place It is highly suggestive of a possible miscarriage of justice"

A spokesman for the Department of Justice said he would like to get full details on the case before issuing a statement today

Mr Arthur Chaskalson, chairman of the Johannesburg Bar Council, said he did not know the circumstances of the Esterhuizen case and could not comment on it

Rushed

"But the Johannesburg Bar Council has been made aware of the fact that in other cases accused people have been rushed into court and required to plead to criminal charges without adequate opportunity to consider the nature and implications of the charge, or to obtain legal advice"

Mr Chaskalson said that at the request of the Johannesburg Bar Council, the matter was raised by the General Council of the Bar with the Minister of Justice during 1980

"The then Minister of Justice agreed that this should not happen"

"The Johannesburg Bar Council disapproves strongly of any departure from the principle accepted by the Minister that accused people are entitled to adequate time to prepare themselves for a criminal trial before being called to plead"

This was ordinarily the case, Mr Chaskalson said, and no circumstances could justify a departure from it

Prof Johan van der Vyver of the University of the Witwatersrand law faculty said he had never before heard of such a speedy trial for such a serious offence

There had been several cases under labour law last year when people had been brought to court hastily, and lawyers had then raised objections

"I am quite sure that such excessively speedy trials must prejudice the accused's defence Part of the defence procedure is to consider the need for legal advice and to secure the state of mind that is required to conduct a defence in a responsible and proper manner

RDM (252) 21/1/82 RA

Trial on same day as arrest 'unusual'

Mail Reporter

THE trial and conviction of people within hours of their arrest on serious charges was "exceptional" and not encouraged, a Department of Justice spokesman said yesterday

Such speedy trials as that of bank robber Peter Esterhuizen in Durban recently were "very unusual", he said

Esterhuizen was tried in a Durban Regional Magistrate's Court last week five hours after he held up a bank and robbed it of R25 000

He was sentenced to six years' jail but is to appeal against his conviction

A Justice Department spokesman said the question of whether it was advisable for a person to be tried so soon after the offence or his arrest, usually did not arise

"This is an exceptional case and I can assure you that this is not the procedure we favour

"The magistrate was surprised when Esterhuizen declined legal representation and insisted that his trial go on It is not the sort of situation that happens every day

"It is generally regarded as best not to proceed with a trial the same day as the arrest in such a serious offence But usually there is no question of this happening"

Legal experts have warned that too hasty a trial could lead to a miscarriage of justice and jeopardise a person's legal rights by not giving him time to decide whether he wants legal representation or to prepare his defence

The Natal Bar Council is to petition the Minister of Justice to change the law to prevent such rapid passing of sentence

'Ridiculous'

(252) Mercury 24/1/82

That's what I think of provision for summary sentencing, says Pitman

Mercury Reporter

MR HARRY Pitman, MP for Pinetown, yesterday condemned as 'ridiculous' the provision in the Criminal Procedure Act which allowed summary passing of sentence on any accused who was unable in the circumstances to prepare or conduct a defence properly

He said the case of Peter Esterhuizen, who was convicted and sentenced to six years' imprisonment last Wednesday, less than five hours after he robbed a bank in Florida Road, Durban, was a perfect example of what 'is *per se* an unjust law'

By this, Mr Pitman said that he was casting no aspersion against the judicial officer who presided at the trial, but was pointing out that the principle of summary sentencing was wrong

Esterhuizen, who is to appeal against the sentence with the aid of the Society for Human Rights, said in court that he was in a distraught mental condition when he robbed the bank

He said in evidence that he had contemplated suicide before committing the robbery in a drugged and emotional state

Mr Pitman said that when the provision was introduced in 1977 by the then Minister of Justice, Mr Jimmy Kruger, he had argued in the House that it could lead to injustice

'The fact of the matter is that the provision should never have been passed,' he said

Mr Ray Swart, leader of the PFP in Natal, said there was clearly merit in an accused having time to prepare a def ence.

At the weekend, the Society of Advocates in Natal passed a resolution that it would make representations to the Minister of Justice, Mr Kobie Coetsee, to have the law changed

Society president Brian Law said that the Bar Council felt that in all cases, particularly where any accused faced imprisonment, they should be given time to consider whether they wished to consult a legal adviser before pleading

A statement passed by the council said that it was unlikely, in the circumstances of the Esterhuizen case, that the Magistrate, Mr J J Augustine, could have been in possession of all the facts which may have affected the accused's judgement or his blameworthiness before sentence

Asked if this were the case, Mr T L Blunden, president of the Regional Court in which Esterhuizen was sentenced, said that he could not comment until he had read the full file of the case, and would prepare an answer once he had done so

● See Editorial Opinion

(252) MOM 3/2/88

Legal Aid Board is stingy, says lecturer

MANY of South Africa's poor people are not getting a fair deal from the Legal Aid Board and are becoming victims of a policy that borders on stinginess.

That is the contention of a law lecturer at the University of Cape Town, Mrs Marion Dixon, in an article in the latest edition of the law journal De Rebus

Her views were supported by senior Cape Town advocates yesterday, one describing the board's contribution as "niggardly" and a "denial of justice"

Noting that the Legal Aid

Mail Correspondent

Board disclosed an excess of income over expenditure of more than R500 000 in its latest annual report, Mrs Dixon commented "It appears that the legal aid scheme may recently have been carrying its thrift to extremes of parsimony not intended by the legislature

"A Government agency set up to render legal aid to indigent persons is scarcely to be congratulated for spending less than its Parliamentary allocation of funds, if in order to do so, it has had to refuse legal aid to many indigent persons."

In her article, Mrs Dixon cites the categories under which the board can refuse assistance

- If the applicant is unemployed for no sound reason,
- Leads a criminal life;
- If pro deo defence is available,
- If the criminal conduct is admitted and the accused's defence is so simple that he can advance it himself unaided,
- If the offence charged is connected with the use of a motor vehicle

Civil

In civil procedures, exclusionary clauses include

- Applications for maintenance,
- A lawsuit in which the Legal Aid Board is a party;
- A divorce case where there is a reasonable possibility of reconciliation,
- Where the applicant is party to an adulterous union,
- Where an applicant has previously obtained a divorce with legal aid

Mrs Dixon added that the provision excluding an applicant who "leads a criminal life" was "particularly disturbing" in that the applicant was branded criminal even before a court of law has pronounced him guilty.

One Cape Town advocate said "The Legal Aid Board is carrying out its functions in the most niggardly way"

Legal Aid accused of being 'too niggardly'

CAPE TIMES 3/2/82

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Staff Reporter

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Assistance refused

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'Niggardly'

One Cape Town advocate said "The Legal Aid Board is carrying out its functions in the most niggardly way The Act provides assistance to the indigent, but the board has taken it upon itself to define indigence

"By being more generous in its definition of indigency, the board could do something to provide access to the courts for a much greater segment of the population who today are denied access because of prohibitive legal costs

"The denial of justice to so large a section of the population means a denial of human rights"

- In terms of the board's definitions, an indigent single person is one whose income does not exceed R170 a month and an indigent married person, one whose income does not exceed R340 a month The ceiling increases by R30 for each dependant in either case

Sentence 'shouldn't have been imposed'

(252) Mercury (107) 5/2/82

Pietermaritzburg Bureau

THE fifth case of a miscarriage of justice at the KwaZulu-controlled Umlazi Magistrate's Court to occur within a few weeks has been referred to the Secretary of Justice for KwaZulu by two Supreme Court Judges here

Man was wrongly convicted, judges rule

In a joint review judgment, Mr Justice Didcott and Mr Justice Kumleben said that Mr Subiso Gumede was 'quite wrongly convicted' of robbing an unnamed woman and was wrongly sentenced on September 17 to a term of imprisonment which was not specified in papers before the Court

Review

"The sentence, which should have been sent for automatic review shortly after the hearing, was sent for review only on January 15 and came before the Judges on January 22 — by which time Mr Gumede had already served a sentence 'which should never have been imposed', Mr Justice Didcott said

The evidence before the Umlazi Court 'only established clearly' that somebody else had robbed the woman

'All that was proved was that the accused had been in the robber's company before and after the crime was committed,' Mr Justice Didcott said

Babies may be jailed with mother

252 Star 10/2/82

Own Correspondent

MARITZBURG — Twin four-month old babies may be sent to prison with their unmarried 19 year old mother who had been convicted of murdering a woman who called her a prostitute.

In the Maritzburg Supreme Court yesterday the Acting Judge President, Mr Justice James, and two assessors sentenced a young mother (who may not be named) to five years' imprisonment for murder with extenuating circumstances.

Mr Justice James said the crime was serious and the court could not suspend the sentence because of the woman's two babies.

ORPHAN

The 19 year-old mother is an orphan and has no husband. Until the babies are six months old and alternative arrangements for their upbringing can be made they may be sent to prison with their mother, according to Mr Justice James.

The court heard yesterday how the woman, then four months pregnant, had stabbed and killed Miss Delesele Mbambo.

The incident happened outside the Globe cinema in Raisethorpe.

Standing in the witness box with bowed head she told the court she had been confronted by Miss Mbambo while waiting in a bus shelter.

KILLER

"She was very drunk and asked me why I was a killer. Then she said I was a prostitute," she said in a subdued voice.

The two women started fighting punching and scratching each other. Bite marks were found on Miss Mbambo's body but the accused denied biting her.

At one stage Miss Mbambo picked up a plank and hit the pregnant woman across the back with it.

The two had to be separated by passers-by.

"Then I went into a nearby store and bought a knife. I wanted to frighten her away so she wouldn't interfere with me again. I intended using the knife on her body, but just to scare her."

AIMED

"I stabbed her," the woman admitted.

She said she aimed the knife at the woman's arm but it penetrated her heart and killed her.

A few days later she gave herself up to police.

Summing up, Mr Justice James said it was clear the dead woman had been the aggressor.

Mercury 10/2/82

Magistrate asked about 'wrong' sentence

252 ~~107~~

Mercury Reporter

THE Secretary of Justice for KwaZulu, Mr W I N Wiggill said yesterday that he had referred the fifth case of alleged miscarriage of justice at the KwaZulu-controlled Umlazi Magistrate's Court to the magistrate concerned

Mr Wiggill was referring to a a joint review judgment in the Supreme Court, Pietermaritzburg, last week by Mr Justice Didcott and Mr Justice Kumleben that Mr Sabiso Gumede was 'quite wrongly convicted' of robbing an unnamed woman and was wrongly sentenced on September 17

The sentence, which should have been sent for automatic review shortly after the hearing, was sent for review only on January 15 and came before the judges on January 22

By this time Mr Gumede had already served a sentence which should never have been imposed, in the opinion of Mr Justice Didcott

Mr Wiggill said he was awaiting a report from the magistrate who imposed the conviction and sentence

Swart to probe Riddell 'secrecy'

(252) ~~254~~

Mercury 10/2/82

MR Ray Swart, PFP spokesman for police matters, is to ask a question in Parliament about the apparent secrecy surrounding an appeal by former Zimbabwean soldier Robert Brian Riddell against a seven-year jail sentence imposed on him by a Durban magistrate on September 1 last year

Riddell, who lives in Durban was allowed out of Durban Central Jail on October 16 on a warrant pending an appeal after serving only 12 days of his sentence It is not known whether bail was fixed since his attorney Mr G E Morley said yesterday that he did not discuss his client's affairs with the Press Riddell, too, has nothing to say to the Press

The Mercury learned that Riddell's appeal was heard in Pietermaritzburg Supreme Court on January 26 in closed session and judgment has not been made available to the Press It is locked in the safe of the Registrar of the Supreme Court Mr C T Verwey, who is away from Pietermaritzburg

The assistant registrar, Mr L O Fourie, said yesterday when asked about Riddell's appeal 'According to my instructions all I can say is that such a matter has already been before the Court but it is regarded as a private and confidential matter My instructions are that nothing can be divulged about the appeal to the Press

Asked who had given such an instruction, Mr Fourie said it had come from the Registrar and added that any questions about the appeal should be

Crime Reporter

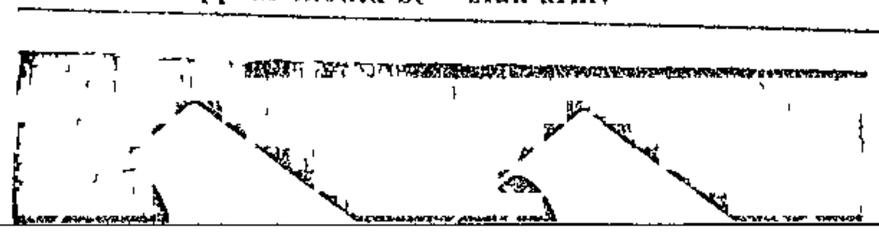
put to him when he returned on February 22

When Mr Ray Swart was told of the matter he said in Cape Town yesterday that the secrecy surrounding the appeal in a straightforward criminal case struck him as being decidedly odd and once he had all the details he would raise the matter at question time in Parliament

When Riddell appeared before Regional Court Magistrate Mr W H Weitz in Durban on September 4, he was sentenced to one year in jail for selling 3 000 rounds of 5 56 ammunition and three years' jail for illegally possessing a 303 rifle, an AR 15 rifle and an automatic pistol

Another three years was imposed for illegally possessing 3 070 rounds of 9 mm ammunition, 150 rounds of 303 ammunition, 500 rounds of 22 ammunition, 19 rounds of 308 ammunition, 685 rounds of 7,62 ammunition and 2 000 rounds of 5,50 ammunition

Riddell told the Court that he had brought the ammunition with him after leaving the Rhodesian army



New housing

Mercury 10/2/82 (12)

Municipal Reporter

A COMPANY is being launched by a group of Natal businessmen and political figures to ease the housing shortage in the greater Durban metropolitan area and Pietermaritzburg.

It will be the first time a utility company of this nature has been formed in South Africa outside the Western Cape.

Indians, whites and Coloureds earning up to R1 100 a month stand to benefit first, but in the long term blacks could also participate according to the chairman, former National Party senator Mr H B Klopper

He said the Government had already been approached to provide capital by way of cheap land and long-term, low interest loans and the private sector would be asked to contribute

The founding members are, Mr Klopper a director of companies, Mr Derek Watterson, New Republic Party MP for Umbilo and former MEC in charge of local government, Dr Lawrence McCrystal, economist, town planner and director of companies, Mr R Heine, director of a large finance institution, Mr Owen Jones, town planner, civil engineer and chairman of the Metropolitan Consultative Committee and Mr G Krog, director of Indian Education

Non-political

Durban City Council and the Department of Community Development have been asked to nominate representatives The first board meeting is scheduled for tomorrow

Mr Klopper said 'This is a non-political project We are all people who have made a success in our own undertakings and now want to contribute something towards the community

'When we go to the other race groups for representatives we don't just want figureheads, we want people with knowledge and skills who can make an effective contribution

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SECURITY LAWS

The lawyers' view

FM 12/7/82 (250)

An Association of Law Societies report calling for urgent revision of SA's security laws is in wide disagreement with many aspects of the recommendations by the Rabie Commission of Inquiry into Security Legislation

The report, which called the deaths in detention of Steve Biko and Joseph Mdluli and many others "cogent evidence of misuse of power," has heightened relevance in the wake of last week's death in detention of Dr Neil Aggett

It was drawn-up by an ad hoc committee consisting of two representatives of each provincial Law Society One of the Transvaal members was Schalk van der Merwe who also became a member of the Rabie Commission

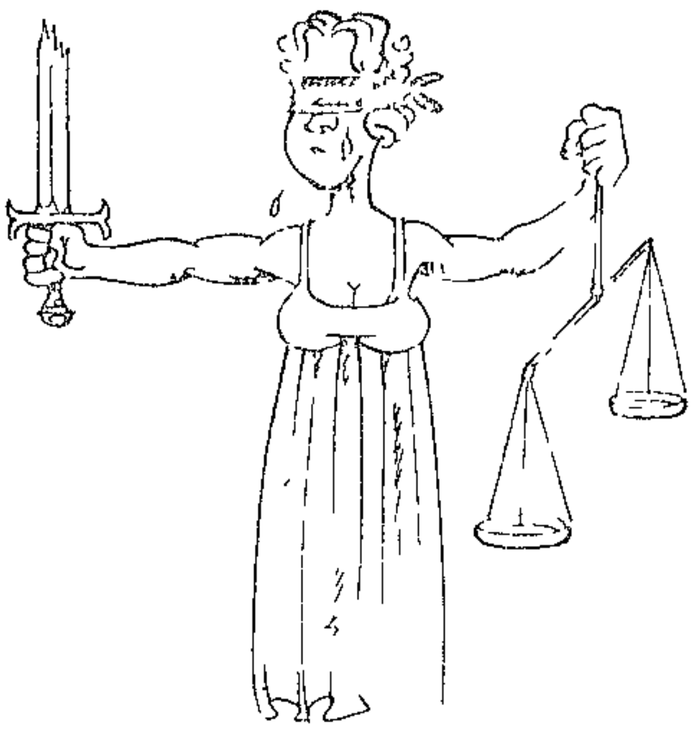
This week the president of the Association of Law Societies, Monty Knoll, refused to release the report to the *FM* Knoll said the Rabie Commission had met some of the Association's submissions and that the organisation had been asked by government to comment on the Rabie recommendations In the circumstances he did not feel free to release the report

It is clear from details obtained elsewhere that although the Rabie Commission met some of the law societies' objections to the security laws, there are major differences between the safeguards proposed by Rabie and those the societies felt were desirable

Both reports adopt the standpoint that security legislation is necessary in SA's circumstances The societies' report, however, adds "The greater the powers granted to the State the greater should be the measures for the supervision and control of those who exercise extraordinary powers on behalf of the state"

Noting that the powers granted the police by security legislation were exercised in secrecy without their having to account for the actions the report proposed safeguards

Calling for security laws to be consolidated into a single Act (as Rabie subsequently did as well) the law societies committee proposed this Act should be supervised by an independent standing commission In addition people against whom action was taken should be informed in



writing of the legal provisions applying to them

It was also proposed that all detentions should be made under a warrant and confirmed by a Judge President who would have access to detainees and the right to release them

There should also be a detailed code for the handling of detainees They should have regular medical examinations and there should be a waiting period between their release from detention and their trial on any charges that might be brought against them

The law societies committee also proposed that the independent standing commission should review all bannings under the Internal Security Act and that there should be a complete review of procedures for handling complaints of irregularities by the police

These proposals for firm safeguards contrast with Rabie's recommendations that detainees be visited by magistrates, that others have access to them (at the discretion of the Minister of Police) that no-one be held for more than 30 days (unless the Minister deems it necessary) and that if a prisoner is held for more than six months the police must convince a review board that it is necessary

The committee's proposed independent standing commission is also a far stronger safeguard than Rabie's proposals for officially appointed inspectors of detainees a review of bannings and the appointment of an advisory committee to report before a publication or organisation was banned

Abuse of power

The law societies report said that among the consequences of the present administration of security laws were abuse of power and loss of public faith in the administration of justice

The committee held that the deaths of detainees "cannot but be regarded as cogent evidence of misuse of power"

In the *FM*'s view the law societies' report represents the expert and considered opinion of one of the country's senior legal organisations and a useful contribution to the debate on security laws that was sparked off by the Rabie recommendations

☐ The law societies report was drawn-up in 1979 and handed to the Minister of Justice before copies were sent to Sunday newspapers On September 1, 1979, government brought out a special Saturday edition of the Government gazette containing regulations governing the Rabie Commission

ANOTHER CELL DEATH

It will take some time before the full cost to SA of the death of trade unionist Dr Neil Aggett in detention last week can be fully counted However, one immediate result has been a further serious deterioration in the relations between government and the new generation of black trade unions

The public reaction of senior officials in the Department of Manpower to Aggett's death has been very restrained In private, however, they are making it clear that they regard his death as a severe blow to the credibility of government's labour reforms both within SA and abroad His death took place at a time when the department was continuing with its programme of reform despite opposition from rightwing Nationalists

Aggett was the 46th person to have died in detention since 1963 and, according to one estimate, the sixth trade unionist The assurance by Minister of Police Louis le Grange that the investigation into his death is being given the highest priority is commendable But it will hardly do much to diminish the anger among trade unionists

In the wake of Aggett's death a number of leading businessmen have spoken out strongly against detentions without trial and have pointed to the international repercussions that can be expected When the *FM* went to press there were indications that many employers would not take action against workers who took part in a work stoppage to mark Aggett's death

Riddell

Pietermaritzburg Bureau

THE court file of former Zimbabwean soldier Robert Riddell has been declared a confidential document following an urgent application by the Minister of Defence in the Supreme Court here yesterday

Brig Richard Alexander Knipe, of the Defence Force's legal division, supported the application for an order prohibiting the disclosure of any parts of the records relating to Mr Riddell's appearances in the Magistrate's and Supreme Courts on arms and ammunition charges

Throughout the brief hearing before Mr Justice Leon yesterday, Brig Knipe referred to passages in the record that the Defence Force contended should not be made public

The action had been brought by the Defence Force for several reasons, one of them being that it was difficult to say who had had access to the papers during the case's passage through the magistrate's and Supreme Courts, Brig Knipe said

Unfounded fears

Matters referred to by Mr Riddell in the papers could have a detrimental effect on the State and the Defence Force, and could lead to unfounded fears on the part of the public, he said

The application was the only way to safeguard the interests of the State, Brig Knipe said

Mr Justice Leon, who set aside Mr Riddell's conviction and sentence of seven years' imprisonment imposed on three arms and ammunition charges during a criminal appeal last month, ordered after hearing Brig Knipe, that the registrar of the Supreme Court, the attorney-general of Natal, Mr Riddell and Mr H W Weitz should show cause by March 26 why the order of court should not be made permanently binding

The two page order granted yesterday prohibits the publication, either directly or indirectly, of any sections, information and facts contained in the numbered files housed in the safe of the Court Registrar, Mr C Verwey.

A second section directly prohibits anybody making known any facts that have to do with the subject matter of the criminal proceedings in the case

Public focus

The files on Mr Riddell were first brought into public focus after the Mercury tried unsuccessfully to learn details of a criminal appeal brought by Mr Riddell in the capital's Supreme Court last month.

Although Mr Justice Leon, one of the appeal judges, said the hearing had been carried out in open court and confirmed that the charges and convictions had been set aside, the assistant registrar, Mr L O Fourie, refused the Mercury access to the files, saying merely that they 'were confidential'

He said they were locked in the safe of the registrar, Mr C Verwey, and refused to comment further

Mr Verwey, who was in Cape Town on court business, was the only person empowered to release the file on his return to the city on February 22, he said

The attorney-general refused to comment on the matter and both Mr Justice Leon and Mr Justice Broome — who heard Mr Riddell's appeal — stated that the decision to hold or release the file rested entirely with Mr Verwey

● Ormande Pollok writes that Mr Ray Swart, Progressive Federal Party MP for Berea, has tabled a series of questions in Parliament about the appeal by Mr Riddell

The questions do not specifically refer to Mr Riddell but it is clear that this is the case to which he is referring

Blackout clamped on arms case records

(252)

RDM 13/2/82

Mail Correspondent

A PUBLICATION blackout has been placed on the court records of the arms and ammunition case involving the former Zimbabwean soldier, Robert Riddell

The files were declared a confidential document after an urgent application by the Minister of Defence in the Maritzburg Supreme court yesterday

Mr Riddell's conviction and sentence of seven years' jail, imposed on three arms and ammunition charges, were set aside during an appeal last month

The files were first brought into public focus after a Durban newspaper tried unsuccessfully to learn details of the appeal brought by Mr Riddell

Supporting the application for an order prohibiting the disclosure of any parts of the records relating to Mr Riddell's appearances in the Magistrate's and Supreme Courts on arms and ammunition charges was Brigadier Richard Alexander Knipe, of the SADF's legal division.

Throughout the hearing before Mr Justice Leon yesterday, Brig Knipe referred to passages in the record that the Defence Force said should not be made public

The action had been brought by the Defence Force for several reasons — one of them being that it was difficult to say who had had access to the papers during the case's passage through the courts, Brig Knipe said

He said matters referred to by Mr Riddell in the papers could have a detrimental effect on the State and the Defence Force, and could lead to unfounded fears on the part of the public

Mr Justice Leon — who was one of the appeal judges — ordered that the Registrar of the Supreme Court, the Attorney General of Natal, Mr Riddel and Mr H W Weitz should show cause by March 26 why the order should not be made permanent.

The two-page order prohibits the publication, either directly or indirectly, of any sections, information and facts contained in the files kept in the safe of the Registrar, Mr C Verwey

A second section directly prohibits anybody making known any facts that have to do with the subject matter of the criminal proceedings in the case

Last month, though Mr Justice Leon had said the hearing had been in open court, the Assistant Registrar, Mr L O Fourie, refused the Press access to the files, saying merely that they "were confidential".

He said they were locked in Mr Verwey's safe and refused to comment further

Mr Verwey, who was in Cape Town on court business, was the only person empowered to release the file on his return on February 22

The Defence Force application yesterday came less than 24 hours after newspaper attorneys had tried unsuccessfully to gain access to the files

GENERAL NEWS

Exodus of prosecutors crippling the courts

252

Star 16/2/82

By Tony Stirling

Long delays in getting cases before court and falling standards of justice are being caused by the rapid staff turnover in the office of the Transvaal Attorney-General.

Six senior prosecutors, among them a Deputy Attorney General and one of the province's most experienced prosecutors in comercial cases, resigned from the Attorney General's staff this month

The Star spoke to some of those leaving All said that justice in South Africa was suffering because

- Rapid turnover in staff and heavy workloads both in the Department of Justice and the police meant delays of several years were possible in getting matters to court.
- People with insufficient experience were being called on to prosecute in serious cases
- The delays were causing hardship and stress to accused and taking the impetus out of the administration of justice

Among those who resigned to go into private practice this month are Mr Chris Jansen, SC, who prosecuted in the Silverton siege trial, and Mr J-L C van Vuuren, one of the most experienced men dealing with commercial cases in the Transvaal

In Mr van Vuuren's case this will mean that another prosecutor qualified to handle matters in the Supreme Court will have to take over some cases in which Mr van Vuuren and the police have been involved for up to five years

Those spoken to indicated that their main reason for leaving was the huge gap in earnings between advocates in private practice and those in the employ of the State.

SUPPORT

The Star found growing support for the idea that the State should hire private counsel to prosecute, including support from senior ranks of the police

However Attorney General Mr J E "Koos" Nothling said he was not even considering this possibility

Because of the critical shortage of prosecutors in the magistrate's court last year their starting salaries of prosecutors were raised significantly, and in addition allowances of between R300 and R400 were given in a bid to stop the exodus

New Ministry of Law and Order

Star 16/2/82

South Africa is to get a new Ministry of Law and Order, headed by the present Minister of Police, Mr Louis le Grange

The Prime Minister, Mr P W Botha announced this in the Assembly today when he said the Government had accepted the main recommendations of the Rabie Commission into security legislation

The commission's proposals about new definitions in security legislation have been accepted by the Government

Mr Botha said the principle of the revision of preventitive security action was also accepted

He said the new Ministry of Law and Order would have under its charge the South Africa Police headed by the present Commissioner and a directorate for security legislation headed by a director

...e Star

...nting terror ... cells

...Justice's ...atment ...l of Dr ...ect res- ...ds will ...n a legal ...he legal ...ks this ...th Afri- ...s that ...ence ...ce as if ...h ...and ...al ...of a ...ns in ...few in ...ir citi- ...chanism ...ernment ...ks has ...to allow ...al and ...ervision ...rogators ...n of the ...v responsi- ...s in the ...e horror ...e deaths ...ed they ...so long ...subject- ...hary con- ...prospect of ...themselves ...ere is little ...do to end the horror — short of insisting on a return to habeas corpus, which should be the aim of every civilised man in this land.

The Minister of Justice's assurance that justice will be done in the particular case of Dr Aggett is welcome, but he ought to be castigated for using the privilege of Parliament to allege without evidence, that Mrs Helen Suzman fabricates documents. Indeed the spectacle of the Nationalist caucus attacking a champion of law instead of attacking its own statutory Frankenstein monster is alarming for South African society.

The sight of a Government hiding behind Helen Suzman's skirts and behind a flimsy argument on sub-judice rules is not a pretty one. Its use of the excuse of "total onslaught" to justify the corruption of rule of law is also foreboding.

Only yesterday a spokesman for the US Administration gave a categoric assurance that the United States, the most powerful nation on earth, will "not support terrorism in order to bring change" to southern Africa. Such a categoric assurance deserves a categoric response — like getting rid of any possibility of terrorism inside the interrogation cells.

...d the poor

...IN court ...tely variable. The man on the

252 Star 17/2/82

Quality of justice is strained...

A crisis is developing in the courts because of the resignation of senior public prosecutors. Tony Stirling spoke to senior counsel to find out why these advocates are leaving the State's employ.

Recently, Mr Joel Mervis, PFP, MPC, a qualified advocate, called on the Attorney-General to employ private counsel as prosecutors because of the serious delays in bringing important matters to trial.

This month six senior prosecutors have resigned. All of them were qualified to handle cases in the Supreme Court, and one of them, Deputy Attorney-General, Mr Chris Jansen, SC, had 15 years' experience in the courts.

Senior prosecutors outlined a situation in which they felt forced to leave because of the huge earnings gap between advocates in private practice and themselves.

They predicted that unless there was a narrowing of this gap to more realistic levels, the administration of justice would continue to be delayed by a rapid turnover in staff.

According to the prosecutors, their counterparts in private practice with similar experience are earning up to four times more than the State pays its advocates.

While they realise the Government cannot match these salaries, they believe there should be a serious effort to narrow the gap.

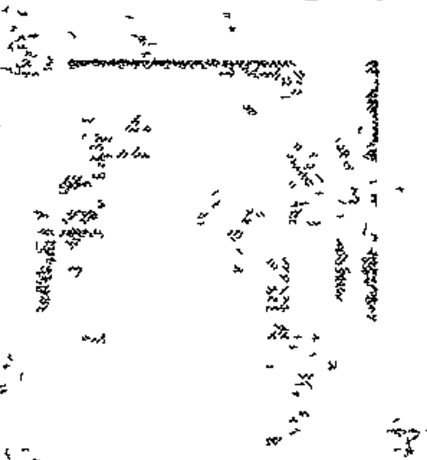
But money is not their only reason for leaving. Work overloads, frustration and the diminished status attached to their profession have contributed.

The Perskor case, involving an alleged circulation discrepancy was cited by Mr Mervis as an indication of the overload of work in the Attorney-General's office. It is by no means the oldest matter on the books, having been going only two years.

One of the advocates leaving the government service told me of two cases he has been handling that date back to 1977 and 1978. When a suggestion was made that he handle one of the matters after leaving, and which is due to come before court next month it was flatly refused. However, representations are to be made to the Minister of Justice for him to be permitted to prosecute.

Among the top ranks of the police, who publicly refuse to criticise a sister department, there is growing support for the idea that private counsel be employed to prosecute to overcome the crisis facing justice.

Those to whom I spoke said it took about five years to produce an advocate of sufficient experience to prosecute properly in major matters, particularly complex commercial cases.



Dr Yutar ... none of his calibre.

Often in the big cases the prosecutors are pitted against counsel of vast experience and only those who have thoroughly prepared a case and who have an adequate grounding in the courts can hope to match up to the "silks" employed by the accused.

The Star found that in the Transvaal a further factor has been worsening the workload of prosecutors. One man assigned to a specialist post with the rank of deputy attorney-general has not handled a matter for four years because he has been attached to commissions of inquiry.

It meant that the strength of that particular section was down 25 pecent. One of the aforementioned advocates has just again been appointed to a commission of inquiry.

A senior counsel said justice was suffering because of serious delays in getting cases to court — sometimes as long as five years.

"It is not only unfair to the accused, but it tends to water down justice since everyone concerned tends to forget about a case when it is so long in coming to court," he said.

Work overloads also applied to the police, he said, and cited an example of one officer who had opened more than 40 new dockets in complex matters in one month.

"The situation in the lower courts is even worse, and I have heard of instances in commissioners courts where interpreters had been called on to prosecute.

"It is not in the interests of justice to have unqualified men prosecuting, but if you cannot get to people then you have to do something," he said.

"In the lower courts prosecutors are not given adequate time to prepare their cases. Often it is a matter of being handed the file shortly before a case goes into court," he said. "In the past only prosecutors with at least a year's experience could handle a matter in the regional courts. Now people with three or four months' experience are doing it," he said.

When you consider the heavy sentences that can be imposed in a regional court it is unreasonable to expect anyone but an experienced prosecutor to handle cases there. "Often this is not so," he said.

"Something must be done to bring the standard of prosecution back up to what it was. The problem is you simply don't get men of the calibre of a Percy Yutar prosecuting any more and there must be reasons why this is so," the prosecutor said.

Tony Stirling is a senior reporter on The Star

Few players have g... more to rugby ... England's captain, ... Beaumont, who ... nounced his retire... from the game a ... days ago.

He was kicked on ... head while leading ... cashire in the co... championship fina... week last Saturday ... missed England's ... with Ireland at ... weekend. He has ... advised to stop pla... by doctors after a ... hour neurological ... mination showed un... nerability to old ... juries.

Both as leader an... player Beaumont ... gressed from slow ... ginnings to the ... First capped by ... land in 1975, he w... unlikely choice as ... tain when given th... in the 1977/78 se... He had had little ... experience of capt...

But, thanks part... the presence of ex... enced men round ... and more especial... his own personal... ample of honest... unwavering endea... he became a man ... everyone looked u...

The Lancashire ... which Beaum... showed on the field ... matched by his ... tilous manner o... with which he ... with friends ... strangers alike.

It is sad to think ... he will never pl... Twickenham again ... retirement at 29 l... an enormous gap ... rugby of the B... Isles.

The Lions are ... tour New Zealand ... year, and Beau... would almost cer...

G...

Star 18/2/82 (252)

Advocates do court typing

Advocates do typing and clerical work at the Rand Supreme Court because the Department of Justice has been unable to fill vacant posts

Deputy Attorney-General Mr T P McNally SC has been doing most of his typing since his typist retired at the end of last year

Mr McNally confirmed this but added a typist, employed on a part-time basis, had started work in his office this week

In the commercial branch, headed by Mr M T van der Merwe SC, a junior advocate who is also a competent typist is doing the typing for this department

Two of three typists' posts in the registrar's section have been vacant for over a year

Advocates are taking turns at administrative duties since the resignation of the chief clerk last month

But Mr McNally said there was no crisis in his division He had a full staff complement and had not had resignations for about 18 months

He denied staff shortages caused delay in bringing cases to trial In most instances delays were caused because attorneys found trial dates offered unsuitable

(252) RDM 23/2/82

Community work sentences on way

By LIN MENGE

A MEETING will be held with the Chief Magistrate of Johannesburg, Mr J A van Dam, early next month to set up a system by which criminals can be sentenced to community service instead of being sent to jail.

More than 60 organisations in Johannesburg are prepared to offer offenders work so that they may serve their sentences in their spare time, while keeping their jobs and continuing to live at home.

The scheme is being organised by the Johannesburg branch of the National Institute for Crime Prevention and Rehabilitation of Offenders (Nicro) on similar lines to that started by Nicro in Cape Town in 1979

"The Chief Magistrate, Mr Van Dam, keenly supports the idea and we will be meeting with him early in March," Mr Talbot Plater, branch director of Nicro in Johannesburg, said in an interview yesterday

With the assistance of the Chief Magistrate, a selection panel will be set up representing the courts, the Department of Health and Welfare, and organisations which provide offenders with work or supervision

This panel will screen all offenders considered suitable for sentencing to community service rather than to jail

The panel will make a recommendation to the court and the magistrate will then sentence the offender to work for a specified period in the recommended institution, for example a hospital, a children's home or an animal care centre

Either the institution itself, or Nicro, or members of organisations such as Lions or Rotary, will supervise the offender and report back to the court

Offenders of all races will be eligible for community service

It is hoped to extend the scheme later to administrative offenders, including pass law offenders

Mr Plater said the sentence would be related to the offender rather than to the crime For example, a shoplifter who is fond of animals might be sentenced to cleaning kennels after hours, rather than to cleaning a shop

"We will have to start off very gently, with relatively minor offences, but we aim to make it easier for magistrates to pass this type of sentence," he said

"We want to keep the idea before the magistrate all the time that community service is an effective alternative form of sentencing"

● The Criminal Procedure Act already provides for this type of sentence It is the implementation that needs court, State and community co-operation

Solution to GL5 (Cont'd)

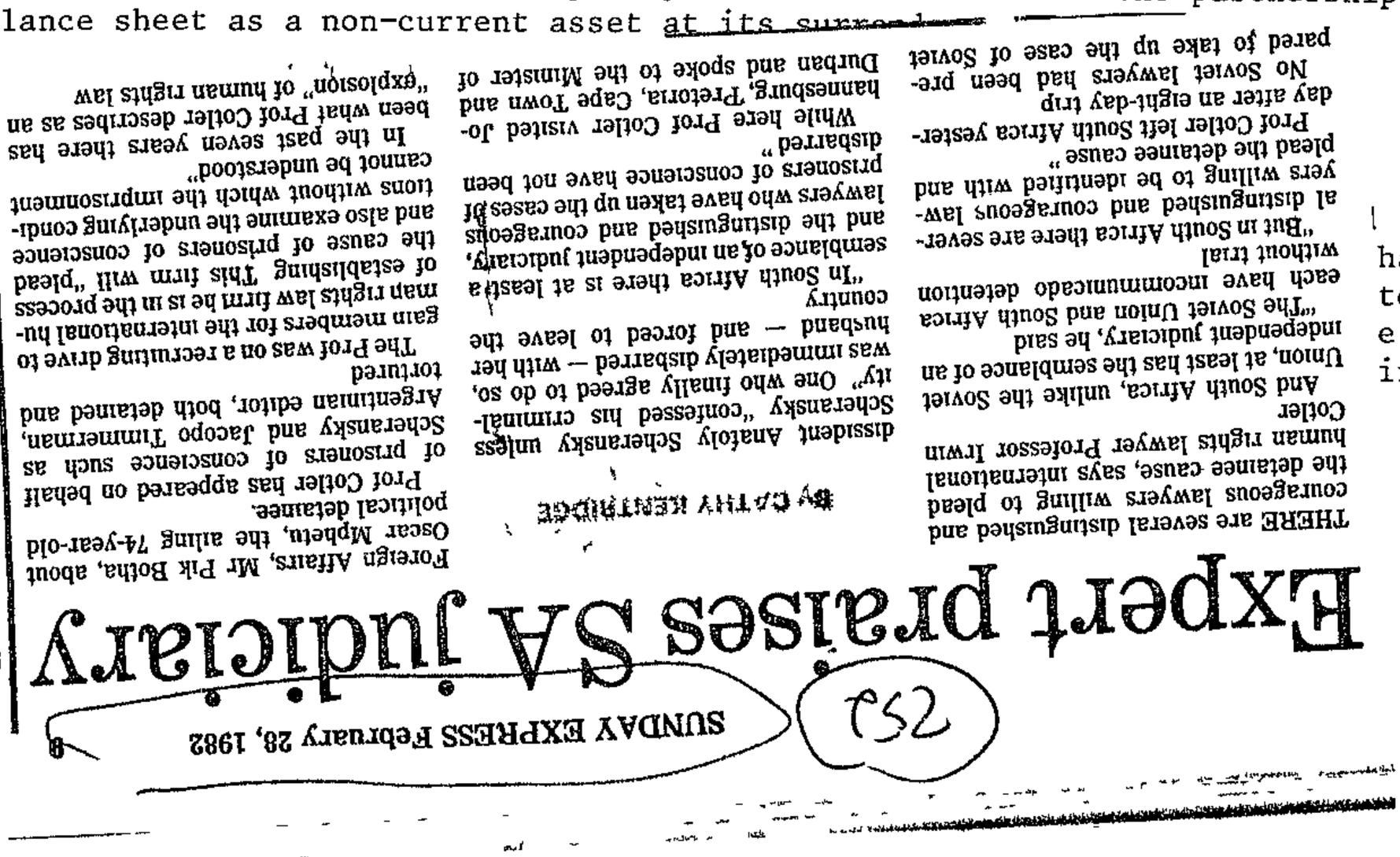
(2) Premiums Treated as an Asset - Cont'd:

Year 02 - same as year 01

03, Jan 1:	Life Policy	300	
	Bank		300
Dec 31:	Income Statement	60	
	Life Policy		60
	Policy written down to surrender value (See Note 1 below)		
04, Jan 1:	Life Policy	300	
	Bank		300
Jan 2:	Debtor (Insurance Company)	24 000	
	Life Policy		540
	Income from Life Policy		23 460
	being accrual of proceeds receivable		
Jan 2:	Income from Life Policy	23 460	
	Income Statement		23 460
	being closing entry		
Jan 31:	Bank	24 000	
	Debtor		24 000
	being receipt of proceeds		

Note 1:

At the end of year 03, the life policy would be reflected on the partnership balance sheet as a non-current asset at its surrender



SUNDAY EXPRESS February 28, 1982

252

Expert praises SA judiciary

By CATHY KENTRIDGE

THERE are several distinguished and courageous lawyers willing to plead the detainee cause, says international human rights lawyer Professor Irwin Cotler

And South Africa, unlike the Soviet Union, at least has the semblance of an independent judiciary, he said

"The Soviet Union and South Africa each have incommunicado detention without trial

"But in South Africa there are several distinguished and courageous lawyers willing to plead the detainee cause" Prof Cotler left South Africa yesterday after an eight-day trip

No Soviet lawyers had been prepared to take up the case of Soviet dissident Anatoly Scheransky unless Scheransky "confessed his criminality" One who finally agreed to do so, was immediately disbarred — with her husband — and forced to leave the country

"In South Africa there is at least a semblance of an independent judiciary, the distinguished and courageous lawyers who have taken up the cases of prisoners of conscience have not been disbarred"

While here Prof Cotler visited Johannesburg, Pretoria, Cape Town and Durban and spoke to the Minister of Foreign Affairs, Mr Pik Botha, about Oscar Mphetu, the ailing 74-year-old political detainee.

Prof Cotler has appeared on behalf of prisoners of conscience such as Scheransky and Jacopo Timmerman, Argentinian editor, both detained and tortured

The Prof was on a recruiting drive to gain members for the international human rights law firm he is in the process of establishing This firm will "plead the cause of prisoners of conscience and also examine the underlying conditions without which the imprisonment cannot be understood"

In the past seven years there has been what Prof Cotler describes as an "explosion" of human rights law

Public prosecutors

713 Mr D F DALLING asked the Minister of Justice

(1) (a) How many posts are there on the establishment of his Department for public prosecutors and (b) how many vacancies are there in each province in respect of such posts?

(2) whether there are any public prosecutors in the employ of his Department who are not in possession of the requisite qualifications if so (a) how many and (b) what are their qualifications?

The MINISTER OF JUSTICE

(1) (a) 712

(b)

Cape Province	0
Natal	1
Orange Free State	0
Transvaal	1

(2) Yes

(a) 23

(b) Matric With a few exceptions these officers have all progressed with their studies towards obtaining legal qualifications

ACCOUNTING A

SOLUTION TO: GL5

(1) Premiums Treated as Business Expense

01, Jan 1:	Insurance Expense	300	
	Bank		300
	being payment of premium		
Dec 31:	Income Statement	300	
	Insurance Expense		300
	being closing entry		

Years 02 and 03 - same as 01

04, Jan 1:	Insurance Expense	300	
	Bank		300
Jan 2:	Debtor (Insurance Company)	24 000	
	Income from Life Policy		24 000
	being accrual of proceeds receivable		
Jan 2:	Income from Life Policy	24 000	
	Income Statement		24 000
	being closing entry		
Jan 2:	Income Statement	300	
	Insurance Expense		300
	being closing entry		
Jan		24 000	24 000

(2) Prem

01,

Dec

300

300

ed/ ....

Injustice by delay

Star 3/3/82 (252)

MARITZBURG — A grave miscarriage of justice had resulted from delay in typing court records because a man who should never have been convicted had been kept in jail since November, Mr Justice Page said in Maritzburg yesterday.

He said that the delay in preparing the records had stultified the whole purpose of automatic review by the Supreme Court over magistrate's court cases.

He ordered that a copy of his judgment be sent to the Registrar of the Supreme Court.

The judge was quashing the conviction and five-month sentence of Mr Siphiwe Henry Maduna (26) who had been convicted of robbery at Newcastle on November 26 last year.

The typed copy of the proceedings was received by the magistrate, Mr A E Brown, only on January 25 this year and the case was submitted for review the following day

Mr Justice Page said that the result of this delay was that, due to no fault of the magistrate, the accused already had served most of the sentence

He said it had never been properly investigated whether Mr Maduna, who had been trying to recover money from a gambling associate, had used excessive force or had applied the force for an unnecessarily long time

Mr Maduna should therefore not have been convicted

Mr Brown pointed out there had been a shortage of transcribers in Newcastle

Delay kept man in prison

(252) Mercury 4/3/82

Pietermaritzburg Bureau

A LENGTHY delay by a private company which transcribes court recordings resulted in a miscarriage of justice and forced a man to serve most of a prison sentence that should never have been imposed, a Supreme Court judge said here

The firm, Lubbe Recordings, had been given the tapes of the hearing in which a Newcastle man, Mr Themba Nkabinde, was found guilty of robbery and sentenced to five months' imprisonment on November 27 last year — the day after his sentencing, said Mr Justice Page, with Mr Justice Broome

The typed record was, however, only received by the magistrate on January 25 and was submitted for review to the Supreme Court the next day

'As a result of the delay the accused served most of a sentence which should not have been imposed and a grave miscarriage of justice resulted, and the whole purpose of automatic review has been stultified,' Mr Justice Page said

Rectified

The 'highly unsatisfactory state of affairs' should be reported to the Registrar of the Supreme Court and rectified immediately, he ordered when setting aside the sentence and conviction

Mr Nkabinde had been arrested after he and another man had been seen gambling by a policeman, the Judge said

Mr Nkabinde's fellow player had grabbed the money, including Mr Nkabinde's stake, and attempted to flee Mr Nkabinde had then wrestled with the man and taken back his cash forcefully

The magistrate had never properly investigated whether Mr Nkabinde had employed excessive force to regain his possessions, but the struggle had been 'part and parcel of Mr Nkabinde's endeavour to retrieve his money,' the Judge ruled

Indicates translated version

For written reply

(252) Hansard Q Col 256-257

Court interpreters

4/3/82

410 Mr D J DALLING asked the Minister of Justice

(1) (a) How many posts are there on the establishment of his Department for court interpreters and (b) how many vacancies are there in respect of such posts,

(2) whether any such posts are filled by persons who are not in possession of the requisite qualifications; if so, how many?

The MINISTER OF JUSTICE

(1) (a) 575

(b) 6

(2) 75, mostly persons on probation who have not yet passed the formal selection test for court interpreters

[illegible] Minister for Justice

(1) (a) How many posts are there on the establishment of this Department for clerks of court and the magistrates courts, but not including clerks who are there in respect of such posts

(2) Whether any such posts are filled by persons who are not in possession of the requisite qualifications; if so, how many?

THE MINISTER FOR JUSTICE

Clerks of the courts are the designation given to the grade of a junior rank administrative staff attached to magistrates courts in respect of the particular courts of justice [illegible] in accordance with the duties specified by statute

	(1)(a)	(1)(b)	(2)	
Senior Administrative Assistant	419	18	Yes	28
Administrative Assistant	604	41	Yes	25
Senior Clerical Assistant	100	24	No	
Clerical Assistant	390	84	Yes	46
Total	1 513	167		99

Ex-Chief Justice Steyn under fire

(252) WM 13/3/82

Mail Reporter

FORMER Chief Justice L C Steyn — a major influence in the development of South African law — has come under attack for favouring the State in cases where its interests were in dispute

The criticism is levelled by Mr Edwin Cameron, a former lecturer in the University of the Witwatersrand Law Faculty, in the latest edition of the SA Law Journal

Mr Steyn retired in 1971, after nearly 16 years in the Appellate Division — 12 of them as Chief Justice The influence of Mr Steyn on the legal system was far-reaching — and regrettable — according to Mr Cameron

"He was appointed in 1955 to an Appeal Court which had gained a reputation throughout the Western world for its fearlessness and for championing fundamental rights He did not leave it so"

Mr Steyn's appointment to the bench in 1951 was one of the earliest made by the National Party Government

Mr Cameron calls his rise to the top post in under eight years "meteoric"

"The bald facts of his elevation leave no question but that he was the man marked out by the new regime to be its chief judicial officer — a role he filled with utter appropriateness

"His flaccidity in the defence of individual liberty and his zeal for rendering unto the executive what he thought due to it no doubt suited a Government driven to increasingly repressive statutory measures in order to subdue the dissent which the implementation of its ideology occasioned"

BACKGROUND to the news

Wanted: some guidelines for the gallows

252

Star 17/3/82

"Only" 96 people were executed in South Africa last year compared to an average of about 130 in the three previous years, according to official statistics. But the generally high hanging rate has prompted a call for the courts to be given more clearcut guidelines when passing sentences for murder. A prominent legal academic has suggested that, if they were granted more discretion in passing the death sentence, some judges might sentence even more people to death unless limiting principles or guidelines were developed.

Chief Reporter

The death sentence is such an extreme measure that lawyers are now questioning whether the South African courts follow an adequate procedure when they judge murder cases

The debate about the death sentence is usually couched in moral terms such as the right to take a person's life even if he is a murderer

But the latest contribution to the debate takes a critical look at whether the courts consider all the necessary criteria before they take the ultimate step of passing the death sentence

It is contained in an article written in the February issue of the SA Law Journal by Dr Dirk van Zyl Smit, associate professor of law at the University of the Witwatersrand

The Criminal Procedure Act restricts the discretion of the courts in murder cases, the article points out

The death sentence for murder is mandatory unless the court finds extenuating circumstances (or unless a woman is convicted of murdering her newly-born child or where a person under the age of 18 is convicted)

Dr Smit quotes a judgment which suggests that the courts have a freer discretion to impose the death sentence

But, he adds "Judges who are predisposed towards the death sentence for murder might, it is respectfully suggested impose the sentence of death with too great a facility if limiting principles or guidelines were not developed"

Put bluntly he is saying that, if you give some judges more rope, they may hang more murderers. What the courts need are clearcut guidelines

Dr Smit says it is clear that there are substantial limitations imposed on courts by the current provision requiring extenuating circumstances to avoid a death sentence

For example, extenuating circumstances for a murder do not include evidence relating to the character of an accused person — including the question of whether he has previous convictions

The courts also have to treat all murders in the same way — whether they are "serious" murders or not A "serious" murder would include a deliberate murder for gain

Dr Smit points to United States Supreme Court's view that, without guidelines, the death sentence is arbitrary

"The American experience points to the dangers — and the challenges — inherent in allowing South African courts a discretion to impose the death penalty for murder," he adds

"The possible danger is that the death sentence for murder might be too freely imposed"

Dr Smit proposes two possible solutions One is that the courts themselves develop a set of principles The other is that the law be changed to lay down guidelines

He writes that, in general, it would be more desirable for the courts to do so But the Appellate Division has, in the past, been reluctant to lay down firm guidelines for sentencing

Dr Smit proposes that, because of the gravity and finality of the death sentence, right of appeal should be automatic, which it is not at present.

He points out that a call to give the courts more discretion on the death sentence for murder was based on the assumption that this would bring about a significant reduction in the large number of death sentences and executions

The call also presupposes that it would be possible to identify fairly and justly the "serious" cases of murder for which the death sentence should be imposed

Also, most statistics indicate that the killer, or the rapist, of a white victim is most likely to be sentenced to death, he adds

The social attitudes which underlie this might be too deep rooted to be eliminated by procedural reforms, he writes

Dr Smit proposed that, if procedures were changed, "before-and-after" studies should be made on whether the exercise of judicial discretion had been modified

"If the studies demonstrated that real changes had not taken place even those who have no fundamental philosophical objection to the sentence of death for murder might well be persuaded that it cannot be implemented justly in our society and ought, therefore, to be abandoned," he concludes

(252) Hansard Q.(6) 434-5
19/3/82

State prosecutors

*15 Mr P. R C. ROGERS asked the Minister of Justice:

(1) Whether State prosecutors have to gain a certain number of years' experience in district courts before being transferred to regional courts, if so, what is the average number of years' experience that has to be so gained,

(2) whether he intends to change this position, if not, why not, if so, (a) why and (b) when,

(3) whether he will make a statement on the matter?

The MINISTER OF JUSTICE

(1) There is no statutory requirement in this regard In practice it is endeavoured to appoint only those State prosecutors who have gained sufficient experience in district courts, as regional court prosecutors

(2) and (3) No, prosecuting ability varies from person to person and the present arrangement whereby the utilisation of the services of State prosecutors on their staff is left in the discretion of heads of offices, is regarded as satisfactory

JUDGE WHO STEERED JUSTICE AWAY FROM HUMAN RIGHTS IN STATE'S FAVOUR IS IN THE OPEN NOW

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21/3/82 S. Express

A UNIQUE and critical analysis of the career of the controversial former-Chief Justice L C Steyn, which appears in the February issue of the South African Law Journal, has caused a stir in legal circles

The analysis, which mainly relies on decisions made by Mr Justice Steyn in the course of his 16 year career in the Appellate Division, was made by Mr Edwin Cameron, a former law lecturer at the University of the Witwatersrand

He concluded that Mr Justice Steyn had a "towering but parsimonious intellect that he was a scrupulous but ungenerous judge, that his attempt to rid South African law of its unique and fundamental connection with English law was not only jurisprudentially and historically unjustified, but ultimately quixotic that he was an unfettered but — of his own volition — executive-minded judge and that during his term of office a legal temperature, already chill for the survival of human values and the preservation of fundamental freedoms, turned several degrees colder

The phrase "executive-minded" is used by lawyers to indicate a leaning towards the Government or a public body when its interests are at stake rather than towards the individual and it occurs often in criticism of the former Chief Justice who retired in 1971 and died five years later

Reactions in academic legal circles to the article range from welcome of the scrutiny to disagreement with Mr Cameron's conclusions

Professor John Dugard, head of the Centre for Applied Legal Studies at the University of the Witwatersrand said that "in other countries academic lawyers frequently examine the legal philosophy of judges

'In South Africa this has not been seriously attempted in the past largely because of the tendency in our society to place judges beyond reproach and criticism

"Mr Cameron's article is significant in that it breaks with that tradition and places one of South Africa's most controversial Chief Justices under scrutiny

"For many years Judge Steyn has been much criticised among practising and academic lawyers because he introduced an executive-minded approach to decisions of the Appellate Division in matters affecting human rights thereby breaking with the more liberal approach of the Appellate Division before his appointment

'Now the criticism is out in the open I believe this is a very healthy development It would be a good idea if the present Appellate Division was subjected to the same scrutiny"

On the other hand, Roman Dutch Law expert Professor T J Scott, of Pretoria University, thought that although Mr Cameron's article was "thoroughly written and well-researched, I am not in accordance with the conclusions he reaches I find it a bit slanted It casts a disfavourable light on L C Steyn"

Born in 1903, Lucas Cornelius Steyn grew up in what Mr Cameron described as the "difficult 'reconstruction' years of what had become the Orange River Colony

"The Afrikaner minority was embattled on two fronts By the numerically overwhelming black population and the British victory over the Boer States in the war of 1899-1902 which threatened to portend the political and cultural eclipse of the Afrikaner people"

Mr Justice Steyn attended the University of Stellenbosch and after what is described as a "brilliant career" in the public service, where he is said to have gained "one of the highest assessment ratings accorded anyone in that institution" he was appointed to the Bench in 1951

His eight-year rise from being a civil servant, through the ranks of Supreme and Appeal courts, to being appointed Chief Justice in 1959 over the heads of more senior members of the Appellate Division, is described by Mr Cameron as "meteoric"

"The bald facts of his elevation leave no question but that he was the man marked by the new regime (the Nationalist Government came to power in 1948) to be its chief legal officer — a role he filled with utter appropriateness

"His flaccidity in defence of individual liberty and zeal for rendering unto the executive what he thought due to it no doubt suited a government driven to increasingly repressive statutory measures in order to subdue the dissent which the implementation of its ideology occasioned"

From the outset Mr Justice Steyn's judicial career was controversial Contemporary newspaper reports record the decision by the Johannesburg Bar to boycott his court for the first 21 days of his appointment to express "the Bar's strong disapproval and deep concern at the breach of principle, namely, the appointment of a public servant to the Bench"

According to the account the Bar felt this step was necessary "to emphasise the necessity in the public interest for an experienced and independent judiciary

'A Bench which is, and which is known to be absolutely independent and absolutely fearless is the foundation of our liberties"

And according to Mr Cameron, the initial fears expressed by the Johannesburg Bar were justified by the nature of the decisions handed down by Mr Justice Steyn in the course of his judicial career

He was a Roman Dutch law purist who wanted to 'terminate the special bond' with English law" and did so "not only by firing broadsides but by embarking on a

Jeer Chief Justice slashed for his flaccid defence of liberty

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● Mr Justice L C Steyn, a former Chief Justice, steered South African justice away from its championing of fundamental rights in favour of the Nationalist Government His decisions in the Appellate Division had a lasting — and damning — effect on future judgments on human rights

S. Express 21/3/82

war of attrition which would eventually see the English elements in our legal system starved of their support"

According to Mr Cameron the "coming of the British in 1806 had profound effects on the nature and basis of the common law applicable in South Africa

"By accretion, by growth, by infiltration, by imposition, English law could (have) become an integral source of South African law This is in fact precisely what occurred

"Yet Steyn tried to denounce this process both by expressly repudiating what he considered to be unjustifiable reliance on English sources or seeking to repel the intrusion of English doctrines and concepts, and by simply ignoring English Law and legal precedents in South African cases"

Mr Cameron added. "It has been suggested that the attitude underlying this approach is the legal counterpart of the nationalist resurgence that was sweeping white South Africa

"On a broad view it is suggested that what the National Party sought to attain in terms of racial exclusivity and purity by means of the Prohibition of Mixed Areas Act, the Immorality Act and similar measures, the Roman Dutch purists sought to achieve in respect of South Africa's legal system"

Mr Cameron cited particular appeals, where Mr Justice Steyn was the senior judge, in which offences under these Acts were in issue and arrived at the conclusion that "considerations of individual justice and fairness were neglected in the interests of executive freedom of action"

Mr Cameron concluded that the influence of Mr Justice Steyn's "learning, personality and perception of justice was far-reaching and that he left a sombre and considerable legacy"

Cape Times 22/3/82 (252)

New Supreme Court system speeds trials

By SARAH HETHERINGTON

A DRAMATIC speed-up of the judicial process in the Cape Town Supreme Court has resulted in three murder cases and a rape case coming to trial within about a month of the crimes

An appeal has also been heard within three weeks of the sentence being handed down in the Magistrate's Court, and the number of cases being handled by the court has more than doubled

The Deputy Attorney-General, Mr Frank Kahn, SC, said last week that the record cut-down in delays was a result of the new system introduced last September which makes maximum use of court hours

Cases are being brought to court quicker than ever before as a result of close co-operation between the judiciary, the Attorney-General's staff, advocates, attorneys and the police

Mr Kahn said that the speed-up had been achieved in spite of staff shortages This was in the interests of both the State and the accused

"Of course, the advantages are obvious The accused is innocent until convicted and the anxiety of the awaiting-trial period is done away with

"For the State, the advantage is that the evidence is fresh In a recent case the court could inspect a flat with bloodstains still present

In November last year, the Judge-President, Mr Justice Munnik, said there was no question of individual cases being rushed or of the civil roll being affected

No pressure

Mr Kahn said yesterday everyone involved in the process of getting a case to court had become so used to the new system that they were no longer "acting under pressure"

Among the cases that have made Cape judicial history in coming to court so quickly are

- Jan Swarts, 28, was sentenced to death on January 13 for murdering 15-year-old Johan Fletcher with an axe at his home in Bellville on December 10 last year
- Themba Radebe, 37, was sentenced to death on February 19 for the murder of a Sea Point attorney, Mr Izak Resnick, 83, in his London Road flat on January 31
- A 20-year-old Worcester man, Mr Heinrich Kotze, is currently on trial charged with the rape of a woman on March 1
- Mr Isaac Fortuin, 34, of Bellville, is currently on trial charged with murdering a Bellville naturopath, Mr Francis Lawrence, at his surgery on February 13

TUESDAY, 23 MARCH 1982

†Indicates translated version

For written reply: Hansard

(252) **Staff shortages** Q.Col. 444 – 445

112 Mr D J DALLING asked the Minister of Justice

Whether any services provided by his Department were suspended in 1981 owing to staff shortages, if so, (a) what services and (b) where?

The MINISTER OF JUSTICE

(a) and (b) During the first half of 1981 all criminal courts could, especially in Johannesburg, not function at all times as a result of a shortage of legally qualified staff After the institution of a special allowance and other improved conditions of service with effect from 1 April 1981, the position improved to such an extent that a sufficient number of legally

qualified persons are at present available to suitably fill almost all posts of magistrate and public prosecutor As far as administrative services are concerned, the telephone enquiry facilities for maintenance recipients at the Magistrate's Office, Johannesburg were suspended A shortage of clerical staff at a few offices, mainly on the Witwatersrand, also had as a result that during the second half of 1981 certain sections of the offices concerned were only open to the public until 13h00 instead of 16h30 daily With a few exceptions, these problems have since been solved by means of internal arrangements.

(252) Hansard Q. Col. 446

Extradition requests

23/3/82

334. Mr. R. R HULLEY asked the Minister of Justice.

(1) (a) How many requests for extradition have been (i) received and (ii) granted since 1 January 1981 and (b) what was the reason for each such request,

(2) whether all persons against whom extradition requests were granted have left the Republic, if not, (a) how many have not left the Republic and (b) why not?

The MINISTER OF JUSTICE

(1) (a) (i) 12

(ii) 1 (11 Applications are still receiving attention)

(b) Two requests for purposes of trial in Italy on charges of terrorism and murder, respectively; 1 for trial in Germany on charges of sexual crimes; 2 for trial in Venda on charges of *inter alia* murder, and 7 for completion of sentences in Transkei.

(2) No.

(a) 1

(b) The person involved is at present serving a sentence of imprisonment in the Republic of South Africa.

OR
Oq

Reducing the high costs of litigation

CAPE TIMES 23/3/82 252

By J R DENDY YOUNG, S C

AMONG the several features of our system of justice calling for reform, none is more pressing than the matter of costs of litigation This is an unacceptable face of our courts today

The pauper procedure provided has proved inadequate. It has been supplemented by legal aid for the indigent, but because of the restricted meaning given to indigency, legal aid is hopelessly inadequate Justice must be made accessible to that large sector of society which lies between the pauper or indigent and the rich

The right of legal representation in the courts is an indispensable safeguard of justice and freedom

There must be an in-depth inspection of some of the sacred cows of our legal system in regard to costs First, the rule that the loser pays all must be abolished in favour of the United States rule that only in exceptional circumstances is an award of attorney's fees made against the loser in litigation, that is to say, where the action has been brought unnecessarily and the winner has been compelled to litigate by the unreasonable obstinacy of the loser

If a person thinks he has a just claim and has to go to court to recover it, why should he or she have to risk possible financial ruin if the claim is lost? Losing a case in court by no means necessarily implies that the claim was bad in law There is some foundation for the cynic's view that to win in court you must have a good case, a good judge, a good advocate, a good attorney, a good bank balance and good luck Something can quite easily go wrong along that line without fault on your part An award of costs against the loser is in truth an award of damages to the winner But what wrong has the loser done to justify such an award?

Exercising a constitutional right to take a genuine dispute to the courts for decision cannot surely be a wrongful act, and it is only for a wrongful act that damages can be awarded The English rule (followed in this country) that, save in special circumstances, the loser pays the costs of both sides is unique to the United Kingdom The fact that the rule operates as a serious deterrent to litigation is no justification

Second, the principle of contingency fees should be admitted in our practice Contingency fees are allowed in the United States but not in the United Kingdom We follow the United Kingdom The prohibition of contingency fees stems from the old English rule against champerty which prohibits any bargaining for a share in the spoils of litigation in return for assistance in bringing the suit In the United States the principle of contingency fees is an important factor in bringing litigation within the reach of the poor and not-so-poor

Third, the division (imposed by statute) of the legal profession into advocate and attorney ought to be abolished It is the source of massive escalation in the costs of litigation and any positive contribution to the administration of justice is very doubtful, it is monopolistic and a drag on the market

The division is a relic from the legal system in the United Kingdom Once upon a time there may have been some justification for the rule. In the 18th century Dr Samuel Johnson could still observe that "he did not care to speak ill of any man behind his back, but he believed the gentleman was an attorney" Anecdotes of the late Samuel Johnson by Hester Lynch Piozzi, published 1786

Of course, today such an observation would be entirely inappropriate and, moreover, the qualifications for admission as an advocate or as an attorney are now very comparable The division has never existed in the United States, where the term advocate is synonymous with the terms attorney, counsel or lawyer It survives in odd parts of Australia Long ago it prevailed in Germany, but was abolished in 1879

It was once said that the traditional clients of the lawyer are the rich That no longer applies

(252) **Public prosecutors** Hansard 24/3/82 Q. Col. 457–458

*5. Mr. P R. C ROGERS asked the Minister of Justice,

(1) Whether any complaints relating to the workload of public prosecutors

have been lodged with him of late; if so, (a) how many, (b) by whom and (c) what was the nature of the complaints;

(2) whether he (a) intends to take and (b) has taken any steps to remedy the position, if so, what steps?

The MINISTER OF JUSTICE·

(1) No

The rest of the question falls away.

An interview with Association of Law Societies of SA chief Monty Knoll

W/E ARGUS 27/3/82

The case for an Ombudsman in SA

(252)

A SEMINAR on the need for an Ombudsman in South Africa will be held at Stellenbosch on Tuesday and Wednesday next week under the auspices of the Association of Law Societies of South Africa, the International Bar Association and the International Ombudsman Institute. Legal circles in South Africa think the time is ripe to inquire whether such a new office — directly responsible to Parliament — should be established and, if so, how.

In an interview in Pretoria with JOHN PATTEN, the president of the Association of Law Societies of South Africa, Mr Monty Knoll, answers questions about the issue.

WHAT is the purpose of the discussions on an Ombudsman?

This is the first concerted move towards having this question debated in public The objective behind the move is to see whether such an office could be accommodated, and if so, what form it should take.

Where did the seminar idea originate?

This came about basically because of the membership of the Association of Law Societies of South Africa in the International Bar Association, which has a sub-division called the Ombudsman Forum. It is there to promote the advance of the office of Ombudsman throughout the world.

This idea actually took shape at the biennial conference in 1980 in West Berlin of the International Bar Association in the course of talks

concept The idea of the seminar is to get ideas as to the form — given our set-up — that would suit us.

Would it be separate from the Government?

Very much so An Ombudsman classically stands independent of the executive arm of the State We would

Advocate General limited

'THE Advocate General's powers are very limited — State financial irregularities are virtually all that may be regarded as within his scope.'

between South African lawyers and members of the Ombudsman Forum.

Out of these talks grew the idea of holding a seminar.

Is the Association of Law Societies of South Africa convinced of the need for such an office?

It has felt for some years that there is such a need and that a probe is needed to see whether in fact its view is justified We think that whatever we can do to assist in the understanding of this office can only be useful in the general public interest

The post of Advocate General was set up fairly recently. Was that not sufficient?

The Advocate General's powers are very limited — State financial irregularities are virtually all that may be regarded as within his scope.

What sort of Ombudsman would be wanted?

This is an investigatory seminar We in the legal profession know the Ombudsman institution works well in many Western countries.

We believe — as is the case today in most Western countries — that administrative law has become such a large part of life that it affects the citizen at almost every turn Some mechanism needs to be provided to deal with this We believe the time is right for the institution of such an office

Would this be by extending the office of the Advocate General?

The existing machinery could be extended into a wider field, but we are not in any way married to that office should be a man of totally independent stature, who should report to Parliament as to what he has done in the previous year, what complaints he has investigated and what recommendations he has made.

Tabling of that report would make it a public document The real force of the Ombudsman lies in the fact that he can compel public scrutiny of official action After due investigation of a complaint, he must either recommend action or not recommend action.

Head of Law

As we see the office, that would be the total extent of his powers He would not have powers of implementation.

He would not himself be able to prosecute?

No. There are countries in which ombudsmen have prosecuting powers. I would say the feeling in our profession is that that should not be part of his office He would simply make recommendations and not enter into the field of conflict It is absolutely essential he should be, and be seen to be, totally impartial

Should he be from the Bench or at least from the legal profession?

We have no firm ideas on that, but one would imagine that the training of the judge would be ideally suited to this type of office He is trained to weigh evidence, hear both sides and then come up with an impartial finding, and reasoned and just recommendations His whole training and background is fitted for that type of office

Would he have to conduct a formal inquiry?

He would not be a court The classical Ombudsman does an informal investigation. If he gets a complaint against an official, he would investigate that complaint in any manner he might find fit.

A lot of value lies in the fact that the investigations are informal Where one finds you are investigating an official who has a job of work to do and you don't want to disturb his work more than is necessary, it is possible one could go to his office to discuss matters.

There would be a considerable volume of minor complaints where one does not want any kind of formalism or waste of time.

The other advantage of having power to investigate minor complaints is that the courts are not suitable vehicles for the bringing of minor complaints, because there are delays and costs Costs to the individuals concerned would be virtually eliminated in the case of the Ombudsman. Some means may, however, have to be devised to discourage frivolous or purely vexatious complaints.

Could the Ombudsman investigate any complaint?

That would depend on the form adopted Some ombudsmen cannot investigate complaints against Ministers of State — the reason being that this could affect their responsibility to Parliament But countries in which this is the case are in the minority. The classical Ombudsman in, for example, the Scandinavian countries, is there to investigate any complaint by any private citizen against any instrument or official of State He can also himself take the initiative

Society's body

This serves a very useful purpose, because there is a need for a vehicle or method whereby people can ventilate their complaints and know they will be attended to.

It does not always mean the complainant will win A great advantage of the office is that where a government servant is found to be in the right, it is equally important that the government office will be vindicated in public.

When would it become public knowledge that a complaint had been made?

I don't know how it would be here In my view, the proceedings — particularly in matters of major import — should be open to the public This may be subject to some practical modification in minor complaints Secrecy should be avoided Publicity must be ever present, even if in minor cases it is only at the stage when the complaint has been investigated and the report made to Parliament.

ABOVE — Mr Monty Knoll, the president of the Association of Law Societies of South Africa.

Would he have the right of subpoena and search?

Certainly, otherwise he would not have any teeth to carry out his function. He would have power to call for documents You would have to give him full power to carry out his function.

What about security matters?

That is relevant to publicity. If this country were to adopt an Ombudsman in the widest sense, including security matters (and this one doesn't know), then in the nature of things a great deal of that work might have to be kept confidential.

It might be that the country would like to have more than one Ombudsman. The Government might wish to set up some separate machinery in the field of national security

Permissive new society is flayed by judge

(252) Star 31/3/82

By Caroline Braun

Permissive society in industrialised countries has had a damaging effect on justice, says the Judge President of the Transvaal, Mr Justice Boshoff.

Addressing a graduation ceremony at Potchefstroom University yesterday, Mr Justice Boshoff said there was a huge increase in the crime rate throughout the Western world because of social instability.

He said the workload of the courts was piling up daily and there was a fear that eventually there could be a breakdown of law and order.

He quoted the crime rate in Yeoville over the past five years to illustrate how the probelm was growing. Since 1977 there have been 11 664 crimes in the suburb including 81 murders, 50 rapes, 401 robberies, 7 779 thefts and 653 assaults.

"Marriage as an institution is also taking a knock. Every Wednesday in Johanesburg up to 212 unopposed divorce cases come before the court.

"Many marriages break up within a year and often one partner is already living with a new mate by the time the divorce comes to court.

"In our industrialised society we are living in a system of short-term relationships We are becoming mentally oriented to a breakdown of family life and a decrease in the influence of the church and religion

"The new morality has led to a decline in decency and respect for authority and a measure of unwillingness to accept responsibility for other people.

"It has also led to an increase in divorce, violent crime, juvenile crime, alcohol abuse, drug addiction, mental disturbances and student and civil unrest," Mr Justice Boshoff said

(253) **Extradition treaties** 31/3/82

Hansard Q. Col 528

*22 Mr B B GOODALL asked the Minister of Justice

Whether South Africa has extradition treaties with any countries, if so, with which countries?

†The MINISTER OF JUSTICE

For obvious reasons it is not customary to furnish this information, but if the hon member is interested in it, I shall gladly give him the information on a confidential basis in my office

(2) Altogether five reports were presented on 12 July 1977, 4 November 1977, 27 April 1978, 23 November 1978 and 20 November 1979 respectively to the depositors of the bank and the Registrar of Banks

(3) No

(4) No further investigations were necessary

(5) There is no statutory obligation to lay the reports upon the table of Parliament Depositors accepted an agreement in terms of Section 311 of the Companies Act 973 in terms of which

1 The bank was sold

2 All subsidiaries of the bank as well as the assets of the bank were transferred to a newly established company within the group, and

3 The depositors of the bank acquired, on a proportional basis, shares in the newly established company in exchange for that part of their funds which was not repaid to them so that they own 100 per cent of the share capital of this company All remaining claims of depositors were converted to shareholders loans to the aforementioned company

After the abovementioned agreement was confirmed by court, the curatorship of the bank was terminated

African International Publishing Company

*4 Mr D. J N MALCOMESS asked the Minister of Foreign Affairs and Information

(1) Whether any funds or portion thereof paid to the African International Publishing Company were deposited by that company with a banking institution the name of which has been furnished to the Minister's Department for the purposes of his reply, if so, (a) when and (b) what amount (i) was so deposited and (ii) has been recovered to date,

(2) whether it is anticipated that further funds will be recovered, if so,

(3) whether such further funds will be paid over to the State Trust Board, if not, why not?

†The MINISTER OF LAW AND ORDER (for the Minister of Foreign Affairs and Information)

(1), (2) and (3) The State Trust Board has no claim against *African International Publishing Company (Pty) Ltd* For particulars regarding this are contained in the *Special Report of the State Trust Board* dated 10 June 1980 which was tabled on 13 June 1980

Alfeskor Trust

*5 Mr D J N MALCOMESS asked the Minister of Foreign Affairs and Information

On what date or dates was the amount of R395 437,50 deposited through Alfeskor Trust with a certain banking institution, as referred to in his reply to Question No 12 on 26 February 1982?

†The MINISTER OF LAW AND ORDER (for the Minister of Foreign Affairs and Information)

On 10 August 1976

252 Hansard Q.62 376 – 517 31/3/82

Staff shortage

*6 Mr P R C ROGERS asked the Minister of Justice

(1) Whetehr his Department is experiencing a shortage of staff, if so,

(2) whether such shortage is affecting the administration of justice in respect of the time (a) taken for cases to come before the courts and (b) spent in prison by accused persons awaiting trial, if so to what extent in each case?

The MINISTER OF JUSTICE

(1) Yes, as far as clerical staff is concerned

(2) (a) and (b) No I wish to add that the number of cases enrolled every day is determined by the number of courts available to try those cases and is unlikely to be adversely affected by periodical shortages in supporting clerical staff which are presently being alleviated by reorganization and the working of overtime No statistics are available to indicate whether or not the shortage of clerical staff caused any delay in bringing accused persons to trial Even if reports in this regard were called for from every court in the Republic (there are more than 300 magistrates' offices) it is most unlikely that delays, if any, resulting from clerical staff shortages would be distinguishable from other delaying factors such as absence of witnesses and remands

East London· foot patrols

*7 Mr P R C ROGERS asked the Minister of Law and Order

(1) Whether police personnel are available for foot patrols in the commercial centre of East London during the (a) day and (b) night, if not, why not, if so,

(2) whether it is his intention to increase the police personnel available for such patrols?

The MINISTER OF LAW AND ORDER

(1) (a) and (b) Yes

(2) No, unless circumstances require it and the manpower position is such that more members can be made available for that purpose

Normalization of sport

*8 Mr D J DALLING asked the Minister of National Education

Whether pursuant to the recommendations of the report on the normalization of sport in South Africa which was published by the Human Sciences Research Council in 1980 he (a) intends to take or (b) has taken any action relating the Reservation of Separate Amenities Act, No 49 of 1953, if not why not, if so, (i) what action and (ii) when?

†The MINISTER OF ENVIRONMENT AFFAIRS (for the Minister of National Education)

In a press statement dated 22 May 1981 I pointed out that the Government agreed that a further in-depth investigation of all aspects of the Reservation of Separate Amenities Act was desirable, but that apart from legal experts experts in other fields too would have to be involved This investigation has meanwhile been referred by the Department of Community Development to the Technical Committee investigating the Group Areas Act and related Acts

Unsealed drinking straws

*9 Mr P C CRONJÉ asked the Minister of Health and Welfare

(1) Whether he has received any representations regarding health hazards arising from the dispensing of unsealed drinking straws on serving counters, if so,

(2) whether he will consider introducing measures to stop this practice?

†The MINISTER OF HEALTH AND WELFARE

(1) No,

(2) falls away

†Mr P C CRONJÉ Mr Speaker, arising out of the hon the Minister's reply and in view of the fact that this practice does in fact exist, could the hon the Minister tell us whether he considers the said practice as healthy?

Prof makes case for ombudsman

CAPE TIMES 3/3/82

252

Staff Reporter

THE establishment of the office of an ombudsman in South Africa would give the "whole system" a broader base of legitimacy and acceptance, a speaker at the ombudsman seminar in Stellenbosch told delegates yesterday

Professor M Wiechers, the director of the Institute of Foreign and Comparative Law at the University of South Africa, said three factors pointed to the possible success of an ombudsman's office under present conditions

The first was the tradition South Africans had of "not taking things for granted" People were usually critical of government action, he said, and this could be shown by the many commissions of inquiry set up by the government

Secondly, the bureaucracy was very legally minded and there was a "deeply cherished sense of law and order, and legality in the country"

"Thirdly, we have a strong tradition of clean government and good bureaucracy"

What made the creation of an ombudsman's office difficult, however, was the fact that very often there would be no remedy to the problem within existing laws, he said

"All questions that would be the business of an ombudsman are terribly politicized in this country The ombudsman would find himself involved with the whole political system"

Laws caused most of the suffering and injustices in the country, he said Outlining the role of an ombudsman, Professor Walter Haller, of the University of Zurich in Switzerland, said such a person would have to be an independent official responsible to Parliament or the legislature

An ombudsman was there to receive complaints from aggrieved persons and to also examine whether governmental agencies and officials proceeded legally and equitably

The ombudsman could not change unjust laws and could only operate successfully if there was a minimum consensus on principles of fair administration among citizens, politicians and officials, he said

The seminar ends today

what reasons and (c) how many persons were affected by the cancellation of such permits,

(2) whether he will make a statement on the matter?

The DEPUTY MINISTER OF CO-OPERATION

(1) Yes

(a) On instruction of a local official of the Department of Co-operation and Development

(b) Persons were screened by an Administrative Committee and it was found that they were not *bona fide* residents of Crossroads

(c) 521

(2) No statement is contemplated

Mr K M ANDREW Mr. Speaker, arising out of the reply of the hon. the Deputy Minister, may I ask him whether the executive committee of Crossroads was consulted prior to these steps being taken?

The DEPUTY MINISTER. Mr Speaker, I have nothing to add to the reply which I have already given

For written reply

Hansard Q Col. 531-532

54

Universities for Blacks: cost per student

31/3/82

271 Dr A L BORAINE asked the Minister of Education and Training

What was the cost to the State per student at each of the universities for Blacks in 1981?

The MINISTER OF EDUCATION AND TRAINING

University of Fort Hare	R 3 800
University of the North	R 2 775
University of Zululand	R 2 989
Medical University of Southern Africa	R12 288‡

‡ The *per capita* expenditure is relatively high, as it contains an element of establishment and because the University also deals with paramedical training and is involved with the hospital

330

Deportation orders

31/3/82

Hansard Q. Col 532

335 Mr R R HULLEY asked the Minister of Internal Affairs

(1) (a) How many Whites have been served with deportation orders since 1 January 1981 and (b) what were the reasons for serving them with such orders,

(2) whether all such persons have left the Republic, if not, (a) how many have not left the Republic and (b) why not?

The MINISTER OF INTERNAL AFFAIRS

(1) (a) 129 orders were issued during the period 1 January 1981 to 28 February 1982

(b) The orders were issued under the Admission of Persons to the Republic Regulation Act, 1972 (Act 59 of 1972)
122 were issued in terms of section 43
3 were issued in terms of section 44A
4 were issued in terms of section 45

(2) No

(a) 115

(b) 83 orders were suspended
32 orders have not been executed because the persons concerned were still serving prison sentences, because their whereabouts were unknown, because their acceptance by their countries of origin was still pending, or because representations about the orders were still under consideration

National Senior Certificate examination: Coloureds/Indians 31/3/82

Hansard Q Col. 533

368 Dr A L BORAINE asked the Minister of Internal Affairs

(a) How many (i) Coloureds and (ii) Indians entered for the National Senior Certificate examination in 1981 and (b) how many entrants in each race group (i) passed, (ii) failed and (iii) obtained matriculation exemption?

The MINISTER OF INTERNAL AFFAIRS

The National Senior Certificate examination is controlled by the Department of National Education and the statistics required by the hon member will therefore have to be obtained from that Department It is, however, assumed that the hon member is in fact interested in the statistics for the Senior Certificate examination controlled by the Department of Internal Affairs, if so, the statistics are as follows

(a) (i) 9 269

(ii) 5 805

(b) (i) 5 279 Coloureds and 4 672 Indians

(ii) 3 990 Coloureds and 955 Indians

(iii) 1 384 Coloureds and 2 056 Indians

Hansard Q Col. 533-534

Internal Security Act

31/3/82

378 Mrs H SUZMAN asked the Minister of Justice

(1) Whether any notices in terms of section 5(1)(e) and section 9(1), respectively, of the Internal Security Act (a) were issued, (b) were withdrawn and (c) expired during the second six months of 1981, if so, how many in each case,

(2) whether any notices which expired were renewed, if so, how many,

(3) how many notices in terms of each of these sections were of effect as at 31 December 1981?

The MINISTER OF JUSTICE

		Section 5(1)(e)	*Section 9(1)*
(1)	(a)	No	Yes—1
	(b)	Yes—3	Yes—27
	(c)	Yes—1	Yes—22
(2)		No	Yes—5

(3) *Section 5(1)(e)*

5 (This number includes 1 person who left the Republic of South Africa)

Section 9(1)

111 (This number includes 32 persons who left the Republic of South Africa)

252

Regional court prosecutors

Hansard Q Col. 534 31/3/82

415 Mr P R C ROGERS asked the Minister of Justice

What percentage of regional court prosecutors have less than (a) two years', (b) one year's and (c) six months' experience?

The MINISTER OF JUSTICE

(a) 15,4%

(b) 2,8%

(c) 0,7%

Kruger Rand coins

421 Mr K M ANDREW asked the Minister of Finance

(1) On what basis are the prices of (a) one ounce (b) half ounce (c) quarter ounce and (d) one-tenth ounce proof Kruger Rand coins established each year,

(2) what was the price for proof Kruger Rand coins in each of the above cate-

Efficacy of ombudsman office in SA is doubted

Star 2/4/82

Own Correspondent

STELLENBOSCH — There is a real need and desire for an Ombudsman in South Africa

This emerged clearly at the International Ombudsman Conference in Stellenbosch this week.

However, there were many unresolved questions about the make-up of South African society

In the same sense that Mr Hassan Howa believes there cannot be "normal" sport in an "abnormal" society, some of the participants believed the harshness of South Africa's laws would make it impossible for a classic-style ombudsman to play his role properly

Professor M Weichers of the University of South Africa said the "human condition" in South Africa had become highly politicised

Questions such as where a person could live or work, what kind of education he could get or where his children could go to school, were part of the political system

Because an ombudsman would have to be right out of the political arena, it would be difficult for him to investigate issues such as housing complaints

Though this was seen as an obstacle by some of the lawyers present, others believed an ombudsman could still operate successfully in South Africa

For example, if there was little he could do for a man who had been arrested for not having his passbook on him, he could find out why there was a delay in a passbook being issued.

Johannesburg advocate Mr Arthur Chaskalson SC supported Professor Wiechers's contention that there were three main obstacles to establishing an ombudsman office in South Africa

These were that the laws in South Africa had a too narrow base of legitimacy, they were white men's laws designed for all races, and often there were no legal remedies to injustices because of the harshness of the laws

Mr Chaskalson believed that while these were problems that the legal profession could do little to change, an ombudsman might be able to do something

He believed that if the ombudsman played his role properly, he would be able to promote change in administrative laws

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Examiner's Initials:
Voorletters van Eksaminator:

APE TOWN
KAAPSTAD

heading on the Examination Paper):

Monetary Economics.

COURSE of study (e.g. B.A.; B
STUDIEKURSUS:

B.A

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2

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2. Candidates are reminded to in... on all loose sheets accompanying ... examination question

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4. A candidate attempting to he... from any other candidate, or hav... ised books or notes in his posses... to be disqualified and to be further ... be determined by the Senate.

5. A candidate must not take o... tion room any examination book ... University

6 Pages must not be extracted f...

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...Geen kandidaat mag boeke of aantekeninge van ...r aard ookal by hom in die eksamenkamer hê nie ... die Registrateur deur skriftelike kennisgewing las ... het om bepaalde boeke mee te bring

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...Geen eksamenskrifte deur die Universiteit ver... ..., mag uit die eksamenkamer weggeneem word

...Geen bladsye mag uit hierdie eksamenskrif ...eur word nie

DNP110JD

Move to get help for the little man in his big battle against bureaucracy

One step closer to ombudsman

By Tony Spencer-Smith

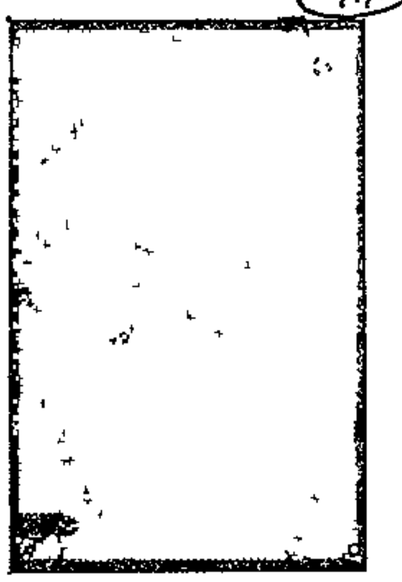
THE appointment of an ombudsman to fight for the little man against bureaucracy came a step closer this week with the holding of a top-level legal seminar on the topic at Stellenbosch.

While several speakers emphasised that it would be extremely difficult for an ombudsman to operate effectively in discriminatory and authoritarian South Africa, most delegates clearly felt that such a figure could go a long way to creating a better society.

There was heated debate about whether the Nationalist Government would allow the establishment of an Ombudsman Office with real teeth.

The two-day seminar — organised by the International Bar Association, the largest world organisation of the legal profession, together with the Association of Law Societies of South Africa and the International Ombudsman Institute — was attended by about 100 top attorneys, advocates, legal academics and judges

Key foreign speakers included Mr Justice Ulf Lundvik, president of the International Ombudsman Institute and a former Chief Parliamentary Ombudsman of Sweden;



Sweden's Lundvik

Canada's Weir

against bureaucracy generally involved one or more of three factors

These are unwarranted delays in getting even simple decisions, breakdowns in communication caused partly by the "tendency to couch rather simple messages in a mumbo-jumbo of bureaucratic nonsense," and the failure to recognise the necessity for "a humanising factor in government"

"There is, unfortunately, too often a tendency to forget that in dealing with problems, we deal with people

"We are not dealing with files, or file numbers, or categories, but with people who have the same concerns, emotions, fears and hopes as do the rest of us

"In many cases, we find that the problem presented to us has had its roots in a failure to recognise these characteristics, a failure to deal wth the citizen as a citizen, rather than an imposition" END

Mr Alex Weir, chairman of the Ombudsman Forum of the International Bar Association, and Professor Walter Haller, professor of constitutional and administrative law at the University of Zurich. Mr Weir told the delegates the seminar represented the most significant promotion of the ombudsman concept ever undertaken by the International Bar Association.

Both the general council of the bar in South Africa — representing advocates — and the Association of Law Societies see the need for an ombudsman in this country, and a joint move from these bodies to petition Parliament to go ahead on this can be expected following the seminar.

While delegates were generally in favour of the idea of such an office being established, to cut through red tape and help the ordinary citizen to cope with injustice at the hands of the all-powerful State, serious questions were raised about the extent to which an ombudsman would really be able to help blacks beleaguered by white laws.

An ombudsman was defined at the seminar as an independent, high-level official responsible only to Parliament, who investigated complaints from the public about injustices incurred at the hands of the bureaucrats, or who could look into such situations off his own bat.

South Africa has lagged behind many other Western countries in establishing such a post.

Delegates suggested that the staff of the ombudsman's office should be multiracial, to help create a "new face of justice" in this country.

Dr Randall Ivany, the Ombudsman of Alberta, Canada, and the executive director of the International Ombudsman Institute — who could not make it to the seminar because of illness and who had his paper read for him in his absence — said complaints

NB → Mr Alex

Changes May mean Cabinet reshuffle

Political Staff

CAPE TOWN — A number of substantial changes are to be made to the Constitution in an amendment Bill to be published next week

The long title of the Bill also indicates that a major Cabinet reshuffle is in the offing

The Constitution Amendment Bill makes provision for the increase in the number of deputy Cabinet Ministers on which there is now a limit of six.

As it is the Cabinet is short of two members following the resignation of Dr Andries Treurnicht and Dr Ferdi Hartzenberg which followed the split in National Party ranks

By increasing the number of deputy Ministers, the Prime Minister, Mr Botha, could be looking at a major revision of the structure of the Cabinet.

The Bill will propose that in future Members of Parliament on the provincial councils will not be able to be members of town or city councils or divisional councils

The provisions could mean that a large number of MPCs will have to resign council or provincial seats.

Lenasia legal aid

Star 6/4/87 (257)

A legal aid centre was opened on Saturday at the Jiswa Centre in Suikerbos Street, Ext 5 in Lenasia

A spokesman for the volunteer legal aid body said there were thousands of people in Lenasia and surrounding areas who were falling foul of the law through ignorance

The legal aid centre, which was formed by a group of former law students, plans to help people in these circumstances.

"We will study their cases, give them the necessary advice and arrange for the briefing of attorneys and legal fees if needed," the spokesman said

The free consultation service is available only on Saturdays

A typical scene in the Single quarters. Ninety-one families live in broken-down houses in the area. There are no community facilities for them

The Single Quarters are a former mine hostel on the edge of Reiger Park in Boksburg. They are made up of several old buildings scattered carelessly next to myriad criss-crossing dirt roads

It is home to 91 families

"The Single Quarters should have been demolished years ago," said Reiger Park community leader, Mr George du Pessis during a visit to the area.

"The area is rife with drug problems, violence and child pregnancy The people's surroundings are doing this to them. They just don't care any longer how they live."

The area is known as the Singles because each house is divided into four rooms; each single room, in turn, serves as a house for a different family.

The people here have long given up any hope of finding decent homes of their own. "I couldn't care any more," said a 60 year-old grandmother, Mrs Minnie Taylor.

Star 8/4/87 (127)

Crucial Fosatu meeting at Easte

South Africa's largest independent trade union grouping, the Federation of SA Trade Unions (Fosatu), is to meet at the Easter weekend for its first national congress

More than 200 delegates from 10 Fosatu affiliates will gather at Hammanskraal to attend the crucial two-day meeting.

The congress will deal with the problems of union organisation and leadership, relationships with worker and non-worker organisations and "the political role of the unions in the context of a working - class movement in South Africa," according to a statement

Unions and politics has been a major bone of contention between Fosatu and other independent, worker organisations

The statement said the congress will meet "amid a growing realisation of the need for unity in the union movement and a debate around how such unity is best achieved"

Since 1979 membership of affiliates had grown from 30 000 to 94 000 and from a handful of union-management agreements Fosatu unions

ARGUS 8/4/82 (252)

Courts can no longer keep pace, says judge

MR Justice Diemont

Argus Correspondent

OUDTSHOORN — An Appeal Court judge, Mr Justice Diemont, said here last night that although in years gone by six judges could cope with the volume of work, today 18 judges in Bloemfontein could not clear their desks working seven days a week

He was speaking at a centenary dinner for old boys of the Oudtshoorn Boys' High School

He said that while there were many problems in South African society such as racial friction, an unstable gold price and a shortage of housing, the upsurge in violence was seldom mentioned

Jails were packed and the courts could not keep pace Even if there were a two-year moratorium with no rapes, shootings or major frauds, it would still take the Appeal Court judges two years to complete the cases waiting to be heard

Mr Justice Diemont, an old boy of the Oudtshoorn Boys' High School, said if there were more discipline in the classroom there would be less violence on the streets.

In his day teachers chose their canes from a handy quince hedge and used them effectively.

In his opinion caning in schools did not encourage violence, although there had been calls in South Africa that caning be banned

Treason trio's appeal rejected

RDM 8/4/82

BLOEMFONTEIN — The Appeal Court yesterday dismissed the appeals against the death sentence of three men convicted of high treason

The men are Ncimbithi Johnson Lubisi, Petrus Tsepo Mashigo and Naphtali Manana, whose convictions arose from deeds that culminated in an attack on the Soekmekaar Police Station on January 4, 1980

The men were convicted by Mr Justice J P O de Villiers in the Transvaal Supreme Court on November 17, 1980

Sentence was held over by the trial judge to be imposed if necessary on a charge of robbery and two counts of attempted murder

Yesterday the Chief Justice, Mr Justice Rumpff, with the concurrence of Mr Justice Jansen, Mr Justice Rabie, Mr Justice Viljoen and Mr Justice van Heerden (acting judge of appeal) held that the trial judge had not acted unreasonably

Various considerations had been relied on in mitigation These included the youth of the appellants, although the judge said this really applied only to Mashigo, who was 19 at the time of the attack

It was also submitted that the three had not received advanced education, that they did not act from inner vice and that they were susceptible to the influence of the African National Congress

The Chief Justice said the probable absence of inner vice and the presence of outer influences were cancelled out as mitigating circumstances because of the callous and cowardly manner in which innocent people were sought to be killed for political purposes

It was submitted that the acts by Manana, Mashigo and Lubisi were only manifestations of an embryonic stage of high treason

This submission paid no regard to the context of the conspiracy aimed at overthrowing the State by a sustained process of violence — Sapa

(252) Hansard 14/4/82

Resignations of legally qualified personnel

Q Col. 598 – 600

416. Mr P R C ROGERS asked the Minister of Justice

(1) Whether any resignations were received from legally qualified personnel in his Department in 1981, if so, how many in each category

(2) whether any of these posts have since been filled, if so, how many in each category?

The MINISTER OF JUSTICE

(1) Yes

Magistrate	42
Senior State Advocate	1
State Advocate	11
State Prosecutor	81
Assistant State Attorney	12
State Law Adviser	1

(2) Yes. As indicated in my reply to written question No 112 on 23 March 1982, the position in regard to legally qualified personnel improved considerably after the institution of certain improved conditions of service with effect from 1 April 1981 Except for 1 post of Senior State Advocate which has since been filled and one post of State Law Adviser which is still vacant, it is not possible to furnish particulars in regard to the specific posts referred to in part (1) above, but the following particulars are indicative of the extent to which vacancies have been filled in the remaining categories·

Category	*Vacancies as at 31 December 1981*
Magistrate	6*

(*This was the position at 1 March 1982 The number as at 31 December 1981 is not available)

Category	*Vacancies as at 31 December 1981*
State Advocate	2
State Prosecutor	3
Assistant State Attorney	Nil

Ex-Chief Justice's impact on SA law seen as 'regrettable'

CAPE TIMES 20/4/82 (252)

By GERALD GORDON, QC

THE DEATH on February 5 of Dr Neil Aggett, the 46th person to die in detention since 1963, has turned the spotlight of world criticism again on South Africa's security laws, and with them other legislation affecting the rule of law and race relations

It has however repeatedly been urged in defence of our social and legal system that judges trying cases apply the law as they find it and that the blame for capricious, oppressive and unjust invasions of freedom and human rights must be laid at the door of the legislature Indeed our judges gained a reputation in the Western world for protecting fundamental rights and in particular the court of appeal became renowned as a fearless champion of basic freedoms and justice

This was the court of appeal to which Lucas Cornelius Steyn was elevated from the Transvaal Provincial Division in 1955 and it was the court to which he was four years later appointed, over the heads of his senior colleagues, Schreiner and Hoexter, to preside as Chief Justice

Urgent work

Some time earlier he had said there was urgent work to be done and his 12 years in the country's highest judicial office — a term of service exceeded only by Innes — gave him ample opportunity to do it

In a well-researched study of the judgments of the late Justice Steyn (he died in 1976), Edwin Cameron, advocate of the Supreme Court and formerly a senior lecturer in law at the University of the Witwatersrand, concludes that Steyn's "impact on South African law has as a whole, been regrettable" The 38-page article appears in the February issue of the South African Law Journal (Vol 99, Part 1, 1982), and reactions in legal and academic circles vary from approval of to disagreement with the writer's conclusions

While in many other countries academic lawyers frequently scrutinize the legal philosophy of judges, in South Africa judges are traditionally placed above criticism and attack The article is therefore a departure from tradition

Lucas Cornelius Steyn was born in 1903 on a farm in the Orange Free State only 18 months after British rule was established over the whole of Southern Africa His early childhood was spent in what Mr Cameron calls "the difficult 'reconstruction' years of what had become the Orange River Colony" The Afrikaner minority was embattled on two fronts the numerically overwhelming black population and the British victory over the Boer states "The Afrikaner's agony of this period, both spiritual and material, cannot but have had a formative impact on him"

He attended the University of Stellenbosch and "his prodigious talents found expression in a brilliant career in the public service," (1928-1951) "where he is said to have gained one of the highest assessment ratings accorded anyone in that institution"

In 1946 he published his work on statutory interpretation, "Die Uitleg van Wette", the first legal textbook to appear in Afrikaans In it, as Cameron says, he made plain to the legal world "that he was a Roman-Dutch 'purist' determined to resist and, if possible, eradicate the pervasive grasp that English law and legal concepts had gained on the South African legal system as a result of one hundred and fifty years of cultural and constitutional association It was a philosophy that was not only congenial to Afrikaner nationalism but elemental to it"

Contrasting the qualifications of Oliver Deneys Schreiner and Lucas Cornelius Steyn for appointment as Chief Justice, Mr Cameron says the former 'had singled himself out as meriting Nationalist odium' and, though he could have served only two years, for him to hold that august lofty post was unthinkable

Steyn, on the other hand, a man of formidable intellect, "may have been the Nationalist Government's man in the sense that his legal philosophy was of a piece with the broader pattern of nationalism then ineluctably being impressed upon the life of the country His flaccidity in the defence of individual liberty and his zeal for rendering unto the executive what he thought due to it no doubt suited a Government driven to increasingly repressive statutory measures in order to subdue the dissent which the implementation of its ideology occasioned"

This is not to say he was a toady He was a man of autonomous conviction whose talents he used to implement his legal notions "Had it been otherwise, his impact on this country's profoundest legal values would have been far less severe"

'Ungenerous'

Examining that impact and his contribution to South African law the writer says "far from deserving acclaim, still less veneration, it should on balance be perceived as having been lamentable" The record shows, Mr Cameron submits, that L C Steyn "had a towering but parsimonious intellect,

The late Chief Justice L C Steyn "executive-minded"

that he was a scrupulous but ungenerous judge", that his attempt to excise the English law was "not only jurisprudentially and historically unjustified, but ultimately quixotic", that, though unfettered, "he was — of his own volition — an executive-minded judge" and "that during his term of office a legal temperature already chill for the survival of human values and the preservation of fundamental freedoms, turned several degrees colder"

Steyn's judicial career had been controversial from its inception There was wide dissatisfaction with the appointment of a public servant instead of a practising advocate to the Bench and the Johannesburg Bar decided to boycott his court This was however solely on the ground that a public servant was unsuitable for judicial office because a Bench that is "absolutely independent and absolutely fearless is the foundation of our liberties"

Split decisions

Mr Cameron interestingly examines Steyn's 200 appellate judgments, and in particular the split appellate decisions in which he delivered a judgment Forty-five of the 200 produced a divided court Of these 19 involved, on the one side, a private individual or corporation, and, on the other, a state authority or institution or some other public body like a municipality Only six of these cases involved contentious issues of public law impinging on the liberty of the individual

"In five of these six cases, although either view was manifestly tenable, Steyn's judgment fell on the side favouring executive power This ratio of five to one is suggestive Steyn's judicial consistency in opposing the viewpoint favouring individual liberty — represented in each of these cases, and at times with vigour by some of his fellow judges — seems evident"

As Chief Justice, Steyn delivered a series of eight important judgments on the application of the Group Areas Act in each of which an attempt to mitigate or delay the impact of the statute was defeated and the action of the Group Areas Board supported Limitations on the "Board's freedom of action", said Steyn J, could never have been contemplated otherwise, the investig[illegible]s would assume "bare[illegible] anageable" dimension[illegible] 'Considerations *ad misericordiam* (of compassion) should not be allowed to become an invitation to laxity"

Three cases

Frequently in the course of the application of law a judge is called upon to choose between conflicting principles, precedents, rules of interpretation and textual authorities In a well-known trio of cases in which Steyn J sat, detainees challenged the extent of police powers under the detention without trial provisions

In the first, *Loza v Police Station Commander, Durbanville*, 1964, the question was whether the enactment authorized immediate rearrest when the 90-day period had expired The court, in spite of the *in favorem libertatis* (in favour of liberty) rule, held re-arrest to be in order (The question was later settled statutorily by the notorious section 6 of the Terrorism Act of 1967 which provided for indefinite detention)

Second, *Rossouw v Sachs*, 1964 "It was not the intention of Parliament that detainees should as of right be permitted to relieve the tedium of their detention with reading matter or writing materials"

Third, *Schermbrucker v Klindt NO*, 1965 The court had no power to order the production before it of a detainee in order to give evidence in person of torture allegations This was the only divided decision of the trio The majority of the court said "Any interference with that detention which may negative the inducement to speak is likely to defeat the purpose of the legislation"

Despite the ambit of judicial choice — as the strong disagreement in the third case and the fact that in the second case the decision of the court appealed from (two judges) was reversed — Steyn J consistently opted for the executive interpretation

English law

On the subject of English law as a source, Mr Cameron accuses Chief Justice Steyn of "legal chauvinism" and of using emotive language in a heated tone "To go and seek it (our own law) thus in a different legal system, I cannot, even where in fact uniformity of legal principle is to be found, view as anything but a perverse procedure" "It would go ill with the status of a sovereign republic that it should be in thraldom to the decisions of another country"

Another way in which he sought to enervate the influence of English law was simply by ignoring it Though English writers or decisions were frequently followed in South African precedents or were included in the heads of argument of counsel or referred to by fellow appeal judges, the Chief Justice either ignored the reference or dismissed it as of no instructive or persuasive force

Politics

A judge's duty, asserted Steyn, in interpreting statutes is solely to establish the intention of the legislature This is the chief doctrine of his book Judges, he said, should "give politics as wide a berth as their work permits" and it is not the function of judges, when the legislature has firmly enacted a deliberate policy (such as interrogation under solitary confinement), "to write an indignant codicil to the will of Parliament" He seems to have assumed that speaking out against invasions of the rule of law is entering politics, and that remaining silent is not But, writes Cameron, "silence and apathy, too, are capable of expressing viewpoints, as strongly indeed as outspokenness"

Cameron continues "Had the decision in *Schermbrucker's* case gone the other way, had, that is, the investigating officials in a security case been subject to the admonition of due inspection of the health and safety of their detainees when claims of maltreatment arose, many of the controversial allegations arising from the death and injury of detainees over the past two decades in South Africa would not have arisen"

In support of this point it may be urged that justice has a more positive function than the mere interpretation of the intentions and policy of the legislature It is bound up with the defence of freedom and certain unbreakable human rights As Edmund Burke said two centuries ago, "Whenever a separation is made between liberty and justice, neither, in my opinion, is safe"

(252) Sowetan 20/4/82

Know your rights

A family's guide to the law in SA

• Housewives who deduct money from their domestic workers' wages for breakages are doing so illegally.

• Every time a doctor injects a patient, the doctor is technically committing assault. The assault is legalised by the patient's permission.

• Only two percent of people brought before South African courts on criminal charges are legally represented. Even for serious crimes, this figure is only 15 percent.

These are some of the intriguing facts to emerge in a new book from the Reader's Digest called 'Family Guide to the Law in South Africa '

This 776-page work is the first time that a law book has been written specifically for the layman

Legal Aid

'Family Guide to the Law in South Africa' is described as a 'step into an unmapped territory dotted with granite-faced law courts and criss-crossed with red tape '

Over half a million words deal with subjects such as crime, buying and selling property, owning a car, divorce and so on It is the first time an attempt has been made to make the complexities of Law comprehensible to the layman

Domestic Workers

Among the subjects covered is legal aid for domestic workers According to the book domestic workers are at present totally excluded from the protection of labour legislation, but they are still protected by South African common-law — and this is usually more than most employers of domestic workers realise

The book warns that at no time are employers allowed to withhold wages from a domestic — whatever the reason

The book quotes the case of a domestic who accidentally allowed her employer's canary to fly out of an open window. The employer deducted R35 from the domestic's wages for the loss of the canary The domestic sought advice from an attorney and the employer was made to hand the R35 to her worker The same rule applies to any housewife who suspects that her domestic may have stolen something No money may be deducted from her salary to make up any loss from a suspected theft Employers who do so could be sued by their domestic — not only for the wages, but also, if the charge proved false, for defamation

'Family Guide to the Law in South Africa' also makes it clear that domestics cannot be summarily dismissed without good reason, such as theft, refusal to work, dishonesty, gross incompetence, gross insolence and insubordination, gross misconduct or drunkenness

Proper notice must be given when dismissing a domestic worker A month for monthly paid workers, a week for weekly paid workers (although two weeks' is preferable)

The book also advises employers to establish a proper working contract with their domestic worker, covering such items as hours of work, time off, sick pay, leave pay, arrangements about overalls, accommodation, bus and train allowances, references and period of notice

Advice is also given regarding the hiring of African domestic workers — and what steps should be taken to ensure that they are 'legally' employed

Doctors and Patients

The book also covers the relationship between patient and doctor — in particular the patient's right to complain about doctors or even sue doctors.

A doctor who operates on a patient without the patient's consent could find him or herself in trouble — unless he can show that the patient was unconscious and that the operation was necessary to save the patient's life However, if the doctor knew that the patient was opposed to treatment, he cannot operate

This is known as the 'doctrine of necessity' — and it can also be used by a surgeon who exceeds the patient's permission during an operation For example, a patient consents to an operation for the removal of his tonsils — and the doctor finds a fatal disease affecting the vocal chords, and removes these as well

However, if the removal of the vocal chords was not necessary to save the patient's life, the doctor could be sued for damages

Consent for an operation is usually given in a form signed on admission to hospital — which usually doubles as an admission form

'Family Guide to the Law in South Africa' advises patients to read this form very carefully — and not consent to the treatment or operation until this is fully explained Anything you want done — or not done — should be stated on this consent form

The book also deals with the thorny question of what happens when something goes wrong during treatment — assuming that consent has been given

Any claim against a doctor who harms rather than heals must show that the doctor was negligent — and the only way to do this is to bring evidence from other doctors saying that they consider the original doctor's conduct is negligent This is something most doctors are extremely reluctant to do

Another very important point made by the book is distinction between a genuine error of judgment and negligence The law recognises that even the reasonably careful doctor sometimes makes an error of judgment

For example, a surgeon who left the theatre sister to remove swabs after an appendectomy was sued for negligence after one of the swabs was left in the patient's abdomen The Appellate Division — South Africa's most senior court — decided that the mistake of leaving the swab in the patient's body did not amount to negligence

Legal Aid

In a section dealing with legal aid, the book points out that qualifications for help with legal fees and costs are very stringent The means test ceiling for applicants to the Legal Aid Board is so low that only the poorest can scrape through — leaving the majority of people ineligible for aid, but still unable to afford the very high cost of legal representation

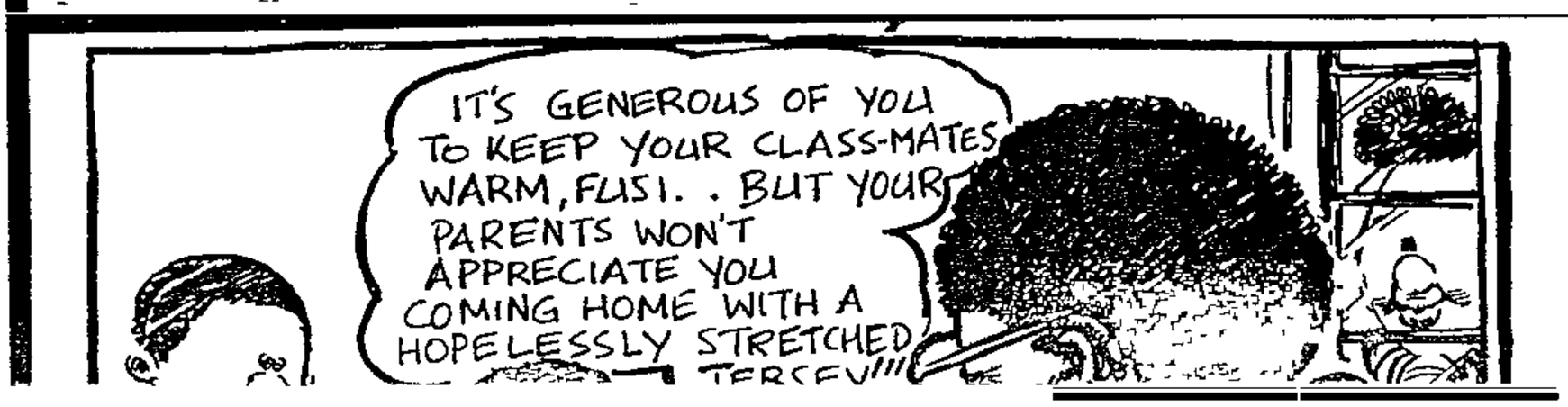
Legal aid is also not available to people who are 'unemployed without sound reason, or lead a dissolute or dishonest life'

This compares dramatically with the situation in the United States where the Supreme Court has ruled that no-one may be sent to jail without legal representation

Although legal aid is difficult to obtain, there are several centres which give legal help and advice — and many of these are listed in the book

In very serious cases the state will pay an advocate to defend an accused 'pro deo' (literally for God)

The book will be published this month at R33,95, which may look expensive but could prove worth it in the long-run



Political comment in this issue by J Latakgomo and A Klaaste Subediting, headlines and posters by S Matlhaku All of 61 Commando

Rabie appointed Chief Justice

252

RDM 23/4/82

Political Correspondent

CAPE TOWN — Mr Justice Pieter Jacobus Rabie, a judge of the Appellate Division who headed the Rabie Commission of Inquiry into security legislation, has been appointed Chief Justice of South Africa

Mr Justice Rabie's appointment, which takes effect on June 5, has met with a luke-warm response from the official Opposition

The report of the Rabie Commission has been severely criticised for not going far enough in protecting the rights of the individual

Mr Justice Rabie succeeds Mr Justice Rumpff who is retiring

Mr Dave Dalling, the PFP's chief justice spokesman, said that while Mr Justice Rabie's appointment could not be faulted on the basis of his academic career and service on the Bench it nevertheless worried him that a man with a more compassionate approach to security legislation had not been appointed as Chief Justice

He said he did not want his remarks to be construed as a condemnation of the appointment and hoped Mr Justice Rabie would ensure that the basic freedoms enjoyed in most western countries would be maintained in South Africa

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Justice announcement 'badly timed'

Political Staff

AN opposition spokesman said today it was unfortunate' that the announcement of Mr Justice Rabie's elevation to Chief Justice had come so soon after his controversial report on security legislation

The report was widely criticised for not dealing specifically with deaths in detention methods of interrogation, why detainees were kept in solitary confinement and the treatment of Section 6 detainees

It was announced by the State President today that Mr Justice Pieter Jacobus Rabie, judge of appeal would be appointed Chief Justice from June 5

He has also been appointed Acting Chief Justice from April 30 while Mr Justice Rumpff, the present Chief Justice is on vacation

Born on January 30 1917 Mr Justice Rabie matriculated at Koffiefontein in 1934

He was admitted as an advocate in March 1949 and as senior counsel in July 1962

He became a judge in the Transvaal division in 1966 and a judge of appeal in 1971

He has been chairman of the South African Law Commission since 1976

Mr Justice Rabie is married with three married children

The Opposition's chief justice spokesman, Mr Dave Dalling, said it was vital that the custodian of South African law, the Chief Justice, should champion the rights and freedom of the ordinary individual

'While one doesn't like to criticise the appointmentof a new Chief Justice, it is a great pity that this appointment comes at a time when the work of his commission is under severe criticism

'One of the main failings of the Rabie Commission report was that it tended to favour the interests of the State at the Expense of the freedom of the individual

'With the growing authoritarianism, it is imperative that a Chief Justice is a courageous champion of the rights and freedom of 'the ordinary individual,' Mr Dalling said

Section A.

Committee formed for service option to jail scheme

252

By ENRICO KEMP

COMMUNITY service as an alternative to imprisonment has received a boost with the establishment of a co-ordinating committee in Cape Town to help implement and administer the scheme

The community service scheme gives effect to a provision in the criminal code which allows a judicial officer to suspend the sentences of approved offenders on condition they render unpaid service to a non-profit body or community institution

Overcrowding

The scheme has already been successfully applied to 30 cases locally With a current national prison population of more than 100 000 people, most of them serving short-term sentences, proponents of community service believe the scheme would alleviate the problem of over-crowding in prisons and also enable the offender to render useful service to the community

The concept of community service was researched and discussed at a seminar organised by the Lion's Head Rotary Club toward the end of last year

Approval

The idea met with general approval and a co-ordinating committee comprising representatives of service and welfare organisations and legal personnel was subsequently formed

Represented on the committee are the Cape Town branch of the National Institute for Criminal Rehabilitation (Nicro), the Lion's Head Rotary Club of Sea Point, the Chief Magistrate of Cape Town, Mr C F W van Zyl, Cape Town's senior public prosecutor, Mr N Treurnicht, and the senior probation officer of the Department of Health and Welfare, Mr A B J Brink

The committee is headed by a City attorney, Mr Sam Gross, who is also vice-chairman of the Haven Night Shelter in Green Point

Mr Gross said community service ensured that "the offender does not become a burden on the State that has to feed, clothe and guard him, but instead renders a service and makes a contribution to society"

In practice, the application of community service orders is a two-fold operation After an offender has been found guilty, his background has to be investigated

Social workers

This is done by the chief probation officer and his staff, assisted by Nicro's director, Miss Linda Christiansen, and her social workers.

If a judicial officer orders an offender to perform community service at a specified institution, the Lion's Head Rotary Club and Nicro will obtain approval from the institution to absorb the offender

The Rotary Club will then delegate members to monitor and supervise the offender When the period of service has been satisfactorily completed, the Rotary member will issue a certificate to the probation officer, who in turn will report to the court on a given date

Appealed

The co-ordinating committee has appealed to all non-profit organisations rendering a public community service to join the panel of institutions where offenders can be placed

Organizations already involved in the scheme include St John's Ambulance, the National Sea Rescue Institute (NSRI), the Community Arts Project, the Alpha Gym and Recreation Club and Alexandra Institute

Mr Gross emphasized that the work would be unpaid and that the services rendered by the offender was a symbolic payment by the offender of his debt to society

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Wait-and-see on Rabie role

Star 26/4/80

(252)

Chief Reporter

South African lawyers concerned at the application of security laws are adopting a wait-and-see attitude on the role of the newly appointed Chief Justice, Mr Justice Rabie

Mr Justice Rabie was chairman of the Commission of Inquiry into Security Legislation whose recent report drew widespread criticism from lawyers for allegedly failing to protect political detainees from police intimidation

Practising lawyers in general are reluctant to comment on the appointment which takes effect on June 5 when Mr Justice Rumpff retires

WRONG

Lawyers say it would be wrong to aggravate the difficulties of the Appellate Division by commenting on the appointment at this stage

The Appellate Division plays an important role in interpreting law and setting legal precedents and has a vital function in the civil rights structure of the country, lawyers believe.

Professor A S Mathews, professor of law at the University of Natal (Durban) is one of several academic lawyers who criticised the Rabie report at a recent seminar at the University of the Witwatersrand

"One of the disappointments of the Rabie Commission was an inadequate emphasis on individual and human values as opposed to Government interests," he said in an interview

"I hope that the Appeal Court, under Judge Rabie's term of office, will not neglect issues of humanity and civil rights.

"They are sorely in need of protection, particularly in the security area On such matters a new Chief Justice clearly has an awesome responsibility," he added.

Professor D H van Wyk, professor of law at the University of South Africa, who also attended the seminar, said people should be careful before they attributed Mr Justice Rabie's appointment to his role on the commission

Professor van Wyk said that while some people might have been disappointed with the commission, the report had recommended protection of individual liberty which could only be built upon by the Appellate Division

Professor John Dugard, director of the Centre for Applied Legal Studies at the University of the Witwatersrand, who has previously criticised the Appellate Division for failing to protect individual freedom, is on a visit to the United States and was not available for comment

Year	Total	
1970		
1971		
1972		
1973		
1974	590	+
1975	1 500	x
1976	3 000	x
1977	3 500	x
1978	..	
1979	3 800	$
1980	4 000	Fosatu

Area of Operation: Port El East London, Durban,

Founded: 1973

Registration: No

This Union merged with Numar 80 and therefore address is as for Numarwosa. , and membership figures for original union a ogether they now belong to NAAWU.

S.A. TYPOGRAPHICAL UNION

Year	Membership				
	African	Asian and Coloured	White	Total	
1970		..	..	19 075	Ø
1971		..	..	19 194	Ø
1972		..	..	20 666	Ø
1973		8 620	12 435	21 055	x
1974		9 279	12 690	21 969	x
1975		9 364	12 682	22 046	x
1976		9 259	11 969	21 228	x
1977		8 658	11 091	19 749	x
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Star 27/1/81

on the line

Laying our laws

A book has just been published which may clear up some of the mystery our laws have for the layman. JUSTIN GEORGE reports.

FOR most people law is a mysterious thing surrounded by strange rituals and even stranger language, understood only by a closed circle of professionals who form its priesthood.

Now, for the first time in South Africa, a book written specially to help laymen understand the law has appeared.

The average reader should have no problems coping with the clear style of the "Reader's Digest Family Guide to the Law in South Africa (priced at R33,95)

Nearly 800 pages long, it contains sections dealing with the administration of the law, crime, housing and property, the family and marriage, money, business, labour, driving, leisure and SA's race and security laws.

The book is filled with interesting facts about the SA legal system.

For example, how many people know that when they buy a packet of cigarettes they are making a contract with the shopkeeper, or that it is illegal for employers to suspend employees without pay? Or that a "lock-out" by employers which has not been sanctioned through the correct conciliation channels, is just as illegal as an "illegal" strike?

Most workers do not know that even if their strike is a legal strike, they can still be dismissed.

Few people realise that many guarantees offered by manufacturers take away common law rights, and that consumers would in most cases be better off without them. For example, some products are guaranteed for a limited period, which means if defects surface after the guarantee period has elapsed, the buyer has no claim. In common law, there is no time limit, but the defects must have existed at the time of sale.

One of the more interesting facts about our legal system is that in the eyes of our Roman-Dutch common law, all men are equal, which means there is no discrimination and separation between different races in common law

The whole system of racial domination and discrimination, which began to develop long before the Nationalists came to power in 1948, has been created by statutory law, and in the process many of the common law rights of the majority of South African people have been taken away

The Group Areas Act, for example, took away the common law right to own property and live anywhere in South Africa. In terms of this act, a person may only own property and reside in his race group's group area. Other laws restrict the mobility of the labour force. Certain types of work are reserved for members of the white "race" Other laws limit the geographical mobility of black workers, while the Mixed Marriages Act and Immorality Act limit the freedom of people to choose who to marry and love.

It is not only in the field of race relations that common law rights have disappeared. Under security legislation, many common law rights have been swept away An individual can be detained indefinitely without trial in terms of Section 6 of the Terrorism Act. A person who is banned is "published" without trial and without being convicted of an offence. If he breaks his banning order, he commits an offence and can be punished by the courts

It is in this area, the area of South Africa's race and security laws, that the compilers are perhaps too cautious. They commit themselves to presenting only the "facts" about the legal system, and leave any critical conclusions which might be drawn to the reader Yet the distinction between "fact" and "comment" is a spurious one. It is also a dangerous one, because it can be used by some to omit certain facts by arbitrarily classifying them as "comments"

Some comments about the relation between social change and the law could have been added as well This is particularly relevant to South Africa, where social and legal reform have become major issues. We can understand the law better if we know why it changes as society changes.

Marriage law is a good example of how social changes which have accompanied industrialisation in South Africa have forced changes in the law Although property is jointly owned by a couple married in community of property, only the husband may administer the property He can administer it in any way he sees fit, and need not get his wife's permission if he chooses to sell any part of the joint property She may sign and food. Put more bluntly she is reduced to the status of a child.

However, as industrialisation in South Africa changes the marriage relationship by drawing millions of women from their homes into factory and domestic work, the traditional dominance of men is weakening, and marriage law is changing to accommodate the new realities. To give an example, if the Matrimonial Property Bill becomes law this year, and it seems it will, then women married in community of property will no longer need their husbands' consent to make contracts.

Similar changes in the law are taking place, and can be expected to take place, in other fields, especially in areas like industrial relations Nothing lasts very long in industrial capitalism, and many time-honoured racial restrictions will crumble as South Africa becomes a fully developed capitalist society

Job reservation and laws like the Group Areas Act restrict the mobility of private property At the moment, South Africa is a developing capitalist country, and it can accommodate these restrictions But it is hard to see how they will be reconciled with a developed capitalist economy which will require the abolition of all restrictions on the free circulation of labour and property

However, in spite of these shortcomings, this book remains an outstanding achievement. Most important, it will succeed in informing South Africans about their legal rights, something crucially important when so many of their freedoms are under attack.

Rabie is new Chief Justice

252

CAPE TIMES 23/4/82

Political Staff

MR JUSTICE Pieter Jacobus Rabie, a judge of the Appellate Division who headed the Rabie Commission of Inquiry into security legislation, has been appointed Chief Justice of South Africa.

Mr Justice Rabie's appointment, which takes effect on June 5, has met with a luke-warm response from the official Opposition.

The report of the Rabie Commission has been severely criticized for not going far enough in protecting the rights of the individual.

Mr Dave Dalling, chief PFP spokesman on justice, said that while Mr Justice Rabie's appointment could not be faulted on the basis of his academic career and service on the Bench, it nevertheless worried him that a man with a more compassionate approach to security legislation had not been appointed.

252

Raising money for defence 'desirable'

Mercury Reporter

ANY system which allowed people to raise money lawfully to defendthemselves in court was desirable from a legal point of view, the president of the Natal Law Society, Mr Graham Cox, said yesterday

He was referring to the application by Mr Mike Hoare, leader of the alleged Seychelles hijackers, to establish a charity organisation to raise funds for the defence costs in the hijack trial, as well as for families of men who may be jailed, and for dependents of men still being held in the Seychelles

Under the Fund Raising Act, the application has to be accepted by the Department of Social Welfare before money can be collected

'In a society where everybody is innocent until proven guilty, it is important that defence should not be made on the strength of the finances available,' said Mr Cox

He said that this principle had to apply to everybody, no matter how unpopular society might judge a crime to be, as happened in the case of child murder, 'because taking the charge into account is assuming a degree of guilt'

At present the legal system offered two methods for impecunious people to gain a defence, either by appealing to the Legal Aid, or by requesting a pro deo defence

A lecturer in the department of law at the University of Natal said that he did not think there was much chance of Mr Hoare's application being accepted.

He said the Act had been introduced to cut down on the number of organisations which collected charity from the public, and he saw the application by the alleged mercenaries as setting an uncomfortable precedent if it was accepted

Mr Hoare confirmed he had met the department, but said he had no further comment to make.

MONDAY, 3 MAY 1982

†Indicates translated version

For written reply

(250) Hansard

Magistrates/prosecutors

Q Col. 745 – 746 3/5/82

418 Mr P R C ROGERS asked the Minister of Justice

(1) Whether, during the latest specified period of two years for which figures are available, any officials of his Department had to act as (a) magistrates and (b) prosecutors without their having the requisite qualifications for these posts, if so, in which courts in each case,

(2) whether any of these posts have since been filled by qualified personnel, if so, how many in each case?

The MINISTER OF JUSTICE

(1) and (2) Statistics are not kept up to date in the form as set out in the question Before 1 April 1981 there was however a considerable shortage of magistrates and prosecutors with the result that services of a relatively large number of officials without the prescribed legal qualifications had to be utilized in the posts concerned However, since 1 April 1981 virtually all professional posts of magistrate have been filled by appropriately qualified staff As far as prosecutors are concerned, there are at present only 36 out of a total of 712 which are not in possession of the prescribed legal qualifications They are, however, busy with law studies and some of them are also experienced prosecutors There are also 110 Magistrates' Offices at certain rural centres where the command posts have an administrative grading (in contrast with a professional grading which is obtained through the volume of judicial work performed) and are occupied by persons who are not fully qualified These officers hold appointments as acting magistrates and also handle the relatively small quantity of judicial work at those centres They are strictly selected, experienced and most of them are also busy with law studies This is, however, a temporary measure Meanwhile the Commission of Enquiry into the Structure and functioning of the Courts have also found it necessary to consider the feasibility of separating judicial and administrative functions in Magistrates Courts, and if so, in what manner As soon as the final report of that Commission has been received, the aforementioned temporary measure will be reconsidered

Eyebrows raised over Rabie appointment

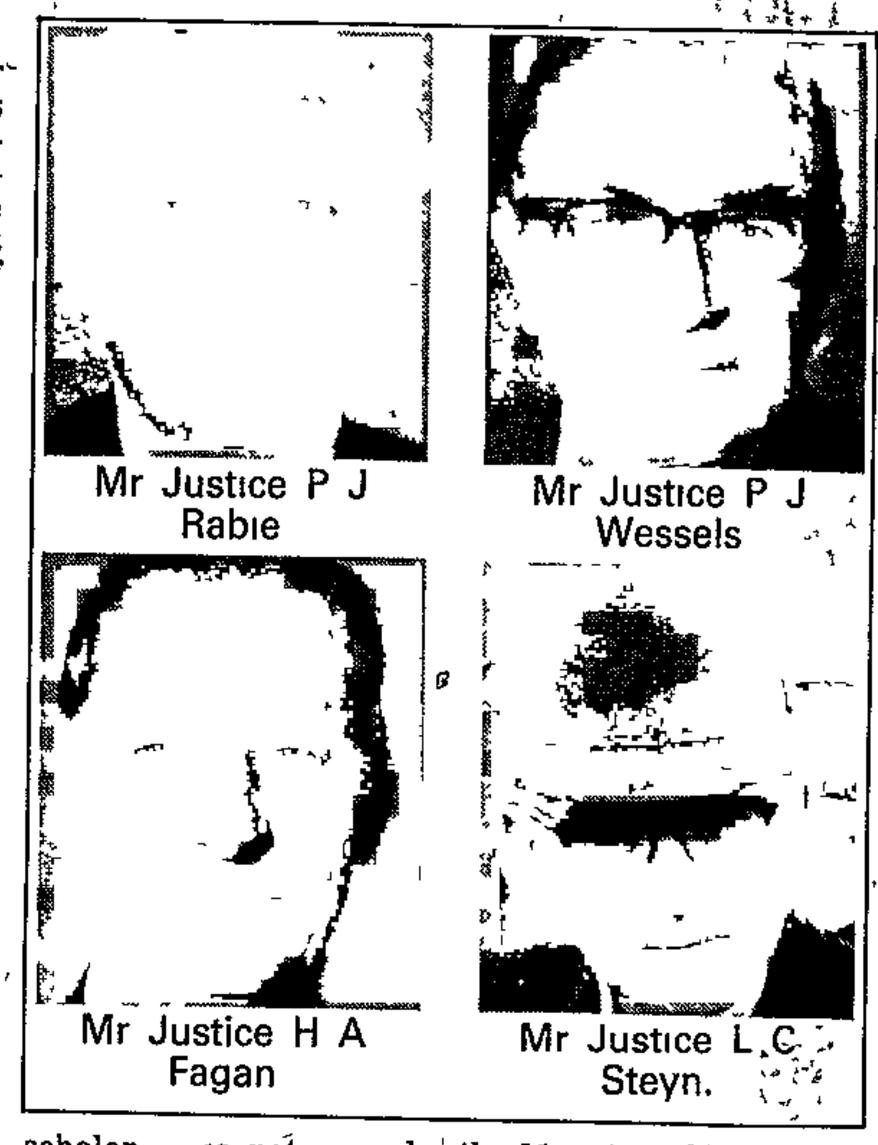
CAPE TIMES 3/5/82 (252)

By JANE ARBOUS

THE appointment of Mr Justice Pieter Rabie as South Africa's Chief Justice was the fifth departure from the principle established in 1910 that the most senior judge of appeal be appointed to the position

His appointment by the government over the heads of Mr Justice P J Wessels, 67, the country's most senior judge of appeal, and the second-in-line, Mr Justice E L Jansen, 63, is a subject of discussion in legal circles

Mr Justice Rabie, 64, takes over on June 5



Mr Justice P J Rabie

Mr Justice P J Wessels

Mr Justice H A Fagan

Mr Justice L C Steyn.

'Jockeying'

The tradition of the most-senior judge becoming Chief Justice was established in 1910 to avoid "jockeying at the top", where personal factors could come into play to the detriment of the judiciary

But every appointment since 1957 has been a deviation from this principle

No reasons were given for the appointment of Mr Justice Rabie, who is considered an experienced and eminent jurist

Highly-regarded

However, the by-passing of the highly-regarded Judge Wessels is raising some eyebrows

Significance is seen in the fact that Mr Justice Rabie was chairman of the important commission on security legislation which has just reported

If the government saw the appointment as recognition of this role, the government's action would be highly questionable, in the view of senior men in the legal profession If not, they see no justification for Mr Justice Rabie's appointment ahead of Mr Justice Wessels

There was no reason they said, why the younger Mr Justice Rabie could not move into the position when Mr Justice Wessels retired in a few years

The by-passing of Mr Justice Jansen — regarded as a brilliant legal scholar — is not considered so serious as, being a younger man, he could still be appointed after Mr Justice Rabie's retirement

The first departure from the principle of automatic succession came in 1957 with the appointment of Mr Justice H A Fagan on the retirement of Mr Justice A van de Sandt Centlivres

Mr Justice Fagan was technically the third judge of appeal Ahead of him lay Mr Justice O H Hoexter with Mr Justice O D Schreiner at the top

His appointment was condemned

If precedent had been followed, Mr Justice Schreiner — whose appointment to the Appellate Division was hailed — would have been made Chief Justice There was no apparent reason for ignoring Mr Justice Schreiner, who at times had acted as Chief Justice

Of course, his refusal to approve the government's legislative scheme to remove the coloured voters from the common roll in the Cape might have been a factor

According to the South African Law Journal, Mr Justice Fagan wrote to the Minister of Justice on hearing of the rumour that he would get the post and asked him to reconsider the offer in view of the seniority of the other two judges

Exactly what happened and the reasons for it are still a matter of conjecture and rumour

Scathing comment appeared in the newspapers, and political interests and sectional considerations were publicly aired as the reasons for the same thing happening again two years later when Mr Justice Fagan retired after a distinguished tenure

In the second deviation from tradition, Mr Justice L C Steyn was appointed ahead of Mr Justice Schreiner and Mr Justice Hoexter

He was succeeded in 1971 by Mr Justice N Ogilvie Thompson who jumped ahead of Mr Justice P J van Blerk Mr Justice Thompson was replaced two years later by Mr Justice F H L Rumpff — Mr Justice Rabie's predecessor

Mr Justice Van Blerk thus shared with Mr Justice Schreiner the distinction of being by-passed twice, but no public objections were raised

S.A. R. & H. Salaried Staff Association
S.A. Society of Bank Officials
S.A. Society of Journalists
S.A. Technical Officials Association
S.A. Theatre & Cinema Employees Union
S.A. Typographical Union
S.A. Woodworkers Union
Die Spoorbond
Steel, Engineering and Allied Workers Union
Sweet Workers Union
Textile Workers Industrial Union
Transport & Allied Workers Union
Trawler & Line Fishermens' Union
Underground Officials Association of S.A.

UNIONS OPERATING IN THE WESTERN PROVINCE (INCLUDING THE NORTHERN CAPE)

Bakery Employees Industrial Union
Boland Inmaakwerkersvereniging (Paarl)
Brewery Employees Union (Cape Peninsula)
Cape Divisional Council Workers Union
Cape Town Gas Workers Union
Cape Town Municipal Workers Association
Chemical and Allied Workers Union
Cinematograph Projectionists Union (Coloured)
Diamond
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Escom
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Federat
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Munisip
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Western
Worces

Rabie's leapfrog to top surprises lawmen

15/5/82 RDM

Mail Correspondent

CAPE TOWN. — The appointment of Mr Justice Pieter Rabie as South Africa's Chief Justice is the fifth departure from the principle, established in 1910, that the most senior Judge of Appeal gets the position.

And his appointment by the Government over the heads of Mr Justice P J Wessels — most senior Judge of Appeal — and the second in line, Mr Justice E L Jansen, is a subject of discussion in legal circles

Mr Justice Rabie takes over on June 5

The tradition of appointing the most senior judge was established to avoid "jockeying at the top", where personal factors could come into play to the detriment of the judiciary

But every appointment since 1957 has been a deviation from this principle

No reasons were given for the appointment of Mr Justice Rabie, who is considered an experienced and eminent jurist

However, the bypassing of the highly regarded Mr Justice Wessels is raising eyebrows

It is seen as significant that Mr Justice Rabie was chairman of the important commission on security legislation

If the Government saw the appointment as recognition of this role, its action would be highly questionable, in the view of senior legal men

There was no reason, they said, why Mr Justice Rabie, who was younger, could not have taken the position when Mr Justice Wessels retired in a few years

The bypassing of Mr Justice Jansen — regarded as a brilliant legal scholar — is not considered so serious as, being a younger man, he might still be appointed after Mr Justice Rabie's retirement

The first departure from the principle of automatic succession came in 1957 with the appointment of Mr Justice H A Fagan, technically the third Judge of Appeal

Ahead of him was Mr Justice O H Hoexter, with Mr Justice O D Schreiner at the top

His appointment was condemned

If precedent had been followed, Mr Justice Schreiner — whose appointment to the Appellate Division was hailed — would have been made Chief Justice There was no apparent reason for ignoring him

His refusal to approve the Government's legislative scheme to remove the coloured voters from the common roll in the Cape might have been a factor

According to the SA Law Journal, Mr Justice Fagan wrote to the Minister of Justice on hearing of the rumour that he would get the post and asked him to reconsider the offer, in view of the seniority of the other two judges

Two years later, when Mr Justice Fagan retired after a distinguished tenure, Mr Justice L C Steyn was appointed ahead of Mr Justice Schreiner and Mr Justice Hoexter, in a second deviation from tradition

He was succeeded in 1971 by Mr Justice N Ogilvie Thompson, ahead of Mr Justice P J van Blerk

METAL AND ALLIED WORKERS UNION

Year	Membership				
	African	Asian and Coloured	White	Total	
1970					
1971					
1972					
1973					
1974	3 900			3 900	+
1975	3 900			3 900	*
1976	6 700			6 700	*
1977	7 000			7 000	*
1978				..	
1979				..	
1980				8 400	Fosatu Annual Report Nov. 1980/81

Address: 1 Central Court
125 Gale Street
Durban
4001

Telephone: (031) 69215

Officials: Secretary: D. Sibabi

Area of Operation: Transvaal, Natal, Eastern Cape

Founded: 1973

Registrati

Recognitio

Membership:

Peake cross-examined

A WHITE woman defending a civil action of running a business that promised families that parole could be arranged for jailed members was questioned at length in the Johannesburg Magistrate's Court yesterday.

Under cross-examination Mr Geoff Budlender for defence put it to Mrs Peake that she sent out letters to prospective members with the letterhead Prisoners' Aid. In doing this, she knew quite well that there was a publicly known Government agency called the Prisoner's Friend.

He said it was surprising that in most of her correspondence she attached her signature but it was not the case in these "recruitment" letters.

Mr Budlender also referred to an article which appeared in The Star's Fair Deal consumer section in 1978 where an investigation was carried out on Mrs Peake's organisation.

He went on to cite another case where Mrs Peake was prosecuted on two charges of keeping a brothel

p. 11

9) McKennon Chairs
10) Alusaf
11) Vosa
12) Craft Engineering
13) Selchain
14) Stone Street & Hansen
15) Barlows

'Critical' staff shortage hits legal service

ARGUS 6/5/82

252

Political Correspondent

STAFF shortages in the Department of Justice were critical in 1980 — 1981 and some services were breaking down, according to the latest report of the department tabled in Parliament.

According to the report, which covers July 1980 to June 1981, some services were suspended because of a shortage of professonal staff

With the available professional staff, efficient services, could not be given at all times

In the master's and registrar's divisions, the clerical / administrative staff position was "alarming" and efficient services could no longer be given.

Improved salaries for legally qualified staff had led to an improvement in the staff position in professional divisions after April 1981

Resignations had dropped, recruitments were improving and there was every indication that this would continue.

In the year under review, a critical shortage of legal staff and an acute shortage of public prosecutors, especially in Johannesburg, had a detrimental effect on the administration of justice.

On April 1 1981, 192 officials not qualified in law were employed in professional work.

In the Attorney-General division the position also left much to be desired.

DETERIORATING

There were several vacancies for state advocates and it was apparent that the position was gradually deteriorating

Due to the critical shortage of clerical staff, the administrative division of the state attorney in Johannesburg had almost completely collapsed.

Among typists in this office, there was a vacancy figure of 84 percent.

"The staff position is a cause for deep concern, particularly on the proper accounting and safeguarding of public moneys

"Huge sums of money are daily being received and paid out all over the country. The relative inexperience of the staff as well as the staff shortages make financial control and management almost impossible," the report says.

By withdrawing staff from other offices, simplifying procedures and mechanisation, the department was still able to render services.

● More parliamentary reports — Pages 6 and 7.

Shock findings on legal aid

SA's prison population and costs could be cut

(252) Tribune Reporter S. Tribune 9/5/80

WHILE more than a million people go undefended through the magistrates' courts every year, South Africa spends only two percent of what Canada spends on legal aid and less than six percent of what Britain spends per head of population.

Legal aid in South Africa probably reaches less than one percent of the accused pesons who are sentenced to goal in magistrates' courts.

These are some of the challenging findings contained in a book on legal aid due to be published this month which calls among other things for a major injection of cash into our legal aid system.

Its author, Professor David McQuoid-Mason, a departmental head in the law faculty of the University of Natal and author of other law books, argues that a defended accused has 300 percent more chance of being acquitted than an undefended accused.

The cost of an effective legal aid programme would be largely offset by predictable savings on a reduced prison population which stood at nearly half-a-million annually in sentenced and unsentenced prisoners at the last reckoning.

An Outline of Legal Aid in South Africa is the first book to comprehensively examine legal aid since it was introduced 10 years ago.

Prof McQuoid-Mason calls for a number of far-reaching reforms including the introduction of state defenders and for it to be incumbent on judges, magistrates, as well as the police at the time of arrest to ask if the accused wants legal aid and tell him how to get it.

