PUBLIC SECTOR GVT.

JUSTICE.

18 FEB 75 - 28. July 78

HANSARD 3 Q. column 169-170
18 February 1975.

254

Coloured/Indian prosecutors/magistrates' salaries/training

*18 Mr D J DALLING asked the Minister of Justice

(1) (a) How many (i) Coloureds and (ii) Indians are at present employed as (aa) prosecutors and (bb) magistrates and (b) in which districts are they employed in each case,

(2) what are the salaries of (i) Coloured and (ii) Indian prosecutors and magistrates, respectively and (b) what are the salaries for White persons holding posts in corresponding positions,

(3) whether any steps were taken during 1974 to narrow the salary gap between the race groups in the above categories, if so, what steps,

(4) whether any steps are contemplated to narrow such gap during 1975, if so, what steps,

(5) how many (a) Coloureds and (b) Indians have commenced training as prosecutors and magistrates in 1975,

(6) where are such prospective prosecutors and magistrates respectively, being trained,

(7) whether any steps are contemplated and/or being implemented to increase the number of such trainees, if so, what steps

The MINISTER OF JUSTICE

(1) (a) (i) (aa) None

(bb) None

(ii) (aa) Two

(bb) None

(b) One each in Durban and Pinetown

(2) (a) (i) and (ii)

Prosecutors R2 700 × 150 — 3 600
Magistrates R3 150 × 150 — 4 200 — 4 380

(b) Prosecutors R3 480 × 180 — 5 100 — 5 340
Magistrates R5 340 × 240 — 6 300 × 360 — 7 350

(3) and (4) The Government's policy in regard to the narrowing of the gap has been clearly stated on various occasions in the recent past Apart from the salary improvements which were granted to non-White officials over the past few years—the most recent of which became effective as from 1 July 1974—the matter is continuously receiving the attention of the Government with a view to implementing its policy

(5) (a) One

(b) None

(6) Wynberg, Cape

(7) The necessary facilities can be provided should more persons make themselves available for such training

Question
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Question ... .
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Hansard 7 Q Columns 568–72.
21/3/75

254

/ Persons sentenced to death/executed

*35 Mr R M DE VILLIERS asked the Minister of Justice

(a) How many males and females, respectively in each race group were (i) sentenced to death and (ii) executed during 1972 1973 and 1974, respectively, and (b) of what crimes had they been convicted

†The MINISTER OF JUSTICE (Reply laid upon Table with leave of House)

(a) and (b)	Whites		Bantu		Coloured		Asians	
	Male	Female	Male	Female	Male	Female	Male	Female
1972								
Murder								
(a) (i)	—	—	44	1	13	—	—	—
(ii)	1*	—	25	—	9	—	—	—
Rape								
(a) (i)	1	—	3	—	3	—	—	—
(ii)	—	—	2	—	—	—	—	—
Murder and Rape								
(a) (i)	—	—	4	—	3	—	—	—
(ii)			3	—	—	—	—	—
Murder and Robbery								
(a) (i)	1	—	3	—	—	—	—	—
(ii)	—	—	5*	—	—	—	—	—
Rape, assault with the intent to rape and robbery								
(a) (i)	—	—	—	—	1	—	—	—
(ii)	—	—	—	—	1	—	—	—

(a) and (b)	Whites		Bantu		Coloured		Asians	
	Male	Female	Male	Female	Male	Female	Male	Female
1973								
(a) and (b)								
Murder								
(a) (i)	3	—	41	—	13	—	3	—
(ii)	—	—	25	1*	6	—	—	—
Rape								
(a) (i)	—	—	1	—	1	—	—	—
(ii)	—	—	—	—	1	—	—	—
Murder and Robbery with aggravating circumstances								
(a) (i)	—	—	1	—	2	—	—	—
(ii)	—	—	—	—	—	—	—	—
Murder and attempted murder								
(a) (i)	—	—	1	—	—	—	—	—
(ii)	—	—	—	—	—	—	—	—
Murder and Robbery								
(a) (i)	—	—	1	—	1	—	—	—
(ii)	—	—	1	—	1	—	—	—
Housebreaking and rape								
(a) (i)	—	—	—	—	1	—	—	—
(ii)	—	—	—	—	—	—	—	—
1973								
Murder and Rape								
(a) (i)	—	—	—	—	1	—	—	—
(ii)	—	—	1*	—	3*	—	—	—
Attempted murder and robbery with aggravating circumstances								
(a) (i)	—	—	—	—	1	—	—	—
(ii)	—	—	—	—	—	—	—	—
Murder and robbery, murder and rape								
(a) (i)	—	—	—	—	2	—	—	—
(ii)	—	—	—	—	1	—	—	—
Housebreaking with the intent to rape and rape with aggravating circumstances								
(a) (i)	—	—	—	—	1	—	—	—
(ii)	—	—	—	—	1	—	—	—
Murder, housebreaking with the intent to rob, robbery with aggravating circumstances and rape								
(a) (i)	—	—	—	—	2	—	—	—
(ii)	—	—	—	—	2	—	—	—
1974								
(a) and (b)								
Murder								
(a) (i)	2	—	52	—	17	—	—	—
(ii)	1	—	26	—	3	—	2*	—

(a) and (b)	Whites		Bantu		Coloured		Asians	
	Male	Female	Male	Female	Male	Female	Male	Female
1974								
Rape								
(a) (i)	—	—	1	—	—	—	—	—
(ii)	—	—	1	—	1*	—	—	—
Robbery with aggravating circumstances								
(a) (i)	—	—	—	—	—	—	—	—
(ii)	—	—	—	—	—	—	—	—
Childstealing								
(a) (i)	—	—	1	—	—	—	—	—
(ii)	—	—	1	—	—	—	—	—
Murder and Robbery with aggravating circumstances								
(a) (i)	—	—	5	—	—	—	—	—
(ii)	—	—	1	—	2*	—	—	—
Robbery and Rape								
(a) (i)	—	—	2	—	—	—	—	—
(ii)	—	—	—	—	—	—	—	—
Murder and Rape								
(a) (i)	—	—	2	—	3	—	—	—
(ii)	—	—	—	—	1	—	—	—
Housebreaking with intent to rob, robbery with aggravating circumstances and rape								
(a) (i)	—	—	—	—	1	—	—	—
(ii)	—	—	—	—	—	—	—	—
Murder and Robbery								
(a) (i)	—	—	—	—	—	—	—	—
(ii)	—	—	1*	—	—	—	—	—

*Convicted in previous year

***Focus on Africa* found undesirable**

*36 Dr A L BORAINE asked the Minister of the Interior

In terms of what paragraphs of section 5(2) of the Publications and Entertainments Act did the Publications Control Board find the magazine *Focus on Africa* Vol 1, No 3, of November 1974 undesirable

The MINISTER OF THE INTERIOR

(d) and (e)

*37 Mrs H SUZMAN – Reply standing over

HANSARD 4 Q. column 278.
25 February 1975.

254

Training of Black trainee prosecutors and magistrates

*35 Mr D J DALLING asked the Minister of Bantu Administration and Development

Whether the training afforded to Black trainee prosecutors and magistrates is identical to or substantially the same as that afforded to White trainee prosecutors and magistrates, if not, what are the differences

†The DEPUTY MINISTER OF BANTU ADMINISTRATION AND EDUCATION

Yes

HANSARD 4 Q. column 319-320
28 February 1975.

254

Indian/Coloured prosecutors/magistrates training

*23 Mr D J DALLING asked the Minister of Justice

(1) Whether any specific steps are contemplated or being considered to increase the number of Indian and Coloured recruits for training as prosecutors and magistrates, if so, what steps,

(2) whether the training afforded to Coloured and Indian trainee prosecutors and magistrates is identical to that afforded to White trainee prosecutors and magistrates, if not, what are the differences

The MINISTER OF JUSTICE

(1) The recruiting of personnel for the Public Service is undertaken by the Public Service Commission My predecessors and I have, however, on various occasions encouraged Asians and Coloureds to make themselves available for the necessary training with minimal response

(2) The in-service training afforded to the 2 Asians and 1 Coloured trainee prosecutors is identical to that afforded White trainee prosecutors There are no Asian or Coloured magistrates at present When the need arises, Asian and Coloured prosecutors and magistrates will receive the same theoretical training at the Department's Training Section

RDM
3/4/75

254

Support

Another way in which the Government has shown its support for the death penalty is the steps it has taken over the years to increase the number of capital crimes. Before the present Government came to power in 1948, treason, murder and rape were the three capital crimes in South Africa. Now terrorism, sabotage, [illegible] robbery, kidnapping and housebreaking with aggravating circumstances have been added.

In Law, Order and Liberty in South Africa Professor A S Mathews writes: "If a South African [illegible] Marxist leanings went to an English

The crowded road to the death cell

SPECIAL CORRESPONDENT

● South Africa has the highest rate of executions in the world and the biggest daily prison population of any Western country. Under South African law a judge has no discretion to spare an accused's life if he does not find extenuating circumstances. Most death sentences arise from murders but armed robbery, rape and housebreaking with aggravating circumstances are also among capital offences. Moves have been initiated to try to reduce the size of the prison population, mostly there for pass offences.

SEVENTY-SEVEN prisoners are waiting on "Death Row" in Pretoria's Central Prison to be executed Two of them are Whites, 20 are Coloureds of mixed race descent and 55 are Africans

We have been reminded of this grim gallows scene by the passing of the death sentence on Marlene Lehnberg, who is one of the two Whites on "Death Row"

Highest

South Africa has the highest rate of judicial killing in the world At any given moment, "Death Row" has its complement of prisoners awaiting execution

Now in the wake of the Lehnberg sentence have come renewed demands by abolitionists for the death penalty to be scrapped. The abolitionists are still a small section of the population, but the Lehnberg case has given their cause more impetus than any other murder trial in recent history

Under South African law if a judge does not find extenuating circumstances he has no discretion to spare the accused's life.

This is one way in which the State demonstrates its attitude to the death penalty. From the moment the judge in the Lehnberg trial declared that he found no extenuating circumstances he was obliged to impose the death sentence

The General Council of the Bar has asked for this provision to be removed from the law and for judges to be given discretion in imposing death sentences, even if no extenuating circumstances are present But the Government has not responded to the request

university in 1955 to study communism for two years this will presumably be a training which could be of use in furthering the aims of communism and which will therefore be punishable as a capital offence unless the student can prove beyond a reasonable doubt that this was not his purpose "

South Africa reached a peak of judicial killings in 1968 with 118 executions, but there has been a decrease since then. Between June, 1969, and June, 1970, there were 84 executions and 80 in the following year

Robbery

In 1972, 1973 and 1974 our courts sentenced 241 people to death—165 Africans, 66 Coloureds of mixed race descent, three Asians and seven Whites Of the 241 condemned people (only one was a woman), 91 Africans were executed, 32 Coloureds, four Whites and two Asians—a total of 129 executions in three years The principal offence was murder Other offences were rape and robbery with murder

Whites

Of 130 people who were under sentence of death between June, 1972, and December, 1973, only two were Whites Of these 110 were found guilty of murder, and of the 110 only one was a White man—he was found guilty of murdering another White man The remaining 109 were Blacks in 29 cases they had murdered Whites, and in the remaining 80 cases they had murdered Non-Whites

Most death sentences arise, therefore from murders committed by Blacks on Blacks The 20 people who were sentenced to death for offences other than murder were with one exception all Blacks Their crimes were murder and robbery, robbery with aggravating circumstances, rape and house breaking with aggravating circumstances

Rape

No White person has ever been executed for raping a Black woman, but in 1955 the Minister of Justice said that during his term of office "not a single Black who has been sentenced to death for raping a White woman has escaped the death penalty"

In a survey, practising advocates were asked from their experience whether they thought that Blacks stood a greater chance of being sentenced to death than Whites Of those who responded to the survey, 49 per cent replied "yes".

Judges

The proponents of the abolition of the death penalty in South Africa are few, but they include men of standing in the community. Recently, two retired judges spoke out against the death penalty. One said it would have to fall away sooner or later The other related how, after he sentenced an African to death, the African turned round as he was being led out of the court and protested that he had been in prison at the time of the alleged offence.

The judge immediately ordered the African's counsel to appeal against the conviction and sentence, and the African's claim was found to be true, and he was acquitted With so many Africans facing capital charges it is hardly surprising that their defences are not always thoroughly prepared.

South Africa not only has the highest judicial killing rate in the world; it also has the biggest prison population of any Western country. Most of the prisoners are Africans who have contravened technical" laws

Example

In 1973, for example, 364 000 sentenced and 268 487 unsentenced prisoners were admitted to custody, in a total population of four-million Whites and 21-million Blacks On average 95 015 people were in prison every day, most of them Blacks This is the equivalent of 413 for every 100 000 of population, compared with 25 per 100 000 in the Netherlands, 61 in Sweden, 70 in France and 72 in Britain

Steps

In the past year or two, the South African Government has initiated steps to try to reduce the size of the prison population The Prime Minister, Mr Vorster, recently agreed to the appointment of a committee, consisting of Black homeland leaders and Government officials, to try to humanise the operation of influx control.

HANSARD 9 Q. column 647
8 April 1975.

254

Capital/corporal punishment

*15 Mr D J DALLING asked the Minister of Justice

(1) Whether he is considering (a) the abolition of (i) capital and (ii) corporal punishment or (b) a reduction of the application of each form of punishment, if so,

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

The MINISTER OF JUSTICE

(1) (a) (i) and (b) As far as capital punishment is concerned No

(1) (a) (ii) and (b) As far as corporal punishment is concerned This is one of the matters which may be investigated by the Commission of Inquiry into the Penal System of the Republic and I shall therefore make no statement in regard thereto at this stage

(2) No

HANSARD 10

15/4/75

Q. Column .

~~(1) 101~~

(2) 254

Magistracies in Bantu homelands

*22 Mr M L MITCHELL asked the Minister of Bantu Administration and Development

How many magistracies are being administered by Bantu persons in each Bantu homeland

The MINISTER OF BANTU ADMINISTRATION AND DEVELOPMENT

Transkei—7
Lebowa—2
Bophuthatswana—1
kwaZulu 2
Remaining homelands- Nil

RDM 29/7/75

African magistrate

Our Correspondent

DURBAN — Mr. Wellington Mtshali, 41, chairman of the KwaZulu Liquor Board, has been appointed a senior magistrate, the first African to be appointed to this position.

A magistrate at Umlazi, near Durban, for several years and a lecturer in law, Mr. Mtshali spent 60 days in the United States in 1973 as a guest of the State Department.

He said his wife had contributed towards his advancement. "She had made many sacrifices for my career."

1 102
(2) 254

Kruger acts as court staff quits

RDM 29/7/75

Staff Reporter

THE Minister of Justice, Mr. Jimmy Kruger, and the Public Service Commission are working on schemes to prevent continued resignations of public prosecutors.

This was disclosed by the Secretary for Justice, Mr. J. P. J. Coetzer, yesterday.

"Schemes are also being studied to supplement our present staff," Mr Coetzer said.

Asked to comment on the decision to close two magistrate's courts in Johannesburg, at the beginning of August because of the grave shortage of public prosecutors, Mr Coetzer said:

"I am fully aware of the situation. We do have a shortage of staff.

"Steps are being taken to try to prevent the closure of the magistrate's courts in Jeppe and Booysens, scheduled for August 1," Mr Coetzer said.

The senior public prosecutor of Johannesburg, Mr F von Lieres, said last week that prosecutors were leaving the service because they could get much better salaries in the private sector.

One prosecutor, who is leaving the service at the end of the month, told the Rand Daily Mail he had been offered R400 a month more than he was paid as a prosecutor.

Hanging laws—call by judge

STAR 28/8/75

Pretoria Bureau

A judge of the Transvaal Division of the Supreme Court, Mr Justice Trengove, has called for the overhaul of legislation covering capital punishment

In the top-level debate in Pretoria on the death penalty he came out strongly in favour of the automatic right of appeal.

Assessors should have a say in sentencing people convicted of capital crimes, and the accused's background should be examined as a matter of course, he believed.

The death sentence should only be imposed in extreme circumstances and after careful consideration.

He had only found it necessary to use the death sentence twice during his eight-year term as a judge, he said.

The four speakers at last night's meeting, arranged by the Pretoria Discussion Group, Datum 80, were sharply divided on whether the death penalty acts as a deterrent.

Professor Brian Johanson, Professor of theology at the University of South Africa, said if it did so executions should then be televised during school hours.

He said it was nothing less than cold-blooded planned murder by the state.

Mr J Labuschagne, a leading criminologist, said there was too much concern for the murderer and too little for the victim.

"Senor" counsel in the Scissors murder trial, Mr I Mahomed, SC, said it was only a matter of time before the death penalty had to die.

Law men in race protest

Sunday 31/8/75

Tribune Reporter

[illegible] Law Society has petition to the secretary for justice, [illegible] be totally segregated [illegible] Durban Magistrate's Court.

[illegible] structure [illegible] Somtseu Road, has been [illegible] Durban pro[illegible] fessional men [illegible] nonu[illegible]

[illegible] thoroughly discussed at [illegible] last [illegible] following petition from [illegible] torneys.

[illegible] they requested [illegible] that [illegible] adopted [illegible] that the [illegible] condemn [illegible] the [illegible] action and expressits condemnation [illegible]

[illegible] president of the [illegible] council has made written representations to the Secretary for Justice and [illegible] prepared to [illegible] meantime [illegible] the matter reconsidered."

Disclosures

The controversy about the new court building has risen over disclosures that complete segregation will be practised in the building.

The R3 million building has been designed so that different races will enter the building through separate entrances and not [illegible] they are in the courtroom.

NEW LAW COURTS RACE BAN

Mercury Reporter

THE SOUTH ... Indian Council is to urge the ... Minister ... Worster to ... segregation ... Durban's new multi ... million ... Court ... in ... Somtseu Road ... due for opening soon.

... separate entrances for ... Whites and Blacks ... surrounded and inside the ... courts ... halls will ... separate ... lifts, ... according ... some attorneys.

COMPLAINT LODGED

Fearing that apartheid will be strictly enforced in the ... courts, about ... Durban attorneys, ... Black ... White, have lodged a complaint with the Natal Law Society, according to an attorney. ... fear that discrimination on racial grounds in the new courts would subject the legal profession to ridicule and disrespect, he said.

'Apartheid showpiece'

STAR 1/9/75

Own Correspondent

DURBAN — Attorneys are shocked at apartheid measures which are to be practised at Durban's new R8-million magistrate's court in Somtseu Road.

There is to be no mixing whatever between Black and White lawyers and between White attorneys and Black clients. Apartheid conditions will be so rigid that Black and White attorneys and public will enter the building through separate entrances while inside the courts, walls have been built to keep the races apart.

Representatives of the Durban Legal Association, who toured the building, found that "separate development had been taken to the extreme."

After representations by 39 Black and White attorneys, the Natal Law Society decided at the weekend to take the matter up with the Ministry of Justice.

Mr Conway Restom, chairman of the Durban Legal Association, said today: "We are busy with our representations, but no decision has yet been taken by the department."

A White attorney said: "If a lawyer arrives with a Black client they will have to separate, and meet again only in the courtroom. This could be insulting to our clients."

He said that even attorneys would not be allowed to sit together, and that this would be a severe handicap when Black and

To Page 3, Col 7

Apartheid court

STAR 1/9/75

(From Page 1)

White legal men were involved in trials together.

He said the situation would become more difficult in a civil or criminal case when an Indian attorney briefed a White senior counsel and a Black junior counsel. The counsel would not be allowed to confer at the same table.

A spokesman for a group of Black attorneys said the whole situation was "ridiculous and absurd." He said the new building had been constructed in such a way that it would become an "apartheid showpiece."

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'APARTHEID' COURTS TO BE PROBED

254

Mercury Reporter 3/9/74

THE Minister of Justice, Mr. J. T. Kruger, is to receive a full report on Durban's new R8-million "apartheid" law courts.

The detailed report will be put to him by the Secretary for Justice, Mr. J. P. J. Coetzer, who made an on-the-spot examination of conditions designed to impose strict apartheid at the new complex.

A spokesman for the Department of Justice in Pretoria yesterday confirmed Mr. Coetzer's visit to the new building in Somtseu Road on Friday.

He said that Mr. Coetzer had inspected the whole building following representations made to the department by the Natal Law Society.

He was accompanied on the inspection by Durban's Chief Magistrate, Mr. L. L. A. McKay, and a representative of the Public Works Department.

The spokesman said that Mr. Coetzer was not available for comment

"But I can say he is fully aware of the situation in the light of complaints made by Durban attorneys.

"As soon as the Minister returns from Port Elizabeth he will be fully informed of the position by Mr. Coetzer"

Gun death report to Kruger

STAR 9/9/75

Dr Percy Yutar, SC, Attorney General of the Transvaal, revealed in Cape Town today that the Minister of Justice, Mr Kruger, would receive a detailed report of a Pietersburg police investigation in which a Black caddy was fatally shot.

Dr Yutar was in Cape Town to speak at the National Road Safety Council's symposium on law enforcement.

The caddie, William Sekgatsa (14) was shot dead on a Pietersburg rugby field on November 13, last year, while being interrogated about a missing R2

On June 5 a Pietersburg magistrate, Mr E J Steenkamp, found a White policeman's negligence caused the boy to be fatally shot in the head.

The inquest was told that Constable Izak Johannes van Vuuren punched the boy in the stomach and twice shot into the ground at his feet.

Evidence was that the constable pointed the barrel about 12 cm from the caddie's forehead. When the boy said nothing he shot him, then screamed "Oh God, I have shot the little kaffir."

Constable van Vuuren said in an affidavit the caddie tried to grab the gun He heard three shots but did not know who fired them.

Dr Yutar, who previously announced he had declined to prosecute the policeman, said today he had arranged for a detailed report on the matter to be handed to the Secretary for Justice for submission to the Minister.

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Court apartheid for best -Kruger

5 TMR 12/9/75

Pretoria Bureau

The Minister of Justice last night issued a statement to clear up the arrangements which would apply in the new Durban Magistrate's Court building.

The Minister, Mr J Kruger, said he was doing so because of the recent adverse Press comments on the service facilities for the different population groups in the building.

He said the Durban office was planned in such a way that the different population groups could be served in the most efficient and sympathetic manner by their own officials.

To assist the public further and ensure that the best possible service was rendered, the following further arrangements would be made.

Entrances would be identified so that the different population groups could reach their destinations in the building easily.

An information service by officials of the different population groups would be provided at each entrance.

Legal practitioners, as officers of the court, were already aware of the design of the building, knew the best routes to their destinations, and had unrestricted movement in the building.

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STAR 15/9/75

Minister acts on detention

Pretoria Bureau

Instructions that excessively long periods of detention by awaiting-trial prisoners be avoided wherever possible have been issued by the Minister of Justice, Mr Kruger.

Magistrates have been told to ask for evidence on why further delays are necessary after an accused's trial has been postponed twice at the request of either the State or the accused himself.

And prison heads have been instructed to make a report to the chief magistrate of the district on every awaiting-trial prisoner who has been held for longer than three months.

Cases of this nature should be taken to higher authorities if chief magistrates feel unhappy about them — as high as the Ministry itself if necessary, according to the instructions.

Mr Kruger was approached following the case in Bloemfontein in which the Chief Magistrate, Mr C P J Steytler, said the hearing of a Coloured accused who had been held for a year ought to have finished within a month.

Mr Kruger said the instructions on speeding up court appearance of awaiting-trial prisoners had been issued before the conclusion of the Bloemfontein case.

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KRUGER BID TO SPEED JUSTICE

1/11/75

Weekend Argus Correspondent

PRETORIA. — The Government is taking urgent steps to relieve bottlenecks that have developed in the handling of cases by South Africa's courts.

The Minister of Justice, Mr J T Kruger, disclosed in an interview that he had increased the size of the Bench in several of the *sub-rosa* cases, but he admitted a problem still existed in the Western Cape

Mr Kruger disclosed that he had spoken to the Judge President of the Cape about the problem

We have arranged to meet each other for a full discussion in depth on the position of the Cape courts, Mr Kruger said

EXTRA JUDGE

He had appointed one extra judge to the Cape Division, bringing the total to 13, but had also found it necessary to make five acting appointments for varying periods

The Cape Division had had to increase number of sitting courts from six to nine recently to cope with the increase in cases

Mr Kruger released figures showing the overall crime figure for the past three months in the Peninsula, Stellenbosch and Worcester areas had been almost 22 000, compared with 20 000 for the same period last year This showed a 10 percent increase in crime in one year.

The police were attributing the crime increase to the population explosion, population movements and to development

In the Transvaal, extra appointments to the Bench had helped to overcome a developing problem and the position was at present satisfactory, but the position in the Cape was still not right

BACKLOG

Mr Kruger said the backlog in the handling of cases should be seen against the continuing staff shortage Extra judges could be appointed where court facilities allowed, but the more judges that are appointed, the more the bar is denuded of practising silks who are also needed for the administration of justice as a whole

'It is my department's aim to clear the backlog in the courts as soon as possible I want to bring people before the courts with the least possible delay,' he said

There was a standing instruction to magistrates, for instance, to take evidence after the second postponement on the reason why any postponement was necessary

Lawyers to complain

NOT HAPPY

A lawyer said: "I know magistrates are not very happy about this. One day a person they have just sentenced might think he has nothing to lose by assaulting or even killing a magistrate."

Although no incidents have occurred court officials were considering approaching the Department of Justice about the matter, the same lawyer said.

Germiston court officials may complain to the Department of Justice about the lack of separate entrances to Germiston courts for magistrates and prosecutors and the public.

Germiston has one of the few court buildings in the country without such separate entrances

One prosecutor told The Star, "It is quite disturbing to have to walk among people you are going to prosecute. It is easy to recognise us because we wear robes

"At times I have been very frightened

"The magistrates are even worse off. They also have to walk along public corridors with their robes on to get to and from their Benches"

East Rand Bureau

TABLE 10: REGULAR EMPLOYEES, AS A PERCENTAGE OF REGULAR PLUS CASUAL EMPLOYEES, AS AT 31ST AUGUST 1973 (1)

REGULAR EMPLOYEES AS A PERCENTAGE OF REGULAR PLUS CASUAL EMPLOYEES

RACE - AFRICAN

DATE - AS AT 31ST AUGUST 1973

EC REGION	1	2	3	4	5	6	7	8	9	10	11	12
PERCENTAGE	93.23	28.28	62.08	48.63	71.74	53.08	78.83	56.26	56.97	73.08	13.06	34.65
EC REGION	13	14	15	16	17	18	19	20	21	22	23	24
PERCENTAGE	53.12	51.60	43.20	32.47	38.40	57.48	52.33	50.78	46.70	55.80	60.44	45.61
EC REGION	25	26	27	28	29	30	31	32	33	34	35	36
PERCENTAGE	97.66	100.00	94.95	98.29	94.44	98.80	100.00	100.00	.00	.00	.00	100.00
EC REGION	37	38	39	40	41	42	43	44	45	46	47	48
PERCENTAGE	.00	100.00	.00	.00	100.00	.00	100.00	.00	.00	.00	.00	.00
EC REGION	49	50	51	52	53	54	55	56	57	58	59	60
PERCENTAGE	100.00	.00	.00	.00	.00	.00	.00	.00	.00	.00	.00	.00

Coloured/Indian prosecutors/magistrates

184. Mr. D J. DALLING asked the Minister of Justice

(1) (a) How many (i) Coloureds and (ii) Indians are at present employed as (aa) prosecutors and (bb) magistrates and (b) in which districts are they employed in each case;

(2) (a) what are the salaries of (i) Coloured and (ii) Indian prosecutors and magistrates, respectively, and (b) what are the salaries for White persons holding posts in corresponding positions,

(3) whether any steps were taken during 1975 to narrow the salary gap between the race groups in the above categories; if so, what steps;

(4) whether any steps are contemplated to narrow such gap during 1976; if so, what steps,

(5) how many (a) Coloureds and (b) Indians have commenced training as prosecutors and magistrates in 1976;

(6) where are such prospective prosecutors and magistrates, respectively, being trained,

(7) whether any steps are contemplated and/or being implemented to increase the number of such trainees; if so, what steps.

The MINISTER OF JUSTICE:

(1) (a), (i) (aa) 2

(bb) None

(ii) (aa) 3

(bb) None.

(b) (i) (aa) One at Wynberg, C.P., and one at Johannesburg

(bb) N.A.

(ii) (aa) Two at Pinetown and one at Durban.

(bb) N.A

(2) (a) (i) and (ii) The salary scales applicable to the posts of Indian and Coloured prosecutors are R2 700 × 150—3 600 and Indian and Coloured magistrates R3 150 × 150—4 200—4 380.

(b) White prosecutors and magistrates are paid according to the salary scales R3 480 × 180—5 100 —5 340 and R5 340 × 240—6 300 × 360—7 380, respectively

(3) No

(4) The Government is giving constant attention to the matter and from time to time makes such adjustments in this regard as circumstances permit No fixed timetable for future adjustments can, however, be supplied

(5) None.

(6) Falls away.

(7) Yes, recruiting campaigns are undertaken.

Senate Hansard 4 Q col 13

9/3/76

256

Death sentence: Automatic right of appeal

*2 Senator B R BAMFORD asked the Minister of Justice:

Whether he intends to introduce legislation to provide for an automatic right of appeal when the death sentence is imposed, if not, why not.

The MINISTER OF POSTS AND TELECOMMUNICATIONS (for the Minister of Justice):

No, but the matter is being considered by the South African Law Commission

Industrialised Countries

256

Persons sentenced to death

600 Mrs H SUZMAN asked the Minister of Justice:

(1) (a) How many persons were sentenced to death during 1975 and (b) for what crime in each case,

(2) whether any of these persons appealed against their sentences, if so, (a) how many, (b) of what crime had each been convicted and (c) in respect of which of these appeals was the death sentence set aside

The MINISTER OF JUSTICE

(1)

(a) 103

	Murder	Robbery	Rape	Murder and Robbery
(b)	96	2	3	2

(2) Yes

(a) 44

(b)	39	2	2	1
(c)	19	2	—	—

Hansard 10
col 699
30/3/76

B56

20/4/76 HANSARD NO. 12

848

Executions

716 Mrs H SUZMAN asked the Minister of Justice

(a) How many males and females, respectively, in each race group were executed in 1975 and (b) of what crimes had they been convicted

The MINISTER OF JUSTICE.

(a) 50 Bantu and 18 Coloured males
No females were executed

(b)

	Bantu males	Coloured males
Murder	40	15
Robbery	2	—
Murder and Robbery	5	1
Murder and Rape	2	2
Rape	1	—

Visits to other countries

717 Mrs. H SUZMAN asked the Minister of Police.

Whether he paid any official visits to other countries during 1975; if so, (a) to which countries and (b) what was the purpose of each visit.

The MINISTER OF POLICE:

No

Hansard 16 21 5 76

Venue

Has the venue for your presentation been decided? If so:

(a) will you be playing at home or away, and is the meeting room familiar to you?

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Cases sent for trial in Western Cape magisterial districts 1860

835 Dr F VAN Z SLABBERT asked the Minister of Police

How many cases classified under (a) good order and public peace, (b) community life (c) personal relations, (d) property, (e) economic matters and (f) social matters were sent to trial during the years ended 30 June 1965 1970 and 1975, respectively, in the magisterial districts of (i) Cape Town, (ii) Simonstown, (iii) Wynberg, (iv) Bellville, (v) Strand, (vi) Somerset West, (vii) Stellenbosch, (viii) Paarl, (ix) Wellington, (x) Worcester, (xi) Tulbagh, (xii) Ceres, (xiii) Montagu, (xiv) Robertson, (xv) Malmesbury, (xvi) Hopefield, (xvii) Vredenburg, (xviii) Piketberg, (xix) Caledon, (xx) Hermanus, (xxi) Bredasdorp, (xxii) Swellendam, (xxiii) Heidelberg and (xxiv) Riversdale

The MINISTER OF POLICE

The required statistics for the year ended 30 6 1965 are unfortunately not available

Particulars for the years ended 30 June 1970 and 1975, respectively, are as follows

30 6.1970

	(a)	(b)	(c)	(d)	(e)	(f)
(i)	1 034	1 363	1 029	3 553	118	1 369
(ii)	109	150	253	291	—	212
(iii)	450	2 713	2 847	3 634	3	1 821
(iv)	445	994	1 524	2 246	71	1 467
(v)	58	55	407	227	—	126
(vi)	69	90	160	195	—	152
(vii)	120	159	476	420	—	104
(viii)	484	509	1 476	1 657	1	612
(ix)	8	10	256	245	—	103
(x)	503	252	923	622	—	323
(xi)	123	99	265	148	—	40
(xii)	195	121	568	283	—	59
(xiii)	72	52	248	136	—	44
(xiv)	93	38	315	128	—	34
(xv)	157	162	445	445	7	181
(xvi)	8	14	30	29	—	17
(xvii)	169	140	391	232	—	144
(xviii)	113	64	185	140	2	53
(xix)	159	115	487	386	—	158
(xx)	148	44	144	130	—	87
(xxi)	147	28	211	174	1	42
(xxii)	178	142	440	286	5	57
(xxiii)	40	30	105	51	2	32
(xxiv)	41	17	140	61	—	24

30 6 1975

	(a)	(b)	(c)	(d)	(e)	(f)
(i)	2 390	836	1 220	3 793	57	1 167
(ii)	113	145	230	349	—	153
(iii)	1 265	1 549	3 790	4 307	2	2 060
(iv)	642	511	1 739	2 650	4	1 774
(v)	121	54	448	309	1	146
(vi)	49	21	174	233	—	75
(vii)	99	112	590	434	—	72
(viii)	373	485	1 806	2 224	6	798
(ix)	125	58	302	365	3	124
(x)	275	271	943	705	—	204
(xi)	162	98	283	122	2	50
(xii)	137	57	548	202	—	47
(xiii)	107	45	450	268	—	51
(xiv)	111	49	399	108	—	37
(xv)	114	90	538	413	13	218
(xvi)	20	2	30	48	—	39
(xvii)	160	109	423	446	1	350
(xviii)	114	57	284	196	—	243
(xix)	173	131	544	491	—	162
(xx)	114	53	163	240	—	109
(xxi)	80	34	223	153	—	44
(xxii)	198	77	437	252	—	88
(xxiii)	65	35	153	71	—	26
(xxiv)	48	13	115	59	—	26

256

Hansard 19
11/6/76.

A

Corporal punishment

947. Mrs H SUZMAN asked the Minister of Prisons.

(1) How many males (a) under 21 years of age and (b) of 21 years and over in each race group were sentenced to corporal punishment during the year ended 30 June 1975,

(2) how many strokes were inflicted in respect of each catgory of persons

The MINISTER OF PRISONS

(1) (a) Males under 21 years.

Whites	16
Bantu	632
Asians	1
Coloureds	173

(b) Males of 21 years and over

Whites	38
Bantu	1 771
Asians	1
Coloureds	278

(2) Males under 21 years

Whites	81
Bantu	3 157
Asians	5
Coloureds	902

Males of 21 years and over

Whites	204
Bantu	9 187
Asians	5
Coloureds	1 489

Venue

Has the venue for your presentation been decided?
If so:

(a) Will you be playing at home or away, and is the meeting room familiar to you?

(b) Is it suitable as a meeting place for your audience and as a background for your subject?

(c) Is it the right size for the audience expected?

(d) Will everyone be able to see? Is there a dais or platform? Is there enough room for the proper positioning of one or more projection screens?

(e) Will everyone be able to hear? Will you need to use a microphone? Is there a public address system already installed? Will there be any distracting noises and can these be silenced during your presentation?

(f) Can the room be darkened easily? Are there sufficient power supplies for any projected visuals or recorded sound?

Visuals

(a) What equipment will you have at your disposal? Will there be an experienced projectionist available?

(b) Are there any suitable visuals or other aids (e.g. films, videotapes, sound tapes, slides, etc.) already available?

(c) What facilities are there for obtaining or making others you may need?

Budget

Has a budget already been prepared? If so, how much money has been allowed for:

254

The Star Thursday Ma

Judges to get pay increase

13/5/76.

John Patten, Political Correspondent

CAPE TOWN — The Government is proposing to grant pay increases of 10 percent to judges of the Supreme Court and similar, increased pensions to retired judges and judges' widows.

The Chief Justice will be entitled to a salary of R24 200.

The salary increases for judges are planned to take effect on July 1 — the same date on which the Government has announced 10 percent pay increases for public servants and Railway and Post Office employees.

The increases for judges' widows is proposed only from October 1.

Besides the R24 200 annual salary for the Chief Justice, salaries of R22 550 a year are suggested for Judges of Appeal, R21 450 for a provincial division judge president, and R20 350 a year for other judges.

Widows of judges or retired judges who died before April 1972 will get a pension of R3 960 a year, while widows of judges who died after April 1 1972 or who retired and died before July 1974 will receive a minimum of R2 563 a year rising on a sliding scale to R3 960 a year.

Judges on pension will get a minimum of R7 920 a year, rising above that according to a set formula.

25b

Govt reintroduing disputed law bill

26/11/76 STAR.

John Patten,
Political Correspondent

The Government is again going to try to push through the controversial Criminal Procedure Bill it first introduced in 1973.

The Minister of Justice, Mr Kruger, disclosed this today in an interview, when discussing what he described as a "very heavy" legislative programme from his department for the coming parliamentary session.

But Mr Kruger said the Bill would return to the order paper in a modified form, which he thought would make it less controversial while at the same time achieving the goal of streamlining the process of law.

–VEHEMENT

In 1973 the original Criminal Procedure Bill, providing for pre-trial interrogation of accused and other major departures from South Africa's law procedures, caused an outcry among the law societies and was so vehemently opposed by the parliamentary opposition parties that the Government could no longer afford the parliamentary time it would have taken to pass into law.

Mr Kruger said the Bill would be sent to the law societies for their consideration and to others concerned with such legislation. The Bill would come on early in the session.

Dealing with other legislation he intends piloting through the coming session, the Minister said he would

● Go ahead with his controversial Bill to prohibit the showing of commercial films on Sunday. The Bill was held over at the end of the last session.

PRESS PICTURES

● Reintroduce the Liquor Amendment Bill, which stood down last session, but which contains important changes to the method of granting liquor licences.

● Introduce a second liquor Bill.

● Pilot a Bill concerning Press photographs and reporting of prison matters — a Bill that would be worked out in liaison with the Newspaper Press Union.

286

Cape Times 7/12/76

Dr Yutar's unusual speech

DR PERCY YUTAR is leading evidence before the Cillie Commission into the riots which is seeking to discover "the causes which gave rise thereto" It can thus naturally be expected that Dr Yutar will confine discussion of causes thereof to the four walls of the commission But no, apparently he deems it in order to give the Rotary Club of Cape Town an interim summing-up in which he asserts, *inter alia*

● Agitators who were instructed, advised and counselled by anti-South African elements overseas took advantage of the genuine grievances of the Black people to foment the unrest,

● The riots did not flare up simultaneously throughout the country but were instigated by a group of 27 men in three cars who toured the Transvaal, starting fires to draw police attention from one place to another,

● Nothing happened in Cape Town till certain leaders were summoned to Johannesburg — "their fares paid locally" — where they were asked "Why are you so quiet in the University of the Western Cape?",

● From the University of the Western Cape, unrest spread to the Coloured townships Evidence was that agitators from the north — travelling in taxis to avoid recognition — arrived in the City to exploit the situation,

● Those responsible for the riots were a very small minority — "a rebellious few" — who intimidated children into taking part in protest marches,

● The smallest children were placed at the head of protest marches, in the hopes that if the police killed some of them, here would be an opportunity of whipping up mass feeling at their funerals,

● The outlook was not as bad as would appear from some press reports,

● The press had created a political climate in which agitators flourished

It must be noted that Dr Yutar stated that what he was telling the Rotary meeting was based on evidence which the commission had heard so far, and he reiterated this when confirming to the Cape Times that what the Rotary newsletter had quoted was "substantially correct" But Dr Yutar knows that some of the assertions he made could, to put it mildly, be in considerable dispute before the commission Indeed, it has been forcibly argued that the system of apartheid was an equally important reason for the unrest — something which, as it happens, Dr Yutar did not mention In fact, the points he did mention appear to coincide broadly with the drift of views expressed by Government and official spokesmen Now, he is fully entitled to his personal view of matters and as the person leading evidence he is in a pretty strong position to form his particular judgments *But that's not really the job of the person leading evidence,* it's the job of Mr Justice Cillie

Understandably, political figures including Mrs Helen Suzman have been quick to raise the possibility of contempt Dr Yutar has been a servant of the law long enough to know the rules, backwards; and it is hardly necessary for others to read him a lecture on those specifically discouraging acts or utterances which "prejudice, influence or anticipate the proceedings of findings" of a commission

● If Dr Yutar does not want to see damage done to the standing of the commission he is officially assisting, he owes it a full and public explanation for his most unusual speech

256

'Comrades' list upsets the Bar

The Johannesburg Bar Council had accused the Minister of Justice Mr Kruger, for giving "publicity to a defamatory statement, which the Minister himself does not believe to be true."

In a statement issued by the council, the chairman, Advocate J C Kreigler, said that it was "regrettable" that the Minister read in Parliament a document supposedly published by the African Communist Party in which certain members of the Johannesburg Bar were praised as "comrades" and helping their case

Mr Kruger's publication of the document could give rise to the "unfortunate belief on the part of the public", that certain advocates who handle charges of "a political nature identify themselves with the cause of their clients"

Mr Kriegler said this was not so. It was a rule of the Johannesburg Bar that advocates could not turn down a case because they disagreed with the political beliefs of a client.

This was the second time Mr Kruger had produced the document naming the lawyers

Hansard 3 cc cols 287 -
11/2/77

256

Civil appeals

(58) Mr D J DALLING asked the Minister of Justice.

(1) What is the average delay after set-down for the hearing of civil appeals in the (a) (i) Cape of Good Hope Provincial Division, (ii) Natal Provincial Division, (iii) Orange Free State Provincial Division and (iv) Transvaal Provincial Division and (b) Appellate Division, of the Supreme Court,

(2) in respect of what dates are these figures given.

The MINISTER OF JUSTICE

(1) (a) (i) 3 months

(ii) 12 months

(iii) 3-4 months

(iv) 6 months

(b) 6 months

(2) The figures are in respect of the 1976 calendar year

Hansard 3 Q cols 285 – 287 11/2/77

256

Civil cases

(57) Mr D J DALLING asked the Minister of Justice

(1) What is the average delay after set-down for the hearing of civil cases in respect of the (a) (i) Cape of Good Hope Provincial Division, (ii) Eastern Cape Division, (iii) South-Eastern Cape Local Division, (iv) Northern Cape Division, (v) Natal Provincial Division, (vi) Orange Free State Provincial Division, (vii) Transvaal Provincial Division, (viii) South West Africa Division, (ix) Durban and Coast Local Division and (x) Witwatersrand Local Division, of the Supreme Court and (b) the magistrates' courts of (i) Cape Town, (ii) Grahamstown, (iii) Port Elizabeth, (iv) Kimberley, (v) Bloemfontein, (vi) Pretoria, (vii) Pietermaritzburg, (viii) Windhoek, (ix) Durban, (x) Randburg and (xi) Johannesburg,

(2) in respect of what dates are these figures given

The MINISTER OF JUSTICE:

(1) (a) (i) 8 months

(ii) 2 years

(iii) 9-12 months.

(iv) 9 months

(v) 12 months

(vi) 12 months

(vii) 6 months

(viii) 4 months

(ix) 12 months

(x) 4 months

(b) (i) 4 months

(ii) 2-3 months

(iii) 3 months

(iv) 3 months

(v) 1 month

(vi) 3 months

(vii) 3-4 months

(viii) 3 months

(ix) 10 weeks

(x) 3 months

(xi) 3 months

(2) These figures are in respect of the 1976 calendar year

Hansard 3 Q col 281-2 11/2/77

256

Inferior/superior courts: Apartheid

*27 Mr J D DU P BASSON asked the Minister of Justice †

Whether there is any form of apartheid on grounds of race or colour in the (a) inferior and (b) superior courts in (i) the Republic and (ii) South West Africa

†The MINISTER OF ECONOMIC AFFAIRS (for the Minister of Justice)

(a) and (b)(i)

As far as the administration of justice is concerned, no distinction on grounds of race or colour is made in our courts

(ii) The position is the same as far as South West Africa is concerned

Hansard 5 col cols 429-430 22/2/77

256

Salary/wage gaps

193 Mr D J DALLING asked the Minister of Justice:

(1) What amount will be spent by his Department during the financial year 1976-'77 in respect of differentiated increases granted in salaries and wages in order to narrow the gap in the salaries and wages of employees in the different race groups,

(2) (a) in respect of which posts are the salary and wage gaps (i) being narrowed and (ii) not being narrowed, (b) what method of adjustment is being applied and (c) what is the effective result of the adjustment.

The MINISTER OF JUSTICE

(1) Since the payment of salaries and wages to employees in the Department takes place according to scales which are from time to time approved for the various races by the Treasury on the recommendation of the Public Service Commission, this is not a matter over which my Department exercises control

(2) Falls away.

Senate Hansard 2 Q cols 7-8

23/2/77

256

Death penalty

*2. Senator B R. BAMFORD asked the Minister of Justice.

(1) When was the last full investigation made into the imposition of the death penalty in South Africa,

(2) whether he will consider the appointment of a commission of inquiry into the imposition of the death penalty, if not, why not

The LEADER OF THE HOUSE (for the Minister of Justice)

(1) The Lansdowne Commission, which was appointed in 1945, investigated the matter Thereafter it was discussed from time to time inside and outside Parliament In 1969 for example there was a full debate on the matter and the Government and the Official Opposition were unanimously in favour of the retention of the death penalty The matter was again considered when the Viljoen Commission was appointed in 1974 and it was decided not to include the question whether the death penalty should be retained in the Commission's terms of reference since the Cabinet was still satisfied that the penalty should be retained in the Republic

(2) No, for the reasons already mentioned

Kruger refuses suicides probe

By BERNARDI WESSELS
Political Correspondent

HOUSE OF ASSEMBLY

THE Minister of Justice, Mr Jimmy Kruger, yesterday refused to appoint a fullscale judicial commission of inquiry into the growing number of police detainees who commit suicide.

Mr Kruger said everything was being done to prevent the suicides and so he had instructed the police to find new centres for interrogation

As the Minister spoke at a special Press conference over the suicides of detainees, many of them held under security laws, news came through of another death-in-detention case in Maritzburg

The Minister was replying to a series of questions in a Rand Daily Mail editorial on Tuesday He gave a written reply to each question and enlarged on some.

Mr Kruger revealed the police were considering shifting the interrogation rooms to ground floor level in places like John Vorster Square where some suicides have involved leaps from the 10th floor

Since March last year 11 detainees held under security laws and another five held under the criminal code have committed suicide.

Other methods being considered to prevent suicides was the use of leg irons, straightjackets and whether detainees should be allowed clothes which could be made into ropes

Mr Kruger said all interrogation rooms had been fitted with bars after the Ahmed Timol case in 1971, but sometimes other rooms were used when there were not enough with bars.

There were various reasons for the suicides Some of them were due to psychological factors, in other cases the detainee followed the instructions of the Communist Party, and some happened because the prisoner feared interrogation for rape or theft

Magistrates visited detainees every two weeks and complaints could be made

Asked about coercive methods of interrogation, Mr Kruger said such allegations were usually made in court and sometimes involved a little trial within a trial but he had not found one case going against the police

Mr Kruger said he was satisfied there were adequate channels for a detainee to complain The integrity of the Security Police was very high, but they could not all be angels

When a man resisted arrest, pressure sometimes had to be applied

Four policemen had been charged in the Mdluli case and, although all four had been acquitted, further investigations were being made and would be referred to the Attorney-General.

● **Kruger's answers — Page 9, How they died — Page 18**

Kruger No to deaths inquiry

CAPE TOWN — The Minister of Justice, Mr Kruger, yesterday refused to appoint a full-scale judicial commission of inquiry into the growing number of suicides in detention.

At the same time Mr Kruger gave the assurance that everything was being done by the police to prevent suicides and that he had instructed the police to find new venues for interrogations to minimise suicide attempts

As the minister spoke at a special press conference, news came through of another detainee's death in Pietermaritzburg

Mr Kruger was replying to a series of questions posed in a Rand Daily Mail editorial on Tuesday He gave a written reply to each question and elaborated on some

Mr Kruger revealed that the police were considering shifting the interrogation rooms to ground floor level in places like John Vorster Square where some of the suicides have involved jumps from the 10th floor

Since March last year 11 detainees held under security laws and five held under the criminal code had killed themselves The total since 1963 numbered 25

Other methods being considered to prevent suicides was the use of leg irons and straitjackets It was also being questioned whether detainees should be allowed clothes which could be torn and used as ropes

"But you know who will be the first to squeal if we do this," Mr Kruger said, in an obvious reference to the Progressive Reform Party's Mrs Helen Suzman and the press

Mr Kruger said all interrogation rooms had been fitted with bars after the Ahmed Timol case in October, 1971, but sometimes other rooms were used when there were not enough interrogation rooms, as was the case during last year's township unrest.

Clear directives had gone out from the Commissioner of Police that everything possible should be done to prevent suicides Mr Kruger expressed his regret that suicides had occurred

Mr Kruger said it was in the standing orders of the police, besides being prohibited by law, that there should be no physical abuse of detainees or any coercion

Asked whether the harshness of interrogations had led to the suicides, he said people did not like being interrogated

"But I am satisfied that the Security Police understand their instructions and that they are aware we won't stand for any abuses What safeguard can we have? There must be a certain amount of trust in a man's seniority and experience"

Magistrates visited detainees every two weeks when complaints could be lodged He was satisfied there were adequate channels for a detainee to complain

Asked about allegations of coercive methods, Mr Kruger said they were usually made in open court and sometimes involved a trial within a trial, but he had not found one case going against the police

The integrity of the Security Branch stood very high but they could not all be angels When a man resisted arrest, pressure sometimes had to be applied

Four policemen had been charged in the Mdluli case and although all four had been acquitted, further investigations were being made and would be referred to the Attorney-General — PC

The 13 questions, page 19.

Hansard 6 Q cols 566 - 568 4/3/77

256

Coloured/Indian prosecutors/ magistrates

59. Mr D J DALLING asked the Minister of Justice.

(1) (a) How many (i) Coloureds and (ii) Indians are at present employed as (aa) prosecutors and (bb) magistrates and (b) in which districts are they employed in each case;

(2) (a) what are the salaries of (i) Coloured and (ii) Indian prosecutors and magistrates, respectively, and (b) what are the salaries for White persons holding posts in corresponding positions,

(3) whether any steps were taken during 1976 to narrow the salary gap between the race groups in the above categories, if so, what steps,

(4) whether any steps are contemplated to narrow such gaps during 1977, if so, what steps,

(5) how many (a) Coloureds and (b) Indians have commenced training as prosecutors and magistrates in 1977,

(6) where are such prospective prosecutors and magistrates, respectively, being trained,

(7) whether any steps are contemplated and/or being implemented to increase the number of such trainees, if so, what steps

The MINISTER OF JUSTICE

(1) (a) (i) (aa) Two

(ii) (aa) Two.

(i) (bb) None

(ii) (bb) None

(b) The two Coloured prosecutors are employed in Athlone and the two Indian prosecutors in Durban and Chatsworth

(2) (a) (i) Legal assistant (Prosecutor), R2 700 × 150–3 600 + 15%.
Magistrate No post has as yet been created

(ii) Legal assistant, R2 700 × 150–3 600 + 15%
Magistrate, R3 150 × 150–4 200–4 380 + 15%

(b) Legal assistant, R3 480 × 180–5 100–5 340 + 10%
Magistrate, R5 340 × 240–6 300 × 360–7 380 + 10%

(3) Yes By the granting of pensionable allowances at higher rates than those for Whites

(4) The Government s policy in this regard is that the gap will be narrowed as circumstances permit

(5) (a) and (b) None

(6) Falls away

(7) Yes recruiting campaigns are undertaken The hon member is also referred to my oral reply to his question No 3 of 1 February 1977 I also wish to mention that 25 students have registered this year at the University of the Western Cape for the Civil Service Law Examination and five for the B Iuris degree Many of these students will probably join the Department of Justice

256

Cape Times 26/3/77

SA hanging rate highest — Suzman

Mrs Suzman

in parliament

HOUSE OF ASSEMBLY — South Africa had the highest rate of capital punishment in the world and 701 people were hanged between 1967 and 1976, Mrs Helen Suzman (PRP, Houghton) said yesterday

Speaking during the committee stage of the debate on the Criminal Procedure Bill, she said that by advocating the abolishment of capital punishment she was not advocating that murderers and other criminals go unpunished There was provision for long-term sentences and certain people in fact deserved being locked up for life

South Africa was a violent society, but she believed that the causes underlying the violence in this society should be investigated and removed

It was unfortunate that the Viljoen Commission of Inquiry into the penal system was specifically prevented from investigating capital punishment by its terms of reference, as South Africa was one of the few countries in the West which still used this form of punishment

In Western Europe only France and Spain provided for capital punishment, but used it sparingly In Israel it was used only for ex-nazi criminals, and had only been used once, in the case of Eichmann

Canada and New Zealand had abolished capital punishment. The United States Supreme Court had voiced serious reservations against it. In Britain it had been abolished except for certain forms of high treason and piracy and efforts to reintroduce it into the British penal system in 1973 and 1974 had failed.

In contrast, South Africa had been adding steadily to its list of crimes to which capital punishment applied Reserved initially for murder, rape and armed robbery, it now covered many other crimes In 1966 this situation reached an all-time high when 124 people were executed

Although murder accounted for the vast majority of cases, studies had shown that in more than 90 percent of murder cases there had been no evidence of premeditation There was no clear evidence that capital punishment acted as a deterrent or that the absence of this form of punishment acted as an incentive to criminal action.

Mr Bill Deacon (IUP, Albany) said that in most African states, criminals were still being executed in public.

In England the police were almost unanimously in favour of restoring capital punishment as this was, in their opinion, the only way of dealing with the Irish terrorists

The death sentence was necessary as a form of punishment as well as a deterrent to would-be criminals, he said.

The Minister of Justice, Mr J T Kruger, said a report compiled by the United Nations and submitted to the Secretary-General showed clearly that there was no trend in favour of abolishing capital punishment by member states.

The report stated clearly that for every member state devoted to the abolition of capital punishment, three were legally committed to its sanction and use, he said.

There was also ample evidence to show that some member states who had abolished capital punishment were in favour of reinstating it as both a deterrent and as a form of punishment.

A clause containing the principle of capital punishment was adopted, with personal objections recorded by Mrs Suzman, Mr Rene de Villiers (PRP, Parktown) and Mr Gordon Waddell (PRP, Johannesburg North). The Progressive Reform Party allowed a free vote on the issue.

Mrs Suzman then moved an amendment to a subsequent clause, seeking to abolish the mandatory death sentence and to have it apply only where there were aggravating circumstances

Mr Kruger said wilful murder was, in itself, the greatest degree of crime. One could not therefore find aggravating circumstances to this, but had to work in the other direction to determine extenuating circumstances

Mrs Suzman's amendment was defeated in a division in which the United Party and the Independent United Party supported the Government — Sapa

(C) DOMESTIC EMPLOYEES

	PROVINCE	EMPLOYMENT					AVERAGE MONTHLY EARNINGS[1]				
		August 1965	August 1969	August 1973	Percentage change 1965-69	Percentage change 1969/73	1964/65	1968/69	1972/73	Percentage change 1964/65 1968/69	Percentage change 1968/69 1972/73
AFRICAN	CAPE	25 775	23 788	20 284	- 7,7	- 14,7	5,08	6,26	6,17	23,2	-1,4
	NATAL	13 158	12 811	11 233	- 2,6	- 12,3	6,47	7,90	9,89	22,1	25,2
	TRANSVAAL	39 877	40 033	34 360	0,4	- 14,2	5,90	6,83	8,56	15,8	25,3
	O.F.S.	33 133	32 909	31 265	- 0,6	- 5,0	3,66	4,11	4,35	12,3	5,8
	R.S.A.	111 923	109 541	97 142	- 2,1	- 11,3	[illegible]	[illegible]	[illegible]	17,4	14,1
ASIAN	CAPE	36	-	10	-	-				-	-
	NATAL	320	337	163	5,3	- 51,6				23,0	23,3
	TRANSVAAL	4	8	1	100,0	- 87,5				964,8	176,7
	O.F.S.	-	-	-	-	-				-	-
	R.S.A.	360	345	174	- 4,2	- 49,6				30,9	17,2
COLOURED	CAPE	20 770	18 584	15 884	- 10,5	- 14,5				18,0	9,2
	NATAL	24	40	20	66,7	- 50,0				-38,3	116,2
	TRANSVAAL	192	208	167	8,3	- 19,7				5,8	53,6
	O.F.S.	625	546	487	- 12,6	- 10,8				13,5	3,2
	R.S.A.	21 611	19 378	16 558	- 10,3	- 14,6				17,7	9,5
WHITE	CAPE	109	71	-	- 34,9	-				-33,3	-
	NATAL	8	-	-	-	-				-	-
	TRANSVAAL	29	14	-	- 51,7	-				41,6	-
	O.F.S.	6	9	-	50,0	-				3,0	-
	R.S.A.	151	94	-	- 37,7	-	22,36	16,80	-	-24,9	-
TOTAL	CAPE	46 690	42 443	36 178	- 9,1	- 14,8					
	NATAL	13 509	13 188	11 416	- 2,4	- 13,4					
	TRANSVAAL	40 102	40 263	34 528	0,4	- 14,2					
	O.F.S.	33 744	33 464	31 752	- 0,8	- 5,1					
	R.S.A.	134 045	129 358	113 874	- 3,5	- 12,0					

[1] (a) 62
(b) 41

Abortions

739. Mr H. E. J. VAN RENSBURG asked the Minister of Justice:

How many persons were (a) prosecuted for and (b) convicted of carrying out abortions during the period 1 July 1975 to 30 June 1976

The MINISTER OF JUSTICE.

The required statistics are not kept by the Department of Justice. The Department of Statistics supplied the following statistics

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Hansard II col 848 14/4/77

(30)

Hansard 11

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	ECONOMIC REGION										
	41	42	43	44	45	46	47	48	49	50	
Maize											ALES/NO. (1)
Grain Sor											12,8 6,9
Wheat											22,4 1,3
Other Cer											0,2 3,8
Sunflower											1,0 0,5
Ground Nut											35,8 1,5
Ground Nut											1,0 5,8
Legumes											0,6 2,2
Tobacco											22,6 0,9
Chicory											- -
Seed Cotto											- -
Sugar Cane											- 0,4
Sisal											- -
Phormium T											- -
Hay&Fodder											- -
Vegetables											7,6 1,2
Citrus Tree											6,1 0,6
Citrus Tree											- -
Bananas, P											- -
Granadi											
Other Sub-T											
Other Sub-T											
Nut Trees (											
Nut Trees (											
Grapes (B)											
Grapes (N-B											
Other Decid											
Other Decidu											
Cattle											
Sheep											
Goats											
Pigs											
Horses,Mules											
Ostriches											
Poultry											

proportion to the total foreign exchange earnings that would have been derived from their exports, their application was refused

Attorney/client privilege

*5 Mr H. H SCHWARZ asked the Minister of Police:

Whether there is any instruction to members of the Police Force in regard to observance of the attorney/client privilege, if so, (a) when was the instruction issued and (b) what are its terms, if not, why not

The MINISTER OF INDIAN AFFAIRS (for the Minister of Police)

Yes

(a) The exact date could not be established, but the standing instruction apparently existed since 1917

(b) The current provisions read as follows

S O 319

(44) The member on duty at interviews between a prisoner and his legal adviser shall move out of hearing but remain within view or easy reach in case of any attempt at escape

(46) *Excepting* letters between a prisoner and his legal adviser, all written communications to or from prisoners are to be read by the station commander or charge office sergeant and if there appears to be anything in them in the nature of a warning to an accomplice or prejudicial to the interests of justice they are not to be dispatched without instructions from an officer, the prisoner being notified of the stoppage of any outgoing communication

These instructions amount thereto that any communication between a legal adviser and his client in any particular case is privileged

Mr H H SCHWARZ Mr Speaker, arising out of the reply given by the hon the Minister, I just want to state—I do it with due appreciation of the hon the Minister of Community Development's difficulty—that all he has read out relates to relations with prisoners But what is the situation with respect to people who are not prisoners? That is the question I actually put to the hon the Minister

Mr SPEAKER Order!

1,0	4,8	11,9	-	-	-	-			
0,7	55,7	3,8	-	-	-	-			
1,9	68,4	8,6	-	-	-	-			
0,9	4,9	3,6	0,6	0,3	0,1	-			
5,2	24,2	10,0	0,1	0,2	-	-			
-	-	0,5	-	-	-	-			
0,1	0,1	0,3	-	-	-	-			
,2	-	0,5	1,1	0,6	0,3	-			
,8	-	1,7	0,8	0,5	0,2	0,1			
,6	0,9	8,3	5,9	1,9	5,6	1,8			
,2	-	0,6	1,7	0,3	1,9	1,1			
,5	0,3	4,7	0,6	0,3	0,3	0,3			
,7	0,6	6,3	7,4	2,5	3,6	1,4			
,7	0,3	6,6	4,7	1,3	2,9	1,6			
-	0,1	0,4	0,4	0,8	0,8	0,2			
,3	0,3	1,7	1,5	3,5	1,3	0,4			

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Number of judges/magistrates/prosecutors in Republic

811 Mr D J DALLING asked the Minister of Justice

How many (a) magistrates, (b) magistrate's court prosecutors, (c) regional magistrates, (d) regional court prosecutors, (e) judges and (f) Supreme Court prosecutors were there in the Republic in each of the last four years

The MINISTER OF JUSTICE

	1973	1974	1975	1976
(a)	677	696	710	709
(b)	424	421	431	439
(c)	71	73	78	85
(d)	110	113	121	129
(e)	80	87	89	90
(f)	78	78	80	84

Senate Hansard 8

Q nos 63-64

2/5/77

Expenditure on legal aid

27 Senator B R BAMFORD asked the Minister of Justice

(1) What is the annual expenditure on legal aid,

(2) whether the extension of the present scheme is contemplated, if so, in what respects

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The MINISTER OF JUSTICE

(1)

Financial Year	Amount
1971-'72	R17 548,00
1972-'73	R151 143,00
1973-'74	R327 006,00
1974-'75	R486 703,00
1975-'76	R774 779,00

(2) The Legal Aid Board resolved on 25 March 1977 that the means test limit be increased with effect from 1 April 1977 as follows
8,55% in the case of Whites
19% in the case of Coloureds and Asians
26% in the case of Blacks

Star WOMAN

Bid to better black women's legal status

STAR 11/5/72

A move to reach out to, and educate as many black women as possible in South Africa to their rights, was made at the weekend, at the Conference on the Legal Status of Black Women.

More than 150 black women from all over South Africa attended the conference held in Johannesburg, and organised by the women's division of the South African Council of Churches.

They set up a committee of 12, the Committee for the Legal Status of Black Women.

Its task is

- to call a national conference on the legal status of black women within the next two months,
- to try to organise more women at various levels throughout the country, to make such a conference representative,
- to undertake a broad educational programme by holding seminars throughout the country, and include as many men as possible,
- to do intensive research on what consensus there is among women on still wanting customary marriage and lobola

In the interim they intend to lobby and talk to responsible and influential people, as well as other women's groups

Miss Zubie Seedat, a lawyer from Durban, told the conference that the history of black women in South Africa was one of suffering and endless long years of double discrimination on the grounds of sex and colour.

"The black woman valiantly struggles for the improvement not only of herself, but of all blacks in South Africa," she said

SUE UNTERHALTER reports

Especially in Natal, white legislators had distorted traditional law, which in traditional society had favoured black women to decree them perpetual minors under male guardianship

In addition, the pass and influx control laws thwarted progress and crippled family life, she said.

Mr Godfrey Pitje, a Johannesburg lawyer, said the main force against change is the black woman herself

"Unless she changes her basic attitudes to the system, many of the disabilities of the black woman are going to be with us a very long time," he said

"Women could not have it both ways — they could not try to maintain custom, but do away with legal disabilities

Implications

It was felt most women, and men, did not understand the implications of the marriage contract, and their options The Marriage Guidance Society should also be asked to include the interpretation of the marriage contract to black spouses — especially to people planning to marry

- the committee will liaise with the Women's Legal Status Committee on issues of common concern.

The conference also advocated that

- all marriages should be legalised, including customary union, where so many women have suffered because of their husband's being able to contract second, civil marriages
- All women who reach 21 should attain full legal status,
- Discrimination against women in employment should be stopped, and there should be equal pay for equal work;
- Women who qualify to maintain a house should be allowed to own a house,
- While they noted that husbands may now bequeath their houses to their wives and children if they make wills, the conference advocated widows should automatically inherit their husband's house even if there is no will,
- If married according to common law and no will is left, spouses should also succeed to each other's estates according to common law, and not according to Bantu Law, where a husband's estate goes to his nearest male relative

Lobby

"The committee has got a lot of spadework to do Its task is to talk to women, and at the next national conference we hope to get a representative delegation together to speak to the authorities on these issues," said Mrs Deborah Mabiletsa, director of the women's division

Hansard 17 Q col 1176 24/5/77

Separate facilities for Whites/non-Whites in supreme/magistrates' courts

(*10) Mr H H SCHWARZ asked the Minister of Justice

What is the policy of his Department in regard to the provision of separate facilities for Whites and non-Whites in (a) supreme and (b) magistrates' courts.

†The MINISTER OF JUSTICE.

(a) and (b) Separate toilts and waiting rooms are provided to eliminate possible racial friction In the courts there are no separate facilities. For legal practitioners no separate facilities

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Separate toilets keep out friction — Kruger

Cape Times
25/5/77

Political Staff

THE Minister of Justice, Mr Jimmy Kruger, said yesterday that "there are no separate facilities" in Supreme and Magistrate's Courts. But, he said, separate toilets and waiting rooms were provided "to eliminate possible racial friction".

Mr Kruger was replying to a question which had been tabled in the House of Assembly by Mr Harry Schwarz (PRP, Yeoville).

Afterwards in an interview, Mr Schwarz rejected Mr Kruger's reply.

"In spite of what the Minister says there is still separation in many magistrate's courts.

"In courts of all places there can be no discrimination and without delay all signs of it must be eliminated, including toilets and rest rooms," Mr Schwarz said.

Hansard 19 col 1269

† Indicates translated version

For written reply

Indians employed by Department of Justice

1078 Mrs H SUZMAN asked the Minister of Justice

(a) How many Indians, other than magistrates and prosecutors, are employed by his Department, (b) in what capacities are they employed and (c) how many are employed in each capacity

The MINISTER OF JUSTICE

(a) 23

(b) and (c)

Senior Indian Interpreter Clerk	2
Indian Interpreter Clerk Grade I	2
Indian Interpreter Clerk Grade II	10
Indian Clerk Grade II	6
Indian Assistant Clerk	3

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SUNDAY TRIBUNE, AUGUST 21, 1977

Criminal Procedures Act spells danger for the undefended and uneducated

'GUILTY AS CHARGED'

...even if a man doesn't know exactly what he is admitting

By ANTHONY SWIFT

THE danger of undefended, uneducated accused being wrongly sentenced has been considerably increased by a clause of the new Criminal Procedure Act.

This is the opinion of two members of the University of Durban-Westville's Law Department after one of them attended a regional court hearing in which there was no adequate basis for appraising a proper sentence.

They are Professor Bill Ramsden, formerly Attorney-General of Swaziland, and Mr Jacobus du Plessis, a former public prosecutor and attorney.

Under the old law (where the offence merited imprisonment or a fine exceeding R100) the State had to prove independently of any admission by the accused, that the alleged offence had been committed.

Under Section 112 of the new Act, in cases where imprisonment (or more than R100) is merited, and an accused pleads guilty, he can be found guilty purely on his admission made in court and the State does not have to prove commission of the offence.

Mr du Plessis said: "In the case I watched, three men were accused of culpable homicide and pleaded guilty. In the old days, the State would have had to prove that a person was killed unlawfully and this caused his death.

"Evidence would have to be given, which might take up to two hours and which might be very difficult to prove. This hearing took 10 minutes."

The magistrate asked the accused to plead and they pleaded guilty to charges of culpable homicide

The magistrate asked the first accused "Do you admit you unlawfully killed the deceased?"

The accused answered: "Yes"

Magistrate: "How did you kill him?"

Accused: "I kicked him."

The magistrate conducted the same dialogue with the other accused, the second of whom also answered the last question with, "I kicked him"

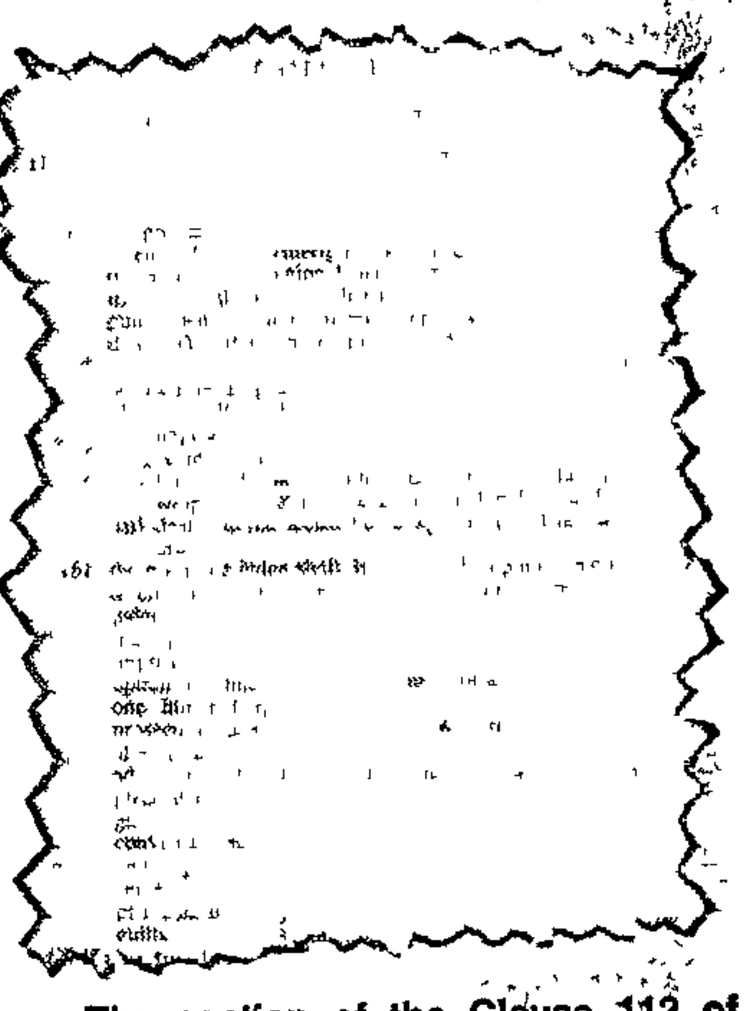
The third answered: "I stabbed him twice," but added that the second accused also stabbed the victim.

"To be fair to the magistrate," said Mr du Plessis, "he did ask the prosecutor what was the cause of death according to the medical findings."

The answer was stab wounds. The man had been stabbed six times. "It was clear the prosecutor had no information on which it could be decided whether two people had been involved in the stabbing"

The magistrate then asked the accused whether the attack had been a "single transaction" (whether it was undertaken in con-

Professor Bill Ramsden — "In the vast majority of cases, the unrepresented accused is unaware of the qualifying principles of the law"



The section of the Clause 112 of the new Criminal Procedures Act that governs procedure in a serious non-capital offence where the accused pleads guilty

cert) They replied: "Yes"

Previously he had asked the first accused why he had kicked the man and he had replied. "Because he tried to grap hold of me"

Before the magistrate found them guilty he asked the prosecutor whether the admissions were in accordance with his evidence and the prosecutor answered "Yes."

The magistrate then found all the accused guilty of culpable homicide and sentenced the first and second accused to one year's imprisonment and the third to three years.

According to Mr du Plessis, the court:

Stabbed

- Didn't establish and clearly didn't have the means to establish whether the second accused also stabbed the victim;
- Didn't establish whether the three accused waylaid the man or he waylaid them or whether any or all of them acted out of self-defence or provocation;
- Didn't establish whether the first or second accused knew that the third accused had a knife on him;
- Didn't establish whether the knife was a butcher's knife or a small penknife or whether accused number one and two were barefoot or wearing hob-nail boots or whether they kicked him in the shin or brutally about the head.

"Without the above information there could be no basis for allocating sentence," said Professor Ramsden.

"Without knowing more about the nature of the attack and the motivation of the attackers, you can't tell whether it was self-defence, or common assault, or culpable homicide or even murder."

"The accused may have no more concept of his guilt or innocence than he does of the other side of the moon," said Mr du Plessis.

Said Professor Ramsden: "In the vast majority of cases, the unrepresented accused is unaware of the qualifying principles of the law. He may well plead guilty to having killed a man unlawfully when he in fact acted out of self-defence or provocation.

"In a case that came before me, a young man pleaded guilty to the theft of a girl's blazer. I asked him carefully whether he had intended to steal the blazer and keep it for himself. He answered: Yes

"But evidence of the commission of the offence showed he had been teasing the girl, had held her by her coat and she had run off, leaving it in his grasp. When she had gone he dropped it on the ground and went off.

"Clearly in this case the accused didn't understand what was meant by the intention to steal, even though it had been explained to him.

"The new section places enormous responsibility on the magistrate and the prosecution, because it is now possible for the accused to be convicted on his own disjointed admissions without fully appreciating what he is admitting."

The magistrate's responsibility is increased by further jurisdiction under a recent amendment to the Magistrate's Court Act.

Review

Previously any sentence over three months or R300 imposed by a magistrate was subject to automatic review. Now he can impose sentences of up to one year or R1 000 and, in the cause of a senior magistrate, sentences in excess of six months or R500 and, in the case of a junior magistrate, in excess of three months or R250 are subject to automatic review.

A regional court can impose up to 10 years or R10 000 without the matter having to go on review.

Professor Ramsden said: "In 10 percent of the cases in my experience in which the accused had pleaded guilty the offence had not been proved to have been committed.

"Plea bargaining — trying to persuade the accused to plead guilty by promising him a lighter sentence — has become a major problem in Britain and the United States, and may well become so here.

The conclusion of both Professor Ramsden and Mr du Plessis is that unless the courts are going to be very careful — much more than the regional court Mr du Plessis attended — the new procedure could lead to rough justice for many.

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Sunday Tribune 21/8/77

The law and your money

(256) FM 16/9/77

Been to court lately? Noticed what it did to your pocket? Perhaps it's time to extend the legal aid system — or to avoid litigation

The notion that all men are equal before the law is simply not true, and probably never has been. To say so casts no reflection on a judiciary doing its fallible human best to see everyone gets a fair deal.

But it remains a fact that, all other things being equal, a rich murderer has a better chance of saving his neck than a poor one. He can pay for the services of the best counsel and call on batteries of experts to testify on his behalf, taking his case to the highest court in the land if necessary. A poor man may have to make do with a *pro deo* defence, which usually means an austerity model.

In civil matters the scales of justice are heavily weighted in favour of the wealthy. Minister of Justice James Kruger remarked recently: "We would be amazed if we knew the number of middle income wage-earners who waive their rights rather than oppose a wealthy opponent in court."

Few individuals can match the resources of a company, and any action is a gamble in which loser usually pays practically all. In criminal matters, the individual is pitted against the unlimited resources of the State.

Tangling with the law is an extremely costly business. A completely undefended divorce action would normally cost at least R400. A day of a senior advocate's time in court would hardly be worth less than R600 and could easily be twice that. Juniors' fees start at around R350.

Some advocates deliberately ask prohibitive fees to avoid taking a case, though in fairness it should be added that in special circumstances they may work for nothing, or for a token fee.

In civil matters, the litigant has some control over costs. He can pick his lawyers, decide how far to pursue his case, or settle out of court. In criminal cases he must go to court willy-nilly unless there is the option of an admission of guilt. Beyond that, the only choice is whether or not to have legal representation.

Some suggest that the proportion of undefended cases may be as high as 90% or, in the case of pass law offences, even higher.

By definition, admissions of guilt are undefended. In 1975/76 Department of Justice figures show that 1 662 096 criminal, 751 175 civil cases, and 1 582 203 admissions of guilt were recorded in magistrates' courts. Supreme courts "disposed of" 3 561 criminal and 36 436 civil cases.

Most blacks go undefended because of poverty or ignorance — or both. Were each case to be defended, the whole system would have to be re-structured. As it is, court rolls are heavily congested and civil matters sometimes have to wait in a queue for a hearing in the Supreme Court.

A legal aid system exists and is better than nothing. But only just. In 1975/76, legal aid was granted in 17 509 cases at a total cost of R998 000 — an average of R57 per case. Income limits are so low that only indigent whites qualify for aid, while few blacks even know that aid is available.

A LAWYERS VIEW

An attorney comments:

"As to the fees charged by attorneys, one should bear in mind that 60% and upwards of all fees charged are paid out by them in direct costs of running their practices. Furthermore, attorneys must rank amongst the most heavily taxed of all taxpayers. Not for them the expense accounts and fringe benefits such as company cars and low interest rate housing loans — neither do they benefit from the pensions enjoyed by civil servants and many others, and the security enjoyed by civil servants."

For single persons, the maximum monthly earnings are R140 for whites and R95 for blacks. For married persons, cut-off is R280 for whites and R190 for blacks. These limits are extended according to the number of children in a family.

The Minister of Justice told Parliament earlier this year that "of all applications for legal aid 70% are in respect of matrimonial matters and approximately 40% thereof are in respect of divorce proceedings".

Since April this year legal aid for instituting divorce proceedings has been suspended as a cost-saving measure.

Between the indigent and the affluent there is a fearful majority afraid of being financially crippled for life by the law.

The recent Sidarel case provides a dramatic illustration of the crushing bur-

3. Nostri in insidias inciderant? In tenebris, autem nullus erat usus oculorum, nec imperia in [illegible] accipi poterant. Ordines [illegible] arma virique, alius super alium, praecipitabantur. [illegible] trucidatio fuit. Nostri ex [illegible] perunt, vel iam per medios hostes [illegible] septingentos viros ex quattuor cohortibus amisimus.

Contemplez du matin la pureté divine,
Quand la brume en flocons inonde la ravine,
Quand le soleil, que cache à demi la forêt,
Montrant sur l'horizon sa rondeur échancrée,
Grandit comme ferait la coupole dorée
D'un palais d'Orient dont on approcherait!

Enivrez-vous du soir! à cette heure où, dans l'ombre,
Le paysage obscur, plein de formes sans nombre,
S'efface, de chemins et de fleuves rayé;
Quand le mont, dont la tête à l'horizon s'élève,
Semble un géant couché qui regarde et qui rêve,
Sur son coude appuyé!

2. .../

3/...

den legal costs can place on an accused Agreed it was an exceptional case, but the same principles apply in most lesser cases where an accused is neither too poor to qualify for legal aid, nor rich enough to look after himself.

The estates of at least three of the accused had been sequestrated several years before the trial began. This precluded borrowings to finance defence costs Relatives and friends could, and did, chip in — thus creating debts of honour rather than obligation .

Two of the accused were convicted and the third acquitted. Legal costs of the two convicted, excluding possible appeal costs, were around R60 000 each, and there is no reason to suppose costs of the acquitted party were much different A forth accused who was convicted had his own counsel and therefore costs were probably higher.

The court sat for more than 80 days and the case lasted a year. By normal standards, fees were not untoward considering the work and time involved Nevertheless they would represent a obligation few ordinary salaried people could discharge in a lifetime

Was there any alternative? Certainly — to plead guilty or to seek less experienced, therefore less costly, legal representatives

Had they pleaded guilty they might have been punished for offences of which the court, in several instances, decided they were *not* guilty

Secondly, three of the accused are accountants — professional men whose careers, they knew, would be destroyed by conviction on counts of fraud In the circumstances they had little choice but to employ the best defence available

Thirdly, when costs reach such heights, savings through employing lesser counsel are meaningless.

What vulture?

Lawyers are particularly sensitive to suggestions that the legal eagle much resembles a vulture They point out that Supreme Court tariffs, except for consultations and appearances (which were adjusted in 1972), were last altered in 1969 The magistrates court tariff was revised in 1972 Overheads have not stood still in the meanwhile

Chairman of the Bar Council, Advocate Douglas Shaw QC, estimates that a successful advocate who earned £8 000 a year pre-war would have to earn R250 000 to enjoy the same standard of living today

Lawyers are hardly among the nation's poor The human sciences Research Council reports that self-employed attorneys earn on average R18 850 a year.

Whether such earnings are excessive is a subject for philosophical debate. In practice, there seems little chance of legal fees being reduced.

In Shaw's view there is much to be said for beefing-up the legal aid system and allowing persons found not guilty in criminal cases to at least recover their costs from the State

"I know it sounds unlegal," he says, "but there are just far too many laws. People talk about shortening procedures and there's something to be said for that; but to a person involved in a case it's important that it receives the fullest consideration It's the only case which matters to him and he's not the slightest bit interested how crowded the court roll is with other matters"

Moves are afoot to cut corners One of the reasons given to Parliament by the Minister of Justice this year for extending the powers of regional courts was that the move would cut delays and costs. Mr Justice Oscar Galgut has been appointed head of a commission to look into civil practice and procedure and make cost-cutting suggestions

Perhaps someone should consider that keeping people out of prison would itself be the best cost-saving measure of all

with reminiscence ... explicavit. "Patruus

filled the timeless silence. ... haud procul hinc in caverna celatus est; sed haec caverna

virgultis densissimis tecta est, nec quisquam – nisi locum bene explora-

She listened. She scribbled her notes with joy, almost with ecstasy, never ... solus;

for a moment criticizing what she heard. The lecturer was a mouthpiece, a priest.

As he stood, black-gowned, on the rostrum, some strands of the whispering

confusion of knowledge ... singled out and

woven together by him, till they became a lecture.

At first, she preserved herself from criticism. She would not consider the

professors as men, ... on their ... before

coming to college. They were the black-gowned priests of knowledge, serving for

ever in a remote, ... arma virique, alius

the end of the mystery was in their keeping. ... the beginning and

... perunt, vel iam per

medios hostes ... plus quam septingentos viros ex

quattuor cohortibus amisimus.

Enivrez-vous du soir! à cette heure où, dans l'ombre

Le paysage obscur, plein de formes sans nombre,

S'efface, de chemins et de fleuves rayé,

Quand le mont, dont la tête à l'horizon s'élève,

Semble un géant couché qui regarde et qui rêve,

Sur son coude appuyé!

2. .../

FR. 77.78

Plots 1 and 2 had similar physiognomic types, namely, grassed dwarf shrubland.

3/...

(256) Star 23/11/77

JUSTICE MINISTER KRUGER'S CHALLENGE TO THE STAR TO PUBLISH TAPE TRANSCRIPT IS TAKEN UP

This is what Kruger, Buthelezi discussed

In response to a challenge by the Minister of Justice, Mr Kruger, for The Star to publish in context the exact transcript of his discussion with Chief Gatsha Buthelezi, the following dialogue is published below.

The transcript of the discussion, which took place in September, was only made available to The Star in time for publication in yesterday's editions.

The discussion in which Mr Kruger said that he would accept English speakers only as part of "my country" when they become Afrikaners, was part of a discussion in which Chief Buthelezi argued that Zulus should not be a separate nation while English and Afrikaners were regarded jointly as one

● *On Page 12 of the transcript the dialogue is taken up*

MR KRUGER: You have a parliament at Ulundi .

CHIEF BUTHELEZI: In fact, the Ulundi thing as far as I am concerned is nothing more than local administration of the Zulu people We want, we are just a section of the South African people

MR KRUGER: Don't you consider the Zulus as an entity on their own, as an entity of people I mean What is the position between you and the Xhosas for example?

CHIEF BUTHELEZI: No, I would say that the position between us and the Xhosas is the same as between the Afrikaners and the English I mean they are all, you are the same people, as we are the same people. We have been speaking the same language in fact as the Xhosas.

