

Due legal process

JUDY GREENBERG

Cape Western Region attended Bantu Commissioners' Courts as observers. For various reasons they found it almost impossible to keep an accurate record of court proceedings, but one of their members gives her impressions. This paper was presented to the Black Sash Conference, 1977.

THERE IS an appalling waste of time and energy and money expended on influx control. One sees the indignities that people have to suffer because of the influx laws and one can well imagine the feelings of the people who get caught up in the administration of them.

People are picked up the blue Bantu Affairs Board vans as they patrol the streets (no to mention the more frightening process of being searched for at home in bed in the early hours of the morning). Imagine how you would feel if you were picked up as one elderly man who came to court was: he and his wife came to Cape Town from a town some miles away to shop. She went into a store to buy some things and he, waiting outside on the pavement, was picked up by a Bantu Affairs Board van which happened to be passing by. She came out and did not know where he was and he had no way of telling her.

It is not hard to imagine how uncomfortable it must be being driven round in the heat in those overcrowded vans. In the courts, too, if there are a large number of cases to be heard and no room on the benches inside the court, the prisoners are crowded into the cells to wait with, very often, no room to sit.

While at the court the prisoners are given bread and water to drink and at night if they go back to jail they get a meal, but it is inevitable, with the numbers who have to be dealt with, that there are some who are missed out. I heard of one instance where a woman was picked up at 9 pm and had neither food nor drink till noon the next day.

I do not know if the people arrested are told anything of their legal rights. If the court procedure seems confusing to us then it must be equally confusing for them. Those waiting for their case to come up are usually lined up according to the order of their case and some of them are led in a line to wait in the courtroom.

The courtroom is usually a big, bare room with long benches for the accused and spectators to sit on. At one end are tables for the magistrate, prosecutor and clerk of the court and defending attorney (if there is one). There is also a place for the interpreter near the magistrate.

The atmosphere of the court is one of people being 'processed' rather than being accused of something. One has to keep reminding oneself that the results of the cases will often affect someone's life in a radical kind of way.

Those being charged act in different ways — some are obviously used to the procedure, some are confused, most seem fairly impassive and some even seem to find it amusing. Very little information is given in court about the accused. You get no idea of what jobs they do, how they live or any picture of them as people.

Almost nobody is represented by an attorney. When they are, this slows down the proceedings considerably, and, of course, you get a much broader picture of the circumstances of the case and who the accused is, eg a case conducted by an attorney may take 20 minutes, whereas it is quite common to get 44 cases dealt with in 35 minutes without an attorney.

Most people plead guilty. This means that if there are any mitigating circumstances they are not taken into account in the same way they would have been if the accused had pleaded not guilty. I do not know if the people understand this. I suspect that most of them find it easier to plead guilty, as the case is finished with more quickly and most of them know that in terms of the law they are guilty anyway.

In one case, the accused pleaded guilty, the prosecutor pointed out to the magistrate that that person should not have been in court because his papers were in fact in order. He was discharged.

As far as legal representation goes, it would be time-consuming for these people to find an attorney, and possibly they do not know how to go about it. I would think that most people would not like to take the time off work for legal consultations and would also prefer not to seem to be troublemakers.

We have not liked the undignified way some people are treated, such as having to open their mouths to have their teeth examined, if they say they are under sixteen and therefore have no pass, or some of the women being told to take off their wigs in order that their age can be assessed.

There is a tremendous difference, too, in the way court officials conduct the cases, and I am sure this affects the ability of people to tell their story adequately. Some are sympathetic, but a magistrate can be abrupt and impatient. Sometimes the prosecutor will lean over and shout at the accused and sometimes the interpreter, who wields power as he is the chief communicator, acts in an overbearing way.

Administrators cannot change the laws, but if they administer them with humanity it would make a great difference to those helpless in the face of them.

On a busy day at Langa 70 cases may be heard in 110 minutes, as happened on February 8 this year. All were charged with being illegally in the Cape area, most were also charged with not having a reference book with them. Nearly all pleaded guilty and nearly all were fined.

The fines have just gone up. A first offender pays R40 or spends 80 days in jail for being illegally in the area. For not having a reference book they are fined another R5 or 10 days. The

maximum for second and third offenders so far has been R60 or 90 days. If there are mitigating circumstances the fine is usually R10 or 20 days or R20 or 40 days.

Occasionally people are discharged or given a suspended sentence, eg on another day a woman with four children in the Cape and three of them sick was referred to the Aid Centre so that the matter could be taken up with the authorities.

The magistrate is a busy person. He acts as 'prisoners' friend' after the proceedings are over, and he and the police help to contact friends and relatives to obtain the fine money.

On a 'good' morning in Court well over R1 000 can be collected (not to mention fines employers have had to pay the authorities for having employed these people, if they are picked up at work).

We must remember that the Magistrate is merely administering the law, and all that we can hope for in the way of real change is that some day, the law will be changed.

Poor you!

ELEANOR ANDERSON

X What a sweat! Every finger aches.

Y Poor you. And poorer you for choosing Housing for Blacks as the subject of your speech.

X I don't see why. Having one's own home is a pretty nice thing, as we both know.

Y Of course I know, but I also know these Blacks. Give them a house and the first thing they do is fill it up with family.

X Isn't that more or less what you and Sally have done?

Y That's different.

X Ah.

Y Must you say 'Ah' in that superior way?

X I'm not trying to be superior, but I do suggest that Black and White people have lots of habits in common.

Y Nonsense. Black men just want a hut and three wives.

X I expect some of them do, but does that go for Philemon who works in your office?

Y He's different. I've been to his house in Soweto and you can talk to him just as you'd talk to anybody. His English is excellent.

X Philemon is the sort of urban Black my speech is about.

Y I tell you he's an exception. For one thing, most Blacks have more children than they can cope with.

X Wasn't that roughly how it was for you and Sally when your little afterthought James came along?

Y That's different.

X I suppose it is (X chuckles). I wonder if Philemon thinks you had James so you could fill up the house? Or, for that matter, bought a third car to fill up the garage?

Y Your'e being ridiculous. How could Philemon know why I do things?

X How indeed? I don't suppose he ever will until you and he are no longer strangers.

Y We're not strangers! I tell you I went to his house once. (X resumes typing and Y has to raise voice in order to be heard.) BUT THERE'S ONE THING I'D LIKE TO MAKE QUITE CLEAR TO YOU.

X Hmm?

Y I flatter myself that I'm as broad-minded as they come, but I could never, never live under a Black government. I'd find it intolerable to be told what to do and where to go and who I am by somebody who hadn't the least idea of what I value and what I'm really like.