No national statistics are published about the number of accused in criminal trials or civil proceedings who have no legal representation. Prof McQuoid-Mason makes original conservative projections from the few pilot studies that have been done.

Survey

A Cape Town survey for instance showed that 84 percent of blacks, 79 percent of coloured and 42 percent of white accused were unrepresented in 1980 Another survey in Retreat showed that 99,9 percent of black and 92,3 percent of coloureds were unrepresented. Similar results were found in two Durban studies

Blacks and coloureds together make up 90 percent of people changed with criminal offences and of the prison population. If you assume on the basis of the local surveys that 80 percent of black and coloured accused are unrepresented you get a figure of just over one million of the cases recorded each year in the magistrates' courts

Other surveys show that while 35 percent of defended accused are acquitted only 10 percent of undefended accused are acquitted This means that thousands of people languish in South African prisons who would not be there had they been properly represented.

The Legal Aid Board is funded by an annual parliamentary grant. In 1979-80 it was R2 000 000. Divided by our 28-million population this gives an expenditure of seven cents per capita compared with R1,40 in Britain while Canada which has a smaller population (23,25 million) spends more than 78 million dollars on legal aid.

PROFESSOR David McQuoid-Mason ... more legal aid would mean cuts in prison costs.

Increase

To provide a legal aid programme on a par with the developed world the Government would have to increase its legal aid budget by more than 20 times.

Such a move would significantly reduce the prison population — one of the world's highest.

"The average acquital rate for represented accused is 35 percent," says Prof McQuoid-Mason.

"The daily cost of keeping one prisoner was R3 in 1979-80 I reckon the state would save R1,56-million on the drop in prisoners sentenced up to a month and R6,22-million on those sentenced for more than a month and less than four, not to mention longer sentences

"Legal representation would also lead to more non-custodial sentences for accused who are found guilty"

Prof McQuoid-Mason also argues that legal aid funds could be made to go much further if the board abandoned the referral system — by which applicants are referred to private attorneys who are then paid by the board — and instead appointed its own salaried lawyers to act for applicants

He estimates that for R1 148 750 paid out by the board in legal fees in a single year representation was secured for only 3 349 applicants.

For the same amount the board might have employed 43 lawyers (allowing for administration costs) with an ability to handle 8 600 cases — more than twice the number.

Prof McQuoid-Mason believes that many law graduates, inspired by ideas of community service, would jump at such posts

But legal aid would really work only when judges, magistrates and the police were obliged to ask the accused whether they wanted legal aid and to advise them on how to get it.

21/5/82 RDM

Court finds SA laws 'beyond the pale'

(109) (329) (252)

By PATRICK LAURENCE

THE Appeal Court has indirectly but unmistakably found the Terrorism Act and the Internal Security Bill — still before Parliament — to be in conflict with accepted Western principles of justice, top legal experts said yesterday

They were commenting on the historic decision of the Appeal Court to uphold an appeal against a conviction under the Terrorism Act on the grounds that the Act is inconsistent with the Declaration of Fundamental Rights in Bophuthatswana's Constitution

The appeal was heard by a full bench of 11 Appeal Court judges The appeal was upheld by a majority of seven to four One of the dissenting judges was Mr Justice Rabie, Chief Justice-elect and chairman of the Rabie Commission into security laws

Only twice before has a full bench of the court convened — once to hear an appeal against the removal of coloureds from the common voters' roll in the mid-1950s and once, in 1969, to hear an appeal against the extension of the Terrorism Act to South West Africa

The appellant, Mr Wilfred Marwane, was found guilty under the Terrorism Act in 1979 and sentenced to 15 years' jail by Bophuthatswana's Supreme Court He appealed against his conviction, arguing that the Terrorism Act was inconsistent with Bophuthatswana's Declaration of Fundamental Rights

Bophuthatswana inherited South Africa's Terrorism Act when it attained independence in 1977 Bophuthatswana's Declaration of Fundamental Rights is based on the European Convention on Human Rights, which is seen as a definitive statement by the West of its position on human rights

Prof Marinus Wiechers, of the University of South Africa, said 'The implication of the Appeal Court judgment is that South Africa's Terrorism Act cannot stand the test of measurement against the European Convention of Human Rights"

The professor, who is a legal advisor to the Bophuthatswana Government and who helped frame its Declaration of Fundamental Rights, added "In as much as the Terrorism Act continues to exist in the Internal Security Bill, the Appeal Court judgment applies equally to it in a moral, though not legally enforceable, sense"

Prof John Dugard, director of the Centre for Applied Legal Studies, had earlier pointed out that Section Six of the Terrorism Act — which provides for detention without trial — has been incorporated into the Internal Security Bill

Describing the Appeal Court judgment as "terriblv important", Prof Dugard, author of a penetrating study of human rights in South Africa, said "What the court has said is that the South African Terrorism Act is contrary to Western principles of criminal justice"

Bophuthatswana's Declaration of Fundamental Rights enshrines a number of rights, including

- The right to be presumed innocent until proved guilty
- The right of detainees to test the validity of their incarceration in a court of law
- The right to protection against retroactive legislation (although only passed in 1967, the Terrorism Act was made retroactive to 1962)

The Appeal Court — which functions as the highest court of appeal for the "independent homelands" as well as South Africa — found that the Terrorism Act was in conflict with the Declaration of Rights

Bophuthatswana has since repealed South Africa's Terrorism Act Its security legislation is contained in its Internal Security Act of 1979, which — according to Prof Wiechers — was drawn up with the conscious objective of reconciling it with the Declaration of Rights

South Africa, whose constitution does not have an enforceable Bill of Rights, bequeathed its Terrorism Act to Transkei, Venda and Ciskei when they became independent

The Transkei, which does not have a Bill of Rights, subsequently repealed the Terrorism Act, only to re-assert many of its draconian powers in its Public Security Act

Venda still relies on the Terrorism Act Lutheran ministers of religion face charges under it in connection with the African National Congress attack on the Sibasa police station last October

Prison ordered to return notes

Star 24/5/82

By Jerry McCabe
West Rand Bureau

A Krugersdorp Regional Court magistrate has ordered prison authorities to allow a prisoner to keep documents he had prepared for his defence

Mr Chris Eksteen made this order last week after Mr Herklaas Esterhuyse told him that the Krugersdorp prison authorities had confiscated a book of notes he had prepared for his defence.

Mr Esterhuyse has been charged with four counts of fraud involving almost R500 000 He pleaded not guilty at a previous hearing

At this hearing Mr Esterhuyse withdrew instructions from his attorneys and is now conducting his own defence. He told Mr Eksteen he was unable to continue his case without his prepared notes

Major Stephanus Potgieter, officer in charge of the Krugersdorp prison, was called to give evidence as to why Mr Esterhuyse's notes had been confiscated

He said he was following an instruction issued by the Commissioner of Prisons in 1980 which prohibited a prisoner from taking any notes or written documents out of a prison or taking them into a prison

Mr George Thiart, who appeared for the State, said an accused person should be allowed all possible aid in preparing his defence

Mr Eksteen said Mr Esterhuyse's case would be adversely affected if he were denied the right to use the notes he had prepared for his defence.

"I order, that in spite of the specific regulations, the documents concerned that are relevant to this case must be made available to the accused," he said

Mr Eksteen also heard evidence from Mr Henry Weideman, who said he lent Mr Esterhuyse R3 000 after Mr Esterhuyse had offered him a job as fered him a job

The case continues today.

(252) Hansard Q. col. 890 - 892 24/5/82

Judges of appeal

890 Mr D el DALLING asked the Min of Justice

(a) How many judges of appeal were there in the Republic as at 1 April 1982 (b) what are their names and (c) when was each such judge appointed to the Appellate Division?

The MINISTER OF JUSTICE

(b) and (c)

Name	*Date of appointment to the Appellate Division*
(1) P J Wessels	1 2 1963
(2) E L Jansen	16 9 1968
(3) P J Rabie, *D.M S*	16 4 1971
(4) G v R Muller	16 4 1971
(5) M M Corbett	1 6 1974
(6) G P C Kotze	1 6 1976
(7) S Miller	30 7 1976
(8) M A Diemont	1 7 1977
(9) C P Joubert	10 7 1977
(10) J J Trengove	16 12 1978
(11) P M Cillié	1 1 1980
(12) G Viljoen	1 1 1980

Family courts 'not feasible'

(252)

25/5/82 Star

The creation of family courts in South Africa would lead to a lowering of standards because of the shortage of skilled personnel, Mr Justice R J Goldstone said yesterday at a child welfare seminar in Johannesburg.

"Because of the manpower shortage in South Africa the officers who would preside over family courts would inevitably be less qualified than judges of the Supreme Court," the judge said

Cases involving children probably constituted the most important and difficult work of a judge

"While judges may lack certain qualities and have insufficient expertise to preside over family disputes, I have no doubt they are best suited for the task," he said.

He criticised psychiatrists and psychologists who "far too frequently lose sight of the fact that their primary duty is to assist the court and not to advance the case of their clients"

On the courts' power to consent to marriages parents opposed, he said South African judges tended to favour parents' decisions.

Mr Justice Goldstone told the delegates there was some justification in the criticism that litigation was expensive and conceded there were many delays in the judicial system

"Our legal aid system is not as extensive as it should be and delays frequently result in hardship and even injustice," he said. 'But the system should be improved, not replaced"

He suggested people and organisations interested in child welfare should try to improve the existing system.

"There are problems which need greater definition and some can be partially, if not totally, solved," he concluded

The Bench in person

252

RDM 29/5/82

... and the "abhorrent creatures" in the dock

By LIN MENGE

PROFILE

YOU have Jack van Dam to thank for high parking fines, for forbidden public gatherings and no smoking in city cinemas That is because he is a magistrate — more precisely Chief Magistrate of Johannesburg and, it so happens, the most senior magistrate in South Africa

Predictably, he is ram-rod stiff, gimlet-eyed, not a man to be trifled with Yet he is also soft-spoken, diffident, quietly humorous and friendly You tread warily, awed by the office, when you first meet him, when you leave you have enjoyed meeting the man

Perhaps it is his lack of arrogance Authority, so earnestly worn, does not need it And the life-long progression from clerk to chief magistrate does not invite it Mercifully, this particular top Johannesburg executive, with an office with a R1-million monthly turnover, is not a whizzkid

As a boy he fancied becoming a game warden He also wanted, more than anything, to become a medical doctor, but there was no money for that He once wrote a book on microbiology It was never published, but it was some compensation for not having been able to study medicine

The son of an accountant in the South West African Administration, he too joined the service and spent three years as a clerk in the Lands Branch in Windhoek before being transferred to clerical-cum-assistant magisterial posts in places such as Rundu and Tsumeb

Rundu was so remote the young Van Dam went on camel patrols

"I never thought then that I would be sitting here — I would have been completely horrified at any suggestion of my coming to Johannesburg at all," he says now

From there he went to various postings in Cape Town and Pretoria — regional court prosecutor, assistant control magistrate, civil magistrate He came to Johannesburg in 1967 and progressed from district to regional court magistrate, from deputy chief to chief magistrate in 1980 He is a youthful 57 — perhaps it is the ginger hair and freckles that does it

As Chief Magistrate Mr Van Dam is responsible for everything that happens in the huge complex that is the Johannesburg Magistrate's Court, with its 33 district courts which in turn include branch courts such as Soweto, Hillbrow and Booysens He is ultimately responsible for the R1-million monthly turnover in fines and bail and maintenance money. He is in charge of the staff of 400 And for the operation of all the courts — civil, criminal, inquest, children's, juvenile and maintenance, for breach of the peace inquiries, judicial and quasi-judicial inquiries and administration of estates

No, he no longer does Bench work While he may give legal guidance to magistrates and prosecutors, his time is entirely taken up with administrative duties

"I miss the Bench work," he says "I'd like to see the magistrate as a completely professional person — the professional status of the magistrate as a judicial officer rather than as a mixture of judicial and administrative officer should receive more emphasis"

To Jack van Dam, a good magistrate is above all a person "who has a real understanding of human nature and suffering, who, after he has found a man guilty is able to deal with the matter of sentence subjectively"

He must be able to balance all the facets and impose a sentence that will be to the best advantage of all concerned

"That requires an understanding of human frailty and fallibility and, as one learned gentleman put it, 'if he knows a little law, so much the better'"

Subjective sentencing? Does that mean that just as there are "hanging judges", there are "jailing magistrates" Oh yes 'It is part of the magistrate's personal make up"

Could he label himself?

"I can't be a judge of my own court," he said Yet he freely admits to a strong distaste for sexual offences

"When you preside in a regional court with rape cases day after day you come to abhor that type of offence And because crimes of violence and sexual assault are so often coupled with drug abuse, I think I have also found the drug abuser and especially the pusher an abhorrent creature I have a great distaste for persons who enrich themselves by creating misery for other people"

Where he will find a TV crime series "interesting", he prefers not to watch soap opera, again because of their "distasteful sexual attitudes"

Home, in Linden, means a wife, two daughters and — he gleamed happily — a grandson His hobby is woodwork Of course he makes things — "poverty necessitates that I make my own things!" He does pistol shooting, purely as a hobby, and loves walking When he retires, it will be to the foot of Table Mountain

He admits to lying awake at night worrying about the burdens of office The staff shortage is acute, even if the courts are not in "chaos" as one Press report suggested There is also the nagging worry of every magistrate who presides over criminal cases — will the sentence he imposed help rehabilitate the offender?

"I very often doubt if a prison sentence has any beneficial effect, but I have yet to find an alternative"

Flogging? "There is a place for it, for particular offences, but it should not be imposed without very careful thought"

He is pleased he presided over a test case on the highly controversial issue of smoking in cinemas He ruled that the regulation banning smoking was legal — and the Supreme Court upheld his decision He was a heavy smoker himself, at the time

Among his many other duties such as presiding over Roads Board meetings and certain types of liquor licence hearings, Mr Van Dam must fix all admission of guilt fines for the Johannesburg magisterial district In 1980 he doubled penalties for parking offences "I got into a lot of hot water with certain people over that, but parking offences have dropped by a third, according to the latest figures" He looked smug

But once an accused decides not to pay the spot fine, and to go to court, it is up to the magistrate to decide whether to caution and discharge the offender, or fine him more heavily

And that brought Mr Van Dam to the whole question of magisterial independence It is his responsibility, for example, to grant permission for meetings that are otherwise prohibited in terms of the Riotous Assemblies Act.

"That is entirely in my discretion I might call for a report on a particular type of meeting, but I am not bound by anyone If it is drawn to my attention that there might be a breach of the peace I might decide not to grant permission — but I consider it for myself, it is my authority"

But haven't magistrates been accused of lacking independence, of being the lackeys of their political masters because they are paid by the State?

"Yes It dismays me intensely — such allegations show complete ignorance on the part of those who make them No one can tell a magistrate what to do on the Bench except the Supreme Court I can fix admissions of guilt but I have no right to interfere with a magistrate in the exercise of his judicial discretion Nor has the Department of Justice Nor has the Minister It is never attempted

"It so happens the magistrate falls within the ambit of the Public Service Commission and that his salary is paid by the State, but so is the salary of the Chief Justice, and of the Comptroller and Auditor-General They are fearlessly independent and I am proud to say that in my experience magistrates are equally fearlessly independent on the Bench There is a lot of appreciation on record from Supreme Court judges, from the Appellate Division down, on the good work magistrates are doing Only 1,3% of automatic review cases from the Johannesburg Magistrate's Court are overturned and that is usually on the matter of sentencing Only a very small number of cases go on review or appeal"

None of this precludes legal guidance being given to magistrates Mr Van Dam is president of the Magistrate's Association For some years he edited the quarterly journal the association puts out to help magistrates keep abreast of new legislation And as Chief Magistrate he can offer advice Meetings are held at which sentencing norms are set in the interests of uniformity — but again the courts are not bound by these norms, he says

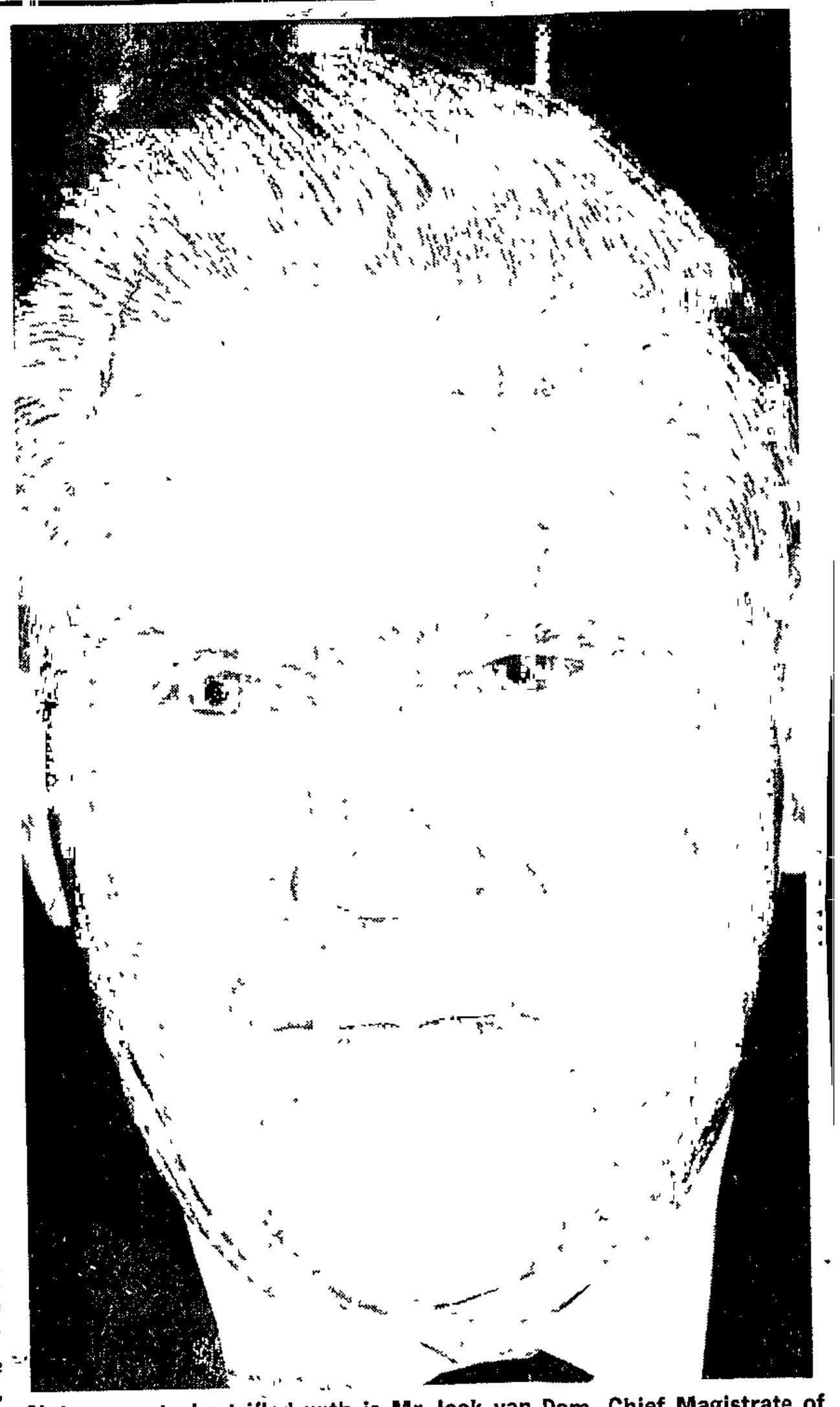
If the Attorney-General decides that a particular offence requires a more severe response, he instructs the prosecutors to tender evidence to the court to show that such cases should be treated more harshly But the sentence is the magistrate's decision

But what about the code that instructs magistrates to convey criticism of Government departments through Government channels — and not in their public judgments? It was Mr Van Dam who, in 1980, confirmed the existence of the controversial code

Those codified instructions still exist, he said

"If it is in the interests of justice, and necessary, then the judicial officer is duty-bound to include such criticism in his judgment But one should be just as careful about criticising a Government department, such as the Police, as one would be about criticising any other organisation, such as, say, the Rand Daily Mail

"Why? Because the magistrate or judge is untouchable when he gives his judgment, so it is difficult to get back at him The principle is that you do not say things about a person who cannot reply"



Not a man to be trifled with is Mr Jack van Dam, Chief Magistrate of Johannesburg

Picture ROBERT TSHABALALA

In violation of human rights...

ARGUS 1/6/82

252

In South Africa convictions under the Terrorism Act and the General Law Amendment Act are commonplace. JOHN RICHARDS, News Editor of The Argus, reviews a historic decision of the Appeal Court which ruled that they constitute a violation of human rights

BY a majority of seven to four South Africa's supreme judicial body, the Appellate Division of the Supreme Court, Bloemfontein, has held that two South African statutes, the Terrorism Act, No 83 of 1967 and the General Law Amendment Act, No 76 of 1962 violate fundamental human rights

The situation in which the Acts were tested was an anomalous one, as an integral part of the Acts themselves is that they cannot be ruled upon by a South African court

However the Appellate Division was ruling on an appeal brought by a citizen of a sovereign, independent, but foreign State, something it was entitled to do in terms of the Supreme Court Act, No 59 of 1959 (as amended), and the Republic of Bophuthatswana Constitution Act 1977, which became effective in 1977 of that year

Each of the three Acts which the appellant was alleged to have contravened is an Act, not of Bophuthatswana, but of the Republic of South Africa

The corollaries of the judgment are that anyone detained in the Republic of Bophuthatswana would at the time of the appellant's arrest, have had recourse to the courts to contest the legality of his detention

Furthermore that any person charged in that country, at that time, would not have the onus of having to prove himself innocent but would be deemed innocent until the State had proved him guilty beyond reasonable doubt

Wilfrid Sebonege Marwane had been convicted in 1978 by Mr Justice Hiemstra in the Supreme Court of Bophuthatswana of contravening the Terrorism Act, which became law in South Africa in 1967 He was sentenced to 15 years' imprisonment

He had been charged with contravening the Terrorism Act, alternatively with contravening a section of that Act read with a section of the General Law Amendment Act, which Mr Justice Miller, who handed down the judgment, referred to as the "sabotage provisions"

A second alternative charge was contravention of the Arms and Ammunition Act of 1969

He pleaded not guilty to the main charge and the first alternative, but guilty to the second alternative, contending that he had undergone military training in Angola against his will, and that his only reason for returning to Bophuthatswana was to reach his home in Zeerust

He had returned in the company of military men to whose command he was still subject at the time, but he admitted that he had been in possession of a grenade when arrested

In the majority judgment by Mr Justice Miller to which Judges of Appeal Messrs Jansen, Muller, Diemont and Viljoen, as well as Acting Judges of Appeal, Messrs Galgut and Van Heerden concurred, it was held that the Arms and Ammunition Act of Bophuthatswana contained no provision objectionable to the Constitution Act of Bophuthatswana

The other two Acts which formed the basis of the main charge and the first alternative, were, however, held to be in conflict with his country's Constitution Act, and the appellant's conviction on the main charge was set aside He was found guilty of contravening the Arms and Ammunition Act, and sentenced to 3½ years' imprisonment

This is not, however, the main thrust of the judgment, which was based on the conflict between the laws of the Republic of South Africa and those of Bophuthatswana which has entrenched in its Constitution Act, certain fundamental rights and freedoms

These are, firstly "Everyone charged with a criminal offence shall be presumed innocent until proved guilty"

Secondly "Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided promptly by a court and his release ordered if the detention is not lawful"

At the time of independence the Bophuthatswana Legislative Assembly repealed certain laws, but decreed that "all laws which immediately prior to the commencement of this constitution were in operation in any district of Bophuthatswana . . shall continue in operation and continue to apply except in so far as such laws are superseded . . amended or repealed"

But Mr Justice Miller ruled that this retention of laws governed by the opening words of the subsection of the Constitution Act, "Subject to the provisions of this constitution "

Of course, the constitution contained the two declarations of rights and freedoms mentioned above, and these were in direct conflict with the provisions of the Terrorism Act and the General Law Amendment Act

It was apparent from the provisions of these two Acts, said Mr Justice Miller, that an accused bore the onus of proving beyond reasonable doubt the absence of the elements required to convict him

It also provided that no court could pronounce on the validity of detention under the two Acts, nor could a court order the release of any detainee held in terms of them

The judge found that these conflicts, and they were not the only ones, precluded the possibility of the Terrorism Act being in force in Bophuthatswana when Marwane committed the acts which formed the basis of the charges against him

The hearing of Marwane's appeal was only the third time in the history of the South African Appellate Division that a full Bench of 11 judges has sat to hear a matter—the two previous occasions involved the validity of enactments of the South African Parliament the Senate Act of 1955, and the South African Amendment Act of 1956, and, on the second occasion in 1968 when the applicability of the Terrorism Act and a section of the General Law Amendment Act to South West Africa were at issue

In Marwane's case there was a dissenting judgment handed down by the Chief Justice, Mr Justice Rumpff, in which the Chief Justice designate, Mr Justice Rabie and two other Judges of Appeal, Messrs Joubert and Cillie, concurred

The judgment of the Chief Justice was based, in the main, on the interpretation of the phrase, "Subject to the provisions of this constitution . "

Whereas Mr Justice Miller gave these words an extensive meaning Mr Chief Justice Rumpff felt they should be interpreted restrictively

Bearing in mind that the State of Bophuthatswana had been born in perilous times, there was no doubt in his mind that both the South African Parliament and the Legislative Assembly of Bophuthatswana had intended that "any rule of law" of effect in Bophuthatswana at the time of independence would continue to apply unless expressly repealed or amended after independence.

252 Hansard

Corporal punishment

Q Col. 945 1/6/82

630 Mrs H SUZMAN asked the Minister of Justice

How many adults of each race group were sentenced to corporal punishment in 1981?

The MINISTER OF JUSTICE

The required statistics are not readily available

Van den Bergh allowed to sue

252 RDM 5/6/82

Mail Correspondent

CAPE TOWN — The former head of the Bureau of State Security, General Hendrik van den Bergh, was yesterday granted permission to sue Mr Justice A J Lategan for R50 000 damages

The Supreme Court decided that Gen Van den Bergh would be allowed to sue Mr Justice Lategan for alleged defamation, but dismissed his application to sue the Erasmus Commission, of which Mr Justice Lategan was a member

Mr Justice Lategan will appeal against the decision

One of the three Supreme Court judges, Mr Justice Milne, Deputy Judge President of Natal, said in his judgment that Gen Van den Bergh had failed to prove that the statements made about him in the Erasmus Commission report were published maliciously

The situation where Mr Justice Lategan had spoken at a Junior Rapportryers meeting in Paarl in 1979, was different to the comments made in the Erasmus Commission

On this occasion he had not appeared as a member of the commission, and did not have the protection of privilege

Gen Van den Bergh said in his application that Mr Lategan had told the Junior Rapportryers that the members of the commission could not "decide whether this man (Van den Bergh) was mad or a liar"

Hoexter report calls for small claims court

252

RDM 10/6/82

Political Staff

THE ASSEMBLY — The Hoexter Commission has urged the creation of a small claims court in South Africa for legal disputes involving less than R750

The commission, whose fourth interim report was tabled in Parliament yesterday, said the present process of resolving disputes was "very expensive"

It described delays in litigation as an "unmitigated evil" and said the pace of justice lagged in ordinary courts

Barriers like poverty and ignorance impeded citizens' access to the courts

Another obstacle often overlooked by lawyers was the psychological barrier experienced by people in courts

Because of these factors "many daily injustices go unrectified either because of reluctance to litigate on the part of a potential plaintiff with a valid claim or because of reluctance on the part of the actual defendant to resist what he recognises to be a spurious claim"

In the South African context, in a small claims court "many of the litigants will be poor, ill-educated and unsophisticated people"

There was also a manpower shortage in the South African legal system

"South Africa has too few trained lawyers to meet the needs of a total population of 25-million people," the commission said

It said it subscribed to the basic principle that judicial officers presiding in courts of law should not be members of the civil service.

The likeliest candidates for appointment as adjudicators in small claims courts were unpaid volunteers from among practising attorneys, advocates and academic teachers of law.

It said small claims courts should be separate and independent tribunals in the system of lower courts

Hearings would be conducted in an informal atmosphere by the adjudicator, who would assume an active inquisitorial role

"The commission is convinced that the successful functioning of a small claims court hinges largely on the personality of the ajudicator"

It said it was "strongly of the view that in a South African small claims court the requirements of justice would best be served by imposing a total bar on legal representatives of either party at a trial"

It added "Legal representation, so the commission considers, must inevitably tend to infuse into the proceedings that air of formality and technicality which is fundamentally alien to the real spirit of small claims procedure"

Legal representation also gave the rich litigant an improper advantage over a poor opponent

The commission felt small claims courts should not make any award of costs between parties and the only expenditure for a plaintiff should be a modest filing fee

Although it conceded there were substantial arguments favouring hearings in private, the commission felt all small claims hearings should take place in public unless both parties wanted a private sitting

A fundamental principle should be that small claims courts be open to all races

Judges cleared of excess payments

ARGUS 11/6/82 252

Argus Correspondent

DURBAN. — Judges of the Transvaal and Natal Benches have been cleared of allegations that some judges, might have been involved in "fiscal irregularities" in respect of subsistence and travel allowances made payable to Supreme Court judges and their clerks

The judges were cleared in a report of a parliamentry select committee which considered the report of the commission of inquiry into the allegations conducted by the Chief Justice of South Africa, Mr Justice F L H Rumpff.

The committee while giving its findings has recommended that the Rumpff report remain "confidential"

It is not known which judges or how many were involved in the allegations

The investigation followed certain statements made by Mr Mervyn King following his resignation from the Transvaal Bench more than two years ago

The committee found "that there was not a single Transvaal judge who deliberately submitted incorrect claims"

It found that Natal judges "assumed and believed bona fide that their claims had been correctly compiled and submitted by their clerks and that they had in no way acted dishonestly or deceitfully"

However, the committee noted with "concern the incorrect and irregular manner in which some claims for subsistence and travelling expenses were submitted, which resulted in certain amounts being paid to some judges' clerks to which they were not entitled"

The report noted with "appreciation" that Transvaal judges concerned had already repaid voluntarily the amounts which had been paid to them and to which they were not entitled It recommended that as result the issue could be regarded as having being disposed of.

On the Natal judges the committee proposed that a recommendation of the commission be accepted and that "should any overpayment have taken place, a financial rectification is not necessary in their case"

As far as judges' clerks in both the Transvaal and Natal were concerned the committee said that because of conditions no amounts paid should be recovered.

Small claims Courts a 'valuable step forward'

(752) Mercury 11/6/82

Mercury Reporter

THE establishment of a 'small claims' Court for settlement of civil disputes involving amounts up to R750, as recommended by the Hoexter Commission, has been welcomed by a consumer law expert as 'a valuable step forward'

Prof David McQuoid-Mason of the Faculty of Law at the University of Natal said the proposal, which is contained in the fourth interim report into the structure and functioning of the courts, would be of great benefit to the man in the street and would make the Courts more accessible to him

'This will apply particularly to consumer disputes where an individual cannot afford a lawyer and yet feels he has a genuine grievance which could be settled by a Court,' he said

Exception

Mr Tony Brokensha vice-president of the Natal Law Society, said that while he had not read the report in full, the principles were in line with the thinking of much of the profession with the exception of the amount of money which the Court would handle

'If it is kept as high as R750 there is a possibility that certain debtors will utilise the small claims Court to delay payment of debts,' he said

An officer of the local Legal Aid Board said that the concept was an excellent one, particularly for people who had a genuine grievance but who were unable to afford legal representation or the time off from work to go to court.

Typical

He said that many cases for which legal aid was sought were to do with comparatively small amounts, something which the proposed small claims Court would handle

A typical case was that of a Durban woman who claimed she was owed R108 in commission but which her former employer refused to pay

She feels she would like to seek redress to the courts even if it's only on a matter of principle but under the present system the cost and the risk involved in litigation is not justified' he said

404 crayfish too small, says NPB

Mercury Reporter

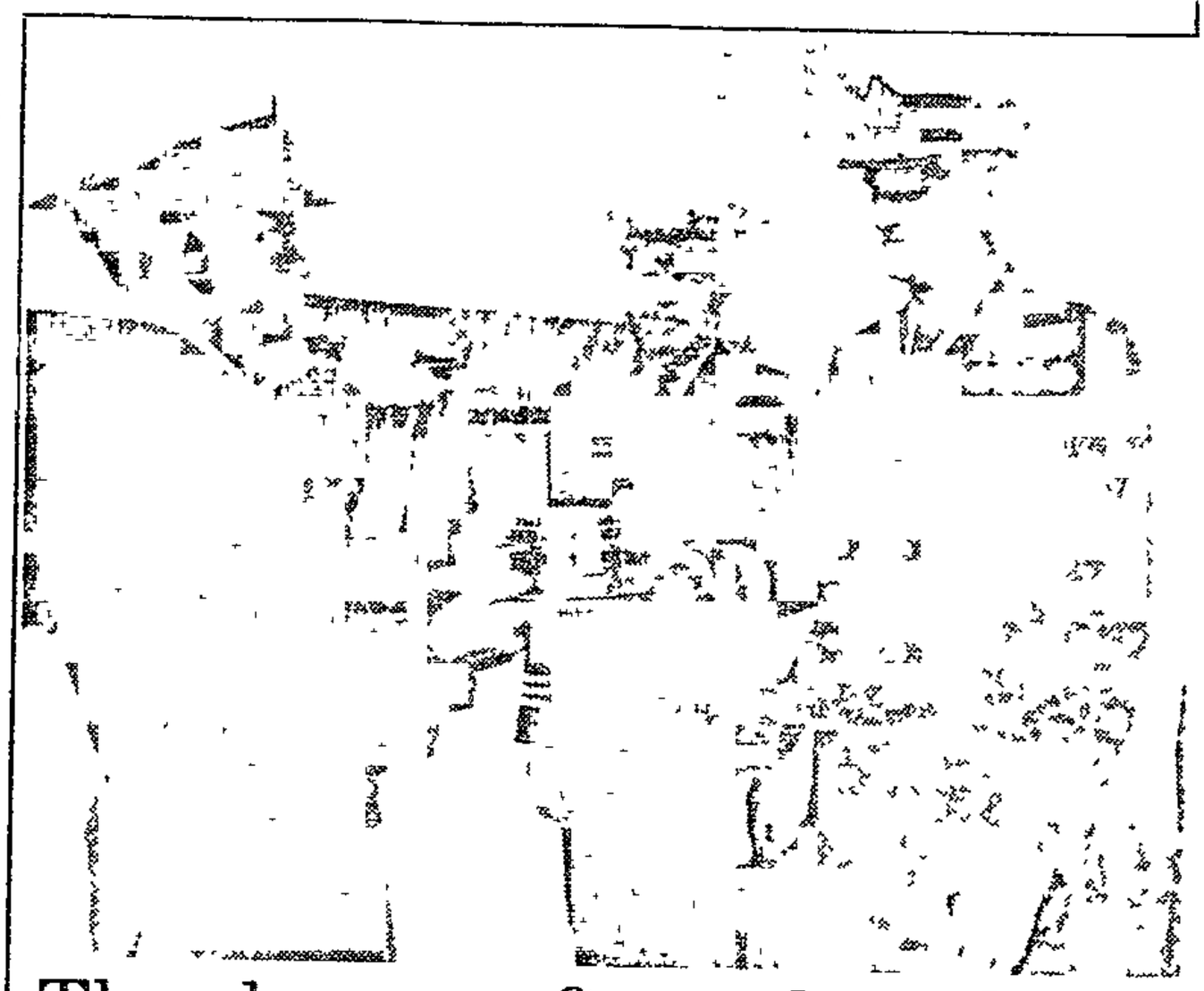
THE owner of a Port Shepstone frozen foods shop yesterday pleaded not guilty to charges of importing 404 undersized crayfish and 79 bags of oysters from Transkei in the Port Shepstone Magistrate's Court

Mr John Spiller of Spiller Frozen Foods appeared before Mr A P van Wyk after he was allegedly found in possession of the crayfish and oysters by an official from the Natal Parks Board last month

The Court heard that Mr Spiller had a permit to import crayfish from Transkei during the season from February to October

He did not, however, have a permit to import oysters and was accused of possessing 404 undersized crayfish out of a delivery of 910

The hearing was adjourned until June 16



Thanks . . . after a long haul

THE ship's company of S A S Jalsena at Salisbury Island Naval Base yesterday bade farewell to Cmdr G van der Merwe who retires at the end of the month as commanding officer of Naval Training Command based at Simonstown

Officers and ratings bought a brass barometer which was presented (pictured) to the commodore by Sea K Ballasur on behalf of Jalsena Cmdr Ian Manning, officer commanding the SAS Jalsena (centre), looks on

Cmdr van der Merwe joined the Navy 25 years ago For 10 years he was OC of the Naval Gymnasium and then Chief of Naval Staff Personnel Later he was Director of SADF Personnel Development He returned to the Navy two-and-a half years ago as OC Naval Training Command

Zimbabwe DRC leaders call for end to apartheid

HARARE—Five white leaders of the Dutch Reformed Church in Zimbabwe have called for the abolition of apartheid in South Africa

They have signed a letter calling for an end to the system of separate development perpetuated by Pretoria

The ministers are Mr Abraham Louw Moderator of the Central Africa Synod Mr Gerard Breytenbach of Maronder Mr Pieter van Vuuren of Rusape Mr Deon van Dyk of Kadoma and Mr D

formed Church leaders in Southern Africa who protested to their white 'mother church' in Cape Town against the practice of apartheid in South Africa In the letter the signatories confessed they were guilty and shared responsibility for 'the main social evils in South Africa

They said the apartheid ideology and the laws governing territorial segregation race classification and mixed marriages could not be defended on the basis of the Bible Jus

ing society, the men said

They believed that matters like the forced removal of people, the disruption of marriages and family bonds through migratory labour under expenditure on black education insufficient and bad housing for black people and low wages could not be reconciled with the demands of the Bible for justice and human dignity

Mr van Vuuren who is church order adviser on the Central African Synod said yesterday he

ıip ɔle R30 287

money due to the KwaZulu Government for services in the area

He was supposed to bank the money but had not done so and kept it for himself

None of it had been recovered

Ndimande declined to make any statement about where the money had gone and did not give evidence

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Mr du Plessis said the Court did not know where the money was 'It has simply disappeared into thin air'

He jailed Ndimande for five years

B/C Jasper D Maritime Carrier, E Rosario
s L Melton Universal, L/M Nobel, N H
n O/P Helen Schulte, R Anemone
, 3/4 Frigo America, 6A Anangel Glory; 7
an Career 11 Alpac Africa 12A Ridge, 15

ber 101 Bauchi, 102 Ever Oasis 103 Porto
Santa Criz 106 Baron pentland, 107 Sanko

08 Falmouth Bay SRJ Breede GRAVING
DOCK Leda EBH Thorheide BUOYS

ik Frankfort Express, Ange Baltic Rea

ɔello S A Vergelegen Helen Schulte Bar

accessible to him

This will apply particularly to consumer disputes where an individual cannot afford a lawyer and yet feels he has a genuine grievance which could be settled by a Court,' he said

Exception

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Dissension

A spokesman for the Legal Resources Centre said the idea of the small claims Court was an excellent one

Hire purchase agreements were often a cause a dissension, she said, citing the case of a woman who had paid for a four-piece lounge suite, only to have a three-piece set delivered

'In spite of her protests the company concerned refuses to take back the suite and refund her money or even to give her credit for the missing item

In this instance the Court is her only hope she said

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The ministers are Mr Abraham Louw, Moderator of the Central Africa Synod, Mr Gerard Breytenbach of Maronder, Mr Pieter van Vuuren of Rusape, Mr Deon van Dyk of Kadoma and Mr D Ganzevoort of Nyanda

The clergymen were among 122 Dutch Reformed Church leaders in Southern Africa who protested to their white 'mother church' in Cape Town against the practice of apartheid in South Africa In the letter, the signatories confessed they were guilty and shared responsibility for the many social evils in South Africa

They said the apartheid ideology and the laws governing territorial segregation race classification and mixed marriages could not be defended on the basis of the Bible Justice and not merely law and order should be the guiding premise in ordering society, the men said

They believed that matters like the forced removal of people, the disruption of marriages and family bonds through migratory labour, underexpenditure on black education insufficient and bad housing for black people and low wages could not be reconciled with the demands of the Bible for justice and human dignity

Mr van Vuuren who is church order adviser on the Central African Synod, said yesterday he wholly identified himself with the contents of the letter he signed

It is logical that the Church should never go along with an evil perpetrated by anybody he said

Mr van [illegible] thought [illegible] not describe [illegible] South African [illegible] it was necessary that the teachings of the Bible should be brought to its attention

Christians should show others what love was all about The move would need concerted efforts and time from all who would like to see an end to the evils practised by the South African Government [illegible] Sapa

Bill will be 'shutting cities' to rural blacks

Mercury Reporter

THE new influx control Bill will merely entrench the practice of 'shutting the cities' against rural blacks desperate need for work and food, director of Diakonia, Mr Paddy Kearney said yesterday

People come to the towns because in the rural areas they lack the bare necessities for survival,' he added

Mr Kearney was responding to Wednesday's publishing in Parliament of the long awaited Bill on black influx control which will relax restrictions for blacks who qualify to be in the cities, while tightening the measures to keep those out who do not qualify

He said it was difficult to get excited' about a move which appears to retrench the most fundamental aspect of the South African system

Star 18/6/82 (252)

General Coetzee: correction

On May 10 1982 The Star carried an editorial headed "A chilling suggestion" which criticised Lieutenant-General Johan Coetzee, Head of the Security Police, for remarks he was believed to have made about holding political trials in closed courts

The Star is happy to accept General Coetzee's assurance that this understanding was erroneous and that the editorial was therefore based on a mistaken premise We accept that no direct reference was made to "closed" or "secret" trials nor did he expressly say that he personally favoured them

What General Coetzee had in fact said in an interview with SABC-TV was that he "wondered whether the time had not arrived when alternative mechanisms for security trials should be considered"

The Star's comment was published in good faith and we regret any embarrassment caused to General Coetzee

Treason: SA can't complain

252

Star 18/6/82

Chief Reporter

South Africans have no cause to be outraged at the decision by a Seychelles court to try seven foreign mercenaries for treason — South Africa effectively does the same, legal experts say

Normally the common law of high treason is applicable only to the citizens of a country or aliens who are permanent residents

But in the Seychelles coup trial this week, the Chief Justice of the Seychelles, Mr Justice Earl Seaton, ruled that mercenaries could be charged with treason

Professor John Dugard, director of the Centre for Applied Legal Studies at the University of the Witwatersrand, said "South Africans can hardly take exception to this step on the part of the Seychelles authorities.

"Our own statutory form of treason in the old Terrorism Act and now in the Internal Security Act allows a foreigner who enters South Africa to participate in subversive activities to be tried for statutory treason

"Several foreign nationals have consequently served long terms of imprisonment"

Professor Dugard added that the South African Appeal Court was about to consider the case of a possible alien (a Transkeian) who was convicted by the Transvaal Provincial Division of the Supreme Court under the common law of treason.

"Generally South Africans should remember that people in glass houses should not throw stones

"Our own South African laws are so uncivilised that we can hardly point a finger at laws of other states," he said

Professor Marinus Wiechers, professor of Constitutional Law at the University of South Africa, said the common law of high treason and the law of statutory treason in the Terrorism Act, now the Internal Security Act, amounted effectively to the same thing

He said the maximum penalty in both cases in South Africa was the death sentence

He said there was an inherent danger in creating statutory law on a par with the common law crime of high treason

It has been pointed out that 13 foreign mercenaries were tried for treason by the MPLA in Angola in 1976 after fighting for the FNLA forces and four of them were executed

The Star's Pretoria Bureau reports that, both in Angola and internationally, there is no crime in being a mercenary, so the MPLA used resolutions and condemnations of the mercenaries' activities issued by other African states to constitute a legal argument

Since then, a protocol has been added to the Geneva Convention stating that mercenaries have no right to be combatants or prisoners of war

Therefore any professional soldier who is captured alive may be summarily executed

But, even if a person does not qualify for prisoner-of-war status under the Geneva Convention, he can still receive its protection as a protected belligerent provided he complies with three basic prerequisites

- A member of an irregular armed force must be commanded by someone responsible for the actions of his men
- Irregulars must have fixed distinctive signs, easily recognised — such as a uniform
- They must also carry their arms openly

Weighing up the cost of justice

(252) S. Express 20/6/82

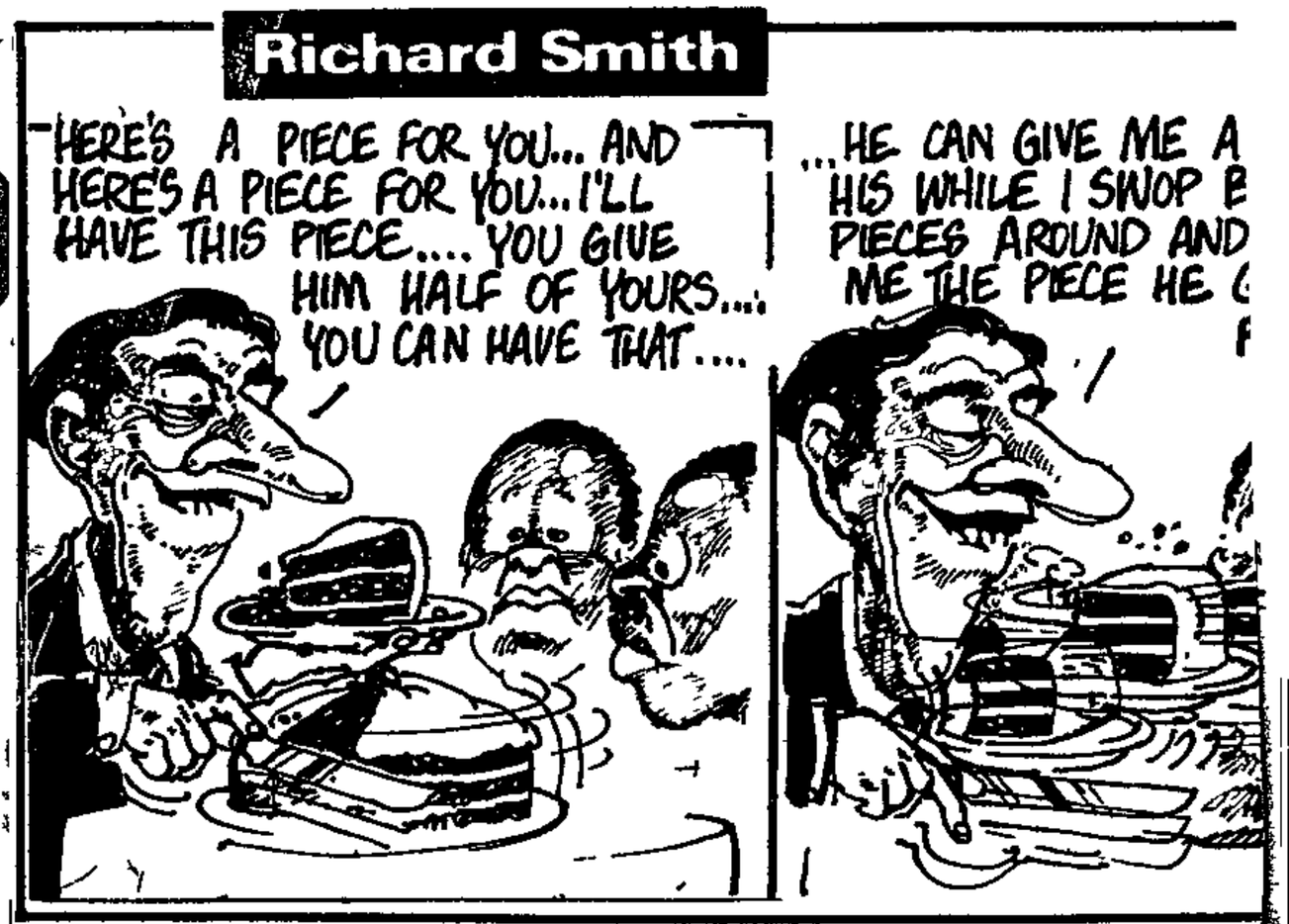
SMALL CLAIMS COURTS TO GIVE PUBLIC A CHANCE TO GET JUST DESERTS AND STAY SOLVENT

THE South African who goes to court can expect — in the words of Ambrose Bierce, 19th century American newspaperman, misanthrope and satirist who wrote the Devil's Dictionary — "to give up his skin for the hope of retaining his bones".

The costs of litigation have become astronomical

The Hoexter commission into the structure and functioning of the courts, the fourth interim report of which was tabled just before Parliament prorogued last week, has come to the rescue with a recommendation to establish small claims courts

Disputes involving amounts up to R750 would be resolved in such courts in proceedings characterised by "simplicity, speed and inexpensiveness."



(252)

Even the top dogs are hit by costs

THERE have been many recent examples of high expenses and costs in South African court actions.

The costs of actions brought by and against Dr Eschel Rhoodie, former Secretary of the Department of Information, ran into hundreds of thousands of rands.

The 43 men charged with the attempted Seychelles coup in November last year who were charged, released and charged again have

R40 000 for legal counsel.

The parents of Dr Neil Aggett, the trade unionist who was found dead in his security police cell, have already spent R50 000 on fees to lawyers involved in preliminary hearings and the inquest into the death of their son The final figure could be twice as much.

The South African Council of

...al, ... pope and satirist who wrote the Devil's Dictionary — "to give up his skin for the hope of retaining his bones".

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Special report By CATHY KENTRIDGE

Paperwork would be minimal, no lawyers would appear for either party, and the adjudicator would combine the role of counsel for both parties He would be an unpaid volunteer from the ranks of practising advocates, attorneys and academic lawyers

It would cost the plaintiff about R2 for a notice of claim plus another couple of rands to cover the costs of the service on the defendant

The small claims courts may, if they succeed, provide some relief for the man who is neither poor enough to qualify for legal aid nor rich enough to pay for a lawyer

Legal fees can bring a litigant to the brink of financial ruin

In the magistrate's court, if the amount in dispute is not more than R1 500, an advocate is entitled to charge R200 for the first day and R135 for each subsequent day The attorney can charge R15 for every hour in court

Thus if R1 500 is in dispute and the atttorney is entitled to R75 a day, the cost of the hearing for one party for just the first day is 18,3% of the amount in dispute and for both parties it is 36,6%

If R700 is in question just the advocate's fee can be 95% of the amount in dispute

In the Supreme Court a junior advocate can charge R50 an hour and a senior R90 An advocate can ask for R600 for the first day and R400 for subsequent appearances and for days on which he has to be at the court — even if the case is not being heard

By statute an attorney is entitled to charge R40 an hour for a Supreme Court appearance

With an increasing proliferation of paperwork from both bureaucracy and lawyers, administrative staff crises in the justice department and delays caused simply by the volume of work in proportion to the number of lawyers to do it (there are 5 310 attorneys registered with the Association of Law Societies and 670 practising advocates in South Africa to serve a population of 25-million), the average man can find it tough going to get his just deserts

The proposal for small claims courts was made as long ago as June 1977 by Mr David Dalling, Progressive Federal Party MP for Sandton

He estimated that millions of rands in costs and manhours were lost, wasted or abandoned because of administrative red tape, understaffing of judicial departments and a huge workload

In the same year the then Minister of Justice, Mr Jimmy Kruger, said "The rich and poor are able to go to court to establish their rights but the middle-income earner faces the risk of possible financial ruin in seeking, through litigation, to establish what he considers to be his just right

"I think we would be amazed if we knew the number of middle-income earners who avoid litigation, who waive their rights, rather than take a wealthy opponent to court"

He said the finest system of justice was meaningless if the cost prohibited its availability to the public

His remarks have not lost their cogency with the passage of years with more and more people falling into the middle sector between qualifying for legal aid and being able to afford legal fees.

All lawyers interviewed this week welcomed the small claims court idea but they suggested that an hour with a lawyer before signing a contract would be worthwhile precaution against disputes

...and against Dr Eschel Rhoodie, former Secretary of the Department of Information, ran into hundreds of thousands of rands.

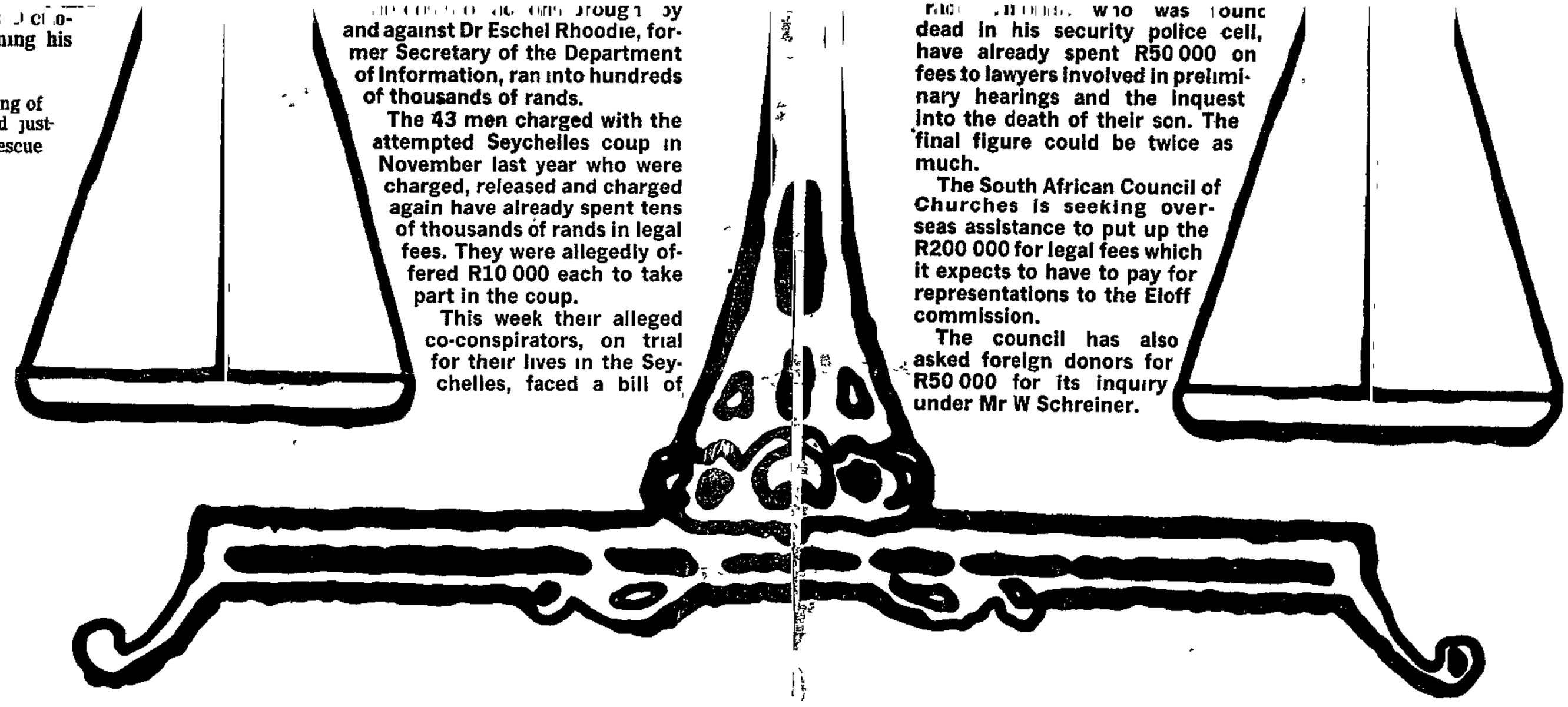
The 43 men charged with the attempted Seychelles coup in November last year who were charged, released and charged again have already spent tens of thousands of rands in legal fees. They were allegedly offered R10 000 each to take part in the coup.

This week their alleged co-conspirators, on trial for their lives in the Seychelles, faced a bill of ...

... who was found dead in his security police cell, have already spent R50 000 on fees to lawyers involved in preliminary hearings and the inquest into the death of their son. The final figure could be twice as much.

The South African Council of Churches is seeking overseas assistance to put up the R200 000 for legal fees which it expects to have to pay for representations to the Eloff commission.

The council has also asked foreign donors for R50 000 for its inquiry under Mr W Schreiner.



Corners can be cut to keep those legal fees down. . .

Express 20/6/82

CUTTING cost corners when taking legal action is a way of ensuring justice does not hurt the bank balance more than necessary

Johannesburg lawyers suggested many ways clients could prune — or avoid — high bills

For instance, they should arrive at the attorney's office fully prepared

Being prepared means saving costs by the client doing much of the information gathering, investigating and legwork rather than paying an attorney to spend his time battling with bureaucracy for answers to letters and phone calls

But be warned Clients should confine themselves to information-gathering

They should not take issue with the other side because this could easily lead to costs being trebled as the attorney tries to unravel the tangle the client may possibly have got into

Another basic point about having a preliminary consultation with an attorney is that the clients should get an opinion as to the strength of their case and chances of success and what the fees are likely to be

The client could then decide whether it was worthwhile instituting proceedings or not

At the time of consultation the attorney might point out the subsidiary costs arising out of litigation

Apart from the legal fees there are the loss of earnings if the client has to appear in court over a long period and possible travelling and accommodation expenses

Then, if the client loses the action, costs could be awarded against him and he might have to pay the fees of the other side's attorney as well as his own

If a client lost a claim for R3 000 in the Supreme Court, he could pay a legal bill of R5 000

Mr Arthur Chaskalson, SC, chairman of the Bar Council, suggested taking out insurance against 'unexpected legal costs'

Various schemes are available in the United States

The one most applicable is known as 'prepaid legal insurance' in which a group of eligible individuals or families is enrolled in a prepaid plan with a prescribed schedule of benefits

A set amount is paid into the plan to buy coverage for the group

Services could be provided by designated lawyers or the member of the scheme could obtain services from any lawyer in private practice who was prepared to act for him

One of the problems that could arise with this scheme is that of controlling the nature of the cases financed so no vexatious or frivolous claims would be made.

South African insurance brokers and underwriters said their companies did not offer an umbrella insurance policy for legal fees but added that in certain circumstances legal fees were covered in various types of policies

These included household policies where the householder was insured for legal costs arising out of injury to people and damage to property, and motor insurance policies

Only one company said that, at a cost of R12 a year, insurance up to a maximum of R2 500 could be obtained against legal costs arising out of anything other than divorce and criminal charges

The policy would cover every type of legal fee such as costs arising out of hire purchase deals, property transactions, faulty products and defamation

Divorce fees range from R15 for a do-it-yourself undefended divorce to thousands of rands

Another option open to a client is to agree on a fee with his lawyer or pay the fixed tariff for the job

Lawyers feel the tariff does not reflect what it costs them to do the work in terms of time taken and their overheads, so most attorneys prefer to agree on a fee with the client in advance.

Americans take the agreed fee principle several stages further in that many lawyers work on a 'contingency fee' basis

This can operate in two ways Either the client pays his lawyer only if he wins or the laywer takes a percentage of whatever is won

In South Africa this subject arouses great controversy as many lawyers feel it would put too much pressure on lawyers to win and that some would resort to unscrupulous methods to do so

Those who favour this scheme feel the advantages far outweigh the disadvantages in that it brings legal remedies within reach of everyone

Thus, if a client has a strong claim and cannot get free legal services or afford to pay, he could litigate on a contingency basis

And, as one lawyer put it "The price you pay for justice is time — to prepare each case and give the individual the best chance of getting his just deserts"

S Express
20/6/8
P 22

Eyes right as Pik steps into the future in a jungle kit

THE Foreign Minister, Mr Pik Botha, has an incomparable eye for the future — he was a verligte before other Nats, he broke with Dr Connie Mulder before any other Nat, he spoke of joining KaNgwane to Swaziland while Dr Koornhof was still struggling to integrate sport

So when Mr Botha turned up this week in the uniform of an air force colonel, it was bound to be taken as an indication of where the Government is headed

Next step epaulets and gold braid

Anything Galtieri can do..

□□□

ANY lingering doubt that the Government sees its future in military terms was surely removed when General Magnus Malan turned up looking like a humble troopie. Pik may have his eye on the future, General Malan, like all professional officers, has his eyes firmly on the last war

□□□

THE Swazi land deal has again highlighted the enduring mystery of South African politics why has this Government failed to perceive the perfect ethnic solution to South Africa's problems?

Almost half of the whites live in the PWV, from Pretoria to Welkom, and from Witbank to Rustenburg

Declare this area independent, like Venda, and one man, one vote becomes possible in the rest of the country Whites living in the rest of South Africa could find their political expression and cultural fulfilment in the PWV, and perhaps in a couple of city states like Durban and Stellenbosch

Of course, it would be only fair to permit black capital to be invested in the white area — through the PWV Development Corporation, of course

□□□

THE inability of the Nats to imagine the effects of their policies on other people was nicely (if unintentionally) captured in a cartoon in Beeld this week It had Mrs Thatcher offering the Falklands — "plenty of access to the sea" — to a primitively depicted Chief Gatsha Buthelezi.

The point was clear: Chief Buthelezi had lost some land — toughies!

In tone it was oddly reminiscent of the British cartoons showing another South African leader, also primitively depicted, after the loss of another bit of southern African territory Paul Kruger in 1902

It's no comfort to the Zulus, but it's an exquisite irony that power seems to have made modern Afrikaners capable of the same insensitive arrogance that distinguished Victorian Brits.

□□□

TALKING of irony, the British Labour Party's proposal to arm the ANC is bound to be received with wry amusement by the Irish Americans who are so often accused by Britain of arming the IRA Sauce for the goose?

In fact, there's not much for South Africans to worry about. The proposal is more a measure of the eccentricity of the modern Labourites than an indication of future British policy.

□□□

THE Afrikaanse Taal en Kultuurvereniging (the Broederbond's cultural front) urged the Government this week to use Afrikaans in negotiating with the coloured people A speaker at the annual congress said the Government was far too ready to speak English to black people

Now, if the price of negotiation with blacks is to do it in Afrikaans, for heaven's sake go ahead Afrikaans, English, Urdu, Sanskrit or Esperanto — what does it matter so long as they negotiate!

□□□

MUDGE defiant, Pik hopeful, Crocker concerned don't miss the next exciting instalment of our weekly serial: Namibia moves towards a settlement

● Gatsha Buthelezi ... lost some land

Supreme Court judges criticise magistrate

(252) RDM 22/6/82

Pretoria Bureau

AN ALBERTON magistrate was criticised by two judges in the Pretoria Supreme Court yesterday for acting improperly while asking an accused to explain his plea in court

The judges, Mr Justice Dijkhorst and Mr Justice van der Walt, said the magistrate, Mr W A Niemann, acted in an irregular manner

The judges' criticisms came when they set aside the conviction and sentence of a man convicted by Mr Niemann

Mr Oupa Petrus Kgobalala, 29, of Phadima Section, Katlehong, near Germiston, was found guilty in the Alberton Magistrate's Court on October 22 last year on a charge of culpable homicide Mr Niemann was on the bench

He fined Mr Kgobalala R400 (or eight months' jail), of which R200 or four months were conditionally suspended for five years

The charge arose from an accident near the Katlehong Hospital on April 24, 1981, when a three-year-old child, Mandla Khuze, was knocked down by a vehicle driven by Mr Kgobalala The child died on the way to hospital

Mr Kgobalala's appeal against the conviction and sentence was heard by the two judges

In his judgment, Mr Justice Dijkhorst said Mr Niemann acted improperly while asking Mr Kgobalala to explain his plea of not guilty in court The judge said the magistrate turned the questioning into cross-examination

Mr Kgobalala's explanation of his plea filled nine pages of the court record

The judge said the magistrate's questioning was "irregular and out of the way" The magistrate's actions were wrong, said the judge

Judge Dijkhorst said Mr Niemann had gone beyond his powers to ask an accused why he tendered a particular plea

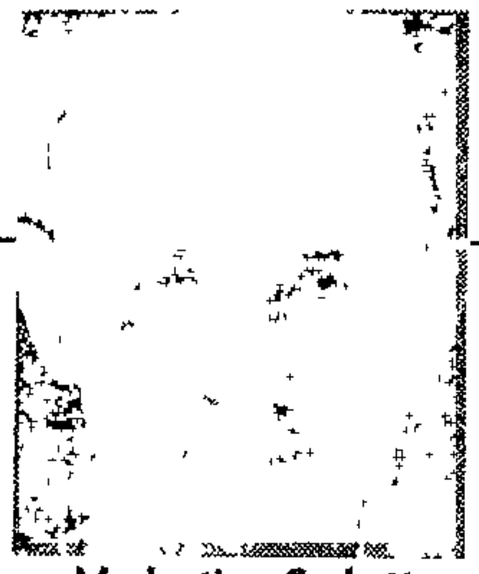
The judges also said they could not understand why, during the hearing, the magistrate switched off the recording machine to speak to Mr Kgobalala's attorney

The judges accepted Mr Kgobalala's evidence — that he was travelling at about 40km/h when the accident took place

The State, the law and the individual

ARGUS 29/6/82

252



Mr Justice Corbett

EXTRACTS from an address by Mr Justice M M Corbett of the Appeal Court at the recent graduation ceremony of the University of Cape Town.

"I see grave dangers to the legal system — and the esteem in which it is held by society — in legislative arrangements whereby a powerful State agency and the individuals comprising it are placed permanently beyond the reach of the law."

OUR common law, as it has come to us down the centuries, is the product of some of the finest minds thrown up in the Western World during the last two millenia.

The Romans started it; the medieval monks and jurists of Western Europe rediscovered it, preserved it and cogitated over it; the Dutch lawyers modified and in some respects simplified and generally modernised it; and South African jurists have continued to develop and temper it to meet the demands of contemporary society.

It is, I believe, a magnificent heritage, a fine example of man's capacity for rational thought. For justice is reason and reason is justice. That is the fundamental equation underlying most civilised systems of jurisprudence.

Objectivity is a vital ingredient in the judicial process It is a quality which requires the judge, inter alia, to decide cases without favour or prejudice and not to make up his mind until he has heard all the evidence — and the argument. There are generally two sides to every case. Ultimately the judge has to decide that one party is wrong and one is right. But this can only be done by carefully, objectively and unemotionally weighing the evidence — and the argument — at the conclusion of the case

I think that herein lies a moral of more general application I have referred to the social and political problems which beset our country. Some of these are universal, some are peculiar to our own society

I hope that you, graduands, have an awareness of these problems and that you will continue to interest yourselves in them.

No doubt many of them fall into the category labelled "political." But do not let that put you off On the contrary it should whet your appetites

Some people say "Leave politics to the politicians" I can think of no worse advice

If I may be forgiven a plagiarism, I suggest that politics is much too serious a thing to be left solely to the politicians

In saying that, I mean no disrespect to those who guide the affairs of State I merely wish to underscore the thought that the essence of democracy is healthy political debate at all levels of society.

And it is here that I make a plea for objectivity. I know that in South Africa politics is generally a heady brew. Emotion and prejudice often tend to predominate.

But if ever there was a time in our affairs when clear-headed and objective thinking were urgently needed on the problems which confront us, it is now — and in the not-too-distant future.

After discussing basic features of common law, Mr Justice Corbett said.

A feature of our common law to which I wish to make reference is its emphasis upon the liberty of the subject

Most, if not all, of you are no doubt familiar with the writ of **habeas corpus** of English law, which traces its origin back to Magna Carta and which (when issued) requires the body of a person whose liberty has been restrained to be brought before the court so that the lawfulness of the restraint may be investigated and determined.

What is perhaps not so well known is that the Romans, many centuries before Magna Carta, had evolved a very similar remedy known as the **interdictum de libero homine exhibendo** (meaning, literally, the interdict concerning the producing of a free person).

This remedy was received into Roman-Dutch law and is today part of our common law. It was applied, in an extended form, by the Appeal Court as recently as 1975.

Of course, Parliamentary and other legislation has made many inroads upon the liberty of the individual. I do not propose to discuss the merits or demerits of such legislation. I will allow myself but two brief comments.

The first is that such intrusions on the liberty of the subject are by no means a purely South African phenomenon

The second is that, as a lawyer, I see grave dangers to the legal system — and the esteem in which it is held by society — in legislative arrangements whereby a powerful state agency, and the individuals comprising it, are placed permanently beyond the reach of the law.

I would point out, however, that in the interpretation of such legislation, our common law requires ambiguities to be resolved **in favorem libertatis**, i.e. in favour of the liberty of the individual. And this rule is often applied in practice.

The concern of our common law for the liberty of the subject is but one manifestation of the Western concept of freedom. The modern state is a very complex organism. And modern notions of government tend to promote interference in many spheres with the freedom of the individual

It is my belief that the role of the common law, as administered by the courts, in sometimes putting a brake upon such interference, in protecting the individual in proper cases against encroachments upon his freedom, except where this is clearly authorised by the statute, and generally in shielding the weak and helping the underdog, is an essential balancing mechanism in modern society.

I hope that you, in your future lives, will also cherish this concept of individual liberty, that you will show concern for the rights of others, particularly the underdog, for, as it was once said — "The love of liberty is the love of others"; and that you will strive for a fair balance between the freedom of the individual and the legitimate demands of the State.

The high cost of the law

(252) Mercury 1/7/82

Mercury Reporter

LAWYERS agree that only the very poor and very wealthy can 'afford' legal representation in South Africa — and that action is needed to right the anomaly

With professional advice and representation becoming increasingly costly, it is middle-income earners who appear hardest hit Subsidised or free legal assistance and aid is available only to the unemployed and meagre-salaried

Even those who can afford to hire lawyers and who win civil action awards often find themselves out of pocket over funds

Or else, in criminal cases, the onus is on the accused to find the money to establish his innocence — even if acquitted

Too complex

No form of personal liability cover exists from insurance companies because the possible risks involved are too complex, too loosely-defined and too expensive to formulate policies

The only applicable exceptions are cases accepted on Pro Deo (for God) or Pro Amico (for a friend) bases, either of which, however, would warrant special circumstances

Other than seeking assistance from the government-funded Legal Aid Board, which lays down a stringent 'means test', whereby requests are only considered if applicants earn less than R170 a month (single) or R340 a month (married), the only alternative recourse is the newly-formed Legal Resources Centre (in Durban and Johannesburg only)

This is a non-profit organisation of dedicated lawyers whose objective in providing free services in the public interest for the main part involves cases likely to benefit more persons than the parties involved

Courts have recognised both the need and the right to be represented, however, and authorities are in accord that denial of these rights through monetary or other considerations may be a miscarriage of justice

Nevertheless, more people are appearing for their own defence in the dock than ever before

And, in the meantime, practitioners' fees are continually rising to the extent that to hire 'top boys' in the business can cost hundreds, if not thousands, of rands a day

Mr Graham Cox, president of the Law Society of Natal, feels it would be 'a marvellous idea for the State to subsidise legal assistance' — but points out the economy couldn't afford it

He suggests as alternatives either a system where individuals contribute a portion of costs, or for the Legal Aid Board to revise its means test on a sliding scale, according to income

In the U S A, he says, a scheme is frequently used in civil claims where cases are conducted for a contingency fee, on a 'profit-sharing' basis which earns lawyers a proportion of awards

But this is considered unethical practice in South Africa and could not, in any case, be adapted to criminal cases

'Tariffs prescribing maximum fees are laid down, but frequently exceeded by agreement between attorney and client,' says Mr N J van Rensburg, secretary of the Law Society of South Africa

'This arrangement was introduced of necessity because legal firms found they couldn't come out on laid-down tariffs Clients can accept or refuse it's their option

'It's an accepted but unfortunate fact that only the rich and only the poor can get legal representation The middle-income earner is left in the middle'

Mr van Rensburg agreed this was 'an unhealthy state of affairs,' but said little could be done about it

A topical point in case is the current controversy of the 'hijack trials' being heard in Pietermaritzburg and the Seychelles

Continued representation of the accused has repeatedly been in doubt because of their lack of funds to afford legal teams

Legal costs for the men involved will exceed R150 000, regardless of the outcome And this excludes money to live off for the duration of the trials while the accused are unable to be employed

One attorney said 'I've done a lot of work with no guarantee of being paid Yes, lawyers do charge a lot, but we often don't get paid a lot We have as many bad debts as anyone

Give and take

'It's frequently a give and take situation — lawyers will go out on a limb regarding costs to do what's just, well knowing that chances of their being paid are slim'

The director of Durban's Legal Resources Centre, Mr Chris Nicholson, refers to the situation as 'insidious'

Even those who can afford to hire lawyers and who win their cases often find themselves paying enormous amounts

Mr Nicholson's organisation is also largely concerned with educating the public on their rights and with providing para-legal assistance to those who can't afford professional help

With a small group of others he is willing to forego the lucrative benefits of the profession to provide free assistance to clients

The easiest, most effective — perhaps the only — way to get past these difficulties, it seems, is to steer well clear of the courts

Indian made Additional Magistrate

252 Mercury 13/7/82

Mercury Reporter

MR S H MUNDHREE, who joined the Department of Justice as an interpreter nearly 19 years ago, this week was appointed Additional Magistrate at Chatsworth — the second Indian to hold the position in the Republic.

His appointment was confirmed yesterday by the Chief Magistrate at Chatsworth, Mr D J Gouws. He said he was pleased about the appointment, saying that it took a lot of sacrifice to get where Mr Mundhree had got.

'There is a great future for Indians in the Department of Justice,' he said

Mr Mundhree's appointment was made by the Director-General of the Department of Justice.

He started his career in 1963 as an interpreter and clerk in the Pinetown Magistrate's Court. He was later transferred to Chatsworth as clerk of the Court

Within a few months of appointment in Chatsworth he rose a step up the ladder to become a public prosecutor and later a senior prosecutor.

On May 1, 1980, he was appointed Control Magistrate at Chatsworth in charge of administration — a position he has held until his newest appointment.

Part of his duties as Control Magistrate also extended to presiding at trials involving civil cases.

Mr Krishna Maharaj, who is also based at Chatsworth, was the first Indian to be appointed a magistrate

Ex-prisoner's plea for ANC leaders

CAPE TIMES 14/7/82 (232)

Own Correspondent

JOHANNESBURG — One of the first Robben Island prisoners freed under the new dispensation for political prisoners said yesterday that his release would be meaningless if the remission was not extended to ANC leaders Nelson Mandela and Walter Sisulu

Mr Henry Africa 25 of Orlando West was released exactly a month before serving his full term of four years He and Mr Siphiwe Ngwenya also of Orlando West were released with 11 other prisoners

They were sentenced after being convicted under the Communism Act by a Kroonstad Magistrate in 1978 Both were charged with possession of banned literature

Mr Africa said he was taken to Robben Island where he spent 42 months before being transferred to the Helderstroom Prison in Caledon Western Cape He spent six weeks there before being transferred to a Bloemfontein prison

After one day he was told he was being freed

Mr Africa was reserved when interviewed at his home yesterday

He said he had 'never expected to be out so soon and added that his release and that of others would be meaningless if the remission was not extended to ANC leaders Mandela and Sisulu who are serving life sentences

Ciskei extradition treaty explained

D. Dispatch 17/7/82

EAST LONDON — An extradition treaty between South Africa and Ciskei does not force either country to extradite political offenders, according to the Government Gazette

But people facing offences under military law may not be extradited, according to the agreement

Generally the agreement stipulates that the two countries undertake to extradite to each other persons accused or convicted of criminal offences

It applies to people accused or convicted of offences for which a prison sentence of six months or more would apply or which would carry a more severe penalty than a fine alone

Applications for extradition may be refused in cases where the country holding the offender is investigating offences committed

The agreement lays down that extradition will not be granted in cases where a person has become immune to prosecution because of a time lapse— DDR

YOUNG BLOOD CHALLENGES THE OLD FACE OF CRIME...

ARGUS 19/7/82

252

WHILE unable itself to bring about social change, the Criminology Institute at the University of Cape Town can "provide the resources to encourage such change, and that is one of the most exciting features of this uniquely challenging position," says Professor Dirk van Zyl Smit, the new director of the institute

"The practical usefulness of the work of the UCT institute through its strong community links makes it unlike any other academically-based social science discipline," Professor van Zyl Smit says.

"This is for me another very exciting attraction since it bears directly on my special interest in criminal justice and its community image"

Professor van Zyl Smit, 32, took up his new post 10 days ago after teaching criminology — "Which I entered quite by chance" — at the University of the Witwatersrand since 1978

What's happening behind the statistics ....

Eight years ago he was prosecuting in Cape Town after graduating from the University of Stellenbosch, but concerned about his future.

So when the opportunity arose to study criminology at Edinburgh University he jumped at it, and stayed on to complete his doctorate

"It was more of a wrench to leave Johannesburg than I would have thought,' he admitted

"I really loved the intellectual atmosphere of Wits and my teaching, but this post, being the only chair in criminology which is directly linked to the faculty of law — in most universities criminology is an offshoot of the sociology department — gave me the opportunity to practise my two loves, and proved quite irresistible"

Professor van Zyl Smit has not yet mapped out his research or teaching plans, but believes he will try to define more closely the relationships between law and social controls, to discover to what extent the criminal justice system is seen as "legitimate"

He writes every year on the administration of law for the Annual Survey of South African Law, and emphasises that while the practical and community aspects of criminology attract him strongly, he feels it is important to do work that is intellectually valid

"A simple example of this is that it is easy to make cheap points using criminal statistics — and it is a very strong temptation to do so

"But ultimately it is more valuable to find out what is happening behind the statistics, and this is what the intellectual approach seeks to do"

Professor van Zyl Smit's wife is also an academic — a classicist who taught him at Stellenbosch, then moved on to lecture at the Rand Afrikaans University

She will be teaching at the University of the Western Cape in the new term They have two chil-

PROFESSOR Dirk van Zyl Smit, the new director of the Institute of Criminology at

Ciskeians refused bail — councillor

13/8/82 (252) D. Dispatch

EAST LONDON — A former mayor and current town councillor of Mdantsane has complained that three Ciskeians charged with petty offences had been refused bail in the King William's Town magistrate's court because they gave Ciskei addresses

Mr Ben Mashiyane said he was present in court on Monday when the three alleged offenders' applications for bail were refused on grounds that they had given Ciskei addresses

One of the accused, he said, was a young woman charged with stealing a packet of sweets worth 38 cents from a King William's Town supermarket

"I feel there is some injustice in these people being refused bail I have been detained once and I know what it is like being in a cell during these cold winter nights," said Mr Mashiyane

Ciskeian authorities should take the matter up he said "It is high time that the position of black Ciskeians be cleared up, especially as far as the South African courts are concerned"

He questioned the purpose of the extradition agreement between Ciskei and South Africa if people could still be refused bail on these grounds

The chief magistrate of King William's Town, Mr P Nel, yesterday said he had no comment on the matter

"I don't know on what grounds they were refused bail and I am not prepared to discuss it" he said

The assistant director of the Ciskei Department of Justice Mr D Takane said he had not received any similar complaints from Ciskeians

"This is the first time I have heard of this The question of bail is entirely at the discretion of the magistrate"

A public relations spokesman for the Department of Justice in Pretoria Mr M Ferreira said any person who was dissatisfied with a decision to refuse bail was at liberty to appeal against it with a higher court

"The authority to grant or refuse bail is vested in the presiding judicial officer, and this office is precluded from interfering with that jurisdiction Only a higher judicial office may interfere" he said

Mr Ferreira pointed out that each bail application was considered on its own merits One of the several factors to be considered in the granting of bail was the possibility of the accused person absconding

Article 2 of the extradition agreement between South Africa and Ciskei allowed extradition in respect of any accused person charged with offences punishable in terms of such laws by imprisonment of six months or more, or by a more severe penalty other than by a fine alone — DDR

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Examiners' Initials		

Paper No PAPER II
(to be copied from the heading on the Examination Paper)

NOTE CAREFULLY

1 Enter at the top of each page and in column (1) of the block on this cover the number of the question you are answering
2 Blue or black ink must be used for written answers The use of a ball point pen is acceptable Red or green ink may be used only for underlining, emphasis or for diagrams, for which pencil may also be used
3 Names must be printed on each separate sheet (e g graph paper) where sheets additional to examination book(s) are used
4 Do not write in the left hand margin

WARNING

1 No books, notes, pieces of paper or other material may be brought into the examination room unless candidates are so instructed
2 Candidates are not to communicate with other candidates or with any person except the invigilator
3 No part of an answer book is to be torn out
4 All answer books must be handed to the commissioner or to an invigilator before leaving the examination

Any dishonesty will render the candidate liable to disqualification and to possible exclusion from the University

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ARGUS 27/8/82 (252)

'Disquiet' over judicial appointments

JOHANNESBURG. — In the past 30 years, several judges have been appointed to the Supreme and Appeal courts for political reasons rather than on merit, a senior Johannesburg advocate claimed this week

Delivering a lecture entitled Telling The Truth About Law, at the University of the Witwatersrand, Mr Sydney Kentridge, Sc, said political preference had influenced judical appointments.

"This has undoubtedly led in many cases to better-qualified men being passed over in favour of other less worthy of appointment or promotion.

"Fortunately, such blatant political appointments have constituted a small minority of the Bench, but there have been enough of them to cause disquiet, especially as this tendency has clearly not yet ceased

"It is these appointments which endanger the standing of the Supreme Court as an independent body"

Mr Kentridge said it was 'also disturbing that trials for serious political offences were heard only by a certain section of the Bench.

"It is obvious that these trials are not heard at random by all or any of the available members of the Bench, but only by certain judges Time and again, the same few judges seem to sit in these cases

"Many senior judges, with 10 years or more on the Bench, have never presided over such a trial.

"This is disturbing because there ought never to be the slightest suspicion that the courts are being manipulated

"The matter requires investigation, not merely an awkward silence"

Mr Kentridge also said the time had come to give thought to increasing the independence and improving the standing of the magistracy

"Because magistrates are civil servants, they are vulnerbale to governmental pressures

"An extroardinary illustration of this was revealed a year or two ago when it came to light that for many years there had been in existence a department circular urging magistrates to be cautious and restrained in making adverse comments in their judgments about police witnesses,' he said

'Disquiet' over some judges

CAPE TIMES 27/8/82

252

Own Correspondent

JOHANNESBURG — A number of appointments to the Supreme and Appeal Courts in recent years had been made for political reasons and not on merit, a senior Johannesburg advocate said this week.

Speaking at one of the University of the Witwatersrand's series of senate special lectures, Mr Sydney Kentridge, SC, warned that such appointments — and withholding criticism of them — endangered the standing of the Supreme Court.

"Over the past 30 years a number of appointments to the Supreme Court and a number of judicial promotions have been made which are explicable solely on the ground of the political views and connections of the appointees," Mr Kentridge said.

Small minority

Fortunately such "blatant political appointments" had constituted a small minority of the Bench — "but there have been enough of them to cause disquiet, especially as this tendency has clearly not yet ceased".

Mr Kentridge said most lawyers knew of this, but did not talk about it for fear of impairing the Supreme Court's high reputation.

"I would say just the opposite. It is these appointments which in fact endanger the standing of the Supreme Court".

Judicial appointments were not exempt from public criticism. To do so in honest, temperate language would not be contempt of court.

"The knowledge that unworthy appointments will not pass without adverse comment is the best, perhaps the only, protection against them".

Mr Kentridge said there was another "disturbing development" in relation to trials for serious political offences.

Same judges

In certain parts of the country it had become obvious that trials of persons charged with these offences were not usually heard at random by all or any of the available members of the Supreme Court Bench.

"Time and again the same few judges seem to sit in these cases," he said.

Why this was so was impossible to discern, but the pattern had become too clear to be dismissed as coincidence.

"This is disturbing because there ought never to be the slightest suspicion that the courts are being manipulated".

On South Africa's magistrates, Mr Kentridge said they were officials of the Department of Justice — usually with experience only as prosecutors.

"From the public point of view, the connection between the judicial branch and the prosecuting branch of the Department of Justice seems too close, and their position as civil servants makes magistrates vulnerable to governmental pressures".

"It is time some thought was given both to the effects of the present magistrate's court system and to the possibility of increasing the independence and improving the standing of the magistracy".

August 28, 1982

(252) ROM

'Open judges' jobs to debate'

28/8/82

By MARTIN FEINSTEIN

THERE should be freer public discussion on the appointment of judges, the head of the Faculty of Law at the University of Natal in Durban said yesterday.

Professor Anthony Mathews, commenting on a speech this week in which a prominent Johannesburg advocate said some South African judges had been appointed for political reasons and not on merit, said "I share his concern".

But other legal organisations were reluctant to comment — at least at this stage.

The advocate, Mr Sydney Kentridge, SC, said in a University of the Witwatersrand public lecture that it was the duty of Bar Councils and law faculties to "scrutinise" judicial appointments in order to protect the reputation of the Supreme and Appeal Courts.

Mr Kentridge said that although "blatant" political appointments constituted a small minority of the Bench, "there have been enough of them to cause disquiet, especially as this tendency has clearly not yet ceased".

Prof Mathews said. "Part of the remedy would certainly be freer discussion of judges' appointments.

"And an additional remedy would be some system of vetting prospective judges perhaps by Bar Councils, who would then make recommendations to the appointing authority, a system used in many American states".

The Minister of Justice, Mr Kobie Coetsee, told the Mail through a spokesman that he would "choose his own time to comment" on Mr Kentridge's speech.

A spokesman for the Director-General of Justice, Mr J P J Coetzer, said the Department of Justice was not involved in the appointment of judges and could therefore not comment.

The president of the Transvaal Law Society, Mr Etienne le Roux, said. "To the best of my recollection this matter has never been officially discussed at council level, and that is as far as I can take it."

The leader of another legal organisation — who asked that neither he nor the organisation be named — also declined comment at this stage.

The president of the Natal Law Society, Mr Graham Cox, said the society was "more than satisfied" with appointments to the Natal Supreme Court Bench.

APPOINTMENTS OF SOME JUDGES POLITICAL — MP

W/E ARGUS 28/8/82

252

By Vivien Horler

CAPE TOWN MP Mr Brian Bamford says he knows of several judges who were appointed on political grounds

Mr Bamford a practising advocate was commenting on remarks made by Mr Sydney Kentridge, QC that a number of South African judges had been appointed solely on political grounds and not on merit

Three senior judges, including the Chief Justice of South Africa, have refused to comment on Mr Kentridge's claims

Mr Bamford said Obviously Sydney Kentridge is right He has made a very brave statement"

However the Chief Justice Mr Justice Rabie, told Weekend Argus "These remarks have been made before I don't think I'm going to say anything about them"

The Judge-President of the Cape Mr Justice Munnik, and the Judge-President of the Free State Mr Justice Klopper, refused to comment

Mr Kentridge, who has developed a reputation as defence counsel in political trials, told an audience at the University of the Witwatersrand this week that in the past 30 years several judges had been appointed to the Supreme and Appeal courts for political reasons and not on merit.

"Fortunately such blatant political appointments have constituted a small minority of the Bench but there have been enough of them to cause disquiet, especially as this tendency has clearly not yet ceased

Mr Kentridge also charged that serious political offences were heard only by a certain section of the Bench

"It is obvious that these trials are not heard at random by all or any of the available members of the Bench, but only by certain judges Time and again the same few judges seem to sit in these cases

Mr Kentridge said this was disturbing because there should never be the slightest suspicion that the courts were being manipulated

Mr Brian Bamford said he could list several political appointments to the Bench

"There is a strong tradition in South Africa that judges are appointed from practising senior counsel but over the years the Government has appointed a Government law adviser, an ambassador a Speaker of the House of Assembly and an atorney-general

"They are clearly from beyond the ranks of the Bars Yet every single major Bar in South Africa has senior counsel capable of holding down a judgeship

Senior counsel were reluctant to become judges because of the "pathetic" salaries

"Senior counsel can comfortably earn six figure salaries in a year yet judges don't even get half that If the Government is going to take the cream of private practitioners it must pay decent salaries

Mr Bamford said a former Nationalist Cabinet Minister, Mr T C Erasmus, once said judges were not appointed on merit only and that the need to balance English and Afrikaans speakers was taken into account

"That is outrageous but it shows the general thinking

Generally Mr Bamford said the most successful advocates made the best judges because of their vast experience He believed that judges should be appointed by an independent body as was the case in Italy and Israel

NO POLITICS

Mr Justice Cloete, the Judge-President of the Eastern Cape said that to the best of his knowledge no judges in his division had been appointed for political reasons And no judges who presided over so-called political trials in his division were hand picked

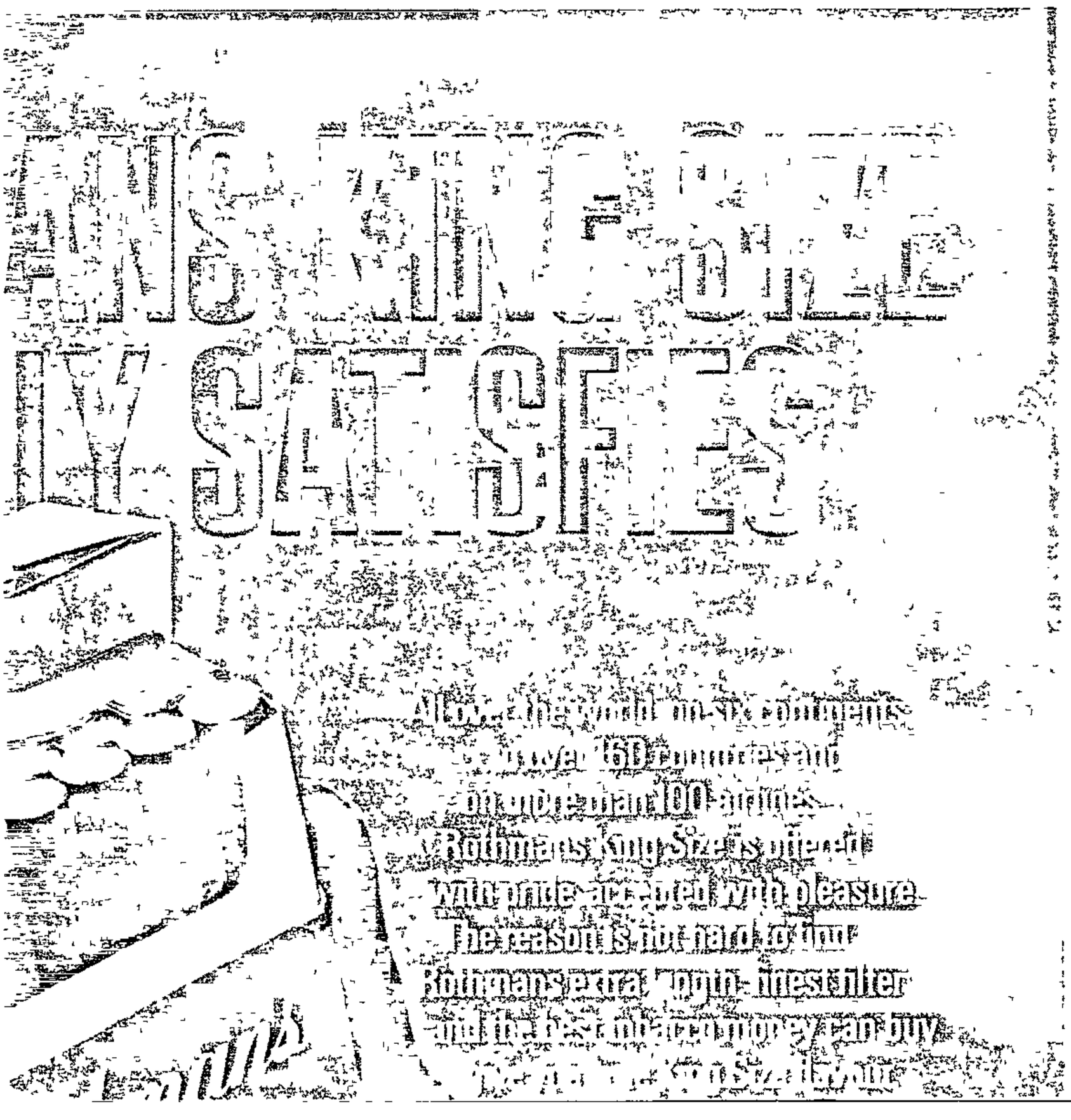
"Judges have no politics on my Bench" he said

Mr Justice Boshoff of the Transvaal said he believed reports of Mr Kentridge's speech had been distorted in the Press

He said it was extremely difficult to find senior counsel willing to accept appontment to the Bench

"They're making too much money," he said

Mr Justice Klopper of the Free State refused to comment on the appointment of judges — "It is outside my sphere"



APPOINTMENTS OF SO

W/E ARGUS 28/8/82

JUDGES POLITICAL — M

By Vivien Horler

CAPE TOWN MP Mr Brian Bamford says he knows of several judges who were appointed on political grounds.

Mr Bamford, a practising advocate was commenting on remarks made by Mr Sydney Kentridge, SC, that a number of South African judges had been appointed solely on political grounds and not on merit

Three senior judges, including the Chief Justice of South Africa, have refused to comment on Mr Kentridge's claims

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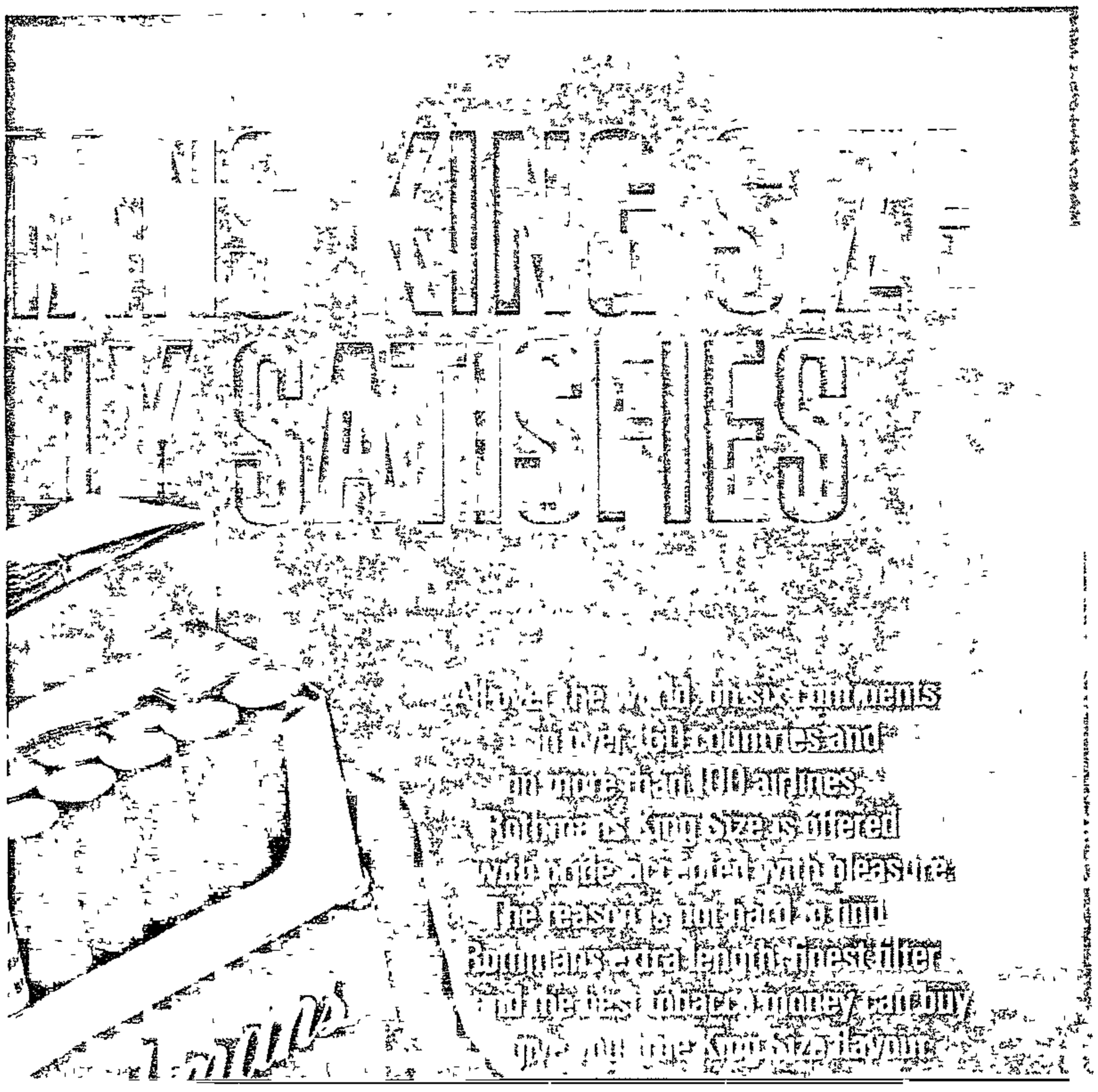

Political judges 'inevitable'

By MARTIN FEINSTEIN

THE danger of appointing judges for political reasons is inherent in a system where appointments are made by the Government of the day, the president of the Association of Law Societies of South Africa (Alssa) said yesterday

Mr J E Knoll was commenting in an Alssa statement on a speech last week, in which a prominent Johannesburg advocate said some judges had been appointed for political reasons

Mr Knoll said a viewpoint, which had "a substantial degree of support within the profession", was that the appointment of judges should be made and be seen to be made in a manner designed to ensure, "as far as is humanly possible, the total independence of the judiciary from political influence of any kind"

"This could perhaps best be achieved by means of an appointing panel consisting, say of representatives of the Bench and of the two branches of the legal profession, and a nominee of the Minister of Justice under the chairmanship of the Chief Justice"

Judges are presently appointed by the State President in consultation with the Cabinet

"I am aware that in a small minority of instances, appointments have from time to time over the years aroused controversy on the basis of being so-called 'political' appointments," Mr Knoll said

"Some of the men involved have, in the event, turned out to be fine judges, though individual opinion as to the merits of their original appointment may have varied from person to person

"My association is, under its constitution, empowered to represent generally the views of the attorney profession on the question as to whether an appointment is or is not 'political', there could and probably would be a diversity of opinion"

Bar Council speaks out on judges

252

RDM

1/9/82

By MARTIN FEINSTEIN

THERE is considerable support in the legal profession for the view that the appointment of judges should not be solely at the discretion of the Government, the Johannesburg Bar Council said yesterday.

The chairman of the council, Mr Arthur Chaskalson, SC, was responding to a speech last week in which a prominent Johannesburg advocate, Mr Sydney Kentridge, SC, said a number of judges had been appointed for political reasons

The Bar Council's statement follows similar comments by legal academics and the Association of Law Societies of South Africa

"The importance of a skilled and independent judiciary cannot be overstressed," Mr Chaskalson said, "and equally important is that the public should have confidence in the judiciary and the judiciary should be deserving of such confidence

"In South Africa — and this is so in many other countries — judges have always been appointed by the government of the day With some exceptions, appointments have been made from the ranks of Senior Counsel practising at the Bar

"Due to the tradition of independence that exists at the Bar, this has been seen as a system which produces an independent judiciary"

Mr Chaskalson said Mr Kentridge had not questioned the independence of the South African judiciary — but he had pointed out that judicial appointments could be, and had on occasion, been made for political reasons

"The importance of this is not the individual cases, but the adequacy of a system of judicial appointments which would make it possible for a government minded to do so to create a compliant judiciary

"In some countries procedures exist to guard against this possibility and to ensure that judicial appointments are made on merit and not as political favours"

Mr Kentridge suggested that similar procedures should be introduced in South Africa

"The question whether the existing system provides adequate protection against the creation of a compliant judiciary, or, whether there should also be additional safeguards to ensure that the judiciary is, and is seen to be, truly independent and appointed on merit are legitimate matters for debate both within the legal profession and the general public," Mr Chaskalson said

"Views within the profession differ on this issue, but there is considerable support for the view that the power of appointment should not be solely at the discretion of the Government, and that there should be a judicial appointments committee or other procedures to safeguard the independence of the Bench and its merit," he said

THE ARGUS WEDNESDAY AUGUST 25 1982

Ciskei judge rules statements admissible

ZWELITSHA — Chief Justice D S De Wet ruled in the Ciskei Supreme Court yesterday that statements allegedly made in Afrikaans by three Mdantsane men on terrorism charges were admissible as evidence

The judge said the contents of the statements were acceptable provided that a proper English translation was placed before the court The fact that they were made to a magistrate outside Ciskei did not invalidate them because Ciskei had not been independent when they were made

Defence counsel, Advocate M T K Moerane, had objected to their admissibility on the grounds that they were in Afrikaans, which was no longer an official language in Ciskei and that they were not made to a Ciskeian magistrate or magistrate in Ciskei

Mr William Mabone Duna, 31, Mr Dumisani Bizette Maninjwa, 31, Mr Bhayi Jeffrey Keye, 52, and Mr Luyanda Patric Mayekiso, 23, all of Mdantsane have pleaded not guilty to participating in terrorist activities, recruiting people to undergo military training, being members of the banned ANC and being in possession of banned literature

The Attorney General, Advocate W J Jurgens, had applied to submit statements allegedly made by Mr Duna Mr Maninjwa and Mr Mayekiso

He said Mr Mayekiso had told the magistrate he had not been assaulted at the time of making the statement but had said he had been assaulted two weeks previously

Mr Jurgens said the statement had therefore been made freely and voluntarily and there was no connection between it and the alleged assault as the latter had allegedly taken place two weeks previously

Mr Jurgens said that when Mr Maninjwa was asked what benefit he expected to gain from making a statement he had said he hoped his "colleagues" would be discharged This was no inducement, however

Mr Moerane submitted that the statement allegedly made by Mr Duna appeared to have been made by a Mr A F Majola and this name did not correspond with Mr Duna's name

He argued further that the state should prove to whom the statements had been made Secondly, the person who issued the certificate should say whether he had interpreted correctly and verify that he was the interpreter

Mr Moerane criticised the East London additional magistrate, Mr Edward Marais, who took Mr Duna's and Mr Maninjwa's statements

He said Mr Duna had told the magistrate that he had already made a statement to a Lieutenant Van Wyk Asked why he wanted to make a second statement, Mr Duna had said he wanted to make it so that it could be handed to court

Mr Moerane said the magistrate should have asked when the first statement had been made and investigated the matter

And when the accused said he wanted his second statement to be handed into court, the magistrate should also have queried this It was a curious answer and the magistrate should have realised there may have been influence brought to bear

Dealing with Mr Mayekiso's claim when he made his statement that he had not been assaulted "now" but two weeks previously, Mr Moerane said the magistrate had not even asked him who had assaulted him

Mr Maninjwa, when asked by the magistrate what advantage he expected to gain from making the statement had said he wanted his colleagues to be discharged

"Here again Mr Marais recorded in a mechanical way," Mr Moerane said, and accused the magistrate of not doing his duty Here too there seemed cause to suspect inducement, he said

Mr Justice de Wet ruled in Mr Duna's case that the statement clearly had been made by him There had been a mistake in the name

He upheld Mr Moerane's contention on the other elements

The state called Mr Edward Marais, who testified that he took Mr Duna's and Mr Maninjwa's statements

Under cross-examination by Mr Moerane, he said it made no difference to him when taking a statement whether a deponent was detained under the security legislation or not

He said he seldom went beyond the prescribed questions to probe for inducements and alleged assaults

Cross-examination of Mr Marais continues today — DDR

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include representatives of municipal, management committee and divisional council associations in the Cape.

lish the new Cape regional bodies will be held in Kimberley on Friday, Cape Town on Monday, Beaufort West on Tuesday and Port Elizabeth during September

Mr Louw will be chairman of each of the four regional bodies, with Mr Hernus Kriel, MEC in charge of local government, as deputy chairman

Invited to each of the meetings are seven representatives of the Municipal Association of the Cape, seven members of the Association of Management Committees, one member of the South African Indian Council and one member of the Association of Divisional Councils

NOMINEES

Each committee will comprise nominees of these bodies appointed by the Administrator, as well as any ad hoc members the Administrator may think necessary, and ex officio members nominated by the Department of Internal Affairs

Regional committees will in turn be represented on a national liaison committee under the chairmanship of the Minister of Constitutional Development, Mr Chris Heunis.

dorp, Vredendal, Clanwilliam, Piketberg, Ceres, Worcester, Montagu, Ladismith, Oudtshoorn, Uniondale and (along the coast) Knysna George, Mossel Bay, Riversdale, Swellendam, Bredasdorp, Caledon and the whole Western Cape-Peninsula area

- Karoo, based in Beaufort West, comprising Calvinia, Sutherland, Laingsburg, Prince Albert, Beaufort West Fraserburg, Murraysburg, Victoria West, Richmond Hanover, Noupoort Colesberg, De Aar, Philipstown, Hopetown, Prieska, Victoria West, Fraserburg and Williston
- Northern Cape, based in Kimberley, comprising Gordonia, Kenhardt, Herbert, Kimberley, Barkly West, Warrenton, Vryburg, Kuruman and Postmasburg
- Eastern Cape, based in Port Elizabeth, comprising on its boundaries with the Karoo and Western Cape regional committees the districts of Venterstad, Steynsburg, Middelburg, Graaff-Reinet, Aberdeen, Willowmore and Humansdorp, and all the area east of these districts, including Aliwal North Elliot-Maclear, Queenstown-Komga, Cradock, East London, Grahamstown and Port Elizabeth.

Alleged statement irregularities cited

D. Dispatch 3/9/82

ZWELITSHA — An advocate told the Supreme Court here yesterday that if his instructions were correct, the taking of a statement from one of his clients charged under the Terrorism Act had been attended by the most gross irregularities he had encountered in his career

Defence counsel, Mr M T K Moerane, said in the terrorism trial here that if his instructions were correct, the magistrate who took down a statement from one of the accused, Mr Luyanda Mayekiso, had made false entries

Mr Moerane was cross-examining Mdantsane's former additional magistrate, Mr J Stanford, who took down Mr Mayekiso's alleged confession

Mr Mayekiso, 23, Mr William Duna, 31, Mr Dumisani Maninjwa, 31, and Mr Bhayi Keye, 52 have pleaded not guilty before Chief Justice De Wet to participating in terrorist activities, being members of the banned ANC, recruiting people to undergo military training and being in possession of banned publications

Mr Moerane said he had been instructed that on August last year Mr Mayekiso was taken to Mr Stanford's offices at the Mdantsane magistrate's offices to make a statement Mr Mayekiso said he had refused to continue making the statement after insisting that it should be recorded that he had been assaulted by police and that the names of the alleged culprits be recorded as well

Mr Moerane's instructions were that after Mr Mayekiso's refusal to make the statement Mr Stanford called two police officers, a Mr Genda and a Mr Madliwa After aspeaking to them he allegedly made a telephone call and soon after three East London security officers, a Lieutenant Van Wyk, a Mr Muller and a Mr Robey Keith were said to have arrived Mr Mayekiso claimed he had been taken away without making a statement

Mr Moerane said Mr Mayekiso alleged he had been taken to the Cambridge police offices of the security police and been assaulted On the following day (August 19) he said he had been taken to Lt Van Wyk's office, where he claimed he had found Mr Stanford and a Colonel Nonhonho of the Ciskei Central Intelligence Services The last portion of his statement, dated August 18, was then taken and he was made to sign after Col Nonhonho acted as some sort of interpreter, Mr Mayekiso said He claimed to have been coerced by police to make the statement he signed

Mr Stanford denied making a false declaration He also denied that Mr Mayekiso had ever refused to make a statement He said Mr Mayekiso had been willing all along Mr Mayekiso had told him he had been assaulted by police during interrogation two weeks earlier but that this was not related to the statement he was making, Mr Stanford said

Mr Mayekiso had been calm and collected and related simply the history of events His demeanour had been relaxed and he had appeared at ease There had been no visible assault marks on him, Mr Stanford said

Mr Stanford denied making a telephone call as alleged by Mr Mayekiso

He said Mr Mayekiso had been taken away on August 18 after he had finished making a statement He denied going to the offices of the security police in Cambridge the next day He said he had been at work as usual on that day and besides, Cambridge was outside his jurisdiction The statement had been completed at the magistrate's offices on August 18, he said

Mr Stanford said Mr Mayekiso was fluent in English and had asked that his statement be read back to him in English without interpretation

Asked why he had signed confirmation that the statement had been read and interpreted to Mr Mayekiso when it had not been interpreted, Mr Stanford said he had forgotten to delete a section in the form to show that the statement had not been interpreted but read back to Mr Mayekiso in English only

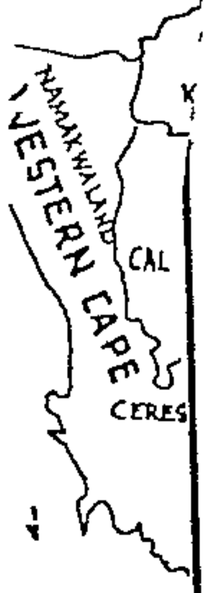
Mr Stanford conceded that additions and alterations in the original statement bore his initials only and none of the deponent's He agreed with Mr Moerane that when a deponent made an alteration the deponent had to intitial the change

Asked why the deponent's initials did not appear in the alterations, Mr Stanford said he did not know how this oversight had occurred

Mr Moerane asked whether, when writing out the statement, Mr Stanford had been copying from another document that had already been prepared Mr Stanford said there had been no statement or document on his desk except the statement he took down from the deponent

Mr Moerane suggested that the reason why Mr Mayekiso's initials did not appear was that he had not been present when that particular statement was made Mr Stanford said Mr Mayekiso had been there all the time

The trial continues — DDR



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Police use 'gas' in courtroom

ANC men get 20 years for high treason

Pietermaritzburg Bureau

A TEARGAS substance was used in the Supreme Court here yesterday to subdue spectators minutes after a Judge had pronounced sentence of 20 years' imprisonment each on three men convicted of high treason.

Patrick Ntobeko Maqubela, 32, Mboniswa de Villiers Richard Maqhutyana, 29, and Seth Mpumulelo Gaba, 24, members of an ANC-backed conspiracy, were responsible for a series of explosions in Durban last year in which nine people were injured and more than R400 000 damage caused.

The Judge, Mr Justice Auret van Heerden, had left the courtroom when the three defendants raised clenched fists and started chanting slogans

They were joined by a crowded public gallery.

A police spokesman confirmed that an aerosol canister, which he said was not teargas but had 'a similar effect', had been used to subdue the crowd There had been no arrests and no injuries

Streaming eyes

After the police action spectators and lawyers rushed from the building with streaming eyes, many coughing and sneezing uncontrollably.

Earlier police had had to warn members of the public to remain silent after they had broken into song while waiting for the Judge to enter the court

The five-week trial took a surprise turn yesterday when two prominent churchmen were called to give evidence in mitigation of possible death sentences

Archbishop Denis Hurley, the head of the Catholic Church in Natal, and Dr Simon Gqubule, president of the Methodist Conference, told the Court they would like to see the abolition of the death sentence

Questioned by Mr Ernie Wentzel, SC, for the defence, Archbishop Hurley said he believed the death penalty would exacerbate social conflict in South Africa.

He also warned that by paying the ultimate penalty the men might be considered by their communities to be martyrs. This would 'deepen and strengthen the resolve' of those involved in the struggle rather than act as a deterrent.

Speaking on behalf of the South African Council of Churches, which he served as vice-president, Dr Gqubule said the council had petitioned President René of the Seychelles not to execute mercenaries involved in the abortive coup there

This illustrated their standpoint, which was that the death penalty should not be imposed on anyone

Christian families

Cross-examined by Mr Ian Slabbert for the State, Dr Gqubule conceded that he did not regard the actions of the three accused as Christian

However, he knew them to have been brought up in Christian families — the father of Seth Gaba, for example was a Methodist minister — and they had been led by the circumstances in which their people lived to commit the crimes of which they were accused

Mr Wentzel said a letter found in the possession of one of the accused had indicated that the timing of the explosions had been carefully chosen to avoid injury to the public

This indicated that they were mindful that their conduct could be dangerous to others, he said.

He also pointed to the 'grievously divided people of South Africa', and appealed to the Court to do whatever it could towards the process of reconciliation

'I'm not asking your lordship to set aside the law, but to understand what it is that brings the three people before the Court from their backgrounds to their present situation'

Mr Slabbert submitted that the death penalty was intended to be imposed at the Judge's discretion in the most extreme cases, but this was such a case

Mr Justice Auret van Heerden said he had given earnest and anxious consideration to the facts and had concluded 'with a measure of hesitation' that the death penalty was not warranted

The 20-year sentence, however, should not be regarded as minimising the seriousness of the crimes

Mr Wentzel said he would ask for leave to appeal

Teargas tactics 'undesirable'

9/7/82 Merury

Pietermaritzburg Bureau

THE Progressive Federal Party spokesman on law and order, Mr Harry Pitman, has called for an immediate and full inquiry into the use of teargas in the College Road Supreme Court here on Tuesday

An aerosal canister was used to subdue a large crowd of spectators in the public gallery after the presiding judge, Mr Justice van Heerden, had left the room

The incident happened shortly after three men had been jailed for 20 years each for high treason The three convicted men had raised clenched fists and started chanting slogans after being sentenced and the cry was taken up by people in the crowded public gallery

A shock

The teargas substance was sprayed into the crowd and people rushed from the building with streaming eyes, many of them coughing and sneezing uncontrollably, according to a Mercury reporter who was at the court.

Mr Pitman said yesterday that the use of teargas in a South African Supreme Court gave one a shock

'It is highly undesirable that this should happen It should happen only in the most extreme circumstances such as imminent violence Reports so far indicate that this was not the position,' Mr Pitman said

He called for an 'immediate and full' inquiry to ascertain who in authority gave the order to use teargas and if no one did, who was responsible for using it.

'The circumstances also should be fully investigated and unless it is found that an extreme situation existed people should be punished to bring home the extreme undesirability of this sort of thing'

'If people misuse a court for demonstrations there are laws that can be used against them,' he said

A senior police spokesman said the substance used was not a gas but 'tearsmoke' which irritated the skin and eyes and made one rush outside to get fresh air

The spokesman said the police had acted lawfully in using the 'tearsmoke' to disperse unruly spectators in the public gallery, and added that the situation could have developed into something more serious

'The courts are there for the holding of trials, not for demonstrations and protests,' he said

Minister warns on 'anarchism'

11/9/82

(252)

Staff Reporter C. Times

ANARCHISM will not be allowed to undermine the tradition of law in South African courts, the Minister of Justice, Mr Kobie Coetsee, said at the official opening of the new Magistrate's Court in Paarl yesterday.

Addressing about 130 people, including MPs and members of the Provincial Council and the President's Council, Mr Coetsee said he was disturbed by a recent incident in a Supreme Court in which police had had to fire "teargas" to subdue demonstrators

"What is the use of building excellent buildings and having an excellent judicial system if that system is not applied?" he asked

Mr Coetsee said the country luckily had "very little wrong" with the application of law, and thanked judges and judicial officials for their work.

Ill-treatment of animals 'serious'

"Our Bench is independent and free to carry out judicial discretion without any obstruction," he said

Mr Coetsee also said he viewed the ill-treatment of animals in a very serious light and would review existing penalties

He said he intended to increase drastically the penalties during the next parliamentary session

● Our correspondent in Paarl reports that the plaque the minister unveiled yesterday had his name spelt incorrectly. His surname was spelt Coetzee — with a "z" instead of an "s"

'Select few' try security cases

Star 16/9/82 (252)

Carolyn Dempster reports from Durban on the conference on detentions and security legislation.

A definite pattern had emerged of a select few Transvaal judges handling trials of a political nature, said prominent human rights lawyer Professor John Dugard at a conference on detention and security legislation in Durban yesterday

The evidence gleaned from a study of security trials in the Transvaal between 1978 and 1982 showed that, in effect "17 percent of the Transvaal judiciary heard 84 percent of the cases in question"

In plain figures, the 25 trials of people charged with treason, terrorism, sabotage or serious offences under the old Internal Security Act 44 of 1950, were heard by 12 of a possible 45 judges Thirteen of the cases were heard by four judges

There was no evidence to suggest the judges who heard political trials were endowed with greater expertise than other members of the Transvaal judiciary or that their common denominator was seniority.

"Those appointed to preside over political trials ranged from the most senior to those only recently appointed," Professor Dugard reported

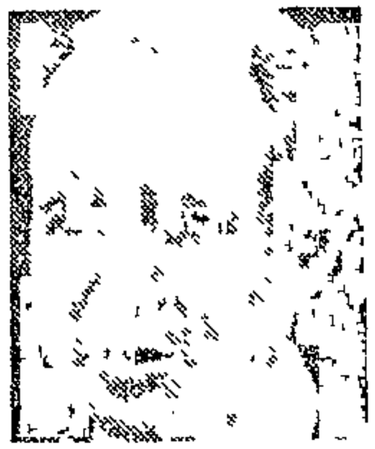
The one factor showed by these judges was that all had been members of the Pretoria Bar before their appointments to the bench, Professor Dugard's study revealed

"The Pretoria Bar is seen by many as one of the most conservative Bars in the country It seldom — if ever — condemns oppressive security laws and until very recently it constitutionally excluded blacks from membership," said the professor

Professor Dugard, who heads the Centre For Applied Legal Studies in Johannesburg, was echoing the words of Mr Sydney Kentridge SC

In an address at the University of the Witwatersrand last month Mr Kentridge commented "In certain parts of the country it has become obvious that trials of persons charged under security laws are usually heard, not at random, but by only a section of members of the Supreme Court Bench"

Professor Dugard also made the observation that "in recent times a similar pattern to that in the Transvaal seems to be emerging in the Appellate Division where matters affecting the security of the State are concerned"



Professor Dugard . study spans four years

Tucker hits 'illusion'

Star 16/9/82

DURBAN — Pages of security legislation created the illusion that a detainee was protected and had certain rights but, in fact and effect, there was little protection, Johannesburg Attorney Mr Raymond Tucker told delegates to the Detention and Security Legislation conference in Durban yesterday.

"The truth is that what rights remain tend only to illustrate the extent of the loss of rights and the remedies provided highlight the absence, in reality, of meaningful protection," Mr Tucker said

In a review of the new detention legislation contained in the 1982 Internal Security Act, Mr Tucker attacked the "smokescreen" of protective legislation saying that, in most cases, the detainee's fate rested in the hands of a benevolent Minister.

Although the courts were not totally excluded — they were entitled to determine if the detention was in accordance with the relevant section — they had no jurisdiction to pronounce on the validity of any action taken under a section of the Act or to order the release of a detainee.

This principle — of keeping the courts as far as possible from detainees had been part of security legislation since 1963, Mr Tucker said.

When the detention laws were introduced it was specifically provided that no court should have jurisdiction to order a release from custody.

Delegates discussed how best to use the few legal avenues open to detainees and bring about change and decided:

- That a Bill of Rights would automatically guard against excessive abuses.
- Greater publicity should be given to detentions, conditions and abuses.
- Detainees should be made aware of their rights — one of which was that they did not have to make any statements.

Reform may bring harsher security laws

Star 16/9/82

South Africa may face even harsher security measures if the Government is to "manage" reform on its own terms, delegates attending the conference in Durban were warned by a leading academic, Dr D Davis

Dr Davis, a senior lecturer in the Department of Commercial Law at the University of Cape Town, said it had been historically shown that if the interests of the State required the curtailment of the rights of the individual or of certain groups, then this would be carried through

"Thus reform will be managed along strictly authoritarian lines, and in this development security legislation will play an important role"

Pointing to the way in which security laws had already been used to "manage" or control reform, Dr Davis highlighted trade union activity

"Trade union activity has been promoted via the recommendations of the Wiehahn Commission and then cut back by the widespread security police action against prominent trade unionists"

"Reform needs to be introduced in a manner which any proposals will not divide Afrikanerdom in too irreparable a fashion, and at the same time will prove acceptable to a moderate black community who are perceived as being intimidated by minority groups opposed to the Government"

By employing security legislation to channel the development of reform, the Government would be extending the coercion already practised for 30-odd years But as Northern Ireland had shown "persistence in a policy of general coercion is likely to ensure that a state of instability will continue"

In a more direct attack on the destructive nature of South Africa's security legislation, Mr Arthur Chaskalson SC said white South Africa stands isolated, defending itself behind a network of security legislation and military power"

After 20 years the extent of the repression was more apparent South African society had become increasingly divided, brutal and authoritarian "But" he added, "a society which depends for its survival upon harsh security laws will inevitably collapse."

Professor Tony Matthews of the Natal University's Law Department said the price of enforcing security legislation on its present model was likely to be greater disorder and insecurity

The right to criticise the judiciary

ARGUS 4/10/82 (252)

Summary of a recent address by Mr Sydney Kentridge SC, distinguished member of the Bar, to the University of the Witwatersrand. Wide public interest prompts this expanded version of the address, previously featured in briefer form.

IN SOUTH AFRICA many issues which elsewhere would be simply legal issues are regarded as political Any criticisms of aspects of our legal and judicial system are only too readily construed as attacks not merely on the Government but on South Africa

Those who react in this manner are not merely members of the Government They include lawyers That is why it is so difficult for Bar Councils and Law Societies to speak confidently for all their members on subjects such as these

On the other hand, approval of the SA legal system and judiciary can also bring wrath down on one — from a different quarter

The truth seems to me to lie somewhere between extravagant praise and intemperate censure

I believe the judicial system is the country's most valuable social institution But it is no help to an honest understanding of it to suppress facts which may show that it is less than perfect and is capable of improvement Nor is it healthy for the institution itself Adlai Stevenson once said it is pleasant to hear yourself praised — as long as you don't inhale I think at times that our judiciary has inhaled too much

We do not need to be taught certain lessons Our system is an advanced and civilised one It must accordingly be judged by civilised standards

The foundation of our legal system, as of all civilised legal systems, is the existence of an independent judiciary The judges of the Supreme Court number slightly more than 100 It is they who are responsible in the main for the international reputation of our judiciary

Their independence is a reality and not a mere legal fiction In the words of Mr Justice Schreiner, the independence of the judges "is a major source of the security and well-being of the State" The judges are almost invariably appointed from the senior members of the practising Bar They are not government servants and their training and professional ethics have given them habits of detachment and independent judgement

They have deservedly been commended, in South Africa and abroad, for their ability and for their readiness, often shown, to decide cases adversely to the government of the day

But now it is necessary to say that some of this

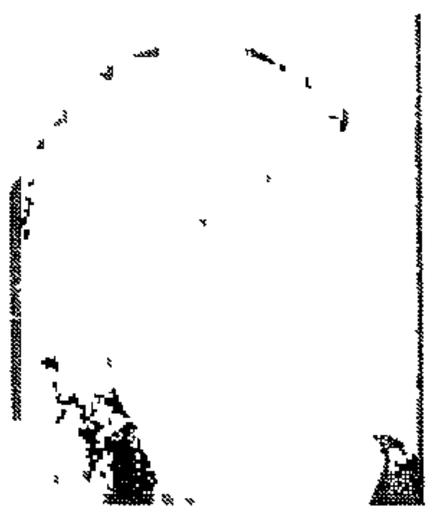
sider only the South African judges as their equals"

Perhaps this is indeed so But one may think that "the butter's spread too thick" One may think, too, that this tribute would have come better from another source Unfortunately, in some quarters, any comment on the judiciary which falls short of extravagant eulogy is regarded with disfavour

Some years ago I referred at a law dinner, attended by some Supreme Court judges, to some moderate criticisms made of our judiciary Nonetheless, making all allowance for these criticisms, I said I believed that we still had the best judiciary in Africa It was clear that those most immediately concerned thought this compliment wholly inadequate That geographical limitation was not acceptable

But there is something which we are entitled to expect of the Executive The underlying assumption of an independent judiciary is that, as far as it is possible to do so, the judges must be appointed on merit

Long before the present Government, politi-



Sydney Kentridge

cal preference influenced judicial appointments Both Smuts and Hertzog made many appoint-

edly led in many cases to better qualified men being passed over in favour of others less worthy

It must also be said that over the past 30 years a number of Supreme Court appointments and judicial promotions have been made which are explicable solely on the ground of the appointees' political views and connections and on no other conceivable ground

Fortunately such blatant political appointments have constituted a small minority of the Bench But there have been enough of them to cause disquiet especially as this tendency has clearly not yet ceased Most lawyers know this but do not often publicly discuss it

Some would say that it is best not to talk about these things, because to do so im[illegible]

pattern has become apparent in relation to trials for serious political offences In certain parts of the country, at least, it has become obvious that such trials are usually heard not at random by all or any of the available members of the Supreme Court Bench but only by a section of the members of that Bench

Time and again the same few judges seem to sit in these case Many senior judges, who have been 10 years or more on the Bench, have never found themselves presiding over such a trial

One does not know how the judges are allocated or on what basis the prosecuting authorities set down the cases for hearing But the pattern has been too clear, at least in some divisions of the Supreme Court, to allow it to be dismissed as coincidence

This is disturbing because there ought never to be the slightest suspicion that the courts are being manipulated The judges themselves, I am certain, are not and could not be parties to this selectivity The responsibility must lie somewhere else The matter requires investigation, not merely an awkward silence

Of course, although they are of [illegible]

important perhaps, their position as civil servants makes magistrates vulnerable to governmental pressures

An extraordinary illustration of this came to light a year or two ago It was revealed that for many years there had been in existence a departmental circular which urged magistrates to be cautious and restrained in making adverse comments in their judgments about police witnesses

I do not know to what extent magistrates gave heed to that circular but it is enough that it should have been issued by the department and accepted, apparently without protest, by persons who were, after all, members of the judiciary

No such directive would ever have been tolerated by the Supreme Court Bench and no civil servant would have had the temerity to send such a circular to the judges

What this leads me to say is that it is time that some thought was given both to the effects of the present magistrates court system and to the possibility of increasing the independence and standing of the magistracy

One improvement has been made Traditionally,

Although what I have o say will be in some neasure critical, this riticism must always be neasured against the eal merits of the judici- il system — merits vhich sometimes seem oo obvious to mention

some years ago, in in article in the South African Law Journal, a judge of the Supreme Court said he had been told on good authority in England that "English judges who are undoubtedly the most eminent judges in the world, con- objectively, is ridiculous The fact is that here, as in other countries, some of our judges are outstanding by any standard many are very good indeed and some certainly are not What more can one expect of any judiciary?

which could be called political Nonetheless, it must be said that over the past 30 years political factors have been placed above merit — not only in appointments to the Bench but in promotions to the Appeal Court This has undoubt-

preme Court I would say just the opposite It is these appointments which in fact endanger the standing of the Supreme Court

The American Bar Association regularly comments publicly on the merits or demerits of newly-appointed judges I believe it would be a proper function not only of Bar Councils but of university law journals to scrutinise the pattern of judicial appointments and, where necessary in the public interest, to comment on them To do so honestly and in temperate language is not contempt of court

Judicial appointments are no more exempt from public criticism than any other appointments to public office The knowledge that unworthy appointments will not pass without adverse comment is the best, perhaps the only, protection against them.

There is another development in our judicial system which I find even more disturbing, and which has too long got by without public comment, although this, too, is well known in the legal profession Over the past several years a certain

system, judges constitute only a fraction of the judiciary of South Africa By far the greater part sits in the lower courts as local or regional magistrates

I have no figures, but there must be many hundreds of magistrates They, together with the commissioners who sit in the special courts on the laws governing influx control, are responsible for deciding the great preponderance of cases heard in this country

All are civil servants, under the discipline of the Department of Justice This means that not only their promotions but also their postings from one part of the country to another are in the hands of the department Nearly all are former public prosecutors Their whole legal experience and background has been the prosecution of offences on behalf of the State

We take this as the norm We in South Africa have never known any other system But its drawbacks are not difficult to see From the public point of views, the connection between the judicial branch and the prosecuting branch of the Department of Justice seems too close More

and police all fell under the Department of Justice Now Justice and Police are separate departments

It would be impossible to appoint magistrates from the practising legal profession There are not enough advocates or attorneys in South Africa to permit this But perhaps there is some way of bringing about a greater separation between the judicial and the prosecuting arms, and some way of removing magistrates from the ordinary discipline and procedures of the civil service

I would think that this is a proper subject for research by some university law faculty At all events, I do not think that we should go on complacently talking about an independent judiciary in South Africa when we are really speaking only about one section of it

I do not overlook the fact that shortcomings on the magisterial bench are subject to correction by the Supreme Court. But, for various reasons, including the poverty and ignorance of many accused persons, the majority of magistrates court decisions are not effectively subject to appeal or review

Outcry over 'unfair' jail terms sets off petition

S. Express 10/10/82 252

DISPARITY in sentences imposed in South Africa's courts is causing concern.

These cases were all heard in South African courts recently:

● July: A 54-year-old grandmother, Mary Smith, was sentenced to five years for handing one Mandrax tablet to a police informant

● July: Mr Laas Horn-Grey, 63, of North Riding, was fined R100 after he paid for groceries worth R115 — but did not include a 19c pen.

● October 1982. Mr Antonio Pita de Leca, who stabbed a man to death, was acquitted in the Rand Supreme Court. The judge said there was no evidence to contradict that he had acted in self-defence under "intoxication and extreme provocation".

By ANGELA GILCHRIST

LIONEL Hunter paid his R120 fine for common assault a week before his victim underwent a fourth surgical bid to restore his voice.

And on Tuesday, 22-year-old Duduzi Zunju was led away to spend 12 months in jail for stealing R3,70 from the Carlton Centre wishing well

These are just two of the numerous cases that highlight growing concern about the disparity of sentences handed out in South Africa's courts

Outraged Johannesburg estate agency director Mrs Michelle Samson has started a petition protesting at "unfair and disgusting" punishments — a petition that will be sent to the Minister of Justice and Police Mr Louis le Grange, the Attorney General of the Tranvaal Mr Koos Nothling and Commissioner of Police General Mike Geldenhuys

It was the Hunter case, heard in Randburg Magistrate's Court last Friday, that sparked off her petition The 20-year-old amateur boxer and national serviceman was fined R120 (or 60 days) for assaulting 45-year-old textile technician Mr Hans Ruhsmann at a Bryanston fête in May

Mr Ruhsmann's vocal chords were damaged in the attack He was unable to breathe and had emergency surgery

"Many of the people who have contacted me had incidents to relate about unjust treatment in the country's courts," said Mrs Samson,

Mr Ruhsmann's wife Maureen said Mr Hunter had scored a victory, even though guilty "Meanwhile, my husband is in hospital and doesn't know whether he will ever get his voice back

"There is a festering imbalance in the system and, judging by calls we have had, the public seems to be fully behind us"

Sandton town councillor Mr Max Strous intends to sign the petition because he feels Mr Hunter's sentence was far to lenient "I was recently fined R50 for speeding — a victimless crime

"The police went to a great deal of trouble to find Mr Hunter — an identikit of him appeared on TV — and when finally caught up with this is what he gets

"I find it absolutely abhorrent"

And Frank Rundel, another company director, said he was furious about Mr Hunter's sentence because it rekindled his anger about an attack that was made on him by six thugs at Kyalami racetrack

"I suffered serious physical injuries and the incident caused a great deal of worry to my wife and family When the assailants were taken to court they were given a fine of R150, which was nothing when split between them"

A criminologist at the University of the Witwatersrand, Mr David Dyzenhaus, said disparities in sentencing occurred worldwide because of differing attitudes toward punishment

"But this is far better than a machine system of sentencing, which would hardly be democratic The magistrate has to decide what form of punishment will help the guilty party become a responsible member of society"

A legal expert, who asked not to be named, said he would like to see some form of compensation for victims such as Mr Ruhsmann

"A suspended sentence might have been a good idea, provided Mr Ruhsmann was compensated for his medical bills Violent crimes receive severe sentences overseas, whereas in South Africa statutory crimes are often more heavily penalised"

A criminologist at the University of Cape Town, Professor Van Zyl Smit, said "Mr Hunter inflicted an ordinary assault which had extraordinary consequences It is very hard to make such broad generalisations"

The Director General of the Department of Justice, Mr J P J Coetzer, said the function of deciding whether an accused was guilty and, if found guilty, what sentence should be imposed, was vested in the courts

"The executive does not interfere with the exercise of these functions," he said

252

Star 12/10/82

Why sentences must vary

Sentencing in South African courts often seems random, haphazard and personal. It is difficult to understand why the assailant of a man who almost died after being struck on the throat is fined R120, while a man who stole two cakes from a shop window was sent to jail for three years (later reduced to one year).

Presented by these and other examples, Professor van der Vyver said he was reluctant to comment on particular instances of sentencing.

● A man kicks an acquaintance to death in a toilet and is fined R500 while his companion is fined R50 for common assault; but a man found guilty of stealing examination papers is sentenced to seven years in prison.

● A company director is fined R600 for speeding; but a man who raped a nine-year-old girl gets fined R300.

● A car driven by a drunken driver mounts a pavement, hits and kills a 13-year-old boy and injures a young girl. The driver is sentenced to 18 months in jail; but a man steals a jacket and handbag and is sent to jail for three years.

Apparent disparities in sentences, such as these, often leave members of the public confused and angry. Professor J D van der Vyver of the law faculty of the University of the Witwatersrand, explained to Carina le Grange why there cannot be a generalised standard of sentence according to the seriousness of the crime.

"A basic principle of our law is that after conviction, each sentence should be individualised. The magistrate or judge should consider each case in view of all its unique properties and circumstances in determining the appropriate sentence," he said

Professor van der Vyver said it was dangerous and perhaps even wrong to expect a general standard of sentence for the same kind of offence.

The use of alcohol and consequent intoxication, as well as diminished responsibility due to drug use or insanity — whether temporary or not — are often used to plead in mitigation

This often gives rise to sentences that seem to be lenient, and not in keeping with the seriousness of the crime involved

Professor van der Vyver, however, stressed the soundness of the principle that a person could not be held responsible for his acts if he did not know what he was doing or could not control his acts

NO DIFFERENCE

It should make no difference whether the accused's condition was due to alcohol, youth or insanity, he said

"The difficulty is, however, that a practice developed in South Africa where the courts seem to overstate the influence of alcohol on a person's accountability," he added

Mr Justice Rumpff had recently said, however, that although it was a good principle not to punish a person not responsible for his actions, there had not been enough investigation by judges into the influence alcohol had and the role it played in specific cases, Professor van der Vyver added

In cases of drunken driving the picture changed completely, since drunkenness formed part of the charge.

CULPABLE

Professor van der Vyver explained that accountability in these cases hinged on whether a person had advance knowledge that he would be driving after drinking

As soon as the possibility existed that a person knew he would be driving later, he was held culpable

"A man who does not have a car, and begins drinking in circumstances which exclude the possibility that he will be driving later, but who nevertheless becomes so inebriated that he then takes a car and drives, will not be held responsible," the professor said.

Criticism of magistrates 'part of onslaught'

ARGUS 21/10/82

252

ACCUSATIONS that magistrates were not independent and that they should therefore not hear security trials were part of the onslaught against South Africa, the Minister of Law and Order, Mr Louis le Grange, said today

Speaking at the opening of the Wynberg Magistrate's Court and district police headquarters, Mr le Grange said that even though magistrates were civil servants, they acted impartially and independently in their duties

He rejected allegations that visits to detainees by magistrates were not a proper safeguard for detainees

DISCREDIT

"Accusations of this kind are a part of the onslaught against South Africa and one of the aims is to discredit the State and its organisations

"The South African Police were one of the first targets and are still the target of blatant untruths"

Mr le Grange said the police were experiencing a serious personnel shortage It was especially difficult to estimate the shortage in some metropolitan areas

"This was not due to the salary structure or work benefits South Africa just does not have enough developed or skilled people to cater for its needs"

Before declaring the R4,8-million complex open, Mr le Grange presented eight medals to Cape Town police including the SAP medal for combating terrorism which was awarded to Brigadier G J Odendaal, Divisional Inspector of Police

Cape Times 22/10/82 (252)

Victim is due

By Jon Owelane

Johannes Marotola's voice trails away in despair at his helplessness and lines crease his youthful face as he relates how he lost the use of his legs four years ago yet became a rich man — if only on paper.

His future seems empty despite the huge sum a Transvaal judge awarded him last week — R15 000 in compensation for his injury.

There is a major obstacle between Mr Marotola and his money — the man ordered by the court to pay has disappeared.

On October 16 1978 Mr Marotola then 25 and a sign painter with the roads division of the Transvaal Provincial Administration was with some friends near a cafe in Muldersdrift on the West Rand.

farms in Muldersdrif

"At the time of th Supreme Court hear I was staying with relative township, f be cause because of a back.

The [illegible] Marotola [illegible] Klaasen [illegible] one hospital with [illegible] Clemen brought [illegible] there with other wo men for an identi parade.

"I clearly pointed him out from the other men. He then apologised for having shot me just as he had done as I lay on the ground with a bullet in my spine at Muldersdrif," Mr Marotola said.

"I will never forgive him for what he has done to me never. He had no reason at all to shoot me."

Magistrates: Le Grange defence

Crime Reporter

THE Minister of Law and Order, Mr Louis le Grange, yesterday said suggestions that magistrates were not independent and impartial and therefore should not preside over security matters were part of the "onslaught against South Africa".

The minister was speaking at the opening of the new police district headquarters, police station and magistrate's courts at Wynberg.

The opening was attended by the chief director of the Directorate of Justice, Mr S J N Marais, and the Judge-President of the Cape Mr Justice Munnik.

Mr Le Grange said it was unfortunate that recently the independence and integrity of magistrates in regard to security legislation had been questioned.

Security laws

Criticism had been levelled about the use of magistrates to fill certain positions in the carrying out of security legislation.

It had been suggested that magistrates were not independent and therefore should not hear security cases.

It had also been suggested that visits by magistrates to detainees could not give any real protection because the magistrate was ostensibly not independent of the executive authority.

"I am convinced and happy that magistrates in the Republic, although they are State officials are totally impartial and independent in exercising their duties," Mr Le Grange said.

"The government does not prescribe to them how to conduct their judicial functions and over the years our magistrates have built up a tradition of independence and impartiality which is generally respected.

"Allegations of that nature are a facet of the onslaught against the Republic.

"The aim is to try to bring the State and its organs into disrepute, and in this regard certain persons, organizations and daily papers more than accommodate the broader implications."

The minister said he dealt daily with various facets of the onslaught against the Republic.

The country's "enemies" used sophisticated techniques and sometimes the actions appeared innocent and humanitarian.

Technique

One technique was using people and organizations without their knowing it.

He said the country's enemies grabbed every possible incident to put the authorities and their organs in a bad light.

Wild allegations were made against the security police and were published sensationally without the truth first being established.

R25 000 gift for Unisa's development

EDUCATION BRIEFS

The Gold Fields Foundation has given R25 000 to the University of South Africa's Development Fund.

Mr A J Weideman, chairman of the foundation made the donation last month during a ceremony to mark the event. The foundation was originally established by Gold Fields SA to assist educational training and health projects and help charitable organisations.

* * *

An apolitical student association representing the interests of students at English and Afrikaans technikons has been formed.

The National Union of Technikon Students (NUTS) was constituted when the SRC chairmen of the technikons met in Pretoria two weeks ago and Mr Gerard Rhoodes chair-

doing the course will be able to talk to the lecturers at the cocktail party, which is being held at the school, 2 St David's Place, Parktown at 5.30 pm.

* * *

A three-day seminar to help science lecturers upgrade the quality of school science teachers will be held in Pretoria from today until Wednesday.

Organised by Unisa, the Pretoria College of Education, the Onderwyserskollege and Pretoria University, the seminar has been planned because of the shortage of science

SECTION 4

UNIVERSITY OF CAPE TOWN
EXAMINATION ANSWER BOOK

Magistrate prosecutes

Cape Times 30/10/82 (252)

Staff Reporter

A COMMISSIONER of the Department of Co-operation and Development acted as prosecutor and magistrate in separate cases in the Langa Commissioners' Courts yesterday

This was described by Professor John Dugard, the head of the Centre for Applied Legal Studies at the University of the Witwatersrand, as "grossly irregular" But the Commissioner for the Cape Peninsula, Mr L J van Heerden, said it was "quite normal".