MR KRUGER: But we are as, we are a different people and what the English-speaking people mainly have derived from the same background, the same Germanic-Anglo background

CHIEF BUTHELEZI: No, but I would think a cultural identity personally does not mean to say that you are not the same people You have a cultural identity, with the language and the history, just as they have but that doesn't mean to say that you are not the same people

● *The discussions then continued and the dialogue is taken up again on pages 23, 24, 25 and 26 of the transcript*

CHIEF BUTHELEZI: But there's no love lost between you and the British even now.

MR KRUGER: Of course

CHIEF BUTHELEZI: I mean every year, your Prime Minister, every year

MR KRUGER: That is the whole point

(overtalk)

CHIEF BUTHELEZI: Talks about black unity, I mean white unity, he appeals to the whites to be united, every year I listen to every message ...

MR KRUGER: That's right . .

GOOD EXAMPLE

CHIEF BUTHELEZI: Because there isn't any love lost. It's a marriage of convenience

MR KRUGER: That's the whole point, Chief. . .

CHIEF BUTHELEZI: Why shouldn't we follow your example?

MR KRUGER: But why should you, because you can see it brings ..

CHIEF BUTHELEZI: Because it's a good example —

MR KRUGER. No, it brings dissension.

GENERAL PRINSLOO: We haven't asked to be united with the British and American and that sort of thing We are people living here in a white area

CHIEF BUTHELEZI: Yes, I mean English-speaking South Africans

MR KRUGER: The English-speaking person is becoming ...

CHIEF BUTHELEZI: There isn't much — Cross talk —

GENERAL PRINSLOO: He's South African, he is not, he's may be English-speaking

CHIEF BUTHELEZI: Yes

GENERAL PRINSLOO: But he's a South African.

CHIEF BUTHELEZI: Yes, but between you really there's no love lost between you

GENERAL PRINSLOO: I don't know

CHIEF BUTHELEZI: If you can speak honestly this morning

Cross talk —

CHIEF BUTHELEZI: And then your unity is merely a marriage of convenience, that's all

WHITE AFRICAN

MR KRUGER. No, but from the Afrikaners' point of view, what we are really saying here, we are saying to any other white South African that is here, he must become an African, he must become a white African, like the Afrikaner is a white African I am detribalised from Europe altogether I can't stand Holland, although I came from Holland I can't stand them, I am detribalised, I am like an American Negro, he has become an American, he is detribalised from Africa, and I have detribalised from Europe I am a white African

I have got a separate language and everything I am a nation And the English-speaker will have to become an Afrikaner Then when psychologically becomes an Afrikaner, then he may be able to join my country like a Xhosa if he stays in Zululand long enough, if he starts marrying a Zulu girl and he accepts the customs of the Zulu, then you will turn round and say to him, "Yes, you are not a Xhosa any more you are now a Zulu, that's the difference"

CHIEF BUTHELEZI: No, but we have intermarried already As far as we are concerned .

MR KRUGER: Well, that's another matter ..

CHIEF BUTHELEZI: It's not hypothetical. Our people have inter-married right through, even I mean in Soweto, in Pretoria here, they have inter-married and no one can undo that.

MR KRUGER: Well, people that do that, with people that become Zulus you will accept them in the Zulu nation Zulus that become Xhosas, they will accept them in the Xhosa nation That doesn't make a difference to the two nations.

CHIEF BUTHELEZI: No, I accept them as my brother in the same way ..

BLACK BROTHER

MR KRUGER: Right .

CHIEF BUTHELEZI: that you accept the English as —

MR KRUGER: I accept you as my brother Let me tell you something I accept the black man of Africa as my black brother, I have always accepted him He is part and parcel of southern Africa. But he's a different nation and this is the whole point and that nobody can go against history, you know, not the PAC, not ANC, not Lbeallo, not Sobukwe, not anyone This is what this argument is about

The discussion then turned to a comparison between Israel and the Jews and the Zulus and kwaZulu

Involved in the discussion with Mr Kruger is Mr Gibson Thula, Chief Buthelezi's urban representative The dialogue is taken up on pages 55, 56 and 57 of the transcript:

MR KRUGER: But Soweto is just an urban township, like Johannesburg.

MR THULA: Right, but what I am saying is that there are more Zulus there than in any other township, Zulus in Soweto.

MR KRUGER: That may be

MR THULA· Now when he goes to them, then they ask him, then he says to me, look, I am still going to discuss the question....

MR KRUGER: Can you tell me now that because there is more Jews outside of Palestine, that Israel isn't a State?

MR THULA: No, no, I am trying to say he is selling us, he will be selling us something like an Easter egg where we don't know what is inside

MR KRUGER: The analogy is that Israel, I mean there is more Jews outside Israel than inside Israel Israel is still a State It is the mother of them all, that's what Zululand is

MONEY TO ISRAEL

MR THULA· Mr Minister, what I am trying to say, Chief Buthelezi has not been presented with a proper setup in KwaZulu KwaZulu starts from here to here, finish and klaar Now when it comes, it would be developed, studies are this that every year there will be so many jobs coming up because of this programme This he doesn't have and he has come to us and says now look, I am selling separate development, complete independence We say, how do you buy that because we don't know where we are going to fit in the lot And this is the problem which is facing us. But once we agree, we accept this How do we go about it?

MR KRUGER: You cannot deny your own homeland You cannot deny the fact that there's Jews outside Israel and Israel is still a homeland They are sending money to Israel, they go to Israel and then they run away from other places and the whole kaput and you cannot deny the facts of history, you cannot deny the facts of life and I think the Chief is right when he says his people are 200 years in Zululand Of course it's, this is all he has really got to think about as a statesman It's as simple as that, Chief, you must think about that I think

CHIEF BUTHELEZI: Of course kwaZulu is the whole of Natal, in fact it's the whole of Natal

NO DANGER

MR KRUGER: I am not saying how big Zululand is, but I say Zululand is Zululand, it's there You can't take it away, big or small

CHIEF BUTHELEZI: You mean the remnant of it

MR KRUGER: Whatever is is, it doesn't matter you can't take it away friend This is your mother

CHIEF BUTHELEZI: I don't mean history Zululand, Minister, I mean Zululand as received by your Government policy

MR KRUGER: I s . . that the problem be discussed at all Let's get our philo base right You are really coming on philosophical base we are really talki key When you acc luland as the mo them all, you ca and argue with m Minister about other things, th my department, are right, then I not to me a dang

(256) Cape Times 10/12/77

35 apartheid signs in Wynberg court building

Staff Reporter

THIRTY-FIVE apartheid signs, in both official languages, hang on doors and walls inside and outside the Wynberg Magistrate's Court building

During a Cape Times survey of the Cape Town, Goodwood, Athlone, Bellville, Kuils River and Parow magistrate's courts this week the Wynberg courts were the dirtiest and displayed the most apartheid signs

There are separate entrances for "non-whites" and "whites" and separate marriage/births offices, maintenance offices, accounts offices and toilets

"It has been the practice here for donkey's years," said Mr E Rorich, chief magistrate at Wynberg

"I don't think there is any law to say that the signs should be here, but being in the office all the time we hardly notice them I will definitely look into the matter though," he said

In the Wynberg courts there are four signs, two on the wall and two on the door, reading "whites" and "non-whites", to each court room.

Inside the courts people sit where they can find a seat, even though the benches are divided by a low partition

The entrances to the building are also clearly marked in the same way The "non-white" entrance is marked with three signs

The white toilets have mirrors, towels and toilet paper, but the black toilets are bare rooms with a toilet and basin

They contrast sharply with the Bellville courts, the newest in the Peninsula, which have no petty apartheid signs in the corridors, the main entrances or the court entrances

The toilets at the Bellville courts are segregated but "equal" The black and white toilets were both clean, with mirrors, towels and toilet paper

Only a few kilometres away at the Goodwood and Parow magistrates' courts the Cape Times found petty apartheid readily apparent in both buildings

Both buildings have two separate entrances for blacks and whites which lead into two wings on either side of a central courtroom The gallery in the courtrooms is also divided by a high partition, into a white and a black area

The court entrances and the toilets are not signposted, other than by sex for the toilets

Only the toilets at the Athlone and Kuils River courts were segregated, There were no discriminatory signs

A lone sign on the side entrance of the Kuils River court reads "Entrance non-whites court" in both official languages

At the Cape Town magistrate's courts the toilets are also segregated, as are some of the offices Only "A" court displays signs for a separate "white" and "non-white" entrance

All the courts, except at Wynberg, were clean and some had pot plants in the corridors

The floors of the Wynberg courts were littered with papers and cigarette ends

The people at most of the courts seemed to take little notice of the signs and used the entrances which were most convenient

Financial Mail

Barring foreign funds

Talk that a law may be passed to stop money coming into SA to meet legal costs in political trials is causing concern in legal circles Justifiably

There is every reason to believe that the rights of the accused in political cases will be gravely prejudiced if the legislation is enacted The rights of the ordinary citizen to bring civil actions against the State or its officers could also be seriously diminished

There seems little doubt that it was the recent inquest into the still-unexplained death of Steve Biko that gave rise to pressures for government action to prohibit foreign funding The horrifying details of how Biko was treated in detention which counsel for his family prised out of the security police caused untold damage to SA's reputation abroad

The Nationalist Party's parliamentary justice group was recently reported as likely to discuss the question of legislation with Justice Minister James Kruger early in the parliamentary session starting on January 27 The group's chairman, Pretoria advocate and MP for Waterkloof Tom Langley, tells the *FM* that the possibility of legislation is "mere speculation at this stage" He adds, however, that "although I haven't yet applied my mind to it, I would favour it"

Langley says SA has a "very effective system of legal aid, including *pro deo* counsel in trials on capital charges Normally, I would not be opposed to people getting money overseas, but in some cases the money is politically tainted and that is what annoys me

"I think money is being wasted in this process. Counsel is entitled to his fees, but in some cases services are obtained over-abundantly There are seniors, juniors, teams of counsel, in cases which could be dealt with by only one counsel"

Broadly-speaking, two kinds of assistance are available to people unable to pay for lawyers themselves Firstly, as Langley points out, people charged with offences carrying the death sentence can obtain counsel on a *pro deo* basis Secondly, financial aid can be obtained through the Legal Aid Board set up under the Legal Aid Act of 1969 to provide assistance to "indigent persons"

Both systems have serious drawbacks, however The board applies a means test to applicants basically, the effect is that a white with an income above R140 a month, a coloured person or Indian with more than R105, and an African with more than R95 does not ordinarily qualify for legal aid These amounts are increased where the applicant has dependent children, and the board also has the discretion to provide assistance to people with incomes above the minima if it is satisfied that they are nevertheless indigent.

Justice must not only be done and be seen to be done. It must be paid for. Any attempt by government to cut off foreign funds for political trials should strenuously be resisted

The board's director, J J A Mostert, tells the *FM* that since its inception six years ago it has received nine applications for assistance from people charged under security legislation and granted all of them.

Nevertheless, the fact remains that the board's responsibility is to provide assistance to the indigent· the means test would thus exclude a great number of potential applicants.

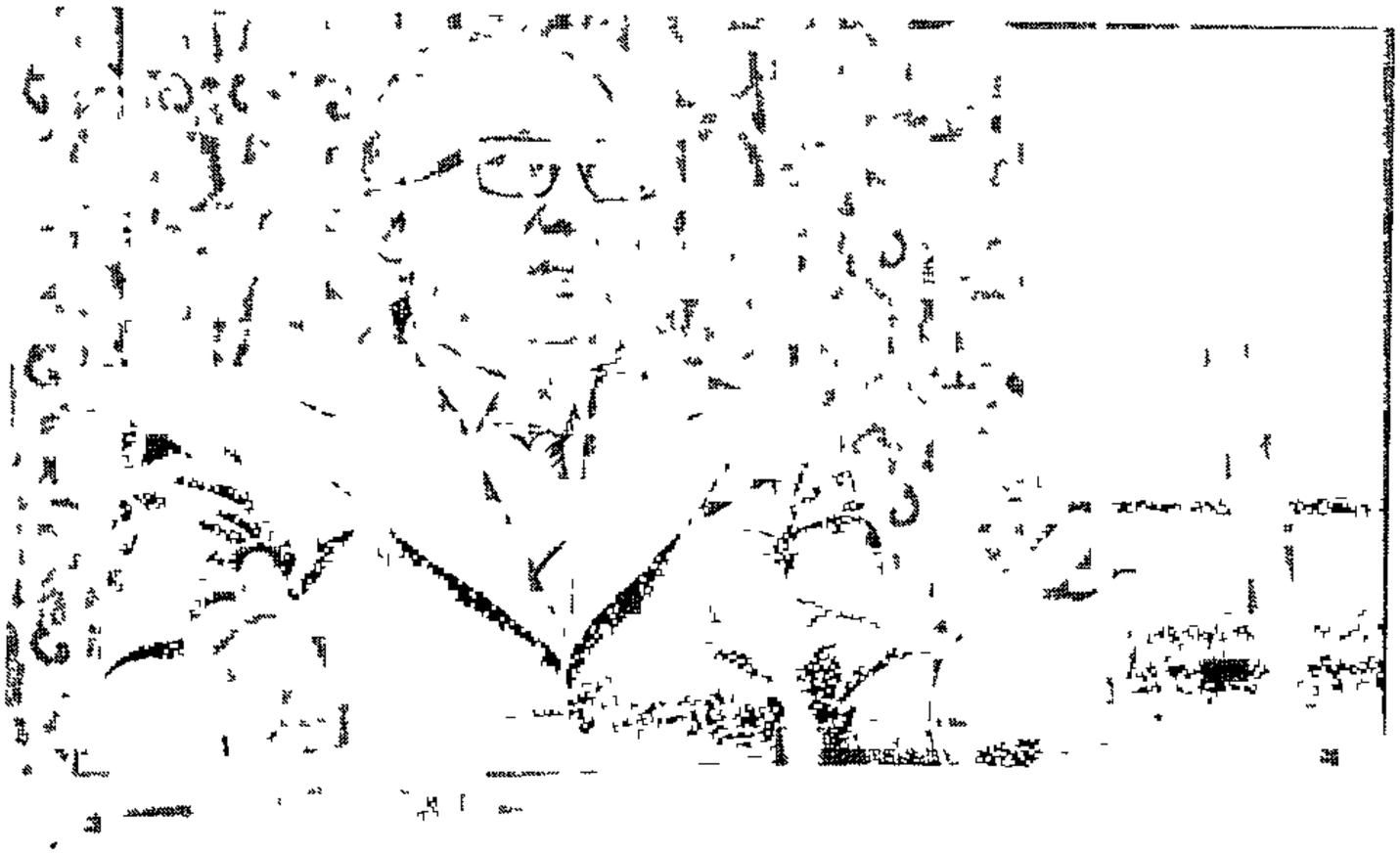
People who do not qualify for assistance from the board and who are not charged with capital offences are left in limbo, since defence on a *pro deo* basis is not available to them

Even where *pro deo* counsel, paid for by the State, is available, there are grave drawbacks Generally speaking, only one counsel is appointed to appear for the accused in such cases, and he normally appears without the all-important assistance of instructing attorneys The work-load on one man in complex political cases can often be very heavy

For a young advocate, just starting at the Bar and without a great deal of work coming his way, a handful of *pro deo* briefs may come as a welcome break. And in practice, most *pro deo* briefs go to young juniors

But it is no reflection on the legal profession to say that *pro deo* briefs are not popular The advocate is usually paid a flat rate of R30 a day, whereas a spokesman for the Johannesburg Bar Council points out that even the most junior advocate defending a person on, say, a murder charge would normally command a fee of more than R100 a day

So advocates appearing on a *pro deo*



James Kruger . . . a wide issue but the principle's simple

basis are in effect very often subsidising the defence of their clients.

The pre-trial costs in political cases are often enormous. Counsel and their attorneys are often tied up for weeks in consultations with their clients, interviews with potential witnesses, and discussions with experts in various fields which may be relevant to the case For this, the *pro deo* system makes little or no financial allowance One veteran of political trials tells the *FM* that top members of the Bar can sometimes spend up to three months preparing a case

Inevitably then, counsel appearing *pro deo* in complicated political trials stand to have to make substantial financial sacrifices if their clients are to be assured of a proper defence.

If Kruger does decide to forbid money coming in from abroad for the defence in political cases, there can be little doubt that the legal rights of the accused could be gravely jeopardised

Langley's claims to the contrary notwithstanding, SA does not have an adequate system to provide legal representation to people who cannot afford to pay for it themselves.

Nor should it be forgotten, as a top man at the Bar points out, that the State as prosecutor in political — as in other — cases has almost unlimited resources at its disposal ie taxpayers' money

To argue, as *Beeld* did in a recent editorial, that foreign funding is "political interference" in SA, is misguided. The fact that individuals and organisations abroad are prepared to pay the costs of SA lawyers appearing in SA courts represents, if anything, a vote of confidence in the country's judiciary and its legal system.

Justice in SA has already gravely been damaged by all the laws providing for detention and other forms of punishment without trial. It is to be hoped that the Bar and the Side-Bar will protest with all their might against any further attempts to damage the cause of justice in this country.

The cost of money

Rising interest rates in the US could put paid to any further marked fall in South African rates. For the stock market and business generally that's bad news

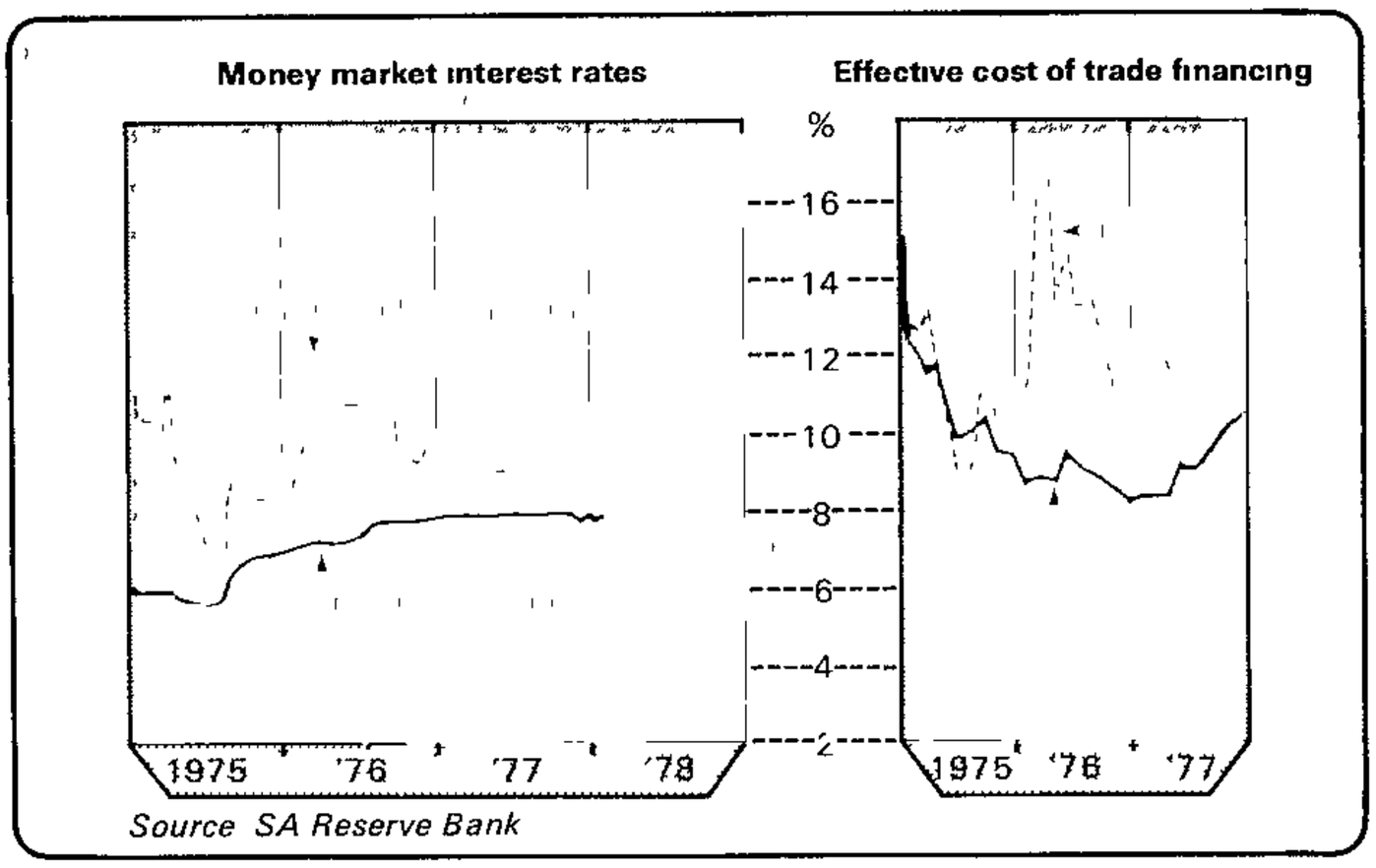
There will be a number of interesting points about the 1978-79 budget that President Carter will unveil on Monday For the future of interest rates perhaps the most important will be the size of the budget deficit — $61bn, almost identical to the amount projected for the current year. The fact that the US will run up $120bn in government debt in just two years will not sit easy with the world's money markets

Not surprisingly, since the first week of January the US prime rate has moved from 7,75% to 8% and the Fed's discount rate, the one it charges commercial banks, has been raised from 6% to 6,5% Other rates have hardened too

Britain meanwhile has been enjoying a period when interest rates have been falling fast for longer than at any time since the war. Rates peaked in late 1976 at the height of the sterling crisis with the Bank of England's minimum lending rate touching 15%. By October last year, the heavy inflow of dollars from abroad had pushed it down to 5%. It is still only 6,5%.

Over the next six months the picture will change considerably. This year is going to see an expansion, if not a full scale boom, in consumer spending, while capital investment in both the private and public sector is scheduled to rise too.

At present there is slack capacity in the banking system, which could cater for some of the higher demand without too much impact on interest rates But later, as the expansion of bank lending starts to boost money supply growth, most economists feel that controls, such as special deposits with the Bank of England or limits on the volume of lending, may have to be reimposed This all suggests rising short-term interest rates by the middle of 1978



Source SA Reserve Bank

How will these trends in the US and UK affect SA rates over the next six months or so?

There is still some inherent downward potential for both long and short-term rates in SA. But the hardening of rates overseas could neutralise it.

The real test will come in the April-June quarter, when seasonal factors make for greater liquidity, causing interest rates to soften. However, the gap between rates here and abroad has become so narrow that any further hardening overseas could have an immediate impact.

The gap between the cost of six month acceptance credits in New York and SA, for example, is currently between 0,5% and 0,75%. According to UAL's Tony Ross, "anything less than a 1% differential must certainly be causing Pretoria some concern"

Switching from foreign to local financing would cause a heavy drain from the foreign reserves at a time when large foreign loan repayments could be taking place

Sterling financing might still be cheaper than what is available in Johannesburg But the UK Treasury has refused to permit sterling to be used for third country transactions.

Even the inert SA Treasury bill rate has been edging up slowly during the past three weeks (from 7,9% to 7,93%). This has been mirrored by similar increases in the NFC's call rate However, the increases in these rates can be regarded more as a token gesture that the Treasury intends to keep a tight rein on liquidity than as a true reflection of money market conditions

From April (after the budget) the

FM 20/1/78 252

basis are in effect very often subsidising the defence of their clients

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Hansard 18 June 1978
Questin 730. Cols. 918-919.

252

919 FRIDAY, 9 J

The MINISTER OF PRISONS

1976

(a) (i) White males 7
Coloured males 8
Black male 1

(ii) nom

(b) White males 3
Coloured males 8
Black males 16
murder and robbery 1
rape 1

1977

(a) (i) White male 1
Coloured males 26
Black males 63

(ii) non

(b) White rape 1
Coloured murder 23
rape and attempted murder 1
robbery
murder attempted murder and rape 1
Black murder 1
rape

found grounds for criticism Besides, the notorious Council of Ten, established in the fourteenth century as a temporary adjunct to its other governing councils, became a permanent watchdog over the political health of the Venetian republic Operating with commendable dispatch, employing informers and a secret police force, the Council often discovered plots in their incipient stages and sent dangerous men beyond reach—into exile or death. With its doge—that powerless, ceremonial head of state elected for life—with its rotating councils where all were equal, the Venetian constitution symbolized the omnipotence, fulfilled the purposes, and expressed the will of the merchant aristocracy to perfection Venice secured the kind of loyalty that cannot be bought by fear and lies deeper than mere self-interest

Florence was, or liked to think it was, different While ingenious politicians used the republican Florentine constitution as a screen behind which merchant magnates manipulated the machinery of power, the prevalence of republican ideals served as a check on the plutocracy Republicanism was an ideal to which the dissident could appeal and which the most ambitious Florentines found it convenient to respect Even the Medici were too shrewd and too attached to this ideal to subvert it wholly At the beginning of the fifteenth century, stung to self-awareness by the aggressive designs of Visconti Milan, Florentine humanists reexamined their republican tradition and Leonardo Bruni, an impressive political and responsible public official, set the tone with his civic humanism, saddening exile and active service in Cape Town in advocated public service, extolled liberty, and regarded the contemplative life as against the virtues of the ancient Roman Republic [15] Bruni's civic humanism, developed in the face of foreign danger and in the midst of magnificent artistic vitality, was characteristic local product In political theory as in the arts, literature, and philosophy, Florence contributed far more than its share to the making and the glory of the Renaissance

This contribution was the result of hard work in unpromising circumstances Florence enjoyed an appealing but insecure geographical situation. Surrounded by the lovely Tuscan hills, bathed in the warm, clear Tuscan sun, the city was cut off from the sea by the hostile republics of Lucca and Pisa. Much of its energy was consumed by wearing, inconclusive wars with these neighbors, too weak to resist Florentine expansion, too strong wholly to succumb to it While Pisa was added to Florentine territory in 1406, a disastrous campaign against Lucca led to a grave domestic crisis in 1433

[15] Hans Baron, *The Crisis of the Early Italian Renaissance Civic Humanism and Republican Liberty in an Age of Classicism and Tyranny* (2nd ed , 1966)

TABLE 2

THE PERCENTAGE SHARE OF INDUSTRIES IN GDP

Table 2 (Continued)

1. Halls and Building				
2. Libraries				
3. Parks and				
C. Trading and Public Utilities				
1. Electricity				
2. Markets				
Water				
Welfare Services				
1. Ambulance				
2. Health	16,9	11,2	1787* 5,74*	52,3
3. Housing	14,7	10,	8,26*	
		14,5	23,9	50,2

*denotes that central or provincial government has provided grants to subsidise these services partly.

Effectively Consumed Services and Cultural Activities are mainly financed by property rates, whilst Welfare Services are largely financed by grants from the provincial government. The Council would like to charge for all services rendered but is prevented from doing so in the case of electricity and markets and water as largely self financing since consumers are charged directly for these services. In the case of electricity a surplus has been achieved for the last few years and the profits are used to finance other services, thus providing relief via rates.

Grants are made to selective services chosen by the higher levels of government, - additionally the latter also provide for a system where lump sum grants account for up to 60% of revenue. (13)

Characteristic local product

Conclusions and Proposals

From the above discussion it would seem that neither the ability to pay nor the benefit approach can be applied with any degree of confidence This conclusion proves, it is by no means clear who bears the burden of rates, and it is unreasonable to levy a property tax in respect of being even roughly proportionate to benefits received.

The emphatic conclusion reached earlier was that the role of local authority should not include redistribution. Since the ability to pay approach is in conflict with this conclusion, a revenue base that more closely matches the incurred and services received must be sought.

(13) South African Treasurer - June 1976, page 92.

[14] Ibid , 62

Kruger must quit, says the NRP

EAST LONDON — The New Republic Party's congress yesterday unanimously adopted a resolution calling on the Minister of Justice, Mr J T Kruger, to resign immediately.

Proposing the motion calling for Mr Kruger's resignation, Mr Harland Bell, former MP for East London City, slated the Minister's "arrogance in a statement made last year after the death in detention of Mr Steve Biko."

If Mr Kruger decided not to resign, he should appoint a judicial commission of inquiry to investigate deaths in detention

Mr Bell said.

It was now possible for detained people to disappear from the face of the earth without families knowing what had happened to them because detainees had no recourse to legal representatives.

Referring to the large number of people who had plunged from buildings while in detention, Mr Bell said it was obvious Mr Kruger had no control over his department, because he had issued instructions aimed at preventing a repetition of such events

A judicial inquiry into the deaths of detainees should be carried out by members of the legal profession because of their independence

Magistrates could be regarded as part of the Government executive

Delegates applauded as the motion was adopted unanimously.

The congress urged the Government to provide equal salaries for national servicemen of all races.

The motion, adopted unanimously, called on the NRP's public representatives to investigate whether it was necessary to call up national servicemen for two full years and urged a larger permanent force on the lines of the now defunct Special Service Battalion

NRP leader and defence spokesman Mr Vause Raw said although the party advocated a bigger permanent force, something like the Special Service Battalion would not be a viable proposition today.

On calls for unemployed coloureds to be conscripted into the army, he said "I feel you cannot conscript people unless you have their full loyalty."

The congress also adopted unanimously a motion accusing the Government of placing farmers in an untenable position and calling for it to reduce farming input costs to assist consumers and allow the farmer to make a living "commensurate with his investment and effort."

While in the shape of the early in the institution of wool merchant powers and nobles from shopkeepers, active emerge Florence into its internal st also, in its wa tax assessmen burdens it p found themse after an econ wool worker greater on th came to be f succeeded on undisturbed b government fe personnel bu

The histor ruthless, adm its mark in Flor a reputation fo not until 1393 at with the found

his manipulation of elections coupled with well-timed sentences of imprison-

[16] *Ciompi* is a corruption of the French word *compere*, which the Florentines had heard from French soldiers, it referred to the wool workers and then, by extension, to the working classes as a whole

PUBLIC SECTOR - GOVT. —

JUSTICE

252

3-1-79 —— 15-12-79

per cent of rural ho
the lower 70% of rur
they would have estu
poverty line and tha
rural households who
that practically all
economy in terms of
is only the two top
income and the riche
these categories, u
income.

Justice is moving faster

The wheels of justice are turning faster nowadays It's possible for offenders to be convicted and sentenced within days of committing a crime.

A spokesman for the Johannesburg Magistrate's Court said "Cases in the district and regional courts are being disposed of more quickly than before — but I wouldn't call the improvement dramatic."

He said provisions of the new Criminal Procedure Act had in many cases speeded up, court proceedings

Where an accused pleaded guilty and there was no dispute about the facts, trials could be completed in minutes

DEFENCE

"The new Act provides that if an accused pleads guilty he can be found guilty without evidence being led But the magistrate must be satisfied he has admitted all the elements of the offence and that he is in fact guilty," said the spokesman

Where an accused pleaded not guilty, he would be asked to disclose the basis of his defence. Facts not disputed could be noted as admissions. Evidence would be led on matters still in dispute.

Recent cases on the Rand illustrate that even serious cases are being dealt with speedily. In one a young man was convicted in a regional court of culpable homicide within days of a shooting incident.

The offender was sentenced to three years' in jail, suspended for five years.

In another case two men were convicted of robbery with aggravating circumstances within five days of the hold-up. Both pleaded guilty

The proposals to sep
from those who run s
enormous relative power of the few large families who own up
cattle of the country. The proposal is to zone tribal graz
commercial ranching, communal and reserved areas. Commercia
mostly in the western less populated regions, are to be held
tenure. Settlement on these lands would be by the larger l
The purpose behind this proposal is to ensure the continued
commercial ranching. As a corollary to this proposal, the
large herds to leasehold ranches is intended to relieve pres
communal lands. These are the lands closer to settlements
heavily grazed in the past and are in need of restoration.
category, reserved areas, which is not important in this disc
aim behind the proposals, to combine the promotion of commercial ranching with protective devices for the smaller livestock owners who will continue to rely on communal grazing, is laudable. What is questionable is the means whereby this is intended to be carried out.

In essence, the proposal is for a once-for-all settlement of livestock interests. Considerable benefits will flow to the wealthier families who obtain leasehold ranches, unless, as proposed, in the first instance small livestock owners combine together to claim the same privilege. There are several factors that suggest this will not happen. The first is that 45% of the rural population have no cattle and so are out of the running from the start. Secondly, all available evidence suggests that at present it is few families who practice the commercial management of herds. Farmers on

EBRUARY

Internal Security Act: cases referred to Review Committee

52 Mrs H SUZMAN asked the Minister of Justice

(1) How many cases were referred to the Review Committee in terms of the Internal Security Act during 1978,

(2) whether the Committee recommended the withdrawal of any notices, if so, (a) how many and (b) with what result

The MINISTER OF JUSTICE

(1) 114 82 of these cases were reviewed once, 27 a second time 4 a third time and 1 four times

(2) Yes

(a) Nine

(b) Effect was given to the Review Committee's recommendations

Hansard (27 col 73 16/2/79

Corporal punishment

252

*6 Mr D J DALLING asked the Minister of Justice

How many persons were sentenced to corporal punishment in the Republic in 1978

The MINISTER OF INDIAN AFFAIRS (for the Minister of Justice)

The required information is not readily available from Departmental sources

Harward (2) Co 176
16/2/77
252

Legislation to abolish or limit corporal/capital punishment

*7 Mr D J DALLING asked the Minister of Justice

Whether he intends to introduce legislation during the current session to abolish or limit (a) corporal and (b) capital punishment, if not, why not.

The MINISTER OF INDIAN AFFAIRS (for the Minister of Justice)

No I am not aware of any reason why these matters should be considered again now

Persons hanged in Republic Hansard (2) Col 72

*5 Mr R. J. DARLING asked the Minister of Prisons. 16/2/79

How many persons were hanged in the Republic during 1978.

†The MINISTER OF INDIAN AFFAIRS (for the Minister of Prisons): 252

132.

Hansard 6 Questions Col. 448 14/3/79

252

14 MARCH 1979

Persons executed

451 DR F VAN Z SLABBERT asked the Minister of Prisons

(a) How many persons in each race group were executed during 1976-'77 and 1977-'78, respectively, and (b) of what crimes had they been convicted

The MINISTER OF PRISONS

(a) 1 7 76 to 30 6 77

Whites	
Coloureds	
Blacks	

1 7 77 to 30 6 78

Whites	
Coloureds	
Blacks	

(b) 1 7 76 to 30 6 77

Whites—	murder	3
Coloureds—	murder	14
Blacks—	murder	50
	rape	1
	murder and robbery	2

1 7 77 to 30 6 78

Whites—	murder	1
Coloureds—	murder	20
	murder and robbery	3
	rape and culpable homocide	1
	rape and murder	1
Blacks—	murder	62
	murder and robbery	12
	rape	2
	robbery with aggravating circumstances	1
	robbery and rape	1
	murder and rape	1

252

For written reply

Senate Hansard 4 Col 17
14/3/79.

Prisoners

11 Senator L E D WINCHESTER asked the Minister of Prisons

What was (a) the average daily number of prisoners for each race group, and (b) the average number of prisoners per 100 000 for each race group, as at the latest date for which figures are available

The MINISTER OF PRISONS

Figures for the year ended 30 June 1978

(a)	Whites	4 275
	Blacks	73 185
	Coloureds	21 225
	Asians	607
(b)	Whites	96,(
	Blacks	45[illegible]
	Coloureds	851,(
	Asians	78,02

the middle berths as shelves for our things. We had a capital breakfast at Elandsfontein and did not grudge the 4/- charged for it as our dinner the night before consisted of buns and coffee at the railway restaurant at Pretoria. While we were at Elandsfontein we saw Lord Milner's train pass through on its way to Pretoria. There was a guard of 50 men in a truck attached to the train.

In the evening we [illegible] and dined there. During the night we [illegible] tunnel but saw nothing of Majuba o[illegible] down the hill. It reverses at [illegible] tunnel is 5 000 feet above the se[illegible] 4 000 feet. We got to Glencoe in ti[illegible]n went by the branch line to Dundee. [illegible]t Glencoe and got the first copper [illegible]n South Africa. Dundee is only eight[illegible]pe. We camped beside the station and spent the day unloading our trains as they came in.

The two Squadrons and two guns that arrived before us were sent off by midday to De Jager's Drift on the Buffalo River, a march of some 15 or 16 miles. It seems that a couple of thousand Boers under Botha were coming down to invade Natal and we, and other troops, were hurried down to stop him. Natal was

247 jailed for life

THE Minister of Police, Mr J T Kruger, said yesterday 247 people were serving life sentences in South Africa.

In a written reply to a question by Mrs Helen Suzman (PFP Houghton) in the House of Assembly, he said that 36 of these people were on Robben Island

37 people have been hanged in SA this year

CAPE TIMES 9/4/79

252

Own Correspondent

JOHANNESBURG — The execution for murder last Friday of five men, including the African National Congress insurgent, Solomon Mahlangu, brought to 37 the number of people hanged since the beginning of the year

The execution rate of 37 in 96 days averages out at nearly 2,6 executions at day, which reflects the rising rate of hangings in the past few years after a drop in the early 1970s

Last year 132 people were hanged, giving South Africa its highest annual total of executions since Union in 1910 The previous highest annual total of 119 was recorded in 1968

The statistical year 1973-74 saw executions drop to a low 43 — below the 57 recorded in 1911, the first full year of Union — but since then they have risen steadily, reaching 61 in 1976 and 90 in 1977

The overall trend since 1948 has been a general rise in the annual total, although there was the relative trough of the the early 1970s

An important factor in the rise has been the extension of the number of capital crimes in the post-1948 era

Although "political crimes" carry the death penalty, it has been become almost a tradition not to impose this sentence for action which has not resulted in loss of life

The African National Congress insurgent in the Pretoria ANC trial, Mosima Sexwale, almost certainly benefitted from the tradition when he was sentenced to 18 years imprisonment and not death

Sexwale threw a grenade into a police vehicle near the Swaziland border gate late in 1976, injuring the two policemen in it Had either of them died, he may have got the supreme penalty

Mahlangu quoted the Sexwale case in his plea for mercy, but the difference was that two men died in the Goch Street shooting whereas the two injured men recovered in the border grenade incident

Another problem faced by Mahlangu's lawyers in their fight to save him from the gallows was that murder carries a mandatory sentence unless extenuating circumstances can be proved

Long wait for a date with SA's busy hangman

ROM 364/79 252

JAN VAN DER MERWE

ON MARCH 3 1977 Xavier Tanse Leisher, 26, was sentenced to death in Johannesburg for the gangland slaying of drug pedlar Johnny Karam and two alleged prostitutes.

Today Leisher, now 28, is in Pretoria where, more than two years after being convicted, he is still awaiting a date with South Africa's anonymous hangman

Leisher's lawyers appeared to have exhausted every loophole open to them when suddenly, on Tuesday afternoon, Leisher learned that his case had been referred back to court in an unprecedented move by the State President, Mr Vorster.

'Leisher has been left to grapple with his conscience for longer than can be condoned'

The order did not specify whether Leisher would be retried. But it is understood that fresh medical evidence has come to light Whether this can succeed and beat the hangman or not nobody knows, but Leisher's predicament is bound to revive the energies of South Africa's small but vociferous anti-death penalty lobby

It is not the fault of the abolitionists that Leisher, a South African of Lebanese descent, has become something of a poor-man's Caryl Chessman Confined in a cell in Pretoria's death-row his fate has touched the hearts of at least one open sympathiser — a Roman Catholic priest who has said that Leisher is a "reformed character" and "living for the day when he will be able to do something about the R20 000 his parents have spent on his defence"

Says the priest, Father Clayton Jackson, of Turffontein, Johannesburg, "We have been expecting a decision every day for the past six months I can tell you that Tanse is completely off drugs now and able to feel remorse for what he has done"

According to Father Jackson, Leisher, a former altar boy and professional boxer and footballer, is reading serious literature and has "become deeply religious"

All very touching, say the protagonists of legal killing Leisher should have thought of all this before triggering off the shot which has brought him to the brink of the gallows He should also have considered the precious lives of his victims, and so on

A Pretoria advocate who confesses to having lost "more clients to the gallows than is conducive to nocturnal comfort" commented "The fact is that Leisher, a proven one-time drug addict, has been left to grapple with his conscience for longer than can be condoned While his lawyers fight for his life, hardened recidivists in another section of the Central Prison may be planning future crimes unhampered by the prospect of the noose"

Should not Leisher, who does not possess an ingrained criminal background, also be given the opportunity of rehabilitating himself? In this regard it is interesting to note that a recent authoritative American study indicates that paroled robbers and rapists constitute a far greater danger to life than do paroled murderers And in Britain, where 183 killers were reprieved and subsequently released between 1930 and 1949, not a single one of the parolees was involved in an other murder

"The lesson has been learnt," a Belgian Minister of Justice has stated, "that the best means of inculcating respect for human life is to refrain from taking life in the name of the law"

'The best means of inculcating respect for human life is to refrain from taking life in the name of the law'

South Africa's "hanging" statistics over the years are startling Since 1970 nearly 700 people have been executed Of these only 10 or so have been white By contrast 632 people met their end at the hands of the British hangman over the half-century spanning 1900 to 1950

In 1978 the South African execution rate rose sharply for the second successive year to reach an all-time high of 132, an increase of 46,5% on the 1977 figure of 90. And recently the executions of African National Congress terrorist, Solomon Mahlangu, and four other men, brought to 37 the total since January 1

Comparisons can be invidious and misleading Yet one cannot but wonder at the fact that in Britain, which has both a far higher population and slums equally as crime invested as South Africa's, no more than 106 people were hanged in the eight years between 1949 and 1956 This proved, however, enough to engender a public outcry which led in the following year to a drastic reduction in the categories of crime for which the culprits could be hanged

In the United States, which houses a so-called "violence quotient" at least as potent as that allegedly prevalent in South Africa, the average annual execution rate during the 1950s was 72 Significantly, the death penalty at this time was rarely carried out on any one other than a first-degree murderer, or a black convicted of rape in the Southern States By 1959 the number was down to 49 — all of them men — and in 1961 the rate further shrank to 42.

The present position in the United States is that only one person — a Utah Mormon who had strictly forbidden the making of any legal representations whatever on his behalf — has been executed during the current decade Several hundred people, however, among them many who have been on Death Row for longer periods than Xavier Tanse Leisher, are still awaiting the final word on their destinies

But the salient point laid bare by any comparative study of South Africa's execution rate is that a hanging takes place in Pretoria every three days and that all but a few of the victims are black

In the cases of most of South Africa's more recently condemned murderers, robbers and rapists, they appear to have been despatched with what one cynic has termed "commendable rapidity", or else reprieved But as far as Tanse Leisher is concerned he has already spent two Christmases at Beverley Hills, as Pretoria's maximum security prison is known to its inmates

'South Africa's disturbingly busy hangman continues to fashion his nooses — with the bulk of public opinion solidly behind him'

Leisher's accomplice in the three killings, former bank clerk Basil Budwa Thomas, 27, has meanwhile completed a third of his nine year prison sentence As a first-offender he becomes eligible for parole next year — an incongruous state of affairs when viewed in the light of Leisher's situation

Johnny Gavanozis, who was hanged last month after his execution had been stayed several times, and Paulina Tolken, who was reprieved by the State President after her appeal had been turned down, spent 19 and 17 months respectively awaiting news of their fate Gavanozis had shot and killed a gambler who allegedly owed him money, while Tolken had axed her husband to death as he lay asleep. Wife-killer, Org Louw Swanepoel, who was also reprieved at the last minute last month, languished in the death cell for 18 months. By a remarkable coincidence, the pleas of both Gavanozis and Swanepoel, which have now been settled, and that of Leisher which is being taken back to court, were all handled by the same Johannesburg attorney

"Leisher's fight for life has, of course, buttressed the case for abolition in that it has dispassionately dumped the inhumanity inherent in the execution process on our doorstep" the attorney says. "But South Africa's disturbingly busy hangman continues to fashion his nooses and, what is more, with a vast bulk of public opinion solidly behind him.

South Africa, claim the retentionists, is "not yet ripe" for even a reduction in the number of crimes for which the supreme penalty may be exacted

"We live in a violent society" they say "in which violence has to be met with a strong and steady hand" In this spirit Minister after Minister of Justice has over the years assured the public that the situation will "under no circumstances be reconsidered" And disturbingly, and in contrast to trends in virtually all so-called "civilised" states, the number of capital crimes has been increased in South Africa over the past two decades

As Professor Barend van Niekerk has pointed out the country's statutes at present provide for at least ten crimes for which the death penalty may be imposed These include murder, robbery, rape, kidnapping, child-stealing, sabotage and terrorism An ironic tribute perhaps to the memory of the 19th century social reformer, Sir Samuel Romilly, who reminded his countrymen that "cruel punishment has an inevitable tendency to produce cruelty in the people"

Lengthy terror trials tie up Justice staff

HOUSE OF ASSEMBLY — Terrorism and sabotage cases are taking up progressively more of the time of the Attorneys-General and their staff, the Secretary for Justice, Mr J P J Coetzer, says in the Department's annual report for 1978

The report, tabled in Parliament yesterday, says that owing to their scope and complexity, these cases take some time to prepare

"In court, too, such cases are usually of lengthy duration At any given time there are one or more of these cases in progress in the Supreme Court or in the regional courts

"Furthermore, there are always cases of this nature awaiting trial or requiring preparatory work"

The report says some witnesses, for fear of subsequent retribution, will flee rather than testify against an accused

For this reason an attorney-general at times had no option but to have State witnesses detained in terms of the Internal Security Act

The report also says the new procedures introduced by the Criminal Procedure Act, 1977, are a great success, particularly those relating to pleas of guilty and not guilty, which had given rise to misgivings during the debate on the Bill

In virtually all divisions of the Supreme Court the number of criminal cases subject to automatic review had dropped by 50%

"As regards the procedure relating to the plea of guilty, it appears that magistrates on the whole are very pleased with its operation

"They are satisfied that justice is done to the accused and that as a rule, cases are dealt with more expeditiously to the advantage of the accused

"The accused is spared the anxiety and the waiting which go with repeated postponements," the report says

The anomaly that occurred previously of an accused pleading guilty and being aquitted (to his own surprise and to the surprise of the complainant and other interested persons), merely because the State had been unable to prove the commission of the offence, has now been eliminated

'Where the accused is now acquitted, it is clear to him that he had been under a misapprehension concerning his position in law"

During the year under review, 65 018 cases were disposed of without evidence, 379 269 without evidence but after questioning and 232 698 with evidence

Ample careers, no volunteers

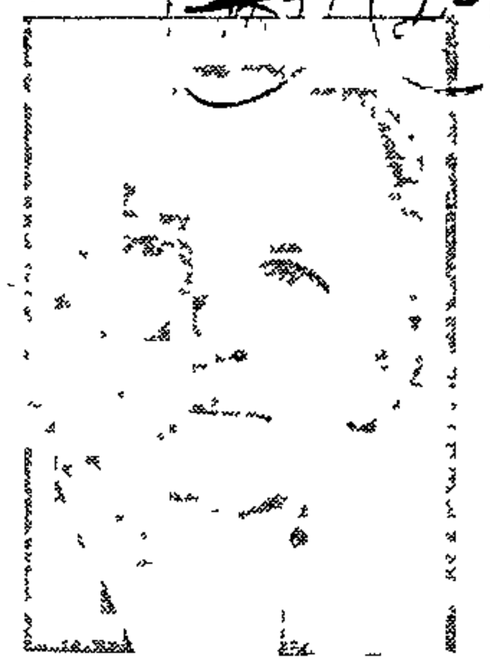
THE ASSEMBLY — There was no reason why suitable coloureds or Asians could not advance to the rank of chief magistrate in their own areas, according to the Secretary for Justice, Mr J P J Coetzer

He said there were adequate facilities for studies leading to the appropriate qualifications, but "the problem now, as before, is that no suitable applicants present themselves for training"

The Department was willing to take every possible step to give suitable candidates the neceesary practical training, he said

"The opportunities are there for members of the Asian and Coloured population groups to be trained as State prosecutors and as magistrates It only remains for candidates to come to the fore"

The report also said a full-time magistrate's office would be established at Atlantis — the coloured city on South Africa's west coast — as well as Mitchell's Plain, near Cape Town, by March 1983 — Sapa



MR J P J COETZER
Secretary for Justice

New criminal procedures are 'a success'

C.T. 26/4/79

HOUSE OF ASSEMBLY — It is evident that the new procedures introduced by the Criminal Procedure Act, 1977, are a great success, according to the Secretary for Justice, Mr J P J Coetzer

His remarks are contained in the annual report of the Department of Justice which was tabled in the Assembly yesterday

The procedures, he says, are a great success particularly those relating to pleas of guilty and not guilty, which had given rise to misgivings during the debate on the bill

In virtually all divisions of the Supreme Court, the number of criminal cases subject to automatic review had dropped by 50 percent

"As regards the procedure relating to the plea of guilty, it appears that magistrates on the whole are very pleased with its operation They are satisfied that justice is done to the accused and that, as a rule, cases are dealt with more expeditiously to the advantage of the accused

"The accused is spared the anxiety and the waiting which go with repeated postponements," the report says

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"Where the accused is now acquitted, it is clear to him that he had been under a misapprehension concerning his position in law"

During the year under review, 65 018 cases were disposed of without evidence, 379 269 without evidence but after questioning, and 232 698 with evidence

According to the report, the number of cases automatically subject to review has declined considerably

"During the previous year, 70 264 cases were submitted to the Supreme Court for review and during the past year only 31 699 — a decrease of 38 565 This decrease has brought about a large saving in terms of manpower"

The new procedures contained in the Act have also helped to reduce the number of bench hours During the previous year, 342 105 hours were spent trying criminal cases as against 307 252 during the past year — a decrease of 34 853 hours — Sapa

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§ 6. FLEXIBILITY OF TRUSTS

The element of flexibility is an important one. The trust at least in its sophisticated form is the creation of the English court of chancery and so is an equitable institution, like the Roman fideicommissum, which had its origin in imperial intervention with the ordinary course of law and was elaborated by the equity lawyers of the Proculian school. Flexibility is a feature of both institutions. In the fideicommissum there was at common law no limit to the possible number of substitutions which the creator of the fideicommissum might impose and no limit except legality to the conditions on which the substitutions might be made to depend [65] The flexibility of the trust arises from a number of factors. In the first place the machinery of administration may be vari[illegible] the number of trustees, their mode of appointment and repla[illegible] system of management,[67] the amount of discretion e[illegible] and the period for which they are to manage the tr[illegible] depend on the expressed intention of the founder [illegible] close check on the operations of the trustees and r[illegible] to nominate additional trustees.[68] Alternatively he n[illegible] the widest freedom to sell, invest or carry on busines[illegible] fit. The trust accommodates both the autocrat, pr[illegible] humous, and the liberal. Again, the trustee may give t[illegible] fixed rights or may, as in a so-called discretionary t[illegible] trustees a discretion to give or withhold benefits. T[illegible] enable the founder of the trust and the beneficiaries to[illegible] of both worlds. The founder can put property outsid[illegible] tence to dispose'[70] yet retain an effective voice in its a[illegible] The beneficiary can count on receiving the benefit o[illegible] discretion yet tell his creditors that he owns no prop[illegible] surprising that in South Africa the trust became ever [illegible] until in 1955 the imposition of a donations tax[71] reduc[illegible] however, destroying its attractions for those wishing to minimize the taxation of capital But we have not heard the last of it yet, and there seems to be a tendency for the number of registered trusts to rise with the growth of population.[72]

§ 7. SOURCES OF THE LAW OF TRUSTS

A rather sterile controversy has raged over the question whether the South African law of trusts is an English, a Roman-Dutch or an indigenous South African institution The matter may be approached

[65] See now Act 94 of 1965 ss 6, 7
[66] Below, ch 4
[67] Below, ch 6
[68] *Creighton Trust* v *CIR* 1955 (3) SA 498 (T)
[69] *CIR* v *Est Sive* 1955 (1) SA 249 (AD), 1955 (1) PH G1
[70] § 278
[71] Act 43 of 1955 Part VI (now Act 58 of 1962 Part V).
[72] Master of the Supreme Court, Cape Town, private communication

either historically or analytically. As a matter of history[73] there is no doubt that trusts were introduced into the Cape after the British occupation in 1815 and later spread to Natal and the rest of the country. The British officials and, later, the British settlers who came to the Cape in the early nineteenth century brought with them the words 'trust' and 'trustee' and the notion of a trust as it was then conceived in England and Scotland. As early as 1817 we find that the government made a grant to one *B* 'in trust for the Missionary Institution of the United Brethren at Groenkloof'.[74] It was natural that wills and antenuptial contracts should begin to make use of the new notion A whole series of nineteenth-century statutes at the Cape and in Natal made use of the mechanism of a [illegible] or the services of trustees.[75] The first reported case in which a [illegible] was the subject of litigation was decided in 1833 [76] The reports [illegible] a number of trusts, many of a charitable character, which [illegible] set up in the forties and fifties of the last century,[77] though [illegible] citizens of Dutch descent the old *modus* continued to be [illegible] ed.[78] In Natal, too, grants in trust were made soon after the [illegible] tion of 1843 [79]

[illegible] the 1830s trust companies were founded and concerned [illegible] ties, among numerous other activities, such as the adminis- [illegible] of the estates of deceased persons, with acting as trustees [illegible] was the South African Association for the Administration [illegible] lement of Estates, founded in 1834, which according to [illegible] the first such company in the world.[80] The Board of [illegible] followed in 1838. There are now nearly 50 trust com- [illegible] South Africa,[81] and they control funds (not all trust funds [illegible] t sense) valued at over R450 000 000 These trust com- [illegible] 'financial institutions' as defined by the Financial [illegible] s (Investment of Funds) Act 1964[82] and are subject to [illegible] special rules as to investment [83] Their officers are subjected

[73] Frere-Smith 1–2, 6f, Joubert 204, Van der Merwe & Rowland 317–20
[74] *Moravian Church Missionary Society* v *September* (1909) 3 Buch AC 494, 502, 503, per Buchanan J
[75] Ords 4 of 1829, 5 of 1832, 71 of 1830, 86 of 1831, 5 of 1832, 7 of 1836, 2 of 1842, 6 of 1843, 5 and 7 of 1845, 13 of 1846, 9 of 1855, 17 of 1859, 31 of 1861, 32 of 1861, 34 of 1861, 20 of 1863, 3 of 1873, 17 of 1876, 7 of 1882, 33 of 1884 (all Cape), Ords 4 of 1849, 11 of 1856, 27 of 1874, 10 of 1881 (Natal)
[76] *Twentyman* v *Hewitt* (1833) 1 Menz 156, *Batt* v *Batt's Widow* (1835) 2 Menz 408, *Buissine & another* v *Mulder et uxor* (1835) 1 Menz 162, Coertze *Die Trust in die Romeins-Hollandse Reg* 54–6
[77] *Darroll & another* v *Tennant & another* 1932 CPD 406 (donation of 1849), *Bishop of Cape Town* v *Bishop of Natal* (1869) 6 Moo PC 203, *Viscountess De Montmort* v *Board of Executors* (1882) 2 SC 69
[78] *De Wet* v *Marais* 1911 CPD 361 (donation of 1843) For a preoccupation *modus* see *Re Consistory of Dutch Reformed Church, Cape Town* (1897) 14 SC 5, 7 CTR 4 (government grant of 1735).
[79] *Bohlela* v *Natal Native Trust* 1919 NPD 174 (grant of 1852)
[80] In fact there is an instance from Massachusetts as early as 1818 Marsh 34.
[81] For England see E K Allen *The Law of Corporate Executors and Trustees* (1906), D R Marsh *Corporate Trustees* (1952)
[82] Act 56 of 1964 s 1(*g*)
[83] Act 56 of 1964 s 4

HT16

QUESTION 1 - SUGGESTED SOLUTION

1. a) The ABC method of inventory control analyses stocks into several different categories.

b) Each category is determined according to its total annual consumption costs.

c) Some categories will make up a large percentage of annual consumption cost and a low percentage of the total number of items used. Other categories will make up a [illegible] tion cost and a large p[illegible]e.

d) Rigorous c[illegible]r items having high consu[illegible]ering, low safety sto[illegible]

e) Items havi[illegible]ll not be so rigorously [illegible] ordering high, highe[illegible]

2. a) An indirect [illegible]t be attributed to a particu[illegible]

b) A cost centr[illegible] item where costs are co[illegible]

c) A fixed cost [illegible] vary over a wide level o[illegible]

d) Prime cost c[illegible]. plus direct labour plus [illegible]on expenses.

e) A relevant c[illegible]ge as a result of a decisio[illegible]en in to account in making a [illegible]

f) An opportun[illegible] regone in favour of an alter[illegible]

3. a) The physical weight (volume) method - a product is allocated a portion of the joint costs in the same proportion as that product's weight (or volume) of all the main products.

b) Relative sales value method - a product is allocated a portion of the joint costs in the same proportion as that products total sales value at the split off point bears to the value of all the main products sales value at the split off point.

over

Intermediate courts

*2 Mr D J DALLING asked the Minister of Justice

(1) Whether any decision has been taken in regard to the introduction of intermediate courts, if not, when is a decision expected to be made; if so,

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

The MINISTER OF COLOURED RELATIONS (for the Minister of Justice):

(1) and (2) No. As the Secretary for Justice has stated in paragraph 1.13 of his last Annual Report, I announced last year that a fact-finding investigation was in progress and that, depending upon the findings, consideration would be given to the possible introduction of an intermediate court. The task of fact-finding has now virtually been completed and the information that has been collected is now being collated and evaluated. Only after I have considered these facts, will I decide whether the idea should be taken further and then all interested parties will be consulted.

*1 Mr D J DALLING—Reply standing

†Indicates translated version

For oral reply.

NORISTAN NEEM SCS-GROEP OOR

Deur ALPHONS DU TOIT

MET die oorname van die SCS Farmaseutiese groep van Johannesburg is die Noristan-groep nou op een na die grootste maatskappy in die private sektor van die land se farmaseutiese bedryf.

Die oorname van SCS (vir 'n bedrag wat streng geheim gehou word) het gevolg op 'n deurtastende ondersoek en onderhandelings wat agt maande geduur het. Die transaksie is deur Finansbank van Johannesburg beklink. Die finale koopkontrak is Woensdag onderteken.

Dr Hugo Snyckers, besturende direkteur van die Noristan-groep het aan my gesê: „Na verwagting sal die Noristan-groep se omset, wat nou meer as R10 miljoen per jaar beloop, weens die oorname met tussen 30 persent en 40 persent toeneem. Dit sal vanselfsprekend die posisie van die Noristan-groep in die private sektor van die Suid-Afrikaanse farmaseutiese mark dramaties verander."

Dié groep beklee tans die sesde posisie in die mark en sal nou maklik na plek nommer twee opskuif.

Grootste

„Maar wanneer verkope aan die openbare sektor asook kontrakvervaardigings vir ander etiese maatskappye in berekening gebring word is Noristan reeds waarskynlik die grootste vervaardiger van etiese farmaseutiese produkte in die land."

Volgens dr. Snyckers bestaan tussen 50 persent en 60 persent van die totale farmaseutiese mark (wat sowat R164 miljoen per jaar beloop) uit verkope aan staatsinstansies en die openbare sektor in die algemeen. „'n Aansienlike persentasie van hierdie verkope bestaan uit generiese middels, of ons daarvan hou al dan nie.

„Ons was al geruime tyd op die uitkyk en die SCS-groep het geskik geblyk. Dit beskik oor 'n afdeling vir etiese produkte, 'n reeks patente-medisyne en 'n beduidende aandeel van die generiese mark.."

Registreer

Met die oorname van die SCS-groep sal Noristan ook nou in besit gebring word van nuwe produkte wat reeds bemark word, op 'n tydstip wanneer dit al moeiliker word om sulke produkte, veral patentemedisyne te registreer en om volgehoue groei en markpenetrasie te bewerkstellig.

Die maatskappye wat deur Noristan-groep aangekoop is sluit in SCS Farmaseutiese Laboratoria, Ethimed, en Satab Labatoria, wat gesamentlik as die SCS-groep bekend staan.

Rapport 6/5/74

Reuliere verwerkliking van Pep-resep

Pep Stores se nuwe supermarkgroep oorgeneem

Diversifikasie vir hierdie groep en is maar net die begin van 'n nuwe landwye supermarkgroep.

Deur DAVID MEADES

VANDEESWEEK se verrassende aankondiging dat mnr. Renier van Rooyen se Pep Stores 'n middelmatige Kaapse supermarkgroep oorgeneem het, verteenwoordig 'n ingrypende diversifikasie vir hierdie groep en is maar net die begin van 'n nuwe landwye supermarkgroep.

Pep Stores het die Kaapse Shoprite-groep vandeesweek teen 'n koste van R1,9 miljoen oorgeneem, wat gegrond is op die netto batewaarde van die maatskappy.

Shoprite het agt winkels in die Kaapse Skiereiland en het reeds 'n omset van R10 miljoen per jaar

Pep se voorsitter, mnr. Renier van Rooyen, het aan Sake-Rapport gesê dat sy groep reeds die afgelope drie jaar die supermarkbedryf bestudeer en dat hy en die nuwe besturende direkteur van Shoprite, mnr Wellwood Basson, reeds verskeie studiereise daarvoor na die buiteland onderneem het

Daar is 'n tyd gelede besluit dat daar in hierdie rigting gediversifiseer gaan word en as die Shoprite-proposisie hom nie voorgedoen het nie, sou Pep in elk geval van meet af sy eie supermarkgroep begin het, sê mnr Van Rooyen.

MNR. RENIER VAN ROOYEN . . op pad na 'n tweede landwye ketting.

Likied

Shoprite was egter 'n baie belowende situasie. Die groep is nog klein, maar is baie winsgewend en baie likied — meer as die helfte van sy bates bestaan uit kontant.

Die maatskappy is kernresond, het 'n baie goeie bestuur en hiermee kry „ons die voet in die deur", sê mnr Van Rooyen

Die plan is om vir eers die groep in Wes-Kaapland uit te brei omdat daar nog baie moontlikhede is en ook omdat dit op die kort termyn redelik maklik gedoen kan word, voeg mnr. Van Rooyen by.

Die besluit is egter in beginsel geneem om die groep landwyd uit te brei en daar sal onmiddellik met die beplanning daarvan begin word Hierdie soort voorbereiding neem natuurlik tyd, maar mnr Van Rooyen meen dat hulle binne die volgende jaar redelik vinnig sal kan begin beweeg.

Hy is ook geensins vanplan om met die bestaande supermarkgroepe se grootwinkelidee mee te ding nie Mnr. Van Rooyen sê dat Shoprite meer op die buurtgedagte konsentreer en dat hierdie beginsel uitgebou sal word.

Ruimte

Die talle heel groot winkels het 'n ruimte in die onmiddellike buurt gelaat en dit is daardie gaping wat Pep met Shoprite gaan benut En as 'n mens na die Pep-resep kyk, dan lyk dit of mnr. Van Rooyen dink aan talle soortgelyke, redelik klein supermarkte, waar die huisvrou steeds kruideniersware teen afslagpryse kan koop

Met die merkwaardige groei van Pep Stores het hierdie groep se Pep-beginsel die stadium bereik waar sy interne groei nou meer uit die algemene groei van die ekonomie moet kom. Maar die groep is besig om groot kontantbronne te mobiliseer, wat met die huidige oplewing al hoe groter sal word.

Die groep sal dus oor die volgende jaar of wat groot bronne vir belegging hê en 'n heel nuwe diversifikasie moes dus kom

Die uitbouing van die Shoprite-groep tot 'n landwye supermarkketting sal terselfdertyd ook swaar kan steun op die ondervinding wat met die ontwikkeling van die suksesvolle Pep-resep opgedoen is.

†Indicates translated version.

For written reply

Hansard 14 (861) 14/5/79

Prisoners hired as farm labourers

641 Mrs H SUZMAN asked the Minister of Prisons

(1)(a) How many prisoners were hired as farm labourers during 1978 while (i) on parole and (ii) still serving their sentences and (b) to how many farmers were prisoners in each category allocated,

(2) whether inspections were carried out into the conditions under which these prisoners were employed, if so, how many inspections,

(3) whether any other method of supervision by his Department is applied, if so, what method,

(4) whether conditions on any farms visited were found to be unsatisfactory, if so, (a) on how many farms and (b) what steps were taken by his Department to rectify the conditions,

(5) whether prisoners are paid by the farmers, if so, what rate of pay is laid down,

(6) whether his Department is paid by the farmers, if so, what rate of pay is laid down,

(7) whether farmers are empowered to inflict corporal punishment on prisoners

The MINISTER OF PRISONS

(1) These particulars are not readily available because separate statistics are not kept of the different categories of hirers

(2) Yes. Particulars are not readily available for similar reasons as given in (1).

(3) Parolees and prisoners may at any time lodge complaints orally or in writing

(4) Yes, very seldom

(a) Not readily available

(b) The provision of parolees or the hiring out of prisoners is immediately suspended until these conditions have been satisfactorily improved, or further provision of parolees and prison labour is stopped

(5) Parolees—yes, a wage according to mutual agreement between the employer and the parolee. A minimum of R0,45 per day is, however, payable and free lodging clothing food and medical treatment must be provided to non-white parolees who perform unskilled labour and for whom no wage determinations exist

Prisoners—no

(6) Parolees—no

Prisoners—yes It varies in urban areas from R1 90 per unit per day if the department provides a guard and R0,70 per unit per day if the hirer provides a guard, to R1 50 per unit per day if the department provides a guard and R0,42 per unit per day if the hirer provides the guard, in rural areas

In all cases the hirer must provide the transport to and from work

(7) No

RAND DAILY MAIL, Saturday, May 19, 1979

'Jail terms reduce fear of prison'

Political Staff

CAPE TOWN — Mr Kowie Marais (PFP Johannesburg North) yesterday questioned the wisdom of sending prisoners to jail for short periods "because of the danger that they would soon lose fear of prison"

He said that during the year ending June 1978 about 90 000 people were jailed for one month Another 90 000 were jailed for up to four months and 25 000 more for between four and six months

He said one of the best deterrents to crime was the threat of being sent to jail To jail people for short periods hardened them to the prospect of jail life

"Jail becomes old hat," he said

Mr Marais called for research to determine how many people jailed for short periods were jailed again later for other convictions

He asked for research to be done to establish how effective parole and suspended sentences were as a deterrent and the effectiveness of corporal punishment

Mr Marais also drew attention to the number of prisoners sentenced to corrective training of two-to-four years and prevention of crime

During the year ending June 1978, 17 500 people were jailed for two-to-four years The sentence was given to people who had been convicted regularly — a possible indication of psychopathic traits

The Government should take steps to determine how many convicts were psychopaths so they would be categorised and treated, he said

"We must find out how and why they landed up at a dead-end Because that is what it is when they get mandatory sentences for corrective training or prevention of crime"

● Mr Marais is a former Rand Supreme Court judge

Kruger has one regret

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Nimrod 14/6/79

Mercury Correspondent

CAPE TOWN — Mr. J. T. Kruger, the newly elected president of the Senate, yesterday said he had one regret about his five years in the Cabinet — the "unfortunate remark" he made on the death in detention of the Black consciousness leader Mr. Steve Biko.

Mr Kruger discussed the statement he made to a jovial National Party congress shortly after he heard of Mr. Biko's death in detention two years ago — "I am not glad and I am not sorry about Mr. Biko, he leaves me cold"

The phrase reverberated round the world, increased racial tension inside South Africa and marked a turning point in the career of Mr Kruger — who was axed from the Cabinet this week

"I am sorry I used that sentence," Mr Kruger said yesterday

"It was an unfortunate remark but I think it was reported out of context—I didn't really reflect my feelings towards people in that remark

"My feelings are very humane — I have a tremendous amount of sympathy for people in unfortunate circumstances," he said

Controversial

During his term as Minister of Justice Mr Kruger became South Africa's most controversial Cabinet minister because of his handling of deaths in detention, bannings, imprisonment without trial and the Soweto riots

Asked his views on the absolute power he wielded to ban and detain people without trial Mr Kruger said "That is one of the unfortunate and onerous duties of a minister and you have to face up to these duties

"I can frankly say I have tried with great humanity to exercise whatever powers the statute has given me and I have never been impressed by these powers"

Mr Kruger compared his role in banning and detaining people without trial to the role of a judge who had to pass a heavy sentence

Though people who were banned and detained without trial did not appear in court Mr Kruger said he believed his actions justified on the basis of information he had received

Unmoved

"Restricting people you don't know personally is a very, very difficult thing for a person to do — I did it in the course of my duties," Mr Kruger said

Mr Kruger was unmoved by another aspect of his duty as Minister of Justice — the tough application of the Sunday observance laws which bind all South Africans to maintain Sunday as a day of rest

Replying to criticism that these amounted to "cultural imperialism" over groups with different values Mr Kruger said "The quiet Sunday that South Africa enjoys is something we musn't let slip from our grasp"

On his relations with the Press, which often reached rock-bottom levels, Mr Kruger said he believed the Rand Daily Mail had dealt badly with him in certain respects but he held nothing against the Press

Press

He added "I will do my best to bring about a better spirit between me and the Press and, if necessary, between the Government and the Press"

Mr Kruger declined to comment on his handling of the Soweto riots because he was awaiting the report of the Cillie Commission of Inquiry

"The personal dealings I had with Black people were very pleasing indeed," he said

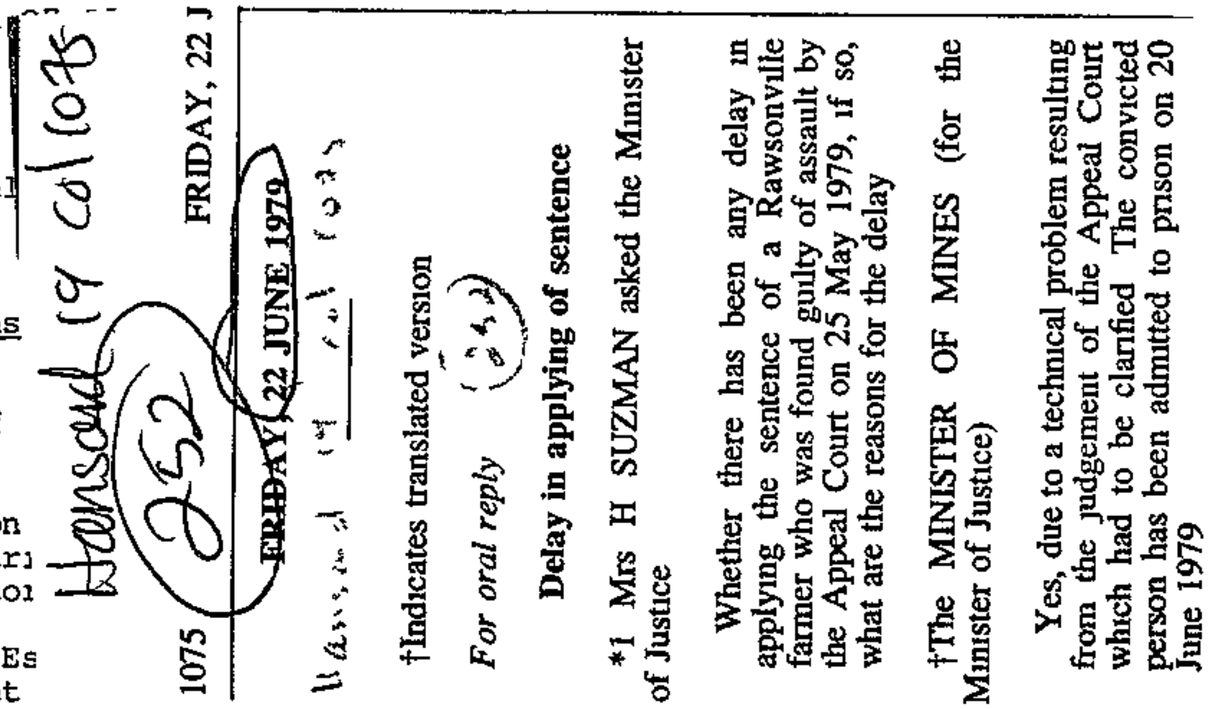
"I have met a tremendous amount of Black people and also young Black people involved in the rioting of 1976

"They have been to my office for a cup of tea and I had discussions with them," he said

Asked whether any understanding had been reached Mr. Kruger replied "That is a very general question — it depends on different attitudes"

(Report by H Zille, House of Assembly Cape Town)

with selected major categories of disease. Clearly, this is an entirely hypothetical situation. However, these competing risks life tables not only provide an indication of the relative importance of various disease categories to both the overall mortality experience and also to expectation of life of the three communities, but also, since there is an approximately linear relationship between the reduction of mortality and the percentage increase in life expectancy, any improvement will give rise to a proportional improvement in the expectation of life. Thus, if the mortality associated with any of the diseases included in Fig. 6 are reduced by 50%, then the increase in the expectation of life will be 50% of the improvements indicated.



1. Department of Statistics (1977). Census of Hospitals and Establishments for In-Patients. Report 20-06-01. Government Printer, Pretoria.

2. Department of Statistics (1977). Report on Deaths 1974. Report 07-03-10. Government Printer, Pretoria.

3 Department of Statistics (1976). Report on Bantu Deaths in Selected Magisterial Districts 1974. Report 07-03-08. Government Printer, Pretoria.

4. Department of Statistics (1976). South African Statistics 1976. Government Printer, Pretoria.

5. Department of Statistics (1974). Report on Bantu Deaths in Selected Magisterial Districts 1968 to 1971. Report [illegible] Printer, Pretoria.

6. South Africa. Act 58 of 1970.

7. Department of Bantu Administration and Devel[illegible] the Department 1974/5. Report RP 114/1975. Pretoria.

8. Chiang, C.L. (1968). Introduction to Stochas[illegible] Biostatistics. Wiley, New York.

9. City of Cape Town (1977). Annual Report of Health 1975. p.110. Cape Town.

10. Department of Statistics (1976). Population [illegible] Marital Status and Type of Dwelling by Distri[illegible] Report 02-05-08. Government Printer, Pretoi[illegible]

11. Martins, J.H. (1975). Regional Population Es[illegible] University of South Africa, Bureau of Market [illegible] Report No. 46, Pretoria.

12. Knutzen, V.K., Bourne, D.E. (1977). The Repr[illegible] the Xhosa. S.A. Med. J. 51, 392-394.

13. Department of Statistics (1971). Statistical classification of Diseases, Injuries and Causes of Death. Manual 07-03-00. p.v. Government Printer, Pretoria.

14. Department of Health (1978). A Guide to the Health Act, No. 63e of 1977, p.17. Department of Health, Pretoria.

15. Department of Health (1978). Infant Mortality Rates in South Africa. Epidemiological Comments Dec. 1978, 1-21.

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REFERENCES

Diseases of the Circulatory
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No 1431 29 June 1979

TEMPORARY ASSIGNMENT OF THE ADMINISTRATION OF THE DEPARTMENTS JUSTICE, POLICE AND PRISONS

It is hereby notified that the Acting State President has been pleased to approve of the assignment for 19 June 1979 of the administration of the Departments Justice, Police and Prisons to the Honourable A L Schlebusch, Minister of the Interior and Immigration

No 1431 29 Junie 1979

TYDELIKE TOEWYSING VAN DIE ADMINISTRASIE VAN DIE DEPARTEMENTE JUSTISIE, POLISIE EN GEVANGENISSE

Hierby word bekend gemaak dat dit die Waarnemende Staatspresident behaag het om goedkeuring te heg aan die toewysing vir 19 Junie 1979 van die administrasie van die Departemente Justisie, Polisie en Gevangenisse aan Sy Edele A. L. Schlebusch, Minister van Binnelandse Sake en Immigrasie.

The judge's dilemma

Two recent judicial decisions (by Mr Justice King in the Transvaal, and Mr Justice Didcott in Natal) have underscored the conflict between law and justice — the kind of paradox to be found in all democracies, and certainly of special relevance in SA

Over the past 30 years the Nationalist government has erected a picket fence of statute law to safeguard white privilege and political power in the face of increasing black pressure and a fundamentally libertarian legal system inherited from Holland and England

Frequently, judges have found for the accused and against government in various types of case, only to see Parliament resort to more stringent legislation to ensure future convictions New statutory offences such as sabotage and terrorism have been devised The onus has been shifted on various issues, minimum sentences stipulated, and detention without trial in circumstances where the courts are deprived of their inherent right to intervene

Acceptance of judicial office in SA cannot always be an easy decision for the individual concerned Yet once the commitment is taken, it carries with it the obligation to enforce the legal system as it stands on the statute book, warts and all Especially in the context of heavy resort to punitive statutes by government, the judge's discretion to soften a harsh system is limited

Nonetheless, the question has arisen crisply in England of *how* a judge ought to interpret a statute when a so-called "strict" or "literal" interpretation shows the law to be unjust or unfair The judicial approach in England clearly has a special interest for SA

In England, until about 30 years ago, the prevailing view among the judges was much like that in SA today Even though the operation of an Act of Parliament appeared to be harsh, absurd or unjust, the English courts felt they had no right to interfere If the Act was unjust, the only remedy was for Parliament to amend the Act Failing that, there was little the judges could do about it

That view has now lost favour in England Lord Denning, Master of the Rolls (and in that office England's highest dignitary in the Civil Courts) last year set down in forthright terms how a judge should set about interpreting a statute — the so-called "purposive approach"

"Whenever the strict interpretation of a statute gives rise to an absurd and unjust situation (said Lord Denning), the judges can and should use their good sense to remedy it — by reading words in, if necessary — so as to do what Parliament would have done, had they had the situation in mind"

It would be fair to say that this does not reflect the general attitude of the South African judiciary to the interpretation of statutes By and large, South African judges take the traditional and more conservative view that Parliament is there to make the law, the courts to enforce and uphold it

This would mean, in effect, that our judges (whatever their personal feelings mights be) are bound in law to place a fairly strict interpretation upon the words of a statute, even if that interpretation results in hardship or possibly manifest injustice

It is precisely for this reason that the recent observations of Judge King and Judge Didcott acquire a special interest Do they contain a hint — no more than a hint — of rumblings against the traditional approach to the interpretation of statutes? Do they suggest, perhaps, the birth of a movement that will draw our courts closer to the Denning philosophy?

The two South African cases are instructive Mr Justice Didcott was called upon to interpret Section 29 of the Black Urban Areas Act, in terms of which an African had been declared an "idle person" and ordered to be removed to a farm colony The matter came on review before Judge Didcott Taking all the *facts* into account, the judge found he was able to reverse the finding of the Commissioner Nevertheless, it was the Judge's remarks on the law which are highly significant

Just law

He indicated that while the Commissioner's finding might have accorded with the legislation, it was not in accordance with justice Judge Didcott went on to say "Parliament has the power to pass statutes and there is nothing the courts can do about that The result is law But it is not always the same as justice The only way Parliament can make legislation just is by making just legislation"

Some lawyers see in this — justifiably or not — a clear hint that judges were never intended to be rubber-stamp, rule of thumb operatives like civil service clerks While it is true that Parliament is supreme, the judges also possess inherent powers which, perhaps, they have been too tardy or too reluctant to invoke

In the matter heard on appeal by Mr Justice King an Indian had been convicted for living without a permit in a white area of Johannesburg Here, again, the question of justice, equity and the unfair operation of a Parliamentary statute was raised

It is true that Judge King rejected the appeal because he felt bound, in law, to do so But his *obiter dicta* would have quickened the pulses of those lawyers who look for signs of a move towards the "purposive approach" (as opposed to the "literal approach") in the matter of interpreting statutes In this case the appellant claimed he lived in a white area out of necessity — he could find no other place to live "If I were sitting as a court of equity," said Judge King, "I would have come to the assistance of the appellant"

Here was a clear expression of view, virtually similar to that of Judge Didcott In effect, it says "The law passed by

Law v justice . . . what's fair?

A RADICAL VIEW

...ly, self-exiled political trial ...un Chetty has added a radi... ...ion to the debate on SA's ... But his comments could ...me sympathy in the prag... Botha administration

...ana recently, Chetty said ...uestion of law is: if you do ...y say in the formulation of ... the country — as was my ... a black man without the ...en how can you have any ... to the judiciary?"

... significance for Botha's "to... ...y," of defence with its need ...e hearts and minds of the ... population"

...t detention without trial ...mply don't suit the domestic ...ket They create bitterness

...nterpreting the Group Areas ...ommon law defence of neces... ...anner that accords with the ...stice.

...st, however welcome his sug... ...ng for the granting of permits ...persons living in white areas"

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Parliament is an unjust law." In the light of that remark even the ordinary lay citizen can hardly fail to note the moral and legal conflicts imposed on judges when they are called upon to uphold and protect laws which they find are unjust, unfair or oppressive. (Are these observations by Judges Didcott and King a flash in the pan? Or do they presage a significant shift by our judges towards the "purposive approach" to interpreting Acts of Parliament?)

Professor John Dugard, of the University of the Witwatersrand, had this to say: "These cases are both important in that they reflect a new awareness by the judiciary of the extent to which our laws frequently fail to promote justice In the African's case, Judge Didcott emphasised that section 29 of the Black Urban Areas Act does not accord with natural justice Nevertheless, he went on to interpret that law on the facts before him so as to give effect to the concept of justice.

In the Transvaal case, on the other hand, Judge King interpreted the law in a narrow manner against the concept of justice He then looked back on his own interpretation, went on to express regret over the result and said that it did not accord with justice He did not appear to me to go to the same lengths as Judge

Appropriately, se... attorney Shun Ch... cal dimension to... legal system Bu... well find some s... matic P W Botha...

In Botswana ... "A basic questio... not have any say... the laws of the ... position as a b... vote — then ho... allegiance to the...

This has signi... tal strategy," of... to "win the he... indigenous popu...

Stringent de... clauses simply ... black market ...

Didcott in interp... Act or the comm... sity in a manner... notion of justice.

"One must, ho... gestion calling fo... to coloured perso...

The significant ...

And Botha's recent reference to the ... possibility of black revolution — along ... with the appointment last week of a ... commission to review security legisla... tion — points to an awareness of this

Of course Prime Minister Botha's present position in the YP and the continued apartheid premises of his policies make the prospect of his ever entering the legal debate on Chetty's terms — meaning effective black participation in the legislative process — unlikely But a man as hardheaded as Botha is in a position to *ensure* adaptations to the existing legal system

At the very best he will be sensitive to pressure on the vital private sector, which can no longer afford to have its foreign dealings hampered by moral condemnation of apartheid laws

...gard's comment is his reference to a ... "new awareness" among the judiciary In ... an era when there is so much talk about ... "change", and when in fact so much is ... actually being changed, those who value ... civil rights may well hope that the judicia... ...ry will flex its muscles in a broader, more ... vigorous use of its undeniable authority

...ount. ... alter... ...ved in ... costs ...iven ...lth ... of re... ...lified ...not ...d.

(c) to know the effectiveness of a given amount of money when spent on different objectives, so that choices can be formulated in terms of the alternatives we might afford - so many geriatric day care centres, so many child welfare clinics, etc.

Financial statistics are not traditionally arranged on this basis but in categories such as 'salaries', 'transport', 'medicines', etc. A separation, e.g. between expenditure on different disease groups or age groups cannot be made.