The unusually high number of cases in the past few days was causing problems "If we have to deal with 200 cases a day then we have to make special arrangements," he said

Mr J Uys, who has recently been appointed a commissioner, first prosecuted in several pass law cases yesterday morning before presiding as the magistrate in several more cases, and later returning to act as prosecutor

Professor Dugard said he found this "extraordinary One expects the same rules of procedure to apply in the commissioners' court that apply in the magistrate's court

"In the Department of Justice, a senior public prosecutor sometimes takes over as an acting magistrate, but I have never heard of someone acting as magistrate and prosecutor in the same court on the same day"

Mr Van Heerden pointed out that Mr Uys had not served as prosecutor and magistrate in the same cases, but in different cases

Mr Michael Richman, chairman of the Western Cape region of Lawyers for Human Rights, said the practice was "highly undesirable even if permissable, especially where one is dealing with unsophisticated people

"These people would tend to see the magistrate in the same light as the prosecutor Justice must not only be done, it must be seen to be done"

A City attorney said commissioners were not real magistrates in terms of the Criminal Procedures Act, but were officials of the Department of Co-operation and Development who were vested with the authority to act as magistrates

Paper No 1

(to be copied from the heading on the Examination Paper)

EVERY CANDIDATE MUST enter in column (1) the number of each question answered (in the order in which it has been answered); leave columns (2) and (3) blank.

	Internal	External
(1)	(2)	(3)
2	20	
ners' Initials	FW.	

NOTE CAREFULLY

1. The answers only on the right hand pages will be marked The left hand pages may be used for rough work, but no credit will be given for such work.
2. Enter at the top of each page and in column (1) of the block on this cover the number of the question you are answering
3. Blue or black ink must be used for written answers The use of a ball point pen is acceptable Red or green ink may be used only for underlining, emphasis or for diagrams, for which pencil may also be used
4. Names must be printed on each separate sheet (e.g graph paper) where sheets additional to examination book(s) are used.

WARNING

1. No books, notes, pieces of paper or other material may be brought into the examination room unless candidates are so instructed
2. Candidates are not to communicate with other candidates or with any person except the invigilator.
3. No part of an answer book is to be torn out.
4. All answer books must be handed to the commissioner or to an invigilator before leaving the examination.

Any dishonesty will render the candidate liable to disqualification and to possible exclusion from the University

EDSON 13253

Box 56, Cape Town 8000

Reply on Porter School inadequate

ARGUS 1/11/82 252

THE reply by the Directorate of Education of the Department of Internal Affairs to the allegations made by Mr Ernst Kroneberg (The Argus, October 21) sets out the legal and theoretical basis upon which the Porter School is run

Mr Kroneberg maintains that the school "is a punitive institution " and the directorate considers that contention an injustice

Mr Kronenberg alleges "The staff members who administered the punishment did it with a degree of severity I found astonishing" and "Porter's answer to the boys' problems is to beat them or keep them longer."

The directorate maintains "Therapy is an important form of rehabilitation, in which punishment hardly plays a significant role"

The reply by the directorate at no point denies the allegations made by Mr Kroneberg It does attempt to reduce his credibility by pointing out that he was employed as a teacher-psychologist and therefore "can most probably make worthwhile comments on educational matters which fall within the purview of his experience," (but), "it is apparent that he is not qualified to judge on the directorate's Children's Act institutions "

It would seem that although Mr Kroneberg is not registered as a psychologist in South Africa he has (besides a master's degree in psychology from London University) 30 years of experience in teaching and psychology

Yes, maybe he was employed at Porter as a teacher psychologist, but that does not limit his observations to educational matters

The four years he spent at Porter may be a "relatively short period" of experience on which to base his observations of South African Children's Act Institutions (in general), but it is by far a long enough period in which to observe Porter (in particular)

The criticisms which Mr Kroneberg made were of a specific nature Most of them, revealing inhuman and primitive treatment, were levelled at Porter itself

The reply by the Directorate of Education seems to me an evasion of the issues raised by Mr Kroneberg and a totally inadequate response to his allegations

B E R N A R D ALTMAN
Rondebosch

14 men executed in week

Sowetan 10/1/82

Own Correspondent

Seven more men have been executed at the Pretoria Central Prison. Seven men were reported to have been executed last Tuesday. It was announced this week that another seven were executed on Thursday.

They were

- Stanley Keyter, Daniel Swartz and Pieter Booysen who on January 28 were convicted of murder in Port Elizabeth.
- Johannes Mavimbela who was convicted of murder and robbery with aggravating circumstances in Johannesburg on February 5.
- Mathews Mapatse and Stephen Makura who were convicted of housebreaking, robbery with aggravating circumstances and rape at Springs on February 10.
- Themba Radebe who was convicted of murder, housebreaking and robbery in Cape Town on February 19.

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'Rise' in Demand (or Supply)
'Increase in Quantity Demanded' (or Supplied).
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Maximum Price
Minimum Price
Rent Control
Minimum Wages Legislation
International T
Transport Costs
Tariff
Economic Rent.

Acquitted — after 2 years on the Island

Own Correspondent

CAPE TOWN — It was difficult to be overenthusiastic about being acquitted of a crime after serving two years of a five-year term of imprisonment, two Durban youths said yesterday afternoon when they arrived in Cape Town after being released from Robben Island.

Mr Mandla Sibisi (23), and Mr Stanley Thembha Mthembu (21), who were sentenced in 1980 to five years' imprisonment under the Terrorism Act, were released after the Natal Division of the Supreme Court set aside their sentences on Tuesday.

Two years ago, in the Durban Regional Court, they were convicted of undergoing military training. Five other men arrested with them were acquitted.

In an interview shortly before they flew home, they said they could not be jubilant "as things still are in this present form."

"We never at any stage expected such a step. We could not believe it when warders told us that our appeal had been successful and we would be released," said Mr Sibisi.

WRAB COP SHOOTS MAN

(257) Sowetan 17/11/82

AN ALEXANDRA hostel inmate was shot dead after a group of inmates allegedly attacked West Rand Administration Board police inspectors in an incident which has angered community leaders.

Mr Richard N Mu[illegible] room [illegible] was shot [illegible] he had apparently attacked the inspectors with a sjambok fol[illegible] the [illegible] and the [illegible]

It not known wh[illegible] other inmates were [illegible] the [illegible] he Alex and [illegible]ison Committee has asked the authorities to inquire into the matter.

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Church rejects bogus letter

THE AN[illegible] Church has [illegible] an anonymous letter sent out on letterheads of the South African Council of Churches and attacking both Bishop Desmond Tutu and the SACC.

The letter claims to be written by disgruntled SACC staff members, but has [illegible]

Aged get bananas for Africa

A MILLION-and-a-half bananas valued at R75 000 are to be made available as a gift to the aged of South Africa this month.

According to a Press statement yesterday the gesture to mark the year of the aged has been made possible by the current record banana crop

Mr Barney Bester,

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MEN'S TAILS

WHAD GU

Sowetan 17/11/82

SHOOTS N

AN ALEXANDRA hostel inmate was shot dead after a group of inmates allegedly attacked West Rand Administration Board police inspectors in an incident which has angered community leaders.

Mr Richard N Muyandeni of room 48 was shot after he had apparently attacked the inspectors with a sjambok following the arrest of another man during a raid at the hostel, a police spokesman said yesterday

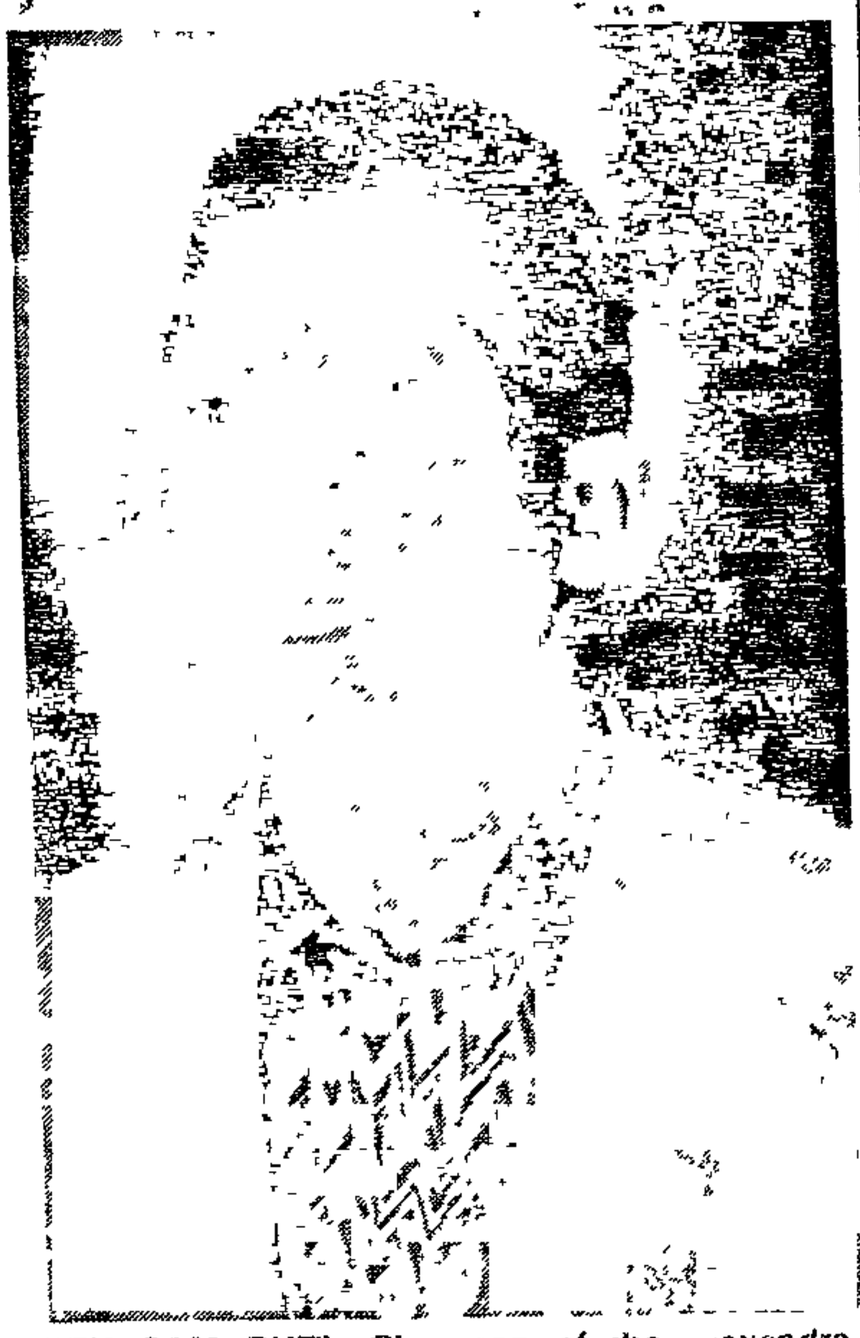
It is not yet known whether other inmates were injured during the skirmish and the Alexandra Liaison Committee has asked the authorities to inquire into the matter

A spokesman for the police directory in Pretoria yesterday told The SOWETAN the inspectors had raided the hostel During the raid they arrested and took an unknown man outside the hostel

Mr Muyandeni then took a sjambok and attacked the inspectors One of them fired a shot which hit him in the chest This was followed by an attack by inmates who charged at the inspectors.

Wrab's chief director, Mr C J Bezuidenhout, said normally the police raided the hostel whenever inmates owed rent and to check on any "illegals" on the premises

"Our men never conduct pass raids at the hostels and the incident must have occur[illegible] during a routine [illegible] he said.



REV SAM BUTI: Chairman of the Alexandra Liaison Committee

ALEX INMATE SHOT DEAD AT HOSTEL

Wrab's chairman Mr J C Knoetze, confirmed the incident and said the matter was being investigated by the SAP

The chairman of the liaison committee, the Reverend Sam Buti, said he was [illegible] to hear the news" He was particularly concerned about the incident and condemned the action

He said such raids were not necessary if the superintendents were doing their work

'It is annoying for blacks to be raided in hostels as though they all were criminals,' he said.

Aged get bananas for Africa

A MILLION-and-a-half bananas valued at R75 000 are to be made available as a gift to the aged of South Africa this month.

According to a Press statement yesterday the gesture to mark the year of the aged has been made possible by the [illegible] board had decided to [illegible] this promotional [illegible] the senior ci[illegible] all races rathe[illegible] advertising pr[illegible]

"Ten thousan[illegible] of bananas wil[illegible] distributed to old age homes and service centre[illegible] registered with the [illegible] Fo[illegible] he said [illegible] that [illegible] first grade fruit be presented to the elderly of all population groups

Mr Bester said owing to the stabilisation work of the board, bananas had become a year-round fruit in South Africa

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somewhere someone
I don't want to know

Le Grange's criticism of judge is attacked by top legal experts

252 S Express 21/11/82

BY ARLENE BEIZ

THE Minister of Law and Order, Mr Louis le Grange, has created a stir among top lawyers with his criticism of an acting judge during his hard-line Odendaalsrus speech this week

Although Mr le Grange did not mention any names in his reference to the judge he was clearly referring to Mr Acting Justice J C Kriegler's remarks about the re-banning of Dr Beyers Naude.

Mr Kriegler had previously told an Afrikaans newspaper that his comments would have been unprintable if he been allowed to comment on the banning order

"The insinuation contained there is clear and I am not prepared to accept it as such," said Mr le Grange

He said he fully supported a 1971 statement by a former Chief Justice, Mr Ogilvie Thompson, which 'deprecated' the public expression by judges on controversial issues — regardless of whether or not those issues had political overtones

However three top lawyers this week supported Judge Kriegler's actions and criticised Mr le Grange for ignoring the constitutional separation of powers between the executive and the judiciary

"The acting judge acted correctly when he said he could not comment and his remark could have meant anything," said Pretoria constitutional law expert Professor Marius Wiechers

Professor J D van der Vyfer the national president of Lawyers for Human Rights and Professor G Lubbe, of the University of Stellenbosch Law Department, supported this view

"I think Judge Kriegler behaved appropriately but if he was wrong in making the statement while an acting judge, then Mr le Grange was equally wrong in responding to it," said Prof van der Vyfer

Prof Lubbe described Mr le Grange's criticism as 'something that shouldn't happen', adding that he agreed with the acting judge's comments

Mr Justice Kriegler refused to comment.

Mr le Grange also disclosed that the banning of Dr Naude would definitely be reviewed despite the latter's refusal to appeal against his three year banning order

The banning will be considered by the review board newly-constituted in terms of the latest Internal Security Act, said Mr le Grange

The board consists of three members — one of whom must be a judge former judge or former regional magistrate and one of whom must have had at least 10 years of continuous legal experience.

Currently comprising Pretoria judge Mr Justice T H van Reenen, Pretoria attorney Mr Mike Odendaal and retired senior regional magistrate, Mr L V de Kock the members were appointed for two years after the new security act came into force in July

"There is no question of these men being influenced in any way" said Mr le Grange

If the Minister — who is to submit documents to the board — does not accept the board's recommendation that a banning order be lifted he then has to submit all these documents to the Chief Justice or a Judge of Appeal designated to hear the case

These judges can set aside the Minister's decision if they are satisfied that he has exceeded his powers or acted in bad faith.

Those appealing to the board are allowed to repeat their representations every year, and may also take their cases to court while it is being heard by the review board

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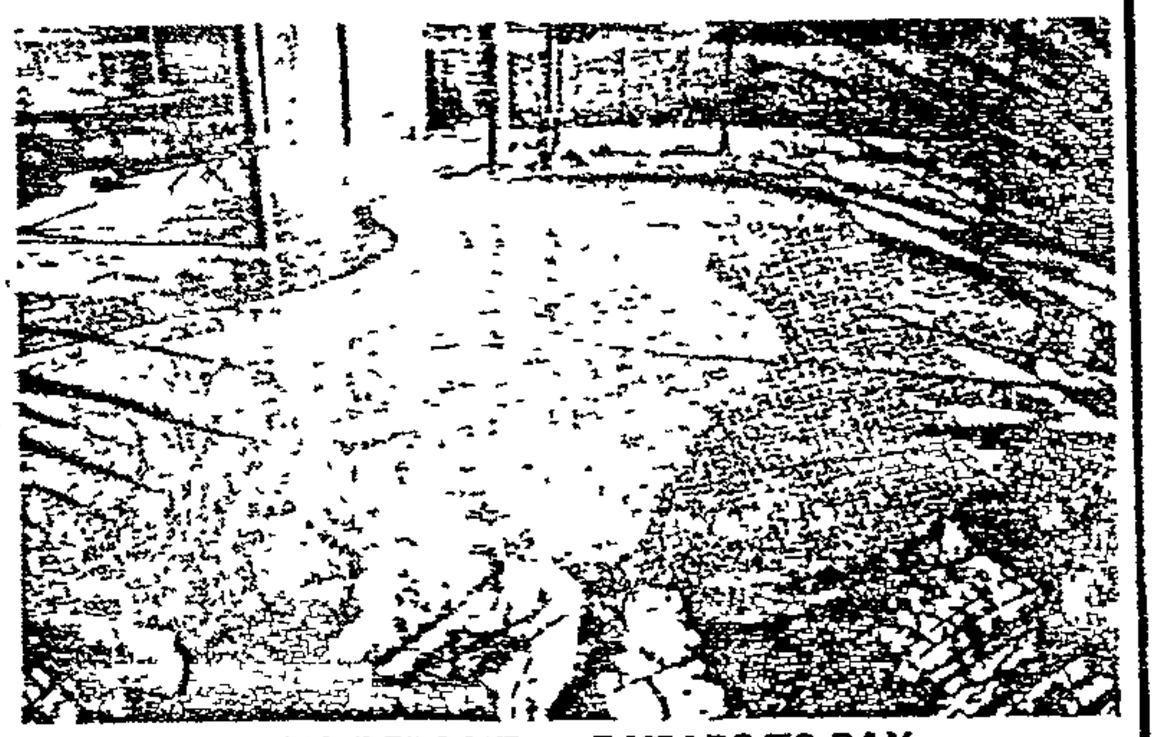

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10 YEARS GUARANTEE

POOLS

/1/2

ANDFONTEIN

NATIONAL SWIMMING POOL INSTITUTE OF SOUTH AFRICA

Member of National Swimming Pool Institute

Expert explains SA laws on rights after arrest

(252) E. Post 7/12/82

By SHIRLEY PRESSLY

MANY people are illiterate — and even literate people are often ignorant of the machinery of justice and unaware of their rights

This week I spoke to the Associate Professor in Public Law at the University of Port Elizabeth, Professor Dana van der Merwe, and asked him to interpret what steps are laid down in the Criminal Procedure Act between arrest and an awaiting trial prisoner's first appearance in court.

The Criminal Procedure Act lays down two stages when an arrest is made The person must submit to control and be informed of the reason for his arrest

If he does not submit and accompany the policeman quietly, the Act makes provision for the law enforcement officer to touch a part of his body and even use force if the circumstances call for it.

As soon as the initial stage of arrest is over the law enforcement officer is obligated by the Act to inform the person arrested of the reason for his arrest The person is entitled to ask for a copy of the warrant of arrest if a warrant has been issued

If it is an arrest which is being made "on the spot" without a warrant of arrest then the law enforcement officer must give oral grounds or reasons for the arrest These points are all covered by Section 39 of the Criminal Procedure Act.

Once arrested, an accused has to be brought before a magistrate within 48 hours according to Section 50 of the Criminal Procedure Act This 48-hour period may be extended if an arrest is made at the weekend or after 4pm when the magistrate's courts have closed for the day

Under Common Law the doctrine of *habeas corpus* entitles somebody who has an interest to apply for an interdict to the civil court that the person be released and the judge may grant a *rule nisi* A broad interpretation is given to "somebody who has an interest" and can include an employer

Section 53 of the Act covers the civil liability of the State for wrongful arrest. Civil proceedings can be instituted against the Minister of Police and a claim for damages lodged

The accused is entitled to legal assistance from the moment of arrest and is not obliged to make any statements to the police before he has spoken to his legal representative

A person under 18 is entitled to be assisted by his parents during the court proceedings.

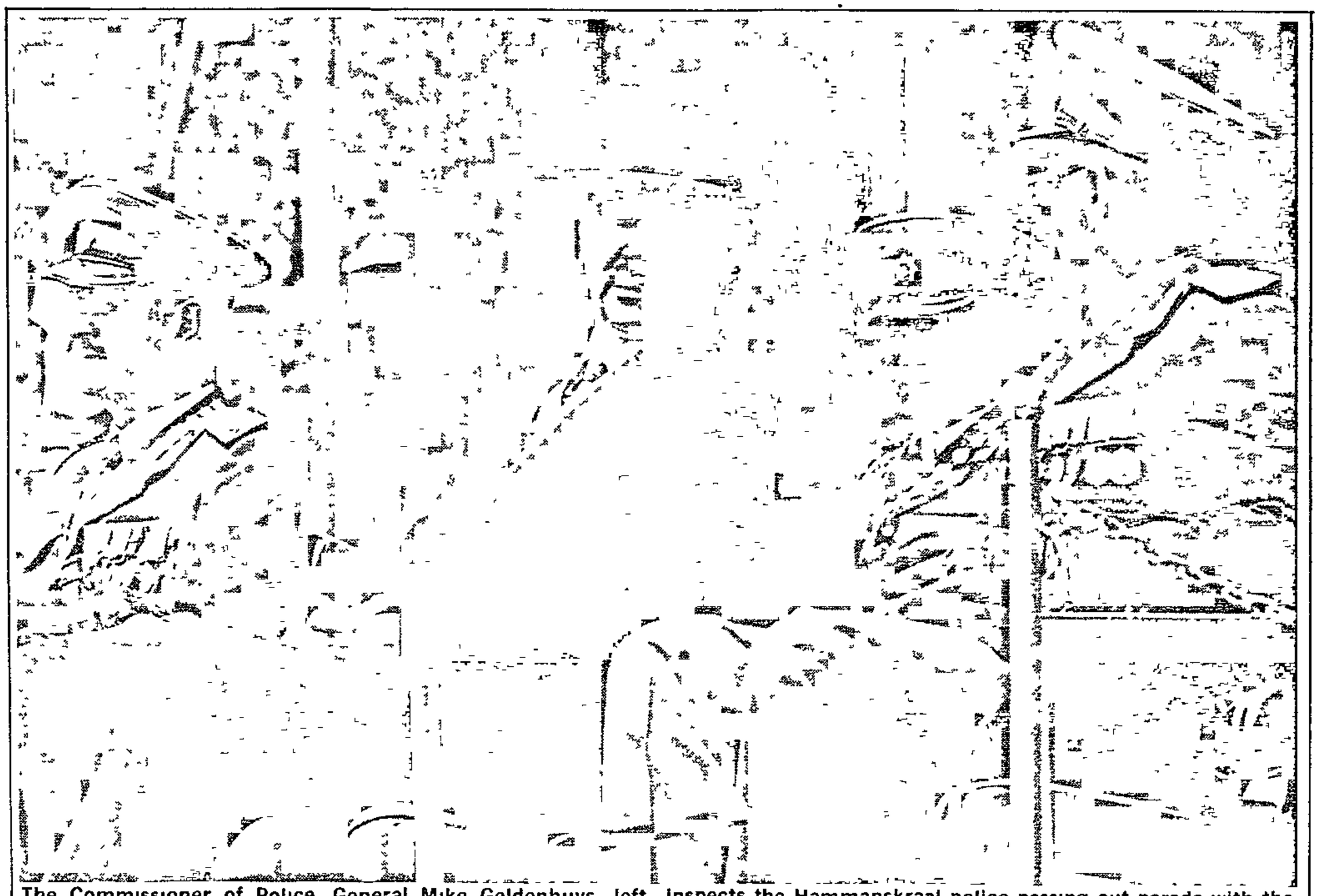
Accused persons are also entitled to postponements of the court proceedings in order to obtain legal assistance.

Section 59 of the Act deals with police bail for certain crimes A police officer holding certain rank is entitled to release an awaiting-trial prisoner on police bail This is not a right but is at the discretion of the police officer in charge of the station

Section 60 of the Act, which deals with bail granted by the court, has been interpreted to read that bail should not be fixed so high that it constitutes a denial of bail

Factors influencing the bail decision are as follows:

The court has to consider the possibility that an accused will abscond, the chances he will commit another offence before his trial and the chances that the course of justice might be defeated by him interfering with potential witnesses



The Commissioner of Police, General Mike Geldenhuys, left, inspects the Hammanskraal police passing out parade with the Minister of Law and Order, Mr Louis Le Grange, centre, and Brigadier Fanie Malan, CO of the training college.

Picture ROBERT TSHABALALA

Rdm 3/12/82 (252)

Tinsel trade likely to lose some glitter

Pretoria Bureau

IT MAY not be such a merry, free-spending Christmas for the retail trade, according to economists

Major reasons, they said yesterday, were the recession, inflation (still running at between 14% and 15%), a decline in total savings and a more cautious spending approach by the general public

A deputy governor of the South African Reserve Bank, Dr A S Jacobs, said while he expected the notes in circulation to amount to a record R3 000-million when they reached their Christmas peak, there would be only a minimal increase in real spending

The president of the Johannesburg Chamber of Commerce, Mr Doug Stewart, said in money terms the chamber expected a growth in year-end spending of about 11%

This, against a background of 14% inflation, could mean a reduction in real terms

However, two other leading economists felt retail turnovers would increase in real terms, if only marginally

Barclays Bank's chief economist, Dr Johan Cloete, said wages and salary increases during the year had been substantial, and year-end bonuses, too, would swell available spending power

There could, therefore, be a small increase in sales volumes compared with last Christmas

Volkskas's chief economist, Mr A T Engelbrecht, said that in spite of a big decrease in savings and the recession there was still some "spending fat" available

Flat lift assault trial on

Mail Reporter

A YOUNG man who allegedly trapped a 50-year-old woman in a lift, robbed her of R5 and then indecently assaulted her appeared briefly in the Hillbrow Regional Court yesterday

Mr Martin Schoeman, 28, of Victoria Road, Bertrams, appeared in connection with allegations of robbery and indecent assault committed on November 27 in a Joubert Park building lift

It is alleged he stopped the lift hit the woman, took her handbag and the money from her purse, and after returning her handbag assaulted her indecently

Mr A H Barlow postponed the case until December 21 and bail of R300 was granted

Hands off suspects, Le Grange warns

Pretoria Bureau

POLICEMEN should guard against the temptation to assault people they had arrested, according to the Minister of Law and Order, Mr Louis le Grange

Mr Le Grange, addressing a passing out parade at the Hammanskraal Training College near Pretoria yesterday, told 684 newly qualified policemen it was the duty of the police to enforce the law and not to punish the wrongdoer

Mr Le Grange urged police to be reasonable and firm without dominating the public

He said a great deal of a policeman's conduct depended on common sense and sound judgment"

If they were led into temptation the men had to remember what they had been taught.

"In this way you will be able to resist these temptations and secure a happy and successful career in the force," Mr Le Grange said

Mr Le Grange presented awards to the best student, Constable M M Makhoba, the best rifle shot, Constable M R Khoza, the best revolver shot, Constable M P Motaung, and the best platoon leader, Constable M T Mofya

The Minister praised Lieutenant L Mapakati and Warrant-Officer J P Matseba, the first black officers in South Africa to have passed their National Diploma in Police Administration

"It is necessary that in these modern times all the members of the police force must be better qualified for effective performance"

Policemen cleared of assault

252

DM 15/12/82

Mail Correspondent

DURBAN — Two security policemen, Warrant-Officer Patrick Jacobs, 35, and Sergeant Mohlin Gopal, 29, were found not guilty and discharged by Mr D M Young in the Durban Magistrate's Court yesterday on a charge of assaulting the Azanian People's Organisation acting chairman, Mr Bradley Potgieter.

The two men were alleged to have assauled Mr Potgieter on March 19 after they had seen him putting up a poster advertising a Sharpeville commemoration service

The magistrate said the State had failed to prove that the policemen had assaulted Mr Potgieter He rejected Mr Potgieter's evidence

Restore testing right to court

CAPE TIMES 16/12/82 252

South Africa's Constitution prevents our courts testing the validity of any legislation passed by Parliament. Mr Justice M A Diemont of the Appeal Court argued last week that this right should be restored as a new constitution is formulated This is an edited extract from his address to graduates at the University of Cape Town.

:LIEVE that it is of cal importance that Supreme Court ld be strong I be- that it should have a and unfettered ju- ction And I believe this must be stated ıy and clearly

happily the power of Supreme Court has many years been ıfied and eroded neg- ely by administrative . executive and legisla- e action

he time has come to a halt and to reverse at process

Sweeping changes

Constitution-making is in the air We have been told by the Prime Minister that sweeping changes are to be made to the South African Constitution In a mere six weeks Parliament will assemble and the great debate will begin It is a debate which will have far-reaching consequences for you and me

We were told a fortnight ago by the President's Council that certain group rights would be entrenched in the new Constitution I welcome that statement but I cannot close my eyes to what happened in the past

In the Act of Union there were certain entrenched clauses One of the clauses entrenched the rights of the coloured voters in the Cape Province In 1951 Parliament passed an Act without the requisite two-thirds majority, disenfranchising those voters

One of the citizens who lost his rights, Edward Harris, went to court to challenge the might of Parliament It was a brave thing to do He won his case The Court of Appeal held that the Separate Representation of Voters Act was invalid

Parliament, in its wisdom, now did a strange thing It passed an act called "The High Court of Parliament Act" — (Act No 35 of 1952) It constituted itself a court of law with higher jurisdiction than the Appeal Court This hybrid court sat in Pretoria and 100 or more members of Parliament — now all elevated to the Bench — gave a judgment overruling the Appeal Court

Mr Justice Diemont addressing UCT graduates

Mr Harris came back to the Supreme Court Again he challenged Parliament and again he won his case The Court of Appeal decided that the High Court of Parliament Act was invalid So once again there was a stalemate The entrenched clause remained entrenched

The deadlock was broken when the Senate was packed so as to give the government the necessary two-thirds majority when the two Houses sat together The Separate Representation of Voters Act was reinstated and became a law and a large body of citizens was disenfranchised

What is the moral of the story? The answer is that a determined government can bypass entrenched clauses Entrenched clauses serve as a useful brake but they do not provide a complete guarantee for the rights they seek to protect.

What then is the solution to the problem? In my view the Appeal Court should be given a wide and unfettered testing right — the right to test legislation That right was taken away from the courts after the Harris case Section 59 of the Republic of S A Constitution Act provides that "No Court of Law shall be competent to enquire into or pronounced upon the validity of any act passed by Parliament" That is an unwise piece of legislation It should be repealed

That a Supreme Court should be given review powers and a testing right is not a novel proposition Some 60 countries throughout the Western world have adopted some form of judicial review

In West Germany, to give just one example, there is a special Constitutional Court. It consists today of 16 judges and they are kept busy enforcing basic rights and unravelling constitutional problems

The exercise of review power by the highest court in the land is not novel in South Africa either In March this year it was decided that the Terrorist Act was in conflict with the Constitution of Bophuthatswana The Appeal Court had the power and exercised the power to declare an Act of Parliament in a black homeland state invalid It is anomalous that it cannot do so in respect of South African legislation

Ingwavuma case

In what is widely known as the Ingwavuma case, the SA government sought to hand part of Kwazulu to Swaziland The decision was challenged in the courts The Appeal Court in Bloemfontein ruled unanimously on September 30 this year that the State President had acted beyond his powers The Proclamation was set aside

The government accepted that ruling and the whole matter is now the subject of a judicial inquiry I do not know what the ultimate decision will be What does concern me is to underline and underscore the role which the Appeal Court played It dispensed justice based on law

In the Zululand case and in the Bophuthatswana case a constitutional problem was investigated and resolved impartially and fairly and expeditiously — and was accepted by everyone

I hope that the constitution makers will recognize the vital contribution which the Court of Appeal can make in resolving the disputes which are certain to arise I make no comment on the merits or demerits of the new proposed constitution for South Africa But there are three points I should like to emphasize in conclusion

Firstly, the concept of a three-chamber parliament with a powerful executive president is a novel one It is going to give rise to many and difficult legal problems Constitutional problems will have to be resolved fairly and expeditiously

Secondly, history has shown that a constitution is not just a piece of paper It is a charter which needs understanding, goodwill and acceptance by citizens to make it work. Acceptance is the key word

This new concept, this new Constitution, may be difficult for the man in the street to comprehend, but it will be more acceptable to him if an independent judiciary is given the testing right and the power of review

Thirdly, the Court of Appeal in Bloemfontein is the one body in South Africa with the status, the objectivity and the legal knowledge to perform this function Let the Supreme Court say what the supreme law of the land is

Competitions ra

By an Ar

AMONG the major factors causing deterioration of architectural standards are the greatly intensified commercial values pervading all aspects of society from the pulpit to the arts

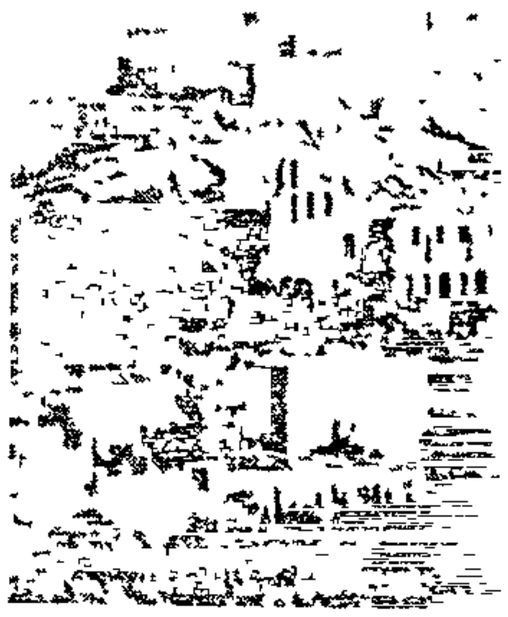
These are threatening to transform the once noble profession of architecture into a super-technocratic, business-orientated, fashion-motivated business in which such values as aesthetics and community interests are in danger of being relegated to the lip-service department

It is not uncommon to hear people explaining the operation of market forces as preachers do the Bible, as if it would be sacrilegious to interrupt the God-directed process of profit-making to which all other needs must be made subservient

Profit motive

There is no escaping the actuality of the profit motive — it is a fact of social life that cannot be talked away But unfortunately it is not as self-regulating as its defenders would like to believe, and in cases where individual interests conflict with the general interest, society must intervene

The recent report of the eroding of the Acropolis in Athens having to be protected from the acid effluent of private cars is



The Acropolis has to be

necessary and understandable, as we all want to live as comfortably as possible and depend on work to do so

But there is obviously a price to pay in the form of an ever more aggressive man-made environment both in the central city and the suburban areas People come a long way below profit considerations Which brings me to the main point I want to make with particular reference to the selection and appointment of architects

South African architects depend for work on

bridge drive

Pure readers never look at the East-West hands because they want to find

♠ Q 9 7 3 ♣ J 9 5 3 2. What do you say?

Magistrate charged with falsifying evidence in PE court

30/12/82 (252) E. Post

By SUE OLSWANG

AN acting Port Elizabeth regional magistrate appeared in the Port Elizabeth Magistrate's Court today on charges of attempting to defeat the ends of justice by falsifying evidence

Mr Wilfred Leon Visser, 42, of Middle Street, Kirkwood, is charged with two counts of attempting to defeat the ends of justice and falsifying evidence by altering court records

Mr Visser was acting as a regional magistrate in the Port Elizabeth Magistrate's Court at the time of the two alleged offences

The State alleges that on May 7, as acting regional magistrate in the Port Elizabeth Magistrate's Court, Mr Visser presided over the case of the State versus Sandile Sifuba

He found him guilty and sentenced him for the unlawful possession of a firearm and ammunition

The State also alleges that on July 9, as acting regional magistrate in the Port Elizabeth Magistrate's Court, Mr Visser presided over the case of the State versus Feti Nomarwayi, Michael Mankahlana and Griffiths Batayi

He found all three guilty and sentenced them on three charges of assault with intent to do grievous bodily harm and one charge of malicious damage to property

Mr Visser is charged with falsifying evidence as he allegedly changed certain parts of the typed court record of both the cases

He is also charged with defrauding the clerk of the court in Port Elizabeth, the registrar of the Supreme Court in Grahamstown, the judges of the Eastern Cape and the Attorney General in Grahamstown, by falsifying evidence

The case has been postponed to January 20, 1983

Magistrate Mr WILFRED VISSER shields his face from the camera as he leaves the Port Elizabeth Magistrate's Court today.

Mr Visser hit an Eastern Province Herald photographer, Mr Basil Hall, in the face this morning when Mr Hall took a photograph of Mr Visser as he was leaving the court

The flashbulb from Mr Hall's camera fell to the ground when Mr Visser hit him When Mr Hall took a second photograph, Mr Visser threatened to hit him again

Mr D F M Smith was on the Bench Mr J M Scott appeared for the State Mr Visser was not represented

PUBLIC SECTOR-GOVT. - JUSTICE

1983

JAN. — DEC.

Comment on evidence

(252) 18/1/83 Crime Reporter Mercury

THE possibility of taking evidence on commission in a British prosecution of former Durban Det-Sgt David Somes was in no way initiated by the South African authorities, according to Mr D Swanepoel, director of legal process at the Department of Justice in Pretoria

He was referring to a report in the Mercury last week which, he said yesterday, might be construed by some as having given such an impression

In the original report Mr Swanepoel was not making a statement, per se, when he said 'taking evidence on commission was one of the options that the British authorities could consider if it complied with their procedural law'

He was replying to a reporter's query phrased in those terms

But, he added, that if such an option were being considered it would have to come from the British authorities handling the prosecution It could not come from the South African authorities

South Sothos to be tried in Kgotla courts

CAPE TIMES 18/1/83 (252)

By ANDREW DONALDSON

THE South Sotho-speaking people in the Western Cape who transgress "customary law" are for the first time being tried officially in Kgotla (traditional) courts

This "official" court is the first of its kind in the Western Cape, according to Mr T S Khati, the man who has been nominated for appointment as "judiciary councillor" for the South Sotho in the Western Cape

Although such a tribal court, which usually deals with illegitimate pregnancies and domestic problems, is already in practice, the Department of Co-operation and Development still has to endorse Mr Khati's nomination

Towards the end of last year, the department contacted the South Sotho Community Council for the furnishing of a suitable person for appointment as "judiciary councillor"

This was done in terms of section 21(A) of the Black Administration Act of 1927 (Act 38 of 1927), whereby the same judicial powers "as may be conferred on a black chief or headman in terms of sections 12 and 20 of the Act" may be given to any black person

On December 5, Mr Khati, a South African Transport Services liaison officer, was nominated as judicial councillor by the South Sotho Community Council

Mr L van Heerden, the department's Western Cape Commissioner, said Mr Khati's post still had to be confirmed by the Minister of Co-operation and Development, Dr Piet Koornhof

According to Mr M M Cabadiya — private secretary to Mr Khati — Mr Khati does not have any training in the procedures of civil law, but this "is not necessary for the post"

In terms of the rules of the court, gazetted in 1967, no advocate or other legal practitioner may appear or act for any party in such a court

Mr Cabadiya said the maximum penalty that could be imposed on a defendant was the payment of six cows, or R300

"In the case of maintenance, a common problem, this would be regarded as a 'dowrage' and not payment of damages, as the case will still be open for further negotiations, such as marriage"

Mr Cabadiya said that the Kgotla court should not be confused with the Makgotla, the civil guard system that made news headlines in the late '70s for the manner in which they had handled urban violence in Soweto

(252) Dispatch 21/1/83

Magistrate's trial to be in Grahamstown

PORT ELIZABETH — The trial of a former acting regional magistrate here who is charged with two counts of attempting to defeat the ends of justice was yesterday referred to the Supreme Court in Grahamstown

The trial of Mr Wilfred Leon Visser, 42, a Kirkwood magistrate, has been set down for March 7

Mr Visser pleaded not guilty to the charges at a previous hearing

The trial arose out of two trials Mr Visser presided at while acting as a regional magistrate last year

On May 7 last year Mr Visser convicted and sentenced Mr Sandile Sifuba

The trial was recorded on tape and, when an appeal was lodged with the Supreme Court, was typed and reflected a true record of the proceedings

Copies of the typed court record were also submitted to Mr Visser for his reasons

It was alleged that Mr Visser, knowing the copies would be sent to the judges who would hear the appeal, unlawfully and intentionally, in an attempt to defeat the ends of justice, altered a paragraph in all the copies given to him

The second charge arises from a trial on July 9 Mr Visser also presided at this trial and convicted and sentenced the accused

An appeal against sentence was lodged and again the proceedings were typed from the recorded tape

Mr Visser was given copies of the proceedings and it is alleged that he again made alterations to the copies he knew would be sent to the appeal judges

At a previous hearing Mr Visser admitted making the alterations but denied he had the intention of defeating the ends of justice

He also conceded that he knew the Supreme Court would be relying on the copies he had altered — DDC

Need to trust the judges under new constitution

Cape Times 25/1/83

252

The first of two articles by a legal correspondent

UNLIKE our generals, our judges seldom venture views in public places They think it irreconcilable with being impartial, and being seen to be impartial, in a deeply divided society

Recently two judges — both members of the Appellate Division, our highest court — felt impelled to depart from this tacit practice They did so in careful terms The issue was that of protecting civil liberties under the new constitutional dispensation

Receiving an honorary doctorate from the University of Cape Town, Mr Justice Corbett said this

" As a lawyer, I see grave dangers to the legal system — and the esteem in which it is held by society — in legislative arrangements whereby a powerful state agency, and the individuals comprising it, are placed permanently beyond the reach of the law"

Mr Justice Diemont . wants "wide and unfettered testing right" for the Supreme Court

Erosion of power

More specific and urgent in tone was the graduation address in December of Mr Justice Diemont He called for "a wide and unfettered testing right" for the Supreme Court He said that the time had come to cry a halt to the process of administrative and executive erosion of the power of the Supreme Court, and to do so loudly and clearly

Why this sense of urgency? Why *now*?

Under the new constitution it is certain that we are to see an extremely powerful executive Yet the strength of the executive, and its fine focus in the office of the Prime Minister, are already realities The Westminster system has not protected individual liberties against the burgeoning of the executive, nor sustained a legislature as a force to be reckoned with We have an imperial presidency already The real debate should rather be How do we balance the organs of government *now*?

It is an irony that at Westminster itself it is commonly realized that, in the 1970's and 1980's, the democratic dream has soured The ostensible division between executive, legislative and judiciary has proved no division at all The executive has, like the tiger of Riga, revealed a cavernous maw and an insatiable appetite

It is appropriate that an eminent English judge was the first to sound public alarm In a brilliant analysis, Sir Leslie (now Lord) Scarman (who last year headed the inquiry into the Brixton riots) in 1974 traced the progressive weakening of the common law's capacity to protect the individual from negative effects of the intervention of the state Government sought to advance the public good in a torrent of legislation Almost unnoticed at first had come a thick alluvial accretion of regulations, controlling boards, and administrative discretions

The result was to leave both individual and community rights in a gravely weakened state And once the inherent balance between such rights within a society was threatened, its natural resistance to domination, conflict and instability was undermined

'Exacting standards'

Lord Scarman concluded in these striking terms

"The legal system must now ensure that the law of the land will itself meet the exacting standards of human rights . This calls for entrenched or fundamental laws protected by a Bill of Rights — a constitutional law which it is the duty of the courts to protect even against the power of Parliament In other words, there must be a constitutional restraint placed upon the legislative power which is designed to protect the individual citizen from instant legislation, conceived in fear or prejudice and enacted in breach of human rights"

The call was taken up by others Powerful figures like the present Lord Chancellor, Lord Hailsham, and the former Master of the Rolls, Lord Denning, became converts Lord Denning put it simply The power of the executive — through its grip on the legislature — had grown enormously Individual and community rights were being swamped The law was increasingly powerless — and that should never be Nothing should be above the law Only a Bill of Rights and a testing power of the courts over legislation could strike the balance Someone had to be trusted "Let it be the judges"

How could this be achieved in South Africa? In spite of the evidence before it, the second report of the constitutional committee dismissed the case for constitutional review and a Bill of Rights The analysis is brief and their reasons — which we examine in a subsequent article — are not compelling

Critical area

Even more troubling is the failure to make detailed provision for deadlocks between the executive and the legislature, and between the chambers themselves This is an area at least as critical as the protection of individual and group rights through judicial review of legislation The second report merely recommends in anodyne terms

"Such conflict management measures as may be contained in the Constitution Act should be directed primarily at conflict avoidance with the aid of negotiatory structures, such as, for example, Permanent Parliamentary Committees"

The recently published "Constitutional Guidelines" faces a little more squarely what it calls "the final power of settlement" of disputes between the three chambers This, we learn, is to vest in the President's Council Why? The answer given is this

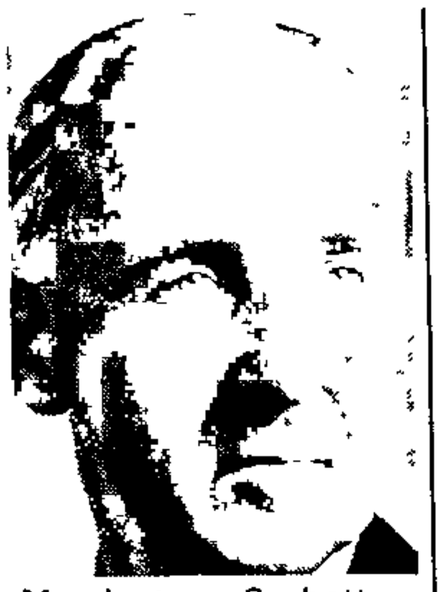
"Disputes should be resolved in terms of the principle of co-responsibility by a body representing all parties concerned, but which nevertheless would be able to pass judgment as independently and objectively as possible The President's Council is representative of all three groups and its primary function remains expert and informed advice to the Government It is, therefore, the obvious body to perform the function of final arbiter"

In short Someone must be trusted Let it be the President's Council

Balance ignored

The proposition has only to be stated to be rejected In the first place, the fundamental problem of the balance between individual rights, group rights and the long reach of the executive remains ignored In the second place, clashes between the chambers are not the only very real potential source of conflict Thirdly, and accepting that the President's Council does afford the government "expert and informed advice", that is not by itself a qualification to determine the most intricate and nicely poised constitutional disputes And this under a radically new dispensation with no comfortable coastline of precedent to creep along, like early Mediterranean mariners

For in the final instance, as the President's Council's own uneasy choice of language suggests, the "function of final arbiter" is judicial It is not political It must be impartial, and be seen to be impartial Can a group of men and women, appointed by the Prime Minister, with (for the most part) neither training nor experience in adjudication, and with (again, for the most part) known political allegiances, discharge this function?



Mr Justice Corbett . sees "grave dangers to the legal system"

Trusted?

In the final analysis, the question is whether they will be trusted Their integrity may be such that they deserve to be, but that is not the question Will they be both impartial, and seen to be impartial?

This deeply divided society cannot afford constitutional impasses It needs checks and balances, cartilage between its bones A testing power and a Bill of Rights is not an impractical liberal pipe dream, alien to this country Indeed, it has deep and successful South Afrian roots, which will be the theme of the concluding article

Which checks are most likely to be respected? Who is likely to be trusted?

Let it be the judges

(To be concluded)

Small claims court plan awaits comment

3/2/83 (252) Star

The Department of Justice has asked a wide spectrum of organisations to comment on proposals to establish small claims courts

Government departments and institutions, the Bars and Side-Bars, Assocom, the Federated Chamber of Industries and the Handelsinstituut are among those asked for comment

A spokesman for the department said in Cape Town that the department was awaiting replies

The Commission of Inquiry into the Structure and Functioning of the Courts found that there was an urgent need for special machinery for the settlement of minor civil disputes informally and it recommended that small claims courts be established.

Proceedings in these courts would be simple, fast and inexpensive. Paperwork would be kept to a minimum

Jurisdiction would be limited to claims of up to R750 and parties would not be allowed legal representation.

Legal assistance and advice during the pre-trial period would be available free to both parties

All hearings would be in public unless both parties requested the adjudicator to hold the hearings in private

There would be no appeal from the decisions of the small claims courts, but an aggrieved party would have a limited right of review in the Supreme Court

Mr. Robin B. Riddell, appeal against sentence 4/2/83

252 Hansard Q Col. 29-30

*19 Mr R A F SWART asked the Minister of Justice,

(1) Whether an appeal against a sentence in a lower court by Mr Robin Brian Riddell to the Natal Provincial Division of the Supreme Court has been (a) lodged and (b) heard, if so, (i) when in each case, (ii) what were the charges against the accused in the lower court and (iii) what was the sentence imposed by such court,

(2) whether the accused was released on bail pending the hearing of the appeal, if so (a) what were the conditions of bail and (b) when was he released,

(3) whether the original trail was held *in camera*,

(4) whether any additional evidence was led in the course of the appeal hearing, if so, what was the purport of such evidence,

(5) whether the appeal hearing was held *in camera*,

(6) whether judgment in the appeal case was delivered *in camera*, if so, why,

(7) what was the judgment delivered in the appeal hearing?

The MINISTER OF JUSTICE,

(1) to (7) In terms of a rule *nisi* which was confirmed by the Natal Provincial Division of the Supreme Court of South Africa on 26 March 1982, no documents or information or facts mentioned or referred to in the cases concerned may be published directly or indirectly

SAP may charge Catholic leader

(252) 2014 5/2/83

Mail Correspondent

DURBAN — Charges under the Police Act may be instituted against Archbishop Denis Hurley, Catholic Archbishop of Durban, "and any newspapers or media" that had published his claims that the SA Police had committed atrocities in SWA

Lieutenant-Colonel Leon Mellett, of the Ministry of Law and Order, said yesterday that the police would investigate possible charges under Section 27B of the Police Act against Archbishop Hurley and "any newspapers or media that published or disseminated the archbishop's allegations"

Col Mellett said the allegations were made by Archbishop Hurley in Pretoria on Thursday at the Southern African Catholic Bishops' Conference

The archbishop said last night that his information about the incident was of such a nature that a prima facie case did exist

"A good court case would be welcome," he said

- Section 27b of the Act deals with the "prohibition of publication of certain untrue facts" in relation to any action by the police force or any part of the Force or any member of the Force without having reasonable grounds for believing that the statement is true
- The onus of proof rests on the person making the statement
- The penalties on conviction are a fine not exceeding R10 000 or imprisonment for a period not exceeding five years or fine and imprisonment.

All answer

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The Natal Mercury, Tuesday, February 8, 1983

Industrialist to shut down factory after being granted bail

252

Mercury Reporter

AN INDUSTRIALIST yesterday told a Verulam Magistrate that he would shut down his engineering company permanently so that there was no likelihood of him interfering with State witnesses

Mr Louis Duncan, 71, said this in evidence during a fresh application for bail before Mr H J Hitchcock in the Verulam Magistrate's Court

The industrialist is facing charges on 15 counts of contravening the Labour Relations Act, two counts of perjury and another for defeating the ends of justice He has pleaded not guilty

Before yesterday's application, Mr Hitchcock had refused an earlier application by advocate Chris Manewick, for Mr Duncan, that he recuse himself on the grounds that he had made a finding on credibility alone

Mr Hitchcock found that Mr Duncan had been interfering with State witnesses and ordered that he be detained in custody

Mr Manewick said yesterday that in view of new problems encountered by Mr Duncan he should be allowed bail

He said Mr Duncan had consulted a doctor at the weekend and had been asked to see a specialist neurosurgeon on Thursday this week

Prosecutor Mr Roderick Callum objected to bail on the grounds that the Court had found that Mr Duncan had been interfering with State witnesses in spite of warnings by the Court

Mr Manewick informed the Court that Mr Duncan was having financial problems and had put his house on sale Also he had decided to shut down his factory

He said the factory would be closed down immediately under the supervision of the Industrial Council so that there was no likelihood of Mr Duncan interfering with State witnesses

Mr Duncan was allowed bail of R1 000 and was ordered to be at his business premises only until February 22 for the purpose of closing it down

The hearing was postponed to February 11

ERY CANDIDATE MUST enter in umn (1) the number of each question swered (in the order in which it has een answered), leave columns (2) and (3) blank.

	Internal	External
(1)	(2)	(3)
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2	10	
3	6	
9	10	
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Examiners' Initials		

NOTE CAREFULLY

1. Enter at the top of each page and in column (1) of the block on this cover the number of the question you are answering
2. Blue or black ink must be used for written answers The use of a ball point pen is acceptable Red or green ink may be used only for underlining, emphasis or for diagrams, for which pencil may also be used
3. Names must be printed on each separate sheet (e g graph paper) where sheets additional to examination book(s) are used.
4. Do not write in the left hand margin.

WARNING

1. No books, notes, pieces of paper or other material may be brought into the examination room unless candidates are so instructed
2. Candidates are not to communicate with other candidates or with any person except the invigilator.
3. No part of an answer book is to be torn out.
4. All answer books must be handed to the commissioner or to an invigilator before leaving the examination.

Any dishonesty will render the candidate liable to disqualification and to possible exclusion from the University

Court yes to Muslim head-dress

(2) 252 D. Dispatch 11/2/83

ZWELITSHA — A regional court magistrate in Ciskei, Mr J A Dracatos, said he did not object to Muslim head-dress in court

In an interview he said although he did not expect a big crowd of Muslims to come to court wearing head-dress, he would allow them in court

This follows the debarring of a Muslim leader, Mr Hassan Petshwa, by the police last week from the regional court here to listen to proceedings in the Fort Hare violence trial

Police told Mr Petshwa that the wearing of the head-dress was not allowed in Ciskei courts They said he was not properly dressed

On Tuesday the defence council in the Fort Hare trial, Advocate M T K Moerane, told Mr Dracatos, the magistrate in the case, that he had been approached by some members of the public who claimed they had been ordered by the police to leave court because they did not have ties on Mr Moerane said it was an open hearing and people should be allowed to listen to the proceedings

The state prosecutor, Mr B D Nel, told the court that he was not aware of the police action

Mr Dracatos said he knew nothing about the police orders He said people not wearing ties should be allowed in court

He then referred to a press report which claimed that Mr Petshwa had been barred from entering court because he refused to take off his head-dress He said he never asked the police to debar Mr Petshwa and that he became aware of the incident after reading the report

He said people of other religions were free to come and listen to proceedings

In an interview, he said he did not find any objection to Mr Petshwa wearing the head-dress in court He respected other people's religious beliefs — DDR

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1. No books, notes, pieces of paper or other material may be brought into the examination room unless candidates are so instructed.
2. Candidates are not to communicate with other candidates or with any person except the invigilator.
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Any dishonesty will render the candidate liable to disqualification and to possible exclusion from the University

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(252) Hansard Q. 61.82 — 83

Commissioners who act as magistrates/prosecutors

11/2/83

*19. Mr. P R C ROGERS asked the Minister of Co-operation and Development

(1) Whether any commissioners in his Department have acted as magistrates as well as prosecutors in the same court on the same day, if so,

(2) whether he has taken any steps to prevent a situation of this nature from recurring, if so, what steps?

The MINISTER OF CO-OPERATION AND DEVELOPMENT.

(1) Yes. In exceptional cases an official holding the appointment of both commissioner and prosecutor acts as presiding officer in one case and as prosecutor in another case. This does not constitute an irregularity It did, however, happen in the periodical courts at King William's Town and Stutterheim that a presiding officer acted both as presiding officer and prosecutor in the same case This obviously constituted a gross irregularity

(2) Yes When the irregularity was detected the practice was stopped immediately Suitable arrangements have been made to avoid a recurrence by providing adequate staff

†Mr J J B VAN ZYL Mr Speaker, arising out of the hon the Minister's reply, can he tell us whether the accused was found guilty or not guilty?

Mr B R BAMFORD Mr Speaker, arising out of the hon the Minister's reply, can he tell us whether the presiding officer/prosecutor conducted his case from the Bench or from the Bar? [Interjections]

Doctor: many Xhosa need help in court

D. Dispatch 17/2/83 252

CAPE TOWN — Well-informed social workers should be at court to explain proceedings to "confused and anxious" people, a delegate told the University of Cape Town's conference on forensic psychiatry

Dr V Bührmann, a senior psychiatrist at the university, was speaking on transcultural psychological factors in crimes of violence committed by Xhosa people She referred to the belief in witchcraft which many of her patients had shown

"I was very saddened by the way these patients speak of their confusion at a court appearance

"They can lose contact with reality and the findings of the judge must be explained in detail

"There should be social workers at the courts — people should not have to wait for years in a mental hospital before they are sorted out," she said

The defence of insanity had been turned into a scapegoat for the shortcomings of the criminal law system, a legal and psychiatric expert told the conference

Professor Ralph Slovenko, professor of law and psychiatry at a Detroit University, said a "chorus of voices" was urging American society to abandon or modify the insanity defence, believing its abolition was a way of fighting violent crime.

Professor Slovenko said the defence of not guilty by reason of insanity was often a rich man's defence

He said the trial of world-be assassin John Hinckley had reportedly cost the United States Government more than $300 00 for medical experts, and had cost Hickley's parents nearly one-million dollars for legal and expert fees.

Professor Slovenko cited the case of Edmund E Kemper III, who was acquitted by reason of insanity of murdering his grandparents in 1964, and released five years later as "cured"

He later murdered six students, his mother and one of her friends — for which he was found guilty

The plea of not guilty by reason of insanity did offer an "element of flexibility in an otherwise rigid system," although it was a "last ditch defence"

One proposal for change was the creation of the verdict of "guilty but mentally ill" — SAPA

Prosecutor 'blackmailed' us, 3 tell court

By JOHN MILLER

THE three men who last year said they were blackmailed by a prosecutor into pleading guilty on various charges of housebreaking, appeared in the Randburg Regional Court yesterday to have their pleas altered to ones of not guilty

Mr Keith Mylchreest, 32, of Crown Mines, previously pleaded guilty to two of 22 charges of housebreaking while Mr Steven Westgate, 31, of Phillips Street, Townsview pleaded guilty to four charges and Mr Henry Clark, 45, of Joubert Park pleaded guilty to all 22 counts of housebreaking.

R93 000 worth of goods were stolen from several houses in the northern suburbs, from one in Florida and from one in Bedfordview

Mr Mylchreest claimed in court yesterday the previous prosecutor, Mr T Liversage, promised to have their bail reduced from R10 000 each to R1 000 if they pleaded guilty to certain charges

Mr Westgate collaborated Mr Mylchreest's claims and said he was handed a piece of paper with the exact charges to which he should plead guilty.

He said "Mr Liversage came down to the cells before we appeared in court and we struck the deal with him on condition that our bail was reduced

Advocate Mr Paul Shapiro, defence for Mr Westgate, told the court how his client's family had to borrow the money to pay bail of R4 000 and that they were now in financial difficulties

The application for altering the pleas was postponed by the magistrate, Mr T Kleinhans, until today and Mr Clark and Mr Mylchreest were remanded in custody while bail was extended for Mr Westgate.

252 Hansard Q.Col. 327–328

Legal aid

25/2/83

68 Mr M A TARR asked the Minister of Justice

(a) What was the total number of applications for legal aid in terms of the Legal Aid Act, No 22 of 1969, made during the latest specified period of twelve months for which figures are available and (b) how many of these applications were (i) granted and (ii) refused on grounds other than failure on the part of the applicant to qualify for legal aid in terms of the prescribed means test?

The MINISTER OF JUSTICE

According to the Director of the Legal Aid Board statistics for the period 1 April 1981 to 31 March 1982 are as follows

(a) 34 269.

(b) (i) 8 640 A further 9 638 cases were solved through the mediation of representatives and officials of the Board or by state or other institutions

(ii) 3 906 A further 7 209 applications were refused in terms of the means test

4 876 cases were still under consideration at the end of the relevant period

D. Dispatch 26/2/83 (252)

Stutt man refused leave to appeal

PORT ELIZABETH — A man who was convicted and sentenced to death for murder in Grahamstown this week was yesterday refused leave to appeal to the Appellate Division in Bleomfontein

Steven Katiti, 32, was sentenced to hang for shooting dead a Stutterheim general-dealer, Mr Pieter Kock, with an R1 rifle at his home on June 15, 1981

He also received the death penalty for robbery with aggravating circumstances after the court found he had forced Mr Kock's wife, Mrs Cornelia Kock to give him R500 in cash and a 22 revolver

He was acquitted of three other crimes committed in Cathcart after the court accepted he had been in Johannesburg at the time and found there had been no proper identification of Mr Katiti as the person responsible

Mr Katiti's application for leave to appeal was heard yesterday by the Judge President of the Eastern Cape, Mr Justice Cloete, who was presiding judge at his trial and convicted and sentenced him to death on Thursday

Judge Cloete said there was no reasonable prospect that an appeal court would come to a different conclusion about Mr Katiti's guilt The findings of the trial court were essentially findings of fact based on credibility and he was not persuaded another court would take a different view

The judge rejected the argument of Mr Katiti's counsel, Mr R Quinn, that discrepancies and contradictions in the evidence of state witnesses gave his client a reasonable prospect of success on appeal

Mr Quinn said that since the court had accepted Mr Katiti's alibi — that he was in Johannesburg the day before the Kock murder — the onus was on the state to explain how he could have travelled to Stutterheim in time to commit the crimes the following evening

The state had failed to do this, he added It had also not produced direct evidence of Mr Katiti's identification as the person who committed the crimes, but had relied on circumstantial fact and a confession made by Mr Katiti to a police major in Johannesburg

Another court might find the confession unacceptable as the police had been in possession of enough details of the murder to have schooled him in his statement, as Mr Katiti claimed in court

It was significant, Mr Quinn added, that at the first opportunity on which he had access to an independent judicial officer — a magistrate in King William's Town — Mr Katiti made another statement in which he recanted

Judge Cloete said the court had already found that even if the confession had been excluded from the case there was still enough acceptable and credible evidence to prove Mr Katiti's guilt beyond a reasonable doubt

The application for leave to appeal was opposed by Mr J H S Hiemstra, who appeared for the state

Mr Katiti now has 21 days in which to petition the Chief Justice for leave to appeal — DDC

WEDNESDAY, 2 MARCH 1983

†Indicates translated version.

For oral reply

Hansard Q 61r

252 **Justice: services suspended**

402 -403

*1 Mr D J DALLING asked the Minister of Justice

Whether any services provided by his Department were suspended in 1982 owing to staff shortages, if so, (a) what services and (b) where?

†The MINISTER OF JUSTICE

(a) and (b) During the first seven months of 1982 a shortage of administrative staff existed at a few offices of the Justice Directorate, mainly on the Witwatersrand This resulted in certain sections of the offices concerned being open to the public only until 13h00 instead of 16h30 daily The inconvenience caused hereby was so negligible that as far as is known no complaints were received from the public Since August 1982 the staff position has improved to such an extent that normal office hours are now being maintained in all suboffices of the said Directorate In the magistrate's office, Johannesburg the telephone inquiry facility for maintenance recipients is at present still suspended, but will soon be reinstated

Justice. report of Department

*2 Mr D J DALLING asked the Minister of Justice

When it is anticipated that the report of his Department for the period 1 July 1981 to 30 June 1982 will be laid upon the Table?

The MINISTER OF JUSTICE

The date on which the report can be

laid upon the Table is, among others, dependent on the period of time in which the printing process can be finalized At this stage it is not possible to give an indication in this regard I can, however, assure the hon member that unless unforeseen circumstances emerge, it will take place in time for the discussion of the Justice vote in Parliament

Magistrates' courts, administrative posts

(252) Hansard Q. 60: 459–462

200 Mr D J DALLING asked the Minister of Justice

(1) (a) How many posts are there on the establishment of his Department for administrative staff attached to magistrates' courts, (b) what is the break down of such administrative staff and (c) how many vacancies are there in respect of such posts,

(2) whether any such posts are filled by persons who are not in possession of the requisite qualifications, if so, (a) how many and (b) what are their qualifications?

The MINISTER OF JUSTICE

(1) (a) 2 247

(1)(b) Rank

Rank	Number of Posts	(1)(c)	(2)(a)
Assistant Director	2	—	—

(1)(b) Rank	Number of Posts	(1)(c)	(2)(a)
Control Administrative Officer	8	—	—
Senior Computer Operator	2	1	—
Administrative Officer	144	—	2
Computer Operator	1	—	—
Senior Administrative Assistant	444	15	190
Head Typist	2	—	—
Senior Stores Officer	2	—	—
Personal Secretary	7	—	3
Senior Data Typist	4	2	—
Telephonist	19	1	—
Typist	141	11	8
Administrative Assistant	731	15	147
Senior Clerical Assistant	96	16	25
Clerical Assistant	360	22	65
Data Typist	10	2	1
Stores Officer	6	—	1
Security Assistant	4	—	—
Clerk Grade I (B)	22	—	7
Clerk Grade II (B)	96	4	37
Assistant Clerk (B)	113	4	16
Clerk Grade I (I)	2	—	—
Clerk Grade II (I)	5	—	1
Assistant Clerk (I)	3	—	—
Clerk Grade (C)	2	—	—
Clerk Grade II (C)	10	—	1
Assistant Clerk (C)	11	5	3
Totals	2 247	98	507

(2) (b) Standard 6 to 9

Public prosecutors posts

202 Mr D J DALLING asked the Minister of Justice

(1) (a) How many posts are there on the establishment of his Department for public prosecutors and (b) how many vacancies are there in each province in respect of such posts,

(2) whether there are any public prosecutors in the employ of his Department who are not in possession of the requisite qualifications, if so, (a) how many and (b) what are their qualifications?

The MINISTER OF JUSTICE

(1) (a) 736

(b) None

(2) Yes

(a) 18 The transfer of these officers and the filling of the posts concerned with legally qualified officers, who are available for appointment, is receiving attention at present

(b) Standard 10 Some have already progressed with studies towards obtaining legal qualifications

(252) Hansard X

Q 61 467 – 469 2/3/83

Justice, clerical administrative staff

278 Mr D J DALLING asked the Minister of Justice

Whether the position in respect of the clerical/administrative staff of his Department, as referred to in paragraph 1 11 on page 45 of the report of his Department for the period 1 July 1980 to 30 June 1981 has changed since then, if so, what is the current position expressed in the same terms as set out in the said paragraph 1 11?

The MINISTER OF JUSTICE

The position has improved As at 31 December 1982 the position was as follows

Directorate Prisons

	(a) Number of Posts	(b)(i) Posts filled	(b)(ii) Posts vacant
Chief Organization and Work Study	1	1	—
Chief Organization and Work Study Officer	3	3	—
Organization and Work Study Officer	17	9	8
Totals	21	13	8

Directorate Justice

	(a) Number of Posts	(b)(i) Posts filled	(b)(ii) Posts vacant
Chief Organization and Work Study Officer	1	1	—
Organization and Work Study Officer	8	1	7
Totals	9	2	7

Administrative Officer	95%
Senior Administrative Assistant	53%
Administrative Assistant	72%
Senior Clerical Assistant	50%
Typist	87%

Justice, Organization and Work Study Division

279 Mr D J DALLING asked the Minister of Justice

(a) What is the authorized establishment of the Organization and Work Study Division of his Department and (b) which positions in this division are (i) filled and (ii) vacant at present?

The MINISTER OF JUSTICE

	(a) Number of Posts	(b)(i) Posts filled	(b)(ii) Posts vacant
Chief Organization and Work Study	1	1	—
Chief Organization and Work Study Officer	3	3	—
Organization and Work Study Officer	17	9	8
Totals	21	13	8

	(a) Number of Posts	(b)(i) Posts filled	(b)(ii) Posts vacant
Chief Organization and Work Study Officer	1	1	—
Organization and Work Study Officer	8	1	7
Totals	9	2	7

WEDNESDAY,

The services of three officers in the Division Inspectorate are temporarily being utilized in the Division Work Study

Magistrate under stress, court hears

E-Post 7/3/83 (252)

Post Correspondent

GRAHAMSTOWN — Mr Wilfred Leon Visser, 42, a Kirkwood magistrate, today appeared before the Judge President, Mr Justice Cloete, in the Grahamstown Supreme Court in connection with several cases he had dealt with when he was acting regional magistrate in Port Elizabeth last year

Mr Visser pleaded not guilty to a charge of having attempted to defeat the ends of justice by altering the tapes of recordings made in the courts where he presided.

The first witness was the Regional President, Mr Gert Steyn

He spoke of practical tests to which provisional magistrates were routinely subjected to every five months

The findings of the provisional magistrate were then tested against the findings of judges who had examined the judgments

Mr Steyn said Mr Visser had failed his first test as a regional court magistrate The Regional President could make alterations if necessary to the record

Mr Steyn said he had received a letter from Mr Visser in which he expressed regret that his work had been questioned

Mr Visser said at the time of the test he had been under great strain, working late at night and early the next morning

He was under heavy medication while suffering from influenza

He had bought a house in East London, which would cost him a great deal if he were forced to sell it

The pressure under which he worked made it necessary for him to get treatment for mental stress and also for ulcers Medication cost him about R100 a month

Although these matters were not put forward as an excuse, he wanted to mention that he had been born in the Eastern Cape and understood the Xhosa language

The result was that at times he listened to the evidence and not so much to the interpreter, but tried to convey the broad trend of the evidence

When he went through the record he was shocked to find discrepencies there between that which he had put into one section and what the record said

At that stage he found that all rational thinking disappeared and he adapted the record from his notes

Finally it seemed that he had forgotten to switch on the recording machine, at which stage he included part of the record from his notes

Asked what Mr Visser's future was in the department, Mr Steyn said he could not speak on behalf of the department, but he personally felt that he would not be kept on

When he saw Mr Visser after the revelations, he had been in a state of great shock

There had been a split verdict on his first test

It had been decided to alter the system of testing for magistrates to tone down the stress to which a candidate for a hired post was subjected

This had been decided at the last meeting of the advisory committee

He expected that the Minister of Justice would make an announcement shortly

The secretary of the presidents regional council in Port Elizabeth, Mrs B P Dixon, said Mr Visser had telephoned her once and asked her to send on judgments to him so he could correct any mistakes in them

Normally she would have made a note of the folder of a judgment so that it could be corrected by the president of the council

(Proceeding)

The Attorney-General, Mr E C Heller, and Mr N Nel appeared for the State Mr M H Claassens appeared for Mr Visser

Dispatch
8/3/83

Magistrate: I changed court record

252

GRAHAMSTOWN — A former acting regional magistrate charged with two counts of attempting to defeat the ends of justice admitted his regret at altering court records, according to documents read before the supreme court here yesterday

The Kirkwood magistrate, Mr Wilfred Leon Visser, made the admission in a written explanation requested by the president of the Eastern Cape Regional Court, Mr Gert Steyn, in November last year

Calling the incident unsavoury, Mr Visser wrote he regretted it "more than words could say" He added he had been under considerable pressure and was being treated for nervous tension and ulcers at the time

Mr Visser, 42, has pleaded guilty to one of the counts

Mr Steyn told the court he had noticed a discrepancy in typed court records of two trials at which Mr Visser had presided while on probation as a regional magistrate last year In both cases appeals were lodged with the supreme court

Mr Steyn said he had established that tape recordings of the proceedings were different in several respects from the official transcripts

On instructions from the Department of Justice he had asked Mr Visser for written explanations

Referring to the transcript of a case against Mr Sandile Sifuba, Mr Visser wrote he had been shocked when he realised he had made "an improper omission" and he asked forgiveness

Explaining transcript alterations in the second case, in which the accused were Mr Feti Nomarwayi, Mr Michael Manklhlana and Mr Griffiths Batayi, Mr Visser wrote of "a costly lesson which will be with me for the rest of my life I can only go on my knees and ask for help from above to overcome this crisis"

He conceded he had "irrationally altered a transcript to agree with my notes When a person is subject to so much tension and you realise your future and life's ambition depends on it, you reach a stage where rational thought gives way and irresponsibility comes to the fore

"It was a stupid and unforgivable thing to do I knew there was a master copy"

Under cross-examination by Mr M H Claassens, for the accused, Mr Steyn said Mr Visser was a competent magistrate who had made good progress during his 25 years' service

He had failed his first probation by a small margin and was given a second, final chance

"Had this case not arisen, he would have been appointed regional magistrate in East London," Mr Steyn said

"He undoubtedly regretted his actions, which were totally out of character"

Mr Steyn said it had been decided that in future regional magistrate candidates would face less pressure during their probation

Mr Steyn's secretary, Mrs Pauline Dickson, testified Mr Visser had requested transcripts of both cases so he could correct any typographical errors This was not standard procedure, she said

State advocate Mr Stuart Redpath said he had discovered discrepancies in typed court records when the case against Mr Feti Nomarwayi and two others went on appeal These were detailed in court

The defence's first witnesses was a Port Elizabeth attorney, Mr Gideon Huisamen, who said he had handled several cases before Mr Visser

"In the 20 years I have known him, I have found him extremely fair," Mr Huisamen said

"In his court there was always an atmosphere of justice In all my cases before him, I never found it necessary to lodge appeal against his sentences

"When I heard of this case I was shocked and worried because to me it was totally against his pattern of behaviour in court"

The case continues today — DDC

Magistrate extolled by PE attorney

E. Post (252) 8/3/83

Post Correspondent

GRAHAMSTOWN — The allegations against a magistrate charged with attempting to defeat the ends of justice did not match his behaviour in court, a Port Elizabeth attorney said yesterday

Mr Gideon Huisamen was giving evidence before the Judge President of the Eastern Cape, Mr Justice Cloete, in a case involving an acting-Regional Court magistrate, Mr Wilfred Leon Visser, 42

Mr Visser is alleged to have altered the court record in several cases he presided over

Mr Huisamen said the allegations were not in keeping with Mr Visser's behaviour in court In the 20 years he had known Mr Visser he had been extremely fair, and had conducted cases in the judicial calm expected from the Bench

Mr Visser has pleaded guilty to one of two charges of attempting to defeat the ends of justice

When the hearing was continued today, legal argument was heard in respect of the first count

The Attorney-General, Mr E C Heller, submitted that the magistrate should have foreseen that his action in altering the record might have had the effect of defeating the ends of justice, or obstructing the course of justice

As regards his statement that he relied on his own knowledge of the Xhosa language in making alterations to records, he should have called on the official interpreter and informed him of alterations he was making in the presence of the accused in the case

Mr M H Claassens, for the defence, submitted that although Mr Visser had altered some passages in the record, he did not change their meaning

He also toned down other passages but these also reflected their meaning in the original form

Judgment was reserved until tomorrow afternoon

Mr Claassens told the court he would be calling four witnesses in mitigation of sentence if necessary

(Proceeding)

Mr Heller is conducting the State case with Mr Chris Nel

Magistrate found guilty

D-Dispatch 11/3/83 (252)

GRAHAMSTOWN — A former acting regional magistrate, Mr Wilfred Leon Visser, was convicted in the Supreme Court here yesterday on two counts of attempting to defeat the ends of justice

Mr Visser, a Kirkwood magistrate, pleaded guilty on one count involving 76 alterations to the typed court records of a trial he presided at while on probation as a regional magistrate last year

Finding Mr Visser, 42, guilty on the second count, the Judge President, Mr Justice J D Cloete, said Mr Visser had made glaring alterations to transcripts of a case which went on appeal

The altered versions differed fundamentally from the original in important aspects relating to the demeanour of a witness, and was an attempt to give a misleading impression

"It is of the utmost importance that appeal judges can depend on magistrates' findings about the demeanour of witnesses and accused," the Judge President said

In mitigation a general practitioner said Mr Visser suffered attacks of depression Psychiatric treatment had not been possible, he said, because Mr Visser could not take leave and the necessary drugs would have impaired his work

He said Mr Visser had been under considerable stress while on probation as a regional magistrate and could have become irrational

Under cross-examination, the doctor said Mr Visser was a broken man and had spoken of suicide after charges were brought against him

Mr Visser testified "I did not think the alterations would prejudice any of the accused when the case went on appeal"

A father of two teenagers, he said his conviction would lead to a Department of Justice inquiry resulting in his dismissal

The case continues today — DDC

Ex-magistrate led blameless life — lawyer

E-Post 11/3/83

(252)

Post Correspondent

GRAHAMSTOWN — Wilfred Leon Visser had led a blameless life until the age of 41, the Supreme Court in Grahamstown was told today

Visser, a former Port Elizabeth probational regional magistrate, was yesterday convicted on two counts of attempting to defeat the ends of justice by altering the official records of court cases

In legal argument today Mr M H Claassens (for Visser) said a senior colleague had described Visser as a man of integrity He had led a blameless life

Medical evidence indicated that from 1977 Visser's health had deteriorated under the impact of stresses to which he was subjected in the course of his work

He was pigheaded about not taking long leave and his conscientiousness almost amounted to his being prepared to work himself to death

Mr Claassens suggested that rehabilitation would be best served by leaving Visser in the bosom of his family under psychiatric treatment He was now a broken man, who led a life of torment over what he had done

Mr E C Heller, the Attorney-General, said Visser had made alterations to the two judgments dealt with at the trial in a planned way It must have taken a considerable time to arrive at the alterations in the judgments

His motive was to remove an obstacle to his promotion as a regional court magistrate Mr Heller said this was a most serious matter

Sentence will be passed later today

been achieved in the salaries paid to officers of different race groups in that Department,

(4) what is the total number of non-White officers in that Department who do not enjoy full parity in salaries,

(5) (a) what steps are being taken to eliminate the existing disparities and (b) when is it estimated that such disparities will be eliminated?

252 Hansard Q Col 609-611

Justice. salaries 11/3/83

249 Mr D J DALLING asked the Minister of Internal Affairs

(1) In what categories has full parity been achieved in the salaries paid to officers of different race groups in the Department of Justice

(2) what is the total number of non-White officers in the said Department who enjoy full parity in salaries,

(3) in what categories has full parity not

The MINISTER OF INTERNAL AFFAIRS

(1) *Coloureds and Asians*

State Prosecutor/State Advocate,
Magistrate,
Lieutenant Colonel,
Major,
Captain,
Lieutenant,
Warrant Officer,
Sergeant,
Warder

Blacks

Chief Court Interpreter,
Lieutenant Colonel,
Major,
Captain,
Lieutenant

(2)

Coloureds and Asians	1 956
Blacks	51

(3) and (4) The programme for the implementation of parity in salaries between the various population groups for comparable work, qualifications and productivity is implemented in phase simultaneously with general salary adjustments and on a horizontal basis for all activities of work in the Public Service The implementation of a further phase of the programme is preceded by a survey of the categories and number of officials

in the Public Service which are involved, including the Department of Justice As it is not clear at present when a general salary adjustment will be effected, reliable information with regard to the categories and number of officials which do not enjoy parity in salaries, is not available

(5) (a) The implementation of further phases of the programme will be considered in the light of the available funds when future general salary adjustments for government personnel can be effected

(b) Due to the decisive role the availability of funds plays in the implementation of further phases of the programme of parity in salaries, it is not possible to determine when parity in salaries in all categories will eventually be effected

Magistrate who altered records gets three years

252

E Post

12/3/83

Weekend Post Correspondent

GRAHAMSTOWN — In a case described as unique in South African traditional history, a former acting regional court magistrate, Wilfred Leon Visser, 42, of Port Elizabeth, was yesterday sentenced to an effective three years imprisonment on two counts of attempting to defeat the ends of justice.

He had altered the official records of two cases at which he had presided and which were to go on appeal.

There were emotional scenes after sentence was passed and when Visser broke down he was comforted by members of his family.

The Judge President of the Eastern Cape, Mr Justice Cloete, who had presided at the five-day trial in the Supreme Court here, said Visser had committed crimes of gross dishonesty which struck at the roots of the admistration of justice of which South Africa was justly proud.

Deliberate alterations to the court records were calculated to mislead judges of appeal.

In one case, Visser had made 77 alterations to the record, most of them to the disadvantage of the accused in that case.

The judge said the crime became more reprehensible because it was a judicial officer's duty to see that the accused was given a fair trial, to assist him if he was unrepresented and to protect him against any unfairness.

The judge said he could not accept that Visser did not realise the serious implications of what he was doing after more than 20 years experience in the magistrates' courts.

He had shown remorse and had not tried to deny his guilt.

Visser was granted leave to appeal and bail of R200.

The Attorney-General, Mr E C Heller, with Mr C Nel, appeared for the State and Mr M H Claassens, instructed by Canter and Delport of Port Elizabeth, for the defence.

MONDAY, 14 MARCH 1983

†Indicates translated version

For written reply

Hansard 14/3/83

252 Court interpreters Q. Col 641-642

201 Mr D J DALLING asked the Minister of Justice

(1) (a) How many posts are there on the establishment of his Department for court interpreters and (b) how many vacancies are there in respect of such posts,

(2) whether any such posts are filled by persons who are not in possession of the requisite qualifications, if so (a) how many and (b) what are their qualifications?

The MINISTER OF JUSTICE

(1) (a) 588

(b) 8

(2) Yes (a) and (b) Although academical qualifications as such is not a requirement for appointment as court interpreter, there are various other requirements for appointment and a formal selection test also has to be passed Among others it is required that the person concerned should, in addition to one or more Black languages, also be proficient in both official languages At present there are 37 persons on probation because they are not yet sufficiently proficient in both official languages and 5 because the required standard of interpreting ability has not yet been achieved

252 Q. Col. 649 – 650

Justice resignations

Hansard 14/3/83

424 Mr P R C ROGERS asked the Minister of Justice †

(1) Whether any resignations were received from legally qualified personnel in his Department in 1982 if so how many in each category,

(2) whether any of these posts have since been filled if so how many in each category?

The MINISTER OF JUSTICE

(1) and (2)

Rank	Number of resignations	Number of posts filled
Deputy Attorney-General	1	1
Senior State Advocate	6	6
State Law Adviser	2	1
State Advocate	11	11
Senior Assistant State Attorney	1	1
Assistant State Attorney	16	16
Magistrate	17	17
State Prosecutor	73	73
Estate Controller	9	9

Magistrate tries to stop autopsy on dead detainee

16/3/83

By PATRICK LAURENCE
Political Editor

A NELSPRUIT magistrate, Mr W H Olivier, yesterday refused permission for the family of a man who died in detention last week to have an autopsy conducted by a private pathologist

But, in spite of his refusal, an autopsy will be conducted today at Nelspruit's Saffas Mortuary by Dr J B C Botha in the presence of a State pathologist

The police and the chief State pathologist, Professor J Loubser, are understood to have been co-operative about the request for a post mortem by a private pathologist

The detainee, Mr Tembuyise Simon Mndawe, died last week after "apparently hanging himself". He was described by the Commissioner of Police, General Mike Geldenhuys, as a "trained terrorist".

A State pathologist conducted a post mortem last week soon after Mr Mndawe had died

A Nelspruit lawyer acting for the Mndawe family, Mr Mathew Posha, applied in writing last Friday to Mr Olivier for permission under Section 5 of the Anatomical Donations and Post Mortems Act for a private pathologist to conduct a post mortem

According to Mr Posha, Mr Olivier first told him verbally yesterday that another post mortem was unnecessary and that it was within his discretion as to whether there should be another post mortem.

Later yesterday a letter from Mr Olivier arrived at Mr Posha's office It read "I regret to inform you that I feel that the required consent cannot be given by me in terms of the said Act".

Mr Posha then phoned the Department of Justice in Pretoria He spoke to an official, Mr J N Labuschage, who — according to Mr Posha — said he would have to "consult other interested parties".

Last night the Director-General of Justice, Mr J P J Coetzer, confirmed that Mr Posha had applied for permission for a post mortem to be conducted by a private pathologist and that the application had been refused

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X Q Col. 714 – 715 X

Magistrates/commissioners, salary scales

258 Hansard 18/3/83

4 Mr P J LE ROUX asked the Minister of Internal Affairs †

(1) Whether the salary scales of magistrates and commissioners in the Department of Co-operation and Development are the same, if not (a) why not and (b) what are the nature and extent of the difference, if so,

(2) whether the promotion requirements in respect of magistrates and such commissioners are the same, if not, (a) why not and (b) what are the nature and extent of the difference?

The MINISTER OF INTERNAL AFFAIRS

(1) No,

(a) following a structure investigation a salary scale with links was made applicable on magistrates The salary structure of commissioners has as yet not been investigated, and

(b) differences in salary scales only exist between the rank of Magistrate and the ranks of Commissioner Senior Commissioner and Principal Commissioner These differences are set out in the rest of the reply as now laid upon the Table by me

Magistrate R9 234 × 414 – 10 890 × 570 – 14 880/14 310 × 570 – 16 590 × 849 – 19 986/18 288 × 849 – 22 533 (Progression scale R20 835 × 849 – 24 231)

Commissioner R9 234 × 414 – 10 890 × 570 – 14 880

Senior Commissioner R14 310 × 570 – 16 590 × 849 – 18 288 (Progression scale R16 020 – 16 590 × 849 – 19 986)

Principal Commissioner R18 288 × 849 – 22 533 (Progression scale R20 835 × 849 – 24 231)

(2) (a) and (b) fall away

Probe into alleged court malpractice

252 E. Post 24/3/83

Crime Reporter

A VERITABLE hornet's nest could be uncovered in the course of police investigations into alleged irregularities at the Gelvandale Magistrate's Court

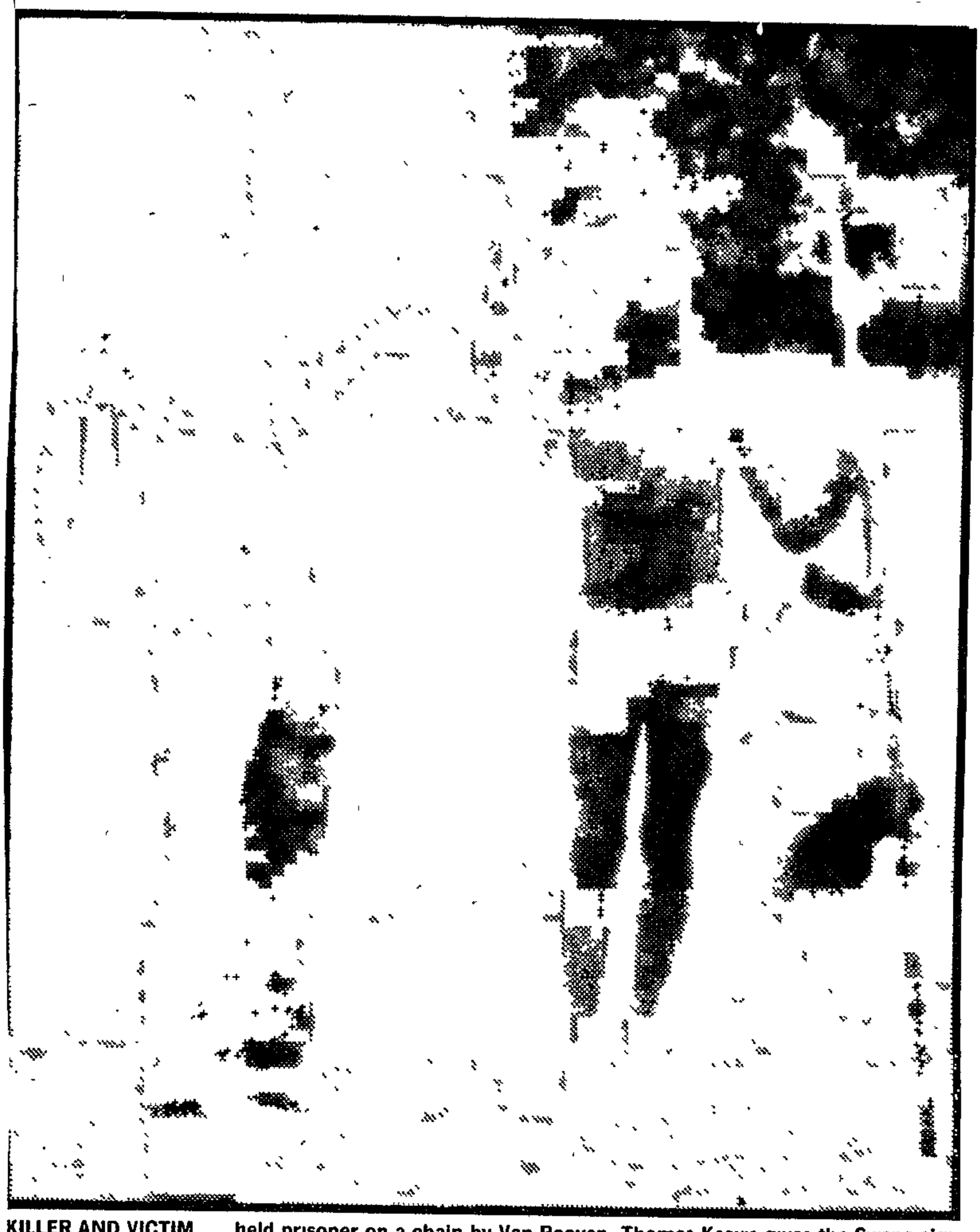
A police docket into alleged irregularities was opened after an inspection at the court by a magistrate

The investigating officer is Captain D L E Laubscher, branch commander of the Criminal Investigation Department at Algoa Park

It is believed the police investigation followed alleged instances where monies paid by motorists for admission of guilt summonses were not paid into the State coffers, and warrants of arrest were squashed

The Evening Post was reliably told that the ramifications of the irregularities were wide, and that several people were allegedly involved

But more explicit details could not be given because the allegations still had to be probed in an intensive police investigation which had already been launched



KILLER AND VICTIM . . . held prisoner on a chain by Van Rooyen, Thomas Kasire gives the Swapo sign

Farmer si parole pri to three (heavy bea

Sto rag ove cha

A LEGAL storm ha shocked South Wes a white farmer who ing him over three

Windhoek lawyers wer handled the murder case

The State prosecution re charge of assault Howev homicide and sentenced him to six years in jail

Lawyers have backed Mr Justice Johan Strydom's verdict, and said the sentence of six years' imprisonment was a fairly heavy sentence for culpable homicide

They expressed concern, however, that the State did not use a senior advocate to

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252

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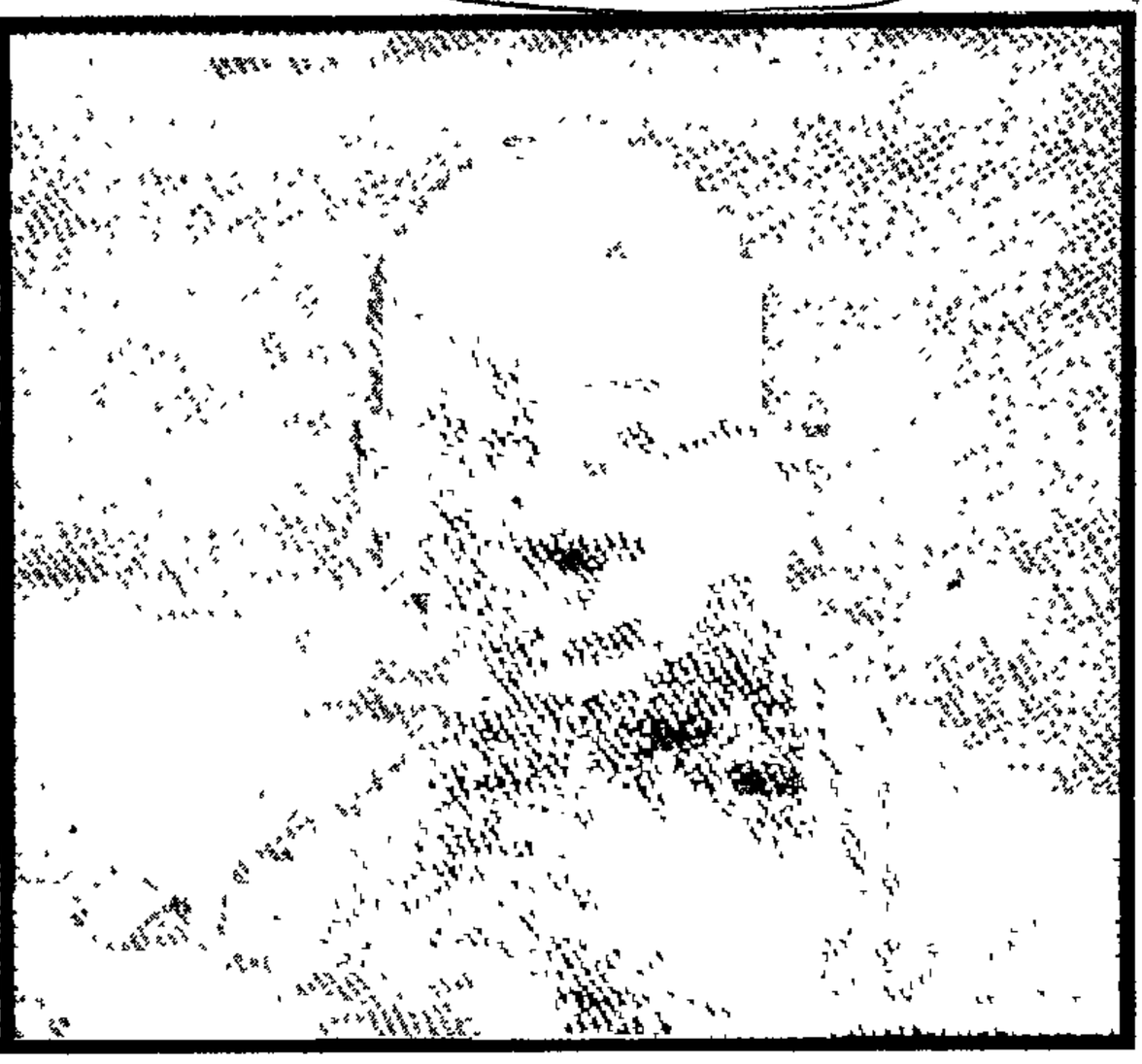

KILLER AND VICTIM . . . Andries van Rooyen, 24, (left) assaulted Thomas Kasire, 18, until the youth died

ıained youth killing

storm has erupted over the court case that has South West Africa and South Africa — the trial of ..mer who killed a black youth by brutally assault- over three days.

lawyers were yesterday sharply critical of the way the State murder case against Tsumeb farmer Andries van Rooyen, 24.

prosecution requested that Van Rooyen be found guilty of the lesser ..ault However the judge found Van Rooyen guilty of culpable .. sentenced ..s in jail

..e backed Mr Strydom's ver- the sentence of ..isonment was ..y sentence for ... ..ed concern, the State did .. advocate to handle the case

The Attorney-General of South West Africa, Mr Don Burnette, said yesterday the State was happy with the verdict and that it had doubts from the start whether Van Rooyen would be convicted of murder.

He said he had no senior advocates available for the case, which was not so complicated that a junior State advocate like Mr Gerhard Burger could not handle it.

Use of a senior advocate was not justified in this case, he insisted

The trial had a dramatic ending in the Windhoek Supreme Court on Friday when Mr Justice Strydom overruled an impassioned plea by State advocate Mr Gerhard Burger that Van Rooyen be found guilty of assault with aggravating circumstances or common assault

Clenched fist

South Westers, even the most cynical and hardened among them, this week recoiled in horror when pictures taken of the dead youth, Thomas Kasire, 18, were splashed in local newspapers

The pictures, taken by Van Rooyen's brother during the three-day assault, showed the youth with a chain round his neck

One close-up picture showed the bloodied and battered face of Thomas Kasire, with a part of his left ear cut off "to show the world that you are a Swapo"

Another picture showed the 45kg youth giving a Swapo clenched-fist sign, held on a chain by the 2m-tall Van Rooyen

News of the controversial sentence spread like wildfire through Windhoek on Friday, and was the sole talking point

Public concern was reflected by the local newspaper, the Windhoek Observer, which reacted sharply to the verdict and sentence in a front page report and a leading article

Delivering his judgment the newly appointed Mr Justice Strydom said he could only base his verdict on evidence submitted to him by the State

He dismissed allegations that Mr Kasire was a Swapo terrorist and said he did not accept the argument of the State advocate against convicting Van Rooyen of culpable homicide because of his low intelligence, and because he was under the influence of liquor

It was not proved beyond reasonable doubt that Van Rooyen was guilty of murder, but he should have sensed that Mr Kasire could have died from the assaults and was therefore guilty of culpable homicide, Mr Justice Strydom said,

A farm worker, Mr Faustinus Murongo, earlier testified that on March 26 last year Thomas Kasire and Lukas Kasuto, both prisoners out on parole, were asked by Van Rooyen to which ethnic groups they belonged

By KOOS COETZEE Windhoek

When Mr Kasire said he was an Ovambo, Van Rooyen told him that all Ovambos were "Swapos" and started assaulting him Mr Kasire denied that he was a Swapo supporter

Kicked

Van Rooyen hit Mr Kasire on the head with a broom, kicked him in the stomach and face, slapped him in the face again, hit him on the head with an empty bucket, and took a knife and cut off part of his ear

Then, using a crowbar, Van Rooyen stabbed Mr Kasire under the nose, in the stomach and in the foot, the court heard

Mr Kasire was also assaulted by Kasuto on instruction of Van Rooyen in an attempt to force an admission that he was "a Swapo"

Mr Kasire was chained to various poles on the farm during the three days he was held

Another farm worker, Mr "Sokkie" Witbooi, said the next day Mr Kasire was given water but no food while his wounds were tended with a disinfectant usually used for cattle

The following day, the day of Mr Kasire's death, he was given food but could not eat as his throat was sore During the afternoon Mr Kasire was called for again and after being assaulted for a few minutes fell down and died, Mr Witbooi said

A friend of Van Rooyen, who visited his farm on the day of the youth's death, told the court that Mr Kasire had admitted being a Swapo terrorist The Ovambo youth had said he knew how a rifle worked and that he had killed two blacks and a white in South West Africa

Van Rooyen's father, Mr Andries van Rooyen, testified that his son's wife had deserted him at the time and he was very tense

Terrorists had been on his son's farm nine times, Mr van Rooyen said

A psychologist, Mr H Cole, described Van Rooyen as "a good boy without aggression"

But after this evidence, the prosecutor told the court that Van Rooyen had been convicted for an assault committed after Mr Kasire's death

Van Rooyen was granted leave to appeal against judgment and sentence, and his bail of R500 was extended

For his part in the killing, Kasuto was convicted of assault and sentenced to three months' jail suspended for three years

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253 Hansard

Rehabilitation centres

Q Col. 864 -865

590 Mrs H SUZMAN asked the Minister of Co-operation and Development

(1) (a) How many rehabilitation centres have been designated by the Director-General of his Department in terms of section 14 of the Blacks (Urban Areas) Consolidation Act, No 25 of 1945, and (b) where are these centres situated,

(2) whether any persons were sent to any of these centres in terms of (a) section 10(4) and (b) section 12(2) of the said Act in the latest specified three years for which figures are available, if so, (i) how many and (ii) for what offences in each case, in each such year?

The MINISTER OF CO-OPERATION AND DEVELOPMENT

TUESDAY 29 March 1983

(1) (a) Nil Rehabilitation centres are not designated in terms of section 14 of the Blacks (Urban Areas) Consolidation Act 1945

(b) Falls away

(2) (a) and (b) Fall away

Rehabilitation centres

591 Mrs H SUZMAN asked the Minister of Co-operation and Development

Whether any persons were sent to any rehabilitation centres in terms of section 29 of the Blacks (Urban Areas) Consolidation Act, No 25 of 1945 in the latest specified three years for which figures are available, if so, (a) how many, and (b) to which centres in each case, in each such year?

The MINISTER OF CO-OPERATION AND DEVELOPMENT

Yes

1979—Nil
1980—Nil
1981—One To the Madadeni Centre
New Castle

pers presented at a Law conference on 'Discretion in Criminal Justice' in 1981

The editors, Mr N C Steytler and Mr M C J Olmesdahl, both senior lecturers in law at Natal University, are concerned that "in South Africa there is a dearth of research on the criminal justice process — a position which, if justice is to be promoted, must be rectified"

Although the figures provided by most of the authors [illegible] roughly 400 per 100 000 of the population," she writes

The ratio per 100 000 for each population group was

Asians . . 57 per 100 000
Whites . . 81 per 100 000
Blacks . . 362 per 100 000
Coloureds 792 per 100 000

In addition there were 13 865 awaiting-trial prisoners in custody

"Of the average 1,5-million people who are processed through our courts every year, at least 500 000 [illegible] justice system and law application/enforcement for different populations and income groups

"Any issues around legal aid, representation and knowledge of rights have to be addressed against this background, and not in isolation — they are all part of a broader social structure," she says

Mrs Slabbert, a senior lecturer for the Institute of Criminology at the University of Cape Town, has done special research into legal representation of offenders

"It was found that more than three times as many people who were legally represented were acquitted than was the case of the undenfended accused.

"There are no national figures available on representation but in surveys in 1980 in more than 800 cases, it emerged that over a period of one year in one [illegible] rate of one a minute," says Mrs Slabbert.

Mrs Slabbert slams these figures, saying they compare unfavourably to other

Equally alarming was the fact that as many as 25% of (rape) victims were under 10 and 59,3% under 20.

Western countries where, in Britain, 99% of the accused in serious criminal cases are legally represented

"In 80 000 of 750 000 motoring and other petty offences the accused are defended

"At best we can claim that representation of our white population compares favourably with these statistics," she says

The book also includes papers on rape, robbery and the death sentence

'Sentences for Rape', by Mr O Salmon, a student at [illegible] 25% of the victims were under 10 and 59,3% were under 20 The most severely affected age group was the 11- to 20-year olds with 39% of all victims being below the age of 16," writes Mr Salmon

Mr Salmon found the average sentence imposed on rapists was seven years In only two cases was the death penalty imposed

In reviewing the general relationship between the rape and the sentence, Mr Salmon found

- An accused, when part of a gang rape, was twice as likely to receive a heavy sentence than if he had acted alone
- When other crimes were committed at the same time as the rape the sentence was heavier
- The sentence was more severe if the rape occurred in the victim's home — possibly because it followed a break-in

June 30

In 1958-59 there were 157 death sentences imposed by

There are frequently charges that the race of the accused is the most or one of the most important determinants of the death sentence.

courts Seventy were carried out and 28 death sentences were commuted

In 1968-69 there were 107 death sentences imposed by court, 84 of these were carried out and 12 were commuted

In 1978-79 194 death sentences were imposed and 148 of these were carried out The statistics for commuted sentences were not available

"There are frequently charges that the race of the [illegible] tenced to death

"In respect of other characteristics, the accused generally had a low socio-economic status," he said

The race of the victim, however, seemed to have a definite bearing on the risk of a death verdict

Where the victim was white the risk of a death verdict was higher than 68%, when there was an Indian victim the rate was close to 50%, while in respect of black victims the percentage number of death sentences was only 13%

"Thus while the race of the accused has been shown above not to be significantly associated with the death sentence, the race of the victim was highly associated with the imposition of the death sentence," said Mr Olmesdahl

☐ Criminal Justice in South Africa is published by Juta and Company Ltd and the suggested retail price is R19,75

Justice in South Africa is on trial...

● Mana Slabbert — her paper on legal representation estimates the South African prison population is probably the highest in the world

By CHRISTINA PRETORIUS

THE foibles and strengths of the South African legal system step into the witness box in the newly published book 'Criminal Justice in South Africa'.

"One has to accept the fact that courts are not computers and that they are manned by fallible people that is why it is so difficult to achieve the ideal of consistency in sentences " writes Mr Justice R N Leon in his introduction to the book

'Criminal Justice in South are outdated — the most up-to-date figures are those for 1980 — they continue to have relevance today

Mana Slabbert, in her paper on legal representation, estimates the South African prison population is "probably the highest in the world"

"At the end of June 1979 there were 81 009 sentenced prisoners in custody —

Of the average 1,5-million people who are processed through our courts every year, at least 500 000 should never have been

should never have been there

"Influx control and other technical offences are examples It was established that 40% of all blacks who were sent to prison were sent there because of such offences," she says

Mrs Slabbert believes the Government's policy of separate development means the criminal justice system cannot be viewed "in a vacuum or as existing outside of this ideological and legal apparatus"

"Western legal systems imply that there is equal access to the justice system South Africa quite clearly

Magistrate's Court and seven months in another, that only 151 out of 825 — or 18% — of persons were legally represented in court on criminal charges

"In analysing the representation for the different population groups it was clear that whites were represented to a much larger exent than other groups'

Whites ..... 48,5% (63 out of 130)

Blacks ..... 3,4% (10 out of 291)

Coloureds ..... 26,6% (134 out of 509)

"Observation of cases in the Langa Commissioners' Court indicated that unde-

the University of Natal in Durban, found that rape is predominantly a crime of the younger accused, with 39% below the age 21

The subject matter concerned all 118 rape convictions returned by the Durban and Coast Local Division of the Supreme Court from 1970 to 1979

The rape victims encompassed a wide age spectrum — the youngest was 2½ years old while the oldest was 85 At least five other victims were over sixty

"Equally alarming was

● If the rapist threatened his victims with a gun or knife he had a 40% chance of receiving a heavy sentence, whereas he stood only a 20% chance if he merely threatened with his fists

● The more premeditated the crime was, the heavier the sentence

"Until fairly recently," wrote Mr Olmesdahl, one of the editors of the book, "South Africa held the dubious distinction of having the highest execution rate in the world "

Mr Olmesdahl's statisti-

accused is the most or one of the most important determinants of the death sentence It is claimed that if the accused is black he is more likely to be sentenced to death This overtly simplistic claim is not borne out

"The race of the accused seems to have little association as to whether the death sentence is imposed or not, although there were too few white accused to draw a definite conclusion

"The sexual difference is interestin — only one fe-

Rape sentences vary with race, status of victims, study shows

(252) S. Express 17/4/83

By LINZI HOWARD

PEOPLE who rape white women stand twice as much chance of receiving a heavy sentence than if the victim is black, Indian or coloured.

And if the judge is Afrikaans, the rapist's chances of getting off lightly are lower

These are some of the findings in a study of 118 rape cases returned by the Durban and Coastal Local Division of the Supreme Court from 1970 to 1979

Out of the 118 victims, 29 (a quarter) were under the age of 10, but the fact they were so young did not increase the severity of their attackers' sentences

The study, by University of Natal law student Mr Owen Salmon, has revealed "clear indications that the exercise of judicial discretion abounds with operative predelictions"

Mr Salmon's findings have been incorporated into the recently published book 'Criminal Justice in South Africa' edited by two senior law lecturers in Durban — Mark Olmesdahl and Nico Steytler

An important observation by Mr Salmon was that a man who raped a black, Indian or coloured had an 80% chance of getting a light sentence, but if he raped a white woman he had only a 37% chance of avoiding a severe sentence

In the study any sentence of more than seven years was considered heavy

The analysis showed that of 118 victims, 16 were white and 81 black Ten of the 16 rapists of white women received more than nine years imprisonment and only 13 of the 81 rapists of black women were given sentences as severe

Another definite influence on sentencing, claimed Mr Salmon, was the language of the presiding judge Afrikaans-speaking judges gave far heavier sentences than their English-speaking counterparts, and the only two death sentences were given by an Afrikaans-speaking judge

Afrikaans judges also gave only half as many suspended sentences as their English-speaking colleagues

Mr Salmon listed 10 main factors which determined the severity of rape sentences and maintained that while some of these factors were legally acceptable, many were not.

Apart from the linguo-nationality of the judge and the race of the victim having unacceptable influences on the sentence of the rapist, there is also the consideration of whether the rape victim had children

In the analysis, men who raped mothers were more heavily penalised than those who had raped childless women

Furthermore, instead of rapists of young girls being severely punished it was evident the older the victim, the heavier the sentence

Only 21% of the men who had raped girls under 10 years old were given sentences of more than seven years, whereas rapists of women over 51 had a 71% heavy sentence rate

The marital status of the victim also had a marked effect on the sentence For raping married women, one out of every two rapists received heavy sentences while rapists of unmarried women had a one in four chance of getting a sentence of more than seven years

Mr Salmon pointed out other curious findings For example, a rapist who was a 'loner' generally got off with a lighter sentence

He found that 32% of the rapists studied lived alone

Also, the older the rapist and the more skilled or educated he was, the more chance he had of a light sentence — especially if he had raped an unskilled or unemployed woman

He would have a 50% chance of being imprisoned for more than seven years if his victim was a skilled worker or a housewife, but only a 20% chance if she was unskilled or unemployed

Professor Roland Graser, head of the criminology department at the University of Durban-Westville, said

"It is superficial and dangerous to generalise and draw conclusions from crime and punishment statistics as human behaviour is so complex"

At the University of the Witwatersrand, law lecturers Christina Murray and Felicity Kaganas said that although Mr Salmon's survey was not the final word on sentencing for rape, it did highlight what could be serious problems

"If, on further research, race is found to be an unarticulated premise in determining sentence, this must be recognised and eliminated," they said

They also believed that the validity of the criteria influencing judges' decisions should be examined

They said, however, that sentencing was an extremely complex process and a far more detailed analysis than Mr Salmon's was necessary

EVENING POST, MONDAY, APRIL 18, 1983

252

Rape sentences vary with race of victims — study

Post Correspondent

JOHANNESBURG — People who rape white women stand twice as much chance of receiving a heavy sentence than if the victim is black, Indian or coloured.

And if the judge is Afrikaans, the rapist's chances of getting off lightly are lower

These are some of the findings in a study of 118 rape cases tried by the Durban and Coastal Local Division of the Supreme Court from 1970 to 1979.

Out of the 118 victims, 29 (a quarter) were under the age of 10, but the fact they were so young did not increase the severity of their attackers' sentences

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Mr Salmon's findings have been incorportated into the recently published book, *Criminal Justice in South Africa*, edited by two senior law lecturers in Durban, Mark Olmesdahl and Nico Steytler.

An important observation by Mr Salmon was that a man who raped a black, Indian or coloured had an 80% chance of getting a light sentence, but if he raped a white woman he had only a 37% chance of avoiding a severe sentence.

In the study any sentence of more than seven years was considered heavy.

The analysis showed that of 118 victims, 16 were white and 81 black. Ten of the 16 rapists of white women received more than nine years' imprisonment and only 13 of the 81 rapists of black women were given sentences as severe.

Another definite influence on sentencing was the language of the presiding judge. Afrikaans-speaking judges gave far heavier sentences than their English-speaking counterparts and the only two death sentences were given by an Afrikaans-speaking judge

Afrikaans judges also gave only half as many suspended sentences as their English-speaking colleagues.

Mr Salmon listed 10 main factors which determined the severity of rape sentences and maintained that while some of these factors were legally acceptable, many were not

Apart from the linguo-nationality of the judge and the race of the victim having unacceptable influences on the sentence of the rapist, there was also the consideration of whether the rape victim had children. In the analysis, men who raped mothers were more heavily penalised than those who had raped childless women

Furthermore, instead of rapists of young girls being severly punished, it was evident that the older the victim, the heavier the sentence. Only 21% of the men who had raped girls under 10 years old were given sentences of more than seven years, whereas rapists of women over 51 had a 71% heavy sentence rate.

The marital status of the victim also had a marked effect on the sentence For raping married women, one out of every two rapists received heavy sentences while rapists of unmarried women had a one in four chance of getting a sentence of more than seven years

Mr Salmon pointed out other curious findings For example, a rapist who was a "loner" generally got off with a lighter sentence. He found that 32% of the rapists studied lived alone.

Also, the older the rapist and the more skilled or educated he was, the more chance he had of a light sentence, especially if he had raped an unskilled or unemployed woman.

He would have a 50% chance of being imprisoned for more than seven years if his victim was a skilled worker or housewife, but only a 20% chance if she was unskilled or unemployed

Professor Roland Graser, head of the Criminology Department at the University of Durban-Westville, said. "It is superficial and dangerous to generalise and draw conclusions from crime and punishment statistics as human behaviour is so complex."

Two University of the Witwatersrand law lecturers, Christina Murray and Felicity Kaganas, said that although Mr Salmon's survey was not the final work on sentencing for rape, it did highlight what could be serious problems

"If, on further research, race is found to be an unarticulated premise in determining sentence, this must be recognised and eliminated," they said

They also believed that the validity of the criteria influencing judges' decisions should be examined

They said, however, that sentencing was an extremely complex process and a far more detailed analysis than Mr Salmon's was necessary.

252

Staff shortages behind break-outs

The Star 20 APR 1983

Crime Staff

The Prisons Service is being forced to cut down on administrative staff and concentrate most of its available manpower on keeping watch over prisoners

This acute administrative staff shortage and "possible structural shortcomings" at the new Johannesburg prison near Diepkloof have been cited by the Prisons Service as possible reasons for the 48 escapes from the prison since January.

A prisons spokesman says the service is continually giving its attention to "all possible deficiencies" which could be responsible for the escapes

These include possible structural deficiencies in the multimillion-rand prison which recently took over the role previously served by the old Johannesburg Fort

Of the 48 prisoners who have escaped so far, 15 have broken out by sawing through bars and sliding to the ground on blankets and sheets tied together.

The shortage of administrative staff was illustrated by the first escape in January when three potentially dangerous awaiting-trial prisoners were not found to be missing until a day after the escape.

Prison authorities had to hold an identification parade involving all the inmates to discover who was missing

On April 2 an awaiting-trial prisoner, Mr Sammy Nyundu, described by police as "extremely dangerous", escaped from the prison. Mr Nyundu was being held on 27 charges, including nine of rape.

The chief of the CID on the Witwatersrand, Brigadier Tertius Wium, said police were naturally concerned at every escape. But he refused to comment on the spate of escapes

Detectives are still searching for 12 of the 14 long-term prisoners who escaped on Friday night after sawing through the bars of a cell The men were serving sentences ranging from five to 28 years for rape, murder, robbery, dealing in drugs and other crimes

22 APR 1985

Breytenbach's new poems

(252) The Star

The first volume of poetry by Breyten Breytenbach since he left prison after seven years will be on sale next week.

"Eklips" is the first of five poetry volumes and two of prose written by Breytenbach in prison

Published by Taurus, the "Eklips" jacket has a drawing by the author

Professor Ampie Coetzee, of the publishing firm, and a lecturer in Afrikaans-Nederlands at the University of the Witwatersrand, said today "'Eklips' is at least of the same quality as, but possibly better than, Breytenbach's earlier work"

"Eklips" has only one poem with direct reference to prison ("Transit" is about his move from Pretoria Central to Pollsmoor, Cape), but Professor Coetzee said the volume was clearly the work of someone in isolation. "It is survival poetry"

Jail's new security is secret

2 - APR 1986 (252)

The Star Crime Staff

The Prisons Service is to take urgent action to end the series of escapes from the new Johannesburg Prison

Senior prison officials met in Pretoria yesterday for discussions

In less than four months 48 inmates have escaped, and residents of nearby homes have demanded an assurance from prison authorities that action will be taken

Yesterday's meeting was chaired by the Chief Deputy Commissioner of Prisons, Lieutenant-General M C P Brink, and attended by the commander of the prison and the Transvaal Regional Commissioner of Prisons

In a statement after the meeting a spokesman said decisions had been taken and action begun

The Prisons Service hoped that the ideal it was striving for — the prevention of further escapes — would be fulfilled

The exact nature of the steps it was taking would not be published

258 City Press 24/4/83

From Page 7

Rough justice

sentence was more severe than that for coloureds, Asians and blacks, in that order."

Mr Salmon also said: "There is an almost two-fold increase in severity of sentence where a white person was raped compared with the situation where a black was raped."

Assault

Mr L Koobel, also of the University of Natal, who looked at assault cases in the Durban area, concluded that there was no systematic pattern between the race of the victim and the type of sentence.

But he said there was a "strong relationship between the race of the victim and the effective punishment received".

Victim

Mr M C J Olmesdaal, a senior lecturer at the University of Natal, examined death sentences, and concluded that "where the victim was white the risk of a death verdict was over 68 per cent, while in respect of black victims the precentage number of death sentences imposed was only 13 per cent."

Factor

Mr D Harcourt-Baldwin, who studied juvenile offenders, found that "race is a significant factor when considering whether a juvenile is likely to be whipped, and how many cuts will be administered."

The book examines these issues in much greater detail, but the overwhelming conclusion is that the race of an accused person in South Africa will detrimentally affect their chances of "justice".

Mr Salmon also looked at the language of the judges in rape cases and concluded that "the severity of sentence [illegible] indicates that Afrikaans-speaking judges [illegible] and less eager to impose alternative methods of punishment than English-speaking judges."

Justice and equal rights before the law seem a long way off.

SA lawyers publish a book which asks: Is this justice?

BLACKS GET WORST DEAL IN COURT

252 City Press 24/4/83

CAPE TOWN — Black people in South Africa are paying the heaviest penalty in the criminal justice system

They are more likely to get heavier sentences than other groups — particularly if their alleged victim is white

They are more likely to spend time in jail as unsentenced prisoners before trial

Shock

They are less likely to receive bail than other groups, and they are less likely to be represented by lawyers

These are the shock findings of a group of academic lawyers whose papers have just been published in a book

Under the title of Criminal Justice in South Africa (Juta), the book reveals a number of findings about justice in South Africa which show that black people, as a group, can expect the worst deal

And South Africa according to Mrs Mana Slabbert, a senior lecturer in criminology at the University of Cape Town, has a prison population which "is probably the highest in the world"

Advocate

She quotes the prominent Johannesburg advocate, Mr Sydney Kentridge, as saying that at least half a million of the 1,5 million people processed through South African courts every year should not be there

Mr Kentridge had mentioned "influx control and other technical offences as examples"

Burden

Mrs Slabbert adds "It was established from the latest available statistics that 40 per cent of all blacks who were sent to prison were sent there because of such offences"

Mr Nic Steytler, a lecturer in law at Natal University, said that 48,5 per cent of the people received into prison in 1978/79 were "unsentenced"

But in 1974/75 only a quarter of these unsentenced prisoners actually returned to serve sentences

Mr Steytler commented that the incarceration of a quarter of a million unsentenced people to prisons was "both a heavy financial and social burden to shoulder."

No plea

He showed that more than half of the people who appeared in court for the first time were not even asked to plead

Even people who pleaded guilty had to wait three or four weeks in jail before a police form detailing previous convictions was produced — and then this only showed previous convictions in 43,2 per cent of the cases

In robbery cases, Mr N Kotze of the University of Durban - Westville found "the race of the accused seemed to have an effect on sentence, the white accused all receiving sentences of four years or less While 40 percent of the blacks received sentences longer than four years."

Sentence

Mr Kotze also said that the race of the victim also had a significant effect. "Where the victim was white 42 percent of the accused received a sentence higher than average, while if the victim was a black, only 25 percent received a heavier than average sentence"

When it came to rape, Mr O Salmon, a University of Natal student, found that "the race of the victim had a strong bearing on the severity of the sentence"

He added "The findings here are that for white victims the

To Page 9

have certain academic and professional qualifications, if so, what qualifications?

The MINISTER OF CO-OPERATION AND DEVELOPMENT

(1) Yes but attention is however, drawn to the fact that section 13 of the Blacks (Urban Areas) Consolidation Act, 1945 does not create any offence The qualifications required in terms of section 2(3) of the Black Administration Act, 1927 is the Civil Service Lower Law Examination or an examination determined by the Commission for Administration to be equivalent thereto

(2) No

(3) Yes, in respect of presiding officers appointed in terms of section 2(2) of the Black Administration Act, 1927 as commissioners and assistant commissioners, the qualification laid down in section 2(3) of the said Act is required

Commissioners' court commissioners

687 Mrs H SUZMAN asked the Minister of Co-operation and Development

(1) Whether persons appointed as commissioners in commissioner's courts with jurisdiction over offences in terms of (a) sections 10 (4) and 13 of the Blacks (Urban Areas) Consolidation Act, No 25 of 1945, as amended, (b) section 15 of the Blacks (Abolition of Passes and Co-ordination of Documents) Act, No 67 of 1952 as amended, and (c) Regulations No S 19(3) and 47 of the Regulations promulgated in Government Notice No 1036, dated 14 June 1968, have academic and professional qualifications, if so, what qualifications,

(2) whether such commissioners are required to have gained experience as prosecutors prior to their appointment, if so, what is the minimum period of experience required,

(3) whether presiding officers in Courts 1, 2, 3 4 and 5 who are attached to the commissioners' courts in Market Street Johannesburg are required to have certain academic and professional qualifications, if so, what qualifications?

Commissioners' courts: prosecutors

688 Mrs H SUZMAN asked the Minister of Co-operation and Development

(1) Whether persons appointed as prosecutors in commissioners' courts with jurisdiction over offences in terms of (a) sections 10 (4) and 13 of the Blacks (Urban Areas) Consolidation Act, No 25 of 1945 as amended, (b) section 15 of the Blacks (Abolition of Passes and Co-ordination of Documents) Act, No 67 of 1952, as amended and (c) Regulations Nos, S 19(3) and 47 of the Regulations promulgated in Government Notice No 1036, dated 14 June 1968, have academic and professional qualifications, if so, what qualifications;

(2) whether such prosecutors have completed the training courses offered by the Department of Justice in Pretoria, if not, why not,

(3) whether the State prosecutors in Courts 1, 2 3 4 and 5 who are attached to the commissioners courts in Market Street Johannesburg are required to have certain academic and professional qualifications if so what qualifications?

The MINISTER OF CO-OPERATION AND DEVELOPMENT

(1) Public prosecutors act under authority delegated by the Attorney General in terms of the provisions of the Criminal Procedure Act 1977 and the qualifications required for such delegation of authority would therefore not be a matter for my department As regards prosecutors appointed by presiding officers in terms of section 5 of the said Act for particular cases or occasions in Commissioners Courts, the Act empowers the appointment of competent persons

(2) As and when circumstances permit prosecutors appointed in Commissioners Courts are sent to attend the training courses offered by the Department of Justice Exact figures regarding those prosecutors who have completed such courses are not available

(3) Prosecutors in Courts 1, 2, 3, 4 and 5 who are attached to the Commissioners Court in Market Street, Johannesburg are appointed in accordance with the provisions of the Criminal Procedure Act, 1977

Commissioners' courts: interpreters

689 Mrs H SUZMAN asked the Minister of Co-operation and Development

(1) Whether persons appointed as interpreters in the commissioner's courts with jurisdiction over offences in terms of (a) sections 10 (4) and 13 of the Blacks (Urban Areas) Consolidation Act No 25 of 1945, as amended (b) section 15 of the Blacks (Abolition of Passes and Co-ordination of Documents) Act, No 67 of 1952 as amended, and (c) Regulations No S 19(3) and 47 of the Regulations promulgated in Government Notice No 1036 dated 14 June 1968 have academic and professional qualifications if so what qualifications

(2) whether interpreters in Courts 1 2 3 4 and 5 who are attached to the commissioners courts in Market Street Johannesburg, are required to have certain academic and professional qualifications, if so, what qualifications?

The MINISTER OF CO-OPERATION AND DEVELOPMENT

(1) Persons who are appointed as interpreters in Commissioners' Courts are in possession of at least a Standard VIII (Junior) certificate

(2) The interpreters in Courts 1, 2 3 4 and 5 attached to the Commissioner's Court Johannesburg are in possession of at least a Standard VIII (Junior) certificate

Politics

CAPE TIMES 26/4/83

Probe hanging call rejected

252

Political Staff

HOUSE OF ASSEMBLY — The Minister of Justice, Mr Kobie Coetsee, yesterday turned down a PFP call for a commission of inquiry into the desirability of retaining the death penalty in South Africa

"Nothing has happened since 1969 to cause the re-opening of the book on the death penalty," Mr Coetsee said

He was responding to a call by Mr Dave Dalling, PFP justice spokesman, who called for a commission of inquiry into capital punishment when he opened the parliamentary debate on the justice vote

"It is an inhumane and archaic form of retribution," Mr Dalling said

"In the interests of the good name of South Africa, and of the humane and enlightened administration of justice, I call upon the Minister to initiate such an inquiry," he said

Mr Dalling said most Western democracies had abolished the death penalty and, where it had not been abolished it had fallen into disuse

"South africa probably hangs more people a year than are hung or executed in any other Western county," Mr Dalling said

Mr Coetsee said in reply that the death penalty was a "very delicate subject" which was treated with the "greatest circumspection" by the executive authority

"I am satisfied that every case is treated with the greatest circumspection," Mr Coetsee said

If any impression had been created to the contrary he wanted to deny it, Mr Coetsee said

He said the death penalty was an institution in South Africa which was an emotional subject

It clearly had a deterrent effect and there had even been calls for the death penalty for rape — a view which he could respect

"I am not prepared to be an instrument in the dismantling of such an institution"

He gave the assurance, however, that delicate matter of capital punishment would continue to be handled with the greatest circumspection and that he would not allow the application of the death penalty to cause South Africa embarrassment overseas

Sapa reports that the Minister said the number of executions in South Africa had dropped by about 30 percent during the past few years

Referring to the Department of Prisons, he said that if something occurred which caused distress it was investigated, immediately and rectified

Justice still hamstrung by chronic staff shortages

STAR 12 MAY 1983

By Sue Leeman, Pretoria Bureau

While the 1981/82 financial year had been a bumper one for staff recruitment in the Prisons Service, there were still serious gaps in the ranks, according to the Department of Justice's annual report.

The Directorate of Justice continued to be hamstrung by a 20 percent staff shortage and was having to use under-qualified personnel.

During 1981-82, the Prisons Service had had a net staff gain of 850, compared with only eight the previous year. The service's staff was now 16 800.

Improved benefits, totalling more than R18-million — effective from April 1, 1982 — had given the service a much-needed boost.

However, the report states, there was still a shortage of artisans and a chronic shortage of agricultural technicians on the country's 19 prison farms.

Only 116 of the 161 approved posts for social workers were filled and 150 coloured and black auxiliary social workers were being used to prop up this division

The report also showed that the service had only 23 of a required complement of 29 psychologists.

Staff training had been largely successful, with more than 2 300 members having completed courses as caterers, dog handlers, receptionists, literacy instructors and store managers. Another 37 had been trained as nurses and auxiliary social workers.

The Directorate of Justice was still plagued by staff shortages, according to the report, and the 1981/82 financial year had seen a net loss of 155 permanent staff

More than 1 600 of the directorate's posts remained unfilled and, of those occupied, more than 1 000 were filled by underqualified personnel

The most critical shortage was in the clerical ranks, where 128 of the 1 624 posts were vacant and a further 452 filled by unqualified people

The Commission for Administration had been asked to investigate improved service benefits for clerical staff, State law advisers and registrars in magistrates' courts, the report states.

Ten new posts for regional magistrates and 17 new positions for State prosecutors and advocates had been created Thirty-five advocates had been removed from the roll.

R9,7-m spent on jails to help hold 91 000

By Sue Leeman, Pretoria Bureau

The South African Prison Services spent R9,7 million on new prisons during the 1981-82 financial year in an attempt to relieve the serious overcrowding in jails.

In its annual report for 1981-82, the SAPS stated that by the end of June 1982 more than 91 000 prisoners were being held in accommodation intended for 74 000.

Three new prisons — the 4 250-bed Johannesburg prison as well as penal institutions in Walvis Bay and Krugersdorp — had been completed and would help ease the situation.

New prisons planned for Durban and Maritzburg would hold 6 600 more offenders, according to the report.

The number of escapes from prisons and work teams from 1981 to 1982 was the lowest in 13 years, and of the 1 256 escapers 844 were recaptured

A totally computerised, decentralised system for the administration of prisoners and prison staff had been introduced It was also being used to store logistic and security information.

The report says nearly 700 prisoners were involved in formal study during the year under review. Of these 71 were involved with undergraduate university study, six with postgraduate work, 188 with technical qualifications and 174 with matric.

A total of 1 900 prisoners underwent literacy training and the adult education programme may go countrywide after its initial success at the Zonderwater and Leeuwkop prisons

Criminal cases skyrocket

Pretoria Bureau

The number of criminal cases entered on the rolls of the Cape of Good Hope and Transvaal divisions of the Supreme Court skyrocketed between July 1981 and June 1982.

The Department of Justice's annual report said cases had steeply increased in the Cape of Good Hope from 130 in 1980-81 to 330

The Transvaal had had to cope with more than 600 criminal cases during 1981-82, compared with 370 cases the previous year

The number of criminal cases handled by all branches of the Supreme Court rose from 1 681 to 2 266

However, in magistrates courts countrywide, the number of criminal cases dropped by more than 50 000 to 1 400 000

A 174 capital cases were tried and 98 people wereexecuted, while 32 Death Row occupants received clemency Eleven others had had their death sentences set aside on appeal

Of the more than 180 civil and criminal appeals heard by the Supreme Court, 75 were upheld

The State Attorney's Division reported that the number of debt recoveries and inquiries had dropped dramatically

During 1981-82 14 800 such recoveries and inquiries were made as opposed to more than 20 000 during 1979/80

'If you had done this to a white woman.....'

VICTIM WAS BLACK SO SENTENCE SOFTER

252

City Press 15/5/83

CP Reporter

EAST LONDON — Lawyers have expressed dismay at comments made by a Supreme Court judge before he jail-jailed two white men for killing a black woman.

In the trial in the East London Supreme Court last week, Mr Justice Solomon told Joseph Hoole and Melville Kumm — found guilty of beating to death Miss Nomakosazana Dyakashe in the East London Cemetery last September:

"I take into account this woman was black. If the boot were on the other foot, if two black men did this to a white woman . . . I would have had to deal with them more severely."

Judge Solomon jailed Kumm for 10 years and Hoole for eight. Earlier, they had pleaded not guilty to charges of rape and murder. A third accused, David Lottering, was found guilty of contravening the Immorality Act and given a suspended sentence.

Professor John Dugard, director of the Centre of Applied Legal Studies at Wits, described Judge Solomon's comments as "disheartening."

"In a number of Supreme Court decisions, judges have been at pains to distance themselves from racial factors in their judgements," he said.

Prof Dugard pointed out that all Supreme Court judges were white and they "should be particularly careful when making these kinds of comments which tend to violate the confidence of the man in the street that all people are equal in the eyes of the law."

Magistrate ordered to rethink sentence

252 RDM 31/5/83

By JOHN MOJAPELO
Pretoria Bureau

A LEBOWA magistrate who imposed a sentence "blended with mercy" was ordered by the Pretoria Supreme Court yesterday to impose sentence afresh because the sentence he imposed was "inappropriately" lenient

Mr Justice F H Grosskopf ruled that a fine of R250 (or 12 months' imprisonment) imposed on Pule Rexon Sedibe, 22, by an assistant magistrate of Mapulaneng, Mr C N Nkoenyane, was not in accordance with the Dangerous Weapons Act of 1968

Section 4 (1) of the Act prescribes a compulsory sentence for anybody who is found to have used a dangerous weapon in an assault

Sedibe, of Bosbokrand in Lebowa, was found guilty by Mr Nkoenyane of assault with intent to do grievous bodily harm on January 24 He was found guilty of having stabbed Mr Simon Minsi the previous day with a 16cm knife

"In my view this knife should be regarded as a dangerous weapon within the meaning of Section 4 (1)," the judge said

He said the sentence was "inappropriate" and the R250 fine was "inappropriately low compared to a period of imprisonment of a year"

The judge said the head, left shoulder and back injuries sustained by Mr Mnisi in the attack by Sedibe were of a "serious nature" The attack was unprovoked, the judge added

Mr P B Jacobs, Deputy Attorney-General and a senior State advocate Mr E C J Wait, said in a statement to the judge that the sentence imposed by Mr Nkoenyane was "shockingly light" The assault was seemingly unprovoked and tantamount to attempted murder

The two State advocates said that even if Sedibe was a first offender the circumstances of the case justified the imposition of a stiffer penalty, and that the sentence in this particular case was "inappropriate"

"A period of a year is also inappropriately high compared to a fine of R250," the two advocates said

In his reasons for imposing the sentence, Mr Nkoenyane said that the court felt it was proper to allow Sedibe, being a first offender, the option of a fine and a lighter sentence, though he could not be left unpunished

"In its judicial discretion the court found the punishment fit for the accused as well as the crime, being fair to society as well as being blended with a measure of mercy," Mr Nkoenyane said

252 Hansard 3/8/83

Cape Town Magistrate's Court

Q. Col. 1456 - 1457

*7 Mr K M. ANDREW asked the Minister of Justice:

(a) For what total number of hours were the courts at the Cape Town Magistrate's Court in session during the latest specified period of 12 months for which figures are available and (b) what total number of persons appeared before these courts during that period?

†The MINISTER OF LAW AND ORDER (for the Minister of Justice):

Particulars for the period 1 July 1981 to 30 June 1982 are as follows:

(a) Criminal cases, excluding admissions

of guilt: 9 064 hours
Civil trials. 452 hours
Civil applications. 1 231 hours

(b) Particulars of the number of persons involved are not readily available, but the number of cases dealt with is as follows:
Criminal cases, excluding admissions of guilt: 53 938
Civil trials: 142
Civil applications: 14 599

These particulars do not include cases dealt with in the Regional Court.

not, what steps does he intend taking in this regard, if so, (a) why and (b) when?

†The MINISTER OF COMMUNITY DEVELOPMENT

(1) Yes.

(a) Latest representations are dated 2 February 1983 and 29 April 1983

(b) (i) Mrs B Calder who purchased a dwelling in this area under the prevailing circumstances.

(ii) Objection was raised regarding the presence of Indians in the vicinity of her property

(2) The property occupied by the Indians is situated in a controlled area with the result that further investigation is required to determine possible steps against those concerned

(3) Yes, the housing circumstances of those concerned is being investigated to establishing what can be done to relieve the situation

(4) No, steps are not envisaged as the outcome of the inquiry referred to in (3) is awaited

Mr Speaker, in addition I just want to mention certain further points The lady concerned moved from elsewhere into this area, which is not a White group area, but a controlled area She bought this particular property among the Indians living there, while she knew very well what the situation was that prevailed there Since she has come to live there, she now expects that all the Indians around here, people who have been living in that area for decades, should be removed I think that in all fairness, we should give the facts in full

†Mr J J NIEMANN: What is more, she probably votes for the PFP [Interjections]

Mr B W B. PAGE: Mr. Speaker, arising out of the reply given by the hon the Minister, does he believe that the hon member for Langlaagte really knows where Umhlali is?

The MINISTER I really do not think so.

Mr D J. N MALCOMESS Does anybody know? [Interjections]

Mr SPEAKER Order!

252 Hansard 3/6/83

Cape Town Magistrate's Court

Q. Col. 1456 - 1457

*7 Mr K M ANDREW asked the Minister of Justice:

(a) For what total number of hours were the courts at the Cape Town Magistrate's Court in session during the latest specified period of 12 months for which figures are available and (b) what total number of persons appeared before these courts during that period?

†The MINISTER OF LAW AND ORDER (for the Minister of Justice).

Particulars for the period 1 July 1981 to 30 June 1982 are as follows:

(a) Criminal cases, excluding admissions of guilt 9 064 hours
Civil trials 452 hours
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(b) Particulars of the number of persons involved are not readily available, but the number of cases dealt with is as follows.
Criminal cases, excluding admissions of guilt: 53 938
Civil trials: 142
Civil applications. 14 599

These particulars do not include cases dealt with in the Regional Court

Hansard

Langa Commissioner's Court: presiding officers Q. Col. 1457

3/6/83

*8 Mr K M. ANDREW asked the Minister of Co-operation and Development.

Whether he or his Department has dealt further with the matter concerning the conduct of two presiding officers at the Langa Commissioner's Court referred to in his reply to Question No 7 on 9 October 1981; if not, why not; if so, what further action has been taken?

The DEPUTY MINISTER OF CO-OPERATION:

As indicated in the reply to Question 7 of 9 October 1981 the investigation into the matter had already been completed at that stage and circulars regarding this matter had been issued

Directives in this regard have to be strictly adhered to The two officials concerned have been severely cautioned to maintain an irreproachable conduct in court at all times.

*9. Mr K M ANDREW —Constitutional Development and Planning—Reply standing over

Medical faculty

*10 Mr A. SAVAGE asked the Minister of National Education:

(1) Whether it is the intention to establish a medical faculty at a university falling under his Department if so,

(2) whether the University of Port Elizabeth has been considered in this regard, if so,

(3) whether a decision has been taken on the matter; if so, what (a) was the decision and (b) were the reasons for taking it?

The MINISTER OF NATIONAL EDUCATION.

(1) No

(2) and (3) Fall away.

Seals

*11. Mr. E. K. MOORCROFT asked the Minister of Environment Affairs and Fisheries:

(1) How many seals were culled in South African waters during the latest specified season for which figures are available;

(2) whether any increase in this number is envisaged in the forth-coming season; if so, (a) what is the extent of the envisaged increase and (b) on

Hansard

252 Q.601.1464 3/6/83

Athlone Magistrate's Court

938 Mr. K M ANDREW asked the Minister of Justice:

(a) for what total number of hours were the courts at the Athlone Magistrate's Court in session during the latest specified period of 12 months for which figures are available and (b) what total number of persons appeared before these courts during that period?

The MINISTER OF JUSTICE:

Particulars for the period 1 July 1981 to 30 June 1982 are as follows:

(a) 3 186 hours

(b) 9 365 cases were dealt with. Particulars of the number of persons involved are not readily available.

The above particulars relate to criminal cases only (excluding admissions of guilt). Civil cases originating from the Athlone area are dealt with at Wynberg

Langa courts 'instruments of oppression'

CAPE TIMES 7/6/83

252

Political Correspondent

HOUSE OF ASSEMBLY — The Langa Commissioner's Courts were described yesterday as disgraceful instruments of oppression where black people could not expect a fair trial

Mr Ken Andrew (PFP Gardens) called for an urgent investigation of all commissioner's courts by the Hoexter Commission, which is studying the functioning of South African courts

Mr Andrew's attack on the Langa courts, which deal with black people accused of pass law and influx control offences, came during the budget debate on the Department of Co-operation and Development.

"I believe the laws that govern the lives of blacks are unjust, but even in terms of those laws, a black person cannot expect a fair trial when he appears in the Langa Commissioner's Courts," he said

In 1982 the Langa courts had dealt with 9 393 people at an average of five minutes and 22 seconds per case. In 1982-83 the Athlone Magistrate's Courts had dealt with 9 365 cases at an average of 20 minutes and five seconds per case

Urging an inquiry into commissioner's courts, he said: "These courts are a disgrace They are instruments of oppression, not of justice"

"The attitude of the magistrates is unsatisfactory, often hostile and sometimes abusive

"This government makes hundreds of thousands of black people criminals every year because they seek work and wish to live together as families."

In 1981 the Langa courts had imposed sentences totalling 684 years in prison In 1982 they had imposed fines totalling R249 662

The speech by Mr Andrew was described by the Deputy Minister of Development, Dr George Morrison, as shocking and unworthy of an MP

(252) (RDM) 7/6/83

Lawyers rapped over legal aid for the poor

By ANTON HARBER

LAWYERS do not adequately represent the interests of the poor, says Mr Arthur Chaskalson, SC, director of the Legal Resources Centre

Nor had they made as substantial a contribution to the community as they could have done

Mr Chaskalson, whose organisation fought the two-year court battle that led to the Appeal Court's historic Rikhoto judgment last week, also said the future of the legal profession depended on its ability to meet the demands of life

He said this in an interview published in the latest edition of De Rebus, the journal for South African attorneys

"If it fails to do so, it may well lose the confidence of the public, be seen as serving only the interests of the rich, and in the process bring the legal system and all associated with it into disrepute"

Lawyers, Mr Chaskalson said, were the people best equipped to represent the interest of groups and individuals and were often the only people entitled to do so

Because of this they had a special role to play and should make their services available to all

"In the main, the talents of the legal profession in South Africa have been put to the service of fee-paying clients and insufficient time has been given to broader community interests," he said

Large sections of the community did not have effective access to the courts, nor to the legal help they needed to protect themselves

"The greatest challenge facing the legal profession today is the building up of a legal aid system which will ensure the interests of all sections of the community are adequately represented

"It is appalling that tens of thousands of people are sentenced to imprisonment every year without having had legal representation," he said

Lawyers could also get involved in law reform and in legal education

In an editorial, the journal said those involved in the administration of justice needed a much greater awareness of the necessity for legal aid

Aid is supplied to only a fraction of people appearing in court, according to Legal Aid Board statistics

The editorial cited two recent cases in which illiterate and unsophisticated people faced criminal charges without legal representation The convictions had been set aside on review

It should be the duty of the prosecutor, or even the court, to assist the accused in getting legal aid the editorial said

Hansard 10/6/83

Hendrik Johannes van den Berg v Abraham Johannes Lategan

252 Q. Col. 1532 – 1533

*5 Mr J H VISAGIE asked the Minister of Justice †

Whether the State made a contribution in favour of a party in the case of *Hendrik Johannes van den Berg* v *Abraham Johannes Lategan* in respect of the (a) claim instituted and (b) legal costs incurred, if so, (i) in favour of which party was this contribution made and (ii) what amount was contributed in respect of the (aa) claim and (bb) legal costs?

†The MINISTER OF JUSTICE

(a) No

(b) Yes

(i) The Honourable Mr Justice A J Lategan

(ii) (aa) None

(bb) It has been decided that the attorney and client costs which the Department of Justice has incurred on behalf of the Honourable Mr Justice Lategan in connection with the contested application, as well as general Van den Berg's party and party costs payable to him by the said judge in terms of the settlement between the parties in connection with the application, should be defrayed from State funds by virtue of the State's interest in a commission of inquiry appointed by the State President A final determination in accordance with this decision still has to be made According to present indications the costs will amount to R14 173,08

It has also been decided that the Honourable Mr Justice Lategan must himself pay his attorney and client costs in connection with his appeal against the judgement in the contested application and in connection with the action which was instituted against him by the plaintiff, as well as the party and party costs incurred by General Van den Berg in both the last-mentioned actions

SUSPENSION OF BUSINESS OF PARLIAMENT

†The LEADER OF THE OPPOSITION Mr Speaker, I should like to thank the hon the Prime Minister for his willingness to reply to this question I should like to ask him whether the report which appeared in *Die Burger* this morning, namely that Parliament will meet again on 8 August, is correct The report states that the hon. the Prime Minister said so himself As how definite can we

Rhodes' legal service continues to grow

E. Post

11/6/83

GRAHAMSTOWN — Rhodes University's Legal Aid Clinic is now in its fifth year — and still growing

The clinic, which offers legal aid to people in the Grahamstown district, has opened about 95 files so far this year, and so seems set to surpass last year's total of 176

Senior law students at Rhodes University volunteer their services to the clinic, which opens its doors once a week

The director of the clinic and senior law lecturer at Rhodes, Mr A J G Lang, said although no exceptionally novel or complex legal points were raised, a number of cases of lively legal interest were referred to the clinic

Matters dealt with ranged from contractual claims arising from disputes concerning employment, matrimonial, pension and maintenance claims The clinic had also dealt with criminal charges and claims relating to property or tenure

The majority of cases dealt with related to problems experienced by black people

One of the clinic's early problems was a reluctance on the part of the Grahamstown community to regard it as an effective service

But by 1982 a number of claimants had succeeded in their actions after the clinic had intervened, and claims against consultants were withdrawn or simply not pressed

"What is especially pleasing is that on a number of occasions we have actually been asked for advice on another aspect of law by persons against whom we have previously acted for consultants Mr Lang added

In an effort to overcome the problem of a staff shortage during examination and vacation time, the clinic employed two students on a part-time basis for two months during the 1982 year-end recess

(252) Hansard 15/6/83 Col. 1551 - 1553

Langa Commissioners' Courts

*11 Mr K M ANDREW asked the Minister of Co-operation and Development

Whether any persons appearing before the Langa Commissioners' Courts in 1982 were legally represented in court if so, how many persons (a) were and (b) were not so represented?

The DEPUTY MINISTER OF CO-OPERATION

Yes

(a) 104

(b) 9 298

Langa Commissioners' Courts

*12 Mr K M ANDREW asked the Minister of Co-operation and Development

(1) (a) Which persons have served as presiding officers at the Langa Commissioners' Courts in a (i) permanent and (ii) temporary capacity in 1980, 1981 1982, and 1983, respectively, and (b) what (i) are the legal qualifications and (ii) is the legal experience of each of these presiding officers,

(2) by whom are these presiding officers appointed?

†The DEPUTY MINISTER OF CO-OPERATION

(1) (a) (i) Officers appointed as presiding officers on a permanent basis from 1980 to 1983 —

Mr L van Wyk
Mr W Fourie

(ii) Officers appointed as presiding officers on a temporary basis —

1980—None
1981—Mr J J Fourie (Two days only)
Mr E L Kleynhans
1982–1983—Mr J J Uys (Twenty days only)

(b) (i) Legal qualifications of the above-mentioned officers are as follows —

Mr L van Wyk—None
Mr W Fourie—Public Service Law Examination
Mr J J Fourie—None
Mr E L Kleynhans—B Iuris
Mr J J Uys—B Iuris

(ii) The legal experience of the relevant officers is as follows —

Mr L van Wyk—10 Years bench experience in Commissioners' Courts
Mr W Fourie—30 Years bench experience in Commissioners' and Magistrates' Courts
Mr J J Fourie—10 Years experience in Commissioners Courts
Mr E L Kleynhans—6 Months experience as Prosecutor and one year bench experience in Commissioners' Courts.
Mr J J Uys—One year experience in Commissioners' Courts

(2) These presiding officers are appointed by the Chief Commissioner Western Cape under del-

egated powers in terms of section 2(2) and 2(6) of the Black Administration Act 1927 (Act 38 of 1927)

†Mr S S VAN DER MERWE Mr Speaker arising out of the hon the Deputy Minister's reply, is the experience of the presiding officers in Commissioners Courts regarded as a qualification or a disqualification?

†The DEPUTY MINISTER Mr Speaker, I indicated earlier that I am not prepared to express any opinions If the hon member experiences any problems, he is free to place a further question on the Question Paper

Cape Times 16/6/83

Renewed call for probe of courts

Political Correspondent

MR KEN ANDREW (PFP Gardens) last night renewed his call for an investigation of Commissioner's Courts after being told some presiding officers at Langa had no legal qualifications and most cases there were undefended

He told Parliament last week that the Langa courts were disgraceful instruments of oppression

Subsequently the Chief Commissioner of Co-operation and Development for the Western Cape, Mr Timo Bezuidenhoud, accused him of "destabilizing society by bringing the courts into disrepute".

After being given further information in Parliament yesterday, Mr Andrew said in a statement that Mr Bezuidenhoud had no idea of what was going on at the Langa courts

Where Mr Bezuidenhoud had said most accused in the Langa Commissioner's Courts had legal defence, Mr Andrew was told yesterday that only 104 of the 9 402 people who appeared there last year were legally represented

● **Commissioner not legally qualified, page 4**

Cape Times 16/6/83 252

Commissioner not legally qualified

Political Correspondent

HOUSE OF ASSEMBLY — One of the two permanent presiding officers at the Langa Commissioner's Courts has no legal qualifications and the other is a magistrate who has passed a public service law examination

Both, however, had lengthy experience as presiding officers

This was disclosed yesterday by the Deputy Minister of Development, Dr George Morrison, in reply to a question from Mr Ken Andrew (PFP Gardens)

Dr Morrison said presiding officers were appointed by the Chief Commissioner of Co-operation and Development for the Western Cape

Mr L van Wyk and Mr W Fourie were appointed permanent presiding officers from 1980 to 1983

Mr Van Wyk has no legal qualifications but has 10 years' bench experience in commissioner's courts Mr Fourie has passed the public service law examination and has 30 years' bench experience in commissioner's and magistrate's courts

Three temporary presiding officers were appointed over the past three years They were Mr J J Fourie for two days, with no legal qualifications but 10 years' experience in commissioner's courts, Mr E L Kleynhans who has a B Juris degree, six months' experience as a prosecutor and one year on the bench in commissioner's courts, and Mr J J Uys, who presided for 20 days, has a B Juris degree and one year's experience in these courts

Magistrate, attorney clash in court

CAPE TIMES 17/6/83

252

Staff Reporter

A LANGA Commissioner's Court magistrate yesterday took "the strongest exception" to an application by an attorney representing five Hout Bay squatters that he recuse himself because he had earlier discussed the bail hearing with the State prosecutor

The attorney Mr Colin Fortes, told the magistrate, Mr W Fourie that he had overheard him and prosecutor, Mr D Mngomeni, discussing his intention to apply for bail for the five accused men

"I feel that the presiding officer might be influenced by this and object to the fact that I was not present at the discussion," he said

'Strongest exception'

Mr Fourie's immediate reply was that he took the "strongest exception" to the argument He said that Mr Mngomeni had approached him saying he had no objection to a postponement and that he would oppose a bail application At no stage had he committed himself regarding the bail application, he said

"I therefore fail to see any grounds for my recusal"

Three of the five accused men, Mr Zweletemba Clarick, 37, Mr Sithulise Kwele, 38 and Mr Prutse Sibhozo ,39, were granted R50 bail each provided they report daily to the Guguletu police station until the day of their trial, June 24

Releasing the men, Mr Fourie warned them that their bail receipts would not automatically entitle them to stay there until June 24 They would have to apply for visitors' permits

Earlier in the hearing Mr Fortes said one of the accused men had described severely overcrowded conditions in Pollsmoor Prison

Two other squatters who appeared in the same hearing, Mr Joe Mashoba, 42, and Mr Minnis Mabiza, 31, were remanded until June 24 after it was learnt they would not be able to afford bail

● In a separate hearing five other squatters were remanded until June 22 They were not represented

All 10 men are accused of being in the Disa River area of Hout Bay illegally and have been held in Pollsmoor Prison since their arrest at the squatter camp during the past two weeks

5 ex-KTC residents convicted

Staff Reporter

FOUR KTC squatters were yesterday each fined R75 (or 75 days) conditionally suspended for two years, for illegal squatting and remaining in the Peninsula for longer than 72 hours

As a condition of suspension, Pinana Qomsazi, Elias Maqaqa, 54, Litchman Mbkeni, 38, and Edward Nginangini, 38, were ordered to leave the Peninsula not later than June 30, unless they obtained permission to stay

A fifth man, Sipho Mkesi, 28, was fined R100 (or 100 days) suspended for two years for illegal squatting

He was acquitted on a charge of remaining in the Peninsula for longer than 72 hours as there was evidence that he was a contract worker, and ordered to report to the Langa Commissioner's offices to arrange accommodation

Mr E F van Jaarsveld, a Western Cape Administration Board (WCAB) inspector, said the men were part of a group arrested at the KTC site on May 17 because they could not show permission to live and work in the Peninsula.

Mr D C Luyt, for all the men, said they were in a desperate position and had not had any reasonable alternative course to follow

The magistrate was Mr A P Kotze Mr A C Venter appeared for the State

These former KTC squatters have all vowed never to return to Transkei despite an Athlone magistrate making their return a condition of suspending their sentences Outside the Athlone Magistrate's Court yesterday were: Edward Nginangini, top left; Elias Maqaqa, top right, Litchman Mbkeni, centre; Sipho Mkesi, left, and Pinana Qomsazi, right

Rhodes Scholars gathering in UK

From page 1

over two centimetres into his heart

He was kept in the in-

Crayfish beds may be rotated

Shergar: Lloyds in R12m payout

(252) O Col. 1586 - 1588

Hendrik Johannes van den Bergh v Abraham Johannes Lategan 17/6/83

*3 Mr I H VISAGIE asked the Minister of Justice †

(a) On what date were the words used which allegedly gave rise to the case of *Hendrik Johannes van den Bergh* v *Abraham Johannes Lategan*, referred to in his reply to Question No 5, standing over, on 10 June 1983, and (b) how is the amount of R14 173,08 mentioned in that reply made up?

†The MINISTER OF INDUSTRIES, COMMERCE AND TOURISM (for the Minister of Justice)

(a) The plaintiff and his legal adviser are the best equipped to furnish the reply Particulars in this regard as disclosed in the pleadings and during the court proceedings, can also be ascertained from the judgment by the Honourable Mr Justice Milne in the Cape of Good Hope Provincial Division of the Supreme Court of South Africa on 4 June 1982 I do not regard it as feasible to convey the findings in the judgment to the House, especially as it has already been given in an open court and the case record is available to any member of the public If, however, the hon member experiences problems in obtaining a copy thereof I will be glad to assist him

(b) The amount is made up as follows

(i) The respondent's attorney and client costs in connection with a contested application in terms of section 25(1) of the Supreme Court Act, 1959 (Act 59 of 1959) R6 554,52

(ii) The applicant's party and party costs in connection with the said application R7 618,56

Mr F J LE ROUX Mr Speaker, arising out of the hon Minister's reply, can he tell us whether he is aware that the words complained of were used after the Commission had already completed its task?

The MINISTER Mr Speaker, the hon member should rather put that question to the Minister concerned

Administration Board inspectors carry away the frame of a squatter shelter during a raid on the camp yesterday. The shelters were put on a bonfire and burnt, but after the inspectors had left, the squatters retrieved some of the branches from the fire.

CAPE TIMES 21/6/83 252

Study slates pass law courts

Labour Reporter

THE pass laws and the procedures applied in the commissioner's courts "undermine the general standards of criminal justice", an in-depth study published by the University of the Witwatersrand's Centre for Applied Legal Studies has found.

The study follows a recent row which arose after Mr Ken Andrew, PFP MP for Gardens, had told Parliament that the Langa Commissioner's Courts were "disgraceful instruments of oppression where black people could not expect a fair trial".

Conducted at the Johannesburg Commissioner's Courts by a researcher at the centre, Mr Ramarumo Monoma, the study reported a number of "disturbing" facts

During the period in which Mr Monoma observed the Commissioner's Courts, only five of 2 380 acccused — 0,21 percent — had legal representation.

"From my observations I am satisfied that where the accused is represented, the standard of justice is substantially higher," he said

Other observations by Mr Monoma of where he believed the standards of justice at the Commissioner's Courts did not meet those set by the Supreme Court and Magistrates Courts included that·

- State witnesses or arresting officers did not appear to attend the proceedings
- It was not explained to most accused that they could be released on bail Bail was also fixed at such a high level that most could not afford it
- Where the accused was sentenced on two counts, the court did not order that the sentences run concurrently The fact that the accused might have spent some time in jail as an awaiting-trial prisoner was also not taken into account for sentencing
- The accused were often not strictly and accurately informed of the charges against them and certain major elements of the crime were never mentioned or proved

In one case, a woman who told the court she was coloured pleaded guilty to a charge of failing to produce her reference book on demand — an offence which applies only to blacks She was convicted on the strength of her plea.

- Most commissioners did not question the accused sufficiently
- Neither the commissioner nor the prosecutor addressed the accused as Mr, Mrs or Miss. Sometimes only first names were used and sometimes only the case number.

Magistrate calls Transkei 'wretched'

CAPE TIMES 22/6/83

252

Staff Reporter

THE situation in Transkei was wretched but it did not justify breaking the laws of South Africa, an Athlone magistrate said yesterday as he sentenced seven men for squatting at KTC

Six men, Zitshonisile Mgibisa, 26, Mgobozi Andries Nqwikiso, 29, William Mati, 50, Sydney Ngqola, 44, William Malala, 39, and Skelo Eliot Jajini, 45, were sentenced to a total of R100 (or 100 days) each for illegal squatting and being in the Peninsula for longer than 72 hours

The entire sentence was suspended on condition that they were not convicted of a similiar offence and that they leave the Peninsula by July 15

A seventh man, Alfred Qayi, 57, was acquitted of being in the Peninsula for longer that 72 hours He was cautioned and discharged for illegal squatting

Particulars in his reference book indicated he had worked for the same employer for 19 years

"In the light of the Rikhoto judgment it appears as if he qualifies to live in the Peninsula," the magistrate, Mr A P Kotze, said

All the men pleaded not guilty to the charges and raised neccessity as their defence

Passing judgment, Mr Kotze said "Conditions in Transkei are bad and wretched but they can not be clasified as a state of emergency No one testified that they approached the Transkei Government for assistance The court is not satisfied that they did everything in their power"

Passing sentence Mr Kotze said "The court has listened to the evidence and has sympathy with you who do not have any family left in your places of birth The court cannot even give you advice but will impose a sentence which will prevent you from finding yourself in a similar position"

Mr A C Venter appeared for the State Mr P J Berthold appeared for all the men

'NO JUSTICE IN COURT'

City Press 26/6/8 (252)

CP Correspondent

CAPE TOWN — The pass laws and the commissioners courts undermine the general standards of criminal justice in South Africa, a study published by Wits University's Centre for Applied Legal Studies has found.

The study — entitled: "Is this justice?" — was conducted at the Johannesburg Commissioner's Courts by a researcher at the centre, Mr Ramarumo Monoma.

Its publication follows closely a recent row which arose after Mr Ken Andrew, the PFP MP for Gardens, told Parliament that the Langa Commissioner's Courts were "disgraceful instruments of oppression where black people could not expect a fair trial".

During the period in which Mr Monoma observed the pass courts only five of the 2 380 accused were legally represented.

He found that the accused are not informed that they can be released on bail and that bail is usually fixed so high that most cannot afford it.

The accused are often not informed of the charges against them, and certain major elements of the crime are never mentioned or proved.

The commissioner nor the prosecutor never address the accused as Mr, Mrs or Miss.

In conclusion, Mr Monoma says: "The findings compel us to ask the question: 'Is it possible to introduce fair-trial procedures into these courts?'

The answer is probably no.

(3) Falls away

Hansard 29/6/83

Port Elizabeth Commissioners' Courts

Q. Col. 1744

*28. Mr D J N MALCOMESS asked the Minister of Co-operation and Development:

(1) (a) Which persons have served as presiding officers at the Port Elizabeth Commissioners' Courts in a (i) permanent and (ii) temporary capacity in 1982 and 1983, respectively, and (b) what (i) are the legal qualifications and (ii) is the legal experience of each of these presiding officers,

(2) by whom are these presiding officers appointed?

†The DEPUTY MINISTER OF CO-OPERATION

(1) (a) (i) Officers appointed as presiding officers on a permanent basis in 1982 and 1983:—
Mr. F. J. Fourie
Mr. A. P. Rossouw
Mr. J. J Claasen
Mr G. S du Preez
Mr J. P. du P. Botha
Mr. J. A C Swanepoel

(ii) No officers were appointed as presiding officers on a temporary basis for the period 1982–1983. (June)

(b) (i) and (ii) The legal qualifications and experience of the above-mentioned officers are as follows —
Mr F J Fourie—Public Service Law Examination (17 years)
Mr A P Rossouw—B Iuris (4 years)
Mr J J Claasen—B Iuris (3 years)
Mr G S du Preez—B Iuris, LL B (8 years)
Mr J P du P Botha—B Iuris (4 years)
Mr J A C Swanepoel—B Iuris (5 years)

(2) These presiding officers are appointed by the Chief Commissioner Eastern Cape under delegated powers in terms of sections 2(2) and 2(6) of the Black Administration Act, 1927 (Act 38 of 1927)

Port Elizabeth Commissioners' Courts

*29 Mr. D J N MALCOMESS asked the Minister of Co-operation and Development

(a) For what total number of hours were the courts at the Port Elizabeth Commissioners' Courts in session during the latest specified period of 12 months for which figures are available and (b) what total number of persons appeared before these courts during that period?

The DEPUTY MINISTER OF CO-OPERATION

(a) 589 hours for the period 1 June 1982 to 31 May 1983

(b) 2 789 persons

Hansard

Johannesburg Commissioners' Courts

29/6/83 Q 61 1746

*30 Mr P G SOAL asked the Minister of Co-operation and Development

Whether any persons appearing before the Johannesburg Commissioners' Courts in 1982 were legally represented in court, if so, how many persons (a) were and (b) were not so represented?

†The DEPUTY MINISTER OF CO OPERATION

Yes

(a) Number of persons legally represented in the Johannesburg Commissioners' Courts (Criminal) in 1982
33

(b) Number of persons not legally represented in the Johannesburg Commissioners' Courts (Criminal) in 1982
56 011

LCL

Major decision on 'idle' blacks

MARITZBURG — A landmark ruling that will affect thousands of urban blacks was handed down in the Supreme Court here this week

A Full Bench of the Natal Provincial Division ruled that the legal definition of the term "idle and undesirable", as applied for 60 years since the Urban Areas Act was passed, was incorrect

Mr Justice D L L Shearer, Mr Justice J M Didcott and Mr Justice D B Friedman also called on the government to scrap the section of the Act which empowers commissioners to banish people to prison farms for up to two years

Section 10 rights

Another consequence of being found "idle" is that the accused automatically loses his or her Section 10 rights, which entitle black people to live and work in urban areas

The judges' ruling has overturned four previous Supreme Court decisions

The judgment arose from the case of a part-time domestic worker, Ms Beauty Duma, who was declared "idle and undesirable" by a commissioner and sentenced to a term on a prison farm

Set aside

Following argument by Mr Chris Nicholson of the Legal Resources Centre, the three judges set aside the declaration of Ms Duma as an idle person and her prison farm term

They ruled that the commissioners involved in previous cases had applied incorrect criteria to decide whether the person was idle The commissioners should have used the ordinary dictionary meaning of the word idle — not the highly technical definition they had been using the judges said

Mr Justice Friedman described the legislation as "undesirable

Mr Justice Didcott commented "A number of judgments delivered by the Supreme Court have called Section 29 drastic That seems the least that can be said of it. No counterpart, nothing at all similar can be found in any system of jurisprudence with which we would like ours to be compared"

Under Section 29 of the Urban Areas Act there are technical definitions of the terms "idle and undesirable"

Ruling hailed

Mr Peter Gastrow of the Progressive Federal Party's justice group, hailed the ruling as a landmark and said it meant black urban residents would have a more secure hold on their Section 10 rights

Mr Chris Nicholson of the Legal Resources Centre said in Durban last year that more than 5 000 people had been investigated for being "idle and undesirable"

Durban Black Sash Advice Office supervisor, Mrs Jillian Nicholson, said much would depend on the decision being generally known by those implementing the Act and those likely to be charged under it — Sapa

35 kisses a night at camp

Staff Reporter

EIGHTEEN teenagers are having a tough initiation into "motherhood" after giving up a week of their holiday to brush hair, make beds and give about 35 goodnight kisses before their day's work is done

The girls, who are on holiday from school or university, are spending this week as "camp mothers" at the Cape Times Fresh Air Camp at Froggy Pond

Their day starts early — they must wake before the children — who then have to be washed, dressed helped with tidying their bungalow, and hustled through to breakfast

Each of them is directly responsible for six or seven girls aged between six and nine This demands constant vigilance and the girls have two hours off a day, when other workers look after their group

Why should 18 young women choose to be "maternal drudges" in their vacation?

"We all love children" they said"

They agreed the experience also forced them to re-examine their own situations and home lives

They feel rewarded by the reactions of the children who cluster around them draw them pictures and bring them small treasures from the beach Many workers attend camps regularly

Leonore (holiday t , Dia

HENSHILWOODS
Established 1894
STORM OF A SALE NOW ONE!
IF THE RAIN KEPT YOU AT HOME ON MONDAY — DON'T WORRY — WE STILL HAVE MASSES OF BARGAINS!
DUVET COVER SETS
with pillowcases
From R16,95 set
Drip Dry
WHITE SHEETS
From R19,55 pair
Fitted
BOTTOM SHEETS
From 91 cm
R9,55 each
Acrylic
BABY BLANKETS
90 x 125 cm
R7,95 each
PILLOWCASES

WHOLESALE MEAT TO THE PUBLIC!
Topside, Silverside and Tenderised Steak per kg R3,29
1st Grade Hindquarter per kg R2,39
Prime Hindquarter R2,49

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Major decision on 'idle' blacks

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35 kisses a night at camp

Staff Reporter

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Acrylic
BABY BLANKETS
90 x 125 cm
R7,95 each
PILLOWCASES
prices

WHOLESALE MEAT TO THE PUBLIC!
Topside, Silverside and Tenderised Steak per kg R3,29
1st Grade Hindquarter per kg R2,39
Prime Hindquarter per kg R2,49

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PE's presiding officers are better qualified

E. Post 30/6/83 252

Political Correspondent

CAPE TOWN — The presiding officers at the Port Elizabeth Commissioner's Courts are generally much better qualified than those in Cape Town, says the Deputy Minister of Co-operation and Development, Dr George Morrison

In reply to questions from Mr John Malcomess (PFP, Port Elizabeth Central) he said the qualifications and experience of the six presiding officers in Port Elizabeth appointed on a permanent basis in 1982/83 were Mr F J Fourie — Public Service Law Examination (17 years experience), Mr A P Rossouw — B Juris (four years), Mr J J Claasen — B Juris (three years); Mr G S du Preez — B Juris, LlB (eight years), Mr J P Du P Botha — B Juris (four years), and Mr J A C Swanepoel — B Juris (five years)

In reply to a similar question earlier this month, Mr Morrison said one of the permanent presiding officers at the Langa Commissioner's Courts in Cape Town had no legal qualifications whatsoever

In reply to another question from Mr Malcomess yesterday, Dr Morrison said the Port Elizabeth Commissioner's Courts were in session for a total of 589 hours last year, during which a total of 2 789 accused appeared before them

He said only 33 of the 56 011 persons who appeared before the Johannesburg Commissioner's Courts last year were legally represented in court

A similar question in Parliament earlier this month disclosed a much better position in the case of the Langa courts, where just more than 1% of the 9 500 accused were represented

Reasons	% Boys	% Girls
Maladjustment with other pupils	1,8	0,5
Serious illness or death of member of family	1,8	0,5
School work too difficult	1,3	0,3
Being ill-treated by leaders in hostel	1,3	—
Receive no communication from home	1,0	0,3
Lawsuit pending against pupil	1,0	—
Want to attend school in hometown	1,0	—
Lost train ticket during holidays	0,8	0,8
Maladjustment with specific teacher	0,5	—
Pupils smoke dagga at the school	0,5	—
Transferred to another school unwilling to go	0,5	—
To seek help for a narcotic problem	0,3	0,8
Abscond just for the adventure thereof	0,3	0,5
Wish to care for his/her illegitimate child	0,3	0,3
Experience language problem (cannot follow Afrikaans)	0,3	—
Wanted to give evidence in court case	0,3	—
Social Worker granted permission that he may stay away from school	0,3	—
Abscond to boyfriend/Want to get married	—	6,8
Real or suspected pregnancy	—	3,3
Accused of Lesbian inclinations	—	2,0
Discord at home and abscond from home	—	1,5
Married during holidays	—	1,5
Mentally disturbed (and abscond from hospital)	—	0,8
Got off at wrong station	—	0,5
Release on licence not approved	—	0,3
Commissioner of Child Welfare promised her release after six months	—	0,3
Nobody to meet her at station after holidays	—	0,3
Feel unsafe at school because of its proximity to Lesotho	—	0,3
Became ill during school holidays	—	0,3
School refuses consent for smoking	—	0,3

Reasons	% Boys	% Girls
No absconder's enquiry held	2,0	—
Pupil not readmitted or discharged as untraceable absconder	8 8	24,1
	100%	100%

(4) Yes The Department is continually giving guidance to principals and staff of the schools concerned to motivate and assist the pupils to make the best use of the educational opportunities they are offered. Furthermore, a relaxed atmosphere is being created in the schools and hostels with a view to assisting the pupils during their rehabilitation

Dairy Hansard 30/6/83 Col. 1833

Dairy products

1078 Mr E. K MOORCROFT asked the Minister of Agriculture·

Whether there have recently been any price increases in respect of dairy products, if so, (a) in respect of which dairy products and (b) what was the percentage increase in each case?

The MINISTER OF AGRICULTURE

No (a) and (b) fall away

However, the Dairy Board announced that dairy prices would be adjusted as follows with effect from 1 July 1983

(a) The gross producer price of fresch milk will increase by 11 per cent in the Cape Peninsula and by an average of approximately 8,3 per cent in other controlled areas,

(b) Control over the consumer price of fresh milk is to be abolished;

(c) The gross producer price of industrial milk will increase by 9,4 per cent, and

(d) The consumer price of butter and cheese will increase by 10,87 per cent and 10,8 per cent repsectively

Johannesburg Commissioners' Courts 30/6/83

252 Hansard Col. 1834

1082 Mr P G SOAL asked the Minister of Co-operation and Development

(1) (a) Which persons have served as presiding officers at the Johannesburg Commissioners' Courts in a (i) permanent and (ii) temporary capacity in 1980, 1981, 1982 and 1983, respectively, and (b) what (i) are the legal qualifications and (ii) is the legal expreience of each of these presiding officers,

(2) by whom are these presiding officers appointed?

The MINISTER OF CO-OPERATION AND DEVELOPMENT

(1) (a) (i) Officers appointed as presiding officers permanently—

1980· Messrs D W M Paulsen, R R Rheeder, P. J Warner, J J Joubert, G van Eyssen, C P W Schutte, H Wendelborn, J O'Conner

1981· Messrs C H Swanepoel, P J Warner, R R Rheeder, J J Joubert, C P W Schutte, G van Eyssen, D Lubbe, P Vermaak and J. F Reyneke

1982. Messrs. C. H Swanepoel, A J. Becker, W J. Scheepers, R. R. Rheeder, P. J. Warner, J. Boshoff, J. J Joubert, L J Moorcroft, S P. van Rensburg, C J. Nel, M. Serfontein, D. Lubbe, J F Reyneke, and P. Vermaak.

1983: Messrs. A. J. Becker, J. Boshoff, J. J. Joubert, L J Reyneke, P Vermaak, J. Preiss, J. J. Muller, J. J. Swart, W. Faul, C. Maree, M. le Roux, H. F. Hannon, T. Freysen and W. J. Scheepers.

(ii) Officers appointed as presiding officers temporarily—

1980· Messrs. G. M. S. Rossouw, A. C Wilken and H. Drutman.

1981: Messrs. G M S. Rossouw, A. C. Wilken, and H. Drutman.

1982· Messrs. A. C. Wilken and H Drutman.

1983· Messrs A. C Wilken, H. Drutman and D P Kleyn.

(b) (i) and (ii) The legal qualifications and experience of the above mentioned officers are as follows.—

D. W. M. Paulsen—Civil Service Lower Law (20 years)
R. R. Rheeder—Civil Service Higher Law (23 years)
P. J Warner—Civil Service Higher Law (23 years)
J. J. Joubert—B Juris (13 years)
G. van Eyssen—Civil Service Lower Law (3 years)
C. P. W Schutte—B. Proc (38 years)
H. Wendelborn—German Legal Qualification (4 years)
J. O'Conner—BA. LLB (1 year and 6 months)
C. H. Swanepoel—Civil Service Lower Law (22 years)
D. Lubbe—B. Juris (1 year 6 months)
P. Vermaak—B. Proc (21 years)
J. F. Reyneke—B. Juris (6 years)
A. J. Becker—Civil Service Lower Law (20 years)
W J. Scheeper—BA., Civil Service Lower Law (22 years)
J. Bosshoff—BA., Dip. Juris (15 years)
L. J. Moorcroft—B. Juris (3 years and 6 months)
S. P. van Rensburg—B. Proc (2 years)
C. J. Nel—B. Juris (6 years)
M. Serfontein—B. Juris (1 year and 6 months)
D. Lubbe—B juris (1 year and 6 months)
J. Preiss—BA., LLB (6 months)
J J. Muller—BA., LLB (6 months)
J. J. Swart—BA., LLB (6 months)
W. Faul—BA., LLB (6 months)
C. Maree—B. Juris (1 months)
M. le Roux—BA., LLB (6 months)
H. F. Hannan—Civil Service Lower Law (22 years)
T. Freysen—B Juris (3 months)
G. M. S Rossouw—Civil Service Lower Law (41 years)
A. C. Wilkens—BA. Civil Service Lower Law (20 years)
H. Drutman—Attorneys admission (45 years)
D. P. Kleyn—BA., LLB (30 years)

(2) These presiding officers are appointed by the Chief Commissioner, Witwatersrand, under delegated powers in terms of section 2(2) and 2(6) of the Black Administration Act, 1927 (Act 38 of 1927).

QUESTIONS UNDER NAME OF MEMBER

Andrew, Mr. K. M.—
Community Development, 379, 768, 777, 781, 1605.
Constitutional Development and Planning, 1348, 1500.
Co-operation and Development, 96, 105, 203, 273, 274, 488, 578, 579, 602, 603, 643, 688, 690, 691, 728, 729, 731, 773 (1417), 803, 823, 833, 834, 835, 854, 855, 886, 888, 956, 959, 983, 984, 1026, 1121, 1194, 1255, 1269, 1270, 1296, 1367, 1387, 1389, 1391, 1412, 1457, 1481, 1521, 1522, 1523, 1551, 1561, 1608, 1610, 1611, 1612, 1613, 1614, 1615, 1616, 1617, 1623, 1640, 1693.
Defence, 602, 1258
Education and Training, 101, 155, 156, 195, 196, 479, 772, 800, 925, 1267, 1344, 1413, 1439, 1465, 1597, 1678, 1694, 1809, 1821
Environment Affairs and Fisheries, 1443, 1472, 1473, 1475, 1644.
Finance, 1618
Foreign Affairs and Information, 63, 890, 957, 1066, 1067.
Health and Welfare, 575, 1501
Industries, Commerce and Tourism, 995
Internal Affairs, 276, 427, 512, 513, 951, 1202, 1204, 1349, 1394, 1395, 1537, 1676, 1718, 1719, 1724
Justice, 1456, 1464
Law and Order, 496, 798, 1025, 1027, 1193, 1194, 1256, 1258, 1333, 1371, 1387, 1405, 1578
Manpower, 649.
Mineral and Energy Affairs, 1442.
National Education, 1167, 1206, 1211, 1229, 1322, 1323, 1324, 1690.
Posts and Telecommunications, 623, 624.
Prime Minister, 1404.
Transport Affairs, 1598, 1750, 1754.

Aronson, Mr. T.—
Agriculture, 790.
Community Development, 1303.
Constitutional Development and Planning, 1000, 1100.
Co-operation and Development, 1085, 1355, 1406
Finance, 828, 1102.
Industries, Commerce and Tourism, 997, 1132.
Manpower, 926
Mineral and Energy Affairs, 927
Posts and Telecommunications, 1134
Transport Affairs, 791, 907, 920.

Barnard, Dr. M. S.—
Agriculture, 1755, 1757.
Constitutional Development and Planning, 999
Co-operation and Development, 535, 797, 1006, 1036, 1092, 1093, 1103, 1234, 1235, 1524, 1525, 1526, 1773
Defence, 829, 1102, 1203.
Education and Training, 480, 968, 1345.
Finance, 945
Foreign Affairs and Information, 189
Health and Welfare, 28, 87, 99, 100, 109, 138, 139, 231, 249, 250, 274, 304, 393, 400, 473, 474, 500, 589, 590, 626, 704, 727, 817, 852, 1006, 1009, 1011, 1051, 1052, 1090, 1101, 1102, 1225, 1230, 1235, 1236, 1297, 1420, 1461, 1505, 1560, 1633, 1635, 1725, 1731, 1732.
Internal Affairs, 425, 910, 1037, 1038, 1039, 1049, 1449, 1494, 1535, 1536, 1632.
Justice, 924, 1094.
Law and Order, 704, 867.
National Education, 190, 868, 1010, 1167, 1421.

Barnard, Mr. S. P.—
Agriculture, 1479.
Community Development, 55, 311, 409, 1454, 1657.

Complaints about Pollsmoor

Mandela and Suzman in frank talks

W/E ARGUS 2/7/83 (25-2)

Political Staff

MRS HELEN Suzman has told of "uninhibited" talks she had this week with Nelson Mandela, Walter Sisulu and other prisoners at Pollsmoor

She said Pollsmoor Prison offered them fewer facilities than their former "home" on Robben Island — but they said the food was better

Mrs Suzman, the official Opposition spokesman on prisons, asked for the get-together after receiving information that conditions at Pollsmoor were unsatisfactory

90-minute visit

She said "I had a 90-minute visit with Nelson Mandela, Walter Sisulu and four other prisoners, all except one of them jailed for life

"It was a very full and open discussion, despite the fact that both the commander of Pollsmoor and the regional commander of prisons were present There were no inhibitions

"It is clear to me that Pollsmoor, as a closed maximum-security jail as far as these prisoners are concerned, is less open and offers fewer opportunities than did Robben Island

MRS Helen Suzman

"On Robben Island there were better facilities for recreation — for example tennis and football

One large cell

"Although the men are together in one very large cell (on Robben Island they were in single cells), I was not very impressed with the structure of the single cells now being built at Pollsmoor

"I hope very much to persuade the authorities to make changes

"All six men are studying for degrees

"They have no complaints about medical or dental treatment and said the food was, in fact, an improvement on what they received on Robben Island

"They were in good health and in good spirits

"Depressing"

"They did have a number of complaints which, I am told, are being attended to

"The yard where they exercise and spend most of the day is certainly a rather depressing place with very high walls, and I can see that this would be very dispiriting for men who at present have no hope of remission of sentences

"The library facilities are rather limited but, I believe, will be improved

"They used to have a weekly film at Robben Island It is hoped that facilities for documentaries from the library will be made available"

"Well-educated"

Mrs Suzman said the men were not ordinary prisoners but highly intelligent and well-educated

"The fact that they have spent such a great part of their lives in jail cannot but command compassion," she added

"It's high time the Government considered remission of sentences for these people, who, by any normal standards, have been punished for their offences"

SA justice is 'even-handed' — UK paper

252 Star 7/7/83

By John D'Oliveira, The Star Bureau

LONDON — Enemies of South Africa mistook their foe if they expected the actions of a totalitarian state, a major British newspaper has said.

In a leading article, The Telegraph said that, within the context of "obnoxious laws", the administration of official justice in South Africa was "unusually even-handed".

The conservative Fleet Street daily referred to allegations from prominent Britons and the Anti-Apartheid Movement that the transfer of political prisoners like Nelson Mandela from Robben Island to Pollsmoor Prison amounted to an attempt by the South African authorities to break detainees' physical and mental health.

However, Mrs Helen Suzman, a courageous opponent of apartheid, had visited the prison and was reported as saying that, although conditions were far from idyllic, Mandela and other prisoners were comparatively well fed, read uncensored newspapers and lived in reasonably spacious cells. For the most part of the day they had access to a library and an exercise yard

"Mrs Suzman may of course be ingenuous, but she knows a great deal more about South African justice that do most critics of apartheid here

"Indeed, anyone who knows the Republic at all will have doubted that famous political prisoners would have been actually encouraged to die That is not the South African way.

"It may well be the custom of some violent and undisciplined police officers to push blacks out of high windows, but within the context of obnoxious laws, the administering of justice is usually surprisingly even-handed," the paper said

The South African Government had just reduced to only 10 the number of banned people.

Examples of repression in South Africa were "somehow peculiar" to the Republic and were not readily appreciated by the British liberal who seemed to believe that "something as frivolous as a cricket ban will bring the South African Government to its senses"

Unbanning aids rule of law — US

The Star Bureau

WASHINGTON — The lifting of banning orders is a victory for those in South Africa working to strengthen the rule of law, the State Department says

State Department spokesman Mr Alan Romberg said in a prepared statement people who remain banned were still a cause for concern Those accused of crimes should be given a chance to defend themselves in court

"Many persons in South Africa, both inside and outside the Government, agree with the Reagan Administration that the practice of banning represents a fundamental violation of the rule of law through the denial of due process

"Our position, shared by many, is that those who are accused of a crime should be charged and allowed to defend themselves through recourse to the judicial system," Mr Romberg said.

Claims may be dismissed

Star 252 2/7/83

By Rashid Chopdat and Fiona Macleod

Small claims brought before Supreme Court judges could be dismissed in future

This is the effect of a judgment today by Mr Justice G Coetzee, who also called for a law to preclude Supreme Courts from being used for debt-collecting

Mr Justice Coetzee made his ruling when dismissing two applications for default judgment by the Standard Bank

The bank sued a Cape Town client for R773 and one in Brandfort, Free State, for R1 222,19 plus costs at magistrate's court level

The judge said recently it had become practice for small claims which could be heard at magistrates courts to be brought in the Supreme Court

'ECONOMICALLY EFFICIENT'

The bank's attorney had sued the clients living in other provinces because it was "economically efficient" to handle the cases from Johannesburg rather than instruct attorneys in other towns

Mr Justice Coetzee said that if this form of debt collecting became the vogue, it could have disastrous results for the administration of justice

He said that in the last decade staggering inflation had also played a part in the increase of small claims being referred to the Supreme Court

The costs of a Supreme Court action were high and out of all proportion to the claim.

Supreme Courts should be used for settling disputes while default judgments and liquidations should be dealt with in the magistrate's courts

"A better way may be to ensure legislatively that Supreme Courts are not used for any form of debt collections This would be a way out of the dilemma facing judges, particularly in the Witwatersrand Division"

The judge said that Supreme Courts had the discretion to refuse relief where applications did not fall within their jurisdiction

"I am now mentioning the possibility that in future such cases will be dismissed"

Legal aid available in North End, Gelvandale

E. Post 27/7/83

Post Reporter

THE legal aid clinic run by University of Port Elizabeth students in Gelvandale has proved popular, but many people are unaware of the other legal aid clinic in North End

According to a senior law lecturer at the University of Port Elizabeth, Mr F Marx, the clinics are run by students under the supervision of an attorney.

The legal aid clinics are in the Methodist Church Hall, Blagshaw Street, North End and at the Toynbee Club in Kobus Road, Gelvandale.

Mr Marx said the students started the clinics three years ago as a service to the public and especially to the underprivileged who could not afford legal costs

The service was designed to bring law students in contact with practical legal problems.

Mr Marx said the clinics were open to everybody on Thursdays from 6pm to 8pm.

Public utilisation of the service had improved considerably since the beginning of this year "In fact we are so busy at the Gelvandale clinic we can't handle all the cases we have and a slight backlog has developed," he said.

"The students conduct interviews with people who have problems and give the necessary advice on everything from marital law to criminal law problems"

The legal aid clinics function in co-operation with the Law Society of Port Elizabeth and are run by a body of students under the chairmanship of a final-year student, Mr Frikkie Greeff

The Editor, Rand Daily Mail,
Box 1138, Johannesburg 2000

Bar Council vigorously champions fair legal aid

YOUR leader, "Costly justice" (RDM, July 26) calls for comment

The "messages" which the General Council has sent out are not contradictory as you suggest There is nothing contradictory in saying that particular allegations made in the Press about counsel's fees are sometimes wildly inaccurate and malicious, while at the same time recognising that overcharging is indefensible and restating the Bar's determination to stamp it out

The impression frequently created by those who air their views in the Press about counsel's fees is that counsel generally charge unreasonable fees This is just not so But, regrettably, cases of overcharging by particular counsel do arise from time to time

So strongly does the Council wish to curb the charging of unreasonable fees that it has advised its constituent Bar councils to ensure that they have the constitutional power to control the fees which members of the Bar charge, even in cases where the fee is an agreed fee, and the client has made no complaint about it

Your further comment about the general level of legal costs in litigation being higher than the ordinary man can bear echoes what the Bar has been saying for years They are high because the cost of employing highly-trained professional men cannot be low

The fact of the matter is that, however modestly lawyers may charge for their services in litigation, the cost will still be too much for the average citizen to bear The remedy lies in acceptance of the principle that legal services, like medical services, should be subsidised by the state to a greater extent than they are at present This will entail the extension of the state's legal aid scheme to encompass the man of average means and the provision of the necessary funds from the public purse

Your leader suggests that it is only the specific problem of those charged with capital offences which the Bar is concerned about Nothing could be further from the truth, as reference to the frequently-declared policy of the Bar towards the extension of the legal aid system will show The inadequacies of the legal aid scheme and the need to extend its ambit are constantly pointed out by the profession

It is not easy to understand, therefore, why you say the Council "should be giving attention to this" It has done so, and will continue to do so, with all the vigour at its command

— R M MARAIS SC, chairman of the Bar of South Africa, Cape Town

'Our lost freedoms are foe's victory'

252 RDM 30/7/83

Mail Correspondent

MARITZBURG — The erosion of the powers of the judiciary had left a blemish on the courts in South Africa, the Chief Justice, Mr Justice Rabie, said yesterday

The occasion was the opening of the new Supreme Court in Maritzburg yesterday

In his address Mr Justice Rabie said one could not close one's eyes to the fact that, in the past few decades, significant inroads had been made on the powers which the courts had exercised in more peaceful times

Speaking of revolutionary movements, he said everyone in South Africa knew that people outside the country's borders, supported by powers overseas which were "antagonistic towards us and which have a philosophy we reject" wanted to destroy order in South Africa through what they called a "war of liberation"

"This order includes our courts and we see how violence is being used to achieve these ends"

"This situation has already led to legislation which has made inroads on traditional freedoms and to a certain extent has left a blemish on our courts"

Mr Justice Rabie said some of the customary court procedures had become too restricted and inadequate because of the threats and the emergency of the situation

"We know that the task and responsibility of those who have to make regulations to protect the country and its inhabitants is a difficult one, but we offer the serious opinion that the erosion of traditional powers of the courts should be kept to a minimum," the Chief Justice said

"It must also be borne in mind that every inroad on traditional powers can be seen as a recognition that the freedoms which are traditonal can no longer be maintained, and that the enemy in this respect has scored a victory"

Chief Justice warns on govt inroads

252

S. Express

21/7/83

PS

THE CHIEF Justice, Mr Justice Rabie, yesterday urged the government to keep inroads into the powers of the courts to a minimum

Opening the new Supreme Court in Pietermaritzburg Mr Justic Rabie said "We know that the task and responsibilty of those who have to make regulations to protect the country and its inhabitants is a difficult one, but we offer the serious opinion that the erosion of traditional powers of the courts should be kept to a minimum

"It must also be borne in mind that every inroad on traditional powers can be seen as a recognition that the freedoms which are traditional can no longer be maintained and that the enemy in this respect has scored a victory"

The erosion of the powers of the judiciary had left a blemish on the courts, Mr Justice Rabie said

"All of us know that people outside our borders, who are supported by powers overseas which are antagonistic towards us and who have a philosophy which we reject but they call a 'war of liberation', want to destroy order in South Africa

"This order includes our courts and we see how violence is being used to achieve these ends" — Sapa

ay August 9 1983

Mandela request to see husband

MARITZBURG — Mrs Winnie Mandela is to request permission to visit her husband, jailed African National Congress leader Nelson Mandela, to discuss his nomination as chancellor of the University of Natal

The family lawyer says reports that Mandela had refused to stand for election were the result of a "misunderstanding"

The lawyer, Mr I Ayob, said that as neither he nor Mrs Mandela had been able to communicate with Mandela to find out whether he wished to stand, it had been decided Mrs Mandela should request to be allowed to visit her husband at Pollsmoor Prison, Cape Town

Mrs Mandela is banned and restricted to her Brandfort home in the Free State

The president of the Durban campus Students' Representative Council, Mr Jonathan Taylor, said that the university had agreed to give the Mandelas until August 26 to decide

A telegram received by the university last week saying that Mandela did not wish to stand has been retracted

Author Dr Alan Paton, who has also been nominated for the chancellorship, said he stood by his earlier announcement that he would withdraw if Mandela stood for the post

Dr Chris Saunders, joint chairman of the Tongaat group and Huletts Corporation, was also approached as a potential nominee but declined owing to business commitments — Sapa

Experts want legal aid use of lawyers' fund

By MAURITZ MOOLMAN

A CALL for interest earned by the attorneys' fidelity fund to be used in legal aid for the poor was welcomed by legal experts yesterday

The call, made in Parliament by Mr David Dalling, Progressive Federal Party spokesman on Justice, followed an expression of concern at the state of legal aid by the Judge-President of Natal, Mr Justice A J Milne

Mr Justice Milne, opening the congress of Lawyers for Human Rights in Johannesburg last week, said the law should be amended to require all courts to inform an accused of his right to apply for bail and legal aid

He said that, in South Africa, blacks especially were denied this right

He called for the expanded use of courts by blacks "to replace inarticulate resentment with active and legal action"

In reply to criticism of the legal aid system in a letter which appeared in the Rand Daily Mail recently, Mr R M Marais, SC, chairman of the Bar of South Africa, said "The inadequacies of the legal aid scheme and the need to extend its ambit are constantly pointed out by the profession"

He said the remedy for high legal costs lies in acceptance of the principle that legal services, like medical services, should be subsidised by the State to a greater extent than they are at present

Professor Johan van der Vyver, University of the Witwatersrand legal expert, and vice-president of Lawyers for Human Rights, welcomed the call by Mr Dalling, but said he felt very strongly that the State should not shirk its responsibility in providing legal aid by shifting that responsibility to a private fund

He said the attorneys' fidelity fund was contributing towards legal education, for which the universities were grateful

Prof Van der Vyver agreed with Mr Justice Milne that legal aid should be made more readily available but added that to inform all people of their right to legal aid was "problematic"

"Everybody will apply, irrespective of whether they need assistence or not," Prof Van der Vyver said

Mr Dalling said interest earned on the attorneys' fidelity fund was in excess of R3-million a year And with banks now paying interest on current accounts, this would increase to between R8-million and R10-million

He said the fund held more than R20-million while only about R2 800 000 had been paid out in claims since 1979

He said legislation should be amended to broaden the scope of the fund's spending to make a contribution to the administration of justice

FREE. Mr Solomzi Selani, Mr Carter Seleke and Thami Mazwai

Pic JOE MOLEFE

The SOWETAN news editor Thami Mazwai and four student leaders were yesterday released after spending 18 months in jail.

By ZWELAKHE SISULU

The five were jailed after refusing to give State evidence at the trial of Khotso Seatlholo, president of the South African Youth Revolutionary Council (Sayrco), in 1982

Those released with Mazwai are. Mr Thabo Ndabeni, a leading member of the Azanian People's Organisation (Azapo), Mr Solomon Selani, an organiser of the Azanian Youth Unity (Azanyu), the organisation's president, Mr Carter Seleke and Mr Sipho Somacele

Mazwai was yesterday adamant he had taken the correct stand by refusing to testify "If today I am called again to give evidence against another person, I would still refuse

"A journalist relies on his integrity to exercise his duties to the fullest and this is why it would be against journalistic ethics for me to be a State witness," he said

While in prison his family moved into their new home in Pimville and he was seeing it for the first time "It is a great relief to be back with my family and I appreciate the support they received in my absence," he said

When detained Mazwai was general secretary of the Media Workers' Association of South Africa (Mwasa)

Mr Seleke said although it was a relief to be free, he felt bitter about those who were still imprisoned "It's good to be free and I intend pursuing my goals from where I left off I have no intention of merely being a cheerful robot," he said

"I have no regrets about the stance that I took, in fact I would do it all over again," he added

His elder brother died while he was still in prison

Mr Selani said "I have not been intimidated by imprisonment I still hold the same beliefs and principles as when I was jailed In fact, I am more determined now"

Putco may reduce prices after fuel cuts

LOWER FARES

Sowetan 12/8/83

No deposit if you pay within 6 months. That's why we like Geen & Richards.

The 'Eleanor' seats 6

RAND DAILY MAIL, Saturday, August 13 198

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How to use a legal fund's idle millions

By CHRIS FREIMOND
Political Correspondent

REVOLUTIONARY new approaches to legal training and legal aid in South Africa could be just two of the major affects of proposals made this week by the Progressive Federal Party's justice spokesman, Mr Dave Dalling.

The suggestions involve the better use of millions of rand lying idle in a fund originally set up to cover claims against "black sheep" in the legal profession

Mr Dalling was speaking in the Second Reading debate on the Second Attorneys Amendment Bill in Parliament. The Bill makes provision for the payment of interest earned on attorney's trust money now in banks to be paid to the fidelity fund

The measure has become necessary because of the decision by banks to pay interest on current account deposits The fidelity fund was originally created to protect clients against attorneys who illegally used trust money

Interest earned on the portion of trust money invested by attorneys in the other interest bearing accounts is already paid into the fidelity fund.

But only about 60% of attorneys maintain such accounts and use only between 10% and 15% of their average trust money in doing so, Mr Dalling said

Even this small portion of trust money earned the fidelity fund about R3-million a year together with its own investments The fund is currently worth more than R20-million.

With banks paying interest on current accounts, the fund's income was in fact expected to rise from about R3-million a year to between R8-million and R10-million a year, Mr Dalling said.

This sum would come from interest earned on the estimated R250-million held in trust by the 2 400 legal firms in South Africa

Since 1979 the fidelity fund had paid out only R2 800 000 in claims by the public But the many millions of rand remaining in the fund could be used only for very restricted purposes, Mr Dalling said

At present the fund may, with the approval of the Minister concerned, make grants mainly to universities and give bursaries for education research in law

Since 1979 grants to universities have totalled R2 700 000 and 287 law students and researchers have been assisted to the value of R375 000.

Since 1979, the total sum dispersed by the fund was R4 900 000. Its income alone exceeded R9-million and its total value went above R20-million

With the added interest on trust accounts being channelled into the fund, this means, Mr Dalling said, "in terms of what the fund is entitled to do, it will still only spend between R1-million and R2-million a year, and it will have a regular income of something like four times that amount

"Within three years the state of the fund would have doubled and within five years its value could exceed R50-million"

He urged the Minister of Justice, Mr Kobie Coetsee, to consult with leaders of the legal profession to "focus their minds on one or two matters of principle which now arise".

Matters that needed to be considered included "Whether it was correct that such huge sums of money be earned through the banks and utilised by the profession from money deposited by the public and not the profession — for the purposes of protecting the public against black sheep attorneys

"Whether it would not be better to pass on to the clients concerned some or all of the interest earned on trust money — particularly large sums held for long period

"Whether it was right to allow a fund of this limited nature, fed by money belonging to the public, to grow out of all proportion to the need it serves"

Possible legislation to broaden the scope of the fund's permitted expenditure needed to be looked into

There was "a crying need" in South Africa for a more sophisticated, easily accessible and more readily available system of legal aid in regard to both civil and criminal matters, Mr Dalling said

The case for using the rapidly growing fidelity fund to assist in this field was very strong

Mr Dalling also suggested the possibility of the fund financing the establishment of a law institute for the practical training of lawyers, as had been done by a law society in Australia.

Another possibility was that the fund could finance internal auditors for the legal profession to help curtail even further the type of malpractice that leads to claims against the fidelity fund, he said.

No objection to legal aid from fund, say lawyers

By MAURITZ MOOLMAN

THERE were no objections to legislation allowing the conditional funding of legal aid from the Attorneys' Fidelity Fund, spokesmen for the fund and the Transvaal Law Society said yesterday

The chairman of the fund, Mr Eric Liefeldt, said from Cape Town that provided control of the fund did not change and the prime obligation of the fund to protect the public from unscrupulous lawyers remained, there would be no objection from the fund

And the president of the Transvaal Law Society, Mr Roger Cleaver, said although it was primarily the responsibility of the State to fund legal aid, the society was in principle not opposed to the call made by Mr David Dalling, PFP spokesman on justice, earlier this week for legislation to enable the fidelity fund to contribute to legal aid

Legal experts yesterday backed Mr Dalling's call but said legal aid was primarily the responsibility of the Government

Mr Cleaver said lawyers would not be opposed to financially assist legal aid provided the money was available

He said it should be remembered the fund was firstly intended to protect the public

He said the fund provided bursaries to law students and contributions to universities on the basis of the number of professors in the law faculties The money was even used for the salaries of professors

Mr Cleaver added lawyers were prepared to do their share in as many spheres as they were needed, including legal aid

In calling for the change to be made to the scope of the fund during the Second Reading of the Second Attorneys' Amendment Bill, Mr Dalling estimated the fund earned an annual interest of more than R3-million

But Mr Liefeldt said although most of the fund's income came from interest earned in the various trust accounts, he estimated the annual income from interest was about R1 500 000

He said the fund could not be expected to administer the funding of legal aid because the fund was acting purely as an "insurance agency" for lawyers

Star (252)

14/8/83

Judge calls for SA Bill of Rights with teeth

By David Braun, Political Reporter

A Bill of Rights with the power to test it vested in the Supreme Court has been called for by the Judge-President of the Natal Provincial Division of the Supreme Court, Mr Justice A J Milne

He said at the annual meeting of Lawyers for Human Rights, held in Johannesburg at the weekend, that such a Bill of Rights would be an excellent way to get both the legislature and the courts to take cognisance of basic rights and freedoms.

While the law of apartheid was contrary to the Universal Declaration of Human Rights as approved by the United Nations, the interpretation of that law by the courts often took into account many of the provisions of the declaration

However, the declaration itself could be adapted to South African conditions, to the satisfaction of all groups The Bill of Human Rights should be given teeth by allowing the courts to have testing power

Mr Justice Milne said the South African legal system failed lamentably on legal aid.

Cultural and traditional differences, especially of black people, combined with poverty and ignorance often meant that the South African system was incomprehensible to people who found themselves before the courts

"We need to disseminate more knowledge about how our system works We need more trained black lawyers to form a bridge between these people and the judicial system"

Blacks, he said, were generally unaware that they had the right to challenge a court's decision, were entitled to apply for legal aid and to apply for bail.

"The way our system is working is that the people who need help the most are not getting it"

The system was not one of equal access for all to legal assistance

A third aspect which needed investigation was the prisons, said Mr Justice Milne

While he considered South African prisons to be run well, they were overcrowded and prisoners were not always able to communicate with family and legal representatives

If the Hoexter Commission had not looked into these aspects then perhaps a judicial commission should be appointed

While South Africa's record on human rights compared quite favourably with those of some other countries, this did not let South Africans off the hook

RAND DAILY MAIL, Tuesday, August 16, 1983

Pay probe as psychiatrists desert courts

By TONI REYNEKE and CHRIS OLCKERS

A RAND SUPREME COURT judge yesterday ordered an inquiry into the payment of accounts submitted by private psychiatrists appointed by the courts to examine accused people.

This followed a decision by private psychiatrists not to accept court appointments because of laxity in the payment of accounts

Mr Justice P J van der Walt heard that the Department of Police was responsible for the accounts He was told the police either delayed payments, sometimes for as long as five months, or did not pay the accounts in full

But it was later established that the Department of Justice paid the bills Psychiatrists are paid expert witness fees and receive R30 an hour.

Mr Justice Van der Walt made this order when he appointed Dr Z Wolf, a private psychiatrist, to examine Mr Christiaan Pretorius, a 19-year-old Boksburg man accused of battering his stepson to death

According to Section 79 of the Criminal Procedure Act, the courts must appoint private psychiatrists who, with State psychiatrists, examine accused persons referred for psychiatric observation

Mr Justice Van der Walt said that should private psychiatrists refuse to accept such cases, they would make it "impossible" for the court to adhere to Section 79

He asked the court registrar to conduct an immediate investigation

Dr Wolf yesterday refused to discuss the matter and referred the Mail to the secretary of the Association of Psychiatrists, Dr E Oberholzer

Dr Oberholzer said there had been problems with payments and a senior member of the psychiatry profession had been appointed to negotiate with the department nearly two years ago

"But the situation is still the same Many colleagues have complained that it either took months for them to be paid and, in many instances when they did get paid, it was less than the amount asked for."

"It was not a concerted effort on behalf of Johannesburg psychiatrists to refuse appointments," he said

Four sentenced for 'racial' assault

Star 18/8/83

By Fiona Macleod

If Mr Mbhazima George Mavasa, who was fatally stabbed in Yeoville on November 30 last year, and his companion had been white, they would not have been assaulted, a Rand Supreme Court judge said when sentencing their four attackers yesterday

Mr Justice B O'Donovan said that although the assault on the two men was related to regrettable racial aspects he was not inclined to pass a more severe sentence than if the victims had been white

Three of the attackers were convicted of assaulting Mr Mavasa, who died after he was stabbed in the heart, and all four were convicted of assaulting his companion, Mr Geyani Harry Mabasa, with intent to do bodily harm

The four men were initially charged with murdering Mr Mavasa and attempting to murder Mr Mabasa during a fight

Mr Justice O'Donovan fined Steven Francis Westgate (32), address given as Carnation Mansions, Yeo Street, R350 (or four months) and sentenced him to 18 months' jail, suspended for five years, for assaulting Mr Mabasa

His brother, Warren Selwyn Westgate (18), of the same address, and William Richard Baker (20), address given as Swartzkop Street, Crystal Park, Benoni, were each fined R500 (or six months) and sentenced to two years' imprisonment, suspended for five years, for both assaults

Steven John Welles (24), address given as Plot 371, Hampton Road, Glen Austen Extension 1, was fined R350 (or four months) and sentenced to 18 months imprisonment, suspended for five years

Cape Times 19/8/83 (252)

Official silence on executions

By MARIANNE THAMM
Crime Reporter

THERE are 175 prisoners in "death row" at Pretoria Central Prison, but few members of the public will know when they die

The executions will not be publicized as in the past, Mr J N Labuschagne, a liaison officer for the Directorate of Justice, said

The reason for withholding the names of executed prisoners, Mr Labuschagne said, was to avoid giving "prominence" to the event and to protect the next of kin and the families of the condemned

Confirmation of executions could be obtained from the deputy sheriff, he said A Prisons Department spokesman confirmed that prisoners sentenced to death were brought from all over the country to be executed at Pretoria Central Prison

During the early 50s the Prisons Department decided to make known the names of prisoners who had been executed to counter rumours that executions were not taking place

The Cape Times Chief Reporter, Mr Roger Williams, was a Sapa representative in Pretoria at the time and recalls when the superintendent of Pretoria Central Prison summoned him and a colleague to the prison

Mr Williams said they were not told why they had been asked to go to the prison

"We knocked on the heavy wooden gate, a warder opened up and let us into the outer courtyard of the prison," Mr Williams said

Mr Williams said he and his colleague were told to wait in the courtyard while the superintendent, accompanied by a clergyman and several other prison officials, filed past into the inner courtyard

"We heard the thudding of a trap door and presumed that an execution or executions had just taken place," Mr Williams said

The superintendent emerged from the inner courtyard soon after and asked Mr Williams and his colleague to accompany him to his office

He issued a statement about the executions that had taken place and the names of those hanged and said it was now Prisons Department policy to announce when condemned prisoners were executed

The superintendent then asked Mr Williams to circulate the statement to other newspapers, saying that the policy had been instituted to counter rumours in the townships that death sentences were merely threats and never really carried out

Mr Labuschagne said the 175 prisoners in "death row" consisted of 131 black men, two black women, 30 coloured men, one coloured woman, eight white men, one white woman and two Indian men

They had been sentenced to death for crimes including murder, robbery with aggravating circumstances, rape and kidnapping

Several of those awaiting the call of the hangman are prisoners whose trials have gained nation-wide public attention

Among them is Maureen Smith, her chauffeur Jack Ramogale, and her hired killer David Mguni They were sentenced to death for the murder of Mr Roger Charles Smith Their appeals against the conviction are being considered by the Appeal Court

Another is Keimoes farmer Hannes Theron, who was sentenced to death in the Upington Supreme Court on March 29 for the murder of former senator Dr A J Visser He has also been granted leave to appeal against the sentence

INSIDE MAIL

We select judges well, says judge

25/8/83 (252) RDM

By GERALD REILLY

THE Judge President of the Cape, Mr Justice G G A Munnik, has come out strongly in favour of the present system of appointing judges, in the face of growing criticism of the system from some of the country's attorneys.

The judge was responding in "De Rebus" — the South African attorneys' journal — to claims by the immediate past president of the Cape Law Society, Mr L S van Zyl, that the involvement of the political process in appointments of judges in South Africa was wrong

Mr Van Zyl claimed further that to entrench and reaffirm the independent status of the Supreme Court it seemed not only obvious, but essential, that judges be appointed by the State President on the advice of those best able to advise, and not by the government in power

Those best able were the Bench, more particularly the Chief Justice, and the Judges President

It was naive to suggest the Minister of Justice knew practising advocates sufficiently well to decide on appointments, Mr Van Zyl said

The Bench should best be able to judge the qualities of those who appeared before it Yet there was nothing which made such consultation compulsory

In his response in "De Rebus" Judge Munnik said that, until he was convinced the present system was producing a bunch of incompetent, politically prejudiced and biased judges, he would not support change.

He believed firmly that whatever imperfections there might be in the system it had stood the test of time, and he rejected "with contempt" any suggestion that the Bench in South Africa was anything less than the honest, independent Bench it had always been

"And I do not need leaders in the Press to tell me that the Appellate Division has proved this in its most recent decision on the Ingwavuma dispute a judgment delivered by our new Chief Justice, whose appointment was queried in the same Press a few months ago."

The judge said it was not very delicately suggested that the Chief Justice was appointed because he had drawn up the Terrorist Act

"Now suddenly he is a hero because he has given a judgment which suits the Press We don't need the Press to vindicate us, we do not need the Press to vindicate the integrity of the Bench"

Its integrity was inherent in its being and its record, the judge stressed

In the United Kingdom the Lord Chancellor — the equivalent of the Minister of Justice — recommended to the Queen, as the South African Minister of Justice recommended to the State President, who should be appointed to the Bench

The judge assumed that, as in the South African system, British appointments to the Bench were a Cabinet decision

Responding to the view that it would be naive to suggest Ministers of Justice have been acquainted with all practising members of the Bar to the extent necessary to decide who to recommend, Judge Munnik explained

When a vacancy occured in a provincial division, or when an additional appointment was asked for by the Judge President, the procedure and practice observed for 20 years on the Bench "with two or three lamentable exceptions" had been to consult not the Chief Justice who "to be quite honest is too preoccupied with his own duties to have a clue about what goes on in the provincial division at advocates level" but the Judge President, who "knows his customers" and was best fitted, usually after consultation with his senior colleagues, to make recommendations to the Minister

The Chief Justice was, of course consulted about appointments to the Appellate Division

To the judge's knowledge the Minister invariably acted on such recommendations

The Judge President knew who was able, who was prepared to work — that was very important — and who did not regard the Bench as a place to which he retired after his arduous years at the Bar, and who would fit into the Bench of his division

It was Lord Bacon, a Chancellor of great fame, the judge said, who was reputed to have said

"I want my judges to be gentlemen If they have a little knowledge of the law, so much the better"

It grieved him, Judge Munnik said, that for the sound and tried principles set out governing the appointment of judges a sort of United States Congressional committee had been suggested as a substitute

This would consist of the Chief Justice . who knew nothing of the needs of the provincial divisions or the ability of its practitioners, . or the judges president, only one of whom had the requisite knowledge of the advocates in his particular divison, two senior advocates nominated by the Bar Council, advocates whose knowledge of the candidates could be non-existent, and two senior attorneys nominated by the Law Society

The judge said he shuddered to think of the lobbying which might take place under such a system

"It would by comparison make the American system of approval by a Congressional committee look like divine intervention"

Judge Munnik concluded his response

"Our Bench, like that of a civilised country like Great Britain, has stood the test of time. I say in all seriousness if, with the best motives in the world, you want to change the norms of appointments of judges just to bow to an ill-considered, and possibly suspect, *vox populi* then you are doing the administration of justice a disfavour"

Ex-magistrate faces 20 counts of fraud

(257) Mercury 6/9/(8)

Former Mtunzini Magistrate Mr Frederick Hendrik Swanepoel pleaded not guilty to 20 counts of fraud.

Mercury Reporter

A FORMER magistrate pleaded not guilty to 20 counts of fraud involving R1 750 when he appeared in the Mtunzini Magistrate's Court yesterday before Mr P J du Plessis

Mr Frederick Hendrik Swanepoel appeared with two co-accused, Mr Richard Patrick Fraser and Mr Ramsamy Pillay, respectively the former court interpreter and former policeman in the Mtunzini Magistrate's Court where Mr Swanepoel was a presiding officer

They also pleaded not guilty to the 20 counts of fraud or alternative counts of theft.

The three accused are also charged with two counts of bribery and one count of defeating or obstructing the course of justice

Between June 1981 and November last year the accused allegedly pocketed about R1 750 in fines received from people convicted in the Mtunzini Magistrate's Court

Mr Pillay allegedly performed as a prosecutor in the court in connection with 10 counts

He was charged with obstructing the course of justice because he and the other accused allegedly knew he was not competent to act as a prosecutor, and was never delegated, nor appointed nor designated by writing as prescribed by the law to act as a public prosecutor

Neither was the fact noted in the relevant court records, it is alleged

During the time, Mr Pillay was a member of the South African Police Force

He is charged with failing in his duty as a policeman to report on the commission of crimes or irregularities in the judicial proceedings

Mr Fraser allegedly performed as a court interpreter during the time 10 of the alleged crimes were committed It is alleged he and the other accused knew he was not competent to act as an interpreter and had not been duly appointed, nor taken the oath, nor made the affirmation prescribed by law to act as a court interpreter

This fact also was not recorded in the relevant records of court proceedings, it is alleged

Endorse

Mr Swanepoel, a magistrate in the court at the time, is charged with failing to endorse on court records the capacities in which the other two accused performed in court

He allegedly failed to endorse on court records that the oath had been taken by Mr Fraser or that he had correctly interpreted from or into the language he was called on to interpret

Mr Swanepoel is charged with failing to endorse on court records that Mr Pillay had been designated by him to act as a prosecutor

He allegedly allowed the other two accused to act as court interpreter and prosecutor, knowing they were not competent

He allegedly conducted court proceedings relating to 11 of the alleged crimes without a prosecutor present

Mr Swanepoel is also charged with not keeping proper records of these proceedings and, as a magistrate, with failing to report irregularities in judicial proceedings

Mr Swanepoel's defence was conducted by Mr Gideon Lotz Mr Fraser conducted his own defence and Mr Pillay's defence counsel was Mr J H Kruger

Mr C P H Manzau and Mr D A Paver appeared for the State

LRC to open in City soon

15/9/83 (252) C. Times

By PHILLIP VAN NIEKERK

THE Legal Resources Centre (LRC), an independent body of lawyers taking up legal issues of social and public concern, has set up offices in the City and is ready to start operating this week.

The LRC, which already has branches in Johannesburg and Durban, is widely known for its handling of the landmark Komani and Rikhoto cases, which established the city rights of thousands of black workers and their dependants

Formed in 1979, the aim of the body is to "demonstrate to the South African public what can be achieved, peacefully, through the use of law as a community resource"

The LRC deals mainly with pass laws, labour, housing, consumer and community issues The recently-appointed local director of the LRC, City attorney Mr Richard Rosenthal, said these were issues of public interest law as opposed to the usual legal aid services which dealt with individuals who did not have enough money to pay legal costs

Mr Rosenthal, who is to be director in a part-time capacity, said the local LRC had taken two years to establish and has been funded by, among others, the Ford Foundation, the American Field Foundation, several private sector companies and overseas organizations

He said the LRC was now in a position to receive its first clients, most of whom are expected to be referred by community organizations and trade unions The delay in opening the offices was due to a lengthy process of canvassing opinion

'No imposition'

"We didn't want to impose something on the community which we thought was a good idea but which was not generally supported in the community," he said

Mr Rosenthal said the LRC could not predetermine which issues would be taken up in Cape Town "That would have to emerge from the needs of the community" he said

However, he said the kind of issues which were important in Cape Town included housing, squatters, bus fares, environmental issues, labour and the peculiar position of blacks in the Western Cape resulting from the coloured labour preference policy

The LRC has employed two full-time lawyers — Mr Geoff Budlender, who has been seconded from the Johannesburg LRC till the end of the year, and Ms Shanaaz Meer.

Like the other two LRC's, the Cape Town LRC will be running a fellowship programme providing training for young lawyers

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SEE PAGE 2

25/9/83 City Press

(252) ~~159~~ ~~259~~

500 STRIKING MINERS SACKED

By ZB MOLEFE

FIVE HUNDRED miners at Iscor's Sishen mine in the North-West Cape have been sacked following a strike over pension payments.

And startling allegations of mass beatings and arrests have begun to filter in, says the unregistered African Mineworkers' Union (AMU), which has called an emergency meeting for tomorrow to discuss the sackings.

According to AMU chairman Samson Ndou, the strike at Sishen was sparked by miners' demands that their pension contributions be paid out to them on August 19.

But management refused and the workers downed tools for four days

Mr Ndou said that according to information received from miners, hundreds of them were loaded onto trucks and taken to a nearby field where they were beaten up and teargassed Later, many were charged with malicious damage to property and fined R30. "Those without money were locked up"

A spokesman for Iscor confirmed that the miners had gone on strike over their pension payouts, but denied the allegations that the miners were assaulted

ployees were "intimidated not to resume their work".

Limited damage was done to mine property during the strike

The statement said that "during the course of events it became necessary to discharge a number of employees A group also resigned on their own, bringing the total who had resigned to 500".

KNN more SA fights
by Gerrie

strike over their pension payouts, but denied the allegations that the miners were assaulted.

In a statement, the spokesman said workers were asked to return to their jobs while the issue was being thrashed out, but this was done "to a limited extent" as the majority of the em-

Limited damage was done to mine property

of events it became necessary to discharge a total who had resigned to 500".

MAINSTAY CUP

WITS CRASH

SEE BACK PAGE

NO 'FREEDOM' FOR DR PIET — Page 2

CLASH LOOMS OVER UNION CALL

TENSION is mounting over tomorrow morning's planned half-hour work stoppage by the country's 470 000 miners to mourn the deaths of the 65 who died in the recent Hlobane colliery disaster.

The Chamber of Mines has issued a strong statement, warning the National Union of Mineworkers (NUM) that the planned stoppage will constitute an illegal strike and that management might take action.

The Chamber's general manager, Mr Peter Bosman, said the disruption of operations in the mining industry was "quite inappropriate" as an expression of mourning, and could be construed as an action against management.

But the NUM is undeterred. "We will go ahead with the stoppage," said the union general secretary Cyril Ramaphosa yesterday, adding that he had made it clear to mine management that the workers were not asking permission to down tools between 9am and 9,30am.

MAKEBA GETS THE AXE

Inside

breaches are taking place

Justice on 'the rack'

ARGUS 11/10/83 (252)

Mrs Mana Slabbert

Staff Reporter

THERE was enough evidence to suggest that South Africa's system of justice generated more crime than it prevented or curbed, a University of Cape Town criminologist, Mrs Mana Slabbert, said in the city today

Addressing the conference of the Western Cape branch of the Security Association of South Africa, Mrs Slabbert said "There is no difference between the assault of an offender on a street victim and the assualt of a prison warder on a prisoner

"The Barberton Prison trial has clearly illustrated the brutality which took place and the lack of protection which the prisoners involved had"

Citing the interim report of the Hoexter commission of inquiry into the structure and functioning of the courts, she said this showed the administration of justice had reached breaking-point as a result of a staff shortage

"The commission observed that the possibility exists of accused being wrongfully convicted, as facts which could be of advantage to them are not brought before court," she said

"Another witness said 60 percent of commissioner court cases showed irregularities and that half were incomplete A number of people who preside over commissioner courts have little or no legal training"

UNSAFE

There was also evidence that certain sections of prisons were unhygienic and unsafe Prisoners were often bored and unproductive and the prison environment encouraged gang formation and unrest

"There is thus enough evidence to suggest that institutions and the present functioning of the justice system generate more than prevent or curb crime," she said

Mrs Slabbert said there were definite social structures, laws and policies which maintained and perpetuated lawbreaking

"The South African crime rate, which is the highest in the Western world, would be drastically reduced if basic opportunities for survival and the quality of life were to be provided for those who are denied them," she said

Unemployment was one of the major causes of lawbreaking in South Africa About 33 000 people were imprisoned for influx control offences every month, while there were twice as many burglary, theft and robbery cases reported to the police than there were crimes of serious violence

Judge slams 2-way radio in AWB trial

252

By MARGARETHA GOOSEN

IN A DRAMATIC development yesterday it was revealed that the daughter of a State witness — she, too, works for the Security Police — had a two-way radio with her when she attended a session of the Afrikaner Weerstandsbeweging (AWB) terrorism trial

Mr Justice H P Van Dyk strongly condemned this and said it was a "gross irregularity"

Such a radio could broadcast the happenings in court Security Police Colonel Jack Cronjé's daughter Daleen should have realised this, and left the radio outside, he said

The revelation came as Mr Johan Kriegler, SC, for the defence, was cross-examining Col Cronjé in the trial-within-a-trial which followed an objection by the defence to the State's handling of a written statement by Mr Dawid Botes before a Walvis Bay magistrate

Mr Botes, an AWB member and Springs town councillor, is appearing with AWB leader Mr Eugene Terre'-Blanche, a former member Mr Jacob Viljoen, and AWB secretary Mr Jan Groenewald in the Pretoria Supreme Court on charges of terrorism, alternatively unlawful possession of firearms and explosives

Mr Kriegler told Col Cronjé that he was following evidence led in the trial-within-a-trial When Col Cronjé said he could not hear what was going on inside the court, Mr Kriegler said that his daughter Daleen would have told him, as she was seen in court twice — and had a two-way radio with her

Col Cronjé said his daughter attended the case because of her interest in Mr Botes, an old family friend He said she had the radio with her because she was on duty at the time — but that he instructed her to switch it off

He said the radio could not broadcast outside the court building, and said he did not have a radio with him

His daughter also had not told him anything more than he had read in the newspapers

Col Cronjé said he did not know that his daughter had attended a whole session at the time that she had the radio with her A Mr Scott told him that somebody took the radio away — and he thought she had left after that

Col Cronjé admitted yesterday that a statement before a South African magistrate could be used as evidence in court, and that he had not briefed Mr Botes on the procedure for such a statement, nor told him that it could be used as incriminating evidence

He had known it was his duty to obey judges' rules (to explain the rights of a suspect and the consequences of such a statement) He would have done so, but he had thought the magistrate would explain the procedure to Mr Botes

He said also he talked to Mr Botes about his statement last week, knowing that it was improper for a State witness to do so, because Mr Botes was recording the conversation and he wanted to know why

Col Cronjé denied that his mention of the statement was a perpetuation of his alleged "pestering" of Mr Botes over the statement He had not discussed the statement with Mr Botes after his visit to Hentiesbaai last year, he said

THe case continues today

Courts not open to all — Chief Justice

ARGUS 24/10/83

252

From KEN VERNON, Staff Reporter

GRAHAMSTOWN. — South Africa's courts were not open to all its people, the Chief Justice said here today.

Mr Justice P J Rabie was speaking at a special sitting of Supreme Court judges in the 1820 Settlers' Monument to celebrate the centenary of the Cape Law Society, founded here in 1883.

Mr Justice Rabie said the high cost of litigation made it "impossible, save for a comparative few, to have their disputes settled in our courts".

"There are many rich people in South Africa, but there are many poor people," he added.

He outlined the work carried out under the legal aid system, but said it would be "naive" to think the whole problem could be solved that way.

The Cape Law Society's president, Mr M Hales, said "millions of South Africans are denied effective access to our legal system" because the country had only 6 000 practising attorneys for a population of 29 million.

On the new constitution Mr Hales said discussion would be more fruitful if the good faith of those seeking to introduce changes was not impugned.

While the new constitution proposed no radical changes to the legal system, a committee of judges, under the chairmanship of the Chief Justice, should be set up to "advise whether there are areas of decision-making by the president and the government generally which could properly form the subject of judicial review".

He also called on "prejudiced" local authorities to allow black lawyers to open offices in white areas near courts.

Denying them such offices endangered South Africa's world standing.

(News by K Vernon, ABC Standard Bank Building, Main Street, Port Elizabeth)

All should have access to courts — Chief Justice

By ANDRÉ JORDAAN, news editor of the Daily Dispatch, who attended the commemorative Supreme Court session in Grahamstown marking the centenary of the Law Society of the Cape of Good Hope.

GRAHAMSTOWN — The high cost of litigation and its unavailability to many who could not afford it deserved the urgent attention of the legal profession, the Chief Justice of South Africa, Mr Justice Rabie, said here yesterday

Mr Justice Rabie was addressing a special sitting of the Supreme Court to commemorate the centenary of the Law Society of the Cape of Good Hope

He referred to the ideal that all people should have access to the courts and to the fact that the courts were "not open to all"

"There are many rich people in South Africa, but there are many more poor people, and no one can deny that the high cost of litigation makes it impossible, save for comparatively few, to have their disputes settled in court," Mr Justice Rabie said

Much was done by way of legal aid and it was to the credit of attorneys that they provided this service without receiving the compensation to which they would normally be entitled

It was often said, and rightly so, that legal aid services should be expanded and that the government should take steps to see that this was done

"But it would be naive to think that the whole problem could be solved in this way," Mr Justice Rabie said

"And this is not all The expansion of the system beyond reasonable limits will not be without its dangers for the profession as we know it.

"The greater the bill becomes which the government is called upon to pay, the greater may, I fear, eventually become the danger of the introduction of socialising procedures — a development which would bode ill for the independence of the profession as we know it"

Mr Justice Rabie said it was widely hoped that the Hoexter Commission proposals would lead to a simplification and shortening of court procedures and that this would lead to a saving in time and costs But not too much should be expected from proposals which related primarily to the structure of the courts

"The causes of the high cost of litigation are many and varied, just as are the cost of so many other services today

"But, whatever the causes may be, the fact is that things cannot be allowed to continue as they are at present

"The profession will realise, I hope, that its continued existence as an independent profession is ultimately dependent on its image with the public and its acceptance by the public," Mr Justice Rabie said

The president of the law society, Mr M H Hales, said in his address to the special sitting of the supreme court that the difficulty of making the law and legal services freely available to all was more acute in a country such as South Africa which combined a modern industrial society with a third world culture

He said the law society advocated the expansion of the legal aid system and had committed itself to support small claims courts where attorneys would serve as presiding officers without remuneration

It also supported the work done by legal clinics at universities and institutions like the Legal Resources Centre

Mr Hales said economic realities placed a limit on the amount of work attorneys could do without remuneration nor at non-profitable rates However, many legal firms were prepared to provide this service with the aim of making the law available to as many of the population as possible

He said the government was also limited by the amount of money which could be made available for legal aid

"Nonetheless I believe that legal aid should be expanded by making it available for a wider range of legal services and also by making it available to applicants in a higher income group," he said

To compensate the legal profession for the increasing amount of work it would have to do at non-profitable rates or even at a loss, the government should seriously consider introducing tax bonuses or rebates for legal aid supplied by the profession

Legal aid administration could also be improved by removing it from indirect government control and placing it in the hands of a utility company under the control of the profession with financial support from the government

"Legal aid is viewed with suspicion because it is so closely associated with the government and government officials In saying this I do not wish to cast aspersions on the good work done by officials in legal aid offices throughout the country," Mr Hales said

Insurance companies could also consider providing insurance for legal costs to the wealthier classes

Mr Hales said the attorneys' profession was limited by its size in relation to the total population — 6 000 practising attorneys against 29 million

"It must follow that many millions of these people are denied effective access to our legal system In South Africa we are in the process of evolutionary change It must be apparent that unless these millions of underprivileged people can see value in and derive a benefit from our legal system, there will be little incentive for them to ensure its continuance in the future," Mr Hales said — DDR

Role for judges in new deal?

GRAHAMSTOWN — Much could be gained by setting up a commission of judges to consider the position of the judiciary under the new constitution, the president of the Law Society of the Cape of Good Hope, Mr M H Hales, said yesterday

In an address to a special sitting of the Supreme Court to commemorate the law society's centenary, Mr Hales said the courts had never had a testing right under the Westminster system, save in the entrenched sections of the constitution But what was now proposed was a complete departure from the Westminster system with a degree of non-accountability by the President not found in any comparable parliamentary system

Mr Hales said the Supreme Court had great prestige and decisions by the Appeal Court on the most contentious matters would find acceptance from the overwhelming majority of people

He said a testing right for the courts was no new thought. It had proponents in distinguished judges but was also opposed by others

"The great fear is — and I say it respectfully — that we might find ourselves ruled by judges," Mr Hales said

"Whatever direction the existing constitutional proposals initially take, I suggest much would be gained by setting up a commission of judges, chosen by the Chief Justice to consider the position of the judiciary under the new constitution and in particular to advise whether there are areas of decision making by the President and the government generally which could properly form the subject of judicial review

"Certainly some political decisions of the President would not be capable of review, but many difficult decisions will have to be taken affecting group interest which could well be finally left in the hands of the Appeal Court," Mr Hales said

He emphasised that nothing he said should be taken as reflecting any negative comment on the constitution on which voters would vote next month

Mr Hales said if the courts were more closely involved in the direct review of executive decisions of government, their judgments would be open to public criticism This was a consequence which should be suffered in the interests of the closer participation of the courts in overseeing acts of government

"However, there is a disturbing tendency of criticising our judiciary as if it were simply an arm of government enforcing government policy," Mr Hales said

No one objected to well-considered dissertations on the role of the courts, but "ad hoc" judgments were resented by those who were mindful of the judicial independence which judges in South Africa had always demonstrated

"If any one is to account for inequalities under the law, it is not

Cont

Daily Dispatch
25 October 1983

(252)

the judges who enforce the law, but Parliament which enacts the laws in question," Mr Hales said.

Referring to the question of individual liberty in South Africa, Mr Hales said an effort should be made to re-establish the principles enunciated by the Association of Law Societies.

These were that no person should be punished until sentenced by a court after a fair trial; the State had an obligation to inform the accused of the particulars of the charges against him, it should refrain from maltreating the accused, it should allow him legal representation, and the accused should be brought to trial without undue delay.

Mr Hales also referred to the plight of some black attorneys who, he said, were unable because of local prejudice to obtain authority to open offices in white areas in reasonable proximity to the courts before which they practised.

(News by A. Jordaan, 33 Caxton Street, East London)

Star 26/1/1983

(252)

Courts 'not open to all'

Own Correspondent

GRAHAMSTOWN — South Africa's courts were not open to all its people, the Chief Justice of South Africa said here yesterday

Mr Justice P J Rabie said the high cost of litigation made it "impossible, save for a comparative few, to have their disputes settled in our courts

"There are many rich people here, but there are also many poor people," he said

Mr Justice Rabie was speaking at a special sitting of Supreme Court judges in the 1820 Settlers Monument to celebrate the centenary of the founding of the Cape Law Society in Grahamstown in 1883

He said although the legal aid system did good work it would be "naive" to think the whole problem could be solved that way

Mr Justice Rabie said the greater the expense of law, the greater the threat of "socialising procedures, a development which would break ice for the independence of the profession as we know it"

DENIED

The Cape Law Society's president, Mr M Hales, said that as there were only 6 000 practising attorneys for a population of 29 million — "millions of these people are denied effective access to our legal system"

Mr Hales said discussion on the new constitution would be more fruitful if the good faith of those seeking to introduce changes was not impugned

While the new constitution proposed no radical changes to the legal system, a committee of judges, under the chairmanship of the chief justice, should be set up to "advise whether there are areas of descision-making by the President and the Government generally which could properly form the subject of judicial review".

Mr Hales also called on "prejudiced" local authorities to allow black lawyers to open offices in white areas near courts

Denying them such offices endangered South Africa's world standing and the country's legal system, he said

(252) D. Dispatch 26/10/83

Community service idea welcomed

LLOYD BODILL records the opinions of people who hold key positions in East London on the concept of imposing community service orders instead of prison sentences.

EAST LONDON — Giving some offenders community service to do instead of jail sentences is a good idea, provided it is done selectively

This is the view of a number of people in key positions in East London

A suggestion that community service orders be made part of South Africa's criminal justice system has been put to the Cape Law Society at its annual meeting in Grahamstown this week

The motion was proposed by a Cape Town attorney, Mr Sam Goss, who said South Africa's daily prison population exceeds 107 000, of which about 60 per cent are short-term prisoners — serving sentences of six months or less

Community service orders require an offender to do unpaid work, of benefit to the community, for a time specified by the courts, instead of going to prison

In Cape Town, people convicted of drunken driving have been sentenced to working in the casualty departments of the city's hospitals, for a period laid down by magistrates

East London's chief magistrate, Mr J M van Rooyen, said most local magistrates were in favour of the idea

"We will probably impose such sentences soon The idea is not to have too many short term prisoners in prison," he said

Mr Van Rooyen said offenders would have to be carefully screened before being given a community service

"You can have difficulty in giving a sentence like this We will have to have social reports on a person before finding a sentence that suits him"

It would not always be possible to sentence people who committed serious offences to a community service

"What do you do with an assault case? It will be hard to couple a community service with rape," said Mr Van Rooyen

Mrs Petro Gaitskill, the local branch director of the National Institute for Crime Prevention and Rehabilitation of Offenders (Nicro), said she would support "anything in the line" of community service orders

"We are definitely keen to assist on progress reports of people given a community service instead of going to prison," she said

Mrs Gaitskill has had first hand experience with this type of sentence. About two years ago a magistrate ordered a Standard 9 schoolboy spend his school holidays working for Nicro after he was found guilty of a serious offence during school boycotts in Mdantsane

The schoolboy was placed under the authority of Mrs Gaitskill "It was a wonderful thing He gained so much from working here," she said

Mrs Gaitskill also emphasised the need to screen candidates for community service sentences

"I will go out of my way to find out the home circumstances of a person," she said

The chief social welfare officer of the Department of Health and Welfare in East London, Mr Paul van Deventer, said "The idea is good, but you will have to be selective about this"

He added "If I had anything to with it I would first help youthful offenders, because people with heavy criminal records could try and take advantage of this"

Mr Van Deventer said his department was supposed to provide a social worker to liaise with the courts, but was unable to do this because of staff shortages

East London's chief traffic and licensing officer, Mr Brian Evans, agrees in principle with the idea of community service orders, but said the service chosen should suit the criminal, because "you don't want to send a bloke back into society worse than before"

He said a person found guilty of a driving offence and sent to work for a set time in a hospital "might be squeamish and a hindrance there, and this might cause him psychological harm."

To overcome possible problems like this, offenders should be carefully screened before being sentenced to a community service, Mr Evans said

The medical superintendent of Frere Hospital, Dr Robin Newbery, said "It's a good idea, providing it has the backup

"If you sentence someone who has smashed up someone in a car to work in casualty on Saturday nights, it might have a better effect on him than prison, and could benefit my casualty department"

Dr Newbery also emphasised the importance of screening offenders "I would not like to see a chap convicted of assault working in my hospital," he said

EL attorney honoured

GRAHAMSTOWN — An East London attorney, Mr John Ashton Chubb, was named as one of three honorary members of the Cape Law Society at the start of its 100th general meeting here yesterday

Mr Chubb, who was admitted as an attorney in 1930, is a consultant in the firm founded by his father

The director of a number of East London companies, he helped establish a branch of Rhodes University in the city and will receive an honorary doctorate from the university next year

MR CHUBB

The other honorary members are Port Elizabeth's most senior practising attorney, Mr Ivan Wilke, and Mr S J Levin, who has practised as an attorney at Vredenburg since 1926

Mr Wilke was Port Elizabeth's youngest attorney when he was admitted to the side bar in 1924 aged 21

He has been a member of the Port Elizabeth Attorney's Association for more than 25 years, serving two terms as president

The society's meeting was opened yesterday by the Administrator of the Cape, Mr Eugene Louw, in the absence of Minister of Justice, Mr H J Coetsee, who could not attend

Mr Louw appealed to attorneys to involve themselves in local government which should enjoy greater powers, he said

"It is essential that we have city councillors who are prepared to serve Communities need skilled and qualified leaders"

Mr Louw said the retention of provincial government was necessary for financial control, co-ordination and as a body of appeal

However it was important to extend the powers of local government and involve other population groups — DDC

Family court has merit, law society told

PORT ELIZABETH — Greater involvement of the legal profession in social reform was advocated by the president of the Cape Law Society, Mr M M Hales, at the society's 100th annual meeting yesterday

This would require a closer relationship between the judiciary, advocates and attorneys, he said, with judges "setting the direction and tone"

Mr Hales said distinctions between the rights of men and women before the law "should surely disappear", considering the role played by women in society today

"With the legal grounds for divorce made easier, we should perhaps be more concerned now with the effect of divorce on family and inter-personal relationships," he said, suggesting that mediation by a counsellor in divorce proceedings rather than confrontation between the parties' attorneys could help "remove the bitterness from divorce"

"The removal of divorce and family cases to a family court also has much merit"

Mr Hales said a greater understanding existed for the sociological reasons for crime There was a belief in the urgency of prison reform and a feeling that the law should be administered with greater compassion — DDC

State legal men unite

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8/11/83

By MAURITZ MOOLMAN

STATE ADVOCATES have formed a society to promote their image to the public

The man in the street, they say, sees them too often as only prosecutors

The Society of State Advocates was formed at the weekend to "promote and maintain" their leagl status

Mr T P McNally SC, Deputy Attorney-General of Johannesburg, said the society was formed to maintain social contact between State Advocates countrywide and discuss and comment on legal ethical issues

He said State Advocates needed to promote the status of State Advocates in the Supreme Courts

They were not always seen as advocates as well, he said, and this was the reason behind the forming of the society

Mr McNally said the society will discuss any matters such as the deviation from previous statements by witnesses, and material discrepancies in these statements will be debated by the society

The SOSASA committee consists of Mr McNally as chairman, Mr H G Klem, SC, Deputy Atorney-General in Maritzburg, as deputy chairman, Mr C du Plessis, SC, Deputy Attorney-General of the Free State, Mr P B Jacobs, Deputy Attorney-General of Pretoria, and advocates Mr D van Niekerk of Cape Town, Mr W J Jurgens, Attorney-General of the Ciskei, and Mr D A Gordon of Johannesburg (honorary secretary)

252 RDM 11/11/83

Prosecutor was 'unfit for job'

A PUBLIC prosecutor, described by a Natal Appeal Court judge as unfit to occupy his position, was no longer employed by the Department of Justice, a department spokesman said in Pretoria yesterday

He was commenting on a case in the Maritzburg Supreme Court where the Appeal Court judge, Mr Justice Didcott, with Mr Justice Leon concurring, set aside the convictions and sentences of six Chatsworth men convicted in the Port Shepstone Magistrate's Court.

All six were given jail sentences of six years, three years of which were suspended conditionally for five years, by the magistrate, Mr A H van Wyk

In his judgment, Mr Justice Didcott described the manner in which the case was conducted by the prosecutor, Mr D Markram, and the failure of the magistrate to check him, as a "travesty of justice"

The chief of administration and personnel in the Department of Justice, Mr Jack Marais, commented that Mr Markram was no longer a public prosecutor

Mr Justice Didcott's judgment might result in an internal departmental inquiry of which the findings would not be made public, he said

The magistrate was still in the employ of the department, he added — Sapa

Judge slates sentence under Zulu law

252 ROM 12/11/83

MARITZBURG — A Supreme Court judge in Maritzburg has ordered that a judgment be sent to the South African Law Commission and Permanent Penal Reform Committee for consideration

Mr Justice M E Kumleben was criticising the harsh consequences of mandatory sentences under certain provisions of the code of Zulu law.

It was found that a Scottburgh magistrate had correctly convicted eight men under Zulu law of promoting or participating in an armed assembly, but in a reserved judgment the judge said that while the convictions should stand, it was clear the men were not in any real sense guilty of misconduct.

The magistrate had found they were defending themselves against attack and Mr Justice Kumleben found the mandatory minimum one-year sentence in this instance outrageously unreasonable.

He said the harsh consequences for the appellants could only be alleviated by the State President — Sapa

New Rand AG pledges efficiency in service of justice

S. Express 13/11/83

By LESLEY LAMBERT

MORE efficient administration of justice on the Witwatersrand — that's the pledge of the first Attorney-General of the Witwatersrand division of the Supreme Court.

"Nobody likes sitting in jail for 10 months, having his case postponed and then being found not guilty," says the newly-appointed AG, Klaus von Lieres und Wilkau, SC

His task will be to keep the Witwatersrand's criminal law machine — which serves 10 magisterial districts and a population of about 3 500 000 — running smoothly

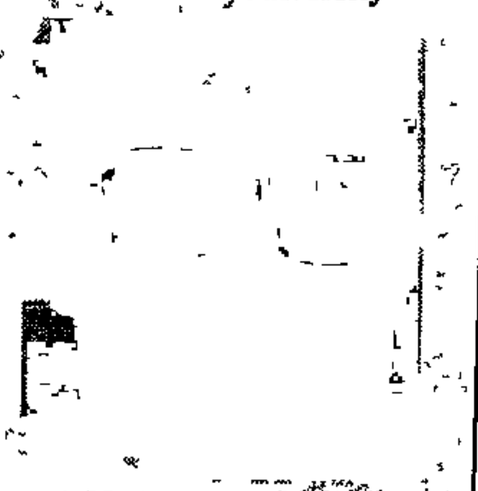
Mr von Lieres stressed the importance of co-operation between the public and legal staff in the administration of the courts

"We run a public service of law enforcement here and we'll do everything to ensure the most efficient dispatch of the law with the least inconvenience to the public, but it can only work if they co-operate with us as well.

"We are not here to harass the public but to work with them to achieve our objective of efficiency," he said

The rapid rise of Mr von Lieres to the position of attorney-general should be seen against the background of long legal experience

He obtained BA and LlB degrees from Stellenbosch University



● Mr Klaus von Lieres und Wilkau

Admitted to the Cape Bar in 1966, he then moved to the Transvaal in 1971 and served as a prosecutor in the Rand Supreme Court where he was appointed senior public prosecutor in 1974

Mr von Lieres was the prosecutor in several prominent cases, including the terrorism trial in 1972 in which Mohamed Essop and others faced charges under the Terrorism and Suppression of Communism Acts Mr Essop and another accused were sentenced to five years jail

were sentenced to five years jail

He prosecuted in the case involving the shooting of Natal journalist George Harper in Cape Town, for which Johannes Groenewald was sentenced to death

Mr von Lieres is the chief investigator of the two-man commission of inquiry into the South African Council of Churches and was a member of the two Steyn commissions on the media

Asked whether he thought his part in the commissions had influenced his new appointment, he said "Somewhere along the line somebody decided I'd do commissions They were an extra — and not even an optional extra"

The Steyn commissions inquired into reporting on security legislation and into the South African media

Mr von Lieres still believes — "based on the surveys" — that the Press did not quite come up to scratch in the coverage of what was found to be the needs of the people in the second inquiry

This was the most important part of the report, he said, and he was disappointed that it did not receive enough attention

POLITICAL comment in this issue by Ken Owen, headlines and sub editing by Ameen Akhalwaya, both of 171 Main Street, Johannesburg

The forgotten man who will hang . . .

(252) NOM 19/11/83

DAVID MGUNI has become almost the forgotten man of the Maureen Smith murder saga.

He was the killer who was to have been paid R10 000 to plunge the fatal knife into Roger Smith after the family chauffeur Jack Ramogale had tripped the main electrical switch and plunged the Smith home into darkness

Of the murderous trio, only Mguni now faces the hangman after Thursday's Appeal Court rulings

Maureen Smith has been given a 20 year jail sentence, and Ramogale 15 years Mguni — who, in the event, was never paid for the crime he committed — is to hang

At the first appeal earlier this year in Bloemfontein, Mguni's lawyers argued that the offer of R10 000 in banknotes to a man who earned his living as a backyard mechanic in the shanty black township of Alexandra was a fortune and should be regarded as temptation so extreme as to mitigate in extentuation of his actions in killing Roger Smith

In his written judgment — handed down at the Appeal Court in Bloemfontein — the Judge of Appeal, Mr Justice Wessels, considered Mguni's case in this way

"In so far as the third appelant is concerned, I shall assume in his favour that the onus rested on the State to prove the issue of extenuating circumstances

"It was proved beyond any reasonable doubt that he became a murderer for financial gain The (trial) court correctly held that the fact that he was persuaded to kill the deceased for a reward of R10 000 did not constitute an extenuating circumstance

"In my opinion there is no merit whatsoever in his appeal"

Mr Justice Smuts, the acting Judge of Appeal, said in his written appraisal that he could find no difference between Mguni — who plunged the knife into Smith — and Ramogale, who had agreed to trip the fuses on the main electrical supply to the Smith household and thereby lure Roger Smith into the garden, where he was killed

Mr Smuts wrote "In the present case the act of Ramogale, in luring the deceased out of the house to a spot where he knew the hired killer was waiting, was so closely connected with the death of Smith that his degree of moral blameworthiness is practically indistinguishable from that of Mguni's

"I see no difference worth mentioning between the man who stabs the man and the man who places a knife in the hand of the killer, with knowledge that it will inevitably and immediately be used to kill the victim"

Cape offenders sentenced to help aged, handicapped instead of imprisonment

Peninsula leads move to replace jail with service

W/E ARGUS 19/11/83 252

Professor Dirk van Zyl Smit

Weekend Argus Reporters

LEGAL attention in South Africa is being focused on the Peninsula, where magistrates' courts have been passing sentences of community service rather than jail

If this proves successful, legislation will be formulated to provide an infrastructure to expand the system and apply it nationally

The move towards community service is the result of overcrowding in South African prisons The aim is also to prevent certain offenders from having to spend time behind bars

Mr C F W van Zyl, Chief Magistrate of Cape Town, says he would like to see "much more use of community service" as an alternative to imprisonment countrywide

Eased in

He said he was "very much in favour of community service" but, like all new things, it had to be eased in gradually

Professor Dirk van Zyl Smit, director of the Institute of Criminology at the University of Cape Town, agreed that community service should be introduced nationally

Professor van Zyl Smit said community service was "one of the most positive developments there is in the penological field. It is a sentence which should be used far more widely, with the qualification that it can't be used for all types of crime"

Aged

For the past three years Cape Town magistrates have been imposing community service as a condition of suspended or postponed sentences

So far 50 offenders have been been given community service sentences ranging from helping the mentally handicapped and aged to working for the NSRI or St John Ambulance

The experimental community service programme is being co-ordinated by the National Institute for Crime Prevention and Rehabilitation of Offenders (Nicro), which is working with magistrates and probation officers in various State departments

Those sentenced to community service include.

- A university student found guilty of possessing dagga, who was sentenced to 200 hours of service at a club for the mentally retarded
- A man found guilty of starting a fire on Table Mountain, who was sentenced to 200 hours' work for Kirstenbosch National Botanical Gardens
- A housewife found guilty of shoplifting, who was sentenced to 150 hours' work for a local crêche

One Cape Town offender, who was sentenced to 150 hours' service in an old age home for negligent driving, said "This is so much better than being sent to prison You put your whole self into the work to make it a success"

Attached

The man, who could not afford to pay a fine, said at first he found it difficult working with old people "Now I look forward to it One gets so attached to them and they are so grateful that I hope to continue helping them when I have completed my sentence."

Although the Criminal Procedures Act provides for the imposition of community service sentences, there is no infrastructure in law which can regulate the procedure

An interdepartmental committee which includes representatives of the Departments of Justice, Welfare and Prisons is investigating ways to deal with the overpopulation of prisons And one committee of the group — which is expected to report in mid-1984 — is looking into community service and its application nationally.

Seminar

A series of seminars has been held for magistrates, the judiciary and academics, at which alternatives to imprisonment have been discussed

Miss Linda Christiansen, director of the Cape Town branch of Nicro, which is co-ordinating the project, said her organisation was "delighted" with the results.

She felt Nicro had succeeded in its task and that the whole country should adopt the system

"We don't see community service as a soft option. It is fairly strictly controlled and is a form of punishment. It is used in cases where we don't feel the person will benefit from prison and all the negative connotations that go with it

Recognition

"Our main aim is to give people recognition that they have something to contribute and to provide a positive learning experience

"Since March there have been 18 new cases for consideration Even the City Council's cleansing department and the Fairest Cape organisation have come to us offering places for people who have been found guilty of littering — dumping rubble in rivers and so on"

Miss Christiansen said although the Criminal Procedures Act provided for the imposition of community service sentences, there was no infrastructure in law to protect people if it backfired

To protect all those involved in the decision to sentence individuals to community service, Nicro had taken out a special insurance policy which covered 50 offenders

Protect

"If, for instance, you have someone working with the aged and he suddenly runs amok, our policy would protect the magistrate and everybody else involved in the sentencing procedure

"But the possibility of something going wrong is remote. Out of 14 000 people sentenced to community service in Britain there has not been one court case involving injury or damages, although there have been some out-of-court settlements"

Miss Christiansen said it was up to the magistrate, the prosecutor, the probation officer, the offender's lawyer or his family to suggest community service

Once the magistrate had ordered a probation officer's report on the individual, a panel meeting was held at which the offender was present The panel decided whether he was suitable for community service and what type he should perform, but it was up to the magistrate to make the final decision

Magistrate acted improperly

(252) Mercury 18/11/83

Pietermaritzburg Bureau

A FULL Bench of three Supreme Court Appeal Judges here yesterday ruled that a Vryheid magistrate acted improperly in continuing a trial in spite of evidence that the charge sheet was altered without the accuseds' knowledge

'Both accused claimed in court that changes had been made, and there was evidence to support this,' said Mr Justice Leon, with Mr Justice Shearer and Mr Justice van Heerden concurring

On appeal was the case of Farah Mbatha, who was found guilty along with fellow petrol pump attendant, Genesis Zungu, of stealing more than R2 000 from a Vryheid garage last year.

Magistrate Mr H Wolmarans sentenced the two to nine months imprisonment last year.

Before setting aside the convictions and sentences of both accused, the Judges criticised aspects of earlier proceedings.

'The Magistrate should have dealt with the matter of the changes in the charge sheet before proceeding with the trial,' said Mr Justice Leon.

'This was quite improper conduct on the part of the Magistrate, especially in dealing with an unrepresented accused.'

'Service instead of prison' call

Cape Times 22/11/83 (252)

Chief Reporter

THE Law Society of the Cape of Good Hope has, at its annual meeting in Grahamstown, adopted a motion by a Cape Town attorney that the principle of community-service orders, in place of imprisonment for certain categories of crime, be approved as part of South Africa's criminal justice system

In favour of scheme

The motion was introduced by Mr Sam L Gross, who also proposed that the Minister of Justice be informed of the society's support of this principle, and that the necessary legislation be enacted as soon as possible.

The minister, he added, had already expressed himself in favour of the scheme, as had the penal-reform commission under the chairmanship of Mr Justice Viljoen, of the Appellate Division

In his motivation, Mr Gross said that in most countries the crime rate had risen considerably, with the result that prisons were overcrowded

South Africa's daily prison population now exceeded 107 000, of whom about 60 percent were short-term prisoners — that is, prisoners serving six months or less

It was generally agreed, Mr Gross said, that imprisonment was not the answer for all law infringements, for apart from the expense to the State of maintaining supervision and custody, the chances of deterioration in prison were as great as those of reform

"In Britain, the community-service orders scheme has been operating since 1972, and more than 20 000 cases have been dealt with on this basis The scheme is also in operation in the United States and most Western countries"

Non-custodial penalty

The concept of community-service orders was simply a non-custodial penalty, requiring an offender to work unpaid for a specified number of hours which must be completed within a specified period

In this system the offender had the option not to avail himself of a community-service order, but to serve the traditional prison sentence instead.

Mr Gross added "It is not likely, however, that offenders would turn down an order which ensures freedom of movement and non-restriction of liberty, as against custodial imprisonment".

SA should have an ombudsman — report

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STAR 29/11/89

By Sheryl Raine, Pretoria Bureau

South Africa needs to re-examine the role of its courts, reconsider its laws based on race and protect its citizens from uncontrolled bureaucracy, a Human Sciences Research Council investigation has urged.

The investigation into the role of the judiciary has revealed a serious lack of control over the administrative powers of Governmental authorities.

Professor J C Bekker of the University of Zululand, who conducted the research on behalf of the HSRC, found that there was insufficient protection for the ordinary citizen against unlawful action by Government authorities

In his report released in Pretoria today he said the State had over the years acquired control over virtually every aspect of human activity.

This had degenerated to a stage where the ordinary man felt threatened by State intervention in his daily affairs, he said

The country's present system of administrative law did not provide adequate protection and there was no legal right of recourse to the courts

Professor Bekker has recommended a fully-fledged ombudsman "to keep officials on their toes" and to serve as a warning against the abuse of powers

He has also made out a strong case in favour of the courts in South Africa and their right to decide on the validity of laws. The role of the courts would have to be reconsidered in the new constitional dispensation

He said that as long as the courts were forced to adjudicate on the grounds of race they would be accused of having a racist approach to the administration of justice

Professor Bekker highlighted the way in which judicial officers were used as Government agents to enforce administrative measures

"This system of administrators playing judicial roles has not worked anywhere in Africa," he said

Courts 'don't give protection from Government actions'

ARGUS 30/11/83

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Argus Correspondent

PRETORIA — South Africa needs to re-examine the role of its courts, reconsider its laws based on race and protect its citizens from uncontrolled bureaucracy, a Human Sciences Research Council investigation has shown.

The investigation into the role of the judiciary has revealed a serious lack of control over the administrative powers of governmental authorities

Professor J C Bekker of the University of Zululand, who conducted the research for the HSRC, found there was insufficient protection for the ordinary citizen against unlawful action by Government authorities

In a report released in Pretoria yesterday he said the State had over the years acquired control over virtually every aspect of human activities

This had degenerated to a stage where the ordinary man felt threatened by State intervention in his daily affairs.

The country's present system of administrative law did not provide adequate protection, he said, and there was no legal right of recourse to the courts

"John Citizen is more often than not at the mercy of the bureaucracy," he said

"In some way the various administrative organs which decide on the destinies of South African citizens must be regulated and controlled"

Professor Bekker has recommended a fully fledged ombudsman to keep officials on their toes and to serve as a warning against the abuse of powers and irrational decision-making

He has also made out a strong case in favour of the courts in South Africa and their right to decide on the validity of laws The role of the courts would have to be reconsidered in the new constitional dispensation.

He said that as long as the courts were forced to adjudicate on the grounds of race they would be accused of having a racist approach to the administration of justice

The courts were required to enforce laws such as the Immorality Act and the Separate Amenities Act and other segregative measures

He highlighted the way in which judicial officers like magistrates and commissionrs were used as Government agents to enforce administrative measures

"The system of administrators playing judicial roles has not worked elsewhere in Africa," he said

"In South Africa, too, it works to the detriment of judicial officers and administrators

"On one hand magistrates and commissioners cannot be as independent as one would wish them to be and on the other they can't give their undivided attention to administrative matters"

Chapter 6

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METROPOLITAN

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Centre to challenge rise in rent, service charges

Staff Reporter

THE recently opened Legal Resources Centre in Cape Town is to challenge the legality of rent and service charge increases in Paarl's Mbekweni township

The increases, applied this year, gave rise to a protest march by township residents on the offices of the Western Cape Administration Board on September 1

One hundred and seventy-one were arrested and 98 of them were convicted this week under the Internal Security Act of attending an illegal gathering They were each fined R30 (or 30 days)

NO DATE

Mr Geoff Budlender, head of the Legal Resources Centre office in Cape Town, says the centre has applied to the Supreme Court to challenge the legality of the increases No date has been set for the hearing

Mr Budlender said the grounds of the application were that the Administration Board had not followed the correct procedure in increasing rents and service charges

The Cape Town office of the Legal Resources Centre, which runs offices in Johannesburg and Durban, was opened in September and had an opening function last night

The purpose of the centres is to take up matters of principle on behalf of disadvantaged people

MAIN ISSUES

Mr Budlender said the main issues being taken up by the centre in the city were housing, squatting, influx control and labour

Mr Richard Rosenthal, director of the Cape Town office, said the office had already dealt with a number of interesting matters

They included a Supreme Court application which led to the return of showers to 600 contract workers in Nyanga hostel, and the reinstatement of Mrs Margaret Dreyer, dismissed for union activities

Her union, the National Union of Textile Workers, was now negotiating an agreement with the factory after the matter was taken to the Industrial Court

The president of the Cape Town Law Society, Mr Max Hales, presented a full set of Butterworth's Statutes to the centre

He said South Africa had a "severe case of over-legislation" and many people did not know their rights

Laws governing blacks alone filled a volume of statutes, he said The work of the Legal Resources Centre was worthy of support

Mr Arthur Chaskalson SC, national director of the Legal Resources Trust, which has operated for five years, said the three centres would employ 28 lawyers and articled clerks from next year

An important part of the work of the office would be to prepare a manual for advice offices and to help local advice committees to handle everyday matters such as workmen's compensation and pension queries

Human rights still hold in South Africa

7/12/83

By JULES BROWDE, SC
Chairman, Lawyers for Human Rights

THIS COMING Saturday, those countries which are commonly referred to as "the free world" celebrate Human Rights Day

It is the day on which is reaffirmed support for the ideals laid down in the Universal Declaraiton of Human Rights

The United Nations Declaration was made on December 10, 1948, and it is on the anniversary of that day each year that the reaffirmation is made

Despite the fact that South Africa, in the company of the Communist Bloc countries and Saudi Arabia, abstained from voting in favour of the Declaration there is great concern still alive in this country for the principles embodied in it

To mention but a few of the articles

- All human beings are born free and equal in dignity and rights They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood
- No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment
- Everyone has the right to recognition everywhere as a person before the law
- Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him
- No one shall be subjected to arbitrary arrest, detention or exile
- Everyone has the right to freedom of movement and residence within the borders of each state

It will readily be understood why it was that the South African delegation abstained from voting the ethos of our post-war political programme was to be incompatible with many of the sentiments expressed in the Universal Declaration

It has been said, however — and not without some justification — that we do not have the most reprehensible human rights record and that there still are recognised within the framework of the law in South Africa certain of the freedoms which are enshrined in the constitutions and laws of the Western world

In his address to Lawyers for Human Rights at its last annual general meeting, the Honourable Mr Justice J Milne, Judge President of Natal, said

"Let us take care that all those human rights already existing within our law, and all those human rights which we in future win within our society, are hung on to and properly protected through truly equal access to the courts for each and every individual among us, and let us, as lawyers, bend our best efforts and apply our best minds to the problem of how to achieve this now in our various and unequal society, without waiting for some idyllic future when there will be no serious inequalities between our individuals and our communities"

It is in order to keep alive the kindled flames — burning feebly though they may be — that Lawyers for Human Rights think it important to commemorate Human Rights Day annually and to bring to the notice of the public the various aspects of human rights which need stressing here

On Saturday, a public meeting will be held at 10 30am in the Waverley Hall (Central Methodist Church), on the corner of Pritchard and Smal Streets, Johannesburg

The public will be addressed by speakers on such varied topics as the rights of women, the right to trade, the right to engage in sport and the right to freedom of speech, to mention but a few

Speakers include Professor Ander van der Walt, Tony Bloom, Deborah Mabiletsa and Raymond Louw

It is hoped that by attending meetings such as this the public of South Africa will be encouraged not to allow those human rights which we have to die because of a lethargic acceptance of the erosive process that has been going on for decades

Desperate need for general legal aid, says lawyer

Star 8/12/83

Own Correspondent

CAPE TOWN — There is a desperate need for a network of community-based legal centres, staffed by salaried lawyers, to guarantee that the law is just to all no matter how poor they may be, says Mr Wallace Mgoqi, a researcher with the Southern African Labour and Development Research Unit

Mr Mgoqi, who has recently completed a law degree and is planning to do a year's fellowship with the Legal Resources Centre which was recently established in Cape Town, will present a policy paper at the Carnegie investigation into poverty to be held next April

Land and labour laws affected the poor more severely than any other laws, Mr Mgoqi said in an interview this week

"Land laws determine what kind of land is available to whom Labour laws control who can get a job and where they can find it Labour contracts affecting black workers severely disadvantage them in terms of the law," Mr Mgoqi said

Poorer communities in South Africa felt helpless in the face of the law

Access to justice was severely limited because of high legal fees and because most lawyers were concentrated in big cities, away from the rural areas

In his paper Mr Mgoqi recommends that legal services in black communities should be spread too make them more financially and physically accessible

He also says that members of the community should be trained to have a functional knowledge of the law.

Lawyers who are prepared to take up cases in the black communities could help make life "slightly more tolerable for some"

When the Legal Resources Centre in Johannesburg took up the cases of Komani and Rikhoto, two migrant workers fighting for urban rights, and won them, it benefited not only the individuals but also helped to set down the rights of the poor, Mr Mgoqi said

'Revolutionary' draft marriage law gazetted

ARGUS 9/12/83 252

Argus Correspondent

JOHANNESBURG — The Government today gazetted revolutionary draft legislation which, if accepted, will give South Africa one of the most advanced marriage laws in the world

The Minister of Justice, Mr Kobie Coetsee, called for comment on the draft Bill, which is based on four recommendations of a Parliamentary select committee on matrimonial property law

The Bill, intended to become the Second Matrimonial Property Act of 1984, will debated in Parliament next year

It provides for

- The abolition of the marital power a husband has over his wife and her property in existing marriages under the Common Law
- A discretionary power whereby the courts can order, on the disolution by death or divorce of a marriage out of community of property, that an equitable share of one spouse's estate be made over to the other spouse
- A prohibition on the sale of the family home unless both parties have given their consent

The Bill also provides for couples married out of community of property before the commencement of the proposed Matrimonial Property Act of 1984 to change their marriage to an accrual system by a simple notarial contract within a year of the commencement of the Act.

This contract would replace their existing ante-nuptual agreement

The accrual system provides for the equal sharing of the gains of a marriage at its end, whether by divorce or death

Comment on the draft Bill should be sent to the Director General Justice, Private Bag X81, Pretoria, 0 001 before January 31, 1984

An explanatory memorandum and questionnaire are obtainable from the same address

CAPE TIMES 10/12/83 252

People's courts plan gazetted

PRETORIA — Draft legislation for the introduction of small claims courts in South Africa was published in the Government Gazette yesterday for comment

The proposed "people's courts" will deal with civil claims of up to R750

The draft bill will be tabled in the next parliamentary session

In a statement in Pretoria yesterday, the Minister of Justice, Mr Kobie Coetzee, said the legislation was aimed at the "limitation of costs of litigation and the efficient and speedy adjudication of small civil disputes in an informal manner"

Guardians

The legislation, which will be known as the Small Claims Court Act, provides for courts to be manned by officials from the legal profession

No legal representation will be allowed, but minors will be allowed to get help from their parents or legal guardians.

It has also been recommended that hearings take place after hours to make it easier for litigants

The courts will have jurisdiction over the following

- Actions in which is claimed the delivery or transfer of any property, movable or immovable, not exceeding R750 in value.

Mortgage

- Actions against the occupier of any premises or land within the area of jurisdiction of the court, provided that, where the right of occupation of any premises or land is in dispute, such right does not exceed R750 in clear value to the occupier
- Actions based on or arising out of a liquid document or a mortgage bond, where the claim does not exceed R750
- Actions based on or arising out of an agreement as defined in Section I of the Credit Agreements Act (Act 75 of 1980), where the claim or the value of the property in dispute does not exceed R750
- Actions other than those already mentioned in this section, where the claim or the value of the matter in dispute does not exceed R750.
- Counterclaims not exceeding R750 in respect of the causes of "action mentioned"

The draft legislation is based on recommendations contained in the fourth interim report of the Commision of Inquiry into the Structure and Functioning of the Courts — Sapa

Magistrate under fire for township remark

252

S. Times

11/12/83

TWO SUPREME Court judges have criticised a magistrate for describing people living in Chatsworth as having a standard of morality which "falls below the accepted norm."

By GEORGE MAHABEER

The magistrate, Mr F M Vorster, also said during the passing of sentence on two brothers, whom he had convicted of assault, that the people who live in Chatsworth were predisposed to violence and the seeking of revenge.

Mr Justice Leon, with Mr Justice Shearer concurring, said there was no doubt that there were people in Chatsworth who might be classified in that way, as there were people in Durban or anywhere else.

"But it was entirely wrong of the magistrate to generalise in such a way as to suggest that merely because someone lives in Chatsworth that he was that kind of a person," said Mr Justice Leon

Mr Justice Leon was commenting on a sentence of four month's imprisonment imposed on the two brothers, by Mr Vorster.

The brothers, Rohith Mahabeer, 23, and Radesh, 22, were convicted of assault with the intent to do grievious bodily harm on May 30

The Mahabeers were also ordered by Mr Vorster to pay the complainant compensation of R152.

They were convicted of assaulting a neighbour, Mr Soogoon Hemraj with a knobkerrie and an iron instrument on the evening of January 30.

The brothers appealed against the sentence.

The Supreme Court found that proper procedure had not been followed in the case

Revenge

"There is another unsatisfactory feature of this case which I must mention at the outset," said Mr Justice Leon

"The magistrate apparently in deciding what sentence to impose, sought the advice of the complainant.

"Mr Bloukamp, for the state, and Mr Choudree have correctly pointed out this was a most improper thing for the magistrate to have done. He also asked the complainant if the Mahabeers should be "put away".

Mr Justice Leon said the magistrate went further and said: "As far as this particular complainant is concerned, the court has got his word that he does not insist that the accused be sent to jail.

"But in Chatsworth one has this serious problem that if a complainant, in open court, asks that the accused be sent to jail, he makes himself liable to revenge when the person comes out of jail later on.

"So it is, indeed, common that all interested persons, when the address the court do not really press for jail sentences."

Mr Justice Leon said this quotation was merely an example of the magistrate's approach, which "permeated" the record, towards people living in Chatsworth, " which suggests he regards the inhabitants of Chatsworth as people who seek revenge

"He also regards the people who live in Chatsworth as people who are predisposed to violence and as people whose general standards of morality fall below the accepted norm.

"But it is unfair to the vast majority of law abiding citizens of Chatsworth to categorise people who live there in such a way"

The Supreme Court confirmed the conviction but amended the sentence to four months imprisonment conditionally suspended for five years

ARGUS 12/12/83 (252)

'People's Courts' to cut backlog on small claims cases

Argus Correspondent

PRETORIA — Small claims courts are set to cut the mounting backlog on civil court rolls following draft legislation published in the Government Gazette

The draft Small Claims Courts Act is based closely on the fourth interim report of the Hoexter Commission, which found that small claims courts would speed up the "lagging" pace of justice in South Africa as well as providing an accesible low-cost forum for the settling of claims

South Africans have recently become familiar with the concept through the television programme People's Court, which shows the procedures of a small claims court in California

The new draft Bill provides for small claims courts to hear claims of up to R750 arising from individual disputes over money, movable objects and immovable property actions of ejectment, mortgage bonds and credit agreements Individuals may also lodge claims against companies, but not vice versa

Proceedings, which are to be public, will be held before commissioners chosen from the ranks of private legal practitioners with at least seven years' uninterrupted experience

None of the proceedings, except for the final verdict, will be recorded

A commissioner will question both parties himself, and neither party will be allowed legal representation or other aid during the proceedings The court will not be bound by the existing rules of evidence.

No claimant is bound by law to bring his case before the small claims court, but once he has done so, the court's verdict is final, with only limited appeal to the Supreme Court

Both parties may call witnesses, but no-one can be forced to give evidence and all evidence must be given under oath

The sum payable by the offending party must be paid immediately unless the parties agree on a system of instalments Limited costs, including court fees, may be granted

People found to be in contempt of court face fines of up to R500, while those who fail to pay an amount ordered by the court may be imprisoned for six months without the option of a fine

Summonses to appear will be delivered by hand, after which the defendant will have a prescribed period in which to lodge notice that he will be appearing to defend himself

Where liability is in question, several defendants may be sued, while a group of plaintiffs may press their related claims together

The Hoexter Commission recommended that a nominal fee be payable by the plaintiff on lodging the case, but this will be determined when the court rules are drawn up

Helping the poor and the disadvantaged: Ms Shehnaz Meer and Mr Geoff Budlender at Cape Town's new Legal Resources Centre.

Giving legal recourse to the disadvantaged

(252) ~~258~~

Cape Times 14/12/83

By MICHAEL ACOTT

A NEW group of legal specialists is bringing the law within the range of Cape Town's poor and disadvantaged communities

Three months after it opened its doors in Church Street, the Legal Resources Centre is already overworked and looking for more staff and more funds

The range of work goes from domestic workers alleging wrongful dismissal or hire-purchase disputes over a vehicle to major test cases and requests to investigate the halting of major projects allegedly harmful to the wider community

This is what happened in Johannesburg, where the first Legal Resources Centre was established in 1979, and in Durban where the second LRC opened in 1982

Cases have come pouring in from people who might otherwise have had nowhere to turn to because of the cost of legal services The LRCs take these cases free of charge and have established some important legal principles affecting thousands of people

Public-interest law

"We are beginning to develop a new speciality, an area which has been under-represented and under-litigated for a long time," commented the centre's part-time director, Mr Richard Rosenthal

That speciality is public-interest law

It consists of cases represented by individual problems but illustrative of problems affecting a wider number of people These cases would not see the courts but for the work of public interest lawyers

They include housing problems, labour issues, influx control cases and applications by transport companies for bus fare increases

"It is totally impossible for an individual to litigate about the increased cost of a bus ticket. But collectively the effect of an increase is substantial," Mr Rosenthal says

"Public interest issues tend to impact on poor people more than on the rich The poor tend to be both more affected and more impotent This is a function of economic disadvantage as well as of lack of knowledge"

Mystique of lawyers

He sees the centres as helping to "demythologize" law by removing the mystique of lawyers and courts for ordinary people

"Lawyers are an unfamiliar breed to poor people Their experience is generally negative They are at the receiving end of the judicial system rather than experiencing it as something that can be used to assert their own rights"

As in other centres, the LRC here helps, and is helped by, local and community advice offices to which poor people take their troubles

Where a pattern emerges of several cases involving the same principle, the LRC will take one to court as a test case to establish a right It is then often involved in a series of subsequent cases to ensure that right is enforced

Two watershed cases on black urban rights were both undertaken by the LRC These were the Komani case which established the rights of black people with urban rights to have their families with them, and the Rikhoto case which extended permanent urban areas rights to contract workers

The Cape Town LRC is now taking up the cases of a number of local contract workers whom the Administration Board says do not qualify for "Rikhoto" rights This, too, may result in a test case being taken to the Supreme Court

Local successes

Local successes already include the restoration of shower facilities to a Langa hostel after the Administration Board turned the showers into a dry-cleaning concern It also secured the reinstatement of a factory worker dismissed during a labour dispute and believes the case helped defuse the dispute which was settled soon afterwards

The centre is now undertaking a dispute about increased rents in the Paarl township of Mbekweni and has had correspondence with the Administration Board about the destruction of squatters' property in Crossroads raids

The major cases make the headlines, but they are not the centres' main workload of establishing and enforcing the rights of the disadvantaged

"Landmark cases are a very important but quantitatively small area of our work," Mr Rosenthal says

"We can cite four or five watershed cases, but the bulk of our work is bread-and-butter issues"

Mr Geoff Budlender, assistant director of the Johannesburg LRC seconded to Cape Town for four months to help establish the office, said one of the most heart-breaking aspects of the work was having to turn away people in trouble

"We refer quite a lot of cases to the state Legal Aid Board, which works quite well here and certainly better than in some other centres But their funds are also limited

No other channel

"We, too, have to turn away people who may have no other channel for redress"

Legal Resources Centres try to be more than legal aid agencies, selecting cases which will have the maximum impact for the greatest number of people They take on hire-purchase cases, such as where a Johannesburg company had "sold", repossessed and resold the same vehicle to several people, and the rights of domestic workers to proper notice where a pattern of illegal dismissals is noted

But inevitably there are individual cases because the people concerned believe they have been wronged and have nowhere else to go

The LRCs are trying to limit these cases by providing manuals for use by "paralegals" in community advice offices throughout the country They have produced an advice office training manual and separate publications on pension rights, unemployment insurance and the Black Administration Act

Balancing the scales

They hope that most people can be helped by having their rights explained at advice offices and clinics, community self-help centres for which the LRCs provide back-up services The local LRC will then undertake litigation when recourse to the law seems necessary

Mr Budlender says making real the rights people have on paper is part of helping the legal system to do its job protecting the weak against the powerful and the individual against the State

"You cannot do that unless the poor and the individual have lawyers The Americans call it balancing the scales of justice"

Balancing those scales is not as financially rewarding as private legal practice, but the job satisfaction of establishing rights for the disadvantaged is high Both Mr Budlender and Ms Shehnaz Meer, the only full-time attorney at the Cape Town centre, love the work

Source of funds denied

Mr Budlender returns to the Johannesburg centre next year He will be replaced by Mr Lee Bozalek, a partner whose city law firm has made available to the Cape Town centre for a year

Balancing the scales of justice is also expensive The centres are financed by the Legal Resources Trust, a registered fund-raising organization which has budgeted more than R1-million for next year

Most of the money still comes from overseas donors, but local lawyers and companies are making increasing contributions Some firms are contributing R5 000 and more a year

One potential source of funds has been denied the Cape Town centre The Administrator refused the Cape Town City Council permission to contribute, deciding the Legal Resources Centre was not an organization of public benefit entitled to receive money from local authorities

Family courts — a more gentle approach

21/12/83 (252) Star

The breakdown of a family, for reasons ranging from divorce to juvenile delinquency to alcoholism, is finally dealt with by a court of law. Many people involved with family problems would like to see the introduction of courts geared specifically to dealing with the family. Report by LYNNE CORNFIELD.

An air of expectancy hangs over professionals and volunteers concerned about the law and the family here they are waiting for the Hoexter Commission findings on family courts

The commission investigated the structure and functioning of all courts —. but the family courts handle all matters relevant to families such as divorce, custody, juvenile crime and so on

They have been successful in other countries and the concept has great support here

The Women's Legal Status Committee co-convener, Mrs Roberta Johnston, feels family courts would ease some of the trauma of family conflict

She welcomed the "gentler" approach of the family court saying it would afford financial relief in a country where litigation was expensive and legal aid sparse

The Johannesburg Child Welfare Society's director, Mr Howard Ferreira, also saw the possibility of a family being treated as a whole with a more humane approach

The essence of family life is togetherness — but all too often that unity is threatened by violence among family members, parental discord or juvenile delinquency

When the problem is serious enough to go to court, the process of disintegration is aggravated by the fragmentation of jurisdiction

Family violence is dealt with in the criminal court, juveniles in the juvenile court, children in need of care in the children's court, maintenance in the maintenance court, child custody and divorce in the Supreme Court

Too often the emphasis is on punishment or else the judicial officer has been given too little information to have real insight into the problem and its solution

Crime is crime, the law is the law, and the courts are under an obligation to make decisions based on the Criminal Procedures Code However families are the cornerstone of society and other places, like Canada and certain American states, have found a different way of dealing with cases that involve families — family courts

South Africa could follow, depending on the commission's findings

What are family courts?

There are many models but the concept was outlined recently at a symposium for social workers by Professor Francis Bosman, Director of Development of the Association of Law Societies

Family courts could have a higher status than magistrates courts Divorces must be presided over by a judge

The advantages of family courts are that families in trouble are offered more than a purely legal solution to their problems and that their conflicts are dealt with in a single integrated court with staff working as a team with one philosophy and under the direction of one specialised judicial officer, not necessarily a judge

The standards laid down in America for a judge in juvenile and family courts are

- Deeply concerned about the rights of people
- Keenly interested in the problems of children and families
- Sufficiently aware of the contribution of modern psychology, psychiatry and social work so that due weight can be given to their findings
- Able to evaluate evidence and situations objectively
- Eager to learn
- A good administrator
- Able to conduct hearings in a kindly manner and talk to children and adults sympathetically without losing the essential dignity of the court

Professor Bosman sees family courts as an opportunity for closer co—operation between social workers and lawyers who, under the present system, "still operate to a large extent separately and independently of one another and sometimes even regard one another as adversaries or at least with a degree of distrust"

She said the link between the law and the social sciences were what gave family courts their distinctive stamp

"A court cannot be called a family court if it denies the social disciplines the vital and necessary roles they need to play in many areas of the legal process"

Professor Bosman felt that under the present system there was not always sufficient emphasis on rehabilitation, be juvenile delinquent marriages

"A family court in the first place be as a court of law but does not mean th family court should lend itself to provi certain advisory, m gatory, counselling enforcement servic she said

If it was staffed should be with so workers and psych gists, the family c would be geared for and would be able to the judicial officer ex sive background infor tion

That would go a way to ensure the possible protection

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2/1/83 Star

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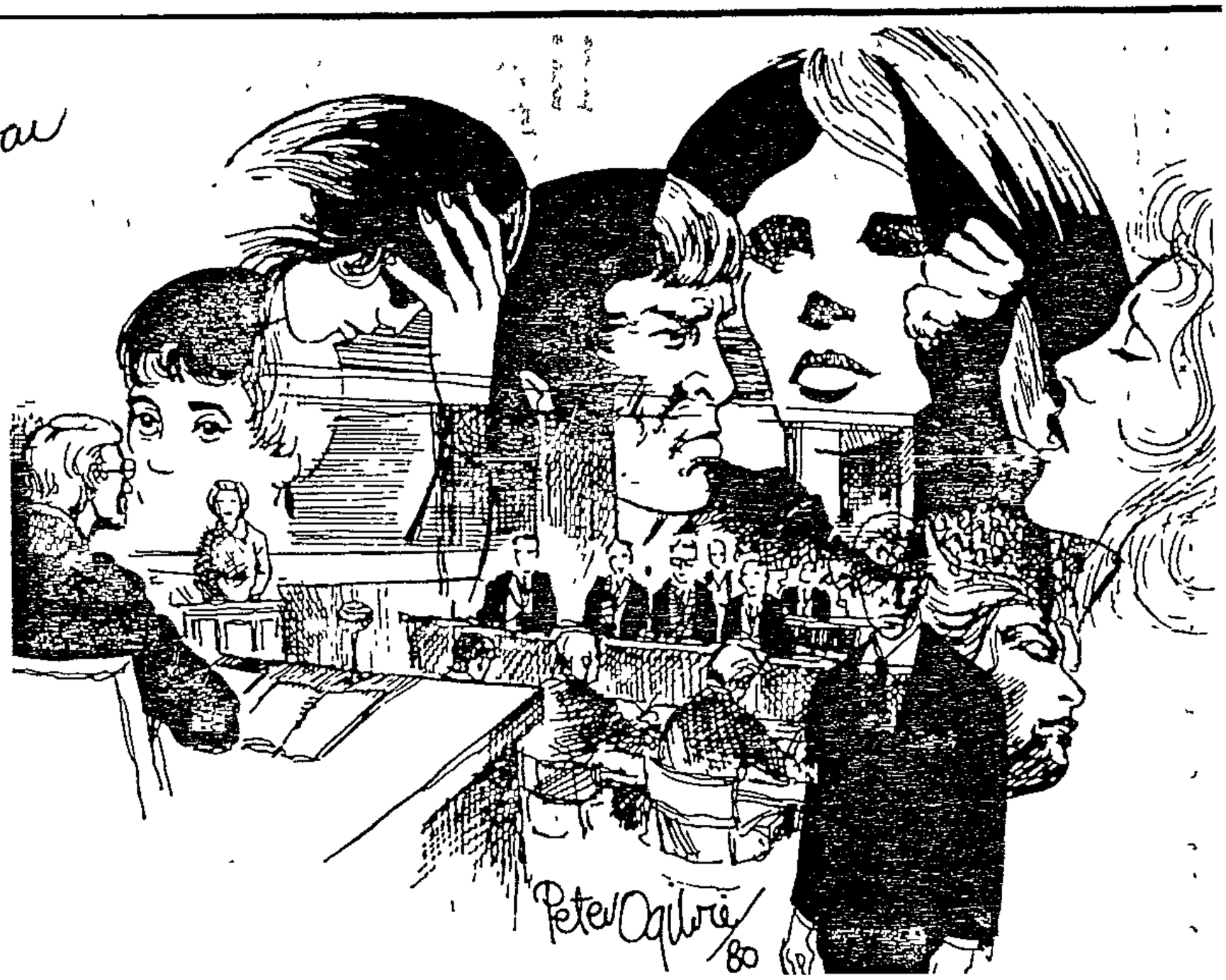

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Professor Bosman felt that under the present system there was not always sufficient emphasis on rehabilitation, be it of juvenile delinquents or marriages

"A family court must in the first place be seen as a court of law but this does not mean that a family court should not lend itself to providing certain advisory, investigatory, counselling and enforcement services," she said

If it was staffed as it should be with social workers and psychologists, the family court would be geared for that and would be able to give the judicial officer extensive background information

That would go a long way to ensure the best possible protection for children in undefended divorce cases, where one parent may simply be giving in to undue pressure from the other

Under the present system, conflicts over money and children are fought out in court by the parents in much the same way as any other civil case Their confrontation can ruin any hope of long term co-operation between them so necessary for the child's welfare

The more relaxed and informal atmosphere of the family court, with its back—up of social services, might also encourage more victims of family violence to take action

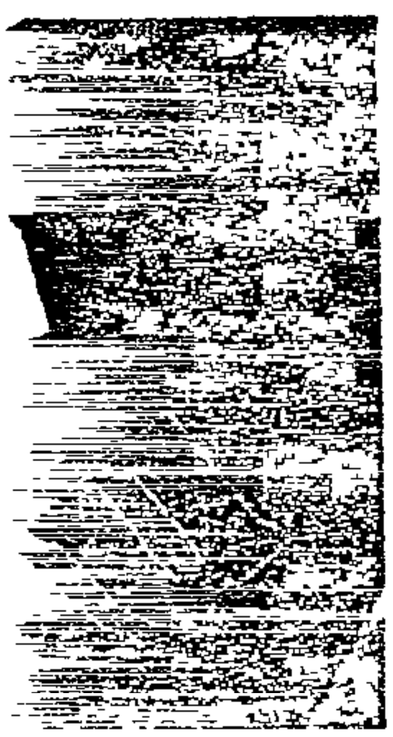
Professor Bosman said police were loathe, for justifiable reasons, to intervene in family matters Often when they did, an abused wife would do her best to have the case withdrawn or would jeopardise the case in court by giving poor evidence

These matters could be handled with greater delicacy through the family court system where guidance and counselling could provide an alternative to prosecution in some cases

Family courts would also have a vital role to play in handling juvenile delinquency Professor Bosman said youngsters were often prosecuted for crimes that amounted to nothing more than childish pranks or that would not have happened if they had had more parental supervision

The court's back—up services could ensure that more emphasis was placed on the sociological circumstances of the offenders and their rehabilitation, and less on their criminality and punishment

Professor Bosman said family courts should not be viewed as institutions that would attempt to save marriages at all costs Rather, their role would be to identify those cases where there was a chance of reconciliation, and to help those where there was not, to dissolve with the least amount of trauma



World issues pall as money takes over

By Donald Knowler, Star Bureau

NEW YORK — Today's woman is more interested in financial success, less concerned about political issues and more tolerant of premarital sex, a new study has shown

According to a survey of 1 000 American women, making "a lot of money" is more important now than a year ago

On premarital sex, 44 percent disapproved, compared with 51 percent last year Two-thirds of women aged 18 to 24 thought it acceptable, while less than a third of women 65 or older approved

PUBLIC SECTOR - GOVT. - JUSTICE

1984

JANUARY —

ARGUS 4/1/84 (252)

Summons with a difference for Mrs Sickle

Mrs Pamela Sickle, appointed South Africa's first coloured woman magistrate.

By SAN VIVIER
Staff Reporter

PUBLIC prosecutor Mrs Pamela Sickle was on leave two weeks ago when she heard she would have to return to Athlone Magistrate's Court this week — to be on the Bench

The first coloured woman magistrate in the country ("there's a bit too much emphasis on colour in that question") was "shocked" at her appointment

It was "nerve-racking" to sit on the Bench for the first time on Monday, she said

"But once there I got used to it," she added with a laugh

Mrs Sickle does not think her job will be too difficult "It's a case of putting your shoulder to the wheel" she said

"It's like any other job other women before me have done it and there were no problems Anyway, I'm used to working in a man's field

About the "first" as a coloured woman, she said frankly "I don't like the question There's a bit too much emphasis on colour"

The daughter of a medical practitioner, Mrs Sickle grew up in Elsies River and attended Harold Cressy School

Her father encouraged her to do a law degree and she completed a B Proc at the University of the Western Cape She started working for the Department of Justice in 1980

At 30 Mrs Sickle is also probably one of the youngest magistrates in the country, appointed after only three years as a prosecutor Most prosecutors work for about five years before being appointed magistrates

She said law was an ideal profession for women There was no discrimination in the Department of Justice, the hours were regular and she enjoyed the human contact

She is married to a motor mechanic and is the mother of an 18-month-old son (his grandmother looks after him)

Mrs Sickle planned to do an LLB degree this year, but now thinks she will have to postpone her studies so that she can "get used to the Bench"

The appointment was a "great challenge", she said

She does not feel particularly strongly about feminism, but makes it very clear that she does not believe a woman's place is in the home

Justice with a feminine touch

(272)

12/1/84 C. Herald

By Nazeem Howa

IT took slightly-built Mrs Pamela Sickle just three years to work herself up from State Prosecutor to Control State Prosecutor to magistrate, and in earning a position on the bench she became the first black woman to be given this appointment.