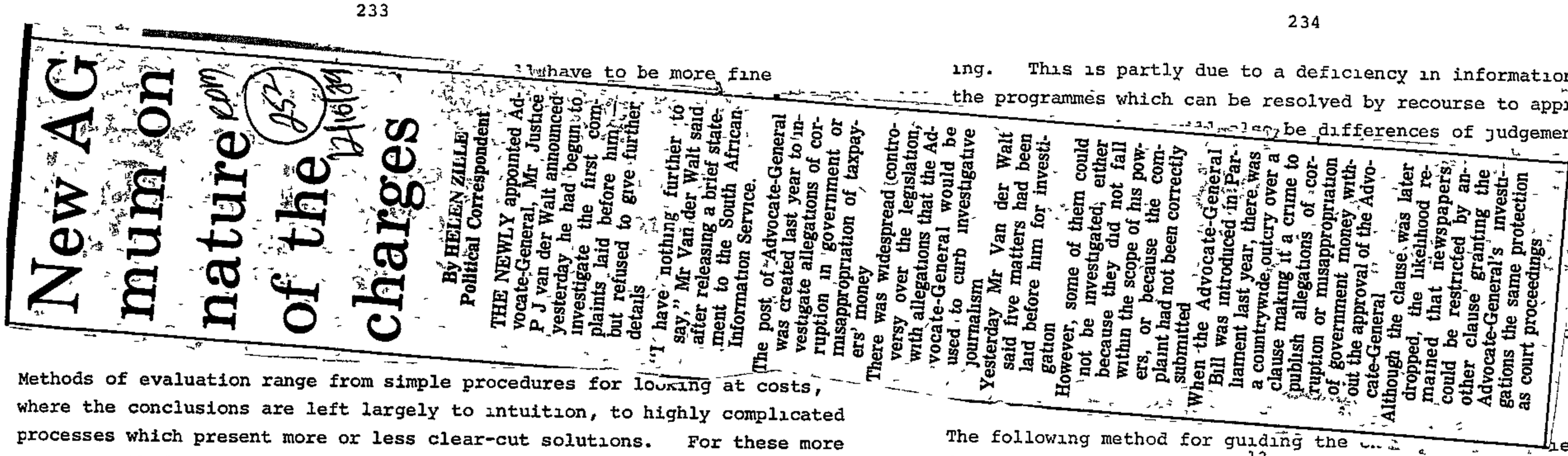
The grouping of expenditure into programmes is an art. Pole, an economist in the U.K. Department of Health, writes:

> "Programme structure should, in my view, be mainly determined by the decisions to the taking of which one wishes it to contribute... One might suggest that where decisions are primarily a matter of political or moral judgement - of determining basic priorities - one would want the activities to be compared to reside in different programmes - the mentally handicapped against the alcoholics; but where it is a more technical question of how particular objectives can best be achieved - drug therapy against behavioural therapy - one would want the activities to be compared to be within a particular programme. This distinction ties up with an economic jargon of slightly older vintage - that of cost-benefit and cost-effectiveness, and through that to the main stream of neoclassical welfare economics, which attempts to make a distinction between the choice of the composition of the basket of outputs and the choice of the set of resources from which each output is to be produced. The former is, in a broad sense, a question of tastes, values, or utilities; the latter is a question of techniques"

He adds:

> "In practice, it is not an easy matter to make a hard and fast distinction between technical matters and matters of values or utilities in the health services. From one point of view, the question whether to treat schizophrenics in hospital or in the community is a technical one. Which is the cheaper way to fulfil whatever are the society's requirements for the treatment of this group? But community care originally became fashionable as a good thing in itself. The practitioners are very apt to muddle the medical and economic arguments when it suits them, and the politicians and administrators equally so when it suits them, but the economist's concern is to keep them separate". [9]

Programme budgeting, then, entails the attempt at this separation, sorting out from the multiplicity of decisions those which can be made on the basis of administrative or economic, together with medical-technical criteria, and those in which the role of the public through political



New AG mum on nature of the charges

By HELEN ZILLE
Political Correspondent

THE NEWLY appointed Advocate-General, Mr Justice P J van der Walt announced yesterday he had begun to investigate the first complaints laid before him, but refused to give further details

"I have nothing further to say," Mr Van der Walt said after releasing a brief statement to the South African Information Service.

The post of Advocate-General was created last year to investigate allegations of corruption in government or misappropriation of taxpayers' money

There was widespread controversy over the legislation, with allegations that the Advocate-General would be used to curb investigative journalism

Yesterday Mr Van der Walt said five matters had been laid before him for investigation

However, some of them could not be investigated, either because they did not fall within the scope of his powers, or because the complaint had not been correctly submitted

When the Advocate-General Bill was introduced in Parliament last year, there was a countrywide outcry over a clause making it a crime to publish allegations of corruption or misappropriation of government money without the approval of the Advocate-General

Although the clause was later dropped, the likelihood remained that newspapers could be restricted by another clause granting the Advocate-General's investigations the same protection as court proceedings

Methods of evaluation range from simple procedures for looking at costs, where the conclusions are left largely to intuition, to highly complicated processes which present more or less clear-cut solutions. For these more precise methods, most of the value judgements have to be made explicitly in advance. Some points on the spectrum between these two extremes are analysed below.

2.3 Looking at Expenditure

Basically, one is looking for inconsistencies. It was noted that a logical axiom, basic to economics, is that a rand should yield approximately the same value in whichever programme it is spent. If the net social benefit from the marginal expenditure on one programme much exceeds that on another, one can do better by withdrawing funds from the second programme and increasing expenditure on the first. By simply looking at a breakdown of the budget between programmes, the amounts spent on each may be compared with our intuitive notions of how much 'ought' to be spent on these things. Our judgement will depend on what we consider the benefits of expenditure under each programme to be, a process which cost-benefit analysis seeks to formalise (see below). For example, if it can be shown that expenditure on preventive medicine constitutes approximately 2% of all expenditure on health,[11] it may be felt that the benefits from this kind of provision warrant an increase in the share of the budget allocated to it.

Unfortunately, such intuitive processes can pick out only the grossest incongruities which are recognised by all, whatever criteria of 'value' are used. The optimum level of expenditure on a particular objective is, from the point of view of intuitive judgement, highly uncertain, because of the wide variation in benefits attributable to a particular type of spending. This is partly due to a deficiency in information on the results of the programmes which can be resolved by recourse to appropriate data.

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Potential health problems are first listed, and then given a score (from one to four pluses) under each of four headings:

Diagram 1. A method of ranking health problems

Problem	Prevalence	Severity	Community concern	Vulnerability to management	Total
Large & poorly spaced families	++++	++++	+++	++	96
Inadequate ante-natal & obstetric care	++++	++	++	+++	48
Malnutrition	+++	+++	++	++	36
Need for medical care	++	++	++++	++	32
Specific diseases:					
V.D.	++	++	++	++	16
Dental problems	++++	+	++	++	16
TB	+++	+++	+++	++	54
Common cold*	++++	+	+	-	0
Yaws*	-	++	+++	++++	0

* Added to test scoring method

the cost of raising the necessary funds has to be taken into account. The funds themselves are already justified by comparison with the alternative methods of provision, but there are additional costs involved in raising them: interest on loans, or administrative and incentive costs of raising taxation. These are normally insignificant for any given project, but may affect the overall amounts available for the health budget.

Where the methods of providing a given service use the same kinds of resources in different proportions, the decision-making can be simplified by means of Linear Programming, though health service choices cannot usually be presented in the simplified way required by this method.

2. CHOICE OF PROGRAMMES

So far, we have discussed methods of choosing means to obtain a given objective. But what tools are available to aid the choice of objectives themselves? Can anything be said on the question of the priority to be given to particular diseases or age groups, whether to allocate more to child welfare clinics or care of the aged?

Overall criteria are needed, and they have to be expressed in such a way that they can guide these detailed questions. Essentially, the problem is not only to relate resources used to objectives achieved, but to relate the various objectives to each other.

There are various means of doing this; but all of them require that expenditure be accounted for by the ends it is expected to achieve.

2.1 Programme Budgeting

Programme budgeting, also known as budgeting by objectives, involves the presentation of expenditure data according to the objectives to which it is directed. Thus, projects to combat TB would be grouped together, geriatric problems, sanitation programmes, etc.

This is necessary:

(a) to know the cost of pursuing each objective;

(b) to group together activities with the same objectives which can be compared by cost-effectiveness analysis;

(c) to know the effectiveness of a given amount of money when spent on different objectives, so that choices can be formulated in terms of the alternatives we might afford - so many geriatric day care centres, so many child welfare clinics, etc.

Financial statistics are not traditionally arranged on this basis but in categories such as 'salaries', 'transport', 'medicines', etc. A separation, e.g. between expenditure on different disease groups or age groups cannot be made.

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Cape A-G appointed to the bench

Own Correspondent

CAPE TOWN — The Attorney-General of the Cape, Mr A J "Braam" Lategan, SC, who served on the three-man Erasmus Commission into the former Department of Information, has been appointed a judge of the Cape Division of the Supreme Court

It is believed this is the first time an attorney-general has been appointed to the bench

Judges are usually appointed from the ranks of practising advocates with senior status, while in exceptional cases, senior State law advisers have been appointed

In a statement released to Sapa last night, the Minister of Justice, Mr A L Schlebusch, said that Mr Lategan would take up his appointment from December 3

His appointment would fill a vacancy left by the retirement of Mr Justice Louis de Villiers van Winsen

He graduated BA LLB in 1955 from the University of Stellenbosch where he served on the Students' Representative Council and held the position of chairman of the Intervarsity committee

Mr Lategan joined the public service in 1956 as a public prosecutor and spent 3½ years on the staff of the Attorney-General of the Transvaal. He was transferred to Cape Town where he served as deputy-attorney before secondment to SWA in October 1976

Often in the public eye, he was State Prosecutor in the sensational Cohen murder trial in Cape Town in 1970. He was appointed to the Erasmus Commission in November 1978

Mr Lategan and his wife, Tina, live in Oranjezicht. They have five children, an eldest son in matric and twin daughters in Standard nine in Stellenbosch, and a son and a daughter at the Jan van Riebeeck Primary School in Cape Town

Late last night, Mr Lategan said "I feel honoured to be elevated to such a very honourable position"

He added, however, that there was also a "feeling of sadness" about leaving his present position

"To me it meant a lot — a very meaningful role in society I was very happy in that role, to bring justice to people, to use my discretion to help the weak and the poor"

The 47-year-old Attorney-General was appointed to his present position in January 1977 after 1½ years as Attorney-General in South West Africa

Born in Lutzville — "a beautiful part of the world" — in the North West Cape, he matriculated in 1950 in the local high school's first matriculation class

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ne public through political

processes is essential; and the division will have to be more fine the more discriminating public decisions can be.[10]

The results of programme budgeting may be valuable in themselves, although the mere procedure does not necessarily ensure that better decisions will be made. Their potential is realised only if there follows an assessment of the value of expenditure in each programme.

2.2 Programme Evaluation

Methods of evaluation range from simple procedures for looking at costs, where the conclusions are left largely to intuition, to highly complicated processes which present more or less clear-cut solutions. For these more precise methods, most of the value judgements have to be made explicitly in advance. Some points on the spectrum between these two extremes are analysed below.

2.3 Looking at Expenditure

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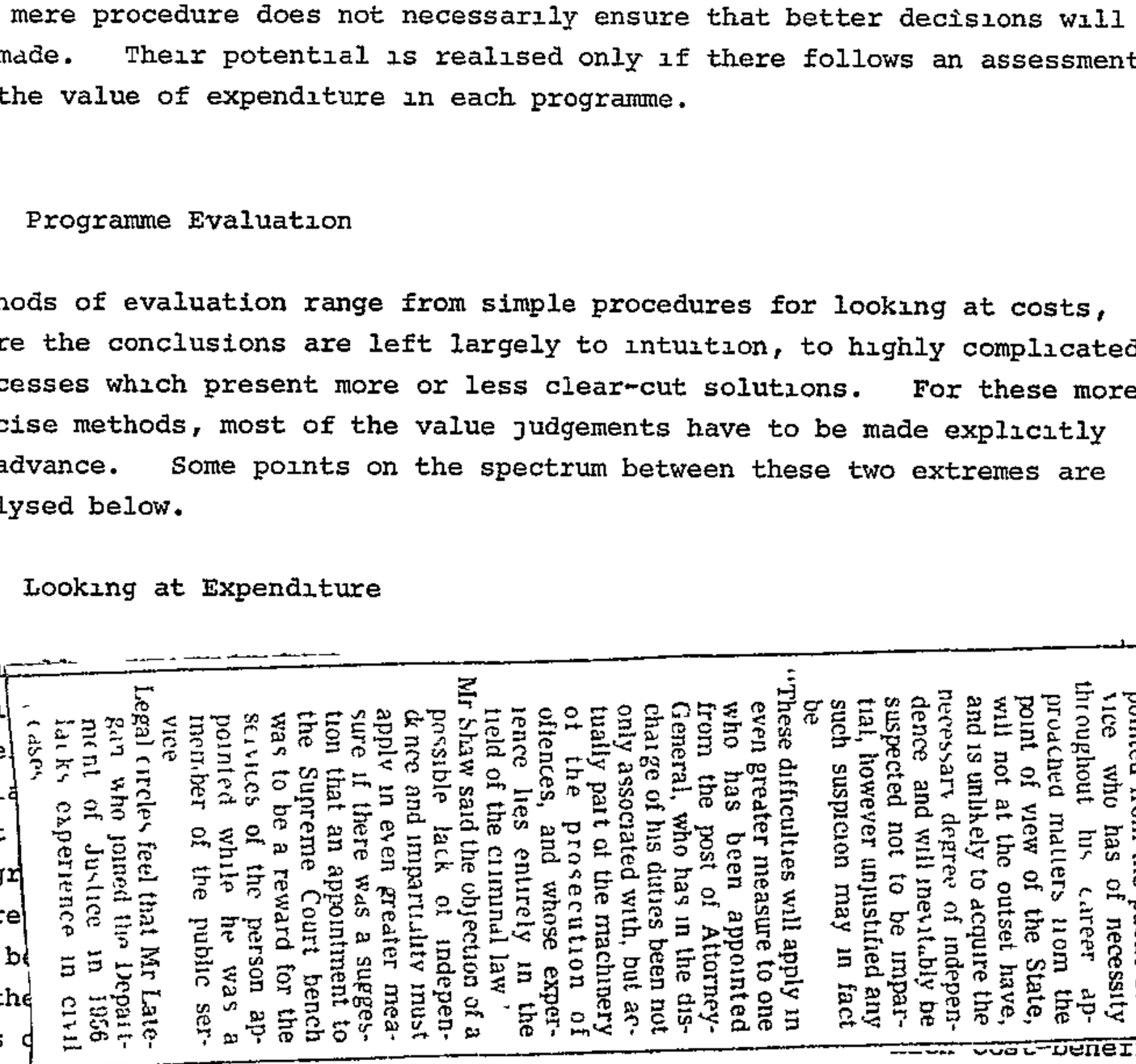

A-G as judge: why the Bar objects

By BRUCE STEPHENSON

THE General Bar Council has strongly criticised the appointment of the former Cape Attorney General, Mr Braam Lategan, to the bench of the Supreme Court

Mr Lategan, who became Attorney-General in 1976 and served on the Erasmus Commission, was appointed to the bench last week by the Minister of Justice, Mr Alwyn Schlebusch

The council has been trying without success to see the Minister for urgent talks on the controversial issue

The council's chairman, Mr Douglas Shaw, QC, said in a statement yesterday the council believed it was self-evident that the Supreme Court bench should be completely independent and impartial

"The general council is of the opinion that a person appointed from the public service who has of necessity throughout his career approached matters from the point of view of the State, will not at the outset have, and is unlikely to acquire the necessary degree of independence and will inevitably be suspected not to be impartial, however unjustified any such suspicion may in fact be

"These difficulties will apply in even greater measure to one who has been appointed from the post of Attorney-General, who has in the discharge of his duties been not only associated with, but actually part of the machinery of the prosecution of offences, and whose experience lies entirely in the field of the criminal law"

Mr Shaw said the objection of a possible lack of independence and impartiality must apply in even greater measure if there was a suggestion that an appointment to the Supreme Court bench was to be a reward for the services of the person appointed while he was a member of the public service

Legal circles feel that Mr Lategan who joined the Department of Justice in 1956 lacks experience in civil cases

spaced families

Inadequate antenatal & obstetric care	++++	++	++	+++	48
Malnutrition	+++	+++	++	++	36
Need for medical care	++	++	++++	++	32
Specific diseases:					
V.D.	++	++	++	++	16
Dental problems	++++	+	++	++	16
TB	+++	+++	+++	++	54
Common cold*	++++	+	+	-	0
Yaws*	-	++	+++	++++	0

* Added to test scoring method

analysis seeks to formalise (see below). For example, if it can be shown that expenditure on preventive medicine constitutes approximately 2% of all expenditure on health,[11] it may be felt that the benefits from this kind of provision warrant an increase in the share of the budget allocated to it.

Unfortunately, such intuitive processes can pick out only the grossest incongruities which are recognised by all, whatever criteria of 'value' are used. The optimum level of expenditure on a particular objective is, from the point of view of intuitive judgement, highly uncertain, because of the wide variation in benefits attributable to a particular type of spend-

ing. This is partly due to a deficiency in information on the results o the programmes which can be resolved by recourse to appropriate data. Nevertheless, there will also be differences of judgement which cannot be resolved without prior agreement on the relative valuation of differen benefits which have to be fed into the analysis; and in the intuitive process, these two factors may not be differentiated.

A very large proportion of decisions are now taken with no further analys than this. Any further steps involve a way of systematically valuing the benefits of different programmes to render them comparable to one another

2.4 An Informal Method for Setting Objectives

The following method for guiding the choice of priorities has been described by John Bryant.[12] It has been used by medical and nursing students in Thailand, and one of its advantages is that it can be used where no numerical data is available. It, therefore, lends itself to discussion, to draw on the experience of a group of people.

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Bar this appointment

THE appointment of the former Cape Attorney-General, Mr Braam Lategan, to the bench of the Cape Supreme Court has come under strong criticism from the General Bar Council.

The council says thus of the appointed, "A person appointed from the public service, who has of necessity throughout his career approached matters from the point of view of the State, will not have, and is unlikely to acquire the necessary degree of independence, and will inevitably be suspected not to be impartial, however unjustified any such suspicion might be".

The standards of the South African Supreme Court in large measure rest on the fact that judges are drawn from the ranks of private practice. That, among other things, can produce independent judges. A dramatic example of this was the decision taken by Mr Justice Anton Mostert to make public the evidence he had gathered about the "Department" of Information during his investigations into currency control irregularities, despite enormous pressure applied by the Prime Minister, Mr P W Botha, to stop him. This action was a fine advertisement for South Africa at a time when Info had shown that some members of the Government had been guilty of gross abuse of power.

There is also speculation that Mr Lategan is to become the Advocate-General (Mr Justice Petrus van der Walt was appointed only in an acting capacity) If this happens, the controversy will deepen even further because, as is the case with the Bench, this office must not be filled by somebody who has had connections with the State After all, it could well be the Government of the day (as with Info) which finds itself in the dock.

It is common cause that Mr Lategan is respected in legal circles and criticism of the move to appoint him to the Bench should in no way be seen as a personal attack on him, nor should it be taken as any reflection on him as a man of integrity and principle. But he was a member of the Erasmus Commission (itself a subject of much political controversy), as well as being a public servant and these points constitute an argument which one hopes will make the Minister of Justice, Mr Alwyn Schlebusch, reconsider his decision.

Dental problems	++++	+	++	++	54
TB	+++	+++	+++	++	0
Common cold*	++++	+	+	-	0
Yaws*	-	++	+++	++++	

* Added to test scoring method

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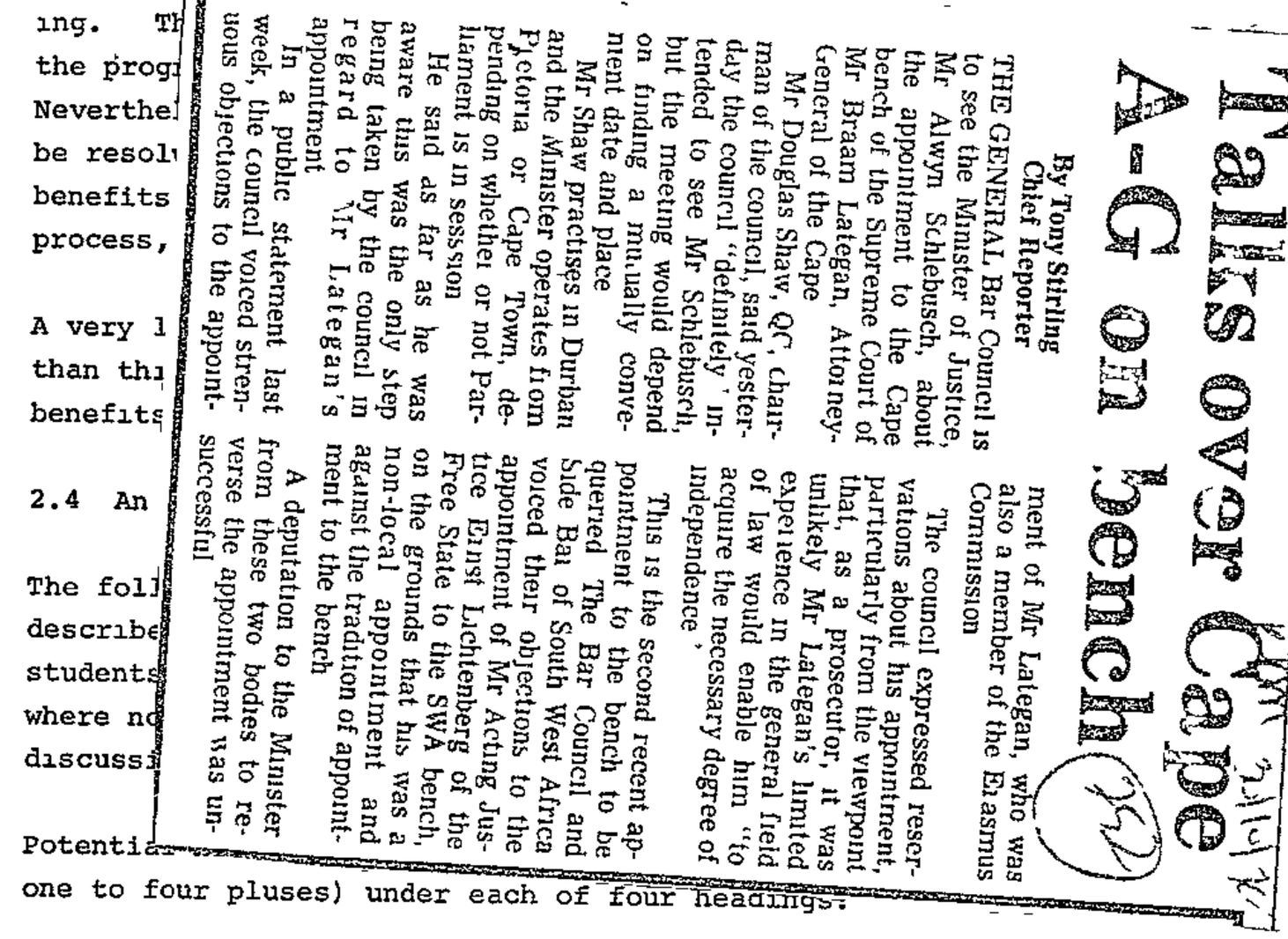

Talks over Cape A-G on bench

By Tony Stirling
Chief Reporter

THE GENERAL Bar Council is to see the Minister of Justice, Mr Alwyn Schlebusch, about the appointment to the Cape bench of the Supreme Court of Mr Braam Lategan, Attorney-General of the Cape

Mr Douglas Shaw, QC, chairman of the council, said yesterday the council "definitely" intended to see Mr Schlebusch, but the meeting would depend on finding a mutually convenient date and place

Mr Shaw practises in Durban and the Minister operates from Pretoria or Cape Town, depending on whether or not Parliament is in session

He said as far as he was aware this was the only step being taken by the council in regard to Mr Lategan's appointment

In a public statement last week, the council voiced strenuous objections to the appointment of Mr Lategan, who was also a member of the Erasmus Commission

The council expressed reservations about his appointment, particularly from the viewpoint that, as a prosecutor, it was unlikely Mr Lategan's limited experience in the general field of law would enable him "to acquire the necessary degree of independence".

This is the second recent appointment to the bench to be queried. The Bar Council and Side Bar of South West Africa voiced their objections to the appointment of Mr Acting Justice Ernst Lichtenberg of the Free State to the SWA bench, on the grounds that his was a non-local appointment and against the tradition of appointment to the bench

A deputation to the Minister from these two bodies to reverse the appointment was unsuccessful

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Diagram 1: A method of ranking health problems

Problem	Prevalence	Severity	Community concern	Vulnerability to management	Total
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V.D.	++	++	++	++	16
Dental problems	++++	+	++	++	16
TB	+++	+++	+++	++	54
Common cold*	++++	+	+	-	0
Yaws*	-	++	+++	++++	0

* Added to test scoring method

DAVID BOURNE AND BRUCE DICK

2 MORTALITY IN SOUTH AFRICA 19

PART 1 1929-1970

It has become increasingly apparent durir
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little alternative but to make use of measur
unhealthy aspects of the community. Mortality data is one such measurement.

Information about the mortality experience of the community is routinely collected in most countries, the reliability and detail of this data showing considerable variation depending on a number of factors, not the least of which are the resources available for its collection. There are further problems associated with reliability (See Pt. II).

GENERAL NEWS

Minister spells out policy on judges

THE Government would continue to depend mainly on practising advocates to fill vacancies on the Bench, the Minister of Justice, Mr Alwyn Schlebusch, said yesterday

In a statement, Mr Schlebusch said he could not, however, undertake that appointments would not sometimes be made from the public service

"The Government will continue to offer judicial appointments to the most able and suitable persons available"

Mr Schlebusch said he had taken note of comment about the appointment of Mr A J Lategan, SC, as a judge of the Supreme Court

"Appointments to the Bench are, in most cases, made from among the ranks of practising advocates Such appointments have, however, from time to time, also been made from the ranks of advocates in the public service"

As examples, Mr Schlebusch mentioned Mr Justice L C Steyn, who became Chief Justice of South Africa, Mr Justice D H Botha, who became an Appeal Court judge, and Mr Justice F P van den Heever, all of whom had gained great prominence on the Bench

Over the years others who had not been practising members of the bar had been appointed judges

"There is therefore no rigid custom that only practising advocates should be appointed"

Mr Schlebusch said he personally greatly appreciated the role played in the administration of justice by advocates in private practice

"Similarly, I have great appreciation for the contribution they make in accepting acting appointments to the Bench Also, when accepting permanent appointments, some of them accept a reduction in their income

"Over the years advocates have in this manner — and also by bringing with them a store of knowledge and experience — kept the standard of our judiciary at a high level"

Lawyers who identified themselves as potentially able judges were, however, also found in the public service

"It was in the past, and will in future, certainly not be wrong to make appointments to the Bench from their ranks, by way of exception.

"They can also offer special knowledge and expertise that can only enrich the combined knowledge and expertise of the Bench

"Even among those appointed from the bar, there were, from time to time, specialists in particular fields of the law, with perhaps little experience in other legal areas Their lack of specialist experience in those other areas did not prevent them from becoming able and honoured judges"

Mr Schlebusch said the chairman of the General Council of the Bar of South Africa had said in a Press statement that when a public servant, and especially an attorney-general, was appointed a judge, he would at the outset not have, and was unlikely to acquire, the necessary degree of independence

"This is an unfortunate statement that I cannot accept Not only has history proved him wrong, but in our legal system an attorney-general is expected to be a minister of truth

"His task is very much the same as that of a judge He considers evidence placed before him and decides upon that evidence whether a prosecution is to be instituted or not

"It will be a sad day for South African justice when the legal fraternity no longer accepts that our attorneys-general exercise an objective judgment when deciding whether a prosecution is instituted or not," Mr Schlebusch said — Sapa

* For details of sources of deaths before 1926, see reference 3, volume for 1938, page XVIII.

as strong as its tradition

13/4/71

Despite strong criticism from the General Bar Council, the Minister of Justice has stood by his appointment of Mr Braam Lategan, former Cape Attorney-General, to the Bench of the Cape Supreme Court Here **GERALD GORDON** a former chairman of the Cape Bar Council, explains why lawyers object to the appointment

N THE serious controversy hat has been raging over the ppointment of the Attorney-eneral of the Cape to the upreme Court Bench, it is imortant to keep in mind certain asic concepts and principles elating to the structure of our idiciary

As the South African system f judicial appointments emmed originally from the nglish procedure, we should rst examine the latter and easure how it differs from ose of certain other foreign ountries, and then consider e practice that has grown up South Africa

There are two main distincons between the English judial system and that of contental countries In continental urope, judgeship is a career ith special training for it Young men and women enter e legal civil service as trains and then graduate from the west courts and hope to adance through various judicial fices and other posts under e minister of justice to the ghest courts of the land ength of service and the perisites of office are determined as in other civil service partments

arristers

In England, judges — both of erior and superior courts — e appointed from practising embers of the Bar, puisne dges of the High Court must barristers of at least 10 ars' standing

The second distinction is the sence in England of a minis- of justice Appointments to Bench are made by the rd Chancellor, who has himlf always had experience as a actising barrister and as ch, has been a member of at brotherhood that abides in d around the Inns of Court

In the exercise of his judicial patronage, the Lord Chancellor acts in terms of the great traditions as he sees them and on his own personal responsibility, and the doctrine of collective ministerial responsibility does not arise

In the Colony of the Cape of Good Hope the English system was incorporated into the Charter of Justice of 1832, section 3 of which provided that the Chief Justice and the puisne judges had to be barristers or advocates This statutory principle was extended in practice to the other areas that ultimately made up Union and it became the rule that the Supreme Court Bench be recruited from the ranks of advocates in private practice and almost invariably from those whose seniority as practitioners had earned them the title of QC or KC, or now SC

On the other hand, the lower courts have always been manned by magistrates, judicial officers who have always been members of the public service and as such, akin to the career judges of continental systems South Africa, as did its former constituent colonies and states, has a minister of justice and so differs from England, but while this minister is in charge of the administration of justice as a whole, his authority as regards the judges of the Supreme Court is severely restricted by statute and tradition, both of which have aimed at producing a fearless, impartial Bench independent of the Executive, as has been the case in England since the Act of Settlement of 1701

Removing judges

Under that Act which grew out of the conflict between the Stuarts and the Commons, judges can be removed only upon the address of both Houses of Parliament

This principle was carried abroad throughout the British Empire and was reaffirmed here in the South Africa Act of 1909 and again in the Supreme Court Act of 1959 which provides that no judge may be removed from office "except by the State President upon an address from both Houses of Parliament in the same session praying for such removal on the grounds of misbehaviour or incapacity"

The grounds for dismissal must thus be great before the extraordinary procedure required is invoked and in fact, no judge has ever been dismissed in South Africa, though there was one case of unsuccessful impeachment about a century ago The independence a South African judge thus enjoys cannot be matched by the status of any civil servant — be he magistrate, prosecutor, Attorney-General or other member of the public service

Fortunately, the independent and fearless outlook of our Bench, moulded in statute, has been aided by the source from which judges have been drawn With few exceptions, judges throughout the country have been chosen from the ranks of the Bar

Of this institution Sir Patrick Hastings, one of England's greatest barristers of this century, said "So long as civilization continues, English justice will remain the admiration of the world, and English justice could never have reached the position which it now enjoys without the independence and inflexible honesty of the English Bar To the client whom he represents an advocate owes a duty to act with fearless independence, to the court before whom he appears he owes the duty of complete and absolute honesty in all he says and does If he fails in either of these duties, he will sink into well-deserved oblivion, if he maintains the tradition which he has inherited he will have earned his place upon an honoured roll"

SA tradition

The South African Bar has followed this tradition, which is also part of the Roman-Dutch tradition

It is this compound of independence and honesty which has shaped our judiciary and as a consequence, in spite of the hostility with which South Africa is regarded abroad — at the time of Sharpeville a National-Court has come to be regarded as the bastion of freedom and the rule of law

There are essential features of the Bar's structure which conduce to the breeding of honesty and independence Mr Arthur Suzman, QC, the doyen of the South African Bar, addressing law students at the University of Witwatersrand (May 17, 1971) said

"The Bar is a small closely knit group which leads a semi-corporate existence Association fosters integrity If a member of the Bar cuts corners or behaves improperly, this fact becomes known almost immediately to his colleagues and eventually seeps through to the Bench This acts as a strong deterrent to improper conduct The Bar, I believe, is the best incubator for the Bench Admittedly we hatch an occasional bad egg, but on the whole I know of no better system of judicial appointment than that of selection from the leaders of the Bar Furthermore, when a member of the Bar is appointed to the Bench he remains sensitive (at least for a limited period) to the opinions of his erstwhile colleagues, and he tends to carry over to the Bench the disciplines which have been instilled into him while a member of the Bar"

It may be added that the corporate existence is fostered by the fact that the advocates have their chambers all in one building where they share common-rooms, a Bar library and other facilities

'Judge-made' laws

Another aspect is that one of the most important sources of law lies in the decisions of the courts

A strong Bench will invariably contribute sound and valued "judge-made" law to the jurisprudence of a country It is significant in this connection that probably the weakest patch in the South African law reports came from early Natal, where up to well into this century, the Bench was composed in the main firstly of persons who had practised simultaneously — under the dual system then operating there — at both the Bar and the Side-Bar and were thus not members of a true corporate Bar, and secondly of civil servants

Mr Justice William Broome, for example, was from 1875 to 1904 public servant, dual practitioner, magistrate, Supreme Court Registrar, Master, Chief Magistrate of Durban and then from 1904 to 1917, a judge on the Natal Supreme Court Mr Justice Beaumont who, like some other Natal judges of the day, had no legal training, graduated from the army to the magistracy and thence to the judiciary Later, after dual practice had ended and civil servants were no longer appointed, the Natal Bar strengthened and with it markedly the Bench — and the law reports of that Division

The Bar has consistently opposed the appointment of judges from other than the ranks of senior advocates and in 1961, when the Chief Magistrate of Johannesburg, Mr F C Silke, was strangely made a Queen's Counsel and it was feared that this was a harbinger of his being made a judge, the General Council of the Bar made representations to the Executive and received the assurance that appointments would be made only from senior advocates

This had followed an earlier storm in 1951 when the Senior Government Law Adviser, Mr L C Steyn, had been made a judge in the Transvaal and the Johannesburg Bar had boycotted him until he was elevated to the Appellate Division The whole of this episode was unfortunate as Mr Justice Steyn was an outstanding jurist, although he had never practised, and later became an eminent chief justice

Only eight

Since Union there have been only eight judges appointed from outside the Bar 1914, Gardiner J (Attorney-General), 1926, Matthews J (Senior Government Law Adviser), 1930 Bok J (Secretary for Justice), 1931, Lansdown J (Government Law Adviser), 1933, Van den Heever J (Secretary for Justice), 1951, Steyn J (as above), 1956, Botha J (Senior Government Law Adviser), 1961, Conradie J (Speaker, House of Assembly)

Of these only Botha J, Matthews J and Steyn J had never practised Van den Heever J, although he practised only early in his career, proved like Steyn J to be an outstanding jurist

The Bar protested to many of these appointments And it protests now to the appointment of Mr A J Lategan, Attorney-General of the Cape, as a judge

In a statement, the General Council of the Bar of South Africa said the Bench should be completely independent and impartial and has a reputation, here and overseas, for being so

"A person appointed from the public service, who has of necessity throughout his career approached matters from the point of view of the State, will not at the outset have, and is unlikely to acquire, the necessary degree of independence, and will inevitably be suspected not to be impartial, however unjustified any such suspicion may in fact be These difficulties will apply in even greater measure to one who has been appointed from the post of Attorney-General who has in the discharge of his duties been not only associated with, but actually part of, the machinery of the prosecution of offences, and whose experience lies entirely in the field of the criminal law"

Bad principle

To this viewpoint might be added that most of the decisions by far in the law reports are on civil matters and an advocate who has had no civil practice and little or no contact with the civil law can make small contribution to the body of judicial precedent, let alone sitting as a judge in civil disputes

Mr E O K Harwood, a retired Attorney-General, said the appointment was "an excellent precedent" It is — if you wish to depart from the South African tradition and open the door to the continental system of career judges and hold out hopes of judicial appointment to the whole civil service

But to those who think like the GCB — and me — it is a precedent for a bad principle

Another (anonymous) legal authority supporting the appointment quoted the cases of Gardiner J and Lansdown J both of whom were Attorneys-General But Judge Gardiner practised successfully from 1897 to 1910, while Judge Lansdown on his appointment by President Roosevelt to an international commission was described as "one of South Africa's most erudite and eminent men of law an outstanding advocate at the Bar", he was moreover the author of the standard work on the liquor laws and, with Gardiner J, of the famous volumes on the criminal law

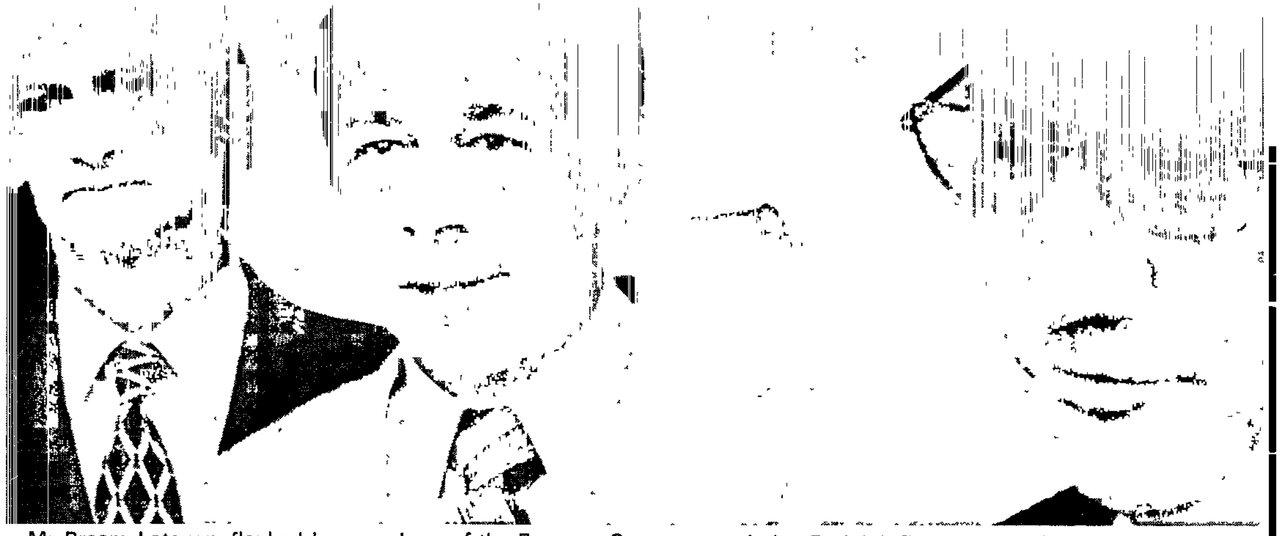
The unfortuante feature of protests of this nature is that they involve personalities and I would say at once that the present protest is particularly inauspicious because Mr Lategan has been an able and competent Attorney-General and is a man of integrity and principle and one who has always been a friend of the Bar The thoughts in this article must not be taken as in any way a reflection on him personally

Committees

Perhaps an important lesson from such controversies may be learnt In some constitutions which have emerged since World War II one finds provision for judicial appointments by special non-partisan committees, as, for example, in the French constitution of 1946 and the Italian constitution of 1948

Perhaps the best instance is that applying in Israel, where Law 54 of 1953 (The Judges' Law) provides for appointments by the President of the State upon the proposal of an appointments committee The committee consists of nine members — three judges, two members of the government (including the minister of justice), two members of the Knesset (Parliament) and two practising advocates elected by the Israel Bar Association

Has the time not come in South Africa for the adoption of a similar procedure for elevation to the judiciary?



Mr Braam Lategan, flanked by members of the Erasmus Commission, Judge Rudolph Erasmus and George Smalberger

with selected major categories of disease. Clearly, this is an entirely hypothetical situation. However, these competing risks life tables not only provide an indication of the relative importance of various disease categories to both the overall mortality experience and also to expectation of life of the three communities, but also, since there is an approximately linea
percentage inc
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ACKNOWLEDGEMENT

The writers wish
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Sentence can't run from date of detention—ruling

BLOEMFONTEIN — The Appeal Court said yesterday the principle that a sentence could be backdated to a date before a person had been convicted could not be endorsed. A person should not undergo punishment before he was convicted of an offence.

The Chief Justice, Mr Justice Rumpff, with Mr Justice Rabie and Mr Justice Trehgove concurring, found that Section 32(1) of the Prisons Act 1959 whereby a court is not competent to order a sentence to run from the date of detention, was commanding and not merely indicatory.

The Appeal Court had been asked to consider the question of law as to whether the Cape Supreme Court had been judicially competent to order that prison sentences imposed on Norman Hawthorne (10 years, three conditionally suspended) and John Williams (10 years, two conditionally suspended) should run from the dates of their detention

These were October 6 and 29, 1976, respectively

The men were convicted by Mr Justice L de V van Winsen on September 16 1977, of robbery with aggravating circumstances

The Appeal Court said a person who was in custody pending trial did not undergo imprisonment as such and special provision was made about food, clothing, bedding and reading matter for such persons

The Chief Justice said if spoke for itself that a trial judge would take into consideration when determining sentence that an accused had been in custody for a considerable time

The Appeal Court set aside the sentences on Hawthorne and Williams and substituted imprisonment of nine years for Hawthorne of which three years is suspended for three years, and imprisonment of nine years on Williams, of which two years is suspended —Sapa

13-11-79

REFERENCES

1. Department of Statistics (1977). Census of Hospitals and Establishments for In-Patients. Report 20-06-01. Government Printer, Pretoria.

2. Department of Statistics (1977). Report on Deaths 1974. Report 07-03-10. Government Printer, Pretoria.

3 Department of Statistics (1976). Report on Bantu Deaths in Selected Magisterial Districts 1974. Report 07-03-08. Government Printer, Pretoria.

4. Department of Statistics (1976). South African Statistics 1976. Government Printer, Pretoria.

5. Department of Statistics (1974). Report on Bantu Deaths in Selected Magisterial Districts 1968 to 1971. Report 07-03-04. Government Printer, Pretoria.

6. South Africa. Act 58 of 1970.

7. Department of Bantu Administration and Development (1975). Report of the Department 1974/5. Report RP 114/1975. Government Printer, Pretoria.

8. Chiang, C.L. (1968). Introduction to Stochastic Processes in Biostatistics. Wiley, New York.

9. City of Cape Town (1977). Annual Report of the Medical Officer of Health 1975. p.110. Cape Town.

10. Department of Statistics (1976). Population Census 1970; Age, Marital Status and Type of Dwelling by District and Economic Region. Report 02-05-08. Government Printer, Pretoria.

11. Martins, J.H. (1975). Regional Population Estimates for 1974. University of South Africa, Bureau of Market Research. Research Report No. 46, Pretoria.

12. Knutzen, V.K., Bourne, D.E. (1977). The Reproductive Efficiency of the Xhosa. S.A. Med. J. 51, 392-394.

13. Department of Statistics (1971). Statistical Classification of Diseases, Injuries and Causes of Death. Manual 07-03-00. p.v. Government Printer, Pretoria.

14. Department of Health (1978). A Guide to the Health Act, No. 63e of 1977, p.17. Department of Health, Pretoria.

15. Department of Health (1978). Infant Mortality Rates in South Africa. Epidemiological Comments Dec. 1978, 1-21.

* * * * * *

which has not been de… *prima facie* evidence that such dividend
has been retained by … with as prescribed in this section, and
the Master may there… ainst the liquidator under section 405

(*b*) The Cou… ch proceedings order the liquidator to
pay any such dividend… deposited and in addition to pay to the
Master for the benefit … e Fund an amount equal to the amount
of such dividend.

(4) Any creditc… ntitled to any dividend may, if payment
thereof is delayed, afte… ply to the Court for an order compelling
the liquidator to pay … or or member.

411. Payment of … r.—Any person claiming to be entitled
to any money deposite… idator under the provisions of this Act
may apply to the Mast… the Master may, on a certificate by the
liquidator or on other… erson claiming such payment is entitled
thereto, pay the amou… concerned

In Winding-up

412. Meetings of … **voting at meetings of creditors.**—(1) In
any winding-up of a co… s and members or contributories shall,
save as otherwise provi… l and held in the following manner:

(*a*) in the cas… s nearly as may be in the manner pre-
scribed fc… of creditors under the law relating to
insolvency…

(*b*) in the cas… or contributories, in the manner pre-
scribed by…

(2) The provisio… ency Act, 1936 (Act No. 24 of 1936),
shall *mutatis mutandis* a… ditor to vote at a meeting of creditors
in a winding-up of a co…

413. Meetings to … and others.—Where by this Act the
Court is authorized, in … have regard to the wishes of creditors,
members or contributor…

(*a*) the value … claims and the voting rights of the
various m… he company in terms of its memoran-
dum or ar… consideration, and

(*b*) the Court … purpose of ascertaining the wishes of
such credi… ories direct meetings of the creditors,
members o… , held and conducted in such manner
as it directs, and may appoint a person to act as chairman of any such meeting
and to report the result thereof to the Court

414. Duty of directors and officers to attend meetings.—(1) In any winding-up of a company unable to pay its debts, every director and officer of the company shall—

(*a*) attend the first and second meetings of creditors of the company, including any such meeting which is adjourned, unless the Master or the officer presiding or to preside at any such meeting has, after consultation with the liquidator, authorized him in writing to absent himself from that meeting;

(*b*) attend any subsequent meeting or adjourned meeting of creditors of the company which the liquidator has in writing required him to attend

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PROCLAMATIONS

by the State President of the Republic of South Africa

No 285, 1979

COMMISSION OF INQUIRY INTO THE STRUCTURE AND FUNCTIONING OF THE COURTS

Under and by virtue of the powers vested in me by section 1 of the Commissions Act, 1947 (Act 8 of 1947), I hereby declare that the provisions of that Act shall apply to the Commission of Inquiry into the Structure and Functioning of the Courts appointed by me on the 29th day of November 1979

Given under my Hand and the Seal of the Republic of South Africa at Pretoria this Twenty-ninth day of November, One thousand Nine hundred and Seventy-nine

M VILJOEN, State President

By Order of the State President-in-Council

A L SCHLEBUSCH

No 286, 1979

COMMISSION

by the State President of the Republic of South Africa

To:

The Honourable Mr Justice Gustav Gerhardus Hoexter,
Mr Johan Phillipus Jacobus Coetzer, S C,
Prof Anthony John Middleton,
Mr Johan Marius Potgieter,
Mr Austin Arnoldus Schreiber, S C

Greetings!

Whereas I deem it expedient to appoint a commission to inquire into, and to report and make recommendations on, the matters mentioned hereinafter,

Now, therefore, by reason of the great trust I repose in your knowledge, judgment and ability, I hereby authorise and appoint you to be members, and you, the Honourable Gustav Gerhardus Hoexter, to be Chairman, of a commission, with the following terms of reference

To inquire into the structure and functioning of the courts of law in the Republic of South Africa and

PROKLAMASIES

van die Staatspresident van die Republiek van Suid-Afrika

No 285, 1979

KOMMISSIE VAN ONDERSOEK NA DIE STRUKTUUR EN FUNKSIONERING VAN DIE HOWE

Kragtens die bevoegdheid my verleen by artikel 1 van die Kommissiewet, 1947 (Wet 8 van 1947), verklaar ek hierby dat die bepalings van daardie Wet van toepassing is op die Kommissie van Ondersoek na die Struktuur en Funksionering van die Howe wat ek op die 29ste dag van November 1979 aangestel het

Gegee onder my Hand en die Seel van die Republiek van Suid-Afrika te Pretoria, op hede die Nege-en-twintigste dag van November Eenduisend Negehonderd Nege-en-sewentig

M VILJOEN, Staatspresident

Op las van die Staatspresident-in-rade

A L SCHLEBUSCH

No 286, 1979

OPDRAG

van die Staatspresident van die Republiek van Suid-Afrika

Aan

Sy Edele Regter Gustav Gerhardus Hoexter,
Adv Johan Phillipus Jacobus Coetzer, S C,
Prof Anthony John Middleton,
Mnr Johan Marius Potgieter,
Adv Austin Arnoldus Schreiber, S C

Saluut!

Nademaal ek dit dienstig ag om 'n kommissie aan te stel om ondersoek in te stel na en verslag en aanbevelings te doen oor die aangeleenthede hieronder genoem,

So is dit dat ek, aangesien ek groot vertroue in u kennis, oordeel en bekwaamheid stel, u hierby magtig en aanstel as lede van 'n kommissie, en u, U Edele Gustav Gerhardus Hoexter, as Voorsitter daarvan, met die volgende opdrag

Om ondersoek in te stel na die struktuur en funksionering van die geregshowe in die Republiek van

to report and make recommendations on the efficacy of that structure and functioning and on the desirability of changes which may lead to the more efficient and expeditious administration of justice and a reduction in the cost of litigation and in the course of such inquiry and in such recommendations to give attention in particular, but not exclusively, to the desirability of—

(a) establishing outside the Public Service an intermediate court between the lower courts and the Supreme Court, which would, as far as possible, sit throughout the country, and replace the existing regional court, and of restricting criminal appeals from such a court to a superior court by requiring leave to appeal in the same manner as in appeals from provincial divisions,

(b) establishing a family court as a branch of the court contemplated in paragraph (a) or otherwise,

(c) restricting appeals on fact to one appeal to one superior court,

(d) restricting appeals to the Appellate Division to appeals on questions of law and appeals also on fact where the death sentence has been imposed,

(e) [depending upon the recommendations in regard to paragraph (d)] determining a new procedure for the hearing of appeals on fact which at present go to the Appellate Division, excluding such appeals where the death sentence has been imposed,

(f) providing special machinery for the settlement of minor civil disputes in an informal manner,

(g) bringing also those courts for which other Ministers are now responsible under the administrative responsibility of the Minister of Justice

Given under my Hand and the Seal of the Republic of South Africa at Pretoria this Twenty-ninth day of November, One thousand Nine hundred and Seventy-nine

M VILJOEN, State President

By Order of the State President-in-Council

A L SCHLEBUSCH

Suid-Afrika en om verslag en aanbevelings te doen oor die doelmatigheid van daardie struktuur en funksionering en oor die wenslikheid van veranderings wat tot doeltreffender en spoediger regspleging en 'n vermindering in die koste van gedingvoering kan lei en om by dié ondersoek en in dié aanbevelings in die besonder, maar nie uitsluitlik nie, aandag te gee aan die wenslikheid van—

(a) die daarstelling buite die Staatsdiens van 'n intermediêre hof tussen die laer howe en die Hooggeregshof, wat sover doenlik dwarsdeur die land sittings hou en die bestaande streekhof vervang, en die beperking van strafappèlle vanaf so 'n hof na 'n hoer hof deur dit onderworpe te maak aan verlof tot appèl op dieselfde wyse as by appèlle vanaf provinsiale afdelings,

(b) die instelling van 'n gesinshof, as 'n vertakking van die hof beoog in paragraaf (a) of andersins,

(c) die beperking van appèlle op feite tot een appèl na een hoer hof,

(d) die beperking van appèlle na die Appèlafdeling tot appelle op regsvrae en appèlle ook op feite waar die doodstraf opgelê is,

(e) [afhangende van die aanbevelings met betrekking tot paragraaf (d)], die bepaling van 'n nuwe prosedure vir die beregting van appèlle op feite wat tans na die Appelafdeling gaan, uitgesonderd sodanige appèlle waar die doodstraf opgelê is,

(f) die skepping van spesiale masjinerie vir die beslegting van klein siviele geskille op 'n informele wyse,

(g) die inskakeling onder die administratiewe verantwoordelikheid van die Minister van Justisie ook van daardie howe waarvoor ander Ministers tans verantwoordelik is

Gegee onder my Hand en die Seel van die Republiek van Suid-Afrika te Pretoria, op hede die Nege-en-twintigste dag van November Eenduisend Negehonderd Nege-en-sewentig

M VILJOEN, Staatspresident

Op las van die Staatspresident-in-rade

A L SCHLEBUSCH

forced into the upper parts of the space-time box by ignoring several of the original definitions. As more examples of such forcing occurred, so the original definitions of the slots were loosened and expanded to contain an ever-increasing variety of artifacts. Survival of the revised framework was soon threatened again because the boundaries between the large, block-shaped subdivisions had become too blurred. Also, quantitative analysis was beginning to permeate archaeological procedures (Mason 1957) and the urgent need arose for numerically undistorted samples, complete artifact type lists, and far more rigorous attention to provenience (Inskeep 1961). Furthermore, the concepts of culture, industry, variant, stage, period, and phase were in free and variable circulation in the literature. The framework appeared to be [illegible]

About 100 000 SA prisons each day are in

By WELELENI MASHUMI
Pretoria Bureau

THE daily population in South African prisons was about 100 000 and with the developing Government policy, black members of the Prisons Department were faced with a challenging task in the administration and control of institutions where blacks were being detained.

The was said by the Minister of Police and Prisons, Mr Louis le Grange, in his address at the passing-out parade of black warders at the Baviaanspoort Prisons College near Pretoria yesterday.

The Minister further praised the department's personnel for performing their tasks dutifully in terms of the Standard Minimum Rules of the United Nations Congress on Crime Prevention and Rehabilitation of Offenders, which South Africa was a signatory.

It was this dedication to their work by the warders that has helped curb any large-scale violence often found in many countries.

Such violence occured only once in the country and even then this was of a much smaller extent, Mr Le Grange said.

The department has been running a project which offers basic literacy training in reading and writing to prisoners, most of whom are blacks. The project was in full swing in 48 prisons and was geared towards providing illiterate inmates with basic skills in writing, reading and basic arithmetic.

A number of long-term prisoners have already written academic and technical examinations.

Library facilities at 110 centres supplied more than 401 294 books to prisoners by the de-

partment.

To relieve the taxpayers of the burden of maintaining the high prison population, the department has embarked on certain productive projects. These projects have yielded agricultural produce worth R8,5-million, raw material worth R3-million to be used in workshops and building projects worth R10- million, he said.

As a result of these projects the cost of keeping a prisoner has dropped to R2,84 a day and the Minister said this was reasonably lower than in most Western countries which, in certain cases, was more than R100 a day.

Despite all the department had been doing to the prisoner to regard himself as a creation of God, the department has met sharp criticism, often undeserved — from within and outside the country, he said.

Wonderwerk, Rose Cottage, and several other miscellaneous assemblages including the long-ignored "coarse Stillbay" reported from between the Second Intermediate and LSA in the pioneer excavations at Peer's Cave (Keith 1931). Although a few categories have been tentatively isolated, such as the Robberg Industry (Deacon 1977), an increasing number of assemblages remain vaguely labelled (eg. "Early LSA") and floating uncertainl within the gross subdivisions of the Middle and Later Stone Ages.

To avoid the ambiguities inherent in even these large categories, an increasing number of authors have recently turned to terms such as Holocene and Upper Pleistocene to define broad units. Thus a third sytem is being introduced into the literature. The time-axis of the framework is clearly in the throes of its fourth major crisis.

Development of the space-axis

It is hardly surprising that the space-axis of the framework has undergone similar episodes of strain during the course of its development, but the causes were not always the same as those outlined above. W.D. Gooch (1881) was the first to recognise the need for subdivisions in South Africa, although the classifiers of his times in Europe appear to have avoided this approach. By subdividing his field observations into five geographical regions, Gooch anticipated that we should not expect the Stone Age continuum to advance in an orderly progression of contemporary phases throughout the subcontinent. However, the later accumulation of field results showed that his regional/landscape slots did not covary with "culture-areas" represented by mapped distributions of similar-looking stone artifacts. Although Goodwin (1946b) was attracted to regional subdivision, he seems to have realized this and the units known as Cultures and/or Industries became the common approach to both spatial and chronological subdivision of the three Stone Age blocks.

Inevitably, new Cultures tended to spring up wherever a pioneer archaeologist happened to be located — either because of his place of employment or because of his personal field interests. The first ones to appear in the literature tended to cluster around Cape Town, Grahamstown, the Kalkfontein dam on the Riet River, the diamond-diggings on the Vaal, and so on. By the time of the 1929 meetings of the British Association, vast uncharted regions still existed between these oases of research.

Court costs a reason for SA legal probe

Argus 3/12/79

252

Argus Correspondent

PRETORIA — Concern that the cost of litigation is beyond the reach of the average man is one of the main reasons for the appointment of a five-man commission of inquiry into South Africa's legal system.

It would appear that litigation has become costly, that the courts have become less accessible than they could be and that there are lengthy delays in the conclusion of criminal and civil cases,' said a statement by the Minister of Justice and of the Interior, Mr Alwyn Schlebusch.

Because of this the commission had been appointed to inquire into the structure and functioning of the courts 'to meet contemporary needs'.

A REDUCTION

The commission's terms of reference include investigating the more efficient administration of justice and a reduction in the cost of litigation.

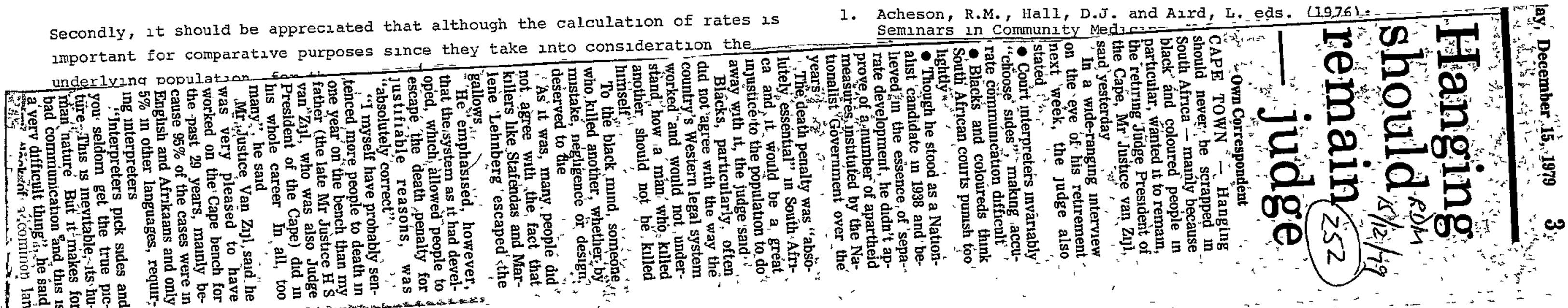
It will also look into the desirability of an intermediate court between the lower courts and the Supreme Court, the possible replacement of the Regional Court, the establishment of a family court, the restriction of appeals and the settlement of minor civil disputes in a more informal manner.

The chairman of the commission will be Mr Justice G G Hoexter, and its other members are Mr J P J Coetzer SC, the Secretary for Justice, Professor A J Kiddleton of the University of South Africa, Mr J M Potgieter — representing the attorneys — and Mr A A Schreiber SC, representing the advocates.

is consistently worse than that of the whites. The 'coloureds' have higher mortality rates for all the major causes of death apart from cardiovascular diseases and neoplastic diseases in men over 65 years of age, neoplastic diseases in women in this group, and cardiovascular disease in men 45-64 years of age during 1960 and 1970. Clearly the rate of 5/1 000 which has been chosen is entirely arbitrary but a similar pattern of mortality emerges if lower or higher levels are selected.

Two aspects of these age-cause specific mortality rates require emphasis. Firstly, whilst being affected by the incidence of the diseases in question, these rates are also influenced by their fatality rates, for example, a decrease in the mortality related to Tuberculosis will not only be influenced by a decreasing incidence of this disease but also by improved prevention at primary, secondary and tertiary levels of intervention which will consequently decrease the fatality rate and, therefore, the associated mortality.

Secondly, it should be appreciated that although the calculation of rates is important for comparative purposes since they take into consideration the underlying population for [illegible] different expectations of life have been included: (1) e_o - the expectation of life at birth, and (2) e_{45} - the expectation of life at 45 years of age.



December 15, 1979 3

Hanging should remain — judge

By Own Correspondent

CAPE TOWN — Hanging should never be scrapped in South Africa — mainly because black and coloured people in particular, wanted it to remain, the retiring Judge President of the Cape, Mr Justice van Zyl, said yesterday.

In a wide-ranging interview on the eve of his retirement next week, the judge also stated

● Court interpreters invariably "choose sides", making accurate communication difficult.

● Blacks and coloureds think South African courts punish too lightly.

● Though he stood as a Nationalist candidate in 1938 and believed in the essence of separate development, he didn't approve of a number of apartheid measures instituted by the Nationalist Government over the years.

The death penalty was "absolutely essential" in South Africa and it would be a great injustice to the population to do away with it, the judge said.

Blacks, particularly, often did not agree with the way the country's Western legal system worked and would not understand how a man who killed another, should not be killed himself.

To the black mind, someone who killed another, whether by mistake, negligence or design, deserved to die.

As it was, many people did not agree with the fact that killers like Stafendas and Marlene Lehnberg escaped the gallows.

He emphasised, however, that the system as it had developed, which allowed people to escape the death penalty for justifiable reasons, was "absolutely correct".

"I myself have probably sentenced more people to death in one year on the bench than my father (the late Mr Justice H S van Zyl, who was also Judge President of the Cape) did in his whole career. In all, too many," he said.

Mr Justice Van Zyl said he was very pleased to have worked on the Cape bench for the past 29 years, mainly because 95% of the cases were in English and Afrikaans and only 5% in other languages, requiring interpreters.

"Interpreters pick sides and you seldom get the true picture. This is inevitable, its human nature. But it makes for bad communication and thus is a very difficult thing", he said.

The greatest change he had noticed since the start of his legal career was that bilingualism in and outside court had become the norm rather than the exception.

In the early thirties judges would answer in English when advocates addressed them in Afrikaans. One had the impression that it was not the done thing to use Afrikaans in the courts.

● Mr Justice van Zyl retires next Saturday, on his 70th birthday.

Both white and 'coloured' females have shown an increasing life expectancy at the age of 45, and although this has been small, it contrasts with the downward trend of both white and 'coloured' males.

Although it is apparent that the Expectation of Life at birth for the 'coloureds' has shown a marked improvement between 1941 and 1970, it is salutary to note that neither 'coloured' males nor females, at either e_o or e_{45}, have reached expectations of Life in 1970 which are as high as the whites were in 1929. What also gives some cause for concern is that although the expectation of Life cannot be expected to improve indefinitely, it would appear that the 'coloured' life expectancy is levelling off at a much lower age than has occurred in the white community.

REFERENCES

1. Acheson, R.M., Hall, D.J. and Aird, L. eds. (1976). Seminars in Community Medicine

5. South Africa (1971-1977) : Department of Statistics, Reports of Deaths, Reports 07 - 03 - 01 to 07 - 03 - 12, Government Printer, Pretoria.

6. South Africa (1948) : Official Year Book No. 23, 1946, Chapter XXIX, Government Printer, Pretoria.

7. Van Tonder, J.L. and Van Eeden, I.J. (1975) : Abridged Life Tables for all the population groups in the Republic of South Africa (1921-1970), Report S-34, Human Sciences Research Council, Pretoria.

8. Preston, S.H., Keyfitz, N. and Schoen, R. (1977) . Causes of Death; Life Tables for National Populations, Seminar Press, New York

9. Sadie, J.H. (1970) : S. Afr. J. Economics, 38, 1.

10. Doll, R. (1976) : Monitoring of Government Statistics, in Seminars in Community Medicine, Volume 2. ibid.

of life at birth has been [illegible] a better expectation of life than men, and so for both whites and 'coloureds'. In fact, hat at e_{45} 'coloured' females have a better males. What is perhaps of some concern is tation of life for males and females is widen- in both the whites and the 'coloured' communirly marked in the latter for whom Male:Female it e_o has become 6,9 years in 1970. For whites) has increased to 7,0 years in 1970.

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PUBLIC SECTOR - GOVT

Justice

1-1-80 - 31-12-80

26/5/80

252

Appt. of Commission of enquiry into certain allowances of judges + judges' clerks in the Transvaal and Natal.

See Hansard 15 cols 7133 – 7135

23/4/80.

252

State Attorney Amendment Bill

See 5 Harvard 5 Cob 1150 - 1152

Supreme Court Amendment Bill

See 5 Harvard 5 Cob 1152 - 1160

21/4/80

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State Attorney Amendment

Bill

Sa Hansard 10 ors 4357-43

21/4/80

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- Judges Remuneration Amendment Bill (2nd Reading).

See Hansard 10 cols 4395 - 4403

9(568) **Executions** 15/4/80 (3E3) 252

549 Mrs H SUZMAN asked the Minister of Prisons

(a) How many persons in each race group were executed during 1978-'79 and (b) of what crimes had they been convicted?

The MINISTER OF PRISONS

(a) and (b)

Whites
2 — Murder

Coloureds
34 — Murder
1 — Rape
1 — Robbery with aggravating circumstances

Blacks
97 — Murder
3 — Rape
10 — Robbery with aggravating circumstances

Vote agreed to

Vote 22 — Justice''

Mr D J N MALCOMESS Mr Chairman I note that item K—''Casual Interpreting and Reporting including Mechanical Recording Equipment' has run up by a rather massive amount of R576 000, which actually represents an increase of 27,8%, which in terms of casual interpreting does seem rather large So I would assume that the bulk of the expenditure is on additional mechanical recording equipment and I would be grateful if the hon the Minister could inform us further about this matter

*The MINISTER OF JUSTICE Mr Chairman during the 1978- 79 financial year an amount of R1 million was voted under main

Hansard 5 col 1870

R52

from part appro. B1

division K of the department s budget for the purchase of mechanical recording equipment for use in the courts An order was placed on 27 October 1978 for the delivery of this equipment Delivery had to take place before 31 March 1979 During March 1979 the contractor indicated that he could deliver only equipment to the value of R379 620 during the 1978-'79 financial year with the result that the other equipment was only delivered during the 1979-'80 financial year Since there were no funds for the payment of abovementioned expenditure on the department's budget for 1979- 80 the Treasury was approached on 25 May 1979 for approval of additional funds amounting to R615 000, but with savings this amount was brought down to R342 050

Vote agreed to

Judge Mostert resigns from

252 CAPE TIMES

Own Correspondent

JOHANNESBURG. — Judge Anton Mostert, who sits on the Natal Supreme Court and is one of the youngest judges in the country, has resigned He informed the Minister of Justice, Mr Alwyn Schlebusch, and his Judge-President of his decision yesterday.

Another young judge from the Transvaal, Mr Justice Mervyn King, who was appointed to the Bench last year, has also resigned.

Judge Mostert confirmed his resignation to the Cape Times correspondent last night He said. "It is my intention to return to practice."

Asked for his reasons, he said· "I will not furnish my reasons to the press because the matter is not for public discussion."

The resignations are unprecedented in that it is the first time there have been resignations from the Bench for reasons other than old age or ill health

Judge King, asked last night whether he had resigned, said "That is correct." He would not disclose his reasons

The Judge-President of Natal, Mr Justice Neville James, last night said, "Judge Mostert was an extremely co-operative and friendly colleague on the Bench. He got on extremely well with his colleagues We are all very sorry to see him resign He will be missed.

"He told me today that he had resigned. I have no idea why he resigned It was for his own personal reasons We didn't discuss it before he rang up the minister"

One of Judge Mostert's colleagues, Mr Justice R N Leon, said· "I think he was a most valued colleague. I am very sorry to hear it"

Mr Schlebusch said he was not prepared to comment on the resignations and directed the Cape Times correspondent to the judges involved

Judge Mostert was appointed to the Bench in the Transvaal

Bench

17/1/80

division of the Supreme Court in 1974 at the age of 43 His rise was meteoric He was admitted to the bar in 1965 and seven years later became a Senior Counsel

Judge King is 42 His rise to the Bench was also fast He started practising as a lawyer in 1962 and was admitted to the Bar in 1965 He was gazetted as a Senior Counsel in 1975.

Judge Mostert's revelations on November 2, 1978, confirmed newspaper reports by Morning Group newspapers about the massive misuse of public money through Department of Information secret funds including the financing of The Citizen

● Not even a nameplate on his door, page 4

Mr Justice Anton Mostert.

is consistently worse than that of the whites. The 'coloureds' have higher mortality rates for all the major causes of death apart from cardiovascular diseases and neoplastic diseases in men over 65 years of age, neoplastic diseases in women in this group, and cardiovascular disease in men 45-64 years of age during 1960 and 1970. Clearly the rate of 5/1 000 which has been chosen is entirely arbitrary but a similar pattern of mortality emerges if lower or higher levels are selected.

Two aspects of these age-cause specific mortality rates require emphasis. Firstly, whilst being affected by the incidence of the diseases in question,

Both white and 'coloured' females have shown an increasing li
at the age of 45, and although this has been small, it contras
downward trend of both white and 'coloured' males.

Although it is apparent that the Expectation of Life at birth
'coloureds' has shown a marked improvement between 1941 and 1
salutary to note that neither 'coloured' males nor females, a
or e_{45}, have reached expectations of Life in 1970 which are a
whites were in 1929. What also gives some cause for concern
though the expectation of Life cannot be expected to improve
it would appear that the 'coloured' life expectancy is levell


GENERAL NEWS

Mr Justice Anton Mostert, with his wife Joan and youngest son Chris, at their home in Maritzburg yesterday after his surprise decision to retire from the Bench and return to private practice

Explain why ju
quit, says Suzm

RDM

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18.1.80

By BRIAN O'FLAHERTY

MRS Helen Suzman last night called for the reasons for the resignations of Judge Anton Mostert and Judge Mervyn King to be made public

The resignations are seen in legal circles as part of widespread dissatisfaction among advocates and many judges over recent appointments to the Bench

Mrs Suzman, an Opposition spokesman on justice, said "It is clearly a cause for deep concern when two young and able judges resign from the Bench, and obviously public speculation must be rife over the reasons behind their decisions

"I believe it would be in the public interest if those reasons were disclosed If, as has been suggested, there is a conflict of conscience, the Government should pause and reflect on laws and actions that cause South Africa's judiciary to be deprived of the services of men of the calibre of Judge Mostert and Judge King."

The New Republic Party spokesman on justice, Mr John Malcomess, yesterday called for a parliamentary commission consisting of Government and Opposition MPs to investigate the resignations

He said such a commission ould, if necessary, make recommendations to ensure that South Africa's judiciary was above political interference of any kind

The two judges had resigned from the Bench on what was clearly a matter of principle, he said

"One is nationally, even internationally, known because of the Information affair — a man whose courage in a political situation and in disagreement with the Prime Minister was widely praised

"Because of this, the question must be asked Have they resigned because they feel there has been interference in the judiciary by the Government?"

Legal circles point to the recent overruling by the Minister of Justice, Mr Alwyn Schlebusch, of objections by the General Bar Council to the appointment to the Supreme Court of the former Cape Attorney-General, Mr Braam Lategan, as being a symbol of the general dissatisfaction at the Government's attitude to the judiciary

Both judges were still silent yesterday about their reasons for resigning

Judge King, 42, confirmed that he had resigned on January 10 with effect from January 31, but would not give his reasons He said he would not be sitting on cases for the rest of the month and intended returning to the Bar.

Judge Mostert, 48, who is on leave, will also not return to the Bench

Professor John Dugard, Professor of Law at the University of the Witwatersrand, said he did not know the reasons for the resignations

But, he said, the public might "legitimately draw the inference" that Judge Mostert was not happy with his treatment after his historic disclosures on the Information scandal, and that Judge King had resigned because of a "conflict of conscience" in implementing the Group Areas Act

Mr Justice W G Boshoff, Judge-President of the Transvaal, said yesterday he had not been informed officially of Judge King's resignation

"I have no idea why he resigned. He is still young, and I suppose he would probably make much more money off the Bench That may be one reason"

Professor S A Strauss, Professor of Criminal Law at the University of South Africa, said "Both these gentlemen will certainly be a loss to our Bench There is no question about that They both handed down landmark judgments

"Judge King handed down a judgment last year in which he was strongly critical of the Group Areas Act He came to the conclusion that the Act had an inequitable result on some people, and that if he were sitting in a court of equity — to decide the case merely on the basis of what is reasonable and not in accordance with the law — he would have found in favour of the appellant"

Prof Strauss said "This was really an adverse finding as far as the Group Areas Act is concerned The judge indicated in no uncertain terms that it was creating hardship for certain people in this country"

The "Mail" yesterday attempted to obtain comment on the resignations from the Prime Minister, Mr P W Botha, the Minister of Finance, Senator Owen Horwood, and the Minister of Justice, Mr Alwyn Schlebusch. None was available

A back door to the judiciary for public servants?

A LIVELY dispute between most of South Africa's advocates and the Department of Justice over the future of the judiciary is likely to soon break out in full fury

The dispute was muted last November as the participants decided to wait for the Hoexter Commission of Inquiry's recommendations into the structure of the courts But it is sure to resume once the commission has reported — whatever its recommendations

By KEVIN STOCKS

Basically the issue is whether judicial appointments should remain the almost exclusive preserve of advocates, or whether full-time officials of the justice department should be eligible for appointment as judges

So far it has been a quiet war that has made little impact on public consciousness — being fought mainly through the pages of legal magazines and in sparsely reported speeches and official pronouncements

It is also a deceptive war in that the short-term objectives of one side or the other may not fully reflect their long-term aims.

Battlefield

Yet the outcome will, for better or worse, decide the quality of the courts for many years to come and thus every South African's access to impartial justice

The chosen battlefield of both sides is the controversial project to establish so-called "intermediate courts"

Many in the justice department feel these courts should be set up between magistrates' courts and the Supreme Court

The presiding officers would not only be called judges, but would have many of the rights and privileges of Supreme Court justices — including the right to refuse a convicted accused permission to ap-

Secretary for Justice, Mr J P J Coetzer SC, that such intermediate courts should have jurisdiction even in murder cases, although without the power to impose the death sentence

Thus a major revolution in the way South Africa dispenses justice is clearly being advocated

Proponents of intermediate courts argue that they would relieve the burden on the Supreme Courts by taking many cases that would otherwise clog its roll

They say they would also offer cheaper justice to the public, as attorneys could argue before the intermediate courts, cutting out the expense of briefing advocates

Opponents of the system — believed to include most Supreme Court judges — see the proposal as nothing less than an attempt to infiltrate the justice department bureaucracy into the judiciary

Independent

They argue that judges drawn from the ranks of the advocates — as with one or

training independent

They are thus more likely to uphold the Supreme Court tradition of deciding according to the law and refusing to be influenced by Government policy or suggestions of official displeasure

This, they hold, is not true of justice department officials who have spent all their working careers carrying out Government policy

Devalued

In the past, proposals to appoint officials — in this context mainly magistrates — to the Supreme Court bench aroused passionate opposition from both the Society of Advocates and the Law Society

Many advocates now suspect the authorities intend slipping officials onto the bench via the back door of the intermediate courts

Once one has judges in the land who are not Supreme Court Justices, the argument runs, the rank and status of judge will be devalued

It will also be easier, and arouse less opposition, to

MR J P J COETZER
Revolution in judiciary?

Court Bench than it would be to promote a magistrate

The question is now being officially considered by the commission under the chairmanship of Mr Justice Gustav Hoexter of the Natal Bench

Other members are the Secretary for Justice, Mr Coetzer, Professor Anthony Middleton, Mr Johan Potgieter and Mr Austin Schreiber SC

Among other things, it is charged with investigating

- The possibility of establishing, outside the public service, an intermediate court between the lower courts and the Supreme Court to replace the existing Regional Court
- The possibility of restricting criminal appeals from such a court to a superior court by requiring leave to appeal as in the Provincial Divisions

Although the terms of reference refer to the proposed intermediate courts as "outside the public service" opponents of the idea are convinced that most intermediate judges will, if such a court is established, be drawn from the ranks of the magistrates

They point out that the Secretary of Justice has himself several times exhorted magistrates to prepare themselves for office as judges in intermediate courts

Suspicion

There is also a suspicion that in some official quarters there is a steely determination to have intermediate courts — whatever the Hoexter Commission recommends — although a condemnation of the idea by the commission would make it extremely difficult to carry such a proposal

There is even talk in legal circles that the plans for the new Supreme Court in Johannesburg, now being built within the facade of the old building, make provision for two floors to be reserved for intermediate courts

A spokesman for the Department of Justice this week dismissed such talk as "nonsense"

It was standard policy in designing new court buildings to make provision for the needs of the foreseeable future, he said, so the new building might well make advance provision for extra courts

This however did not mean the department was being "so presumptuous" as to anticipate the findings of the Hoexter Commission or a Government decision to set up intermediate courts, he said

Mr Justice Anton Mostert . . . "at present on leave."

Dissatisfaction prompts Mostert resignation

WIDESPREAD dissatisfaction with the attitudes to and the treatment of the judiciary as well as certain controversial appointments to the Bench are the major reasons behind the shock resignation of Supreme Court Judge Mr Justice Anton Mostert.

It was learnt that Mr Justice Mostert, who dazed the nation 15 months ago with his revelations about the Information scandal, did not base his decision on any single factor but an accumulation of unsatisfactory developments involving the judiciary in recent years.

Speaking from his home in Oriel Road, Pietermaritzburg, Judge Mostert said that he intended practising at the bar, and that he had already served his last day on the bench of the Natal division of the Supreme Court.

"At present I'm on leave, he said.

Meanwhile, the New Republic Party's chief spokesman on Justice, Mr John Malcomess (MP for East London North), yesterday called on the Prime Minister and the Minister of Justice to institute a full investigation into the reasons for the resignations of two judges to ensure that the South African bench did not lose men of such calibre.

The resignation of Mr Justice Mostert, he said, was "a nasty blow" for the South African system of justice.

"Even more so because he was known all over the world for the courageous stand he took in exposing the Information affairs.

Mr Malcomess recalled the major row the judge had had with the Prime Minister, P W Botha at the time of the information affair

Mrs Helen Suzman, the Progressive-Federal Party MP for Houghton and spokesman for Justice, said that it was a matter of great concern that a judge of Anton Mostert's calibre had been forced to make a decision

"To me this looks as though the net result will mean a worsening of the situation.

"However I do feel that if political reasons are behind the resignations, the Judges should clarify the issue and not leave it to speculation."

One of Judge Mostert's colleagues, Mr Justice John Didcott said yesterday: "Anton Mostert's resignation is a personal and public blow His intellect, courage and immense, integrity made him an outstanding judge. I am proud to have served on the same bench as he"

Judge Mostert, who was appointed to the bench in the Transvaal Division of the Supreme Court in 1974, shocked South Africa on November 2, 1978 with his revelations about the gross misuse of public funds through the Department of Information, including the financing of the Citizen newspaper.

EXPOSE

The expose came several hours after the Judge had had heated discussions with the Prime Minister, P W Botha over his intention to disclose to the public evidence about the Department's dealings and exchange control contraventions.

As far as can be established this is the first time in South Africa's judicial history that Supreme Court judges have resigned from the bench other than for reasons of age or ill health.

Justice King quits after 'conflict of conscience'

MR JUSTICE MERVYN KING resigned from the Bench as a result of a "conflict of conscience" following a judgment he gave in a Group Areas Act case last year, legal sources have suggested.

Mr Justice King's resignation from the Transvaal bench of the Supreme Court, was handed in a week ago and takes effect at the end of this month.

He declined to comment on the reasons for his resignation, but said he intended to return to practice at the Johannesburg bar.

In August last year, Mr Justice King dismissed an appeal against the ejectment of Mr Ahmed Nazir Adams and his wife, who are Indians, from a flat in Doornfontein, Johannesburg, which is a white group area.

to the provisions of an Act of Parliament

"Speaking for myself and if I were sitting as a court of equity, I would have come to the assistance of the appellant

"Unfortunately, and on an intellectual honest approach, I am compelled to conclude that the appeal must fail."

Commenting on the resignations of Mr Justice King and Mr Justice Mostert, Professor John Dugard, Professor of Law at the University of the Witwatersrand and director of the Centre of Applied Legal Studies, said these were the first resignations have been advanced for their resignations, the public is entitled to believe that Mr Justice Mostert has resigned as a result of his treatment following the information scandal, and that Mr Justice King has resigned as a result of the conflict of conscience that arose from the implementation of the Group Areas Act."

Professor Duggard said the last such resignations in Southern Africa occurred when judges resigned in Southern Rhodesia

"But South African judges seem to be pre-

the past 30 years inevitably led to problems of conflict between conscience and the enforcing of laws on the part of judges

"The Government should realise that laws of the kind it has enacted place a severe strain on judicial conscience

"If future resignations are to be avoided the Government will have to seriously consider eliminating the areas which give rise to the most serious conflicts of conscience".

Examples of such areas were the discriminatory Group Areas Act and

chairman of the Johannesburg Bar Council, said he could not comment on whether Mr Justice King would be re-admitted to the bar

But he said there was

RAND
Daily Mail

FRIDAY,
January 18, 1980

Disillusionment in the judiciary

WHEN TWO of the country's most able judges suddenly resign while they are still young and fit, it is cause for the gravest concern. Because a judgeship is a prestige position that no-one would give up lightly, and so resignation almost certainly means serious dissatisfaction.

And when a country's judges start becoming disillusioned, then one of the basic pillars of the nation-state is crumbling.

Mr Justice Anton Mostert and Mr Justice Mervyn King have not made public their reasons for resigning But there can be little doubt that Judge Mostert's resignation is related to the way he was treated after his disclosures about the Information scandal, his confrontation with the Prime Minister and the way he was stripped of his commission and replaced by the Erasmus Commission It is also pretty obvious that Judge King's resignation has something to do with a judgment he had to give last year in a Group Areas Act case, when he made it quite clear that he had a conflict of conscience in dismissing an Indian couple's appeal against an eviction order

But it appears that the disillusionment may go further than these specific issues. There seems to be a general dissatisfaction over the Government's attitude towards the judiciary, and in particular over some appointments to the Bench. This was epitomised recently by the appointment of the former Attorney-General of the Cape (and member of the Erasmus Commission), Mr Braam Lategan, to the Cape Supreme Court It was in conflict with the important tradition of appointing judges only from the Bar and not from the civil service, but the Minister of Justice, Mr Alwyn Schlebusch, overrode objections from the General Bar Council and went ahead.

And behind all this, of course, lies the longer story of how over the years the executive has steadily taken more and more arbitrary powers to itself, bypassing the courts and diminishing the role of the judiciary.

Thus one can imagine a slow growth of disillusionment, until something occurs as a last straw If that stage has been reached with two judges, are there perhaps others not far behind?

252 Rapport 20/1/80

Regter wil nie uitpraat

* VERVOLG VAN BL. EEN *

gaan praktiseer

* In regskringe is daar verskeie besware teen die aanstelling van regter Lategan.

Die Prokureur-generaal werk feitlik uitsluitend met strafsake, terwyl dit maar sowat 'n tiende van die Hooggeregshof se werk uitmaak, verduidelik 'n advokaat. „'n Man wat sy hele lewe net met strafreg te doen gehad het, gaan dit moeilik in 'n regterstoel vind. Ek weet nie hoe hy siviele reg gaan toepas as hy nog nooit as advokaat gepraktiseer het nie. Ek dink dit is onmoontlik om dit te doen. Dit sal so 'n man jare kos om in te haal.

„Die feit dat 'n voormalige regsadviseur, L C Steyn, as regter aangestel is, is nie as presedent van toepassing nie, want regter Steyn het as regsadviseur met die hele spektrum van die reg te doen gehad," sê die advokaat.

In regskringe word ook gevoel dat 'n staatsamptenaar moontlik nie so onafhanklik soos 'n advokaat kan wees nie.

„'n Man wat sy hele lewe vir die staat opgetree het, kan miskien onbewus neig om hom aan die staat se kant te skaar. Dit is die gevoel in regskringe."

Nog regters kan bedank

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Rapport 20/1/80

Deur HENRI CROUS en MARISSA VAN NIEKERK

NOG regters gaan moontlik binnekort om dieselfde redes as regter Anton Mostert en Mervyn King bedank. Regsgeleerdes het gister aan RAPPORT bevestig dat daar wye ontevredenheid onder regters heers oor toestande in die regstelsel.

Die hoofgriewe berus op beweerde miskenning van die Suid-Afrikaanse regbank deur politici en sekere staatsdepartemente en die verontagsaming van besware voor die regbank. In laasgenoemde geval word die voorbeeld genoem van adv Braam Lategan wat ondanks besware van die Balieraad deur mnr Alwyn Schlebusch, Minister van Justisie, as regter aangestel is.

Regter Lategan was voorheen Prokureur-generaal van Kaapland en lid van die Erasmus-kommissie.

Mnr Schlebusch, wat binne 'n bietjie meer as 'n maand ná sy ontname van justisie te kampe het met regterlike probleme, is nie beskikbaar vir kommentaar nie. Ook lewer oor die bedanking van regter Mostert nie.