But this meteoric climb up the ladder of success has not put paid to her ambition She hopes to work her way up to the position of Regional Magistrate soon

Mrs Sickle, 30, completed her matric at the Harold Cressy High School and then completed a B Proc degree at the University of Western Cape in 1979 before joining the staff at the Athlone Court as a State prosecutor in 1980

● *MRS Pamela Sickle*

SURPRISE

"In 1981 I was appointed Control State Prosecutor and now I have been appointed to the bench It came as a surprise to me as prosecutors who become magistrates are normally called upon to do a special course I have never done such a course," a proud Mrs Sickle said

And during her three-year stint at the law courts, Mrs Sickle has come up with some definite personal opinions about matters affecting her job But being a magistrate she cannot allow these opinions to influence her decisions.

Asked about the violence inherent in our society and her contact with it in the law courts, she lightheartedly points to the grey streaks in her hair

Then seriously she says "Actually, I don't think I have that much more contact with violence than the next person If I were a housewife, I would have as much contact with violence as any prosecutor or magistrate"

PUNISHMENT

Turning to community service as a means of punishment, she said "I have no objection to community service instead of prison terms, but one should just be very careful about where to draw the line

"Depending on the nature of the offence, I would prefer to sentence those convicted to community service, but can one sentence a convicted murder to clean out a morgue?"

Mrs Sickle's husband, Derek, is a mechanic and the couple have a 17-month-old son, Brett. With the family and the housekeeping to do, she has hardly any spare time.

But she is determined to further her studies next year when she plans to enrol for an LL B

EVENING POST, TUESDAY, JANUARY 31, 1984

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Weekend bail facilities sought by lawyer groups

JOHANNESBURG — The South African legal profession is to ask the authorities to make it possible to obtain bail from magistrate's courts during weekends and public holidays

The Association of Law Societies and the General Council of the Bar, noting that at present bail during those periods can be granted only by a judge of the Supreme Court, decided this at a meeting in Johannesburg.

Judges were available only in the major cities of South Africa so that many arrested people had no opportunity to seek bail during those times, it was pointed out

It was also decided to make representations to the Government about the short notice sometimes given to the legal profession in connection with important proposed legislation.

It was "sometimes so short that informed and considered comment by the legal profession is not possible within the limited time available".

"The profession considers it to be its public duty to comment on proposed legislation which affects the administration of justice. It cannot discharge this duty adequately if it is not given the time to do so"

Two recent moves in the legal field were approved at the meeting:

- The establishment of the proposed small claims courts. Advocates and attorneys pledged their support and assistance in manning them.
- The acceptance by the Legal Aid Board of the principle of providing indigent people charged with capital offences with legal representation through the legal aid system instead of assigning their defence to counsel acting *pro deo*.

However, it was accepted "current economic circumstances" prevented the immediate implementation of the new system — Sapa

†Indicates translated version

For oral reply

Hansard 3/2/84

(252) **Port Shepstone magistrate**

Q. 601. 36

*1 Mr D J DALLING asked the Minister of Justice

(1) Whether his Department has instituted an investigation in regard to the Port Shepstone magistrate referred to in a ruling given by the Pietermaritzburg Supreme Court in or about November 1983, if not, why not, if so, what is the name of the person concerned,

(2) whether the investigation has been completed, if not, when is it anticipated that it will be completed, if so, what were the findings,

(3) whether any action has been taken against this person, if not, why not, if so, what action?

The MINISTER OF JUSTICE

(1), (2) and (3) Before the matter could be analysed the official concerned was transferred to Johannesburg in the normal course of events with effect from 1 January 1984 where he resigned His last working day was 31 January 1984 I am prepared to furnish the hon member with his name on a confidential basis

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TELLING THE TRUTH ABOUT THE L

By SYDNEY KENTRIDGE

(Exerpts from an article in a recently published collection of Senate Special Lectures, issued by the University of the Witwatersrand)

THERE is of course a peculiar difficulty in trying to find out or state the truth about any important subject in South Africa

Anything one says is likely to be interpreted either as an attack on the government or as a defence of apartheid. This means that inconsequential statements are given an importance beyond anything they deserve

The problems of stating or even seeking the truth about any important institution in South Africa apply with peculiar force to the law

De Tocqueville, the 19th-century observer of the American political system, said, in a celebrated aphorism, that in the United States scarcely any political question arises that is not resolved, sooner or later, into a judicial question

In South Africa, by contrast, many issues which elsewhere would be simply legal issues are regarded as political — the fairness of our criminal procedure, the adequacy of our legal aid system, the death penalty for murder, administrative inroads into the powers of the judiciary

Indeed, those who question these aspects of our legal system may be accused of the worst crime of all — providing ammunition for the external enemies of South Africa

Confident

And it is not as if those who react in this manner are merely members of the government or, shall we say, the electors of Germiston district They include lawyers from all branches of the profession That is why it is so difficult for Bar councils and law societies to speak confidently for all their members on subjects such as these

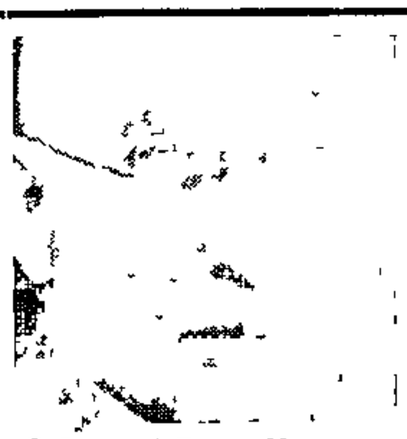
On the other hand, approval of the South African legal system and the South African judiciary can also bring wrath down on one — but of course from a different quarter

If one makes even so modest a statement as that the Supreme Court of South Africa is on the whole able and independent, and that in general accused persons appearing before that court get a fair trial, one runs the risk of being told that one is giving a veneer of legality and respectability to an oppressive system

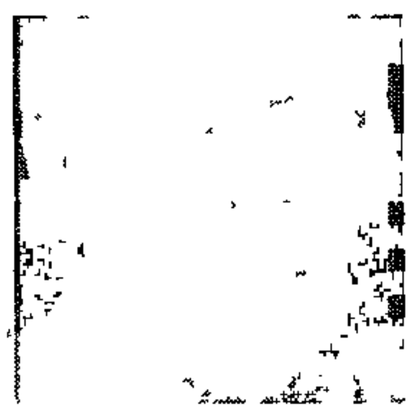
There is plainly some element of truth, and not necessarily an unimportant one, even in these tired cliches But it is equally plain, to me at least, that this is far from the whole truth

The truth seems to me to lie somewhere between extravagant praise and intemperate censure This middle position is not very surprising or very original but nor is it one which either supporters of the government or

It is seldom that any word of criticism of our judiciary is heard. Here one of South Africa's leading advocates argues that lawyers and law journals should be less circumspect in their comments upon controversial judicial appointments



● General Barry Hertzog ... own appointments



● General Jan Smuts political preferences

had influenced judicial appointments in South Africa Both Smuts and Hertzog made many appointments to the Bench which could be called political

Nonetheless, it must be said that over the past 30 years political factors have been placed above merit — not only in appointments to the Bench but in promotions to the Appeal Court

This has undoubtedly led in many cases to better qualified men being passed over in favour of others less worthy of appointment or promotion

Again, while it may sometimes be acceptable to accord some preference to a well-qualified candidate of the day, it is quite another thing to make an appointment solely on political grounds

Internal Security Act or high treason

In certain parts of the country, at least, it has become obvious that trials of persons charged with these offences are usually heard not at random by all or any of the available members of the Supreme Court Bench but only by a section of the members of that Bench

Time and again the same few judges seem to sit in these cases Many senior judges, who have been 10 years or more on the Bench,

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Time and again the same few judges seem to sit in these cases Many senior judges, who have been 10 years or more on the Bench, have never found themselves presiding over such a trial

One does not know either how the judges are allocated to these cases or on what basis the prosecuting authorities set down the cases for hearing

Disturbing

This is disturbing because there ought never to be the slightest suspicion that the courts are being manipulated The judges themselves, I am certain, are not and could not be parties to this selectivity

The responsibility must lie somewhere else The matter requires investigation, not merely an awkward silence

By far the greater part of the judiciary sit in the lower courts as local or regional magistrates They have limited jurisdiction in civil cases and limited but very large jurisdiction in criminal cases They, together with the commissioners who sit in the courts specially constituted for blacks in terms of the laws governing influx control, are responsible for deciding the great preponderance of cases heard in this country

All the magistrates are civil servants, under the discipline of the Department of Justice Magistrates are not chosen from the ranks of the practising legal profession They have risen in the service Their whole legal experience and background has been the prosecution of offences on behalf of the state We take this as the norm

We in South Africa have never known any other system But its drawbacks are not difficult to see From the public point of view, the connection between the judicial branch and the prosecuting branch of the Department of Justice seems too close

More important perhaps, their position as civil servants makes magistrates vulnerable to governmental pressures

There was an extraordinary illustration of this which came to light a few years ago It was revealed that for many years there had been in existence a departmental circular which urged magistrates to be cautious and restrained in making adverse comments in their judgments about police witnesses

Directive

No such directive would ever have been tolerated by the Supreme Court Bench and no civil servant would have had the temerity to send such a circular to the judges

It is time that some thought was given both to the effects of the present magistrates court system and to the possibility of increasing the independence and improving the standing of the magistracy.

As to the effects of the system, it would surely be worthwhile to carry out some comparative research into criminal trials in the Supreme Court and the magistrates court

What is the conviction rate in the two courts? What are their respective attitudes to the granting of bail? How do they deal with pleas of guilty by undefended accused? What steps do they take to ensure that undefended accused know of their rights to legal aid?

Nor should it be assumed in advance that in all these respects the magistrates courts necessarily perform worse than the Supreme Court.

Criticism

However, South Africa being the sort of country it is, there is no doubt that praise is more acceptable than criticism This is so especially for those who, as members of the practising legal profession, have to play some part in the operation of the legal system

It cannot be denied that there are certain areas of law and legal procedure about which the profession as a whole says little, even though there is much which might be said This is regrettable

I believe that the judicial system is the country's most valuable social institution But it is no help to an honest understanding of it to suppress facts which may show that it is less than perfect and is capable of improvement Nor is it healthy for the institution itself

Adlai Stevenson once said that it is pleasant to hear yourself praised — as long as you don't inhale I think at times that our judiciary has inhaled too much praise for its own good

Our system is an advanced and civilised system It must accordingly be judged by civilised standards And this in turn means that one must not shrink from looking at the real facts about it

The foundation of our legal system, as of all civilized legal systems, is the existence of an independent judiciary

The part of our judiciary most in the public eye is the Supreme Court The judges are appointed by the executive and, once appointed, they cannot be removed save by a resolution of Parliament, on the grounds of misconduct

There has never been such a resolution and it would be unthinkable that any such method would be used to remove a judge merely because he gave a judgment or judgments which the government did not like

The independence of the judges is thus a reality and not a mere legal fiction

In the words of Mr Justice Schreiner, the independence of the judges "is a major source of the security and well-being of the state"

The judges are almost invariably appointed from the senior members of the practising Bar They are not government servants and their training and professional ethics have given them habits of detachment and independent judgment

The judges of the Supreme Court have deservedly been commended, both in South Africa and abroad, for their ability and for their readiness, often shown, to decide cases adversely to the government of the day

The fact is that some of our judges are outstanding by any standard, many are very good indeed and some certainly are not.

What more can one expect of any judiciary? But there is something more which we are entitled to expect of the executive The underlying assumption of an independent judiciary is that, as far as it is possible to do so, the judges must be appointed on merit

Appointments on purely political grounds must be avoided if the independence and standing of the Bench are to be maintained

Puritanical

One must not be too puritanical about this The political predilections of the government of the day have influenced judicial appointments wherever the executive has had the power to appoint the members of the judiciary

This has been true not only of such a frankly political system as that of the United States, but even of the United Kingdom, that home of "the most eminent judges in the world"

Long before the present government came into office, political preference

Fortunately such blatant political appointments have constituted a small minority of the Bench It is these appointments which in fact endanger the standing of the Supreme Court.

Scrutinise

But I believe that it would be a proper function not only of Bar councils but of law journals published by university faculties of law to scrutinise the pattern of judicial appointments and, where necessary in the public interest, to comment on them

To do so honestly and in temperate language is not contempt of court Judicial appointments are no more exempt from public criticism than any other appointments to public office

There is another development in our judicial system which I find even more disturbing Over the past several years a certain pattern has become apparent in relation to trials for serious political offences

I know that whenever anyone talks of political offences some Minister or policeman says there is no such thing, people in this country are charged only for ordinary crimes

By political offences I mean offences committed with political motives — such as offences under the

Way to make punishment fit the crime

252

W. Post
N. End. Post 11/02/84

By SHARON LI GREEN

COMMUNITY service sentences as an alternative to short-term imprisonment will be imposed on an organised basis from now on by Port Elizabeth magistrates where appropriate

This move comes after concerted efforts by the South African National Institute for Crime Prevention and Rehabilitation of Offenders (Nicro)

The aim of community service — to rehabilitate an offender within the community by sentencing him to work in his spare time in a job linked to his offence — has a number of advantages

These are both for the individuals concerned and also the authorities who are faced with administering South Africa's enormous prison population, the highest *per capita* in the world

Prisons are a great economic expense for the State and consequently a burden for the taxpayer, costing R4,5 million a week

Since last October more than 65 community service orders (CSO) have been successfully imposed in Cape Town where the pilot scheme was launched with the full co-operation of the Chief Magistrate

The most successful CSO to date in terms of public approval has been the case of the man who had negligently caused a devastating fire on Table Mountain

After intervention by Nicro the man was sentenced to work in the Kirstenbosch National Botanical Gardens

According to Mr Justice Goldstone, national chairman of Nicro, it is hoped to launch the scheme countrywide — after an interdepartmental Government committee has completed its work

The final result, it is envisaged, will take the form of a schedule attached to the Criminal Procedure Act The existing Act has made provision for CSOs since 1977 after the Viljoen Commission recommendations, but it does not detail how they can be imposed

While Port Elizabeth magistrates have imposed CSOs in isolated instances, nothing has been done on an organised basis where community service institutions have been willing to provide employment for the offender

Now Nicro has had a reasonably positive response from various churches, charity and welfare organisations, hospitals, local government agencies and State departments willing to accommodate offenders sentenced to undertake community service

A useful reference has been a Bachelor of Arts Honours study, completed in September, 1983, on community service as an alternative to short-term imprisonment by a former probation officer at the Port Elizabeth law courts, Miss Magdaleen van Staden

Miss van Staden told Weekend Post that the aim of a prison sentence was not to eliminate the offender from society but to rehabilitate him

But because of the large prison population most of the short-term prisoners serving sentences of less than two years could not be involved in an intensive rehabilitation programme

A vicious circle was created with imprisonment having a negative rather than rehabilitative effect This to a great extent was the reason for their habitual relapse into crime

There should be an attempt to impose a prison sentence only as a last resort, she said

"Prisoners are deprived of freedom, material possessions — and all aspects of their daily existence are strictly controlled They lose their autonomy and have to respond to a number they have been allocated rather than their name"

Most important, a prisoner is cut off from the outside world "During visiting hours he is not permitted to have physical contact with his wife and children This often results in marriage and family breakdowns"

Despite reform programmes, a former court official with the Department of Health and Welfare in Cape Town, Mr I G van Gass, reports that problems inside prisons have increased

The Chief Magistrate of Port Elizabeth, Mr J A Coetzee, said this week there were several advantages of community service These included

- Bringing about a positive change in the attitude of the public towards offenders by indirectly giving them the opportunity of becoming more actively involved
- Upholding the offender's self-esteem by allowing him to retain his employment and providing for the needs of his family

Moreover, a suitable placement would contribute to a positive attitude towards life by the offender, thus allowing him to become a useful member of society

While Port Elizabeth magistrates approve of CSOs, Mr Coetzee said one of the main obstacles was the attitude of the community to this type of punishment, and whether they were willing to accept the implementation of it in the community

CSOs would be applied on an organised basis with a definite organisational structure of places of employment This was considered as a breakthrough for Nicro, according to its branch director in Port Elizabeth, Miss Venita Blignaut

"The imposition of CSOs is a team approach involving the Department of Justice, the Department of Health and Welfare and Nicro It is up to the probation officer to select a suitable case and then to make a recommendation

"The court must then be handed a pre-sentence report and if the sentence is imposed, Nicro has to coordinate the supervision of the offender who has to comply with certain conditions of the service"

She felt that the advantages of community service far outweighed the disadvantages "The unsympathetic attitude of the community must change — not all offenders are 'criminals'"

A retired Port Elizabeth magistrate, Mr B P Loots, supported the concept of community service in principle but felt that practical problems would inevitably arise

One of the most pertinent questions was who would be responsible for claims that arose if an offender was injured while working

"I'm against any measure that makes the execution of sentence more cumbersome," says Mr Loots "Judicial officers will have to include measures to ensure that the person is protected if he's hurt"

"However, community service orders should constantly be at the back of every magistrate's mind when he is sentencing An alternative, periodic imprisonment — which not only allows people to keep their jobs but also maintains family unity — can be imposed more frequently if only judicial officers use their imagination enough"

He felt that community work was most suitable particularly for juveniles It could even prove successful in serious crimes like malicious damage to property and assault where the culprit had to make amends by working in the employ of the person he had offended

MONDAY, 13 FEBRUARY 1984

†Indicates translated version

I or written reply

Unlicensed television sets

17 Mr D J DALLING asked the Minister of Foreign Affairs

(a) What was the estimated (a) number of unlicensed television sets in the Republic as at the latest specified date for which figures are available and (b) loss of revenue suffered by the SABC as a result?

The MINISTER OF FOREIGN AFFAIRS

(a) Based on estimates for 1983, there are of the order of 250 000 unlicensed TV sets in the Republic of South Africa

(b) Loss of revenue by the SABC as a result of this situation is of the order of R10 million

252

Commissioners' Courts: legal representation

Hansard Q Col 137 13/2/84

59 Mr P G SOAL asked the Minister of Co-operation and Development

Whether any persons appearing before the Johannesburg Commissioners' Courts in 1983 were legally represented in court, if so, how many persons (a) were and (b) were not so represented?

The MINISTER OF CO-OPERATION AND DEVELOPMENT

Yes It must be borne in mind that most offences are of a petty nature which in the normal course of events would not require legal representation

(a) Sixty-two (62)

(b) Sixty-two thousand four hundred and seventy-six (62 476)

Administration Boards. investments

Q Col 138 13/2/84

60 Mr P G SOAL asked the Minister of Co-operation and Development

What was the name of each commercial bank or building society with which moneys had been invested by Administration Boards as at 31 March 1983, as referred to in his reply to Question No 1081 on 31 August 1983?

The MINISTER OF CO-OPERATION AND DEVELOPMENT

(1) *Administration Board Western Cape*

(a) Commercial Banks Boland Bank, Trust Bank, Bank OFS, Merca Bank, Rondalia, Standard Bank

(b) Building Societies Allied, Saambou, SA Permanent, Natal, United, Eastern Province Trust Bou

(2) *Administration Board Eastern Cape*

(a) Commercial Banks Trust Bank Merca Bank

(b) Building Societies Allied, SA Permanent, Natal United

(3) *Administration Board Northern Cape*

(a) Commercial Banks Trust Bank, UAL Bank, Bank OFS, Finance Bank, Merca Bank, Santam Bank, Volkskas

(b) Building Societies Saambou

(4) *Administration Board Southern OFS*

(a) Commercial Banks Trust Bank, Santam Bank

(b) Building Societies Allied, Saambou, SA Permanent, Natal United, Eastern Province

252 [redacted]

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No staff shortage, says prosecutor

Courts have backlog of 8 000 cases

Star 13/1/84

By Mike Cohen and Joe Openshaw

There is a backlog of more than 8 000 cases at the Johannesburg magistrate's and regional courts, but the senior public prosecutor says they will be "worked off" in two months.

The senior prosecutor, Mr A de Vries, says there is no staff shortage at the courts and the situation cannot be compared with 1980, when there were 35 vacancies for prosecutors.

In many of the pending cases there had been formal appearances, but the accused had not pleaded because police were still investigating.

Police in Johannesburg, however, have denied this claim. They say that after the initial appearance of any accused — by law, within 48 hours of arrest — investigations are completed by the second appearance. This is usually within two weeks.

Traffic

Mr de Vries said there were 3 000 cases pending in the district courts and 5 000 in the regional courts.

He does not consider this abnormal. He said the number of cases pending in the regional courts was slightly higher than normal because the courts had recently been in recess.

"But this will be worked off in the next two months," he added.

In central Johannesburg alone — the area which falls under John Vorster Square and does not include outlying police stations — there are almost 2 300 cases pending.

This is the highest in a long time, according to a police spokesman.

But Mr de Vries said that once the courts were back in full swing after the recess "the number of pending cases will be considerably lower"

Inquests

He said the number of pending cases included a substantial number of traffic charges.

The courts were only four prosecutors short, he added, "but these posts will be filled by April".

The Johannesburg Magistrate's Court has 60 courtrooms — 30 district and 30 regional courts — and some of these deal with maintenance, juvenile affairs and inquests.

Mr de Vries also pointed out that staff from the Johannesburg courts were often sent to "special" cases at other courts in the Transvaal.

The "special courts" hear important cases scheduled to last from three days to three weeks. Some involve charges under security legislation

● See Page7.

On Friday the Appeal Court dismissed the appeal by Rudolf Mbuyisele Bonakele against a double death sentence for the kidnap and rape of a Springs schoolgirl. On the same day, Rodney Steven Ax, who was sentenced to death last year for repeatedly raping a Berea woman, had his death sentence set aside and substituted with a sentence of 15 years' imprisonment Below are the reasons for the judgments, given separately by two Acting Judges of Appeal

Star 252

Why rapist escaped hangman's noose

20/3/84

Convicted rapist and robber Rodney Steve Ax will not go to the gallows

The Appeal Court has changed his death sentence for repeatedly raping a woman in Berea, Johannesburg, between February 4 and 6 1983 to 15 years' jail

The court has also set aside his convictions and sentences on a charge of robbery and of robbery with aggravating circumstances

Ax, in effect, will now serve 44 years behind bars

He was convicted by Mr Justice W J Human in the Rand Supreme Court on June 9 1983 on three counts of rape, two of robbery, eight of robbery with aggravating circumstances, two of indecent assault, two of theft, and two of escaping from prison

On Friday, Mr Justice Howard (Acting Judge of Appeal), with Mr Justice Corbett, Mr Justice Cillie, Mr Justice Viljoen and Mr Justice Galgut (Acting Judge of Appeal) concurring, ordered that the 15 years' jail for rape should run concurrently with the other sentences

Mr Justice Howard said three experts who had testified on Ax's psychopathic condition were unanimous that he could benefit from intensive treatment in a highly disciplined environment, such as Sonderwater Prison Hospital

To arrive at this conclusion, a Professor Nelson had relied on Ax's youth, the fact that his psychopathic disorder was due largely to environmental factors, and the possibility of a gradual disappearance of the immaturity to which he had attributed Ax's cerebral dissfunction

PROGNOSIS

A Dr Berman had emphasised that what was otherwise a poor prognosis was modified by Ax's youth, and that this made him "a little bit more optimistic" about the prospects of rehabilitation

The judge said that none of the expert witnesses was prepared to say that treatment at Sonderwater would reform Ax, or was likely to do so But they were clearly convinced, on what appeared to be adequate grounds, that there was a real possibility of reform

Mr Justice Howard held that each of these findings constituted a material misdirection The findings were

- Ax was a "criminal psychopath with no hope of benefiting by treatment"
- There was not the slightest hope that he could become a reformed character
- There was no evidence that Ax's early family environment and later peer group (thieves and troublemakers) could have contributed significantly to his anti-social behaviour
- There was no connection between his psychopathic condition and the commission of the present series of offences
- He was a committed, unrehabilitated, remorseless, habitual criminal
- All methods to rehabilitate him had failed

Mr Justice Howard said the treatment of psychopathic disorders and prognosticating about the rehabilitation of psychopaths were matters peculiarly within the expertise of psychologists and psychiatrists, and the court would generally be guided by their opinions to arrive at conclusions on matters of this nature

There was no justification to ignore the unanimous and apparently well-founded opinion of experts, and to conclude in the teeth of their evidence that there was not the slightest hope of Ax benefiting from treatment or being rehabilitated

Mr Justice Howard said that, expert evidence aside, it seemed obvious to him that Ax's appalling childhood circumstances, with a brutal father forcing him to become a thief, must have contributed significantly to the warping of his character.

A look at the evidence left Mr Justice Howard in no doubt that Professor Nelson was correct to impute Ax's criminal conduct to his psychopathic condition

While it may be correct to describe Ax as a remorseless habitual criminal, the implication that "all methods" to rehabilitate him have been attempted — but without success — was quite unfounded There was no evidence that there had been any serious attempt to rehabilitate him

Sending a boy of 15 to prison for two years could hardly be regarded as an appropriate "method" to treat his psychopathic disorder, said Mr Justice Howard.

The judge said these misdirections were undoubtedly material, because they had featured prominently among Mr Justice Human's reasons for sentencing Ax to death

Ax's conduct in raping, humiliating and terrorising a woman evoked feelings of anger and disgust

"He is a violent psychopath with a dreadful criminal record — a menace to society But he was a mere 18-years-old at the time His criminal behaviour was ascribable to his psychopathic personality That, in turn, was largely due to early environmental factors," said the judgment

Mr Justice Howard did not think that in these circumstances the interests of society demanded that Ax be put to death

Kidnapper 'not compassionate'

The Appeal Court in Bloemfontein has upheld a double death sentence imposed last year on a man convicted of kidnapping and raping a schoolgirl

Rudolf Mbuyisele Bonakele was originally sentenced to death by Mr Justice D J Curlewis in the Springs Circuit Court on June 7 1983. Sentence on a charge of indecent assault was held over by the trial judge.

In an Appeal Court judgment last week, Mr Justice Galgut (Acting Judge of Appeal), with the concurrence of Mr Justice Corbett, Mr Justice Kotze, Mr Justice Cillie and Mr Justice Smuts (Acting Judge of Appeal), ruled that that the trial judge had exercised dne discre-

native had definitely been in the mind of the trial judge, Mr Justice Galgut said.

It was clear from Bonakele's own story that he had hoped to make the complainant amenable to his wishes and that the gifts he had made her were for this purpose.

It was true that he had not physically assaulted her, but there had been no need to do so, as she had been too small to offer resistance

Equally, it was true that in the sexual acts he had not shown undue violence However, Bonakele's conduct in keeping the girl confined and chained, in repeatedly performing

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The judge said that none of the expert witnesses was prepared to say that treatment at Sonderwater would reform Ax, or was likely to do so But they were clearly convinced, on what appeared to be adequate grounds, that there was a real possibility of reform

In his reasons for sentence, the trial judge summarised the evidence of the three experts and accepted their conclusion that Ax was a psychopath

He went on to describe Ax's criminal career from 1976 to February 1983 and, without indicating that he rejected the view of the experts, or giving any reason for disagreeing with them, he made various findings

Mr Justice Howard held that each of these findings constituted a material misdirection. The findings were:

- Ax was a "criminal psychopath with no hope of benefiting by treatment"
- There was not the slightest hope that he could become a reformed character.
- There was no evidence that Ax's early family environment and later peer group (thieves and troublemakers) could have contributed significantly to his anti-social behaviour.
- There was no connection between his psychopathic condition and the commission of the present series of offences.
- He was a committed, unrehabilitated, remorseless, habitual criminal.
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Mr Justice Galgut said it was clear from Mr Justice Curlewis's detailed reasons for imposing the sentences that he had taken into account all the mitigating and aggravating factors submitted by counsel for the defence and the State.

He had then concluded that the crimes were so serious that the death penalty, and not a long term of imprisonment, should be imposed

The whole tenor of the judgment pointed to the fact that imprisonment as a possible alternative had definitely been in the mind of the trial judge, Mr Justice Galgut said

It was clear from Bonakele's own story that he had hoped to make the complainant amenable to his wishes and that the gifts he had made her were for this purpose

It was true that he had not physically assaulted her, but there had been no need to do so, as she had been too small to offer resistance.

Equally, it was true that in the sexual acts he had not shown undue violence. However, Bonakele's conduct in keeping the girl confined and chained, in repeatedly performing sexual acts, ignoring her weeping and requests to be allowed to go home, and in threatening to kill her if she sought to escape could not qualify as compassion.

All that could be said for Bonakele, the judge concluded, was that he had sought to make a terrible ordeal less dreadful.

It was evident from Bonakele's actions that he had laid careful plans for the kidnapping and that the purpose had been to have sexual intercourse.

Despite the girl's supplications, he had continued to hold her captive in appalling and harrowing conditions.

prosecution in criminal proceedings in such lower court In terms of section 5 of the said Act a presiding judicial officer may designate any competent person to conduct a prosecution in particular criminal proceedings or in all criminal proceedings on any particular day if for any reason the person appointed in terms of section 4 is unable to discharge his function or if no such person has been appointed No specific qualifications or experience is thus required by law for the appointment of officers as prosecutors in commissioners' courts but whether a person is suitable for such appointment falls within the discretion of an officer qualified in law

Yes 49 on 28 March 1984

Hansard 28/3/84

Black commissioners' courts: prosecutors

Q.601.777

*18 Mr D J DALLING asked the Minister of Co-operation and Development.

(1) What (a) qualifications are and (b) experience is required for the post of prosecutor in the Black commissioners' courts in the Republic;

(2) how many persons currently hold (a) acting and (b) permanent positions as prosecutors in these commissioners' courts;

(3) whether any such persons do not have the requisite (a) qualifications and (b) experience, if so, how many in each case?

The DEPUTY MINISTER OF CO-OPERATION

(1) In terms of section 4(b) of the Criminal Procedure Act, 1977 (Act 51 of 1977), an Attorney-General may in writing appoint any officer of the State as public prosecutor in any lower court within his area of jurisdiction who shall, as representative of the Attorney-General and subject to his control and directions, institute and conduct on behalf of the State any

(2) (a) This figures is not readily available

(b) One hundred and twenty-two officials hold appointments as prosecutors in commissioners' court

(3) Falls away

Black commissioners' courts: commissioners

*19 Mr D J DALLING asked the Minister of Co-operation and Development

(1) What (a) qualifications are and (b) experience is required for the post of commissioner in the Black commissioners' courts in the Republic,

(2) how many persons currently presiding over commissioners' courts in the Republic were appointed in (a) an acting and (b) a permanent capacity,

(3) whether any such persons do not have the requisite (a) qualifications and (b) experience, if so, how many in each case?

†The DEPUTY MINISTER OF CO-OPERATION·

(1) (a) In terms of section 2(3)(a) of the Black Administration Act 1927 (Act 38 of 1927) an official must

have passed the Civil Service Lower Law Examination or an examination determined by the Commission for Administration to be equivalent thereto in order to qualify for appointment as a Commissioner (Presiding Officer)

(b) No experience is required by law

(2) (a) Forty-two

(b) One hundred and forty-nine

(3) (a) Forty-two officials were appointed in terms of section 2(b) of Act 38 of 1927 to act as temporary Commissioners These officials have completed part of their studies for the qualification and are busy therewith or have extensive experience

(b) Falls away

chased and (ii) expropriated and (c) for what purpose is each of these properties to be used?

The MINISTER OF TRANSPORT AFFAIRS

(1) and (2) Official residences have traditionally been made available in Cape Town to the General Manager and the System Manager of the SA Transport Services

A flat was purchased at Sea Point 30 years ago for the General Manager for an amount of R10 753 For obvious reasons it is no longer adequate for the requirements of the highest official in such an Organization The flat was, therefore, sold for R180 000 and a suitable flat was acquired in Sea Point for R381 000

Another more adequate residence for the System Manager, Western Cape, has been acquired in another part of the Cape Peninsula at R170 000 and the existing residence is at present in the market The valuation thereof is R210 000

The total additional costs involved in the acquisition of these two residences are, therefore, estimated at R173 000

No other properties were acquired in the areas referred to in the question during the period indicated

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TUESDAY, 3 APRIL 1984

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†Indicates translated version.

For written reply

Pinetown by-election: special votes

716. Mr S S VAN DER MERWE asked the Minister of Internal Affairs.

(1) With reference to his reply to question No 471 on 14 March 1984, (a) on what date and (b) at what time was each of the special votes in respect of the Pinetown by-election on 15 February 1984 mailed to Pinetown;

(2) whether his Department (a) issues any instructions and (b) furnishes any guidelines in regard to the mailing of special votes, if so, what is the nature of these instructions and guidelines, if not, (i) why not and (ii) what is the policy of his Department in this regard,

(3) whether any steps will be taken to prevent special votes arriving late in future; if not, why not, if so, (a) what steps and (b) when?

The MINISTER OF INTERNAL AFFAIRS:

(1) (a) and (b) The information requested cannot be furnished, as the envelopes were sealed, together with other documentation, as required by section 73 of the Electoral Act, 1979 It was possible to reply to Question No 471 on 14 March 1984 because, as provided in section 72(2) of the said Act, the list of covering envelopes received was available for public inspection at the office of the returning officer without paymnet of any fee during a period of one month after the declaration of the result of the poll

(2) (a) and (b) Yes Paragraph 7.11(d) of the Procedure Manual for Elections issued by the Department of Internal Affairs also contains the following instruction.

> "Hand the registered special covering envelope VE 3/9 in at the nearest post office as soon as possible or have it delivered by hand to the returning officer "

The hon member is also referred to section 87(4) of the Electoral Act, 1979

(3) In terms of section 82(5) of the Electoral Act, 1979, applications for special votes shall close at 21h00 on the second day preceding polling day In cases where it is not possible to deliver covering envelopes by hand to the returning officer concerned, the

Department has to rely on the service of post offices The Department is satisfied that officers involved in elections and the post offices take all reasonable steps to prevent votes reaching returning officers too late However, where a vote is recorded in a remote place two days before polling day, there may be several reasons why it is not received timeously

Voters' roll

720 Mr P G SOAL asked the Minister of Internal Affairs

How many names were (a) added to and (b) deleted from the voters' roll in each constituency of the Republic in each month from July up to and including December 1983?

The MINISTER OF INTERNAL AFFAIRS

Returns regarding the number of names added to and deleted from voters' lists in each electoral division of the Republic are made available monthly to the head offices of political parties The reply involves a mass of information which makes it impractical to furnish it by way of a formal reply

Hansard Q. Col. 837

Athlone school circuit area

3/4/84

744 Mr S S VAN DER MERWE asked the Minister of Internal Affairs.

How many (a) classrooms, (b) teachers and (c) pupils were there at the (i) Belthorn, (ii) Sunnyside, (iii) St Marks EC and (iv) Habibia primary schools in the Athlone school circuit area as at the latest specified date for which figures are available?

The MINISTER OF INTERNAL AFFAIRS.

As at 7 February 1984—

	(i)	(ii)	(iii)	(iv)
(a)	19	21	14	20
(b)	17	25	14	22
(c)	397	708	300	611

WEDNESDAY, 4 APRIL 1984

†Indicates translated version

For oral reply

252 Hansard

Johannesburg Commissioners' Court No 4

Q. Col. 838

*1 Mr D J DALLING asked the Minister of Co-operation and Development

(1) (a) What categories of cases are dealt with in Court No 4 of the Johannesburg Commissioners' Courts and (b) how many (i) full days during February 1984 did this court sit and (ii) cases were dealt with during this period,

(2) whether any persons appearing before this court were legally represented during this period, if not, why not, if so, how many (a) were and (b) were not so represented;

(3) (a) how many persons who (i) were and (ii) were not legally represented (aa) were found guilty as charged, (bb) were found not guilty and (cc) had their cases postponed to a later date and (b) how many of the persons convicted (i) were sentenced to imprisonment and (ii) paid fines?

The DEPUTY MINISTER OF CO-OPERATION

Court No 4

(1) (a) Section 10 Act 25/1945 (males)
Section 15 Act 67/1952 (males).

(b) (i) 21 days

(ii) 1 579 cases.

(2) No legal representation—reasons unknown.

(a) Falls away

(b) 1 579

(3) (a) (i) (aa) Falls away

(bb) Falls away

(cc) Falls away.

(ii) (aa) 1 043

(bb) 7

(cc) 158

Withdrawn	371
Total	1 579

(b) (i) 204

(ii) 91

The balance of 748 were cautioned and discharged.

Johannesburg Commissioners' Court No 6

*2 Mr D J DALLING asked the Minister of Co-operation and Development.

(1) (a) What categories of cases are dealt with in Court No 6 of the Johannesburg Commissioners' Courts and (b) how many (i) full days during February 1984 did this court sit and (ii) cases were dealt with during this period,

(2) whether any persons appearing before this court were legally represented during this period, if not, why not, if so, how many (a) were and (b) were not so represented,

(3) (a) how many persons who (i) were and (ii) were not legally represented (aa) were found guilty as charged, (bb) were found not guilty and (cc) had their cases postponed to a later date and (b) how many of the persons convicted (i) were sentenced to imprisonment and (ii) paid fines?

†The DEPUTY MINISTER OF CO-OPERATION:

Court No 6

(1) (a) Section 10 Act 25/1945 (females)

Section 15 Act 67/1952 (females) Trespassing: (Hostel Regulations). Curfew Proclamation R196/1936

(b) (i) 21 days

(ii) 1 755 cases

(2) No legal representation—reasons unknown.

(a) Falls away

(b) 1 755

(3) (a) (i) (aa) Falls away

(bb) Falls away

(cc) Falls away

(ii) (aa) 875

(bb) 31

(cc) 215

Withdrawn	634
Total	1 755

(b) (i) 601

(ii) 274.

Total 875

Council for Social and Associated Workers: annual fees

*3 Dr M S BARNARD asked the Minister of Health and Welfare:

(1) What are the annual fees payable to the Council for Social and Associated Workers,

(2) whether this amount was increased in 1983, if so, (a) why and (b) by what amount,

(3) whether he has received any representations concerning this increase; if so, (a) when, (b) from whom and (c) what was (i) the nature of these

representations and (ii) his response thereto?

The MINISTER OF HEALTH AND WELFARE.

(1) Sixty rand;

(2) no, amount increased as from 1 April 1984,

(a) as a result of increased costs,

(b) thirty-nine rand,

(3) (a), (b) and (c)(i) and (ii) Falls away

Hout Bay: quarrying of sand

*4 Mr C W EGLIN asked the Minister of Mineral and Energy Affairs

(1) Whether quarrying of sand is taking place at the sand dunes in Hout Bay, if so, by whom is it done,

(2) whether such quarrying is taking place with the approval of his Department, if so, when was approval granted,

(3) whether any conditions were attached to such approval, if so, what conditions,

(4) whether an environmental impact study was undertaken prior to the approval being granted, if not, why not, if so, (a) when and (b) by whom,

(5) whether he consulted any other State department in regard to the matter, if not, why not, if so, (a) which State department, (b) when and (c) with what result?

†The MINISTER OF MINERAL AND ENERGY AFFAIRS.

(1) Yes As far as can be ascertained, by the firm Clifford Harris, acting as the contractor for and under the control of the Divisional Council of the Cape and the Cape Provincial Administration

(2) No Since the quarry activities are for road construction purposes and are being conducted under the control of a Provincial Administration, a permit is, in view of the provisions of section 6B(1)(b) of the Physical Planning Act, 1967 (Act No 88 of 1967), not required to be obtained from my Department

(3) As far as is known, the Provincial Administrations prescribe certain conditions in connection with quarry activities of this nature

(4) This information can be obtained from the Cape Provincial Administration

(5) Falls away.

Mess facilities: Voortrekkerhoogte

*5 Mr J H VAN DER MERWE asked the Minister of Defence:†

(1) Whether members of all race groups make use of the mess facilities at the Staff Corps at Voortrekkerhoogte, if not, by members of which population group are these facilities used;

(2) whether members of different population groups make use of other facilities provided by the South African Defence Force, if so, what facilities,

(3) whether he will make a statement on the policy of the South African Defence Force in regard to the sharing of the above-mentioned facilities by members of different population groups?

The MINISTER OF DEFENCE

(1) If the question refers to the Personnel Service School the reply is yes

(2) Yes, all facilities which the SA Defence Force offers to its members. This is done on the basis of the provisioning of separate facilities for the different population groups under specific provisions.

(252)

HOEXTER COMMISSION

Race — children detained 3 years

Political Staff

TWO pre-school children were held in detention in Cape Town for three years awaiting race classification by the Department of Internal Affairs

This was revealed in the Hoexter Commission's final report

In the report the commission said it had come to its notice that "the disposal of children's court cases is sometimes delayed because the Department of Internal Affairs is slow to give decisions on the children's racial classification

"For example, the Chief Magistrate of Cape Town cited a case to the commission involving two pre-school children, in which it took the department almost three years to classify them as white

"These children were in detention from June 12 1978 to June 8 1981 before they could be declared children in need of care and the case could be disposed of."

Total break with 'black law' urged

Political Staff

THE Hoexter Commission has recommended that the administration of justice for blacks be removed from the Department of Co-operation and Development's controversial commissioners' courts and given to the Department of Justice

The commission described the courts as "outmoded and obsolete" and rejected the department's attempt to increase its sphere of influence by setting up and controlling a new South African law-court structure to deal exclusively with black criminal and civil cases

The commission said the system recommended by the department was "by any civilised standard, unnecessary, humiliating and repugnant"

CHANGE

Apart from recommending the retention of the tribal and chief's courts in rural areas be maintained, the commission wants an almost complete break with "black law"

The commission found that since the establishment of special courts for blacks there had been a fundamental change in the standard of living, life-style, family life and education of blacks This was particularly the case with urban blacks

"Restricting urban blacks under the present dispensation to commissioners' courts in their civil litigation is unrealistic and unreasonable

"The commission is satisfied that with the exception of courts of chiefs and headmen, the policy of separate courts for blacks is outmoded and obsolete"

The chiefs' courts, which were "not functioning satisfactorily in many respects", should remain under the control of the Department of Co-operation and Development and be retained for as "long as they continue to meet the needs of blacks"

Commissioners' courts chould have their judicial and administrative functions separated, and as soon as possible thereafter should be abolished along with commissioners' appeal courts

It also recommended the scrapping of black divorce courts, which should be transferred immediately to the Department of Justice's control, until the recommendation could be met

The commission set out the history of the Department of Co-operation and Development's growing control and administration of justice among blacks.

CLASHES

At times the situation led to clashes at ministerial level

From the first contact with blacks there had been a problem about recognition of black law and custom

The Black Administration Act of 1927 granted some recognition to black law and custom, but after 1949 the power of commissioners' courts was gradually extended, with a substantial increase in 1957 with the Native Laws Further Amendment Act

'Many should not be in prison at all'

Political Staff

SOUTH Africa had one of the biggest prison populations in the world and evidence had shown "that large numbers of people" should not be in prison at all, the Hoexter Commission of inquiry into the structure and function of the courts has found.

The overcrowded state of South Africa's prisons could not be allowed to drag on, the commission has warned

The overcrowding, which was in part caused by "hordes" of people being sent to prison for technical contraventions of apartheid laws was having "a significant bearing on the image of justice and the proper functioning of the criminal courts"

"Hordes of blacks"

Awaiting-trial prisoners, who could be held for 40 days or more, accounted for 267 995 of the people held against 282 200 sentenced prisoners

"A material factor in regard to the overcrowding of our prisons is that hordes of blacks land in prison as a result of influx control

"Judged by civilised norms, these people are not real malefactors.

"They are the needy victims of a social system that controls the influx of the people from the rural to the urban areas by penal sanction

"The reason for this virtual unstemmable influx is poverty"

The commission found that the prisons were crammed with thousands of breadwinners "who have landed there for minor technical offences" and this was having a major psychological effect on the black group

"Losing its power"

Firstly, after suffering the shame and indignity of imprisonment for minor offences, contempt was bred for the administration of justice and criminal courts in particular

It had also resulted in many blacks not regarding a prison sentence as a stigma and imprisonment was "losing its power as a deterrent

"A further and more obvious pernicious consequence of the overcrowding is its frustrating effect on the execution of sentences of imprisonment imposed by the courts"

This was that criminals sentenced to long terms were released prematurely, defeating the rehabilative object of the court's carefully considered sentence

The final report

THE Hoexter Commission, which inquired into the structure and functioning of the courts and had its fifth and final report tabled in Parliament today, was appointed in November 1979.

The draft legislation to have a small-claims court was one of the steps that flowed from the commission's recommendations.

In its final report it deals further with the structure and functioning of the courts, the efficacy of the structure and the desirability of changes

It also went into the desirability of an intermediate court between the lower courts and the Supreme Court and replacing existing regional courts. It turned this down.

The chairman of the commission is Mr Justice G G Hoexter.

252 The Argus 5 April 1984

New 'social' family courts are proposed

Political Staff

FAMILY courts which would deal with divorce and take over the functions of the existing children's, juvenile and maintenance courts, could be on the cards

The courts, which already exist in some countries, are recommended in the final report of the Hoexter Commission

The family court would have two parts It would have a social component "known as the family court conselling service" and an ordinary court component

The counselling part would have three functions —

- A reception process to sift and classify family problems, giving both legal and social counselling and referring spouses to marriage counsellors where a marriage could be saved
- A conciliation process to make the parting in marriages, where there was an irreparable rift, less traumatic for them as well as the children
- A supporting service to the court to carry out further welfare investigations or to ensure any counselling service required.

THE COURT COMPONENT

The commission, however, said "the moral decay, of which the high rate of divorce in South Africa may be a symptom, has to be arrested elsewhere than in the courts"

The court component would be a court of record and of law but the commission recommended that a "permanent rules board" would consider rules to shift the emphasis of the rules away from the "adversary system of litigation towards more inquisitorial procedures "

The court would be on the same level as a regional magistrate's court

Among the tasks of the family court would be divorce, including maintenance and custody matters, marriage of minors, matters dealt with by the Commissioner of Child Welfare, criminal charges against juveniles under the age of 18, legal matters affecting the aged and some drug rehabilitation issues

The commission recommended that simultaneously with the creation of a family court, an office of "Children's Friend" should be created

PUBLIC EXPENSE

"The Children's Friend will be legally qualified and in proceedings of the family court he will protect the interests of minor and dependent children"

The Friend would have the power to arrange legal representatation for a child at public expense

It suggested the court be housed separately, with the aim that the reception centre would "come to be accepted by the community as a place of refuge to which members of a family may have recourse at times of family crisis

Initially the court should be established in the four major urban centres as pilot schemes before being expanded, with a "circuit" court for rural areas

'Improve salaries to avoid shortages'

Political Staff

DRASTIC action to improve the salaries of public prosecutors and State advocates was needed to avoid extremely serious staff shortages

This was recommended by the Hoexter Commission

The commission pointed out that in its second report in 1980 there had been an urgent need to improve judicial officers' working conditions and salaries

There could be an even worse situation when the economy revived

RESIGNATIONS

Resignations had increased from 45 in 1981 to 76 in 1982 in spite of the continuing recession in the economy

The commission also recommended a major upgrading of attorneys-general, in status as well as in salaries

"The image abroad of an independent Bench in South Africa, much valued locally, is due in no small measure to the standard of criminal justice in the Supreme Court"

STATUS

It was necessary for the role of the attorneys-general to be recognised. Their status and prestige "should be such that they can carry out their functions fearlessly, freely and independently".

Separate judicial function proposed

Political Staff

THE Hoexter Commission has recommended that judicial functions be separated from administrative work in magistrates' courts and that all judicial officers there be made independent of the public service

It would like to see such a separation implemented as soon as possible

"Judicial magistrates" would then have the same independence as Supreme Court judges The commission also urges that their minimum academic qualification be the LLB degree

LIMITED

Administrative functions now performed by magistrates would be done by public servants who could be called "resident magistrates"

As part of the process of making judicial officers independent, the commission recommends that "active steps be taken to recruit judicial officers from all racial groups in the private sector"

The Argus
5 April 1984
252

Tighter divorce laws to protect children

Political Staff

THE Hoexter Commission has recommended a tightening-up of divorce laws, particularly to give children greater protection.

Included in the recommendations is an insistence that all minor children affected by a divorce case should have a legal representative appointed by the court, with the costs being met by the State in most cases.

Now courts have the discretion, but are not obliged to appoint legal representatives for children.

The commission also recommended that the Divorce Act of 1979 should be amended so that:

- No action for divorce could be instituted where minor children were involved until an approved social agency had investigated the circumstances of the children and the parties.
- A decree of divorce would only be granted when both parties had testified before the court.
- A decree would only be granted when the court was satisfied that the arrangements proposed for the minor children are satisfactory.

The commission found that "in the vast majority of undefended divorce actions neither is the question of fact as to whether the marriage has irretrievably broken down properly investigated, nor is the investigation into the suitability of the provision for minor or dependent children thoroughly undertaken."

This state of affairs had arisen because of overloaded court rolls with undefended actions being dealt with in the few minutes a case had, and because the vast majority of cases were undefended.

The superficial and unseemly haste with which undefended actions were dealt with "damages the image of both our administration of justice and the institution of marriage".

Hoexter report says Pass Laws must go

Big shake-up of SA's legal system urged

252

8/4/84 Star

Political Staff

Cape Town

Major reforms in the judicial system and incisive attacks on the administration of apartheid, are contained in the fifth and final report of the Hoexter Commission tabled in Parliament today.

Among the commission's dramatic recommendations are

- Reform of the Pass Law system, which presently puts tens of thousands of "non-criminals" in jail, over-crowds prisons and gives South Africa one of the highest *pro rata* prison populations in the world
- Reform of the legal system to bring laws pertaining exclusively to blacks closer to normal judicial practices
- Removal of control and administration of judicial procedures (including the controversial Commissioner's Courts) from the Department of Co-operation and Development
- Establishment of Family Courts
- Reform of the divorce procedures, particularly to give greater protection to children
- Greater independence for the judiciary, particularly officers in the lower courts
- Establishment of a Council of Justice, regardless of race, to advise the Minister of Justice.
- Introduction of a legal obligation on the Minister of Justice to consult the judge president of a division in the appointment of a judge.

The commission, which devoted an entire section of its report to "special courts for blacks" said the system was "outmoded and obsolete"

"That inhabitants of the same country should purely on the grounds of race be criminally prosecuted in separate courts for any offence whatever is, in the commission's, view, by any civilised standard, unnecessary, humiliating and repugnant

"Separate court systems on the grounds of race are morally indefensible and incompatible with the fundamental principle that all are equal before the law"

The commission harshly rejected evidence of the Department of Co-operation and Development not only to hold onto the control it already has on the administration of justice for blacks but also to increase the control to cover all judicial proceedings involving blacks.

It blamed influx control as being one of the prime causes of the overpopulation of prisons It warned that convictions under laws such as influx control were posing a serious threat to the judicial system The Pass Law threatened the social fabric, and also the prisons system Prisons were 46 percent above their accommodation capacity

In recommending the creation of Family Courts, the commission hopes to reduce the divorce rate as well as give better protection to children An essential part of the family court would be a counselling section which would attempt to solve problems without the necessity for judicial processes

In dealing with departmental staff problems, it warned that not only would status and salaries have to be substantially improved but recruitment in the lower courts would have to be broadened to include all population groups

Important work

The commission was appointed in November 1979 under the chairmanship of Mr Justice J G G Hoexter It has already made a number of important recommendations including the establishment of small claims courts or people's courts, which the Government has accepted The legislation for the small claims courts is before Parliament at the moment

The fifth and final report is the most sweeping of all and could spark off a serious political row.

Progressive Federal Party justice spokesman Dave Dalling today called for an urgent debate in Parliament on the report

● See Page 4, World section.

Judge who was critical of delays

By Eugene Saldanha

Mr Justice Gustav Gerhardus Hoexter (60) is a former judge of the Appellate Division of the Supreme Court noted for his frequent criticism of lengthy delays in bringing cases to court

He was appointed a judge in the South West Africa Supreme Court in July 1970 and in February 1974 was appointed to the Bench of the Natal Division of the Supreme Court

Mr Hoexter became a Judge of Appeal on June 9, 1982

Other members of the Hoexter Commission of Inquiry, which was appointed on November 29 1979, were Advocate Johan Coetzer, Professor Anthony Middleton, Mr Johan Potgieter and Advocate Austin Schreiber

In August 1980, Mr Coetzer withdrew from the commission and Advocate J C Ferreira, assistant to the Advocate-General, was appointed to replace him.

In December 1980, Mr Schreiber was appointed to the Bench of the Supreme Court He died suddenly in June last year.

The report was submmitted to the Government on December 5 last year and tabled in Parliament today

(252)

Hoexter recommendations welcomed in most quarters

Major reforms in South Africa's judicial system were proposed by the Hoexter Commission of Inquiry in its fifth and final report, tabled in Parliament yesterday. There has been widespread reaction to the report, which proposes dramatic changes to the structure and functions of the country's legal system. Most of the organisations interviewed reacted favourably to the recommendations and below are some of the reactions to the commission's report.

The president of the South African Association of Law Societies, Mr Louis van Zyl, has welcomed the Hoexter Commission's recommendations, saying there is "very little" in the report with which he disagrees

Perhaps the most significant recommendation, said Mr van Zyl, was that the judicial system should be independent of the Government

This meant magistrates would no longer be part of the civil service and a judge would be appointed only after consultation with the judge president of the province

The South African legal profession would have even further say over the running of the courts and legal system if the Government accepted the commission's recommendation that a council of justice be established, Mr van Zyl said

Mr van Zyl also endorsed recommendations concerning family law — that family courts be established and that the divorce laws be amended

The chairman of the Johannesburg Bar Council, Mr W H Schreiner, hoped the Hoexter Commission's report would give new impetus to improving the administration of justice

Referring to the commission's criticism of the overcrowding of prisons, Mr Schreiner said the legal system suffered from an exorbitant number of technical offences that called for prison sentences

The commission's recommendation on the need for legal aid, especially in criminal cases, has been welcomed by the director of the Legal Resources Centre, Mr Arthur Chaskalson, who said the reference to the pass law system in the report would focus public attention on two aspects of the legal system

"Legal aid is a necessity and not a luxury At present, thousands of people are convicted and sentenced without having had the benefit of legal representation

"The pass law system makes criminals out of otherwise law-abiding citizens and causes untold suffering The sooner it is abolished, the better," said Mr Chaskalson

The Black Sash has welcomed the commission's recommendation that judicial work affecting blacks presently performed by the Department of Co-operation and Development be incorporated under the Department of Justice

The organisation's vice-president, Mrs Joyce Harris, yesterday said the move was something the Black Sash had been advocating for many years

"We believe that the manner in which cases have been handled in the Commissioners Courts (which handle exclusively black pass offences and divorces) has been an aberration of justice in terms of the speed with which they are processed and the absence, for the most part, of legal representation for the accused, who are often unable to understand the proceedings and are not informed of their legal rights"

The director of the South African Institute of Race Relations, Mr John Kane-Berman, also praised the Hoexter Commission for calling for the abolition of Commissioners Courts

"But it seems to me that it is necessary to move beyond this — even if pass laws are administered by the Department of Justice rather than by the Department of Co-operation and Development, they are still discriminatory, inhuman and unnecessary"

Welfare groups have welcomed the commission's recommendations on the tightening up of divorce laws to give children greater protection

The director of the Child Welfare Society, Mr Howard Ferreira, said the recommendations were a "very big step in the right direction and that they have been long overdue"

These recommendations were also welcomed by Mr Allan Jackson of the Family Life Centre, who said they went a long way to protect the interests of the child in divorce cases

Mrs Roberta Johnston, of the Women's Legal Status Committee, also said the family court should be seen as something completely different from the criminal court but added that it should be a department of the Supreme Court

A clinical psychologist, who cannot be named for professional reasons, said the greatest value of the recommendations was that they could break the pattern of the vicious circle whereby children who suffered through divorce later often got divorced themselves

● See Page 6

Nat justice crucified — PFP

Political Staff

THE ASSEMBLY — There is to be a special debate on the final report of the Hoexter Commission and its recommendations of major changes in South Africa's legal system

Announcing this the Minister of Justice, Mr Kobie Coetsee, pointed out that the commission had undertaken its investigation into the functioning of the courts at the request of the Government

Mr Dave Dalling, the Official Opposition's chief spokesman on justice matters, has described the report as "a public crucifixion" of Nationalist incompetence in the area of justice administration

Mr Coetsee said the Government had given the commission its task to ensure that the South African judicial system kept pace with the needs of the times

As a result of the interim reports of the commission the Government had already made made considerable adjustments in the administration of justice in fields such as appeal procedures and a small claims court

The Minister criticised Mr Dalling's political use ofthe report He said the Government would give its viewpoint on the report at the appropriate time

Mr Dalling said the report of the commission was set to bring about enlightened change in the administration of justice

Its findings and recommendations represented in one document a comprehensive indictment of Government inertia and a critical commentary of the faulty perception held by successive Cabinets of the concept of justice administration in a democratic society

"It is essential that Parliament be given an early opportunity to debate fully and publicly the report's contents and its ramifications

"The Government should at the earliest possible opportunity make its attitude and reactions to the recommendations known

"The PFP, long the supporter of rational non-racial law reform, supports the major findings of the commission," Mr Dalling said

The Star Friday April 6 1984

Call for overhaul of justice system

Cape Times 6/4/84

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Political Staff

HOUSE OF ASSEMBLY. — Serious shortcomings in the structure of South Africa's judicial system have been highlighted by the government-appointed Hoexter Commission whose final report was tabled in Parliament yesterday.

Among its more glaring criticisms were the gross over-crowding of prisons by black technical offenders, the suspicion with which blacks regarded some officers of the court who were seen as "functionaries of the State", and the low standard of criminal justice administered to blacks in Commissioners' Courts controlled by the Department of Co-operation and Development

A major overhaul of the existing judicial structure was recommended

The Progressive Federal Party's spokesman for justice, Mr David Dalling, said the report was "a comprehensive indictment" of government inertia and a critical commentary of its faulty perception of the concept of the administration of justice in a democracy

He called for an urgent parliamentary debate on the report The Minister of Justice, Mr Kobie Coetsee, later said a debate was being arranged

The commission, under the chairmanship of Mr Justice Gustav Hoexter, was appointed in November, 1979, to inquire into the structure and functioning of the courts

Among its key recommendations was the establishment of a non-racial Family Court with wide-ranging functions to streamline the handling of familiy matters

It also recommended the scrapping of the Department of Co-operation and Development's Commissioners' Courts which play a key role in enforcing influx control

These courts were viewed by blacks "in a very unfavourable light" and were seen to be used by the government to subjugate them and restrict their freedom to seek work.

Security trials

The standard of justice in the Commissioners' Courts compared unfavourably with that of the Magistrates' Courts

The commission was also critical of aspects of security laws' trials

Other recommendations included:

- That all administrative functions, powers and duties affecting the administration of justice in South Africa be brought under the control of the Minister of Justice
- A major overhaul of salaries paid to attorneys-general, state advocates and public prosecutors
- That steps be taken to reduce the cost of litigation and the time taken to bring matters to court
- Restrictions on the appointment of judges as chairmen or members of government commissions of inquiry
- A substantial increase — under continuous review — of the monetary limits to the civil jurisdiction of the lower courts
- The provision of legal representation for accused persons of limited means in all serious criminal cases through a comprehensive legal aid system
- A review of the means test for legal aid to make it available to more people, and the promotion of legal aid by official recognition of and financial support for legal clinics
- The recruitment and training of people other than whites to provide some of the auxiliary administrative services in courts

● More on the Hoexter Commission report, page 4

Children held 3 years in 'bungle'

Political Staff

TWO PRE-SCHOOL children were held in detention for three years while they were being racially classified in what the Hoexter Commission has described as a "sorry example" of bureaucratic bungling

The commission has called for a special "Family Court" and the appointment of a Children's Friend to look after the interests of minors in judicial and other proceedings

In its report, the commission says that a Children's Friend "will contribute greatly towards preventing children from broken homes from becoming the victims of bureaucratic bungling"

"It came to the commission's notice that the disposal of Children's Court cases is sometimes delayed because the Department of Internal Affairs is slow to give decisions on the racial classification of the children concerned

"For example, the Chief Magistrate of Cape Town cited a case to the commission involving two pre-school children, in which it took the Department almost three years to classify the children as white

"These children were in detention from June 12, 1978, to June 8, 1981 before they could be declared children in need of care"

25c

Hoexter: 'Take magistrates out of civil service'

Political Correspondent

HOUSE OF ASSEMBLY — Lower courts would never be truly independent until magistrates were taken out of the civil service, the Hoexter Commission reported yesterday.

It said magistrates were exposed far too much to undue influence through their public service connections, whether or not this was ever exercised.

Evidence had also been presented that magistrates' functions could also create the impression that they were "political tools in the hands of the government"

The commission recommended that magistrates be relieved of their administrative functions and then given statutory independence by taking them out of the public service "as soon as possible"

It was for the government to decide how this should be done, but the commission described the matter as urgent

Its final report, tabled in Parliament yesterday, recommended a division between administrative officers with only minor magisterial powers and to be known as "resident magistrates", and judicial officers to be known by the present titles of "district magistrate" and "regional magistrate"

The commission said it had had many representations about the lack of independence because magistrates were exposed to undue influence because of their position as public servants

"They were at pains to point out that the problem was not so much whether magistrates were actually subjected to undue influence, but the very fact that it was possible at all"

Possible areas of influence mentioned in the report included:

- The threat of transfer with its disruptive effects on family life and home ownership.
- Possible inquiries into public service "misconduct" for disobeying a lawful order or commenting on the administration of any government department. This could lead to discharge or a salary reduction, which the commission said was incompatible with judicial independence
- Public service promotion and salary increases dependent on merit assessment, "which creates the possibility of currying favour"
- Evidence claiming public service directions had been issued, relating particularly to matters involving the State, which were "in direct conflict with the exercise of an independent judicial discretion".

The commission recommended that magistrates should be appointed and dismissed only by the State President on the recommendation of new advisory boards.

- Various practices in Magistrate's Courts — such as using police stations for court rooms — have been sharply criticized by the commission.

The commission said many witnesses had drawn attention to the practice of public prosecutors travelling in the same vehicle with the district or regional magistrates and arriving with the magistrate at the court

"Enquiries by the commission revealed this most unsatisfactory state of affairs to be likewise due to an administrative instructive carried out as an economy measure

"Legal practitioners, witness and litigants who notice this practice can hardly be blamed for inferring that in the course of a journey which sometimes takes hours, the magistrate and the prosecutors are bound to discuss the case concerned.

"The harm done by this practice to the image of independent administration of justice cannot be sufficiently deplored by the commission"

'Black' courts policy 'repugnant'

Political Staff

HOUSE OF ASSEMBLY — The Hoexter Commission has recommended the scrapping of commissioners' courts — one of the main cogs in the government's influx control machinery

In its final report tabled in Parliament yesterday the commission said "by any civilized standard" the criminal prosecution for any offence of inhabitants of the same country in separate courts purely on the grounds of race was "unnecessary, humiliating and repugnant"

The report said the commission had satisfied itself that with the exception of courts for chiefs and headmen, the policy of separate courts for blacks was outmoded and obsolete. They should "without delay" be amalgamated with ordinary courts

Special courts for blacks at present under the control of the Minister of Co-operation and Development were examined by the commission It was asked to investigate whether such courts should be brought under the responsibility of [illegible]

Social system 'jails hordes'

Political Staff

HOUSE OF ASSEMBLY — Hordes of black people who were not real criminals landed in overcrowded prisons as the needy victims of a social system of influx control, the Hoexter Commission has found

"The prisons are crammed with thousands of breadwinners who have landed there for minor technical offences," it said

The commission, whose report was tabled in Parliament yesterday, also found that "South Africa has one of the biggest prison populations [illegible] people in prison were awaiting-trial prisoners

A material factor in regard to the overcrowding of prisons "is that hordes of blacks land in prison as a result of influx control"

"Judged by civilized norms, there people are not real malefactors

"They are the needy victims of a social system that controls the influx of people from the rural to the urban areas by penal sanction

"The reason for this virtually unstemmable influx is poverty," the commission said

It felt the over- [illegible] for technical offences had a two-fold psychological effect on the largest population group in the country

"In the first place, it breeds in many blacks — especially those who have actually suffered the shame and indignity of imprisonment for minor offences — contempt for the administration of justice in general and the criminal courts in particular

"In the second place, the result is that contrary to sound social norms, the serving of a prison sentence is no longer regarded as a

PFP calls for debate on report

Political Staff

THE Progressive Federal Party spokesman on Justice, Mr David Dalling, yesterday called for an urgent parliamentary debate on the final report of the Hoexter Commission tabled in Parliament yesterday

Mr Dalling said "This is one report which the government cannot afford to shelve"

In a responding statement the Minister of Justice, Mr Kobie Coetsee, said the government had already started proceedings to [illegible] the matter debated in Parliament.

Mr Dalling said the report was a "public crucifixion of Nationalist complacency, indifference, insensitivity, inefficiency, bureaucracy, incompetence, indolence, racial prejudice and bluster" in the key area of justice administration

The report was set "to blow a fresh wind of enlightened change into the administration of justice [illegible]"

Single hierarchy

The report said that the general view of those who made representations — and particularly of blacks who were subject to the jurisdiction of the special courts for blacks — was that there should be a single hierarchy of courts for all irrespective of race

● The Department of Co-operation and Development urged the commission to recommend the creation of a new division of courts under the administrative control of the Minister of Co-operation and Development to try all offences committed by blacks in white areas where there were large concentrations of blacks, such as Soweto

The report said that from evidence given by representatives of the department it appeared that the ideal they were striving for was a separate hierarchy in criminal courts for blacks in which provision would be made for a separate magistrate's court, supreme court and appellate division for offences committed by blacks within the Republic

and that the prisons were "full to overflowing"

It established that in June 1983 a total of 267 995 of the 560 334 [illegible] social problem closely linked to the whole system of justice"

The cramming of prisons with breadwinners who had landed there [illegible] of the country, and that imprisonment as a punishment for the commission of a crime is consequently losing its power as a deterrent"

Cape Town: 'Too many judges'

Political Correspondent

HOUSE OF ASSEMBLY. — The Hoexter Commission believes Cape Town has nearly 50 percent more judges than it needs, while the Transvaal Supreme Court is the most understaffed.

In an examination of the workload of the various Supreme Court provincial divisions, the commission said Cape Town needed only 13 of its present 18 judges, while seven more were needed in the Transvaal, which had 38 at the moment.

The commission calculated that 50 to 60 percent of the country's judicial work was done in the Transvaal by only 39,5 percent of the judges

The other overworked divisions were Natal and the Northern Cape, while the Cape, Eastern Cape and Free State divisions had too many judges

The commission suggested a new distribution "more in accord with the actual needs of the respective divisions" Its proposal is.

Transvaal — 45 judges instead of 38; Natal — 17 judges instead of 15, the Free State — seven judges instead of nine; the Cape — 13 judges instead of 18, the Eastern Cape — eight judges instead of 13; and the Northern Cape — six judges instead of five.

This would be an increase of two over the present 96 judges.

The commission said its analysis was not necessarily accurate or expert and suggested proper planning by a statistician based on reliable data.

● If the government does decide to change the numbers of judges in the various provinces, it will not be by transferring judges from one area to another. They are specifically protected against transfer

Government inertia

The findings and recommendations of the commission represented a "comprehensive indictment of government inertia and a critical commentary of the faulty perception held by successive Cabinets of the concept of justice administration in a democratic society", he said

The government should, as soon as possible, and before the parliamentary debate make known its attitudes and reactions to the findings and recommendations of the commission A White Paper would be appropriate

The PFP supported the major findings and recommendations of the commission In particular the party agreed that

● The Executive had over the years displayed a lack of appreciation of the needs of the Judiciary

● The auxiliary and administrative back-up to the Judicial function had been neglected

● Political appointments to the bench should be avoided

● Urgents steps should be taken to simplify all rules of procedure to cut down on delays and the cost of litigation

Justice 'subverted'

● Black commissioners' courts worked in such a way that justice was subverted and they should be abolished

● A Family Court should be established

● Prisons were grossly over-populated largely due to technical laws based purely on race

"If all the above is not a public condemnation of past policy, acts and omissions, then nothing ever will be," Mr Dalling said

administration of justice"

Daily administration of the Bench was considerably dislocated by a judge's absence, and the only solution was often the appointment of acting judges — another practice the commission criticized.

While the appointment of temporary judges was justifiable as an unavoidable emergency measure, it said the administration of South African justice had largely become dependent on the appointment of acting judges

The commission recommended that no judge be appointed chairman or member of any ad hoc government commission of inquiry without the approval of its proposed Council of Justice, a 15-man body to advise the Minister of Justice

'Safeguards' mooted in appointing judges

Political Correspondent

HOUSE OF ASSEMBLY — The Hoexter Commission has recommended safeguards in the appointment of judges following criticism that some judges are appointed for political reasons

However, it made no findings on claims that certain judges were assigned most security trials, because the Judge-President of the Transvaal did not reply to a request for comment on why this had happened in the Transvaal

The report said it had heard evidence that individual merit was not always the decisive factor in assessing candidates for judicial appointment

It quoted a paper by Mr Sidney Kentridge SC, saying there had been sufficient "blatant political appointments" to the Supreme Court and the Appeal Court over the past 30 years to cause disquiet

"In the opinion of the commission it is prejudicial to the efficient administration of justice, the image of the Bench and public confidence if the manner in which judges are appointed leaves any room for gossip about the independence of those elevated to the Bench"

It recommended that the Minister of Justice should be required by law to consult various levels of the judiciary before recommending new judicial appointments to the State President

The commission's report, tabled in Parliament to the Bench

...ec s on ...e ...upreme Court had, however, maintained reasonable ...

...oo many reasons for declining judicial appointment"

Call to 'change legal aid system'

Political Staff

HOUSE OF ASSEMBLY — Far-reaching changes to South Africa's legal aid system have been proposed by the Hoexter Commission

It said "Any state that prides itself on a democratic way of life should not regard legal representation of parties before its courts as a pure luxury or a fortuitous benefaction of the Government, but as an essential service

"Indispensable to the achievement of the democratic ideal in any modern state is access to its courts for all its inhabitants

"For any person who has to appear in court without counsel, whether as an accused in a criminal trial or as a litigant in a civil action, the excellence of his country's judicial system is small comfort, and any claim by the State that the courts are open to all has a hollow ring," the commission said

It urged that a goal should be set to provide legal representation to accused people of limited means — and not only indigent people as at present — through a comprehensive legal aid scheme available to the accused in all serious criminal cases in all courts, not merely in Supreme Court trials involving capital offences

It also proposed that the means test applied by the Legal Aid Board at present should be reviewed "in order to make legal aid available to a broader cross-section of the population"

The commission called for official recognition to the legal clinics run by students at a number of unversities and for the provision of funds for the regular employment of salaried lawyers in these clinics as part of the Legal Aid Board budget

It found that the provision of pro Deo advocates experienced "substantial problems" in preparing the accused's defence and said the pro Deo system had outlived its usefulness.

Problems of police 'shortage'

Political Staff

HOUSE OF ASSEMBLY. — The shortage of experienced policemen was resulting in the unnecessary detention of people awaiting trial, the Hoexter Commission has found

The commission said Attorneys-General had pointed out that "police investigations in pending criminal cases often left much to be desired, with the inevitable result that Attorneys-General have had to make numerous inquiries through the prosecutor in the lower court before the trial could proceed

"The time lag in such cases is considerable and is estimated by some Attorneys-General at months rather than weeks, and this often results in the unnecessary detention of persons awaiting trial"

family court "with comprehensive jurisdiction in respect of all matters directly affecting family life, including divorce"

The move could lead to a reduction in legal costs but could also mean that certain cases, such as undefended divorce actions in which minor children are involved, would take longer to process

The commission has laid heavy emphasis on the interests of children involved in divorce cases

It has recommended that there should be two components — the courts and what it describes as the "family counselling service" which will sift and classify various cases, help to make matters such as divorce less traumatic for those involved and see that social welfare work ordered by the courts is carried out

Breach of promise

The courts, it says, should deal with divorces, matters presently heard under the Age of Majority Act, marriages of minors, all black divorces, matters presently heard by the Commissioner of Child Welfare, matters heard in terms of the Maintenance Act, the trial of juveniles on criminal charges, the accommodation of aged and debilitated persons and drug abuse

The commission has recommended that it should not deal with wills, mental cases, claims for seduction or breach of promise, paternity suits or criminal trials involving juveniles charged jointly with an adult

Another recommendation is the appointment of a Children's Friend to protect the interests of minors with strong emphasis on divorce cases

It suggests that the Divorce Act be amended so that where minors are involved, no action for divorce may be instituted until an approved social agency has investigated the circumstances of both the children and of the parties to the action

Further, it recommends that no divorce be granted until the Family Court is satisfied that arrangements for minor children are satisfactory

Monday's business

HOUSE OF ASSEMBLY — Monday's business Minister of Finance, Mr Owen Horwood, to reply to the second reading debate on the budget — Sapa

Station killing: Men appear

Staff Reporter

TWO men who allegedly gunned down a South African Transport Services train conductor earlier this year appeared briefly in the Bishop Lavis Magistrate's Court yesterday

Mr Patrick Bagley, 25, of Woodbury Avenue, Epping Forest, and Mr Michael Langenhoven, 19, of Napier Court, Clarke's Estate, were not asked to plead to a charge of murdering Mr Bennie Botha, 31, at Lavistown station early on February 18

The hearing was adjourned to Monday and they were remanded

Mr D H Cronje was the magistrate Mr A Vallie appeared for the State The men were not represented

Evidence was that narcotics squad detectives had used a Mr Peter Venter as a trap after booking two separ-

judgment and bail of R3 000 for Mr Stain and R1 000 for Miss Schiel was extended

Mr W J Marias was the magistrate

Death at 107

Own Correspondent

LONDON — Britain's oldest man, 107-year-old Alfie Grant, has died at a home for the aged in Dovercourt, near Harwich, Essex

Alfie, who walked to his local pub every day, claimed the secret of long life was 10 cigarettes and six double sherries a day

Absent judges could 'prejudice' justice

Political Correspondent

HOUSE OF ASSEMBLY — The Hoexter Commission recommends that no judge be appointed to any government commission of inquiry without the approval of a new judicial council

The report said the number of judges away from courts because of involvement in commissions could prejudice administration of justice

A survey on the "prodigal use" of judges as commission chairmen was published in the legal journal De Jure in 1980

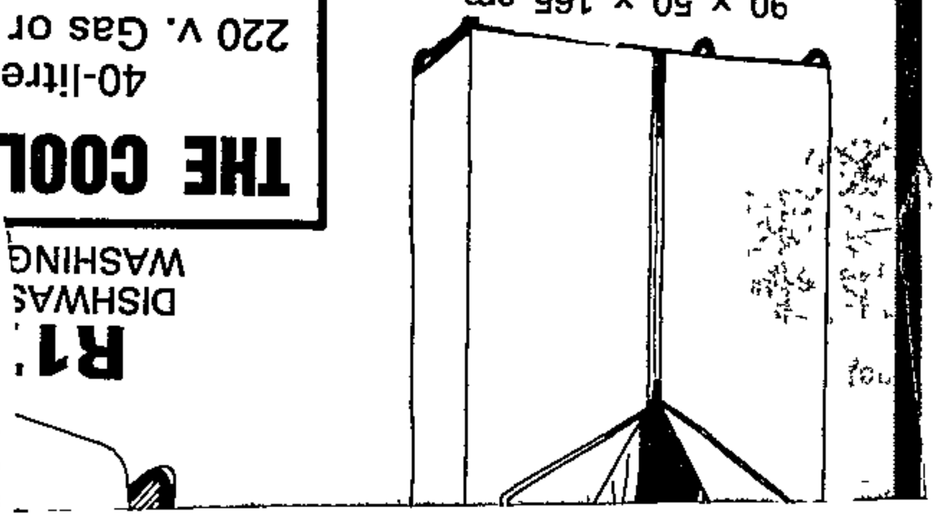
"At the end of 1980 no less than 19 of the 102 Supreme Court judges were not occupied full-time and exclusively with the administration of justice in the Supreme Court," the commission said

"Five of them had been seconded to the Supreme Courts of neighbouring states Nine were involved in ad hoc government commissions or were serving on statutory bodies."

The report said that although it was sometimes desirable to use independent and objective legal expertise to advise the government on certain matters, the administration of justice could be prejudiced by using judges "too freely"

'Political character'

"Many of the matters investigated by so-called 'judicial' commissions are unrelated to the administration of justice and often impel the judge concerned to take a stand of an essentially political character This not only embarrasses the judge,



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Judicial posts: Pay factor denied

Political Correspondent

HOUSE OF ASSEMBLY — The Johannesburg Bar Council has contested an earlier finding by the Hoexter Commission that the main reason experienced attorneys declined appointment as judges was poor judicial salaries

In evidence reported in the commission's final report, the Bar Council said there were a number of other reasons, including disapproval of death sentences, "offensive legislation", the detention of witnesses, minimum sentences and "political appointment yesterday, included a lengthy section on the high earnings of senior advocates from whom judges were selected

But it noted reasons other than loss of salary why some advocates were reluctant to accept appointment as judges The commission said it would not examine the validity of these reasons, but believed there was an overriding reality which advocates should not ignore

This was that South Africa had no bill of rights, and the majority of its citizens were vote- [illegible] men and

standards of judicial administration and independence

An important safeguard of this independence was the fact that advocates were the primary source of judicial appointments This would be so only for as long as advocates were prepared to make the sacrifices appointment to the Bench demanded

"If ever the judiciary in South Africa should lose its independence, the country will have lost, never to regain, an asset beyond price

"In the light of this inescapable reality, it would be short-sighted of the Bar to parade too

Mr Coetsee said the Hoexter probe had been ordered by the government with a view to keeping pace with with the demands of the time

It therefore had to be seen as a government initiative and not a result of opposition criticism

He said Mr Dalling's "political and unfounded" use of the Hoexter report was deplorable and would do nothing benificial for justice in South Africa

The government would make its views on the report known at the appropriate time, Mr Coetsee said

Report recommends special family court

Political Staff

A SPECIAL family court has been recommended by the Hoexter Commission because it says the present system of adjudicating family matters in courts is "inefficient"

It says that at present family matters are dealt within nine different courts under two separate systems and now wants them rationalized into a

ENT ARGUS 6/4/84 (252)

Hoexter report a 'public crucifixion' — Dalling

By TOS WENTZEL
Political Correspondent

THE ASSEMBLY is to have a special debate on the final report of the Hoexter Commission and its recommendations on major changes in South Africa's courts system

Making the announcement, the Minister of Justice, Mr H J Coetsee, pointed out that the commission had undertaken its investigation into the functioning of the courts at the request of the Government

Mr Dave Dalling, MP, the Opposition's chief spokesman on justice matters, has described the report as "a public crucifixion" of Nationalist incompetence in the area of justice administration

Mr Coetsee said the Government had given the commission its task to ensure that the South African judicial system kept pace with the needs of the times

The Government had already, as a result of the interim reports of the commission, made considerable adjustments in the administration of justice, in fields such as appeal procedures and a small claims court

He criticised Mr Dalling's political application of the report He said the Government would give its viewpoint on the report at the appropriate time

Mr Dalling said the report was set to bring about enlightened change in the administration of justice

Its findings and recommendations represented in one document a comprehensive indictment of Government inertia and a critical commentary of the faulty perception held by successive Cabinets of the concept of justice administration in a democratic society

"This report is of the greatest significance in the South African context at this time of developing reform

"It is essential that Parliament be given an early opportunity to debate fully and publicly the report's contents and its ramifications, unfettered by restrictive time constraints

"The Government should at the earliest possible opportunity (and prior to the Parliamentary debate) make its attitude and reactions to the findings and recommendations known

Mr Dave Dalling

Mr H J Coetsee

Shake-up of system urged

Star 6/4/84

Political Staff

CAPE TOWN — Major reforms in the judicial system and incisive attacks on the administration of apartheid are contained in the fifth and final report of the Hoexter Commission which was tabled in Parliament yesterday.

Among the commission's dramatic recommendations are

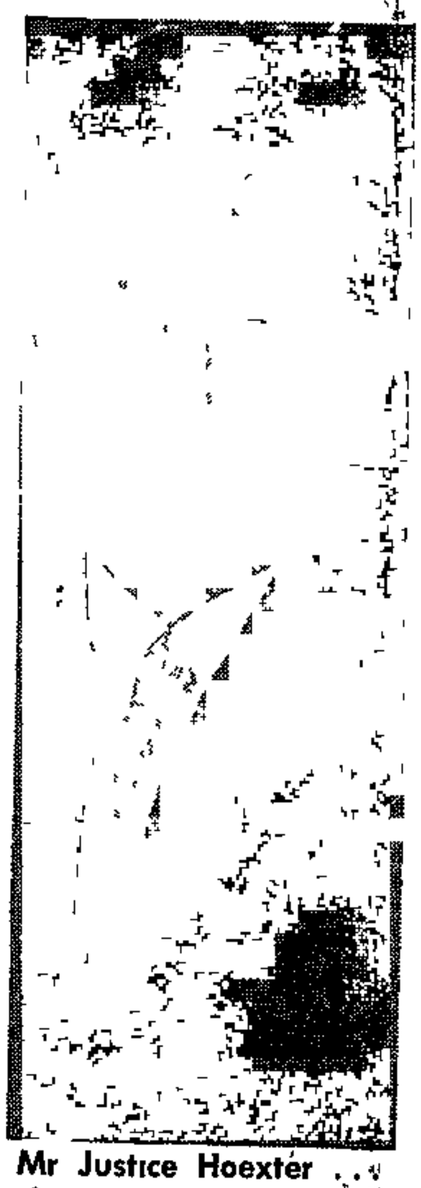
- Reform of the Pass Law system, which presently puts tens of thousands of "non-criminals" in jail, giving South Africa one of the highest pro rata prison populations in the world
- Reform of the legal system to bring laws pertaining to blacks closer to normal practices.
- Removal of control and administration of judicial procedures (including the controversial Commissioner's Courts) from the Department of Co-operation and Development
- Establishment of Family Courts
- Reform of the divorce procedures, particularly to give greater protection to children
- Greater independence for the judiciary, particularly officers in the lower courts
- Establishment of a Council of Justice, regardless of race, to advise the Minister of Justice
- Introduction of a legal obligation on the Minister of Justice to consult the judge president of a division in the appointment of a judge

The commission, which devoted an entire section of its report to "special courts for blacks" said the system was outmoded and obsolete

"That inhabitants of the same country should purely on the grounds of race be criminally prosecuted in separate courts for any offence whatever is, in the commission's, view, by any civilised standard, unnecessary, humiliating and repugnant

"Separate court systems on the grounds of race are morally indefensible and incompatible with the fundamental principle that all are equal before the law"

The commission harshly rejected evidence of the Department of Co-operation and Development not only to hold on to the control it already has on the administration of justice for blacks but also to increase the control to cover all judicial proceedings involving blacks



Mr Justice Hoexter ... the commission chairman.

1984

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Hoexter: R250 000 a year for advocates

HOUSE OF ASSEMBLY — Top advocates in Johannesburg earn R250 000 a year and in Durban R125 000 a year, the then Judge-President of Natal told the Hoexter Commission in 1982

The Commission said it believed complaints concerning exorbitant advocates' fees "are not entirely unfounded" although it said it was not able to find that "advocates in general charge excessively high fees"

It did, however, "find that certain advocates do err in this respect"

The commission, whose report was tabled in Parliament on Thursday, said the high cost of court cases in South Africa "is certainly the most important reason" why access to justice for most people existed in theory only

'The Ritz'

"The quip of an English lawyer that 'justice is open to all, like the Ritz Hotel', applies equally to access to justice in South Africa"

It said it had been alleged that lately advocates' fees had become totally unrealistic

"Members of the public, but especially attorneys, complained that the situation was becoming quite impossible"

Senior attorneys told the commission this was giving rise to "an explosive situation" between the two legal professions

A Durban attorney told the commission that when a senior and junior advocate appeared on both sides, the daily legal costs were at least R4 000

Long argument

In Johannesburg, senior counsel often charged R3 000 for the first day and junior counsel R1 500

In a Cape Town case, where there had been a four-day argument on the amendment of pleadings, a senior advocate was said to have marked a fee of R32 000, although this was reduced to R18 000 on taxation

The commission said the former Judge-President of Natal — it did not name him — had expressed surprise in his testimony "at the exorbitant fees charged by some advocates in trial actions"

In a letter to the commission in June 1982, the then Judge-President of Natal wrote "It is, I believe, not unknown for the top men at the Johannesburg Bar to earn R250 000 per annum

'Commonplace'

"It is quite commonplace for them to earn R125 000 per annum at a comparatively small Bar like the Natal Bar

"I am aware of two juniors at the Natal Bar who have been at the Bar respectively eight and nine years, who earned last year R85 000 and R75 000 nett"

The commission said an investigation by a Bar council was one of the few measures available to protect the general public from exploitation

There were also complaints about the fees charged by attorneys

"Judges complained that bills of costs were often debited with fictitious items"

Photocopies

A Judge-President pointed out malpractices such as the photocopying of documents which were debited as though they had been typed, and attorneys had charged for attendance in court when they were not present

Appeal records often included "voluminous documents which are entirely irrelevant"

In an attempt to control the rising costs of legal action, the commission proposed that where more than 20 percent of an advocate's fee was "taxed" off (reduced), the taxing master should be obliged to report this to the Bar Council

Outsider for treason trial

8/4/84 City Press

NEXT month's high treason trial in Pietermaritzburg is to be presided over by an Eastern Cape judge, Donald Kannemeyer, because charges include the bombing of the city's supreme court.

Three young men, Duma Gqubule, 19, Sithabiso Mahlobo, 25, and Benedict Anthony Martins, 27, face a number of counts including terrorism and high treason at a trial starting on May 2.

Natal's Judge President, Judge John Milne, confirmed that Judge Kannemeyer would preside, adding that it was necessary for people to see that justice was impartial

Row over proposal to scrap 'black' courts

A ROW between the Department of Justice and hardline sections of the Department of Co-operation and Development is brewing in the wake of recommendations that Commissioners' courts be assigned to the scrapheap

By BRIAN POTTINGER
Political Correspondent

Only after bitter disputes with the Justice Department was the old Department of Native Affairs able to get some judicial powers for their Commissioners — lynchpins in the administration of influx control and other apartheid measures affecting millions of black people living outside the homelands.

But this week the high-powered Hoexter Commission of Inquiry into the courts made scathing observations about the quality of justice dispensed at commissioners' courts and called for their scrapping

Within the Department of Co-operation and Development itself there appear to be mixed feelings about the recommendations

No decision has yet been taken about the fate of the courts — their future is tied to the existing, enormously complex Cabinet committee inquiries and parliamentary select committee investigations into the controversial "Third Koornhof Bill" dealing with influx control

But some elements in the department stand by the official submission to the Hoexter Commission which appears to embody a stunning proposal for a completely separate judicial hierarchy — from magistrates' courts up to an appellate division — to deal with offences committed by blacks in common South Africa

Influential quarters in the department are, it is understood, still in favour of this idea that has been roundly rejected by the Hoexter Commission, which has called for a common judicial system

Influx control

So keen is the Department of Justice that judicial functions be stripped from the commissioners that studies on which functions can be transferred are already completed

The rumble over the future of the commissioners' courts has apparently spilt over into another crucial area — the parliamentary select committee inquiry into the "Third Koornhof Bill", which deals with the explosive issue of influx control

Three scheduled meetings of the committee have been postponed, and with two months of the present session over it has still not sat

Fears are being expressed that the select committee and the legislation it is vetting will not be ready by the end of this session

At the root of the problem facing the Government is how to retain influx control while diminishing the harshness of its application Key questions to be decided are who should enforce it and which agency should act as the judicial authority

In representations to the Hoexter Commission, the Department of Cooperation and Development has argued that the authority of the commissioners' courts should be extended — not scrapped — and that they be allowed to deal with all criminal actions committed by blacks

Squabbles

The department claimed that as a result of the earlier bitter Justice-Native Administration squabbles on judicial authority over blacks in common South Africa, commissioners' courts in the major urban areas were left handling only the most unpleasant criminal cases — chiefly springing from ideological and policy legislation

The Hoexter Commission claimed there was no justification for two separate judicial systems (apart from the chiefs courts), called for a splitting of the judicial and administrative functions of the commissioners, and urged that the judicial functions be transferred as soon as possible to the Department of Justice

Legal aid: Call for funds rise

Cape Times 9/4/84

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Staff Reporter

THE Hoexter Commission's comments on the "excessive" fees charged by advocates had again emphasized the need for increased State subsidies to legal-aid services, the chairman of the General Bar Council of South Africa, Mr Robin Marais, SC, said yesterday

He was reacting to reports on the Commission's findings that top advocates in Johannesburg earned R250 000 a year, and that senior counsel in Johannesburg often charged R3 000 for the first day

He said the Hoexter Commission had not concluded that advocates' fees were in general excessive The average advocate did not earn more for the time he devoted to his work than his equivalent in other professions

'Misleading'

"To talk of a senior advocate being paid R3 000 'for the first day' for an action is misleading unless it is made clear that this fee includes days spent beforehand in preparation of a case, quite apart from the consulatations with witnesses who may have to be called"

He said it was regrettable that "from time to time" fees were charged which brought the profession into disrepute

"But Bar Councils throughout South Africa are there to prevent this from happening, and they do so, even to the extent of ordering a reduction of fees in a case where neither the client nor the attorney has complained The Bar is eager to root out overcharging whenever it occurs"

But no other professional group in the country rendered free, or at a nominal charge, services on a larger scale than the Bar

"The overwhelming majority of its members receive no more than a reasonable reward for their time, experience and training I do not think the Hoexter Commission has concluded otherwise"

He said a client was entitled to ask what an advocate would be charging, and that no one was compelled to engage an advocate whose fees were excessive

'Nothing new'

It was "nothing new" that the general level of legal costs in litigation was more than the average man could afford The Bar had been drawing attention to this for years Costs were high because the cost of employing highly-trained professionals could not be low

"However modestly lawyers may charge for their services in litigation, the cost will still be too high for the average citizen to bear"

The remedy lay in acceptance of the principle that legal services — like medical services — should be subsidized by the State to a far greater extent than they were at present

Parliament and Politics CAPE TIMES 11/4/84 (252)

Small Claims Courts Bill

HOUSE OF ASSEMBLY — The first step was taken yesterday towards the creation of small claims courts in which small civil disputes can be handled at little cost to the litigants

Introducing the second reading of the Small Claims Courts Bill, the Minister of Justice, Mr Kobie Coetsee, said its objective was "to create access to justice by, among others, eliminating the need for costly legal representation (and) time consuming adversary procedures before and during the trial of these claims"

At present, he said, the value of the subject of litigation often did not warrant the expense of litigation and so the potential claimant had to resign himself to injustice

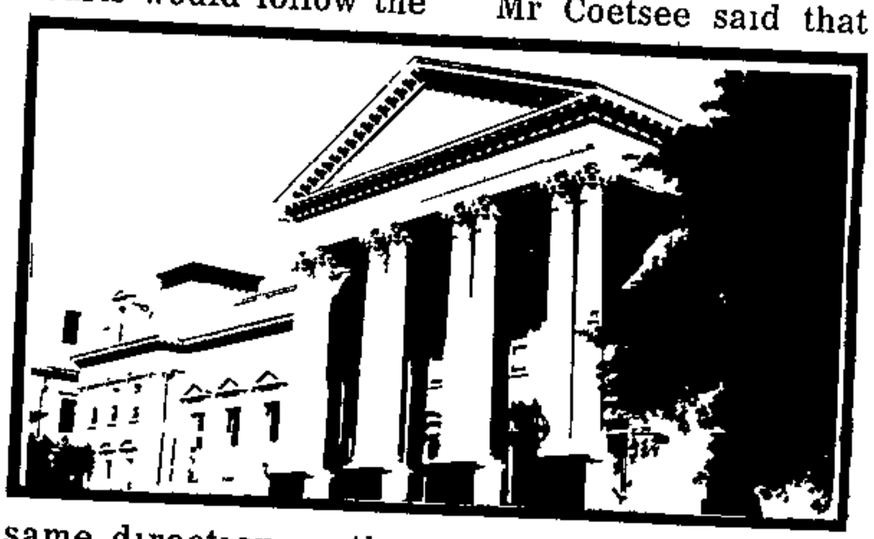
Mr Coetsee added that he hoped these courts, which were suggested by the Hoexter Commission, would contribute to "an awareness among consumers of their legal rights and remedies in everyday trade and transactions"

For this reason, his department would publicize as much information as possible on the procedures and benefits of these courts

Mr Coetsee said the courts would follow the same direction as the other courts in South Africa They would not function in the manner portrayed by the American television programme, "The People's Court", which created the impression that the administration of justice was not the sole function of small claims courts

According to the bill, no costs may be awarded in the small claims courts, and only "minor court fees" will be charged Provision is made for the cessation of actions if complex questions of law arise

Mr Coetsee said that in order to follow the Hoexter Commission recommendation that the courts maintain maximum independence, the courts would be manned by judges who were not bound to the Executive authority Although the rules of evidence would not apply in the courts, which would have their own procedures, the law would still be based on Roman-Dutch law



Litigants would be aided by legal assistants in drawing up summonses and could obtain legal advice

Mr Coetsee emphasized that the courts were intended for disputes and not for debt-collecting Special provisions had been made in the bill to prevent the domination of the courts by debt-collecting agencies "to the detriment of individual litigants"

A plaintiff, according to the bill, will have to prove the defendant's liability and the amount of the claim

While recommendations on the jurisdiction of the courts ranged between R1 000 and R5 000, Mr Coetsee said it would, for the time being, be set at R1 000 The bill provided a mechanism to adapt this figure according to the rate of inflation and "other requirements" — Sapa

	R
Pretoria	22 755
Johannesburg	194 224
Durban	2 765
East London	4 370
Port Elizabeth	3 860
Cape Peninsula	184 615
Bloemfontein	61 015
West Rand (Excluding Johannesburg)	427 039
East Rand	255 197

(252) Hansard

Langa Commissioners' Courts

Q-Col 931 12/4/84

530 Mr K M ANDREW asked the Minister of Co-operation and Development

(a) For what total number of hours were the Langa Commissioners' Courts in session in 1983 and (b) what total number of persons appeared before these courts in that year?

The MINISTER OF CO-OPERATION AND DEVELOPMENT

(a) 630

(b) 7 890

Building plots

718 Mr P C CRONJE asked the Minister of Community Development

(1) (a) What was the total cost to his Department of the land referred to in his reply to Question No 9 on 9 March 1984 and (b)(i) from whom was this land acquired, (ii) what area of land was acquired from each person or body and (iii) what amount was paid to each such person or body in respect of this land,

(2) whether any of the 25 building plots offered for sale to the public by tender were awarded to tenderers, if so, (a)(i) to whom, (ii) on what basis and (iii) at what price was each plot awarded and (b) what is the size of each of these plots?

The MINISTER OF COMMUNITY DEVELOPMENT

(1) (a) R1 240 843,54

(b)

(i)	(ii)	(iii)	Date of purchase
The Trustees of the Hindu Institute	944 m²	R 12 300,00	1969
The Trustees of the Cato Manor Indian Benefit Club	1997 m²	R 816,40	1960
Joint Estate of the Late Walter Hoover and his surviving spouse Lourdes Mary Sophia Hoover (née Gabriel)	929 m²	R 1 869,36	1965
John Felix Emmanuel Gabriel	945 m²	R 6 000,00	1970
Amod Khan	971 m²	R 7 000,00	1969
Tatiah Mooneesamy Reddy	961 m²	R 683,16	1963
Ramaswami Venket Ramiah	938 m²	R 1 556,00	1969
Mahomed	950 m²	R 3 600,00	1969
Ramesh	1079 m²	R 700,00	1968
Estate Late Lutchminarian	2776 m²	R 1 160,00	1966
Khairoonmisa	1094 m²	R 685,12	1960
Estate Late Gabriel Andrews	1,1028 ha	R 6 260,00	1969
Amed Suleman and Goolam Hoosen Suleman	2052 m²	R 8 000,00	1969
Goolam Nabee Ismail Moolla	986 m²	R 7 270,50	1969
Abdul Hamid Mulla	1009 m²	R 8 000,00	1969
Mahomed Hussian	1381 m²	R 1 216,80	1964

(b)

(i)	(ii)	(iii)	Date of purchase
Sheik Hoosain	1280 m²	R 3 250,00	1968
Mariamma	2072 m²	R 5 511,25	1969
Manikkam	1,1836 ha	R 7 148,35	1966
Vyapury	6146 m²	R 4 465,00	1975
Muniamma	1951 m²	R 2 360,00	1969
Munsami	3182 m²	R 9 200,00	1968
Muniappen Naiken	1012 m²	R 850,00	1969
Ponnama, Munsami, Thangavelu, Arumugam, Subbiah and Parevatheeamal	8385 m²	R 4 943,24	1967
Yeagambiam Mohamberry Cooppan	2053 m²	R 1 600,00	1968
Govindasamy Naidu	965 m²	R 666,39	1964
Mahalingam Yagabaram Nainaar	5727 m²	R 4 052,90	1966
Vyapury	6178 m²	R 5 200,00	1969
Kader	3491 m²	R 2 290,00	1967
Estate Late Ellamma and Latchmanen	1275 m²	R 4 100,00	1967
Trustees of the Choonilal Rana Family Trust	8094 m²	R 21 724,00	1965
Chinnah	929 m²	R 760,00	1966
Mariah, Nagiah and Estate Late Mottai	929 m²	R 800,00	1968
Narainsamy	929 m²	R 716,64	1964
Stree Gangaiamman	1875 m²	R 4 850,00	1971
Estate Late Cassimjee Hoosen	929 m²	R 500,00	1970
Trustees of the Second River Muslim Society	929 m²	R 3 000,00	1973
Hashmatullah	929 m²	R 4 136,00	1968
Estate Late Janaki	929 m²	R 2 892,00	1966
The Second River Muslim Society	1,9825 ha	R 9 517,27	1961
The Second River Muslim Society	9680 m²	R 17 000,00	1973
Chinnasami and Samasundari	1,0248 ha	R 7 532,00	1968
Kistnappa	2012 m²	R 4 478,40	1961
Moonoosamy Perumal Appavoo	3,3179 ha	R 30 000,77	1969
Thillaysababathey Pillay	8103 m²	R 5 118,40	1967
Atchiganoomah, Ganesa Moodley and Kistamma	3,2012 ha	R 20 000,00	1969
The Trustees of the Cato Indian Education Society	3948 m²	R 32 000,00	1969
Kistna Singh	1,8210 ha	R 12 861,60	1966
Dorasamy	1012 m²	R 1 600,00	1969
Jamiah Chengiah	1012 m²	R 720,00	1965
Atchiganoomah, Ganesa Moodley, Kistamma, Neelavathi, Govindamma and Sivagamie Moodley	2,0234 ha	R 30 000,00	1976
Dawood Osman	2023 m²	R 8 860,00	1969
Dukhni	1760 m²	R 1 161,93	1969
Ramnath	982 m²	R 5 262,55	1966
Dwarika	1042 m²	R 1 516,06	1969
Sheik Ameer	1071 m²	R 600,00	1966
David Soppam	2,0234 ha	R 10 000,00	1970
Latchmaya, Venketsamy and Govindsamy	2,0234 ha	R 11 032,00	1968

Big law reform sums

Govt accepts Hoexter recommendations for sweeping changes

Argus 24/4/81 (252)

By TOS WENTZEL
Political Correspondent

FAR-REACHING recommendations for the restructuring of South Africa's court system have been accepted by the Government.

The Minister of Justice, Mr Kobie Coetsee, announced this today in a special debate in the Assembly on the fifth and final report of the Hoexter Commission into the structure and functioning of the courts.

In the same debate, Mr Dave Dalling, MP, the Opposition's chief spokesman on justice matters, said the Government's procrastination, indolence, insensitivity, complacency, indifference and incompetence had resulted in the sad state of affairs described by the commission.

Paid tribute

Mr Coetsee pointed out that the legislation providing for a smalls claims court now before Parliament flowed from a recommendation of the commission in an earlier report.

He paid tribute to the comission for a monumental task performed in a fearless manner.

The Government accepted in principle the recommendations of the report on a rationalisation which would lead to the present black judicial system under Co-operation and Development being placed under the Justice Department.

The possibility of such a change had been investigated for some time but it was a complex problem which, among other things, had to do with officials and vested rights.

Family court

The Government regarded this as a matter of great importance and further details of a rationalisation programme would be announced in the foreseeable future.

The Minister announced that the Government would give attention to having a family court as proposed by the commission. A Bill dealing with this would be sent out for comment shortly.

Referring to the concern expressed by the commission about South Africa's crowded jail conditions, Mr Coetsee said the Government was also concerned about the jail population. For this reason there was a building programme and steps to institute alternative sentences.

The over-population of the jails had been brought down from 46 percent to 41,8 percent.

The recommendations about the appointment of judges did not differ from established practice by which judge presidents or the chief justice were consulted about the appoint-

'Unflinching criticism'

CAPE TIMES 13/4/84

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Political Staff

HOUSE OF ASSEMBLY — The Hoexter Report represents a "forthright, penetrating and courageously unflinching criticism of every aspect of the administration of South Africa's judicial system", Mr Pat Rogers (NRP King William's Town) said yesterday

The NRP's justice spokesman said the commission "shouts in protest" at the effect ideology has had on functioning of the courts in South Africa

This criticism extended all the way from "the exposure of the undue influence of magistrates by their linkage to the public service, through to the condemnation of the commissioners' courts by the commission"

He said its report disclosed that South Africa's judicial system did not measure up to the highest ideals of justice

Describing the report as "an important document in the reform process", Mr Rogers said it should be treated with the same sense of urgency as the new constitution

But deterioration of the administration of justice had taken place over a long period of Nationalist government. As such, it was unfair of the PFP to blame the minister entirely

Small claims court: PFP demands met

CAPE TIMES 13/4/84 (252)

HOUSE OF ASSEMBLY. — The Minister of Justice, Mr Kobie Coetsee, yesterday met Opposition demands for some practical qualification for academics appointed to adjudicate on the proposed Small Claims Court.

He made his offer to compromise on an amendment moved by Mr Peter Gastrow (PFP Durban Central) during the bill's committee stage yesterday.

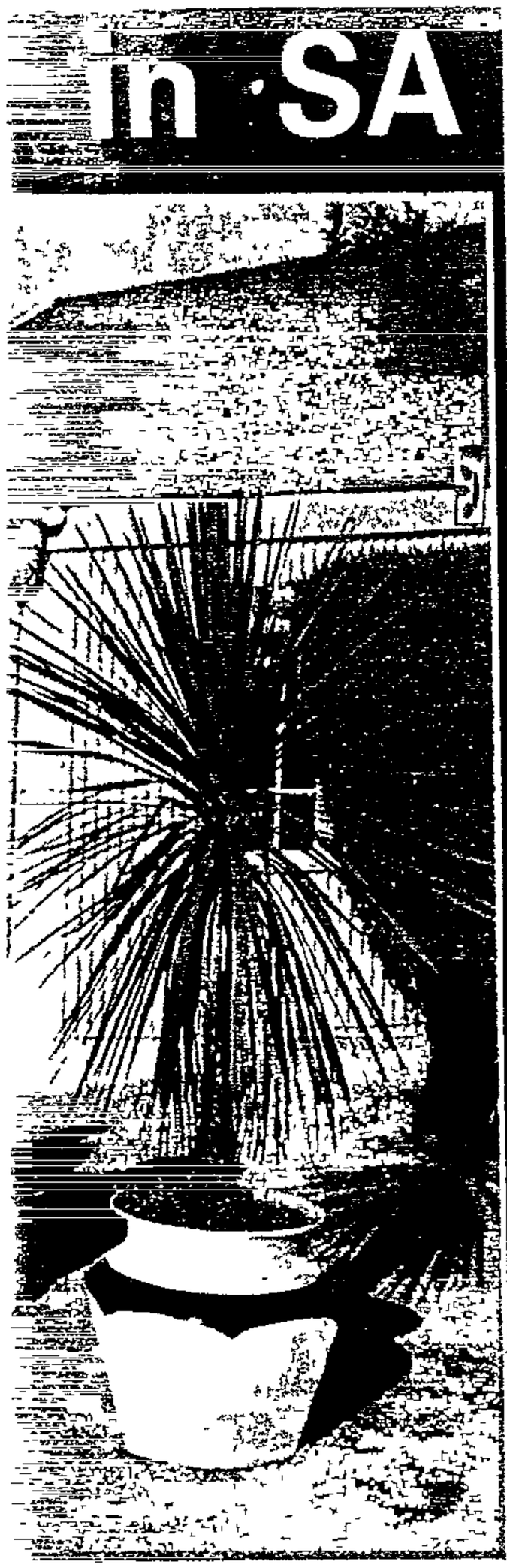
Mr Gastrow said the presiding officer, to be known as a commissioner, should have the same seven years of practical experience demanded from advocates, attorneys and magistrates appointed to the post.

The Hoexter Commission's fourth report had laid particular stress on the fact that such persons should have practical experience in order that the public might have trust in them.

The clause said the academic candidate should have been "involved in the administration of justice or the tuition of law, or possess such other experience as, in the opinion of the minister, renders him suitable for appointment".

Mr Gastrow wanted all the words after "or" scrapped but the minister said he was prepared to substitute it with the word "and".

Mr Gastrow said this was an improvement as it would now mean such a person would have to have some experience other than his academic qualification. — Sapa



annual South African Transport
(from left): Mr John Botha, Mr
an and Mr Piet Terblanche It is
e trophy.

Govt has ignored Hoexter, says PFP

CAPE TIMES 13/4/84

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Political Staff

HOUSE OF ASSEMBLY. — In a series of stinging attacks in Parliament yesterday, the Progressive Federal Party accused the government of ignoring serious shortcomings highlighted in the Hoexter Commission's report on the country's judicial system.

The party's chief Justice spokesman, Mr David Dalling, said the report was a major indictment of a key aspect of the Nationalist administration He called on the Minister of Justice, Mr Kobie Coetsee, to resign

Mrs Helen Suzman, a PFP spokesman on black affairs and prisons, said aspects of justice administered to blacks in terms of influx-control laws were resulting in contempt for the administration of justice in general and the criminal courts in particular These problems were emphasized by the Commission, but were not being adequately addressed by the government.

Mr Harry Schwarz, the PFP's leading Finance spokesman, said the cost of litigation in South Africa was approaching the level of a national scandal

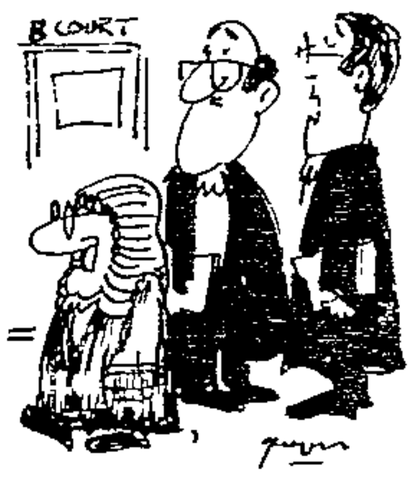
Further study

The Commission examined the structure and functioning of the courts Its report was tabled in Parliament last week It was discussed during a special debate in Parliament yesterday

In detailing the government's response to

Mr David Dalling

crack of dawn



"That's a small claims judge from the small claims court"

stival diary

will add the festive touch to the city to-
street buskers, military and Gospel
jazz musicians and a choir fill the air
and
avern of the Seas is the venue for a
of musical performances, including
moor Prison Services Band at 5pm,
al duo Tyrone and Billy at 6 30pm
Riverboat Jazz Band at 8pm
shop Lavis Band will entertain Grand
s at 1pm and the South African Rail-
ice Band will be on Greenmarket
at lunch time to add a bit of swing to
market
tea at the Cape Sun Palm Court will be
ened by a Welsh choir with the Petro-
and there is a Youth Orchestra concert
City Hall at 8pm
ringe Music Festival at the Carousel in
nt, Coffee and Cream at Charlie Parkers
Gospel music concert at the Muizen-

Political Staff

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Mr David Dalling

Further study

The Commission examined the structure and functioning of the courts Its report was tabled in Parliament last week It was discussed during a special debate in Parliament yesterday

In detailing the government's response to the report, Mr Coetsee said some of the recommendations were acceptable in principle, although further study and comment were necessary

The government's response to the report included

- The acceptance in principle that black commissioners' courts should be removed from the jurisdiction of the Minister of Co-operation and Development and administered by the Department of Justice Details would be announced soon
- Consideration of the recommendation that a Family Court be established to deal with family matters such as divorce and children's cases A draft bill would be published soon for comment
- Concern about overcrowded prisons (This issue was highlighted by

To page 2

CAPE TIMES 13/4/84

From page 1

the Commission which found that many prisoners were technical criminals jailed for pass-law and related offences) In an apparent attempt to counter this finding, Mr Coetsee said a survey on March 15 this year showed that "so-called control offenders" comprised only 7,09 percent of the total prison population

- An investigation of ways to relieve overcrowding of prisons, including the building of low-cost minimum-security prisons
- The cost of litigation was worrying the government and it was anxious to hear comments that could lead to lower costs

'Insipid'

Mr Dalling said Mr Coetsee's response to the report had been "insipid, feeble and bland"

He had brushed over many of the major criticisms raised in the report and had not even started to address the problems of the administration of justice

Mrs Suzman said she could not accept that only 7,09 percent of prisoners were influx-control offenders About 52 percent of prisoners were jailed for four months or less

The Commission's comments on overcrowded prisons as a result of technical offenders was a strong indictment

Legal aid

Mr Schwarz said the government should work immediately towards a proper system of legal aid

In replying to the debate, Mr Coetsee said the government had attended to the issues raised in the report

He accused Mr Dalling of "malicious verbosity" and of wasting an opportunity to make a positive contribution

- More reports on the debate, page 4

Cape Times, 13/4/84 (252)

Commissioners' courts 'compromised'

HOUSE OF ASSEMBLY. — Commissioners' courts had become "symbols of discrimination and oppression" and were "hopelessly compromised" by government policy, Mrs Helen Suzman (PFP Houghton) said yesterday

It was for these reasons, she said during debate on the Hoexter Report, that she agreed with the commission's recommendation that these courts have their work amalgamated with the other courts, which fall under the Department of Justice.

In his report, Mrs Suzman said, Mr Justice Hoexter had said it was "monstrous and untenable" that commissioners in the black courts, acting as judicial officers, actually carried out the administrative work that implemented government policy

She added that because government policy was synonymous with apartheid these commissioners were hopelessly compromised even before they started their duties

These courts had become symbols of oppression and discrimination, especially in the urban centres where they heard "so many thousands of pass law cases".

However, even if the duties of commissioners' courts were transferred, Mrs Suzman said, she feared magistrates' courts would be unable to cope with all the work And the government, as it had done in the past, might just solve the problem by deporting thousands of pass offenders from South Africa

"The solution is not just in the revision of the judicial arrangements, it is in the revision of the wretched laws themselves — indeed, their repeal."

Mrs Suzman said she did not believe the Minister of Justice, Mr Kobie Coetsee, when he said only about seven percent of the country's prisoners were influx control offenders The commission said 52 percent had sentences of less than four months, and Mrs Suzman said one could take it most of these came from influx control

She added that the Hoexter Commission, just like the Smit and Fagan Commissions in 1940 and 1948, had questioned the need for the pass laws.

"It is a pity the commission did not come out and unequivocally call for the abolition of these penal sanctions against people held under the pass laws."

● Earlier Mr Coetsee said the government had accepted in principle the recommendation on rationalization of special courts for black people.

Mr Coetsee said the commission had been instructed to investigate incorporation under the Minister of Justice of judicial functions for which other ministers were presently responsible.

Details of the rationalization programme would be made known "within the foreseeable future". — Sapa

Sapa

CAPE TIMES 13/4/84

Langa: One case every five minutes

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Political Correspondent

HOUSE OF ASSEMBLY. — The Langa commissioner's courts processed black cases at the rate of one every five minutes last year

This emerges from figures given yesterday by the Minister of Co-operation and Development, Dr Piet Koornhof, in reply to a question from Mr Ken Andrew (PFP Gardens)

A total of 7 890 people appeared before the courts in the 630 hours they were in session last year — an average of one case every 4,8 minutes

The majority of cases heard in the courts relate to pass-law and influx control offences

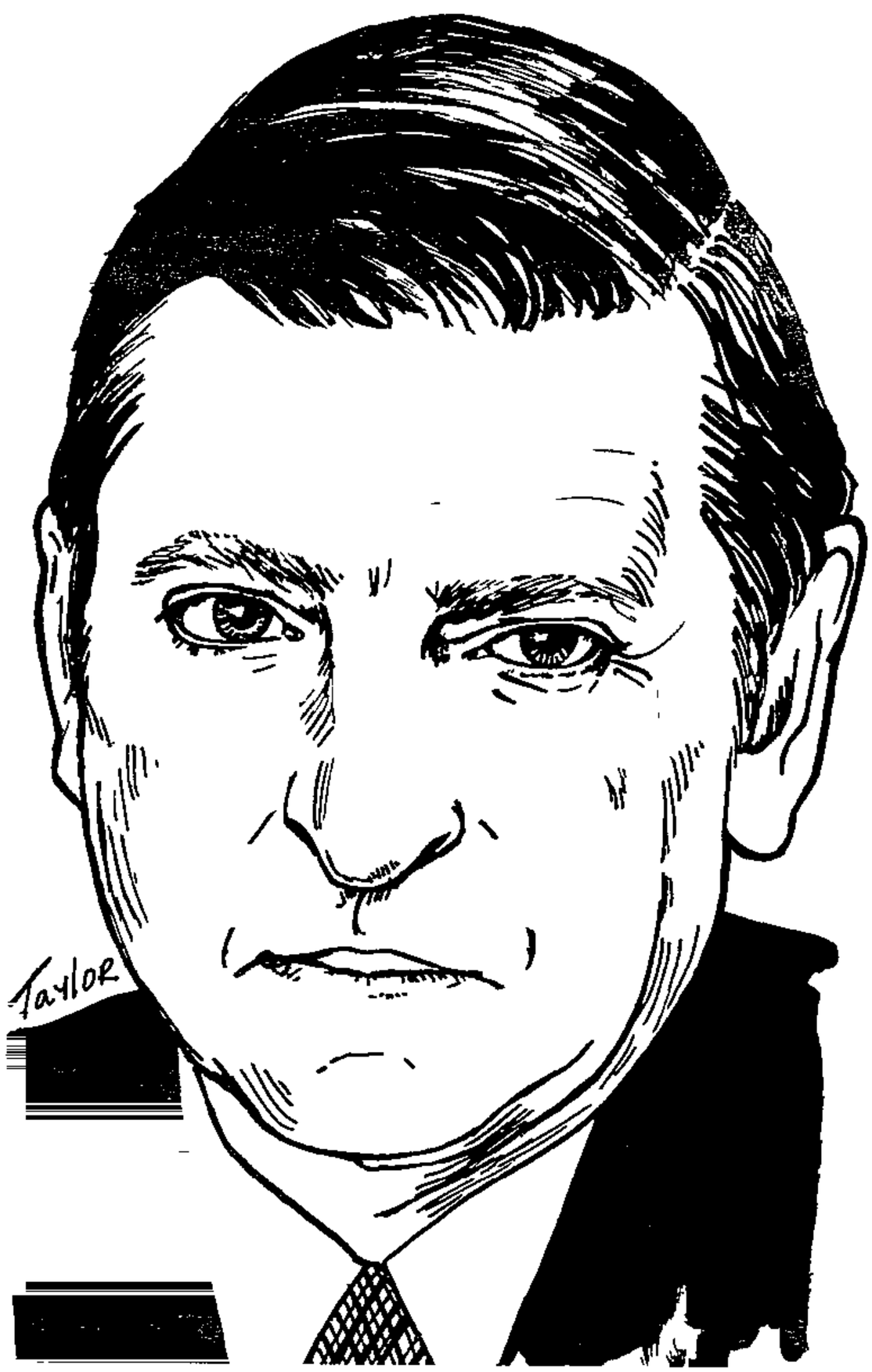
This separate legal system for black people, under the control of the Department of Co-operation and Development, was criticized in the Hoexter Report

(252)

PERSONALITY OF THE WEEK: MR JUSTICE GUSTAV HOEXTER.

Giving meaning to the quality of justice

As the author of South Africa's weightiest judicial reform reports since Union Mr Justice Gustav H Hoexter is undeniably the country's legal personality of the year. JAAP BOEKKOOI looks at the man and the clan.



THE Orange Free State, long known as the world's model republic, has always had its patrician gentry Such as the Hoexters, who always were the very *beau monde* of Rouxville

The latest of the line to make the headlines during the past week is Mr Justice Gustav Hoexter, leader of the commission which has recommended to Parliament the most drastic revisions in the country's legal system, from the independence of magistrates to the abolition of black Commissioner's courts, changes to the pass laws to family courts and a national Council of Justice

They are proposals that have made every lawyer, from small-town attorney to senior judges, as well as parliamentarians, sit up and discuss that very real issue that can be summarised as the quality of justice

As such the Hoexter proposals are part of the wider policy of reform, giving hope to many, but also running the risk of rejection and backlash by the standpat lobby, a fate previously experienced by the Erika Theron and the De Lange commissions

The fifth, and last, Hoexter report is, perhaps, the culmination of all the other reform reports, for it does not address only a section of society (the Coloured community or education) but the whole spectrum of South Africa's peoples affected by law and justice

The weighty investigation, which will secure the name Hoexter a permanent place in the annals of the country's legal history, naturally needed a heavyweight in the field of law, and that is why Justice Hoexter came to lead it

For the Hoexters, from the time the first of them, a doctor, arrived in Rouxville from Germany (the town Hoexter lies on the Weser River just off the rat catcher's Hamelin), have been marked by a unique blend of brilliance, wide interests, culture and a remarkable devotion to the law

Both legal Hoexters, *pere* Oscar, at one time acting Chief Justice, and son Gustav, chose other careers Oscar studied commerce at Cambridge but on return to his native country bowed to the seductive call of the law His son did the same after showing promise as a symphonic violinist and studying medicine at the University of Cape Town

Music also infused the Hoexters' approach to the law, which, apart from the logic, was one with feeling, even *appassionata* Says one observer of Judge Gustav on the Bench "He is dedicated, obviously motivated, and very alert He does not miss a point"

A law colleague adds "In the old tradition of judges he spurns publicity He has a delightful dry humour but does not use it on the bench"

Typical of Judge Gustav Hoexter's dedication is that he had to suspend his love for the violin for 30 years while, after qualifying at Cambridge, he practised as a judge's clerk, advocate (taking silk 19 years ago), judge, and, since 1978, appeal judge, in the obvious belief that you cannot fiddle, like Nero, when there are burning issues

Now, on long leave at his cottage in Dullstroom, where he holidays to pursue his other passion of trout fishing (another is league tennis and still others are snow skiing and languages), he and his wife, an accomplished pianist, have restarted the music making they did in their 20s

Most of this information you don't get from Judge Gustav himself, judicially reticent as he is "I will give you my *curriculum vita* and no more," he says "Just make your article cold and clinical. God forbid you write something gushing"

When you ask him whether he broke off his studies at UCT to volunteer for Jan Smuts (the Hoexters were known as "Smutsmense" in their district) because he felt strongly about the then controversial war issue, he protests in typical clipped voice "Of course I felt strongly about it I would not have joined had I not"

The lustrous Hoexter tradition is not about to end with this week's magnum opus Like his father, Mr Justice Hoexter, who has 10 years to go on the Bench, he could conceivably become acting, or even Chief Justice They are already the first instance of a father and son on the same Bench

And to follow in line there are also the three Hoexter daughters, with their distinctions in classics and languages, the youngest of whom is reading law at Oxford on a Rhodes scholarship

Think of it — another appeal judge in the making, (Miss) Justice Hoexter III, perhaps?□ — *Staff reporter.*

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FOCUS ON SECURITY LAWS

FORTRESS SA

Let's not imagine that our legal garrison actually PROTECTS us

By PROFESSOR TONY MATHEWS, School of Law, University of Natal

THE proposition that a grossly swollen programme of security legislation threatens human freedom is an obvious one that is frequently made.

Much less obvious is the argument that the system of drastic process is a threat to the very goal with which it is usually associated the attainment of order and stability in society.

Advocate D P de Villiers, a cautious and 'responsible' critic of government policy in South Africa, has recently questioned the "unspoken assumption that the more drastic the measure, the more likely it was to be effective", and quotes with clear approval the point that "measures which might be effective in a strictly short-term situation might well be less effective or even counter-productive in circumstances of prolonged unrest".

There are also signs, admittedly too faint to inspire much cheer, that the government itself is beginning to understand that its overkill security measures have become a threat to the order it is bent on maintaining

Banning orders on individuals have for the moment been cut back, detentions are being more carefully monitored to prevent a repetition of a Biko or Aggett tragedy, and security activities are less oppressive in the labour field

The lesson has not yet been learned, however, to the degree required for a legislative rolling-back of the security programme

Such a process has begun in other societies with comparable security problems In Israel, where the security threat, both internal and external, is of daunting proportions, a law was introduced in 1979 requiring every detention to be confirmed by a judge of the Supreme Court within 48 hours of arrest The ordinary courts in Israel have the right to see all the evidence against the detainee and the power to set aside the detention if not

inclination to increase coercion and to diminish freedom, but in such a situation of crisis, civil rights have a vital contribution to make towards the achievement of peace and stability

This does not mean civil rights for terrorists and saboteurs, since these are people whom no government can afford to tolerate even if its policies have contributed to their presence There should be civil rights for everyone else, however regardless of their political views

A more extensive reform of security laws than that envisaged by the Rabie commission is now urgently needed to turn opposition in the direction of negotiation and away from violence.

The fundamental principle of such a programme of reform should be that punishment and restriction are reserved for a narrowly-defined group who are found by the courts, or other genuinely independent tribunals, to be involved in or committed to politics of violence, or to be working towards a political order that will suppress human freedom

All others should be legally free to organise and to appoint leaders to take part in negotiation politics for a better social order

Violence in South Africa has grown from a condition in which opposition groups working against official policies and especially their chosen leaders, have suffered repression whether or not they have been guilty of sabotage or terrorism

For leaders, this has resulted in the dilemma which is well described in the following words "The possibility of reaching an acceptable resolution of conflict is rendered particularly difficult by the fact that the white power elite recognises only those black leaders who — whatever their reasons — either accept their policy or have accepted an official role within the framework of this policy Black leaders who refuse to go along with this are not accepted as participants in discussions and negotiations" (Theo Hanf *et al* South Africa and the Prospects of Peaceful Change, published by Rex Collings, London)

Negotiation politics will not replace

is infinitely worse than our own (2 000 deaths attributable to terrorist activities since 1972), yet detention in Northern Ireland is limited to a maximum of seven days and may be used only for the interrogation of terrorism suspects

Moreover, detention is subject to strict monitoring to ensure that there is no maltreatment of detainees For some years now, the emphasis in Northern Ireland has been the prosecution in the ordinary courts (which employ slightly modified rules or procedure) of persons alleged to have committed acts of terrorism or other security crimes

In both these countries, drastic laws have been repealed or modified for reasons transcending the belief in freedom and civil rights They have been changed partly because of the recognition that harsh laws have been found to have the capacity for generating disorder, for producing the very response that they were designed to avoid

In passing, the response of the West German authorities to the Baader-Meinhof terrorist threat is worth recording Notwithstanding the ruthlessness of this and other terror groups in West Germany, legislative restriction of liberties has been minimal

The most important of the measures introduced provide for temporary isolation of prisoners from outside contacts, broader powers of search under warrant, restrictions on the choice of counsel by accused persons (the number of defenders was limited to three and a lawyer could not defend more than one accused in the same case) and qualifications on the freedom of written contact between counsel and client. (Though there is power to ban extremist organisations in West Germany, the power is under control of the courts and may be exercised only for precisely defined reasons)

Even this moderate legislative response to terrorism in the Federal Republic aroused vigorous opposition and criticism

Astute observers of the political and security situation in Israel attribute the success of the internal security policy, and the maintenance of a remarkable degree of openness and democracy in a society under siege, to the judicious and limited application of restrictive laws They observe that where the authorities became more hawkish, as under former Prime Minister Mr Menachim Begin on the West Bank, the security situation worsened and the possibility of accommodation with moderate Arab leaders dangerously weakened

example of the virtues of moderation in internal security policy

Is this true also of Northern Ireland? It is in the limited sense that moderating harsh laws has not worsened the security threat. Despite the intractability of its political and security problems, Northern Ireland does provide support for the proposition that the denial of rights through harsh laws is counter-productive to the goals of political order.

It is precisely because of a long history of discriminatory laws and practices and harsh repression that the security threat has assumed its grim and fearsome dimensions

The treatment of the Irish by the British, and of the Roman Catholic minority by the Protestant majority in Northern Ireland, is a tragic chronicle of severe and frequently brutal repression and of a counter-reaction that grew ugly in proportion to that repression Northern Ireland is an example of the predicament we may reach in a decade or so if we do not remove discrimination and extend rights by moderating the repressive apparatus of the state

Whatever official assurances South Africans may be given from time to time, the security situation is undoubtedly serious and appears to be growing steadily worse

Black political opposition has moved through the classic phases that are characteristic of a rightless group struggling for social and political justice

The first was one of gentlemanly politics and civilised pressures That gave way to public demonstrations, including massive protest marches, and these, in turn, were replaced by passive resistance and non-violent defiance

Thereafter, campaigns of sabotage were launched, but these were directed at the authorities and, with increasing and alarming frequency in recent times, at ordinary civilians. In the past year there have been dozens of bombs and defused bombs, and a dismaying number of civilian deaths

During this whole period the laws have become progressively tougher in form and application What seems significant is that the growth of violence and the toughening of the laws have run parallel with each other

The laws have not diminished violent opposition, instead, that kind of resistance has intensified in almost direct proportion to legalised repression

There are two major lessons to be learnt from this unpalatable fact. The first is that the denial of basic human

ances felt by those subject to it, are a major source of conflict in South Africa

Commentators on Northern Ireland have drawn that same lesson from Irish history "Where violence stems from deeply-felt and widely-held grievances, the security response is likely to cause further grievance In these conditions it may also generate more widespread support for violent action" (Boyle, Hadden Northern Ireland, published by Martin Robertson, Birmingham, England)

The second lesson, also expressed in this quotation, is that in a situation of social injustice, the application of harsh laws to curb dissent tends to drive opposition towards increasingly violent strategies The mailed fist may bring short-term relief against security threats, in longer perspective, it could have calamitous results

Men in power, when faced with challenges to law and order, have a natural

the leadership of opposition groups is allowed to emerge without the fear of jail banning or even death for activities that are peaceful.

Otherwise we shall continue to construct a law-and-order tinder box which though it may take time to ignite, will eventually bring us to a Northern Ireland situation At that stage, as in Northern Ireland, all remedial measures could become futile

● Extracts from an article by Professor Mathews published in the latest issue of Optima magazine

ARGUS 24/4/84 (752)

Law Commission moves to stimulate interest of public

PORT ELIZABETH. — The government's Law Commission would no longer function as a "backroom" body but would "go public" so as to attract the interests of more of the population, the commission chairman, Appeal Judge, Mr Justice Gerrit Viljoen said today

Addressing the South African law conference here, Mr Justice Viljoen said the commission had until now been a "brain trust", consulting people in the legal profession and members of the public who might have an interest in the project under consideration. However, this had been done in camera and had "not always been satisfactory"

The commission, he said, wanted to stimulate more interest in its legal reform activities Furthermore, experts in a particular field would be invited, or could come of their own accord, to join in "open discussion" with the commission

"The commission is confident that once the news is spread that it is prepared, as it were, to go public, assistance will be offered by bodies like the Advocates' and Attorneys' Association, the universities and other bodies from the private sector"

Later in his speech on aspects of law reform, Mr Justice Viljoen said many South African jurists were "intensely unhappy" at the state of the country's statutory law.

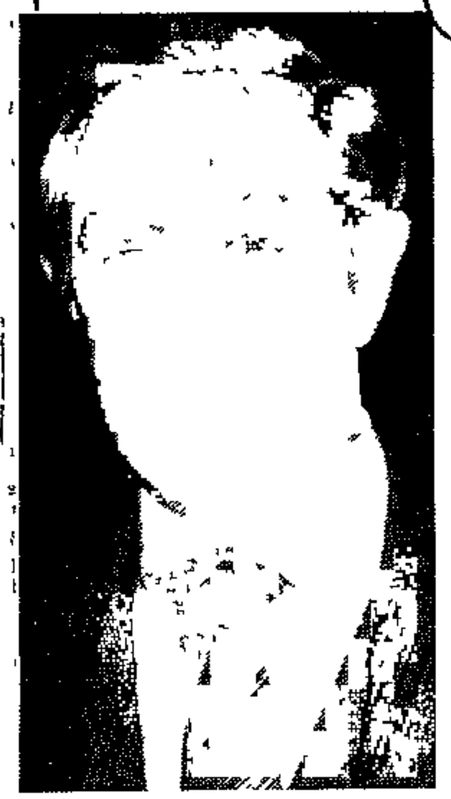
He referred especially to "the sometimes indigestible phraseology . and sometimes contradictory nature of the legislative provisions which are on the statute book".

He questioned the ability of the law advisers who scrutinise draft legislation before it is submitted to parliament

The commission suggested that the Department of Justice or some universities should start a course in legislative drafting. — Sapa.

(252)

Law Commission's role in reform varied



Dr GERRIT VILJOEN

By CHRIS RENNIE

THE activities of the South African Law Commission covers a wide and dynamic range from Admiralty Courts and salvage laws to test-tube babies and rape

This much was clear from the address its chairman, Mr Justice G Viljoen, Judge of Appeal, gave to the law conference being held in Port Elizabeth this week

In his paper today on aspects of legal reform he dealt with the more important projects at present being tackled

He mentioned a searching look being given at certain legal principles such as the so-called "hearsay rule", the compatibility of a spouse to give evidence against a spouse in criminal proceedings and the admissibility of certain documentary evidence

He mentioned the progress made with legislation leading with Admiralty Courts governing maritime matters and the consideration been given to salvage laws.

Consideration is being given to gaining as much uniformity regarding prescriptive periods, particularly those applicable where action is being brought against the State.

But on a more mundane level, the commission is also considering a provision that would allow a divorced woman to share in her ex-husband's pension benefits

It is considering revising Trust Law and also Inheritance Law

It is considering reducing the age of majority and investigating the legal position of children born out of wedlock by artificial insemination — so-called test-tube babies

Mr Justice Viljoen mentioned that a lot of pressure had been brought by women's groups in connection with sexual offences. He said the trauma women suffered in such incidents was well known.

The commission was considering ways of protecting women victims of sexual offences in the process of criminal proceedings against offenders

But he said the mammoth task of the commission at present was the revision of the vast number of statutes on the statute book

During the discussion period Professor B Ranchod, of the University of Durban, Westville, said he had been encouraged by the addresses of both the minister and of Mr Justice Viljoen.

He posed the question as to what role the law commission filled in South Africa If it was to become a law reform commission it was to be hoped that it could play a very positive role in "policy matters" under the new constitutions

Mr Justice Boshoff, of Transvaal warned against a "overdose of reforming" He said South Africa had a source of legal principles in Roman Dutch law It would not do to follow too closely the European systems He advised that South African courts stick to the interpretation of the established principles or, like statutory law, continual amendments would result

Severing of links with the public service is welcomed

Post Reporter

THE severing of public service ties by presiding officials in South Africa's courts was welcomed by the Law Society conference today

The proposal was made in the report of the Hoexter Commission.

Approving the recommendation the Director General of the Department of Justice, Mr J P J Coetzer, said that a more compact system would result.

All citizens would have equal access to the courts — with the exception of the tribal courts

He outlined the new concept of family courts with its separate judicial and welfare components aimed at reconciliaton or settlement or finally judgment

Increased legal aid would make them accessible to all

Mr S W van der Merwe, chairman of the Supreme Court Committee, spoke in favour of attorneys, academics and magistrates being considered for appointment to the Bench.

He was opposed by Mr Justice Milne who, in arguing in favour of presiding officers severing ties with the public service, said the Hoexter Commission, after much deliberation, had decided against attorneys being eligible for elevation to the Bench

The small claims court was also discussed.

Speakers objected to the fact that while applicants could choose a court, the respondent did not

The were limited grounds for review and absence of an appeal were also objected to

The president of the East Cape Regional Court, Mr G Steyn, asked that magistrates be empowered to autorise legal aid in suitable criminal cases

There was provision for such aid at present, but because of the time-consuming process needed for approval, it was seldom used

Mrs Joice Perry, of the Child and Family Welfare organisation in Maritzburg, queried the fact that clients had to request the use of the social component in family courts

The social component should be introduced at the start.

She pointed out that attorneys were sometimes more interested in winning

She was advised to submit her ideas and views in writing for consideration before family courts were instituted

R250 000 computer inquiry

Post Reporter

A GRANT of R250 000 to help fund an inquiry into the establishment of a central computerised legal information retrieval system has been announced by Mr L S van Zyl, president of the Association of Law Societies in South Africa

The Government is likely to probe the feasibility of such a system

The Minister of Justice, Mr Kobie Coetsee, told the Law Society conference the computer, as a tool of law reform, could help rationalise the statutes and the identification and removal of duplication

Courts for small claims planned for next year

By JOHN CLARK

SMALL CLAIMS COURTS will be established in several centres in South Africa by April next year

This was announced by Mr H J Coetsee, Minister of Justice when he delivered the opening speech at the South African Law Conference in Port Elizabeth last night

It was attended by about 200 guests, who included representatives of four national states, academics and law practitioners

Mr Coetsee said the adjudication of small claims was acclaimed as a revolutionary new process where traditional processes of law were being changed in order to provide access to the courts and keep legal costs down

He said the traditional adversarial system of law process would be replaced by the inquisitorial system There would be no legal representation, no cross-examination, no

A pilot scheme of about seven small claims courts would be established by April 1, 1985.

Speaking on law reform, Mr Coetsee said the Government had accepted in principle the findings of the Hoexter Commission where it had recommended that special courts for black people should become part and parcel of the existing justical system, so as to re-affirm that the lower courts would be "visibly free and independent in their adjudication"

He said governments were now playing an increasingly important role in law reform, especially where the law had to keep pace with the changes in life patterns and relationships brought about by scientific and technological developements

Law reformers were giving attention to the issues of

- Procreation by artificial insemination, the transplantation of human tissues and organs and sex change operations
- Accessibility to personal information with increased use of computer data storage as an invasion of privacy.
- Monetary law, which regulated the rights and obligations affected by changes in the value of money affected by inflation.
- Space law — defining who was responsible for satellites, the status, boundaries and jurisdiction of space
- Group rights — where the rights of minority groups are being debated by international agencies

Mr Coetsee said the Constitution Act of 1983 was explicit in its protection of group interests

He said law reform should be a continuous process or the law and society could part company

Priorities for law reform should be established This was especially true in South Africa where legal expertise was limited

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(50 marks - 60 minutes)

Hansard Q. 61. 975 24/4/84

Adoption

843 Mr A B WIDMAN asked the Minister Internal Affairs.

How many Coloured children were placed in adoption in terms of the Children's Act in 1983?

The MINISTER OF INTERNAL AFFAIRS

573

Adoption

844 Mr A B WIDMAN asked the Minister of Internal Affairs:

How many Indian children were placed in adoption in terms of the Children's Act in 1983?

The MINISTER OF INTERNAL AFFAIRS

179.

WEDNESDAY, 25 APRIL 1984

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†Indicates translated version

For oral reply 25/4/84

251 Hansard Q. 61. 975

Members of Police Force: charges of assault

*1. Mrs H SUZMAN asked the Minister of Law and Order.

(1) Whether (a) Warrant Officer Gert Johannes Coetzee, (b) Warrant Officer Christo Hattingh and (c) Constable Dirk Kruger were recently convicted in Volksrust on charges of assault, if so,

(2) whether these persons are still members of the South African Police, if not, (a) when and (b) why did they leave the Police Force, if so,

(3) whether any steps are to be taken against these persons following their conviction, if not, why not, if so, (a) what steps and (b) when;

(4) whether he will make a statement on the matter?

The MINISTER OF LAW AND ORDER.

(1) (a), (b) and (c) Yes

(2) Yes

(3) Yes. (a) and (b) Boards of Enquiry in terms of section 17 of the Police Act, No 7 of 1958, have already been convened. The members have been suspended from duty.

(4) No.

Persons killed/wounded by Police

*2. Mr D J N MALCOMESS asked the Minister of Law and Order:

Whether any persons were shot by the South African Police in February 1984; if so, how many persons were shot and (a) killed and (b) wounded in that month?

†The MINISTER OF LAW AND ORDER.

Yes, 56 persons.

(a) 17

(b) 39

Umkubaan area: sale of plots

*3 Mr P C CRONJÉ asked the Minister of Community Development.

(1) Whether, with reference to his reply to Question No 9 on 9 March 1984, any further plots in the Umkubaan area of Cato Manor have been or are being offered for sale to the public; if so, (a) how many plots and (b) on what basis will they be sold;

(2) whether the South African Indian Council has been informed of the sale of this land, if so,

(3) whether the said Council commented on the (a) method of sale of the land and (b) prices charged; if so, what was the purport of its comments in each case?

The MINISTER OF COMMUNITY DEVELOPMENT.

(1) Yes

(a) 67 Sites

(b) The sites are being offered at determined prices to families who have to be resettled

(2) Yes

(3) Yes, the Council has requested that sales be held in abeyance until the Council is in a position to submit further representations.

(a) and (b) Fall away

*4 Mr A SAVAGE — Foreign Affairs [Withdrawn]

Hansard Q. 61 977

Guguletu: case of alleged murder

25/4/84

*5 Mrs H SUZMAN asked the Minister of Law and Order.

(1) Whether, with reference to his reply to Question No 17 on 24 February 1984, the investigation into the case of alleged murder in Guguletu on 19 February 1984 has been completed, if not, (a) why not and (b) when is it anticipated that it will be completed, if so, what were the findings,

(2) whether any persons have been charged as a result of the investigation; if not, why not; if so, (a) who and (b) what are the charges,

(3) whether any action has been taken by the South African Police against the policeman concerned, if not why not; if so, what action?

†The MINISTER OF LAW AND ORDER

(1) No

(a) Because the statement of a witness and the ballistic report are being awaited.

(b) It is anticipated that the investigation will be completed within the next few weeks

(2) No. Because the investigation has not yet been completed

(3) No. Whether or not steps will be taken will be determined by the outcome of any legal process which may result from the incident

Lawsuits against Minister

*6 Mr P H P GASTROW asked the Minister of Law and Order:

(1) Whether any lawsuits were brought against him in his capacity as Minister of Law and Order in 1983 by members of the public; if so, (a) how many and (b) what (i) were the circumstances of the lawsuit, and (ii) was the outcome, in each case,

(2) whether he paid out any moneys (a) as a result of successful lawsuits brought against him and (b) in out-of-court settlements, if so, what total amount?