„Die rede daarvoor is dat ek vanselfsprekend nie (die redes) weet nie en as ek geweet het, sou ek nie gesê het nie," sê hy.

Volgens adv J P J Coetzer, Sekretaris van Justisie, is die departement nie bekommerd oor die bedankings van die twee regters nie. Regter Mervyn King het skaars agt maande as Transvaalse regter gedien, sê hy.

Adv Coetzer sê alles wat hy van die bedankings weet, het hy in koerante gelees.

Regter Mostert het gister gesê: „Ek hoop nie dat dit vir my nodig sal wees om op my verklaring (die bedankingsaankondiging) uit te brei nie. Deur dit te doen, sal dit net die huidige polemiek aanblaas. Dit is in belang van die regspleging dat die twisgeskryf tot 'n einde kom."

Regter Mostert, wat vyf jaar gelede as regter aangestel is, sal aanbly tot 26 Februarie wanneer sy vakansie verstryk. Hy is van plan om voorlopig in Pietermaritzburg te woon totdat hy in Johannesburg

* VERVOLG OP BL. 2

about 10% of the deaths in the main urban districts are not registered for Africans.

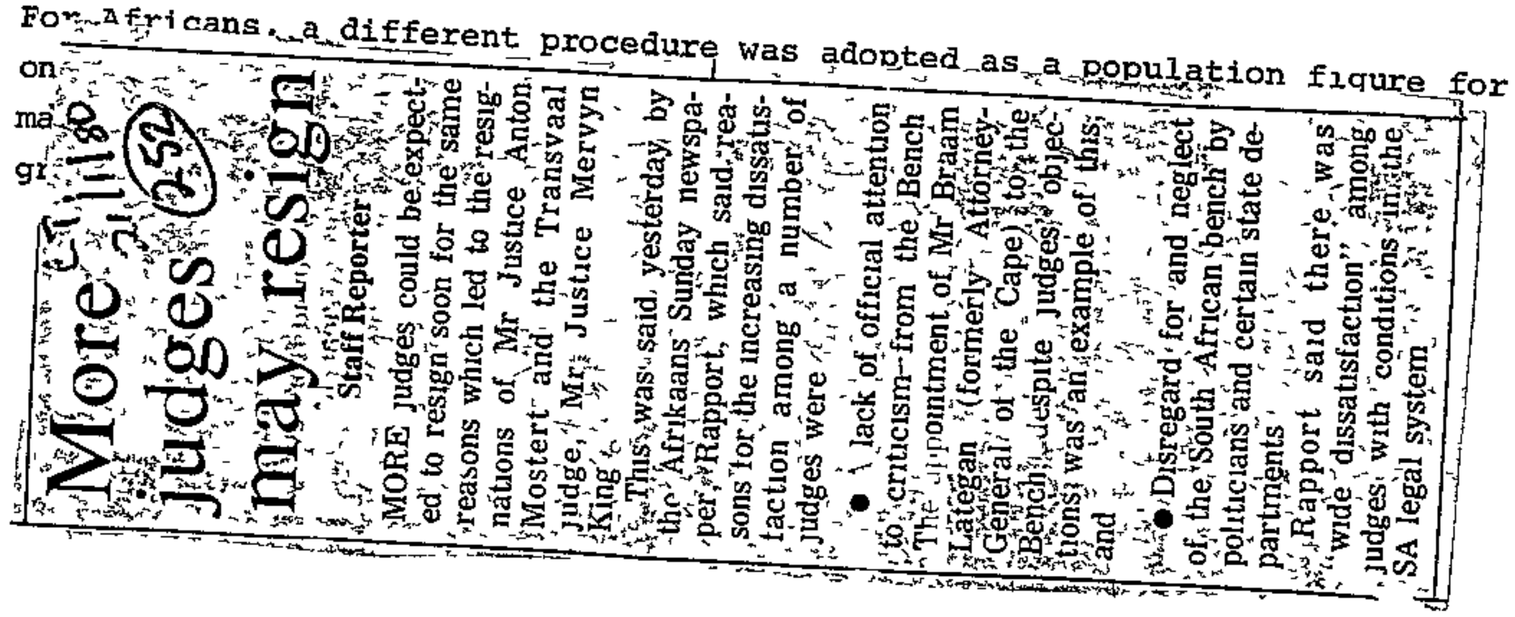
METHODS

The following indices were calculated:

1. Crude Mortality Rates.
2. Standardised Mortality Rates. Two standard populations were used: England and Wales representing a developed population and Mexico 1960 for a developing one.
3. Age and Cause Specific Death Rates. Calculated mainly in five year age groups for the seventeen major divisions of the eighth revision of the International Classification of Diseases (ICD).
4. Proportions of Causes of Death.
5. Infant Mortality Rates.
6. Expectation of Life. Calculated for 1970, the last census year.
7. Competing Mortality Risks.[8] This is the mortality experience of a population under the hypothetical conditions which would exist if a particular cause of death were eliminated. It gives an indication of the relative effect of that cause on the expectation of life.

The calculation of rates involves a knowledge of the base population age specific population. No official estimates of this are available for inter-censual years. For whites, Asians and 'coloureds, the 1970 population has been projected forward using the age specific survival rates from 1970 and taking into account the actual births and deaths in the 0-4 age group. Allowance was made for migration.

For Africans, a different procedure was adopted as a population figure for on ma gr



More judges may resign

Staff Reporter

MORE judges could be expected to resign soon for the same reasons which led to the resignations of Mr Justice Anton Mostert and the Transvaal judge, Mr Justice Mervyn King.

This was said yesterday by the Afrikaans Sunday newspaper, Rapport, which said reasons for the increasing dissatisfaction among a number of judges were:

- A lack of official attention to criticism from the Bench. The appointment of Mr Braam Fourie (formerly Attorney-General of the Cape) to the Bench, despite judges' objections, was an example of this; and
- Disregard for and neglect of the South African bench by politicians and certain state departments.

Rapport said there was "wide dissatisfaction" among judges with conditions in the SA legal system.

The crude death rates and the standardised mortality rates for whites, Asians and 'coloureds' and urban Africans are presented in Fig. 1. The interpretation of these figures is confounded by the differences in the underlying structure of the population. The population pyramids of the various groups were pictured in Part I with the exception of the urban Africans, which appears in Fig. 2. This population shows an excess of healthy working males and lack of elderly persons as a result of the migratory labour situation.

The standardised mortality rate provides a single figure for the mortality experience of a population which can only be fully expressed in terms of a series of age specific death rates. The SMR is calculated by multiplying all the age specific mortality rates in the observed population by the corresponding numbers in the standard population, adding the number of deaths so obtained and dividing the total standard population. While this figure is independent of the age structure of the observed population, the choice of the standard population will affect the weighting given to the deaths in the various age groups. The choice of an underdeveloped population as a standard will give great weight to infant deaths and little weight to deaths among the elderly, while a developed standard population will reverse the position. The choice of standard population affects the ranking of the mortality between the observed groups. There is no 'true' answer. As the Duke of Wellington said: 'There are lies, damned lies, and statistics'!

Infant mortality rates are summarised in Fig. 3. Once again, difficulty is experienced in obtaining data for Africans. Birth statistics for Africans are not published by the central government. The various medical officers of health[9] have estimated the infant mortality rates for their urban areas. These show considerable variation. (See also ref.15). A mean figure and the range are given in Fig. 2. These de facto figures should be interpreted with caution as sick infants are often brought to the cities from rural areas. An indication of the situation in the rural areas is given by a sample survey carried out in Cape Town and Transkei among Xhosa-speaking Africans.[12] An increase in infant mortality was observed with decreasing urbanisation, the figure for the completely rural areas being of the same magnitude as those parts of the world devoid of medical services. Fig. 4 summarises the age specific mortality rates of

Notes:

In addition, much research at universities is funded privately. MRC grants constituted only 21,5% of UCT medical research funds.

Additional costs are: disability grants; compensation for industrial accidents; compensation for occupational disease.

In the latter category, the mines alone accounted for compensation worth R17 million for occupational diseases:

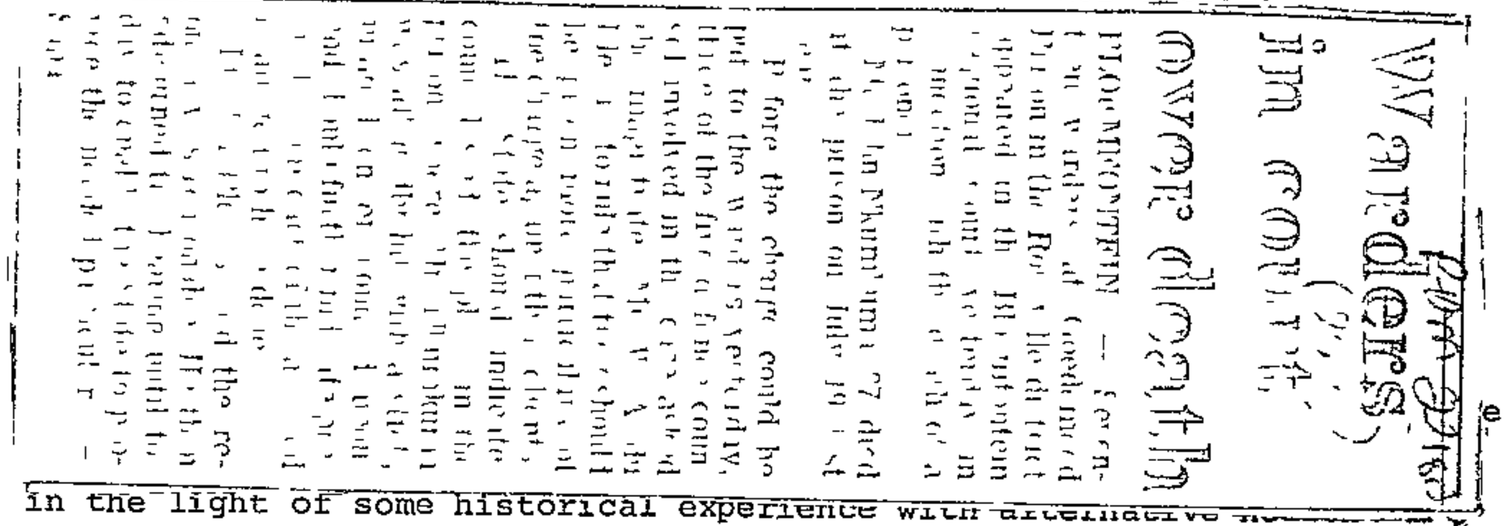
sick pay funds; unemployment insurance paid to workers off sick, health care provided by the industrial sector.

These figures include only direct costs to government, private persons or firms. Indirect costs: loss of productivity, inconvenience etc. which can be measured in money terms would probably be far greater; e.g. Wynand Louw (*20) estimated the cost of alcoholism and problem drinking in the Western Cape alone to be R33 million, of which R14-15 million was accounted for by loss of production. Oosthuizen (*63) estimated the cost of peptic ulcers in South Africa to be R50,8 million p.a., of which R31,9 million p.a. was loss of production. Thus, these direct expenditures are not the only, or the main economic loss to be avoided by improved health care and prevention. Added to this, are the unquantifiable costs of inconvenience, pain and bereavement.

McGrath (Ch.5) pointed out that health expenditure in South Africa has not kept up with the growth of GNP since 1959/60 and is now below the average proportion of GNP for other countries with the same income level. This is associated with a falling proportion of government expenditure allocated to health services. (See Ch.5, Table 4).

The overall impact of health expenditure on health status is limited, McGrath shows, by an extremely uneven allocation. The racial distribution of health expenditure (insofar as this can be judged from official statistics) is more uneven than that of either income or total consumption. 73% of Whites are covered by medical aid, but very few Blacks. There are disparities in both quality and quantity of hospital beds in relation to population. The geographical differences in population per doctor (969:1 in the 13 largest urban areas and 23 037:1 in 'homelands' in 197C) are representative of the differences in the availability of health services by area, and this further accentuates racial and income inequalities.

3.2 HEALTH STRUCTURES IN SOUTHERN AFRICA: — SOME CASE STUDIES



in the light of some historical experience with alternative [illegible] structures, as described by Kanis, in Chapter 8, where he discusses the Gluckman Commission and the Health Centre experiment. The 1944 Gluckman Commission[9] investigated the contemporary health service structure and found it fragmented, poorly distributed in relation to health needs, and excessively oriented to curative medicine. It proposed alternatives for future development, which were later practised in Israel and other countries, but which failed at that time to gain wide acceptance in South Africa.

The Commission advised the establishment of a National Health Service, 'based on a modern concept of health', an integrated preventive, promotive and curative service at grassroots level, using a team approach.

3.3 URBAN SERVICES

Although the Day Hospitals (in the Cape Province) have been seen in the light of the health centre experiment, Raine (Ch.15) points out that the comparison is tenuous: the Day Hospitals have no preventive role at present and operate with conventional staffing patterns; they treat those who attend without attempting to work directly in the community. This is the work of the district sisters organisation and health educators employed by the Cape Divisional Council.

Despite the impressive improvements in health status in the Cape cited by Smith in support of the Day Hospitals Organisation (DHO), Raine shows the difficulties in relating such benefits to the nature of health services when so many other variables are involved

PRISONER LAY IN POOL O BLOOD — WARDER TELLS COUR

A PRISON warder told a court in Bloemfontei n yesterday he had seen a prisoner lying pool of blood, with the marks of an assault cl early visible on his back.

Post

Warder G Victor was giving evidence in the Regional Court at the hearing in which 17 warders are charged with culpable homicide in connection with the death of a prisoner

Six white warders and 11 black warders have pleaded not guilty to the charge

The prisoner John Nkumkuma died in the Goedemoed Prison at Aliwal North on July 19 last year

Mr Victor told the court he had heard that day that a prisoner had escaped A number of warders had gone searching for him.

STRUGGLE

Mr Victor had been walking with another warder, Mr F de Wet when the latter's dog nosed out the escaper, who tried to run away

Mr de Wet told the court Mr Victor had caught the prisoner and both had fallen to the ground in a struggle

The dog caught hold of the escaper on the thigh.

The prisoner had been handed over to the other wardens and Mr Victor and Mr de Wet had gone to search for Mr Victor's cape and the dog's leash

Mr Victor told the court he had returned to the prison a short while later and had sat outside to rest before entering

When he went into the prison he saw the prisoner lying in the courtyard in a [illegible] blood Marks on his indicated he had assaulted

The hearing conti today — Sapa.

of some or all inputs, and gains from an ad-
e state of the art. This is controversial and
rom the battlefield. But in the medical sector,
may be a dwindling number who hold that in rich
he inputs of a given kind and given quality
alists, hospital structures, equipment, drugs)
aise the health status of the recipient popula-
[illegible] indicators. Two decades back, a plateau

HEALTH CARE EXPENDITURE AS A PERCENTAGE OF GNP

COUNTRY	PERCENTAGE	SOURCE
United States (1975)	8,3	Marmor (1977:75) Klarman (1977:215)
(1976)	8,6	Marmor & Tenner (1977:21)
Canada (1976)	7,1	Marmor & Tenner, ibid.
West Germany (1971-2)	5,8	Kaser (1976:20)
(1976)	8,0-9,0	Chester (1976:70)
Netherlands (1971-2)	6,7	Kaser ibid.
France (1973)	5,8	Chester (1976:70)
(1976)	7,0-8,0	Chester ibid.
GDR (1971-2)	5,8	Kaser ibid.
United Kingdom (1971-2)	5,1	Kaser ibid.
(1975)	5,4	OHE (1976:1)
Czechoslovakia Hungary, Poland (1971-2)	4,8-5,1	Kaser ibid.
South Africa	3,6	McGrath (1978:11)
USSR, Bulgaria, Rumania (1971-2)	2,4-2,8	Kaser ibid.

Note: These are selected, unadjusted estimates culled from a range of miscellaneous sources; they may not be fully comparable.

processes is essential; and the division will have to be more fine the more discriminating public decisions can be.[10]

The results of programme budgeting may be valuable in themselves, although the mere procedure does not necessarily ensure that better decisions will be made. Their potential is realised only if there follows an assessment of the value of expenditure in each programme

ing. This is partly due to a deficiency in information on the results of the programmes which can be resolved by recourse to appropriate data. Nevertheless, there will also be differences of judgement which cannot be resolved without prior agreement on the relative valuation of different benefits which have to be fed into the analysis; and in the intuitive process, these two factors may not be differentiated.

A very large proportion of decisions are now taken with no further analysis than this. Any further steps involve a way of systematically valuing the

ogrammes to render them comparable to one another.

bd for Setting Objectives

guiding the choice of priorities has been [12] It has been used by medical and nursing one of its advantages is that it can be used available. It, therefore, lends itself to experience of a group of people.

re first listed, and then given a score (from ach of four headings:

ing health problems

	Severity	Community concern	Vulnerability to management	Total
	++++	+++	++	96
	++	++	+++	48
	+++	++	++	36
	++	++++	++	32
	++	++	++	16
	+	++	++	16
	+++	+++	++	54
common cold	++++	+	+	0
Yaws*	-	++	+++	0

* Added to test scoring method

PRISONER KICKED
ALL OVER
WE'RE BOYS' 262

AN ESCAPED prisoner who had been recaptured was being kicked on "all parts of his body", by a Goedemoed Jail warden while lying in the prison quadrangle

This evidence was given by Warder V Qhwanyaza before Mr W A du Plessis in the Bloemfontein Regional Court yesterday when the culpable homicide trial of 17 warders of the jail was resumed

All the accused have pleaded not guilty to causing the death of the escaped prisoner, Mr John Nkumkumba on July 19 last year

The accused are Mr Sybrandt A Gous (21), Mr Petrus D Saayman (32), Mr Jacobus Willers (30), Mr Gerrit J Steenkamp (21), Mr Quinton J Thompson (18), Mr Herman Oosthuizen (21), Mr David T Mlungwana (26), Mr Mzoli C Zingane (28), Mr Elliot M Bhuqa (28), Mr Wellington T Mgidi (26), Mr Mzandwele Diko (27), Mr Abraham Ntlomeng (27), Mr Samuel Ntlai (25), Mr Victor Kometsi (43), Mr Jackson Mboyi (24), Mr Simon Lebona (41) and Mr Patrick Khomari (22).

Mr Qhwanyaza said he had been helping to search for an escaped prisoner on a koppie outside Goedemoed Jail when he heard a whistle being blown.

He saw Mr Gous fell the prisoner with a punch to the jaw. Two warders, Mr M Ndziba and Mr Bhuqa, helped to pick the prisoner up

Mr Gous then said. "Release the dog so that he can walk in front."

Mr Thompson and Mr Gous walked in front of the prisoner and Mr Oosthuizen joined them Mr Gous pushed the prisoner from behind

'KICKED'

ESCAPER

From Page 1

While lying on his stomach, the prisoner Mr Boyi gripped a leg They took him to the jail ner court of him. where they left I dropped: "He was the fall. I could hear the noise made by the as if a person heard noises kicked and son was being kicked and hit. My view was obscured by the iron grilles of the jail" The hearing continues today

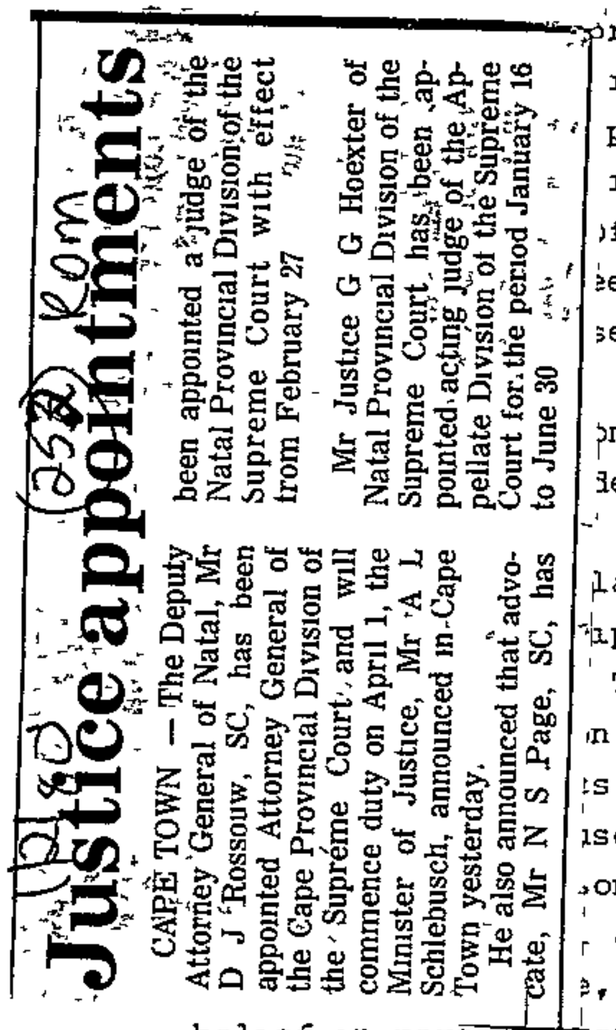
Mr Qhwanyaza said he and others who had been walking some distance saw Mr Gous behind. Thompson pulled and Mr Thompson by the ing the prisoner was arms. Mr Oosthuizen close by. was "It appeared as if the prisoner losing consciousness, his head was lolling.

Whisson (*14), Watts (*7) and Holdstock (*15) show that diviners and herbalists continue to practise widely in the town as well as in the country. Westcott (Ch.12) and Holdstock note that problems dealt with extend far beyond the strictly medical, to a wide variety of problematic relationships and material losses or needs.

Monica Wilson (Vol.2) and Schweitzer (Vol.2) also regard many prophets and priests in independent churches as indigenous healers; they see healing as a large part of their role and utilise a variety of traditional and religious symbolic processes to this end. They are consonant with the culture and environment of their adherents. Schweitzer attributes their increasingly important role to the conflict which indigenous healing may present to Christian beliefs, and perhaps also to the fact that the movement is particularly concerned with problems resulting from urbanisation.

A number of reasons are presented for the frequent hostility towards such healers from Whites and from the medical profession in particular.

(1) Lack of knowledge, in itself engendering suspicion. The world views underlying indigenous healing are for the most part inaccessible to the Western-trained White doctor, and may appear inconsistent


Justice appointments (252)
CAPE TOWN — The Deputy Attorney General of Natal, Mr D J Rossouw, SC, has been appointed Attorney General of the Cape Provincial Division of the Supreme Court, and will commence duty on April 1, the Minister of Justice, Mr A L Schlebusch, announced in Cape Town yesterday.
He also announced that advocate, Mr N S Page, SC, has been appointed a judge of the Natal Provincial Division of the Supreme Court with effect from February 27
Mr Justice G G Hoexter of Natal Provincial Division of the Supreme Court, has been appointed acting judge of the Appellate Division of the Supreme Court for the period January 16 to June 30

roach. Such experience medical doctors have
igenous treatment is often biased as it is
patients who came to them after a failure in
ional practitioner' (Solomon). She adds
of their own patients perceive treatment failure
eek out help in the traditional sector goes
se of the Thalidomide baby should be a constant

me treatments which is perceived, resulting in
death. However, harmfulness may also be partly

latans practising beside healers who have under-
ip, which she notes is a matter of concern to
They would prefer the recognition of a pro-
n, but Wilson feels that the best control is
s themselves, who go to those who help them.
ise divining and witchcraft (Wilson).
onal causation of disease can exacerbate
anxiety. Wilson concedes that there is some
, although in the case of mental illness the
belief in personal causation may be, in a sense, accurate; and divining techniques may be anxiety-relieving as well as anxiety-causing.

No mention is made of [illegible]
It may be that the secure position of the Western-trained medical practitioner is not threatened by indigenous healing, as its manifest effectiveness in certain conditions ensures a demand already in excess of supply.

It is probably on the basis of their effectiveness or otherwise that indigenous practitioners will ultimately be recognised by the wider medical profession or not. The papers presented contributed much on this score, although, as Schweitzer says, it is difficult to evaluate the effectiveness of indigenous healing because the 'goals and objects of treatment are not defined within a biomedical idiom'; the definition of 'normality' and 'illness' are different.

Various papers recorded that indigenous healers on occasion referred patients to Western-trained doctors and also to mental hospitals. Schweitzer notes that the fee may be returned to the patient if she does not appear satisfied.

In view of the undoubted satisfaction of the patients and their apparent improvement under the care of the *igqira*, Bührman, herself a practising psycho-analyst, goes on to discuss the reasons for this success. (See Ch.13, Vol.2).

Most of the papers recommend some degree of recognition of indigenous healers on the grounds that they are effective, often more so than their Western-trained counterparts, though a better understanding of the reasons for this effectiveness may be needed before scientifically trained health personnel can support this. Additional grounds are that so few medical practitioners are available in many urban and rural locations. Holdstock notes that there are as yet 'no registered Black clinical psychologists or psychiatrists in any of the urban townships, there is only a handful of social workers'. A large proportion of physical ailments are psychosomatic and less likely to be treated effectively by Western medicine. Further, recognition would enable a dialogue to take place which would result in an attitude less damaging to the patient on the part of Western-trained doctors (Watts *7) and enable both sides to learn from each other.

9. MENTAL HEALTH SERVICES

9.1 Historical Background.

Solomons (Vol.2) describes the origins of the mental health service in South Africa. Overcrowding grew from 8% in 1916 to 25% in 1960. Commissions

The bureaucratic threat to justice

The legal profession is worried by what appear to be moves towards the appointment of public servants as judges. They feel bureaucratic interference is a great danger to the independence of the judiciary. In the light of the recent resignations of two Supreme Court judges, a senior advocate spells out the fears of his profession for 'Mail' readers.

ON NOVEMBER 30, 1979, the State President appointed the Hoekstra Commission of Inquiry into the structure and functioning of the courts

One of the terms of reference was that the commission should in its recommendations give attention "in particular, not exclusively, to the desirability of establishing outside the public service an intermediate court between the lower courts and the Supreme Court which would as far as possible sit throughout the country and replace the existing regional court and of restricting criminal appeals from such a court to a superior court by requiring leave to appeal"

The recent resignation of two members of the Supreme Court Bench, Mr Justice Anton Mostert and Mr Justice Mervyn King, has made it very relevant to ask why the question of the intermediate courts should be submitted to the commission

Obviously it is not proper to endeavour to anticipate or influence the findings of the commission which will be based on representations made to it

It is, however, legitimate to inquire whether the fact that this question has been submitted to a commission is a symptom of a tendency in the administration of justice which may give cause for disquiet

Although the terms of reference of the commission refer to establishing an intermediate court "outside the public service", the history of the move towards the establishment of intermediate courts seems to indicate that, even though the courts may be ostensibly outside the public service, supporters of the setting up of those courts contemplate that they will provide an avenue for promotion of members of the public service

In several addresses to meetings of members of the Department of Justice the present Secretary for Justice — himself a member of the commission — has exhorted magistrates to fit themselves for office as judges in the intermediate courts An article in "Nuntius", the annual journal of the Justice Society, the members of which appear to be almost entirely members of the public service and the president of which is the Secretary for Justice, advocates that all magistrates should be referred to as judges

The author of the article is Mr C F Klopper, one of the three members of the public service sent overseas to investigate, among other things, the structure of courts with a view to the "possible institution of an intermediate court in South Africa in the immediate future"

The putting into effect of a proposal for the setting up of intermediate courts with magistrates as members of those courts might well have very serious effects on the administration of justice in South Africa

Many magistrates no doubt carry out their tasks very competently and under unenviable working conditions But the fact remains that their training is entirely in the public service

They have usually started their working life in the Department of Justice and have worked their way up, usually through the ranks of prosecutors, to a seat on the Magistrate's Bench

Many of them have a spell in the administrative section of the Department of Justice and many of their functions, particularly in country areas, are administrative rather than judicial

The history of the proposal is of crucial significance The Supreme Court Bench is drawn from the ranks of practitioners in private practice Their attitude of mind is independent To those who wish to assert an authoritative bureaucratic regime, this independence frequently seems excessive and unwelcome because it questions the authority of anyone who seeks to infringe the normally recognised fundamental rights of the private citizen The Supreme Court Bench is not impressed by suggestions that actions are 'in accordance with policy" or similar justifications

The only justification that it recognises is that an act is in accordance with the law

Bureaucratic interference represents a very great danger in modern times Unless it is kept within its proper limits it can reduce to vanishing point the liberties of the ordinary citizen For this reason alone (and there are many others) it is essential that the independence of the Supreme Court must be preserved

The citizen cannot be expected to look with confidence to a court whose members are drawn from the ranks of a State department to protect them against the advance of bureaucracy The bureaucrats are themselves members of State departments It would therefore be a sad and probably a fatal day for the administration of justice as we understand it in South Africa today if the distinction between the Supreme Court and other courts became blurred The tendencies mentioned above show a move towards blurring that distinction If magistrates as well as judges are called judges, then obviously the difference in name disappears

If magistrates are appointed to an intermediate court with the title of judges, not only will the distinction in name disappear but a stepping stone will be created to facilitate the [illegible] ex-members of [illegible]ment of Justice [illegible]preme Court Bench the direction to [illegible]sion is to investi[illegible]ting up of the [illegible]court outside the [illegible]vice Clearly, [illegible]numbers requir[illegible]court would [illegible]sary for appointi[illegible] from the ranks [illegible] have served in [illegible]ment of Justice

Many respon[illegible]ior members of [illegible]fession feel that [illegible]years there has [illegible]erate policy of [illegible] status of the [illegible] salaries have [illegible] kept pace with [illegible]living and compar[illegible]vourably not only [illegible]ries available in [illegible]and industry but [illegible]muneration paid [illegible]Ministers

This is a cor[illegible]cent developme[illegible]1930's judges a[illegible]Ministers were [illegible]on approximately [illegible]scale

Working condit[illegible]sence of the [illegible] endeavours are [illegible]powers-that-be to [illegible]preserve their [illegible]grave causes for [illegible]tion

Unless it is c[illegible]manifest that [illegible]the Government [illegible]serve the [illegible] status of the [illegible]inevitable that [illegible]uneasiness that [illegible]mentioned in this [illegible]symptoms of a [illegible]sire to lower the [illegible]Supreme Court [illegible]must be stressed, [illegible]from the only sy[illegible]

The inevitable [illegible]that, even if it is [illegible]by those who do [illegible]gravely to harm [illegible]destroy the inde[illegible]the Supreme C[illegible]and with it the [illegible]affords to the com[illegible]

Lawyer reveals judges' pay plight

NATAL MERCURY 2/2/80

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CAPE TOWN — Advocates have been turning down offers of appointment as judges because the pay is too low.

This was revealed here yesterday by Mr E R Liefeldt, president of the Association of Law Societies, in a statement concerning the resignations of Mr Justice Anton Mostert and Mr Justice Mervyn King.

Mr Liefeldt declared: 'It is, with respect, placing too high a premium on a judge's status to expect a highly competent advocate to accept, for say 25 years of his working life, an income which might be as little as a third or even a quarter of what he could earn in private practice.

'We now have the undesirable phenomenon of appointments being offered to suitably qualified advocates and being turned down for financial reasons.

'A judge's position was such that he should not have to be concerned financially or to query whether his appointment was worthwhile.

He said that if financial frustration on the part of judges was to be avoided and that if appointment was to continue to be attractive to those persons who should be on the Bench, the matter of salaries needed urgent revision.

The fact that, in spite of the pay, the Supreme Court Bench had been able to maintain its standards of competence, independence and impartiality was of some surprise to Mr Liefeldt.

The Association of Law Societies did not wish to become involved in speculation as to the reason for the resignation of the two judges, or to comment on the attitude of the General Council of the Bar to their readmission to the Bar, which was a domestic issue for the Bar councils concerned.

The statement said that the standard of the independent judiciary was a matter of pride locally and of congratulations internationally.

Tribute

Mr Liefeldt paid tribute to the public - spiritedness of the judges, 'not because of the shortage in the country of suitably qualified persons for elevation to the Bench, but because of the pay they receive'.

In recent years younger judges who had not had an opportunity to build up substantial estates were being appointed.

'At the same time the earnings of advocates approaching eligibility for the Bench have increased so that elevation may mean a financial sacrifice which a man otherwise eminently suitable for the Bench simply cannot afford to make, whatever the other advantages of his appointment may be.' — (Sapa)

Schlebusch lays down law to verkrampte advocates

By KITT KATZIN

PRETORIA'S verkrampte advocates have been told in blunt terms by Minister of Justice Alwyn Schlebush that they will have to change their racial attitudes and admit Black members to the all-White Bar Association

Documents given to the Sunday Express this week reveal that the Minister said he would support the application of a Black advocate, received last year, to become a fully-fledged and practising member of the Pretoria Bar

The Pretoria Bar is the only one in the country to ban Blacks

Mr Schlebusch laid down these policy lines in "friendly but serious" discussions with the chairman of the Bar, Kees van Dijkhorst, SC The discussions took place at Civitas, Pretoria, two months ago

A memorandum based on his remarks was circulated to members of the Bar

According to that memorandum, Mr Schlebusch said the Bar's constitutional ban on Blacks "stuck out like a sore thumb" and should be abolished

He warned Mr Van Dijkhorst, SC, that the Bar "was swimming against the stream"

He said it would have to give in eventually

The Minister was told by Mr Van Dijkhorst that a Black advocate, Mr T B R Kgalegi, had applied to practise as a junior at the Bar and possibly become a member

Discussing this application, Mr Schlebusch told Mr Van Dijkhorst that, if it was decided to admit Mr Kgalegi the necessary forms should be sent to Mr Schlebusch He would then see they were submitted to the proper authorities

And he would support the granting of a permit

The ban on Blacks by the Pretoria Bar — largest and most active in the country — has generated considerable racial bitterness in the past

During recent years there have been several moves to open the Bar to all races

Ironically, at a number of meetings a majority was in favour of doing so but there was not the two-thirds majority necessary to change the constitution

Early last year Black attorneys in the city threatened to expose the 48 advocates who had voted against admission of Blacks to the Bar in a secret ballot

It was the second year running that a move to allow Blacks had been blocked in secret ballot

Black attorneys then informed the Bar Association that in future advocates would have to answer a questionnaire on their personal racial views before being briefed by a local Black attorney

"We feel we would not be doing our clients, who are predominantly Black, a good service by having their cases handled by people who have deep-seated racial prejudices," said Mr A Cassim, a spokesman for the Black attorneys

Yesterday the secretary of the Pretoria Bar, Willem Heath, commenting on Mr Schlebusch's remarks, said it was well known that the constitution of the Bar did not allow Blacks to become members

Asked whether, in the light of Mr Schlebusch's views, the restriction was likely to be abolished, Mr Heath said it was possible the matter would be discussed, although Mr Kgalegi's application had not yet been considered

However, it did not mean that because Black advocates were not permitted to join the Bar in terms of its constitution, members were necessarily opposed to the move

"It depends on individual opinions," Mr Heath said

is consistently worse than that of the whites. The 'coloureds' have higher mortality rates for all the major causes of death apart from cardiovascular diseases and neoplastic diseases in men over 65 years of age, neoplastic diseases in women in this group, and cardiovascular disease in men 45-64 years of age during 1960 and 1970. Clearly the rate of 5/1 000 which has been chosen is entirely arbitrary but a similar pattern of mortality emerges if lower or higher levels are selected.

Two aspects of these age-cause specific mortality rates require emphasis. Firstly, whilst being affected by the incidence of the diseases in question, these rates are also influenced by their fatality rates, for example, a decrease in the mortality related to Tuberculosis will not only be influenced by a decreasing incidence of this dis- ...n at ...uent- ... s is ... cs ...h ... o- ...ro- ... ... 6. ... on ... t, ...es

Advocate-General decides on hearings

By ARNOLD GEYER

THE Advocate-General decides at his own discretion whether hearings are open to the public and the Press or not.

And any Press inquiries about the nature and number of complaints dealt with by his office have to wait until the Advocate-General's report to the Leader of the House of Assembly has been tabled

This was said yesterday by Mr J C Ferreira SC, assistant to the Advocate-General, Mr Justice P J van der Walt

He was asked to explain the nature of the proceedings in terms of the controversial Advocate-General Act, following confirmation that the ultra-Rightwing Herstigte Nasionale Party (HNP) had lodged a formal complaint.

The HNP alleges that BOSS and, later, DONS spied on and bugged party meetings and officials, and that National Party office-bearers used taxpayers' money to further their own political ends

Mr Ferreira said his office still needed considerable time to decide whether the Act cov-

or all persons — whose presence is seen as unnecessary or undesirable could be 'barred' from the hearing,

● If the matter relates to money credited with the Secret Services Account no-one shall be allowed at the proceedings, and that

● Any person who discloses the contents of a document in possession of the Advocate-General's office without permission from the Advocate-General is guilty of an offence

Mr Ferreira would not say how many complaints had been received since the post of Advocate-General was created last year or what the nature of the complaints were

"This is confidential information. The Advocate-General has to submit a report to the Leader of the House of Assembly, who, in turn, will lay it on the Table in Parliament within seven days".

Section 6 of the Act, however, empowers the Advocate-General to prohibit the publication of a report if he is of the opinion that it is not in the interest of State security

— ered the HNP's complaints

Mr Jaap Marais, leader of the party, said yesterday he was confident his "corruption, spying and bugging" allegations formed a "solid" case in terms of section 4 of the Act

This section states that any person can lay a complaint if there are reasonable grounds to suspect that

● State money has been dealt with dishonestly, or that

● Any person employed by the State has been — directly or indirectly — enriched or received any advantage in an unlawful or improper way at the expense of the State

When asked whether such an inquiry would be held in public or in camera and what the nature of the proceedings would be, Mr Ferreira referred to section 6 of the Advocate-General Act of 1979, which states that

● The procedure is determined by the Advocate-General at his discretion,

● The circumstances of each separate case determine the nature of an inquiry,

● Any 'category of persons —

Both white and 'coloured' females have shown an increasing life expectancy at the age of 45, and although this has been small, it contrasts with the downward trend of both white and 'coloured' males.

Although it is apparent that the Expectation of Life at birth for the 'coloureds' has shown a marked improvement between 1941 and 1970, it is salutary to note that neither 'coloured' males nor females, at either e_o or e_{45}, have reached expectations of Life in 1970 which are as high as the whites were in 1929. What also gives some cause for concern is that although the expectation of Life cannot be expected to improve indefinitely, it would appear that the 'coloured' life expectancy is levelling off at a much lower age than has occurred in the white community.

REFERENCES

1. Acheson, R.M., Hall, D.J. and Aird, L. eds. (1976): Seminars in Community Medicine, Volume 2: Health Information, Planning and Monitoring, Oxford University Press, London.

2. White, K.L. and Henderson, M.M. eds. (1976) : Epidemiology as a Fundamental Science, its Uses in Health Services Planning, Administration, and Evaluation, Oxford University Press, New York.

3. South Africa (1929-1940) : Report on the Vital Statistics of the Union of South Africa. Annual 1926-1938, Government Printer, Pretoria.

4. South Africa (1961-1965) : Bureau of Census and Statistics, Report on Deaths, South Africa and South West Africa, Reports UG 26/1961, RP 17/1961, RP 45/1965, RP 63/1965, Government Printer, Pretoria.

5. South Africa (1971-1977) : Department of Statistics, Reports of Deaths, Reports 07 - 03 - 01 to 07 - 03 - 12, Government Printer, Pretoria.

6. South Africa (1948) : Official Year Book No. 23, 1946, Chapter XXIX, Government Printer, Pretoria.

7. Van Tonder, J.L. and Van Eeden, I.J. (1975) : Abridged Life Tables for all the population groups in the Republic of South Africa (1921-1970), Report S-34, Human Sciences Research Council, Pretoria.

8. Preston, S.H., Keyfitz, N. and Schoen, R. (1977) : Causes of Death; Life Tables for National Populations, Seminar Press, New York

9. Sadie, J.H. (1970) : S. Afr. J. Economics, 38, 1.

10. Doll, R. (1976) : Monitoring of Government Statistics, in Seminars in Community Medicine, Volume 2. ibid.

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6/2/80

Persons hanged in Republic

*7 Mr D J DALLING asked the Minister of Prisons,

How many persons were hanged in the Republic during 1979?

†The MINISTER OF PRISONS

Hansard ... No 1 col. 4 6/2/80

(252)

Legislation: corporal/capital punishment

*8 Mr D J DALLING asked the Minister of Justice

Whether he intends to introduce legislation during the current session to (a) abolish or (b) limit (i) corporal and (ii) capital punishment, if not, why not?

†The MINISTER OF JUSTICE

No I am not aware of any reason why legislation on these matters should be introduced at this stage

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Persons executed in Republic

16 Mrs H SUZMAN asked the Minister of Prisons

How many (a) males and (b) females of each race group were executed in the Republic during 1979?

The MINISTER OF PRISONS

(a)	Whites	2
	Coloureds	33
	Blacks	98
(b)	None	

No news is bad news

The denial of current news to political prisoners appears to be an extra type of punishment which cannot be justified says Mr Harold Rudolph, writing in the SA Law Journal.

The courts should have the power to review decisions of the Commissioner of Prisons suggests Mr Harold G Rudolph, a senior law lecturer at Wits. Bob Kennaugh reports.

He is the fourth academic lawyer to criticise an Appellate Division judgment in which a number of political prisoners were refused literature or reading matter other than censored women's or similar popular magazines

The latest examination underlines the problem as to whether a prisoner retains or is stripped of his rights while serving a sentence

The prisoners who brought the application argued that by refusing them the news, the Commissioner of Prisons was unlawfully breaching rights which they claimed they were entitled to in terms of sections of the Prisons Act

Refusing an appeal against a decision in the Supreme Court the Acting Chief Justice Mr Justice Wessels (with whom three other appeal court judges concurred) stated that "life within an institution must of necessity be regulated by rules In the interests of security, discipline must at all times be maintained"

Basic rights or necessities, such as food, clothing, accommodation and medical aid, were covered in the regulations But in the opinion of Mr Justice Wessels "access to publications and to sources of news of current events cannot be regarded as being basic to maintaining the minimum standard of living"

The majority decision of the court was that the application had been founded on the alleged existence of rights enforced in a court of law. However it was clear the legislature intended conferring wide powers on the Commissioner "in connection with the performance of his functions by the Prisons Department" The court held that the Commissioner had a discretion in exercising his powers A court of law could not review his conduct, provided it was not inconsistent with the provisions of the Prisons Act, the regulations or any order of court

Mr Justice Corbett, dissenting, held that "fundamentally a convicted and sentenced prisoner retains all the basic rights and liberties . . of an ordinary citizen except those taken away from him by law, expressly, or by implication, or those necessarily inconsistent with the circumstances in which he, as a prisoner, is placed"

Mr Rudolph agrees with the views of the dissenting judge "Man has advanced from the days when it was thought that torture could only be physical. It is accepted almost universally that psychological maltreatment can be and often is as great a torture as is physical torture

"If this is so, then it is submitted that the prisoner has a right against such psychological treatment and this right is antecedent. This would mean that the exercise of the Commissioner's discretion is quasi-judicial and that the courts are empowered to review the exercise of it."

The poet Donne wrote. "No man is an island, entire of itself" And, says Mr Rudolph, the effect of the majority judgment as far as white long-term prisoners are concerned, "is to sentence them to imprisonment on a remote, desolate and lonely island, totally cut off from the outside world".

In conclusion he says "It appears that the 'no-news' rule is a type of extra punishment to be inflicted only on political prisoners

"One wonders whether the time is not ripe for the South African courts to adopt the approach of the American and European courts The tragic events surrounding the death of black consciousness leader Steve Biko make it imperative, in South Africa's interests, for her to be seen to treat all her prisoners in a just, humane and equitable manner"

CAPE TIMES 8/2/80 252

Judges' low salaries caus concern in legal circle

By STEPHEN WROTTESLEY

JUDGES are impartial, above reproach, uncomplaining — and underpaid

Talk in legal circles is that a number of top advocates who have been offered places on the Bench have turned them down because of the low salaries

Judges, part of South Africa's independent and impartial judiciary, earn less than leading men in other professions In fact, when they join the Bench, they probably have to take a drop in earnings of more than 30%

The plight of the judges was first raised when there was speculation that low salaries was a possible cause for the recent resignations of Mr Justice Anton Mostert and Mr Justice Mervyn King from the Bench

The two men have not disclosed their reasons for resigning, but a low judge's salary has been given as one of the possible causes

Last week Mr E R Liefeldt, president of the Association of Law Societies, called for urgent revision of judges salaries

"The judges' independent and impartial position makes it difficult, if not impossible, for them to make a public issue of their salaries," he said

This week the Progressive Federal Party said that a member of its justice group would certainly raise the question of judges' salaries during the justice debate

Salaries specified

Judges' salaries are specified in the Judges' Remuneration Act Salaries are set for a chief justice (R30 432), judges of appeal (R28 368), judge presidents (R26 976), deputy judge presidents (R26 280) and judges (R25 596)

They are also paid a tax-free allowance of R2 700 — a figure that has remained unchanged since 1968

Judges work long hours and the mental strain is telling Many executives would never dream of putting up with the hours of work that a judge performs

On Wednesday this week there were over 70 applications to be dealt with by the duty judge Every file has to be read before the court sits and the judge has to have the legal details of each case at his finger-tips

Often they are seconded to positions other than on the Bench

Judges have presided over some of the most important commissions in South African history and one, Mr Justice M T Steyn, acted as Administrator-General of SWA/Namibia

Mr Justice Mostert conducted a one-man commission into exchange control regulations — a commission which took him into the headlines with his disclosures concerning the now-defunct Department of Information

Mr Justice Cillie conducted the commission of inquiry into the widespread rioting that rocked South Africa in 1976, and Mr Justice Jan Steyn of the Cape Bench is executive director of the Urban Foundation

However, a judge, who is appointed from the most senior ranks of advocates, still earns less than a top self-employed architect, civil engineer, doctor, managing consultant, accountant or managing director

Statistics about the wage structure of graduate white men in 1979 released by the Human Sciences Research Council — statistics released *before* last year's increase in salaries for judges — showed that a top advocate earns in the region of R36 000, a managing director R36 480 and an accountant R34 305

Far down the scale were magistrates, whom the HSRC gave an upper average salary of R11 530, and public prosecutors with yearly incomes of R6 820

The difference in salaries becomes strongly apparent when comparing the salaries of a judge to the earnings of an advocate at the age that a judge is normally appointed

An advocate in the age bracket of 50-54 earns about R59 000, although lawyers spoken to said it was not unusual for an advocate to earn as much as R100 000 a year

Advocates often also sit as directors on a number of boards

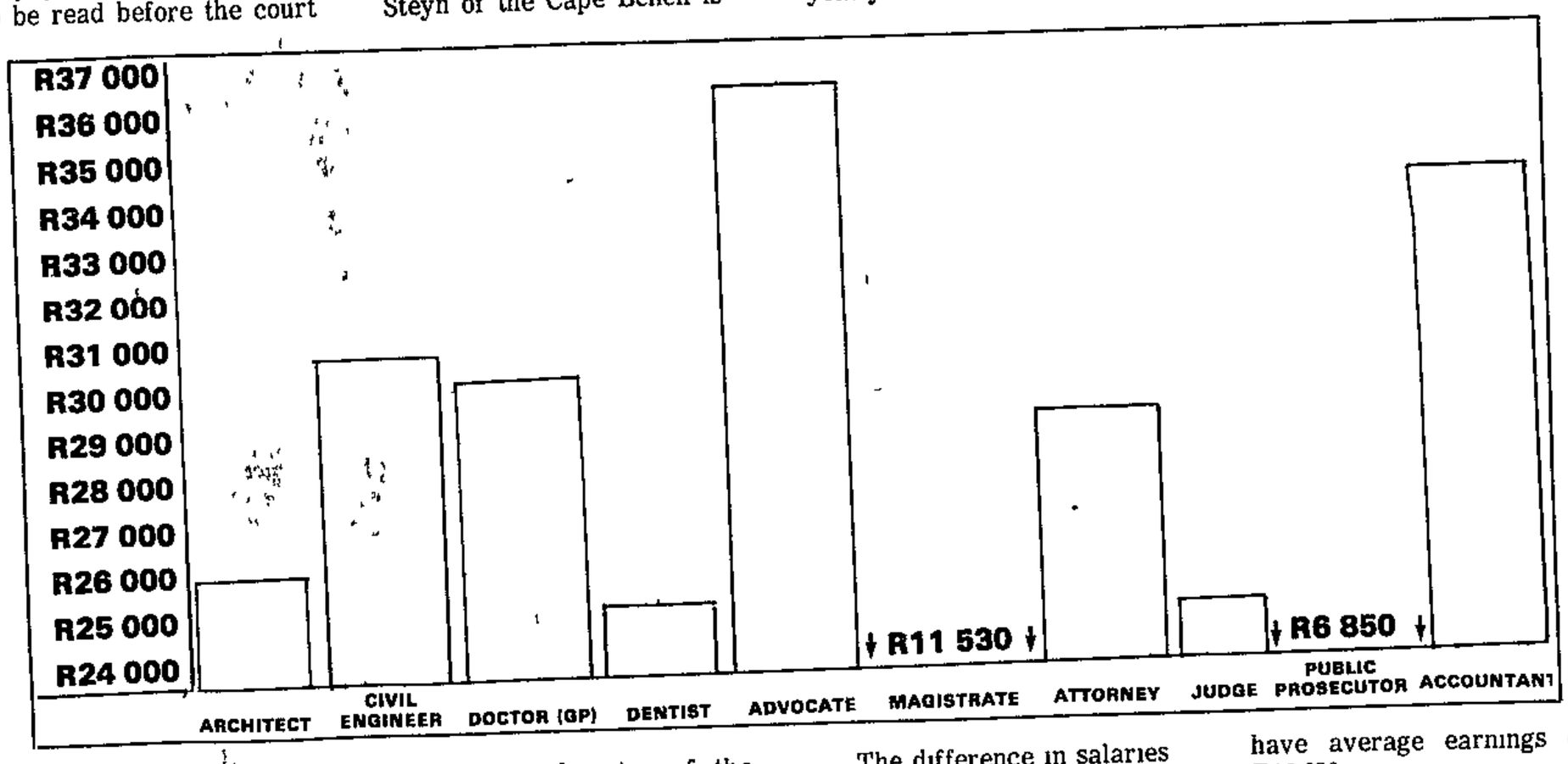
And, according to the statistics, while there had been an 8,2% increase in advocates' earnings, those of judges had increased by only 6,8%

Possibly the only man who may have had an increase in being appointed to the Bench was the former Attorney-General of the Cape, Mr A J "Braam" Lategan, whose controversial appointment was announced last year

According to the statistics, senior state advocates have average earnings of R16 630

Mr Liefeldt said last week "If one looks at the advertisement pages of the financial press one finds salaries offered for situations carrying far less responsibility and requiring far less qualification at much higher levels than those paid to judges "

'The standard of the independent judiciary in South Africa is a matter of pride locally and of congratula-



Cape Times 8/2/1980

Minister to review judges' salaries urgently

HOUSE OF ASSEMBLY — The Minister of Justice, Mr Alwyn Schlebusch, yesterday pledged his urgent attention to the question of judges' salaries

He was replying to a call on the government by Mr Dave Dalling, Progressive Federal Party MP for Sandton, to "pay judges what they are worth"

Mr Dalling also called for judicial appointments to be removed from the politically-controlled executive and placed in the hands of an independent "appointments board" representative of the Bench, the Bar, the law councils and the executive

He said the open secret that the Minister of Justice was finding it difficult to persuade suitable senior advocates to accept permanent appointments to the Bench was cause for great concern Senior counsel earned from R50 000 to R100 000 a year and many were also active in private business

"Upon becoming a judge, their income for life is less than one-third of what they achieved in the past In addition, they are required to resign their private business interests"

The principal reason for the present state of affairs was directly related, therefore, to the financial sacrifices they were obliged to make when leaving private practice

"The second reason has to do with increasing legislative interference in the administration of justice Every year more and more powers are removed from the jurisdiction of the superior courts"

Mr Schlebusch said the only point on which he could agree with Mr Dalling was on the question of judges' pay. He would consult his colleagues and give the matter his urgent attention

● Judges' salaries causing concern, page 11

TABLE II

Rheumatic Heart Dis

Hypertensive Diseas

Ischaemic Heart Dis

Cerebrovascular

Press shown prison

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DD 8/2/80

EAST LONDON — The new women's prison at Fort Glamorgan here was shown to the press and dignitaries yesterday

It will be occupied within the next fortnight by women prisoners from throughout the Eastern Cape, including long-term prisoners from Port Elizabeth and George

Colonel S J Oosthuizen, commanding officer of the East London Prison Command, Brigadier Hennie Botha, administrative control officer of Prison Information Services, and Colonel Erica van Zyl, chief inspectress of female prisons, showed guests the prison, which can house 300 prisoners

It will be run by an all-female staff of 48, has a 10-bed hospital section, and a kitchen to be manned by prisoners.

Other features are a needlework room and laundry, and a creche and feeding room for prisoners' babies

The prison will also serve as the Eastern Cape observation centre, and is one of the largest women's prisons in South Africa — DDR

Top: At the entrance to the new prison for women at Fort Glamorgan, Colonel S. J. Oosthuizen, commanding officer of the East London Prison Command (right) welcomes Brigadier Hennie Botha, administrative control officer of Prison Information Services (left), Colonel Erica van Zyl, chief inspectress of female prisons, and guests. Above: Colonel Erica van Zyl, chief inspectress of female prisons (right), with Major A. Gerber, prison social worker, and Captain M. E. van Staden, head of the new prison.

* Ey/7 suicide and self-... Africa which does not appear in I.C.D. (8th revision) ...

FATTIS & MONIS STRIKE

For almost a month 88 workers at the Fattis & Monis factory in Bellville Sout have been on strike. They struck because five of the fellow workers were dismissed. The workers say the dismissals were because all five were members of a trade union. The union was trying to negotiate for better pay and hours of work R40 a week and an 8 hour working day. A director of the factory says these demands are "out of all proportion" and unreasonable and would lead to "disruption" in his firm.

Officials of the 10 000 member union (the Food & Canning Workers Union) say the dismissed men had signed a document giving the union rights to negotiate for better conditions. The factory has refused to negotiate with the union. It says the men were replaced by machinery and that it was part of a cut-back of staff.

Although those dismissed are 'Coloured', more than half the men on strike are African contract workers. In spite of the threat of being endorsed back to the Homelands, the African workers have stood firm with their 'Coloured' brothers and sisters. On the first day of the strike men from the Department of Labour tried to separate 'Coloured' & African workers who had gathered outside the factory. The workers refused to be separated. One said, "We were all there for the same purpose."

Moves of solidarity with the striking workers are increasing. At a solidarity meeting last week more than 50 [illegible]ity and college students from U.W.C., Hewat, Peninsula Training College and [illegible] college called for workers to be reinstated and for a boycot[illegible] oducts.

The Western Province Traders [illegible]ll instruct its members not to sell the factory's product[illegible]iation.

The South African Council of [illegible]ed on all sports bodies and schools affiliated to SACOS [illegible] re-employment of the workers and a boycott of the factory

At a meeting at U.C.T. over [illegible] a call for a boycott of all Fattis & Monis products.

Fattis & Monis insist that [illegible] However a director of the firm says he is worried about the [illegible]f the factory's products by blacks as much of the facto[illegible]cks. The management have kept production going by employi[illegible] place of the stiking workers. However production has been

Who are Fattis & Monis? Fa[illegible] factory which produces the following products: All Rec[illegible]cluding self-raising flour, Cake flour, Bread flour, Sifted [illegible], Wjeatie Treat flour; All products with the Fattis &[illegible]luding icecream cones, wafers, cake cups, macaroni, spagetti, large & small shells, ribbon noodles - broard, narrow, plain and green, rings and dilatines; All the above noodles and spagettis under the following brand names: Pick 'n Pay, Pot o' Gold, Princess, Checkers and Roma; Philadelphia flour and Koeberg Mille pack mealie meal. Fattis and Monis also control a number of Bakeries including Wrench Town Bakery in Observatory, Good Hpe Bakery in Elsie River and Ultra Bakery in Somerset West.

Mostert readmitted to Bar

The Johannesburg Bar Council has readmitted the former Supreme Court judge Mr Anton W Mostert, to the Witwatersrand Society of Advocates.

Mr Mostert, a judge of the Natal Supreme Court, announced his resignation from the bench last month.

The announcement concerning Mr Moster's readmission to the Bar was made today by Mr Jules Browde, SC, of the Johannesburg Bar Council

Another former judge, Mr Mervyn King, was also readmitted this month.

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STUFFED CABBAGE SALAD — May Bennett, Ridgeworth

1 fresh green medium size cabbage
onions
carrots
tomatoes
fresh pineapple
radishes

Cut the centre from the cabbage, leaving the outer leaves to form a bowl. Wash well. Chop onion. Peel and cube the carrots and pineapple. Cube tomatoes. Thinly slice some of the inner leaves of the cabbage leaving the stalks. Place the carrots, pineapple, tomatoes, sliced cabbage and the finely chopped onion in a bowl adding any juice from the tomatoes, pineapple and add salt and black pepper to taste. Toss well. then pile the salad into the cabbage "bowl". Garnish with radish roses and a small bowl of mayonnaise for those who like it. To make the radish roses, cut across the tops in a double cross, then put them in iced water until the radishes open up.

---oOo---

GERMAN POTATO SALAD — Ethne Board, Port Elizabeth

boiled potatoes
cooked bacon
mayonnaise
chopped onion
salt and pepper

Cube the potatoes while still hot. Chop up the bacon, mix with the potatoes, onion and mayonnaise. Season with a little salt and pepper. Use hot or cold.

---oOo---

EGG SALAD — May Bennett, Ridgeworth

hard boiled eggs
salanaise
salt and pepper
paprika and persley

Cut eggs in half and lay on a flat salad platter; cut side down. Pour over salanaise.

---oOo---

CHICKEN AND CUCUMBER SALAD — S. Drury, East London

1 cup cooked chicken, diced
4 T finely chopped walnuts
French dressing/mayonnaise
lettuce
1 cup cucumber, peeled and diced
1 cup cooked green peas

Marinade chicken, cucumber, nuts and peas with French dressing. Serve on lettuce with mayonnaise. Cover with greaseproof paper and refridgerate until ready for use.

French dressing:
Blend together 6 T salad oil and 2 T lemon juice.

---oOo---

SPRING GREEN SALAD

1 medium size lettuce
2 onions
parsley

Wash and shred the lettu
keep a few pieces for ga
Wash scallions, and cut
green left on. Toss the
scallions together, salt
dressing and serve in a
of mint and parsley.

CURRIED GREEN BEAN SALAD

2 lbs sliced green beans
2 chopped onions

Boil the beans (sliced)
pour off the water.

Sauce:
1 1/2 cups sugar
1 d curry powder

Mix the curry powder, f
so that no lumps form,
boil up and stir all the
and onions, bring to boi

APPLE TUNA TOSS SALAD

1 medium head lettuce, t
bite-size pieces (4 cu
2 cups diced apple
1 11 oz can (1 1/3 cups)
orange sections, drai
1 6 1/2 or 7 oz can tun
and broken in large c

In a large salad bowl,
tuna and nuts; toss toge
and lemon juice; mix wel
toss gently. Makes 4 -

19 complaints now 252 to the A-G

Political Staff

THE ASSEMBLY — The Advocate-General appointed in the wake of the Information debacle received 19 complaints within four months of the office being created.

Of the 19 complaints, only seven could "possibly fall under the provisions of the (Advocate-General) Act"

The first report of the acting Attorney-General, Mr Justice P J van der Walt, says three of the complaints were investigated and finalised without any action being necessary. The remaining four were still under investigation. They included a complaint about unlawful hunting in SWA/Namibia.

The three cases finalised involved complaints against Escom and a municipality, against the South African Wool Board, and allegations that a policeman and a public prosecutor had accepted bribes in an abortion case.

However, it was found that nothing unlawful or improper had taken place.

Although a number of complaints had been rejected because they fell outside the scope of the Act, the judge said it was not part of the South African way of life. The public service had a proud record "my object to assist, as far as possible, persons with real or imagined grievances by means of informal interviews and inquiries or by referring their complaints to the appropriate authority."

He felt these complaints should not simply be ignored and that a sympathetic approach "serves to engender and promote confidence in the public administration."

PFP spokesman Mr Harry Schwarz commented that the report could be a disappointment to scandalmongers as it tended to show that corruption was not part of the South African way of life. The public service had a proud record

252

Hansard
4(203) 27/2/80

Intermediate courts

*2 Mr D J DALLING asked the Minister of Justice 4(203) 27/2/80

(1) What progress has been made in regard to the establishment of intermediate courts,

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

The MINISTER OF JUSTICE

(1) and (2) The State President appointed a Commission of Inquiry into the Structure and Functioning of the Courts on 30 November 1979 The Commission has extensive terms of reference and must *inter alia* give attention to the desirability of establishing an intermediate court. The Government will again give attention to the matter after the Commission has reported in this regard

(252)

Spread out appeal hearings — report

RDM 4/3/80

THE ASSEMBLY — The Commission of Inquiry into the structure and functioning of courts has recommended temporary measures to wipe out the backlog of pending Appeal Court hearings

The commission's interim report was tabled in the Assembly yesterday by the Minister of Justice, Mr Alwyn Schlebusch

The report said the number of Judges of Appeal in civil hearings should be reduced from five to three The Chief Justice should also be empowered to direct that appeals should be heard in places other than Bloemfontein

The number of appeals heard by the Appellate Division had increased considerably in the last 10 years, but the number of Judges of Appeal had not increased proportionately

The reduction of the number of judges in civil proceedings would leave more judges free to preside at hearings

It would not be prejudicial to the administration of justice, the report said

Appeals heard outside Bloemfontein should be restricted to matters of lesser judicial importance

The measures would apply until December 31, 1983 In the meantime, the commission would look at a permanent solution — Sapa

Justice and race: judges answer critic

252
RDM
4/3/80

Political Reporter

CRITICISM of the administration of justice as applied to different races was referred by the Cillie Commission to judges and a few chief magistrates for comment

This is revealed in the commission's report, which says that after consideration of all comments and available evidence, it is convinced the administration of justice did not create an attitude among blacks which gave rise to unrest or contributed markedly to a climate of resistance and revolt

The commission's report says a member of an Urban Bantu Council stated he had observed the following:

- If a white person murdered another white, there was outstanding administration of justice
- The administration of justice was itself subtler and sharper if the offence was committed over the colour line, for example, when a black stood trial on a charge of raping or murdering a white person
- The administration of justice went awry and was full of shortcomings when a white man was charged with the rape or murder of a black person.
- When two black people came up against each other in court in cases of rape or murder, the administration of justice collapsed

In connection with this point, it was claimed

- The magistrate or judge did not listen to the honest and dutiful policeman, was extremely lenient towards the culprit, and neglected the suffering of the victim.
- Bail was allowed too easily, and the criminal got a "very pleasant" hearing.

The commission sent copies of the statement to the Chief Justice and the Appeal judges, the Judge-President and other judges of all divisions of the Supreme Court, and a few chief magistrates.

"The answers were practically the same," it says.

There was little comment on the first statement On the following three, the general view was that the colour or race of the accused and the complainant made no difference to the administration of justice. In fact, every administrator of justice took an oath to treat every person equally

The same legal rules and principles were applied in all hearings and every person's case or guilt must be proved beyond reasonable doubt before the court found him guilty

All the evidence was considered by the court and where a policeman's evidence was rejected, it was not merely over the race of the accused.

Sometimes, those attending court might well get the impression that the accused was being treated too leniently

That might be because he had no legal representation, or because the presiding official was not influenced by the same evidence as those attending.

On the question of bail, the commission says, it was advised that a false impression existed among many blacks They could not understand why the "guilty man" arrested by police should be freed again

Gegee onder my Hand en die Seel van die Republiek van Suid-Afrika te Pretoria, op hierdie Sesde dag van Februarie Eenduisend Negehonderd-en-tagtig

M. VILJOEN, Staatspresident

Op las van die Staatspresident-in-rade:

L. LE GRANGE.

PROKLAMASIE

van die Staatspresident van die Republiek van Suid-Afrika

No R. 47, 1980

KOMMISSIE VAN ONDERSOEK NA DIE STRUKTUUR EN FUNKSIONERING VAN DIE HOWE

Kragtens die bevoegdheid my verleen by artikel 1 (1) (b) van die Kommissiewet, 1947 (Wet 8 van 1947), vaardig ek hierby die regulasies in die Bylae vervat uit, met betrekking tot die Kommissie van Ondersoek na die Struktuur en Funksionering van die Howe, wat ek op die 29ste dag van November 1979 aangestel het.

Gegee onder my Hand en die Seel van die Republiek van Suid-Afrika te Pretoria, op hede die Twintigste dag van Februarie Eenduisend Negehonderd-en-tagtig

M. VILJOEN, Staatspresident

Op las van die Staatspresident-in-rade

A. L. SCHLEBUSCH

BYLAE

REGULASIES

1. In hierdie regulasies, tensy uit die samehang anders blyk, beteken—

"beampte" iemand wat in die voltydse diens van die Staat is en wat aangestel of aangewys is om die Kommissie by die uitvoering van sy werksaamhede behulpsaam te wees,

"dokument" ook 'n boek, pamflet, aantekening, lys, omsendbrief, plan, plakkaat, aanplakbiljet, publikasie, tekening, foto of prent,

"Kommissie" die Kommissie van Ondersoek na die Struktuur en Funksionering van die Howe;

"lid" 'n lid van die Kommissie,

"ondersoek" die ondersoek wat deur die Kommissie ingestel word;

"perseel" ook grond of 'n gebou, bouwerk, gedeelte van 'n gebou of bouwerk, voertuig, vervoermiddel, seevaartuig of lugvaartuig,

"Voorsitter" die Voorsitter van die Kommissie

2. Die verrigtinge van die Kommissie moet op die wyse wat die Voorsitter bepaal, genotuleer word

3. (1) Iemand wat aangestel of aangewys is om die verrigtinge van die Kommissie in snelskrif aan te teken of op meganiese wyse op te neem of om sodanige verrigtinge wat aldus aangeteken of opgeneem is, te transkribeer, moet vooraf 'n eed of bevestiging in die volgende vorm aflê

Ek, A. B., verklaar onder eed/bevestig en verklaar—

(a) dat ek getrou en na my beste vermoe die verrigtinge van die Kommissie van Ondersoek na die Struktuur en Funksionering van die Howe in snelskrif sal aanteken/op meganiese wyse sal opneem en transkribeer soos deur die Voorsitter gelas;

Given under my Hand and the Seal of the Republic of South Africa at Pretoria this Sixth day of February, One thousand Nine hundred and Eighty

M. VILJOEN, State President

By Order of the State President-in-Council.

L. LE GRANGE

PROCLAMATION

by the State President of the Republic of South Africa

No. R. 47, 1980

COMMISSION OF INQUIRY INTO THE STRUCTURE AND FUNCTIONING OF THE COURTS

Under the powers vested in me by section 1 (1) (b) of the Commissions Act, 1947 (Act 8 of 1947), I hereby make the regulations contained in the Schedule with reference to the Commission of Inquiry into the Structure and Functioning of the Courts which was appointed by me on the 29th day of November 1979

Given under my Hand and the Seal of the Republic of South Africa at Pretoria, this Twentieth day of February, One thousand Nine hundred and Eighty

M. VILJOEN, State President.

By Order of the State President-in-Council

A. L. SCHLEBUSCH

SCHEDULE

REGULATIONS

1. In these regulations, unless the context otherwise indicates—

"Chairman" means the Chairman of the Commission,

"Commission" means the Commission of Inquiry into the Structure and Functioning of the Courts;

"document" includes any book, pamphlet, record, list, circular, plan, placard, poster, publication, drawing, photograph or picture,

"inquiry" means the inquiry being conducted by the Commission;

"member" means a member of the Commission;

"officer" means a person in the full-time service of the State who has been appointed or designated to assist the Commission in the performance of its functions,

"premises" includes any land, building, structure, part of a building or structure, vehicle, conveyance, vessel or aircraft.

2. The proceedings of the Commission shall be recorded in the manner determined by the Chairman

3. (1) Any person appointed or designated to take down or record the proceedings of the Commission in shorthand or by mechanical means or to transcribe such proceedings which have been so taken down or recorded shall at the outset take an oath or make an affirmation in the following form.

I, A. B, declare under oath/affirm and declare—

(a) that I shall faithfully and to the best of my ability take down/record the proceedings of the Commission of Inquiry into the Structure and Functioning of the Courts in shorthand/by mechanical means as directed by the Chairman;

WEDNESDAY, MARCH 12, 1980

THE LAW AND SOCIETY

'FOR THE second time in recent weeks the Mercury finds it necessary to comment on a sentence passed by a judge of the Supreme Court

This is not something we undertake lightly Sentences passed in our courts are, however, of perennial public interest and should by and large reflect the changing mores and values of society They constitute an important measure of the degree of disapproval indignation or outrage that certain offences arouse among ordinary citizens, having regard to the facts of each case as they understand them

The case in question concerns a white man, Hendrik Muller, 58, who abused passing blacks at Boksburg Lake, pointing a gun at them and telling them that the park was for whites only The blacks ran away, but one young man remonstrated with Muller ,saying, 'Please baas, we are allowed here There are even toilets for us here' Muller then shot him several times, killing him

Muller claimed that he had been under the influence of liquor and his counsel pleaded in mitigation that he was an inadequate personality who could not cope with his problems

The judge, Mr Justice Margo, told Muller that the dead man had been 'a helpless victim of your arrogant behaviour towards blacks He had to pay with his life because you couldn't control your emotions'

We have difficulty in reconciling this fitting censure from the Bench with the sentence passed on Muller. 10 years' imprisonment, half of which was suspended for five years Muller was also fined R50 (or 50 days) for illegally possessing two firearms and was declared unfit to have a firearm

We have no doubt that Mr Justice Margo passed sentence only after the fullest and most impartial consideration of the evidence before him

The case will nevertheless be widely seen as having unusual social significance and relevance at a time when the use of public amenities by people of all races is a major issue in the country

All South Africans need to be particularly mindful concerning race relations, and society cannot afford to appear tolerant of or lenient towards those who are, for whatever reason, unmindful of their words and actions, especially when the consequence is loss of life

Those who administer justice would be deceiving themselves if they imagined that the sentence in this case will not cause much speculation — however unjustified it might be — about what the course of events might have been had the roles in the shooting at Boksburg Lake been reversed

STU13-9 EXAMINATION RESULTS IN FACULTY ARTS AS AT 29 02 80

13010 BACHELOR OF ARTS YEAR : 1

STUD NO	SURNAME	FIRST NAMES	COURSE	DESCRIPTION
~~1620048~~	~~BURNE~~	~~SUZANNE ELIZABETH~~	~~106103~~	~~ECONOMICS IA~~
158955C	CARO	SALLY-ANN	107101	ENGLISH I (PRE-1980)
			116120	DRAMA I
			~~114101~~	~~CULTURAL HISTORY OF W.E. I~~
162195Z	CHAIT	CHERYL	102101	AFRIKAANS
~~1539650~~	~~CLARKE~~	~~PENELOPE JILL~~	~~105202~~	~~SOCIAL ANTHROPOLOGY I(PRE 1~~
157789K	COHEN	DAVID	104101	ARCHAEOLOGY I
			110101	HISTORY I
156503M	COLLIER	LINDSEY JEANNE	911101	MATHEMATICS I M102
			916103	ANIMAL BIOLOGY (HALF COURSE
~~1539990~~	~~COLLINS~~	~~BEVERLEY ROYNON~~	~~116120~~	~~DRAMA I~~
153621E	COUCHER	ROBERT GEORGE RENESON	004101	PSYCHOLOGY I
~~1385720~~	~~COURTENAY~~	~~COLETTE~~	~~107101~~	~~ENGLISH I (PRE-1980)~~
153796V	DAVIS	CASSANDRA ELAINE	107101	ENGLISH I (PRE-1980)
~~1404570~~	~~DELAHUNTY~~	~~ANNA TERESE~~	~~906101~~	~~GEOGRAPHY I~~
162384E	DOMAN	MICHAEL EDWARD	106102	ECONOMIC HISTORY I
~~1559310~~	~~DU PLESSIS~~	~~MARCIA ELIZABETH~~	~~107101~~	~~ENGLISH I (PRE-1980)~~
158919N	DUNCAN	ANDREW SYMON	003101	SOCIOLOGY I
			004101	PSYCHOLOGY I
156415R	ERASMUS	ARNO JACQUES ERASMUS	601101	COMMERCIAL LAW A
			910106	STATISTICS IC(HALF CRSE)
~~1623107~~	~~EVANS~~	~~GAVIN MARK READ~~	~~101103~~	~~AFR LANG INTENSIVE (XH06A)~~
161480X	FAFAK	GIULIETTA	107101	ENGLISH I (PRE-1980)
~~1538630~~	~~FARNHAM~~	~~GILLIAN DEBORAH~~	~~115101~~	~~FRENCH I~~
152866J	FARRELL	MICHAEL BRUCE	004101	PSYCHOLOGY I
~~1573590~~	~~FINLAY~~	~~PAMELA JOAN~~	~~102104~~	~~ECONOMICS IB~~
			115102	FRENCH INTENSIVE
			115103	ITALIAN INTENSIVE
~~1597440~~	~~FIORAVANTI~~	~~LUIGINA~~	~~914102~~	~~PHYSICS IB~~

Official tribal courts for Rand

By HARRY MASHABELA

THE Department of Co-operation and Development is planning to establish civil and criminal tribunals in black urban areas in the Witwatersrand

The tribunals, which are to replace the unofficial kangaroo courts begun by people like Mr Siegfried Manthata and Mr David Thebehali in Soweto, are to be modelled on tribal courts run by chiefs and headmen in tribal villages

The department has already given the Chief Commissioner for the Witwatersrand guidelines on how to establish the tribunals 19/3/80

Suitable people are to be appointed to conduct the courts Their powers will be similar to those granted to chiefs and headmen and they will not be subject to the authority of community councils Members of community councils cannot, for various reasons, qualify for appointment to such courts

Initially, the tribunals will be restricted to hearing civil claims arising from customary law as well as crimes punishable under common law, according to the department's advice to the chief commissioner

The tribunals will replace makgotla Each appointed person to whom judicial powers are granted can establish his own kgotla if he wants to But members of the kgotla will receive no remuneration

The department has recommended that a residential area be divided into wards consisting of between 4 000 and 5 000 heads of families so that a 'realistic number of appointments can be made"

Appointments of individuals have to enjoy the support of the majority of the community But no organisation or groups of individuals will be asked to nominate a person for appointment

Appointed persons will work on a part-time basis and receive R15 a month in remuneration from the department

All fines received will go to community councils The department advised that court and office accommodation be found and that councils be responsible for payment of rent for such accommodation

Appeals against judgments by the courts will have to be made to the local commissioner for Co-operation and Development

Crisis hits courts as senior staff quit

STAR
22/3/80

252

By Rashid Chopdat

Johannesburg Magistrates Courts, the biggest and busiest in the country, face a crisis — many experienced prosecutors are leaving for better pay in the private sector

Certain courts have been closed on some days in the past three months and more resignations take effect at the end of this month

The prosecutors have joined nurses and teachers in demands for better pay

Senior administrative officials expect more resignations after next week's Budget if salary increases are not satisfactory

Prosecutors said there was a crisis in the courts and that juniors — many with little or no experience — were prosecuting in the district and regional courts

Seven prosecutors are to leave this month — the highest figure for a single month — and three are being transferred In August 1979 six resigned and four were transferred

The Star has learnt that at least 17 experienced prosecutors have resigned since last December and 11 have been transferred There are about nine vacancies in the regional courts at present

Experienced prosecutors have also been moved into the control offices and other administrative posts

A prosecutor said there were no complaints about working conditions but "you cannot take working conditions home to feed your children"

Most have left to join the private sector in the legal field A few have taken up posts in the commercial field. Those who are leaving said the salary and benefits in the private sector were 'very attractive"

Mr Andre de Vries, the new senior public prosecutor, denied there was a crisis or serious shortage He said there were several vacancies for trained men but they would be filled by replacements

I cannot comment on whether the spate of resignations is alarming or whether there is any justification on the part of those leaving for a better financial position," he said

"The vacancies in the regional court are normal Some people are on leave and others are in the army,' Mr de Vries said

It is quite normal for people to resign they do so all the time Whenever there is an upswing in the economy the private sector attracts trained personnel with better finance"

Mr de Vries would not say how many vacancies there were

STU13-9 EXAMINATION RESULTS IN FACULTY ARTS

13010 BACHELOR OF ARTS YEAR : 1

STUD NO	SURNAME	FIRST NAMES	COURSE
~~152163V~~	~~VAN NIEKERK~~	~~MURIEL DIANNE~~	~~107101~~
159757Z	VAN WAGENINGEN	ANNEMARIE	107101
~~155815P~~	~~VISSER~~	~~ANNELIZE~~	~~107101~~
153767N	WACHER	GUY STEVEN	115102
~~160780L~~	~~WESSELS~~	~~CHARLENE~~	~~107101~~
158400Z	WHITAKER	ANDREW	909105
~~115228Y~~	~~WHITING~~	~~ROBERT GEORGE CURZON~~	~~107101~~
157399L	WILLSHER	MELANIE GABRIELLE ROSANNE	115101
~~154408K~~	~~WOLFE~~	~~ANGELA KILWARDEN~~	~~003101~~ 004101 103202 107101
159697J	WOOD	NICHOLAS	107101
155858L	WYNGAARD	GAVIN WILLIAM ERIC	103202 ~~115101~~

* TOTAL NUMBER OF STUDENTS 137

DEAN

REGISTRAR (ACADEMIC)

Kompuprint

UCT

Call for end to make

(DM 25/3/88, 252)

Staff Reporter

SOWETO residents, at a meeting at the weekend, claimed that the All Nation Guards (makgotla) operating in Soweto were inhuman and violent and called for their removal from the townships

About 200 residents of Orlando West met at the Uncle Tom's Hall on Sunday and agreed to form their own civic or community guards to help fight crime in the townships, provided the idea is approved by the authorities

The meeting was called by Mrs Violet Petjaulema, a Soweto councillor, and the Orlando West Residents Committee of Ward Three

The residents unanimously agreed that Mrs Petjaulema carry their decision to the Soweto Council at the next monthly meeting

They agreed that Soweto needed orderly guards and not the type that attacked defenceless people and damaged homes

Mr Daniel (Khaabo) Nkwadi, chairman of the Orlando West Committee said residents in the township

ships for the residents' safety

"But we do not want the type of guards that molest and attack residents in their homes".

When the question of the possible rent increase was raised, residents said they would not pay services charges in the form of increased rent because they are already paying for the services

The residents said people in Soweto paid for all services rendered because they paid for the repairs of blocked drains, toilets and leaking taps

They also complained that, like Orlando East, the houses were old and were not worth the high rents people are presently made to pay

Young men who attended the meeting blamed the Soweto Council for not providing recreation centres in the townships and said they had applied for a site last year but had not received a reply

After listening to the youths, residents decided that instead of paying for service charges the Orlando West community would rather contribute R1 a family towards the building of such a centre

Legal exodus leading to fewer magistrates

STAR 27/3/80 (248) (252) (178)

"Where are we going to get our magistrates from?" ask Johannesburg prosecutors concerned about the exodus of experienced men from their own ranks.

"Few of the new prosecutors stay long enough to be promoted to magistrates," they say "The Government must think of the future or else we will be short of magistrates"

Many prosecutors agree that the Government is guilty of failing to match the attractive salaries and benefits offered by the private sector.

The departure of 17 colleagues in the last few months is indicative of a trend that will continue until prosecutors are given salaries worth staying on for, according to one source

'What is causing prosecutors to leave is the pay — it is the greatest of our grievances," said one prosecutor.

The pay problem is highlighted by a man who returned to the Department of Justice to settle his debt for the bursary given to him

"I will earn more as a lawyer doing half the work I do prosecuting I need only defend eight clients a week at R50 each to earn R400

"Compare this with my salary of about R500 and the five or six trials I prosecute in daily," he said

"If there are any complaints of working conditions I haven't heard of them But you can't take working conditions home to feed your children"

Another man is leaving because he was not promoted His pay packet is another worry — after seven years in the courts he earns R800 a month

"I am going into private commercial law My salary will be doubled I will get free lunches, tea and a petrol allowance You don't get those here

"I have a degree which is important when salary is considered The benefits of my new job cannot be matched by the department

"On principle I did not drink tea or coffee at the courts because they cost R2 50 a month I will be getting it free now"

An advocate who left the department a month ago said 'I have three degrees was admitted to the bar two years ago, and my net pay was R490 I also did not like the atmosphere and attitude It was bureaucratic typical civil service

'I was not treated with the dignity of a professional person who has the ability to do his job There is more status, professionally and socially, at the Bar

A prosecutor for seven years has joined a leading mineral firm as a departmental secretary He decided there was no future for him in the department

"If I wanted to leave I would have to do it before I was too old My wife is working, otherwise we could not manage — we cannot have children at this stage

"At my new job I will be getting R6 000 more a year'

But one prosecutor with the rank of magistrate who is earning R800 after 10 years says "I do not intend leaving The work is enjoyable and satisfying'

Suzman wants probe into death penalty

By PATRICK LAURENCE

THE veteran Opposition MP, Mrs Helen Suzman, yesterday called for a commission of inquiry into the death penalty after the release in Parliament of figures showing that executions had reached a new high point in South African history

In reply to questions from Mrs Suzman and Mr David Dalling, both of the Progressive Federal Party, the Minister of Police and Prisons, Mr Louis le Grange, disclosed that 148 people were executed in the statistical year 1978/79 and 133 in the calendar year 1979

Both totals exceed the previous highest total over 12 months of 132, the number of people who were executed in 1978

The 148 executions during the statistical year ending 30 June, 1979, represents an increase of 43, or more than 40%, on the total for the statistical year ending 30 June, 1978 In the previous statistical year 71 people were executed

But the 133 executions for the calendar year 1979 represent only a minute percentage increase on the 132 people who were hanged in 1978 However, the 1978 total constituted a [illegible] increase, both absolute and percentage terms, on the totals of 90 for 1977 and 61 for 1976

Mrs Suzman said yesterday "I think it is distressing that South Africa should now be at a new high point of capital punishment It is high time that a commission of inquiry investigated the matter thoroughly"

Mrs Suzman recalled that when she introduced a private member's motion calling for an inquiry in 1969 she did not receive any support in Parliament

The last major inquiry into penal laws and institutions in South Africa was undertaken by Mr Justice Viljoen about six years ago, but his terms of reference specifically excluded the death penalty

Mrs Suzman noted that the rising number of executions had taken place against a background of a decline in South African population because of the granting of independence to three black homelands;

Official statistics show that the population of South Africa dropped from 26 097 000 in mid 1976 to 23 894 000 in mid 1978 because of the independence of Transkei and BophuthaTswana Venda, with a de facto population of more than 320 000, became independent in September last year The de facto population will be deducted from the mid-year estimate of South Africa's population this year

Appeals confined to Bloemfontein

252 RDM 22/4/82

THE ASSEMBLY — The Minister of Justice, Mr Alwyn Schlebusch, yesterday withdrew from the Supreme Court Amendment Bill a clause providing for the hearing of Appellate Division cases at places other than Bloemfontein

The measure had been recommended by the Hoexter Commission of Inquiry into the structure and functioning of the courts in an effort to reduce the backlog in the disposal of appeals

"The Government accepts that appropriate steps should be taken to wipe out the backlog as soon as possible and to prevent a similar situation arising again," Mr Schlebusch said

"The backlog can only be wiped out by the hearing of more appeals simultaneously. Additional Judges of Appeal will, therefore, have to be appointed on a temporary basis"

The Bill also provides for a reduction from five to three judges to constitute the quorum of Appellate Judges needed to hear civil appeals, bringing these into line with the quorum for criminal cases

Mr Schlebusch said the problem had been that only three court rooms were available in the Appeal Court Building, while the streamlining measures would make it possible to hear more than three cases simultaneously

This was why the Commission had recommended that appeals be held elsewhere than Bloemfontein However, the Department of Justice had since been offered accommodation suitable for two courtrooms in a building not far from the Appellate building and it was no longer necessary to implement the Commission's recommendation

This new arrangement was also not wholly satisfactory As it was the intention to examine the whole structure of the courts, a long-term solution would have to be found for the problems affecting the Appeal Court, and it was hoped that the new arrangement would be no more than a temporary measure.

The Bill also extends an existing provision whereby the Chief Justice can enlarge the quorum for the hearing of any case in the process of being heard, providing now that he may extend the quorum for any case still to be heard

The Chief Justice will therefore, with the information at his disposal, be able to determine in advance how the court should be constituted for the hearing of a particular appeal, Mr Schlebusch said

The Bill was taken through all its stages with the support of all parties — Sapa

CT 22/4/80 (2-52)

Bloem only for appeal hearings

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Streamlining

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The bill was taken through all its stages with the support of all parties — Sapa

The kids who were taken to court

252 ~~257~~ ~~50~~ ~~227~~

mon 1/5/80.

The coloured schoolchildren arrested on Tuesday were brought before the Magistrate in batches BENJAMIN POGRUND reports

THE might of the State, threatened by the Prime Minister, Mr P W Botha, in Parliament on Tuesday afternoon, was seen in action that same night at Johannesburg's Newlands police station

It was seen in the bringing before a magistrate of 714 coloured schoolchildren There was confusion about the numbers because of the duplication of names and wrong names even at midnight, it was thought that 860 were to be charged

They were the children arrested still earlier in the day, at about 8 30 am, when police baton-charged and broke up a demonstration protesting against segregated and inferior education

The mass arrests were, clearly, anticipated by the authorities The required number of policemen were there, heavily armed, the vans were there

Some startling accusations have been made by parents about the way the police behaved The police deny the charges

But whatever did happen, the fact was that hundreds of children were carted off to the Newlands police station

Their names and addresses were taken Then, from about 5 pm onwards, they were brought into a small courtroom in the building

An impromptu conveyor-belt system went into operation

Batches of 16 children were brought into the court and lined up in a row Outside, a policeman with a loudhailer called out the names as the hundreds of parents and friends clustered round The parents — mother, father, grandfather or grandmother — went into the court and stood behind their children

Some embraced or kissed Mothers put their arms around their sons or daughters and held them close during the formal proceedings

By this stage, the children were identified by numbers The prosecutor, dressed in formal black robe, checked the accused from his list attached to the charge sheet an offence alleged under the Riotous Assemblies Act in attending an illegal gathering

The line-up ready, a policeman in camouflage uniform bawled out, "Rise in court" and the robe-clad magistrate entered In English and Afrikaans, he formally remanded the children in the custody of their parents, and told them to come to the court again on May 13, or face being arrested Then he adjourned the court and walked out

It took about two minutes for each remand, and about 15 minutes to get each batch ready

It ended at 3 20 am

Nine attorneys, also in their black robes, were in court at various times during the drawn-out proceedings They came from a number of Johan-

In the area outside the court, under bright lights, an impromptu kitchen was set up by church people, to give the children something to drink and eat

Policemen were everywhere Some were in camouflage uniform, others in ordinary uniform, others in casual clothing — which made the automatic rifles they carried seem even more frightening They talked among themselves, often laughing

"If the State is challenged and decides to hit back, it will do so with all the means at its disposal There should be no doubt about this

That is what Mr Botha had also told Parliament earlier in the day

So who were these children who were arrested and brought before court in a manner unprecedented in our country's history?

Were they hooligans or layabouts to be treated in this way? Were they anarchists against whom the full power of the State had to be mustered?

No They were pleasant and decent-looking youngsters, many of them dressed in neat school uniforms

Most of them were under the age of 18 The youngest was officially 13 Some were so small as to belie their ages Where ages were determined to be under 13, the children were released

There was one white child among them, a 14-year old girl She was kept separate from her fellows

hauled before a magistrate, and in the middle of the night at that Rather, there was a poise and a calm pride about them

Nor did their parents — equally decent-looking people — reveal regret or recrimination. There was an obvious bond between children and parents

There was anxiety, and worried questions were passed around about the whereabouts of this and that child But there was a stillness, a tension, in the crowd, which was broken only early in the evening when dogs were used to keep out people surging against the gate

At one stage, as a small boy, still bright eyed despite the lateness of the night, emerged from the court, people rushed to him, crying and hugging him and saying "He's only a child, he's only a child"

Sitting in the courtroom late that night, it was difficult to relate Mr Botha's talk about the use of the might of the State with what was happening there

What are the thoughts in the minds of those children, and in the minds of their parents and grandparents as they face the might of the State in this late-night courtroom?

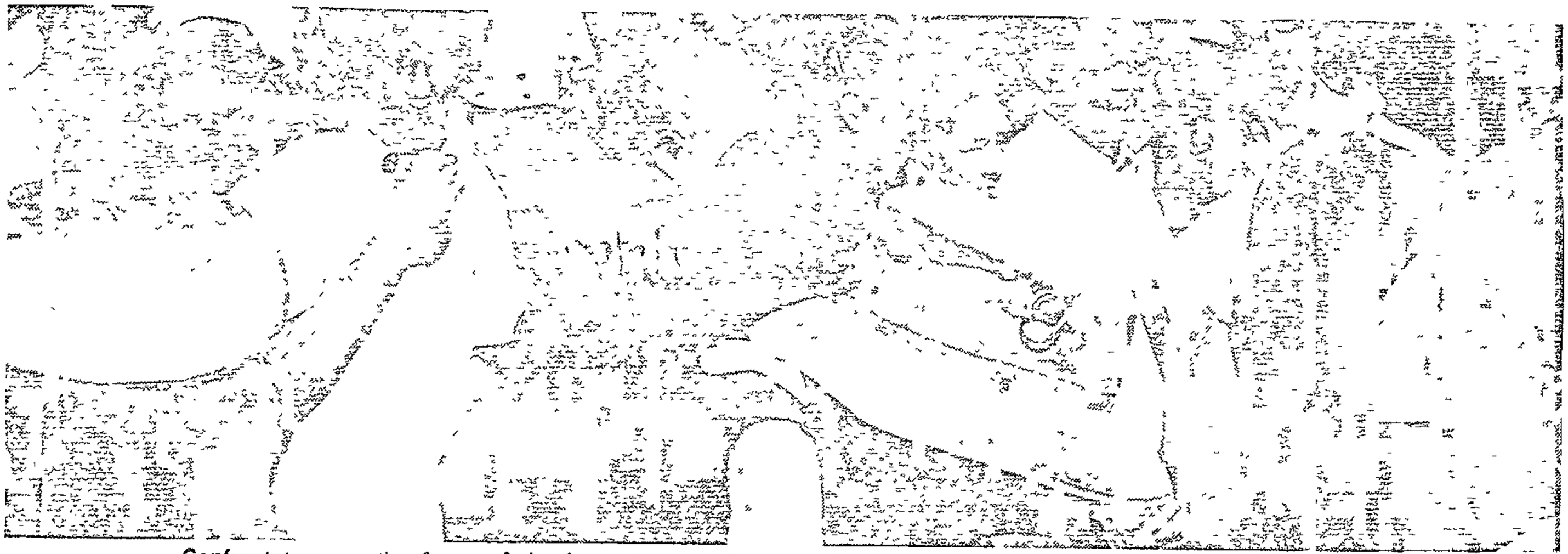
Do they go off with respect for authority? For justice seen to be done?

Or does the State destroy the moral authority, which it must have to function, by using its might in this way?

After Tuesday, there can be no doubt about the response on the part of hundreds upon hundreds of children, parents and

RDM

252 1/5/80



Confrontation the faces of the boycotting students as they line up before the riot squad

Police still investigating malgotla

Staff Reporter

The Senior Prosecutor of Johannesburg had asked the Soweto police to make further investigations into the All Nation Guard case, the Divisional CID Chief for Soweto Colonel Steve Lerm, said yesterday

Col Lerm said the prosecutor required more statements to be taken down before anything else could be done about the malgotla case which is being handled by Captain J A de Beer CID branch commander of the Moroka police

Several members of All Nation Guard a malgotla type organisation, were taken to Moroka police station in March after allegedly assaulting people including a 69 year old grandmother in a house in White City Jabavu

It is also alleged the men stole from the house and caused damage to the furniture and windows

The All Nation Guard is headed by the chairman of the Soweto Community Council Mr David Thebehali He made a statement to the police about the case

Capt De Beer said that so far nobody had been charged He said the police had almost completed their investigations and he estimated the number of statements taken so far to be somewhere in the region of 30

About 12 people have laid charges varying from assault and theft to malicious damage to property

Le Grange may ease 'police state' Bill — but Opposition wary

By PATRICK LAURENCE

THE Minister of Police, Mr Louis le Grange, yesterday confirmed that he was considering modifications to the controversial Police Amendment Bill, following discussions at the weekend, with Security Police officers

Introduced in Parliament on Friday, the Bill seeks to prohibit publication of the names of detainees The ban — backed by a fine of R15 000 or eight year's imprisonment or both — was interpreted to be indefinite

Mr Le Grange, however, confirmed a newspaper report which quoted him as saying that he had not intended the ban to be permanent, and that he was considering an amendment to limit the ban to the time needed by Security Police to complete their investigations

His proposed amendment was cautiously welcomed by Mr Ray Swart, the Progressive Federal Party spokesman on police matters, but rejected by Professor A S Mathews, of the University of Natal, as ineffective

Professor Mathews, an authority on South Africa's security laws, pointed out that the Defence Act already authorised the introduction of censorship by proclamation as an emergency measure for the prevention or suppression of terrorism

Mr Swart said of the proposed amendment "Obviously any improvement on the published Bill will be welcomed But one finds it amazing that a government which has been in power for 30 years should publish so ill-conceived a Bill, so hastily"

But, he added, Security Police investigations often took many months and a ban on publication of the names of detainees was therefore still "highly dangerous and offensive"

Referring to the Rabie Commission, appointed to investigate the fairness and effectiveness of security laws, Mr Swart said "The Bill seems to be anticipating some of the findings of that commission"

Professor Mathews said of the amendment under consideration by Mr Le Grange "It is not an effective limit at all Following the Muldergate affair, there have been four or five new restictions on the flow of information. It is unfortunate that there should be another one"

Author of a definitive study on secrecy in South Africa, Britain and the United States, Professor Mathews said "Leaving it to the Security Police (to decide when the ban was no longer operative) is just to give them another absolute discretion"

Summing up the implications of the Bill, Prof Mathews: "We have a situtuion in which freedom is being eliminated, but the fact that it is being eliminated may not be recorded"

● Editorial comment Page 8

Probe now into judges' allowances

(252) RDM 27/5/80

BY HELEN ZILLE
Political Correspondent

CAPE TOWN — The Minister of Justice, Mr Alwyn Schlebusch, revealed yesterday that an ex-judge, Mr Mervyn King, resigned from the bench earlier this year because he believed that certain members of the bench were involved in "fiscal iregularities" (irregularities involving public funds).

Making a special announcement to the House, Mr Schlebusch said the Bar Council was satisfied that Mr King's belief was "bona fide" and based on reasonable grounds.

He also announced the appointment of a top-level inquiry — headed by the Chief Justice, Mr F L Rumpff — into subsistence and travelling allowances of judges to establish whether "unjustified payments" of taxpayers' money had been made.

The statement caused an immediate stir among Parliamentarians who said any suggestion of judges being guilty of irregularities involving public funds could seriously damage the esteem and dignity of the bench.

In his statement, Mr Schlebusch said the Press had known of these allegations "at an early stage".

The Minister said that when he heard the allegations he called the Chief Justice, Mr Rumpff, the chairman of the Johannesburg Bar Council, Acting Justice J C Kriegler, and two other advocates, Advocate King and Advocate W H R Schreiner, to a meeting in his office on February 22.

At the meeting it was decided that the alleged irregularities should be investigated by the Chief Justice himself aided by a practising chartered accountant.

He and the Bar Council agreed that the facts available should not be made known as it would be unfair to sow suspicion about the honesty of judges and that further facts should be made available.

This would be done by the Chief Justice in a confidential investigation and a report would be submitted to the Minister who would decide on further action. Mr Schlebusch received the report on May 24.

Mr Schlebusch appealed to the Press "to excercise the same circumspection in their reporting on the matter as they have done up to this stage" and drew attention to the regulations of Government commissions of inquiry — that no one shall influence, prejudice, or anticipate the findings of a commission.

● See Page 7

Now Rumpff joins the thicket of commissions

(252) MM 27/5/80.

Political Staff

CAPE TOWN — Yet another commission of inquiry — the Rumpff Commission — has been appointed by the Government.

Although a member of the Cabinet, Mr Punt Janson, last week queried the value of commissions, the Government has not hesitated to appoint them to investigate issues of concern

There has been the Erasmus Commission, the Steyn Commission, the Rabie Commission, the Van der Walt Commission, the Wiehahn Commission, the Riekert Commission, the Browne Commission and more.

According to the Auditor-General, Mr W G Schickerling, the Government spent R494 114 on commissions of inquiry during the 1978/79 financial year, bringing the total spent on those investigations to R1 492 547

In his latest report, Mr Schickerling detailed the expenditure on 26 commissions of inquiry

There were also 68 inter-departmental committees of inquiry, which cost a total of R177 890 during the 1978/9 financial year, bringing their total costs to R424 953 so far

Some of these committees were appointed as long ago as October 24, 1963 (the Department of Mines Inquiry into Sinkholes) and June 8, 1964 (the Department of Community Development Inquiry into the Replanning and Development of District Six)

Although the Government clearly believes there is value in these inquiries, Mr Janson emphasised their limitations

Earlier this month, the Prime Minister, Mr P W Botha, said the Government was considering the appointment of a wide-ranging inquiry into education in South Africa, although he did not say it would be a commission

Mr Janson said in the Assembly that he believed a commission of inquiry would be the wrong way to explore means of improving the educational system because of the long delays in getting reports

"A commission can only work in terms of the Commissions Act, but the main objection that I have is the time it takes to bring out a report

"While everybody waits for the report to come out no interim recommendations for improvements can be easily introduced"

One of his colleagues, the Minister of Police, Mr Louis le Grange, discovered these problems when he introduced the controversial Second Police Amendment Bill, which was aimed at restricting the disclosure of anti-terrorist activities, unless authorised by the police, and prohibiting the publication of names of detainees, again unless this was authorised

Part of this proposed legislation was derived from the recommendations of the Steyn Commission into the reporting of security matters, but it also overlapped the investigations of the Rabie Commission into security laws

Whatever the problems and limitations, commissions are still being appointed

This year, a commission of inquiry into health services under the chairmanship of the former Secretary of Finance, Mr Gerald Browne, has been appointed

Now the Rumpff Commission into alleged irregularities concerning judges' expenses has been appointed

There is some confusion about which commissions completed their investigat particularly as some, like the Wiehahn Commission into labour legislation, have issued interim reports

Erasmus Commission (Information scandal), completed, Riekert Commission (Laws affecting labour legislation), completed, Wiehahn Commission (labour utilisation), interim report released, more due, Rabie Commission (Security laws), still sitting, Steyn Commission (reporting on security matters), completed, Van der Walt Commission (Consolidation), still sitting, but report due this year, Browne Commission (local government), report completed but not published, Browne Commission (health services), just appointed, Rumpff Commission (alleged irregularities, judges' expenses), just appointed, De Kock Commission (monetary system), still sitting, Cillie Commission (1976 Soweto riot), report published, Cillie Commission (Delimitation), still sitting, Viljoen Commission (tertiary education for blacks outside homelands), still sitting, Schlebusch Commission (constitution), interim report ished, still sitting

Courts wait as the judges discuss expenses probe

Star 27/5/80

252

A three-man commission of inquiry into subsistence and travelling allowances of judges and judges' clerks, headed by South Africa's Chief Justice, Mr Justice F L H Rumpff, has been appointed by the State President.

In Durban the process of law in the Supreme Court came to a dramatic halt this morning when judges retired to their chambers to hold a hastily convened meeting—

Attorneys, advocates and their clients thronged the corridors of the court building as they awaited the reappearance of the judges. Almost two hours after court had been due to start, there seemed no sign that the judges' conference was about to end so many members of the Bar headed for a nearby coffee shop to continue their vigil

Advocates believed the judges were meeting to consider a statement by Mr Schlebusch, the Minister of Justice, that a former judge, Mr Mervyn King, had resigned from the Bench earlier this year because he believed some members of the Bench had been involved in "fiscal irregularities" involving public funds.

In a special announcement in Parliament yesterday the Minister said the Bar Council was satisfied that Mr King's belief was "bona fide" and based on reasonable grounds.

Mr Justice Leon, the most senior member of the Natal Bench, would not comment on the reasons for the meeting — or confirm that the judges had met.

Courts resumed in normal sitting at 11.30 am.

The establishment of the commission was gazetted in Pretoria today.

The other members of the commission are Mr F G Barrie, former Auditor-General, and Mr J A Clafford, a chartered accountant.

According to the Gazette the terms of reference of the commission are "to inquire into, report and make recommendations on the subsistence and travelling allowances of judges and the question whether in the Transvaal or Natal an interpretation was given to the prescribed tariffs of those allowances or those of judges' clerks, and claims were submitted in connection with such allowances, that were legally or otherwise not correct and resulted in the unjustified paying out of public money"

Evidence will be heard in camera unless otherwise directed by the chairman.

Interested people wanting to make representations or give evidence can submit memoranda not later than August 27 this year Memoranda must be addressed to the Commission of Inquiry into Subsistence and Travelling Allowances for Judges and Judges' Clerks, Private Bag X81, Pretoria 0001.

655. S ORTHOGRAPHY
656. A SUGA, J.H.
657. D 1931
658. I XHOSA ORTHOGRAPHY.
659. P S.A. OUTLOOK 61 : 117-118.
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Govt plans black people's courts

Political Staff

CAPE TOWN — A Bill to enable the Minister of Co-operation and Development to confer on selected blacks the same judicial power as a chief or headman to pave the way for "people's courts", was introduced yesterday

The Laws on Co-operation and Development Second Amendment Bill will amend the Community Councils Act of 1977

In terms of the proposed law, the Minister may confer on selected blacks the same judicial powers as those which may be conferred on headmen and chiefs after consulting the community council in the area

In practice, people's courts will only be appointed at the specific request of the community council

Mrs Helen Suzman (PFP Houghton) warned of the danger of conferring wide judicial power on people without specialised legal qualifications which could lead to abuse of power

She said she was opposed in principle to the concept

"The exercise of wide judicial powers should be left to the courts, especially in urban areas where black chiefs and headmen play no part," she said

The Bill also provides the legal framework for the inclusion of Mafeking into BophuthaTswana It legalises Government plans to cede the Northern Cape town to BophuthaTswana once negotiations for the transfer are completed

It also reflects yet another switch in the constantly changing Government terminology in dealing with black affairs

What were once officially referred to as Bantu homelands, then as black homelands, then as black states, are now officially to be called "national states"

South Africa - an alternative history

Edward Roux's story, [illegible]948 and revised in 1964, exemplifies Kant's saying that 'p[illegible]ossible only if the prophet himself occasions and produce[illegible]cts'. The latest reprint of Time Longer than Rope[illegible]nsin Press, 1979), has as its sub-title, 'The Black Man's Stru[illegible]outh Africa': the insight into South African history [illegible]strates must be credited in part to the perspective of [illegible] of which E Roux was an active member. 'Black consc[illegible]ise affirms a unity of the oppressed rather than one of et[illegible]ame much later, and it too (at least in its institut[illegible] suppressed.

A history is a story [illegible]tandpoint which leads up to the present and explains [illegible] a people's struggle only coheres properly when the str[illegible] preceding this the unity of plot is more a matter of f[illegible] the history of the 'ancien regime' is always rewritten a[illegible]n and society, especially now in this part of the glob[illegible]nition'.

In order that our vers[illegible] South Africa be not one-sided and if one is to be a[illegible]d choice about the future, this book is essential rea[illegible]n history the story of Jan van Riebeeck up to Smuts,[illegible]l Party of Malan, Verwoerd and Vorster? Or is it ab[illegible] prophet imprisoned on Robben Island in the early l[illegible]hemiah Tile and the Ethiopian Movement; about all [illegible]ulu chiefs and tribes that resisted the white in[illegible] wars 'which ended in the loss of the country and th[illegible]tu to the status of an internal proletariat'? (Time L[illegible]7)

Is our history the sto[illegible] struggle for democratic rights and national liberation / [illegible]ebellion o. 1906 / the passive resistance campaign of Ghandi / the Bulhoek massacre of 163 'Israelites' and that of the Bondelswarts (over 100 men killed) / Clements Kadalie's famous Industrial and Commercial Workers' Union with almost a quarter million members in the 1920's / the Africanisation of the South African Communist Party long before the churches saw the need for this / the African National Congress (ANC), with its slogan 'Mayibuy' i Afrika - Let Africa return' / the series of mass passive resistance campaigns against the pass laws /

He received from P.

'Peoples' courts' planned for blacks

Cape Times 28/5/80

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Political Staff

HOUSE OF ASSEMBLY — A bill which will enable the Minister of Co-operation and Development to confer on selected blacks the same judicial power as a chief or headman, paving the way for "peoples' courts", was introduced yesterday.

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In terms of the proposed law, the minister may confer on selected blacks the same judicial powers as those which may be conferred on headmen and chiefs after he has consulted the community council in the area.

In practice, peoples' courts will be appointed only at the specific request of the community council.

Mrs Helen Suzman (PFP Houghton) warned of the danger of conferring wide judicial power on people without specialized legal qualifications which could lead to abuse of power.

She said she was opposed in principle to the concept of peoples' courts.

"The exercise of wide judicial powers should be left to the courts, especially in urban areas where black chiefs and headmen play no part.

The bill also provides the legal framework for including Mafeking in Bophuthatswana. It legalizes government plans to cede the Northern Cape town to Bophuthatswana once negotiations for the transfer are completed.

The bill also reflects yet another switch in the constantly changing government terminology in dealing with black affairs.

What were once officially referred to as Bantu homelands, then as black homelands, then as black states, are now officially to be called national states.

When will Rabie report? — Suzman

252
RDM 30/5/80

THE ASSEMBLY — Absolutely no progress had been made towards a return to some form of the normal rule of law in South Africa, despite the appointment of a Commission of Inquiry into security legislation in August, 1979, Mrs Helen Suzman (PFP Houghton), said yesterday

Speaking in committee on the Justice Vote, she expressed her disappointment at the fact that the Rabie Commission had not yet reported

"It is now nine months since the commission was appointed — the normal period of gestation Is the commission about to produce its report?

"If not, can the Minister (Mr Alwyn Schlebusch) perhaps induce the commission to do so?

"I believe it is urgently necessary that we know what recommendations to reform the vast battery of arbitrary powers the commission, hopefully, will make, and for those reforms and modifications to be translated into amendments of the security laws"

Mrs Suzman said she believed it would be "most unfortunate" if no amending legislation were to be introduced this session

"It would mean that all those draconian powers would continue to be used and, in many cases, I have to say, abused, throughout the recess, without safeguards and, worst of all, without accountability"

Members needed to know what Mr Justice Rabie's commission recommended and if his recommendations included some checks to the arbitrary powers presently exercised by Ministers and the Security Police

Those checks should be introduced by amending legislation before the session ended — Sapa

'Speedier justice'

RDM 30/5/80
252

THE ASSEMBLY. — South Africa needed speedier and more effective administration of justice, Mr Alf Widman (PFP Hillbrow) said yesterday.

Speaking in committee on the Justice Vote, he said the cost of litigation in South Africa was far too high

People should be able to make more use of attorneys, whose scale of fees was generally lower than that of advocates, and it should not always be necessary to have junior counsel when a senior counsel was employed

It was also clear that the courts were overworked Judges needed time to think and reason and should not be put under constant pressure

South Africa should consider establishing specialist courts to deal with building disputes, engineering, quantity surveying and architecture. Family courts could deal with divorce, maintenance, matters pending in divorce cases, custody and childrens courts

Magistrates courts had to be relieved of things like marriage ceremonies, Land Bank applications, fishing licences and revenue transactions. — Sapa.

Contempt of court or not contempt

Staff Reporter

THE sub judice rule is not nearly as gagging as many people imagine

This emerges from a judgment handed down by a full Bench of three judges of the Transvaal Division of the Supreme Court

The judges upheld an appeal against contempt of the Erasmus Commission by the Editor of the Rand Daily Mail, Mr Allister Sparks, the newspaper's former deputy financial editor, Mr Hamish Fraser, and South African Associated Newspapers

Mr Sparks and the two other appellants were convicted of contempt of commission in January 1979

An authority on newspaper law said yesterday that the judgment handed down by the three judges showed the law of contempt of court did not apply to contempt of commission It also showed that even in court cases there was no such thing as a "gagging writ" to stifle discussion on matters of public interest

○ Editorial comment — Page 10, Full details — Page 11

Tribal justice moves in to take on township disputes

Political Staff

THE ASSEMBLY — The introduction of "people's courts" in black towns came a step nearer yesterday when the Laws on Co-operation and Development Second Amendment Bill passed its Second Reading

The Bill was opposed by the PFP, whose justice spokesman, Mrs Helen Suzman (Houghton), said it was wrong to confer judicial powers on people without the proper training and background

The measure, which will confer on selected blacks the same judicial powers as headmen or tribal chiefs, will be introduced only after being requested by community councils

The Deputy Minister of Co-operation and Development, Mr J J Wentzel, said that reasonable liaison between the makgotla courts and the police would greatly relieve the burden on the police

The measure, with the proper degree of co-operation between the people's courts and the police would be a major contribution towards the maintenance of law and order in black urban areas, he said

The laws determined very clearly which crimes or civil actions could be tried in the courts

In addition all accused had the right to appeal to the commissioners in their areas

"The expense of many court proceedings are a major source of trouble to many blacks This way the people will have access to courts that can be operated very cheaply," said Mr Wentzel

Mrs Suzman interjected, saying that was one of the troubles with the proposed courts

Sapa reported Mr Wentzel as saying said that even in 1980, South Africa was not in a position to consider the abolition of tribal law for blacks, even in the urban areas

He said the procedure of traditional black courts hearing disputes was such that it usually ended in reconciliation of the parties involved

The traditional courts were functioning well and if tribal law were disregarded at this stage it would be an insult to blacks, even in Soweto

The lifestyle of many urban blacks was still linked to tribal law

Dr W D Kotze (NP Parys) said the transfer of Mafeking to BophuthaTswana should eliminate the "Africa syndrome" — that blacks were necessarily hostile to whites

The transfer of Mafeking was putting into practice the Government's policy of helping Africa to help itself

The town would prove that blacks could live in peace and harmony with whites who had settled there

Mafeking would be an ideal choice for the administrative seat of the proposed constellation of Southern African states, Dr Kotze said

Discord over peoples' courts

C.T. 10/6/80

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Political Staff
HOUSE OF ASSEMBLY —

The introduction of peoples' courts in black urban areas came a step nearer yesterday, when the Laws on Co-operation and Development Second Amendment Bill passed its second reading

The bill was opposed by the Progressive Federal Party whose justice spokesman, Mrs Helen Suzman, said it was wrong to confer judicial powers on people without the proper training and background

The measure, which will confer on selected blacks the same judicial powers as headmen or tribal chiefs, will be introduced only after being requested by community councils

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'People's courts' slated in cities

By MANDLA NDLAZI

THE Bill to introduce "people's courts" in the country's black urban areas showed the Government's insincerity in its promises to move away from discrimination.

This was said by a member of the South African Black Social Workers' Association (SABSWA), Mr Shimane Khumalo, who was asking why there should be different sets of laws for race groups living in one country?

Mr Khumalo was among several people who reacted strongly to reports about the Bill read in Parliament this week He said it was not too late for the Government to scrap the Bill, "if they have any respect for the black majority".

In the second reading of the Bill the Deputy Minister of Cooperation and Development, Mr J J Wentzel, said the Government was merely legalising a form of law in use among blacks for many years.

Mr Joe Kawana, chairman of Egoli Child Welfare Association, said: "If they go ahead with the Bill they might as well forget about the maintainance of law and order in these areas Things will be worse, I tell you."

Natal man gets Soweto post

NATAL MERCURY 16/6/80 253

Mercury Reporter

MR Rex Pennington, former rector of Michaelhouse, has been appointed headmaster of a new R4 million commercial school in Soweto from next year.

It will be a fee-paying private school subsidised by the American Chamber of Commerce.

'There will be a very real need for middle-management people in the next 10 years and the school will concentrate on commercial subjects to train people to relieve this shortage,' Mr Pennington said.

The school would open next year with 120 Standard 6 pupils.

Stimulate

'I would like to stay at the school long enough to see our first Standard 6 class matriculate.

He said he hoped the Soweto school would stimulate other people to initiate other quality schools for blacks.

'We will advertise for staff shortly and will be open to all applications. Naturally those with the best qualifications will be taken I'm hoping we'll get a number of good black applicants,' he said

The name of the school has not been finalised but Mr Pennington thought it would probably be called Soweto Commercial High School.

Mr Pennington was born in Greytown and educated at Cordwalles and Michaelhouse

He retired as rector of Michaelhouse in 1977 and has since been teaching at St Peter's Preparatory School in Rivonia

Judge urges stand on SA human rights

By ARNOLD GEYER

A JUDGE has urged lawyers, attorneys and law academics to speak up on violations of human rights in South Africa and to question the social implications of the country's laws

Officially opening the inaugural meeting of Lawyers for Human Rights in Johannesburg at the weekend, Mr Justice J M Didcott of the Natal Supreme Court said the bulk of the population regarded the legal order as "oppression" and that the black population's allegiance to truly protective laws was therefore difficult to gain

He said it was "deeply disturbing" that a growing number of both overseas lawyers and law students in South Africa regarded the country's legal profession as "collaborating with and lending respectability to a fundamentally illegitimate process'

"The time is past for us to be mere technicians and craftsmen — we have to question the social implications of the law and to strive for a more creative contribution by the law to society," Mr Justice Didcott said

The reason why lawyers and attorneys had failed to take a united stand on controversial questions was that the General Bar Council and the Association of Law Societies were structurally unsuited to such a task

"We are inevitably entering a period of great change and what accompanies and results from this will become of paramount importance — the greatest danger is that this may be widespread anarchy," he said

Law and order, not in the sense in which the country's politicians used it but as lawyers understood it, was therefore indispensable

"Allegiance to the idea of law and order on the part of the overwhelming bulk of the population — a belief that it truly protects them and serves their interest — is therefore an absolute prerequisite to real progress,' the judge said

But, in the name of law and order so much had been done that the majority regarded as oppression, that this allegiance would not be easy to gain

He echoed Professor John Dugard, director of the Centre for Applied Legal Studies at the University of the Witwatersrand, who had said that

- The legal order of apartheid had not only brought white South Africa into disrepute but had undermined faith and confidence in the entire South African legal system,
- While whites prospered under laws designed to maintain their privileged position, blacks experienced the order as discriminatory, promoting personal insecurity and denying material advancement,
- Blacks did not share the whites' admiration for the impartiality of the South African judiciary and administration because "an oppressive body of rules" was imposed on them without consultation and enforced by "an array of instruments of coercion", and that
- Sweeping changes had to be made to the entire "edifice of the law" — "while there is still time'

Prof Dugard told the gathering the immediate and minimum requirements to restore faith in South Africa's legal system were a new constitution with a bill of rights providing legal safeguards for individual liberty, anti-discrimination laws to educate an "unenlightened and prejudiced people', and a courageous legal profession committed to the enforcement of human rights

Bench members' position delicate

Staff Reporter

JUDGES' identification with, and participation in, a body such as Lawyers for Human Rights, emerged as a controversial issue at the association's inaugural meeting at the weekend

While some at the 200-strong gathering felt judges should become active members, others said members of the Bench should be eligible for only honorary positions, and not election to the executive

But, delegates told the Rand Daily Mail, the fact that two Supreme Court judges and one from the Appeal Court were present was indicative of the "growing mood of discontent among judges over the State's inroads into the legal order".

The judges at the meeting were Mr Justice J J Trengove, of the Appellate Division, Bloemfontein; Mr Justice V Hiemstra, Chief Justice of BophuthaTswana, and Mr Justice J M Didcott, of the Natal Supreme Court.

Executive members said yesterday that at least three more judges have expressed support for the new association and its aims

Mr Justice Didcott, delivering the opening address at the meeting, said participation of judges in such a body and their expressions of extra-judicial opinions on public issues, was a controversial question — one on which judges themselves did not always agree

"The association may need to involve itself from time to time in highly contentious matters, or comment on proposed legislation in an attempt to influence Parliament No judge could be a party to that. Such an association would be unnecessarily inhibited in its activities if it had constantly to worry about whether it was going further than its judicial members could."

However, this was not to say that a judge may not declare his approval in principle for such a body "That I, for one, do so, is proved by my presence here," said Mr Justice Didcott.

'SA law often used as tool to stifle justice'

Staff Reporter

A LAWYER told 200 of South Africa's top legal men that instead of furthering human rights, the country's legal system had too often been used as a vehicle for the suppression of these rights and of justice

Mr Michael Richmond, a Cape Town attorney and member of the Laywers for Human Rights" steering committee, was speaking at the weekend launching of the group

He said the need for involvement of South African lawyers in the human rights issue was probably more urgent than in any other country

"The outlook for human rights in South Africa grows dimmer almost by the day Recent legislation has once again undermined the rule of law and extended the instruments of repression "

There was very little time left to implement changes necessary to avert the destruction of the legal system

"We should attempt to make those who govern us — and the governed — understand the futility of relying to such a great extent on the power of the law to check social, political and economic pressures, lest one day our once-envied legal system becomes merely an instrument to suppress the majority and to regulate commerce for the benefit of the minority "

Mr Richmond urged the new association to

- Become the conscience of the legal profession by freely speaking out against laws and practices which were unjust and suppressed human rights,
- Avoid becoming simply an "academic talking shop' that confined itself to "reactive sterile statements",
- Undertake and encourage studies and reports on legal aid court impartiality and substantial — "as distinct from lip service" — adherence to due process,
- Encourage "pro bono" public work, and training of underprivileged would-be lawyers,
- Educate lawyers to expect less materially of their profession,
- Awaken an awareness among lawyers and the public of the important differences between the law and justice,
- Persuade "the most illustrious" lawyers to join the association without compromising its objectives, and to
- Give the widest possible meaning to the concept of the rule of law, as a narrow understanding might lead to "silence in controversial areas"

Blacks will wait and see

Staff Reporter

BLACK lawyers are adopting a wait-and-see attitude towards the new Lawyers for Human Rights association

While the black Democratic Lawyers Association (DLA) has welcomed the association — so long as it actively fights the erosion of human rights — the Black Attorneys Association (BAA) boycotted the inaugural meeting

Mr Godfrey Pitje, the BAA chairman, who was invited to address it, said he stayed away in protest over the Government's ban on political gatherings in 24 magisterial districts, and events of the past fortnight

Professor John Dugard of the University of the Witwatersrand explained to the 200 delegates that many black lawyers felt their white colleagues could have taken such an initiative many years ago

"Black lawyers now have certain suspicions and we have to show them that we mean business

Black lawyers had been, and were being, arrested and detained, and the failure of white lawyers to speak out had increased black distrust of the South African legal profession, Prof Dugard said

Black delegates at the meeting emphasised that black people felt the formation of such an association had been precipitated by events in Zimbabwe and Namibia, and that they first had to be sure that this was not merely another attempt by whites to preserve white minority rights

Legal men launch human rights fight

252 ~~258~~ RDM 23/6/80.

By ARNOLD GEYER

A SUPREME Court judge has called on the legal profession to make its voice heard on violations of human rights in South Africa, and to question the social implications of the country's laws.

And the chairman of the Johannesburg Bar Council has urged practising lawyers to form a "bulwark against the executive" and to act fearlessly in unpopular cases.

These appeals were issued at the weekend by Mr Justice J M Didcott of the Natal Division of the Supreme Court, and Mr Johan Kriegler, SC, at the inaugural meeting in Johannesburg of Lawyers for Human Rights.

The organisation was launched by lawyers, attorneys and law academics to fight for the promotion and protection of individual and group freedom

The meeting, described as "historic" and a "watershed event for the legal profession", was attended by about 200 top legal men from all over the country

Its convenor, Professor Johan van der Vyver of the University of the Witwatersrand, said another 200 lawyers had written to the group's steering committee, expressing full support

Two other judges were also present at the meeting in what was seen as open support of the association's objectives

And the Rand Daily Mail has learnt that at least three other judges wrote to members of the steering committee expressing approval of the [illegible]

The judges present were Mr Justice Didcott, Mr Justice V Hiemstra, Chief Justice of BoputhaTswana, and Mr Justice J J Trengove of the Appellate Division, Bloemfontein

Mr Justice Didcott said "We have to question the social implications of the law and to strive for [illegible] creative contribution [illegible] law to society"

Mr Kriegler received a standing ovation after his speech, in which he urged lawyers to fulfil their "holy duty" to act fearlessly in unpopular cases, regardless of the discomfort that might follow

The meeting — for which a special permit had to be obtained because of the present ban on gatherings in certain areas — heard speaker after speaker stress the "urgent and long overdue" need for lawyers to take a united stand against mounting inroads by the State into personal and group freedom

They agreed that the bulk of the population had no access to the law and should be provided with effective legal aid

Professor John Dugard, director of the Centre for Applied Legal Studies, said yesterday the formation of this association by lawyers "of high standing" and their unanimous willingness to advance the promotion and protection of human rights, was "truly historic"

But, he warned, until the association actively demonstrated the application of its aims, black support would not necessarily follow

So far, black lawyers and attorneys have adopted a "wait-and-see" attitude to the association

Professor Marinus Wiechers, of the University of South Africa, echoed the meeting's view that academic discussions on human rights were meaningless and that only the active fight for their practical implementation was relevant

Those elected at the meeting to an executive council for Lawyers for Human Rights are Mr Johan Kriegler, SC, Mr S W Kentridge, SC, Mr E Wentzel, SC, Mr A Chaskalson, SC, Mr G Bizos, SC, Mr Keith Lister, Mr H J Benghu of the black Democratic Lawyers Association, Mr S Sithole, Prof Wiechers, Professor S A Strauss of the University of South Africa, Professor Tony Matthews of the University of Natal, Prof Van der Vyver and Prof Dugard

● **Full reports — Page 2**

Legal services 'vital for poor'

By MEG BRITS

THE urban poor, a steadily growing and essentially black community, are in particular need of readily accessible legal services to enable them to deal with intricate rules which govern their day to day lives

Mr Arthur Chaskalson, director of the Legal Resources Centre in Johannesburg and executive member of the newly-formed Lawyers for Human Rights organisation, said at the weekend there was an awareness of this need among members of the legal profession in Johannesburg

Mr Chaskalson was speaking on public interest law and the work of the Legal Resources Centre at a meeting of the Zionist Luncheon Club at a Johannesburg hotel yesterday

He said public interest law arose out of a belief that all groups should have access to the law — not only the powerful — because the legal system could only function effectively if all persons with grievances or complaints or with a need for legal advice were adequately represented

The Legal Resources Centre was established in 1979, he said, because of growing awareness within the legal profession of the need for the profession to involve itself in the affairs of the poor, rather than just in the concerns of the rich, who were its traditional clients

Mr Chaskalson said he believed the work of the centre was in the public interest, because of the nature of the services it provided and the opportunity it gave to young lawyers to become involved in socially rewarding work

It could also make a contribution, he said, to a greater involvement on the part of the legal profession in social issues

The centre provided legal services to clients without charge, taught law students and supervised law clinics. It was financed by the Legal Resources Trust, and has an annual budget of R200 000

The Legal Resources Centre also handled cases itself — its policy was to take on cases in which a legal decision might be of direct benefit to many people, or might benefit other people in the same position

It also took on cases which might represent a particular form of abuse or exploitation and which called for redress

Mr Chaskalson said the need served by the centre was demonstrated by the demand for its services — it already had more work than it could cope with

The centre provided legal services to clients without charge, taught law students and supervised law clinics. It was financed by the Legal Resources Trust, and has an annual budget of R200 000

The Legal Resources Centre

Foundation of SA justice 'in danger'

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Staff Reporter

THE STATUS of the Supreme Court and with it the whole foundation of justice in South Africa was in danger, the chairman-of the General Council of the Bar of South Africa, Mr Douglas Shaw, said yesterday

Mr Shaw was addressing a luncheon at a Sea Point hotel held to coincide with the annual conference of the council in Cape Town

It was a matter of considerable concern that there was an apparent tendency for the distinction between the Supreme Court and Magistrate's Court to be lessened, he said

Many magistrates carried out a difficult task with great ability and often under trying circumstances But they were still members of the public service

Their careers not only involved a multitude of administrative tasks, but also the situation that they might, in their judicial work, be subjected to instructions from above which they were expected to obey

Criticism of police

One example was that "some years ago" a directive, instruction or recommendation was given to magistrates that they should not criticize the police in their judgments, but that if there were reasons for the criticism of a police officer, they should communicate with the police authorities responsible Mr Shaw believed that this might still be the position

"No doubt those who were responsible for the instruction believed that it was in the public interest, and that the task of the police would be able to be better done if members of the police were not publicly criticized by the Bench

"I think, however, that they overlooked two important matters In the first place, while public confidence is important, it is equally important that it should be placed only in those who are deserving of it The stifling of justifiable criticism of the police could not serve this end

"Secondly, they overlooked the effect upon individuals coming before the courts in cases where the magistrate regarded the police evidence or police action as in some way unsatisfactory No doubt he would decide the case according to his views of the police evidence

"The system of justice in this country, however, sets up a system of appeals An Appeal Court would be deprived of the advantage of knowing of the magistrate s views, and that might well affect the views of the Appeal Court on the whole case

"Nevertheless, a magistrate who disregarded this instruction could not be as sanguine of his prospects as would one who was careful in his observance of it This, I think, is an example of the difference in atmosphere between the public service and the office of a judge of a Supreme Court"

Administrative arm

The public service was, generally speaking, the administrative arm of the executive government It was essential that those who prevented the executive arm from exceeding bounds laid down by law, or who may be called on to review actions of the executive arm, should not appear to emanate from that arm

Mr Shaw said there had been a tendency for the remuneration and status of judges of the Supreme Court to be lowered in comparison with the remuneration and status of holders of comparable offices

"I think it fair to say that till not very long ago the remuneration of a Supreme Court judge was approximately equivalent to that of a cabinet minister This is no longer the case"

Among suggestions which Mr Shaw made was that serious consideration be given to setting up an independent body consisting, at least, of judges, and the two branches of the legal profession, and possibly others, and that the body appoint judges and decide their remuneration and conditions of service

Bar Council opposed to new courts

CAPE TIMES 29/7/80

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Staff Reporter

THE General Council of the Bar of South Africa firmly opposes setting up intermediate courts in the country and favours extending the scope of legal aid

Proposals for setting up intermediate courts between the supreme and magistrates' courts and the question of legal aid were among matters considered at the 35th annual general meeting of the council in Cape Town last week

Proposals for intermediate courts are currently the subject of consideration by a commission of inquiry presided over by Mr Justice Hoexter

"The General Council was firmly opposed to the setting up of intermediate courts and resolved to convey this to the Hoexter commission," the council said in a press statement released yesterday

It said that the council had decided to renew requests to the Minister of Justice, Mr A L Schlebusch, to extend the scope of legal aid so that it could be made available as widely as possible to members of the public wanting to present their cases to the courts

"It was felt that the existing facilities for legal aid which at present exist were not sufficiently widely known to the public, and that the authorities should be asked to adopt more effective measures to inform the public of legal aid facilities"

The council considered a proposal that judges who resigned or retired should be prohibited by law from returning to practice, "save with the consent of the Minister of Justice upon the recommendation of a bar society or association

"The council reaffirmed that it is opposed to the return to practice of judges, and concluded that the proposed legislation is not a desirable method of dealing with the matter It resolved to convey its opinion to the Minister of Justice".

Proposed legislation had been refered to the council for consideration Suggestions included an amendment of the law of evidence to provide for the admission in legal proceedings of records produced by computers

They also included suggestions for a review of the law relating to trusts in South Africa and proposals concerning matrimonial property

Dept of Justice studying statement

CAPE TIMES 29/7/80 252

By ROGER WILLIAMS
Chief Reporter

THE Department of Justice in Pretoria is studying a statement made in Cape Town last week by the chairman of the General Council of the Bar of South Africa, Mr Douglas Shaw, that the status of the Supreme Court and with it the whole foundation of justice in South Africa was in danger.

A SABC interview with Mr Shaw on points he made in the statement, reported in the Cape Times on Saturday, was broadcast in the Radio Today programme early yesterday

One of these points, made when Mr Shaw spoke at the annual conference of the General Bar Council in Sea Point last week, was that "some years ago" a directive, instruction or recommendation was given to magistrates that they should not criticize the police in their judgments

Magistrates should rather communicate with the police authorities responsible if there were reasons for criticism of police officers

Mr Shaw said he believed this might still be the position

A spokesman for the Department of Justice in Pretoria, when approached for comment yesterday, said the department would study Mr Shaw's statement before reacting to it

"So far as the 'directive' to magistrates is concerned, we have also had references to this from other sources and we are looking into it to establish precisely what the position is"

● Mr Shaw, in his address at Sea Point and again in the SABC interview, said it was a matter of considerable concern that there was an apparent tendency for the distinction between the Supreme Court and the magistrates' courts to be lessened

'It's no secret' — but you can't read it

The case of the magistrates' handbook

Mercury Reporter

A CODE of instructions for the guidance of magistrates, issued by the Department of Justice, is available to magistrates only, according to the control magistrate of the Durban Court in Somtseu Road, Miss Joan McLean.

The content of the handbook has been questioned by a leading member of the Bar

Mr D J Shaw, QC, chairman of the General Council of the Bar, yesterday said he had a photostat copy of a paragraph which instructed magistrates not to criticise the police in their judgments

The acting Secretary for Justice, Mr S S van der Merwe, said the paragraph Mr Shaw was referring to had been replaced in 1968 He said the instructions were not secret 'Many advocates have been through the magistrate's court and know the handbook and it can be made available to members of the legal profession — and journalists if necessary'.

However, Miss McLean said the book was for magistrates only

'It contains purely departmental instructions and no other members of the legal profession and certainly no journalists have access to it,' she said

Mr Shaw said it may be true that the paragraph he referred to had been replaced 'but what did they replace it with?'

He said he knew at least one advocate had tried to get a copy of the instructions but had been turned down

'I agree that if the book contains instructions for magistrates' behaviour — things like what they should wear, or not to blow their noses in court — it should be restricted to magistrates But it should certainly not deal with matters that might affect the general administration of justice'

Mr Shaw made several other points regarding the 'trend towards a blurring of the distinction between the magistrate's court and the Supreme Court'

Regarding the pay increase judges were awarded in April, he said 'The view of many judges is that the increases made the situation worse because they introduced a gradation along public service lines There is no difference in responsibility between an ordinary judge and the Judge President, although for his administrative duties he should probably be paid a little more'

Judges earn R32 100 and the Judge President earns R37 200.

Examples of where the Government had made inroads on the judiciary, were boards set up as infallible by statute, and detentions without trial

'They might get hold of the wrong fellow and there is nothing we can do about it

'You can have your passport removed with no recourse to the law,' Mr Shaw said

Mr van der Merwe would not comment on these issues

'The minister will be back on Monday and if it is necessary the department will issue a statement,' he said.

CAPE TIMES 31/7/80 (252)

Advice to magistrates covers all 'officials'

By ROGER WILLIAMS
Chief Reporter

ADVICE to magistrates by the Department of Justice to avoid censuring members of the police force in open court has been replaced, in the department's procedural code now in operation, by advice of a more general nature which does not refer to the police specifically but to "officials of other departments".

One of the points made by the chairman of the General Council of the Bar of South Africa, Mr Douglas Shaw, QC, when he said last week that the foundation of South African justice was in danger was that magistrates, in their judicial work, might be subjected to instructions from above which they were expected to obey

Mr Shaw, speaking during the annual conference of the General Bar Council at Sea Point, said one example was that "some years ago" a directive, instruction or recommendation was given to magistrates that they should not criticize the police in their judgments and any criticism should be referred to the police authorities responsible

He believed this might still be the position

When this was put to the Department of Justice this week, the reply was that Mr Shaw was probably referring to paragraph 56 of the Magistrates' Code issued in 1953, headed "Censure in Open Court"

This paragraph had, however, been redrafted and rephrased in the revised and consolidated Magistrates' Code of 1968

The Cape Times was given access to both documents

In paragraph 56 of the 1953 code, magistrates were advised not to censure members of the police force in open court but rather to refer any criticism they might have of members of the force to the district commandant concerned, in writing.

"Public confidence in the police force could possibly be weakened if criticism of a general nature concerning the police were to be made from the Bench," it said.

In the revised code issued in 1968, paragraph 56 is replaced by a more comprehensive section headed "Comment from the Bench". In this the department says that in principle there is no objection to "fair and appropriate criticism made from the Bench in open court at an appropriate juncture".

The section goes on to say, however, that magistrates should avoid criticism from the Bench on facts not before the court.

Not only is it undesirable, it says, for criticism of this sort to come from the Bench, "it can also, where officials of other departments are concerned, upset the good relationships between this and other departments.

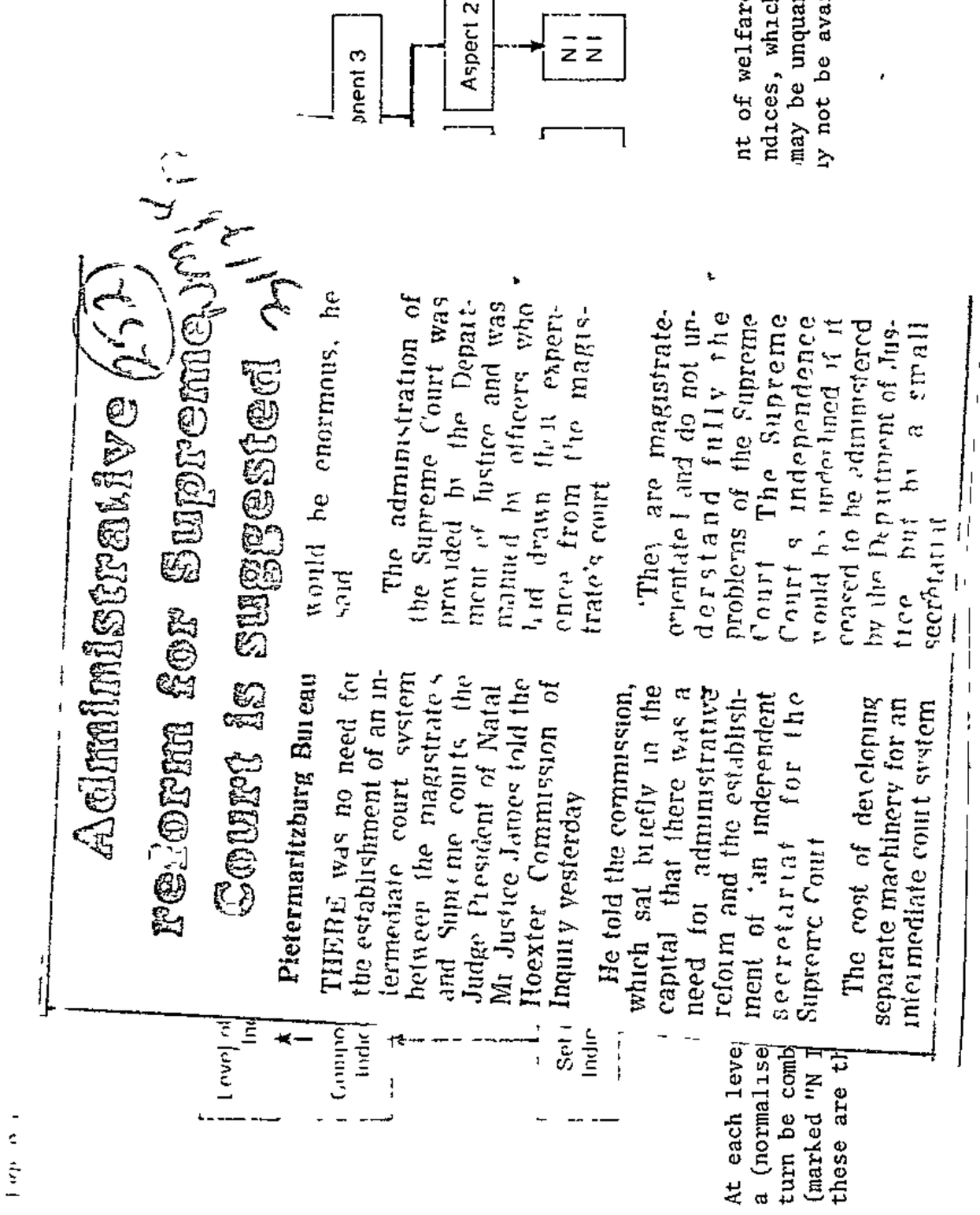
"Where criticism in the latter instance is justified, it would be more suitable to communicate in writing with the department, which in its turn will bring the matter to the attention of the party concerned."

The section also warns magistrates against "the inclination to generalize" which, it adds, can achieve no good object and can only cause embarrassment to the minister and to the department

Mr Shaw, in his address in Cape Town, said it was a matter of considerable concern that there was an apparent tendency for the distinction between the Supreme Court and magistrates' courts to be lessened

Magistrates carried out a difficult task with great ability often under trying circumstances but they were still members of the public service, and in their judicial work they might be subjected to instructions from above which they were expected to obey.

● The Department of Justice has not yet commented on Mr Shaw's statement as such. A spokesman said in Pretoria yesterday that the Minister of Justice, Mr Alwyn Schlebusch, was not expected back at his office till early next week, and he would want to study Mr Shaw's statement before commenting on it



themselves and others (c) National communication extent to which national communication and educational channels are used to present the problems and aspirations of the group to the general public (iv) *Recreational and cultural resources.* The broad variety of resources which facilitate self-actualisation may be included here (insofar as they are not already included above) (a) Entertainment· availability of theatres, cinema, music, opera, ballet, etc , (b) Cultural availability of libraries, museums, adult education centres, hobbies and specialised interest groups, (c) artistic art galleries, art schools, artistic associations (writer's groups, photography societies, etc), (d) Natural resources availability of public and private gardens, parks, game parks, natural environments (mountains, lakes, seas, wilderness), (e) Travel availability to the group of national and international travel opportunities (v) *Living environment* Congenial urban and rural environment for living General quality of built and natural environment, and access to animal life (pets, zoos, farms, wildlife reserves) and 'green places' [77] (vi) *Religious resources.* We list these separately because of their special relation to the goals and fulfillment of the group (a) Access to meeting houses, churches, etc , (b) access to information, and opportunity to meet, others of same persuasion or of different views, (c) resource uses associated in other ways with religion, e g sacrifices, or philanthropic uses of resources

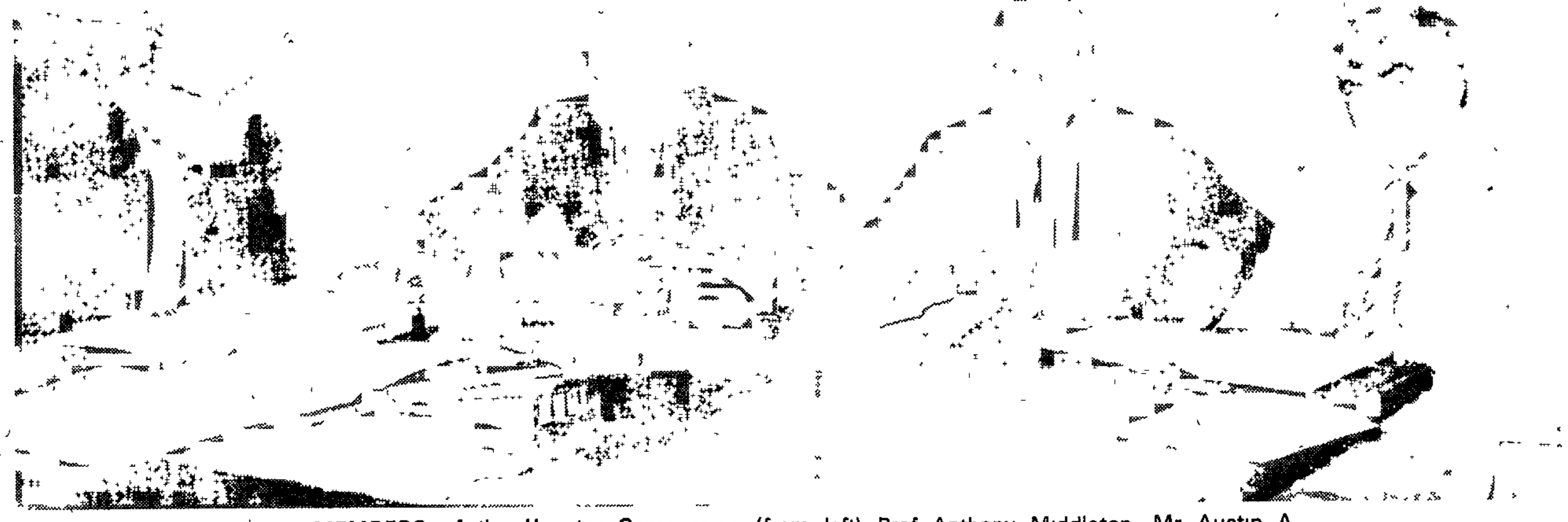
We have now considered the four major components of resource use The two subsidiary components considered next are needed to make a complete accounting scheme possible

5) Organisation Resources are used in setting up, maintaining and reorganising the institutional and organisational structure which is the framework in which all the other activity takes places Included in this component are organisational uses not considered in the other components at this level (i) *Community organisation* Use of the group's resources for organisational purposes enabling the other resources to be deployed effectively, but not accounted for in other components (time and expense involved in committee meetings, employment of policy makers, planners, legal draughtsmen, managers, administrative officers, secretaries, inspectors, etc , keeping organisational

(NM) 11/8/80 (252)

Hoexter Commission hears complaints from judges

Lawyer attacks lower courts



MEMBERS of the Hoexter Commission (from left) Prof Anthony Middleton, Mr Austin A Schreiber, S C, Mr Justice G Hoexter and Mr J M Potgieter.

Mercury Reporter

ONLY one in three judgments given by magistrates in civil actions involving his firm was satisfactory, a partner in a large Durban firm of attorneys said yesterday.

Mr J. I Strauss, was making representation to the Hoexter Commission of Inquiry into the structure and functioning of the courts of law and into the establishing of an intermediate court between the lower courts and the Supreme Court

'Many young attorneys become frustrated with the magistrate's court because magistrates often lack the appreciaton of legal argument. Some attorneys have said to me "They may as well spin a coin."

'Magistrates also lack decisiveness or the self-confidence to make an unpopular decision — too many cases are adjourned for flimsy reasons,' Mr Strauss said

Earlier several judges fiercely opposed the establishment of intermediate courts

Mr Justice Didcott said that such courts would lessen the fundamental distinction between the Supreme Court with its judicial authority and the magistrate's court which was essentially a branch of the public service

The courts would more and more appear to be different tiers of a single edifice where one could start at the bottom and climb to the top

'It must be borne in mind that magistrates chose a career which did not lead to the Supreme Court bench

'At the lower levels justice is somewhat rough It is impossible to provide for competent judicial officers all the way down the line but we must guard against allowing this situation at the bottom to spread upwards.'

Mr Justice Didcott also criticised the 'rudimentary' legal aid system in South Africa

'The majority of criminal accused cases in this country go undefended,' he said. 'The time is long overdue for legal aid to be taken seriously '

Mr Justice Milne criticised the system of administrative tribunals where reasons for decisions were not given He said tribunals should be obliged by statute to give reasons

'How do you give advice for matters on review if you don't know how the decision was arrived at?'

There was also the question of whether the decisions were right.

He said that the civil jurisdiction of magistrates should be increased, provided they had enough experience, and urged the greater use of black manpower.

The commission will sit in Durban today before going on to the other provinces.

'No need for intermediate courts' says judge

4/8/80 WM 252

Mercury Reporter

INTERMEDIATE courts could destroy the independence of the judiciary and promote a bureaucratic, unchallengeable system of control, Mr Justice Broome of the Durban Supreme Court told the Hoexter Commission of Inquiry last week

The commission is looking into the structure and functioning of the courts of law and into the establishment of an intermediate court between the lower courts and the Supreme Court

'I believe that the Supreme Court enjoys the confidence of the general public,' he said,

'Anything which blurs the distinction between the Supreme Court and other Government constituted, Government controlled, policy-obedient tribunals is to be condemned'

Mr Justice Broome told the inquiry there was no need for an intermediate court because the existing system was 'perfectly adequate'

Mr Justice Broome said the salaries paid to judges were totally inadequate

'These facts are known to the authorities as is the fact that the job of a Supreme Court Judge is becoming less than attractive to the sort of people who are qualified for the work, namely senior advocates at the Bar'

He said the inquiry might be seen as a burial service for the Supreme Court and it was a pity that only one Supreme Court Judge was a member of the commission

The commission left Durban on Friday to carry on its investigation in the other provinces

Govt's code of silence for courts

By MARIKA SBOROS

A CODE of conduct for magistrates asks them not to criticise Government departments in judgments, the Chief Magistrate of Johannesburg, Mr J A van Dam, said yesterday

Mr Van Dam said the code of conduct, issued by the Department of Justice, suggested that unless such criticism was absolutely essential to a judgment, the magistrate should write an official memorandum taking up the matter up with the department concerned

"The suggestions are contained in codified instructions for magistrates which have been in existence for many years now," he said

Prominent legal experts yesterday reacted strongly to the code, calling for magistrates to be freed from civil service status in the interests of an independent judiciary

Mrs Helen Suzman, Progressive Federal Party MP for Houghton, denounced the guideline on criticism because she felt it would have an inhibiting effect on some magistrates

"It may well be that if there had been more strenuous criticism of the police by magistrates, there might have been fewer cases of assault and other infringments of authority by the police over the years," she said

Mr Van Dam explained "There is a suggestion that if there is any criticism of an individual in a Government department, it is more effectual to take the matter up with the department concerned by official memo

"A whole department should not be denigrated because of an individual"

Mr Van Dam stressed that these were only guidelines, not binding on magistrates

But a former judge of the Supreme Court, Mr Kowie Marais, called the code "evil", and said he took great exception to it being kept secret for so long

"I fail to see why public servants acting in a judicial capacity should be guided secretly by a Government department"

Mr Marais said even a suggestion to magistrates not to criticise Government departments, for whatever reason, was an obvious inroad into their discretionary powers

"It is something completely foreign to the South African or Roman-Dutch concept of the impartiality of courts of law"

He said the Minister of Justice, Mr Alwyn Schlebusch, owed the public an explanation

"I strongly favour magisterial benches being freed from the civil service," he said

Mrs Suzman said the code highlighted the situation of magistrates as civil servants

Prof S C Jacobs, head of the Department of Public Law at the University of Potchefstroom, also called for the removal of magistrates from the civil service

He said he "did not approve" of the guidelines

The senior deputy Secretary for Justice, Mr S S van der Merwe, said that the paragraph concerned was "merely advice to judicial officers not to comment on something if the facts are not before the court

"I think it does refer to Government departments, but it is a general instruction," he said

"Prior to 1968, there was a paragraph that could have been construed to mean that magistrates should not criticise the police in their judgements This was replaced in that year," he said

Shaw rejects magistrate's reply

Own Correspondent

JOHANNESBURG — The chairman of the General Council of the Bar, Mr D J Shaw, QC, yesterday rejected an explanation by the Chief Magistrate, Mr L McKay, of certain 'guidelines' issued to magistrates regarding their relations with the police

Mr McKay said that the desired close co-operation with the police related to matters of administration and did not figure in any way in a magistrate's assessment of the merits of any case he may be dealing with in court

"How is a magistrate to make the distinction when the code says that he must ensure good relations with the police? And what is an even moderately-educated person going to think if evidence is presented by police?"

He criticized the instruction that magistrates should provide interpreters from their staff if police could not undertake the translations themselves The impartiality of such interpreters was questionable

Mr McKay said that the publicity which the code of instructions had received was "unfair to magistrates and detrimental to the administration of justice in that the judicial impartiality of the magisterial bench is placed in doubt"

He said that experienced magistrates probably did not need the advice given in the code, but it is surely very appropriate for the young and inexperienced"

Legal men attack the secret code

By MARIKA SBOROS

THE code of conduct issued by the Department of Justice, asking magistrates not to criticise Government departments, was symptomatic of serious inroads made by the legislature on the rule of law, a Durban attorney said yesterday

Mr Hassim Seedat, chairman of the Democratic Lawyers' Association, was commenting on the code which has evoked strong reaction from legal experts and politicians, who have called for magistrates to be removed from the civil service in the interests of an independent judiciary

"If there is one attribute in the administration of justice that should be inviolate, it must be the impartiality of the bench," Mr Seedat said

Blacks, he said, saw the courts as "symbols of oppression" because of the multiplicity of racial laws controlling their movement, residence and employment, and the "clogging of courts with so-called pass offences"

"This will seem even more so to blacks when magistrates are silent on the conduct of the police who made the arrests in the first place," Mr Seedat said

Mr Douglas Shaw QC, who first broke the news of the apparently secret code of conduct for magistrates when he spoke at a conference in Cape Town, said he found it "alarming" that the Department of Justice saw nothing wrong in issuing guidelines to "allegedly independent judicial officers"

Commenting on a statement by a Department of Justice spokesman that the code contained guidelines to which magistrates were not bound, Mr Shaw said

"I would have thought if you even issue guidelines, they are expected to be adhered to, whatever you may call them"

Prof John Dugard, head of the Department of Law at the University of the Witwatersrand, said that magistrates occupied an ambiguous position — as civil servants on the one hand and apparently independent judicial officers on the other

"The code emphasises that magistrates are civil servants and this will inevitably undermine their claim to independence in matters involving the individual and the State," Prof Dugard said

As most matters heard by magistrates were criminal law matters in which the police and other Government departments were involved, the public would "justifiably lose much of its confidence in magistrates as impartial administrators of justice," Prof Dugard said

Prof S A Strauss, head of the Department of Law at Unisa, said yesterday the code was not as "horrifying" at it first appeared

"The suggestions contained in the code do not restrict the functions of a magistrate in carrying out his sacred oath of office," Prof Strauss said, adding that he saw nothing wrong in the department issuing the guidelines to magistrates

● The code first appeared in 1953, with a suggestion to magistrates not to criticise the police in their judgements. Magistrates were advised to instruct the District Commandant by official memo This paragraph was taken out in 1968, and replaced with a paragraph which refers generally to criticism of Government departments

BACKGR

Mr L L A McKay, Durban's Chief Magistrate, deals with certain "codes of instruction" given to magistrates, and in doing so explains his concern with the interpretations placed on the guidelines given to magistrates.

'Guides' to lower courts explained

Own Correspondent

DURBAN — Judicial officers of magisterial rank are in duty bound to evaluate the evidence of witnesses and do have the right to criticise any witness, including a police witness, says Durban's Chief Magistrate, Mr L L A McKay.

Mr McKay was commenting on reports that a "secret" code of instructions to magistrates contained guidelines on how they should deal with criticism of certain witnesses in open courts.

It is stated in the code that criticisms of government officials and police witness were better dealt with in the form of a letter or memorandum.

Mr McKay's statement is:

VARIED DUTIES

"Considerable publicity has recently been given to the views of the chairman of the General Council of the Bar and others on the question of the independence of the Magisterial Bench vis-a-vis that of the Supreme Court and much has been made of two particular instructions

After dealing with two instructions, Mr McKay says.

"It is not my intention to enter a debate with the chairman of the General Council of the Bar on the issue of the independence of magistrates but I am concerned that the interpretation placed on the guidelines given to magistrates, and the nature of the publicity given to the matter.

UNFAIR

"It is not only unfair to magistrates but it is also detrimental to the administration of justice in that the judicial impartiality of the magisterial bench is placed in doubt

"I am not the author of the code 'Landdroste' and I do not think it is for me to justify the need for the guidelines given under the two headings referred to, but I feel strongly that, in the interest of justice and public confidence in judicial officers of magisterial rank, the matter should be seen in proper prespective.

"Each magistrate's office in the country is provided with a set of codes dealing with the many and varied duties that are performed by the magistrate and his staff on behalf of the Department of Justice and many other departments.

"There is nothing secret or sinister about these codes.

BASIC MATTERS

They deal basically with administrative matters and are not designed to influence or interfere with the judicial discretion of the magistrate on the Bench. It should be remembered that each and every magistrate's office is responsible for the training of its officials and this includes training young judicial officers.

"There is no taboo on the right of a magistrate to critise any witness (including a police witness) but the code requires of judicial officers inter alia that their comments from the bench be controlled, objective and dignified"

There is advice to avoid criticism on matters which are unrelated to the case in hand and in the latter events, if an official of another department is involved, it is advisable to take the matter up with the department concerned.

OBVIOUS

"As far as the Police Department is concerned it is surely obvious that the department is an arm of the law and that on the administrative level there should be a cordial relationship between that arm and the Magisterial Division which after all, deals with by far the greater percentage of criminal cases tried.

The Star

Another limit on open justice

THE tradition of the South African magistracy is a long and honourable one It is distressing therefore to learn that for at least 12 years, and possibly twice as long, magistrates have been subject to a rule which is clearly authoritarian in intent The Justice Department's official code of conduct urges them not to criticise Government officials in open court, but instead to transmit any comment through Government channels

It is a grave reflection on the independence of magistrates In administering the law and in dealing with broader aspects of justice, they are supposed to have the same freedom as judges Their qualifications, their jurisdiction and their status are less, but the "civil service" nature of their jobs makes no difference Or so South Africans are always assured as magistrates' powers have been steadily increased and the gap with Supreme Court jurisdiction has narrowed

Overall, there is no reason to doubt the integrity which most magistrates bring to their calling Yet an independent spirit is hardly encouraged if the Department of Justice sees fit to limit their role of bringing abuses of power to the public attention It makes little difference that the department considers the rule as a "guideline" rather than an instruction. Once it appears in an official code of conduct it is the voice of authority A breach of the rule can be expected to incur displeasure A magistrate's job might be at risk Promotion prospects could suffer Perhaps this is why it has taken so long for the very existence of the rule to become more widely known.

As regards criticisms of police behaviour, Durban's chief magistrate says the advice to convey these through police channels was withdrawn in 1968 This suggests that the authorities came to a belated recognition of the impropriety of the advice, and reinforces the point as it concerns other arms of government Instead of dealing with complaints in silence, the opposite should be encouraged Magistrates should at all times have been exhorted to act as the outspoken ombudsman of the public.

Magistrates' code of conduct divides legal fraternity

(252) Star 6/8/80

By Marion Duncan

South Africa's civil service magistrates are at the centre of a legal controversy that could prompt a complete revision of the magisterial system, according to local attorneys

It comes from publicity given to the Government-written code of conduct for magistrates, and at a time when the high-powered Hoexter Commission is looking into the structure and functions of the country's law courts, with a view to creating an intermediary court between the Supreme Court and the magistrate's court (a move which would lessen the distinction between the two).

Said one senior Johannesburg attorney "This code issue threatens to blossom into something that could split the legal fraternity of the country, and could well be a catalyst that breaks open all the hitherto suppressed resentment felt by the private and independent members of the legal profession against Government-appointed magistrates"

The code of conduct, first published in 1953 and revised in 1968, contains a paragraph headed "Comment from the Bench" which discourages magistrates from criticising Government departments in open court judgments.

"Justified criticism" of such departments would be more suitably expressed, the code suggests, in an "official letter" to the Department of Justice "which would in turn bring the matter to the attention of the relevant authority."

The code was mentioned last month in an address by Mr Douglas Shaw QC, chairman of the General Council of the Bar of South Africa, as an argument against the increase of magisterial powers.

Said a partner in a large firm of city lawyers: "Shaw was right. For many years now the legal profession has been against the scenario of the magistrates courts.

"Many, but not all of us, have been aware of the code of conduct and have also been aware of the decreasing independence of magistrates After all, it takes a brave man to criticise in public the organisation that employs and pays him.

"Now that the code is being widely publicised and discussed, it could well be used as the basis of a move against the present system and a call for a more equitable system."

He stressed that this forecast came "only from private conversations with fellow lawyers."

Magistrates not bound by department's code

Magistrates were not bound by the codified instructions of the Department of Justice, the Secretary for Justice, Mr J P J Coetzer, said yesterday.

"The Department of Justice cannot and will not try to prescribe to magistrates in this regard.

"The legal position in this respect is very clear and well known and it is not necessary to quote legal authority."

In a statement released in Pretoria, Mr Coetzer was reacting to newspaper reports relating to certain paragraphs in the codified instructions of the department

"These are not secret instructions and are available for anybody who may have an interest therein."

Many advocates and attorneys in private practice today, and also judges, had begun their legal careers in the Department of Justice and certainly took notice of the codified instructions, because they were the basic guide consulted by officers in the performance of their duties, in whatever section they might be working, he said.

Mr Coetzer said Mr D J Shaw SC, chairman of the General Council of the Bar of South Africa, had said in Cape Town on July 25 there was an instruction to magistratres not to criticise the police in their judgments, but rather to communicate any reasons for criticism to the police authorities

It could not be established to which instruction Mr Shaw had referred, but he probably had in mind a paragraph in departmental codified instructions compiled in 1953.

The chapter in which the paragraph appeared had been revised in 1968 and replaced by a new chapter that was still operative today.

The Natal Mercury

WEDNESDAY, AUGUST 6, 1980

252

LEGAL CROSS-FIRE

THERE SHOULD be some sympathy for the plight of South Africa's 900 magistrates, who seem to be caught in the cross-fire of two controversies not of their own making

The first concerns proposals for the establishment of intermediate courts that would in practice be presided over by magistrates and would dangerously blur the constitutional and other distinctions between the lower courts and the Supreme Court

An impressive weight of evidence against this proposal was presented to the Hoexter Commission at its sittings in Natal last week and it now remains to be seen what the commission will recommend in its report on the structure and functioning of the courts

The Natal Mercury has always been fully in agreement with the view that appointments to the Supreme Court Bench should be made only from the ranks of senior advocates But we note with regret that over the past few months the vigorous public advocacy of this policy has tended to create, no doubt unintentionally, a climate in which public esteem for the quality and impartiality of the justice that is dispensed in the magistrates' courts could be quite unwarrantably lowered

Comparisons between the higher and lower courts are both valid and necessary to a proper understanding of the issues Most critics have, in pointing out the important differences between the two, paid tribute to the magistrates who form the broad base of the pyramid of justice upon which all civilised values rest Others, in their eagerness to press a point, have perhaps been less than fair to the lower courts

It is worth noting, for example, that of more than 25 000 magistrates' court cases that went to the Supreme Court on automatic review in 1979, only a very small proportion appear to have been upset

But the most serious misgivings about the civil-service system under which magistrates are trained, appointed, supervised and promoted have been engendered by the disclosure that a departmental handbook for the guidance of magistrates advises that they should not criticise the police in their judgments and that there should be a spirit of co-operation between magistrates and the police

Reading between the lines of the ensuing controversy, one may conclude that some senior magistrates are less than happy about the obvious implications of this official guideline

Pending consideration of more far-reaching changes in the conditions under which magistrates serve, it would surely be in the public interest if the Minister of Justice were to countermand this extraordinary injunction and instead put the emphasis where it properly belongs — on the impartiality and independence that is expected of magistrates in all circumstances

EDITORIAL OPINION

Magistrate's code

The independence of the judiciary from government pressure or direction is, and always has been, a cornerstone of democratic freedom.

The judiciary, whether judges or magistrates, must be free to interpret the law, and pass judgment, as they see each case. There must be no directives from government departments about how they should perform their duties or requirement to consult the police.

Depart from that rule even slightly and the freedom of the judiciary is immediately suspect. Indeed, it is threatened.

Outside this country in recent years, eyebrows have been increasingly raised at some happenings in our courts — just as they have been raised higher and higher at the number of laws that have been introduced by-passing the courts or restricting their discretion

Now it has emerged that it does not end at legislative restriction. A code of conduct (hidden for a long time) has been issued to magistrates by the Department of Justice. Its object is to persuade magistrates to refrain from criticising government departments.

When it comes to the police the "guidelines" are much blunter. According to Mr Doug Shaw, QC, chairman of the General Council of the Bar, magistrates in effect are instructed not to criticise the police in their judgments.

The Chief Magistrate of Johannesburg, Mr Van Dam, has been quick to say that magistrates are not bound by these "guidelines" or this "code" — call it what you will. A magistrate is as independent on the bench as a judge of the Supreme Court.

Then what is the object of the exercise? If there is no intention to influence magistrates, to move them on to a specific course, why issue the guidelines at all? And why designate it a "code of conduct"?

Does it follow that if they ignore the code they are guilty of bad conduct? That it is a black mark against them?

We can only agree with former Supreme Court judge, Mr Kowie Marais, that the whole thing appears to be evil — an inroad into the discretionary powers magistrates have long exercised.

And it emphasises once again the desirability of magistrates being removed from the civil service — to be fully independent of the executive branch of government (as the judges are).

RAND
Daily Mail

THURSDAY
August 7, 1980

That bureaucratic threat to justice

252

THAT magisterial code of conduct may have been around for a very long time, but its public airing could hardly have been more timely.

The code emphasises that magistrate are civil servants, just when there are moves to blur the distinction between the Magistrate's Court and the Supreme Court.

The code, with its concern that "unwise" magisterial criticism would strain relations with other State departments, and magisterial generalisations would lead (perish the thought!) to embarrassment to the Minister concerned, and that "justified" criticism is more fittingly delivered by official memorandum than in open court, would appear to put interdepartmental loyalty above concern for the fundamental rights of ordinary citizens.

As Mr D J Shaw, chairman of the General Council of the Bar, has said: "The public service is generally speaking the administrative arm of the executive government . . . those who prevent the executive arm from exceeding the bounds laid down by law, or who may be called upon to review the actions of the executive arm, should not appear to emanate from that arm"

However much Department of Justice spokesmen may insist that magistrates are not bound by the codes, that no interference in justice is implied, the code makes it crudely clear that magistrates do emanate from that "executive arm"

Mr J P J Coetzer, SC, Secretary of Justice, says the point at issue is indeed whether judicial officers should be members of the public service. It should be possible, he says, tt replace regional courts, in which magistrates perform purely judicial functions, with a court with presiding judicial officers who are not civil servants.

But this is precisely the thorny issue of intermediate courts which is being investigated by the Hoexter Commission of Inquiry. The idea is to set up a court between magistrate's courts and the Supreme Court. It would, say its proponents, relieve the load on the Supreme Court and offer cheaper justice. Judges and advocates, however, have expressed fierce opposition. They are convinced most of the intermediate judges would be drawn from the ranks of magistrates. They point to suggestions that all magistrates be called judges and that regional magistrates prepare themselves for such appointments; to the lowering of the status of Supreme Court judges — in terms of discretion in sentencing, in terms of salary, and the appointment of judges from outside the ranks of advocates.

They fear that the courts will become one edifice, in which a man goes in at the bottom as a magistrate and comes out at the top as a judge. The revelation of that magisterial code pinpoints precisely the danger inherent in such a system.

Abolish magistrates' code, say legal men

Mercury Reporter

THE Durban Legal Circle yesterday called for the withdrawal of the magistrates' code of instructions

In a statement on behalf of the circle, the chairman, Mr A R Fairleigh, said 'The circle believes that it is neither desirable nor necessary to have any sort of guide or direction to magistrates of the type concerned

'We are concerned about the existence of any directive which may in any way, however indirectly, affect the magistrate in the exercise of his judicial function

'The circle feels that both magistrates and practitioners would welcome the withdrawal of the code so that there could be no suggestion, however unjustifiable, that magistrates were in any way influenced by departmental policy'

Mr Fairleigh said the circle accepted the Chief Magistrate's explanation that the purpose of the code was purely administrative and that its existence had not been actively or deliberately concealed from the profession

However, a possible secondary, sinister intent could be read into certain paragraphs — however benign they might appear to magistrates — such as that dealing with their relationship with the police

Doubt

The only way to eradicate this was to do away with the code completely

'Every time anyone goes to court there is a residual doubt — a not-so-residual doubt now — as a result of the controversy. This does not help the administration of justice,' Mr Fairleigh said

'And is it really necessary to tell magistrates about things like courtesy?' he asked

Criticism of court move is rejected

The letter published below has been received from a former chief magistrate of Durban, Mr Alan Wilson.

Dear Mr Editor,

IT WAS inevitable that the proposal to establish 'intermediate courts' should evoke somewhat extravagant cries of dismay from the Bar, and disapproval from the Bench.

'The whole foundation of justice in South Africa was in danger', says Mr Douglas Shaw, QC, if correctly reported Mr Juctice Didcott says that 'at the lower (presumably magisterial) levels justice is somewhat rough' This gentleman is quite distinguished by the forthrightness of his utterances, but I wonder just exactly what this 'rough' means, — rough and ready, crude, coarse, harsh, not consonant with legal principles, or what? Mr Justice Broome says such courts 'could destroy the independence of the judiciary and promote a bureaucratic, unchallengable system of control'. I am at a loss to know what this means, unless it is suggested that intermediate courts would be subject to directives 'from above'.

PREDICTABLE

This reaction was of course predictable. Precisely the same occurred more than 25 years ago when the institution of Regional Courts was proposed 'Unwarrantable intrusion on Supreme Court territory', 'invasion of our rights', and so on, from the Bar But now, after all these years, can one for a single moment contemplate the judicial structure of this country without Regional Courts? The fears of members of the Bar were shown to be quite unfounded and in fact the system worked greatly to their benefit in briefs which came their way, besides which the overworked Bench of the Supreme Court was afforded the relief it needed More important, the administration of justice was immeasurably expedited Did this then endanger 'the status of the Supreme Court and the whole foundation of justice in South Africa?

CONTINUING

During the past twenty years there has been a continuing process in the magisterial division of winnowing judicial duties from the administrative, and magistrates have been encouraged to specialise in the judicial and given every opportunity of doing so Many have qualifications as high, and some higher, than those required for admission to the Bar Regional Magistrates are dedicated judicial officers whose duties are confined to criminal work, in which they are the complete specialists They are utterly independent in the exercise of their functions and are subject to no directives or instructions Any attempt to impose such would be scorned, and rightly so The new proposals would entrench this position, as I understand it

If civil jurisdiction is accorded to the proposed new courts it can act only to relieve congestion at high levels One thinks of divorce proceedings, for example Only a tiny percentage of these are ever defended at the stage of hearing, the balance being settled by agreement with only the Court's endorsement required It could scarcely be contended that a Regional Magistrate would not be competent to handle such matters and many others which are pure formalities One thinks too of the high cost of Supreme Court litigation.

Dealing now with the controversial 'Code', I have had access to this portion and enclose a copy thereof (my translation), both of the original and the replacement of 1968

It will be seen that the original expressed the Department's view (not an instruction) that adverse criticism of a policeman should preferably be directed to his superior But is expressly stated at the very inception that the Department in thus giving its views in no wise desired to restrict the magistrate in the exercise of his judicial discretion, but thought that such criticism would lessen the confidence of the public in the police force

FREEDOM

The replacement passage deals firstly with language considered appropriate from judicial officers and recognises that adverse criticism is unavoidable, but urges that the freedom accorded to the Bench should not be abused Criticism, it says, should be restrained, objective and dignified

The next paragraph says that in principle there can be no objection to justifiable and fitting criticism in open court, and in appropriate cases it would without doubt contribute to put the administration of justice above suspicion and to bring home to the public quite unequivocally that courts of law would not countenance malpractice But criticism should be such that no impairment of the court's image or its functioning should result

FACTS

Following, is a paragraph headed 'Criticism which is based on facts before the court *which are irrelevant*', and expresses the view that magistrates should refrain from such on the grounds that it is undersirable and inappropriate, the fact being not relevant to the issue It could also, where such witness is a member of another Department (the Police are not mentioned) lead to a disturbance of inter-departmental relations It suggests that it would be better if any such comments were made to the Department for transmission to the witness's superiors

In the light of the above, it is not easy to comprehend the two points made by Mr Shaw (Mercury, July 25) Firstly, the Code makes no attempt to discourage criticism *on facts relevant to the matter* in hand, and there is thus no 'stifling of justifiable criticism of the police' Mr Shaw rightly says that public confidence is important, and it is this very thing which the Department had in mind in the original Code But in effect he says that they (magistrates) are 'expected to obey' possible instructions 'from above', and moreover, at the expense of the dispensation of justice No other conclusion could justify the statement.