The MINISTER OF LAW AND ORDER

(1) Yes

(a) 53

(b) (i) The causes of action were as follows:

Damage to vehicles	28
Unlawful arrest or detention	8
Assault	7
Slander or defamation	3

Hansard Q. Col. 975 24/4/84

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~~Oral reply~~ 25/4/84

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Slander or defamation	3

(3) whether he will make a statement on the matter?

The MINISTER OF HEALTH AND WELFARE.

(1) Yes;

(a) the provisions of section 29 of the Fund-raising Act, 1978 (Act 107 of 1978) were applied;

(b) 19-4-1984,

(c) I am not prepared to divulge any reasons;

(2) (a), (b) and (c) Fall away,

(3) No.

Mr R A F SWART· Mr Speaker, arising out of the reply of the hon the Minister, will he indicate why he is not prepared to give the reasons?

The MINISTER Mr Speaker, I should like to point out that my refusal has nothing to do with the late Mr Mahatma Gandhi and it has nothing to do with Sir Richard Attenborough

Mr R A F SWART Mr Speaker, further arising out of the reply of the hon the Minister, may I ask him again whether he would indicate why he has refused?

The MINISTER. Mr Speaker, I have just said that I am not prepared to give reasons [Interjections.]

Mr SPEAKER· Order!

Hansard Q. 61. 1031
251
Policemen killed/injured
27/4/84

*20. Mr L WESSELS asked the Minister of Law and Order.†

What total number of policemen were killed and injured (a) in vehicle accidents in the Republic and (b) outside the borders of the Republic during the execution of their duties in 1983?

The MINISTER OF HEALTH AND WELFARE (for the Minister of Law and Order)

(a) 26 killed and 324 injured

(b) 6 killed and 122 injured

For written reply·

Hansard Q. 61. 1032
~~129~~
Family housing units
27/4/84

160 Mr K M ANDREW asked the Minister of Co-operation and Development

(1) How many new family housing units were provided in (a) Langa, (b) Nyanga and (c) Guguletu in 1983;

(2) how many of these units in each township were converted from hostel units?

The MINISTER OF CO-OPERATION AND DEVELOPMENT

(1) (a), (b) and (c) Nil

(2) Nil.

A new township, Khayelitsha, is being developed in the Drift Sands/Swartklip area, where it is expected that in the next twelve months 5 000 core houses will be erected

Hansard Q 61. 1032
Family housing units
27/4/84

213 Mr A SAVAGE asked the Minister of Co-operation and Development·

(a) How many new family housing units for Blacks in White urban areas were built by each Administration Board in 1982 and 1983, respectively, and (b) what was the expenditure in each of these years on (i) such housing and (ii) infrastructural services for such housing?

The MINISTER OF CO-OPERATION AND DEVELOPMENT

(a) Eastern Transvaal Administration Board

1982 calendar year—252 housing units,
1983 calendar year—460 housing units

Northern Transvaal Administration Board

1982 calendar year—nil;
1983 calendar year—nil

Highveld Administration Board

1982 calendar year—539 housing units,
1983 calendar year—nil.

Western Transvaal Administration Board:

1982 calendar year—21 housing units,
1983 calendar year—nil.

Central Transvaal Administration Board

1982 calendar year—nil,
1983 calendar year—nil

East Rand Administration Board

1982 calendar year—3 020 housing units;
1983 calendar year—750 housing units

West Rand Administration Board

1982 calendar year—879 housing units,
1983 calendar year—1 008 housing units

South Orange Free State Administration Board.

1982 calendar year—nil;
1983 calendar year—1 500 housing units

Orange Vaal Administration Board

1982 calendar year—2 350 housing units,
1983 calendar year—2 543 housing units

Drakensberge Administration Board

1982 calendar year—nil,
1983 calendar year—nil

Port Natal Administration Board

1982 calendar year—82 housing units,
1983 calendar year—35 housing units

Western Cape Administration Board

1982 calendar year—1 521 housing units,
1983 calendar year—nil

Eastern Cape Administration Board

1982 calendar year—1 021 housing units;
1983 calendar year—628 housing units

Northern Cape Administration Board

1982 calendar year—486 housing units,
1983 calendar year—nil

(b) (i) 1982 calendar year—R43 639 874
1983 calendar year—R21 547 669

(ii) 1982 calendar year—R17 233 810,
1983 calendar year—R11 525 811

Among the reasons why few or no housing units were provided by the Northern Transvaal, Western Transvaal, Central Transvaal, Drakensberg, Port Natal and Western Cape Administration Boards, are the following

(a) Northern Transvaal The expansion of the urban Black Townships of Naboomspruit and Nylstroom have been frozen and the residents of the Black township of Louis Trichardt are at present being resettled The residents

4 for 14 days
3 for 16 days
2 for 17 days
1 for 18 days
1 for 19 days
1 for 20 days
1 for 21 days
2 for 22 days
1 for 25 days
1 for 31 days
1 for 33 days
1 for 75 days
3 for 87 days
1 for 109 days

(2) Yes

(a) 25.

(b) 7.
The trials of 11 persons have not yet been concluded

(3) No

Hansard Q. Col 1011 26/4/84

Internal Security Act

824 Mrs H SUZMAN asked the Minister of Law and Order

How many persons were being detained in terms of section 31(1) of the Internal Security Act, No 74 of 1982, as at 31 December 1983?

The MINISTER OF LAW AND ORDER

5 persons.

Internal Security Act

826 Mrs H SUZMAN asked the Minister of Law and Order.

(a) How many persons were detained in 1983 in terms of section 50 of the Internal Security Act, No 74 of 1982, and (b) for what period was each detained before being released?

The MINISTER OF LAW AND ORDER

(a) 38 persons

(b) 21 for 1 day
5 for 8 days
2 for 9 days
2 for 11 days
3 for 12 days
2 for 13 days
3 for 14 days.

Internal Security Act

831 Mrs H SUZMAN asked the Minister of Law and Order

(1) Whether any notices in terms of section 5(1)(e) of the Internal Security Act, No 74 of 1982, (a) were issued, (b) were withdrawn and (c) expired in 1983, if so, (i) how many in each case and (ii) how many such notices were of effect as at 31 December 1983,

(2) whether any notices which expired were renewed, if so, how many?

The MINISTER OF LAW AND ORDER

(1) (a), (b) and (c) No

(2) Falls away

Hansard Q. Col 1011 26/4/84

Curfew regulations

833 Mrs H SUZMAN asked the Minister of Law and Order

How many persons in the Republic were arrested in 1983 for offences in terms of curfew regulations?

The MINISTER OF LAW AND ORDER.

10 757 persons

Assault on infants

842 Mr A B WIDMAN asked the Minister of Law and Order

(1) How many cases of assault on infants by parents were reported in respect of each race group in each province during the period 1 July 1982 to 30 June 1983;

(2) in how many cases in respect of each race group did the infant (a) die and (b) suffer serious injury as a result of the assault?

The MINISTER OF LAW AND ORDER:

Although statistics as required by the hon member are not normally kept, the particulars furnished were specially collected

	(1)	(2)(a)	(b)
Cape Province			
White	10	3	2
Coloured	42	4	11
Black	22	5	2
Natal			
White	8	—	—
Asian	12	—	—
Coloured	1	—	—
Black	51	1	30
Orange Free State			
White	13	—	6
Coloured	2	1	1
Black	2	—	2
Transvaal			
White	44	1	10
Asian	2	1	—
Coloured	22	—	6
Black	51	9	16

FRIDAY, 27 APRIL 1984

†Indicates translated version

For oral reply

Hansard Q. Col. 1013 27/4/84

Robben Island

*1 Mrs H SUZMAN asked the Minister of Justice

(1) Whether any applications were made in 1983 by prisoners on Robben Island to consult with lawyers, if so, (a) how many, (b) what are the names of the prisoners concerned and (c) what were the reasons for the applications in each case,

(2) whether these applications were granted, if not, why not, in each case?

†The MINISTER OF JUSTICE

(1) Yes.

(a) 132 Applications which were made by 91 prisoners.

(b) It is not in the interest of prisoners in general, or of their families, or other relatives that the names of prisoners or other aspects, which may be of personal interest to them, should be released for general information

(c) Falls away in view of the reply given at (b)

(2) Yes Prison Regulation 123 stipulates that a prisoner who is a party to civil proceedings or intends to institute such proceedings, or is an accused in a criminal action, may consult his legal representative in connection with such proceedings or action

Where an application to consult a legal representative is not considered to be in terms of Prison Regulation 123, the visit is considered to be a normal visit which is part of the allotted quota applicable to the visiting privileges of different categories of prisoners

A total of 243 visits by legal representatives, including follow-up visits, were received by prisoners on Robben Island during 1983.

Hansard Q. Col. 1014 27/4/84

Policemen killed/seriously injured

*2 Mrs H SUZMAN asked the Minister of Law and Order

How many policemen, excluding policemen killed or injured in vehicle accidents or outside the Republic, were (a) killed

and (b) seriously injured in the execution of their duties in 1983?

†The MINISTER OF HEALTH AND WELFARE (for the Minister of Law and Order)

(a) 18.

(b) 51.

(d) The standard tariffs applicable to all departments, as approved by Treasury, are
R2,50 per script for 3 hour papers,
R2,10 per script for 2½ hour papers, and
R1,40 per script for 1½ hour papers

(e) Examiners are appointed by the

to ensure that the examiners keep to the memorandum in order to keep the marking process on a high level

†Prof N J J OLIVIER. Mr Speaker, I appreciate the supplementary reply the hon the Minister has just given Further arising out of this reply of his, can he tell us, however, whether any checks are made at all to ascertain whether the students who are appointed to do this work, are in fact competent to do

D H Peta High School: investigation of culpable homicide

*5 Mr S S VAN DER MERWE asked the Minister of Law and Order:

Whether, with reference to his reply to Question No 15 on 17 February 1984, the investigation into a possible case of culpable homicide resulting from an incident at the D H Peta High School in Attendge-

'Ban' on Mariental court case

252

CAPE TIMES 28/4/84

From TONY WEAVER

WINDHOEK. — The Minister of Justice, Mr Kobie Coetsee, has effectively banned a court case from proceeding which would have demanded the release of 37 Swapo prisoners held at a top secret camp near Mariental, 258km south of Windhoek.

The court proceedings may not continue in "the national interest", in terms of a certificate issued yesterday by Mr Coetsee and authorized by the State President, Mr Marais Viljoen

Mr Coetsee invoked an obscure section of the Defence Act, section 103 ter, which states that·

"If any proceedings have at any time been instituted in a court of law against the State, the State President, the Minister (of Defence) a member of the South African Defence Force or any other person in the service of the State and the State President is of the opinion·

"(a) That the proceedings were instituted by reason of an act advised, commanded , ordered, directed or done in good faith by the State President, the Minister or a member of the South African Defence Force for the purposes of or in connection with the prevention or suppression of terrorism in an operational area, and

"(b) That it is in the national interest that the proceedings shall not be continued, he shall authorize the the Minister of justice to issue a certificate directing the proceedings shall not be continued."

'Completely unhealthy'

The chairman of the Windhoek Bar Council, Mr Bryan O' Linn, last night described the "banning of the case" as being "completely unhealthy".

It is believed Mr Coetsee's decision will be raised in Parliament this week, and that the ramifications of the decision will echo in the United States Congress because of intense American civil rights involvement and interest in the case

Legal sources in Windhoek yesterday described the decision by Mr Coetsee, acting with the authorization of the "State President in Council", in other words the cabinet, as being "the last removal of the vestiges of an independent judiciary"

"This is a total breakdown of the rule of law," one source said

On March 6 this year, lawyers acting for 23 applicants, including SWA/Namibia's three most powerful clergymen, brought the application for the release of 37 "undeclared prisoners-of-war".

The 37 were captured during the SADF raid on Swapo's Cassinga camp in southern Angola in May of 1978.

They have since been held at the top-secret Mariental internment camp, and their imprisonment has been the focus of an intensive campaign by Amnesty International and other human rights organizations

'100 women and children held'

The three clergymen who brought the application, along with 20 other applicants, are Bishop Kleopas Dumeni, head of the 300 000-strong Evangelical Lutheran Ovambo Kavango Church, Bishop James Kauluma, Anglican Bishop of SWA/Namibia, and Bishop Bonafatius Haushiko, Roman Catholic Bishop of SWA/Namibia

In papers filed in March supporting the application for the release of the detainees, it was alleged that more than 100 women and children were being held incommunicado in the camp

The action then was brought against the Minister of Defence, General Magnus Malan, the Administrator-General of SWA/Namibia, Dr Willie van Niekerk, the head of the SWA Territory Force, General George Meiring, and Major G Coetzee, commanding officer of the internment camp.

According to yesterday's certificate issued by Mr Coetsee, the court proceedings instituted by Mr David Smuts on behalf of the applicants "shall lapse and be deemed to be void"

In addition, no court of law in South Africa or SWA/Namibia "shall have the power to review, set aside or declare to be void or otherwise question the validity of any certificate issued"

Legal sources said last night that this meant there were no channels for appeal against the decision by Mr Coetsee, and this amounted to "a direct assault by the executive on the independence of the judiciary"

One source described the action as "unprecedented", adding that.

"The courts have been ousted from the legal process by the stroke of an executive pen"

Other (SWA included)

	Male	Female	Total
Agriculture	180	2	182
Mining and Quarrying	68 155	—	68 155
Manufacturing	246	58	304
Electricity	112	28	140
Construction	166	3	169
Wholesale and Retail Trade	139	76	215
Transport	122	130	252
Financing and Insurance	43	50	93
Domestic Services	100	298	398
Other	117	80	197
Total	69 380	725	70 105

Hansard Q. Col. 1051 30/4/84

National states: employed persons

676. Mr R A F SWART asked the Minister of Co-operation and Development:

How many Blacks in each national state were employed in undertakings established (a) on an agency basis and (b) by development corporations for national states as at the latest specified date for which figures are available?

The MINISTER OF CO-OPERATION AND DEVELOPMENT:

(a) National State	Employment as at 31 March 1984
kwaZulu	14 203
Qwaqwa	3 494
Lebowa	4 462
Gazankulu	1 681
KaNgwane	343
kwaNdebele	—
Total	24 183

(b) National State	Employment as at 31 March 1984
kwaZulu	11 968
Qwaqwa	1 887
Lebowa	6 623
Gazankulu	5 009
KaNgwane	2 167
kwaNdebele	—
Total	27 654

The Corporation for Economic Development has also created 24 860 job opportunities in Agriculture and Transport in Bophuthatswana, Transkei and Ciskei, as well as in areas not allocated to a specific national state

The figures in question 1(b) do not include jobs created through financial assistance to Black businessmen and indirect employment created through the granting of credit facilities by wholesale concerns. These activities involve on estimated further employment figure of over 19 000.

Hansard Q. Col. 1052 30/4/84

Bhekumthetho settlement

743 Mr R A F SWART asked the Minister of Co-operation and Development:

Whether his Department intends to resettle the inhabitants of the Bhekumthetho settlement, near Mondlo; if so, (a) what is the nature of this settlement, (b)(i) why, (ii) when and (iii) where will they be resettled, (c) how many persons are involved and (d) what specified facilities will be provided for them?

The MINISTER OF CO-OPERATION AND DEVELOPMENT:

No

Television licences/transmissions

747. Mr K M ANDREW asked the Minister of Foreign Affairs

(1) (a) How many television licences were issued in 1983 to persons living in the Cape Peninsula and (b) what was the income received from these licences,

(2) whether any persons with licensed television sets in the Cape Peninsula in 1983 were unable to receive TV2 transmissions, if so, (a) how many (i) were able and (ii) were unable to receive these transmissions and (b) (i) in what areas of the Cape Peninsula could these transmissions not be received and (ii) how much did the persons concerned pay in licence fees (aa) individually and (bb) in total?

The MINISTER OF FOREIGN AFFAIRS

(1) (a) Approximately 127 000

(b) Concessionary Licences Approximately .. R168 000

Other licences: . . . R5 040 000

Minus 5,5 percent commission paid to the Post Office R286 440

Total . . R4 921 560

(2) Yes

(a) (i) Approximately 65 000

(ii) Approximately 62 000

(b) (i) TV2 signals are very weak or reception is impossible in the following areas: Llandudno, Cape Town, Oranjezicht, Gardens, Three Anchor Bay, Vredehoek, Signal Hill, Tamboerskloof, Bantry Bay, Mouille Point, Bakoven, Camps Bay, Clifton, Fresnaye, Sea Point, Green Point, Woodstock, St James, Muizenberg, Zandvlei, Kalk Bay, Clovelly, Fish Hoek, Sunny Cove, Noordhoek, Simonstown, Glencairn, Elsies Bay.

(ii) (aa) Either R24 (concessionary licences) or R42 (ordinary licences) each

(bb) Approximately R2 500 000

Commissions of inquiry: commissioners

774 Mr D J DALLING asked the Minister of Finance:

What are the current (a) financial arrangements and (b) conditions of employment relating to persons serving as commissioners on commissions of inquiry appointed by the State President?

The MINISTER OF FINANCE:

(a) and (b) The financial arrangements and other instructions concerning commissions of inquiry are set out in Chapter T of the Financial Handbook issued in terms of section 39 of the Exchequer and Audit Act, 1975 (Act no 66 of 1975) In essence what is provided for is a session allowance and the reimbursement, to chairmen and members of commissions, of their travelling, entertainment and subsistence expenses Should the Chairman request a member to render services in his own private time other than normal preparations, provision is made for the payment to the member of an honorarium The reimbursive payments are tax-free but the honoraria are taxable

X X

252 Hansard Q. Col. 1054 30/4/84

East Rand: commissioners' courts

795. Mr P G SOAL asked the Minister of Co-operation and Development.

Whether any persons appearing before the commissioners' courts falling within the area of the East Rand Administration Board in 1983 were legally represented in court; if so, how many persons (a) were and (b) were not so represented?

MINISTER OF CO-OPERATION AND DEVELOPMENT:

Yes.

(a) 466

(b) 67 186.

West Rand: commissioners' courts

796. Mr P G SOAL asked the Minister of Co-operation and Development:

Whether any persons appearing before the commissioners' courts falling within the area of the West Rand Administration Board in 1983 were legally represented in court; if so, how many persons (a) were and (b) were not so represented?

The MINISTER OF CO-OPERATION AND DEVELOPMENT.

Yes

(a) 250

(b) 88 661

Northern Transvaal: commissioners' courts

797. Mr P G SOAL asked the Minister of Co-operation and Development:

Whether any persons appearing before the commissioners' courts falling within the area of the Northern Transvaal Administration Board in 1983 were legally represented in court; if so, how many persons (a) were and (b) were not so represented?

The MINISTER OF CO-OPERATION AND DEVELOPMENT·

Yes.

(a) 15.

(b) 4 656.

Eastern Transvaal: commissioners' courts

798. Mr P G SOAL asked the Minister of Co-operation and Development·

Whether any persons appearing before the commissioners' courts falling within the area of the Eastern Transvaal Administration Board in 1983 were legally represented in court, if so, how many persons (a) were and (b) were not so represented?

The MINISTER OF CO-OPERATION AND DEVELOPMENT·

Yes.

(a) 138.

(b) 15 753.

Western Transvaal: commissioners' courts

799 Mr P G SOAL asked the Minister of Co-operation and Development:

Whether any persons appearing before the commissioners' courts falling within the area of the Western Transvaal Administration Board in 1983 were legally represented in court, if so, how many persons (a) were and (b) were not so represented?

The MINISTER OF CO-OPERATION AND DEVELOPMENT.

Yes

(a) 46

(b) 14 761.

Central Transvaal: commissioners' courts

800 Mr P G SOAL asked the Minister of Co-operation and Development

Whether any persons appearing before the commissioners' courts falling within the area of the Central Transvaal Administration Board in 1983 were legally represented in court, if so, how many persons (a) were and (b) were not so represented?

The MINISTER OF CO-OPERATION AND DEVELOPMENT:

Yes

(a) 528

(b) 25 936

Highveld: commissioners' courts

801. Mr P G SOAL asked the Minister of Co-operation and Development

Whether any persons appearing before the commissioners' courts falling within the area of the Highveld Administration Board in 1983 were legally represented in court, if so, how many persons (a) were and (b) were not so represented?

The MINISTER OF CO-OPERATION AND DEVELOPMENT:

Yes

(a) 711.

(b) 10 738

Southern Orange Free State: commissioners' courts

802 Mr P G SOAL asked the Minister of Co-operation and Development

Whether any persons appearing before the commissioners' courts falling within the area of the Southern Orange Free State Administration Board in 1983 were legally represented in court, if so, how many persons (a) were and (b) were not so represented?

The MINISTER OF CO-OPERATION AND DEVELOPMENT

Yes

(a) 175

(b) 25 050

Orange Vaal: commissioners' courts

803. Mr P G SOAL asked the Minister of Co-operation and Development·

Whether any persons appearing before the commissioners' courts falling within the area of the Orange Vaal Administration Board in 1983 were legally represented in court; if so, how many persons (a) were and (b) were not so represented?

The MINISTER OF CO-OPERATION AND DEVELOPMENT:

Yes

(a) 28

(b) 20 836

TUESDAY, 1 MAY 1984

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†Indicates translated version

For written reply

~~Cholera~~ Hansard Col. 1058 1/5/84

719 Mr E K MOORCROFT asked the Minister of Health and Welfare·

Whether any measures against cholera were taken in 1983 in the Black townships of (a) Bathurst, (b) Port Alfred, (c) Grahamstown and (d) Kenton-on-Sea, if not, why not, if so, (i) what measures, and (ii) what amount was spent, in each case?

The MINISTER OF HEALTH AND WELFARE

Yes,

(1) Bathurst

(a) The water supply in the black township was improved at a cost of R20 000

(b) The Divisional Council of Dias is taking care of cholera guidance in this area

(c) The Cholera Vigilance Committee of Dias Divisional Council will co-ordinate any measures to prevent an outbreak of the disease in this area

CAPE TIMES

252

Row over 'ban' on court case

From TONY WEAVER

WINDHOEK. — A major national and international row is brewing over the effective banning of a court case by the Minister of Justice, Mr Kobie Coetsee

The case would have sought the release of 37 internees held under security legislation at a top-secret concentration camp at Ma ental, south of Win

The 37 pr s were mainly ca d during the Sout rican Defence Force's May 1978 raid on Swapo's Cassinga headquarters in southern Angola

On Friday Mr Coetsee, acting under the authorization of the State President, Mr Marais Viljoen, issued a certificate in terms of an obscure section of the Defence Act, Section 103 ter, which effectively banned the case

Mrs Helen Suzman, Official Opposition spokesman on Law and Order and a member of the Justice committee of the PFP, said last night "The whole issue will definitely be raised by us during Minister Coetsee's justice vote in two weeks' time"

Western Five diplomatic sources yesterday expressed "grave concern" at the "banning" of the case

"We are highly concerned about this, as it would seem to be an abuse of the legal system," one US State Department source said

Inquiries about the "banning" were made to Windhoek from various international quarters yesterday and at the weekend Amnesty International and other major international human-rights organizations have expressed concern about the "banning"

Senior South African lawyers approached for comment on the section universally condemned it

Legal sources particularly objected to the section of the Act which reads "No court shall have power to review, set aside or declare to be void or otherwise question the validity of any certificate ('banning' proceedings) issued" in terms of the Act

A further section of the Act, section 103 ter (8), gives the minister the power to issue a certificate effectively banning an inquest from taking place if the death was caused by. "Any act advised, commanded, ordered , directed or done in good faith by the State President, the Minister, or a member of the South African Defence Force for the purposes of or in connection with the prevention or suppression of terrorism in any operational area"

Fired clothing

By RIAAN DE VILLIERS
Labour Reporter

MORE than 130 fired strikers from Cape Underwear sang and chanted on the fourth day of their "strike vigil" in a Bonteheuwel church yesterday.

The workers, almost all women, are being organized by the Clothing Workers' Union (Clowu), a new, independent union battling for a stake in the giant Cape clothing industry

The workers regard themselves as being on strike after a demand for a pay increase was refused by Cape Underwear management last week.

The company regards them as having been fired.

The workers and union officials say they have conveyed their willingness to negotiate to management, and are awaiting a reply.

"We will wait here until our demands are met," they said.

Mr Allan Falconer, a director of Cape Underwear, said he would comment fully on the situation today.

Fired Cape Underw

The dispute is seen crucial for the future Clowu, a new, independent union formed la year in an attempt t challenge the massive established Garmen Workers' Union (GWU which has 60 000 m bers and is protected

CAPE TIMES. 1/5/84

Hearing 'clears' Everite man

Labour Reporter

EVERITE announced yesterday that a superintendent at its black worker hostels had been "cleared of charges brought against him by fellow employees" at a disciplinary hearing

The hearing came after workers struck briefly at the company's Brackenfell asbestos manufacturing plant two weeks ago in support of a demand that the hostel superintendent and supervisor be fired

They claimed they had been ill-treated by the two men concerned Workers, the General Workers' Union — to which most of them belong — and management eventually agreed on a disciplinary hearing

Everite said yesterday the hearing had been

Cabin 100km

Political Staff

SOUTH AFRICA' maximum speed limit 100km/h is to be r viewed by the Cabin and it is possible th an announcement wi be made this week du ing the budget debat on the Department Mineral and Energy A fairs

Several organization including the AA, ha appealed from time time for an increase the limit

The annual report the department, whi has been tabled in P liament, said that f conservation measu such as the speed li

Too late for classifi

BIRTHS

HANEKOM — To Chrismar Petrus a girl born on April 30 at Jan Marais Clinic Thanks to and staff

DEATHS

FREEMAN — Victoria May R passed away peacefully on day April 28 Fondly by Margaret No flowers by donations if so desired to Welfare Society P O Box Walmer Port Elizabeth 6065

Cape Times 1/5/84

Pass-law courts: Less than 1% represented

Political Correspondent

HOUSE OF ASSEMBLY. — Less that one percent of nearly 284 000 black people who appeared in commissioners' courts last year had legal representation

This emerges from a series of questions tabled in Parliament by Mr Peter Soal (PFP Johannesburg North) and Mr Ken Andrew (PFP Gardens)

The issue is certain to be raised this week during debate on the Co-operation and Development portfolio of Dr Piet Koornhof

Commissioners' courts, which handle mainly black influx-control and passbook offences, have come under increased criticism recently after the Hoexter Commission said a separate legal system for blacks was unnecessary and repugnant

The government has not yet said whether it plans to retain commissioners' courts under the Department of Co-operation and Development, hand them over to the Department of Justice or abolish them and have all offenders appear in magistrates' courts

Figures given by Dr Koornhof show that 283 824 black people appeared in commissioners' courts in 10 administration-board areas last year Of these only 2 738, or 0,96 percent, had legal representation

The total for each administration-board area, with the percentage of accused who had legal representation, is Langa 7 890 (4,8), Orange Vaal 20 864 (0,1), Southern Orange 25 225 (0,7), Highveld 11 449 (6,2), Central Transvaal 26 464 (2,0), Western Transvaal 14 807 (0,3), Eastern Transvaal 15 891 ((0,9), Northern Transvaal 4 671 (0,3), West Rand 88 911 (0,3) and East Rand 67 652 (0,7)

cord charts for 20 years, probably took cocaine four to eight hours before he was killed, a coroner's spokesman said yesterday

Gaye, 44, whose hit records included Sexual Healing and What's Going On, died of two gunshot wounds in the chest here on April 1 after what police alleged was an argument with his father — Sapa-Reuter

Jackson sweeps in

Argus Foreign Service

WASHINGTON — The Rev Jesse Jackson, the black candidate, today won his first primary in the Democratic presidential nomination contest, sweeping to an overwhelming victory here He won more than 60 percent of the votes in the largely black district of Columbia, in which Washington is situated

Court ban: 'No independent judiciary'

ARGUS 2/5/84 252

Argus Foreign Service

WASHINGTON — By rescinding the jurisdiction of the Windhoek Supreme Court in the Cassinga captives case the South African Government repudiated any notion that it was committed to the rule of law, according to an American organisation concerned in the case

"This unilateral action, taken for the first time in Namibian or South African legal history, repudiates any notion of an independent judiciary or a commitment to the rule of law," said the Lawyers' Committee for Civil Rights under Law in a statement issued here

The committee financed the application for the release of 37 people captured in the South African raid on the Swapo base at Cassinga in Angola in 1978 and now held at Mariental in SWA/Namibia

NATIONAL INTEREST

Last week the Minister of Justice rescinded the jurisdiction of the court to hear the application, invoking the section of the Defence Act providing for such action if the State President considers it in the national interest

With an office and a small staff in Washington, the committee consists of lawyers in the United States who share the aim of "helping to solve serious modern problems through processes of the law"

'Miracle cure' stuns nuns after the Pope's blessing

Argus Foreign Service

ROME — British doctor Jan Lavric stunned nuns when he stepped out of a wheelchair soon after being blessed by the Pope

But it was confusion over seating at a Vatican audience with the Pope that led the nuns to believe they had seen a miracle.

Dr Lavric, from Clayton, near Doncaster, had helped to organise a disabled people's pilgrimage to Rome. During the audience he sat in the only spare seat, a wheelchair

"Suddenly a nun wheeled me off," he said

Before he could explain, the Pope had blessed him

The Pope then left and Dr Lavric got out of the wheelchair as the nuns tried to wheel him away

"They shouted 'It's a miracle'," Dr Lavric said.

(b)	Blacks	7	—
(bb) From 1984 01 01 to 1984.04 27			
	Coloureds	1	—
	Blacks	22	6
(b)	Blacks	7	—

Hansard Q. Col. 1095 2/5/84

Sales tax

840 Mr B B GOODALL asked the Minister of Finance:

What amount in general sales tax was derived from (a) individuals, (b) companies, (c) the (i) building and construction, (ii) retail, (iii) wholesale, (iv) manufacturing and (v) services sectors and (d) any other specified sources in the (i) 1982-83 and (ii) 1983-84 financial year?

The MINISTER OF FINANCE.

Reply:

Statistics which distinguish between payments of sales tax by individuals and companies are not maintained For statistical purposes collections of sales tax are analysed under nine main groups The analysis for the relevant financial years was as follows —

Main Group	Financial Year 1982-83	Financial Year 1983-84 (Only collections during the period 1 April to 31 December 1983 have as yet been analysed)
	R	R
(1) Agriculture and Fisheries	12 241 843	9 761 184
(2) Mining and Quarrying	14 940 933	14 307 415
(3) Manufacturing	545 122 645	458 200 980
(4) Wholesale sales and services	569 110 284[1]	470 091 575[2]
(5) Retail sales and services	1 723 914 735[3]	1 564 183 495[4]
(6) Personal services (See note (5) below)	18 184 077	17 258 070
(7) Catering and Accommodation services	126 301 824	106 915 519
(8) Business services	172 240 799	197 593 673
(9) Unclassified (See note (6) below)	1 296 207	1 396 143
Total	3 183 453 347	2 839 708 054

Notes:

(1) Includes an amount of R116 065 589 in respect of construction and building materials.

(2) Includes an amount of R63 506 379 in respect of construction and building materials.

(3) Includes an amount of R70 976 079 in respect of building materials

(4) Includes an amount of R70 850 744 in respect of building materials.

(5) Personal services comprise dry cleaners, beauty salons, etc, as well as medical practitioners, dentists, paramedical services, private hospitals and clinics in respect of the sale of goods.

(6) Business services cover renting and financial leases in respect of movable goods.

Hansard Q. Col. 1097 2/5/84

Corporal punishment

841. Mr P H P GASTROW asked the Minister of Justice:

(1) How many males (a) under the age of 18 years, (b) between the ages of 18 and 21 years and (c) aged 21 years and over in each race group were sentenced to corporal punishment in 1983,

(2) how many strokes were inflicted in respect of each category of persons?

The MINISTER OF JUSTICE:

(1) The required information is unfortunately not readily available The following information is however supplied for the period 1 July 1982 to 30 June 1983.

(i) During the period mentioned 40 004 persons were sentenced to corporal punishment, without a combination of other sentences of whom—

(a) 1 824 were Whites;

(b) 13 300 were Coloureds;

(c) 588 were Asians; and

(d) 24 292 were Blacks

(ii) In addition 654 persons were sentenced to corporal punishment, coupled with imprisonment which was not suspended, of whom—

(a) 9 were Whites;

(b) 178 were Coloureds;

(c) 8 were Asians, and

(d) 459 were Blacks

(iii) Furthermore 795 persons were sentenced to corporal punishment coupled with imprisonment which was suspended, of whom—

(a) 50 were Whites,

(b) 189 were Coloureds; and

(c) 556 were Blacks

(2) The required information is unfortunately not readily available.

Hansard Q Col. 1098 2/5/84

Adoption

845 Mr A B WIDMAN asked the Minister of Health and Welfare·

How many White children were placed in adoption in terms of the Children's Act in 1983?

The MINISTER OF HEALTH AND WELFARE.

2 618.

Hansard Q. Col 1098 2/5/1984

Lebowa Development Corporation

850 Dr W J SNYMAN asked the Minister of Co-operation and Development·†

(1) (a) What amount was written off as bad debt by the Lebowa Development Corporation in each of the latest specified four financial years for which figures are available, (b) how many industrialists were recruited abroad by this corporation in each of these years and (c) how many industrial undertakings were established in Lebowa by means of foreign capital in each such financial year,

(2) whether the Lebowa Development Corporation made any financial grants in the above-mentioned financial years; if so, (a) to whom, (b) when and (c) what was the amount of each grant?

ARGUS 3/5/84 252

Mariental (contd)

THE Government has now explained why it invoked an extraordinary piece of legislation to summarily terminate a case before the Supreme Court at Mariental. Not unexpectedly, the reason is that the Swapo prisoners whom the case sought to free, are also the subject of international negotiations aimed at their release.

That there is such a move afoot will be widely welcomed. Unfortunately it will only partly remove the odour of authoritarianism surrounding this intrusion into the legal process. The government might have used diplomatic or other channels in an attempt to dissuade those who were sponsoring the case. If all else failed, it might at least have explained and acted simultaneously. The circumstances may be unusual, but whatever the intentions the action was short-sighted and damaging to its cause.

Cahora Bassa power

POLITICALLY and diplomatically, the Nkomati accord (as also the Lusaka agreement) has been paying encouraging dividends, as evinced by the international reassessment of the Southern African situation.

To the region itself one of the first tangible rewards of the new realism underlying this rapprochement is the signing of the Cahora Bassa electricity supply contract. While security threats to transmission lines remain a complicating factor, the mutual advantages of the agreement, in economic terms alone, cannot be doubted. Hopefully it will also serve as a spur for wider cooperation and add impetus to the drive for regional stability and peace.

CAPE TIMES 3/5/84 (252)

Seeking odious company

THE atrocious ban placed by the South African Government on a court case in Mariental, SWA/Namibia, cannot be too strongly condemned It places Pretoria in the most odious company — in a continent frequently seen by white South Africans as showing scant regard for human rights. It violates a fundamental principle of the due process of law It alienates friendly Western governments and interests It plays directly into the hands of those who hold that South Africa is not politically sincere over reform and sub-continental accommodation It is a disgrace.

This deft little bit of interference with the real interests of justice was achieved when none other than the Minister of Justice himself, duly authorized, no doubt, by the Minister of Defence, issued a certificate stating that the case, concerning the possible release of 37 Swapo internees, most of them taken prisoner in Cassinga, Angola, in 1978, could not continue "in the national interest".

The fact that the application was backed by an influential legal rights group in the United States will make things worse, because the ban will be widely reported and commented on abroad The provison under the Defence Act which makes such interference possible in cases concerning "terrorism" has always been highly contentious It is a grave danger to what remains of this country's legal reputation It should be scrapped forthwith Moreover, if amends are to be made for this damaging action, the prisoners concerned should be released

54 SWA detainees to be released

CAPE TIMES 4/5/86

252

From TONY WEAVER

WINDHOEK. — In a dramatic development in the controversy surrounding the Mariental internment camp, 258km south of Windhoek, the Administrator-General, Dr Willie van Niekerk, yesterday announced that 54 of the prisoners would be released soon.

And more will be released in the near future, should they be found to "no longer pose a threat to law and order".

The 54 detainees, whose names have not been released, will be freed from the top-secret camp once their next of kin have been traced and arrangements made for their accommodation.

For many of the detainees, it will be their first taste of freedom in six years, as many of the Mariental internees, officially said to number 146, were captured on May 4, 1978 at Swapo's Cassinga refugee and training camp by the SA Defence Force.

The camp has hit international headlines and become the centre of a major national and international controversy this week after the Minister of Justice, Mr Kobie Coetsee, effectively banned a court case in which the release of 37 internees was sought.

14 Angolans

On Friday he issued a certificate in terms of an obscure Defence Act section, 103 ter, saying the case "may not proceed in the national interest".

It has also been confirmed that a further 14 Angolan citizens held at the camp will be released in a prisoner exchange between South Africa and Angola.

It was confirmed by reliable sources yesterday that the 14 Angolans do not form part of the 54 mentioned by Dr Van Niekerk.

Swapo's United Nations representative, Mr Theo ben Gurirab, yesterday welcomed the news, saying "We hope they are all in good health.

'Free all'

"However glad we are at their impending release, we demand the immediate and unconditional release of all Namibian political prisoners."

Mr David Smuts, the attorney who has been acting on behalf of the 37 internees, including 13 women, named in the "banned" application, said yesterday: "My clients welcome the release of any detainees, but in the circumstances, I find the issuing of the minister's certificate to be totally inexplicable."

A source close to the investigation into the release of the internees yesterday said "not all the 37 mentioned in Mr Smuts' application will be released, but some of them will".

'No threat'

Dr Van Niekerk said in the statement: "The decision (to release 54 internees) follows an investigation launched in October 1983 by the SWA Territory Force.

"After the commencement of peace initiatives in Southern Africa and discussion between the Administrator-General and, inter alia, the Multi-Party Conference, an instruction was issued in February this year to speed up the investigation.

"Pursuant to the report, the Administrator-General has decided to release all those detainees who no longer pose a threat to law and order.

"Fifty-four detainees presently qualify for release on this basis. The situation of other detainees is being investigated, and the possibility of more detainees being released cannot be excluded."

(1) to (8) The Government of kwaZulu has been consulted and close liaison about the matter will be maintained with that Government

The matters raised in questions (1) to (6) are still being investigated.

Mr G B D McINTOSH· Mr Speaker, arising out of the reply given by the hon the Deputy Minister, is he prepared to give us an undertaking that the Department of Environment Affairs and Fisheries, which will be responsible for the building of the dam, will make some money available to finance the decent and orderly movement of those people, unlike they did in the Bergville area?

The DEPUTY MINISTER Mr Speaker, it is not possible for me to guarantee the raising of any money by other departments. What this Department is prepared to guarantee, however, is that they will work in close liaison with the Government of kwaZulu to resettle those people.

The MINISTER OF ENVIRONMENT AFFAIRS AND FISHERIES. Does the hon member want dams to be built in Natal or does he not? He should decide about that very quickly. [Interjections]

*11 Maj R SIVE—Agriculture—Reply standing over.

Hansard

Walvis Bay: Coloured voters

Q. Col. 1115 4/5/84

*12. Maj R SIVE asked the Minister of Internal Affairs:

(1) Whether the Delimitation Commission has decided to include the Coloured voters of Walvis Bay in an electoral division of Cape Town for the purpose of representation in the House of Representatives; if so,

(2) whether he intends to create in respect of the said Coloured voters a separate electoral division similar to the one for the White voters of Walvis Bay; if not, why not, if so,

(3) whether he will amend section 49(4) of the Republic of South Africa Constitution Act, No 110 of 1983, accordingly?

The MINISTER OF INTERNAL AFFAIRS.

(1) The Delimitation Commission has not yet presented its report

(2) I am not empowered to create electoral divisions

(3) The hon member is familiar with the way in which Acts of Parliament are amended I have received no representations towards the amendment of the Republic of South Africa Constitution Act, 1983, in this respect and have not considered such an amendment

Maj R SIVE: Mr Speaker, arising out of the reply given by the hon the Minister, should the Coloured people ask for a separate constituency to be established at Walvis Bay, will he be prepared to consider such request favourably?

The MINISTER At this stage the establishment of electoral divisions for Coloured people has already progressed to such a stage that I really believe it is too late to stop the process now I believe we should adhere to our target date

Maj R SIVE. Mr Speaker, further arising out of the reply given by the hon the Minister, when the Delimitation Commission has completed its work and it should be found that Walvis Bay is part of a constituency of

Cape Town, will the hon the Minister then favourably consider the establishment of a separate constituency for Coloureds in Walvis Bay, as was done in the case of the White voters?

The MINISTER. Mr Speaker, I cannot create electoral divisions That can only be done in terms of the current legislation, which does not in the case of the Coloured make particular provision for the creation of a separate constituency at Walvis Bay. The hon member must, however, I believe, also check on his facts. One of his hon colleagues yesterday strongly opposed the small number of voters which we will have in Coloured constituencies in the Orange Free State I believe that in this instance things might even be worse, and the hon member might also meet with strong opposition from within his own party [Interjections]

Maj R SIVE· Mr speaker, further arising out of the reply given by the hon the Minister, is he not aware of the fact that there are only about 3 500 White voters in the White constituency as compared with between 15 000 and 20 000 voters in other constituencies?

The MINISTER. Mr Speaker, I am well aware of that I do not believe, however, that the number of Coloured voters in Walvis Bay will reach anything near the figure of 3 500.

*13. Dr M S BARNARD—Health and Welfare—Reply standing over

Hansard Q.Col 1117

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Cradock: magistrate

4/5/84

*14. Mr D J DALLING asked the Minister of Justice:

(1) What (a) is the age, (b) are the educations and (c) is the departmental experience of the magistrate of the district court of Cradock, whose name has been furnished to the Minister's Department for the purpose of his reply,

(2) whether the said magistrate has made a report to the South African Police concerning the activities of a person whose name has been furnished to the Minister's Department for the purpose of his reply; if so, (a) in what manner and (b) on what date was the report made?

The MINISTER OF INDUSTRIES, COMMERCE AND TOURISM (for the Minister of Justice)

(1) (a) 26

(b) Diploma Iuris.

(c) Clerical duties—5 years.
Public Prosecutor—1½ years
Head of Office—1 year
Additional Magistrate—1 year.

(2) No

*15 Mr P H P GASTROW—Law and Order—Reply standing over.

*16 Mr P G SOAL—Education and Training—Reply standing over

New salary structure

*17 Mr R M BURROWS asked the Minister of Internal Affairs

Whether, with reference to his reply to Question No 746 on 24 April 1984, the new salary structure has been extended to (a) chief inspectors and rectors and (b) in-

1984 ★

Cape Times 5/5/84

Bar slams Coetsee decision

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From TONY WEAVER

WINDHOEK. — The General Bar Council of South Africa, representing 750 South African advocates, yesterday slammed the decision of the Minister of Justice, Mr Kobie Coetsee, to "ban" the court case seeking the release of 37 Mariental internees

In a statement, the council expressed its "deep sense of concern and grave misgiving about this extraordinary use of executive power"

Last Friday, Mr Coetsee issued a certificate in terms of section 103-ter of the Defence Act, ordering that an application by 24 persons, including Namibia's three most powerful religious leaders, "may not proceed" He also ordered that, in terms of the Act, no appeal could be made to any court of law against the certificate

Then, on Thursday afternoon, the Administrator General of SWA/Namibia, Dr Willie van Niekerk, confirmed that 54 of the internees, some of who had been held for over six years, would be released once their next of kin had been traced

Mr David Smuts of Lorenz and Bone, acting on behalf of the 37 internees, confirmed yesterday he had had no approach from the authorities for details of next of kin of 20 of the internees whose details were in his possession

Nor, so far as he knew, had the 20 relatives on whose behalf he was acting, been approached for help with the release of their family members interned in the camp

Yesterday's Bar Council statement follows a similar one by the SWA/Namibia Bar Council earlier this week which "deplored" the banning

Yesterday's statement said that "the situation is made the more disquieting by the fact that the executive is itself a party to the very proceedings it seeks to stop in this manner"

"It is an important principle of our law, both that no one should be a judge in his own cause; and that our courts should should operate without interference by the executive" It was a "dangerous and unhealthy principle" the possible prolonging of what could be "unlawful detention" by "preventing the court from exercising its ordinary powers"

TINDERBOX SA

Our security laws are so harsh they help provoke the violence they are meant to contain, argued Professor Tony Mathews on these pages two weeks ago. Today we present an opposing viewpoint — the case for strong security laws — written by a senior civil servant

THE article 'Fortress SA', by Prof Tony Mathews made for compelling reading and gave a good overview of the liberal-academic view of security legislation

He makes the proposition that too many security laws threaten not only human freedom but also dialectically threaten the very purpose for which they exist — that is, order and stability

Prof Mathews goes on to argue that the security response of increased coercion in situations of crisis may in fact exacerbate the situation rather than improve it

The gist of Prof Mathews's argument is, that in the context of South Africa, this lesson should be learnt and the wide ambit of security laws should be "rolled-back" and replaced by a more relaxed security legislation package which, while allowing for firm action against the "men of violence", will nevertheless allow genuine black opposition leadership to emerge without fear in order to participate in peaceful "negotiation politics"

Those who agree with the sentiments as expressed by Professor Mathews may in fact be surprised by how much of what he says is also agreed with by professional security men involved in the administration of South Africa's laws

The law and order community in South Africa is well aware of the conditions in and lessons to be learnt from Israel, West Germany and Northern Ireland

Nevertheless, there is one fundamental point where the security professionals differ from Prof Mathews and that is where he states that harsh laws to curb dissent lead to increasing violence from the coerced Prof Mathews seems to be suggesting in this instance a cause-and-effect relationship which oversimplifies the complex issues at stake

lax its security laws before negotiation politics have replaced the politics of violence?

dence and co-operation of the target community must be gained and maintained, through effective counter-terrorist action, consulta-

specifically, is to bring about an abnormal atmosphere throughout society, and the surest way of doing this is to force the authorities

ist/subversive, usually because of a lack of suitable or sufficient evidence

Thus while the ultimate intent-

order community is clear — it should maintain the public peace, law, order, security and above all, the continuance of governability

In a territory such as South Africa, the means employed to fulfil this challenge are as important as the function itself

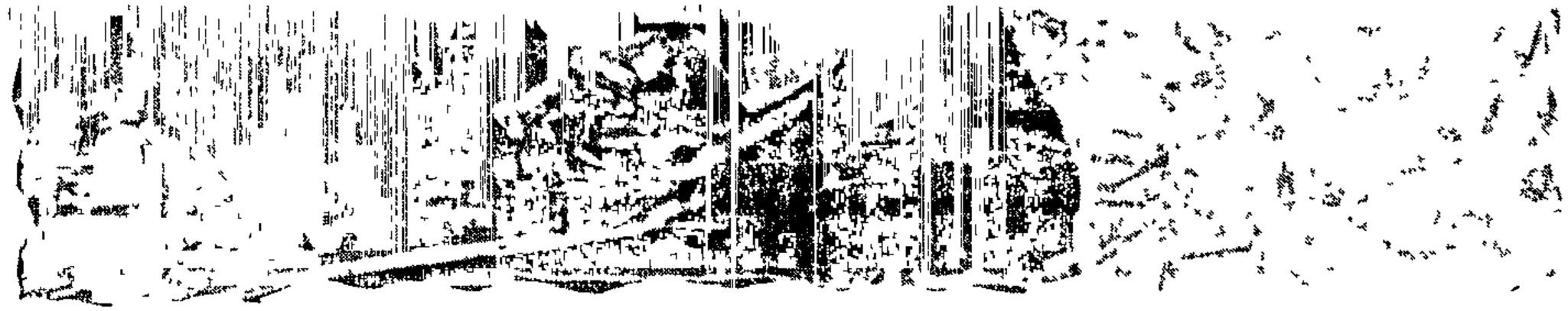
Social, economic and political reform or modernisation produces social, economic and political instability as well as a degree of violence and conflict The challenge of violence and conflict is how to deal with the situation while still maintaining the fundamental norms and values of a free society

The aim of the enemies of society is to break the power, authority and morale of the police This is because the police are seen to be not only the main symbolic representatives of the system, but they are also the front line of the defence of the state

The maintenance of public order and constitutional, political, social and economic *status quo* is more than merely the imposition of order by force

Law and order implies popular and constitutional government and a community which is behind its security forces and in agreement with their actions This then is the challenge for the police and law and order community The enemies of society understand clearly the vulnerability of the law and order community and will deliberately exploit any perceived deficiencies in legislation, structure, manpower, training, finance and resources

A prerequisite for the overthrow of a state is the defeat and collapse of the police, law, order and the public peace It is the duty of the polity, the police and the law and order community in general to ensure that those legislative, structural, fiscal and political counter-measures necessary for the law enforcers to defend society and themselves, are con-



Our security laws are so harsh they help provoke the violence they are meant to contain, argued Professor Tony Mathews on these pages two weeks ago. Today we present an opposing viewpoint — the case for strong security laws — written by a senior civil servant

Those who agree with the sentiments as expressed by Professor Mathews may in fact be surprised by how much of what he says is also agreed with by professional security men involved in the administration of South Africa's laws

The law and order community in South Africa is well aware of the conditions in and lessons to be learnt from Israel, West Germany and Northern Ireland

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It would be equally naive from the security professional's point of view to suggest the reverse cause-and-effect relationship to that proposed by Prof Mathews (Such a reversion of the argument would run that "increased violent dissent is the cause of harsher oppression, the targets of harsh security legislation are the source of blame for oppressive security laws since the laws legislated to stop revolutionaries would be unnecessary if such revolutionaries were not engaged in posing a threat to peace and stability")

The fact of the matter is that neither Prof Mathews's thesis, nor its antithesis, stated above, are the whole truth

This lies somewhere in between, and the blame for any drift towards a Northern Ireland situation in South Africa cannot be laid solely at the door of the security laws and their administration

This fundamental difference with Prof Mathews's proposition then leads professionals in this country to question whether, as he states, a relaxation of political laws would lead to less political violence Would the 'men of violence' not merely step up their campaigns?

It is not only security laws which threaten civil rights, security and freedom Unbridled terror destroys all these civilised values

Can South Africa afford to relax its security laws before negotiation politics have replaced the politics of violence?

Or should the security laws be used to frustrate those who follow the strategies of violence and conflict while men of peace will follow the strategy of negotiation?

Any security professional in South Africa will be able to explain that black political opposition in South Africa is in conflict with, as Prof Mathews says, the denial of basic human rights through 'apartheid'

This conflict is not with the security laws or apparatus *per se*, for these form but a recent and small part of the cause of the conflict as a whole.

From a security professional's viewpoint therefore, it is naive to believe that merely reforming our security laws, in order to allow the emergence of a genuine black opposition leadership, will in any way contribute to a peaceful solution of South Africa's problems

The fundamental conflict will remain and without the effective fire-brigade of our security laws, Prof Mathews's "law and order tinder-box" will soon be ignited — which will destroy those civilised values which we still retain

In combating terrorism in any society, but more especially in a society like South Africa, two main tactics must form part of the overall strategy

First, the society must have effective, practical and yet suitable laws and administrative/executive powers Second, the confidence and co-operation of the target community must be gained and maintained, through effective counter-terrorist action, consultation and education

The overall strategic approach by the authorities must be balanced and realistic, aimed at a compromise between paranoia, which views terrorism and revolution as being immediate and unavoidable, and complacency, which ignores the very real threat to our society

The subversive and terrorist can only operate effectively where there are social, political and economic conditions (often of his own creation) which he can exploit

Thus the main preventive measure against terrorism is to constantly ensure that social conditions are such that the terrorist sows his seeds of violence on barren ground

In any situation where a society is threatened by terrorism, the first priority of the authorities must be to preserve a state of normality to as great a degree as possible, and this goes hand in hand with preserving the society's fundamental values

The most important values to be preserved in a state are legality/rule of law and democratic rights

The aim of the terrorist in general, and of the African National Congress (ANC) in South Africa specifically, is to bring about an abnormal atmosphere throughout society, and the surest way of doing this is to force the authorities to a position where they have no option but to suspend normal rule, declare a state of emergency and even mobilise the army

If the civil authorities and the police do not have sufficient legal powers at their command in order to combat the extraordinary threat of terrorism, then the ultimate resort to the use of the military may have to be utilised, where they might not have been necessary had the civil authority enjoyed sufficient emergency powers

However, legal powers alone are not sufficient and the police must also have access to sufficient resources to ensure that they can cope with almost any conceivable act of extreme violence, terrorism and quasi-terrorism within the country

In this context it should be remembered that many acts of terrorism against South Africa, and especially those committed by the ANC and other foreign-backed forces, are in fact acts of covert war on the part of the foreign backers

In any democratic state, terrorism should be dealt with according to due process of law and through the courts wherever possible

But due to the very nature of terrorism and subversion, it is often extremely difficult, if not impossible, to satisfy due process of law and to convict every terrorist/subversive, usually because of a lack of suitable or sufficient evidence

Thus while the ultimate intention of the state and the law enforcement authorities should be to deal with all terrorists and subversives through the courts, this may be practically impossible, without lowering the standard of evidence required That step has been taken in some countries, but can only lead to bringing the courts into disrepute

The duty of the legislator is to ensure that a society has sufficient law for its administration in any conceivable situation — not too much nor too little

All law should be specific enough to be used against those at whom it is aimed, without unduly affecting the rights and privileges of the ordinary and innocent citizen

The function of the law and order implies popular and constitutional government and a community which is behind its security forces and in agreement with their actions This then is the challenge for the police and law and order community The enemies of society understand clearly the vulnerability of the law and order community and will deliberately exploit any perceived deficiencies in legislation, structure, manpower, training, finance and resources

A prerequisite for the overthrow of a state is the defeat and collapse of the police, law, order and the public peace It is the duty of the polity, the police and the law and order community in general to ensure that those legislative, structural, fiscal and political counter-measures necessary for the law enforcers to defend society and themselves, are constantly available and implemented

Thus, from the perspective of a security professional and law enforcer, Prof Mathews's viewpoint on security legislation, while containing much truth, is sadly incomplete

Nothing is more complex than countering revolutionary tendencies in a multi-ethnic, Third World/First World democracy/autocracy while seeking ultimate political solutions via a minimum of conflict

Prof Mathews's solution, to "roll-back" our security laws, addresses only part of the problem and, if carried out in isolation, will only exacerbate the already serious situation

● *The writer is a senior civil servant whose identity is known to the Editor*

ARGUS 18/5/84 (252)

'Astonishing judgments' damaging courts — Suzman

Parliamentary Staff

CONFIDENCE in the courts was being seriously undermined by some "astonishing" judgments in the Supreme Court, the Assembly heard

Speaking during the debate on the Justice and Prisons vote, Mrs Helen Suzman (PFP Houghton) referred to the "extraordinary disparity" in sentences handed down in recent cases such as the Barbara Hogan trial and the trial of members of the Afrikaner Weerstandsbeweging

The alleged political appointments of judges and the manner in which judges were assigned to political trials sparked fierce clashes in the Assembly yesterday

Nationalist members objected to Mrs Suzman's remarks on judgments and the chairman later said it was out of order to discuss a judge's actual ruling

Mrs Suzman said her confidence in the courts had decreased in recent years because of the suspicion that the appointment of judges in some instances was based on political considerations

Her confidence in the courts had been further undermined by "incomprehensible judgements" that had been handed down.

There was an "extraordinary disparity" in the sentences handed down by Mr Justice van Dyk in the trial of Barbara Hogan and the trial of three members of the AWB, she said

Barbara Hogan, accused of high treason, was sentenced to 10 years in jail and leave to appeal was refused

"SAVAGE"

The State accepted that she was not associated with violent activities on behalf of the ANC and although she was a first offender and had spent about 11 months in custody before the trial, Mr Justice van Dyk passed a "savage" sentence of 10 years' imprisonment

In the case of the AWB, thre three accused were in possession of "a veritable arsenal", including AK-47 rifles and more than 4 000 rounds of ammunition

They were sentenced to two, three and four years' respectively, all suspended for five years Leave to appeal was granted by Mr Justice van Dyk who described the accused as "civilised and decent people"

HITLER SALUTE

"One of these civilised and decent people, Eugene'Terreblanche, is strutting around the country addressing mass meetings and giving the Hitler salute," she said

In the case of Saul Mkize, Constable Nienaber got off scot free and Mr Justice de Villiers called Mkize "impolite and arrogant"

The same judge gave suspended sentences to three policemen found guilty of using electric shocks on suspected cattle thieves One victim was seriously injured and the other died

Pass-court control to Justice

CAPE TIMES 18/5/84 252

Political Staff

HOUSE OF ASSEMBLY — The controversial black commissioners' courts are to be transferred from the jurisdiction of the Department of Co-operation and Development to the Department of Justice from September 1, the Minister of Justice, Mr Kobie Coetsee, announced yesterday

Opposition justice spokesmen immediately demanded to know what tangible changes could be expected in the admistration of justice in the courts

Mr Coetsee announced the transfer during the debate on his budget vote in Parliament. The transfer is in line with a recommendation of the Hoexter Commission into legal reform Its final report was tabled in Parliament earlier this year

Influx control

The commission was highly critical of the racially separate nature of the courts and the inferior standard of justice they dispensed Commissioner's courts are a key element in the application of the government's black influx control laws

The PFP's chief justice spokesman, Mr David Dalling, said during debate that the quality of procedures and judgments in the courts might improve, but that would not solve the central problem surrounding commissioners' courts which was influx control laws

If the same officers were transferred to a new department and continued with the same duties, nothing would have changed

200 000 arrests

Pass laws, applicable only to blacks, resulted in over 200 000 arrests a year, and all those people had to be processed through the courts Changing the departments under which the commissioners' courts fell would not alter the figure, Mr Dalling said

It was possible that due to the more demanding procedures under the Department of Justice, the whole works would be gummed up causing a doubling up of the awaiting-trial prisoners and possibly the adoption of the same conveyor belt style of justice condemned in the Hoexter report.

Mr Coetsee said commissioners' courts applied the laws made by Parliament and under his department they would continue to do so

However, the racial connotation of the courts would now be removed It was possible that it would take time and negotiation to organize the accommodation aspects of the courts The courts would also benefit in terms of image, he said

ver: 'no need to panic'

ier
labourers in
ted antibo-
but the la-
isease.
Deputy Direc-
artment of
more than 100

blood tests had been carried out on people who had come into contact with a Congo Fever victim

Three labourers showed no signs of the disease and were not infectious, but had antibodies for the illness.

"We are watching the situation and there is no need to panic," he said.

are not for eating

Remarks by judge are criticised

252 Star 29/5/89

By Fiona Macleod,

Statements in the Rand Supreme Court yesterday by Mr Justice Irving Steyn when he acquitted Mr Francisco Quintino of murdering a burglar were "to say the least, unfortunate", lawyers and legal academics said today

The judge said Quintino "deserved a medal" It has evoked strong criticism in the legal world. Some lawyers have said he should resign

The Witwatersrand Attorney-General has ordered a copy of the judgment. It is not known why

"A judge prepared to make such irresponsible statements is not fit to sit on the Bench The appropritate authorities should consider putting in motion a parliamentary investigation which could lead to his impeachment," said one academic.

"When a judge says a man should be awarded a medal for shooting someone, he is virtually giving licence to others to kill."

Law Professor Johan van der Vyver of the University of the Witwatersrand said. "There is nothing I could say about this statement that would not amount to contempt of court."

The head of the Criminal Law Department at the University of South Africa, Professor S A Strauss, said Mr Quintino's acquittal seemed to be correct according to South African law

Political Correspondent Peter Sullivan reports that the judge's statement was labelled "incredible" today by Mrs Helen Suzman, the Progressive Federal Party MP for Houghton

See Page 2, Metro section.

Hasty use of firearms is deplored by judge

By Rashid Chopdat

The hasty use of firearms was deplored by a Rand Supreme Court judge today when he acquitted a building contractor on a charge of murdering a labourer after finding that the shooting was in self-defence.

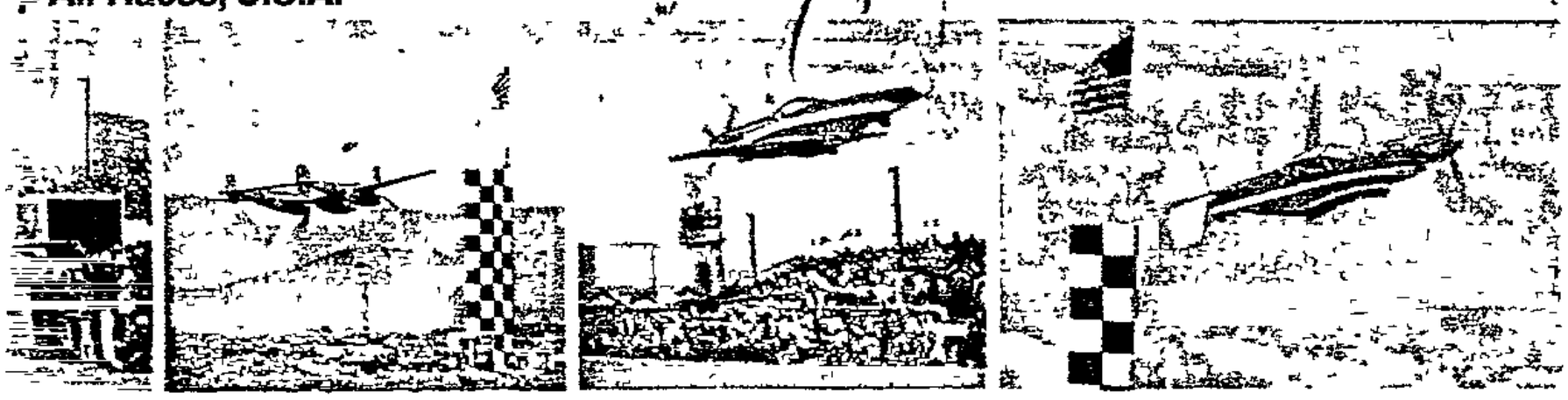
Mr Zacharias Zachapoulous (48), of Berea, Johannesburg, had pleaded not guilty to the charge.

Mr Justice A M van Niekerk said there was uncontradicted evidence that Mr France Molepo had attacked Mr Zachapoulous with a pickaxe.

The judge said that the hasty use of firearms was to be deplored, but in this case the shooting as a means of defence was reasonable and justified.

According to the evidence, the shooting took place shortly after Mr Molepo, a part-time labourer, had demanded his wages after terminating his employment.

Air Races, U.S.A.



action..satisfaction

Action call on remarks by judge

Mercury 26/5/84 (252)

Ormande Pollok
Political Correspondent

CAPE TOWN—Opposition Leader Frederik van Zyl Slabbert said yesterday the Government should repudiate remarks by a judge if reports were correct that he had said a man deserved a medal for shooting a thief who had stolen 63 c milk money

He had raised the issue during the budget debate on the Department of Constitutional Development and Planning during which the chairman, Mr Val Volker, said in a later ruling that had Dr Slabbert still been in the House he would have asked him to withdraw his remarks

Dr Slabbert was commenting on reports which said Mr Justice Irving Steyn had said in acquitting a 56-year-old bus driver, Mr Francois Quintino, of killing a thief that there had been no more milk thefts in the area

He was reported to have said Mr Quintino might have done the community a service and deserved a medal

Calculated

Dr Slabbert said the Minister, Mr Chris Heunis, had said South Africa was in a delicate situation as far as constitutional change was concerned It was loaded with potential for conflict and everyone had to contribute to evolutionary change in society and avoiding 'wrong impressions, stereotypes and distortions of the South African situation'

'I want to agree with him wholeheartedly,' said Dr Slabbert

'I should also like to say, however, on the eve of the departure of the Prime Minister, on the eve of the implementation of the new constitution, I cannot think of anything that is calculated to confirm the worst stereotypes about South Africa, to demonstrate the existence of racial insensitivity and to bring our judiciary and our Bench into disrepute than the judgment and statement by one of our judges that a man deserves a medal and has done a service to the community for shooting somebody who stole 63 c milk money

'Honestly, if that report is correct, I appeal to the Government to repudiate this gentleman and to distance itself from that type of action because it destroys all the good that we could possibly do in the area of constitutional change,' Dr Slabbert said

Interrupting the debate Mr Volker said Mr Justice Steyn's judgment should not be discussed in the House

'South Africa prides itself on the independence of its judiciary,' he said

No bearing

He recalled that the Minister of Justice, Mr Kobie Coetsee, had raised a point of order when the MP for Houghton, Mrs Helen Suzman, had raised a similar issue in a recent debate

The deputy chairman had said at the time that the conduct of a judge in his judicial capacity could be criticised only on a substantive motion

Judge regrets 'medal for a killer' remark

(252) S. Times 27/5/84

By STEPHAN TERBLANCHE

MR JUSTICE Irving Steyn, the judge who was this week reported as saying that a man who shot an intruder who tried to steal 63c milk money deserved a medal, yesterday held a Press conference to "put the record straight".

The judge said that he had not made the remark in his judgment — but he admitted that he may have used the words in "an aside to counsel" which did not form part of his judgment.

During the Press conference — considered as unprecedented in South African judicial practice — Judge Steyn said he was considering "putting the matter in the hands of my attorneys".

The controversy this week centred on the acquittal of Mr Francisco Quintino on a charge of murder for killing Mr Macks Lerutla while he was attempting to steal milk money.

Mr Justice Steyn conceded that it was unusual for a judge to hold a Press conference about something said from the bench during a trial

"But I wanted to put the record straight", he said

He had received a transcript of his judgment late on Friday

"I may have said jocularly that he deserves a medal rather than being convicted — there was quite a smile on everybody's face when I said it But it does not form part of my judgment.

"It may have been an unfortunate aside. It was an attempt to relieve the tension by being frivolous, which if quoted out of context would look much worse. Obviously, one regrets the aside"

'Medal' judge speaks

Cape Times 28/5/84

282

JOHANNESBURG. — Mr Justice Irving Steyn, the judge who was this week reported as saying that a man who shot an intruder who tried to steal 63c milk money deserved a medal, on Saturday held a press conference to "put the record straight".

The judge said he had not made the remark in his judgment — but he admitted he may have used the words in "an aside to counsel" which did not form part of his judgment.

During the press conference, considered unprecedented in South African judicial practice, Mr Justice Steyn said he was considering "putting the matter in the hands of my attorneys".

The controversy centred on the acquittal of Mr Francisco Quintino on a charge of murder for killing Mr Macks Lerutla while he was trying to steal milk money.

Mr Justice Steyn described the report that he had made the remark during his judgment as an "outrageous lie".

He said if he had made the remark as an aside to counsel "one would obviously regret" it "if it was taken out of context and reported as part of my judgment". — Sapa

(252) Star (1/6/84)

Judge's comments do no credit to S African justice

READERS' VIEWS

I was disturbed to read of Mr Justice Irving Steyn's comments in the case of State v Quintino (The Star, May 24)

If your report is accurate (and obviously this will have to be verified by the record of the judgment), Mr Justice Steyn's remarks carry the most serious consequences for the administration of criminal law in South Africa

It appears from your report that the accused, Mr Quintino, was charged with murder as a result of shooting a black intruder who had entered his premises with the intention of stealing Mr Quintino's milk money, which amounted to 63c

The accused, who had been plagued by such burglaries in the past, had set up a home-made alarm to alert him to the arrival of the thief

When the accused saw the thief, he reached for his gun and warned the thief not to move

When the thief failed to obey this instruction the accused fired a warning shot at him and then a second shot, which was fatal.

Such, at any rate, is the accused's version, which Mr Justice Steyn and his assessors appear to have accepted

The court found that as there was no intention to kill the thief, there could be no conviction for murder and apparently, in the absence of negligence, no conviction for culpable homicide

I propose returning to Mr Justice Steyn's finding of the law, but it is also appropriate to examine the judge's remarks in coming to this conclusion

Mr Justice Steyn is reported to have said that the accused "deserved a medal" for what he had done, that "the accused could therefore have rendered a service to the community", and "if I had to catch somebody in my house, I'd shoot him and I'd aim to shoot"

Noting that it is common for people to keep guns these days, Mr Justice Steyn is reported to have added that "anybody going out after burglars these days is looking for trouble"

The deceased, said the judge, was the "author of his own misfortune", and, as he had no right to be where he was, it was not the accused's fault that he was fatally injured

The amount of money stolen was irrelevant as the offence committed by the thief was a first schedule offence, entitling the accused to kill him

With the greatest respect to Mr Justice Steyn who is, after all, this province's most senior judge after the Judge-President and one of South Africa's most experienced jurists, his comments do not do credit to the administration of justice

It is, in my view, wholly inappropriate for any Supreme Court judge (or indeed any judicial officer) to encourage the use of firearms or violence on criminals

South Africa does not have an enviable reputation when it comes to community violence, and it is regrettable to read of judicial advocacy of extra-judicial self-help

This would have the most frightening consequences for our already fragile social peace

Mr Justice Steyn also seems to suggest from the report that it is better to shoot burglars than arrest them

This, too, seems to me to be an inappropriate remark for a Supreme Court judge to make

I must also, with respect, disagree with the judge's finding of the law

It is clear in South African law that one may kill in self-defence and that one may even kill in defence of one's own property

This latter proposition was firmly established by our Appellate Division 17 years ago in the leading case of ex parte Minister van Justisie in re Staat v Van Wyk, a case with which Mr Justice Steyn is undoubtedly familiar

However, the Appellate Division in Van Wyk was careful to point out that killing in defence of property should be resorted to only in the most exceptional circumstances, and the facts of Van Wyk's case were wholly exceptional

In his judgment, Chief Justice Steyn made a number of observations which do not appear to have been observed by Mr Justice Irving Steyn in the present case

(i) Killing in defence or property may only be resorted to when it is absolutely necessary;

(ii) The actor must be certain that there is no means of recovering the property by any other method,

(iii) The stolen property should not be of limited value ("geringe waarde"),

(iv) The act should be equated with that of self-defence in that acting in self-defence may only be resorted to when the attack is substantial,

(v) The least dangerous means should be used to apprehend the thief

With the greatest respect to Mr Justice Irving Steyn, these requirements set out by our highest court and subsequently re-affirmed in three cases with which I am familiar appear to have been ignored in the case of Mr Quintino

It also appears from the report of Mr Justice Steyn's judgment, however, that the judge appeared to rely on the provisions of Section 49 (2) of the Criminal Procedure Act, 1977, in acquitting Mr Quintino

Section 49 (2) provides, *inter alia*, that where a person is reasonably suspected of having committed a Schedule I offence (of which theft and breaking and entering premises are species) and he cannot be arrested or prevented by any other means than by killing, such killing is deemed to be justifiable homicide

It will immediately be seen that this section confers considerable powers on an individual (or a policeman) and the courts have therefore emphasised that it be treated with extreme circumspection

The Appellate Division and the various Provincial Divisions have had occasion to consider the circumstances in which Section 49 (2) (and its predecessor Section 37 (2) of Act 56 of 1955) may be invoked

It seems to me that the parameters which the Courts have laid down are as follows

(i) The test is one of reasonableness, ie there must be an objectively reasonable suspicion that a Schedule I offence had been committed,

(ii) The mere fact that the suspect flees or resists arrest is no justification itself for killing the suspect,

(iii) Other means should first be used before resorting to the use of a firearm,

(iv) A firearm should not be used if no other means of effecting arrest are possible,

(v) An oral warning should be given before shooting; a warning shot should then be fired and if this fails, the suspect should be shot in the legs

With the greatest respect to Mr Justice Steyn, it appears that most of these criteria have not been observed in the present case and that the court has been over-hasty in condemning the act of theft itself rather than the act of violence committed in apprehending the thief

P S G Leon

Johannesburg

● *At a sub-*

/ 66 .....

NATIONAL

Advocates' charges are 'unrealistic' — attorney

ARGUS 6/6/84

252

Argus Correspondent

JOHANNESBURG. — An experienced attorney says he is turning away clients daily because he cannot risk exposing them to advocates' "unrealistic" fees.

According to the attorney, who has had 10 years' experience, he decided to stop briefing advocates when one of his poorest clients was charged R700 by a junior advocate for a simple civil claim which did not come to court

The claim, arising out of a collision, was for R3 500 and the only issue in question was whether a traffic policeman had given his client the right of way The claim was set down for hearing in April, but it was withdrawn after it became clear that the policeman would testify against the client

The attorney said he and the advocate waited one hour at the court to tell the client the matter was withdrawn, drank a cup of tea together and then left

The advocate refused to discuss his fee, but later sent a bill for R700, which the attorney paid out of his own trust funds

R60 an hour

The attorney, who has five years' more experience than the advocate, was entitled to charge R60 for one hour's routine court-work

"If I made an appointment for an operation with a cancer-surgeon and I cancelled the appointment, would the surgeon charge me R700 if he just waited in the theatre for a few minutes and enjoyed a cigarette or a little chat with a colleague?" he asked in a letter to the advocate querying the bill

In a letter to the Johannesburg Bar Council, which is investigating the attorney's complaint, the advocate replied that the bill included fees for setting aside three days to go to court, familiarisation with the matter, and research into the relevant law

The amount was the lowest allowed by the taxing master for the first day's appearance of a junior advocate

The Bar Council's ombudsman said the Press would not be allowed to attend the hearing of the complaint as such hearings were private.

SWA lawyers rebuke minister

Cape Times 23/6/84

252 254

Own Correspondent

JOHANNESBURG. — The Bar Council of SWA/Namibia, attacked yesterday by the Minister of Law and Order, Mr Louis le Grange, has hit back, accusing him of being in contempt of the Van Dyk Commission of Inquiry into Security Legislation.

Mr Bryan O'Linn, chairman of the SWA/Namibia Bar Council, said in a statement that the Bar Council had taken note, with shock, of the attack on them by Mr Le Grange at a South African Police passing-out parade in Pretoria yesterday morning

Mr Le Grange criticized the Bar Council for its evidence before the Van Dyk Commission of Inquiry into Security Legislation in SWA/Namibia regarding alleged atrocities by Koevoet, a special operations unit of the South African security police

Mr Le Grange said the Bar Council's memorandum had allowed some newspapers to brand Koevoet as a "band of murderers"

He said he wanted to ask the Bar Council whether they had considered at any stage "the heinous crimes committed against the people of SWA by Swapo terrorists"

The Bar Council said they would have expected that a Minister of the Republic of South Africa could be relied upon to "respect the *sub judice* rule".

'Appears to be in contempt'

"We suggest to the minister to put his version of the facts and his comments to the commission of inquiry and to abide by the results. His attacks appear to us to be in contempt of the commission"

Mr O'Linn said the Bar Council denied branding Koevoet as a band of murderers, but was not prepared to enter into public controversy with Mr Le Grange

The Bar Council had pointed out to the commission that in view of the war situation, the ideal of the rule of law could not always be followed However, vigilance was necessary to ensure that modifications were made only when necessary and for so long as absolutely necessary

Mr Le Grange said that the allegations contained in the Bar Council memorandum had received extensive press coverage, and editorial comment in certain newspapers had bordered on hysteria

The editor of the Pretoria News had equated Koevoet members with "mad dogs" and had concluded that it was time the unit was firmly leashed, Mr Le Grange said

He added that since a complaint had been lodged with the Media Council, he did not wish to comment further, but went on to ask "this particular newspaper, other editors and the Bar Council of SWA", whether they had considered "the heinous crimes committed against the people of SWA by Swapo terrorists"

Mr Le Grange said that between 1975 and the end of 1983, Swapo had killed 376 local blacks and 17 whites From August last year until the end of April another 35 people had been killed

CAPE TIMES 29/5/84

Mariental 'ban' illegal, court told

252

From TONY WEAVER

WINDHOEK — A full bench of the Windhoek Supreme Court yesterday heard one of the most formidable legal teams yet assembled in SWA/Namibia argue that the State President and the Minister of Justice had acted illegally in "banning" a court application for the release of 37 Mariental internees

And, counsel argued, the 37 were detained for more than a year without proper warrants being issued before security legislation in SWA was amended so as to make their detention "legal"

Mr Justices Hans Berker, Chris Mouton and Johan Strydom reserved judgment in the case, regarded as "constitutionally crucial" by lawyers in Windhoek.

Virtually the entire executive of Swapo inside SWA/Namibia observed the case, as well as almost every top church leader in the country, a large number of lawyers and Ms Debbie Mallack, political officer at the United States Embassy in Pretoria, who was there in her official capacity as an observer

The original hearing to secure the release of the 37, all of whom were seized in Angola during a South African Defence Force raid on Swapo's Cassinga training and refugee camp on May 4, 1978, was banned by the Minister of Justice

Mr Kobie Coetsee issued a certificate on April 17 this year ordering that the hearing could not continue as it was "not in the national interest" that it be heard

The certificate spelt out that in terms of section 103 ter of the Defence Act, court actions could be ordered to be discontinued if they arose out of actions of members of the SADF carried out "in good faith" in the "prevention or suppression of terrorism in an operational area".

The banning of the case, which is being funded by an influential US legal group, The Lawyers Committee for Civil Rights Under Law, caused an international outcry

Yesterday's argument revolved around only five of the original 37, as 31 of them were released suddenly on Friday, and one of the 37 was found to be on the list under two names

Lawyers censure remarks of judge on milk-money killing

(252) Star 10/7/84

Some of Mr Justice Irving Steyn's remarks in the Quintino milk money theft case were unfortunate because they could give a wrong impression of the law about the killing of a person, a committee of the Johannesburg Attorneys' Association said in a statement today

The committee issued the statement after considering the Quintino case in which Mr Justice Steyn, who has since retired, was reported to have said "It appears to me that the accused deserves a medal and not to be prosecuted"

Judgment delivered on May 23 acquitted Mr Francisco Quintino of all charges relating to the fatal shooting of a man who took 63c in milk money from the window sill of Mr Quintino's bedroom

The Attorneys' Association committee concluded "The public should be made aware that the killing of another person is never authorised, other than in the limited way permitted in terms of the Criminal Procedure Act, or where the accused relies on the defence of property

"In this event he must show that his conduct complied with the demands of the circumstances, and that what he did went no further than was reasonably necessary to protect his person or property

"Some of the expressions and the words used by the judge in Quintino's case are, in the view of this committee, unfortunate, in that they could be understood so as to give the public a different impression"

Reviewing the case, the committee said that as a result of numerous thefts of milk money over a period Mr Quintino set a trap — a tin connected by string to the front gate — to alert him

On the night in question Mr Quintino was woken by the alarm

He took a pistol and went to the window where he saw a hand taking the 63 c from the sill

He fired two shots in order to frighten the thief away, he said

The thief straightened up after the first shot and was fatally wounded by the second

The court found that if the deceased had not straightened up when he did the second shot would probably have missed him, the committee said

"The court found, unanimously, that the deceased was the author of his own misfortune

"It found that the shot which killed him was in no way intended to hit him, and that the deceased was responsible for the fact that he stood up at a time 'when he probably should have kept quiet and waited for the police'"

"The court held that the shot was fired accidentally with no intention to kill and with no recklessness or negligence on the part of the accused," the committee said

The committee said it considered that the principles laid down by the Appellate Division of the Supreme Court in a 1967 case continued to apply to the question raised in the Quintino case as to the use of weapons

"And insofar as those principles conflict with the reasoning of Mr Justice Steyn, the Committee disagrees with the latter"

The committee went on "The Appellate Division ruled that a person who relies on the defence of property may not take the extreme measure of killing another person, unless it is necessary to do so" — Sapa

(292) 9 Law

Africa soon

'The People's Court' will come to life in South

By Sue Leeman, Pretoria Bureau

The case of frustrated Frieda who lost her frozen fish in a faulty freezer was humorously portrayed on a Pretoria stage yesterday to depict the workings of a small claims court to delegates at a legal seminar.

It was "The People's Court" come to life in South Africa as "Frieda", nattily dressed in green hat and purple jacket, did battle with "Sleazy Fastbuck", a smooth-talking freezer salesman

Although the civil action, involving Frieda's claim of R375, was acted in a light-hearted manner, there was a serious message behind it

From April next year the man in the street will be able to have his small civil claims involving less than R1 000 settled in a small claims courts

Yesterday about 600 members of the legal profession got together at Unisa to study and discuss the implications of small claims courts both for the profession and the average man.

One thought that emerged strongly is that South Africans are going to have to become used to a legal process very different from what they have been accustomed to in the past.

The absence of legal counsel, cross-questioning and the right to appeal will trim the legal process and costs of pursuing a small claim.

Litigants will present their own cases but will have access to legal advice beforehand.

Law students can be enlisted to smooth the passage of cases through small claims courts, according to advocate Mr A Chaskalson.

Mr Chaskalson said people with minor civil claims frequently approached student law clinics for help. Students could in future refer these people to small claims courts and help them to prepare their cases.

They could also become involved in trying to bring about out of court settlements, he said.

Mr Chaskalson stressed that adequate funds must be made available for the new courts, scheduled for launching next April. "Unless we make a proper investment we are courting disaster."

He said much could be gained from the small claims court pilot project which the Government will launch next April.

Small claims court commissioners must receive specific training if the new courts are to be a success, according to the vice-president of the Transvaal Law Society, Mr Edward Southey

Mr Southey said that variations from the normal practice which a commissioner would encounter in small claims courts included:

- "Largely inquisitorial proceedings in which the commissioner would have an active inquisitorial role.
- "Informal proceedings determined largely by the commissioner.
- "The type of litigants, many of whom would be poor, ill-educated and unsophisticated people unskilled in arguing their cases.
- "The lack of recorded evidence which will force commissioners to deliver ex tempore judgments.
- "The lack of pleadings.
- "The absence of a right to appeal."

RDM 15/8/84 (252)

Which judges hear what?

The allocation of judges in political trials is a sensitive subject. **JOHN DUGARD**, professor of law and director of the Centre for Applied Legal Studies, Witwatersrand University, examines the situation in an editorial which appears in the latest issue of Lawyers for Human Rights Bulletin

FOR several years there has been concern on the part of lawyers and informed laymen about the allocation of judges to hear political trials. Until 1982 this subject was deemed to be too sensitive to raise publicly.

However, in 1982 this matter was raised by Advocate Sydney Kentridge SC in an address at the University of the Witwatersrand

In this address Advocate Kentridge stated

"There is another development in our judicial system which I find even more disturbing, and which has too long got by without public comment, although this, too, is well known in the legal profession.

"Over the past several years a certain pattern has become apparent in relation to trials for serious political offences I know that whenever anyone talks of political offences some minister or policeman says there is no such thing; people in this country are charged only for ordinary crimes

"But in fact no one really has any doubt about what is meant by a political offence By political offences I mean offences committed with political motives — such as offences under the Internal Security Act or high treason

"In certain parts of the country, at least, it has become obvious that trials of persons charged with these offences are usually heard not at random by all or any of the available members of the Supreme Court Bench, but only by a section of the members of that Bench.

"Time and again the same few judges seem to sit in these cases. Many senior judges, who have been 10 years or more on the Bench, have never found themselves presiding over such a trial Why this should be so it is impossible to discern

"One does not know either how the prosecuting authorities to these cases or on what basis the prosecuting authorities set down the cases for hearing But the pattern has been too clear, at least in some divisions of the Supreme Court, to allow it to be dismissed as coincidence

"This is disturbing because there ought never to be the slightest suspicion that the courts are being manipulated The judges themselves, I am certain, are not and could not be parties to this selectivity

"The responsibility must lie somewhere else. The matter requires investigation, not merely an awkward silence"

Later that year I spoke on the same subject at a conference on "Detention and Security Legislation" in Durban On that occasion I stated

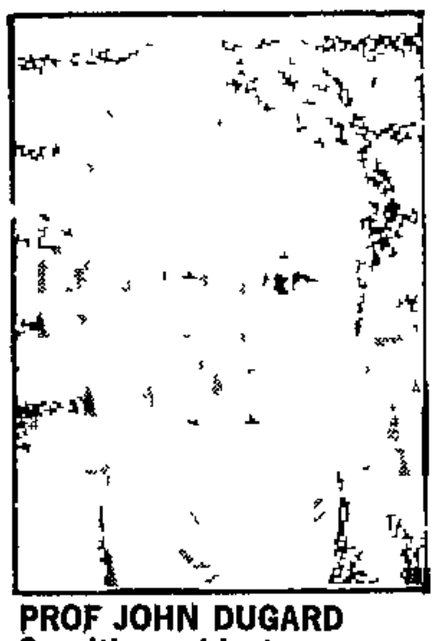
"... I have made a study of security trials held in the Transvaal reported in the Press. Although I do not claim complete accuracy for my figures, I am satisfied that they are reliable insofar as they provide evidence of a pattern in relation to 'political trials'

"From this study it appears that from 1978 to 1982 (inclusive) there were 25 trials in the Transvaal of persons charged with treason, terrorism, sabotage or serious offences under the Internal Security Act 44 of 1950 before the Supreme Court.

"These cases were tried by twelve judges of the 45 judges and acting judges who sat on the Transvaal Provincial Division during the period 1978-1982 Moreover, eight judges heard 21 of these cases

"In effect this means that about 17% of the Transvaal judiciary (including acting judges) heard 84% of the cases in question. One can break this figure down still further — 13 of the cases were heard by four judges — that is, less than 10% of the judges tried 52% of the cases."

This matter was considered by the Commission of Enquiry into the Structure and Functioning of the Courts under the chairmanship of Mr Justice G G Hoexter in its Fifth and Final Report



PROF JOHN DUGARD
Sensitive subject

In this report the Commission considered the above addresses and concluded that it was not able to "arrive at any final finding" on this subject The Commission then went on to state that this "does not entirely dispose of the matter"

It continued " It is vitally important that the general public should have confidence that our courts will maintain absolute impartiality at all times and especially in cases involving subject and State. Judges should guard against a belief that those somewhat exalted notions regarding the administration of justice which they themselves may cherish are shared by the general public

"The latter, as the evidence before this Commission repeatedly showed, often regard the administration of justice with a jaundiced and even a cynical eye. Confidence in the law is a fragile plant Any noticeable tendency for only certain judges to be assigned to preside at criminal trials involving the security of the State would run counter to the proud tradition of our administration of justice, it would debase the judicial office, and inevitably breed suspicion and disquiet

"That the satisfactory manning of the courts of the overworked Transvaal Bench gives rise to troublesome administrative problems and calls for much ingenuity and resource need hardly be said.

"Making full allowance therefore, the Commission is however of the opinion that, in the assignment of judges to preside at sensitive criminal trials, it is in the interests of the proper administration of justice that, so far as may be practicable, an attempt should be made to achieve an even distribution of such work among all the available judges"

Now that a judical commission of enquiry has raised this issue directly, it is important that those responsible for the allocation of judges to preside over political trials should be particularly sensitive to public perceptions in the making of such appointments

For a start it would seem obvious that those judges who have recently tried persons on charges of treason in cases that have received widespread national and international publicity should be excused from presiding over treason trials and serious charges under the Internal Security Act until their brethren on the Bench have also had an opportunity of trying such cases

In this way only will public confidence be restored. This accords with the view of the Hoexter Commission that the interests of justice would best be served by the "even distribution of such work among all the available judges"

This problem was considered by the Hoexter Commission in the context of the appointment of judges to hear political trials in the Transvaal

It might, therefore, be helpful to those responsible for the appointment of judges in future political trials to identify the main trials during the past few years and the judges who have presided over such trials so that these judges are exempted from allocation to political trials until a wider range of judges have presided over such trials

The trials and judges which have received the most attention in recent years are

1) State v Lubisi and others Trial judge The Hon Mr Justice J P O de Villiers
2) State v Tsotsobe and others Trial judge The Hon Mr Justice C D J Theron
3) State v Hogan. Trial judge The Hon Mr Justice H P van Dyk
4) State v Mogoerane and others. Trial judge The Hon Mr Justice D J Curlewis

Three of the above cases were debated in both the Security Council and the General Assembly of the United Nations and resulted in resolutions from these bodies calling upon the South African Government not to execute those sentenced to death.

All four cases received considerable attention nationally, largely on account of the severity of the sentences imposed

The State v Mogoerane and others probably received the most attention, firstly, on account of the fact that the three men sentenced to death in that case were subsequently executed and, secondly, on account of the comments made by Mr Justice Curlewis in passing sentences of death

The remarks of Curlewis J, which liken the activities of the ANC to those of the PLO, have been widely publicised

For instance, an article in the British International and Comparative Law Quarterly castigates Mr Justice Curlewis' comments and concludes that his judgment simply bolsters the growing criticism that the South African judiciary "is merely part of repressive, racist machinery"

Judges who have become closely identified with the hearing of political trials as a result of publicity of the kind described above may, in the wake of the Hoexter Commission Report, find themselves exposed to applications for recusal

The law on the subject of recusal is notoriously uncertain, but there can be no doubt that some of the broader tests enunciated would support an argument that a judge should recuse himself when he is perceived by those sections of the public sympathetic to the accused in a political trial to have been chosen to hear the case by reason of his handling of earlier political trials

The test that immediately comes to mind is that contained in an *obiter dictum* (in Britain) by Lord Esher Mr in Eckersley v Mersey Docks and Harbour Board

"Not only must (judges) not be biased, but . . even though it be demonstrated that they would not be biased, they ought not to act as judges in a matter where the circumstances are such that people — not necessarily reasonable people, but many people — would suspect them of being biased"

Although applications of this kind might fail, they would cause considerable harm to the reputation of our system of justice among many sections of the population because they would lend support to the suspicion that those in authority are determined to permit only a small number of carefully chosen judges to hear political trials

"Confidence in the law is a fragile plant," said the Hoexter Commission If this confidence is to be maintained or, perhaps restored, it is essential that the subject of the allocation of judges to hear political trials be defused.

It will not be defused by the continuation of a practice described by the Hoexter Commission as one that debases the judical office and breeds suspicion and disquiet

Civil case security rule called tragic

D. Dispatch 18/8/84 252

PRETORIA — Citizens of independent national states must first pay security before they can institute civil actions against South Africans because they are "foreigners"

Mr Andrew Beck, a law lecturer at the University of Transkei, commented in a legal publication that the system for these "foreigners was tragic."

Mr Beck cited a Ciskei case where men from Mdantsane were asked to pay R4 500 security by the Eastern Cape Supreme Court.

The nine Ciskeians wanted to sue for wrongful dismissal, but Mr Justice Kannemeyer ordered them to pay security before the case could proceed.

Mr Beck said the South African Government was excluding large numbers of blacks from the status of "incolae" (a person who has the legal status to institute a legal action) in South African law.

Some combined "legislative intervention" was necessary because of the emergence of the independent states, Mr Beck suggested.

In a similar case, a Ciskeian who wanted to sue the Minister of Police was made to pay R2 000 security recently

In another case, a Tlhabane man in Bophuthatswana paid R4 000 to the registrar of the Pretoria Supreme Court to bring an action against the Minister of Law and Order

The man sued the minister for R12 525 for unlawful arrest.

He had to pay the security after the registrar stated he was a foreigner in South African courts The amount was demanded even after the Bophuthatswana Legal Aid Board had bound itself and asked that the security be waived — DDC

Poor interpretation in courts could be causing injustices

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Star

20/8/84

By Andrew Beattie

An investigation into the role and functions of interpreters in criminal courts has indicated that injustices could occur because of poor interpretation

Interpretation is especially difficult when the languages differ as much in syntax and idiom as do the "official" white languages and the African languages

The problem is aggravated when one considers that most of the people appearing in court are black, undefended and lack proficiency in the official languages in which evidence is recorded

'INADEQUATE'

Despite this, interpreters are given only four weeks' training before they are "qualified" to be sworn in

A senior interpreter interviewed said that the training given by the Department of Justice was "totally inadequate"

Lawyers and interpreters expressed misgivings over the standard of court interpretation

An attorney said he had seen an accused person being convicted for the wrong offence, and concluded that this had been a result of inadequate interpreting

Department of Justice officials who were asked to comment on *The Star's* investigation agreed that mistakes could be made by interpreters, and that interpreters often condensed or oversimplified an accused's evidence

"The fact that proceedings are conducted through interpreters for many, or most, cases involving blacks puts an obstacle in the way of a court's assessment of a witness's credibility

"This may adversely affect the court's assessment of the case as a whole," said Mr Raymond Suttner, a lecturer in the faculty of law at the University of the Witwatersrand

A Department of Justice spokesman said that an improved training course for interpreters would be considered, and the differences in pay for interpreters of different races were being narrowed

But some lawyers suggested that the only way to improve the situation would be to do away with the need for interpretation altogether and have the entire proceedings in one language — that of the accused

● See Page 5

Blacks with little law knowledge are mainly the victims

Bad interpreting causes injustice in the courts

252

Star 20/8/84

Part one of an investigation into the role of interpreters in the criminal courts. By ANDREW BEATTIE AND THEMBA MOLEFE.

Injustices are made possible daily in criminal courts because some interpreters are inadequately trained and the courts are overloaded and under pressure — due to a backlog of cases

This was indicated by an investigation by *The Star* which found that blacks were particularly vulnerable to a miscarriage of justice through bad interpretation

Lawyers and interpreters interviewed expressed their misgivings over the standard of court interpreting in South Africa

Most of the people appearing in the courts are blacks who are undefended and who have little or no knowledge of the law Their understanding of court proceedings and the explanations they give in court are only as comprehensive as their interpreter allows

"It could be said that for an unrepresented black accused, the interpreter is the most important person in the courtroom He is his ears and mouthpiece," said a senior interpreter

Evidence of injustices caused by incorrect interpretation is difficult to detect because most white lawyers and observers in court are unfamiliar with black languages

Court proceedings often bear the outward appearance of normality, when in fact an accused is being misled or misrepresented

Black lawyers said at times they had to stop court proceedings because they felt the interpreter was not putting the accused's or witness's statements accurately

For instance, during the arraignment the charges are first read out in detail to the accused by the prosecutor in either of the official languages

The intricate legal language is often oversimplified by the interpreter, robbing the allegations of legal nuance

Example

"In that on or upon May 1 you intentionally and unlawfully entered John Tshabalala's house and you are therefore guilty of committing a crime of housebreaking with the intent to steal How do you plead?"

The interpreter's version would often baldly be 'You went into Tshabala's house and took Do you find yourself guilty or not?'

Lawyers unfamiliar with black languages supported the allegation that misinterpretation threatened justice, and said that in many cases an accused would give a long and apparently detailed explanation in his own tongue in answer to a question This would often be interpreted as a simple "yes" or "no" by the interpreter

"This excludes the presiding officer, the prosecutor and the defence from one of the most important parts of the criminal proceedings — namely what an accused has to say in his defence," said one attorney.

If the presiding officer cannot rely on the interpreter to give an entirely accurate translation, he is clearly not in a position to adjudicate on the matter

Others said that many of the interpreters "condensed" the evidence of an accused or witness because they were constantly put under pressure by the prosecutor's brisk questioning

Example

"Did you intentionally stab the man with a knife?

Accused This man, after hitting me in the mouth, threatened me with a knife We then wrestled for the knife's possession which I managed to retrieve and stabbed him in self-defence"

The interpreted version would be "Yes, he hit me in the mouth and I stabbed him."

One of the interpreters spoken to said many of the less-experienced interpreters did this because they either could not interpret what was said or because they felt it was irrelevant.

The necessity for interpreters makes the proceedings longer — there has to be a duplication of everything said in the court This often results in officers of the court becoming impatient In circumstances like this the interpreter sometimes assumes the role of the presiding officer in deciding which of the questions the accused says he wants to put are "relevant" or not This inhibits the accused's cross-examination

Sometimes impatient interpreters harass an accused person or a witness to give a brisk answer

There are examples where interpreters have, either intentionally or through negligence, given inaccurate translations which have led to an accused being unjustly convicted for an offence

Several attorneys and advocates said they could recall cases where this had occurred and added it was more likely to happen when an accused was undefended

One attorney said he saw a person being convicted for the wrong offence

"I was in the Johannesburg Regional Court about a year ago when a black man who could speak no English or Afrikaans was brought into the dock.

"His trial seemed to proceed normally — and he was convicted and jailed for a long period

"Then the next accused was brought into court and the prosecutor asked him (by name) to plead to the charge

"The accused's reply was 'That is not my name and I am not the person charged with this offence The person you are referring to has just been led down to the cells'

"To me it is obvious that the particular interpreter was not doing his job properly. This is only one of several examples that I have witnessed," said the attorney

Another fairly common practice among interpreters is referring to the magistrate or judge as inkosi, a Zulu word for king or God — or morena, a similar word in Sotho

This intimidates the accused, leaving him totally in awe of the situation, said one lawyer who may not be named

In Sotho the correct word is moahlodi, and in Zulu the word is umahluleli

Another interpreter pointed out that some of his colleagues often insulted the accused and this usually happened "near the end of a long day" when the interpreter felt it would be safe to do so because the presiding officer would not in any case understand

One such example occurred in a Johannesburg Magistrate's Court where the accused, under intense cross-examination by the prosecutor, unconsciously replied in Afrikaans

The magistrate told the accused "You've chosen to speak in your own language, please do so."

This was interpreted as "Look, keep that long tongue inside your mouth I am working for my children here."

Commenting on The Star's investigation, Johannesburg's Chief Magistrate, Mr A O de Meyer, said he was aware of the many problems involved in interpretation, but disagreed with some of the comments about the interpreters

"Several of these are policy matters on which I may not comment

"If lawyers, attorneys or advocates disagree with interpretations, it is their duty to inform the court of this, or to take the matter further

"However I think even if we were to have black judicial officers, many of these problems would remain unsolved

"For example if a black magistrate who was a Zulu were presiding he would have similar language difficulties if the accused were a Shangaan, or a Venda, and an interpreter would still have to be used. These are problems inherent in our society," said Mr de Meyer

Allocation of judges to hear political trials

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20/8/84

The allocation of Judges in political trials is a sensitive subect. JOHN DUGARD, professor of law and director of the Centre for Applied Legal Studies, Witwatersrand University, examines the situation in an editorial which appeared in the latest issue of Lawyers for Human Rights Bulletin.

For several years there has been concern by lawyers and informed laymen about the allocation of judges to hear political trials Until 1982 the subject was deemed to be too sensitive to raise publicly

However, in 1982 Advocate Sydney Kentridge, SC, raised the matter in an address at the University of the Witwatersrand

In this address Mr Kentridge said "There is another development in our judicial system which I find even more disturbing, and which has too long got by without public comment, although well known in the legal profession.

"Over the past several years a certain pattern has become apparent in relation to trials for serious political offences. I know that whenever anyone talks of political offences some minister or policeman says there is no such thing People in this country are charged only for ordinary crimes

"But in fact no one really has any doubt about what is meant by a political offence By political offences I mean offences committed with political motives — such as offences under the Internal Security Act or high treason

"In certain parts of the country, at least, it has become obvious that trials of persons charged with these offences are usually heard not at random by all or any of the available members of the Supreme Court bench, but only by a section of the members of that bench

"Time and again the same few judges seem to sit in these cases Many senior judges, who have been 10 years or more on the bench, have never found themselves presiding over such a trial Why this should be so it is impossible to discern

"One does not know either . on what basis the prosecuting authorities set down the cases for hearing But the pattern has been too clear, at least in some divisions of the Supreme Court, to allow it to be dismissed as coincidence.

"This is disturbing, because there ought never to be the slightest suspicion that the courts are being manipulated. The judges themselves, I am certain, are not, and could not be, parties to this selectivity.

Mr Sydney Kentridge — raised the subject in an address at the University of the Witwatersrand.

"The responsibility must lie somewhere else The matter requires investigation, not merely an awkward silence"

Later that year I spoke on the same subject at a conference on Detention and Security Legislation in Durban I said ". I have made a study of security trials held in the Transvaal reported in the Press Although I do not claim complete accuracy for my figures, I am satisfied that they are reliable insofar as they provide evidence of a pattern in relation to political trials'.

It continued " it is vitally important that the general public should have confidence that our courts will maintain absolute impartiality at all times and especially in cases involving subject and State. Judges should guard against a belief that those somewhat exalted notions regarding the administration of justice which they themselves may cherish are shared by the general public

For a start it would seem obvious that those judges who have recently tried persons on charges of treason in cases that have received widespread national and international publicity, should be excused from presiding over treason trials and serious charges under the Internal Security Act until their brethren on the bench have also had an opportunity of trying such cases

In this way only will public confidence be restored This accords with the view of the Hoexter Commission that the interests of justice would best be served by the "even distribution of such work among all the available judges".

This problem was considered by the Hoexter Commission in the context of the appointment of judges to hear political trials in the Transvaal.

It might, therefore, be helpful to those responsible for the appointment of judges in future political trials to identify the main trials during the past few comments made by Mr Justice Curlewis in passing sentences of death

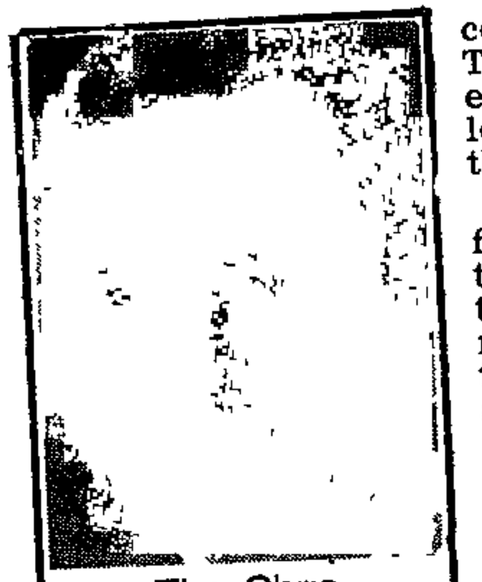
The remarks of Mr Justice Curlewis, which liken the activities of the ANC to those of the PLO, have been widely publicised

For instance, an article in the British International and Comparative Law Quarterly, castigates Mr Justice Curlewis' comments and concludes that his judgment simply bolsters the growing criticism that the South African judiciary "is merely part of repressive, racist machinery"

Judges who have become closely identified with the hearing of political trials as a result of publicity, find themselves, in the wake of the Hoexter Commission report, exposed to applications for recusal

The law on the subject of recusal is notoriously uncertain, but there can be no doubt that some of the broader tests enunciated would support an argument that a judge should recuse himself when he is perceived by those sections of the public sympathetic to the accused in a political trial, to have been chosen to hear the case by reason of his handling of earlier political trials.

Feminists neutering their own gender



The Chris Barnard column

There was a time in my life when I thought that a feminist was a particularly female female.

That was when I was struggling to learn a second language and long before Ms Greer took her skin off to let the public have a look inside

I still relate feminism to femaleness, even though it has been shoved down my throat often enough that one is an attribute of power politics and the other an attribute of sex

Now that I'm older and know a bit more about women, I realise that I don't have enough information to form an opinion. The reason for this is that the average feminist, who insists that she represents all women, doesn't know what she wants

If feminists, and by implication all women, don't know what they want, how can the average male ever be able to supply it?

I spent my life thinking that women were just people To a male they are obviously nicer people than other males, but still people with all the wants and desires of ordinary beings

Around about the time that I was shovelling snow off sidewalks in an American city — trying to earn a few bucks to bring my wife and children over for a holiday — the feminists were barnstorming every political platform they could reach.

Those were the days of lurid posters showing clenched fists thrust out of female crotches and rear view shots of a very leggy woman standing in line with males at a urinal It was good shock therapy and it worked

Suddenly women everywhere were burning bras and hurling lipsticks into the wastebasket In Europe they added their shaving razors, which produced some contradictory stances — such as a whole generation of photographic models with underarm hair

Everybody knows that any revolution can be launched with the guillotine, but to have any staying power it must continue with the vote. The theory is that once enough heads have rolled, the voters will get the message

The trouble with the feminist guillotine was that it emasculated more than male chauvinism, it negated the very potency that made the target an attractive exercise

Little boys worldwide have always been brought up on the principle that the top of the heap is worth attaining and that the citadel is worth the storming They aren't doing it for themselves alone At the back of their minds is always a little girl they are trying to impress

As adult males they hold the unshakable view that girls are desirable If something is thought desirable, it follows that it is desired Hence the widening of male eyes at the sight of a passing female

But the feminists, beating a simplistic kind of drum, call this attitude "predatory" and talk about "sexual harassment"

Charley Brown's ideal had red hair He went through hell and high water for her He never engaged in anything more strenuous than a local baseball game, but essentially his world wasn't any different from the one inhabited by the knights on white chargers who spilt dragon's blood all over Europe in the Dark Ages

What happens when Charley Brown lays his successes at his beloved's feet? As a modern feminist, she either doesn't even notice his existence or alternatively goes out there on the plate and hits a home run just to show how easy it is

In her ears are the cheers of her "fellows", all acclaiming the goal of overthrowing male dominance while unconsciously neutering their own gender

True, Ms Greer has since explained her excesses by pointing out that you can't make an omelette without breaking a few eggs Everybody makes mistakes in a trial and error situation, and where nobody had gone before it was to be expected that some would lose the trail

I believe that few achievements of humankind are unrelated to sexual dynamics Every fullblooded male has his little redhaired girl, and every feminine female her knight on a white charger

You don't have to be a Freud to understand why Napoleon plundered Europe, how Helen caused the destruction of Troy, or even what drove Neil Armstrong to take one giant step for "mankind".

Perhaps it is high time the feminists took a look at the theory that if there is a wrist to be slapped, perhaps it belongs to the hand that rocks the cradle

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"From this study it appears that from 1978 to 1982 (inclusive) there were 25 trials in the Transvaal of persons charged with treason, terrorism, sabotage or serious offences under the Internal Security Act . . before the Supreme Court

"These cases were tried by 12 judges of the 45 judges and acting judges who sat on the Transvaal Provincial Division during the period 1978-1982 Moreover, eight judges heard 21 of these cases

"In effect this means that about 17 per cent of the Transvaal judiciary (including acting judges) heard 84 per cent of the cases in question One can break this figure down still further. 13 of the cases were heard by four judges — that is, less than 10 per cent of the judges tried 52 per cent of the cases"

This matter was considered by the Commission of Enquiry into the Structure and Functioning of the Courts under the chairmanship of Mr Justice G G Hoexter in its fifth and final report

In this report the Commission considered the addresses I've mentioned and concluded that it was not able to "arrive at any final finding" on this subject The Commission then went on to state that this "does not entirely dispose of the matter"

"The latter, as [illegible] dence before this Commission repeatedly showed, often regard the administration of justice with a jaundiced and even a cynical eye Confidence in the law is a fragile plant Any noticeable tendency for only certain judges to be assigned to preside at criminal trials involving the security of the State would run counter to the proud tradition of our administration of justice, it would debase the judicial office, and inevitably breed suspicion and disquiet

"That the satisfactory manning of the courts of the overworked Transvaal Bench gives rise to troublesome administrative problems and calls for much ingenuity and resource, need hardly be said

"Making full allowance, therefore, the Commission is however of the opinion that, in the assignment of judges to preside at sensitive criminal trials, it is in the interests of the proper administration of justice that, so far as may be practicable, an attempt should be made to achieve an even distribution of such work among all the available judges"

Now that a judicial commission of enquiry has raised this issue directly, it is important that those responsible for the allocation of judges to preside over political trials should be particularly sensitive to public perceptions in the making of such appointments

who have presided over such trials, so that these judges are exempted from allocation to political trials until a wider range of judges has presided over such trials

The trials and judges which have received the most attention in recent years are

- State v Lubisi and others Trial judge, Mr Justice J P O de Villiers
- State v Tsotsobe and others. Trial judge, Mr Justice C D J Theron
- State v Hogan Trial judge, Mr Justice H P van Dyk
- State v Mogoerane and others. Trial judge, Mr Justice D J Curlewis

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Three of these cases, the first two and the last, were debated in both the Security Council and the General Assembly of the United Nations and resulted in resolutions from these bodies calling upon the South African Government not to execute those sentenced to death

All four cases received considerable attention nationally largely on account of the severity of the sentences imposed

The State v Mogoerane and others probably received the most attention, first, because the three men sentenced to death were subsequently executed and, secondly, on account of the

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The test that immediately comes to mind is that contained in an obiter dictum (in Britain) by Lord Esher in Eckersley v Mersey Docks and Harbour Board

"Not only must (judges) not be biased, but . even though it be demonstrated that they would not be biased, they ought not to act as judges in a matter where the circumstances are such that people — not necessarily reasonable people, but many people — would suspect them of being biased"

Although applications of this kind might fail, they would cause considerable harm to the reputation of our system of justice among many sections of the population because they would lend support to the suspicion that those in authority are determined to permit only a small number of carefully chosen judges to hear political trials.

"Confidence in the law is a fragile plant," said the Hoexter Commission If this confidence is to be maintained or, perhaps restored, it is essential that the subject of the allocation of judges to hear political trials be defused

It will not be defused by the continuation of a practice described by the Hoexter Commission as one that debases the judicial office and breeds suspicion and disquiet

Idiomatic differences cause complications

Blacks vulnerable to poor interpretations

Star 21/8/84

Part Two of an investigation by *The Star* into the role of interpreters and the standard of interpreting in South African criminal courts. The investigation was conducted by Andrew Beattie and Themba Molefe.

Black people are especially vulnerable to a miscarriage of justice caused by incorrect interpretation, the investigation has indicated

Some interpreters are also unhappy about the situation

Claims that they are being paid badly and receive "inadequate training" are the main causes for this discontent

One of the main reasons why injustices could result from inadequate interpretation, or misinterpretation, is that black languages differ idiomatically from the white official languages, and there is no direct translation for certain technical legal phrases

White interpreters specialising in European languages are better paid and better qualified than their black counterparts

The investigation revealed that black "full-time" interpreters start on a salary of about R360 a month — whether or not they have a university degree

'Cadet interpreters receive no legal training at all.'

Coloured interpreters are paid about R600 a month, and most white interpreters are on a daily basis (about R50 to R70 a day, or part thereof)

A senior interpreter said he felt the initial training given to cadets by the Department of Justice was "totally inadequate"

"Cadets undergo political screening before being selected for the course Most selected are people of a low educational standard, and have no linguistic background A matriculation certificate is all that is required

"The cadets undergo a five-week crash course which includes one week of 'orientation', two weeks' study of theory, and two weeks of practical interpretation

"They receive no legal training, and the instructors on the course have no legal training, either"

There is no time during the course, said the senior interpreter spoken to, for teaching of idiomatic differences in the languages, or other peculiarities

"Their legal understanding or knowledge is nil," said a black attorney There were cases where he detected misinterpretation and been forced to point this out to the presiding officer

"If this type of thing happens to me when the interpreter is aware I speak black languages, one can only imagine how often it happens when an accused is undefended, or defended by a white lawyer," he said

Another black attorney said he had frequently had to interrupt proceedings because he felt an incorrect interpretation was being given

"In most cases where this happened, my objections were overruled Obviously I am not a 'sworn interpreter', and when the interpreter stands by his version the presiding officer has to accept the official interpreter's word"

Another black attorney, who is a former interpreter, said "About 50 percent of the interpreters are wonderful These are usually the ones with greater experience But some of the interpreters are so bad I doubt that they can express themselves in their own language

"In the courses run by the Department of Justice, one only learns purely mechanical things like how to dress in court, how to address the magistrate, and other court etiquette

"Some interpreters never learn anything about the law, or understand what their job actually entails Others learn by experience"

In the Commissioners' Courts, described in the Hoexter Commission report as "entirely subversive of proper justice", the interpreters' role in the administration of justice has been abused because of the radical shortage of trained staff

The senior interpreter said interpreters had been used as prosecutors in these courts, and court orderlies (policemen) used as interpreters

Interpreters have no legal training, and policemen are not as objective in approach or as fluent in white languages as interpreters, he added.

"The administration of justice in a country like South Africa will always be hampered by difficulties like interpretation, especially while judicial officers are all white, and most of the people on trial are black

"One way to improve this situation would be to have black judicial officers, and to have the entire proceedings in one language — the language of the accused," said a black advocate

Interpreters spoken to felt the only way to improve the standards of interpreting and to "ensure justice is done, and heard to be done", was higher pay for black interpreters and a new and comprehensive course for trainee interpreters

Legal Aid Bureau may shut 'unless miracle happens'

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By Fiona Macleod

Johannesburg's Legal Aid Bureau, a voluntary organisation which helps more than 1 500 needy people a month, will be closed by the end of the year unless "a miracle happens".

According to the bureau's director, Mrs Pauline Lipson, the organisation desperately needs finances and will not be able to afford premises when its lease on offices on the third floor of Harley Chambers expires at the end of September.

The bureau, set up in 1937, receives a small grant from the Johannesburg City Counsel and is supported by the Johannesburg Bar, but relies mainly on fund-raising

"It seems it is not a popular charity," Mrs Lipson told *The Star*

MONTHLY

To illustrate the increasing need for such an organisation, Mrs Lipson noted that in 1983 the bureau held a monthly average of 1 499 interviews In the first five months of this year, the average was 1 574 interviews a month

With a small part-time staff, the organisation relied mostly on voluntary workers and the contributions of a panel of attorneys and advocates, she said

It provided a legal advisory service, as well as dealing with certain litigation for people of all races who could not afford to hire such services

PROBLEMS

"Many of the things we deal with are petty, but they are large problems in the lives of those involved

"The closing down of the bureau will spell disaster for these people for whom we provide an invaluable service," the director said

The bureau's future will be discussed at its annual general Meeting to be held at 4 15 pm on September 6 in 922 Innes Chambers, Pritchard Street

Mrs Lipson can be contacted through the bureau at 29-4872

VIEW FROM NATAL

BY MICHAEL GREEN

Justice and the law in SA

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THOSE who read the detail of newspaper reports have been given an unpleasant demonstration of the difference that sometimes exists in South Africa between justice and the law

Part of the case brought by Auret van Heerden, former detainee, against the Security Police was dismissed in Pretoria last week because the judge ruled that it was "time-barred" in terms of the law Had it not been for the time factor, the judge said, he would have awarded Mr van Heerden R5 000 damages for excessive interrogation by the polce

The Police Act states that any civil action brought against the State and involving the police must be initiated within six months of the cause of action

Mr van Heerden was in custody for seven months and it was physically impossible for him to bring legal action against his captors within the prescribed period Nevertheless he has now been told the relevant claim cannot be upheld because it is "time-barred"

This is a situation from George Orwell or Franz Kafka It would be difficult to think of anything more iniquitous In theory the police could make themselves immune to the ordinary laws of the land by keeping a complainant under lock and key for more than six months

Ah, you might say, this is an isolated anomaly No, it is not Two years ago a senior Natal judge did his best to do justice by someone else in the same situation He failed in the end

In that case Mrs Mavis Magubane of Maritzburg alleged she was assaulted while in the custody of the Security Police She spent 14 months in detention before being released (she was not charged with any offence) and five months later she instituted civil action against the Minister of Law and Order, claiming damages of R2 400

The Minister responded by saying the claim was invalid because it had not been initiated within six months of the alleged assaults

The matter went to the Natal Supreme Court and Mr Justice R N Leon said that to deny Mrs Magubane the right to sue was an affront to his sense of justice He said this would mean the police could deliberately lock up a man for six months to prevent him from suing — an "alarming proposition".

Mr Justice Leon ruled that Mrs Magubane was entitled to sue because the Prescription Act (prescribing the periods in which various cases must be brought) had a clause covering claimants who had been prevented by *vis major* ("a superior force") from serving summons

Subsequently, however, the Appellate Division ruled in favour of the Minister of Police in a similar case involving the prescribed six months and the Chief Justice, Mr Justice Rabie, indicated he could not agree with Mr Justice Leon's interpretation

Mrs Magubane, not surprisingly, abandoned her claim To have pursued it would have been a waste of money

The point, however, is that in his judgment Mr Justice Leon added "If I am wrong in my interpretation of the Prescription Act, what is urgently required is for the Police Act and similar statutory limitations to be amended"

That was 18 months ago, and at the time I wrote "It will be interesting to see whether any action will be taken I wouldn't bet on it".

I'm afraid my cynicism has been fully justified A blatantly unfair law not only still exists but is being deliberately used by the State as a defence against complainants, many of them humble citizens, who seek redress in the courts

We hear a lot from the Government about law and order, and the need to maintain it But what about correcting injustice too?

● The death of the American jogger and author Jim Fixx and of two road runners in Johannesburg has inevitaby reopened arguments about whether jogging is good or bad for you Some American authorities say that Jim Fixx would have been alive if he hadn't run so much, others aver that he wouldn't have lived as long as he did (he was 52) without running

I don't know One doesn't want to overdo things, not jogging anyway, and I'm reminded of the wise words of the portly G K Chesterton, who said the only exercise he ever took was walking at the funerals of his more energetic friends □ — *Michael Green is Editor of The Daily News.*

Express 14/6/84 (252)

Thousands go free in wake of reform

Pass laws justice empties the jails

● Sheena Duncan If abuses stop, it is a step forward

● Prof Johan van der Vyver. Impossible for people to sue

By KAY TURVEY

MORE than two-thirds of people arrested for pass offences in Johannesburg are being released before prosecution because police are not following correct procedures.

Reform of the 'pass courts' to eliminate the slipshod justice of the past has saved thousands of people from going to jail under influx control regulations.

Since the Department of Justice took over administration of the commissioners' courts last month, no more than 80 cases are being heard a day, compared to 200 when the courts were under the Department of Co-operation and Development.

Miscarriage

The instant change in the fate of thousands of South Africans reveals a massive miscarriage of justice in the past, legal experts say

There could also be a major reduction in the country's prison population of about 100 000 as a third of all trials have involved pass offences

A prosecutor at Johannesburg's Market Street courts said this week many of the cases were being thrown out as a basic tenet of the law was not being applied — people were not being brought to court within 48 hours of arrest.

Another prosecutor said: "Only about one third of the cases brought in make the court roll, but we don't want to point a finger at the police. We are just much stricter than the commissioners were."

Mr Chris Human, chief public prosecutor of the Johannesburg Magistrate's Court, confirmed there had been a drastic reduction in the number of influx control cases reaching court.

This was because the cases had been assimilated into the ordinary system of justice "We are totally colour blind. Whether someone is green, yellow, black or white, the same law of criminal procedure and evidence will apply to them," said Mr Human.

Under the Department of Co-operation and Development, up to 200 cases, each lasting a few minutes, were heard daily by commissioners with minimal legal training. The courts are now presided over by magistrates.

Arrested

Now more than two-thirds of the about 100 people arrested daily in the Johannesburg area are released before being brought to court, often because sworn statements are not made by the arresting officers or because they do not put forward the elements of the crime as required by law.

Cases are screened by prosecutors and dropped if incorrect or inadequate procedure of arrest has been applied.

According to the Centre for Applied Legal Studies at the University of the Witwatersrand, the commissioners' courts dealt with a third of all people sent to trial each year

The transfer of the courts to the control of the Department of Justice was recommended by the Hoexter commission of inquiry into the country's legal system, whose report was tabled in Parliament earlier this year.

The commission found it "unnecessary, humiliating

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and repugnant by any civilised standards" that separate courts should be used for the prosecution of a country's inhabitants solely on the grounds of race

The magistrates who now preside over the courts hold a South African law degree or have passed the civil service higher law examination. The prosecutors are from the Department of Justice and possess the necessary legal qualifications

The unqualified staff who previously acted as prosecutors have been absorbed as clerks in the magistrates' courts

But for the thousands of people who were wrongfully arrested and unfairly fined or imprisoned before the improvements made by the Department of Justice, no recourse to the law exists

Professor Johan van der Vyver, chairman of the law school at the University of the Witwatersrand, said it would be impossible for those people to sue because of the time that had elapsed

"Legally there is not much that can be done, except to publicly condemn the system of administration of justice, which permits this gross miscarriage of justice."

Mrs Sheena Duncan of the Black Sash said. "If the takeover by the Department of Justice means the police stop their abuses of the law, that is one step forward."

She said police ignored a ruling which allowed blacks a chance to fetch their passes Also, many people from outside Johannesburg were arrested on their arrival at Johannesburg station and charged with being in the area for longer than 72 hours

Mrs Duncan said many people had been wrongfully convicted through their lack of legal representation and ignorance of the law

The changes effected in the Johannesburg court did not appear to be happening in other courts in the country, where the 'sausage machine' system still existed.

Mr Gilbert Marcus of the Centre for Applied Legal Studies which, with the Lawyers for Human Rights and the Black Sash, has been monitoring the 'pass courts', said he believed many cases were being thrown out because "court personnel are not perpetrating the types of abuse characterised by the old system".

"Here many of the basic tenets of justice did not apply and the accused had to rely on the whim and personalities of the court officials."

Mr Marcus said that despite the improvements in the administration of the courts, major inadequacies still existed.

For example, there were still no proper consulting facilities for lawyers, who had to fight their way into the cells to consult their clients. The clients were often not informed of their rights to apply for bail, be defended and call witnesses.

He did not think the changes had been felt in areas outside Johannesburg

A spokesman for the Department of Justice in Pretoria said he was unable to comment on the reduced number of cases.

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Few pass law cases handled under new system of justice

By JOHN CLARK

AT most, only 30 pass law cases a week are being processed in Port Elizabeth's New Brighton Court since the Commissioner's Courts came under the jurisdiction of the Department of Justice, according to Mr Hennie Mouton, the prosecutor at Court 24 which deals with pass law and trespassing offences

Mr Mouton said pass law cases were now being dealt with on only one day a week

Mr Mouton said that in cases where persons were sentenced, the case was referred immediately to the senior magistrate at the court, who examined the case to see if everything had been done according to law

He said prosecutors involved in pass-law offences examined cases thoroughly before bringing them to court

Mr Mouton said nearly 10% of cases were rejected because the evidence was incomplete

He said those found guilty were seldom fined more than R5 (or five days) and were often given until the end of the month to pay the fine or helped by the Prisoner's Friend

Mr J J Swart, assistant senior prosecutor in Port Elizabeth, said only really serious pass offences ever came to court in Port Elizabeth

"In Port Elizabeth courts, there are virtually no pass-law cases being processed," said Mr Swart

Mr Swart said since the Hoexter Commission recommendations were made, the Commissioner's Courts, which were run by the Department of Co-operation and Development, no longer existed

The commissioners had been re-appointed, but under the Department of Justice the controls and procedures were different

When people were picked up, they were immediately screened by a trained officer

Furthermore, it was procedure for the suspect to be given reasonable opportunity to produce his documentation

If the person was charged, he or she was brought to court and appeared before a magistrate as soon as possible — often that afternoon

When the sentence is a case for your concern

Disparities in sentencing will not advance respect for South Africa's legal system. Recent examples are discussed by Lawyers for Human Rights . . .

Lawyers have traditionally displayed reluctance to comment on sentencing of offenders.
It is generally suggested that it is dangerous to comment on sentencing when one is unfamiliar with all the facts of the case and when one has not been able to observe the demeanour of witnesses and accused.
There has, however, recently been a spate of cases tried by regional magistrates in which sentences that call for comment have been imposed:

- Matthews Ntshiwa was sentenced to three years jail, of which half was suspended, for furthering the aims of the African National Congress by possession of a tea mug on which were engraved certain slogans.
- A sentence of two years jail, of which one was suspended, was imposed on Peter Moloi for possession of a tape containing a speech by Oliver Tambo.
- Jacob Moshego was sentenced to five years jail, of which two were suspended, for playing a tape containing so-called freedom songs in a bar.
- Sipho Radebe was sentenced to two years jail for possession of two publications of the banned Pan Africanist Congress.
- A sentence of 18 months' jail, of which 12 were suspended, was imposed on Emily Melk, a nurse, for the possession of a book published by Penguin and found to have been published in the interests of the ANC

The disparity in sentencing is thrown into relief when one contrasts sentences imposed for crimes of physical violence with sentences for crimes committed in response to the institutional violence that characterises South Africa society.
A few examples:

- A twenty-year-old youth who beat a black man to death with karate sticks was sentenced to 1 200 hours in prison on weekends

The youth was walking with his girlfriend and bragged that he was going to kill a houtkop.
He killed the next black man he met.

- Three young white men who kicked a black man to death because they thought he was tampering with their car were sentenced to five cuts
- In SWA/Namibia last year a white farmer was given a six-year sentence for torturing a black worker to death over three days during which his brother took pictures of the victim
- In another case in SWA/Namibia two soldiers were fined R50 each for beating a black villager, raping his wife and roasting him over a fire
- In a trial presided over by Mr Justice de Villiers four policemen from Dirkiesdorp police station at Volksrust were charged with culpable homicide.

They had arrested Absolom Manana and his son, Themba, on suspicion of stock theft and had tortured them by electric shocks and suffocation by hooding.
Mr Manana senior told the court he had screamed, sweated, cried and writhed on the floor as the shocks were administered.
He could tell the policemen nothing about the cattle thefts.
Mr Themba Manana was found dead in his cell later and evidence was given that he had died of asphyxiation, probably caused by electrocution.
The policemen, except for Constable Mkwanazi who was found to be present as an interpreter, pleaded guilty to one or both assaults, including administering electric shocks, but stated that it was not their intention seriously to injure Mr Manana.
Mr Justice de Villiers stated that those who had tortured Themba Manana could not have foreseen his death and were acquitted of culpable homicide.
As they did not have the intention to kill, they could not be convicted of murder.
The accused, Hattingh, Kruger and Coetzee, were found guilty of assault.
In his judgment Mr Justice de Villiers urged senior police officials to prevent subordinates from using electric shocks to obtain information.
All three men were given suspended prison sentences and a fine.
It was observed that the men had not been acting out of self-interest.
These cases can be compared with that of Barbara Hogan who was sentenced by Mr Justice van Dyk to 10 years jail for treason.
It will be recalled that she admitted she was a member and active supporter of the African National Congress.
She also admitted that the ANC has as one of its aims the overthrow of the Government of the Republic of South Africa by violence, but denied that she associated herself with those aims of the ANC which envisaged violence.
The State accepted that she had not engaged in violent activities on behalf of the ANC.
Her work for the ANC had consisted in collecting information in the labour field for use by the ANC and for recruitment of members for the ANC.
Disparities in sentences can often be explained on the basis of differing approaches by judicial officers.
However, it was the same Mr Justice van Dyk who recently tried three members of the Afrikaner Weerstandsbeweging, a right-wing organisation with a swastika-like symbol, for unlawful possession of firearms
All three received suspended sentences, perhaps an appropriate sentence for possessing an unlicensed handgun.

The accused in this case, however, possessed an arsenal including four AK47 automatic rifles, 18 magazines for R-1 automatic rifles, five magazines for G3 automatic rifles, 19 magazines for AK47 rifles and 4 143 rounds of ammunition.
One of the accused, Daniel Viljoen, already serving 15 years for terrorism, was found guilty of illegally possessing an Oerlikon missile.
He, too, received a suspended sentence.

In sentencing the three accused to two years, three years and four years, Mr Justice van Dyk suspended all sentences for five years.
Leave to appeal was granted.
He said the accused were victims of an unfortunate combination of circumstances and the community would certainly not expect him to send them to jail for that.
He described the accused as civilised and decent.
Mr Eugene TerreBlanche, leader of the Afrikaner Weerstandsbeweging and one of the accused, vowed he was ready to resume the struggle for his volk, whites and Christian people.
Sentencing is probably the most difficult task of a judge or magistrate.
It is also in sentences that the values of the legal system are reflected.
The cases above seem to reveal deep-seated racial and political divisions.
If justice is to be seen to be done, politically motivated disparity in sentences must be eradicated.
Unfortunately, many South Africans will construe these sentences as evidence of injustice perpetrated in the name of law.
This will not advance respect for the South African legal system at a time when its credibility is questioned in many quarters

LAW ENFORCEMENT

The army factor

FM 9/11/84

The police and the SADF's sustained "clean-up" operation in Vaal Triangle townships to check "criminal and revolutionary elements" has been criticised by a group of influential lawyers

Lawyers for Human Rights (LHR) is an organisation representing over 800 prominent lawyers nationwide. The LHR questions the legality and wisdom of the decision to mobilise the SADF and police in black townships.

The Criminal Procedure Act, in particular, appears to have been subject to a wide margin of interpretation. "It's not clear if these powers authorise the police to search every house in a particular township in mass raids of this kind," says LHR.

One of the most fundamentally worrying aspects of the operation was the establishment of special courts to hear cases arising from the mop-up. "Accused persons were brought to trial so quickly that they were given no opportunity to obtain legal representation or to prepare their defence," the statement says. LHR adds: "It is inconceivable that proper justice could be done by these courts"

Government said that the objective of Operation Palmiet was to crack down on criminal and revolutionary elements However, it has become painfully obvious that few political arrests were made.

Of the 354 people arrested in the swoop on Sebokeng, the vast majority of those detained were held under migration and influx control laws and not for political offences

"This action suggests that the Defence Force is used to enforce influx control," says LHR. "Imagine the public outcry that would follow such a raid on Linden or Waterkloof."

The raid prompted the British newpaper, *The Guardian*, to revile the operation as "silly" for uncovering pornography but no copies of *Das Kapital*

Commenting on the role of mobilising the SADF in essentially a "civil" operation, LHR says the Defence Force will be seen by blacks as an "instrument of white political repression."

"Operation Palmiet" violated numerous articles in the Universal Declaration of Human Rights, the statement says

The LHR believes the combined operation has done "untold harm" to race relations and the cause of greater basic human rights in SA

Coetsee: role of ANC in SA coming to an end

Star 752

Internal developments in South Africa as well as the country's improving international relations had made organisations, like the African National Congress realise their role was rapidly coming to an end, Minister of Justice Mr Kobie Coetsee said today

When the new constitutional dispensation was implemented, the instigators of violence and unrest had seen another opportunity to create dissatisfaction and incite people to lawlessness and anarchy, he told a passing out parade of nearly 700 policemen and women at the SA Police College at Hammanskraal near Pretoria

The continuing successful reconciliation on a political level between South Africa and its neighbouring states, and among the different population groups inside the country, was proof that organisations like the ANC would not succeed in driving the country closer to the communist kraal through racial violence

STABILITY

"These successes are naturally not acceptable to our enemies and as a result they have used every means to stoke up unrest, suspicion and violence"

Praising police action in the recent violent flare-ups in black townships, he said he felt he was speaking on behalf of every peace-loving citizen when he congratulated them on "the way in which they handled their task of maintaining law and order and ensuring stability"

Their task was to ensure there were no obstacles in the way of political development in the country.

"It came as no surprise therefore, when those who had attempted to disrupt peaceful political progress accused the police of supressing free political expression in South Africa when lawful actions were taken to maintain order.

"South Africa is a democratic country and any attempt to land it in the communist bloc will be fought with every available means.

"The problems of this country can only be solved by peaceful negotiations and positive attitudes," he said. — Sapa

Daily Express, London

Star 8/12/84 (252)

Public violence and the difficulty of definition

By Barry Jammy

On this International Human Rights Day, The Star publishes the third and final article compiled by Lawyers for Human Rights to draw attention to specific breaches of human rights in South Africa.

To speak of an "aftermath" of the recent violent unrest is perhaps an expression of unrealistic optimism. An aftermath is a result, a consequence, of something past, and there are few who could suggest with any conviction that the violence is past.

However, the word is apposite to describe the climate in which the wheels of bureaucratic justice can now be seen to be grinding, with the seeming inevitability of procedure and result which characterises the machinery of the lower courts when dealing with blacks *en masse*

There is a pattern in those courts, rooted perhaps in the application of the "pass" laws in the commissioners' courts, particularly in Johannesburg.

A conveyor-belt flow of accused from cells to dock and almost certain conviction.

Blank, vacant faces in the main, listening without comprehension, bored interpreters repetitively reciting formal charge and formal sentence — on average, a three-minute process when there is no legal representation of the accused.

And representation, invariably provided free when it occurs, is rare in relation to the sheer volume of cases heard.

But the charges in the magistrates' courts on the Reef, in this aftermath, are not related to influx control. They are of alleged public violence, incitement and related offences. Legal representation is virtually non-existent, the law is administered swiftly and coldly, and the results are fearsome.

There are few fines — those imposed are manifestly beyond the imagination, let alone the resources, of the accused. Prison sentences are measured in years, at times as many as five or six, and for a 16 or 17-year-old schoolchild, that is a lifetime.

In the legal context, the crime of public violence, or *geweld*, has been broadly defined as being committed where a body of persons armed with weapons (which would include sticks and stones) commit violence in such a way as to disturb the public peace and security.

But the Supreme Court has recognised the difficulties often inherent in that definition. The late, eminent Judge Oliver Schreiner, sitting in the Transvaal Provincial Division of the Supreme Court as long ago as 1938, commented.

" in dealing with a wide elastic crime of this nature, the court must be careful in case of doubt not lightly to hold that the acts charged are covered by the crime... A general crime of the nature of public violence makes it very difficult to ascertain the relative parts played by the different persons and to fix the degrees of guilt, if any, attaching to them."

It is a disturbing matter of fact that less eminent jurists do not appear to have that difficulty.

Where, in the imposition of legal sanctions, is the line to be drawn? Whose actions are the cause and whose the result of the purported disruption of the public peace and security? Can spontaneous, unpremeditated reaction to authoritarian suppression of the inalienable human right of protest, by companies of soldiers and legions of police with armour and guns and gas and truncheons, be validly held to constitute a crime?

In strict legal terms, perhaps — yes. But is it not possible then, that in their disturbance of the public peace and security, there are criminals on both sides? Or does "public", suddenly, now not mean the community at large?

There can, in the minds of civilised men, be no condonation of violence as a means to an end, whatever the frustrations in achieving it may be.

The horror of the death of a three-week-old white child in Sebokeng, in a stoning incident which has led to the arrest of four persons, is no greater and no less than that of the fatal shooting of a six-year-old black pupil at Wattville, for which no one has been arrested

But as long as inroads into and violations of, human rights, basic liberties and individual dignities continue, there will, whatever the sanctions, be protest, and it will be violent protest whenever its voice is sought to be forcibly subdued.

And it is in its aftermath that the words of Edmund Burke, writing on the impeachment of Warren Hastings in 1788, should illuminate the notepads of all of society's officers deputed to apply those sanctions

"There is but one law for all, namely, that law which governs all law, the law of our Creator, the law of humanity, justice, equity — the law of nature, and of nations."

● *Barry Jammy, a Johannesburg attorney, is chairman of Lawyers for Human Rights (Witwatersrand Region)*

Making justice more accessible to the poor

Staff Reporter

NEARLY six years ago a group of lawyers launched a pioneering project to make the law more accessible to people who could not afford the costs of justice in South Africa.

Today that project, the Legal Resources Centre (LRC), has expanded into a substantial operation, with offices in Johannesburg, Cape Town and Durban, and a budget of almost one million rands.

In his annual report, the LRC director, Mr Arthur Chaskalson, a man who gave up a successful career at the Bar to head the centre in 1979, says the LRC "has been involved in providing legal services to those who might not otherwise have access to the courts".

"It is also involved in clinical legal education programmes, in establishing and operating law clinics, in giving assistance to advice bureaux and in the training of law graduates through a fellowship programme."

Mr Chaskalson said it was clear that legal services — both litigation and advice — "will continue to be the major part of its work".

"These services are focussed on issues relevant to poor and disadvantaged communities.

"The demand for such services increases all the time, and the Legal Resources Centre is and will continue to be hard-pressed to meet that demand, at least until the development of the integrated legal aid scheme envisaged by the report of the Hoexter Commission."

This description of LRC activites does not, however, do justice to the kind of work it has undertaken.

When one looks at some of the cases it has been involved in, the role of the LRC becomes clearer. They include the Rikhoto and Komani influx control cases which extended the rights of migrant workers to be in the cities, labour and housing cases, the Duma case in Natal which restricted the definition of "idle and undesirable" black people, pension problems, Unemployment Insurance Fund cases, consumer exploitation, and the rights of squatters.

These are all issues affecting people who could not normally afford lawyers, let alone the expertise necessary to be able to challenge the way the law is being administered.

The annual report contains some details of typical cases handled by the centre.

"Mr P N purchased a stove on credit from a large furniture dealer in Johannesburg. He understood the purchase price to be R500 and paid a deposit. Upon delivery of the stove, Mr PN discovered that the purchase price was in excess of R1 000.

"On inquiry by the LRC, the saleslady stated that she had used the term 500 pounds because 'Africans still count in pounds and not rands'. Cancellation of the agreement was negotiated and restitution effected.

"On March 26 Mrs N M, a 65-year-old woman, was detained by police at Tugela Ferry and assaulted. The assault included the manacling of her wrists to her ankles, a wet sack being placed over her head and, save for a leather skirt, being held naked in a cell overnight.

"Acting on her behalf, the LRC reported the matter to the Commissioner of Police and instituted a civil action. In the result a policeman was charged and convicted of assault and an amount paid to Mrs N M in settlement of the civil proceedings.

"Mr N, a waiter at a leading Cape Town hotel, was dismissed after nine years' service. He had for several years been an active trade unionist.

"The immediate cause given for his dimissal was that he had placed tartare sauce in front of guests in a stainless steel rather than a silver bowl. Application was successfully made to the Industrial Court for Mr N's temporary reinstatement pending a final resolution of the dispute, which was eventually settled to Mr N's satisfaction.

"One result of this action was a report appearing in the trade journal 'Hotelier and Caterer', which after this case quoted a well-known Cape Town hotelier as stating: 'I would like to warn hoteliers that they should be considerate and fair to their employees and realize that the labour scene in South Africa is changing. You cannot arbitrarily throw people out.'

"In a township outside Cape Town certain ablution blocks were in daily use by hundreds of contract workers dwelling in nearby hostels. The local development board then authorized a local entrepreneur to take over the blocks for conversion to a dry-cleaning business, and summarily deprived the workers of the use thereof.

"An urgent application was brought to the Supreme Court for an order compelling the board to restore the use of the blocks to the workers. A successful settlement of the action ensued and in the process the blocks enjoyed some sorely-needed improvements."

A number of other examples are given in the annual report, but it is jarring to realize that without the LRC, few if any of cases like this would ever come before the courts.

In this way the LRC is making an effective contribution in trying to make justice more accessible in South Africa.

There is a long way to go before there is equal access to the law in South Africa, regardless of wealth and colour.

PUBLIC SECTOR
GOVT JUSTICE

1985

 Cape Times 15/3/85 (252) Parliament and Politics

Minister defends security laws

Political Staff and Sapa

HOUSE OF ASSEMBLY. — Heated interjections from members of the Progressive Federal Party marked a speech by the Minister of Law and Order, Mr Louis le Grange, on a motion proposed by Mrs Helen Suzman (PFP Houghton) in the House yesterday.

The motion called for a return to the rule of law, the lifting of all bannings and detentions, and the repeal of the legislation that enabled the government to carry out these acts

Mr Le Grange said that there were members of the PFP who had come out in favour of the motion in the hope that it would "be of assistance to certain of their friends".

"That is why they put it forward," he said.

"Why don't you say what you mean?" asked Mrs Suzman "You're a coward."

"I hope I have made the point clearly," said the minister.

"You haven't got the guts to be specific," said Mr Brian Bamford (PFP Groote Schuur).

Earlier, Mr Le Grange said hundreds of people had been killed or injured this year in unrest situations created by the organizations that this legislation enabled the State to act against.

There had been a steady increase in incidents of terrorism and sabotage in recent years In 1980 there had been 19 incidents and in 1984 there had been 44. There had also been various incidents this year.

In the most recent incident, a Mr and Mrs Joubert were cold-bloodedly murdered in the Western Transvaal on Wednesday.

AK-47 cartidges had been found on the scene of the crime

"There is only one group of people who use AK-47s and that is ANC terrorists."

A large number of trained ANC and PAC terrorists had been brought before the courts on charges which ranged from attempted murder to treason.

It had been possible to identify these people because the police had these laws to aid them

The government was just as concerned over basic human rights as any other country in the world It would prefer to make no inroads on the rights of its citizens.

But account had to be taken of realities. It would be to no-one's advantage to call for the repeal of this legislation without well-motivated reasons.

He was giving serious attention to "improving relations in our land by improved communications in terms of the stipulations of the Internal Security Act".

● The chances of blacks participating in the reform process were slim unless the government made a genuine effort to get as close to the rule of law as possible, the NRP MP for King William's Town, Mr Pat Rogers, said yesterday in the Assembly.