SACRED

Mr Shaw obviously had in mind the encroachment of Regional Courts upon territory hitherto sacred to the Supreme Court because of the extended jurisdiciton recently extended to the former. It must therefore be the body of Regional Magistrates which he had in mind when he says the distinction between the two courts tends to be blurred It is fair therefore to say that it is these officers who, he fears, will allow their verdicts or other findings to be swayed because of a ministerial or departmental directive I reject this utterly, and so will every other fair-minded person

Mr Shaw's second point is not understood in view of the summary of the Code above He appears to concede that the Magistrate would decide a case according to his view of the police evidence but then seems to think that where this is unsatisfactory (and presumably rejected) the magistrate would be debarred from expressing himself This construction seems to be confirmed by his next statement, that an 'Appeal Court would be deprived of the advantage of knowing the magistrate's views and it might well affect the views of the Appeal Court on the whole issue'

Mr Shaw was apparently unacquainted with the precise wording of the Code, because it refers quite emphatically to criticism based on facts *irrelevant to the issue* It was never intended to place any restraint on criticism of any relevant evidence, either *viva voce* from the Bench or in the magistrate's 'Reasons for Judgment' submitted to the Appeal Court Mr Shaw himself admits the absurdity of any other interpretation (' it might well affect the views of the Appeal Court ')

FURTHER

Mr Shaw makes the further comment that magistrates perform a multitude of administrative tasks, — true, in the initial stages of their careers But by the time they are elevated to the Regional Bench such duties have long since fallen away I have always maintained that it is these very duties, performed over 20 or 30 years, which brings a magistrate into more intimate contact with his fellow-man and teaches him to understand and deal with his problems the more adequately

The extent to which a magistrate is entrusted with independence of thought and opinion can be illustrated no better than by the fact that they are not infrequently required to adjudicate in matters in which the State is one of the parties

LEADERS

Your two leaders, Sir, of 2nd and 6th August respectively, are, with respect, admirable and express the position with commendable nicety But may I make just one or two comments

In regard to the first, in which it refers to magistrates as public servants being ' in some degree subject to instructions .', I can truthfully say that in almost 49 years service with the Department of Justice I never learned of any instruction, directive or recommendation in regard to my judicial duties other than the Code quoted, which is quite innocuous

TWO VOLUMES

The Code does not consist of instructions to magistrates in their judicial capacity It is contained in two large volumes covering the multitudinous facets of a magistrate's administrative functions; no more than a page or two is devoted to judicial guidelines aimed at the junior magistrate to assist his advent to the Bench

I see nothing sinister whatsoever in a request to maintain cordial relations with the police, or to provide interpreters for them if necessary when taking statements from potential witnesses The administrative duties of magistrates, from which judicial officers are, except in the country, totally divorced, are sometimes closely allied to police duties and each is of assistance to the other There is positively no hint, suggestion or implication that the relations should extend to showing preference to the police from the Bench Mr Shaw's comment to the effect that this shows a highly undersirable expectation of cooperation between police and magistrates' is extraordinary There are unfortunately overtones of collusion of the worst kind implicit in this which I am sure the learned advocate did not intend

I agree with you, Sir, that a climate has been created ' in which public esteem for the quality and impartiality of the justice that is dispensed in the magistrates' courts could be quite unwarrantably lowered'

ALAN WILSON

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8/8/80 N/M

Code 'Magistrates'
(Replaced 1968)

56 If circumstances arise which oblige magistrates in the discharge of their judicial duties, to make unfavourable comments about the behaviour of a member of the police force, the Department in no manner wishes to restrict them in the exercise of their judicial discretion, it is nevertheless of opinion that any comment they wish to make could more suitably be done by means of an official letter of the District Commandant than by adverse criticism in open court The confidence of the public in the police force could dimish if criticism of a general nature against the police is made form the Bench

Code 'Magistrates' 1968
Comments from the Bench

14 (1) *Language and extent of (comment)* In the exercise of his judicial discretion it follows logically that a presiding judicial officer will have to comment on aspects of the evidence which he has heard It is thus obvious that he will have to make unfavourable criticism of certain witnesses, particularly if this is the reason why he accepts or rejects certain evidence In the nature of things every case must be dealt with on its merits, but it should be noted that the freedom which is accorded to judicial officers should not be exceeded the wording and extent of the comment should always be controlled (beheersd), objective and dignified

(2) *Justified and appropriate criticism* In principle there is not objection to justified and appropriate criticism made in open court at the proper time. In appropriate instances it would undoubtedly contribute to put the administration of justice above suspicion and to bring home to the public unequivocally that courts of justice will not countenance malpractice. This however must be done in such a manner that no impairment of the court's image or of its functioning should result.

(3) *Criticism which is not based on relevant facts* The Department would like magistrates to refrain from criticism which is not based on *facts relevant to the issue* It is of opinion that it is not only undesirable and improper, for example, to criticise a witness on the basis of facts which are not relevant, but it could also, where officials of other Departments are involved, lead to the disruption of harmonious relations between this Department and others Where criticism in such a case is justified, it would be more fitting to bring the circumstances by way of a letter to this Department for further attention

'Guidance': Tebbutt backs Shaw

Chief Reporter

THE president of the Cape Bar Council, Mr P H Tebbutt, SC, said yesterday that he fully endorsed the view of the chairman of the General Bar Council of South Africa, Mr Douglas Shaw, QC, that the judicial functions of magistrates should not be hampered by any departmental instructions whatever

Mr Tebbutt, who emphasized that he was speaking in his personal capacity, said that nothing the Secretary for Justice, Mr J P J Coetzer, had said about magistrates not being bound by the Department of Justice's codified instructions, had served to change his views in the matter

Mr Coetzer said earlier this week that certain paragraphs in the codified instructions, referred to by Mr Shaw recently, served merely as "guidance" to judicial officers

Mr Tebbutt said yesterday "One can understand the issuing of administrative instructions to magistrates, it is when instructions or recommendations are issued to them in their judicial capacity that I feel this is most undesirable

"If magistrates are not in fact bound to follow instructions or recommendations issued to them by the department, why are they issued in the first place?"

● Mr Shaw, when he spoke at the annual conference of the General Bar Council in Cape Town, said the foundation of South African justice was in danger, and in this context he said magistrates, in their judicial work, might be subjected to instructions from above which they were expected to obey

He referred to an instruction or recommendation issued to magistrates "some years ago" that they should not criticize members of the police force from the Bench in open court, but that they should rather refer any criticism they may have to the relevant police authorities

SUNDAY POST

Justice for all

THE news this week is that magistrates have been told not to criticise the administration during court cases. Instead, they have been told to submit their comments to the authorities concerned

There is one particular aspect of this code which worries us. This is the fact that police have often come under criticism by the magistrates for their handling of certain cases. The present code means that criticism cannot be made

As one legal expert said this week, blacks look to the courts for redress. If a policeman, or any other person for that matter, can get privileged treatment, blacks cannot be blamed for feeling prejudiced.

Already the police have a whole maze of laws which provide protection for them. The latest was the Police Amendment Act, which puts serious restraints on the publication of information regarding police.

Now, with the disclosure that magistrates are restrained from criticising police in court, it seems the police are given privileges which are certainly not warranted

We believe the courts of law should be seen not to be prejudiced We believe that if anybody, in the course of the administration of justice, acts wrongly, then such person must face the consequences — in open court.

The courts must provide equal protection for all the people. If the administration is singled out for this kind of treatment, then it should apply to everybody.

Indeed, justice must not only be done, but must be seen to be done.

Inquiry into judges' spending nearly through

By KITT KATZIN

THE commission of inquiry into allegations of irregularities by some Supreme Court judges involving public funds is "proceeding satisfactorily" — and the commission's first reports are expected to be submitted next month to the State President and the Minister of Justice, Mr Alwyn Schlebusch.

The commission, headed by the Chief Justice, Mr Justice F L Rumpff, was announced by Mr Schlebusch in Parliament in May after he had discussed the allegations with Mr Mervyn King.

Mr King was at the time one of South Africa's youngest and most brilliant judges, but resigned from the bench soon afterwards.

He believed some members of the bench were involved in "irregularities" connected with public funds.

He also discussed the issue with the Judge President of the Transvaal, Mr Justice W G Boshoff, who according to informed sources was very concerned about the allegations which related to claims made by some judges for subsistence and travelling allowances.

It was alleged that "an appreciable amount of money" was involved and that the irregularities had apparently occurred over a number of years.

Mr Schlebusch told Parliament the Bar Council was satisfied that Mr King's belief was "bona fide" and based on reasonable grounds.

He announced that an inquiry would be made to establish whether "unjustified payments" of taxpayers' money had been made to judges.

The commission began its work immediately after its appointment and has since "progressed satisfactorily".

In terms of the relevant Government notice, the deadline for memoranda and evidence was extended to August 26 after which reports are expected to be submitted to the State President and Mr Schlebusch.

It is not known, however, whether the commission's findings will be made public.

● At the time of Mr Schlebusch's announcement, the Judge President of Natal, Mr Justice N James, said he was satisfied from his inquiries that no allegations imputing dishonesty to any Natal judges had been made.

FOR IMMEDIATE RELEASE

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PRESS STATEMENT BY THE SECRETARY FOR JUSTICE, MR J.P.J. COETZER

11/8/80

The Magisterial Division is inter alia responsible for the staffing and functioning of two kinds of courts, district courts and regional courts. There is one or more district courts for each magisterial district and there are regional courts for regional divisions each comprising a number of magisterial districts. For each magisterial district a person is appointed who as the magistrate for the district is the head of the office and also in administrative control of the district. The head of the office in those cities which are also the seats of regional divisions, has up to now been a regional magistrate who was responsible for the district courts of the district as well as for the regional courts of that region. Those cities are Cape Town, Port Elizabeth, Kimberley, Bloemfontein, Johannesburg, Pretoria and Durban.

Approximately two years ago the Inspectorate of the Public Service Commission (as it then was) commenced an investigation into the Magisterial Division. Amongst the recommendations contained in the ensuing report subsequently accepted by the Public Service Commission, was one to the effect that regional courts should become a separate component of the Magisterial Division and that at each seat of a regional division there should be a magistrate as head of the office for the magisterial district as well as a regional court president who, as senior regional magistrate, would do bench work and also be responsible for certain administrative duties pertaining to regional magistrates in that region. It was also recommended that Kimberley should no longer be a seat of the regional court but that the

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regional magistrates stationed there should fall under the Regional Court President at Bloemfontein.

These recommendations have now been implemented and the following officers have been appointed regional court presidents with seats as indicated opposite their names:

Mr L.V. de Kock, formerly Regional Magistrate, Windhoek	Johannesburg
Mr L.L.A. McKay, formerly Chief Magistrate, Durban	Durban
Mr M.J. Prins, formerly Chief Magistrate, Pretoria	Pretoria
Mr T.P. Roberts, formerly Chief Magistrate, Cape Town	Cape Town
Mr C.P.J. Steytler, formerly Regional Magistrate, Bloemfontein	Bloemfontein
Mr C.B. van Zyl, formerly Chief Magistrate, Port Elizabeth	Port Elizabeth

Mr L.L.A. McKay will be retiring from the public service with effect from 1 September 1980 and will be succeeded by Mr E.T. Combes, formerly Regional Magistrate, Durban.

The district court component will as heretofore be mainly entrusted with the adjudication of district court cases and

with auxiliary services pertaining to the administration of justice by both the regional and district courts. At larger centres an officer holding the rank of Chief Magistrate will be in charge of the district court component. The following officers have been promoted to the newly created posts of Chief Magistrate and have been appointed at the centres indicated opposite their names:

Mr J.A. Coetzee, formerly Chief Magistrate, Klerksdorp	Port Elizabeth
Mr P.G. Kuhn, formerly Regional Magistrate, Bloemfontein	Bloemfontein
Mr W.F. Krugel, formerly Regional Magistrate, Pretoria	Pretoria
Mr H.E. Thompson, formerly Chief Magistrate, Randburg	Durban
Mr J.A. van Dam, formerly Deputy Chief Magistrate, Johannesburg	Johannesburg
Mr C.F.W. van Zyl, formerly Chief Magistrate, Benoni	Cape Town

ISSUED BY THE DEPARTMENT OF FOREIGN AFFAIRS AND INFORMATION AT THE REQUEST OF THE DEPARTMENT OF JUSTICE

PRETORIA

11 August 1980

PERSVERKLARING DEUR DIE SEKRETARIS VAN JUSTISIE, MNR. J.P.J. COETZER

Die Landdrosafdeling is onder andere verantwoordelik vir die bemanning en funksionering van twee soorte howe, te wete distrikshowe en streekhowe. Daar is 'n distrikshof of -howe vir elke landdrosdistrik en streekhowe vir streekafdelings wat elk uit 'n aantal landdrosdistrike bestaan. Vir elke landdrosdistrik is daar 'n persoon aangestel wat as die landdros van daardie distrik die kantoorhoof vir en dus ook in administratiewe beheer van daardie distrik is. Die kantoorhoof in daardie stede wat ook die setels van streekafdelings is, was tot nog toe 'n streeklanddros wat dan verantwoordelik was vir die distrikhowe van die distrik sowel as die streekhowe van die streek. Daardie stede is Kaapstad, Port Elizabeth, Kimberley, Bloemfontein, Johannesburg, Pretoria en Durban.

Ongeveer twee jaar gelede het die Inspektoraat van die Staatsdienskommissie (soos dit toe was), begin met 'n ondersoek in die Landdrosafdeling. Onder die aanbevelings wat in die Inspektoraat se verslag vervat was, en wat ook later deur die Staatsdienskommissie aanvaar is, was daar 'n aanbeveling dat streekhowe 'n afsonderlike komponent van die Landdrosafdeling moet vorm en dat daar by elke setel van 'n streekafdeling 'n landdros as kantoorhoof vir die landdrosdistrik moet wees sowel as 'n streekhofpresident wat dan as senior streeklanddros regbankwerk sal doen, maar ook sekere administratiewe verantwoordelikhede in verband met die streeklanddroste van daardie streekafdeling sal aanvaar. Daar is ook aanbeveel dat Kimberley nie meer 'n streekhofsetel moet wees nie, maar dat

die streeklanddroste wat daar gestasioneer is, onder die streekhofpresident van Bloemfontein moet inskakel.

Aan hierdie aanbevelings is nou uitvoering gegee en die volgende beamptes is as streekhofpresidente, met setels soos teenoor hulle name aangedui, aangestel:

Mnr L.V. de Kock, voormalige Streek-landdros, Windhoek	Johannesburg
Mnr L.L.A. McKay, voormalige Hoof-landdros, Durban	Durban
Mnr M.J. Prins, voormalige Hoof-landdros, Pretoria	Pretoria
Mnr T.P. Roberts, voormalige Hoof-landdros, Kaapstad	Kaapstad
Mnr C.P.J. Steytler, voormalige Streeklanddros, Bloemfontein	Bloemfontein
Mnr C.B. van Zyl, voormalige Hoof-landdros, Port Elizabeth	Port Elizabeth

Mnr L.L.A. McKay tree met ingang van 1 September 1980 uit diens en sal deur mnr E.T. Combes, voormalige Streeklanddros, Durban opgevolg word.

Die distrikshofkomponent bly in hoofsaak belas met die beregting van distrikshofsake en met administratiewe hulp-

dienste wat verband hou met die regpleging deur beide streek- en distrikshowe. By groter sentra is 'n beampte met die rang van Hooflanddros in bevel van die distrikshofkomponent geplaas. Die volgende beamptes is bevorder tot nuutgeskepte poste van Hooflanddros en aangestel op die plekke soos teenoor hulle name aangedui:

Mnr J.A. Coetzee, voormalige Hooflanddros, Klerksdorp	Port Elizabeth
Mnr P.G. Kuhn, voormalige Streeklanddros, Bloemfontein	Bloemfontein
Mnr W.F. Krugel, voormalige Streeklanddros, Pretoria	Pretoria
Mnr H.E. Thompson, voormalige Hooflanddros, Randburg	Durban
Mnr J.A. van Dam, voormalige Adjunkhooflanddros, Johannesburg	Johannesburg
Mnr C.F.W. van Zyl, voormalige Hooflanddros, Benoni	Kaapstad

UITGEREIK DEUR DIE DEPARTEMENT VAN BUITELANDSE SAKE EN INLIGTING OP VERSOEK VAN DIE DEPARTEMENT VAN JUSTISIE

PRETORIA

11 Augustus 1980

SA law: the race factor

Most South Africans have been silent about the possibility that racial factors may be playing an unacceptable role in some sentences passed in South African courts, Professor Barend van Niekerk, professor of law at Natal University, told a conference on law today. Bob Kennaugh reports.

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STAR 13/8/80

Any civilised legal system must be able to tolerate discussion about its problems — even racism — as a first step towards solving them

This was the essence of an address by Prof Barend van Niekerk to a southern Africa law reform conference at Sun City, Bophuthatswana, attended by delegates from several countries, including Britain, Tanzania and Kenya

Examining the role played by race in sentencing, Prof van Niekerk offered two broad indications of the direction in which the South African legal system should move in order to escape the label which it carries of being impregnated by subtle and not so subtle forms of racism — in short, in order to be legitimised as a national system of justice and not a racial system of justice

"In the first place, the problems must be recognised and they must be openly talked about," he said

"There has to this very day been a conspiracy of silence, co-perpetuated to some extent by all of us (or most of us) on the problem of racial inequality within and before the law

"If there is one message which the jurisprudential school of America realism imperatively teaches us it is surely that any civilised legal system must be able to tolerate open discussion about its problems as a first step towards possibly solving them

"Now, racism — need I say it at all? — is like the problem with your wife which you never solve, but which you can only defuse and learn to live with by scaling it to manageable levels

"By not even talking about it we are obviously not even beginning that process of adaptation. If I plead for anything here I plead for frankness about a problem which deeply bedevils our legal system's claim to being civilised"

In the long term there had to be an infusion of black ideas, concepts, visions and dreams, and also of realities from the black human condition "into the practically fully-white legal system before it will become, albeit haltingly and never perfectly, a truly South African legal system and, as far as sentencing is concerned, a cause for pride and not for shame"

Other significant points he made were:

● Since 1911 about 200 blacks had been executed for rape, in most cases for raping white women

The administration of justice in South Africa . . "whites and blacks get different treatment."

But according to statistics, and his own inquiries, not a single white had been sentenced to death, let alone actually executed, for raping a black woman

● There was an obvious and direct, but by no means complicated, link between sentencing policy on the one hand and social norms on the other

"This can at times become a cause of deep injustice"

● Circumstances often arose where beliefs in certain communities — witchcraft being the obvious example in black communities — would have to be considered as mitigating factors.

● There is the other of the coin where la wisdom and of spi independence may l judicial officer to racial consider against an accused (sense of additionall nalising him or eve exonerating him for reasons) in a way di not by compassion o dom but by simple ra albeit perhaps inv racism

● A major, and po the most contentious, tion concerning racia sideration entering tencing policy in Africa was that relat cross-racial crimes, ally of violence

● There could b doubt that the j rule against the sentence for white rape in practice strong as that of a s In this context the evidence — at least the case a few yea — that more black were raped by white vice versa

● For the ultimate of murder the patte equally disturbing. history of the Uni the Republic of Africa not more t whites had been e for the murder of b

Barend van Niekerk . . grappling with the race factor

Man charged for 'playing in street'

STAR 13/8/80

(252)

By Mike Cohen, Crime Reporter

A young Diepkloof labourer was arrested last week and has been served with a summons to appear in court to face charges described as "playing soccer in the street".

The young man, who is named on the summons as Mr Isaac Tumade (22), is to appear in the Orlando Magistrate's Court on August 26.

His employer said he had two copies of the summons.

The young man is alleged to have contravened a section of the Criminal Procedure Act.

The summons states that he should appear in court to face charges of playing soccer in the street or any other charges which the prosecutor might bring against him.

There is a R20 admission of guilt fine which can be paid.

His employer said Mr Tumade was arrested on August 8 in Diepkloof and put in a cell in the local police station.

Judge objects to professor's attack

Own Correspondent

JOHANNESBURG — The Chief Justice of Bophuthatswana, Mr Justice V G Hiemstra, has objected to a Natal University law professor using Bophuthatswana as a launching pad to attack South Africa's legal system

Professor Barend van Niekerk was speaking on 'Sentencing in a multi racial and multi-ethnic society' at the Southern Africa Law Reform Conference at Sun City yesterday

Professor Van Niekerk said race and ethnic origin were factors influencing sentencing in South African courts

During discussion time, Mr Justice Hiemstra said he disapproved of Professor Van Niekerk's using Bophuthatswana to launch an attack on South Africa

The Chief Justice added that there were sufficient platforms from which to attack South Africa

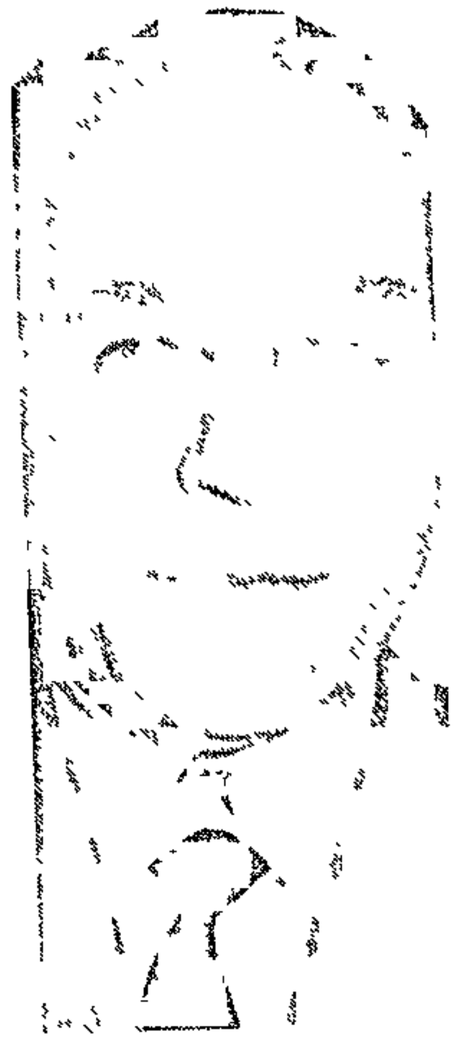
Cheered

A constitutional expert from the University of South Africa Professor M Wiechers, was cheered by delegates when he said Bophuthatswana was moving towards non-racialism and he did not find anything wrong with the conference discussing certain "sensitive issues"

He said there were thousands of blacks in South Africa who went to jail for 'black crimes' and this reinforced the belief that blacks were criminally-minded

Professor Van Niekerk said he was not attacking South Africa but what was wrong in South Africa

He said he believed in free-



Mr Justice V G Hiemstra

dom of speech He paid a price for that and would continue paying it

Earlier Professor Van Niekerk reiterated his conviction that race and ethnic origin were factors influencing sentences in the South African court He has already been charged twice for contempt of court in connection with the same statement

He said the South African legal system must move in order to escape the label of a 'racial system of injustice and must become a legitimized national system of justice

Evidence

Professor Van Niekerk said there was evidence to substantiate the suspicions of a direct unjust obstrusion of racial factors into the sentencing policy of South Africa

He said the statistics showed that since 1910 there had been only three executions of whites for raping children of tender age whereas the figure for blacks was nearing 200 for rape of white women

He mentioned cases of "farm murders or farm assaults', where beating to death or near death of black labourers ended in culpable homicide convictions and fines

He said there was also evidence of unjustified direct obtrusion of racial factors in circumstances of unjustified leniency on racial grounds

Professor Van Niekerk said looking at the pattern of death sentences generally for rape and murder one would find that since 1910 these patterns did not display a consistent pattern of discrimination against blacks

Racist hint in sentences, says professor

'Discrepancy in number of executions'

Mercury Reporter

THE imposition of death sentences in South Africa suggested discrimination against blacks, Prof Barend van Niekerk of the law faculty at Natal University in Durban said yesterday

'No death sentence has ever been imposed, let alone carried out, since 1910 on a white man for raping a black woman, whereas a vast number of the almost 200 executions of blacks seems to have been for raping whites'

Prof van Niekerk told the Law Reform Conference in Bophuthatswana 'There is evidence — at least a few years ago — that more black women were raped by whites than vice-versa. The same holds true, it seems, for murder and assault'

He said statistics did not tell the full story but 'at the very least, they do tell a story which must lend strong support to the suspicion that in certain circumstances different standards obtain'.

It could not be gainsayed that there was a heavy pall of silence, both formally imposed by the law and informally bolstered by social taboos, about the possible obtrusion of race and ethnic origin as a factor which influenced sentencing in South Africa and, possibly, other societies

There was an obvious but complex link between sentencing policy and societal norms

'Circumstances often arise where beliefs prevalent in a community — witchcraft being the obvious example in our black communities — would have to be considered as mitigating, exonerating or simply explaining factors

'Lack of wisdom and of spiritual independence may lead a judicial officer to apply a person's race either to penalise him or exonerate him purely on racial grounds

'In South Africa there is little doubt that the obtrusion of racial considerations in this fashion is widely suspected... and this suspicion is a major reason why administration of justice is viewed with deep suspicion by many blacks.'

Prof van Niekerk reffered to the discrepancy in sentences imposed on blacks and whites, the 'incredible' leniency of sentences in cases of 'farm assaults' and the leniency of sentences imposed in crimes by blacks on blacks.

Sentences for cross-racial crimes, especially violence, showed a consistent pattern of discrimination against blacks

Tribal law 'needs more attention'

STAR 252 16/8/80

By Bob Kennaugh

SUN CITY — The Southern African Law Reform conference held here this week heard that greater attention should be given to customary African law, and that its courts should be raised to the level of other courts

Seventy jurists from several African states, including Sierra Leone and Tanzania discussed legal subjects of mutual interest including the conflict between customary African law and Western law, tribal taboos, polygamous marriages, sentencing policy in criminal courts, family law, makgotla (people's courts) and constitutional developments in South Africa

Professor Marinus Wiechers, professor of Constitutional Law at the University of South Africa, and a key conference speaker, said delegates, both black and white, had discussed the conflict between customary and Western law

Most delegates agreed that greater attention be given to the importance of customary law

Professor Wiechers said in many African states there was now a search for legal origins Customary and Western lawyers should work together to shape new legal institutions in order to create a system with which there could be identification

"This conference has shown that there is a new and emerging Africa that is sure of itself," he said

People were no longer going to be satisfied with simply getting economic benefits to enhance the quality of their lives and ignoring their demands for full participation in shaping their social-legal environment

CONTROVERSIAL

In one of the most controversial speeches, Professor Barend van Niekerk, a law professor at Natal University said there was a heavy pall of silence, both formally imposed by the law and informally bolstered by social taboos, about the possible obtrusion of race and also ethnic origin as a factor which influenced sentencing in South African criminal courts

In another outspoken speech Professor D Welsh, professor of Comparative African Government and Law at the University of Cape Town, said although South Africa was nowhere near being in a revolutionary situation, some of the sociological phenomena associated with such situations might well be present.

"Foremost among these is the evidence to suggest that revolutions occur not only when oppression is at its height but rather when reforms begin to be made"

MONDAY, AUGUST 18, 1980

QUESTION OF SENTENCE

PROFESSOR Barend van Niekerk, who 10 years ago was charged with but acquitted of contempt of court for writing in the South African Law Journal that blacks were more likely to be sentenced to death in capital cases than whites, has returned to the subject in an address to a law reform conference in Bophuthatswana, stating that in many cases differentiation in sentences is a major reason why the administration of justice in South Africa is viewed with deep suspicion by many blacks

He contends that no death sentence has ever been imposed, let alone carried out, since 1910 on a white man for raping a black woman, whereas many blacks have been executed for raping whites

We cannot vouch for the Professor's statement, but it is our view that in a good number of cases the very laws themselves, rooted in racial ideology and with only passing concern for humanity, are so blatantly discriminatory that among these same blacks imprisonment no longer bears any social stigma at all. Perhaps that is understandable for, relatively speaking, we have one of the highest daily jail populations in the world if pass offences and other minor statutory transgressions are counted among social evils.

We do not believe, as we are sure the Professor does not, that in those particular cases he is talking of — but certainly to which we are referring — there is any conscious discrimination when the judicial officer approaches the question of sentence, for the quality of justice in this country is of the highest.

But there are many instances where justice has appeared to be blind while the measure of mercy has, to say the least, been club-footed or possessed of an inordinately heavy limp.

Among the sort of things which trouble us and which we feel should be of more than just academic concern to others — the legal fraternity in particular — are those cases under the Immorality Act, for example, in which an African woman can be sentenced to six months' imprisonment while her white co-accused is found not guilty (Pretoria 1977) and there have been other similar cases.

It is also difficult to understand how a young drunken white man can beat and kick to death two inoffensive black men and be sentenced to 18 months' imprisonment, 12 months suspended, on each count, and in another a white man with two previous convictions for assault and one of pointing a firearm be fined R150 (or 75 days) for so viciously attacking a night watchman that he choked to death in his own blood This when a black man, shortly before the first case quoted, was sentenced to four years in jail (one previous conviction for assault) for the theft of R8 worth of cake He did it because he was hungry

Further, would a white be fined say. R450, or the equivalent of a month's wages for jaywalking? Is this not what a R50 fine represents to an African? Would a white youth be sentenced to a caning for not producing his identity card? We not only doubt it, we are prepared to say it has never happened and yet a punishment which has been described by judges as brutal and severely damaging to physical and mental health is not unknown to young blacks.

One could go on endlessly quoting similar examples of sentences which many fair-minded people have difficulty in understanding Perhaps it is that our society conditions the thinking and colours the responses at the time the laws are applied Whatever it is, things too often — again we say not always — are just not the same for everyone

This apparent differentiation should be vigorously debated not with the intention of detracting from the dignity of any judicial officer or wilfully casting suspicion on the administration of justice, but with the object of removing that suspicion which exists

Justice is not a cloistered virtue, as an eminent judge has pointed out. 'She must be allowed to suffer the scrutiny and respectful, even though outspoken, comments of ordinary men' It is the ordinary man, the benchmark of justice, who is often bewildered

prepared to serve apartheid

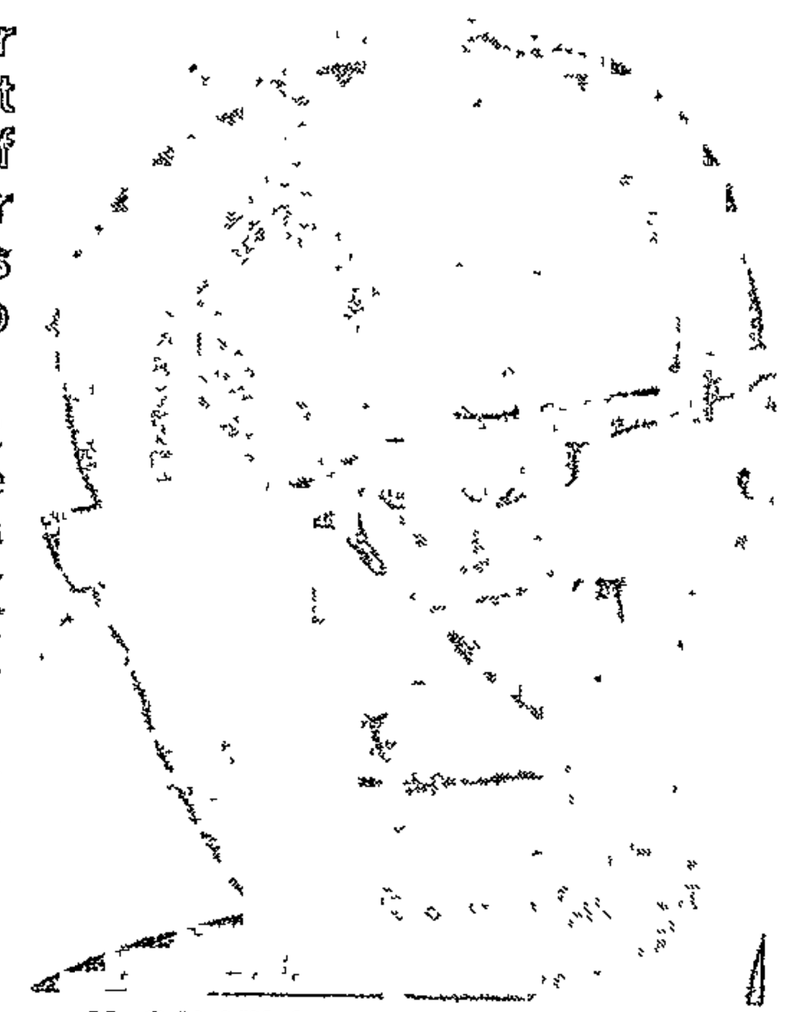
State lawman walks out in amazing apartheid protest

A CHIEF public prosecutor dramatically walked out on his job in the middle of a case this week — after telling the court he was no longer prepared to "serve apartheid".

In an amazing protest Mr A R Klein, chief prosecutor in the criminal section of the Pretoria Commissioner's Court, interrupted the trial of five black men charged under curfew regulations on Friday

He told the magistrate he was refusing to proceed with the prosecution because of various irregularities which he alleged had taken place in preceding cases

"In short, I am not prepared to apply apartheid under the guise of justice," he said — and stormed out of the court



Mr C N J Welman . . . notes to the court

By MARTIN WEIZ

Yesterday Mr Klein, who is completing his law studies at the University of Pretoria, told the Sunday Times he had hesitated for many months

"But on Friday, when in quick succession I was confronted with all the distortions of the system, I had once again to decide 'Do I remain silent, or do I show my cards on the table?'

"I decided that, I as an individual was not important, when it came to the 12 000 or more people who are still prosecuted under the system in Pretoria

tor must be given an opportunity to test the merits of the application and address the court on the application,' Mr Klein told the Sunday Times afterwards

"It is common practice that files are handed to me with notes from the commissioner that no bail should be granted

"When I once had the temerity to say that I would not automatically oppose a bail application without having considered the merits of the case, I was summarily removed fro

cal offence — was given bail of R150, even though I had recommended that he should be released on R50 bail as his family would have great difficulty in raising a larger amount."

In the next case five black men were simultaneously brought to the dock and charged with failing to produce their reference books when asked to do so by a policeman

All four pleaded guilty but two of the accused told the court that their reference books were at their places of work, less than five kilometres from the place where they were

"I simply transposed his words slightly and put them into effect I am not prepared to carry out apartheid," Mr Klein said

After Mr Klein left the court on Friday, the magistrate, M. G Boshoff, looking ashen, immediately adjourned proceedings while officials herded the five accused men back to the court cells

In his announcement to the court, Mr Klein listed these reasons for his decision

- In the first case before the court on Friday a Malawian charged with being an illegal immigrant, the case was postponed and the accused released on his own recognisances, without any evidence or argument having been heard in court

Granted

Mr Klein said that the court file contained a note from the Chief Commissioner, Mr C N J Welman, that no bail should be granted in the case

A later note from Mr Welman, however, said that the accused should be released on his own recognisances, "apparently because of the influence of Professor S A Strauss (a law professor from the University of South Africa) who had been to see him about the case

QC still not happy about magistrates

25/8/80 NM 23/(252)

Mercury Reporter

AS LONG as magistrates remained part of a department responsible for issuing instructions which affected their judicial independence the public could not rest assured that justice was being fairly administered, the chairman of the General Council of the Bar, Mr D J Shaw, QC, said at the weekend

He was commenting on Minister of Justice Alwyn Schlebusch's promise to withdraw a clause in the Magistrates' Code dealing with relations between magistrates and the police and other civil servants

The chairman of the Durban Legal Circle, Mr A R Fairleigh, welcomed the minister's move but said that a senior official in the department should read the whole manual and make sure any other clauses which might give rise to doubt about magistrates' independence were scrapped

Jo'burg courts losing staff

By JEREMY BROOKS

The total number of magistrate's courts which have had to be closed following an exodus of public prosecutors from the Johannesburg area is now 15, according to the Department of Justice.

The number of vacant posts has risen to 56 and according to sources in the Johannesburg Magistrate's Court another four prosecutors are expected to leave at the end of the month.

The Secretary of Justice, Mr J Coetzer, said this week that his department was "faced with a problem which cannot be solved overnight". Factors like the economic upswing and a manpower shortage made it increasingly difficult to maintain the services of academically qualified and experienced personnel, he said.

Yesterday the department's Director of Administration, Mr S Marais, said the present shortage was confined to the Johannesburg and Soweto areas.

Mr Marais said nine district courts at Soweto and Orlando, and six regional courts in Johannesburg had been closed. Urgent cases were being transferred to other courts.

Each court handles, on average, about 20 cases a day. The closure of the 15 courts means an estimated 300 cases are being affected daily.

The department has already made representations to the Commission for Administration for a "special living allowance" for public prosecutors to compensate for poor salaries and high costs in the Johannesburg area.

Jo'burg shortage of prosecutors closes courts

Pretoria Bureau

Johannesburg is the only major centre in the country which has had to close courts due to a shortage of public prosecutors, a spokesman for the Department of Justice said this week.

Cape Town had no vacancies for prosecutors while Durban had some vacancies, but no courts had to be closed as a result, he said.

Johannesburg has 35 vacancies out of a staff complement of 106 prosecutors, and 13 courts have been closed.

The spokesman said the closure of 13 courts did not mean that any cases could not be heard

The cases from those 13 courts were placed on the rolls of other courts

He said priority was given to cases in which accused were in custody, but the courts' work took longer.

In addition Johannesburg used partially-trained administrative staff to carry out prosectors' duties in less-demanding courts such as traffic and remand courts

The spokesman said the commission for Administration was considering the possibility of a special allowance for prosectors in Johannesburg to help them cope with the high cost-of-living

He said this was one of the factors behind the shortage in the city

The other factor was the economic upsurge which created more jobs for legally-trained people. Johannesburg had more such jobs in the private sector than other centres

Blacks to help fill law court gaps?

SUNDAY POST
Reporter

BLACK public prosecutors may be introduced into Soweto to off-set the shortage of prosecutors in the Johannesburg magistrates' courts

This week, the chief magistrate of Johannesburg, Mr J W van Dam, revealed that he had submitted a memorandum to the Department of Justice urging the creation of posts for black prosecutors.

The general shortage of prosecutors has resulted in the closing of several courts in Soweto and Johannesburg In some instances, prosecutors from other magisterial districts have had to be brought in.

If the Department of Justice accepts Mr Van Dam's recommendation suitably qualified people, probably attorneys, would be approached to fill the posts.

Denial

Mr Van Dam denied the shortage was a result of mass resignations because of poor salaries.

He was aware of only three resignations of prosecutors this month.

"However they did not resign in protest. They just got better offers elsewhere," he said.

There was a continuous shortage, he said, and estimated it at between 30 to 40 prosecutors. The shortage had not resulted in any adverse backlog

"We sometimes have to get prosecutors from Germiston, Randburg and Pretoria to help with cases."

Last week nine courts were closed, three in Soweto and six in Johannesburg Six regional courts were not operating

"The memorandum I have sent to the department is based on the broad principle of allowing blacks to work as prosecutors in Soweto I must say, though, I do not expect a reply soon.

"I believe that courts in Soweto should be totally staffed by blacks," he said

Prosecute

When asked whether he foresaw blacks ultimately advancing to a stage where they would prosecute in white cases, he responded: "I do not see that happening in the immediate future."

Referring to the employment of blacks as prosecutors, he said "I have never received any application from a black person to work as a prosecutor but I know that there are suitably qualified people in places like Soweto.

"The memorandum to the department may not be much but I think it is a good start. Having blacks would be a great help," he said.

The Department of Justice could not be contacted for a comment on the memorandum

Suzman draws attention to unkept Pass Law promises

252

STAR 11/9/80

Pretoria Bureau

The dramatic decision by a chief public prosecutor to quit his job in Pretoria rather than "serve apartheid" would hopefully shock the Government into a new realisation, Mrs Helen Suzman, Opposition black affairs spokesman, said yesterday.

But the President of the Transvaal Law Society, Mr Billy van der Merwe, today criticised the prosecutor who walked out of his job at the Pretoria Commissioner's Court last week

Mr van der Merwe said that the prosecutor, Mr A R (Addie) Klein (24), should have taken up any complaints about irregularities in the court with the relevant authorities

"No prosecutor should ever walk out of court," he said

Mr Klein, who alleged certain irregularities in the granting of bail, walked out of the trial of five black men charged under curfew regulations last week

Before leaving he said he was "not prepared to apply apartheid under the guise of justice."

The Commissioner's Court is run by the Department of Co-operation and Development, although its legal staff are seconded by the Department of Justice

Mr Klein has tendered his resignation to the Department of Justice and it is understood he plans to complete his articles with an attorney's firm and to go into private practice

He detailed to the maistrate why he was refusing to continue the prosecution and summed up by saying "In short I am not prepared to apply apartheid under the guise of justice"

Mrs Suzman said "One hopes this will shock the Government into realising it cannot drag its heels over reforming unpopular laws which civil servants have to implement.

"Last year the Government actually undertook to repeal the curfew laws — a move recommended by the Riekert Commission

"Nothing has been done about these measures which creates an inordinate amount of racial friction, poisoned relations between police and the black community and results in thousands of convictions"

Mrs Suzman said nothing more had been heard about the announcement by the Minister of Co-operation and Development, Dr Koornhof, that curfew laws would be suspended experimentally in Pretoria and Bloemfontein

Re: Term 3: Here it is suggested that a discount factor equal to (or slightly higher than) the interest rate on a comparable loan should be used for this term. This stream is riskier than the stream in Term 2 because the lessee requires to have a taxable income to get the cash flow.

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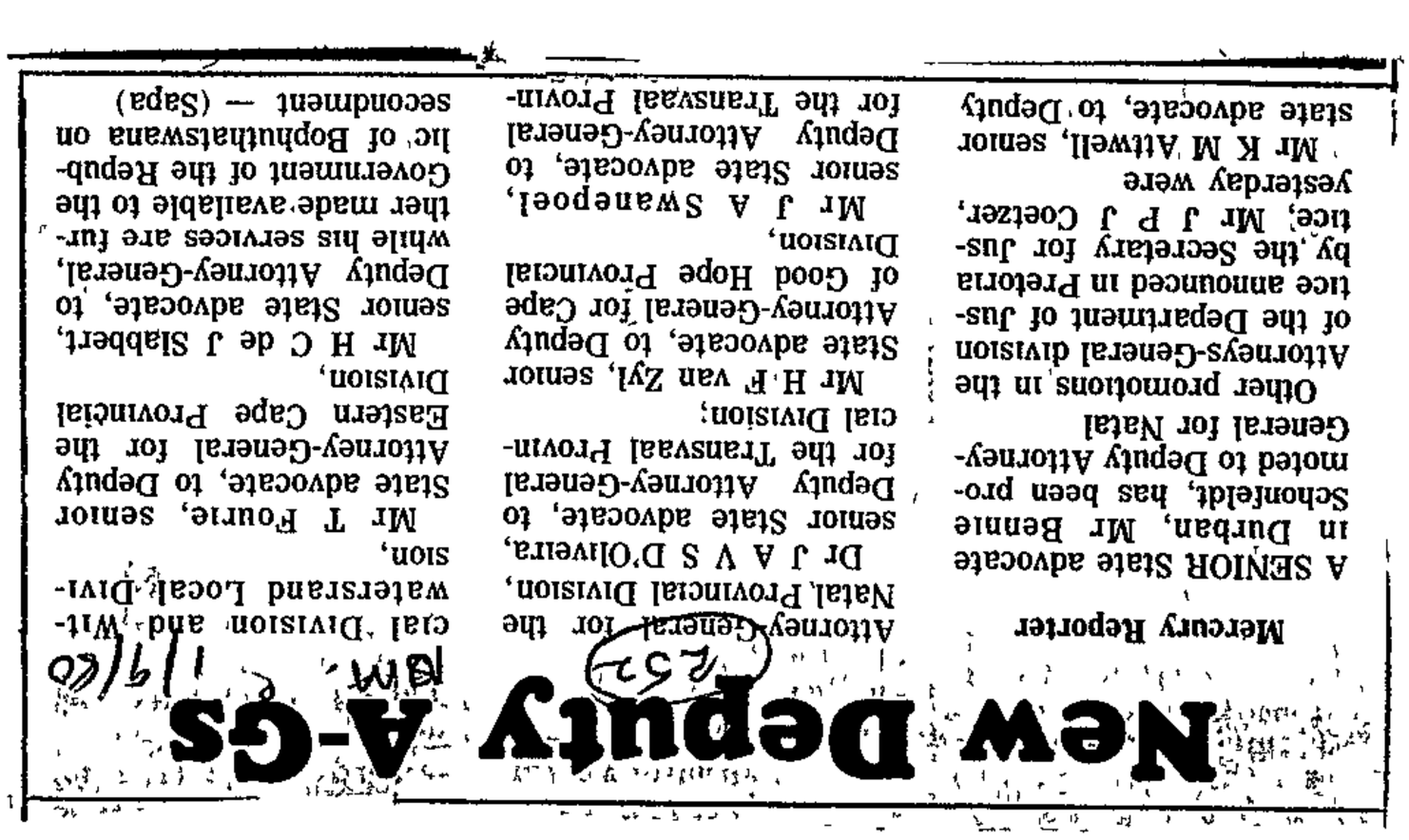
Re: Term 5: The riskiness of this flow is likely to be equal to that of Term 3 thus the same discount factor is suggested. This stream is the tax shield arising from the tax deductibility of the interest on an equivalent (the displaced) loan.

The general approach will now be applied to the problem in MAN. 530 which follows.



New Deputy A-Gs

Mercury Reporter

A SENIOR State advocate in Durban, Mr Bennie Schonfeldt, has been promoted to Deputy Attorney-General for Natal

Other promotions in the Attorneys-General division of the Department of Justice announced in Pretoria by the Secretary for Justice, Mr J P J Coetzer, yesterday were

Mr K M Attwell, senior state advocate, to Deputy Attorney-General for the Natal Provincial Division,

Dr J A V S D'Oliveira, senior State advocate, to Deputy Attorney-General for the Transvaal Provincial Division;

Mr H F van Zyl, senior State advocate, to Deputy Attorney-General for Cape of Good Hope Provincial Division,

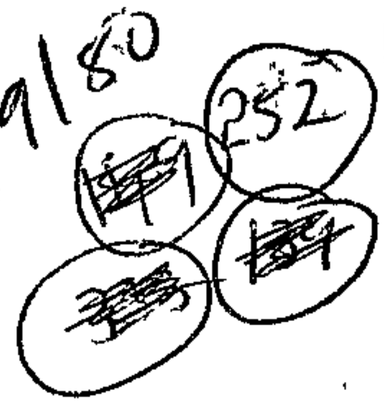
Mr J A Swanepoel, senior State advocate, to Deputy Attorney-General for the Transvaal Provincial Division and Witwatersrand Local Division,

Mr T Fourie, senior State advocate, to Deputy Attorney-General for the Eastern Cape Provincial Division,

Mr H C de J Slabbert, senior State advocate, to Deputy Attorney-General, while his services are further made available to the Government of the Republic of Bophuthatswana on secondment — (Sapa)

Test appeal will affect trade unions

STRIKE 3/9/80



By Drew Forrest and Craig Charney

A key test case on the right of trade unions to sue on behalf of their members is being heard in the Appeal Court in Bloemfontein today

Five judges are hearing the appeal in a case where a Vereeniging company, Bosman Transport, is being sued by the unregistered Transport and Allied Workers Union, the company's works committee, and two dismissed employees

They are asking the court to set aside a 1978 Supreme Court ruling by Mr Justice Eloff that none of the applicants had *locus standi*, or a legal interest in the matter entitling them to sue

The applicants originally claimed that works spokesmen were victimised after trying to raise grievances over drivers' log-books and overtime pay

The case could have a far-reaching impact if the Appeal Court overturns the previous ruling and enables trade unions to protect their members' rights in court

If it did not grant similar rights to in-plant works committees, such a ruling could also deal a body-blow to the Government-promoted alternatives to trade unions

NO INTEREST

Mr Justice Eloff found in his ruling that the union had only an indirect financial interest in the matter, while its own legal rights were not at stake and that works committees also had no right to sue He also held that the dismissed workers themselves had no interest in the case — an urgent application to prevent victimisation — because they were no longer employed

Last week the new Industrial Court handed down a ruling in direct conflict with Mr Justice Eloff's in which it held that the unregistered Metal and Allied Workers' Union and a contract worker whose contract had lapsed, Mr Stephen Maponya, had standing to sue Mr Maponya's former employer, Precision Tools of Johannesburg

STAR

Prosecutor walk-out inquiry

4/9/80 252

Pretoria Bureau

The Minister of Co-operation and Development, Dr Koornhof said today he had ordered an immediate investigation into the sudden resignation of a Pretoria Commissioner's Court prosecutor.

The prosecutor, Mr Adam Klein, walked out of his job last week, alleging various irregularities in the court, which is run by the Department of Co-operation and Development.

A spokesman for the Department said today he could not comment on the matter until the investigation had been completed.

Mr Klein alleged that outside influences were exercised on courts when it came to granting bail conditions.

The Chief Commissioner Mr C N J Welman, said regulations did not permit him to comment.

It is understood Mr Klein will go into private practice as an attorney after completing his articles.

He walked out of a court in dramatic fashion last week saying 'I am not prepared to apply apartheid under the guise of justice.'

Labour law case is crucial

By Drew Forrest

One of the most important test cases of South African labour law in recent years will be heard in the Appellate Division in Bloemfontein tomorrow

At issue are the right of trade unions to represent their members in legal actions in court, and the legal rights of workers who claim they have been victimised

Five judges are to hear an appeal by the Transport and Allied Workers Union (TAWU), the works committee of a Vereeniging company P E Bosman Transport Ltd, and two dismissed employees of the company

COUNCIL ROLE

They will ask the court to set aside a 1978 Supreme Court judgment by Mr Justice Eloff who ruled that none of the appellants had "locus standi," a legal interest in the matter

The applicants had claimed that P E Bosman Ltd had victimised and might continue victimising employees seeking enforcement of an Industrial Council agreement through official means and the TAWU

Mr Justice Eloff found

- The union had only an indirect, financial interest in the matter and its own legal rights were not at stake
- In terms of the Black Labour Relations Regulations Act the works committee could not take up cudgels on behalf of employees except in negotiations with an employer
- The dismissed workers had no legal interest in the application because they were no longer employed

STRENGTHENED

If the earlier Supreme Court rulings are upset by the appeal the position of victimised workers would be greatly strengthened

The right of trade unions to bring "representative actions" on behalf of members has been at issue in a number of recent labour cases

(280K) POST 219/80 c (252)

More should join rebel lawmen who quit - Tutu

By PHIL MTIMKULU

Two black leaders yesterday commended Mr A R Klein, the public prosecutor who walked out of court on a matter of principle, for his courage and also invited those who held similar feelings to join him.

The two leaders are Mr Leonard Mosala of the Committee of Ten and Bishop Desmond Tutu, the General Secretary of the South African Council of Churches (SACC).

And a third black leader, the Reverend Cecil W Begbie convener of the Justice and Reconciliation Division of the Witwatersrand Council of Churches, said Mr Klein's action served as a reminder that very often law courts were instruments of apartheid.

Mr Klein refused to proceed with the prosecution of five black men charged under curfew regulations. This happened in a Pretoria court on Friday

He told the magistrate that he was not prepared to apply apartheid 'under the guise of justice."

Rev Begbie said yesterday: "I would like to express our support for Mr Klein in his stand against the practices of injustices as he experienced them in the law courts This action of Mr Klein's serves as a reminder and proves further that very often our law courts are instruments of apartheid.

"We give praise to God that yet another person has seen the light," he said

Bishop Tutu said Mr Klein should be commended for his "tremendous courage" He said Mr Klein was going to be faced with problems because of his stand.

"I would say he poses a challenge to the practitioners of law The challenge is 'How long are you going to continue co-operating with unjust laws?' Laws which are contrary to accepted legal norms," he said

Mr Mosala said there was an awareness which was spreading among the Afrikaans students and academics and the Klein incident — much as it might be insignificant to the Afrikaners — highlighted this

Professor John Dugard of the University of the Witwatersrand said it was a significant step because it was the first public prosecutor who had resigned as a matter of principle

"It is clear that the Commissioner's Courts are used for enforcing apartheid It is also significant that a public prosecutor should have refused to participate in the process of using the law to enforce the worst features of apartheid," he said

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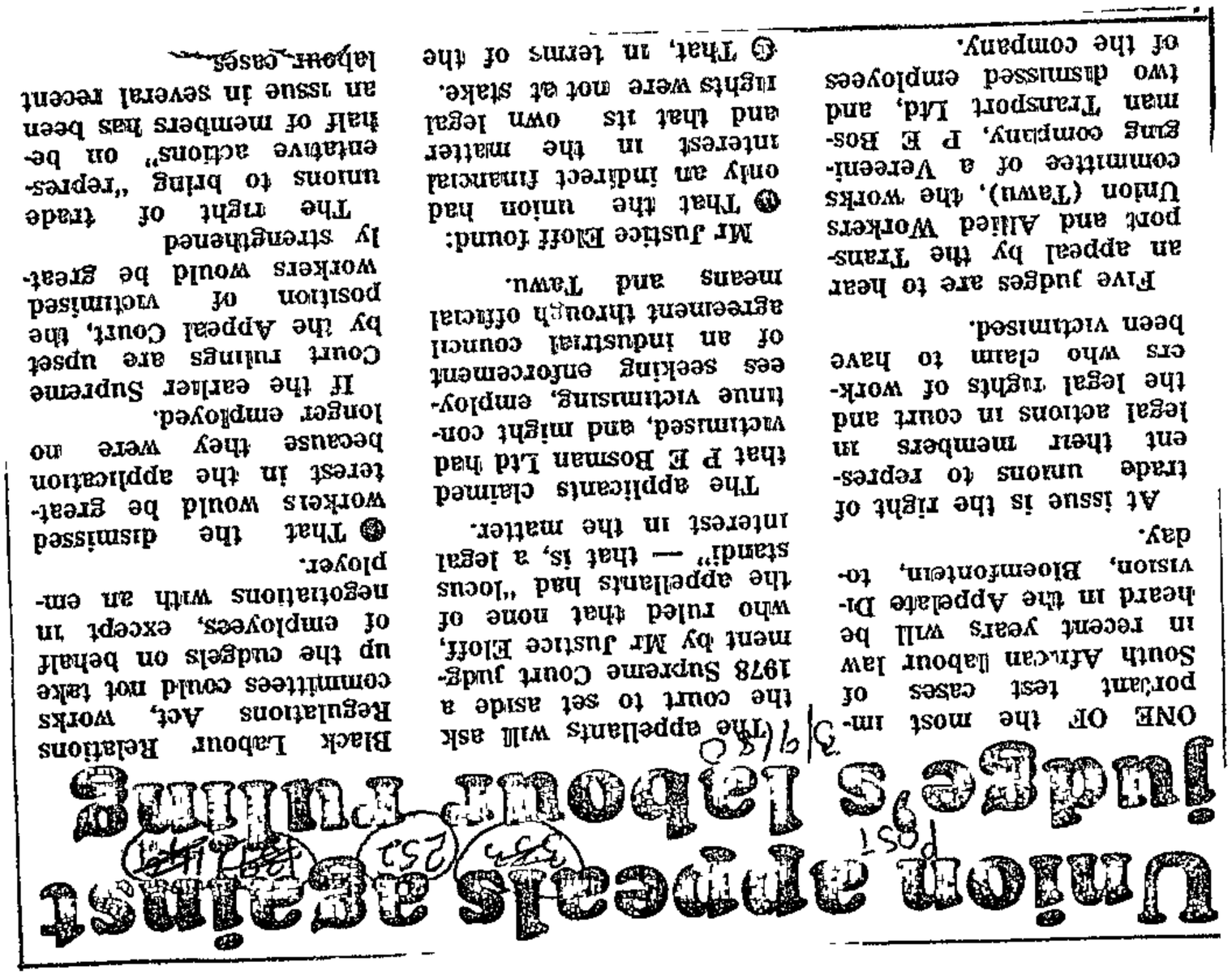

Union appeals against judge's labour ruling

ONE OF the most important test cases of South African labour law in recent years will be heard in the Appellate Division, Bloemfontein, today.

At issue is the right of trade unions to represent their members in court and legal actions in court and the legal rights of workers who claim to have been victimised.

Five judges are to hear an appeal by the Transport and Allied Workers Union (Tawu), the works committee of a Vereeniging company, P E Bosman Transport Ltd, and two dismissed employees of the company.

The appellants will ask the court to set aside a 1978 Supreme Court judgment by Mr Justice Eloff, who ruled that none of the appellants had "locus standi" — that is, a legal interest in the matter.

The applicants claimed that P E Bosman Ltd had victimised, and might continue victimising, employees seeking enforcement of an industrial council agreement through official means and Tawu.

Mr Justice Eloff found:

- That the union had only an indirect financial interest in the matter and that its own legal rights were not at stake.
- That, in terms of the Black Labour Relations Regulations Act, works committees could not take up the cudgels on behalf of employees, except in negotiations with an employer.
- That the dismissed workers would be greater interest in the application because they were no longer employed.

If the earlier Supreme Court rulings are upset by the Appeal Court, the position of victimised workers would be greatly strengthened

The right of trade unions to bring "representative actions" on behalf of members has been an issue in several recent labour cases.

Appeal refusal sets workers back

Own Correspondent

JOHANNESBURG — In a setback for black workers, the Appeal Court yesterday refused to hear a crucial test case in which a Supreme Court ruling which has been interpreted is a blow to the rights of black unions and works committees, was contested

The court refused an application that it condone the late filing of the notice of appeal in the court record This means it will not hear the case

The original judgment handed down in 1978 and known as the Bosman case thus remains in force

In it Mr Justice C J Eloff ruled that unregistered trade unions had no right to appeal to the courts for an interdict against an employer, restraining him from victimizing their members

The court also ruled that unions could not go to court in an attempt to compel an employer to abide by an industrial agreement which lays down legally binding minimum wages and working conditions

In a blow to the government s works committee system the court also ruled that a works committee had no power to go to the courts

Legal sources interpreted the judgment to mean that black workers who feared victimization from their employers and who were not members of registered unions could only go to court individually

Protection

They argued that this would be costly and would make it virtually impossible for these workers to seek protection from the courts in cases of threatened victimization

The case had been brought against a Vereeniging company, Piet Bosman Transport (Pty) by the unregistered Transport and Allied Workers' Union, the company s workscommittee and two of its workers

They had sought to interdict the company from dismissing workers or altering their terms and conditions of employment to their disadvantage

They had also sought an order restraining the company from breaching the industry's industrial agreement

In an attempt to overturn the Supreme Court judgement, the three applicants appealed to the Appeal Court in Bloemfontein

However, the notice of appeal was filed late and the applicants needed permission from the court to proceed

Sipa reports that the court yesterday heard argument from counsel for both the applicants and the company on this issue

The court refused to grant this permission saying that the reasons for the refusal would be given at a later date

The application was heard by Mr Justice Wessels Mr Justice Muller, Mr Justice Miller and acting judges of appeal Mr Justice Galgut and Mr Justice Van Heerden

Implications

Legal sources said yesterday that they regretted the fact that it had not been possible for the court to hear the appeal "The original judgement had important implications for black workers " one legal man said

Implications

Legal sources said yesterday that they regretted the fact that it had not been possible for the court to hear the appeal

The original judgement had important implications for black workers," one legal man said

These sources said that as a result of the fact that the appeal had not been heard, the Supreme Court judgement was now binding on Transvaal courts and had "persuasive authority" in other provinces

Transvaal magistrates courts were absolutely bound by the decision and a Supreme Court judge could only dissent from it if he was "absolutely convinced' that the original court had erred

However it was possible to appeal against a ruling by a magistrate who was bound by the judgement to a "full bench" of the Supreme Court It would also be possible to take another similar case on appeal in an attempt to overturn the judgement

The 'Bosman" judgment does not affect the right of unregistered unions to take cases in which they allege their members are victims of 'unfair labour practices to the industrial court, the new court set up following a Wiehahn Commission recommendation

Unregistered unions are now faced with a situation in which they can take up a wide range of cases in the industrial court but cannot bring certain cases to the Supreme Court

Court walkout denial

THE controversy over the Pretoria court official who walked out of court took a dramatic turn yesterday when an official of the Department of Co-operation and Development said the civil servant was not a chief public prosecutor

In a statement released to the Press, Mr J H T Mills, Director General of the Department, said Mr A R Klein was "only serving as an administrative assistant and not as chief prosecutor"

Mr Klein, a Pretoria law student hit the headlines over the weekend in a Johannesburg Sunday paper, when he claimed to have walked out on a case he was prosecuting because he was no longer prepared to "serve apartheid"

He reportedly told the magistrate that he refused to continue with the prosecution at a trial of five black men charged under curfew regulations because of "various irregularities" which he alleged had taken place in previous cases

Mr Mills said Mr Klein was not a qualified prosecutor but that he was still undergoing training in the field

"It must further be pointed out that it was the duty of the courts to execute all laws passed by Parliament," said Mr Mills who claimed that allegations that certain courts "served apartheid" were "unfounded".

Mr Mills also said his department was concerned about the Sunday Times headlines on its second page which read "Where apartheid still rules hard". He claimed the headline was "misleading"

When Mr Klein left the court on Friday, the magistrate Mr G Boshoff, had to adjourn proceedings

Apartheid rebel lives in fear

By NORMAN NGALE

THE Pretoria prosecutor who recently walked out of court is living in fear of his life and has taken refuge at a block of flats in a remote part of the city.

Mr Adam Rudolf Klein (24), told POST that since the revelations of his refusal to serve apartheid he was taking precautions to protect himself.

He said he had been warned to be careful of the right-wing group, the Wit Kommando

After letting me into the apartment, the controversial ex-prosecutor locked the door as a "precaution" Mr Klein had a gun strapped to his hip.

Mr Klein stormed out on a case at the Pretoria Commissioner's Court on Friday last week after a shock address to the court in which he said: "I am not prepared to serve apartheid."

He alleged the court was used to perpetrate the "inhuman and cruel laws of apartheid under the guise of justice"

CLAIMS

Responding to claims by Mr J H T Mills, Director-General of the Department of Co-operation and Development, that he was just an administrative assistant, Mr Klein said it was true.

But he added that he was also a public prosecutor appointed by and acting on behalf of the Attorney-General of the Transvaal, Mr J E Nothling, since February 11.

Mr Klein produced his letter of appointment which bore Mr Nothling's signature The letter stated that he was appointed under section 4 of Act 51 of 1977.

He said he was expecting the Government to try to "frame" him under a security law and to give the public the idea that he had no right to expose what had happened.

"I do not want to sound like Dr Rhoodie who threatened that he had some tapes which could damage the image of the Government, but I have documents — court records — which will prove such irregularities I mentioned earlier," Mr Klein said.

Klein said his sense of justice did not allow him to serve under apartheid laws designed specifically for blacks

"I am glad that he (Mr Mills) admitted in his report that there were irregularities when he said if there were such irregularities he felt pity for those who became victims," Mr said.

The system was so neatly worked out that it was difficult for members of the public or the Press to determine what was going on.

He did not cite specific cases, but said the cases were so numerous that they could fill volumes

"As soon as you experience these laws your eyes open and you see the inhumanity, the cruelty and the actual discrimination against blacks"

INTRODUCTION

Exactly how dangerous is asbestos to human health? Whether at the level of industry, the State, trade union organisations, academic institutions, civic bodies or interested individuals, many arguments are heard.

There is clearly a double question involved here. What precisely are the vested interests that are brought to bear when taking up any point of view?

Naturally one would expect industry to be biased in favour of playing down the dangers involved and of being most conservative in setting, often expensive, processes for protection of workers in motion. Likewise one would expect trade union and civic bodies concerned with environmental pollution to stress the risks of exposure to asbestos. Academic researchers, where they are not directly employed by industry or trade unions, whether at private or State institutions, may be expected to produce arguments that lie somewhere between these two positions. However it will be argued in this paper that, as is the case with the State (labour department or research bodies), academic institutions and their research workers generally lean more to the side of industry by virtue of a multiplicity of connections.

Essentially there is a state of industrial dispute in society. There is also generally an explicit acknowledgement of this division in most advanced industrial societies, which is enshrined in the law and various state structures. If then asbestos has been established as a carcinogen (a cancer-causing substance), the problem that immediately springs to mind is who is to take the decisions with regard to protection against the effects of this substance in a divided society?

One might think that those directly involved by virtue of their exposure should take the weighty decision, particularly when a notable feature of the whole asbestos controversy has been

41. see (22) p. v.
42. See (17) p. v.
43. Epidemiological an mesothelioma and as J. Clinical Patholo
44. Epidemiology of Me Stumphius. BJIM 2
45. Mesothelioma and As 1972. P. Thériaul Jan/Feb 1978 p.15.
46. Predictions of mort asbestos factory wo p.147-151.
47. Unsuspected exposur Martinschig K.M. et
48. Asbestos and Lung C evidence on the ash International Journ
49. Smoking and Occupat Medicine 5(2) 1976
50. The combined effect factors in relation of Occupational Hyg
51. Does smoking kill w Sterling. Internal Vo. 8 No 3. 1978.
52. U.K. General Household
53. See 22 page 17.
54. Dust exposure on the Quebec. W. Gibbs e
55. Dust-Fibre relationsl W. Gibbs. AEH Vol.
56. See (33).
57. The establishment of J. Peto. Advisory C
58. Amosite and Crocidoli Asbestosis. G. Slun effects of Asbestos.
59. See (22) page 9.
60 See (22) page 110.

48 No 7208 STAATSKOERANT, 5 SEPTEMBER 1980

KENNISGEWING 620 VAN 1980

DEPARTEMENT VAN JUSTISIE

KOMMISSIE VAN ONDERSOEK NA DIE STRUKTUUR EN FUNKSIONERING VAN DIE HOWE

Hierby word vir algemene inligting bekendgemaak dat dit die Staatspresident behaag het om goedkeur dat advokaat Johan Phillipus Jacobus Coetzer, SC, hom onttrek as lid van die Kommissie van Ondersoek na die Struktuur en Funksionering van die Howe wat die Staatspresident op 29 November 1979 aangestel het, en om advokaat Johan Christian Ferreira, SC, in sy plek as lid van daardie Kommissie aan te stel

(5 September 1980)

NOTICE 620 OF 1980

DEPARTMENT OF JUSTICE

COMMISSION OF INQUIRY INTO THE STRUCTURE AND FUNCTIONING OF THE COURTS

It is hereby notified for general information that the State President has been pleased to approve the withdrawal of Mr Johan Phillipus Jacobus Coetzer, SC, as member of the Commission of Inquiry into the Structure and Functioning of the Courts appointed by the State President on 29 November 1979, and to appoint Mr Johan Christian Ferreira, SC, to be a member of that Commission in his place

(5 September 1980)

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os.

Re: Term 3: Here it is suggested that a discount factor equal to (or slightly higher than) the interest rate on a comparable loan should be used for this term. This stream is riskier than the stream in Term 2 because the lessee requires to have a taxable income to get the cash flow.

Re: Term 4: The riskiness o kely to be equal to that of Term 3 count factor is suggested. To comparison with leasing the mo depreciation allowed by the Receive ld be used. Further- more depreciat xt includes the invest- ment and initi

Re: Term 5: The riskiness likely to be equal to that of Ter e discount factor is suggested. Th tax shield arising from the tax the interest on an equivalent (t n.

The general approach will o the problem in MAN. 530 which follows.

Murder suspects could be killed, Court told

Court Reporter

THERE was a danger that two of the alleged killers of Mr Elias Blose, a member of the central committee of Inkatha, could be killed if released from custody, a Durban Magistrate, Mr J J Brits, was told yesterday.

This was said by W/O Frank Watts of the Durban Murder and Robbery Squad when he gave evidence at a bail application hearing for two of the men, Mr Simon Khawula, 18, and Mr Dennis Ngcobo, 24.

The two men, with Mr Nicolas Ngobo, 21, have pleaded not guilty to killing Mr Blose, who was gunned down in Dalton location on August 7.

Pleas of not guilty were recorded by Mr J J Brits when the men first appeared at that time the Court heard that Mr Blose had allegedly boasted he had "killed their fathers and would finish their people".

Mr Brits granted them bail of R100 each, and the three men will appear in court again on September 18.

Information

W/O Watts said he had received information the men could be killed if released

He said that the firearm used in the alleged murder had not been recovered. The accused had co-operated and were willing to help the police recover the weapon.

W/O Watts added that it would be difficult for the police to take them to recover the weapon because there was a small war going on in the area.

He said he thought the men would stand trial if they were not killed.

HANDED DOWN BY PASS COURTS

Prosecutor who quit says courts uphold apartheid

ADAM KLEIN, the Commissioner's Court prosecutor who caused an uproar by walking out of his job because, he said, the courts were being used to enforce apartheid, is a quiet-spoken, sturdy young man whose bearded face was showing lines of tension when I spoke to him in Pretoria.

"A very neat system has been built up in which the law, justice if you can call it that, is used to apply apartheid to every sphere of a Black man's existence," he said.

"It is very ingenious — and it usually works just the way the Government wants it to.

"Courts have been set up to prosecute Blacks under the laws of apartheid.

"There are more than 300 discriminatory laws under which a Black man can stand trial before a commissioner

"The Government and its supporters justify the use of these laws by saying they have been passed by Parliament or proclaimed in the Gazette. The argument runs: 'That is the law and it must be applied'.

"But I maintain that these proclamations should be tested in court and when that is done some will be found to be null and void. They are bad in law."

Mr Klein grew up as a middle-class Pretoria boy — his father was a motor mechanic — and was educated at Langenhoven School in Pretoria. After two years of B Proc at Pretoria University he joined a firm of attorneys as an articled clerk.

"I have never considered myself a politically committed person, but I was involved at one stage with Mr Theo Gerderner's Democratic Party and later with the New Republic Party," he told the Sunday Express

• Adam Klein
'years of tension'

"But I have always felt a deep concern for Blacks and when I completed my articles I decided to specialise in Bantu Law — that is not my phrase, it is the way it is described in the syllabus — and applied for a position in the Commissioner's Courts

"I realised soon after I went there a year ago that the courts were being used to enforce apartheid

"I was appointed a prosector — I became part of that system. If I am tense now, it is because that tension has been building up for years There were few people I could discuss my problems with . . . among them a close friend who resigned for the same reasons as I did

"I tried discussing how I felt with my superiors in the department, and whenever I did I was told that that was the way things were done and that I had to accept it"

Mr Klein said he had discussed his misgivings with "dozens" of senior officials but only one had helped or shown sympathy.

"The aspect I resented deeply, which I felt to be so very wrong, was the way in which the administrators became a force in the courts. Every case had to be postponed for their convenience.

"I worked out that in Pretoria alone Blacks arrested for simple pass offences — many of whom would eventually be warned and discharged — spent thousands of hours in jail while the administrators were checking their documents.

"I could have gritted my teeth and said to myself 'this is the way I am getting experience of Bantu Law', but I could not reconcile my conscience to being part of that system.

"That is why I walked out."

in terms of total costs listing first the items having the highest total cost.

5 Compute for each item its percentage of the total for:

(a) Units - number of units of each item divided by total units of all items, and

(b) Total cost - total cost of each item divided by total cost of all materials.

6 Plot the percentages on a chart.

The following simplified example demonstrates this procedure.

Re: Term 3: Here it is suggested that a discount factor equal to (or slightly higher than) the interest rate on a comparable loan should be used for this term. This stream is riskier than the stream in Term 2 because the lessee requires to have a taxable income to get the cash flow.

Re: Term 4: The riskiness of this flow is likely to be equal to that of Term 3 thus the same discount factor is suggested. To facilitate a fair comparison with leasing the most rapid method of depreciation allowed by the Receiver of Revenue should be used. Furthermore depreciation in this context includes the investment and initial allowances.

Re: Term 5: The riskiness of this flow is likely to be equal to that of Term 3 thus the same discount factor is suggested. This stream is the tax shield arising from the tax deductibility of the interest on an

ced) loan.

lem in MAN.

Anti-apartheid lawman raided

By NORMAN NGALE

THE FLAT, car and offices of Mr Adam Rudolph Klein, a Pretoria ex-prosecutor, were searched by police yesterday.

Two files — which contained court records and his personal copies of poems and essays were taken away

Mr Klein resigned from his job as public prosecutor last month after he had walked out of court case claiming that he was not prepared to serve apartheid.

Mr Klein said this was his first contact with the police since his claim that police did not tell him whether a charge was to be preferred against him but said they would be in touch with him, Mr Klein said

The police did not tell him in MAN.

"Prior to the police visit, this reporter was called to Pretoria Central police station for questioning by Lt W L Lambrecht and was asked whether a paragraph quoted in a story on Mr Klein, published in **POST** on September 5, contained Mr Klein's own words.

The paragraph read: "I do not want to sound like Dr Rhoodie, who threatened that he had some tapes which could damage the image of the Government but I have records — court records — which will prove such irregularities."

"They also searched through my books and asked why I was reading Breyten Breytenbach's works," he said.

"But they took my personal belongings as well and, when I asked why they were taking the poems and essays, they said they would return them They said they were in a hurry and had no time to read the contents," Mr Klein said

NO TIME

The search warrant left in Mr Klein's possession said that the police were looking for court records "concerned in the commission of an offence."

Commissioners' Courts were practising "apartheid under the veil of justice

that-

MATTER OF FACT

A REPORT headed "Security Police raid on flat of lawman" in yesterday's Rand Daily Mail stated that the Security Police had raided the flat of Mr A Klein, the former public prosecutor who walked out of the Pretoria Commissioner's Court three weeks ago.

The Commissioner of Police has complained that it was not the Security Police who were involved in the searching of Mr Klein's flat. The "Mail" regrets that its report was incorrect. The search was in fact conducted by the CID.

SP not involved in search

Pretoria Bureau

Police in Pretoria today denied that the Security Police were involved in a search of the premises of a former public prosecutor, Mr Addie Klein who walked out of his job after condemning apartheid

Brigadier H A du Plessis of Northern Transvaal Headquarters said the search was conducted by the CID branch attached to the central police station as a result of certain information received Certain documents were taken

Brigadier du Plessis said he did not want to comment further but added that police are continuing their investigation

Mr Klein said yesterday that Security Police had raided his car, office and flat

Why I code for

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— by DOUGLAS SHAW, QC, chairman of the General Council of the Bar of South Africa

cussion about "guide lines" or "instructions" to magistrates that there seems to be a considerable danger that the point of the objection to them may be lost

Perhaps, therefore, it may be as well to state again, as shortly as possible, the basis of the objection to them Government departments and other forms of bureaucratic influence have a substantial and, regrettably, increasing effect on the daily lives of every one of us

It is essential that those having that influence should act according to law and that they should, therefore, be controlled by courts which are truly independent

In the nature of things it is improbable that members of one Government department will have the desirable degree of independence when dealing with another Government department

For that reason it is the Supreme Court and not any magistrate's court or similar court which must be charged with the function of protecting the rights of the individual

The promotion of magistrates to the Supreme Court would tend to diminish not only the appearance of independence of the Supreme Court in matters of this nature but the fact that magistrates have served throughout their careers in the Department of Justice would tend to produce in them an attitude of mind which might well be inimical to the necessary spirit of independence

It is here that the existence of the so-called guide lines is relevant

The first question is what the status of these guide lines is. It has been suggested that they are, at the most, recommendations and that it is up to the magistrate to observe them or not as he pleases There has been a disavowal of any suggestion that they can properly be referred to as instructions

This seems to me to be merely playing with words The guide lines clearly express a definite view held by the Department of Justice in which the magistrates are employed

If magistrates are not expected to observe the views of the Department of Justice then it seems an exercise in futility to have those views stated

In addition, according to my information, there is a Supreme Court action in which among the documents is one which shows that a magistrate had a black mark against his record because he had criticised the police

Certainly some magistrates have understood the so-called guide lines to be an instruction that they are as far as possible to refrain from criticising the police

In fact, when the matter was raised at the end of last month the Chief Magistrate of Durban in a letter to me described the following as being part of "the only instructions currently in vogue" (I quote an English translation of the passage The only copy which has ever been available to me is in Afrikaans. I do not know whether it exists in English The translation is from a letter by Mr Alan Wilson, a former Chief Magistrate of Durban, in a letter to the Natal Mercury)

"14(3) Criticism which is not based on relevant facts

** The Department would like magistrates to refrain from criticism which is not based on facts relevant to the issue It is of opinion that it is not only undesirable and improper for example to criticise a witness on the basis of facts which are not relevant but it could also, where officials of other departments are involved, lead to the disruption of harmonious relations between this department and others. Where criticism in such a case is justified it would be more fitting to bring the circumstances by way of a letter to this department for further attention"*

The difficulty about the passage is that the opinion of a particular judicial officer as to what is relevant to the issue may be wrong The procedure of appeals, after all, is designed to correct errors What may seem irrelevant to a particular judicial officer may seem of crucial importance to others, including the court of appeal and including the accused

Quite apart from that, it seems to me that to limit a magistrate in this way represents an unwarrantable interference

There may be a great deal of evidence, for instance, in a case involving an assault on a prisoner about conditions in the prison In the end the magistrate may find that this evidence does not affect his decision

Nevertheless, if he believes that a very unsatisfactory state of affairs has been proved then it seems to me to be wrong that the magistrate should be told that it is undesirable and improper for him to criticise those who have given evidence before him who may be responsible for the undesirable state of affairs.

It is not that the instruction is not to criticise unless the judicial officer is satisfied that his criticism is justified by the evidence. The instruction is that even if the criticism is justified by the evidence the judicial officer is not to make it unless it is "relevant to the issue"

> It is of fundamental importance that justice should not only be done but should manifestly and undoubtedly be seen to be done

This brings me to another aspect of the matter .It has been suggested that the instructions do not deal with the discharge of the magistrate's judicial duties but deal only with his administrative functions Clearly the passage I have quoted deals with judicial functions, not administrative functions

What seems to me to be of grave concern is the effect that the existence of the instructions may have More than 50 years ago Lord Hewart, the Lord Chief Justice of England, said

"It is of fundamental importance that justice should not only be done but should manifestly and undoubtedly be seen to be done"

This statement has been so often repeated that it has become a cliché

Perhaps it is a good thing to consider what the words do mean A man who has been successful in his case is not usually terribly concerned whether justice has been done It is, however, necessary that a convicted person or those concerned with his welfare should be satisfied that this conviction

object to the magistrates

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followed on a completely proper trial

Where, therefore, there is a suggestion, as I believe there is in the passage I have quoted, that "officials of other departments" are to be treated somewhat differently from others and that "harmonious relations" should be preserved with other departments a convicted person may well have the feeling that perhaps the evidence of officials of other departments or the existence of harmonious relations with other departments have been accorded unduly favourable treatment

The impression may be completely unfounded The objection is that the instruction may well tend to produce that impression

This is all the more so with the instruction relating to relations with the police It reads as follows

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"In connection with cases concerning local police matters magistrates must, as a rule, consult the district commandant before they make representations to head office as such cases can often be settled locally Such a manner of dealing with matters advances an understanding and is advantageous for closer co-operation between magistrates and police"

We are assured by the Department that this relates to administrative and not judicial matters No doubt it is intended to Nevertheless, an accused convicted on police evidence may well feel somewhat disgruntled by the thought that the police evidence was considered by someone whose departmental instructions stress the desirability of closer co-operation with the police

This fundamental aspect of the matter seems to have been entirely overlooked by those who have stated the department's view

The situation is, I think, aggravated by a previous instruction relating to comments on police evidence We are told that this was withdrawn in 1968, What we have never been told is why it was ever issued The instruction reads as follows

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"If circumstances arise which oblige magistrates in the discharge of their judicial duties to make unfavourable comments about the behaviour of a member of the police force the department desires that they must bear in mind that while the department in no way wishes to restrict them in the exercise of their judicial discretion the department is nevertheless of the opinion that any comment that they wish to make would be more appropriately made by means of an official communication to the district commandant than by adverse criticism in open court The confidence of the public in the police force can possibly be weakened if criticism of a general nature is made against the police from the bench"

I do not think it is undue repetition to point out that this clearly relates to the discharge of the magistrates' judicial functions and that it clearly expresses the opinion of the department as to comments on relevant evidence.

It has been suggested by the Secretary for Justice that a telephone call could easily have provided the information that the instruction had been withdrawn

I do not think that when the Secretary for Justice made that statement he could have been acquainted with what had in fact occurred

The facts are that some time ago inquiries were made on behalf of a body of attorneys in Natal as to the existence of the instruction with regard to police witnesses The answer given was that there never was any circular with regard to police witnesses It now appears that there was

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Recently I myself caused inquiries to be made with a view to seeing whether I could see the book containing the guide lines The information was that the book was not available for inspection and could be consulted only by magistrates

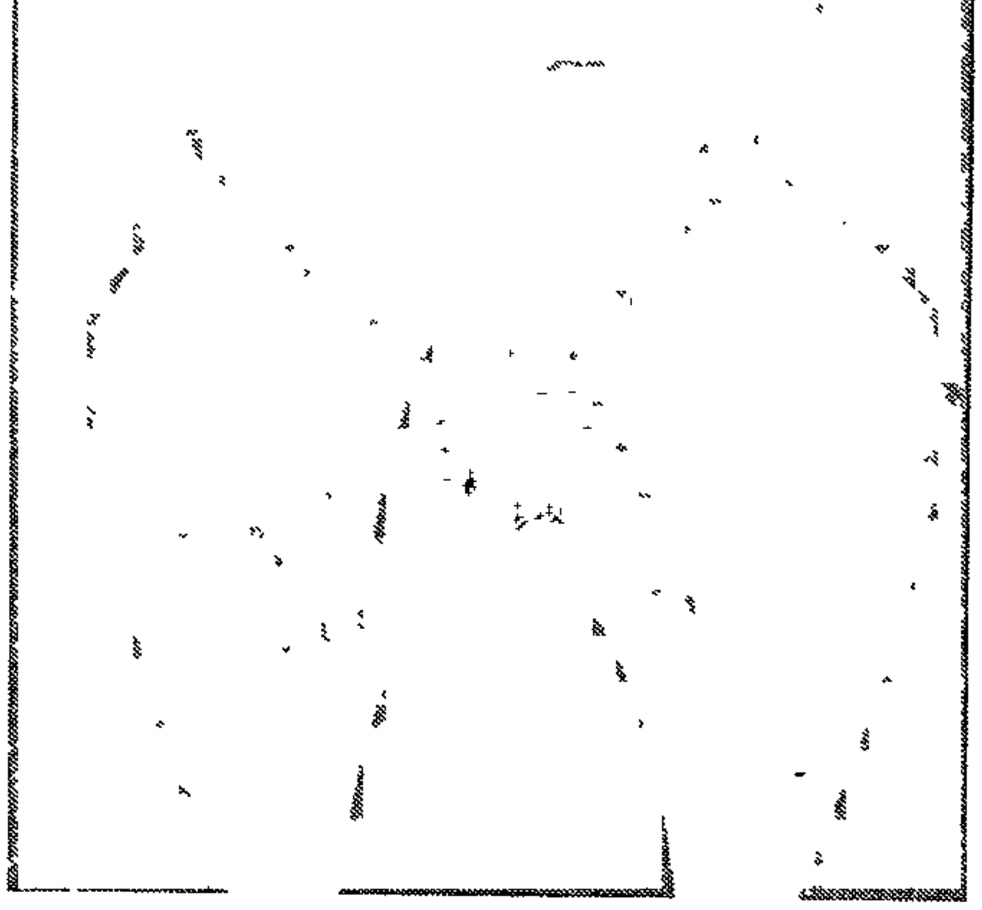
This was confirmed when a request was made by a newspaper reporter on 29th July, 1980 to the Control Magistrate in Durban The next day, however, it was said that the book was available to anyone who wished to see it Since then it apparently has been readily available

I venture to think that this shows that the Secretary for Justice was rather over-optimistic when he expressed the view as to what the result of the telephone call would have been The events demonstrate the desirability of the publicity which has been given to the matter

Once again I wish to emphasise that most magistrates carry out a difficult task with application and ability

Nevertheless training in an atmosphere which can permit the existence of the so-called guide lines does not produce an attitude of mind which can safely be relied upon to protect the citizen against the incursions of bureaucracy

For that protection we must look to the Supreme Court and it is essential that we be perpetually on our guard to preserve the full independence and the proper status of that court.