Introducing an amendment to Mrs Suzman's motion, he said it was "critical" for the government to move in this direction "on the eve of negotiations with black leaders"

"The government started a veld fire in 1948 and now we will all have to fight to put it out."

The review system with regard to detainees could be seen as an "improvement" and a "reformist move". "But another look should be taken to further reform the security legislation," he said

In the preamble to the new constitution there was some indication that the rights of the individual were being promoted "This was not so in the preamble to the old constitution, where the emphasis was heavily in favour of preserving the interests of the State

"The government must commit itself to both the rights of the individual and the preservation of law and order There should be more of a balance between the rights of the individual and the interests of the State."

1984 THAT WAS THE YEAR THAT WAS

Day Ten of an absorbing series in which The Star writers chronicle the triumphs, the defeats and contortions of the human spirit during the year that has just drawn to its close . . .

COURTS: target for a bomb

(184A1) (252) Star 2/1/85

By Fiona Macleod

The year 1984 will be remembered as the one in which the Rand Supreme Court nearly was blown up

A powerful bomb which would have destroyed a large part of the building was found by chance on the 7th floor on September 5 — and detonated on the lawn outside

During the year the courts were also rocked by a series of sensational criminal trials, culminating with the sentencing this month of two Krugersdorp former police sergeants for various serious crimes

The trial brought to the surface details of the festering underworld of drug addiction and the cowboy-style investigations by the two men, Ferdinand Barnard and Theunis Botha, while they were still in the force — which led to the deaths of three drug addicts and police participation in a car theft racket on the West Rand

Barnard was jailed for an effective six years for two murders, an attempted murder and stealing three cars

Botha, convicted of attempted murder, was sentenced to two years' jail, suspended for five years

The year's criminal court sitting ended with the murder trial of former policemen, just the way it began with former security policeman Jan Harm van As in the dock accused of murdering detainee Mr Paris Malatji.

Van As, said to have shot Malatji at point-black range as he held a gun to the kneeling detainee's head, was convicted of culpable homicide and jailed for 10 years

The desperate violence of child and family assaults revealed itself not only in a number of criminal cases, but also in numerous urgent court orders restraining people from attacking family members.

Among the most horrific cases heard were those of young mother Ingrid Afrika, who killed her six-month-old son by feeding him drain cleaner, and Cornelius Nagel, jailed for eight years for beating his stepson to death

Afrika, convicted of culpable homicide in May, wept as she was sentenced to four years' jail, with two years suspended for five years

Nagel was convicted of murdering the boy, who died with at least 82 bruises from beatings and ill-treatment.

But not all the news was gloom and doom In the civil courts the little man often proved that justice was on his side

In June the Department of Community Development was ordered to restore the Pageview home of a sickly 67-year-old man, Mr A Cassim, which department officials had illegally demolished.

Mr Justice D Curlewis attacked what he called the monstrous action of the officials, who had evicted Mr Cassim without notice, heaped his furniture on the pavement, and ripped apart his home

In two separate civil claims, insurance companies paid out large amounts to victims of car accidents.

Deaf 11-year-old Ingrid Foggitt was awarded R220 000, 49-year-old quadraplegic Mr James Botha was paid out R512 000

A remark by Mr Justice Irving Steyn in what came to be known as the Milk Money Trial caused uproar in the legal world in May

In the last trial he heard before retiring, the judge commented that bus-driver Mr Francisco Quintino, who shot dead a man stealing 63c from his milk bottles, deserved a medal Mr Quintino was acquitted of murder

Former Transvaal middleweight boxing champion Cameron "Kangaroo" Adams, and a fellow Spalding Gang member, Vincent Stuurman, were not so lucky

Both had been sentenced to death for murder in February 1982 . . and saw the last of a series of applications to save them from the gallows rejected by Mr Justice Curlewis in October

Behind the closed doors of civil court 6C, Mr Justice D A Melamet presided for more than six months over one of the lengthiest and most costly civil trials in South African legal history, involving a claim originally reported to be for R270 million

The action was veiled behind an order preventing publication of the proceedings and committing the parties to secrecy

It may never be known what the action entailed, what amounts of money were really involved, and who was affected

The only information officially released was that the overseas claimants were unsuccessful in the claim they brought against Sasol Limited, the Strategic Fuel Fund Association, and the Honorary Consul-General for Peru

Mandela unlikely to accept PW offer

By TOS WENTZEL
Political Correspondent

ARGUS 1/2/85

MR Nelson Mandela, the jailed African National Congress leader, is unlikely to accept President P W Botha's release offer unless the ANC is legalised.

This was the impression in political circles today following Mr Botha's statement in Parliament yesterday that the Government would consider the release of Mr Mandela provided he unconditionally rejects violence as a political instrument.

A source close to Mr Mandela today also pointed out that he had consistently maintained that, unless the ANC was legalised, what the movement calls its "armed struggle" would continue

In Government circles, too, there were doubts about whether Mr Mandela would accept the President's condition

Offer to ANC

He will not be willing to cut himself off from the ANC by accepting conditions for his own release

On the other hand, the Government recently made an offer to the ANC that it would be willing to talk if it abandoned violence as a policy.

Nationalist politicians pointed out today that a recent article by Lord Nicholas Bethel on a visit to Mr Mandela gave the impression that Mr Mandela still supported the "armed struggle".

According to that article, which was published in a British newspaper, that was why the human rights organisation Amnesty would not campaign for his release

But there has also been a suggestion that he would be willing to have the ANC call a truce while it was negotiating with the Government

The Minister of Justice, Mr Kobie Coetzee, has said that Mr Botha's speech would be relayed to Mr Mandela and others in jail.

Cause of violence

When questioned by Mrs Helen Suzman MP in the Assembly yesterday Mr Botha said his offer could be extended to certain other political prisoners

She said "It should be understood that South Africa has much to gain if Mandela is free It would remove a major rallying point against this country"

Mrs Suzman said that some of the other prisoners she had in mind to be covered by Mr Botha's offer were a number sentenced to life imprisonment in 1964 at the Rivonia sabotage trial, such as Dennis Goldberg, Walter Sisulu, Govan Mbeki, A Kathrada and Raymond Mhlaba

Others sentenced to life at that trial were Elias Matsaaledi and Andrew Mlangeni

Dr F van Zyl Slabbert, Leader of the Opposition in the Assembly, welcomed Mr Botha's announcement

He said "This is a far more reasonable and tolerant attitude than has been the case before The final choice as to what Mr Mandela should do about this offer is, of course, his own

"It is significant that the offer is extended to other so-called political prisoners as well I believe it would be appropriate for the State President to apply this approach to banned individuals and organisations such as the ANC and PAC

"If this is combined with a clear programme of action to dismantle apartheid and discrimination, I believe the climate for the politics of negotiation rather than confrontation and violence will improve dramatically"

Mr Allen Hendrickse, chairman of the Ministers' Council in the House of Representatives, welcomed the move but said it was regrettable to note from the President's announcement that Mr Mandela was apparently still committed to violence

Meanwhile, the United States has expressed the hope that the South African Government will engage in a dialogue with the ANC

Botha's offer likely to cover 7 Rivonia men

Cape Times 4/2/85

252

Own Correspondent

JOHANNESBURG — The government is not saying which jailed ANC leaders other than Nelson Mandela would receive their offer of conditional freedom

However, it is believed the offer will include at least the seven men jailed with Mandela in the famous Rivonia trial.

When Mr P W Botha, the State President, made the offer in Parliament on Thursday, he said it applied to the other ANC leaders as well, but did not specify which

Spokesmen for the State President, the Department of Justice and the SA Prison Services were unable to say which other prisoners were included in the offer

Helen Suzman

However, Mrs Helen Suzman, PFP spokesman on Law and Order, who originally asked Mr Botha in Parliament if the offer applied to the other ANC leaders, said yesterday that she thought it included at the very minimum those jailed with Mandela

This would include

● Walter Sisulu, originally from the Transkei and a former secretary-general of the ANC Sisulu was a key leader of the ANC in the late 1940s and 1950s, who like Mandela shifted from being a firm "Africanist" and anti-communist to a major proponent of broad political unity He is 73 years old

Oldest at 74

● Govan Mbeki, also a former member of the Umkonto we Sizwe high command, is at 74 the oldest of the Rivonia trialists His health is reported to be uncertain.

● Denis Goldberg, 51, who was the only white convicted in the Rivonia trial and a member of the Umkonto high command

Ahmed Kathrada

● Ahmed Kathrada, 54, who played an important role in the Defiance Campaign of 1952 He served an earlier sentence and a banning order before going underground to join Umkonto and being arrested at Rivonia

● Elias Motsoaledi, 60, was a trade unionist who served briefly as chairman of the Council of Non-European Trade Unions

● Andrew Mlangeni, 58, a former ANC regional secretary At the Rivonia trial he admitted to carrying messages for Umkonto, but denied being a member

● Ramond Mhlaba, 64, from Fort Beaufort in the Eastern Cape He was an active trade unionist and a member of the Communist Party

● **Mandela — anti-apartheid symbol, page 9**

(2) whether any of these pools have been closed to the public; if so, (a) which pools and (b) (i) on what date, and (ii) why, in each case,

(3) whether any staff have been employed in connection with any of these pools since their being closed to the public, if so, (a) how many, (b) in what capacities, (c) why, and (d) at what cost, in respect of each such pool;

(4) whether steps are being taken in respect of reopening these pools for use by the public; if so, (a) what steps and (b) when will each such pool be reopened;

(5) whether his Department intends constructing any additional swimming pools in the Black township of the Cape Peninsula; if so, (a) how many, (b) when and (c) where are they to be constructed?

The MINISTER OF CO-OPERATION AND DEVELOPMENT:

(1) (a) Yes

(b) Yes.

(c) No.

(i) Langa 1
Guguletu 2

(ii) Langa 30 April 1984
Guguletu 31 October 1983 (both).

(2) Yes.

(a) Langa and Guguletu (both).

(b) (i) Langa 1 May 1984
Guguletu 1 November 1983 (both).

(ii) The equipment of the pools became unserviceable due to ageing.

(3) Yes.

(a) 8 in respect of each swimming pool but they also perform duties at the local sports stadiums

(b) 1 supervisor
1 assistant supervisor
3 operators
3 labourers

(c) The staff perform necessary maintenance duties at the swimming pools. Otherwise their services are utilised at the local sports stadiums.

(d) Langa R22 400.
Guguletu R71 680.

(4) Yes.

(a) An amount of R150 000 has been made available for repairs and renovation.

(b) During the 1985/86 swimming season—probably in October 1985.

(5) Yes

(a) 1.

(b) As soon as funds for this purpose become available

(c) Khayelitsha.

Films on Sundays

82. Mr D J DALLING asked the Minister of Justice:

(1) How many applications were received by his Department in 1984 for permission to exhibit films on Sundays,

(2) how many of these applications were for permission (a) in general, (b) in a particular case and (c) in cases of a particular nature;

(3) (a) how many of the applications in each category were (i) granted and (ii) refused and (b) what were the reasons for the refusal in each case?

The MINISTER OF JUSTICE:

(1) 10.

(2) (a) 10.

(b) 0

(c) 0

(3) (a)

	(i) Granted	(ii) Refused
(i) Applications in general	7	3
(ii) Applications in a particular case	0	0
(iii) Applications of a particular nature	0	0

(b) Applications in general:

Three applications were refused because:—

(i) the applicants applied to exhibit the films in commercial theatres, and

(ii) the applicants intended to grant admission for consideration.

In so far as the above-mentioned classification is concerned, it is assumed that applications "in general" refer to those applications in respect of which consent was requested for general permission to exhibit films on Sundays, etc or in respect of which consent was requested for general permission to exhibit films on one or two Sundays per month. In so far as applications "in a particular case" are concerned, it is assumed that these refer to applications to exhibit films on Sundays on specific dates. In so far as applications "in cases of a particular nature" are concerned, it is assumed that these refer to applications to exhibit films of a particular category on Sundays, for example religious and cultural films and films in the Indian or Greek language, etc

(252) Hansard Q. 601-298 26/2/85

Corporal punishment

84. Mr D J DALLING asked the Minister of Justice:

How many persons of each race group were sentenced to corporal punishment during the period 1 July 1983 to 30 June 1984?

The MINISTER OF JUSTICE:

Race	Corporal punishment coupled with imprisonment— which was not suspended	which was suspended	Corporal punishment not coupled with other sentences
Whites	11	40	1 527
Indians	2	3	630
Coloureds	190	260	13 391
Blacks	527	738	23 330
	730	1 041	38 878

(2) whether any of these pools have been closed to the public, if so, (a) which pools and (b) (i) on what date, and (ii) why, in each case,

(3) whether any staff have been employed in connection with any of these pools since their being closed to the public, if so, (a) how many, (b) in what capacities, (c) why, and (d) at what cost, in respect of each such pool;

(4) whether steps are being taken in respect of reopening these pools for use by the public; if so, (a) what steps and (b) when will each such pool be reopened,

(5) whether his Department intends constructing any additional swimming pools in the Black township of the Cape Peninsula, if so, (a) how many, (b) when and (c) where are they to be constructed?

The MINISTER OF CO-OPERATION AND DEVELOPMENT·

(1) (a) Yes

(b) Yes

(c) No.

(i) Langa 1
Guguletu 2

(ii) Langa 30 April 1984
Guguletu 31 October 1983 (both).

(2) Yes.

(a) Langa and Guguletu (both)

(b) (i) Langa 1 May 1984
Guguletu 1 November 1983 (both).

(ii) The equipment of the pools became unserviceable due to ageing

(3) Yes

(a) 8 in respect of each swimming pool but they also perform duties at the local sports stadiums

(b) 1 supervisor
1 assistant supervisor
3 operators
3 labourers

(c) The staff perform necessary maintenance duties at the swimming pools Otherwise their services are utilised at the local sports stadiums

(d) Langa R22 400.
Guguletu R71 680

(4) Yes

(a) An amount of R150 000 has been made available for repairs and renovation.

(b) During the 1985/86 swimming season—probably in October 1985

(5) Yes

(a) 1

(b) As soon as funds for this purpose become available

(c) Khayelitsha.

Films on Sundays

82. Mr D J DALLING asked the Minister of Justice

(1) How many applications were received by his Department in 1984 for permission to exhibit films on Sundays;

(2) how many of these applications were for permission (a) in general, (b) in a particular case and (c) in cases of a particular nature;

(3) (a) how many of the applications in each category were (i) granted and (ii) refused and (b) what were the reasons for the refusal in each case?

The MINISTER OF JUSTICE.

(1) 10

(2) (a) 10

(b) 0

(c) 0

		(i) Granted	(ii) Refused
(3) (a)	(i) Applications in general	7	3
	(ii) Applications in a particular case	0	0
	(iii) Applications of a particular nature	0	0

(b) Applications in general

Three applications were refused because —

(i) the applicants applied to exhibit the films in commercial theatres, and

(ii) the applicants intended to grant admission for consideration

In so far as the above-mentioned classification is concerned, it is assumed that applications "in general" refer to those applications in respect of which consent was requested for general permission to exhibit films on Sundays, etc or in respect of which consent was requested for general permission to exhibit films on one or two Sundays per month. In so far as applications "in a particular case" are concerned, it is assumed that these refer to applications to exhibit films on Sundays on specific dates In so far as applications "in cases of a particular nature" are concerned, it is assumed that these refer to applications to exhibit films of a particular category on Sundays, for example religious and cultural films and films in the Indian or Greek language, etc

(252) Hansard Q. 61-29 8
26/2/85

Corporal punishment

84 Mr D J DALLING asked the Minister of Justice

How many persons of each race group were sentenced to corporal punishment during the period 1 July 1983 to 30 June 1984?

The MINISTER OF JUSTICE

Race	Corporal punishment coupled with imprisonment— which was not suspended	which was suspended	Corporal punishment not coupled with other sentences
Whites	11	40	1 527
Indians	2	3	630
Coloureds	190	260	13 391
Blacks	527	738	23 330
	730	1 041	38 878

Hansard

Staff shortages 26/2/85 Q. Col. 299

85 Mr D J DALLING asked the Minister of Justice

Whether the Prisons Service is experiencing staff shortages; if so, what (a) is the extent of the shortages and (b) is being done to remedy the situation?

The MINISTER OF JUSTICE

(a) The approved establishment of 18 614 posts was, with the exception of 460 vacancies, filled completely on 1985-02-01 This establishment does not make provision for identified needs towards expansion

(b) Efforts are made continually to fill existing vacancies by means of intensive recruiting within the framework of available funds It is constantly endeavoured to increase existing efficiency as measured to accepted norms and special attention is given to the retention of manpower

---

(1) (b) (i)

Number	*Cause of action*
12	unlawful
8	unlawful detention
5	damages
1	unlawful attachment
2	insufficient medical treatment
2	injuries during detention
79	assault
7	death of prisoners
1	breach of contract

(1) (b) (ii)

Claims settled out of court	Claims not furthered by the plaintiff	Claims pending	Claims dismissed
78	17	19	3

(2) (a) No

(b) Yes

1980	R14 061,60
1981	R18 716,17
1982	R31 540,00
1983	R91 606,05
1984	R34 978,25

The amounts include settlements reached pursuant to letters of intention to institute action

Lawsuits against Minister 26/2/85 Hansard Q. Col. 300

103. Mr P H P Gastrow asked the Minister of Justice

(1) Whether any lawsuits have been brought against him in his capacity as Minister of Justice by members of the public; if so, (a) how many in each specified year, (b) what (i) were the circumstances of the suit, and (ii) was the outcome, in each case,

(2) whether he paid out any moneys (a) as a result of successful lawsuits brought against him and (b) in out-of-court settlements, if so, what total amount in each specified year?

The MINISTER OF JUSTICE

(1) Yes

(a) 6 October to 31 December

1980	4
1981	16
1982	14
1983	49
1984	34

Influx control/identity documents

107 Mr P G SOAL asked the Minister of Justice

(1) How many persons were (a) tried for and (b) convicted of offences relating to influx control and identity documents at commissioners' courts in each specified Development Board area in 1984,

(2) what was the average daily number of such cases heard by these courts in each Development Board area in that year,

(3) how many of these persons were (a) legally represented and (b) not legally represented in each Development Board area in the year concerned?

The MINISTER OF JUSTICE

The required information is unfortunately not readily available. Statistics of this nature have not been kept by the Department up till now The keeping of statistics of offences in general is at present the subject of an investigation

Hansard Q. Col. 301

Langa/Nyanga/Guguletu: housing 26/2/85

113 Mr K M ANDREW asked the Minister of Co-operation and Development

(1) How many new family housing units were provided in (a) Langa, (b) Nyanga and (c) Guguletu in 1984;

(2) how many of these units in each township were converted from hostel units?

The MINISTER OF CO-OPERATION AND DEVELOPMENT:

(1) None

(2) None.

Hansard Q. Col. 301

Compulsory education 26/2/85

114. Mr K M ANDREW asked the Minister of Education:

(a) In respect of how many schools in each departmental region had compulsory education (i) been introduced and (ii) not been introduced at the latest specified date for which figures are available and (b) how many pupils were involved in each category in each of these departmental regions?

The MINISTER OF EDUCATION

Figures as on 6 March 1984

Region	(i) (a)	(i) (b)	(ii) (a)	(ii) (b)
OFS	43	18 869	127	54 166
Cape	8	5 007	254	95 792
Natal	9	5 832	102	37 513
N Tvl	76	36 947	190	64 738
O Vaal	38	20 845	104	48 339
JHB	17	5 800	242	84 731
Highveld	78	47 516	131	53 144

Hansard

Farm schools 26/2/85 Q. Col. 302

*115. Mr K M ANDREW asked the Minister of Education:

(1) (a) How many applications for the subsidization of farm schools were received by his Department in 1984 and (b) how many applications (i) were granted, (ii) were refused and (iii) are pending;

(2) what estimated number of pupils benefited from the subsidization of farm schools in that year?

The MINISTER OF EDUCATION:

(1)

(a) 379 in respect of farm school buildings

(b)

(i) 379.

(ii) None

(iii) None.

(2) 468 619 pupils.

Hansard 26/2/85 Q Col 299

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8	unlawful detention
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252 Hansard Q Col. 300 26/2/85

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The MINISTER OF JUSTICE:

The required information is unfortunately not readily available. Statistics of this nature have not been kept by the Department up till now. The keeping of statistics of offences in general is at present the subject of an investigation.

Hansard Q. Col. 301 26/2/85

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(2) how many of these units in each township were converted from hostel units?

The MINISTER OF CO-OPERATION AND DEVELOPMENT:

(1) None.

(2) None.

Hansard Q. Col. 301 26/2/85

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(a) In respect of how many schools in each departmental region had compulsory education (i) been introduced and (ii) not been introduced at the latest specified date for which figures are available and (b) how many pupils were involved in each category in each of these departmental regions?

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(b)

(i) 379.

(ii) None.

(iii) None.

(2) 468 619 pupils.

Bedfordview	—	17	—
Edenvale	2	19	—
Elsburg	—	13	—
Primrose	7	8	—

Note· The police stations not mentioned have a nought return

Blacks (Urban Areas) Consolidation Act

380 Mr G B D McINTOSH asked the Minister of Law and Order

How many Black (a) males and (b) females were arrested in the Pietermaritzburg municipal area in 1984 for contraventions in terms of the Blacks (Urban Areas) Consolidation Act, No 25 of 1945?

The MINISTER OF LAW AND ORDER·

(a) 10 Black males.

(b) 1 Black female.

Hansard Col. 575 12/3/85

Commissioners' courts: legal representation

388. Mr P G SOAL asked the Minister of Justice

Whether any persons appearing before commissioners' courts in 1984 were legally represented in court; if so, how many persons in each specified commissioner's court (a) were and (b) were not so represented?

The MINISTER OF JUSTICE

The required information is unfortunately not readily available Statistics of this nature have not been kept by the Department up till now. The keeping of statistics in general is at present the subject of an investigation.

Johannesburg commissioners' courts

389. Mr P G SOAL asked the Minister of Justice:

Whether any persons appearing before the Johannesburg commissioners' courts in 1984 were legally represented in court, if so, how many persons (a) were and (b) were not so represented?

The MINISTER OF JUSTICE

The required information is unfortunately not readily available Statistics of this nature have not been kept by the Department up till now The keeping of statistics in general is at present the subject of an investigation.

Commissions/departmental committees

417. Mr K M ANDREW asked the Minister of Co-operation, Development and Education:

(1) How many (a) commissions and (b) departmental committees of inquiry were appointed in respect of the Department of Co-operation and Development in 1984,

(2) whether any of the reports of such commissions and committees have been completed; if so, (a) how many and (b) of which commissions and committees,

(3) whether any of the reports of such commissions and committees have been made public, if so, (a) how many and (b) of which commissions and committees,

(4) what is the total estimated cost relating to each of these commissions and committees?

The MINISTER OF CO-OPERATION, DEVELOPMENT AND EDUCATION·

(1)(a) and (b) None.
(2), (3) and (4) Fall away.

Hansard

Blacks (Urban Areas) Consolidation Act

Q. Col. 575 12/3/85

422. Mr G B D McINTOSH asked the Minister of Justice·

How many Black (a) males and (b) females arrested in the Pietermaritzburg municipal area in 1984 for contraventions in terms of the Blacks (Urban Areas) Consolidation Act, No 25 of 1945, (i) were prosecuted in that year and (ii) had been prosecuted as at the latest specified date for which figures are available?

The MINISTER OF JUSTICE.

The required information is unfortunately not readily available. Statistics for the period 1 September 1984 (the date on which judicial work was taken over from the Department of Co-operation and Development) until 31 December 1984 are as follows

(a) (i) and (ii) 6

(b) (i) and (ii) 2

Hansard

Grahamstown police district: offences

Q. Col. 578 12/3/85

433 Mr E K Moorcroft asked the Minister of Law and Order

How many cases of (a) murder, (b) culpable homicide, (c) assault with intent to do grievous bodily harm, (d) common assault, (e) rape, (f) burglary, (g) robbery, (h) theft of vehicles and cycles, (i) damage to property, (j) housebreaking with intent to steal and theft and (k) possession of drugs were reported at each specified police station in the Grahamstown police district in 1984?

The MINISTER OF LAW AND ORDER

	(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)	(k)
Grahamstown ..	42	29	463	297	44	—	61	156	303	751	2
Alexandria .	2	3	130	108	14	—	5	9	28	59	—
Alicedale	—	1	43	41	3	—	4	4	4	14	—
Balfour	2	—	32	15	1	—	—	—	4	18	—
Bathurst .	2	1	48	28	7	—	1	3	6	16	—
Committees ..	—	2	6	1	1	—	1	3	1	9	—
Doringkloof .	—	—	13	5	—	—	—	1	—	6	—
Fort Beaufort .. .	7	4	184	81	5	—	11	24	57	118	—
Fort Brown .. .	—	2	6	3	2	—	—	1	1	1	—
Kaffir Drift	1	—	14	1	1	—	—	1	2	38	—
Kenton-On-Sea . .	2	2	46	39	2	—	—	4	7	34	—
Kinkelbos .	—	4	14	7	3	—	—	1	2	14	—
Paterson	2	4	76	30	7	—	7	10	5	40	—
Port Alfred ..	9	6	142	128	19	—	16	17	37	158	—
Riebeeck East	—	1	19	9	—	—	—	—	2	10	—
Sevenfountains .	—	3	7	6	3	—	—	1	3	23	—

Note· For statistical purposes burglary and housebreaking with intent to steal and theft are codified under the same code

East London police district: offences

434 Mr E K MOORCROFT asked the Minister of Law and Order

How many cases of (a) murder, (b) culpable homicide, (c) assault with intent to do grievous bodily harm, (d) common assault, (e) rape, (f) burglary, (g) robbery, (h) theft of vehicles and cycles, (i) damage to property, (j) housebreaking with intent to steal and theft and (k) possession of drugs were reported at each specified police station in the East London police district in 1984?

The MINISTER OF LAW AND ORDER

Bedfordview	—	17	—
Edenvale	2	19	—
Elsburg	—	13	—
Primrose	7	8	—

Note The police stations not mentioned have a nought return

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The MINISTER OF CO-OPERATION, DEVELOPMENT AND EDUCATION·

(1)(a) and (b) None
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Hansard

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Hansard

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How many cases of (a) murder, (b) culpable homicide, (c) assault with intent to do grievous bodily harm, (d) common assault, (e) rape, (f) burglary, (g) robbery, (h) theft of vehicles and cycles, (i) damage to property, (j) housebreaking with intent to steal and theft and (k) possession of drugs were reported at each specified police station in the Grahamstown police district in 1984?

The MINISTER OF LAW AND ORDER

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Bathurst	2	1	48	28	7	—	1	3	6	16	—
Committees	—	2	6	1	1	—	1	3	1	9	—
Doringkloof	—	—	13	5	—	—	—	1	—	6	—
Fort Beaufort	7	4	184	81	5	—	11	24	57	118	—
Fort Brown	—	2	6	3	2	—	—	1	1	1	—
Kaffir Drift	1	—	14	1	1	—	—	1	2	38	—
Kenton-On-Sea	2	2	46	39	2	—	—	4	7	34	—
Kinkelbos	—	4	14	7	3	—	—	1	2	14	—
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The MINISTER OF LAW AND ORDER

A clash of cultures

252

A British judge once said: "Let justice be done, though the heavens fall." In SA accusations of injustice are all too frequent, particularly in the wake of some recent sentences that the layman finds difficult to understand or justify.

Take away a man's reputation, and how can he hope to hold his head high again? The same applies to any nation, and, unfortunately, no area of SA life can now hope to escape international scrutiny Certainly the courts cannot, despite government boasts that our legal system is one of the best in the world and that our courts enjoy worldwide esteem

Indeed, the courts are sometimes responsible for supplying some of the most effective ammunition available to the international disinvestment lobby Some of their decisions are, to put it gently, impossible to justify.

Even if government's pride in the courts is justified, it takes only one case of apparent prejudice in a judicial officer to destroy the good work done by the courts as a whole

Such a case occurred on March 12 when a Johannesburg regional court magistrate, S J Coetzee, convicted a young policeman of an assault which led to the death of a young coloured breakdancer — and fined him R30 The case was indeed perceived as reflecting apparent prejudice, it was reported as such internationally and did immense harm to SA's image

This is not the place to consider the legal merits of the magistrate's decision, although it should be noted that the press was not alone in finding it unacceptable Jules Browde SC, chairman of the Johannesburg Bar Council, tells the *FM* that if the facts are as reported in the press then the sentence was "startlingly inappropriate"

Magistrates, of course, are human and they make mistakes However, Browde took the issue well beyond that of an individual magistrate's foibles when he added that many disparities in sentencing occurred in SA "because most of our judicial officers are unable to identify with the majority of the population."

There you have it In the simplest terms nearly all SA's magistrates (about 98%), and all the judges, are white while the bulk of those who face them on criminal charges are black

The issues arising from that simplistic statement are immense, but they are issues which all but a few of SA's legal theorists have consistently refused to face There are no authoritative studies in SA on the effect of racial differences on sentences passed by the courts.

Other lands, most of them facing far less delicate situations than SA, have carried out such studies Surveys in the US, Canada, Britain, Australia and Israel (all of which have court systems comparable to ours) show convincingly that unreasonable or unjust disparities in sentencing are due to differences in what is called the "judicial personality."

However, an unjust sentence in Australia is likely to cause a strictly local furore One in SA is seized upon internationally as evidence that a black man cannot expect justice under the apartheid system — even from the courts This may be unfair; but it is a fact with which SA has to contend

This means that our judges and magistrates need to be particularly aware of an extra, social, dimension in many cases that come before them. It is unlikely that all are so aware

As John Dugard, director of the University of the Witwatersrand's Centre for Applied Legal Studies, puts it· "Our judicial officers are human beings. Their judicial decisions, and particularly their sentences, reflect their own life experience and the values and expectations of the community to which they belong"

(252)

If, therefore, a magistrate is a white Afrikaner and the accused a black slum-dweller, there is going to be a large degree of mutual incomprehension The magistrate will tend to come to a decision on the basis of Afrikaner expectations and cultural norms which are meaningless to the accused The same holds true, with slightly different norms, for an English-speaking magistrate

Dugard, in fact, believes that SA's legal system faces "a crisis of credibility." He says "While most whites still see it as a fair legal order, blacks increasingly view it as the white man's means of maintaining white domination "

The black perception, he adds, is not accurate — but it cannot be ignored He points out that it is largely based on sentences passed by the courts, since "sentencing plays a major role in shaping public perceptions of the law as it is the most visible feature of the law "

The case quoted above did not involve a slum-dwelling black What it did involve was a coloured man and that old emotive issue, interracial sex

The young coloured was apparently assaulted because he had a white girlfriend There are unfortunately those in SA who would find assaulting a black for "messing around" with a white girl understandable, if not justifiable The *FM* is quite sure that magistrate Coetzee does not see himself as such a person, but we can understand those who suspect he may be in view of the fact that he imposed a lesser penalty than the admission of guilt for a parking offence

Unfortunately, it seems that this was not an isolated case Supreme Court judges, whose judicial norms are regarded as being far higher than those of many magistrates, have themselves expressed doubts about the appropriateness of some magistrates' court decisions.

Thus the acting-Judge President of the eastern Cape recently overturned a decision by a regional court magistrate with the comment that a reasonable observer could not be blamed if he had left the court saying the magistrate was "biased "

Other cases are easy to find. They may stand out from the ruck of criminal cases because they are unusual, but they remain symptoms of a problem with which our legal system has yet to grapple

Among them.

☐ A white youth who boasted he was going to kill a black and did so was sentenced to 1 200 hours' weekend imprisonment,

☐ Three young white men who kicked a black man to death were sentenced to five cuts each;

☐ A black woman received 18 months' jail (12 suspended) for possessing a Penguin book which was ruled to have been published in the interests of the ANC,

☐ Two soldiers who roasted a black man over a fire and raped his wife were fined R50 each; while

☐ A black who had a tea mug engraved with ANC slogans got three years' imprisonment (half suspended)

Sentencing influenced

The problem of disparate sentences is a serious one and affects justice at magistrate court level more than in the Supreme Court, although many feel that the higher courts do not have an umblemished record But it is in the magistrates' courts that the vast bulk of offenders appear and it is there that decisions are reached that, in most cases, have little likelihood of being published.

Dugard comments· "The most important factors in my judgment are our failure to fully recognise the extent to which the judicial personality influences sentencing " He points to "the weakness in our education and training of judicial officers, the inadequacy of existing procedures for providing personal information about the offender; and the evidence of racial bias in sentencing "

Dugard does not suggest that racial bias is widespread, but says there is evidence of it, "albeit unconscious and undeliberate," in two main areas.

☐ "Interracial homicides and assaults, where the evidence suggests that whites found guilty of killing or seriously assaulting blacks are punished more leniently than blacks when they kill or assault whites, and

☐ "Interracial sexual offences, particularly rape, where black offenders are punished more severely than whites "

Both Dugard and Browde feel there is a need for training seminars on sentencing for magistrates, and Dugard feels judges would also profit from such courses.

Fortunately the Department of Justice seems to agree, at least in part Following recommendations of the Viljoen Commission into the penal system in 1976 the department (in 1981) began introducing training courses for magistrates Courses now offered to both district and regional magistrates by the Division of Justice Training comprise what is regarded as an excellent guide in both the theoretical and practical aspects of sentencing

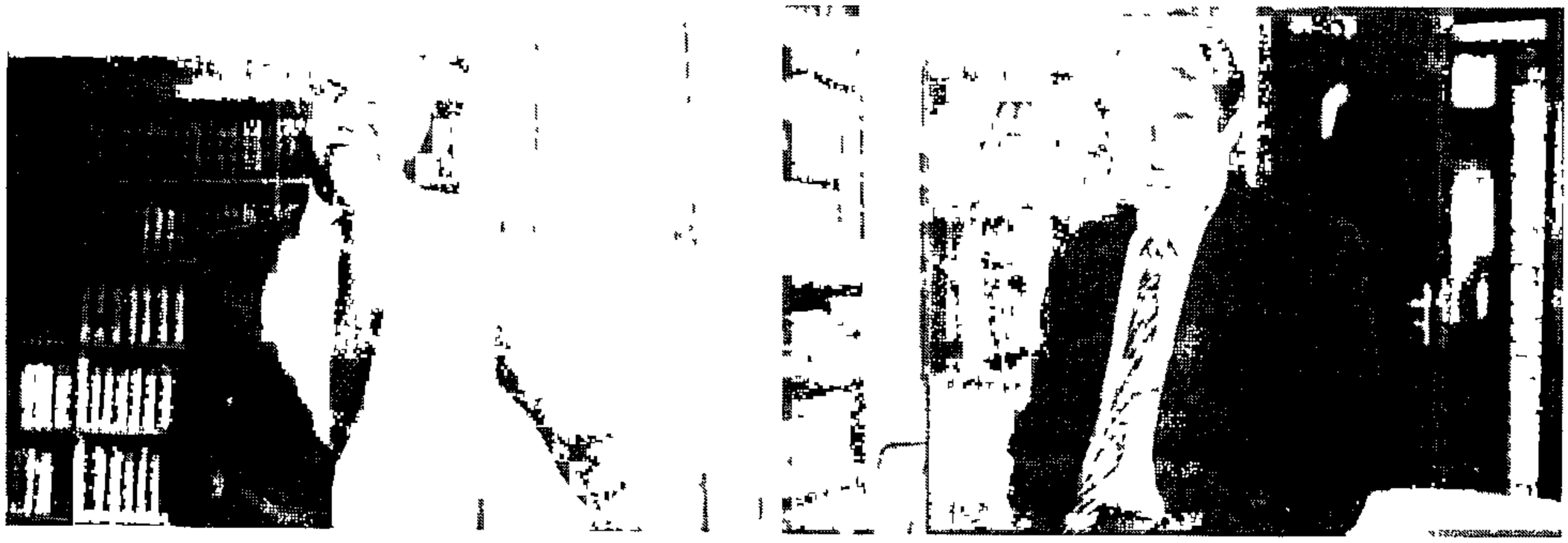
Although such courses are not compulsory for all magistrates — and are regarded by Dugard as promising but inadequate — they do show a perception of the problem and a willingness to seek solutions. Some 20 hours on refresher courses for magistrates is now devoted to sentencing, and the Division of Justice Training plans to double this

Such courses, however, will not automatically solve the problem

Sadly, it is unlikely that SA's legal system will ever fully satisfy the country's critics while it is staffed with white magistrates and judges enforcing white-made law Reasonable blacks do not regard that as judgment by their peers So another forward step should surely be the training of more black judicial officers, who would encounter fewer problems in assessing "the values and expectations of the community to which they belong "

It should never be forgotten that the search for a just legal system is a never-ending one — probably in all nations — and that the courts must continue to make adjustments to changing circumstances

But it is the system we are stuck with while the long and agonising process of black political, economic and educational advancement continues All we can do in the meanwhile is to continue to improve matters by systematically examining evidence of bias and injustice — and eliminating the causes ■



Bar Council's Browde (l), Wits's Dugard . . . 'judicial personality' is the problem

TONGAAT-HULETT

Taking a caning

The canefields are green — but the world sugar market is in the doldrums. With recession and mounting group debt, Tongaat-Hulett finds current conditions a matter of one thing after another.

Tongaat-Hulett was for years a blue-eyed boy of the JSE. A five-year bull trend saw the share price leap from 240c in 1979 to peak in early 1984 at 1 300c — before collapsing over 55% to a 1985 low of 535c. The share now stands at 600c

This downfall reflects three main factors

- Recession has hit all of Tongaat's operations,
- Because of heavy capital expenditure, group debt has soared, and
- The outlook for the sugar industry, in which the bulk of capital spending has been concentrated, is bleak

These factors look unlikely to change in 1985, and the indications are that the group — sometimes called Natal's Anglo because it is 44%-owned by Anglo American and Amic — won't enjoy an early return to favoured-son status.

Initially, it appeared that diversification had provided Tongaat with counter-cyclical sources of earnings. When sugar, the group's traditional activity, entered the doldrums in 1983, building materials absorbed the slack If Tongaat had published divisional profits after interest charges, the sugar division would probably have shown a loss in 1984 But the move into building materials, and the buyout of minorities in Toncoro at end-1983, looked well timed last year when dividends from Toncoro more than doubled from R14,3m in 1983 to R30,5m in 1984, offsetting the disastrous sugar performance.

But events this year suggest that diversification has actually magnified Tongaat's problems Recession has now gripped the construction industry, and Toncoro has seen brick sales plummet by 35% on a year ago. Corobrik, Toncoro's brick-building arm, has had to close nine factories, cut back production at another 32 (out of 51), and retrench more than 1 500 employees

The purchase in 1983 of African Products, the starch and sweeteners division, gave a handsome boost to group profit in the year to end-March 1984, and the 13% average sales margin was the highest of any of Tongaat's operating divisions But recession will slash African Products' profit and margins in 1985 Adverse trading conditions in the food and textile divisions compound Tongaat-Hulett's problems, and suggest overall profit growth will remain largely static over the next two years

However, chairman Chris Saunders argues that diversification has been the mainstay of the group. "We enjoyed a period of tremendous growth," he says, "which worked fantastically well The problems of Tongaat-Hulett today are those of all SA industry, and if we had stayed just in sugar, our results would have been really dreadful If we were just in building, our results would look dreadful in the next few years"

Still, management's philosophy of diversifying into food, clothing and shelter-related activities has not wholly insulated Tongaat's earnings against an economic downturn. Tongaat's closest competitor, Barlow Rand-owned C G Smith Foods, has also seen earnings drop, though by a much lesser degree. CGS Foods diversified only in food, and benefited vastly when the crippling drought, which devastated northern Natal two years ago, left its South Coast plantations relatively unscathed CGS Foods was thus able to boost its sugar profits and briefly grab the leading share of SA's sugar market

But CGS Foods has been more adept than Tongaat in controlling capital spending and protecting itself against soaring interest charges, which at present are hammering Tongaat And the acquisition of Tiger was a masterstroke which has greatly boosted CGS Foods Chairman Tony Norton expects his group's dividend to be cut in the year to end-December, but the downturn is likely to be less severe than at Tongaat

A visit to Tongaat's head office, a magnificent 80-year-old colonial mansion set atop a hill and surrounded by acres of rolling canefields, hardly suggests the group is in a sticky mess "This year's cane is the best I've seen in the 20 years I've been in the industry," declares finance director Ted Garner. Yet, this fine crop merely underlines the problem of the global sugar glut, which has slashed prices and added to Tongaat's woes

For Saunders — an Oxford graduate in agricultural economics and a doyen of the Natal establishment with a reputation for enlightened political thought in the best tradition of *noblesse oblige* — Tongaat-Hulett's present setbacks have come as a knock Says Saunders of Tongaat's difficulties. "Just when we thought we had absorbed all the blows, another comes along It's enough to make a hard man cry"

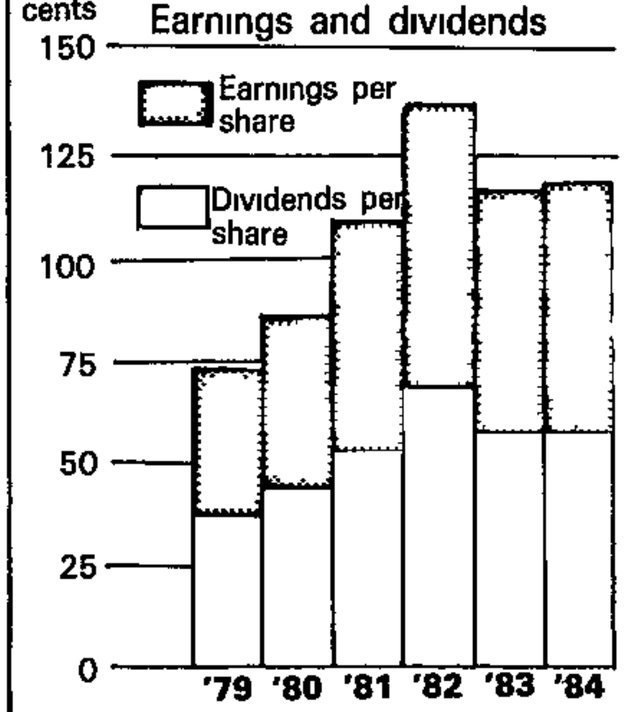
Normal sugar crops in 1984 and 1985 have restored Tongaat to its pre-eminent market position, but the bad timing of two major capital projects has landed the group with record debt at a time of record interest rates The two biggest capital projects are the R175m Felixton sugar mill and the R30m Rietvlei brickworks Felixton came on stream in January last year as the sugar industry's fortunes plummeted Rietvlei was commissioned in October 1984, just as the construction industry was going into steep decline

Total debt soared from R47,9m at end-March 1982 to R502m at the end-September interim This figure, however, includes the high seasonal costs of financing sugar stocks before sale, and debt by the end-March year-end will fall to between R400m and R450m But Tongaat has been hit for six by its interest bill At the interim, interest rose nearly 180% to R44,2m compared with 12 months earlier, and the total interest bill in the year as a whole could well top R90m Comments one analyst "The big question over Tongaat now is the debt It's the gearing that's strangling them"

Management's problems in cutting debt

Chairman Saunders ... sugar is strategic

NOT SO SWEET



ARGUS 2/4/85 252

Sex offence, drink, drugs laws probed

Political Staff

HIGH priority has been given to official investigations which could lead to reforms of laws on rape and other sex offences, and crimes committed under the influence of alcohol or drugs

The investigations, by legal and other experts, are outlined in the annual report of the South African Law Commission

The report has been submitted to the Minister of Justice, Mr Kobie Coetsee, and was tabled in Parliament before the Easter recess

Details of investigation projects include

● Rape — topics for research include the possibility of re-defining rape and marital rape, and reconsidering the "irrefutable presumption" that a boy under 14 cannot be guilty of rape

Among other topics in this investigation are cross-examination of the complainant on her character and previous sexual experience, protection of the complainant's identity, protection of juvenile witnesses, trials in camera and the role of the crisis clinic

The commission also looked at the effect in other countries of reform of the rape law in the past decade

Discussions were held with 57 people representing 30 different organisations, eight attorneys-general (or their deputies) and 36 magistrates

There were also discussions with police, public prosecutors, district surgeons and representatives of rape crisis organisations

● Drug and liquor abuse — three possible approaches to law reform were proposed

First, if a person committed an offence but said he was under the influence of liquor or drugs and acted in a state of automatism or while he was not otherwise criminally responsible, he had to be acquitted

The second approach rules that drunkenness or drug intoxication would not be a valid defence against criminal liability

The third approach was that drunkenness or drug intoxication might sometimes be a valid defence against criminal liability but that people who were thus acquitted were guilty of a statutory offence of criminal drunkenness or intoxication.

Mr Kobie Coetsee

NZ rugby chief has still to decide

WELLINGTON — The New Zealand Rugby Union chairman, Mr Ces Blazey, said today he did not feel bound to call off a proposed tour of South Africa because of a government instruction.

Mr Blazey said on radio the union's pledge to abandon the 1981 rugby tour of New Zealand by South Africa — if instructed to do so by the government — no longer applied

He said the Rugby Union was now governed by a different council and was entitled to make up its mind in terms of 1985

The former government opposed the 1981 tour but did not give a clear instruction to call it off

Mr Blazey's comments followed a call by the Prime Minister, Mr David Lange, for rugby administrators to honour the four-year-old commitment and bow to his instruction that the tour "must not proceed" — Sapa-Reuter

Rape vi to chang

Tygerberg Bureau

RAPE victims will not have to report to police before receiving medical treatment in terms of a new policy soon to be implemented at provincial hospitals in the Cape

The major change in management of rape cases was announced today by Dr N S Louw, Director of Hospital Services, at a congress of the Association of Child Psychology, Psychiatry and Allied Discliplines at Tygerberg Hospital.

"I cannot see why a person stabbed in a drunken brawl has the right to trauma unit treatment at a hospital immediately, while a humiliated, shocked

Nedbank Limited Registered Commercial Bank

FM 5/4/89 (253)

Le Grange . . . how come he was misinformed?

last two weeks

On March 16, 17 and 18 there was a stayaway in Port Elizabeth — attributed to the Port Elizabeth Black Civic Organisation (Pebco) and the Motor Assembly and Components Workers' Union of SA (Macwusa) Pebco, which had a high profile in the early Eighties when it was led by Thozamile Botha, appears to have been galvanised recently after operating at a low key for the last few years

Sactu

Two pamphlets were distributed in PE townships at the time of the stayaway One makes it clear that it was to have been linked to the 30th anniversary of the Congress of Trade Unions (Sactu), the union body linked to the African National Congress which has operated in exile since the early Sixties

The other pamphlet said the three-day stayaway was to be regarded as a period of mourning, and enumerated grievances about petrol, transport and food costs as well as the hike in gst

Despite Macwusa's involvement, however, Peter Cunningham, an industrial sociologist at the University of Port Elizabeth, says other unions in the area did not support the stayaway "The relationship between these unions and employers remains good The trade unions are aware of how bad the economic situation in the PE area is — more so than the other organisations — and have adopted a very pragmatic attitude"

The second stayaway on March 21 — the day of the Langa killings — was confined to Uitenhage and it is not clear what organisations, if any, were involved Cunningham says that early on that day some employers reported that only half their workforce had reported for duty, while others said they had their full staff complement Later in the day, however, it seems that almost all workers went home ■

(2) (i) *Howick*

87 of the applications are expected to be met during October/November 1985 on the completion of a cable work. In the case of a further 61 applications services are required in areas served by carrier systems It has not yet been possible to include the work involved in providing these services in a construction programme and at this juncture no indication can be given as to when it will be undertaken The remaining applications (145) are in respect of services required in the Black residential area of Mpophomeni The delivery of the equipment for a new exchange to serve this area has been tentatively planned for 1986/87 but no indication can be given at this stage as to when the exchange is likely to be commissioned

(ii) *Mooi River*

All the applications are expected to be met during the second half of 1987 on the commissioning of a new automatic exchange

(iii) *Underberg*

Three of the applications are expected to be met at the end of 1986 after the completion of structural changes to the exchange and the installation of an additional manual switchboard Owing to a shortage of funds it was necessary to defer a party-line scheme aimed at providing telephone service to the remaining 6 applicants At this juncture no indication can be given as to when the work will be undertaken

(iv) *Hilton*

21 of the applicants will be provided with service after completion of a cable work during March 1985 Cable works to meet the requirements of another 10 applicants are scheduled for completion during the first quarter of 1986 Relief has been provisionally planned for the 1986/87 financial year for the provision of service to the remaining 124 applicants whose premises are situated in areas served by carrier systems At this juncturre no reliable indication can be given as to when the work will be completed

(v) *Kokstad*

Relief is dependent on the completion of cable works, but at this juncture no reliable indication can be given as to when they will be completed

(vi) *Matatiele*

There are no outstanding applications

(vii) *Nottingham Road*

The applicants are expected to be met during the second half of 1987 on the commissioning of a new automatic exchange

(viii) *Richmond*

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252 Hansard

Corporal punishment

Q. 601.992 9/4/85

503 Mr P H P GASTROW asked the Minister of Justice

(1) How many males (a) under the age of 18 years, (b) between the ages of 18 and 21 years and (c) aged 21 years and over in each race group were sentenced to corporal punishment in 1984,

(2) how many strokes were inflicted in respect of each category of persons?

The MINISTER OF JUSTICE

(1) (a), (b) and (c) The required information is unfortunately not readily available The following statistics are however furnished for the period 1 July 1983 to 30 June 1984

Race	Corporal punishment coupled with imprisonment— which was not suspended	which was suspended	Corporal punishment not coupled with other sentences
Whites	11	40	1 527
Coloureds	190	260	13 391
Indians	2	3	630
Blacks	527	738	23 330
	730	1 041	38 878

(2) The required information is unfortunately not readily available Statistics of this nature have not been kept by the Department up till now The keeping of statistics of offences in general is at present the subject of an investigation

Dairy/meat/wheat products imported

507 Mr D J N MALCOMESS asked the Minister of Agricultural Economics

What was the value of the (a) dairy, (b) meat and (c) wheat products imported by the Republic during the latest specified period of 12 months for which figures are available?

The MINISTER OF AGRICULTURAL ECONOMICS

(a) Approximately R13 million (mainly in respect of exotic cheese i e the kinds of cheese which are either not manufactured at all or are manufactured in insufficient quantities in the RSA) for the period 1 March 1984 until 28 February 1985

(b) Approximately R22 million for the period 1 January 1984 until 30 November 1984

(c) 51 412 456 (USA) Dollar in respect of feed wheat for the period 1 June 1984 until 28 February 1985 The Rand value can not be determined at this stage in view of the fact that financing was arranged by means of overseas loans

The abovementioned amounts represent the total imports for the Republic in respect of dairy and wheat products and for all the members of the joint Customs Union in respect of meat products The Department of Agricultural Economics and Marketing and the Meat Board do not exercise control over the importation of meat products

Hansard

Sabotage/armed attack/explosions

Q. 601 994 9/4/85

529 Mrs H SUZMAN asked the Minister of Law and Order

(a) How many incidents of sabotage, armed attack or explosions had occurred in the Republic in 1984 as at the latest specified date for which figures are available and (b) what was the (i) target and (ii) nature of the incident in each case?

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The MINISTER OF LAW AND ORDER.

Particulars for 1984 to 1985-03-21 are as follows

BRIEFING

Over 100 people a day whipped in SA

RD 10/04/85

MORE than 100 people a day were given sentences of whipping in South Africa between July 1983 and June 1984.

252

The Minister of Justice, Mr Kobie Coetsee, said in Parliament yesterday a total of 39 608 people were given sentences of corporal punishment last year.

Mr Coetsee also said in reply to a question which was tabled by Mr Peter Gastrow (PFP, Durban Central) that statistics of how many people under the age of 18 were given sentences of corporal punishment were not kept.

	R
Lodgers fees	4 659
Entrance permits	73
Water sales	272
House rent	1 939
School levy funds	6 228
Cemetery fees	38
Total	182 006

	R
(c) (i) Salaries	21 123
Printing and Stationary	9
Uniforms/Protective Clothing	40
Legal Fees	239
Insurance	13
Agency costs Housing	35 897
Capital Development Fund Interest	772
Total	58 093

Operating costs for the townships were as follows

	R
Sanitation	33 817
Storm-water	2 400
Refuse removal	5 287
Water	24 204
Housing	1 936
Schools	6 228
Clinics	681
Cemetery	504
Community Council	19 688
Total	94 745
(ii) Development schemes	79 905

(2) (a) (i) Nil The building and renovation of schools are not financed with any of these funds but with funds from the separate budget of the Department of Education and Training

(ii) R17 361

(b) R35 108

(c) R21 076.

(d) R 5 287

Hansard (252)

Functions of officers who were transferred

Q. Col. 1722 13/6/85

839. Mr D J DALLING asked the Minister of Justice:

(1) With reference to paragraph 1.4 on page 5 of the Report of the Department of Justice of the Republic of South Africa for the period 1 July 1983 to 30 June 1984, (a)(i) how many of the 570 officers transferred from the Department of Co-operation and Development to his Department are performing the same functions as they did prior to being transferred and (ii) which specified categories of functions are involved in respect of these officers and (b) in respect of those performing different functions subsequent to being transferred, what different functions do they perform at present;

(2) in respect of what date is this information furnished?

The MINISTER OF JUSTICE:

(1) and (2) Judicial as well as administrative personnel were transferred from the Department of Co-operation and Development to the Department of Justice These officers were also subjected to the same evaluation as any other person who is interested in employment in the Department Cases occurred where it was decided to use an officer concerned in an administrative rather than a judicial capacity and where it was necessary to give training The transferred staff now form an integral part of the Department of Justice

The Department of Justice naturally provides in-service training to all its officers on a continuing basis Public prosecutors attend courses from time to time and there are even magistrates who attend refresher courses

Q. Col 1794 13/6/85

It must be realized that it will almost be attempting the impossible to try to ascertain precisely what each of the 570 officers did before and after they have been transferred Some of them surely have already changed posts on more than one occasion and some of them may even have left the Department already An informed estimate however shows that of the 570 officers 100 are doing full or part-time judicial work and that 161 are acting as full or part-time prosecutors at present.

Hansard

Reference books/influx control

Q. Col 1793 13/6/85

902. Mr E K MOORCROFT asked the Minister of Co-operation, Development and Education.

(1) What total number of persons was arrested by officials of the Eastern Cape Development Board for offences relating to reference books and influx control during 1984 or as at the latest specified date in 1984 for which figures are available,

(2) (a) how many persons appearing in each specified commissioner's court in this area for such offences were (i) acquitted and (ii) found guilty, and (b) what total amount was paid in fines by these persons, during the above year or period?

The MINISTER OF CO-OPERATION, DEVELOPMENT AND EDUCATION.

(1) 1 322

(2) (a) and (b) Since 1 September 1984 the holding of Commissioner's Courts is no longer a function of the Department of Co-operation and Development and the Department consequently no longer keeps statistics in that regard During the period 1 January 1984 to 31 August 1984, 6 018 persons were arraigned for these offences in such Courts in the Eastern Cape Area, of which 2 814 were convicted

Except for the above further information is not readily available

Purchase of houses

13/6/85

905 Mr E K MOORCROFT asked the Minister of Co-operation, Development and Education

(a) How many persons in each specified township falling under the control of the Eastern Cape Development Board lodged applications with the said Board to purchase houses in 1984, (b) how many of these applications had been granted as at the latest specified date for which figures are available and (c)(i) what total number of houses have been purchased in each of these townships and (ii) in respect of what date is this information furnished?

The MINISTER OF CO-OPERATION, DEVELOPMENT AND EDUCATION

	(a)	(b) As at 31 December 1984
Adelaide	1	1
Alexandria	1	1
Alicedale	9	9
Burgersdorp	17	17
Cradock	25	25
Grahamstown	27	27
Molteno	22	22
Motherwell	741	741
Port Elizabeth	305	305
Queenstown	17	17
Somerset East	1	1
Uitenhage	33	33
Total	1 199	1 199

(c) (i) Adelaide	1
Alicedale	15
Alexandria	1
Burgersdorp	20
Cradock	39
Grahamstown	56
Molteno	2
Port Elizabeth	454
Motherwell	1 272
Queenstown	17
Somerset East	5
Uitenhage	60
Total	1 962

(ii) 30 April 1985

tion requested is not kept in a special register and cannot be gathered without perfomring a considerable quantity of work, which is deemed unjustified

(aa) It is estimated that 30 057 Black persons were granted old-age pensions in 1984 This figure reflects only pensions granted by the Department of Co-operation and Development and does not include those granted by the national states

Hansard Q. Col. 1355 30/4/85

Influx control/identity documents

676 Mr R W HARDINGHAM asked the Minister of Co-operation, Development and Education

(a) What amount was derived by the Natalia Development Board in 1984 from fines imposed for offences relating to influx control and identity documents and (b) how much of this amount was in respect of the (i) Port Natal and (ii) Drakensberg Development Boards (aa) before and (bb) after their amalgamation?

The MINISTER OF CO-OPERATION, DEVELOPMENT AND EDUCATION

(a) The Natalia Development Board was established on 1 April 1984. From that date until 31 August 1984 (the date on which the Department of Justice took over the control of courts) R2 791 were collected in fines

(b) (i) (aa) From 1 January 1984 to 31 March 1984 (the date of amalgamation with the Drakensberg Development Board) R1 645 were collected in fines

(ii) (aa) From 1 January 1984 to 31 March 1984 (the date of amalgamation with the Port Natal Development Board) R34 were collected in fines

(i) (bb) See (a) above

(ii) (bb) See (a) above.

Commissioners' courts: legal representation

Hansard Q. Col. 1356 30/4/85

720. Mr P G SOAL asked the Minister of Co-operation, Development and Education

Whether any persons appearing before commissioners' courts in 1984 were legally represented in court; if so, how many persons in each specified commissioner's court (a) were and (b) were not so represented as at the latest specified date for which figures are available?

The MINISTER OF CO-OPERATION, DEVELOPMENT AND EDUCATION

Yes

	(a)	(b)
Bloemfontein	93	5 144
Kroonstad	4	682
Welkom	5	7 768
Vaal Triangle	27	20 098
Botshabelo	128	1 098
Pietermaritzburg	8	629
Durban	20	4 452
Pinetown	20	1 604
Empangeni	1	863
Vryheid	0	988
Umzinto	30	137
Port Shepstone	2	127
Ladysmith	13	943
Dundee	0	369
Estcourt	0	103
Newcastle	0	847
Stanger	8	63
Inanda	29	37
Queenstown	0	1 823
East London	51	3 662
Grahamstown	20	416
Port Elizabeth	728	3 647
Langa	229	4 369
Kimberley	0	688
Benoni	0	5 158
Brakpan	1	1 842
Nigel	12	1 032
Springs	9	2 453
Germiston	213	22 344
Boksburg	15	5 277
Krugersdorp	40	2 171
Roodepoort	10	8 713
Alexandra	85	13 302
Randfontein	0	5 419
Johannesburg	41	58 152
Tzaneen	0	824

Louis Trichardt	0	737
Potgietersrus	23	817
Pietersburg	0	624
Ermelo	8	1 707
Barberton	17	7 531
Nelspruit	26	2 751
Brits	4	1 762
Pretoria	520	21 445
Rustenburg	2	1 106
Witbank	580	4 313
Middelburg	90	2 756
Groblersdal	15	274
Lydenburg	3	946
Lichtenburg	2	1 125
Potchefstroom	10	1 734

Figures up to 31 August 1984

Hansard Q. Col. 1357 30/4/85

Influx control/identity documents

740. Mrs H SUZMAN asked the Minister of Co-operation, Development and Education

(1) How many persons were (a) tried for and (b) convicted of offences relating to influx control and identity documents at the Commissioner's Court in Market Street, Ferreirasdorp, Johannesburg, in 1984 or as at the latest specified date for which figures are available,

(2) what was the average daily number of such cases heard by this court during that period,

(3) what amounts accrued to the State from fines imposed for these offences?

The MINISTER OF CO-OPERATION, DEVELOPMENT AND EDUCATION.

(1) (a) 53 130

(b) 29 009

(2) 310

(3) R15 970

Figures up to 31 August 1984

Illegal immigrants/prohibited persons

Hansard Q. Col. 1358 30/4/85

754 Mrs H SUZMAN asked the Minister of Law and Order

(1) (a) How many suspected (i) illegal immigrants and (ii) prohibited persons were being detained in police stations in the Republic as at the latest specified date for which figures are available, (b) in terms of what statutory provision were they being detained in each case, (c) how long had each been in detention and (d) in which police stations were they being detained,

(2) whether any persons being detained as suspected illegal immigrants admitted that they were illegally in the country in 1984, if so, (a) how many, (b) how long had each been detained when signing an admission to the effect that he was an illegal immigrant, (c) of which countries were they citizens in each case and (d) where had each been detained while his case was investigated?

The MINISTER OF LAW AND ORDER:

(1) (a) (i) 133 as at 1985–03–28

(ii) 276 as at 1985–03–28

(b) In terms of sections 32, 35(1), 40(1), (4) and (5), 52 of Act No 59 of 1972, section 12(1) and (2) of Act No 25 of 1945 and section 26(1) of Act No 67 of 1964

(c) 122 for 1 day
24 for 2 days
47 for 3 days
10 for 4 days
11 for 5 days
3 for 6 days
2 for 7 days
3 for 8 days
14 for 9 days
11 for 10 days
4 for 11 days
1 for 13 days
23 for 14 days

tion requested is not kept in a special register and cannot be gathered without performing a considerable quantity of work, which is deemed unjustified

(aa) It is estimated that 30 057 Black persons were granted old-age pensions in 1981 This figure reflects only pensions granted by the Department of Co-operation and Development and does not include those granted by the national states

Hansard

Influx control/identity documents

Q. Col 1355 30/4/85

6/6 Mr R W HARDINGHAM asked the Minister of Co-operation, Development and Education

(a) What amount was derived by the Natalia Development Board in 1984 from fines imposed for offences relating to influx control and identity documents and (b) how much of this amount was in respect of the (i) Port Natal and (ii) Drakensberg Development Boards (aa) before and (bb) after their amalgamation?

The MINISTER OF CO-OPERATION, DEVELOPMENT AND EDUCATION

(a) The Natalia Development Board was established on 1 April 1984 From that date until 31 August 1984 (the date on which the Department of Justice took over the control of courts) R2 791 were collected in fines

(b) (i) (aa) From 1 January 1984 to 31 March 1984 (the date of amalgamation with the Drakensberg Development Board) R1 645 were collected in fines

(ii) (aa) From 1 January 1984 to 31 March 1984 (the date of amalgamation with the Port Natal Development Board) R34 were collected in fines

(i) (bb) See (a) above

(ii) (bb) See (a) above

Commissioners' courts, legal representation

Hansard Q Col. 1356 30/4/85

720 Mr P G SOAL asked the Minister of Co-operation, Development and Education

Whether any persons appearing before commissioners' courts in 1984 were legally represented in court, if so, how many persons in each specified commissioner's court (a) were and (b) were not so represented as at the latest specified date for which figures are available?

The MINISTER OF CO-OPERATION, DEVELOPMENT AND EDUCATION

Yes

	(a)	(b)
Bloemfontein	93	5 144
Kroonstad	4	682
Welkom	5	7 768
Vaal Triangle	27	20 098
Botshabelo	128	1 098
Pietermaritzburg	8	629
Durban	20	4 452
Pinetown	20	1 604
Empangeni	1	863
Vryheid	0	988
Umzinto	30	137
Port Shepstone	2	127
Ladysmith	13	943
Dundee	0	369
Estcourt	0	103
Newcastle	0	847
Stanger	8	63
Inanda	29	37
Queenstown	0	1 823
East London	51	3 662
Grahamstown	20	416
Port Elizabeth	728	3 647
Langa	229	4 369
Kimberley	0	688
Benoni	0	5 158
Brakpan	1	1 842
Nigel	12	1 032
Springs	9	2 453
Germiston	213	22 344
Boksburg	15	5 277
Krugersdorp	40	2 171
Roodepoort	10	8 713
Alexandra	85	13 302
Randfontein	0	5 419
Johannesburg	41	58 152
Izaneen	0	824

Louis Trichardt	0	737
Potgietersrus	23	817
Pietersburg	0	624
Ermelo	8	1 707
Barberton	17	7 531
Nelspruit	26	2 751
Brits	4	1 762
Pretoria	520	21 445
Rustenburg	2	1 106
Witbank	580	4 313
Middelburg	90	2 756
Groblersdal	15	274
Lydenburg	3	946
Lichtenburg	2	1 125
Potchefstroom	10	1 734

Figures up to 31 August 1984

Hansard Q.Col.1357

Influx control/identity documents

30/4/85

740 Mrs H SUZMAN asked the Minister of Co-operation, Development and Education

(1) How many persons were (a) tried for and (b) convicted of offences relating to influx control and identity documents at the Commissioner's Court in Market Street, Ferreirasdorp, Johannesburg, in 1984 or as at the latest specified date for which figures are available,

(2) what was the average daily number of such cases heard by this court during that period,

(3) what amounts accrued to the State from fines imposed for these offences?

The MINISTER OF CO-OPERATION, DEVELOPMENT AND EDUCATION

(1) (a) 53 130

(b) 29 009

(2) 310

(3) R15 970

Figures up to 31 August 1984

Illegal immigrants/prohibited persons

Q. Col. 1358 30/4/85

754 Mrs H SUZMAN asked the Minister of Law and Order

(1) (a) How many suspected (i) illegal immigrants and (ii) prohibited persons were being detained in police stations in the Republic as at the latest specified date for which figures are available, (b) in terms of what statutory provision were they being detained in each case, (c) how long had each been in detention and (d) in which police stations were they being detained,

(2) whether any persons being detained as suspected illegal immigrants admitted that they were illegally in the country in 1984, if so, (a) how many, (b) how long had each been detained when signing an admission to the effect that he was an illegal immigrant, (c) of which countries were they citizens in each case and (d) where had each been detained while his case was investigated?

The MINISTER OF LAW AND ORDER

(1) (a) (i) 133 as at 1985–03–28

(ii) 276 as at 1985–03–28.

(b) In terms of sections 32, 35(1), 40(1), (4) and (5), 52 of Act No 59 of 1972, section 12(1) and (2) of Act No 25 of 1945 and section 26(1) of Act No 67 of 1964

(c) 122 for 1 day
24 for 2 days
47 for 3 days
10 for 4 days
11 for 5 days
3 for 6 days
2 for 7 days
3 for 8 days
14 for 9 days
11 for 10 days
4 for 11 days
1 for 13 days
23 for 14 days

Judge slams State bail interference

(252)

A JUDGE President has severely criticised a section of the Internal Security Act which empowers an attorney-general to bar accused from being granted bail by the courts

S. Times 5/5/85

Mr Justice Milne, Natal's Judge President, said consideration should be given to the repeal of Section 30 (1) of the Act which allowed attorneys-general to issue certificates to prevent courts from granting bail

By TICKS CHETTY

Age, he said, was the section's sole claim to respectability

Mr Justice Milne said he agreed fully with a judgment given by a full bench of the Supreme Court in Maritzburg last week in which the judges said the section made serious inroads into the role of the courts

He made the remarks in the Supreme Court, Maritzburg, on Friday afternoon, before granting bail totalling R170 000 to 15 men and a woman due to appear in court on May 20 on charges of treason

He said he could not understand why the courts should be precluded by a section of legislation from making decisions on the granting of bail

While an attorney-general issued certificates on information which might be honest and reliable, he was not in a position to test the truth of the information supplied him

'Unlawful'

He said the attorney-general was given only one side of the story The accused was not given a chance to voice his views on the matter

Earlier Mr Ismail Mahomed, SC, who acted for the 16 accused in their bail application, said the arrest of the 16 was unlawful

He said that to arrest a person on the grounds that there was a reasonable suspicion of his having committed treason was not sufficient

The particulars of the offence had to be stated and communicated to the person concerned

"You don't throw a section of an Act at a man You must tell him why he is being arrested," Mr Mahomed said

Mr Mike Imber, Natal's Attorney-General, agreed to withdrew the certificates issued against the 16 and to grant bail

Frantic attempts were then made of behalf of the accused to raise the R170 000

The treason trial of the 16 is expected to last more than a year

The 16 treason trialists are Mr Mewalal Ramgobin, Mr C Sewpershad, Mr M J Naidoo, Dr E Jassat, Mr A Mokoena, Mr C Nkondo, Mr A Gumede, Mr Paul David, Mrs A Sisulu, Mr F Chikane, Mr E Saloojee, Professor I Mohamad, Mr T Gqweta, Mr S Njikelana, Mr S Kikine and Mr I Ngcobo

Conditions of bail include that they have to report to the police twice a day, have to surrender their travel documents, may not attend meetings of the United Democratic Front or any of its affiliates and remain at their homes between 6pm and 9am

Resistance to law can lead to 'revolution'

Star 6/5/85

252

The rule of law needs to be upheld in South Africa to prevent the snowballing effects of resistance to unjust laws and counter-resistance by the State which could lead to revolution, Professor Johan van der Vyver of the University of the Witwatersrand said yesterday

He was speaking at Temple Emanuel in Parktown, Johannesburg, during a panel discussion

He said laws not seen to be upholding a particular moral standard were resisted and there was counter-resistance from those forces charged with the duty of maintaining law and order

Professor John Dugard, of the University of the Witwatersrand, said the rule of law consisted of basic principles to which a decent legal system had to conform.

These included

- That no Government official may deprive someone of his freedom or property by arbitrary means.
- That all people, including Government officials and the police, must be equally accountable.
- Courts must be independent, effective and apply fair trial procedures

McCarthy's gets best part of Dan Perkins in R8,6 m deal

232 Star 7/5/85

By Peter Farley

McCarthy's has bought the retail motor interests and truck hire operations of Dan Perkins for R8,6 million The deal has been on and off for some weeks, but was finally concluded this morning

The sale has, however, stripped the profitable guts out of Trade & Industry's 75 percent-owned motor subsidiary

Dan Perkins Holdings has sold its entire Dan Perkins & Co (Pty) Ltd subsidiary to the Natal-based McCarthy Group

It is the biggest purchase McCarthy's has made since it bought Yamaha in 1981 and should push the group's sales through the R1 billion mark for the first time in a full year.

This year, to end-June, there will be little impact on either listed company's results

Standard Merchant Bank estimates, however, that had the deal been effective for the year to end-June 1984, Danperk's earnings would have been down to 22c a share from the 34c actually achieved — even allowing for an after-tax 10 percent return on the cash received

Not suprisingly, McCarthy Group chief operations officer Mr Dudley Saville says he is delighted with the deal

It makes McCarthy's the biggest truck hire operator in the country and substantially enhances its Toyota and BMW franchise base in the Transvaal

From the McCarthy side, earnings last year would have increased to 86c from 81c, had the deal been in effect for the full year

The listed Dan Perkins Holdings now just comprises the Dinsa engine rebuilding business and the Hendlers heavy transport division

Speculators who have held the Danperk share price around its 185c peak — it was up five cents yesterday to 180, from a low last year of 110c — on the basis of a formal takeover have been left with burnt fingers

The share did not trade this morning, but was quoted at 175c-190c.

The retail outlets acquired by McCarthy's include three Toyota outlets, a BMW outlet, two specialist used car operations and a Hino heavy truck centre

The truck hire side has three branches on the Reef, with an annual turnover of around R6 million

Mr Saville says that the Dan Perkins operations are already committed to further expansion, with a Toyota dealership already under construction in Midrand

The R8,6 million price tag, subject to final adjustment, will be funded from internal resources says McCarthy's Mr Saville

It is not the best time to be invested in the motor sector But with McCarthy yesterday only closing on a 5,1 PE, at its 375c share price, against a 6,0 sectoral average, there will be some who may be tempted to buy in on a now greatly enhanced recovery base

of the main centres of the Republic in 1984 or as at the latest specified date for which figures are available?

The MINISTER OF CO-OPERATION, DEVELOPMENT AND EDUCATION

Period 1 January 1981 to 31 August 1984

Durban	R 1 195
Bloemfontein	*
Cape Peninsula	*
Pretoria	R20 061
Johannesburg	*
East London	*
Port Elizabeth	R 2 660
West Rand (excluding Johannesburg)	*
East Rand	*

*Commissioners' Courts which adjudicate charges in respect of reference books and influx control offences are since 1 September 1984 no longer a function of the Department of Co-operation and Development. Statistics as requested were in the past noted and provided by officers of these courts on a yearly basis. Because of the transfer of the function this arrangement ceased and the figures in respect of some centres are consequently not available.

Amount spent on advertisements

871 Mr D J DALLING asked the State President

(1) What was the total amount spent by his Office in 1984 on placing advertisements for any purpose in newspapers in the Republic,

(2) what amount was paid to each specified newspaper in the above regard in that year?

The STATE PRESIDENT

(1) Nil

(2) Falls away

HoA

WEDNESDAY, 8 MAY 1985

†Indicates translated version

For written reply

General Affairs

Hansard 8/5/85 Col 1456

Passports

834 Mr S S VAN DER MERWE asked the Minister of Home Affairs

(a) How many applications for passports and renewal of passports were received from (i) Coloureds, (ii) Indians, (iii) Blacks and (iv) Whites in 1984 and (b) how many such applications in each category were refused in that year?

The MINISTER OF HOME AFFAIRS

(a)(i), (ii), (iii) and (iv) These statistics are not kept on the basis of population groups. A total of 244 284 applications for passports and renewal of passports was received in 1984.

(b)	Coloureds	5
	Indians	36
	Blacks	43
	Whites	19

Amount spent on advertisements

895 Mr D J DALLING asked the Minister of Finance

(1) What was the total amount spent by the Office of the Auditor-General in 1984 on placing advertisements for any purpose in newspapers in the Republic,

(2) what amount was paid to each specified newspaper in the above regard in that year?

The MINISTER OF FINANCE

(1) Nil

(2) Falls away

THURSDAY, 9 MAY 1985

†Indicates translated version

For written reply

General Affairs

Allocation of funds for housing subsidies

843 Mrs R M BURROWS asked the Minister of Finance

(1) Whether his Department is responsible for the original allocation of funds to State Departments for spending on personnel housing subsidies, if not, which body is responsible, if so,

(2) whether the allocation differentiates between compulsory and voluntary subsidies, if not, why not, if so, what was the allocation to each State Department for (a) compulsory and (b) voluntary subsidies as at 1 April 1985?

The MINISTER OF FINANCE

(1) Yes, in accordance with directives laid down by the Commission for Administration.

(2) No, it will only result in unjustified additional administrative work on the accounting system.

FRIDAY, 10 MAY 1985

†Indicates translated version

For written reply

General Affairs

Hansard 10/5/85 Col 1457

Persons in detention

522 The LEADER OF THE OFFICIAL OPPOSITION asked the Minister of Defence

(a) How many persons were in detention in each detention centre of the South African Defence Force as at the latest specified date for which figures are available and (b) for what offences was each of them in detention at that date?

The MINISTER OF DEFENCE

(a) On 3 May 1985 the position was as follows:

Voortrekkerhoogte	68
Wynberg	6
Grootfontein	15
Bloemfontein	15
Simons Town	6
Kings Rest	2
Walvis Bay	17
Witwatersrand	125
	254

(b) *Description of Offence*

Desertion	2
Absent without leave	96
Using threatening or insulting language	2
Disobeying lawful commands or orders	1
Theft of government property	9
Using or taking article issued to another person	1
Negligent or wilful damage of government property	1
Drunkenness	3
Escape from custody	6
Aiding, abetting, inciting etc	3
Persons liable to render service in terms of Sec 22 or 44 who without good reason when called up, fails to report for such service	125
Common law offence of theft	1
Common law offence of assault	2

252

Hansard Col 1458 10/5/85

Black employees

759 Mrs H SUZMAN asked the Minister of Justice

(1) How many Black (a) regional magistrates, (b) district magistrates (c) clerks of court, (d) prosecutors and (e) messengers of court are there in the (i) Republic of South Africa excluding the national states, and (ii) national states,

HoA

(2) how many Blacks are employed as (a) prosecutors on the staff of the Attorneys-General, and (b) judges' registrars, in the Republic of South Africa,

(3) how many Black (a) sheriffs and (b) deputy sheriffs are employed in the (i) Republic, excluding the national states, and (ii) national states,

(4) how many registrars of the Supreme Court are Blacks,

(5) how many Black taxing masters are there in the (a) magistrates' courts, and (b) Supreme Court, in the Republic of South Africa,

(6) in respect of what date is this information furnished?

The MINISTER OF JUSTICE

(1)

(i) (a) and (b) None

(c) 36

(d) None

(e) Magistrate's Courts None
Commissioner's Courts 7
In many cases assistant-messengers of the court are appointed The Department does not keep record of these appointments and information in this connection is not readily available

(ii) (a) to (d) As far as the National States are concerned, the Department only keeps record of its officers seconded to those States No Blacks are seconded at present

(e) Messengers of the court in the National States are not appointed by the Minister of Justice

(2) (a) and (b) None

(3) (i) (a) and (b) None

(ii) (a) None

(b) 2

(4) and (5) None

(6) 25 March 1985

Coloured employees

760 Mrs H SUZMAN asked the Minister of Justice

(1) How many Coloured (a) regional magistrates, (b) district magistrates, (c) clerks of court, (d) prosecutors and (e) messengers of court are there in the (i) Republic of South Africa, excluding the national states, and (ii) national states,

(2) how many Coloured persons are employed as (a) prosecutors on the professional staff of the Attorneys-General, and (b) judges' registrars, in the Republic of South Africa,

(3) how many Coloured (a) sheriffs and (b) deputy sheriffs are employed in the (i) Republic of South Africa, excluding the national states, and (ii) national states,

(4) how many registars of the Supreme Court are Coloured persons,

(5) how many Coloured taxing masters are there in the (a) magistrates' courts, and (b) Supreme Court, in the Republic of South Africa,

(6) in respect of what date is this information furnished?

The MINISTER OF JUSTICE

(1) (i) (a) None

(b) 2

(c) 14

(d) 16

(e) None
In many cases assistant-messengers of the court are

appointed The Department does not keep record of these appointments and information in this connection is not readily available

(ii) (a) to (d) As far as the National States are concerned, the Department only keeps record of its officers seconded to those States No Coloureds are seconded at present

(e) Messengers of the court in the National States are not appointed by the Minister of Justice

(2) (a) and (b) None

(3) (i) (a) and (b) None

(ii) (a) and (b) None

(4) and (5) None

(6) 25 March 1985

Indian employees

761 Mrs H SUZMAN asked the Minister of Justice

(1) How many Indian (a) regional magistrates, (b) district magistrates, (c) clerks of court, (d) prosecutors and (e) messengers of court are there in the (i) Republic of South Africa, excluding the national states, and (ii) national states,

(2) how many Indians are employed as (a) prosecutors on the professional staff of the Attorneys-General, and (b) judges' registrars, in the Republic of South Africa,

(3) how many Indian (a) sheriffs and (b) deputy sheriffs are employed in the (i) Republic of South Africa, excluding the national states, and (ii) national states,

(4) how many registrars of the Supreme Court are Indians,

(5) how many Indian taxing masters are there in the (a) magistrates' courts, and (b) Supreme Court, in the Republic of South Africa,

(6) in respect of what date is this information furnished?

The MINISTER OF JUSTICE

(1) (i) (a) None

(b) 6

(c) 14

(d) 15

(e) 1
In many cases assistant-messengers of the court are appointed The Department does not keep record of these appointments and information in this connection is not readily available

(ii) (a) to (d) As far as the National States are concerned, the Department only keeps record of its officers, seconded to those States No Indians are seconded at present

(e) Messengers of the court in the National States are not appointed by the Minister of Justice

(2) (a) and (b) None

(3) (i) (a) and (b) None

(ii) (a) and (b) None

(4) None

(5) (a) 3

(b) None

(6) 25 March 1985

Malnutrition

798 Dr M S BARNARD asked the Minister of Health and Welfare

(1) Whether his Department keeps statistics on malnutrition, if not, why not, if so, what estimated number of White, Black, Coloured and Asian

children, respectively, were suffering from malnutrition as at the latest specified date for which figures are available,

(2) whether his Department is taking any action in regard to this matter; if not, why not, if so, (a) what action and (b) with what results?

The MINISTER OF HEALTH AND WELFARE

(1) No As malnutrition manifests itself in such a diversity of conditions notification would not contribute to scientifically significant results

(2) The Department of Health and Welfare is conducting epidemiological surveys on the nutritional status of children 0-5 years of age Page 15 and annexures 15-21 of the 1984 Annual Report of the Department of Health and Welfare give results of such surveys

(53) Hansard Q. Col. 1463

Functions taken over from Department of Co-operation and Development

10/5/85

838 Mr D J DALLING asked the Minister of Justice

With reference to paragraph 1 3(a) on page 4 of the Report of the Department of Justice of the Republic of South Africa for the period 1 July 1983 to 30 June 1984, (a) what, respectively, were the 19 functions identified and designated to be taken over by his Department from the Department of Co-operation and Development and (b) (i) which functions (aa) have and (bb) have not as yet been taken over fully by his Department, (ii) when is it anticipated that these remaining functions will be taken over by his Department and (iii) in respect of what date is this information furnished?

The MINISTER OF JUSTICE

(a) The 19 functions are set out in the annexure hereto

(b) (i) (aa) All the functions

(bb) Falls away

(ii) Falls away

(iii) All the functions were taken over with effect from 1 September 1984

ANNEXURE

SCHEDULE OF FUNCTIONS WHICH FORM PART OF THE ADMINISTRATION OF JUSTICE

	Description of function	Authorizing Statute
1	The adjudication of all criminal cases	(i) Section 9 of the Black Administration Act, 1927 (Act 38 of 1927) (ii) Sections 2 and 9 of the Magistrates' Courts Act, 1944 (Act 32 of 1944)
2	The hearing by commissioners of appeals against the conviction and sentence by a chief or headman	(i) Sections 20(6) and 20(7) of the Black Administration Act, 1927 (ii) Government Notice R45 of 13 January 1961
3	An investigation held by the commissioner to determine whether a Black person is an "idle" or "undesired" person and the granting of an order if such finding is made	Section 29 of the Blacks (Urban Areas) Consolidation Act, 1945 (Act 25 of 1945)

	Description of function	Authorizing Statute
4	The hearing of all civil cases and matters	(i) Sections 10 and 11 of the Black Administration Act, 1927 (ii) Government Notice R2401 of 6 November 1981 (iii) Magistrates' Courts Act, 1944
5	The hearing by commissioners of appeals against judgements of chiefs and headmen (Civil)	(i) Section 12(4) of the Black Administration Act, 1927 (ii) Government Notice R2082 of 29 December 1967
6	The conducting of maintenance enquiries and the determination of amounts payable	(i) Section 5 of the Maintenance Act, 1963 (Act 23 of 1963) (ii) Government Notice R97 of 22 January 1965
7	Children's court enquiries	(i) Section 4 5 and 6 of the Children's Act, 1960 (Act 33 of 1960) (ii) Government Notices R1085 and R1086 of 22 July 1960
8	The consideration of applications of minors to get married	Section 25 of the Marriage Act, 1961 (Act 25 of 1961)
9	All prosecuting duties	The Criminal Procedure Act, 1977 (Act 51 of 1977)
10	Rehabilitation enquiries	Section 30 of the Abuse of Dependence-producing Substances and Rehabilitation Centres Act, 1971 (Act 41 of 1971)
11	Supervising the administering of Black intestate estates	(i) Section 23(4) of the Black Administration Act, 1927 (ii) Government Notice R34 of 7 January 1966
12	Mental Disorder Enquiries	Sections 9 and 10 of the Mental Health Act, 1973 (Act 18 of 1973)
13	All inquest enquiries	Inquests Act, 1959 (Act 58 of 1959)
14	The taking of confessions	Section 217 of the Criminal Procedure Act, 1977
15	The consideration of applications for exceptions on restriction orders	Sections 19(1), 20, 21 and 22 of the Internal Security Act, 1982 (Act 74 of 1982)
16	Enquiries and the issuing of certificates for the purpose of abortion where the pregnancy resulted from rape	Section 6(4) of the Abortion and Sterilization Act, 1975 (Act 2 of 1975)

17 The consideration of applications to hold a gathering	(i) Section 46(3) of the Internal Security Act, 1982 (ii) Government Notice 557 of 26 March 1982
18 Enforcement of fines imposed in chiefs-courts	Section 20(5) of the Black Administration Act, 1927
19 Appeal and divorce court functions	(i) Section 13 of the Black Administration Act, 1927 (ii) Government Notice R2727 of 24 December 1982 (iii) Section 10 of the Black Administration Act, 1927, Amendment Act, 1929 (Act 9 of 1929) (iv) Government Notice R2726 of 24 December 1982

Improvement of conditions of buildings

859 Mr D J DALLING asked the Minister of Justice

(1) Whether, with reference to paragraph 2 14 on page 8 of the Report of the Department of Justice for the period 1 July 1983 to 30 June 1984, any steps are being and/or are to be taken to improve the condition of the buildings from which services are rendered to the public by his Department, if so, (a) what steps and (b) when,

(2) whether any steps are contemplated to change the system of providing funds to complete projects, if so, (a) what steps and (b) when is it anticipated that they will be taken?

The MINISTER OF JUSTICE

(1) (a) Yes All defects in the buildings are reported regularly to the Department of Public Works and Land Affairs who is responsible for the maintenance and renovation of State buildings A comprehensive report on the condition of all the buildings has recently been compiled and a copy thereof forwarded to the said Department for the necessary attention.

(b) The availability of funds will determine when the condition of buildings will be improved

(2) (a) and (b) No, but in terms of a system that will be in force in the 1986/87 financial year the Department will be given the opportunity to motivate its needs on the major works building programme directly to the Treasury Funds for major works, minor works, maintenance and renovations are still budgeted for by the Department of Public Works and Land Affairs

Amount spent on advertisements

891 Mr D J DALLING asked the Minister of Agricultural Economics

(1) What was the total amount spent by his Department in 1984 on placing advertisements for any purpose in newspapers in the Republic,

(2) what amount was paid to each specified newspaper in the above regard in that year?

The MINISTER OF AGRICULTURE ECONOMICS

(1) None

(2) Falls away

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National Education, 145

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†The CHAIRMAN OF THE HOUSE I offer my apologies, because I was under the impression that the hon the Leader of the Official Opposition referred to a debate

†The LEADER OF THE OFFICIAL OPPOSITION That is where the information was made known

Sandy Bay: report

*6 Mr R R HULLEY asked the Minister of Environment Affairs and Tourism.

(1) Whether he has received the report of the Management Committee for the Cape Peninsula Nature Area on the proposed development of Sandy Bay, if not, why not, if so, when,

(2) whether he has taken a decision in this regard, if not, when is it anticipated that a decision will be taken, if so, what (a) are the (i) findings and (ii) recommendations of the report and (b) is the nature of his decision in this regard,

(3) whether he will make a statement on the matter?

The MINISTER OF ENVIRONMENT AFFAIRS AND TOURISM·

(1) Yes, on 23 April 1985

(2) No A decision will be taken as soon as practicable

(a) (i), (ii) and (b) Fall away

(3) Possibly in due course.

Hansard Q.Col. 1483 14/5/85

Langa/Guguletu: swimming pools

*7 Mr C W EGLIN asked the Minister of Co-operation, Development and Education:

(1) Whether any repairs, renovations or other work has been carried out on the swimming pools in Langa and Guguletu since his reply to Question No 70 on 26 February 1985, if not, why not, if so, (a) what specified work has been undertaken, (b) on what dates was this work carried out, (c) what work remains to be done, (d) what total amount had been spent in this regard as at the latest specified date for which figures are available and (e) when is it anticipated that this work will be completed,

(2) whether any further work is to be carried out in respect of these facilities, if not, why not, if so, (a) what work and (b) what is the estimated cost of this work

†The MINISTER OF CO-OPERATION, DEVELOPMENT AND EDUCATION

(1) (a), (b), (c), (d) and (e) No The task is complicated and the Development Board was compelled to make use of consultants The consultants will be appointed shortly and the repairs and renovations will be effected during winter

(2) (a) and (b) Apart from the repairs and renovation, for which R150 000 was found, no work except normal maintenance is foreseen

(252) Hansard Q.Col. 1484 14/5/85

Legal Aid Board

*8 Mr D J DALLING asked the Minister of Justice

(1) Whether an office of the Legal Aid Board has been opened at Mitchells Plain, if so, (a) on what date, (b) what is its staff complement and (c) how many applications for legal aid were handled through this office since it was opened up to the latest specified date for which statistics are available, if not,

(2) whether there is an office of the said Board which serves the needs of the Mitchells Plain community, if so, (a)(i) which office and (ii) where is it situated, (b) what is its staff complement and (c) how many applications for legal aid were handled through this office during the latest specified period of six months for which statistics are available?

†The MINISTER OF JUSTICE

(1) I have approved the recommendation by the Legal Aid Board that certain offices be created to enable the Legal Aid Board to open an office in the Mitchells Plain area and am now in the process of consulting the Minister of Finance in terms of the Act before appointing officers In arriving at this decision, Mr Landers MP for Mitchells Plain has played a meaningful part

(2) Yes

(a) (i) Athlone

(ii) Amelia House, Room 401, 211 Belgravia road, Athlone

(b) 8

(c) During 1984, 1 892 applications were received at Athlone and 417 at Cape Town from people resident at Mitchells Plain

Evasion of military service

*9 Mr P R C ROGERS asked the Minister of Defence

Whether the South African Defence Force is informed or keeps records of South African citizens who are liable for military service and have been evading such service by obtaining (a) citizenship of and/or (b) permanent residence status in Transkei, Bophuthatswana, Venda or Ciskei while continuing to reside in the Republic of South Africa, if so, how many cases of this nature are known to the Defence Force to have occurred during the latest specified period of five years for which statistics are available?

†The MINISTER OF DEFENCE·

No (a) and (b) fall away

Hansard Q.Col. 1483 14/5/85

Duncan Village

*10 Mr R A F SWART asked the Minister of Co-operation, Development and Education.

(1) Whether, with reference to his reply to Question No 343 on 14 March 1985, any residents of Duncan Village remain to be resettled; if so, how many,

(2) whether he has decided to reconsider the resettlement of Black communities, if so,

(3) whether the remaining residents of Duncan Village are still to be resettled, if so, (a) why and (b) when,

(4) whether he will make a statement on the matter?

The DEPUTY MINISTER OF DEVELOPMENT AND OF LAND AFFAIRS.

(1) Yes Approximately 10 000.

(2) All previous decisions regarding the resettlement of Black communities are being reviewed No final decision has been taken regarding Duncan Village

(3) (a) and (b) falls away.

(4) No

Hansard Q.Col. 1486 14/5/85

Chronically ill aged persons

*11. Mr R A F SWART asked the Minister of Co-operation, Development and Education.

(1) Whether his Department has any facilities for the care of chronically ill aged Black persons, if so, (a) where are they situated in each case, (b) what total number of persons can be accommodated in these facilities and (c) what amount was budgeted for the care of the chronically ill aged in the 1984-85 financial year; if not, why not,

(2) whether he intends making provision for chronically ill aged Black persons, if not, why not, if so (a) what provision is to be made in this regard and (b) when?

WEDNESDAY, 15 MAY 1985

† Indicates translated version

For written reply

General Affairs Hansard

Development Boards: allowances

Q Col. 1511 15/5/85

511 Prof N J J OLIVIER asked the Minister of Co-operation, Development and Education

(a) What was the total amount paid out in 1984 in allowances to members of the boards of the Development Boards in the Republic and (b) in respect of how many persons was the amount paid?

The MINISTER OF CO-OPERATION, DEVELOPMENT AND EDUCATION

(a) R718 335

(b) Up to 31 March 1984 the administration boards consisted of 129 paid members Since 1 April 1984, when these boards were converted to development boards, they consist of 91 members of whom 13 are chairmen In respect of each development board there are only six paid members The Chief Commissioners, who serve on the boards, receivce no extra remuneration for this service

Hansard Q. Col. 1511 15/5/85

Ekangale Township

607 Mrs H SUZMAN asked the Minister of Co-operation, Development and Education

(1) Whether Ekangale Township in the Eastern Transvaal is to be incorporated into KwaNdebele, if so, (a) why and (b) when,

(2) whether his Department consulted with the residents of this township before taking the decision to incorporate them into KwaNdebele, if not, why not, if so, (a) with whom did they consult, (b)(i) when and (ii) where were these consultations held and (c) what was the response of the residents to the proposed incorporation,

(3) how many (a) adult (i) males and (ii) females and (b) children are resident in this township,

(4) whether all the residents of this township are Ndebeles, if not, how many persons (a) are and (b) are not Ndebeles,

(5) whether any non-Ndebeles are to be incorporated into KwaNdebele, if so, why, if not, what steps are to be taken in respect of them,

(6) whether any residents of this township who possess rights in terms of section 10 of the Blacks (Urban Areas) Consolidation Act will lose these rights once Ekangale Township has been incorporated into KwaNdebele, if so, (a) why and (b) how many persons will lose these rights?

The MINISTER OF CO-OPERATION, DEVELOPMENT AND EDUCATION

(1) Yes, in due course

(a) Because it is necessary for good management to have the town administered by only one authority

(b) No decision regarding the date has so far been taken

(2) (a), (b)(i), (ii) and (c)

The decision was taken before the planning of the town and therefore before there were any residents The Department of Co-operation and Development did not consult the residents of Ekangale

(3) (a) (i) 1 014

(ii) 1 279

(b) 2 415

(4) No

(a) 1 939

(b) 2 769

(5) Yes, the multi-ethnic component of Ekangale will be incorporated in KwaNdebele for reasons mentioned in (1)(a) The rest of question falls away

(6) No It is intended to amend the Blacks (Urban Areas) Consolidation Act, 1945 to make provision that people who enjoy privileges under section 10 of the Act will not forfeit those privileges under circumstances such as these Until such time as the Act is amended the administrative arrangement according to which such privileges are retained will apply

(a) and (b) fall away

Hansard

Commissioners' courts

(552) Q. Col. 1513 15/5/85

721 Mr P G SOAL asked the Minister of Co-operation, Development and Education

(1) How many persons were (a) tried for and (b) convicted of offences relating to influx control and identity documents at commissioners' courts in each specified Development Board area in 1984 or as at the latest specified date for which figures are available,

(2) what was the average daily number of such cases heard by these courts in each Development Board area in that year or as at the above date,

(3) how many of these persons were (a) legally represented and (b) not legally represented in each Development Board area in that year or as at the above date?

The MINISTER OF CO-OPERATION, DEVELOPMENT AND EDUCATION.

For period 1 January 1984 to 31 August 1984

(1) Development Board area	(a) Tried (prosecuted)	(b) Convicted
Orange Vaal	7 901	5 919
Southern O F S	6 058	4 029
Natalia	*	*
Northern Cape	59	50
Western Cape	4 598 persons were (prosecuted) for influx control offences of which 3 678 were also tried for identity document offences	of these 4 598 persons 3 054 were convicted of influx control the offences and of 3 054, 1 839 were also convicted of identity document offences
East Cape	6 018	2 814
East Rand	*	*
West Rand	78 539	*
Northern Transvaal	1 368	1 301
Eastern Transvaal	5 611	5 305
Western Transvaal	*	*
Central Transvaal	*	15 328

(2) Development Board area	Average Daily Number
Orange Vaal	121
Southern O F S	25
Natalia	*
Northern Cape	4
Western Cape	48
East Cape	38
East Rand	*
West Rand	*

Development Board area	Average Daily Number
Northern Transvaal.	8
Eastern Transvaal	*
Highveld	*
Western Transvaal	*
Central Transvaal	*

(3) Development Board area	(a) Represented	(b) Not Represented
Orange Vaal	27	7 874
Southern O F S	15	6 043
Natalia	*	*
Northern Cape	0	59
Western Cape	229	4 369
Eastern Cape	6	6 012
East Rand	*	*
West Rand	223	78 316
Northern Transvaal.	10	1 358
Eastern Transvaal	*	*
Highveld	345	5 266
Western Transvaal	*	*
Central Transvaal	*	*

*The holding of Commissioners' Courts which adjudicate charges in respect of reference book and influx control offences is since 1 September 1984 no longer a function of the Department of Co-operation and Development

Statistics as requested were in the past noted and provided by officers of these courts on a yearly basis

Because of the transfer of the function this arrangement ceased and the figures in respect of some centres are consequently not available

Commissioners' courts

794 Mr P G SOAL asked the Minister of Co-operation, Development and Education.

(1) How many persons were (a) tried for and (b) convicted of offences relating to influx control and identity documents at the commissioners' courts falling under the jurisdiction of the West Rand Development Board in the 1984 calendar year or as at the latest specified date in 1984 for which figures are available;

(2) (a) what was the average daily number of such cases heard in the said courts in that year and (b) what amount accrued to the State in 1984 from fines imposed for these offences?

The MINISTER OF CO-OPERATION, DEVELOPMENT AND EDUCATION

Statistics up to 31 August 1984

(1) (a) 78 539.

(b) 48 287.

(2) (a) 459

(b) R76 825

Amount spent on advertisements

884 Mr D J DALLING asked the Minister of Co-operation, Development and Education

(1) What was the total amount spent by the Department of Co-operation and Development in 1984 on placing advertisements for any purpose in newspapers in the Republic,

(2) what amount was paid to each specified newspaper in the above regard in that year?

The MINISTER OF CO-OPERATION, DEVELOPMENT AND EDUCATION

(1) R3 033,12

(2)

The South Coast Sun	R193,50
Ilanga Lace	R209,58
Die Tempo	R165,00
The Citizen	R400,00
Die Transvaler	R87,50
The Sowetan	R183,75
The Daily Dispatch	R646,00
Die Oosterlig	R367,50
The Natal Witness	R78,40
Himvo Zabantsundu	R701,89
Total	R3 033,12

Amount spent on advertisements

896 Mr D J DALLING asked the Minister of Environment Affairs and Tourism:

(1) What was the total amount spent by his Department in 1984 on placing advertisements for any purpose in newspapers in the Republic,

(2) what amount was paid to each specified newspaper in the above regard in that year?

The MINISTER OF ENVIRONMENT AFFAIRS AND TOURISM

(1) R453,13

(2)

E P Herald	R164,83
Cape Times	24,00
Oosterlig	93,10
Die Burger	136,10
Het Suid Western	35,10
Total	R453,13

FRIDAY, 17 MAY 1985

†Indicates translated version

For written reply

General Affairs

Johannesburg: telephones

832 Mr A FOURIE asked the Minister of Communications †

(a) How many applications for telephone services were received in 1984 and had been received as at the latest specified date in 1985 for which figures are available, respectively, in respect of the (i) 680, (ii) 682, (iii) 683, (iv) 942 and (v) 943 exchanges in the southern suburbs of Johannesburg, (b) how many of these applications had not been disposed of at the end of these two periods, (c) how many telephones were installed in each of these two periods in respect of the above-mentioned exchanges and (d) when is the backlog in respect of each of these exchanges expected to be eliminated?

The MINISTER OF COMMUNICATIONS

		1984	1 January to 31 March 1985
(a)	(i)	1 620,	463,
	(ii)	716,	291,
	(iii)	2 516,	518,
	(iv)	754,	183,
	(v)	438,	112,
(b)	(i)	222,	69,
	(ii)	360,	50,
	(iii)	27,	nil,
	(iv)	6,	14,
	(v)	nil,	6,
(c)	(i)	1 398,	394,
	(ii)	356,	241,
	(iii)	2 489,	518,
	(iv)	748,	169,
	(v)	438,	106, and

(d) if nothing unforeseen occurs—

(i) and (ii) during the first half of 1986,

(iii) during the first half of 1986 in respect of the 27 applications carried over from 1984, and

(iv) and (v) during July this year

Dining-cars: upgrading of posts

865 Mr W V RAW asked the Minister of Transport Affairs

(1) Whether any senior posts in respect of dining-cars have been upgraded or renamed, if so, (a) why and (b) how many persons were affected,

Report proposes rape law reform

CAPE TIMES 29/5/85 252

Political Staff

FAR-REACHING reforms to the laws on sexual offences, particularly those relating to rape, have been proposed by the South African Law Commission

But the commission, whose report on "Women and Sexual Offences in South Africa" was tabled in Parliament yesterday, did not support a number of more radical reforms, proposed by feminist groups

Among the reforms proposed by the Commission are

- The law should be changed so that a husband may be charged with the rape of his wife, provided that a prosecution should not be instituted without the consent of the Attorney-General,
- The irrebuttable presumption that a boy under the age of 14 cannot have sexual intercourse should be abolished,
- Legislation should be introduced to prevent questions to a complainant in a rape case about her previous sexual experience, except that with the accused, unless it was relevant in cross-examination,
- A prohibition should be imposed by law on the publication of any particulars that could lead to the identification of a rape victim,
- There should be an automatic in camera hearing of evidence of the complainant in a rape case,
- These proposed changes should also apply to other cases of sexual offences against women, such as indecent assault, sexual offences with girls under the age of 16, and the contravention of the provisions of sexual offences involving female idiots and imbeciles

Yesterday, the Minister of Justice, Mr Kobie Coetsee, in reply to a question tabled by Mr Peter Gastrow (PFP, Durban Central), said he did not intend introducing any legislation to implement the commission's recommendations during the current parliamentary session but he said they were being "considered"

In its report, the commission said "It appears from comments received and discussions held that there is a particular need to deal with the victim more sympathetically and to afford her greater protection in the process of law"

Although the commission's proposals will, if adopted, lead to significant changes to laws concerning sexual offences, they stopped far short of introducing changes wanted by women's groups

It did not, for instance, accept that there was a need to change the definition of rape to include a blanket definition of "sexual assault"

The commission also rejected calls for more streamlined procedures for abortions for rape victims, and it did not support a move for the provision of a legal representative for complainants

Although it accepted that the length and unpredictability of the legal process "may greatly add to the rape victim's trauma" it did not feel this could be changed by law and did not recommend a special police squad to deal with sexual crimes "at this stage"

Men hit, kicked to death — schoolboys sentenced

Argus 9/5/85 (252)

Argus Correspondent

WHITE RIVER — Five minor schoolboys who hit and kicked two men to death last year have been ordered to work 52 consecutive weekends at Nelspruit's Rob Ferreira Hospital

Mr Justice D Curlewis found the boys — aged between 15 and 16 years — guilty of culpable homicide.

Their appearance in the circuit court follows the deaths of Mr William Nkosi, 36, and Mr Solomon Kuna, 68

The battered body of Mr Nkosi was found on the school's sportsfield Mr Kuna, with multiple wounds, was taken to hospital where he later died

The dead men were apparently tramps who had found shelter for the night in a kiosk near the rugby field

The schoolboys, who pleaded not guilty of murder, later changed their plea to guilty of culpable homicide

ABOVE AVERAGE

A clinical psychologist, Dr Bazel Carnie, told the court his investigations disclosed that all the boys had above average intelligence

Certain tests also proved they were not violence-oriented and chances were the nasty incident might never had happened had they not been in a group

In passing sentence Mr Justice Curlewis said it was important that the schoolboys be given a suitable sentence so they could realise what they had done

"These are not the type of people that can be sent to a reformatory or to jail," he said

He did not consider cuts suitable punishment either

KEEN SPORTSMEN

"Getting them to do hospital duty for 52 consecutive weekends starting on May 11 will, I believe, have the desired effect as well as prove suitable punishment," Mr Justice Curlewis said

"The scholars, I understand, are all hostel boarders and keen sportsmen For a year they can forget about any weekend activity

"They will not be allowed to go home at weekends — not for birthdays, not for social events, not even for illness. Should they become ill they can be treated at the hospital where they will be doing their weekend duties"

After the hearing there were emotional scenes as parents and their children clung together and wept

t and Politics

Hoexter proposal rejected?

Cape Times 30/5/85

254

Political Staff

MAGISTRATES are unlikely to lose their administrative powers under the Internal Security Act, despite a recommendation to the contrary by the Hoexter Commission

The commission found some of the functions of magistrates were "susceptable to creating the outward impression that they are political tools of the government".

It also found that magistrates had take decisions with political overtones which "came in for sharp criticism at times, often simply because magistrates are public servants

"In this way, the image of the administration of justice in South Africa in general is seriously impaired"

The commission urged the separation of judicial and administrative functions of magistrates

But a committee of inquiry, appointed by the Department of Justice to investigate these aspects of the Hoexter Commission recommendations, has recommended that magistrates retain these powers

The committee's report, which was released yesterday, said the exercise of these powers under the Internal Security Act was "a particularly important function at the lower level".

Racial bias damaging judiciary — Dalling

Cape Times 5/6/85 252

By ANTHONY JOHNSON
Political Correspondent

HOUSE OF ASSEMBLY. — The glaring racial bias in sentences permitted by the judicial system was causing "immense damage" to race relations and the image of justice in South Africa, the Progressive Federal Party charged yesterday.

The PFP's chief spokesman on Justice, Mr Dave Dalling, said there had to be something "drastically wrong" with a system which permitted the "injustice" of numerous disparities in sentences handed down for people of different races

Speaking during the committee stage of the Justice Vote, Mr Dalling said it took only a few bad decisions to bring into disrepute, both in South Africa and abroad, the high standing of courts in this country

As examples of recent sentences which called into question the racial fairness of the courts, he cited

- The "princely" fine of R30 handed down to a white policeman for a "vicious and unprovoked" assault which led to the death of a coloured man in Johannesburg
- Two whites found guilty of using the ring of a soft drink can in a parking metre in Johannesburg in March this year were each fined R50, while a black man was fined R200 or four months for a similar offence
- A white youth who boasted he was going to kill a black person and did so was sentenced to 1 200 hours of weekend imprisonment
- Three young white men who kicked a black man to death were sentenced to five cuts each
- A black woman received 18 months jail (12 suspended) for possessing a Penguin book which was ruled to have been published in the interests of the ANC
- Two soldiers who roasted a black man over a fire and raped his wife were fined R50 each
- A black person who had a tea mug engraved with ANC slogans received three years imprisonment (18 months of which was suspended)

Mr Dalling said the whole question of sentencing should come under the scrutiny of the Minister of Justice, Mr Kobie Coetsee, who should consider re-training and seminars for judicial officers as possible ways of reducing the disparity in sentences

However, the major problem was that 98 percent of all magistrates and all judges in South Africa were white, while the overwhelming majority of those who appeared before them on criminal charges were black.

Disparities

He went on to quote the chairman of the Johannesburg Bar Council, Mr Jules Browde, SC, who recently remarked "Many disparities in sentencing occur because most of our judicial officers are unable to identify with the majority of the population"

Mr Dalling said the time had come for the Department of Justice to make a real effort to recruit, train and promote Africans, coloureds and Indians within the structure of the courts

Replying to the debate, Mr Coetsee said Mr Dalling was being selective in his use of examples and accused him of "smearing South Africa's name"

"We must not put ourselves in the Appeal Court just because newspaper reports give the impression of disparity," he admonished

● See leading article, page 10

Judicial bias: Dalling 'wrong' — Coetsee

Cape Times 6/6/85 252

HOUSE OF ASSEMBLY — The Progressive Federal Party's justice spokesman, Mr Dave Dalling, had been "wrong" in his conclusion that racial bias was damaging the judiciary in South Africa, the Minister of Justice, Mr Kobie Coetsee, said yesterday during the Budget debate on his vote

Citing a number of specific cases, Mr Dalling said in the debate on Tuesday that there had to be something "drastically wrong" with a system which permitted the "injustice" of numerous disparities in sentences handed down for people of different races

Mr Coetsee said in his reply yesterday that he was sure Mr Dalling supported the principle of prison alternatives

Mr Dalling had referred to the case last year where five white schoolboys had kicked two black men to death and were sentenced to a period of community service by Mr Justice Curlewis

Mr Coetsee said the same judge had applied a similar "alternative" in the case of a 19-year-old black man from Witbank last year

He had been convicted of culpable homicide but the judge had postponed this for one year on condition of good behaviour and that the man report for duty at a government mortuary for 26 consecutive Saturdays — Sapa

Political trials 'authenticate' govt acts

Political Staff

POLITICAL trials in South Africa have reinforced the belief among white people in a just social order and have served to authenticate government actions against political opponents, according to Mr Dennis Davis, a senior lecturer in law at the University of Cape Town.

Black people saw the political trial as part of an oppressive system, whereas whites regard it as a mechanism enabling the truth to emerge because it takes place before an impartial judiciary, Mr Davis writes in a new book, "Crime and Power in South Africa", released this week.

He said the Rabie Commission into security legislation had "provided judicial approval of and justification for the existing security laws" and had recommended only the minimum of change.

"The major purpose and achievement of political trials in South Africa is to reinforce the belief among whites in the essentially just nature of the prevailing social order, and project an image of the violent means and revolutionary objectives of the opponents of the South African State.

"This belief in turn serves to authenticate the actions taken by the State against political opponents," he said.

Political trials had a number of advantages for a repressive state.

"It not only reconstructs events and processes as they are perceived by the regime, but also reproduces for the public's benefit an image of a just and fair (albeit imperfect) society, threatened by people and organizations who seek nothing more than its violent destruction."

The use of the political trial as an ideological tool in the hands of the State could be reinforced powerfully by the media "not as a result of any conspiracy, but rather by reason of the combined effects of the ideological framework within which the media operates, and the social organization and reproduction of news".

Politicial trials justified security measures and actions which the State could take against those who threatened implementation of the new deal.

"P W Botha's offer early in 1985 to free Nelson Mandela on condition that he renounce violence can be evaluated in similar terms.

"By refusing the loaded offer, Mandela could be portrayed as a man of violence, refusing to abide by a code of conduct 'accepted by all civilized nations'.

"Likewise, security legislation will be used to portray those organizations, such as the UDF, that refuse to co-operate in the 'new deal' as treasonous and violent."

Stay-away call by 2 500 over sacked staff

N Mercury 252 8/7/85

Pietermaritzburg Bureau

ABOUT 2 500 people in Pietermaritzburg and Howick say they will support a province-wide stay-away if the Pietermaritzburg and Natal chambers of industries failed to persuade Sarmcol to reopen negotiations with 950 dismissed workers

The support was given at a meeting convened by the Metal and Allied Workers' Union (Mawu), in Pietermaritzburg at the weekend after they had been addressed by speakers from church organisations, civic organisations and the United Democratic Front

The Howick-based rubber manufacturing company Sarmcol dismissed its workforce at the end of April when it went on a legal strike following two years of negotiations with the company on recognition of Mawu

Mr J Vilane, president of Mawu, which has 40 000 members in Natal, told the meeting. 'In the light of massive grass-roots support and calls for co-ordinated worker action, the Pietermaritzburg and Natal Chamber of Industries would be asked to intervene in the dispute by getting Sarmcol to the negotiating table

'If our proposal fails, plans for solidarity action will go ahead,' Mr Vilane said

The meeting passed a resolution committing it to 'fully supporting a stay-away if called by Fosatu' in the event of Sarmcol failing to reopen negotiation concerning the reinstatement of the dismissed workers

Mawu is expected to approach the Pietermaritzburg and Natal chambers of industries with their proposal this week.

CP wants legal loophole closed

252

Star 11/7/85

By Gary van Staden, Political Reporter

If a South African court ruled against the Government on the implementation of one of its laws — such as the eviction of "illegal" residents from white suburbs — Parliament had a duty to alter that law and close the legal loophole, Conservative Party MP Mr Koos van der Merwe said last night.

"It must be remembered that judges work for Parliament. We make the laws — judges merely interpret them," Mr van der Merwe told 350 people at a Newlands protest meeting last night.

VERDICT

Mr van der Merwe was discussing a 1982 Supreme Court verdict which said that no coloured or Indian person could be evicted from property in a white area while no accommodation was available in their own group area.

It was obvious, he said, that this legal loophole should have been closed a long time ago.

And the National Party MP for Maraisburg, Mr Piet Pretorius, who shared the platform with Mr van der Merwe, said the Government was considering tougher legislation to deal with landlords who allowed "illegal" residents to occupy their buildings.

● See Page 17.

Call follows legal academics' accusations of racial bias

Slur on legal system 'must be cleared up'

252

STAR 10/8/85

— by —
Andrew Beattie

Although not new, the belief that South Africa's legal system discriminates on the basis of race is a factor that needs to be investigated by an impartial body, and rectified if necessary

This view is expressed by Professor A J Middleton, of Unisa, in *De Rebus*, the South African attorneys' journal

Recent articles by Professor John Dugard (who has frequently advanced arguments that the legal system is discriminatory) and Mr John van der Berg of the University of the Western Cape "tend to bring the administration of justice in South Africa into grave discredit", said Professor Middleton.

Mr van der Berg alleged that there was selective enforcement of laws on racial grounds both by the police and the prosecuting authorities In addition, the "rigging" of benches took place to ensure that judicial officers sympathetic to the Government's cause heard certain cases.

A further allegation was that considerations of race governed decisions relating to the granting of bail and the handing down of sentence,

Although he points out that all of these allegations have been made at some time in the past, they have never provoked any serious response from the authorities

"The allegations are of a very grave nature and if the matter is not resolved, either by exposing the allegations as false or promptly rectifying the situation, it will clearly result in a loss of confidence in the system, and incalculable harm will be done

"Is it not time for the legal profession, which undoubtedly enjoys a tremendous amount of public confidence and an image of impartiality, to investigate the matter and express an impartial view?" he asked

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Indian, black to sit on Bench in treason trial

NM 30/7/85

(252)

Pietermaritzburg Bureau

AN INDIAN attorney and an African businessman both of Durban, will sit as assessors with the Judge President of Natal Mr Justice John Milne in the coming UDF treason trial in Pietermaritzburg

The trial, in which 16 United Democratic Front and trade union leaders have been released on bail totalling R170 000 after been charged with treason, is expected to start in early September

Mr Ishwarbhai Amin, who has one of the oldest Indian law firms in Durban, has practised law for more than 40 years after graduating from the University of Natal, Durban

Mr Wellington Mtshali, who is a marketing manager for a bank in Natal, was the first black magistrate in the Umlazi Court 10 years ago and has legal qualifications from the University of Fort Hare and the University of South Africa

He also has a certificate in commerce from Harvard University in the United States

Legal argument about the 587-page indictment will be heard on August 5 at the College Road Supreme Court in the capital

Man tackl

Crime Re

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a hotel employee of R5 000 y

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Official to be charged

CAPE TIMES 12/7/81

(252)

Own Correspondent

JOHANNESBURG — The Attorney-General of the Eastern Cape, Mr E C Heller, has decided to prosecute the secretary of the Dias Divisional Council, Mr Neville Anderson, for an alleged contravention of regulations relating to the Kannemeyer Inquiry into the Langa shootings

The charge in the Regional Court will concern an allegation that he contravened Section 14, read with Section 15, of the regulations by anticipating the findings of the commission when he testified before Mr Justice Kannemeyer during the inquiry earlier this year

Three ambulancemen employed by the council were suspended from the council's service after they gave evidence before Mr Justice Kannemeyer

Testifying at the commission, Mr Anderson was unable to give Mr Justice Kannemeyer the assurance that disciplinary action would not be taken against other ambulancemen who gave evidence

Two ambulancemen, Mr Joseph Berry and Mr Michael Goqo, were later dismissed The third ambulanceman, Mr Dennis Barlow, was eventually reinstated

Booysens Police Station Gert Smit disappeared on Wednesday

'We should see that everyone gets a fair trial'

Courts should be tuned in to public opinion — judge

252 STAR 16/8/85

BLOEMFONTEIN — It was essential the courts and all concerned with the administration of justice in South Africa should be particularly sensitive to public perception, Mr Justice J J Trengove, national president of the National Institute for Crime Prevention and Rehabilitation of Offenders (Nicro), said yesterday

FOUR FACTORS

Addressing the annual meeting of the Bloemfontein branch of Nicro, Mr Justice Trengove said four factors affected the public perception of criminal justice in South Africa

The administration of justice was controlled almost exclusively by whites, the vast majority of people who appeared in court were black, there was a lack of communication between the accused (unrepresented) and the court and there was a disparity of sentence

"As far as all the officers of the court are concerned — judges, magistrates, prosecutors, attorneys-general — we are all very conscious that in these difficult times in which we live, we should see that everyone, irrespective of who his is, gets a fair trial," Mr Justice Trengove said

It was important anyone who felt unhappy about what happened in court should bring it to the notice of the authorities

He said officers of the court must take notice that in the present climate, with the eyes of the world focussed on South Africa, proceedings in its courts often received widespread national and international media coverage

"Everyone must be sensitive to the fact that the public, the world, is watching us"

A recent report by the Human Sciences Research Council showed whites and blacks differed diametrically in their perception of the administration of justice Whites were the most positive, blacks the most negative and coloureds and Indians somewhere between

While there were 870 white magistrates, until recently there had only been one coloured (now 19), five Indians (now 16) and no black magistrates in South Africa, although there were black magistrates in the homelands

The total daily prison population (sentenced or awaiting trial) was 101 296, of which 4 173 were white, 74 399 black, 582 Indians and 22 142 coloured

COMMUNICATION

The vast majority of people who appeared in court were black, because they were the majority of the population They often appeared unrepresented on serious charges because they did not have the means to afford legal representation

On the lack of communication the HSRC reported it had emerged in a number of cases that interpretations and translations often stopped at a critical stage Judges and magistrates knew what was happening and thought that the accused also did, while interpreters did not accept they had to interpret every word of what happened in court

There was an important duty on everyone involved in the courts to see the communications gap was breached, particularly where an accused was not represented, so he could be fully informed of his position

On disparity in sentence, the judge said there was no such thing as equality of sentence — the circumstances of each case had to be considered

Public perception was often affected by sentences meted out and in South Africa's heterogeneous society there should be no suggestion of any racial bias when an accused was sentenced This undermined confidence, he said — Sapa

Removed during mov-

Police eavesdropped confession, court told

A magistrate who took a confession from an alleged ANC member told policemen they could listen to the confession through the windows of his office, the Rand Supreme Court heard yesterday STAR

Mr Matthews Kekane (27), one of three treason trialists, said he had not trusted the magistrate and therefore had tempered his confession to satisfy the magistrate and the policemen who he said had been listening at the window

Mr Kekane has alleged in a trial-within-a-trial that he had been assaulted and threatened by police, who had forced him to make a statement which satisfied them

Mr Kekane, Mr Albanos Lesotho (26) and Mr Kingsley Sithole (26) have pleaded not guilty to treason They have also denied several charges under the Terrorism Act and the Internal Security Act 16/8/85

Mr Kekane told Mr Justice F C Kirk-Cohen yesterday he had made a statement to a magistrate on July 25 1984 to prevent further assaults by police In the statement he had admitted crimes about which he knew nothing, he said

Under cross-examination he said he had been afraid to lodge a complaint about the assaults to the magistrate or to the inspector of detainees, who had visited him in prison

The hearing continues

Stay of execution for Moloise

DISPATCH 252

PRETORIA — In a dramatic eleventh-hour development, black poet Benjamin Moloise was granted a stay of execution last night, just hours before he was to be hanged for the 1982 murder of a security policeman

In the Supreme Court here, Mr Justice Eloff gave lawyers three weeks in which to petition the State President, Mr P W Botha, to reopen the case

The judgment came as Moloise's mother Pauline, was leading prayers at a planned all-night vigil in Johannesburg

The security policeman Warrant Officer Philippus Selepe was killed at his home in Pretoria's Mamelodi township The ANC claimed responsibility

Moloise was sentenced to death in June 1983 and was denied leave to appeal

The advocate for the defence, Mr Izzie Maisels, QC, argued yesterday that Moloise wanted a stay of execution in order to petition the President under Section 327 of the Criminal Procedures Act Moloise had not been informed earlier of his option to apply under the specific section of the act.

Mr Justice Eloff said "I don't know how his legal advisers could be so remiss but their remissness should not be brought to the door of the defendant"

A petition for clemency made under section 326 of the act was turned down by the President last week

As evidence in the hearing, Mr Maisels submitted a 21-page affidavit signed earlier by Moloise 21.08.85

Mr Maisels said Moloise's affidavit and another affidavit by a sociologist who interviewed Moloise would be given to the President as further evidence

"This man suffers from severe mental abnormalities he said

Earlier the UN Security Council called on South African authorities to halt the execution of Moloise

The council said that Moloise's death would "result in further deterioration of an already extremely grave situation" — Sapa AP

Pleas for clemency P6

Judges slam magistrate for jailing addict

Mercury 252 21/8/85

Pietermaritzburg Bureau

REVIEW judges yesterday slammed a Durban magistrate for a 'shocking and grossly inappropriate' decision to jail a man for two years on a charge of possessing 1 g of dagga, after he had handed himself over to police and had pleaded for treatment.

The judges altered the sentence and committed the man to a rehabilitation centre, with a further one year's imprisonment suspended for five years, on condition that he did not abscond from the centre and that he undergoes, to the satisfaction of the director of that centre, whatever treatment may be prescribed for him

Pending his removal to a rehabilitation centre, he was to be released on his own recognisance, the judges ordered

Convictions

Mr Justice Friedman, with Mr Justice Didcott concurring, described the sentence imposed on Reginald Thomas Blakeman, 42, of Secunda, by Magistrate, Mr G E Andrews, as shocking and grossly inappropriate, and said it lacked insight into the problem.

'It treats the accused as a mere criminal where he is clearly deserving of sympathetic treatment

'His sentence was a last resort to be imposed only when all else has failed and I am far from satisfied that, as yet, all hope of successfully caring for the accused has failed'

Mr Justice Friedman said apart from anything else the case reflected badly on the Court, the prosecuting authority and the Department of Health and Welfare.

The Judge said Blakeman, who had a history of drug dependence and a number of previous convictions for possession of dagga, called at C R Swart Square on May 6 this year, and handed over two sticks of dagga weighing about 1 g to the policeman on duty

He told the policeman he had a very severe dagga problem and wanted treatment

'He did not get treatment. Instead, on the following day, he found himself charged in the Magistrate's Court with being in possession of the very dagga he had voluntarily handed over

'It is, to say the least, remarkable that a decision should have been made to prosecute the accused rather than con-

◆ TURN TO PAGE 2

Judges slam magistrate

252

◆ FROM PAGE 1

duct an inquiry into his admitted drug dependence,' the Judge said.

Mr Justice Friedman said Blakeman pleaded guilty to the charge and handed in to the Court a 'dignified yet heart-rending written statement in which he eloquently expounded upon his sorry plight of drug dependence and begged for assistance'

The Judge said the Magistrate 'understandably' required a probation officer's report which he obtained on July 22

However, the report was not 'as one might have expected, sympathetic to the plight of the accused', and did not suggest that he be sent to a rehabilitation centre, since previous attempts at treatment had failed in the past. Mercury

It instead recommended a minimum sentence of two years so that the accused could be 'assessed by the Department of Prisons' multi-disciplinary therapeutic team and be put into a rehabilitation programme'.

Mr Justice Friedman said Blakeman had pointed out that in the past when in prison, he had been exposed to dagga, and that he was now so motivated into seeking assistance that he had surrendered himself to the police 21/8/85

The Judge said the Magistrate did not appear to have concerned himself with 'testing or appraising in any way critically the approach and evidence of the probation officer'

Mr Justice Friedman said instead he had simply 'as happens regrettably only too often' rubber-stamped the suggested sentence

Death row drama: Pleas to President

ARGUS 21/8/85

/252

Argus Correspondent

JOHANNESBURG — Just 12 hours before he was to hang today convicted ANC killer Benjamin Moloise was granted a stay of execution pending the outcome of a petition to the State President.

Moloise was sentenced to death in June 1983 for the murder of Mamelodi security policeman Mr Phillipus Selepe

After his conviction Moloise failed in an application for leave to appeal, a petition to the Chief Justice and an appeal to the State President for clemency

Moloise's lawyers were notified on Monday that the appeal for clemency had failed

About 4pm yesterday an urgent application was made requesting a stay of execution until an appeal to the State President for the reopening of the trial to hear evidence on extenuating circumstances had been heard

EXAMINED HIM

In the Supreme Court, Pretoria last night Mr Justice Eloff said the factors that dominated the case were whether or not the State President would possibly allow a retrial and why Moloise's lawyers had delayed launching the application

He said that although the State President had already refused an appeal for clemency it did not mean that he would refuse an application to reopen the trial

In an affidavit Moloise said that Professor Brunhilde Helm, the head of the department of applied sociology at the University of Cape Town, had examined him while he was in death row and had concluded that "the offence which I committed was not caused by any inherent wickedness in me"

Moloise, an illegitimate child with an alcoholic stepfather, said his childhood "was cruel and loveless". This made him "extremely vulnerable to pressures and influences," Professor Helm found

Moloise alleged that he had looked to the ANC for leadership but after giving evidence in the trial of one of its members was threatened with death several times

He was eventually told by members of the ANC that he had to choose between killing Selepe "and getting the bullet"

Facing "the most important crisis of my life" without the help of a brother, friend or "wise priest, I chose and I chose wrongly'

Moloise has three weeks in which to apply to the State President for the reopening of his trial

God is great, says relieved mother

Argus Correspondent

PRETORIA — "God is great He has heard my daily prayers and those of the whole world about the innocence of my son," Mrs Pauline Moloise, mother of Benjamin Malesela Moloise, said today after visiting him in his cell in Death Row

Mrs Moloise said she was partly relieved but would relax only when Ben's life had been saved.

Mrs Moloise visited her son for what she thought would be the last time yesterday afternoon She was allowed another brief visit today.

"Ben's mood was unchanged from previous visits and all he said this morning was that he felt tired and in need of sleep"

She thanked the international and local communities, legal advisers, churches and especially sympathetic colleagues at the Tswelang Pele day-care centre in Soweto

"These women who joined me in daily prayers are mostly pensioners who spent most of their day with me."

The Argus Foreign Service reports from New York that the United Nations Security Council urged South Africa not to carry out the death sentence on Moloise soon after a personal plea for his life was made by the Secretary-General, Mr Perez de Cuellar, to the South African UN representative, Mr Kurt von Schirnding

FRONT PAGE

The Argus Foreign Service reports from London that the stay of execution granted to Moloise was on the front page of Fleet Street's major newspapers last night

In Paris, startled SAA counter clerks watched as demonstrators with raised clenched fists shouted "Save Moloise" and "Free Mandela".

Four lorryloads of police tried unsuccessfully to persuade the demonstrators to leave

Police pushed them out of the office and, when fighting started, used their truncheons

Several ambulances were called to take away five injured persons

Yesterday a delegation from the Anti-Apartheid Movement led by the chairman, Mr Bob Hughes MP, had a 30-minute interview with Baroness Young, the junior Foreign Office Minister, about the Moloise case

Mother asks world to save her son

DISPATCH 19/8/85

252

Mrs Pauline Moloisi, mother of the condemned man.

DISPATCH

JOHANNESBURG — The mother of a man, due to hang on Wednesday for the murder of a policeman, appealed yesterday for world help to save her son

Benjamin Moloisi was sentenced to death in June 1983 His clemency appeal to the President P W Botha was rejected last week, an attorney, Mrs Priscilla Jana, said

Moloisi's mother, Pauline, told a press conference in Lenasia yesterday "As a mother I am asking the world to help me try to talk to Mr Botha about the hanging of my son" 19:08:85

Moloisi attracted international attention at the end of 1983 when he was refused leave to appeal. The UN Security Council last year called for his sentence to be commuted

Mrs Jana said the timing of Mr Botha's rejection of the clemency appeal was important, coming at almost the same time as a major speech on Thursday in which he "dashed much-heralded expectations of major apartheid reform"

"He is trying to assure the ruling class that he has got the country under control and that the policy of the government is not going to be changed for anything," she said.

Mrs Moloisi, 53, said her son was a supporter of the banned African National Congress, but she did not know if he was a member of its military wing

In 1983 the ANC denied Moloisi was responsible for killing a security policeman, Mr Phillipus Selepe

Mrs Jana said Moloisi's conviction was based on a confession made in detention, which he retracted at his trial

Meanwhile, in London, about 100 anti-apartheid protesters demonstrated outside the South African Embassy yesterday to oppose the planned execution — Sapa-RNS

Top lawyer says rule of privilege must be redefined

252 STAR 22/8/85

Public policy demanded that citizens feel free to consult openly with their legal representatives, it was argued before the Witwatersrand Deputy Judge President in the Rand Supreme Court yesterday.

EXAMINE

Mr I Mahomed SC, arguing against the seizure by police of a confidential document in the possession of a firm of attorneys, said "The time has arrived to examine the fundamentals of the rule of privilege and to redefine its contours

"It is crucial to the interests of the public that the professional confidence between a legal adviser and his client be protected by the courts"

Mr Mahomed was submitting argument in an application brought by Johannesburg attorneys Cheadle Thompson and Haysom, from whose offices police seized a document relating to the arrest and death of trade unionist Mr Andries Raditsela

The decision in the application, against the Minister of Law and Order, was important as there had been only one previous judgment in South Africa dealing with the issue That judgment, in 1953, did not exempt privileged documents from seizure and was followed by a "furore of academic dissent", Mr Mahomed said

The application before Mr Justice G Coetzee arises out of the confiscation by police on May 27 of handwritten notes taken by attorney Mr Paul Benjamin while he was interviewing Miss Anna Mnguni

Miss Mnguni was a witness to the arrest and alleged assault of Mr Raditsela, a senior member of the Federation of South African Trade Unions (Fosatu), by police on May 4

Mr Raditsela died two days later and his family instructed the attorneys to institute civil action against the police

RETURN

An urgent application for the return of the document was postponed in June after the police handed it back to the attorneys The present argument concerns whether the attorneys were entitled to go to court, and who should pay the costs.

Mr Mahomed submitted the police unlawfully seized the document Their search warrant did not authorise the confiscation of handwritten notes by an attorney, which had not been read to, confirmed or signed by the witness, he said

The document constituted part of a civil action to be brought against the police. The police had already taken a statement from Miss Mnguni and could have subpoenaed her under the Criminal Procedures Act if they wanted to elicit more information

"They had no need to invade an attorney's office or breach his relationship of trust with his client," Mr Mahomed said.

The case was adjourned until today

Unrest complaints to A-G: Call for independent inquiry

ARGUS 22/8/85 (252)

Political Staff

JOHANNESBURG — The decision to refer certain complaints against the security forces to the Attorney-General in the Eastern Cape seemed rather like a delaying tactic instead of an effort to speed up the process, a leading figure in the Congregational Church, the Rev B K Dlula, said today

Mr Dlula was a member of Anglican Archbishop Philip Russell's delegation which met the State President, Mr P W Botha, on Monday

Mrs Helen Suzman, Progressive Federal Party spokesman on law and order, said the move to refer the complaints to an Attorney-General was totally unsatisfactory and would not meet the demand for a broader inquiry into police behaviour

Mrs Helen Suzman, the party's spokesman on law and order, said that the Attorney-General was part of the system Nothing could measure up to an independent inquiry and the Minister of Justice, Mr Kobie Coetsee, should realise that people wanted to be reassured on this.

Mr Dlula and Mrs Suzman were reacting to the announcement last night by Mr Coetsee that complaints made by Archbishop Russell's delegation to Mr P W Botha, about certain members of the security forces had been referred to the Attorney-General for a decision

The decision to refer the complaints to the Attorney-General appears to be a back-down from the earlier hint by Mr Botha to the church leaders that he would consider appointing a magisterial investigation into the complaints

● The Argus Bureau in Port Elizabeth reports that senior Citizen Force army officers have been appointed by the Commanding Officer of Eastern Province Command, Brigadier C P van der Westhuizen, to investigate allegations of misconduct by soldiers involved in operations under the state of emergency regulations in the Eastern Cape

Race on for retrial petition

(252) E 7051 06/09/85

JOHANNESBURG — Attorneys for Benjamin Moloise, convicted in 1983 of killing a security policeman in Mamelodi, are working against time to have a petition for the State President ready by next Wednesday, in the hope that the trial will be ordered re-opened

Moloise, 30, was due to be executed on August 21, but was granted a stay of execution the night before — on condition that his legal advisors submitted the petition for consideration within 21 days

The attorneys will ask the State President, Mr P W Botha, to refer the case back to the Pretoria Supreme Court on the grounds of the new evidence in the petition

The attorneys had said the petition would be based on a sociologist's report submitted as information in the initial petition for clemency which Mr Botha earlier refused

However, in the new petition the report will be submitted as "new evidence", based on pressures under which Moloise acted during the killing — Sapa

Sick and elderly Mpetha starts prison sentence

252

PRETORIA — The elderly and sickly Cape Town community leader, Mr Oscar Mpetha, who was convicted on terrorism charges and sentenced to five years' imprisonment two years ago, entered prison yesterday morning to serve the compulsory minimum sentence under medical care

His appeal against the sentence was rejected in Bloemfontein recently and the Minister of Justice, Mr Kobie Coetsee, said in Pretoria at the weekend he had decided not to recommend a remission of the entire sentence due to the seriousness of the 75-year-old man's crime

Mr Coetsee hinted at the possibility of early parole on compassionate and health grounds, adding that "the renunciation of propagation of violence may be a factor"

Both the Cape Town Supreme Court, where Mpetha was convicted after a lengthy trial which started in March 1981, and the Bloemfontein Appeal Court declared that, if allowed, they would suspend Mpetha's sentence in the light of his personal and health conditions.

Mpetha, who later became a patron of the United Democratic Front when it was founded, and 17 others, mostly youths, were charged with murder and terrorism following riots in August 1980 near Cape Town's Crossroad's squatter camp, in which two men were burned to death

In his judgment, trial court judge Mr Justice Williamson said the facts "permit no other reasonable inference other than that Mpetha intended to endanger the maintenance of law and order," and that he "intended to add fuel to the fire" during the day of rioting and violence

After his conviction of participation in terrorist activities and sentence of the minimum five years, Mpetha was released on bail of R1, pending an appeal against the sentence but not the conviction

This was rejected recently by the Appeal Court, but Mpetha, who is a medically certified diabetic and has a physical disability, did not go to prison as he was sick in hospital

A spokesman for the Prisons Service confirmed in Pretoria that Mpetha entered prison yesterday morning The prison is understood to be Pollsmoor, near Cape Town, but the spokesman declined to confirm this, saying it was not policy to give details of the whereabouts of prisoners DISPATCH

Mr Coetsee said consideration had been given to a possible recommendation regarding the remission of the entire sentence, "in the light of the remarks by both courts and representations made in the course of Parliamentary debate 26:08:85

"I have, however, decided not to make such a recommendation because the crime of which he was found guilty is a serious one and also because of his involvement in the present unrest situation while he was on bail

"On admission to the prison, as is the case with all prisoners, he will be medically examined and as is the normal practice be placed under medical care," Mr Coetsee said — Sapa

Recession increases pleas for legal aid

252

STAR 26/8/85

By Fiona Macleod

Legal aid offices throughout the country are being besieged by pleas for legal help as a result of the economic and political climate.

From April to July this year, the Government-funded Legal Aid Board noted an increase in applications of more than 60 percent compared with the same period last year

Similarly, the Legal Aid Bureau, a private organisation, is dealing with an average increase of 400 applications a month

And there has been a marked rise in the number of civil claims being settled as individuals find they can no longer afford to go to court.

The director of the Legal Aid Board, Mr E S Scholtz, said that, from April 1 to July 31, the board granted legal aid in about 10 455 cases

"This is a more than a 60 percent increase on the figures for the same period last year, when we granted aid in 6 368 applications. Over the whole of the 1984 financial year, we granted aid in 10 503 civil cases and 3 891 criminal cases"

AID SOUGHT BY JOBLESS

Mrs Pauline Lipson, director of the Legal Aid Bureau, said "During the whole of last year we dealt with 18 066 applications. In the first six months of this year we received 11 352 applications"

Mr Geoff Budlender, director of the Johannesburg offices of the Legal Resources Centre, added that there had been a marked increase in pleas from people who had lost their jobs or were unable to meet credit agreements No figures were available.

Another development attributed to the recession is a decrease in the number of civil claims between individuals.

In contrast to this is the rising number of motion court applications each week for insolvencies. According to figures released by the Central Statistical Services earlier this month, the number of insolvencies between February and April this year was 656 — double the number in the same period last year.

Plaintiffs can start writing letters of demand now

Small Claims Courts to begin next month

252 7/9/85 Mercury

Mercury Reporter

PEOPLE wishing to make use of the new Small Claims Court which becomes operational from next month in Durban and Pietermaritzburg can begin writing their letters of demand now.

Prof David McQuoid-Mason, Dean of the Law School at the University of Natal in Durban, said the legal aid clinic on the ground floor of Howard College would be used for the administration of the Court

'People can now begin writing their letters of demand and the first cases in Durban are expected to be heard from about October 12,' he said

Here are the guidelines a plaintiff should follow as set out by Prof McQuoid-Mason.

The plaintiff must write a letter of demand to the other party (defendant) and either serve it personally or send it by registered post. In both cases the plaintiff must retain proof that the letter has been served,

10 days to reply

The defendant has 14 days in which to reply to the letter of demand and to settle the claim (which may not exceed R1 000);

If the plaintiff does not receive payment he must go the legal aid clinic which will be open between 3 p m and 6 p m on Monday to Friday There the Clerk of the Court will issue a summons to be served on the defendant, again either by personal delivery or registered post,

The defendant is given 10 days to reply to the summons or appear in court on the day stipulated by the Clerk of the Court,

The Small Claims Court will sit from October 12 from 5 p m to 9 p m every weekday night in the Moot Court on the second floor of Howard College;

A commissioner, who could be an attorney, advocate or academic, will hear the case and neither party will be permitted to have any legal representation,

The plaintiff is required to produce any written evidence or witnesses and the defendant is allowed to hand in a document setting out his or her defence, or make defence verbally in court,

The commissioner will ask all the questions, consider the evidence and hand down judgment

Prof McQuoid-Mason said the public seeking assistance at the legal aid clinic would be helped by law students and volunteers

'Also people earning less than R400 a month and R100 for each child who need assistance in writing the letter of demand can go to the legal aid clinic on Friday between 12 and 2 p m and the legal resources centre on Saturday mornings between 9 a m and 12 noon,' he said

This means a single person with two children who is earning R600 or less can seek advice when writing the letter of demand The limit for a married person is R800 and R100 for each child.

The Small Claims Court at the Pietermaritzburg campus of the University of Natal will operate in the same way

Prof John Milton, director of the School of Law, said the Court there would probably begin a bit later because the number of cases was not expected to be as high as in Durban.

It would not be much later than the middle of October, however

Petrol bomb: Standard 4 girl guilty

A STANDARD 4 schoolgirl was sentenced to three years' imprisonment, conditionally suspended for five years, after she was found guilty in the New Brighton Regional Court yesterday on a charge of illegally possessing explosives.

The 14-year-old girl was found in possession of a petrol bomb during an incident in the vicinity of Johnson Square, Soweto, Port Elizabeth, on June 15

E POST 05/09/85

She was found not guilty and discharged on a charge of public violence

The magistrate, Mr P Crous, said the girl had been convicted of a very serious offence and legislation provided a minimum sentence of three years' imprisonment and a maximum sentence of 15 years' imprisonment

However, he took into account the girl's age, the fact that she had been in custody since her arrest and that she was a first offender

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The girl, who pleaded not guilty, wept while being cross-examined by the prosecutor, Mr H Bence

She said she stopped at the square to buy some apples after she was sent to borrow some money from her father

According to her, a group of people with petrol bombs and stones were in the vicinity

She said a boy placed a petrol bomb near her and when the police arrived she ran away She was later arrested

Mr Crous said he accepted the evidence of the State witnesses, Constable Vaughan Robert Abrahams and Warrant Officer Peter John Dibben, of the police reaction unit, who saw her at the scene and arrested her.