Mr Shaw

"In connection with cases concerning local police matters magistrates must, as a rule, consult the district commandant before they make representations to head office as such cases can often be settled locally. Such a manner of dealing with matters advances an understanding and is advantageous for closer co-operation between magistrates and police."

'Deliberate plan to control court'

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By Sieg Hannig

The foundations of the South African Supreme Court are "crumbling" after years of a deliberate and determined strategy to harness and control it, a Supreme Court judge alleges.

The allegation comes from Mr Justice Didcott in a memorandum presented to the Hoexter Commission on "intermediate courts" and published in part by Frontline magazine in Johannesburg.

The judge alleges that:

○ The State's domination over everybody and everything is what truly matters to some bureaucrats and politicians who pay ritual tribute to the independence of the Supreme Court but see it as an obstacle.

○ In some cases the Supreme Court has been robbed altogether of its inherent jurisdiction while in others its judicial authority has been carved into deeply.

○ The Department of Justice, initially designed to be the servant of the Supreme Court, has in many ways become its master.

○ The absence of any cogent reason for the proposed intermediate courts raises the conviction that the proposal serves as a "Trojan horse" for an ulterior purpose.

CONSTITUTION

The suspicion was rife among the judiciary and the legal profession that the real aim was to "cut the Supreme Court down to the size the planners want it to have".

The judge said his memorandum had a wider object just as the proposal for intermediate courts did.

This was to warn that while the Commission was considering changing the structure's facade, the foundations were crumbling.

"The time has come, I believe, for the Government to be told that what has been done to the Supreme Court for a generation now has harmed it greatly."

DOCUMENT

The Constitution proclaimed the Supreme Court's independence, but this was the letter of the law. "Its spirit struggles to survive the long siege the Supreme Court has undergone."

Mr Justice Didcott said the reasons for the proposed intermediate courts related mainly to costs, speed and convenience.

In fact intermediate courts would involve an extra layer of appeals and therefore more delay and more cost.

The scheme would also blur the distinction between an independent Supreme Court and the inferior courts in the civil service.

A recent document had proved that magistrates were not truly independent but had to heed department policy.

There was a lack of public confidence in a magistrate who had the task of deciding, for example, the Biko inquest, and who was bound by an instruction not to criticise policemen in public.

The Department of Justice was suspected of having a weighty vote on appointments to and promotions within the judiciary.

Part of the plan, and a further example of the department's influence, was the appointment of civil servants to the Bench.

There was no doubt that "such appointments remain a primary object of the bureaucrats."

Two of the former civil servants who had been appointed, and had distinguished records, might have been exceptions which proved the rule.

There was nothing wrong in itself with a civil servant's devotion to the State's cause — but it was a grave flaw in a judge.

If the law brought a judge into collision with State policies, he should not even notice it.

"No civil servant has that detachment," Mr Justice Didcott said.

PROSECUTION

"It is wrong that the prosecution of criminal cases should fall under the same department as the courts which must try them.

"It is wrong that the State's civil litigation should be handled by the department which administers the courts called upon to decide it.

"It is wrong that banning orders and prohibitions should emanate from the department that has the responsibility for the courts which are required to interpret them, and sometimes to determine their validity."

The judge said there had been a succession of statutes which, in some cases, robbed the Supreme Court altogether of its inherent jurisdiction and, in others, limited it, carving deeply into its judicial authority.

The effects of these ranged from mandatory sentences to the capture of the Supreme Court's work by special tribunals.

Administrative officers were given immunity from judicial review.

There were indemnities protecting officials who had behaved unlawfully and embargoes on interdicts against officials who were about to do so.

Unquestionably the worst was the Supreme Court's loss, in large areas, of that ancient and trusted weapon for the defence of personal liberty — the habeas corpus writ.

"SEETHING"

At the root of the current "seething" judicial discontent lay the fact that the Department of Justice had in many ways become the master of the Supreme Court.

This might have contributed to recent resignations and was likely to cost the country other judges.

"Never before, as far as one can discover from history, has judicial morale been lower," Mr Justice Didcott said.

Publication of judge's views vexes Minister

The Minister of Justice, Mr Coetsee, today reacted angrily to the publication of strong criticisms by a Natal judge, Mr Justice Didcott, that the Government was undermining the status of the Supreme Court.

Also today Mr Justice Didcott reacted angrily to the leaking of a memorandum he submitted to the Hoexter Commission this year.

MRS SUZMAN

"The memorandum was meant to be confidential. I have no idea how the Press managed to get hold of it. I have nothing more to add," he said.

The judge also refused to confirm the accuracy of the report.

Mr Coetsee said the Government's attitude was that the status of the Supreme Court, including its independence and its standing in the eyes of the public, should be unquestionable.

He added "It should be deplored that this material found its way into the hands of a newspaper and it is even more deplorable that the newspaper should publish it."

Mrs Helen Suzman, Progressive Federal Party spokesman on civil rights, said the judge's views had raised doubts on the functioning of the democratic system in South Africa.

INFLUENCE

"It is most disturbing that the comments of Mr Justice Didcott, who is in a position to know, should raise doubts as to the integrity and independence of the Supreme Court for which the public of South Africa have the highest regard," she said.

Mrs Suzman said any suggestion that the executive influenced the judiciary struck at the roots of democracy.

In a speech earlier this year, another Natal judge, Mr Justice Milne, warned that the introduction of intermediate courts now being considered by the Hoexter Commission could affect South Africa's independent judiciary.

He warned the Natal Law Society about the infiltration of the "bureaucratic type of thinking" into the judiciary.

Mr Justice Hoexter said it would not be proper for him to comment on any of these issues. A spokesman for the Department of Justice also refused to

'Supreme Court is

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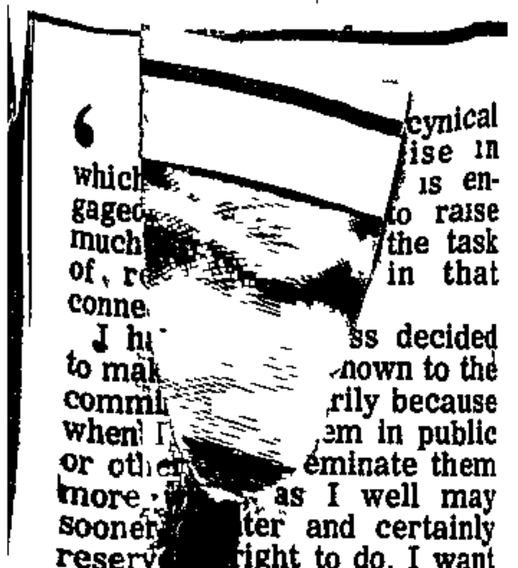

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The reasons for cynicism are threefold

(The first reason deals with individuals)

The second reason is the effort of imagination one must make to treat the proposal for intermediate courts as bona fide at all

The cost of such a system would inevitably be enormous Buildings would have to be constructed oradapted all over the country I take this for granted because, the report of the departmental committee having laid such ress on the need for intermedi courts to be separate in ery way from magistrate's cos, the same accommodatiofor both would scarcely

Then ould have judicial officers e employed and remunera as well as their staff and host of officials and funcries courts require Lies would have to fitted he score Books ld ne be purchased by thou Furniture and e ne ld have to be ls ed ould go on The exp se nfrastructure, it su eay, would be immen

A re e feature of the departm eport is its lack of any ate of either the capital or the annual expenditure ely to be incurred, or even any acknowledgment of the absolute certainty that both would be heavy

The explanation for the omissions on merit to become the absolute rule The Johannesburg Bar alone could then cater not only for the Transvaal's requirements, but also for those of smaller areas whenever these happened to run short of local candidates

Paragraph 5 1 2

"Trials and appeals are often delayed too long, in spite of the expansion of the benches of the courts"

In some divisions, to be sure, this has frequently been the case It is the very problem the Galgut Commission was appointed to tackle While its report is awaited, it seems entitled to the courtesy of official confidence in its ability to find a solution, and interim reticence on the point

The streamlining and simplification of the practice and procedure of the Supreme Court, which one can expect it to recommend, is likely to achieve everything that is necessary It is difficult to see how a fresh tier of courts could improve matters One obvious result would be extra appeals, and thus added delays in the final determination of litigation

Paragraph 5 1 3

"Legal costs are forever rising. Our Supreme Court is the most expensive court for litigants Perhaps a less expensive court should be made available for at least some of the people who today find themselves out of court because of prohibitive legal costs"

(On this issue of costs I can always has been the highest court of the land, that it has never lost its place as such; and that it would be surprising if as many as 10% of the judges in the country, who can surely be counted on for greater concern than anyone else's with its status and prestige, believed that either was likely to be enhanced by the introduction of intermediate courts

Paragraph 5 1 5

"With the jurisdiction they now have, our regional courts already try the most serious offences They are in fact already intermediary (sic) courts"

The point of this passage is rather obscure With regard to civil work, regional courts are very far at present from being intermediate courts, as these are envisaged at any rate

Although regional magistrates obtained civil jurisdiction five years ago, I know of no single civil case decided by any of them in Natal since then Nor does any of my colleagues here whom I have asked. We would not have expected to hear of all such cases But some at least would inevitably have come before us on appeal had there been many, and none ever has

I would be amazed to learn of a dozen altogether during the past five years I have the impression, what is more, that the pattern is much the same throughout the country. The Department of Justice can no doubt correct me, if I am wrong, by producing the actual figures.

capable advocates, attorneys and academics could also gain access to its bench"

The operative word here is "capable". Some hacks from the bar, side-bar and the universities could no doubt be enlisted for the intermediate courts But nobody wants them

The availability of "capable" recruits from such sources, in significant numbers at any rate, is another matter altogether It seems a mere pipedream

"Capable" academics who have strong judicial ambitions tend to realise them in the ordinary way, after joining the bar. The present Supreme Court bench has several examples of these.

Those who remain where they are do so, by and large, because of their devotion to the academic life. They, in any event, would be the first to admit that, without substantial experience in practice, they are ill qualified for the judiciary

"Capable" advocates, on the other hand, can look forward to appointment to the Supreme Court bench, as matters stand Those deterred by the financial sacrifice this entails would scarcely be attracted by the lower salary paid to the bench of the intermediate courts.

As for "capable" attorneys, it is surely an illusion to suppose that more than a small handful seeking a rest would abandon lucrative practices, and sever the valuable commercial associations so many have, for a job like the one on offer

tice, which bears the onus and a heavy onus to prove the case for the radical change it is busy sponsoring, sets an inquiry like the present in motion on grounds so flimsy

The criticism presupposes, of course, that the real grounds are those which have been given Perhaps, however, they are not Perhaps the true object of the bureaucrats behind the scheme is an ulterior one, which has been kept carefully concealed beneath the smokescreen of the departmental committee's report

This brings me to my third reason for cynicism about the whole operation

It is the suspicion, rife in the ranks of both the judiciary and the legal profession, that such is indeed the case; that the establishment of intermediate courts is not envisaged as an end in itself, that it is intended to be but the means to an end, and that the end is to cut the Supreme Court down to the size the planners want it to have.

The goal, if such it be, will never, of course, be acknowledged openly. The Supreme Court is probably South Africa's most respected civic institution, at home and abroad. It certainly has greater prestige, and a record admired much more widely, than either the legislature or the executive.

The bureaucrats whom I have in mind, and those politicians in league with them, realise this fully At regular intervals they therefore pay ritual tribute to the independence of the Supreme Court, to its integrity, to its impartiality

is no object to the Department of Justice Nobody acquainted with it could believe that It does not, and apparently cannot afford to, pay adequate salaries to its magistrates, to its prosecutors or its professional assistants in the offices of State Attorneys and Attorneys-General, who desert it with regularity for private practice, or to its court interpreters, its administrative staff or its other ranks

It does not, and apparently cannot afford to, provide its magistrate's courts with the libraries and secretarial assistance they so desperately need Its standards, by and large, are second rate because it does not have the funds for first rate personnel or first rate facilities.

It would serve the nation better if, instead of indulging in grandiose schemes, it used whatever extra cash it could lay its hands on to meet its existing responsibilities

And what is the scheme for intermediate courts, if not grandiose? What compelling and urgent call for them warrants such contemplated extravagance?

The only reasons ever suggested of which I am aware were summarised by the departmental committee in its report They are not impressive. I shall quote them one by one, commenting as I go

Paragraph 5 1 1

"The benches of the Supreme Court have to be expanded time and again This is an expensive process"

It is not nearly as expensive a process as the establishment and maintenance of an entirely new layer of courts, and nobody applying his mind seriously to the question could have thought for a moment that it was.

"In addition the bars are not inexhaustible"

True, but they still have plenty of silks qualified to be judges. All that is needed to ensure that demand never exceeds supply, in the foreseeable future at any rate, is for appointments to be made from the ranks of the junior bar.

"The Supreme Court is often geographically far removed from the homes of the people who want to call on it for assistance"

So it is. A large proportion of civil cases there, however, are disposed of in the absence of the litigants They go by default, or for some other reason require no evidence, or are decided on affidavits The vast majority in which oral evidence is necessary, on the other hand, involve parties litigating once in a lifetime

In an era of modern transport and sophisticated communications a journey to the seat of the Supreme Court, once in a lifetime too, is no great hardship for those who happen to live elsewhere. Very many, after all, would have to travel some distance at least to reach the nearest of the intermediate courts, which could not manage ubiquity.

Such were the departmental committee's full reasons for its unanimous vote in favour of intermediate courts None bears scrutiny Individually and collectively, they have no real substance

That is not surprising, when one comes to think of it Two of the committee's three members were regional magistrates Their ignorance of the workings of the Supreme Court and of litigation there is manifest No trouble seems to have been taken to remedy it, though a lot was compiling largely irrelevant accounts of the structure and organisation of courts overseas

The committee nevertheless presumed to make ill-considered pronouncements on such topics as delays and costs in the Supreme Court It is an affront to the intelligence of judges and practitioners alike, and an imposition of their time, when they are presented with these, to quote from the commission's letter, for "careful and critical appraisal".

Public money and effort are squandered, what is more, when the Department of Justice exercise The ido they really worship is the State Its dominion over everybody and everything is what truly matters to them

A strong and independent Supreme Court must always seem an obstacle to such as they To harness it, to control it as far as possible, is thus the aim of a deliberate and determined strategy one has witnessed for many years now. There can be no doubt about that Too much evidence has accumulated. All that seems open to argument is whether the present proposal is part of the same programme.

I shall come in a moment to the evidence to which I have alluded What must be recognised and emphasised in the meantime, however, is the plan's intrinsic character. This is nothing less than constitutionally subversive

The Supreme Court is not a branch of the civil service, structurally or notionally. Nor, except perhaps in the loosest sense, has it anything to do with the apparatus of the State.

It is a separate, distinct and complete limb of the constitution That its judges happen to be paid from public funds, and of necessity therefore by the State, is neither here nor there So is the Speaker of the House of Assembly So too is the Leader of the Opposition So, for that matter, is every other Member of Parliament

The Republic of South Africa Constitution Act proclaims the Supreme Court's independence, and its absolute command of its own territory Section 94(1) stipulates:

"The judicial authority of the Republic shall be vested in a Supreme Court, to be known as the Supreme Court of South Africa and consisting of an Appellate Division and such provincial and local divisions as may be prescribed by law."

There one has it It could hardly be plainer The "judicial authority of the Republic" belongs not the Minister of Justice, not to the Department of Justice, but to the Supreme Court as a whole, and to it alone

Mr Justice John Didcott

Such, however, is but the letter of the law Its spirit struggles to survive the long siege the Supreme Court has undergone.

Take, as major examples of this course of events, the succession of statutes which, in some cases by robbing the Supreme Court altogether of its inherent jurisdiction and traditional functions and in others by limiting these substantially, have carved deeply into the "judicial authority" entrusted to it

The particular enactments are too many to go into now, and they have been analysed and evaluated so often that it is unnecessary in any event to do so As we all know, their medley of effects range from mandatory sentences, depriving the Supreme Court of its discretion to impose punishments that fit the circumstances, to the capture of its work by special tribunal, from the immunity to judicial review gained by performers of administrative acts to indemnities protecting officials who have behaved unlawfully and embargoes on interdicts against those about to do so

The worst of all, unquestionably, has been the Supreme Court's loss in large areas of that ancient and trusted weapon for the defence of personal liberty, the writ of habeas corpus

True, the growth of administrative law at the expense of judicial power is a phenomenon by no means peculiar to South Africa, but a sorry feature of modern societies in general

"The New Despotism" was the label Lord Hewart gave it when he used that title 50 years ago for his famous book attacking the process.

Few communities however, and none whose jurisprudence resembles ours, have gone as far as we Few, and none with whom comparison would be welcome, have done so with less apparent reluctance or greater damage to the fabric of the law

Take, as a further instance, the relationship nowadays between the Supreme Court and the Department of Justice, and contrast it with the one contemplated by the constitution The Supreme Court cannot do without an administrative appendage, and, in addition to separate functions allotted to the Department of Justice which are irrelevant at present, that strictly subordinate purpose was the one it was designed to serve.

But it is the nature of bureaucracies to enlarge themselves, to expand their domains, to develop into empires, and our Department of Justice has not acted *contra naturam sui generis* All the while it has gathered power and influence As a result the servant of the Supreme Court seems in many ways to have become its master.

This circumstance lies at the root of current judicial discon-

real grounds for the belief that litigation in intermediate courts would be significantly cheaper than in the Supreme Court.

What makes litigation expensive is the cost of employing advocates and attorneys. The fees of each depend largely on his individual standing and expertise, together with the complexity or otherwise of the particular work for which they are charged.

Seldom, if ever, have they anything to do with the tribunal hearing the case or its place in the curial firmament

It is fanciful to suppose that less would be acceptable in an intermediate court than, by the same advocate or attorney for the same service, in the Supreme Court.

Nor would any great economy result from the suggested by-product, the right of audience to be granted to attorneys in intermediate courts That the division of the profession causes an expensive duplication of legal services is a popular fallacy The truth is that, on the whole, the duplication is minimal, in both extent and cost

Intermediate courts, as already pointed out, would mean more appeals on the other hand, and these would undoubtedly increase costs

Paragraph 5 1 4

"The institution of an intermediary (sic) court may allow the Supreme Court to again assume its proper place as the highest court of the land"

One wonders what the authors of the report supposed they were talking about when they brought themselves to write this. It is typical of the muddled thinking that characterises much of their work, and this is no less so because they seem to have lifted the remark, uncritically and without pausing to reflect on the nonsense it was, from a speech two years ago by the Minister of Justice at that time, who should have known better

All one can say in reply is that the Supreme Court is and was a tolerable and virtually uniform lack of public confidence in regional courts as civil tribunals

The reason, of course, is that very few regional magistrates have any experience whatsoever of civil matters Litigants are unwilling to be used as guinea pigs while the deficiency is gradually and laboriously remedied

They would be no likelier to take the risk merely because regional courts had been renamed intermediate courts The larger the amount in dispute, the less likely indeed they would be to do so.

If the undoubted fact that regional courts try many serious criminal cases on the other hand means that they are "already intermediary (sic) courts", then there seems to be no strong call for change. They may continue to function as regional courts which are "already intermediary (sic) courts", and the rest of us can return to our business.

Perhaps, however, I have spent longer on the point than it deserves The truth, when all is said and done, is that it is a most disingenuous one The authors of the report know full well that what is proposed is not just a new name and a fresh coat of paint, but a project of radical reconstruction

"The question is whether such a court" (i e a regional court) "is correctly placed in the public service dispensation"

Maybe it is not Any movement of regional courts to another place inside "the public service dispensation", or to one outside it altogether for that matter, does not however depend on their transformation into intermediate courts with a vastly enlarged jurisdiction, but can be considered on its merits while their name and powers remain unaltered

Paragraph 5 1.6

"The regional court, which is in fact an intermediary (sic) court, is staffed from the ranks of the public service Such a court will probably benefit thereby if

'under siege'

RDM 14/10/80 252

The Hoexter Commission is currently inquiring into the structure and functioning of the courts of law and into the establishment of an intermediate court between the lower courts and the Supreme Court. MR JUSTICE JOHN DIDCOTT, of the Natal Bench, has submitted a memorandum to the commission in which he attacks the concept of an intermediate court — and delivers a grave warning about the erosion of the Supreme Court. These are major extracts from his memorandum. A separate report on the memorandum appears in the current edition of Frontline magazine.

tent, which is seething . . . it is likely to cost the country judges who are getting near the end of their tether, and it is a definite factor inhibiting recruitment to the Supreme Court bench.

Never before, as far as one can discover from history, has judicial morale in South Africa been lower

There are a number of reasons for this High on the list, of course, stands the grossly inadequate remuneration puisne judges receive and their consequent embarrassment, which the recent increase has done little to alleviate

To pay them insufficient to finance their children's education, to replace their worn-out cars or, except on the cheap, to take holidays is a debasement of their high constitutional position, and nothing less than a national disgrace

Their humiliations do not stop at that point The arrangements, financial and otherwise, for the frequent journeys they must make in the course of their duties, at personal inconvenience and often to their domestic detriment, are primitive, niggardly and entangled in red tape So is much else that governs their daily routine and working conditions

One could go on, but I shall not What causes the greatest frustration, what accounts more than anything else for the dissatisfaction, when all is said and done, is that nobody with the power to remedy the situation gives the impression of caring in the least what judges think about it

Seldom, if ever, are they consulted on subjects affecting them. When they take the initiative and make their views known, not the slightest attention seems to be paid to these Instead the Department of Justice has the Minister's ear, as it had that of his predecessor, and his in turn And those who control it appear to have no aversion at all to the decay of the Supreme Court through gross neglect

The power of the Department of Justice over the Supreme Court bench does not end there It is suspected of having a weighty vote on appointments to and promotions within the judiciary That these are none of its business whatsoever goes without saying, or should at any rate.

Then, as part of the plan as well as a further example of the Department of Justice's increased influence, one has appointments to the Supreme Court bench of civil servants That we have not had more of these is due to the widespread opposition expressed to those which have been made, and to the idea of others whenever that has been mooted.

There is no doubt, however, that such appointments remain a primary object of the bureaucrats

They are fond of pointing to the two law advisers who were put on the Supreme Court and promoted to the Appellate Division, where both had distinguished records and one became Chief Justice Perhaps these were exceptions to the rule who proved it. Outstanding men occasionally succeed in work for which they are initially unsuited, and the pair in question certainly had great technical ability as lawyers

It cannot be said too often that judges should never be recruited from the civil service. The training of a civil servant, even when academically equal to an advocate's, cannot match the wide and varied experience of the law and litigation which a senior member of the bar has accumulated by the time he becomes a candidate for the bench

More important still, much more important, is the civil servant's lack of independence from the State. Whether civil servants tend to do the bidding of their superiors in a conscious effort to enhance their prospects of promotion may be open to argument, in the case of the best of them at any rate

What is not is the instinctive and firmly rooted bias in favour of the State inevitably produced by a working life dedicated to the service of its interests and the implementation of its policies

There is nothing wrong in itself with devotion to the State's cause Such is to be expected of a diligent civil servant

But it is a grave flaw in a judge. His duty is not to serve the State, or to care two pence for its policies. He must apply the law, and it alone If that happens to work to the detriment of the State, if that happens to bring him into collision with its policies, nothing could matter less. He should not even notice it

No civil servant has that detachment Nor can he get it simply by donning a judicial robe The habits of thought developed over 20 or 30 years and carried into middle age are too deeply engrained by then, too stubborn, to be shed.

It is true that magistrates, who are civil servants, handle the bulk of the country's court work, and this point is often made by the bureaucrats when they argue that the role of a judicial officer is not incompatible with membership of the civil service

As it happens, a document has recently come into the hands of the Durban Legal Circle which hurts the argument somewhat It is a single page from a code of instructions issued to magistrates by the Department of Justice

The page in question deals with the attitude required of magistrates towards the police It warns them that public confidence in the police force may be damaged by general criticisms of it expressed from the bench, and it enjoins them, whenever they have adverse comments to make on the conduct of particular policemen, to convey these rather to the responsible officers in official but private communications

The interests of the police force, they are thus plainly told, must be kept in mind while they are trying cases. What the Department of Justice has evidently overlooked is the lack of public confidence in a magistrate bound by an instruction like that who has the task of deciding, for example, the Biko inquest

It goes without saying that no judge would accept such a directive, or tolerate its issue for a moment In the case of the civil service, however, neither the order itself nor obedience to it is really surprising It simply confirms what one already knows, which is that, even when they occupy the magisterial bench, civil servants are not truly independent, but must heed departmental policy

(In a passage in his memorandum dealing with appointments to the bench, Mr Justice Didcott criticised the fact that many of the country's leading counsel had never reached the bench

(He also stated that some of the best judges had never been promoted — or had been promoted too late in their careers

("Take Schreiner, J A, for instance, one of the greatest judges South Africa has ever produced, twice the senior judge of appeal when the post of Chief Justice fell vacant, yet twice overlooked for it

("Take Ramsbottom, J, another giant. What a force on the Appellate Division he would have been had he gone there when he should have, instead of when he was old and ill and had less than two years left to live

("Take Colman, J, unquestionably one of our finest judges in the past 20 years, who never got to the Appellate Division, though the transfers to it while he languished in the Transvaal were plenty ")

(On leading counsel who had never been appointed to the bench, Mr Justice Didcott said "Confine one's attention, for convenience, to the Johannesburg Bar, the largest in the country by far, and one which has always counted among its members most of the ablest advocates of their time

("Ponder on the relatively few Transvaal judges drawn from their ranks in the past three decades

("Imagine the gain to that court, its reinforcement, had it included a Rosenberg and an Ettlinger, a Pollak and a Rathouse, a Maisels and a Hanson, a Welsh, a Kentridge, a Chaskalson ")

If the Government really cares about the Supreme Court's reputation, it will apply the remedy, which lies within its own hands It would be nice were it to surrender judicial appointments and promotions to some neutral selection committee established by it

But one cannot realistically hope for that Executives do not waive their prerogatives What one is entitled to expect, as an absolute rule of policy, is that, having sought and taken the advice of the Chief Justice with regard to vacancies in the Appellate Division and of the Judge Presidents concerned on those elsewhere, the Government should appoint and promote judges

These then are the main moves in the strategy over the years less power for the Supreme Court, its infiltration by civil servants, and the growing suzerainty over it of the Department of Justice

The scheme for intermediate courts, if accepted and implemented, will be all of a piece. The distinction between an independent Supreme Court, which is vested with "the judicial authority of the Republic", and an inferior court within the civil service, which is not, will become blurred

The gap between them will be filled, so that each resembles but a tier in a single edifice To climb from the lower level to the higher will then look easy, and will actually be once the connecting step is inserted

Whether that is what intermediate courts are meant to accomplish is perhaps of lesser moment than the certainty that such will be their effect the absence of any cogent reason for the proposal leaves one, however, with the conviction that it indeed has an ulterior purpose, that it is intended to serve as a Trojan horse

The inference is strengthened by a passage in the departmental committee's report, which must be rated as quite its most remarkable It is to be found in paragraph 5 7 13, and this is how it goes

"The grounds on which a judge can be dismissed are very vague in South Africa and in England The fact that not a single judge has ever been dismissed in England or in South Africa, according to the present dispensation, perhaps indicates that there is something amiss with the procedure "

The non sequitur may be disregarded, and put down to the defective reasoning with which readers of the report are familiar What cannot be ignored is the question mark placed against that vital mechanism protecting the Supreme Court's independence, the irremovability of judges from office except by petition of Parliament

At best the passage is just silly, suggesting that the departmental committee did not realise it was playing with fire At worst the construction is sinister, revealing behind a mask that has slipped the face of the dissembler who pretends to believe in the freedom of the judiciary, but does not

Just as the proposal for intermediate courts has a wider object, as I view it at any rate, so too does this memorandum It is an effort to warn the commission that, while it is busy considering alterations to the structure's facade, the foundations are crumbling

The time has come, I believe, for the Government to be told that what has been done to the Supreme Court for a generation now has harmed it greatly

If the commission were to confront the Government with that, and better still to persuade it to change its ways the administration of justice would be well served

Judge's amazing protest

(252) RDM 14/10/80

Supreme Court 'crumbling' under subversive strategy

By BENJAMIN POGRUND

IN THE most far-reaching and frankest comments ever made on the status of the Supreme Court, a judge has warned of a "deliberate and determined strategy" to harness and control it.

Mr Justice John Didcott, of the Natal Bench, says this campaign is "nothing less than constitutionally subversive"

The strategy over the years, he says, has been less power for the Supreme Court, the threat of infiltration by civil servants, and growing influence and control by the Department of Justice

The foundations of the Supreme Court are "crumbling", he says

He refers also to the fact that many of the country's leading counsel have never been appointed as judges

Mr Justice Didcott sets out his views in a memorandum submitted to the Hoexter Commission which is currently inquiring into the structure and functioning of the courts, and into the establishing of an intermediate court between the lower courts and the Supreme Court

EXCLUSIVE

The Supreme Court under siege — Pages 12, 13

The Rand Daily Mail has obtained a copy of the judge's memorandum from sources other than him

A separate report on the memorandum appears in the current edition of Frontline magazine

Mr Justice Didcott says that judicial discontent is seething

'Never before, as far as one can gather from history, has judicial morale in South Africa been lower"

Attacking the idea of intermediate courts, the judge refers to "the suspicion rife in the ranks of both the judiciary and the legal profession" that the establishment of these courts "is not envisaged as an end in itself, that it is intended to be but the means to an end, and that the end is to cut the Supreme Court down to the size the planners want it to have

"The goal, if such it be will never, of course be acknowledged openly The Supreme Court is probably South Africa's most respected civic institution, at home and abroad

"It certainly has greater prestige, and a record admired much more widely, than either the legislature or the executive

"The bureaucrats whom I have in mind, and those politicians in league with them realise this fully At regular intervals they therefore pay ritual tribute to the independence of the Supreme Court, to its integrity, to its impartiality

"But their hearts are not in the exercise The idol they really worship is the State Its dominion over everybody and everything is what truly matters to them A strong and independent Supreme Court must always seem an obstacle to such as they

"To harness it, to control it as far as possible, is thus the aim of a deliberate and determined strategy one has witnessed for many years now"

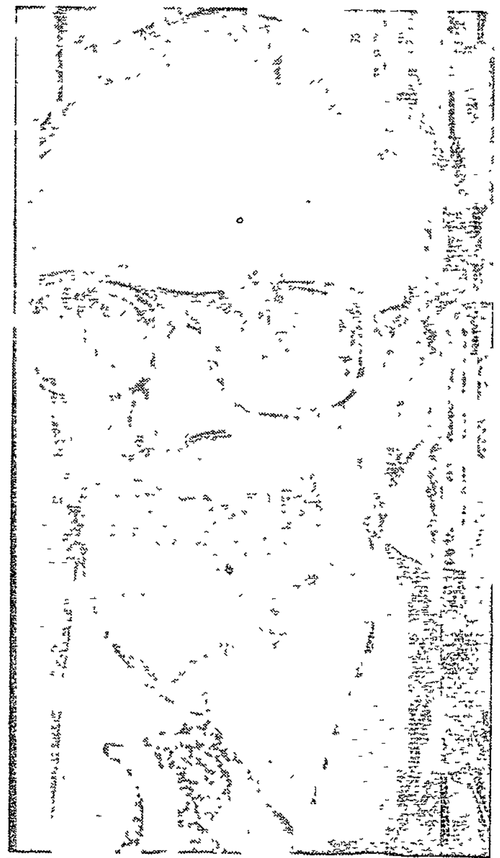
Describing the 'long siege" the Supreme Court has undergone, Mr Justice Didcott refers to the succession of laws which have robbed the court of jurisdiction or cut into its judicial authority

While the growth of administrative law at the expense of judicial power has also happened elsewhere, "few communities, however, and none whose jurisprudence resembles ours have gone as far as we Few, and none with whom comparison would be welcome, have done so with less apparent reluctance or greater damage to the fabric of the law"

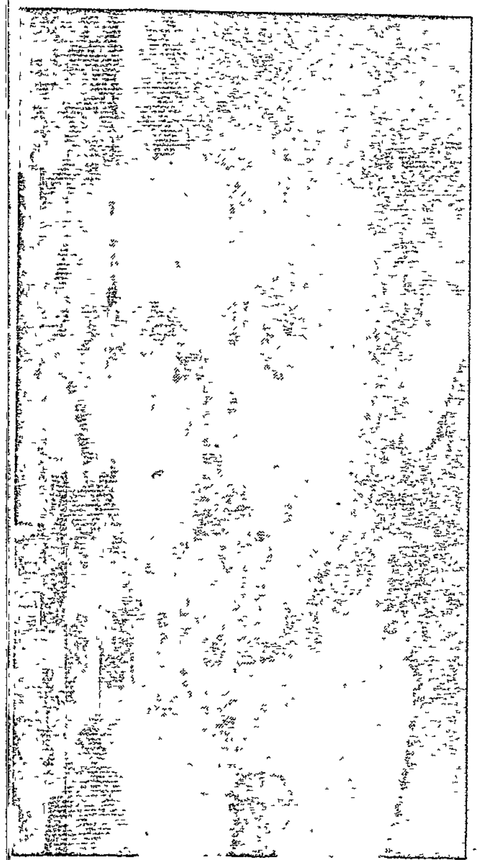
The Department of Justice, which should be the servant of the Supreme Court, seems in many ways to have become its master, he says

This is at the root of discontent among judges, while other factors include

- The 'grossly inadequate remuneration" of judges, which debases their high constitutional post on
- The Department of Justice is suspected of having a weighty vote on appointments to and promotions within the judiciary"



MR JUSTICE DIDCOTT: "A determined strategy" to control the Supreme Court



MR JUSTICE MILNE: Idea of intermediate courts "misconceived"

Intermediate courts 'not the answer'

By ARNOLD CZEVER

THE introduction of "intermediate" courts would make serious inroads into South Africa's independent judiciary, warns another Supreme Court judge

Mr Justice A J Milne, of the Supreme Court's Natal Provincial Division, has attacked the proposals being considered by the Hoexter Commission of Inquiry into the structure and functioning of the courts, to establish a new court between the lower courts and the Supreme Court

He said it

- Would blur the independent status of Supreme Court judges in the public eye
- Would obscure the difference in training and conditions between magistrates and judges, making it appear that Supreme Court judges were merely more senior members of the hierarchy, rather than different in kind,
- Could lead to all courts ending up entirely in the hands of the Department of Justice, and
- Could help bring about a State which no longer possessed the three "cherished" branches of legislature, executive and judiciary, with the latter having been "consumed" by the executive

"I believe the whole idea to be misconceived," Mr Justice Milne told the annual dinner of the Natal Law Society earlier this year Extracts of his speech appear in the latest issue of De Rebus, the South African attorneys' journal

He said drastic change was needed in enhancing the status of magistrates, but added: "Not, however, the creation of a new court, but a fundamental alteration in the training, appointment and conditions of employment of magistrates. The first necessity is for magistrates to be seen to be as independent as possible."

Magistrates had to be freed from purely departmental control, he argued.

Strongly criticising the 'bureaucratic thinking' in the proposals, he pointed out the different motives for promoting magistrates and judges and said "Moreover, while no doubt some magistrates can and do resist it, there is undue pressure built into the promotion system to please those who promote one to higher status and salary

"This, incidentally is one of the reasons why judges object

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including closing entries ed 31 December 1979.

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Surcharge

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Use the "Rule of 78" (Sum ortion interest.

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Judge rejects new courts

RDM 14/10/80

to the recently introduced large differences in salary in the ranks of the judiciary.

"It is bureaucratic thinking, however innocent, of evil intent, and introduces the fatal ladder of hierarchy which undermines, or at least works against, independence of mind, judgment and action."

Mr Justice Milne urged as much public discussion of the proposals as possible and called for serious consideration whether they might not create other problems — "perhaps worse in kind".

Commenting on a statement by the (previous) Minister of Justice that the Supreme Court could not cope with the work sufficiently swiftly, he said a long-term solution was to involve more and more blacks in efficient legal training to meet demands.

"It is in relation to the disproportion of criminal work to civil that the problem lies," he said. A substantial proportion of the work of the courts was criminal — at a rough guess 90% of this involved blacks, most of whom could not afford counsel or attorneys.

Rejecting the expresed hope that intermediate courts would reduce the high cost of litigation, Mr Justice Milne said travelling costs of litigants or witnesses was a minute fraction of the cost.

"The cost lies in legal representation. Litigation is a highly skilled, demanding and time-consuming job, and the best men will always be able to command high fees. You cannot expect to get an advocate or an attorney like a Ferrari for the cost of a buzz-bike," he said.

The proposal to call the personnel of the intermediate courts "judges" was opposed by the Natal judiciary "to a man".

If the jurisdiction of magistrates was to be increased and if magistrates were to be made more like like judges in power and function, then it was absolutely necessary to make them more like judges in training and conditions of service also.

"I fear that the implementation of these intermediate courts as the recommendations stand, will be to make judges more like magistrates," Mr Justice Milne said.

Top-level support for judge's protest

(252)

RDM 15/10/80

STAFF REPORTERS

JUDGES and leading lawyers yesterday backed the urgent warnings of two Supreme Court judges that the independence of the country's judiciary was being undermined.

They voiced support after the publication in the Rand Daily Mail yesterday of a memorandum by the Natal judge, Mr Justice John Didcott, who warned of a "deliberate and determined strategy" to harness and control the Supreme Court.

Mr Justice Didcott said this strategy included less power for the Supreme Court, the threat of infiltration by civil servants, and growing influence and control by the Department of Justice

In another report in yesterday's "Mail", Mr Justice A J Milne warned against attempts "to bring all courts entirely into the hands of the Department of Justice" and said the introduction of "intermediate" courts would make serious inroads into the independence of the judiciary.

Practising lawyers and more than 10 judges contacted by the "Mail" indicated their support for Mr Justice Didcott's stand, but were reluctant to be named

A top advocate said "The profession is boiling over this issue. To be honest, many of us regard Judge Didcott's statement as verging on moderation"

The "Mail" publication of the judge's protest aroused angry reaction from the Minister of Justice, Mr H J Coetsee

"It is outrageous to suggest that the Supreme Court is not independent and even more outrageous to suggest that there are attempts to curb its power," he said.

Later his office released a statement in which he said he regretted the fact that the memorandum had found its way to the Press and that "the Mail has seen fit to publish it".

Mr Coetsee said the Department of Justice had always held the Supreme Court and its judges in the highest regard.

"For myself, as Minister, I want to state that my Government is committed to the rule of law and that we have always recognised the independence and authority of the Supreme Court, as the judicial arm in the constitutional dispensation of our country," he said.

Mr Justice Didcott's memorandum, which the "Mail" received from sources other than himself, was submitted to the Hoexter Commission investigating proposals to introduce a new court between the lower courts and the Supreme Court.

Professor John Dugard, the director of the Centre of Applied Legal Studies at the University of the Witwatersrand, said the Didcott memorandum was a highly significant news item

"It is the first time a judge has expressed himself on the administration of justice.

"The Government has emasculated the Supreme Court so much that there is little more they can do," he said.

"The Johannesburg Bar is the strongest in the country and many advocates have been overlooked for appointment as judges. There are about 20 senior advocates in Johannesburg who are as well qualified, if not better qualified, than many judges in the Transvaal Provincial Division, and in some cases in the Appellate Division."

Professor Johan van der Vyver, a law professor at the University of the Witwatersrand and vice-president of the Lawyers for Human Rights group, said "The tendency for the Supreme Court to be undermined by the executive is a matter for grave concern.

"I cannot say this is the motive of the Government, but certain events and appointments may indicate that this is the case."

Prof Van der Vyver said the first priority of the legal profession should be to free magistrates from departmental control

In Durban, Mr Hassim Seedat, chairman of the Democratic Lawyers' Association, said the creation of intermediate courts would seriously harm the administration of justice and would jeopardise the independence of the judiciary.

● Editorial Comment — Page 10

Useless SA laws to be culled

(252)

RSM 15/10/80

Pretoria Bureau

HUNDREDS of useless statutes cluttering the South African legal system will be severely culled by the law commission investigating the statutes.

According to the secretary of the commission, Mr J D du Bruyn, the commission hopes to submit 800 obsolete and spent laws to the Government for scrapping during the 1981 Parliamentary session.

One Act will be used to repeal the useless laws.

"This is just the beginning of our massive task of cleaning up the statute book. After the 800 have been scrubbed, more than 2 000 other statutes remaining will be looked at closely. We will recommend the scrapping of some and the consolidation of others."

Mr Du Bruyn said most of the 800 statutes would be dealt with during the coming parliamentary session.

In the second part of its programme, the commission would tackle the web of pre-Union and British laws which still cluttered the legal system and which no longer had any purpose.

Among the laws which would probably be removed next year are, for instance, Act 39 of 1960, which deals with trade with the enemies of the country, the Land Credit Act of 1926, various war measures passed by Parliament between 1939 and 1945 and prohibition on the export of Angoras Act of 1922.

Mr Du Bruyn said the ultimate intention was to computerise all legislation. This would simplify the task of the law makers, the courts and the universities.

On old British laws, Mr Du Bruyn said it was virtually impossible to tell just how many of the laws passed by the British Parliament were still in existence.

Among them are the Territorial Waters Jurisdiction Act and the old British Piracy Act probably dating back several centuries.

This legislation had no application or relevance, and it was measures of this kind, where they could be identified, that would be removed.

He said there were also hundreds of proclamations and regulations made under obsolete legislation which would also be removed.

Legal men split over Didcott memorandum

STAR 15/10/80

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By Marion Duncan

Publication of Mr Justice Didcott's memorandum on the erosion of the Supreme Court's independence and authority, is polarising the legal profession into political camps

Judges, magistrates and lawyers who have been approached for comment are reluctant to talk, except off-the-record, because most of them see the issue as a straight pro-government or anti-government matter

Said one advocate "Individual opinions on the Didcott matter depend on which side of the political fence each individual member of the legal profession stands

"Those who support the Government in its policy of apartheid — which implies support of detention without trial, denial of bail, and such pieces of legislation as the Terrorism Act — will obviously support the muzzling and controlling of the judiciary by the Department of Justice and by the Government as a whole

"I think the greatest tragedy in the whole legal mess in South Africa is that more judges and lawyers have not spoken out sooner Everything that Mr Justice Didcott says is correct He could even have gone further"

Said another lawyer "The rule of law in South Africa has been emasculated Anyone who says the courts in this country stand for the rule of law does not know what he is talking about

"I applaud the publication of this memorandum I agree with everything it says I hope it will precipitate a stand

Said another advocate. "I personally am delighted with this memorandum and the fact that it has become public But I know others among my colleagues are not so happy they agree with what they call government 'participation' in the judiciary, as long as the Government is the National Party"

Black lawyers are united in their "jubilation" — as one phrased it — at the Didcott memorandum

"It is political expediency to diminish the independence of the Supreme Court and to create intermediate courts It is political expediency to talk about appointing people to courts who are not legally qualified, but who are loyal to the party system

"This whole public row about the courts can only improve the confidence of the black people — both lawyers and ordinary people — in the judicial system You know, at the moment a black man does not feel he receives justice the black man has lost faith in the judicial system because there are no black judges, because the judiciary is not representative"

Judges lauded for speaking out

RDM 16/10/80

□ From Page 1

that the Bench has in recent months fallen into controversy I think it is even more upsetting that two eminent and respected judges have seen fit to resign their high positions in past weeks

"It has to do with the increasing legislative interference in the administration of justice Every year more and more powers are removed from the jurisdiction of our superior courts

"The court, no matter how great the injustice, has virtually no power to interfere in any of the decisions, often affecting the very lives and liberty of people, taken in terms of South Africa's security legislation

"Except for the extremely limited right of review, the court, in terms of current legislation, may not adjudicate upon the actions of a plethora, a host, a wide variety of Government agencies — the Publications Board, Escom, even down to town planning matters in the Transvaal — and a number of other Government-appointed boards and committees whose decisions vitally affect the individual at large

"Far-reaching invasions of the privacy and freedom of the individual are immune from judicial scrutiny in South Africa

"An independent judiciary must, I believe, be free to provide safeguards against the abuses of the beadledominous (stupidly officious) executive. The courts must be independent and free from interference by the legislature or the executive in their judicial function.

"In South Africa the powers of the courts to redress wrongs are being dangerously whittled away

"Most, but not all, judges are appointed entirely on merit In some cases, one very recently, I believe political actions were not totally irrelevant to their appointment I do not wish to mention the names of the gentlemen concerned unless pressd by the Hon Minister, but the Government knows of the instances I am speaking about, for the Government has a guilty conscience

"Such appointments lead to a breakdown of confidence on the Bench and at the Bar I am not reflecting on the judges, but on the motives behind the appointment of certain judges — that is all This also applies to judges within other aspects of the judiciary"

Mr Dalling then made three proposals for the "reinvigoration of that vital constitutional pillar of our society"

- The removal of judicial appointments from the politically controlled executive and their placing in the hands of an independent appointments board, representative of the Bench, the Bar, the Law Councils and the executive
- The revision and rationalisation of laws in order to restore to the courts the inherent jurisdiction to intercede at the instance of any aggrieved party where injustice was perpetrated by means of administrative decisions
- The lifting of the Bench out of the "realm of financial debate and hardship"

South Africa heard this week that Mr Justice Didcott, a Supreme Court judge, told the Hoexter Commission that there is a "deliberate and determined strategy" on the part of the Government to harness and control the Supreme Court

For many in the legal profession this development is particularly relevant in the light of the misgivings that are being felt about the recent inability of the Appellate Division to move away from discrimination

This follows the result of two recent test cases in which the Appellate Division did not find in favour of homeless coloured people and Indians who have been compelled to find accommodation in central "white" Johannesburg because of the total lack of accommodation in their own group areas

Instead, the Appellate Division upheld two convictions under the Group Areas Act on the debatable and morally questionable grounds that the Act implicitly authorises substantial racial discrimination and injustice, and that necessity was no excuse for breaking the law

This approach is not new Armed with sometimes inappropriate analogies and a logic that takes no account of human rights or dignity, the Appellate Division has a history of fluctuating attitudes to racial discrimination

But it had been hoped that, with the different approach (by even the Government) to race relations in the 1980s, it would, in these two test cases, have broken with its record of the past 25 years and re-established the reputation it had earned in the early 1950s for defending racial equality

During the early part of this century, the court was openly guided by white public opinion in its interpretation of the law For example, in 1911 it gave its approval to school segregation despite the ambiguity of the law

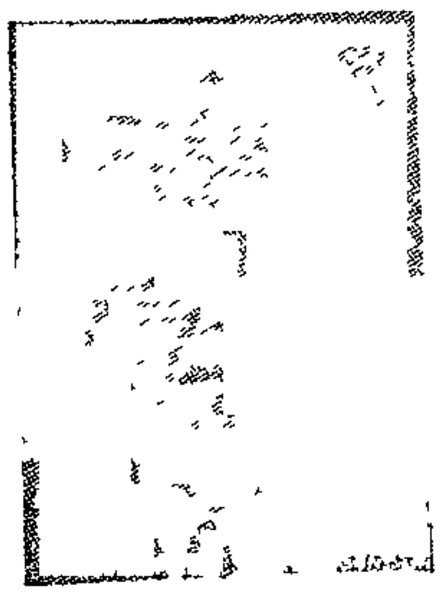
Segregation was given "respectability" in 1934 when it ruled that separate but equal treatment of the different races was not unreasonable and therefore not illegal

In this respect it adopted the same philosophy as the United States Supreme Court, which first gave its approval to the "separate but equal" doctrine in 1896

But then the National Party came to power with its more drastic racial policies, and the Appeal Division found itself out of step with the legislation of the new regime

Under Chief Justice Centlivres and judges such as Mr Justice O D Schreiner, it took a courageous stand in its commitment to equal racial treatment Judge Schreiner was the only dissenting judge in the decision which removed Cape coloured people from the voters roll

Segregation was still recognised, but the treatment of the different races and the facilities provided had to be substantially equal For example, the court insisted on the provision of equal facilities on trains and railway stations



Schreiner

The new Government found this commitment to the principle of equality before the law unacceptable and in 1953 it "rebuked" the Appellate Division by passing the Reservation of Separate Amenities Act

This Act legalised separate facilities for different races and expressly prevented the courts from passing judgment on the validity of this "petty apartheid" where it resulted in substantial inequality of treatment for the different races or where similar separate amenities were not provided for one or other racial group

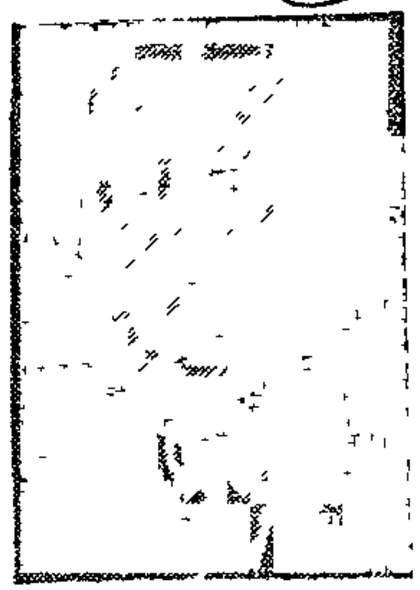
In effect, the Government had replaced "separate but equal" with "separate but unequal" Ironically, this was done a year before the US Supreme Court rejected the separate but equal doctrine on the ground that it failed to provide equality before the law

In addition, the Appellate Division was enlarged by Parliament from six to 11 judges in 1955—whereafter the Government was able to remove coloured people from the voters roll after an appeal to the Appellate Division

Since then, the court has repeatedly given its blessing to discriminatory racial policies and has failed to interpret discriminatory legislation in a way which would protect human rights and give recognition to the principle of equality before the law

This could be done if it chose to interpret existing legislation in accordance with the Roman-Dutch Law principles of equality before the law and, more importantly, adopted a firm commitment to the protection of individual rights Judicial manoeuvres in the past to overrule contradictory precedents indicate that "where there is a will, there is a way"

The most striking example of judicial abstentionism occurred in 1961 when the Appellate Division ruled in the Lockhat case that race discrimination was clearly implied in the Group Areas Act, even though the Act nowhere expressly authorises unequal treatment of the races



Centlivres

The court found that discrimination must have been "envisaged" by Parliament By choosing an interpretation of the law in line with Government policy, it gave its blessing to the large scale removal of people from one group area to another, with all its attendant human suffering

Similarly, it has now refused to recognise the plight of hundreds of people with no homes in their own group areas by turning down the two recent Group Areas Act cases.

In many ways, they were a test for the Appellate Division itself The court was given an opportunity to distinguish or overrule the Lockhat decision of 1961

Lengthy arguments, backed by South African and foreign authorities, were presented to the court in the hope that it would once more invoke the "separate but equal" philosophy of the Centlivres court and find that the unequal treatment of the races under the Group Areas Act was invalid as it was not authorised by the Act

But it chose not to return to its earlier philosophy Instead it endorsed the Lockhat judgment

The Lockhat ruling has caused some concern for Supreme Court judges for example, Mr Justice Mervyn King last year dismissed an appeal against a conviction under the Group Areas Act because, as a judge, he was obliged to "give effect to the provisions of an Act of Parliament"

He added that, had he been "sitting as a court of equity, I would have come to the assistance of the appellant"

Earlier this year, leading jurists and legal experts gathered in Johannesburg to form the Lawyers for Human Rights Organisation

Mr Justice John Didcott of Natal said at the time that much that had been done in the name of law and order in South Africa was oppression

Courts: verdict is concern

STAR 16/10/80

252

The ability of South Africa's highest courts to defend basic human rights in the face of discriminatory legislation stands in greater doubt than ever before. Lynda Loxton this week spoke to legal experts about the Appellate Division, and reports that disappointment in it is running high. Here she explains why.

Bench is vulnerable 'as never before'

STAR 16/10/80

(252)

Mr Justice Didcott's allegations that the Supreme Court is being undermined are on strong ground, writes Mr Brian Bamford SC MP.

Mr Justice Didcott's slashing attack upon the Department of Justice (and therefore by implication also upon the Government) for a deliberate and determined strategy to subvert, harness and control the Supreme Court invites comment on two aspects

The first is whether a judge ought to be outspoken on public issues

On the one hand it is obvious that the Bench should, as indeed it does, criticise legislation, which is badly drafted or which causes hardship to the individual

Thus, many judges are on record in their judgments and in extra-curial statements, as criticising harsh mandatory sentences (for minor dagga offences, for example), and over-zealous implementation of pass laws

On the other hand, there is a firm tradition that judges keep out of politics, although there have been exceptions

It is in the middle area, between the administration of justice and politics in the strict sense, that judges have to be wary Mr Justice Didcott's allegations however, are of course on a special footing

While too strongly worded for some (and too mildly for others) they are contained in a memorandum to a judicial commission of enquiry which is examining the structure and functioning of South African courts and he clearly intended it to be confidential

The second aspect is whether there is any substance in his allegations that the Supreme Court is being undermined Here he is on strong ground

The present Government's record should be tested against four norms which would find general acceptance in this country

- The first is that only the best men should be appointed to the Supreme Court — and that means the most senior and successful practising advocates

But there have been dozens of able advocates passed over by juniors for reasons that could only be political And the government has even gone outside the bar, to appoint a civil servant, a retired ambassador and a serving attorney general

- The second norm is that a judge once appointed should be immune from Government pressure and even criticism

The present Prime Minister's treatment of the then Mr Justice Anton Mostert over the Department of Information scandal is of recent memory

- The third norm is that the Government does nothing which may bring the independence of the Supreme Court into doubt.

The classic breach occured during the coloured franchise crisis The first two attempts by the government to abolish the coloured male franchise (on a common roll with whites) were summarily struck down by the Appeal Court, then consisting of six judges

Before the next attempt, however, the Government in one fell swoop appointed five extra Appeal Court judges — and the public were left with the impression, rightly or wrongly, that the new appointees' judicial sympathies lay with the Government.

- The final norm is that the powers of the Supreme Court, as the final protector of the individual, should not be tampered with

Three gross breaches of this norm spring to mind. the right of appeal to a court by a person aggrieved by a race classification was abolished, so also was right of appeal concerning censorship, and worst of all the Terrorism Act expressly renders our courts totally powerless in all matters relating to persons detained without trial

Mr Justice Didcott's words must be weighed with great care Certainly the South African Bench—and Bar—are today vulnerable as never before

THE JUDICIARY (252)

Who is supreme?

FM 17/10/80

Natal Judge John Didcott was undoubtedly correct when he told the Hoexter Commission of Inquiry that the Supreme Court was under siege by bureaucrats and politicians wanting to curb its powers and even control it via infiltration Independent judiciaries are always stumbling blocks to authoritarian governments — and SA's judges have been no exception (see the *FM*'s cover story on judges' discretion, September 7 1979)

It was they who stopped the Nationalists' initial efforts to remove the coloureds from the common voters' roll and then struck down the "Supreme Court of Parliament" set up to overrule them

The fight over intermediate courts, which most advocates and judges see as likely to undermine the prestige, powers and independence of the courts has been going on since 1978 The director general of the Department of Justice, Johan Coetzer SC (who is himself a member of the Hoexter commission) has been the moving force

In speeches and articles over the last two years he has advocated not merely the institution of intermediate courts but that they should have wide-ranging powers — including the power to refuse people the right to appeal to the Supreme Court

After a Department of Justice inquiry had, unsurprisingly, favoured intermediate courts, the government set up the commission under a Natal judge Gustav Hoexter, to consider this and other questions related to the administration of justice

Much that the Hoexter Commission is considering has a great deal to recommend it — the establishment of family courts and small claims courts for instance

But it is the proposals for an intermediate court and the restriction of appeals to the Appellate Division of the Supreme Court that has been worrying most of the legal fraternity

Unfortunately, although many lawyers are prepared to fight further encroachment on the Supreme Court they tend to do so with a cynical lack of hope Once government has really decided to do something, they feel it does it — regardless of who opposes and condemns its actions All that is needed is the concurrence of the *stemvee* in Parliament

Third judicial level would be 'a disaster'

RDM 18/10/80

(252)

By A J TURN
Former Chief Bantu Commissioner for Natal

DURBAN — Let me say at once that the proposed creation of a third intermediate level of the judiciary with the concomitant stranglehold of the Public Service Commission, the Department of Justice and the whole machinery of bureaucratic red tape would be a disaster, the magnitude of which few people realise

It will be recalled that in the Natal Mercury of October 14, Mr Justice Milne of the Natal Supreme Court was quoted as urging public discussion on the creation of intermediate courts

It is with no little trepidation that I now commit pen to paper. Despite this natural hesitancy, I have certain positive views, acquired since my first appointment to the magisterial Bench in December 1932 and since my experience as a Supreme Court assessor in criminal cases, intermittently from 1962 to 1980

The Supreme Court must continue along the path beaten out by it since 1910 Its status, powers and remuneration must be such that no body, political or otherwise, can assail it

What of the magistrates who are part and parcel of the judicial set-up and who, with understandable if not forgivable exceptions, have played such a remarkable part in the sphere of law and order

They have suffered greatly at the hands of politicians, staff officials and the other hordes which make up the complex of officialdom

Mr Merriman, Cape Prime Minister at the time of Union, detested civil servants and remunerated them accordingly His influence was felt in the first Union Cabinet and later General Smuts adopted a similar attitude

I know of no attempt by a Minister or head of a State department directly to influence a judicial officer in his duties on the Bench

But we all felt the unseen presence of the sword hanging above us The powers of the Minister, of the head of Department and the Public Service Commission — a body composed largely, if not exclusively of politically appointed civil servants — robbed us of true independence

The fear of potential interference was as bad as any actual interference

This is not the product of imagination There must be dozens of officials alive today who remember the case of Native Affairs Commissioner X who criticised a decision of the department to remove a whole tribe from its ancestral home

This courageous man, legally well qualified, a Currie Cup sportsman and marksman who risked his life in successfully saving a colleague from a charging elephant, was for years robbed of promotion

In the opinion of all who knew him, X was undoubtedly destined to be head of the department

He, understandably if regretably, lost administrative promotion, but inexplicably was deprived also of promotion in the judicial field

We magistrates were, in fact, independent when on the Bench, but our justifiable fears forced many of us into a mental state in which we feared a potential lack of independence

I say with the utmost conviction that magistrates and their staffs should be appointed and controlled by the Supreme Court and their salaries fixed by the court in consultation with the Treasury.

In civil cases, extremely high costs have closed the Supreme Court to all but the rich

In criminal cases, a man charged in a Supreme Court in South Africa is in a happier position than in any other court that I am aware of If he is undefended or poorly represented by counsel, the presiding judge will ensure that every point in his favour is brought clearly to light

FEW COUNTRIES HAVE DONE AS MUCH AS WE HAVE TO DAMAGE THE FABRIC OF THE LAW — DIDCOTT

Sun Express 19/10/80 25 2

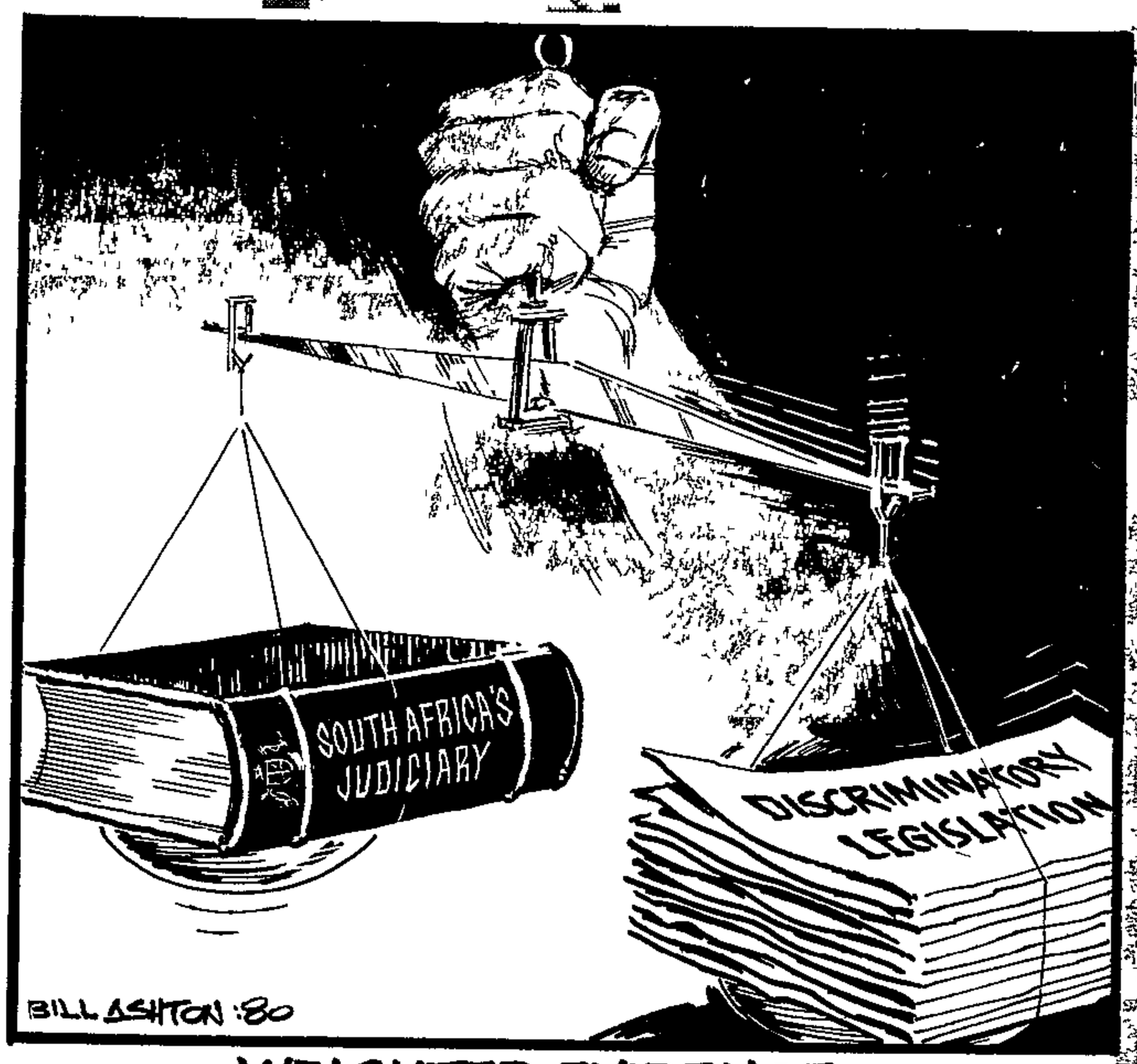
The battle of the

THE scathing memorandum from Mr Justice John Didcott to the Hoexter Commission on the question of intermediate courts and their threat to the Supreme Court is only one shot in a battle that has been raging behind the scenes for some time.

The memorandum, obtained and published by the Rand Daily Mail this week, was a grave warning against the undermining of the authority and power of the Bench

Its publication was one of the few glimpses afforded the public of the struggle between bureaucracy and the country's highest judicial authority — but the Sunday Express can today lift the veil a little more

• Mr Alwyn Schlebusch told of judges' concern



WEIGHTED EVIDENCE

A reliable source claimed that last year several judges in various divisions of the Supreme Court joined a protest against intermediate courts

Reliable sources told the Sunday Express that a number of judges approached the Acting Judge-President of the Transvaal after they had become alarmed that intermediate courts — mooted earlier by an inter-departmental Government committee — were becoming a *fait accompli* and that magistrates were already being marked by the Department of Justice to become judges in the new courts

Later, the four Judge-Presidents joined in a protest to the Minister of Justice, Mr Alwyn Schlebusch, over the composition of the Hoexter Commission which was appointed to look into the structure and procedures of courts of law and the establishment of an intermediate court between the lower and the Supreme Court

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The Sunday Express also understands that the earlier Galgut Commission rejected the concept of intermediate courts

The report of the Galgut Commission is now in the possession of the Hoexter Commission, appointed a year after the earlier commission had had its last hearing

The Galgut Commission was appointed in November, 1976 to investigate "practice, procedures and rules of court with reference to civil proceedings in the Supreme Court"

The chairman and only member of the commission was Mr Justice Oscar Galgut, a retired judge of the Appellate Division and former judge of the Transvaal Provincial Division

Although the Galgut Commission held its last hearing in October, 1978 its report has not yet been tabled

However, the report has been laid before the St[illegible]

fession in recent weeks

In his memorandum to the Hoexter Commission, Mr Justice Didcott cited the establishment of intermediate courts as one of the tools being used by the State in "a deliberate and determined strategy" to harness and control the Supreme Court

□ □ □

Another Supreme Court judge of the Natal Provincial Division, Mr Justice A J Milne, warned that the introduction of

Mr Justice Milne said the Natal Bench had opposed "to the last man" the idea of calling the personnel of the intermediate courts judges — and Mr Justice G G Hoexter, who heads the Hoexter Commission, was a member of the Natal Bench at that time

The Sunday Express also understands the proposals to establish intermediate courts played a major role in the shock resignations in January this year of two brilliant young judges, Mr Justice Anton Mostert and Mr Justice Mervyn King

[illegible]

face in the legal profession for two years It came to a head towards the end of last year and subsided temporarily after the appointment of the Hoexter Commission

□ □ □

The basic issue at stake is whether judicial appointments should be the exclusive preserve of advocates or whether civil servants should be eligible for appointment as judges

A senior member of the Johannesburg Bar, who preferred not to be named, told the Sun-

[illegible] he believed

judges. . .

Sun Express 19/10/80 252

By JOHN BATTERSBY

Political Correspondent

THE growing tendency towards the creation of intermediate courts in South Africa was at the centre of a "conscience of crisis" of two top Supreme Court judges who quit the bench in January

The country was shocked by the resignation of Mr Anton Mostert, the man who courageously defied the Prime Minister, Mr Botha, by publicly releasing his devastating disclosures on the Information Scandal, and Mr Mervyn King, one of the country's youngest and most brilliant judges, who quit in the prime of his career at the age of 42

Though both refused steadfastly to comment on the reasons for their resignation, the Sunday Express established at the time that both had quit because of a "conflict of conscience" in several crucial aspects of South Africa's judicial system

This week, however, the Sunday Express can reveal that it was the question of magistrates being appointed as judges in the proposed intermediate courts that formed the basis of the crisis of conscience that caused Mr Mostert and Mr King to quit the bench

Both are totally opposed to the concept of drawing intermediate judges from the ranks of magistrates This factor more than any other influenced them in their decision to quit

Both are known to believe firmly that judicial independence cannot be maintained without administrative independence, free of political or bureaucratic influence

Their fears about the creation of intermediate courts were echoed earlier this year by attorneys, advocates and legal academics throughout the country

These lawyers say

●Once judges are appointed who are not Supreme Court Justices, the rank and status of judges will be devalued

●To administer the intermediate courts, the Government would have to elevate and transfer at least 130 magistrates to the Supreme Court divisions What then of the administration — and the standard of efficiency — of the magistrate's courts?

●Some regional court magistrates have already been told to prepare themselves for appointments to the Supreme Court bench

●The status of the Supreme

it was too late to arrest the process of erosion of the Supreme Court by the State

The appointment of the Hoexter Commission came at a time when the report of the Galgut Commission, which was investigating how existing procedures could be speeded up, was being eagerly awaited in legal circles," he said

"An investigation into such damental and vital matters ould have been headed by the ief Justice of South Africa aided by a team of experts representing the Bench, the Bar, the Department of Justice and the public"

It made no sense to create extra courts to relieve the load on the Supreme Court

□ □ □

If the Supreme Court is overloaded, then the logical step is to increase the jurisdiction of magistrate's courts

"Why create extra courts and call civil servants judges?

"Once you call a magistrate a judge you have already blurred the vital distinction

"The logical next step would be to appoint intermediate judges as full Supreme Court judges and to gradually phase out the appointment of judges from the ranks of senior counsel

Another senior advocate said there was a complete lack of appreciation by the Government that the Bench should enjoy equal status to Parliament

"It is quite ridiculous that Cabinet Ministers are provided with chauffered cars while judges have to requisition drivers," he said

He did not think that Mr Justice Didcott's remarks would precipitate a judicial stand although he believed the judge's remarks had totally destroyed the credibility of any intermediate courts or "civil servant judges"

In his memorandum, Mr Justice Didcott quoted from the South African Constitution Act to show that the judicial authority of the Republic belonged "not to the Minister of Justice, not to the Department of Justice, but to the Supreme Court as a whole and to it alone"

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But, he added, the Supreme Court had been under seige for a long time — and quoted a number of examples of the inroads into its authority made by the State over the years

He said "The worst of all, unquestionably, has been the Supreme Court's loss in large areas of that ancient and trusted weapon for the defence of personal liberty, the loss of *habeas corpus*

"True, the growth of administrative law at the expense of judicial power is a phenomenon by no means peculiar to South Africa but a sorry feature of modern societies in general

" few communities, however, and none whose jurisprudence resembles ours, have gone as far as we have

"Few, and none with whom comparison would be welcome, have done so with less apparent reluctance or greater damage to the fabric of the law"

• **Mr Justice John Didcott ... 'erosion of judicial power'**

"The trend has already set in with the appointment to the Bench of Mr Braam Lategan, former-Attorney-General of the Cape, and I believe that the erosion of judicial independence by the State has already gone too far to be stopped"

Intermediate courts led to exit of judges

By KITT KATZIN

Court will be adversely affected in terms of salary Judges will no longer be appointed only from the ranks of advocates — a tradition steadfastly maintained for almost 70 years

Said one Johannesburg attorney "If only a handful of senior counsel, earning over R100 000 a year, are accepting appointments as Supreme Court judges for R40 000 a year, who would agree to serve as a judge in a court that has a lesser status?"

● The judicial system will eventually be administered and controlled by what would become a single edifice where someone could start out as a magistrate and ends up as a judge

● While proponents of intermediary courts argue that they would relieve the pressure on Supreme Courts, a system of "cheaper justice" would evolve as it would mean that attorneys could cut out the expense of briefing advocates and argue themselves before these courts

But it is the right of every South African's access to impartial justice, say legal experts, which is the fundamental issue that is at stake

Judges drawn from the ranks of advocates, trained independently, were more likely to uphold the independence of the Supreme Court than officers of the Department of Justice who spent many years working within the framework of Government policy

And legal experts, who point to the controversial magistrates' code of conduct — which, in part, told magistrates to avoid criticising the police publicly — warn of the political implications of appointing magistrates as judges

They believe that when viewed internationally — against the backdrop of South Africa's "total stategy" — the move could be seen as an an attempt by the State to gain overall control over those arms of Government that matter — the Police, the military, and now the hitherto independent and impartial judiciary

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JUDGES IN SECRET STAND

Minister got top-level deputation

Sun Express 19/10/80 252

By JOHN BATTERSBY
Political Correspondent

THE four Judge-Presidents of South Africa last year joined in a remarkable protest to the Minister of Justice, Mr Alwyn Schlebusch, against the composition of the Hoexter Commission of inquiry into aspects of the country's courts.

This dramatic move by the country's top judicial officers can be revealed by the Sunday Express today at the end of a week in which legal circles have been rocked by the disclosure of a scathing memorandum submitted to the Hoexter Commission on the controversial question of whether intermediate courts

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later withdrew following a request made by him to the Minister of Justice

The protest by the Judge-Presidents took place against a background of deep concern in judicial circles over the possible introduction of intermediate courts over which magistrates would be appointed as judges

The Sunday Express learnt that the Acting Judge-President of the Transvaal, Mr Justice Boshoff, had earlier been approached by several judges who expressed alarm that the controversial courts were becoming a fait accompli right under their eyes

A confidential memorandum by Mr Justice Didcott of the Natal Bench to the Hoexter Commission, obtained and published by the Rand Daily Mail this week criticised the concept of intermediate courts as a further erosion of the Supreme Court

In the wake of this remarkable document the Sunday Express can now disclose from reliable sources that.

- The judges who approached Mr Justice Boshoff last year were said to have realised that magistrates were already being earmarked by the Department of Justice to become judges of the new courts
- The issue of intermediate courts was central to the shock resignations of two respected judges, Mr Anton Mostert and Mr Mervyn King, earlier this year

Full reports on Pages 22, 23

should be established between the lower and the Supreme Court

The Hoexter Commission is headed by Mr Justice Gustav Gerhardus Hoexter. Other members are Professor Anthony John Middleton of the Department of Criminal and Procedural Law at Unisa, Mr Johan Marius Potgieter, an attorney of the Supreme Court of South Africa, Mr Austin Arnoldus Schreiber SC, advocate of the Supreme Court of South Africa Mr J P J Coetzer SC, Secretary for Justice, was originally appointed to the commission but

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Sun Post 19/10/80 (252)

A man speaks out

Apartheid protester Adam Klein to fight on

A FORMER Pretoria prosecutor who was recently charged with theft and had his case struck off the roll, is a bitter man

Mr Adam Rudolf Klein (24) who recently walked out of the Commissioner's Court in protest against apartheid laws, told **SUNDAY POST** this week that he felt like a pass-law offender who had just been acquitted, after his case was struck off the roll on October 6

He said that the abolition of the pass laws was the major issue in stamping out apartheid in South Africa "I am not going to stop talking about this most hated system that is frustrating thousands of the black people," said Mr Klein

There are people who know about these oppressive laws but are afraid to speak out, according to Mr Klein

"A number of people, including my friends, have told me that my voice is like a shotgun to a thunderstorm," Mr Klein said

He said that he had got the thunder behind him Mr Klein also said that the people before him, who fought this system, "have been prosecuted", some of them were still licking their wounds, and "I am still licking mine after this harsh treatment"

He said that he was a bitter man today, but "what about millions of black people who are convicted because of the pass-law system" He said that if the government told him to keep alive a system like this, he would be humiliated

According to him, this system creates hatred among the blacw people

"Why must a man in an equal society bear a mark in his pocket from sunrise to sunset", he said "Why must he be prosecuted for not bearing the mark with him," asked Mr Klein

He said that he wanted to know why a black man' existence had to be stated in a reference book while a white man enjoyed the benefit of his identity

He said that he had been wandering for the past few weeks "in bitterness".

"When I imagine the bitterness a black man has gone through I really feel it my duty to encourage the government to abolish these suppressive laws," said Mr Klein

Asked by **SUNDAY POST** if he saw any changes coming, Mr Klein said that "the first change should be to make a black feel safe and free, otherwise the whole thing is just another blanket on the window"

Mr Klein said that there was an act which was made to abolish the pass laws "This is Act 67 of 1952," he said

He told **SUNDAY POST** that this law has not been enforced as yet because it was made to "fool the whites"

Mr Klein said that there were 23 offences in Section 15 of the pass laws, which could make millions of black people criminals "I felt it my duty not to prosecute a man on an unjust laws".

By MONK NKOMO

Judges have confidential meetings with Minister

Staff Reporter

THE Judge-Presidents of South Africa have confidential meetings with the Minister of Justice "from time to time", the Judge-President of Natal, Mr Justice Neville James, disclosed yesterday

Mr Justice James was responding to inquiries about a report in the Sunday Express yesterday According to the report, the Judge-Presidents met the Minister, Mr Alwyn Schlebush, last year to protest against the composition of the Hoexter Commission of Inquiry into the courts

Judge Presidents contacted yesterday declined to confirm whether they had met the Minister over the Hoexter Commission, but Mr Justice Neville James said "We have meetings from time to time with the Minister, but these meetings are confidential They are personal matters between the Judge-Presidents and the Minister

'I would not like to be involved in a newspaper polemic about this I think it would be a breach of confidence to confirm anything or divulge what is discussed with the Minister'

The Judge President of the Northern Cape Provincial division, Mr Justice H R Jacobs said 'I attended all the meetings with the Minister and as far as I know there were no protest meetings As far as I am concerned there was no such thing

"We do have discussions with the Minister — which we have twice a year at least — but I am not prepared to say what was discussed It is something purely confidential" he said

The Acting Judge-President of the Transvaal, Mr Justice W G Boshoff, said "Probably someone did speak out of turn to the Sunday Express and I would not like to be linked to that"

Both the Judge-Presidents of the Cape, Mr Justice H E P Watermeyer, and of the Eastern Cape, Mr Justice J D Cloete, declined to comment or confirm whether the protest had taken place The Judge-President of the Free State, Mr Justice H W O Klopper, was not available for comment

Top jurist opposes intermediate courts plan

STAR 20/10/80

(252)

Mr Oscar Galgut

Own Correspondent

DURBAN — The opposition of yet another prominent member of the legal profession to the creation of an "intermediate court" — which has so far met with criticism from judges and other members of the legal profession — has now become known

Mr Oscar Galgut, a former judge of appeal and chairman of the Press Council, was appointed chairman and sole member of a commission of inquiry into civil proceedings in the Supreme Court in November 1976

In his report, which was recently released to the legal profession, Mr Galgut says there is no need for the creation of an intermediate court

Mr Galgut produced a 154-page report which contains major suggestions to streamline Supreme Court procedure

This report, with recommendations to the Chief Justice who is responsible for changes in the rules of court, was submitted to the State President, but has not yet been published or tabled in Parliament.

Mr Galgut says that when the Minister of Justice announced in 1978 that intermediate courts were being considered, there was great concern among lawyers.

"The general view held was that the Department was determined to see that these courts were brought into being, that the officers presiding would be called regional judges, that the plan was to have these courts in the same buildings as the supreme courts," Mr Galgut reported.

He was able to assure his colleagues at a public sitting of the commission that he had seen the Minister, Mr Alwyn Schlebusch, who had said a commission of inquiry would be appointed This led to the appointment last year of the Hoexter Commission

At the public meeting, he said, "I personally expressed the view, which I hold very strongly, that fragmentation and proliferation of courts, or for that matter state departments, was not desirable nor was it in the interests of the general administration of justice"

Some of Mr Galgut's reasons for opposing intermediate courts are

- Such a court would detract from the standing and dignity of magistrates
- Such a court would inevitably require new staff posts, additional training and experience and would also require new offices of record and places where such records would have to be kept
- The creation of non-travelling intermediate courts would bring about additional expense with regard to library facilities.
- Imposing an intermediate court structure on the present magistrates' court structure and the possible use of their facilities, was clearly undesirable and impracticable.
- It was unlikely that advocates who had proved themselves at the bar, or senior attorneys with a successful practice, would accept appointments to such a court Academics did not have the practical experience.

"The judiciary of South Africa was held in high esteem due to judges being appointed to the Bench from senior practising advocates, who had at no time been subordinate to any masters, nor had their advancement been dependent on the views of an employer — whether the state or other employer This had resulted in a completely independent judiciary"

Mr Galgut said that if the civil jurisdiction of magistrates courts was to be increased, as he recommended earlier in his report, there would be no need for an intermediate court.

Judge has no objection to intermediate courts

Own Correspondent

KIMBERLEY — The Judge President of the Northern Cape Division of the Supreme Court, Mr Justice H R Jacobs, said in Kimberley yesterday he had no objection to proposals put before the Hoexter Commission which would result in the creation of intermediate appeal courts.

Opening the two-day 97th annual meeting of the Law Society of the Cape of Good Hope in the city, he said he and his colleagues in the Northern Cape Division felt there was a lot to say for these proposals

Mr Justice Jacobs said it was justifiably hoped that the proposed intermediate appeal courts would relieve the present Appeal Court of a large section of its work-load and enable it to concentrate mainly on cases in which important legal questions were at stake.

"But it is probably unavoidable that conflicting viewpoints on legal questions would also be expressed by different intermediate appeal courts which would inevitably affect the provincial divisions of the Supreme Court which fell in the areas of the intermediate appeal courts concerned," he said.

Earlier in his speech the Judge President had raised the question of the effect on legal costs of conflicting judgments on legal questions in the different divisions of the Supreme Court.

It went almost without saying that this caused headaches for legal practitioners who had to advise clients, he said. They were almost forced to advise clients in cases where other divisions had subscribed to conflicting viewpoints on a specific legal point to go to court.

Referring to recent disclosures on evidence to the Hoexter Commission, Mr Eric Liefeld, president of the Law Society of the Cape of Good Hope, said he did not think suggestions for changes in the structure of the courts could be said to be part of a political scheme to interfere with the cherished and all-important independence of the judiciary.

He added: "I doubt whether the administration of justice has been well served by the publication of the Press reports at this stage."

He said he accepted the Government remained committed to the vital principle of a free and independent judiciary separated from and not subject to the executive and legislative arms of the State

"The Supreme Court is the finest institution we have in this country," he said, "But this does not mean the existing system cannot be improved."

He said objective consideration should be given to improving the application of the independence principle.

One of the biggest steps in implementing that policy, he said, would be to remove the appointment of judges from the Minister of Justice and place it in the hands of a separate and independent body which could be represented by the Government, the department, judges, bar and attorneys and academics.

A separate department of the Supreme Court, he said, would not only ensure the independence of the Supreme Court, but would ensure it to be manifestly seen to be independent.

Mr Louis van Zyl, vice-president of the Law Society of the Cape of Good Hope, said that as the discussions were still sub judice, the society did not want to rush into print at this stage.

Jo'burg court to get bigger staff

Pretoria Bureau

An infusion of staff into the Johannesburg Magistrate's Court on December 1 will solve the serious shortage of Public Prosecutors, a spokesman for the Department of Justice has announced.

And in the interim, the department has taken temporary measures to overcome the shortage which has resulted in a backlog of trials at the court.

At worst, the shortage of prosecutors at the court resulted in 35 vacancies out of a total of 106 posts earlier this year.

The spokesman said that on December 1, 17 prosecutors would be brought in from other areas. Of these eight would be District Court prosecutors and nine prosecutors of the Regional Court.

In addition a number of prosecutors fresh from university would begin working at the court from December 1. Some of these would be newly-qualified and would assume permanent posts. Others would be students working in their vacation.

The spokesman said that as a temporary measure about a dozen prosecutors had been brought in from other areas.