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Lawyers draw up petition on Maureen Smith sentence

1/9/85

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Mercury Correspondent

JOHANNESBURG—The long and hard-fought legal battle over the Roger Smith murder in Johannesburg in 1982 is still being pressed ahead in an attempt to reduce the 20-year jail sentence passed on his wife, Maureen

Her lawyers have confirmed that they are preparing a petition to be presented to the Prison's Commission

It is understood that the petition will contain 'startling' new evidence which was not available at the time of the trial

Meanwhile, as Scotland Yard detectives prepare to fly to South Africa to interview Mrs Smith in jail at Pretoria Central Prison, her Durban-based lawyer, Mr Duncan Downes, is in London, also in connection with further work on the case.

Blackmail

The Scotland Yard men want to know exactly how deeply involved London insurance assessor Mr Harry Mullocks — Maureen's father — was involved in the stabbing to death of Roger Smith.

Mr Mullocks has already said in an affidavit before the full Appeal Court in Bloemfontein that he had ordered and financed the killing because he feared that Smith might blackmail him with documents taken from Mullocks's office in London's East End

The South African Police have promised 'full co-operation' with the Scotland Yard team

Several months ago Mr Downes said the new evidence being submitted was 'startling' and had only been made available after the appeal case in which Mrs Smith and two black men successfully appealed against the death sentence

It is understood that at least one more affidavit made by Mr Mullocks will be included and there is a possibility that another made by Mrs Smith's daughter Karen will also be adjoined

Johannesburg lawyer Mr Gordon Martin (one of the legal team acting for Mrs Smith) confirmed that Mr Downes was in London in connection with the case

He said it was not yet certain exactly when the petition would be filed

'The position is that you are entitled to submit evidence which wasn't available at the time of the trial and which might materially affect the guilty party's effective sentence.

'It is not a judicial process but is one allowed by the Minister of Justice

'The petition is currently being prepared,' he said yesterday

Teddy bear picnic

Mercury Reporter

THE children of Sunfield Homes who suffer from Downe's Syndrome will

practical or useful

Two City magistrates resign

Staff Reporter

TWO Cape Town magistrates have resigned their posts, apparently because they are unhappy with being associated with the legal system during the current unrest.

One of the magistrates, Mr Eshaad Palmer, confirmed yesterday that he and Mrs Pam Sickle had resigned; but declined to discuss the reasons.

They were both still employed by the Department of Justice until the end of the month and would prefer not to be interviewed until then.

Legal sources, however, said their resignations had been a "decision of conscience" and that several prosecutors had indicated that they might follow suit

Judge's order frees church worker

Own Correspondent

DURBAN — Mr Paddy Kearney, the Diakonia director being held under Section 29 of the Internal Security Act, was released yesterday after a Durban judge declared his detention unlawful

Mr Justice Leon had also granted an application by Mr C Nicholson, for Archbishop Denis Hurley and Mr Kearney's wife, Ms Carmel Rickard, for an order putting his release into immediate effect

Archbishop Hurley and Ms Rickard made the application for Mr Kearney's release last week

The judge said the case had raised matters of constitutional importance which affected the liberty of the subject, the jurisdiction of the courts and the security of the State

"It is necessary to remind oneself from time to time that the first and most sacred duty of a court when possible is to administer justice to those who seek it, high and low, black and white, rich and poor"

Mr Justice Leon said the issues in the case raised the important question of jurisdictional review of the administrator's action and to what extent intervention was prevented by legislation

Validity

The police had relied on Clause (6) of Section 29 which stated that no court of law should have jurisdiction to challenge the validity of the detention of a person under this section, the judge said

Under this section a police officer can arrest and detain a person if he has reason to believe that he has or intends to commit an offence as defined in the section

He said that in his opinion the grammatical meaning of the phrase was "belief upon reason" which did not mean that he thinks he has reason to believe

Therefore the police officer had to have a factual basis on which he based his belief

The judge said he was satisfied that Clause (6) of Section 29 did not preclude the court from investigating whether the necessary jurisdictional facts objectively existed

Power

He said it was an often neglected fact that the Supreme Court would exercise its inherent power to review in regard to excessive legislation on the part of the administration

Archbishop Hurley and Ms Rickard had given detailed reasons for their statements that no reasonable man could have cause to believe that Mr Kearney could have withheld information from the police

The judge said that Colonel I Coetzee of the security police had declined to furnish the facts upon which his belief was based and had not even said when, where and to whom the information was being withheld by Mr Kearney.

Judge President calls for Bill of Rights

(252)

Mercury 11/9/85

THE JUDGE PRESIDENT of Natal, Mr Justice Milne, last week called for the introduction of a Bill of Rights in South Africa. He explained some of the advantages of a Bill of Rights, and answered some of the more common criticisms of the concept, at a meeting in Durban of the Institute of Chartered Secretaries and Administrators. STOVIN HAYTER reports.

A BILL OF RIGHTS should be at the forefront of the minds of those who are considering any future constitutional dispensation for the country, says Mr Justice Milne.

'The complexity and danger of the national plight should not deter people from unflinchingly supporting whatever seems to contribute to a smooth and orderly future

'No settlement, no course of political, social or economic action will be wholly fair to the interests of all We must simply strive to distribute the justice and the injustice more or less equally,' the judge said

To rest on absolutes and insist on winning every front was to risk, in fact almost to ensure, that everyone in the region would end up losing.

'It is more important to sort out a few things we value most, a few priorities, and look for ways to preserve them.'

Mr Justice Milne said there was a need for 'honest brokers' in the bargaining for a settlement between hostile parties with head-on conflicting interests in South Africa

He said a Bill of Rights in which individual and group rights were protected was one of the key proposals in the Buthelezi Commission's plan for a united Natal-KwaZulu

A Bill of Rights could be described as a statement in broad principle of the fundamental rights of the citizens of a country with which all laws had to comply, he said

'When it is coupled with a power of judicial review the courts have the power to strike down legislation which is in conflict with those principles'

A great many of the major reforms of American society since the early 19th century, including the removal of racially discriminatory legislation, had come through the courts and not through the legislature, he said

The use of the Court for this sort of constitutional purpose had several advantages

One was that it was not elected

'Because it is not elected it has no partisan constituents, no fashionable but ephemeral political sectional doctrine to answer to'

Once society in the shape of the legislature had formulated the basic norms upon which it meant to fashion itself, namely a Bill of Rights, and these had received the endorsement of the electorate no aberration by a temporary political majority could legally infringe them

'This means that, as happened in America, reform which it would have been politically damaging to some elected members of the legislature to support was effected by the courts

'Had it come through the legislative body it might have come only after the most damaging of political struggles, or even been held up until civil disturbance was a severe threat.'

Another advantage was that every court was a product of its time and could not operate too far behind or too far in front of the perceptions of its time

It could not initiate legislation, but depended on an aggrieved party contending that certain legislation conflicted with fundamental rights

Trained

Only then could it abolish such legislation, ensuring that it addressed legitimate grievances

'Though men of their time, judges are trained to apply legal principles as objectively as possible to the particular cases before them,' Mr Justice Milne said

A Bill of Rights was also 'peculiarly appropriate' to South Africa, where, in the words of the State President, 'we are all minorities'

'We have a wide variety of minority groups distinguished from one another by racial origin, tribe, language, culture, religion and economic status

'Each may need protection in the future against other groups overwhelming it.'

Mr Justice Milne also rejected the argument that while a Bill of Rights protected individual rights it was somehow inadequate for the protection of so-called group rights

Basic liberties

'What, essentially, is a 'group right' except the right of individual members of that group to a series of basic liberties?

'Of course, what such a Bill would remove would be any favouring of the members of one group above others'

Anybody who thought historically inherited and legally protected privilege would endure much longer was 'living in cloud-cuckoo land'

'What is needed now is to see that privilege for one group is not merely superseded by privilege for another'

Dealing with criticisms often levelled at the concept of a Bill of Rights, Mr Justice Milne said it was sometimes true that a Bill of Rights was not worth the paper it was written on

But a Bill of Rights, the provisions of which were relatively simply stated and which were known and supported by the public-minded and politically conscious in the nation and backed by the power of an independent court, was 'undoubtedly effective'.

'In this country, if we want such respect for a Bill of Rights which could be our protection in future we must initiate one now and use it to extend and protect basic rights for all the population

'It is no use calling for one when and because we have lost those rights ourselves,' he warned.

Other common criticisms were that a Bill of Rights politicised the courts and that it was 'better to build rights into laws themselves'.

But this meant that human rights were better left in the hands of politicians responding to the pressures of their constituencies rather than to judges acting in accordance with fundamental principles endorsed by 'the nation at large'

Impartial

He said that while judges were not necessarily better people than politicians they were in a better position to be just and impartial

And while those who appointed judges might be tempted to appoint them with reference to their political views, judges were appointed for life, making it very difficult to get them to toe any particular party line after appointment.

'Furthermore, it would be difficult to anticipate both the kind of issues which would arise, and the particular form they would take in the particular case before the Court, and to foresee the judge's reaction to them'

There was no reason why the independence of the judiciary should not work as effectively on a Bill of Rights as it did on other judicial decisions, Mr Justice Milne said

'Inadequate' court facilities come under fire

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11/9/85

Mercury ~~Mercury~~

Mercury Reporter

THE Department of Justice was strongly criticised yesterday for inadequate facilities at the Verulam Magistrate's Court.

Chief Magistrate Brian du Randt confirmed that facilities and office accommodation in the buildings were 'hopelessly' inadequate, but added the matter was receiving attention by head office.

After receiving numerous complaints from members of the public, a Mercury team investigated conditions

People waiting outside for their cases to be heard complained bitterly about the lack of waiting room facilities or benches in the corridor. Seating facilities outside the building were non-existent apart from an old bench under a mango tree

Many married women, waiting to be interviewed about divorce claims by the Court's maintenance officer, also expressed anger that they had to sit amid broken desks and old files stacked roof-high in a tiny waiting room outside the Civil Court.

One woman said it was 'disgusting' that the department had not seen fit to improve facilities at the Court, which has jurisdiction over neighbouring Tongaat, Inanda, Phoenix and Mt Edgecombe, besides Verulam.

Members of the Indian staff were also upset that while white staff were provided with transport they were not extended the same privilege

Mr du Randt told the Mercury that the Department of Justice took over control of the Court from the Department of Co-Operation and Development from September 1 last year, but that that was no reason for the facilities not being up to standard.

'I brought this to the notice of the head office of the Department of Justice and we are trying to make public facilities at the court as best as possible,' he said

The Court was placed under tremendous pressure after 400 000 squatters were placed under the jurisdiction of the Inanda magisterial area, he said

A dilipidated bench at the Verulam Magistrate's Court for members of the public waiting for attention at the court.

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Kearney released as Judge rules detention illegal

Mercury

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Court Reporter

MR PADDY Kearney, the director of Diakonia being held under Section 29 of the Internal Security Act, was released yesterday after a Durban judge declared his detention unlawful

Mr Justice Leon had also granted an application by Mr C Nicholson for the Archbishop of Durban, the Most Rev Denis Hurley, and Mr Kearney's wife, Miss Carmel Rickard, for an order putting his release into immediate effect.

Archbishop Hurley and Miss Rickard made the application for Mr Kearney's release last week.

The Judge said the case had raised matters of great constitutional importance which affected the liberty of the subject, the jurisdiction of the courts and the security of the State.

'It is necessary to remind oneself from time to time that the first and most sacred duty of a court when possible is to administer justice to those who seek it'

Mr Justice Leon said the issues in the case raised the important question of jurisdictional review of the administrator's action and to what extent intervention was prevented by legislation.

The police had relied on Clause (6) of Section 29 which stated that no court of law should have jurisdiction to challenge the validity of the detention of a person under this section

Under this section, a police officer can arrest and detain a person if he has reason to believe that he has committed, or intends to commit, an offence as defined in the section

The Judge said that in his opinion the grammatical meaning of the phrase was 'belief upon reason' which did not mean that 'he thinks he has reason to believe'.

He said, therefore, the police officer had to have a factual basis on which he based his belief

The Judge said he was satisfied that the Court was not precluded from investigating whether the necessary jurisdictional facts objectively existed

It was an often-neglected fact that the Supreme Court would exercise its inherent power to review in regard to excessive legislation

Declined

Archbishop Hurley and Miss Rickard had given detailed reasons for their statements that no reasonable man could have cause to believe that Mr Kearney could have withheld information from the police.

The Judge said Col I Coetzee of the Security Police had declined to furnish the facts upon which his belief was based, and had not even said when, where, and from whom the information was being withheld

Mr D Gordon SC, assisted by Mr Nicholson, instructed by Garlicke and Bousfield, appeared for Archbishop Hurley and Miss Rickard. Mr J Combrink SC, assisted by Mr R Hiemstra, appeared for the police.

A new vision of justice for students

STAR 252

A Free State Supreme Court ruling setting aside the expulsion of 17 students from the Tshiya Teachers' College in QwaQwa, was based on the principle of "natural justice" — the hearing of both sides of an issue. The ruling, writes reporter JO-ANNE COLLINGE, is being hailed as a precedent which could have far-reaching consequences in a climate where students often find themselves at loggerheads with the education authorities.

17/9/85

A Free State Supreme Court judge has held up a warning flag to education authorities who attempt to solve their discipline problems by summary dismissal of students.

Mr Justice R van Coller recently set aside the QwaQwa education authorities' withdrawal of registration of 17 students at the Tshiya Teachers' College on the grounds that the expelled students had not been granted an opportunity to present their case before action was taken against them

The judgment has been applauded by public interest lawyers, who say it may have far-reaching implications for students and teachers in a climate where protest is an almost daily occurrence on one or other campus in the country — and expulsion of students is frequently the sequel to such protest

Behind the judge's ruling that the students be reinstated was the idea that the rules of natural justice — which include hearing both sides of the issue — were applicable whenever disciplinary action was contemplated

The case arose from events at Tshiya College in March this year, when students expressed dissatisfaction with the students' council, demanded and were granted the right to elect a new one, and also sought to change the council's constitution

Classes were disrupted and although there was no violence, the rector decided to close the college a few days before the end of term Soon after the closure, parents of 17 students were advised in writing that the registration of their children had been withdrawn

"It is important to note that before the receipt of the letters none of the applicants had any idea that they were to be expelled," the students' lawyers argued

They submitted "It was a term of the students' contracts with the college that the rules of natural justice would apply in all the college's dealings with them

"These rules require that the college give them a fair hearing whenever any disciplinary action against any of them was contemplated or taken and that the college and its officers should act impartially, fairly, reasonably and without caprice and without wilful, arbitrary or improper motives"

The education authorities argued that the expulsion of the students should be seen as a cancellation of contract arising from a breach of the contract by the students

But the judge accepted the argument by Mr E Cameron, representing the students, that the Secretary of Education had acted in terms of section 9 of the QwaQwa Education Act of 1976 "Where the secretary exercises a statutory power the principles of natural justice are applicable unless they are excluded expressly or by necessary implication" In this case there was no such exclusion, the judge ruled

Mr Justice van Coller rejected the authorities' argument that the circumstances at the college were so tense as to make it impossible to give students a hearing before expelling them

"Even if it is accepted that conditions prevailing at the college were as the respondents indicate, the applicants could nevertheless have been given an opportunity to put their side of the case after the college had closed and the students had been sent home"

The Bloemfontein judgment negates one handed down by a full bench of the Ciskei Supreme Court earlier this year in respect of four Fort Hare University students who were excluded from the college for failing to attend lectures

Although statutory disciplinary procedures existed at Fort Hare, the fact that they were not followed was condoned by the court which accepted that the "expulsion" was not "punitive" or "disciplinary" at all — but purely a matter of cancellation of a contract because the students had materially breached it

Wits University law lecturer Mr Etienne Mureinik, writing recently in a law journal, accused the Ciskei judge, Mr Justice A C J Pickard, of playing fast and loose with words like "punitive" and "disciplinary" and ignoring both the tradition and temper of English law on the question of natural justice as it relates to contracts

DISPATCH 24/09/85 (252)

MPC on crimen injuria charge

Dispatch Correspondent

PORT ELIZABETH — The SA Police lieutenant who gave the order to shoot in Langa, Uitenhage on March 21 this year, told the regional court here yesterday that he had not read the findings of the Kannemeyer commission of inquiry into the shootings, which had claimed 20 lives

Lieut John William Fouche, who is station commander at Kirkwood, told Mr G Steyn, president of the regional court, that he was unaware that Mr Justice Kannemeyer had, in four instances, rejected his evidence at the inquiry

Lieut Fouche was giving evidence at the trial of Mrs Molly Blackburn, MPC for Walmer, and Dr Elizabeth May Thompson, a private practitioner from Paarl, who are charged with crimen injuria, in that they allegedly injured, insulted and impaired the dignity of Lieut Fouche by saying he was drunk, unfit to perform his duties and smelt of liquor at the Uitenhage charge office on March 17

They also face an alternative charge of defamation for allegedly making the same allegations in the presence of various people, including members of the press Mrs Blackburn and Dr Thompson have pleaded not guilty to both charges

Lieut Fouche said that on March 17 he had had a braai at his home after attending a church service and before going on duty at Uitenhage, where unrest was being experienced He had not drunk liquor at the braai, he said

He asked a Dr Nel to conduct tests on him for liquor, but the doctor had not taken a blood test "He told me I was sober"

The hearing continues today

Order against SAP assaults

E. Post 25/09/85 (252)

Court Reporter

MR JUSTICE EKSTEEN today granted an order in the Port Elizabeth Supreme Court restraining the South African Police from assaulting detainees at St Albans and North End prisons in PE and future detainees in the PE and Uitenhage magisterial districts.

The urgent application was brought by a Port Elizabeth district surgeon, Dr Wendy Orr, and 44 other applicants.

Dr Orr said in papers before the court that she believed there was an extensive pattern of police abuse on emergency detainees who were being "systematically" assaulted and abused after their arrest

She said detainees were being "brutally assaulted" under interrogation in Port Elizabeth and complaints were being made "on a vast scale"

Dr Orr said in her affidavit "What disturbs me most is that detainees are being taken out of my care for the purposes of interrogation and, during the course of interrogation, brutally assaulted"

She said detainees who complained of assaults almost always showed injuries consistent with their allegations

The applicants for an order restraining the police included relatives of detainees as well as the Rt Rev Bruce Evans, Anglican Bishop of Port Elizabeth, the Rev George Irvine, head of the Methodist Church in the Eastern Cape, and two clergymen who are former detainees

Because the police were acting under emergency regulations and apparently believed they enjoyed an immunity, some of them were "quite unrestrained" in abusing detainees, Dr Orr said

"The departments of Prisons and Health seem to me to have turned a blind eye," said Dr Orr.

Dr Orr said that since August 1 she had been responsible for detainees held at St Albans and North End prisons, obliged to examine them on admission and visit them regularly "There seems to me to be an extensive pattern of police abuse upon detainees," she said

Medical services in the prisons were unable to cope with the vast numbers of detainees who were not getting proper medical care, she said

It had become clear to her that complaints of police assault were not being investigated as they should be

She said she had received instructions not to endorse medical records requesting investigation of alleged assaults

Dr Orr, who started work as a district surgeon in January this year, said she had been involved on a daily basis examining men and women detainees

Having been instructed by her superior, the assistant district surgeon for Port Elizabeth, Dr Ivor Lang, to make copies of all admission cards of people complaining of assault, she extracted 286 for the period July 22 to September 16

These were incomplete and there had to have been more complaints than that, she said

"But even taking it at 286 the number of complaints is astronomical compared with the frequency of complaints of assault in prison normally received"

Dr Orr said that in 153 cases the injuries were such they could not have been inflicted lawfully.

In 60 cases the detainees had facial injuries, eight had perforated eardrums and 26 had weals and blisters consistent with quirt blows on "unusual" parts of their bodies

Seven had injuries consistent with an assault of a restrained victim, 48 had such a multiplicity of injuries they could not have been inflicted in a violent attempt to arrest a man or disperse a mob, and four detainees were not injured on their admission but were later found to have injuries consistent with assault.

The order declared that no member of the SAP enjoyed any immunity in terms of the emergency regulations against civil or criminal proceedings from any wilful assault perpetrated on a detainee held under the emergency regulations

The Prisons Department was instructed by the judge to read out the order to prisoners at the jails concerned

The application was not opposed

● See Page 2

Mr Wim Trengrove and Ms Amanda Rykman instructed by Cheadle, Thompson and Huyson, appeared for the applicants Mr H J Liebenberg, instructed by the Deputy State Attorney, appeared for the first six respondents

MPC's evidence in PE crimen injuria case

— Page 5

Stand on apartheid

— Page 3

Farmer's wife and sister stoned in bakkie

Post Focus

'Detention can scar for years'

E-Post 18/09/85 - (252)

By RUTH PITCHFORD in Johannesburg

BLACK leader Steve Biko's death in police custody eight years ago focused international concern on the physical dangers that civil rights groups say South African detainees face

But pyschiatrists here believe that many more dissidents may emerge from the cells bearing mental scars that may trouble them for years, however hard they try to ignore them

Biko, hero of the black consciousness movement, died on September 12, 1977 His inquest was told he was kept chained during lengthy police interrogation and was finally certified dead after being driven 1 200km, naked on the floor of a Land-Rover, to a Pretoria hospital

He was among 2 400 dissidents who were detained in the 14 months following riots which flared in Soweto in June, 1976

In the past eight weeks, more than 2 500 people have been detained in terms of the state of emergency clamped on 36 magisterial districts of South Africa Of these, more than 1 000 have been released

People have also been detained in terms of internal security laws as unrest has spread "There is currently an avalanche of security detentions taking place outside emergency areas," the Detainees' Parents Support Committee said last week

The DPSC says that since Biko, 12 people have died in detention and another 14 have died while in police custody on charges linked with political unrest

"We fear for the safety of those in detention," the DPSC said as the emergency powers were enforced "We fear, and predict, the inevitability of deaths in detention"

But many more detainees come out of jail with wounds that do not show, civil rights workers believe

A group of about eight mental health specialists is trying to track down some of the many detainees whom, they believe, leave prison anxious, depressed, irritable and emotionally distanced from family and friends — but afraid, suspicious or unaware of their need of psychiatric help

"We believe that everyone has got a breaking point," said a psychiatriast who works in the group "People become extremely sensitive to anything that reminds them of detention They develop insomnia

"What is classic is a nightmare, recreating some aspect of detention, which recurs every night

"Emotionally, there can often be a numbing, particularly when it concerns intimate emotions," said the psychiatrist, who cannot be named for professional reasons

The worst pressure is probably on detainees in solitary confinement, kept indefinitely, their only contact with warders and interrogators, suffering sensual deprivation through being constantly alone in a bare cell

A pyschologist who works for the group said memories of jail were likely to flood back uncontrollably and without warning to ex-detainees "They might suddenly start trembling or crying, or become very anxious"

But the psychiatrist said many tried to suppress their feelings and that too few were coming forward "There's a stigma about psychiatry and they think they're being weak," he said "There's a lot of macho thinking, particularly among people who are politically involved"

Many recent detainees were black pupils, who did not know such help existed, he said There were language barriers and distrust existed, heightened because of interrogation by white police

The group said detainees suffered in much the way that United States prisoners-of-war did in Korea and Vietnam and like hostages — such as passengers on hijacked airliners — suffered now

"We believe detention is at least as traumatic, and very often more stressful than the stresses affecting hostages," said the psychiatrist

"If people are isolated from the people who are important to them, they become dependent on their captors They are in a state of fear and physical exhaustion They are very vulnerable to changing their political beliefs" he said

Some Americans in Korea took part in propaganda broadcasts, to the horror of some in the United States who, ignorant of the concept of brainwashing, saw them as traitors

Black South African dissidents are more likely to return to their communities with their hatred of apartheid race laws intact — but deeply guilty, either for fear that they betrayed colleagues under interrogation, or because they feel they should not have been released while others are still held

The pyschologist said that local leaders among the hundreds held in the past few weeks might expect detention and be better prepared for it beforehand

But, she added "If someone is a leader, the conditions they are held under might be more extreme If the authorities are determined to get information and to break someone, they can do it" — Sapa-Reuter

Law group slams A-G's decision

Pietermaritzburg Bureau

MR MIKE Cowling, chairman of Lawyers for Human Rights, slammed a decision by the Attorney-General not to prosecute a Railway Police station commander who had refused to accept an official complaint from a woman that she had been 'tortured' by one of his constables.

Sgt Johann van Zyl of Donnybrook Railway Police Station was charged with trying to defeat the ends of justice after Mrs Sithekile Phoswa, 39, said she had been assaulted by Const Mabango Matamayi during questioning about selling beer at Bulwer Station.

According to Col Hannes Slabbert of the Railway Police, Durban, the Attorney-General had dropped the case against the sergeant in April 1984. No reasons were given for the decision.

Increased

Const Matamayi was found guilty in the Bulwer Magistrate's Court in August 1984 of assaulting Mrs Phoswa with intent to do grievous bodily harm and was fined R100 (or four months) conditionally suspended for three years.

The constable appealed against his sentence in the Supreme Court in Pietermaritzburg, where he failed to appear to argue his case and the matter was postponed until October 31 when, Mr Justice Didcott ruled, the policeman should show cause why his sentence should not be increased.

According to Court records, Sgt van Zyl said he had not believed the woman's accusations when she had tried to lodge a complaint because when she had been in custody he had not seen her in pain or injured.

Mr Cowling said he was surprised at the decision of the Attorney-General not to prosecute Sgt van Zyl in the light of the constable's conviction.

'The Magistrate accepted Mrs Phoswa's evidence, which should have created enough doubt that the sergeant could have tried to obstruct the course of justice when he claimed he did not believe her story about being assaulted,' he said.

Mr Cowling said the Attorney-General's role was not to judge the merits of allegations but where there was any 'suspicion' he should refer the case for trial and let the court decide.

Mr Cowling said: 'In this case the station commander should have no discretion about assessing the validity of the complaint when it concerns a serious allegation against one of his men.'

Deputy Attorney-General Mr H C Slabbert said it was the policy of the office of the Attorney-General not to give reasons in these matters.

Pressed

In evidence before a magistrate, Mrs Phoswa said the constable had blindfolded and handcuffed her and then pushed a pole between her arms and knees, which had been swung between two chairs so that she did not touch the floor.

She said she had lost consciousness from the pain when something had been pressed against various parts of her body. The woman had been in hospital for eight days and had shown her scars from the assault to the magistrate.

Const Matamayi was sentenced on August 30, 1984, and not last month as was reported in The Natal Mercury yesterday.

Assault interdict

'could lead to actions'

E Post 26/09/85

252

By DIRK VAN ZYL

IF the court interdict granted yesterday restraining police from assaulting detainees in Port Elizabeth and Uitenhage is upheld, it will overcome the indemnity of the police under the emergency regulations, opening the way for detainees to sue the police on grounds of alleged assault.

This is the opinion of Mr Clive Thompson, of Johannesburg, an instructing attorney in yesterday's application in the Port Elizabeth Supreme Court

Mr Justice Eksteen granted an interim order restraining the South African Police from assaulting detainees at St Albans and North End prisons in PE, and future detainees in the PE and Uitenhage magisterial districts

The interdict has been welcomed by civil rights experts as a possible landmark with national implications

The urgent application was brought by a PE district surgeon, Dr Wendy Orr, and 44 other applicants.

Dr Orr said in papers before the court that she believed there was an extensive pattern of police abuse on detainees They were being "systematically" assaulted and abused after their arrest, she said.

Mr Justice Eksteen's order declared that no member of the SAP enjoyed any immunity in terms of the emergency regulations against civil or criminal proceedings from any wilful assault perpetrated on a detainee held under the emergency regulations

The judge granted a *rule nisi* returnable on November 26

The national chairman of Lawyers for Human Rights, Mr Jules Browde, SC, said although the interdict applied only in the PE-Uitenhage region, it would have "persuasive authority" throughout the country in granting orders in similar cases

He hoped the interdict would lead to regular visits by judges — hopefully in every Supreme Court division — with judges taking turns to visit these prisons regularly and with visits applying to all detainees.

The veteran PFP human rights campaigner, Mrs Helen Suzman, MP for Houghton, called for an independent inquiry into allegations of police torture She said the judgment was a "serious reflection on the manner in which the police were abusing their authority".

Mrs Suzman called on the Minister of Justice, Mr Kobie Coetsee, and the Commissioner of Police, General Johan Coetzee, to carry out an undertaking they had given to the PFP two weeks ago "that serious steps would be taken against police found abusing their power"

Professor John Dugard, director of the Centre for Applied Legal Studies at the University of the Witwatersrand, said the interdict indicated the need for judicial intervention to put an end to widespread substantiated allegations of police torture and brutality

He said it was the first time an interdict had been granted in respect of so many detainees and unnamed detainees He hoped it would have an impact beyond Port Elizabeth

The Detainees Parents' Support Committee also welcomed the judgment A spokesman said he hoped other district surgeons would follow the "courageous step" taken by Dr Orr and come forward with details of alleged abuses in other areas

A police spokesman in Pretoria declined to comment on the judgment.

● Editorial comment — Page 10

Dr WENDY ORR, who made the allegations of p detainees in an affidavit before the Port Elizabeth yesterday.

Minister awaits interdict report

PRETORIA — The Minister of Law and Order, Mr Louis le Grange, was today awaiting a report on the circumstances leading to the granting of an interdict restraining police in the Port Elizabeth area from assaulting detainees, according to a spokesman for the minister

An urgent order granted yesterday in the Port Elizabeth Supreme Court by Mr Justice Eksteen interdicted police from assaulting or threatening assault on detainees held under the emergency regulations in Port Elizabeth or Uitenhage.

The order also directed the Minister of Law and Order, the SA Police divisional commissioner, the district commandants and several station commanders in the area to "take all reasonable steps within their power to prevent any member of the SAP from perpetrating such assaults or making such threats "

The order has to be read out by the prisons authorities to detainees being held at the St Albans and North End prisons

A Prisons spokesman in Pretoria said the Prisons Services would inform detainees of the court order — Sapa

Cape Times 27/9/85

'One complaint' for PE judge

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Own Correspondent

PORT ELIZABETH. — The Judge-President of the Eastern Cape, Mr Justice Cloete, said yesterday judges of his division had seen hundreds of detainees under the emergency regulations and he personally had had only one complaint of an assault

The other judges reported confidentially to the Minister of Justice, Mr Coetzee, and he could not speak on their findings, he said

Mr Justice Cloete said he was responding to a statement by Professor John Dugard, of the University of the Witwatersrand, who said it was unclear whether judges were entitled to visit detainees held under the Internal Security Act and that most would take the view that they were "not State officials"

The Judge-President said all had taken an oath which had the effect of making them officers of the State

Mr Justice Cloete said that for decades it had been the practice for judges in his division to make frequent unannounced visits to all jails within the circuits in the Eastern Cape every time they went on circuit

Mr Justice Kannemeyer and Mr Justice Zietsman had since August 16 visited St Albans and North End prisons in Port Elizabeth and he himself had visited St Albans Prison and, on Saturday, Middelburg Prison

At Middelburg six prisoners had asked to see him All had had good reason to do so, but none had complained of assaults.

Only once was he approached by a prisoner who complained of an assault. The man, who had been in prison two days, told him he had been whipped He said he had invited the man to show him his injuries in private, but the man said he had no injuries to show

Mr Justice Cloete said his statement was not intended to have any bearing on an application concerning treatment of detainees brought before the Supreme Court in Port Elizabeth this week.

It would be improper to comment on a pending case, he said

CAPE TIMES 30/9/85

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Ban on meeting in open 'invalid'

By BARRY STREEK

THE government's ban on open-air meetings, which was imposed in March 1984 and reimposed in March 1985, may not be legally valid

This follows a far-reaching judgment of a full bench of the Transvaal Supreme Court in Pretoria

In a majority judgment, handed down by Mr Justice C F Eloff, the court ruled that the proclamation banning open-air meetings "fails to reveal a degree of reasonable lucidity" and was therefore invalid

In doing so, the court upheld a ruling in Pretoria Regional Court dismissing charges against Mr Johnson Mahlangu and 23 other people of attending or enouraging or promoting an open-air meeting in contravention of the ban

A lawyer said yesterday that the court ruling applied to open-air meetings in general, but did not apply to bans on specific meetings, such as those prohibiting meetings supporting school boycotts or work stayaways, nor the bans imposed on specific organizations or those gazetted in particular areas

In the Pretoria case, the accuseds' lawyers argued that the prohibition, signed by the Minister of Law and Order, Mr Louis le Grange, was ultra vires as well as vague and uncertain

Mr Justice Eloff said the minister should have made his meaning clear in the notice prohibiting open-air meetings

Court told of SAP assault

(252) 30/09/85 E-POST

Court Reporter

A YOUTH told the Port Elizabeth Regional Court today that "Miss Molly" came into a police office where he was being assaulted and wiped the blood off his face.

Before the court were two policemen, Detective Constable Grey Simanga and Detective Constable Alfred Lubenga, charged with assaulting 18-year-old Mr Sandile Norman Kona with intent to do grievous bodily harm at Uitenhage on March 17 this year

The case arises out of a complaint lodged by Mrs Molly Blackburn, MPC, about an alleged incident at the Uitenhage police station that day

The two men pleaded not guilty and denied the allegations against them

Mr Kona said during March he was arrested on a charge of arson As a condition of bail he had to report daily to the Uitenhage charge office

On Sunday, March 17, he went with his sister to report at about 9am His sister was told to leave and he was told to wait

He was taken to an office where Mr Simanga accused him of swearing at him on January 16 He denied this and said he was in custody that day

He was locked in a van for about 30 minutes and taken back to the office, where Mr Simanga hit him on the head with a bunch of keys, clouted him and hit him on the body with fists He was also kicked

His hands were handcuffed behind his back and he was hit with a broomstick about the face and body until the stick broke

Mr Simanga then took a sjambok and beat him

At this stage Mr Lubenga appeared The two alleged that Mr Kona was the "dog" involved in a burning case

Mr Lubenga then kicked him and hit him and bashed him against a wall He was kicked in the stomach and clouted

He was then fastened to a table leg with handcuffs and his feet were pulled

At that stage Mr Simanga also kicked him in the stomach and twice in the face

He was being held face down and assaulted with the sjambok when "Miss Molly" appeared She was with other white women

"Miss Molly" was shocked when she saw what was happening The two assailants left the ofice and "Miss Molly" wiped the blood off his nose and mouth with a handkerchief

Another detective then undid the cuffs and took him to a different office where he was locked up the whole day

At about 7pm, police officers came into the room and he was taken to a doctor for examination

After seeing the doctor he was taken to offices in Church Street and asked if he wished to make a statement When he said he did not want to make a statement until he had seen his parents, he was threatened

Afraid, in pain and wanting to be released, he made a statement but did not tell everything that happened He and others were then released He made a statement the following day to "Miss Molly"

Proceeding

Mr C J R Naude was on the Bench Mr J L Venter appeared for the State and Mr G Huisamen for the defence

Tackies, jeans and overalls — anything goes for the litigants

2/10/85 (252) STAR

Small Claims Courts open

By Joe Openshaw

South Africa's Small Claims Courts will be informal night courts similar to the one presided over by youthful and unconventional Judge Harry Anderson in the TV series "Night Court"

Dress for the public and litigants will be casual — open-neck shirts, jeans, overalls and running shoes being *de rigeur* — but the commissioner of proceedings will, like Judge Anderson, be robed

SMALL CLAIMS COURT
HOF VIR KLEIN EISE

P O Box 937
Posbus
SPRINGS
1560

Tel 812-1425/6

Enquiries Mrs E Lowe
Navrae Mev

The Small Claims Courts will sit between 6 pm and 8 pm and claimants and defendants of all races will represent themselves in a relaxed atmosphere where occasional outbursts from ruffled litigants and audible asides from the appreciative gallery will be inevitable

The commissoner will tend to be indulgent with, and helpful to, contesting parties and the amount in dispute limited to R1 000

Small Claims Courts opened for business in Pretoria, Springs, Rustenburg, Bloemfontein, Durban, Maritzburg and Port Elizabeth yesterday but the first cases will not be heard until the end of the month

In Springs, claimants were interviewed by Mrs E Lowe, clerk of the Small Claims Court, between 1 pm and 6 pm yesterday

Mr Anton Kilian, a Springs lawyer and secretary of the Springs Small Claims Court, said there have been hundreds of inquiries from prospective claimants and two letters of demand have already been sent out

PROCEDURE

He said the Small Claims Court will sit at first on Wednesday and Thursday evenings in the old Methodist Church building in Sixth Avenue next door to the new library

He explained the procedure for entering a claim

The claimant will be interviewed by the clerk of the court or a legal assistant and, if the claim is considered legitimate, a letter of demand will be sent to the defendant allowing 14 days for settlement

SUMMONSED

If the defendant does not respond in time he or she will be summonsed and given a further 10 days to comply or be given notice to appear in court and answer the claim

"The claimant can avoid all legal costs involved in service of documents by posting the letter of demand himself and serving summons himself

"If the claimant decides for some reason he does not want to serve summons personally, summons will be served through the messenger of the court at a cost of about R10," said Mr Kilian

He said the first cases in Springs will be heard by Mr Ignatius Bredenkamp, chairman of the Springs Small Claims Court, who will act as commissioner

The panel of commissioners who will hear cases has not yet been announced but they will be local attorneys with not less than seven years in practice

Two temporary legal assistants for Springs will be Mrs M du Preez and Mr I Munnick

The clerk of the court can be telephoned at 812-1425 or seen between 1 pm and 5 pm on weekdays on the second floor, Wima Court, corner of Fourth Street and Fifth Avenue, Springs

Mr Anton Kilian, secretary of the court, says there have been hundreds of inquiries

Mr Kilian discusses first claims with the clerk of the Small Claims Court, Mrs E Lowe

CAPE TIMES 2/10/85 (252)

'People's courts' bring down cost of justice

PRETORIA — Civil litigation for sums up to a maximum of R1 000 came within easy reach of the man in the street yesterday when Small Claims Courts, popularly dubbed "people's courts", started operations in seven centres of the Republic.

The prohibitive cost of civil court cases to the average citizen was one of the major concerns of the Hoexter Commission of Inquiry into the country's legal system and legislation providing for the Small Claims Courts was unanimously approved in Parliament last year.

The first seven "people's courts" opened yesterday in Bloemfontein, Durban, Maritzburg, Pretoria, Port Elizabeth, Rustenburg and Springs. According to the Minister of Justice, Mr Kobie Coetsee, it is intended to set up a Small Claims Court in every major centre

In a statement in Pretoria yesterday, he said local advisory boards involved with establishing the courts had been set up in each of the seven districts, and that these would announce further details locally about the courts.

The department has also issued an information brochure to tell people what the most important steps to be taken are when they want to institute a claim in the new courts.

With the specific aim of cutting costs, neither plaintiff nor respondent may have legal representation in court, although they may obtain prior advice at their own cost, and many of the normal procedures, such as issuing a summons and arranging for witnesses to be present, are carried out in person.

Court procedures are simple and informal, with opposing parties presenting their cases and witnesses to the commissioner before judgment is passed.

The only possible order for costs a court can make against a person can be that of fees for the Messenger of the Court the opposing party may have had, if the judgment is in favour of that party — Sapa

Commission proposes significant changes to marital laws

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Better deal for black women

21/10/85 STAR

By San Vivier

The legal position of black women in South Africa will be substantially improved if proposals by the Law Commission are accepted

In a "working paper" on marriages and customary unions, the commission has sought to bring these institutions "in line with modern needs and realities"

The commission recommended that

- Customary marriages be recognised as a marriage — this will mean that partners will enjoy the status of husband and wife and their children will be legitimate
- Customary law consequences of marriage be changed to enable a wife to acquire and dispose of property in her own name
- A widow of a customary marriage should have the same rights as a widow of a common-law marriage
- "Guardianship" of a woman who has attained the age of majority be abolished
- A woman should not need consent to marry, unless she is a minor

In this regard the commission says "It is felt that the time is ripe for the abolition of the customary law rule that a woman is always under the guardianship of a male person, and that such guardian's consent must be obtained before the woman can conclude a valid customary marriage even where the woman has reached the age of majority"

In regard to civil marriages, the commission said the advantages of the recent reform of marriage laws for other race groups had to be extended to blacks

In the case of common-law marriages, it recommended that

- Marital power be abolished
- The accrual system be applicable unless excluded by antenuptial contract
- Couples already married be given a chance to change their property system
- Courts be given power to overrule an unfair property division on divorce in the case of marriages out of community of property

Contrary to some other African countries it was decided not to ban black traditions such as polygamy and lobola

"The prohibition of polygamy would change the nature of the customary marriage materially and such a step would be regarded by blacks as undue interference with an institution which is part of their cultural heritage

"In line with the committee's approach of changing customary law only in so far as it appears absolutely necessary, it is suggested that the customary marriage should be recognised as a marriage despite its polygamous nature," the report said

But the commission has suggested a customary marriage should be properly dissolved before a spouse of such a marriage may marry by common law.

The customary agreement that lobola be delivered has been embodied in the proposed Bill The relevant clause is phrased in such a way that "it will not prejudice anyone's right to claim lobola in respect of a customary marriage"

The commission has called for comment on the proposals The working paper is available free of charge Correspondence should be addressed to The Secretary, South African Law Commission, Private Bag X668, Pretoria Telephone (012) 26-1121

LEGAL HELP the legal position of black South African women will be substantially improved if proposals by the Law Commission are accepted

Many blacks prefer traditional marriage

Own Correspondent

In spite of urbanisation and a Western lifestyle, many blacks still prefer the traditional marriage system, various studies have found

A Human Sciences Research Council survey shows that more than half of black marriages are customary unions — and thus not recognised by law.

In another study, 95 percent of blacks indicated that they had given lobola And it is estimated that 31 percent of blacks still practise polygamy

In answering a question on polygamy, 65 percent felt that it should be abolished — but the objection to polygamy was based on the present socio-economic climate, rather than morally founded.

The main reason given by those who favoured the abolition of polygamy was that a man was unable to maintain and educate a large family The housing shortage also prevented a man from establishing a home for more than one wife.

Those who favoured the retention of polygamy felt that it was an old tradition among blacks It was also argued that it reduced the number of unmarried women and fatherless children

Some felt that, as long as the women were legally protected, a second wife was preferable to an extra-marital relationship.

They also felt that a customary marriage was necessary to maintain the respect of their community. The system also ensured the respect of the in-laws and acceptance by them

The main reasons for entering into a common-law marriage were to ensure legal certainty and recognition of their marital status

The HSRC survey found that young, urban and educated blacks still favoured traditional marriage

"From the kinds of occupation, such as doctors, teachers, clerks, bookkeepers, salesmen and builders, it would appear that blacks are living very much in contact with the Western culture, yet they refuse to relinquish the traditional customary marriage system," it says

"The fact that the majority of respondents preferred to conclude a customary marriage indicates that customary marriages ought to be legally recognised since the information obtained from the survey does not support the view that customary marriages have fallen into (disuse) in urban areas."

Recommendations accepted

Black women leaders from three provinces who met in Pretoria at the weekend unanimously accepted in principle the Law Commission's working paper recommendations on black marriages

In a statement issued after their meeting at the Women's Bureau headquarters, they stressed the need for speedy reform and for urgency in disseminating and explaining the proposals to the black community

"We would like to ensure that our own views on the proposals are put forward to the Law Commision and that the views of non-black invididuals and institutions should not be put forward as being representative of the black community unless this is in fact the position," they said — Sapa

Law and Order judge appalls

Own Correspondent

DURBAN. — There was a strong suggestion that there was a lack of communication and co-operation between the Minister of Law and Order and subordinate members of his department, a Durban judge said yesterday

Mr Justice Law was dealing with an application interdicting police from assaulting 15-year-old Eugene Vusi Dlamini, who was detained under the Internal Security Act on August 27

The judge said that after an order made on September 6, Eugene had been interviewed by a magistrate who had taken a sworn statement from him.

No consent

The court had also been furnished with comprehensive medical reports

The judge said that when the matter was called, Mr C Schoeman, who appeared for the Minister of Law and Order, Mr Louis le Grange, and the police, had applied for the case to be adjourned for three weeks

Mr Schoeman had said that the matter had been settled on the basis that the respondents consented to the confirmation of the rule

However, the settlement had been effected without the knowledge or consent of the Minister of Law and Order who apparently first heard about the application and its purported settlement on Thursday

Mr Schoeman had been instructed by the minister that he was totally opposed to matters such as this being settled without a proper ventilation of the issues

The judge said that in his view the attitude adopted by the minister was right and proper

"However, the facts which the minister has placed before the court disclose an alarming and deplorable state of affairs"

The judge said he was appalled that a court order such as the one obtained by the applicant on September 6 should not have been brought to the attention of the minister until the day before the extended return date of the rule nisi

'Appalled'

"I am equally appalled that anyone other than the minister could purport to settle legal proceedings based upon such serious allegations without the proceedings even having been brought to the attention of the minister"

The judge said that a similar application, the case of E Nair versus the Minister of Law and Order and the Commissioner of Police, was resolved on September 30 on the same basis.

However, the minister had instructed Mr Schoeman that he had not consented to that settlement either.

"The minister's lack of information concerning these applications and their settlements strongly suggests there is a lack of communication and co-operation between him and the subordinate members of his department."

The judge said the detainee's mother had made out a strong prima facie case that the detainee had been severely assaulted

He adjourned the hearing to October 25 and extended the rule nisi granted on September 6 to that date The detainee would not be prejudiced by the adjournment Mr Schoeman had informed him that the detainee was now an ordinary awaiting-trial prisoner in a case of public violence

Senior magistrate Mr K Templeton testified in papers before the court that he had visited Eugene on September 18 at Shifa Hospital and taken a sworn statement.

Allegations in the sworn statement included that he had been punched in the stomach until he lost consciousness and that he had been kicked and punched by six white men in C R Swart Square, Durban

Breakdown

He also alleged they had seated him on a chair, blindfolded him, tied his hands and legs, and poured water over his head and then over his feet. He had felt he was being shocked

A medical report said the detainee had a perforated left eardrum and a swelling at the base of his tongue.

A psychiatrist's report said the detainee was "very ill-looking", in extreme fear and psychiatrically totally unfit to be interrogated further by security police. He would suffer permanent mental breakdown if this continued.

Magistrates quit to avoid 'political trials'

Mr Eshaam Palmer

By RENEE MOODIE

TWO Athlone magistrates with strong religious convictions have revealed that they resigned from the Bench to avoid presiding over unrest-related trials

Speaking out on the reasons for their resignations for the first time this week, Mr Eshaam Palmer, who with Mrs Pam Sickle handed in his resignation from the Department of Justice at the end of August, told the Cape Times that their resignations stemmed from the current unrest and their unwillingness to be called on to preside over unrest-related trials

The two had previously been unable to discuss their resignations publicly as they were still public servants

Mrs Sickle declined to participate in the interview, but said that Mr Palmer could speak for both of them

Interviewed at his Charlesville home, Mr Palmer said "Although we would not have been forced to do political trials, when the unrest started and people were being arrested we knew there would be political trials We did not want to be put in the position of having either to refuse to do them or to do them

"Pam is a committed Christian and I am a Muslim and we felt on religious grounds we had to identify with the ordinary people We come from the community and we go back to it Our consciences would not allow us to be part of the system in times like this"

He and Mrs Sickle had not had to preside over any political cases before they left "In fact, there was a long shot we might never have had to, but we did not want to take the chance"

Asked if they had experienced any pressure from the community to resign, he said they had not, but added "I think we got out just in time"

Mr Palmer said he had been in the public service for 15 years, having worked his way up from being a clerk. He completed most of his studies through correspondence, although he also obtained a diploma from the Peninsula Technikon

His initial reason for becoming a magistrate was that it was a field as yet unexplored by "so-called coloured people"

"In fact, Pam was the first 'coloured' magistrate in the Republic and I was the second Now that we have resigned there are no coloured magistrates"

Mrs Sickle studied at the University of the Western Cape, and started work as a prosecutor She became a magistrate in December 1983, while Mr Palmer was appointed to the Bench in November last year

Mr Palmer said he and Mrs Sickle would be serving articles to go into private practice as attorneys "We will be taking dramatic cuts in salaries," said Mr Palmer, who is married and has two sons Mrs Sickle has one son

Mr Palmer said both of them had received tremendous support from their families and from legal colleagues in private practice He said he did not know what other magistrates and prosecutors felt as he had not discussed it with them

His resignation had been a difficult decision

"I loved my work as a magistrate, but now I have chosen a new career. We are both still young, and that helps."

'Minister not informed'

● FROM PAGE 1

the applicants

If it transpired that they were spurious, the application should be resisted, but if the investigation revealed the allegations were well founded, this should be admitted and the application should be conceded

The Judge said that in his view the attitude adopted by the minister was right and proper and what one would expect from a responsible minister of State.

'I have no fault to find with that attitude However, the facts which the minister had placed before the Court disclosed an alarming and deplorable state of affairs

'I am appalled that a court order of the nature of the one obtained by the applicant on September 6 should not have been brought to the attention of the minister until the day before the extended return date of the rule nisi

'I am equally appalled that anyone other than the minister could purport to settle legal proceedings based upon such serious allegations without the proceedings even having been brought to the attention of the responsible minister'

He said a similar application in which the minister was again a party had been resolved on September 30 on the same basis as the purported settlement in this matter

This application concerned the case of E Nair versus the Minister of Law and Order and the Commissioner of S A Police

The minister had instructed Mr Schoeman that he had not consented to that settlement either

'The Minister's lack of information concerning these applications and their settlements strongly suggests there is a lack of communication and co-operation between him and the subordinate members of his department,' Mr Justice Law said

Welcomed

'That these subordinates were prepared to agree to consummation of the rule in the Nair matter and in this case, albeit coupled with a denial that the detainee had been assaulted, smacks of a desire to prevent the thorough ventilation of the alleged police assault

'Accordingly, the sentiments expressed by the minister are to be welcomed

'In my view it is highly desirable that the allegations of torture and brutality made not only in this case but in all others should be assiduously investigated

Strong case

'It is equally desirable that if such allegations are established those responsible should be brought to book for their actions

'In this regard the minister might be well advised to give serious consideration to allowing members of the judiciary regular access to persons detained under the Internal Security Act and to cause steps to be taken to ensure that in cases of this nature detainees are brought before the courts to testify themselves'

The Judge said that in her affidavit, the detainee's mother had made out a strong prima facie case that the detainee had been assaulted by members of the security branch while in detention

He adjourned the hearing to October 25 and extended the rule nisi regarding assaults, granted on September 6, to that date

He said the detainee would not be prejudiced by the matter being adjourned

Mr Schoeman had informed him that the detainee was no longer in detention under Section 2(c) 9 He was now an ordinary awaiting-trial prisoner in a case of public violence in which he was one of the accused

In affidavits before the Court it was stated that a senior magistrate, Mr K Templeton, had visited the detainee on September 18 at Shifa hospital.

The detainee had stated that while in detention his face and mouth had been covered with a piece of tube He had been punched in the stomach with clenched fists He had lost consciousness.

A medical report said that examination of the detainee showed he had a perforated left ear drum and there was a swelling at the base of his tongue

A psychiatrist's report had said the detainee was very 'ill-looking' and in extreme fear.

He had kept repeating the police were going to torture him and had kept begging that he must not be sent back to the Security Police.

The report had said that psychiatrically the detainee was totally unfit to be interrogated further by the security police

He had needed psychi-

Cape Times 9/10/85

Buthelezi attacks ANC, praises courts

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GENEVA — Chief Mangosuthu Buthelezi yesterday paid tribute to South Africa's judges and said in the "worsening situation" courts would increasingly spotlight what was going on in the country

The KwaZulu Chief Minister told Dr Niall Macdermot, secretary-general of the International Commission of Jurists, thousands of people had been arrested recently and everywhere there were reports of police brutality

The courts administered obnoxious laws, but the judicial process itself had to a large extent remained untainted and uncorrupted, he said

Chief Buthelezi blamed the new constitution, which excluded blacks from parliamentary participation, for deepening black anger, and for promoting political violence

It was in this climate that the banned African National Congress was "capitalizing on mob behaviour"

"They have unleashed everything at their disposal to set blacks on a killing path They exhort our youth, in weekly broadcasts on so-called Radio Freedom, to make South Africa ungovernable through the employment of violence"

Chief Mangosuthu Buthelezi

Chief Buthelezi said South Africa was now entering a crucial phase in the struggle against apartheid There had never before been such determination by black South Africans to say, "enough is enough" and to begin acting on their convictions

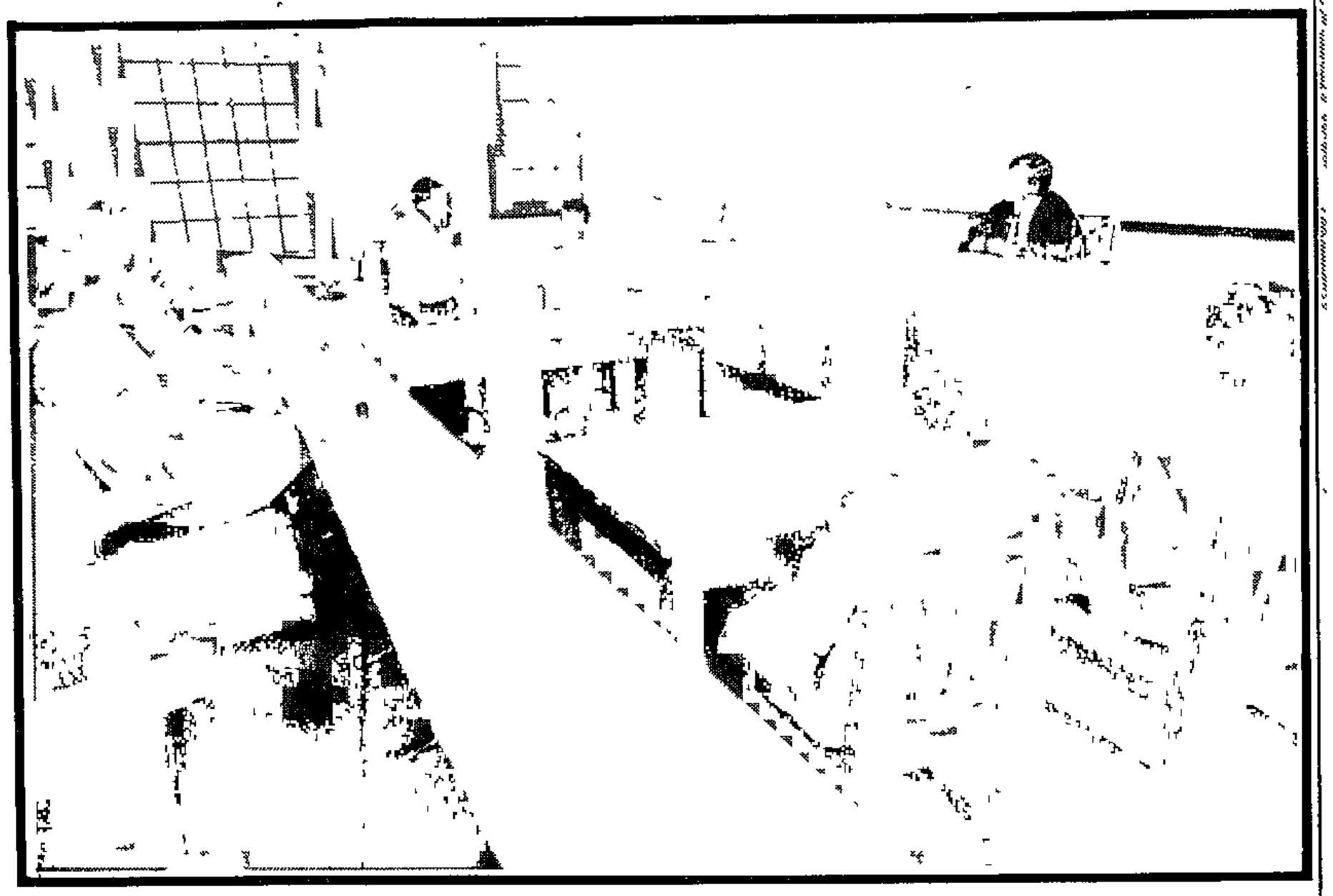
"Inkatha's commitment to radical change, and its adamant refusal to participate in the new constitution or in any of its support structures at first and second level of government, is broadening its base daily," he said — Sapa

This is how Durban's Small Claims Court will work

(252)

Everyman's court of law

Mercury 10/10/85



The Small Claims Court will sit in the moot court at Howard College, University of Natal, Durban, where the first case will probably be heard on October 28. DEBBIE REYNOLDS explains the step-by-step procedure to be followed by anyone taking a case to the court.

PAUL lent his friend John R500 on condition that John paid it back within three months

Six months later Paul was still waiting for his money and John had become more and more evasive Paul finally tracked John down and made him promise to pay the money after he had received his salary

John again failed to pay his debt and Paul feared he would never get the money back because he did not have the funds to get legal assistance

But then he heard that Durban was to get a Small Claims Court which would deal with claims under R1 000 but excluding actions for defamation or sentimental damages

Paul went to the Legal Aid Clinic in Howard College building at the Durban campus of the University of Natal There he met the clerk of the court, Miss Deanne Collins, who explained the Small Claims Court procedure to him

□ □ □

Here is what Paul has to do to bring his action to the newly established Small Claims Court

● First he has to write (or type) a letter of demand to John briefly setting out his complaint and telling him that he has 14 days in which to settle the claim He also has to tell John that if he fails to pay the R500 within this time he will be issued with a summons to appear in the Small Claims Court

Paul can then serve the letter personally, in which case he has to get a receipt from John as proof that the letter has been served, or he can send it by registered post and keep the slip

If Paul needs help in writing the letter he can go to the Legal Aid Clinic where either Miss Collins or other legal assistants (University law students or articled clerks) will help him They are on duty from 3pm to 6pm Mondays to Fridays

If he is relatively poor and single and earning less than R400 a month and R100 for each child, or if he is married and earns less than R800 and R100 for each child (in the case of a married man with two children — R1 000 per month), then he can go to the Legal Aid Clinic at the Legal Resources Centre in St Andrews Street on a Saturday morning between 9 am and noon

● If after 14 days John has not paid the R500, Paul can go to the Legal Aid Clinic at the University between 3 pm and 6 pm on any weekday taking proof that he had served the letter of demand (either the which John has to sign saying he has received it Otherwise Paul could ask a messenger of the court to serve the summons This will cost about R8 and if Paul wins his case he can claim the cost from John

The summons states that if John does not pay the R500 within 10 days he will be required to appear in the Small Claims Court on a certain date The date will be entered on the court roll

If John does settle the debt Paul must phone Miss Collins (816 2446) and she will cancel the hearing

● If John does not settle he will have to appear in court The Small Claims Court sits in the moot court on the second floor of Howard College Building at the University between 5 and 9 pm Mondays to Fridays and is open to the public

□ □ □

Court procedures are informal and simple but Paul and John will be required to wear at least 'smart casual' dress — in other words, no shorts or similar gear

Paul and John may both bring witnesses (but will have to bear their own costs) and any documents relating to the claim If John is going to defend the action he can give a written statement of his defence to Miss Collins before the hearing or he can just arrive on the date set down and give his defence to the court

Paul and John must report to Miss Collins at least half an hour before the appointed session of the court

The judge will be a commissioner who will be an advocate, attorney or academic with practical experience who has been appointed by the Minister of Justice

In Durban there will be about 30 commissioners who have all offered their services free of charge

The commissioner will be addressed as Mr Commissioner and he plays an active part in the proceedings questions to ask each other they can be directed through the commissioner

If either Paul or John do not speak one of the official languages they will be required to bring an interpreter who will be sworn in by the commissioner

The moment the commissioner thinks he has enough evidence he can close the proceedings and give his judgement He will probably do it immediately or he might call a short recess

● If the commissioner finds that John has to pay Paul his R500 he will order him to pay it in full immediately or in installments — provided Paul agrees

If there is a disagreement the commissioner will take John and Paul into a private room where he will examine John's income and set a reasonable payment

● If John still fails to pay the R500 in terms of the judgement then Paul should get a warrant of execution and a copy of the judgement and go to a messenger of the court The messenger of the court is then able to attach John's movable or immovable property and if he still does not pay, his property will be sold and the funds paid to Paul

● No appeal can be filed against the judgement or order of the court but the court proceedings can be referred to the Supreme Court for review on three grounds only — lack of jurisdiction by the court, interest in the cause, bias, malice or corruption by the commissioner, gross irregularity with regard to proceedings

□ □ □

Professor D J McQuoid-Mason, Dean of the Faculty of Law at Natal University, Durban, said three summonses had already been issued by Miss Collins and the first case was expected to be heard on October 28

Some of the claims that have been dealt with so far are

● People trying to reclaim money they have lent

● A domestic worker who was dismissed without notice

● A man who is seeking payment from the municipality because he damaged his suit falling down a hole in the road

'The response has been very good and we have had

Proposed Bill will scrap 'black courts'

(252)

STAR 22/10/85

Pretoria Bureau

The Department of Justice today unveiled an amending Bill which will effectively scrap a number of the so-called "black courts", putting black justice-seekers on a par with those of other races in the law's eyes.

The department also announced proposed amendments to the Criminal Procedures Act which will more clearly define the handing down of community service as punishment

A spokesman for the department said today that, in line with the recommendations of the Hoexter Commission, certain special courts for blacks, including commissioners' courts, children's courts and maintenance courts, would fall away Their functions would be carried out by ordinary courts

The commissioners' courts dealt with cases of people who fell foul of pass laws

The Hoexter Commission, he said, had recommended these special courts be amalgamated with the ordinary courts under the administrative responsibility of the Minister of Justice

The Special Courts for Blacks Abolition Bill had therefore been drawn up and published It would be referred to a standing committee of Parliament, the spokesman said

However, he said, the courts of chiefs and headmen would remain intact in line with the Hoexter Commission recommendations.

The black divorce courts would also continue to operate until the final go-ahead had been given for family courts, currently in the pipeline.

The new Criminal Procedures Amendment Bill had resulted from departmental research into the matter of community service, he said.

The amending legislation, he said, clearly defined community service and laid down that a minimum of 50 hours and a maxiumum of 500 hours' service could be handed out The new minimum age limit was set at 15

ARGUS 22/10/85 (252)

Bill seeks to phase out 'black courts'

Argus Correspondent

PRETORIA. — The Department of Justice today unveiled an amending Bill which will effectively scrap a number of the so-called "black courts", putting black justice-seekers on a par with those of other races in the law's eyes

The department also announced proposed amendments to the Criminal Procedures Act which will more clearly define the handing down of community service as punishment

A spokesman for the department said today that in line with the recommendations of the Hoexter Commission, certain special courts for blacks — including the commissioners courts, childrens courts and maintenance courts — would fall away Their functions would be carried out by the ordinary courts.

RECOMMENDATIONS

The Special Courts for Blacks Abolition Bill had therefore been drawn up and published and it would now be referred to a standing committee of Parliament, the spokesman said

However, he said the courts of chiefs and headmen would remain intact in line with the Hoexter Commission's recommendations .

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Turning to the new Criminal Procedures Amendment Bill, the spokesman said this was the result of departmental research into the matter of community service The amending legislation clearly defined community service and laid down that a minimum of 50 hours and a maxiumum of 500 hours community service could be handed out The new minimum age limit for community service was 15

Black courts for scrapheap

By Sue Leeman, Pretoria Bureau

23/10/85 252

Members of the legal fraternity have welcomed yesterday's announcement by the Department of Justice that a number of the so-called black courts are to be relegated to the scrapheap STAR

The department's director of legislation, Mr Deon Rudman, said that in future the functions of the commissioners' courts, as well as the black maintenance and children's courts, would be performed by ordinary courts. This was in line with the recommendations of the Hoexter Commission

However, the courts of chiefs and headmen were cultural institutions and would remain intact, as would the black divorce courts The latter would continue to operate until the final go-ahead had been given for family courts

Mr Rudman added that in future the courts would be able to take judicial notice of black law and custom without, as in the past, the requirement of proof.

A draft Bill entitled the "Special Courts for Blacks Abolition Bill" had been drawn up and would be forwarded to a standing committee of Parliament It would most probably come before Parliament itself at the next session

The president of the Transvaal Law Society, Mr Edward Southey, said the move was a step in the right direction

Although there would be no real concrete benefits for the black justice-seeker in terms of a better type of justice, the new legislation did go some way towards ending discrimination

In the past, when one black man wanted to take another to court, they had to approach a different authority from everyone else and this had been keenly felt by black people, Mr Southey said

Professor Francis Bosman, editor of the attorneys' journal *De Rebus*, said the new legislation was exciting in that it took the recommendations of the Hoexter Commission one step further

Bill could cut prison population

Pretoria Bureau

The Department of Justice has announced legislation which effectively tightens up on the sentencing of offenders to corporal punishment

It has also revised regulations governing community service in sentencing

The department's director of legislation, Mr Deon Rudman, said it was hoped the courts would opt more for these punishments, which would keep down the prison population

There has been much criticism levelled at the department for overcrowding in prisons, which has sometimes led to inmate unrest

Mr Rudman said in terms of the new Criminal Procedure Amendment Bill, a whipping could only be imposed for offences of a violent nature and serious offences which were committed frequently

The courts could no longer impose corporal punishment in addition to imprisonment, unless part of, or the entire sentence, was suspended

However, he said, the list of crimes for which corporal punishment was applicable would be lengthened to include murder, arson, malicious damage to property, public violence and sedition

It would continue to apply to culpable homicide, but only where this went with assault Bestiality and homosexual acts had been deleted

The courts would also be empowered to sentence male juvenile offenders between of 17 and 21-years-old to a moderate whipping in addition to another punishment, except imprisonment

Mr Rudman said the Bill also tightened up the regulations regarding community service, stipulating a minimum of 50 hours and a maximum of 500 hours as well as a minimum age limit of 15

Community service was also more clearly defined for the courts, he said

The president of the Transvaal Law Society, Mr Edward Southey, said that, while the legal profession was divided on the matter of corporal punishment, he believed most legal practitioners would welcome the new clarity on the matter of community service

Separate courts to go

THE policy of separate courts for blacks, including the commissioners courts are headed for the scrapheap.

252

The Ministry of Justice, at a press conference in Pretoria announced that the commission of inquiry into the structure and functioning of the courts, has recommended that "the policy of separate courts for blacks is obsolete"

The commission, however, found that the courts of chiefs and headmen were cultural institutions of the black population which should be retained as long as they provided the needs of the black people

Divorce

The two bills — Special Courts for Blacks Abolition Bill, and the Criminal Procedure Amendment Bill — were published on October 18 this year for introduction by the Minister of Justice during the 1985 session of Parliament

SOWETAN

A further recommendation by the commission was that the black divorce courts would, in the meantime be placed under the administrative control of the Minister of Justice

24/10

"The bill further provides that the courts may take judicial notice of black law and custom without, as in the past, the requirements of proof thereof," the spokesman for the Department of Justice said yesterday

24/10/85

Prison

Several commissions of inquiry have already come to the conclusion that corporal punishment, by virtue of its deterrent effect, should be retained but that it should only be imposed subject to certain restrictions, the spokesman said

With a view to keeping the provision relating to corporal punishment meaningful and to endeavour as far as possible to keep offenders out of prison, the corporal punishment provisions are revised in the bill

A proviso had been added to the section of the act that corporal punishment should not be imposed in addition to imprisonment unless the whole or part of that imprisonment is suspended "

A section under the criminal procedure act had also been amended to provide that corporal punishment may be imposed for culpable homicide but only if it involved an assault

Five Scorpion gangsters hanged

252 Argus 24/10/85

Argus Correspondent

PRETORIA — Six people, including five members of Cape Town's Scorpion gang, were hanged today.

This brings the number of people executed in South Africa this year to 94 By October 24 last year 97 people had been hanged

The five men, Pieter Solomons, Kerneels Pietersen, Johan May, Piet Douries and Jan Koopman, were sentenced to death in the Cape Town Supreme Court on December 2 1983 for the murder of two rival gang members

"WAR CRIES"

The men bludgeoned Mr Willem Jacobs to death on August 28 1982 and then, screaming "war cries", entered the home of Mr Jan Davids and assaulted him while he slept

Mr Davids's body was found with his skull split open

The sixth man to be executed was murderer Cecil Bruintjies, who was sentenced to death in the Graaff-Reinet Circuit Court on September 21 1984

Small claims

252 24/10/

THE first Small Claims Court sits at the Natal University, Durban, on Monday at 5 p m when the 30 commissioners will also be sworn in The first two hearings have been set down for 5 p m and the third for 7 p m Each hearing is expected to last about 20 minutes and the court is open to the public Other hearings which will be heard have been set down for November 4, 7 and 11 Anyone wishing to bring a claim not over R1 000 to the Small Claims Court in Durban can contact Deanne Collins at 8162446 after 2 p m MERCURY

Appeal Court to consider refusals to testify

252 STAR

25/10/85

Issues arising from recent inquiries held in the Rand Supreme Court into whether State witnesses had a just reason for refusing to testify in a treason trial are to be considered by the highest court in South Africa, the Appeal Court.

In recent weeks three State witnesses have refused to give evidence on the grounds that they fear for their lives. Separate inquiries were held to ascertain whether they were to be considered as recalcitrant witnesses.

Mr Justice L W H Ackermann, the judge presiding over the inquiries, spoke during judgment of the importance of the duty to give evidence. If a witness was too readily excused from the duty, circumstances could be conceived where the function of the court would be inoperable, he said.

He also raised the question of the protection of witnesses after testifying, which seemed to be inadequate in many respects.

The witnesses were subpoenaed to testify in the trial of three alleged members of the African National Congress, who are facing a charge of treason and charges under the Internal Security Act.

During the first inquiry, Sylvia Mabena told the court she feared for her life and that of her son

In another inquiry, trade unionist Duma Moses Nkosi (28), of Soweto, said he feared for his life and the life of his daughter and relatives.

Both were found not to have a just reason not to testify and were sentenced to imprisonment. They appealed against convictions and sentences, and were granted bail of R10 each.

In granting leave to appeal to the Apellate Division, Mr Justice Ackermann said the grounds of appeal involved very important issues

Arising from the evidence in the two cases, the Appeal Court will need to consider.

- Whether the onus rests on the State to prove beyond reasonable doubt the witness did not have a just excuse.
- Whether the fact there is a possibility of harm is a just excuse.
- Whether the witnesses' fears amount to a just excuse
- An appropriate sentence.

The question of the object of the sentence was raised. Mr Justice Ackermann said one of the main objects of sentence was to persuade witnesses to testify Another was the deterrent effect the sentence should have on others.

An inquiry is at present being held to establish whether Miss Marilia Nhlnabatsi, a third witness to refuse to testify in the trial, has a just reason to do so.

Cape Times 25/10/85

Whippings for public violence?

252

By BARRY STREEK

A NEW measure to increase the offences for which whipping can be imposed — including people convicted of public violence — has been proposed by the government and sharply criticized by the opposition

The proposed measure, which is likely to come before Parliament next year, was criticized yesterday by the Progressive Federal Party spokesman on civil rights, Mrs Helen Suzman, and the director of the Institute of Criminology at the University of Cape Town, Professor Dirk van Zyl Smit

Mrs Suzman said South Africa was the only country in the Western world which still retained corporal punishment and it should be scrapped rather than extended

Defiance

She said the new measure smacked of the Whipping Bill of the 1950s which was proposed to break the Defiance Campaign

Professor Smit said "In my view it would be politically short-sighted to use so drastic a form of punishment to deal with offences which are inspired by opposition to the State and by opposition to apartheid"

The new measure, incorporated into the Criminal Procedure Amendment Bill, will increase the number of offences for which whipping can be imposed to include murder where a death sentence is not imposed, arson or malicious damage to property and public violence or sedition

It proposes to abolish corporal punishment for homosexuality and bestiality

Corporal punishment can at present be imposed on men convicted of robbery, rape, assault with intent to do grievous bodily harm, breaking and entering and receiving stolen property

Mrs Suzman said whipping was barbaric and should be abolished, not increased

"I am against whipping in principle and I don't like the extension of offences

"Anyone who has seen the results of the use of a 'light cane', even from pictures, would not hesitate to oppose this form of torture," Mrs Suzman said

'No proof'

Professor Smit said the abolition of whipping for homosexuality and bestiality was positive, but the positive aspects were outweighed by the proposed extensions

"In general, whipping is an inappropriate form of punishment.

"Most civilized countries have abolished it and there is no scientific proof that is particularly effective

"It is particularly objectionable to whip people for crimes not related to personal violence

"Under the guidance of the Supreme Court, the use of corporal punishment has declined consistently in South Africa over recent years

"Steps should be taken to phase it out completely — and not to increase its scope," Professor Smit said

Gearing up for new court

252

Pietermaritzburg Bureau

TWENTY-SEVEN Small Claims Court commissioners have been sworn in at a ceremony in Pietermaritzburg. 26/10/85

A spokesman for the new court said there would eventually be a total of 32 commissioners in the capital. They have been appointed from the ranks of advocates, attorneys and academics.

The first hearing has been set down for November 12 in the Moot Court at the University of Natal here Mercury

The Pietermaritzburg City Council has been approached for permission to use part of the Old Supreme Court building in Commercial Road as the venue for the Small Claims Court.

The court will deal with claims where the amount in dispute does not exceed R1 000

Judges 'sick and tired' of all the sniping

ARGUS 28/10/85

Staff Reporter

THE Judge-President of the Cape of Good Hope Provincial Division, Mr Justice G G A Munnik, told the society's 102nd annual meeting, at the Cape Sun Hotel, that he and his colleagues on the Bench were "sick and tired of this perpetual sniping at the Bench"

They were also sick and tired of 'transparent efforts of late" to play off one division of the Supreme Court against another 'simply because different decisions have been given in different divisions — not on matters of principle, but on the facts of particular cases"

In disclosing that members of his Bench had visited detainees and found "not one complaint of an assault', he rejected what he called "unreasonable, irrational and often malicious criticism" of the Bench

He said that he and colleagues recently visited detainees held under Section 29 of the Internal Security Act

"There were no complaints of assaults from detainees — in fact they assured us they had not been assaulted and they had no complaints of their treatment,' he said

NO COMPLAINTS

"I personally visited detainees held at police stations in the Peninsula, with the same result there were no complaints.

"When the state of emergency regulations were originally announced the Judge-Presidents of the various divisions were asked by the Minister of Justice to make arrangements for judges to visit those held in terms of the emergency regulations

"In this division there was no state of emergency in any area until Saturday and it was therefore not necessary to make such

(Turn to Page 3 col 7)

ARGUS 28/10/85 (257)

Examination boycotters 'will not be readmitted'

Political Staff

STUDENTS at coloured education training colleges who boycotted examinations would not be readmitted next year and would have to pay back their State grants, the Rev Allan Hendrickse, leader of the Labour Party, has warned

Speaking at the Natal congress of the Labour Party in Durban Mr Hendrickse said that 80 percent of school pupils wanted to write the examinations but were being intimidated by what were called "disruption squads".

He warned pupils and students that "if you chose the streets as a battlefield you will have to pay the consequences You must be prepared to die".

The schools were being used as bases for organising violence

Show character

He appealed to students and pupils who wanted to write the examinations to show their charcater and stand up against the "winds that are blowing against you"

He gave the assurance that those pupils who wrote the examinations would be protected — "This is one of the reasons for the declaration of a state of emergency"

He also gave an assurance that those children who wrote but failed the examinations would be allowed to write supplementary examinations next year

The boycott was being applied only by pupils in the Western Cape and they amounted to 38 percent of the total number in the country He believed that fewer than 50 percent wanted to boycott the examinations. In other words, 80 percent should not write because of the demands of 20 percent

He believed the decision at teachers' training colleges was not that of the majority

R2 500 grants

'80 percent' of pupils, students may not write

Education Reporter

COLOURED matric examinations are due to start in earnest this week — but principals estimate that as many as 80 percent of Western Cape pupils will not be writing the first paper, biology, on Friday

Although a delegation from the Cape Teachers' Professional Association ended an emergency meeting with the executive director of coloured education, Mr A J Arendse, hopeful that it would receive "concrete answers" to its suggestions for salvaging the exams, student leaders have indicated that any concessions which failed to meet pupils' and students' demands would be rejected

Pupils and teachers have already stated that any postponement of exams would have to take place in consultation with the broad community.

In recent developments·

- Principals, teachers, parents and students have condemned the department's decision to have pupils write matric exams under guard at the Cape Showground in Goodwood and the Cape Corps base at Faure
- Invigilators have refused to supervise exams for moral and other reasons and the 2 000-strong Western Cape Teachers' Union has called on teachers not to invigilate or mark papers
- Students at coloured training colleges throughout the country as well as at the universities of the Western Cape and Cape Town have also decided to boycott final exams
- Support for the pupils' and students' stand has come from a wide cross-section of community, political, religious and sporting bodies, including trade unions

The chairman of the Athlone and District Principals' Association, Mr H Joubert, said that having pupils write under guard at "sensitive venues" such as the showgrounds and the Cape Corps base "put paid" to the exams

Principals were angry that the onus of ensuring pupils' safety when they travelled by bus from school to the venues rested on them and not the department, he said.

"Even children who were willing to write the exams are likely to change their minds now," he said.

Teachers in Cape Town's black townships affiliated to the Peninsula African Teachers' Association (Penata) have thrown their weight behind black matric pupils' decision not to write exams.

UNPREPARED

The decision was taken because the teachers felt their

Exams: Ebrahim's plea to pupils and parents

Political Correspondent

THE Minister of Education and

person we require for a peaceful, safe and happy country.

plementary examinations next year.

The boycott was being applied only by pupils in the Western Cape and they amounted to 38 percent of the total number in the country He believed that fewer than 50 percent wanted to boycott the examinations In other words, 80 percent should not write because of the demands of 20 percent

He believed the decision at teachers' training colleges was not that of the majority

R2 500 grants

"If they do not write the examinations they don't come back next year Those who don't write will be responsible for paying back the R2 500 grants, if they can't pay the people who signed surety will have to pay"

Mr Hendrickse also told the congress that people had to decide whether they wanted to build the future of South Africa on the ashes of apartheid or on the bodies of the dead youth

The Labour Party was not in the system because it agreed with the new constitution but because it believed it could get rid of apartheid by using the system

Numerous changes had already been achieved, such as parity in pension increases and the scrapping of the Mixed Marriages Act and the Immorality Act

ams, student leaders have indicated that any concessions which failed to meet pupils' and students' demands would be rejected

Pupils and teachers have already stated that any postponement of exams would have to mark papers

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Exams: Ebrahim's plea to pupils and parents

Political Correspondent

THE Minister of Education and Culture in the House of Representatives, Mr Carter Ebrahim, today called on matric pupils to write exams and not to "allow others to destroy your ideals and plans for the future"

He called on parents to support their children and encourage them to write exams

He addressed open letters to both pupils and parents

In his letter to the pupils, he says "You started your school education and progressed to where you are today You wrote examinations and were successful It was years of hard work and sacrifice

"Another final examination is at hand This is a challenge and each year that you are successful means a higher qualification and qualifications make dreams a reality They open doors — a job, a home, a motor car, a good life Qualifications will enrich you — the type of person we require for a peaceful, safe and happy country.

"Confront this challenge and complete the examinations successfully You owe this to your parents and yourself. Do not allow others to destroy your ideals and plans for the future."

Mr Ebrahim says he is addressing parents "as I am concerned about the future of your children"

PROVISION

He says "As you are aware, there are powers at work trying to persuade your children to boycott this year's final examinations These are the sentiments of the minority and the majority of our scholars are desirous of writing their examinations"

The authorities would make the necessary provision for those scholars who wished to write exams, he said

A small group of agitators could not be allowed to jeopardise the future of the children.

rested on them and no. the department, he said.

"Even children who were willing to write the exams are likely to change their minds now," he said.

Teachers in Cape Town's black townships affiliated to the Peninsula African Teachers' Association (Penata) have thrown their weight behind black matric pupils' decision not to write exams.

UNPREPARED

The decision was taken because the teachers felt their pupils had not been able to prepare for the exams, a statement released at the weekend said.

It said that Penata was "part and parcel of the black community" and also wanted to be able to identify what kind of education pupils needed and to marshal other organisations and resources "to assure academic excellence for our students and community"

The teachers said they were compelled by their consciences to work and suffer with the communities they served

The National Union of Students (Nusas) said today that pupils and students in black and coloured townships "occupied by the police and army" could not be expected to write exams.

"The situation in Cape Town is nothing short of civil war The declaration of a state of emergency merely confirms this," it said

CAPE TIMES 8/11/85

SWA row: Judge to step down

252

WINDHOEK — Mr Justice Piet van der Byl is to resign from the SWA Supreme Court and the proposed constitutional council with effect from November 30

The decision came in an out-of-court settlement by contending parties in the SWA/Namibian transitional government

A statement by the cabinet issued here last night said that in terms of the settlement, the cabinet would pay Mr Van der Byl R180 000 on March 1 next year, the first day of the next fiscal year, to compensate him for inconvenience suffered

The legal costs of the action to date will be paid by the SWA/Namibian cabinet except the legal costs of the Administrator-General Mr Louis Pienaar, who will pay his own costs

To an end

"We trust that this affair has now come to an end and that the government shall be able to attend more effectively to the many problems facing this country, the statement said

Last month, two SWA/Namibian cabinet ministers Mr Moses Katjiuongua and Mr Andreas Shipanga brought an urgent application to the SWA Supreme Court to annul the appointment of Mr Van der Byl a former official in the South African Department of Justice

The hearing was adjourned indefinitely to enable the parties to negotiate a settlement

Mr Van der Byl was appointed to the Supreme Court to qualify him for the position of constitutional council chairman, which by law has to be a judge or retired judge

Mr Katjiuongua and Mr Shipanga cited as respondents Mr Van der Byl Mr Pienaar and their cabinet colleagues Mr Dirk Mudge the Minister of Finance Mr Fanuel Kozonguizi the Minister of Justice and cabinet chairman Mr Hans Diergaardt

Acceptable

In subsequent settlement negotiations, Mr Van der Byl indicated he was no longer prepared to serve in the two positions unless he was acceptable to all the SWA/Namibian cabinet members

In terms of the settlement agreement, the attorneys for the applicants are to see to it that all documents filed for the intended action are removed from the court records subject to the approval of the court and the registrar

All the parties undertook not to divulge the contents of the court documents

"All parties accept that in the course of the appointment of Mr Van der Byl, there had been misunderstandings' the statement said "The appointment was not the result of a decision of any single member of the cabinet' — Sapa

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Cape Times 29/10/85

Judge tells of visits to detainees

252

Staff Reporter

THE Judge President of the Cape yesterday said he had received no complaints of maltreatment or assault during recent visits to detainees held at police stations in the Peninsula under Section 29 of the Internal Security Act

Speaking at the opening of the 102nd annual meeting of the Law Society of the Cape of Good Hope, Mr Justice G G A Munnik said he and his colleagues had been assured by the detainees that they had not been assaulted and had no complaints about their treatment.

He rejected what he called "unreasonable, irrational and often malicious criticism" of the Bench

'Sniping'

He also condemned the "perpetual sniping at the Bench" and the "transparent efforts of late" to play off one division of the Supreme Court against another

As long as he was Judge President, the law would be interpreted as it was found "according to the oath of office and to administer justice to all persons alike without fear, favour or prejudice, and as circumstances of any particular case may require, in accordance with the law and customs of the Republic of South Africa"

sunrise news

Tambo on ANC violence in SA

LONDON — The leader of the banned African National Congress, Mr Oliver Tambo, told an international news conference yesterday what the ANC proposed to do about violence in South Africa, Reuter reports from London

In terms of the law his significant statement, affecting human life in South Africa, may not be published without permission from the Minister of Law and Order. (Permission is usually denied but, in any case, *The Star's* normal policy is not to apply because of the danger of manipulation of the news by authority.) 26/10/85

Mr Tambo spoke not only about violence but also made an equivocal and mainly negative statement on the ANC's attitude to negotiations with Pretoria

At the same news conference he launched bitter attacks on British Prime Minister Mrs Margaret Thatcher and President Reagan.

The British Government has refused to speak to Mr Tambo until the ANC renounces violence. But he has been invited to address a parliamentary foreign affairs committee next week.

Report restricted

In terms of the Internal Security Act, Mr Tambo may not be quoted Therefore, this news report has had to be heavily censored. STAR

A question of 'morality, not law'

Only State can quote the ANC

STAR 26/10/85

252

by

David Braun,
Political Correspondent

Legal experts have confirmed that the State President is "above the law" when it comes to quoting banned persons, but they have questioned the morality of his doing so

President Botha quoted the leader of the African National Congress (ANC), Mr Oliver Tambo, extensively this week to support his view that the organisation was committed to violence and that it would serve no purpose to talk to the outlawed organisation

Newspapers and others must, by law, get permission from the Minister of Law and Order before quoting a banned person

Government legal advisers said yesterday that the State was not subject to the provisions of the Internal Security Act with regard to restrictions on the quoting of banned people, and did not have to apply for permission

Top legal experts and academics agree, but say that this is not a satisfactory state of affairs

Professor Johan van der Vyfer, of the University of the Witwatersrand, said it seemed that the argument that the State President did not require permission to quote Mr Tambo appeared to have some merit

"But at the same time it is unfortunate that the State President should indulge in activities which are denied to members of the public," he said

"It is morally deplorable that Mr Botha should do something that others can't," he added

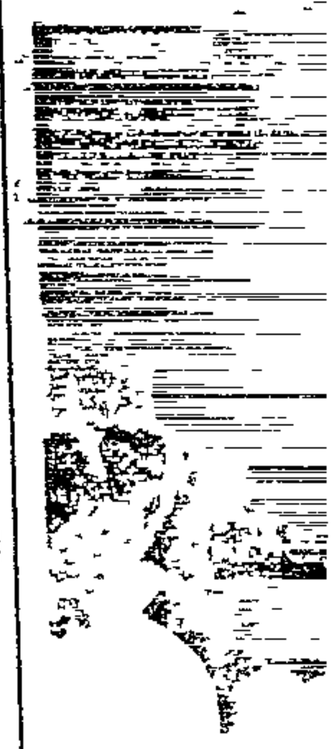
Professor John Dugard, also of the University of the Witwatersrand, agreed with the view that the State President could quote a banned person, but said it was not a satisfactory state of affairs that a banned person could be quoted on a selective basis

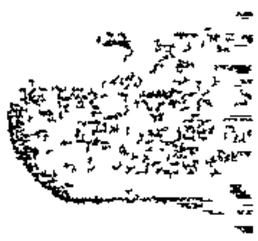
Blanket ban

The Star's lawyers confirm this view, saying that had the Internal Security Act provided for a blanket ban on quoting a benned person, the President would not have been able to quote Mr Tambo

However, the fact that there was provision for the Minister of Law and Order to grant permission to enable such quotation, and that the State President was the supreme authority in the country, meant that Mr Botha did not have to comply with the law

(Report by D Braun, 47 Sauer St, Johannesburg.)





Young Port[illegible] (12) and Su[illegible] "Araial". The

SOWETAN

Boesak goes to high court

20/11/85

DR ALLAN Boesak will apply today to the Supreme Court in Cape Town for an order for the return of his passport.

Dr Boesak's passport was taken from him by the Minister of Home Affairs, Mr Stoffel Botha soon after the Malmesbury Magistrate's Court restored it to him.

Dr Boesak, who is facing charges under the Internal Security Act, was ordered to hand in his passport on September 20 in terms of his original bail conditions, which were described as "stringent"

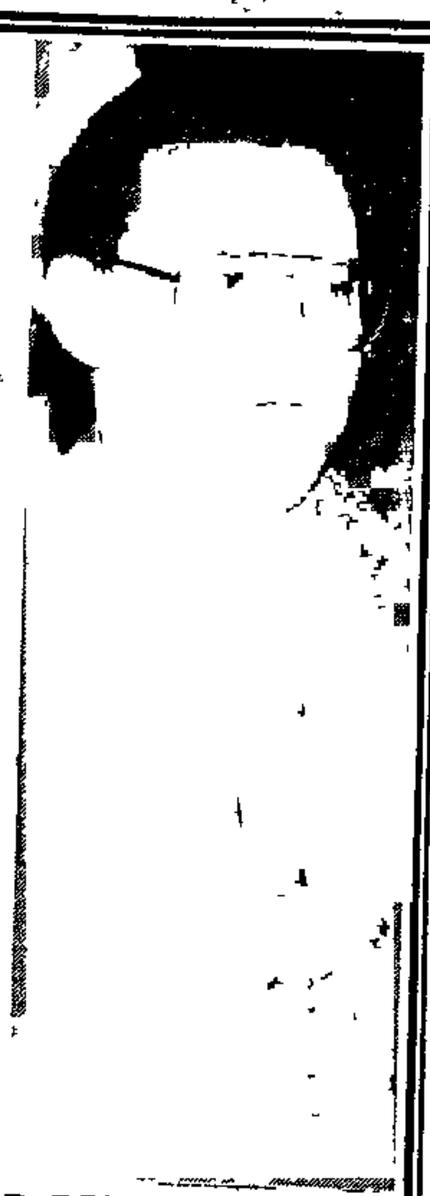
His passport was returned to him on November 4, after a successful application in the Malmesbury Magistrate's Court to relax the bail conditions, and was immediately withdrawn by the Minister of Home Affairs, Mr Stoffel Botha

Dr Boesak was to have received the Robert F Kennedy humanitarian award, for which he is a joint recipient with Mrs Winnie Mandela and Dr Beyers Naude, in the United States today.

Decision

Mr Essa Moosa, Dr Boesak's attorney, said Dr Boesak was applying to have the decision of Mr Botha to confiscate his passport reviewed and for the return of his passport.

The respondents in the case are the Minister of Home Affairs and the regional representative of the Department of Home Affairs.



Dr BOESAK ... passport confiscated.

Call to bring killer of lawyer to trial

13/11/85 DISPATCH

Dispatch Reporter

EAST LONDON — The murderers of Mrs Victoria Mxenge, the civil rights lawyer who was killed by unknown assailants at her home near Durban earlier this year, should be "brought to book with the least possible delay", the attorneys' journal, De Rebus, said in an editorial.

"At the time of writing, as far as we are aware, no one has been arrested and we must assume that vigorous efforts are being made by the police to trace and charge the offender or offenders."

The editorial said the Mxenge family, whose family home is near King William's Town, had suffered a double tragedy, each arising in similar circumstances "Those responsible for the violent death of her husband (Mr Griffiths Mxenge), also a practising attorney, some years ago have still not been charged and we do not know how far the police investigations have proceeded, indeed even whether or not they are still proceeding

"It is of the utmost importance in that case too the police should not relax their efforts.

"The maintenance in our country of civilised standards and a contented and orderly society demand no less."

The right to legal representation was an important principle of the rule of law "From this flows the further important principle that lawyers are required to represent their clients without fear or favour

"Whether the cause is popular or not is immaterial There is no doubt that there are times when the lawyer who upholds this principle is called upon to show great courage."

The "brutal" death of Mrs Mxenge, who happened at the time of her death to be representing people facing charges of treason, gave cause for serious concern

SOWETAN 25/11/88

Bara strike - judge gives ruling today

THE much-awaited judgment in the urgent court application brought by three student nurses at Baragwanath Hospital is to be delivered this morning in the Rand Supreme Court.

Mr Justice R Goldstone on Friday, before a packed courtroom, reserved judgment after hearing argument from counsel for the hospital authorities and the three applicants

The three applicants, Miss Mardulate Tshabalala, Mr Themba Mbobo and Mr Macbeth Nxumalo, are seeking an order to declare their dismissal unlawful

They have also asked for a temporary order halting their eviction from the nurses' home or, alternatively, allowing them to return

Mr J Coetzee, SC, acting for the hospital authorities, argued that the position of student nurses was different from other occupations because work stoppage could endanger life

The students, he said, had been prepared to hold the hospital over a barrel by striking in their own interests Striking was an offence for nurses and the summary dismissals of Mr Mbobo and Mr Nxumalo was therefore justified

As for Miss Tshabalala, she was not dismissed as she had been on leave at the time of the strike He said she should have ascertained her status and her coming to court was not justified

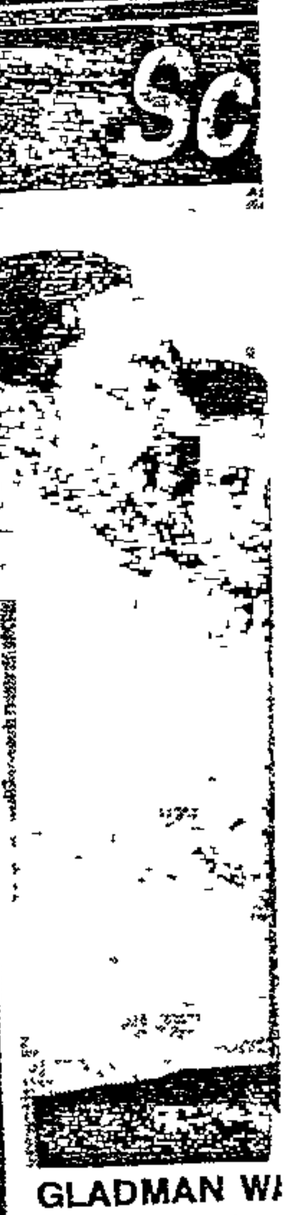
Mr Jules Browde, SC, counsel for the applicants, said although the application had been brought by the three, it was nevertheless a test case affecting the fights of more than 900 others, also dismissed

He submitted the students were wrongfully sacked for "strike action" as the dismissal, on November 18 was given retrospectively from November 13" when there was no threat of a strike"

He said the students would suffer irreparable harm if they were not granted interim relief

SOWETAN Reporter

Student nurses challenge hospital over dismissals



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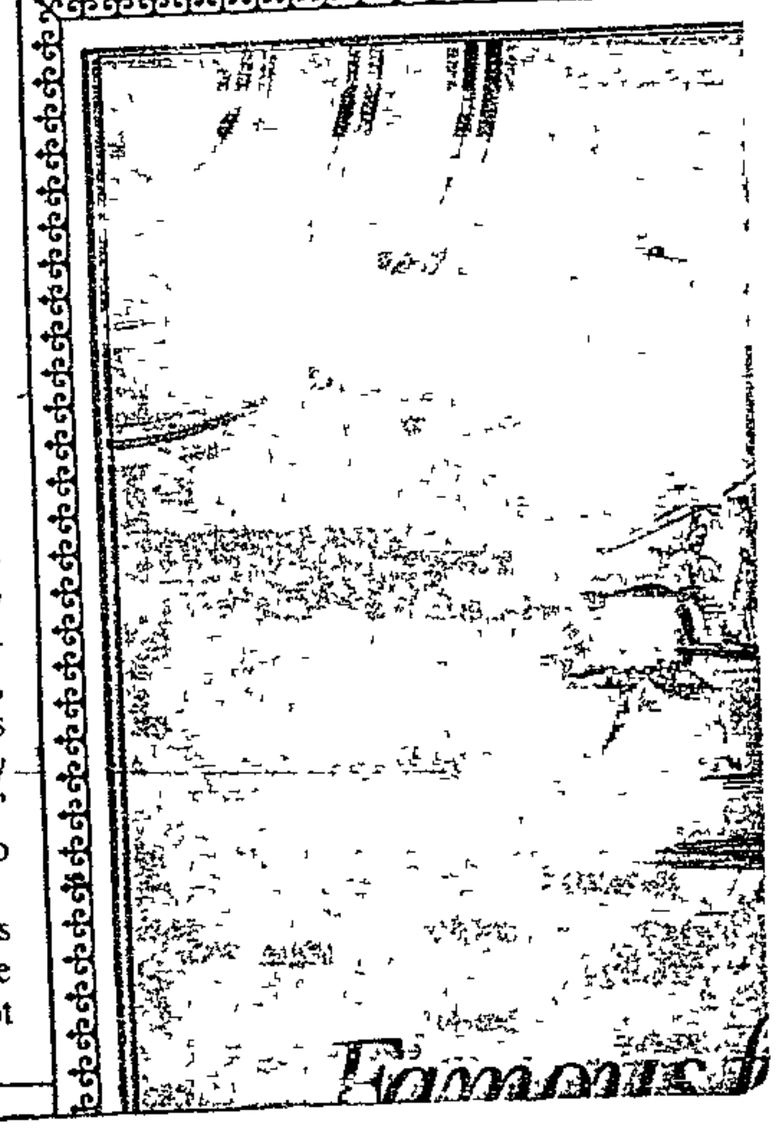

'Kangaroo court' trial

CAPE TIMES 25/11/85

EIGHT people appeared in the Athlone Magistrate's Court on Friday in connection with an incident last week in which three people were allegedly tried by a "kangaroo court" in Nyanga and then lashed 100 times

No charges were put to them and they were not asked to plead

They are Ms Thobeka Hanoyl, 28, Mr Nzimoke Mdidima, 21, Mr Simon Pasiya, 27, Mr Lawrence Sidlayiya 25, Mr Tebyoe Mnyakazi, 32, all of Nyanga, Mr Sparasa Simarila 20, Mr Ndlaphine Kineza, 22, and Mr Oupa Khymalo, 18, no addresses given

The hearing was adjourned to November 26 and the eight were remanded

Mr P Engelbrecht was the magistrate Ms S Syster prosecuted

ARGUS 25/11/85 (252)

'Kangaroo court': Nine charged with assault

Staff Reporter

TWO women and seven men have appeared in Athlone Regional Court on two charges of assault with intent to do grievous bodily harm

Their appearance is a sequel to the activities of an alleged "kangaroo court" in Khayelitsha

Miss Thobeka Hanoyi, 28, Miss Sparasa Simarila, 20 Mr Mzimoke Mdidima, 27, Mr Simon Pasiya, 27, Mr Lawrence Sidlayiya 25, Mr Tebyoe Mnyaki, 32, Mr Israel Nlapo 27 Mr Ndiphine Khymalo, 22, and Mr Oupa Khymalo 18 were not asked to plead and were remanded until tomorrow

They are charged with assaulting Miss Nompenonlo Nginigani and Miss Nompumelelo Gogiba with sjamboks and kerries at Khayelitsha on November 13

Mr P Englebrecht was on the Bench and Miss S Cyster appeared for the State

SOWETAN

TUESDAY, NOVEMBER 26, 1985 — 27c + 3c GST (PWV) Elsewhere 35c

Judge gives different ruling on other applicants

BARAGWANATH NURSE WINS CASE

26/11/85 SOWETAN (252) Case

A RAND Supreme Court judge yesterday found that a Baragwanath Hospital student nurse, who brought an urgent application against the Transvaal Provincial Administration, was unlawfully dismissed and will therefore be reinstated at the hospital and is entitled to her accommodation.

SAPA

Mr Justice R Goldstone, in giving judgment yesterday, said Miss Mardulate Tshabalala, the first applicant, was on leave at the time of the strike and was led to believe that she was dismissed.

He added that the chief superintendent of Baragwanath Hospital, Dr Chris van der Heever, did not apply his mind to each individual circumstance and that the notice of termination issued by him on November 18 was invalid in the case of all students, therefore giving each student the right to be heard.

Miss Tshabalala was awarded costs.

In the case of the second applicant, Mr Themba Mbobe, Mr Justice Goldstone said it was to be decided whether he was employed on a permanent or temporary basis and that oral evidence must be heard to prove whether he was on strike between November 14 and November 18.

He added that Mr Mbobe was entitled to remain in the employ of the hospital and could occupy his room while the court decision was still pending.

Meeting

He found that the third applicant, Mr Macbeth Nxumalo, "did not come to court with clean hands" as he did not deny taking part in the strike action and therefore could not be granted any relief. Therefore no order was made on his application and on costs.

Defence counsel for the 940 student nurses who were dismissed following a strike action at the Baragwanath Hospital earlier this month, yesterday said they intended suggesting negotiations with the hospital authorities.

Advocate Chris Loxton said they were presently preparing a settling telegram which they intend sending to the hospital authorities telling them about yesterday morning's Rand Supreme Court judgment.

Dr van der Heever and other hospital authorities were not available for comment as they were in a meeting, apparently discussing the matter.

To Page 3 ➤

CFP SP

THIS YEAR OUR SPECIALS

From Page 1

More than 300 Baragwanath Hospital student nurses chanted and sang to celebrate their victory at a meeting at the Blackchain Hall in Diepkloof yesterday afternoon.

They unanimously agreed to go back to work today.

A spokesman for the Health Workers' Association said: "We have still have more battles to win before we rest. Demands of the student nurses must be met and their representative bodies (unions) must be recognised. The soldiers must be withdrawn from the hospital."

A moment of silence was observed in memory of a dead student nurse, Miss Nomthandazo Sishi, who was burned to death [illegible]

Meanwhile the director of hospital services in the Transvaal, Dr Hennie van Wyk, yesterday said Baragwanath Hospital officials would implement the ruling of the Rand Supreme Court.

He said that soldiers would be phased out when the workers and nursing staff return [illegible]

'Kangaroo court' — nine on bail

Staff Reporter

ATHLONE Regional Court has released on bail of R250 each nine people appearing on charges of assault with intent to do grievous bodily harm

The nine — two women and seven men — appeared yesterday in connection with the activities of an alleged "kangaroo court" in Khayelitsha

Miss Thobeka Hanoyi, 28, Miss Sparasa Simarila, 20, Mr Mzimoke Mdidima, 27, Mr Simon Pasiya, 27, Mr Lawrence Sidiayiya, 25, Mr Tebyoe Mnyaki, 32, Mr Israel Niapo, 27, Mr Ndlphine Knymaio, 22, and Mr Oupa Knymaio, 18, were warned not to interfere with State witnesses and to report to Guguletu police station on Wednesdays and Fridays

The hearing was postponed until December 20

Mr P Engelbrecht was on the Bench Miss S Cyster prosecuted and Mr E Moosa, of Essa Moosa and Associates appeared for the accused

Cape Times 28/11/85

Kangaroo court: Bail for 9

252

Court Reporter

NINE people who appeared in connection with the alleged whipping of three people after a kangaroo court "trial" in Nyanga, were this week granted bail of R250 each in Athlone Magistrate's Court.

No charges were put to Miss Thobeka Hanoyi, 28, Mr Mzimoke Mdidima, 21, Mr Simon Pasiya, 27, Mr Lawrence Sidlayiya, 25, Mr Tebyoe Mnyakazi, 32, all of Nyanga, and Mr Israel Ntapo, 27, Mr Sparassi Simarila, 20, Mr Ndlapnine Khymalo, 22, and Mr Oupa Khymalo, 19, no addresses given.

The hearing was adjourned to December 20.

Mr P Engelbrecht was the magistrate. Miss J Syster prosecuted. Mr E Moosa appeared for the nine.

Argus 31/10/85 (252)

Seven hanged — man's last-minute plea fails

Argus Correspondent

PRETORIA. — Seven people, including a man who failed at 3am yesterday to obtain a last-minute stay of execution, were hanged yesterday

On February 27 this year, in the Cape Town Supreme Court, Nicolaas Mingo, 32, was sentenced to death for rape Mingo said in an affidavit yesterday that his application for leave to appeal, as well as a petition to the Chief Justice, had failed

He then wrote to his advocate but received no reply As a result, no petition for mercy was made

On Tuesday Mingo wrote to the State President, denying he had committed the crime and alleging that his advocate had "left him in the lurch" At 3am yesterday Mr Justice van der Merwe dismissed the application

The other six men executed were all murderers They were Alex Williams and Johannes Goliath, who were sentenced in February last year in the Port Elizabeth Supreme Court, Mbukelwa Kiwa, who was sentenced in the Durban Supreme Court on December 13 last year, Rembeni Mawawa and Monwabisi Mnguni, who were sentenced in the Cape Town Supreme Court on April 19 this year, and Koko Claasen, who was sentenced in the Cape Town Supreme Court on April 25 this year.

The law must be paramount

IT may seem very strange to talk of human rights during a state of emergency, which has as its basis the removal or suspension of existing rights

It is often said that the state of emergency can be lifted only when "law and order" have been restored

There is indeed a crisis of lawlessness in our country. This phrase, "lawlessness", invokes the image of mob behaviour out of control — and there have been terrible instances of precisely this sort of conduct

The state of emergency has, however, both promoted and highlighted another form of lawlessness — official lawlessness.

By GEOFF BUDLENDER

of the Legal Resources Centre, Johannesburg

(252)

S Times 1/12/85

Possible

When the emergency was announced, it rapidly became clear that it introduced three major innovations into our legal system, which had already been described by eminent lawyers as reflecting a state of permanent emergency because of the security legislation

First, mass arrests and detentions were made possible by granting the power of detention without trial to every member of the police force, railway police, prison service and army.

Secondly, an attempt was made to remove legal control over the exercise of power by the authorities: by attempting to oust the jurisdiction of the courts to set aside any order or rule issued under the emergency regulations, and by indemnifying State officials against liability for all unlawful acts except those which were proved to be in bad faith.

Thirdly, provision was made for censorship of Press coverage of the emergency. Initially, attempts were made to control the Press through informal arrangements. Now there is direct censorship through the ban on photographic material and the control of access to the affected areas.

It did not take great perceptiveness to note that the attempted exclusion of the courts, together with the effects of censorship, would undercut the two key controls on official action — the legal process and public opinion.

It did not take great understanding of human nature to predict that the likely result would be to increase the level and intensity of official lawlessness

Those who live in the areas most affected — the black townships — confirm overwhelmingly that this has indeed been the result.

It is not only a matter of whether or not detainees are assaulted, though that is serious enough. Even more fundamental is the day-to-day experience, by ordinary law-abiding citizens, of random and unnecessary violence meted out to people only remotely connected (if at all) with the activities the emergency was supposedly designed to curb.

Fundamental

It is true, of course, that there have been terrible acts of violence inflicted from within the townships by people who wish to impose their political will.

To condemn official violence is not to condone the violence of those opposed to the system.

But we need to remind ourselves that there is, or ought to be, a fundamental difference. It is the State, above all, which should respect the law. for, if the State ignores the law, why should subjects be expected to act any differently?

To compare the unlawful acts of State officials, who are supposed to act on behalf of all of us, with the unlawful acts of dissident groups is to say that the State, too, is concerned only with power

Then law is irrelevant, it is merely a tool to be used when convenient and disregarded when it is too cumbersome. It should, then, not be surprising when subjects take the same view

Outside

Lawlessness is not a new phenomenon in the black townships For reasons which need not be debated here, the law is not an effective protective presence against ordinary crime in the townships.

The crime statistics show this graphically In addition, officials who administer black lives have such wide discretionary powers that they are often outside the effective control of the law

The law is not an effective protection against those who have physical or official power.

Seen in this light, the current pattern of lawlessness from all sides is but an extreme manifestation of a condition which is endemic — the rule of power rather than the rule of law

So what is to be done?

There is no easy remedy for this crisis There is no magical formula to be chanted, no magical switch to be pulled The crisis of lawlessness is deep and the process of reversing the trend will inevitably be slow and painful

Misconceived

It must start, however, with the reintroduction of government under law, subject to the rule of law. It must start from the proposition that there can be no true or lasting "order" without law or justice.

That is why the call for "law and order" before the lifting of the state of emergency is fundamentally misconceived — there will not be "order" as long as the Government is not seen to be constrained by law and justice.

That is why it is particularly in a crisis, or in a state of emergency, that there is a need to recognise and protect human rights as the only lasting way out of that crisis.

Decades ago, the root cause of the crisis of lawlessness was eloquently described by Mr Justice Louis Brandeis in the Supreme Court of the US·

"If the government becomes a lawbreaker it breeds contempt for law, it invites every man to become a law unto himself; it invites anarchy."

252

Coetsee: No inkling of unrest film viewing

PRETORIA. — The Minister of Justice, Mr Kobie Coetsee, said last night that he had no knowledge of the viewing by Durban magistrates and prosecutors of a Defence Force film on unrest in the townships.

He denied emphatically that his department had sanctioned any attempt to influence the courts, and in turn accused newspapers reporting such fears of themselves trying to influence the course of justice.

The dispute follows weekend newspaper reports that secret security police briefings on the unrest were being given to magistrates and prosecutors.

Horrifying death scenes, explosives, and maps of trouble spots were shown as part of a scheme to inform the courts on what is "really" happening, a Sunday newspaper reported.

The plan, sanctioned by the SADF, the Department of Justice and the SAP, has stunned legal circles and many believe the judiciary may be irrevocably compromised.

Durban magistrates and prosecutors were reportedly told to attend a recent meeting at police headquarters arranged on behalf of the SADF. The Department of Justice has denied that the meeting was a pilot scheme for the rest of the country.

The police deny any sinister intention and the SADF said they regularly briefed "interested people and organizations". Yet both spokesmen declined to disclose the content of the meeting, nor would they allow a Sunday newspaper to see the film.

According to one prosecutor, who declined to be named, the hour-long talks, attended by 50 to 60 magistrates and prosecutors, took a strong anti-ANC/UDF slant. Public violence was discussed and so were methods of terrorism.

The president of South African Law Societies, Mr Graham Cox, said "Anything that could adversely affect or aim to influence the magistrates in relation to judicial independence would cause us grave concern."

In an earlier statement, the Justice Department said the Chief Magistrate of Durban had confirmed the meeting and the viewing of a Defence Force video with a discussion on the unrest situation.

"It has been established that the subject matter dealt with was from an overall perspective and that those who spoke at the meeting are prepared to speak at any other forum," the statement said.

Last night, Mr Coetsee said he reaffirmed the government's commitment to the independence of the judiciary and said South Africa's judges and judicial officers had earned worldwide acclaim for their independence. — Sapa and Own Correspondent

ARGUS 4/12/85 (252)

Coetsee acts on unrest briefings

Argus Correspondent

PRETORIA. — The Minister of Justice, Mr Kobie Coetsee, has instructed magistrates not to attend the "unrest" briefings

Mr Coetsee said today there was no question of countrywide briefings on the unrest, and that he had already made it clear that magistrates would not be involved in briefings which could influence them

But, he said, prosecutors and Attorneys-General would be allowed to decide for themselves whether or not they wanted to attend such briefings

Mr Coetsee spoke following reports that magistrates and prosecutors had attended an "unrest" briefing in Durban, apparently organised by the South African Police and the Defence Force

"Judicial officers decide themselves in the course of a trial about evidence which is presented to them and they obtain the information required during the course of a case

CONVINCED

"I am consequently not at all prepared to meddle in the domain of judicial officers That would be contrary to declared policy

"As far as State prosecutors are concerned they represent the State in criminal cases and it is imperative that they at all times ought to be informed of all relative information

"If specific information about the unrest forms part of the information, briefings will be provided by experts where and whenever it is necessary.

"I am convinced that Attorneys-General and State prosecutors, as a result of the best possible training, have developed the ability to consider the information which has come to their attention in such a manner and to make an objective decision," Mr Coetsee said

EMERGENCY

No briefings for magistrates, says Minister

(252) Star 4/12/85

Pretoria Correspondent

The Minister of Justice, Mr Kobie Coetsee, has instructed magistrates not to attend any unrest briefings

Mr Coetsee said today there was no question of countrywide briefings on the unrest situation He had already made it clear magistrates would not be involved in any briefings which could in any way influence them in the exercise of their judicial functions, he said

However, State prosecutors and attorneys-general would be allowed to decide whether they wanted to attend such briefings

Mr Coetsee's statement followed reports that magistrates and prosecutors had attended an unrest briefing in Durban, apparently organised by the South African Police and the South African Defence Force

"I am not prepared to meddle in the domain of judicial officers, that would be contrary to declared policy.

"State prosecutors represent the State in criminal cases and it is imperative that at all times they are informed of all relative details

"If information about the unrest situation forms part of this, briefings will be provided by experts where, and when, necessary," he said

ARGUS 4/12/85

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EMERGENCY

'Bill of rights' needed

6/12/85 252

BUSDAY ANDRE VAN ZYL

SOUTH AFRICA should establish a universal set of values against which all actions can be measured, says Transvaal Chamber of Industries president Tony Ewer.

"The US has a set of general, guiding values enshrined in a Bill of Rights, but in South Africa we have only the past

"The solution to our problems has been stated many times . . ."

"We in business would like to see movement towards the achievement of such a code, put together in an all-embracing package."

More detainees are challenging the law

BUSDAY 6/12/85

252

REVOLUTION may not be blazening its way down the quiet corridors of the Supreme Court but the stridency apparent over the last few months in some divisions has been interpreted by several lawyers as indicating an increased willingness to challenge the state.

"Many people are aware that official lawlessness is growing and that if the legal system is to survive then there is a need for it to be contained," says Geoff Budlender of the Legal Resources Centre.

However, as the courts become more involved in protecting the individual against excessive executive powers, so they are putting the state's tolerance of judicial opposition to the test.

Twice since the declaration of the state of emergency on July 21, the government has passed regulations having a direct bearing on matters awaiting the decision of the Supreme Court.

How will it respond if the six detainees, who have applied to the Cape Town Supreme Court for an order declaring invalid the extension of their detention beyond the initial period of 14 days, succeed?

> **"Many people are aware that official lawlessness is growing and that if the legal system is to survive then there is a need for it to be contained"**
>
> **— Geoff Budlender, Legal Resources Centre.**

Not only has P W Botha, as promulgator of the emergency regulations, become directly involved by submitting an affidavit on his *bona fides*, but hundreds of people imprisoned by ministerial edict would be released were the court to decide in favour of the detainees.

Since August 28, when the first application on behalf of a detainee was heard in the Durban Supreme Court, there have been reports of 22 similar applications — eight in Durban, five in Cape Town, four in Johannesburg, two in Grahamstown, two in Port Elizabeth and one in Pietermaritzburg

Most of these contested the validity of detentions or requested an order restraining the police from assaulting detainees In some widely reported cases, historic judgments clarifying the rights of detainees were handed down

The Durban Supreme Court has taken a lead in this regard.

Professor Tony Matthews of the law faculty at the University of Natal says one reason for this heightened activity of the courts is that the consequences of the gradual undermining of the rule of law are becoming apparent — and, as far as detainees go, they look "disastrous"

"The general picture is one of horror at what is happening and the courts are responding to this and are offering protection where they can.

"Certain judges in some divisions are taking a stand, are scrutinising official action more closely and are taking more seriously than before the duty of the courts to protect the individual."

Matthews defines this trend as a "movement" rather than a "judicial revolution"

Edward Southey, president of the Transvaal Law Society, disagrees In his view there has been no qualitative change in the role of the Supreme Court, only a quantitative one necessitated by historical circumstances.

"The Supreme Court is performing the function it has always performed," he asserts "Where there are people who believe their rights have been infringed, the Supreme Court's role is and always has been to inquire into the circumstances and make a judgment."

As more and more people were detained under the emergency regulations — the total figure is now 6 261 — so there were more applications for relief and for the interpretation of the regulations by the courts.

Matthews agrees that the emergency produced a rush of court applications but adds: "It would have been quite possible for the courts to adopt an accommodating attitude towards the executive. In my view there are signs of a stronger judicial attitude."

> **"The general picture is one of horror at what is happening and the courts are responding to this and are offering protection where they can"**
>
> **— Prof Tony Matthews, law faculty, Natal University.**

Graham Cox, president of the Association of Law Societies, holds a similar view "There appears to be an increased willingness on the part of judges to adopt a more robust approach to laws which, on the face of them, will create injustices," he says.

☐ GEOFF BUDLENDER.

☐ GRAHAM COX.

"There is a growing tendency where possible to construe laws in a manner which will produce a just rather than an unjust result, even in circumstances where this approach necessitates some departure from a literal interpretation of the words of the statute."

For Budlender "a changing mood" and "feelings of restlessness" on the part of legal practitioners lay behind the shift. They want, he believes, more legal control of government and greater protection of the individual against the state.

One case which threatened to create a conflict between the judiciary and government was that of Port Alfred community leader Ernest Gugile Nkwinti, who applied to have his redetention after the initial 14 day period declared invalid.

The case was heard by the full bench of the Grahamstown Supreme Court on October 17 and 18 and judgment was reserved Before it could be delivered, however, and in a move which is seen by some as an attempt to pre-empt the court, a retrospective amendment to the emergency regulations was promulgated on October 31

The amendment to sub-regulation 3(3) added a clause stating the Minister of Law and Order was not required to give notice to any person or hear any person's views when extending the period of detention — the very issue which Nkwinti wanted the court to decide upon

The full bench unanimously decided that if there had been no amendment, they would have ordered Nkwinti's immediate release on the grounds that he should have been given the opportunity to make representations about his redetention.

However, as Nkwinti instituted legal action prior to the amendment, the full bench found in a later judgment that the retrospective clause was not validly applicable to him and his release was ordered.

> **"Where there are people who believe their rights have been infringed, the Supreme Court's role is and always has been to inquire into the circumstances and make a judgement"**
>
> **— Edward Southey, president, Transvaal Law Society.**

The Cape Town detainees now before court are requesting that the amended clause allowing for the extension of a period of detention without a hearing be declared invalid

A judgment on the same issue, which apparently decided in favour of the Minister of Law and Order, was handed down by the Grahamstown Supreme Court on Wednesday

Time will tell how much judicial independence will be officially tolerated during these socially turbulent times Southey, for one, has no doubts that were an emergency regulation declared unlawful by the court, a new valid one would soon be formulated to replace it.

Jail photographs man's appeal upheld

W/E ARGUS 7/12/85

Supreme Court Reporter

A FREELANCE cameraman who was convicted under the Police Act for photographing Robben Island and Pollsmoor Prison, has had his appeal against sentence and conviction upheld in the Supreme Court, Cape Town.

Mr Clifford Noël Bestall was sentenced in October last year to R300 or 100 days.

On an assignment from International Television News head office in Johannesburg he filmed the two prisons for a documentary.

Miss Justice van den Heever said the conviction was "incompetent".

Mr Bestall had been treated "merely as a technician" by those creating the documentary and had not had the intention to break the law.

She said the section of the Police Act in question was "a strange one".

"It is worded so as to spread its net so widely that it is impossible to monitor and enforce should it be understood in its liberal meaning. It is probably contravened by dozens of people each day."

The shots viewed by the magistrate did not "fall within what one would normally regard as a prison".

(252) S. Times 8/12/85

Natal Judge President to probe police court 'briefings'

By JEREMY BROOKS

THE Judge President of Natal, Mr Justice Milne, is to head an investigation into unrest briefings allegedly given by security police to Durban prosecutors and magistrates

The announcement was made yesterday by the Minister of Justice, Mr Kobie Coetsee

"Information received by Durban magistrates at a meeting on November 15 has received prominence in the media," Mr Coetsee said

"What is at stake is related to the judicial functions of magistrates, more specifically the question whether the information they received there could have a prejudicial effect on the hearing of any particular case in the future

"As I have indicated elsewhere, neither I nor the Government exercise any jurisdiction over magistrates in the execution of their judicial function, the Supreme Court being the sole responsible authority in this regard

"I have therefore requested the Judge President of Natal to consider ways and means of evaluating the information received by the magistrates at the meeting, and of giving guidance on how they should act in particular cases in the light of his findings," he concluded

Mr Coetsee was reacting to publicity and concern expressed by legal figures that the briefings — held secretly, and first disclosed last week — could prejudice magistrate's court findings

Earlier this week he said he condemned "in the strongest possible terms" any attempt to influence the course of justice in this country.

"I shall not hesitate to act if concrete evidence is brought to my attention," he said

According to reports, the magistrates and prosecutors were given briefings during which film clips of "revolting" death scenes, explosives and maps of trouble spots were shown to demonstrate "what was really happening in the country"

STAR 9/12/85

Human rights violations reach a new peak in SA

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George Bizos SC (right), a member of the Johannesburg Bar and member of the National Council of Lawyers for Human Rights, is the writer of this article.

TOMORROW: Three leading South African lawyers discuss various issues affecting human rights. *The Star* publishes edited versions of articles written by them for the "South African Journal on Human Rights", which made its debut this year.

WEDNESDAY: A look at some of the victories for human rights in South African courts during 1985.

December 10 is marked almost throughout the world as Human Rights Day because on that day in 1948 the Universal Declaration of Human Rights was subscribed to by 48 nations South Africa's representatives joined seven others in abstaining

Every other nation that has joined the United Nations Organisation since then has signed the declaration

Lawyers for Human Rights, since its formation five years ago, has tried to remind South Africans of the nature and purpose of the declaration and to score ourselves against its universally accepted standards

One of its main purposes is that men should not be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression

Article 21 proclaims that the will of the people shall be the basis of the authority of government, that everyone has the right to take part in the government of his country and that there will be periodic and genuine elections by universal and equal suffrage

Arbitrary

Article 9 enjoins governments not to subject anyone to arbitrary arrest, detention or exile

The other 28 articles recognise, among other things, the right of the individual to life, liberty and security of person, not being discriminated against on the account of race, sex or religion, a fair and public trial, not being subjected to arbitrary interference with privacy, family or home life, freedom of movement, seek asylum from persecution, nationality of which he cannot be deprived without his consent, own property of which he cannot be arbitrarily deprived, freedom of opinion and expression through any media and regardless of frontiers, work for equal pay and free choice of employment, education of a kind primarily chosen by his parents

Almost every one of these rights was being violated in South Africa in 1948 Its representatives could not sign the declaration even with their fingers crossed

As representatives of the then newly elected government — by a minority of even the whites under the banner of apartheid — they probably did not want to sign it anyway They were probably sure that the world would see the error of its ways and abandon these meaningless platitudes

But in 1985 we are told by those holding high office that mistakes were made, changes have taken place, they want a just and democratic society as did those whom it was earlier necessary to ban and imprison for taking steps to bring it about

Denying

The State President himself, when Prime Minister towards the end of 1980, told his constituency at George "The whites cannot survive through oppressing other races or by denying them human rights and a decent standard of living I know the moment you start oppressing people, the moment you start denying them their rights to live as people, they fight back"

Is this not a recognition of the validity of the main purpose of implementation of the declaration — to avoid as a last resort rebellion against tyranny and oppression?

We are told that there has been change However, the more things are said to change the more, on closer analysis, they appear to be the same — in some respects even worse The year 1985 will probably go down as the year during which violations of human rights surpassed those in every other year of the country's history

The state of emergency regulations of July 21 — extended periodically both in their Draconian effect and geographically — violate practically every one of the rights set out by the world body's declaration, as well as the European Convention, the constitutions of most countries in the world and closer home the laws of humanity enshrined in the Roman-Dutch law, the basis of our legal system

It was declared that the ordinary law of the land is inadequate to enable the Government to ensure the safety of the public and maintain public order Powers were given to the Commissioner of Police and the Deputy Commissioners to make orders

Frightens

Perusal of these orders frightens everyone who has any respect for the rule of law They give a free hand to the police and the defence force to regulate the lives of people — from when to go to school to when, where and in what manner they are to bury their dead

One wonders whether anyone responsible for the promulgation of these orders has heard of Antigone and the fate of the tyrant Creon and his family after his decree

Detention without trial has been with us since 1963 The annual average was about one thousand It did not help to solve any of the country's problems Since July 21 this year

- 6 261 people have been detained without trial, but for lesser periods than previous years
- 426 people have died, mostly as a result of police and defence force action (twice as many per day as before the state of emergency was declared)
- The news media have been prevented from reporting fully on the events (the messenger that brought the news to Creon had to disclaim responsibility to save his life)
- Children have been arrested for breaches of the police orders
- The Army, instead of its proper function of looking outward beyond the borders of the country, is now perceived by most blacks and many whites as an instrument of oppression

Regulations

Was the declaration of emergency really necessary? Blacks have always lived under discriminatory legislation Whites — with very few exceptions — have not really been directly affected by it The cost to the country as a whole and especially its financial loss is too well known to require re-statement

Despite promises to remove discrimination, the Group Areas Act, the pass laws, influx control regulations, differential education and lower wages for blacks for equal work are still in force

The repeal of the Mixed Marriages Act and section 16 of the Immorality Act was a step in the right direction The extent to which we are out of touch with the world is perhaps evidenced by the general and derisive laughter at the Security Council when South Africa's ar-

[illegible] held out the repeal as a major step in the process of reform

Apologists for the deprivation of human rights in South Africa say that things are worse elsewhere Maybe But that is naught for our comfort

Others say that there are forces wanting to make the country ungovernable and the measures are therefore necessary

To them Aristotle has given the answer "Inequality in goods and honours leads to seditions"

Until the inequalities in our society are substantially reduced men and women will not rest Further deprivation of human rights has never been a solution It has created more problems

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Questions as treason 12 go free

PETER HONEY and LINDA ENSOR

IT WOULD be naive to suggest that the dropping of charges against 12 of the 16 treason trialists in the Maritzburg Supreme Court yesterday is the end of one of the more bizarre political-legal sagas of SA's history.

PFP Justice spokesman Dave Dalling yesterday welcomed the release of the 12 but questioned the State's motives for charging them in the first place

"Was this merely a case of vindictive harassment?

"If so, and the State continues to use court procedings as a form of harassment, it will serve only to diminish the whole administration of justice in the eyes of South Africans who are not white," he said.

While court procedings began only in May their origins are to be found in Indian and coloured elections for the tricameral Parliament in August, 1984

Seven UDF leaders were detained because of their opposition to the elections, but the Supreme Court ruled that their detention had been unlawful

The released men went into hiding, anticipating Law and Order Minister Louis le Grange's redetention orders a week later

When five of the former detainees and a Natal Indian Congress member surfaced on September 13, it was as political fugitives in the British Consulate in Durban

Three left the consulate within a month and were immediately arrested. When Archie Gumede, Paul David and Billy Nair emerged on December 12, only Nair was allowed to go free Gumede and David were arrested to face treason charges with their former consulate companions

Nine weeks later, in a countrywide swoop, more UDF and members of the SA Allied Workers' Union (Saawu) were arrested.

All 16 were finally granted bail, totalling R170 000, in May

The case was adjourned until July 11, to allow the State to respond to a defence request for further particulars

After a further delay the procedings began in earnest in August.

Then instructing attorney Victoria Mxenge was gunned down at her Umlazi, Durban, home — four years after the unsolved murder of her attorney husband, Griffiths

Defence counsel Ismail Mahomed, SC, entered into a wide-ranging attack on the 587-page indictment, saying pamphlets distributed by the accused could not stand up to the charge they were guilty of a conspiracy to overthrow the government by violence

On September 2 the presiding judge, Judge President of Natal Mr Justice John Milne, ordered that the defence be given further particulars on some of the charges. However, he found that the charge of high treason and alternative charges were in the main competent.

The trial began in earnest on October 21 Isaak de Vries, a political science lecturer, was the first witness

De Vries later admitted having made "fundamental mistakes" in his evidence that could have misled the court.

It was after an adjournment during De Vries' evidence that the case was withdrawn against 12 of the accused

The four who remain on trial are Saawu members accused of fronting for the banned SA Congress of Trade Unions: Thozamile Gqweta, Sisa Njikelani, Sam Kikine and Isaac Ngoobo.

The 12 freed UDF members, accused of trying to further the aims of the ANC or the SA Communist Party and further revolution, are: Archie Gumede, Albertina Sisulu, Caselm Sakojoe, Frank Chikane, Ismail Mohammed Essop Jassat, George Sewpersadh, Mewa Ramgobin, Aubrey Mokoena, Curtis Nkondo, Moorcogh Naidoo and Paul David.

12/12/85 BUS DAY (252)

Release of 12 treason trialists a political victory — UDF

PETER HONEY, LINDA ENSOR and JOHN BATTERSBY

THE UDF hailed the freeing of 12 of its leaders from treason charges in the Pietermaritzburg Supreme Court yesterday as a political victory.

Seven of the 12 flew into Johannesbueg's Jan Smuts airport to a jubilant welcome from about 100 relatives and supporters last night.

In a statement on their arrival, UDF national treasurer Azhar Cachalia called for charges to be dropped against the remaining four Pietermaritzburg trialists, and also against the 22 people on trial for treason in Delmas.

He also demanded the immediate and unconditional release of all political prisoners.

Railways policemen with dogs kept wellwishers and the media away from the arrival gate as supporters chanted freedom songs and shouted UDF slogans.

Those who arrived in Johannesburg were UDF president Albertina Sisulu, treasurer Cassimm Saloojee, Transvaal vice-president Frank Chikane, Transvaal anti-President's Council committee member Ismail Mohammed, Transvaal Indian Congress president Essop Jassat, UDF regional vice-president Curtis Nkondo and National executive member Aubrey Mokoena.

Others released yesterday were UDF president Archie Gumede, Natal Indian Congress president George Sewpersadh, national co-treasurer Mewa Ramgobin, UDF member Paul David and Natal Indian Congress vice-president Mooroogih Naidoo.

Those still facing treason charges in Pietermaritzburg are all members of the SA Allied Workers' Union: national president Thozamile Gqweta, general secretary Sisa Njikaleni and members Sam Kikine and Isaac Ngcobo.

UDF treasurer Cassimm Saloojee said it had become apparent that charges would be withdrawn when the state's expert witness had been "discredited"

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Nedbank rescues ailing Triomf

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survival in the troubled fertiliser industry.

MD Kobus Becker says that at the end-December all forward exchange contracts expire and the group will be able to take advantage of the weak rand on the export side.

Furthermore, he adds that it has secured profitable three-year contracts for the export of phosphoric acid to Europe. The additional throughput will raise the Richards Bay plant capacity from a current 50% to over 75%.

Negotiations with Foskor have been completed to provide Triomf with the local supply of phosphate rock, which is expected to lead to a R10m annual savings

Becker expects the group to be back in the black in the 1987 financial year.

No doubt the cessation of the fertiliser price war, which has cost the industry R100m over the past year, will help matters.

Tax losses at end-June amount to R221,7m and the fact that preference dividends on the R65m are not deductible for tax purposes is of little significance.

Court frees 12 treason trialists

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last week

"This was not simply a trial against us but against the UDF and the whole style of struggle and mass protest of the last two years.

"We see it as a political victory," he said.

Saloojee said government now had "an historic opportunity" to enter into dialogue with the real leaders of the people

The withdrawal of charges against the 12 was widely welcomed in London yesterday.

First reactions came from the British government and the London-based Anti-Apartheid Movement (AAM), which heralded the decision as a "great breakthrough"

A British Foreign Office spokesman said the government welcomed the development

"We had expressed our concern to the SA government at the time the UDF leaders were arrested and charged."

Tension after SADF strike threat

BUS DAY 10/12/85

● From Page 1

LLA last Friday of seven Basotho in the southern border area of Qacha's Nek.

The SA-Zimbabwe war of words erupted two weeks ago when, according to government, a band of African National Congress insurgents crossed the Limpopo from Zimbabwe into the north-western Transvaal district of Weipe and planted landmines.

Those that exploded killed one man and injured seven others.

Foreign Minister Pik Botha immediately warned Zimbabwe that it would "follow the tracks" of insurgents into Zimbabwe, should there be similar incidents. Zimbabwe replied that it did not permit its territory to be used as a base for armed attacks in SA.

Despite Malan's tough reply to Mugabe yesterday, diplomatic sources in Pretoria and Harare said they had understood that both sides had accepted each other's assurances and that the possibility of any SADF cross-border strike was remote.

Zimbabwe, with its 40 000-strong British-trained army, would prove a somewhat tougher military nut to crack than Mozambique, Lesotho or Botswana.

Zimbabwe's daily newspapers and state-run television and radio highlighted Mugabe's comment that Zimbabwe took the threat seriously.

But Western diplomats were sceptical. "One understands the anxieties of government but . . reality is that Pretoria has enough problems on its plate."

Malan said SA dared not give in to the ANC. He said the SADF would "reach the terrorists wherever they are hiding — also in those neighbouring countries where they think they are safe".

Referring to internal unrest, Malan said· "Those who walk around with ideas to throw bombs, commit murder, arson and intimidation, should take note of the fact they have not even experienced a tiny fraction of our firepower."

If anything, Lesotho has more reason to fear a strike Pretoria remains convinced that Maseru is still harbouring ANC elements, while Maseru continues to accuse Pretoria of allowing the LLA to operate from SA against Lesotho.

A spokesman for the Department of Foreign Affairs said it had no knowledge of the LLA incident and the Lesotho government had not informed SA of it.

Kentridge attacks police methods

BUS DAY 11/12/85

PAUL BELL
Political Correspondent

SYDNEY KENTRIDGE, SA's most eminent advocate, yesterday called the country a police state and said Law and Order minister Louis le Grange appeared powerless to stop his men from brutally abusing their powers

He was addressing a Human Rights Day meeting, along with Bishop Desmond Tutu and the Black Sash's Sheena Duncan, attended by at least 500 people at a Methodist Church hall in central Johannesburg

Towards the end of the meeting, six of the 12 members of the UDF against whom the State dropped treason charges in Maritzburg on Monday, were given an overwhelming reception.

Kentridge said the emergency powers "tell a policemen he may do whatever he pleases to maintain what he considers to be law and order".

"He may shoot, or whip, or teargas. However unnecessary or excessive his action, he knows that he is safe as long as he acted in good faith. And he is told that anything he does will be presumed to be in good faith."

Kentridge said "It would appear that the police do not always tell Mr Le Grange the truth And he appears to believe nobody else And even when abuses are exposed, he seems powerless to stop them.

"This is not because he is a particularly weak or ineffectual man. What his powerlessness demonstrates is that there just is no substitute for control by law."

Duncan summed up the rights described in the Universal Declaration of Human Rights as freedom from fear. Fear, she said, governed the lives of most people in SA

She cited examples from cases she had heard at the Black Sash advice office on Monday·

☐ A woman who, on Sunday, had had her permed hair shaved off with a broken bottle, and was left, bleeding, beaten, and almost scalped — simply because "someone, somewhere had decided that black people with permed hair must be punished";

☐ Two Shangaan men who, on separate occasions, had been allegedly arrested, beaten, made to sign "confessions" that they were illegal Mozambican immigrants, then jailed and deported,

☐ A Soweto man allegedly beaten by soldiers who "wantonly tore up every document he had on him. The weals were all over his face, his head, his arms".

Tutu said apartheid was a foul system which could be defended only by equally-foul means He said he, at the age of 54 and Bishop of Johannesburg, could not vote, nor could he live where wanted, even if he could afford it

"Freedom is indivisible," he said. "The Frankenstein that eats into the vitals of black freedom won't say, when it has finished black freedom, 'I have had enough'. It will say, 'My appetite is insatiable'."

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AIRLINE MOVEMENTS

Cape Times 11/12/87

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Judge: Man was pushed

Supreme Court Reporter

A POLICEMAN had been pushed off the roof of a two-storey block of flats in Parkwood Estate on October 8, 1983, Mr Aaron said in the Supreme Court yesterday.

Mr Walker, injured, and the fall was now a serious, "life-threatening" injury.

Mr Justice S Aaron said the amount for damages he could show he suffered, and left the amount for determination by another judge.

Mr Walker sued the Minister for R185 000 and for R70 000 for pain, suffering and loss of earnings and amenities of life.

He testified that he had been climbed on to this roof near his home or Ordered to escape being robbed and remembered he fell asleep and woke up in hospital.

The evidence of Mr Titus Booysen, who saw with Walker police grabbing Constable I F Knight's legs and then Constable J A Fillies, who was below, had said ment below, had "Throw the pig off," according to Mr Cronstable After Knight had freed his legs, the roof with his foot Mr Justice Aaron said Constable Knight had pushed Mr Walker's grasp, Constable D F Morris given their version of what happened

Constable Morris had helped Knight had record of the incident, "let all vanish Constable Morris admit vanish Constably about a knife." Mr P Hazel, instructed by "obviously invented." a story which he said Mr Walker had

The State Attorney, appeared and Order the Minister, appeared for instructed by Heyns, Strauss and Visagie, appeared for Mr Walker.

12/12/85 BUS DAY

Treason trial 'embarrassment'

IAN HOBBS

LONDON — The *Guardian* newspaper said yesterday the withdrawal of treason charges against 12 United Democratic Front members was an embarrassing setback which SA could easily have spared itself.

The newspaper said the failed indictment had been an attempt by the state to blame the UDF for the disorder in SA, making the trial "wholly political".

Recalling the failure of the 1961 treason trial, an editorial said: "The authorities have clearly learned nothing and forgotten nothing in the interval, but have been reminded that opposition to apartheid, even when criminal violence is involved, is not to be equated with 'treason'. The government would be much better occupied with talking with these people instead of locking them up."

Commenting on the role of the judiciary, the *Guardian* said: "Except when it uses its swinging executive powers under the infamous security laws to bypass due process of law, Pretoria generally observes the principle of the separation of powers.

"South African judges (if not magistrates, who are State servants) have never shed their capacity for independent thought and have often delivered rulings against the government, notably during the constant unrest of the past 15 months.

"The Justices of the Natal Supreme Court have played their part in maintaining this encouraging record.

"On this occasion, however, the prosecution withdrew its charges before the Bench was called upon to give a verdict. So it is not the judiciary which has embarrassed the government but rather the government itself; and doubly so.

"Not only was it the State that was doing the prosecuting but it also decided to bring the charges in the first place..."

BUS DAY 18/12/85

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IPI hails *Cape Times* editor

● HEARD

LONDON — Governments which suppressed the news were no better than hijackers or kidnappers, the International Press Institute said in London

The IPI — representing 2 000 publishers and editors worldwide — strongly defended the publication by the *Cape Times* of an interview with banned ANC president Oliver Tambo.

In its annual *World Press Freedom Review* the IPI report defended *Cape Times* editor Tony Heard's decision to publish

Own Correspondent

the interview and described his prosecution as "selective and punitive" action against a journalist.

"When Tony Heard knowingly broke the SA government's strict rules on quoting a banned person, he did so for very good reasons

"By presenting the full facts to people, both in SA and elsewhere, the Press opens the way to free debate and possible solutions

"Shutting your eyes will not make it go away," the IPI said.

The report also published a profile of Heard from the *London Sunday Times* and an article by Heard from the *Los Angeles Times* entitled· "Another Step in the Minefield".

The Journalist — official organ of the 30 000-strong British National Union of Journalists (NUJ) — said in a special report on Cape riot coverage that since the fall of the *Rand Daily Mail*, the *Cape Times* had emerged as the leader of Press opposition to apartheid.

As 'soldiers become policemen'...

BUS DAY 23/12/85

Critics slam SADF's wide-ranging powers

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Own Correspondent

THE wide-ranging powers given to SADF personnel, allowing them to detain people, disperse crowds, and search and seize articles, have been strongly condemned by civil rights groups.

The regulations give powers to soldiers previously held only by police in emergency areas

They were promulgated last week in the *Government Gazette* without any announcement by the Minister of Police or the Minister of Defence

They apply to any part of the country where soldiers are "quelling unrest, suppressing terrorism or maintaining law and order".

Among the new powers are

☐ Under the provisions of the Internal Security Act, SADF personnel of the rank of warrant officer or above can prevent a prohibited gathering, disperse an unlawful gathering and order the detention of any person for 48 hours — a period which can be extended.

☐ SADF personnel have been given wide powers of arrest.

☐ SADF personnel have been empowered to search buildings and cars and are now authorised to staff roadblocks without the assistance of the police

Asked to explain the reason for the new measures, an SADF spokesman said he had nothing to add to their previous statement on the matter.

Their previous statement read: "This is no more than an amplification of article 3 (2)(b) of the Defence Act".

Witwatersrand chairman of the Lawyers for Human Rights Barry Jammy said the move gave "awesome powers" to members of the SADF and was a "manifestation of panic rather than reason".

"It is in effect an acknowledgement of a situation beyond control by accepted law enforcement methods and agencies. Soldiers have become policemen, policemen soldiers — their traditional functions have lost all definition," he said

PFP defence spokesman Philip Myburgh said Parliament should be given an explanation

End Conscription Campaign (ECC) spokeswoman Clare Verbeek said the measures were a clear sign that the situation in the country had gone from bad to worse.

CRIMINAL PROCEDURE

FIN MAIL 27/12/85

Bring out the whip

In an apparent attempt to curb unrest and cut down the prison population, government has proposed whipping as a punishment for the type of offences being committed in many unrest situations

The proposals, contained in the Criminal Procedures Amendment Bill, are due to go before Parliament next year.

The new measures provide for people convicted of murder (where the death penalty is not imposed), arson, malicious damage to