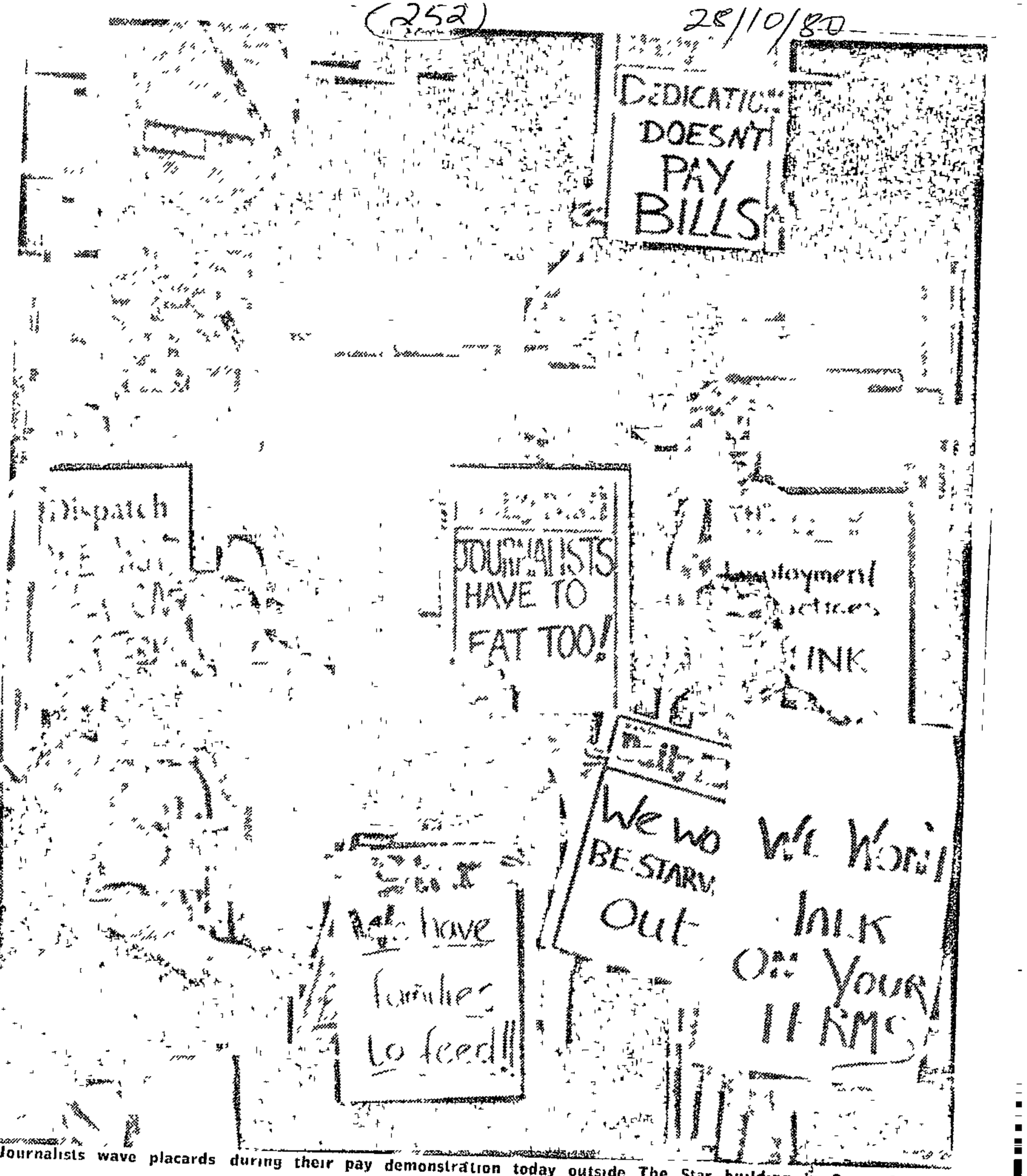
In addition the Johannesburg Chief Magistrate had used his other staff temporarily to act as prosecutors.

This staff may not have been fully qualified, but they were not completely untrained for the job.

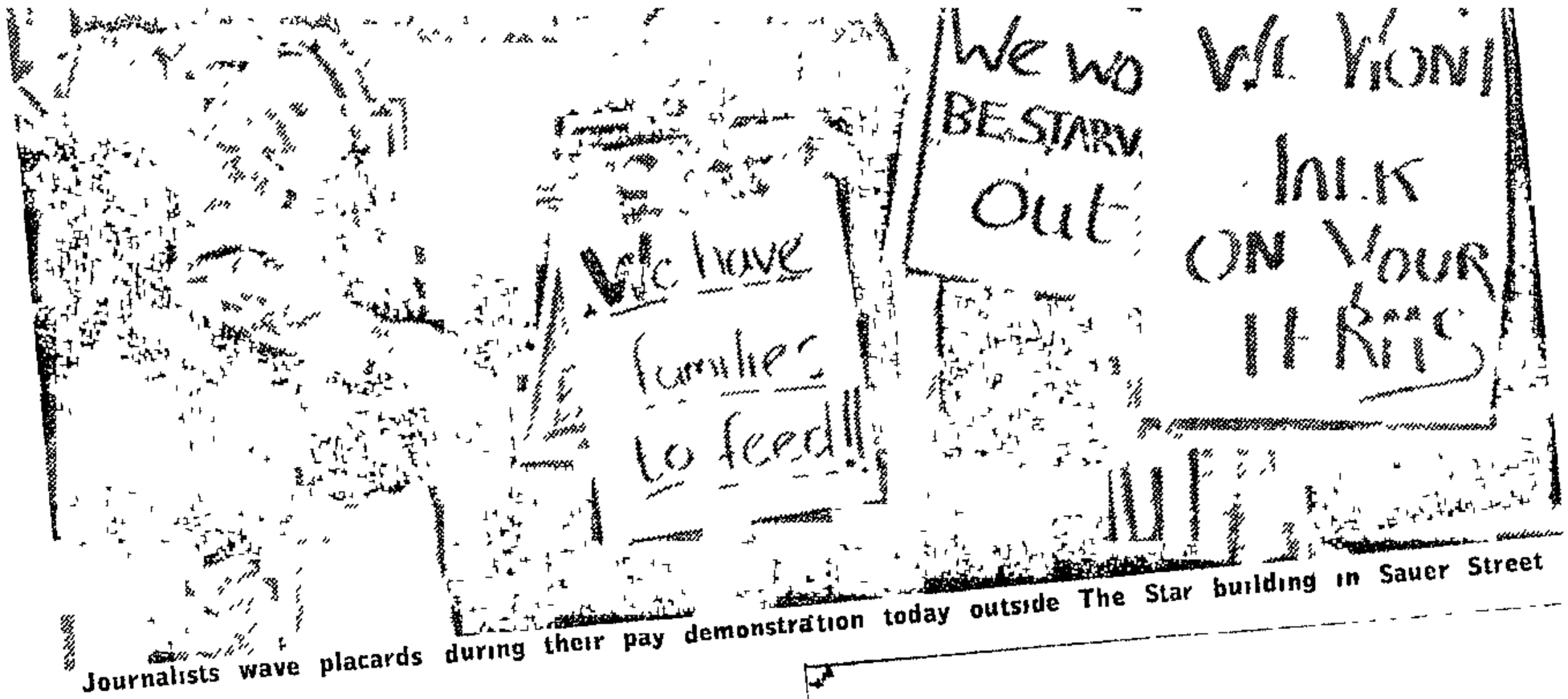
Also two full regional courts from Pretoria were sent for a month to help overcome the backlog of cases. This meant sending two Regional magistrates and prosecutors from Pretoria.

The spokesman said the shortage was confined to prosecutors.

(252) 28/10/80



Journalists wave placards during their pay demonstration today outside The Star building in Sauer Street



Journalists wave placards during their pay demonstration today outside The Star building in Sauer Street

Newsmen stage demos to back salary demands

STAR 28/10/80

By Steg Hannig,
Labour Editor

Journalists became a focal point of the media in their own right today when TV and Press photographers converged on at least 60 picketing journalists outside The Star in Sauer Street, Johannesburg

The demonstration coincided with the current round of wage talks between executives of most of the Englissh-language newspapers and the South African Society of Journalists (SAJS) in the boardroom at The Star today

At the last negotiations, the SASJ demanded a 14 percent pay increase across-the-board Employers offered only six percent across-the-board, with a further six percent rise in the payroll for distribution at the discretion of editors

SASJ chapels throughout the country have discussed further action should management adopt a hard line at today's pay talks

In Durban today, about 80 journalists picketed, the Daily News Building in support of their delegates at the talks

In Johannesburg SASJ and Management spokesmen would not comment on the demonstration at The Star

Recently, Post Transvaal went on strike in Johannesburg Journalists at the Cape Herald, Cape Town, are on strike at present

Senior Journalists said it was the first time they had heard of newspapers being picketed in this country

Work at The Star continued as usual

SASJ members stood outside the Daily News, brandishing placards calling for higher pay and urging support for the SASJ pay negotiators

Journalists from the Sunday Tribune, Post, Natal Mercury, Sunday Express, Sunday Times and the Daily News stopped work for 30 minutes

The SASJ is calling for a 16 percent across-the-board, cost of living increase The exception is Post, which is demanding 24 percent across-the-board and six percent merit increases If the talks reach deadlock, Post Natal has threatened to strike

Striking journalists on the Argus-owned weekly newspaper in Cape Town, The Cape Herald, received their pay cheques today

Announcing this, the managing director of the Argus Company, Mr Hal Miller, said they were paid for the time they had worked this month but not for the days they had been on strike

Intermediate courts would pave way to cheaper justice

RDM 29/10/80 252

I HAVE read with some interest the discussion about the proposed intermediary courts and in particular the memorandum by Mr Justice John Didcott (RDM Oct 14)

The first thing that strikes me about the memorandum of Mr Justice Didcott is this The Hoexter Commission was appointed to make recommendations "which may lead to the more efficient and expeditious administration of justice and a reduction of the costs of litigation"

Yet in his memorandum Mr Justice Didcott does not seem to have made a single recommendation as to what could be done to bring about a more efficient and expeditious administration of justice and he does not mention how, in his view, the costs of litigation could be reduced

There is always another side to the coin, and as far as the Supreme Court, with all its trimmings and vested interests, is concerned, the fact is that it has priced itself out of business the ordinary white person (let alone any black citizen) cannot afford the kind of funds he must raise in fees just to get a ruling in a dispute with a co-citizen from the only institution provided for that purpose by the State

Where Mr Justice Didcott states that in our present Supreme Court procedure the duplication of attendances and costs is minimal, he does, with all respect, not know what he is talking about

This is no criticism as he, as advocate, never really had to bother presenting his account to the client According to tradition, he simply noted his trial fee on his brief and left it to the attorney to explain to the client why an ordinary application to the Supreme Court these days costs a minimum of R3 000 to the unsuccessful party, and a trial action at least R10 000

Even at that price the client does not get certainty as to his rights, as is shown by the numerous cases taken on appeal in which the Appeal Court reversed the judgment of the Supreme Court

I would venture to say the procedures presently adopted not only duplicate but in fact triplicate the costs, or to put it in another way, in an intermediary court the public would be able to get, for one-third of the costs, at least 80% as good a dispute-resolving process as is made available to them by the Supreme Court

The cause of the triplication of costs and the extraordinary delay lies in particular in the following

(A) The division of the Bar with its mandatory requirements that

(i) Both advocate and attorney must be in court whenever the matter is called, and

(ii) The attorney must attend each consultation with counsel

This means that where in other legal systems one trained person has to be paid, our system requires two, even in those instances where the second person can do nothing constructive to further the case

(B) The division of the Bar into senior and junior counsel, and the further provision that junior counsel must accompany senior counsel in all trial actions This tradition once again means that in each consultation, not only two highly trained and expensive lawyers, but in fact three are required and must be paid for

(C) This compulsory multitude of legal advisers also has the effect that whenever a trial date has to be arranged in which both parties engage senior counsel, a date must be found which suits a minimum of six very busy lawyers, and then the time schedule of the client is not yet taken into account

It is obvious that such a date can only be eight to 10 months or even longer after the close of the pleadings, and this once again is an additional factor causing extraordinary delay to legal proceedings

(D) A real wastage of costs (thus contributing to the triplication of necessary expenses) arises when a matter has to be postponed for some reason or other, thus when all three legal advisers of each of the two parties have consulted for hours and prepared for days and then the case does not come on, meaning that all this work has to be done over again.

Similar difficulties arise if one's advocate is engaged in another trial which takes longer than expected, and at short notice the attorney is advised that such counsel, who had been in the case from the outset is no longer available There, too, it means additional costs have to be incurred to try and find a suitable alternative and pay him for his own preparation for the case

(E) Similarly the rule that counsel is entitled to a full day's trial fee if the case is settled two or three days before the date of trial, tends to inflate costs

No such provision is made for the attorney's fees, although the attorney must also keep free the trial date and the days thereafter, just as counsel does, but for some mysterious reason it is felt that counsel should be remunerated for the day he "lost" because the case is settled, while the attorney is not entitled to any such remuneration

I know of no other profession where people are paid for days on which they did not in fact work

(F) The prescribed vacation which the court has granted to itself in terms of the rules of the court are from December 1 to January 31 (two months), from June 16 to July 31 (one-and-a- half months), and from October 1 to October 15 (one-half month) This is a total of four months vacation

I know of no judge who has as yet complained that the court holds vacation for 1/3 of each year Such vacation is not found in any other profession

This is an aspect which should also be borne in mind when considering the judge's remuneration, about which Mr Justice Didcott so bitterly complained, despite the recent substantial rise In this connection it should perhaps also be mentioned that the Supreme Court starts only at 10 00 am and stops generally at 4 00 pm The Magistrate's Court works from 9 00 am to 5 00 pm

These daily hours are important in relation to the costs, because an advocate attending to a matter in the Supreme Court charges *per day,* and obviously, the shorter the day's court-hours the more days are required to complete the trial

(G) A further aspect contributing to increase of costs and delay, is the fact that the more skilled and knowledgeable the legal representatives, the more they tend to engage in technical arguments taking up considerable time

These technicalities, which may be of great interest to them and the judge, do not take the case much further and are often in the ultimate result of little relevance to the case Very often too, these technical issues are raised from the bench, calling for long arguments from both sides at the client's expense

(H) No proper tariff exists for work done at the Bar It is the awkward duty of the attorney to "negotiate" a fee with counsel On taxation, however, the taxing master may have quite a different opinion of the amount that should be allowed to counsel, with the consequence that a client, even if successful, has to pay a substantial portion of the fees himself

(I) Even in other respects everything is not gold that glisters When Dr Rhoodie was freed by the Appellate Division, newspapers were full of praise for the judicial system and how it still is, in the words of Mr Justice Didcott, "South Africa's most respected civic institution"

Even in such moments of enthusiasm everybody seems to forget that it was this very same Supreme Court which sent Dr Rhoodie to jail for 12 years, and that, only because Dr Rhoodie took the risk and had the funds to take the matter on appeal, is he now a free man

What about all those who do not have the funds or the courage to take a Supreme Court judge on appeal, after they have already been through an expensive trial with all its trimmings?

(J) Although the system of appointing judges from the Bar has many advantages, it no doubt also has its disadvantages Many advocates specialise in certain particular aspects of the law If such an advocate who, say, has specialised on criminal law, and has during all his 20 years of practice been mainly a criminal lawyer, suddenly is placed on the bench and has to decide a matter involving the drawing up of a deceased estate account in which the practice of deceased estates, execution, interpretation of testaments and the law of contract make up the issues of the case, he will also be pretty lost and is unlikely to come to a better conclusion than any magistrate of a regional court who would try the same matter

In many other countries judges are a profession of their own and there is probably no fault to be found with that system At least the judiciary then does not become the old age home of the Bar, and this could be an advantage in the institution of an intermediary court, provided such intermediary courts imposed an LL B qualification as a minimum qualification for an appointment

There is no reason why such judges of intermediary courts should be less objective and independent than judges who have been called from the Bar

In fact the practice shows that not all advocates appointed as judges turn out to be as good judges as they have been advocates Mr Justice Didcott's fear that professional judges appointed to an intermediary court would be less trustworthy in view of their allegiance to the State, is just as far-fetched as the argument that judges of the Supreme Court are biased in favour of their erstwhile institutional clients or against their erstwhile opponents at the bar Some are, but most are not

Let us be fair, judges of the Supreme Court are also only human beings and they have their human failings just like we all have, and the intermediary court judges will have them too To point a finger at one specific group and claim that each member of that group is less qualified, objective and independent than all the members of another group, is not justified — **A VAATZ, Windhoek.**

STAR 31/10/80

Supreme court fat, says judge

Pretoria Bureau

A Transvaal judge said today the Supreme Court had grown "fat" while magistrates courts' powers had been eroded

Mr Justice C A Coetzee, giving evidence to the Hoexter Commission on the structure and function of courts, disagreed with Mr Justice Didcott and other judges who reject the proposed intermediate courts

He pleaded for the retention of the present basic judicial system with extended powers for the regional court which he said could be called the "Drostdy"

A "Drostdy" should have the same criminal jurisdiction as regional courts but should be given a R10 000 civil jurisdiction Since 1917, magistrates' powers had been eroded The Supreme Court had taken over some of their powers

Judge suggests new court system

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THE jurisdiction of the Magistrate's Court was being eroded by the Supreme Court, the Hoexter Commission of Inquiry was told yesterday

Mr Justice G A Coetzee told the commission, which is investigating the structure and functioning of the courts, that matters which were once heard in the Magistrate's Court now fell under the jurisdiction of the Supreme Court

Mr Justice Coetzee told the commission he was in favour of Regional Courts being expanded to hear civil matters

He said a financial limit could be imposed on the value of the goods involved in cases heard in Regional Courts He also suggested that a means of restoring the Magistrate's Court's jurisdication was to introduce a statutory formula which could fluctuate to keep cases within their jurisdiction

Mr Justice Coetzee said the extended Regional Courts, which could be known as Landdrost Courts, should include not only people from within the Department of Justice but could also draw members from the various Bars.

He also suggested that the personnel in the new courts should fall under a statutory body and not be under the jurisdiction of the Department of Justice in regard to their dismissal or transfer In this way the courts could be judicially independent, he said — Sapa

No special treatment now, says Tvl judge

STAR 1/11/80 252

By David Breier,
Pretoria Bureau

The days when preferential treatment was given to the appointment of Afrikaners as judges are over, a Transvaal judge said yesterday.

Giving evidence to the Hoexter Commission which is investigating the structure and functioning of the courts, Mr Justice Coetzee said that when Mr C R Swart was Minister of Justice after the National Party came to power in 1948 it was felt that Afrikaners did not receive equal treatment in the courts.

The Government therefore followed a policy of appointing more Afrikaners to the Bench, and some of these were well-known Nationalists, Mr Justice Coetzee said.

This compensated for the previous lack of Afrikaners on the Bench and enabled Afrikaners to be served in their own language at court, he said.

But Mr Justice Coetzee said times have changed and appointments were no longer made on the grounds of prejudice.

An indication of this was the appointment in recent years of a number of Jewish judges.

Mr Justice Coetzee took issue with Mr Justice Didcott of the Natal Bench who criticised Government influence in the appointment of judges.

The commission also heard that attorneys believe advocates charge too much and that advocates think exactly the same thing about their attorneys.

EARNED LESS

Mr L T C Harms, representing the Pretoria Bar Council, said advocates earned much less than their attorneys could.

He said the proposed system of intermediate courts fitting somewhere between the magistrate's courts and the Supreme Court would do nothing to cut down legal costs.

He predicted that advocates would appear in most intermediate courts as they already do in the Supreme Courts.

Advocates have objected to the proposed intermediate courts at which attorneys would be able to appear directly for their clients.

Free courts from the State says Law Society

STAK
3/11/80
2.52

By David Breier,
Pretoria Bureau

The Transvaal Law Society today appealed for the nation's court system to be made independent from the Government

Testifying to the Hoexter Commission which is investigating the structure and functioning of the courts, Law Society spokesmen representing the provinces' attorneys said the Commission was a "heaven-sent opportunity to do something about the status of the judiciary"

The society has called for the courts to be independent of various Government departments which affect the legal system

The attorneys have also asked for an independent body to appoint all presiding officers of courts from magistrates to judges

Addressing the Commission, Mr S W van der Merwe, past president of the society, said that in the past there had been "political appointments" as judges but too few to object to

The society has advocated an independent body which could include judges, magistrates, attorneys, and advocates' representatives as well as the Department of Justice, to make judicial appointments

Mr van der Merwe deplored the neglect judges suffered and said higher pay was needed to attract more advocates to the Bench

South African judges had no secretarial services or research aid and their office accommodation "leaves much to be desired," he said.

By contrast a federal judge in the United States had 10 associates including staff to help him write opinions

Mr van der Merwe said local judges were too overworked to give immediate judgments and as a result the public suffered from delays. He asked that more judges be appointed to reduce the work load and that judges be given time to complete their judgments before hearing the next case

Mr van der Merwe said the society believed the introduction of the proposed intermediate courts between the magistrate's and Supreme Court would not succeed at present due to the lack of capable personnel including attorneys to preside over these courts

He said the intermediate courts need not be written off completely and they could be looked at again in future, "but at the moment they are impractical"

The society has also asked that the legal aid scheme at present run by the Government should be cut loose from State control and run independently

Mr van der Merwe said the Legal Aid Board "must not only be independent, it must be seen to be independent"

He said that especially in terrorist cases the public could not understand how the State which prosecuted could also give legal aid, and therefore legal aid should be made independent of the State while enjoying State subsidies. He said this was done in Britain

Too many judges, says Margo

STAR 4/11/80 252

Pretoria Bureau

Mr Justice Margo of the Transvaal Division of the Supreme Court said yesterday there were too many judges and he proposed a new system of temporary commissioners to supplement the Bench.

He was addressing the Hoexter Commission investigating the structure and functioning of the courts.

Mr Justice Margo said there were too few senior counsel willing to be elevated to the Bench.

He told the commission there were already too many judges and not enough senior counsel willing to do judicial duty.

He criticised the appointment of more permanent judges to the Bench during "peak times".

Instead, he proposed a system of temporary commissioners appointed from the ranks of senior counsel to relieve judges during peak periods.

He suggested these commissioners could deal with divorce courts and criminal cases including capital offences. These cases were straightforward, although crucial, he said.

The commissioners would relieve judges who would then be free to deal with more complex cases.

He said the appointment of too many judges would diminish their status and added "This is debasing the currency."

Call for indepedent judicial appointments

STAR 4/11/80 252

By David Breier,
Pretoria Bureau

A growing movement has emerged to place the appointment and control of all judges and magistrates under an independent administration removed from the public service.

This has become apparent in submissions to the Hoexter Commission which is examining the structure and functioning of courts.

Mr W J du Plessis, representing the Pretoria Attorneys' Association, today told the commission that 'all courts must be independent and seen to be so.

"We believe that nothing must be done to reduce the status of the Supreme Court" he said. If possible the Supreme Court's status should be increased, he added.

"We must try to increase the status of magistrates' and regional courts to approach that of the Supreme Court rather than lowering the status of the Supreme Court," he said.

He said all judicial officials including magistrates and judges should be controlled by an autonomous body although they should still be paid by the State.

"Judicial officials should not be civil servants," he said.

The move by Pretoria's attorneys comes after submissions yesterday by the Transvaal Law Society also calling for judges and magistrates to be appointed by an autonomous body.

At present judges are appointed by the State President in Council with recommendations for promotions to the Bench coming from judge-presidents.

Magistrates are appointed directly by the Department of Justice from the ranks of public prosecutors.

Mr du Plessis proposed that if there were not enough advocates to make up the ranks of the judges, attorneys with the necessary knowledge and experience could be appointed as judges as well.

If there were too few advocates and attorneys to be appointed as judges, senior magistrates with the necessary qualifications should be appointed.

The Pretoria Attorneys' Association has opposed the intermediate co[illegible]

Family Courts could be private

STAR 4/11/80 252

By David Breier
Pretoria Bureau

A special Family Court to deal with domestic problems out of the public gaze, was suggested to the Hoexter Commission in Pretoria today.

Professor F Bosman, a law professor from the University of South Africa, made this suggestion to the commission which is investigating the structure and function of the courts.

Professor Bosman suggested that the Family Court deal with paternal cases, adoption matters, childrens' courts, maintenance, custody and family assaults including baby bashing and wife bashing.

She also suggested that this Family Court sit in camera as "there is no need for the whole world to know that a man hit his wife."

She said this was necessary not to protect the parties involved, but to protect the family.

DIVORCES

She suggested that divorces remained the prerogative of the Supreme Court but that the Supreme Court ask the Family Court for recommendations in complex cases of child custody.

The Family Court could help to keep families out of the normal criminal courts, she said.

Professor Bosman said that many women felt humiliated in going to a criminal court and, therefore, many family matters which could have been solved in court were suppressed.

That is perhaps why you get so many family murders," she said.

Earlier Mr R K R Zeiss, SC, a senior Pretoria advocate born in Austria, pleaded for the present court system in South Africa to be retained.

He said that any attempt to introduce intermediate courts would reduce the respect and awe in which the Supreme Court was held.

He warned this would reduce the status of the South African Supreme Court to that of the courts in Europe which were held in low regard by Europeans.

Court deal for black youths under attack

By JOUBERT MALHERBE
Pretoria Bureau

A PROFESSOR of law at the University of South Africa yesterday sharply criticised the treatment of black juveniles in the criminal courts and advocated a special family court to deal with all juvenile cases.

Giving evidence before the Hoexter Commission inquiring into the structure and functioning of the courts, Professor F Bosman said childish "pranks" were often treated as criminal cases

She cited a case in which black youths shot at a train with catapults, and said it was treated almost "like a sabotage case"

Such instances clearly had a negative effect on the authority of the courts, she said

Prof Bosman, who was giving evidence on behalf of the National Council for Married and Family Life, said in many cases black children had no legal representation

"I think it is criminal to involve a child in a court case without his being legally represented," she said

Prof Bosman said she did not have much confidence in the commissioner's courts

"In her experience as a prosecutor in the juvenile court, she had often found investigating officers would too readily say they could not find the parents of charged black children

"One finds the black child being fully exposed to an unsympathetic prosecutor A social worker would be able to do beneficial work in these cases," Prof Bosman said

She suggested the creation of a special family court with an atmosphere more conducive to the solution of the particular problems arising in juvenile cases

"We only need to re-organise the existing juvenile courts The judicial proceedings should be held in camera," she said

Divorce cases could be referred to the family court, which would investigate the circumstances of each case. The court could then make a recommendation to the judge in the divorce court action

A senior Pretoria advocate, Mr R K Zeiss, told the commission yesterday that the creation of an intermediate court between the Supreme and magistrates' courts would remove the last bastion of respect for South Africa

He agreed fully with Mr Justice Didcott that the creation of an intermediate court would erode the power of and respect for the Supreme Court

Mr Zeiss, who is Austrian-born, said people had "no idea" of the respect abroad for the South African judicial system

A system which had stood the test of time should not be changed, Mr Zeiss said

The creation of an intermediate court would mean the South African judicial system would become more like those in overseas countries

Courts in Europe were "a bit of a joke" and they were not held in any esteem at all, he said

No successful lawyer would be prepared to serve as judicial officer in an intermediate court and the officers would inevitably be drawn from the civil service

Granting semi-judicial status to magistrates would mean that judges of the Supreme Court would eventually also be reduced to a semi-independent status

The attitude overseas of disregard for the courts had been bred by the judicial systems concerned, Mr Zeiss said

"A change in the Appeal Court system could be justifiable as it could relieve the work pressure on judges," he added

Mr W J du Plessis, vice-chairman of the Pretoria Attorneys Association, who also opposed the idea of an intermediate court, said the ideal was that all courts should be independent and that they should be seen to be independent

Magistrates must be removed from the sphere of the civil service, Mr Du Plessis said The status of magistrates' courts also had to be improved

He suggested the creation of an autonomous authority to appoint judges and magistrates.

The authority of the Department of Justice should not be dominant in the appointment of judicial officers, he said.

Advocate criticises Justice Department

By MARIKA SBOROS

THE Department of Justice had done the most harm to the administration of justice in South Africa, a prominent Johannesburg advocate told the Hoexter Commission yesterday

The commission, under the chairmanship of Mr Justice G G Hoexter, is inquiring into the structure and functioning of courts

Mr Z Sutej, SC, said it was his opinion that the Department of Justice had done the most harm to the administration of justice

But he excluded from his criticism the professional sections, including the Attorney-General and State-Attorney divisions

He said the most culpable were the executive (the Minister of Justice) and the administrative sections

"Certain Ministers have been too much under the influence of senior financial and accounting staff," he said

He felt it was not always the case that judges were appointed to the Bench on the recommendation of the Judge-President

He critisised as "indirectly sinister" the political appointments of judges, saying they led to political "non-appointments", and added that the executive would not be willing to give up the right to appoint judges and members of lower courts

He also attacked the controversial idea of intermediate courts, calling them a "Trojan horse" The ultimate reason for them was not to relieve pressure on the Supreme Court, or enhance and return it to glory — the "ulterior motive" was to promote lower courts and their presiding officers to another status

Mr Sutej also said regional courts had too much jurisdiction, and this should be curtailed

"In no other country that I know of, has any court, constituted as our regional courts, got anything near (their jurisdiction) "

He said that the Supreme Court was overworked because the incumbents did not pull their weight

He was in favour of the introduction of special courts to meet the needs of specialised cases, such as marine and admiralty matters

He attacked the practice of not appointing a judge to a permanent position because he was too old and could not render at least 15 years' service

"This is an example of the imposition of a public servant mentality on something which should extend outside public service," Mr Sutej said

The main defect in the South African organisation of courts was the aspect of appeal being subject to leave being granted, he said "No-one should arrogate to himself the right to dish out 10 years or the death sentence without being called upon to justify his decision before a higher court "

Another witness was Mr A de Kok, chairman of the Johannesburg Attorneys Association

He said the necessity for black Commissioners' courts had passed Divorce cases were important for black people because a divorce affected occupancy rights — and there were usually custody wrangles because tenancy was often decided in favour of whoever had custody of the children

These cases were heard by a divorce court for blacks, he said, but should be included in the rest of South Africa's court system — as should the Central Appeal Court and the Industrial Courts which now fall under the Department of Manpower Utilisation

Mr De Kok said a solution to the manpower shortage in the Supreme Court and Department of Justice would be to increase the status of judicial officers, and make salaries and perquisities competitive with the private sector He was in favour of the intermediate courts only if they were courts of status

Mrs Roberta Johnson, of the Women's Legal Status Committee (WLSC), told the commission that women in South Africa had grave difficulties in getting relief through legal means

The introduction of Family Courts could help, but she would be against the idea of public servants presiding over them

Juvenile Courts could be part of Family Courts, and should deal with security matters The WLSC was concerned that young children had appeared in Regional Courts on Terrorism Act charges.

CURRICULUM VITAE

Klaas van der Poel

Has a degree in Operations Research from Tilburg, Holland. He has been with Shell International for 10 years and worked for that company as an international consultant in several countries around the world. His experience includes the design and development of systems for financial management, manufacturing control and production optimisation.

He has taught courses in Management Information Systems and Operations Research at the Business Schools of the Universities of Cape Town and Stellenbosch.

He is ...

Not enough prosecutors to serve the community

STAR 6/11/80 (25.2)

By Deon Delport

The senior public prosecutor in Johannesburg today told the Hoexter Commission that his department could no longer adequately serve the community.

Advocate A de Vries told the Hoexter Commission inquiring into the structure and functioning of the courts the "chaos" in his department was spreading.

The personnel shortage had led to a deterioration in prosecutions.

Quoting from a warning to head office by one of his predecessors, he said that during the two years from 1974, 53 percent of the public prosecutors had resigned.

Thirty-seven out of 50 had done so for higher salaries.

Mr de Vries said that he now had a staff of 82 and was 25 prosecutors short. In a survey of 73 prosecutors, 51 percent of those operating in the regional courts had less than two years' experience.

These courts had the jurisdiction to impose sentences of up to 10 years or a R1 000 fine. In a 34-month period he'd had an almost 100 percent turnover in staff.

His section was now using black interpreters as prosecutors, but these men were still being paid the wages of interpreters' clerks.

"We are going to have to promote these people to magistrates in white areas. It is unavoidable. We do not have the staff," he said.

Another witness, Mr Justice Melamet of the Transvaal Supreme Court, told the commission he regarded the introduction of intermediate or intermediate appeal courts as a retrogressive step.

The reason advanced for such courts was the overloading provincial divisions with civil cases. Mr

Justice Melamet said that in relation to overseas countries the delays in civil litigation in South Africa was not bad.

Justice influenced by State appointees

STAR 6/11/80 252

By Deon Delport

The Department of Justice has been one of the bodies which has done a lot to detrimentally affect the administration of justice and the status of the courts, a senior Johannesburg advocate told the Hoexter Commission yesterday.

Advocate Z Sutej SC was making representations to the Hoexter Commission which is looking into the structure and functioning of courts

He said he was referring in loose eterms to the executive and senior administrative organs that form the Department of Justice, and was excluding the professional sections such as the Attorney-General and the State Attorney's office

SINISTER INFLUENCE

There was a sinister influence in appointments, not only because of the political appointments but because of the political non-appointments, Mr Sutej said

An instance of the public service mentality he knew of was where an acting judge was refused a permanent appointment because the department would get less than 15 years service out of him before pension

He added there was no room at present for the intermediate courts as the ultimate reason for their creation was to promote "loyal courts"

The reform of the courts should be similar to that of the recent reforms in the English judicial system, he said

Mr Sutej also said regional courts had too much jurisdiction and that this should be drastically reduced

Another senior advocate, Mr L S Weinstock (SC) described the administration of the Rand Supreme Court as a "shambles"

NO DIFFERENT

The chairman of the Johannesburg Attorney's Association, Mr A de Kock, said his association wanted the Central Appeal and Divorce Court dealing with litigation from blacks to be included in the ordinary system of courts

The divorces of black people, were no different from those of white and could be handled by the Supreme Court, he said

And often, he continued, court decisions in black divorces, were of more importance than was the case with the white population

This was, he said, because divorce proceedings often had an effect on the right to occupancy of a house The party with custody normally was allowed to stay in the house Mr de Kock said, and often sparked fierce fights over the custody of children

Black magistrates 'in white areas soon'

By MARIKA SBOROS

THERE would soon be black magistrates in white areas because of the critical shortage of prosecutors, a senior State Prosecutor told the Hoexter Commission yesterday

Mr A de Vries told the commission that magistrates were drawn from the ranks of prosecutors and, as increasing use would have to be made of black magistrates, these people would be have to be used in white areas

"We are going to have to accept blacks as magistrates in white areas," he said

Mr De Vries told the commission — which, under the chairmanship of Mr Justice G Hoexter, is inquiring into the structure and functioning of courts — that there was a critical shortage of prosecutors because of poor salaries, lack of professional status and poor long-term planning

Mr De Vries said that in Soweto translator-clerks who were studying law were now acting as prosecutors, but were not being paid extra

He said his department should have a complement of 107 prosecutors but had only 85 In the past 34 months, 94 prosecutors had resigned

From July, 1974 to 1976, 53% of prosecutors resigned — 37% over the issue of pay

Of 73 prosecutors he had surveyed in the Regional Courts, 51% had less than two years' experience in courts which had the jurisdiction to hand down sentences of up to 10 years

Earlier, Mr Justice J D A Melamet, of the Transvaal Division of the Supreme Court, told the commission he was against the proliferation of courts

Intermediate courts were a retrogressive step which created "uncertainty and suspicion in the minds of the public", Mr Justice Melamet said.

Dr J Raubenheimer, a Vereeniging attorney, said the Supreme Court handed down only 10% to 15% of judicial decisions

This meant a lot of judicial decisions were handed down by the executive — the function of wich was administrative, not judicial

He said the first thing that should be done was to take away all judicial functions from the executive and place them under the judiciary where they belonged

He criticised administrative courts — courts which judged cases between the executive and a private person — because they specifically excluded legal representation. These courts should be modelled on a court of law, Dr Raubenheimer said

There were many cases heard in the Supreme Court which could be heard in an intermediate court — which would save costs

Mr T Freysen, a Klerksdorp attorney, told the commission he disagreed that intermediate courts should be separate from the State. He said he would rather see Regional Courts with civil jurisdiction side by side with the usual Regional Courts

The Government should provide training facilities for magistrates and clerks of the court in civil matters, Mr Freysen said

Mr Howard Ferreira, director of the Johannesburg Child Welfare Society, told the commission that there was an urgent need for a family court

The family court should be either under the auspices of the Supreme Court or an intermediate court "with the proviso that whatever the level, it is an improvement on existing levels", Mr Ferreira said

He said the reason for having different courts to hear cases between black people on indigenous or common law was to lower costs

In the children's courts there was a problem with the wide variation in the calibre of the presiding commissioners, Mr Ferreira said.

Blacks 'to run white courts'

STAR 7/11/80
252

The public and Department of Justice would soon have to accept black magistrates in white areas to alleviate the critical shortage of magistrates, the senior public prosecutor in Johannesburg told the Hoexter Commission yesterday.

Mr A de Vries told the commission inquiring into the structure and functioning of the courts, he was at present using black court interpreters, busy with their legal studies, as prosecutors in Soweto.

These men were doing an adequate job but were still being paid the salaries of interpreters.

Recently blacks had also been appointed clerks of the court, doing the same work as their white counterparts. "They are taking money for fines and have the same status as the whites," he said.

Mr de Vries told the commission he simply did not have enough prosecutors adequately to serve the community.

There was also a critical shortage of magistrates.

"We are going to have to advance blacks to the rank of magistrate in white areas. It is unavoidable. We do not have the people," Mr de Vries said.

He added, although the commission's terms of reference included investigating the establishment of intermediate courts — there simply would not be the staff to fill them.

Transvaal judges 'are overworked'

STAR 7/11/80 (252)

By Deon Delport

Working conditions of Transvaal judges were today described as deplorable by a senior advocate who gave evidence before the Hoexter Commission.

There were too few judges doing too much work, said Mr J C Kriegler, SC, who spoke on behalf of the Johannesburg Bar Council.

The commission chaired by Mr Justice C Hoexter, is inquiring into the structure and workings of the courts.

"Some 40 percent of the country's judges are in this province and do about 60 percent of the work. Clearly this disparity leaps out at one," Mr Kriegler said.

The Bench in the Transvaal was not only undermanned but its working conditions were deplorable.

Library and office facilities for judges commuting between the Transvaal Provincial Division in Pretoria and the Witwatersrand Local Division in Johannesburg were totally inadequate, he said

The Supreme Court filled a unique position in the constitutional pattern and was not merely a branch of government.

DIFFERENCE

The public should not be deceived into regarding the Supreme Court and the inferior courts, which were courts of statute, as part of one deal, Mr Kriegler said. There was a difference in the roles of the Supreme Court and inferior courts.

He added that the Supreme Court held an honourable position in the eyes of the general public and overseas visitors.

● **Page 11: Blacks "to run white courts."**

Hoexter told of 'chaotic' staff shortage

JOHANNESBURG — The senior public prosecutor here told the Hoexter Commission yesterday that his department could no longer adequately serve the community.

Mr A de Vries told the commission inquiring into the structure and functioning of the courts, that the "chaos" in his department was spreading.

The staff shortage had led to a deterioration of prosecutions.

Quoting from a warning to head office by one of his predecessors, he said that during the period 1974-1976, 53 percent of his predecessors and prosecutors had resigned. Thirty seven out of 50, he added, did so for higher salaries.

Mr De Vries said that at present he had a staff of 82 and was 25 prosecutors short. A survey of 73 prosecutors showed 51 percent of those operating in the Regional Courts had less than two years experience.

These courts had the jurisdiction to impose sentences of up to 10 years or R1 000 fines. In a 34-month period he had had almost 100 percent turnover in staff.

His section was now using black interpreters as prosecutors but these men were still being paid the wages of interpreter clerks.

"We are going to have to promote these people to magistrates in white areas — it is unavoidable because we do not have the staff."

Though there was a shortage of qualified interpreters, his department had also had to use interpreters as clerks of the court. They had the same status as white clerks and could also take money across the counter, he said.

Another witness, Mr Justice D A Melamet, of the Transvaal Supreme Court, told the commission he regarded the introduction of intermediate or intermediate appeal courts as a retrogressive step.

"The reason advanced for such courts was the overburdening of provincial divisions with civil cases.

Mr Justice Melamet said that in relation to overseas countries the delays in civil litigation in South Africa was not that bad.

He stressed that the civil jurisdiction of magistrate's courts had not kept pace with the increased jurisdiction of criminal courts. Because of inflation the civil jurisdiction of magistrate's courts should be increased to R10 000, he said. — Sapa.

Lawyer under fire in big law probe

8/4/80 252 probe

By MARIKA SBOROS

THE Chief Magistrate of Johannesburg yesterday challenged an advocate's claims that civil magistrates were unqualified for their posts — and because of this could cause the ruin of people who came before them.

He said he doubted if the advocate was competent to judge the qualifications of civil magistrates: he had been unable to find a single one in whose court the advocate had appeared

The Chief Magistrate, Mr J A van Dam, was giving evidence to the Hoexter Commission — which is inquiring into the structure and functioning of South Africa's courts — and was attacking the views given by Mr S L Weinstock, SC, on Wednesday.

Earlier yesterday, Mr J Kriegler, SC, of the Johannesburg Bar Council, had also told the commission that the standard of judicial officers in the civil magistrates' courts was "not satisfactory"

Mr Van Dam said Mr Weinstock was "clearly incorrectly informed" when he claimed that civil magistrates had insufficient training and could not handle their cases.

"I have taken the trouble to find out if Advocate Weinstock ıl court I could not find a single civil magistrate before whom he had appeared," said Mr Van Dam.

Mr Weinstock had said that some magistrates had not the faintest idea of civil law and hadn't studied it.

Mr Van Dam told the commission that there were 12 civil magistrates in Johannesburg, and all were legally qualified

Of 2 440 civil cases dealt with in the period 1978/9, only 18 decisions were reversed on appeal, he said This contradicted the claim that the magistrates did not know their work — the scapegoat for the ruination of litigants would have to be sought elsewhere

"Truly, the community can use the magistrates' courts with confidence"

In his evidence earlier, Mr Kriegler said it was "morally unjustifiable" that there appeared to be one standard of judicial attention for one racial group, and another standard for other race groups.

"The principle of having one set of courts for all the land is paramount," said Mr Kriegler

He described conditions for Transvaal judges as "deplorable"

"It is totally unacceptable that a man with the status of a judge has not got an office he can call his own"

Judges' salaries should be increased, he said, because financial considerations made it difficult for the acceptance of a judicial appointment

He described the Bench as a "sitting duck" because, by the nature of its work, it could not form a union, speak in public, or support pressure groups

Mr Kriegler said the role of the Department of Justice in relation to the superior and inferior courts should be an administrative and not a controlling one

"We support the Natal Bar's representation that the hand of the bureaucracy should, as far as possible, be weakened in the appointment of magistrates."

He suggested that the administrative and judicial functions of the magistrates should be separated.

"In principle, it is morally unacceptable that the man who issues the executive order will within a week or a month decide cases in which people have transgressed the order he has granted," said Mr Kriegler.

Another witness, Mr G Steyn, who is a Regional Court magistrate and vice-president of the Magistrates' Association, told the commission that the public had a bad image of the objectivity of a magistrate, because he was a public servant.

He urged that magistrates be removed from the public service to neutralise this image.

CURRICULUM VITAE

Klaas van der Poel

Has a degree in Operations Research from Tilburg, Holland. He has been with Shell International for 10 years and worked for that company as an international consultant in several countries around the world. His experience includes the design and development of systems for financial management, manufacturing control and production optimisation.

He has taught courses in Management Information Systems and Operations Research at the Business Schools of the Universities of Cape Town and Stellenbosch.
He is recognised as a member of the consultants group of the Computer Society of South Africa and specialises in requirement definition and design of industrial systems.

A case for family courts

PROFESSOR Frances Bosman's appeal to the Hoexter Commission for a family court system to deal with black juvenile offenders is an excellent idea. Even though a major dilemma could be finding the people to run such courts. Goodness knows our judicial system is critically understaffed as it is.

Yet the picture Prof Bosman paints is an awesome one and she was for some years a Juvenile Court prosecutor.

She tells of hundreds of black youths branded as criminals for the rest of their lives because the Juvenile Court system is inadequate to deal with their socio-economic problems, to realise that many of them are stealing merely to survive

Prof Bosman, of Unisa's law school, presents another alarming fact. From her undoubted experience, she maintains 90% of black children appearing before Juvenile Courts are unrepresented, that some youths will plead guilty to almost anything because they know nothing about legal defence.

In terms of the law, parents of accused children under 18 should be present at criminal proceedings. In reality, the professor says, the courts often rely on the flimsy evidence of investigating officers who say these parents can't be traced

Whatever the practical difficulties, her suggestion — that family courts be instituted which would be competent to judge these "crimes" from a point of social understanding — presents a compelling case This country has produced enough jail fodder over the years.

'Equal legal qualifications required for all'

STAR 10/11/80 252

By Deon Delport

BLOEMFONTEIN — All legal ranks, including attorneys, advocates, magistrates and judges, should have uniform legal qualifications, a Free State attorney told the Hoexter Commission in Bloemfontein today

The commission, under the chairmanship of Mr Justice G Hoexter, is inquiring into the structure and functioning of the courts.

Mr J D Symington, of the Law Society of the Free State, said a legal conference should be called under the chairmanship of the Chief Justice to look into a uniform legal qualification for all ranks and the establishment of a practical training school for all legal practitioners

The conference should include judges, attorneys, all universities, the Department of Justice, magistrates and delegates from surrounding black states

The object of the conference would be to establish a legal standard for all people, black and white

At present universities were awarding a variety of Bachelor of Law degrees, with different requirements each, and this was an undesirable situation

He said the present system of appointing judges should be changed to avoid any suggestion of political appointments or non-appointments.

He called for a permanent judicial commission to be appointed to stand totally independent of any other body and this should be under the chairmanship of the Chief Justice.

SUITED

The Minister of Justice should be the deputy chairman, with the Judge-President of each province, the chairman of the Bar Council and the president of the Law Society of each province as members. They would put forward names of those best suited to be appointed to the position of judges

Mr Symington said that there were approximately 5 000 attorneys in South Africa as against 650 advocates and the attorneys would not be as fully utilised as they could be.

At the request of Mr Justice Kloppel, Judge-President of the Free State, some of Mr Symington's evidence was heard in camera as it "might reflect adversely on the Free State Bench". Mr Justice Hoexter noted that Mr Symington had agreed to the request

Reporters were asked to leave.

CURRICULUM VITAE

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Political cases for all courts, says judge

STAR 11/11/80 252

By Deon Delport

BLOEMFONTEIN — A Free State judge expressed his opposition to "political cases" being heard exclusively in the Supreme Court, while giving evidence before the Hoexter Commission in Bloemfontein yesterday.

Mr Justice H C J Flemming said other cases dealing with crimes against the community, such as public violence, were at present being handled by magistrates' courts.

It would be wrong to make exceptions of "political" cases and they should be handled like all other cases the judge told the Hoexter Commission, inquiring into the structure and function of the courts

He said judicial appointments must be made the responsibility of the Minister of Justice, it did not make sense to establish another authority

The best guard against political appointees was the criticism of the Opposition

The only criteria for election to the Bench should be the opinions that an advocate's legal colleagues had of his ability

Mr Justice Flemming said he had no reason to believe that if attorneys were appointed to judicial positions, in intermediate courts, for instance, they would be any more effective

The judge rejected earlier evidence that members of the Free State Bench spent relatively few days a year doing their work

Giving his personal work schedule for a year, the judge said his total working days came close to 225 out of 365

He said the earlier evidence was ungrounded and had damaged the status of the Bench and the country as a whole

A Bloemfontein attorney, Mr J G Botha, who deals mostly with black clients, called for the black Divorce Court to be incorporated into the Intermediate Courts' He said this would counter the long delay in settling litigation

Giving an example of 60 cases on a single day's role in 1978, he said 13 of these had dated from 1976

Although the black Divorce Courts had originally been established to save litigants time and money, the minimum cost for each case was now R200

In the Supreme Court a divorce action could be finished in two months, but in these courts it took six months, Mr Botha said

CURRICULUM VITAE

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Protect status of courts, judge urges

Inquiry told of Bench selection dangers

By ROB MEINTJES

BLOEMFONTEIN — A Free State judge yesterday called for the independent status of magistrates to be safeguarded

Mr Justice Flemming said the Minister of Justice should appoint magistrates on the basis of his confidence in their ability to make independent judgments

The Minister should then stand aside and leave magistrates to exercise their judgment as judicial officers, the judge told the Hoexter Commission of Inquiry into the structure and functioning of the courts

If control over magistrates was necessary it should not concern the judicial aspect of their work — the judgments they made

Nothing should be done to damage the independence of magistrates, he said

Mr Justice Flemming pointed to the risk of magistrates making "safe" judgments by using the "parrot" formula in imposing sentences

Citing an example in which a series of stock theft cases had been heard in short order, he said it was difficult to avoid the conclusion that someone had issued instructions that something should be done about stock thefts

One of the commissioners, Mr J C Ferreira, said the sequence of similar cases resulted from instructions from the Attorney-General to prosecutors, who would then state openly in the magistrate's court that they had received such instructions

In response to a question from the commission, Mr Justice Flemming said he was not alleging that the Department of Justice instructed magistrates to handle certain cases

Referring to reports which reflected badly on the independence of magistrates he said if there was any truth in these, the situation was undesirable, because magistrates were judicial officers

The judge said it worried him that magistrates went to a "training school"

Magistrates were appointed as competent judicial officers and were understood to have the necessary training

Mr Ferreira said the Press had been unfair to magistrates because it had quoted "as the truth", allegations made by witnesses who were not in possession of all the facts

In this way damage was done to a judicial officer

The Department of Justice conducted dozens of courses for a wide range of officials including interpreters and clerks of the court

But "special" training was provided for magistrates on a invitational basis

'We live in a century of propaganda," Mr Justice Flemming replied He proposed that the department actively inform the public about the courts to dispel widespread ignorance about their functioning

He said the standard of Press reporting on court matters was not good enough

Newspapers selected the most sensational aspects of court evidence

Mr Ferreira "That is what happens to evidence for the commission as well "

The judge said newspapers had a duty towards the public to reflect a fair image of what was happening, not merely the sensational aspects

Staff Reporter

BLOEMFONTEIN — The proposal that an "independent" council appoint judges was open to the risk of political pressure, Mr Justice Flemming of the Free State Bench told the Hoexter Commission yesterday

The proposal for such a council to appoint judges was put to the commission earlier this week by the Law Society of the OFS

The society proposed the council be chaired by the Chief Justice, with the Minister of Justice as deputy chairman and the Director-General of the Department of Justice as permanent secretary.

Members would include the judges-president of the provinces and representatives for advocates and attorneys.

Mr Justice Flemming said he was opposed to the formation of such a council because it could lead to group formation" He cited as examples

- Attorneys could put the council under pressure by saying that for years no judge had been appointed from their ranks,
- Another group could say South Africa was friendly with Taiwan and therefore a certain competent Taiwanese advocate should be appointed to the Bench,
- Others could point out that no Indian advocate had been made a judge

The judge said that the Minister of Justice, who is responsible for appointing judges, would 'tread carefully" as long as he realised that once he appointed a judge there was no getting rid of him

But if he was 'given' the council he would ' sit back'

The Minister was kept informed about advocates, the judge said It might happen that because an advocate had defended terrorists" he might be regarded as a political risk who should not be appointed to the Bench

But if the Minister was wrongly informed about a man's competence, the judge said, a mistake could also be made in deciding on his appointment to the Bench

Justice Department: shock pay details

(252) from 13-11-80

• An assistant State attorney, depending on qualifications, starts at a salary between R645 and R962 As length of service accumulates he can move to the next two "legs", R925 to R1 295 and R1 185 to R1 460 A senior assistant State attorney earns R1 850, a deputy State attorney R2 000 and a State attorney R2 225

• State prosecutors and advo-

☐ From Page 1

cates start at R645 with a ceiling of R962 The next salary "legs" are R925 to R1 295 and R1 185 to R1 460 Senior prosecutors and advocates earn R1 850

• The Attorney-General earns R2 225 His deputy earns R2 000

• See Page 11

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Klaas van der Poel

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Department of Justice salaries

(Rand) from 13.11.80 (252)

EXCLUSIVE: By MARTIN FEINSTEIN

annual supply of law graduates with bursary obligations was virtually all that was keeping staff levels in the magistrate's courts and the offices of the Attorneys-General from slipping even further

"Most graduate newcomers have bursary obligations As soon as they've finished, they leave None are prepared to receive a bad salary now in the hope of a slightly better one in 30 years time"

The source said an annual staff turnover of nearly 50% had plagued the Transvaal Attorney-General's office for the last three years "And most resign over pay," he said

"Morale is at rock bottom Staff talk about their pay all the time it has become quite sickening

"The recent (April 1) increases improved the situation slightly, but poor pay is effectively cutting off the intake of young people into the department In some cases, those that stay are not always the best available, so the State ends up with the B-team"

He said he knew of "fair" junior" members of the who earned salaries "like the Attorney-General's"

The equivalent of a legal assistant can expect to at R850 a month with private company imm after admission

His salary jumps to R1 000 after a year, R1 270 after two years, and R1 500 plus a car after three years

The salary scale revelations come only days after a Johannesburg senior State prosecutor told the Hoexter Commission investigating the structure and function of the courts, that the "brain-drain" to the private sector, mainly because of poor pay, was seriously hampering the administration of justice and might even lead to "chaos",

He said he was no longer in a position to provide an effective legal service to the community with the staff available

This is what magistrates and State lawyers earn in a month

• A magistrate, depending on his qualifications and length of service, starts at R645, with a maximum of R1 460 after about six years' experience.

But Indian and coloured magistrates earn less R590 to R812 for a magistrate, R850 to R1 240 for a senior magistrate and R1 130 to R1 405 for a chief magistrate

• A senior white magistrate earns R1 850, a chief magistrate R2 000 and a regional magistrate R1 850 to R2 000

• A regional court president a magistrate in an administrative position — earns R2 225

☐ To Page 2

Shock details of

THE Rand Daily Mail today reveals shock details of salary scales in the Department of Justice, which show that Pretoria busdrivers can earn more than a State prosecutor

A lawyer in the department said this was one of the reasons why the Department of Justice faced a crippling exodus of professional staff

The lawyer, who disclosed full details out of "frustration and anger", agreed to speak out on the situation, which he said was "sickening"

Poor pay and dim career prospects, he said, had dragged morale to "rock bottom"

The salary scales, for several professional posts in the department, show that most State lawyers earn a fraction of their private enterprise counterparts

As a result, the department — and particularly the Prosecutor's and Attorney-General's sections — is losing hundreds of lawyers every year to the private sector

And a Johannesburg senior public prosecutor said the administration of justice was headed for "chaos" unless drastic steps were taken

The scales show that the starting salary for a qualified newcomer to the Department, as a legal assistant, is R440 a month, with a ceiling of R645

All legal assistants prosecute Magistrate's Court cases as soon as they are thought capable, usually a matter of months

However, due to the critical staff shortage, an increasing number of officials below the rank of legal assistant are prosecuting — without extra pay

The starting salary for a municipal bus driver in Pretoria is R500, and the average salary is R737 There is also overtime, which is not offered to the State's legal officers

Many legal assistants also appear in the Supreme Court, although they do not receive the salary of a State advocate, who normally prosecutes these cases.

The 'Mail' source said the

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'Critical' brain drain in Justice Department

MARTIN FEINSTEIN reports on the startling evidence presented to the Hoexter Commission by Johannesburg's Senior State Prosecutor, Mr A P de Vries A copy of his memorandum to the commission was obtained by the "Mail" from a Department of Justice source It paints a disturbing picture of a staff shortage that threatens to cripple the administration of justice

IN mid-1976 the Secretary for Justice was warned that the critical staff situation was seriously affecting the standard of prosecutions and investigations in his department

But the current staff crisis shows that this "timely warning was fruitless", according to evidence placed before the Hoexter Commission last week by Johannesburg's Senior State Prosecutor, Mr A P de Vries.

His evidence to the commission, which is investigating the structure and function of the courts, paints a disturbing picture of a department so crippled by staff shortages that it can no longer adequately fulfil its functions.

The evidence includes a letter, dated July 30, 1976, from Johannesburg's then Senior State Prosecutor, Mr K von Lieres, to the Secretary for Justice.

The letter warned the secretary that the "brain-drain" to the private sector was:

- Encumbering and delaying the training of new staff;
- Leading to the acceptance of cases for trial without proper investigation.

Many such cases were unnecessarily postponed, seriously affecting productivity, he said.

- Gradually causing a drop in the quality of legal work

"It is self-evident that the decline still now being experienced is intimately connected with the loss of personnel and the inability to recruit fully-qualified people," the letter said.

It added: "It is clear that this situation will continue. In future long-term planning . . . it must be taken into account.

"It is unfortunately so that it is always the better prosecutors who are lured away. In other words the remaining quality is constantly weakened

"The personnel shortage is so acute on some levels that "free" promotions are made."

The letter also suggested steps to improve the situation, including the removal of the Department of Justice from the jurisdiction of the Public Service Commission (now the Commission for Administration), improving its image and status, cash rewards to newly-trained staff who stay longer than the required minimum and "more realistic" salaries.

Mr De Vries told the commission: "It appears from the current situation that this timely warning was fruitless (The situation) has gradually worsened since 1976."

"You will naturally realise that I am not in a position to be able to provide an effective service to the community, and consequently justice (geregtigheid) is often wiped out (in die slag bly).

"It appears that prosecutors are generally lacking in experience. This, together with the same personnel shortage in the South African Police brings about a steady decline in the quality of prosecutions.

"The prosecutor is seldom in a position to give meaningful direction to the police."

Mr De Vries gave the example of a district court prosecutor with only three months' experience, who was assigned to prosecute in a case defended by one of the most senior barristers in Johannesburg.

Poor salaries, he said, were the main culprit But he also blamed the general erosion (algehele ontkenning) of the prosecutor's professional status and the apparent absence of long-term planning.

The number of officials with LLB degrees had dropped sharply, while those with a B Iuris are on the increase.

Of 73 prosecutors he had surveyed, only nine had an LLB. Twenty-two had a B Iuris, 21 had law diplomas, nine had B Proc, four had a BA and eight had no qualifications.

But of the 95 prosecutors' resignations between January 1, 1978 and October 31, this year — a turnover of almost 100% — 38 were LLB graduates

And, Mr De Vries said, 659 district courts had been closed between October 1, 1979 and September 30, this year, due to lack of prosecutors and magistrates.

Another 1 074 regional courts were closed in the first 10 months of this year for the same reasons

The magistrate's court in Malmesbury, for example, has had a new prosecutor every month since the beginning of last year.

The memorandum pointed out that:

- The Human Sciences Research Council had found prosecutors to be the second-lowest paid legal officials;
- A director-general of a State department earns R35 000 a year as against R26 700 for an attorney-general, whose status, according to Mr De Vries, should be equivalent to that of a Cabinet Minister.

"There is, in my opinion, no doubt that the entire salary structure of the Attorney-General's department requires a radical revision and upward adjustment"

Dealing with the erosion of the prosecutor's status, Mr De Vries said "It is no coincidence that there are no graduate prosecutors over the age of 34."

"The prosecutors are seen simply as a source of magistrates Any legally-qualified person intending to make justice his career must, as a result of the salary and rank structure, go over to the Magistrate's Department, unless he has an LLB and is permitted to go to the Attorney-General's department.

"The result is that the prosecutor's division has a continuous quality problem . . "

"New courts and increased jurisdiction will boost the status of magistrates, but there will not be suitable prosecutors to staff these courts.

"The Attorney-General's Department will not be able to effectively serve the community of the Republic of South Africa in its hour of crisis"

Consequently, he says, there is a real danger that the legal system will collapse (in due sal stort).

"The remaining prosecutors on my staff work under increasing tension and pressure of work has already had the following casualties," said Mr De Vries.

- A district court prosecutor was forced to take a week's leave due to "nervous problems";
- Another was hospitalised for observation following over-exertion,
- One controlling prosecutor was booked off for two months by his doctor following a complete nervous breakdown.

The evidence also contains letters from two of Johannesburg's former senior public prosecutor — dated May, 1975 and May, 1977 — which warn of an increasing number of courts having to be closed due to the staff shortage.

"This microcosm is . . a representative sample of the general position in Justice throughout South Africa."

Mr De Vries concludes with a grim warning: "Unless purposeful and serious steps are implemented immediately to save (beredder) the situation, chaos will develop The situation can hardly be controlled any more (haas nie meer beheerbaar nie) "

CURRICULUM VITAE

Klaas van der Poel

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'Council would be subject to pressure'

STAR 13/11/80 (252)

Staff Reporter

BLOEMFONTEIN — A Free State judge has opposed the creation of a council to appoint judges because it could be subject to political pressure, the Hoexter Commission in Bloemfontein heard yesterday.

Mr Justice H C J Flemming said it could be suggested to a council, for example, that it had never appointed an Indian to the Bench — and there would be presssure to do so.

"We are now friendly with Taiwan, there is a very capable Chinese advocate — why not appoint him to the Bench," the judge said.

The judge, giving evidence before the Hoexter Commission of Inquiry into the structure and functioning of the courts, said he supported the appointment of capable people of other races to judicial positions.

Courts must be made better known — judge

STAR 13/11/80 (252)

By Deon Delport

BLOEMFONTEIN — There was an urgent need to make the courts better known to the public, a judge told the Hoexter Commission yesterday.

Often the standard of Press reporting on the judiciary was not good, Judge H C J Flemming told the commission, which is inquiring into the structure and functioning of the courts.

Press reports often took the most sensational and interesting parts of each person's evidence — leading a person reading the story to think the accused was clearly guilty. The public did not understand when the courts later let the accused go.

The Press had a duty to make contact with the public and explain what the actual workings of the court were, he said.

Mr Justice Flemming added that often the dignity of his rank was not appreciated.

It was not realised how ignorant the public was — it did not know how to address judges.

He would go to functions where an army colonel or brigadier was seated at the top of the table and a judge seated near the bottom.

Or at another function, the mayor, who was not a guest of honour, was welcomed but a judge who was present was not.

People should be careful about how they talked about the judiciary, he said.

BANDIED ABOUT

During a parliamentary debate in which the Opposition was being attacked, the name of Judge Anton Mostert was freely bandied about by a Government MP without any apparent respect for his position as a judge.

He had heard a politician at a public meeting tell the audience how those in Parliament would, if necessary, show the courts within which constraints they had to work. "People should think more carefully before they talk about the courts. They should not be criticised unnecessarily," he said.

Call for dropping of the two-advocates system

STAR 13/11/80 (252)

Staff Reporter

BLOEMFONTEIN — The rule that two advocates should appear for a litigant should be done away with, the Hoexter Commission was told in Bloemfontein yesterday.

Mr Justice H C J Flemming said that in cases where two advocates could be used, the judge could point this out to the attorney and it could be arranged.

He said that in his experience some of the advocates who took silk and became senior counsel should not have done so.

It was the policy of other senior advocates and the judge-president of a Supreme Court provincial division to allow the man to take silk if he felt he could do so.

Mr Justice Flemming said he had spoken on the subject to a Minister of Justice, who had told him that, in his view, a man who had taken silk was a potential candidate for the Bench.

The judge said the rank of senior and junior counsel should be maintained to act as a "sieve" for those who potentially could be appointed to the Bench.

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Warning of shortage of SA judges

14/4/80 pdm

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Staff Reporter

THE staff crisis in the Department of Justice could affect the future supply of judges, the Progressive Federal Party's spokesman on justice said yesterday

Mr Justice Kowie Marais was reacting to the Rand Daily Mail's disclosure yesterday that low salaries in the department were the main cause of a crippling staff crisis which threatens to seriously affect the administration of justice

Judge Marais said "I find it an alarming state of affairs, and some special arrangements will simply have to be made if the department wants to retain, let alone recruit, staff

"If the administration of justice starts limping, what about the rest of society? It is an essential part of the stability in a community

"This staff shortage is all the more disconcerting in the long run because it will ultimately affect the Bench as well

"The Bench draws from practising advocates in State service, so if the lower levels are in trouble, the whole system is in jeopardy

"The main difficulty is in the Witwatersrand area, and to alleviate this the department will have to step up the special allowances paid to staff in this area

"Then, in the longer term, they will have to sit down and see about improving salary scales to attract the necessary talent and improve this terrible situation

"It seems even more urgent than the teachers' situation"

The Director-General for Justice, Mr J P J Coetzer, said in a prepared statement yesterday "I have taken notice of the report . State departments do not fix the salaries of their officials

"That is a matter with which the Commission for Administration is concerned

"The commission has been informed of the staff position in my department"

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Intermediate court plan would be 'a duplication'

Own Correspondent

MARITZBURG — The introduction of an intermediate court in South Africa would serve no purpose, the Hoexter Commission of Inquiry into the structure and functioning of the courts was told in Maritzburg yesterday

A city advocate, Mr Jan Niehaus, said the introduction of an intermediary court would merely lead to a duplication of services which would not solve present problems facing the court

The time had arrived for the decentralisation of the Supreme Court to allow for the speedier hearing of cases, he said

With this in view a permanent branch of the Supreme Court — manned by at least four judges — should be established in the northern Natal town of Dundee so cases could be heard locally without people incurring large travelling costs, he said

The Judge President, Mr Justice James, told the commission that 'third party' claims should be removed from the Supreme Court as they were time consuming and were often heard years after an accident had occured

The registrars of the various Supreme Courts should have their status improved so they could take over some of the functions of the courts and so ease the work load, he said

The registrars should be raised to the level of regional magistrates, Mr Justice James said Judges would be happy with such a situation, he added

The Hoexter Commission begins its Durban sitting today

Lawyers blame pay for crisis in Department of Justice

ET 14/11/80

252

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Own Correspondent

JOHANNESBURG — Bad pay is causing the crippling exodus of professional staff from the Department of Justice Morale in the department has sunk to "rock bottom" and the administration of justice is headed for "chaos" if drastic steps are not taken

These are the views of two Department of Justice lawyers, one of them Johannesburg's chief public prosecutor

Details of the salary scales in the Department of Justice disclosed this week show that Pretoria bus drivers can earn more than a state prosecutor

A lawyer in the department, who released details out of "frustration and anger", agreed to speak out on the situation, which he described as "sickening"

Poor pay and dim career prospects, he said, had dragged morale to "rock bottom"

The salary scales for several professional posts in the department showed that most state lawyers earned a fraction of their private-enterprise counterparts

As a result, the department — particularly the attorney-general's section — was losing hundreds of lawyers every year to outside companies

And according to Johannesburg's senior public prosecutor, the administration of justice is headed for "chaos" unless drastic steps are taken

The scales showed that the starting salary for a qualified newcomer to the attorney-general's office, as a legal assistant, was R422 a month, with a ceiling of R645

Prosecutors were normally appointed from the ranks of legal assistants, but because of a critical shortage of prosecutors, many legal assistants were prosecuting in court — without extra pay

The starting salary for a municipal bus driver in Pretoria is R500, and the average salary R737 There is also overtime, which is not offered to the State's legal officers

According to the lawyer, the annual supply of law graduates with bursary obligations is all that is keeping staff levels in the magistrate's courts and offices of the attorney-general from slipping even further

"Most graduate newcomers have bursary obligations," he said "As soon as they've finished, they leave"

"None of them are prepared to receive a bad salary now in the hope of a slightly better one in 30 years' time"

The lawyer said that an annual staff turnover of nearly 50 percent has plagued the Transvaal attorney-general's office for the last three years — "and most resign over pay"

"Morale is at rock bottom Staff talk about their pay all the time. It has become quite sickening

"The recent (April 1) increases improved the situation, but poor pay is effectively cutting off the intake of young people into the department In some cases, those that stay are not always the best available, so the State ends up with the B team"

He said that he knew of "fairly junior" members of the bar who earned salaries "like the attorney-general's"

The equivalent of a legal assistant can expect to start at R850 a month with a private company immediately after admission

His salary jumps to R1 000 after a year, R1 270 after two years and R1 300 plus a car after three years

The salary scale revelations came only days after a Johannesburg senior state prosecutor told the Hoexter Commission, which is investigating the structure and function of the courts, that

- The "brain-drain" to the private sector — mainly because of poor pay — was seriously hampering the administration of justice and could lead to "chaos";
- The Secretary for Justice was warned in 1976 that the standard of prosecutions and investigations was declining due to staff shortages, but that this had been a "fruitless" warning,
- He was no longer in a position to provide an effective legal service to the community with the staff available,
- His department, which should have a complement of 107 prosecutors, had only 82,
- Ninety-four prosecutors had resigned in the past 34 months,
- From July 1974 to 1976, 53 percent of prosecutors had resigned — 37 percent over pay,
- Of 73 regional court prosecutors whom he had surveyed, 51 percent had less than two years' experience in courts which had the jurisdiction to hand down sentences of up to 10 years,
- In Soweto translator-clerks studying law were being used as prosecutors — without extra pay

He told the commission "The standing joke among lawyers in Johannesburg is that they never have a shortage of personnel because there's always a prosecutor available"

This is what magistrates and state lawyers earn (figures per month)

A magistrate, depending on his qualifications and length of service, starts at R645, with a maximum of R1 460 after about six years' experience But Indian and coloured magistrates earn less R590 to R812 for a magistrate, R850 to R1 240 for a senior magistrate and R1 130 to R1 405 for a chief magistrate

A senior white magistrate earns R1 850, a chief magistrate R2 000 and a regional magistrate R1 850 to R2 000

A regional court president — a magistrate in an administrative position — earns R2 225

An assistant state attorney, depending on qualifications, starts at a salary of between R645 and R962 As length of service accumulates he can move to the next two "legs", R925 to R1 295 and R1 185 to R1 460 A senior assistant state attorney earns R1 850, a deputy state attorney R2 000 and a state attorney R2 225

State prosecutors and advocates start at R645 with a ceiling of R962 The next salary "legs" are R925 to R1 295 and R1 185 to R1 460 Senior prosecutors and advocates earn R1 850.

The attorney-general earns R2 225 and his deputy R2 000

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Judge: SA laws could be hijacked

252 from 17/4/80

By ROB MEINTJES

IF South Africa's security legislation fell into the hands of communists none of the laws would have to be changed to suit their purposes, a Free State judge told the Hoexter Commission last week

A communist government would need only to put its own people in control of the security legislation

But Mr Justice Flemming did not make the statement as criticism of these laws

His remarks were meant to illustrate the importance of the democratic principle that the political executive should be answerable to Parliament

He felt the principle might be threatened by a proposal before the Hoexter Commission, which is investigating the structure and functioning of the courts

The proposal is that responsibility for the appointment of judges be taken away from the political executive (the Minister of Justice) and given to an "independent" council

This, witnesses have argued, would remove any suggestion that politics might have motivated the appointment of certain judges

But Mr Justice Flemming said the formation of such an "independent" council would not protect the judiciary from political appointments On the contrary, a council might prove more vulnerable to political pressure than the Minister

Central to the judge's argument is the "watchdog" role played in Parliament by the Opposition

Although the Minister of Justice was solely responsible for the appointment of judges, he was also answerable to Parliament, Mr Justice Flemming said

Any government would remain sensitive to awkward questions from a vigilant Opposition — no matter how small its support

The ability to criticise the Minister in Parliament, without fear of being sued for doing so, represented a good check on his actions

The creation of an "independent" council would enable the Minister to evade responsibility for controversial appointments to the Bench He would no longer have to account to Parliament for his actions

And pressure groups might then gain control of decision-making by the "independent" council

An "independent" council established to avoid political appointments could lead to a proliferation of politically appointed judges

And the "discretion" exercised by whoever happened to be on such a council would not be subject to parliamentary control

Council members of a particular political persuasion might make "X" a judge and put "Y" in jail Another political grouping would jail "X" and make "Y" the judge

Mr Justice Flemming used the example of communists taking over South Africa's security legislation to illustrate the fact that legislation intended for a specific purpose could ultimately be used for opposite ends

The judge illustrated his point If a communist power took over it would not have to change any of South Africa's security laws to suit its purposes.

A communist power would merely make other people responsible for implementing the security laws

Similarly, whether the independent council remained non-political or not would depend on how the members exercised their power

Last week the Law Society of the OFS proposed that such an independent body to appoint judges be formed and that it

Justice as deputy chairman, the Director-General of the Department of Justice as permanent secretary, and representatives for advocates and attorneys

Govt laws 'will suit communists'

CAPE TIMES 17/11/80

252

Own Correspondent

JOHANNESBURG — If South Africa's security legislation fell into the hands of communists none of the laws would have to be changed to suit their purposes, a Free State judge told the Hoexter Commission last week

A communist government would need only to put other people in control of the security legislation

But Mr Justice Flemming did not make the statement as criticism of these security laws — instead he meant his remarks to illustrate the importance of the democratic principle that the political executive should be answerable to parliament

He felt that the principle might be threatened by a proposal currently before the Hoexter Commission of inquiry into the structure and functioning of the courts

The proposal is that responsibility for the appointment of judges be taken away from the political executive — the minister of justice — and given to an "independent" council

This, it has been argued, would remove any suggestion that politics might have motivated the appointment of certain judges

But Mr Justice Flemming said that the formation of such a council would not safeguard the judiciary from political appointments On the contrary, a council might prove more vulnerable to political pressure than the minister would

Central to the judge's argument is the "watchdog" role played by the opposition

Although the minister of justice was solely responsible for the appointment of judges, he was also answerable to parliament, Mr Justice Flemming told the commission

Any government would remain sensitive to awkward questions from a vigilant opposition, no matter how small its backing, and the ability to criticize the minister in parliament, without fear of being sued, formed a good check on his actions

The creation of an "independent" council would enable the minister of justice to evade responsibility for controversial appointments to the Bench He would no longer have to account to parliament for his actions, and pressure groups might gain control over decision-making by the council — without fear of being answerable to parliament

Attorneys could place the council under pressure by saying that for years no judge had been drawn from their ranks Another group could say that South Africa was friendly with Taiwan, so why not appoint a certain competent Taiwanese advocate to the Bench? Others could point out that no Indian advocate had been made judge

Mr Justice Flemming used the example of communists taking over South Africa's security legislation to illustrate the fact that legislation intended for a specific purpose could be used for opposite ends

Discretion

An "independent" council established to avoid political appointments could lead to a proliferation of politically-appointed judges

And the discretion exercised by whoever happened to be on the council would not be subject to parliamentary control

Council members of a particular political persuasion might make "X" a judge and put "Y" in jail Another political grouping would jail "X" and make "Y" the judge

The judge illustrated his point If a communist power took over, it would not have to change any of South Africa's security laws to suit its purposes It would merely make other people responsible for implementing the security law

Similarly whether the independent council remained non-political would depend on how the members exercised their power There was nothing inherent in the concept of an independent board which would safeguard it from making political appointments

The Law Society of the Free State proposed last week that such an independent body to appoint judges be formed and that it should include the minister of justice as deputy chairman, the director-general of the Department of Justice as permanent secretary, and representatives for advocates and attorneys

Allow courts secure development — QC

DURBAN — It was essential that the legal profession and the courts should be allowed to develop in an atmosphere of security, Mr Douglas Shaw QC, told the Hoexter Commission in Durban yesterday

Mr Shaw, chairman of the General Bar Council of South Africa, made representations to the commission on his own behalf and on behalf of the Society of Advocates of Natal

Speaking on his own behalf, Mr Shaw said the notion of a takeover of the Supreme Court by the Civil Service was disruptive

"It should be accepted that the Supreme Court and Magistrate's courts are seperate and should remain separate The legal profession is established, and should look after its own house"

Mr Shaw said that it should be recognised that prosecution was different from judging Prosecuting should fall under its own department, while the Department of Justice should deal with Magistrate's courts and the administration of justice

The Supreme Court should have its own department, with the Minister answerable to the Prime Minister

One should also recognise that one was now dealing with an over-burdened court system By introducing another intermediate court, only the symptom was attacked and not the disease

"One should look at procedures to simplify the matters of law, and their burden should then disappear

"Private practitioners should be utilised more, not only to bring an independent mind to prosecution, but to alleviate the shortage of manpower in the public service"

Speaking on behalf of the Society of Advocates, Mr Shaw said the minimisation of delays in the present system of courts in South Africa was of fundamental importance.

"A defendant should not be presented with the adventure of hacking his way through barbed wire entanglements in order to see his interests served," Mr Shaw said

To solve the problem of delays, one could look into the present system of the courts itself and not set up expensive and harmful intermediate courts

The Society of Advocates also suggested that a continuous court session should be in operation throughout the year and that there should not be a time when all judges were on vacation at the same time

Judges' time off could be accommodated during the time the court was sitting

"Instead of leaving delivery of judgment until the recess, judges should have time immediately after hearing a case to deliberate and give judgment," Mr Shaw said — Sapa.

'Remove us from Govt' says magistrate

NM

252
20/11/80

Mercury Reporter

A DURBAN Regional Court magistrate told the Hoexter Commission of Inquiry into the structure and functioning of the Courts that magistrates should be removed from the ambit of the public service because of the adverse publicity they have received in recent years

Mr Trevor Blunden said the Magistrate's Court was often criticised for not being independent, as magistrates were public servants It was thought that they received ministerial directives

Mr Blunden said that while this was not true, 'to ensure that justice is being seen to be done, it is necessary to remove the Magistrate's Court from the ambit of the public service'

He said this would make it possible for people other than public servants to become magistrates

Mr Blunden said allegations had been made against the impartiality of magistrates He said these were founded on the grounds that magistrates were drawn from prosecutors and were therefore more partial towards the State

Dismissing these allegations, he said prosecutors in the Magistrate's Court were trained to be impartial

'It is not their function to "steal a verdict", but to assist the Court in coming to a fair decision'

Regarding the appointment of magistrates to the Supreme Court, Mr Blunden said he did not know of one magistrate who wanted to be a judge in the Supreme Court or any other Court

Mr Douglas Shaw, QC, chairman of the General Council of the Bar, who addressed the commission on behalf of the Society of Advocates and in his own capacity, said intermediate Courts could make no contribution and, in fact, would have a negative effect on the functioning of the Courts

'The status of these Courts and the Supreme Court would be amalgamated in the minds of the public, which would result in the status of the Supreme Court being undermined The high reputation the Supreme Court enjoys overseas will disappear.

'It should be accepted that the Magistrate's Court and the Supreme Court remain separate'

Mr Shaw said there had been a tendency towards appointment to the Supreme Court being regarded as a promotion for civil servants He said it should be recognised that this was undesirable

Mr P Langa, who is now an advocate, said he had worked in the Department of Justice and was transferred to the Department of Co-operation and Development where he was eventually appointed to the Bench of the Commissioner's Court in Ndwedwe

He said he had been the presiding officer for four years and before he resigned in 1977 after obtaining his Bachelor of Laws degree, he had earned R300 a month He believed however that the salary for commissioners was now about R5 000 a year

Embarrassment

Mr Langa told the commission that blacks should be given more opportunities for advancement in the Department of Justice He said he felt that qualified blacks were an embarrassment to the Department of Justice

Mr Langa also suggested that the Commissioner's Court be abolished as there was no longer a need for separate courts for blacks

'While there might have been a need for these courts when they were established, they are no longer necessary as customary law could be dealt with under the common law in the Magistrate's or Supreme Court'

He said the Commissioner's Court was no longer manned by specialists, but by people who had studied law in the same way as other judicial officers

A Durban attorney, Mr Michael Pampallis, told the commission magistrates should be paid a minimum salary of R20 000 a year

He said the dignity and salary of the position of magistrates should be increased to provide an incentive to attract better qualified people

Commission told of 'jungle justice'

STAR 26/4/80 (2) 252

Own Correspondent

CAPE TOWN—A former military law officer and captain in the South African Defence Force said today he had seen "fatal irregularities" and "savage sentences" handed out in military courts during his career in the army.

Mr Norman Patterton, who was a military law officer at the Castle for 13 months, was giving evidence to the Hoexter Commission of Inquiry into Intermediate Courts.

He told the commission that after gaining a degree at Unisa and acting as a court stenographer with the Department of Justice, he was well equipped for a career in the legal section of the army.

When he became a military officer, he was told by another officer to 'prepare for jungle justice".

Mr Patterton said that in all the summary trials he had handled, the accused were between the ages of 17 and 19. Offences for which they were tried included absence without leave, drug offences, slovenly dress and not attending church parades.

Mr Patterton said he discussed the system of trying youngsters for such offences with a Brigadier Reynecke who agreed that the system was ridiculous.

"In fact 20 to 30 percent of the cases I set aside convictions because of fatal irregularities in the convictions. In other cases I diminished the savage sentences."

Mr Patterton said summary military trials were held behind closed doors by single officers.

Ex-A-G: Staff shortage critical

Staff Reporter

THE "critical" staff shortage in the Department of Justice would mean difficulty in getting qualified personnel to preside in the proposed intermediary courts, a former Attorney-General of the Cape told the Hoexter Commission yesterday

Mr E O K Harwood, who retired as the Attorney-General of the Cape of Good Hope in 1977, told the four-member inquiry that about 75 new magisterial posts would have to be created in Cape Town and the Reef area alone when the new courts were introduced

While he was in favour of intermediary courts, he was concerned about the qualifications of those to be appointed

They should have the qualities as those looked for in the appointment of judges, he added

Mr Harwood said he was perturbed over the many junior members of the Bar who had drifted away from work in criminal matters because of the financial lure of civil work

Judges, who had to deal mostly with criminal cases, were being appointed with virtually no criminal work experience

Judges in Cape reject new courts

Staff Reporter

JUDGES in the Cape are unanimously opposed to the idea of intermediary courts between Magistrate's and Supreme courts and between provincial courts and the Appelate Division, the Hoexter Commission heard in Cape Town yesterday

Speaking on behalf of the Bench of the Cape Provincial Division of the Supreme Court, Mr Justice Friedman said yesterday that Cape judges felt there was no need to interfere with the existing structure of courts by introducing a new tier, but that the internal structures of courts should be improved

He said these improvements could come about by improving the working conditions of judges and others employed in Supreme Courts, by cutting down the number of civil cases heard by the Supreme Court and by introducing procedures to cut down the time spent by judges and judicial officers on cases they are called upon to hear

'Inefficient bureaucracy'

Mr Justice Friedman criticized the "inefficient bureaucracy" in the Department of Justice He said there was a lack of understanding among "inferior clerks" of the functioning of a Supreme Court

There was a need to establish a secretariat to deal specifically with administrative matters in the Supreme Court As an urgent step, he recommended the appointment of a high-ranking official with full powers to handle the administration of the Supreme Court

He cited several examples where red-tape had made the work of judges both frustrating and time-consuming, including a case where a judge had to wait six months for tapes to dictate judgments When the tapes arrived, they did not fit the tape recorder

He said there was a need to look at the working conditions of judges' clerks, who were paid lowly civil servant salaries but expected to perform the functions of high-powered secretaries

"In Cape Town we have an excellent staff of clerks who work with equipment that is entirely unsatisfactory There is not a single electric typewriter in the entire Supreme Court"

He said clerks were working on typewriters which in some cases were over 20 years old, and when requisitions were made for more, the Registrar of the Supreme Court had great difficulty securing new typewriters

Mr Justice Friedman said it was absurd that judges had to motivate an official in the Public Works Department for furniture

Another method of streamlining the structure of Supreme courts was to cut down the number of cases heard, Mr Justice Friedman said

Legal aid partly responsible

About 23 to 24 percent of all civil cases heard in the Supreme Court arise out of the Motor Vehicle Insurance Act Mr Justice Friedman said that legal aid, while performing a useful function, was probably partly responsible for increasing the number of cases being heard, as litigants were less likely to settle cases out of court and cases went on for longer than normal

He suggested that a system of no-fault insurance would drastically cut down the time spent by judges dealing with motor vehicle insurance cases

He recommended that the civil jurisdiction of Magistrate's Courts be increased provided magistrates were given the necessary civil training to handle the cases

Speaking on the question of intermediary courts, Mr Justice Friedman said that such a move would be impractical because of the manpower shortage

"It's difficult enough to fill vacancies on the Bench, and to create another series of courts will require more top-ranking appointments We feel more time should be given to improving the existing structure of the Appelate Court

"I personally feel one has to face up to the fact that some limit should be placed on the customary right of appeal when it comes to civil cases The permission of the judge should be sought before an appeal is granted and if he fails to give permission, the appellant may then approach the Judge President," he said

He said if these steps were taken there would be no need to create another tier of courts

RAND DAILY MAIL, Friday, November 28, 1980

Judge is against extra courts

RDM 28/11/80 252

CAPE TOWN — Judges in the Cape were unanimously opposed to the idea of intermediary courts between magistrate's and supreme courts, and between provincial courts and the Appellate Division, the Hoexter Commission was told in Cape Town yesterday

Speaking on behalf of the Bench of the Cape Provincial Division of the Supreme Court, Mr Justice G Friedman said that Cape judges felt there was no need to interfere with the existing structure of courts by introducing a new tier, but that the internal structures of courts should be improved

These improvements could come about by improving the working conditions of judges and others employed in the supreme courts, by cutting down the number of civil cases heard by them, and by introducing procedures to cut down the time spent by judges and judicial officers on cases they are called upon to hear

Mr Justice Friedman criticised the "inefficient bureaucracy" in the Department of Justice

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He said if these steps were taken there would be no need to create another tier of courts — Sapa

Shortage of trained staff is 'critical'

RDM 28/11/80 23

CAPE TOWN — The critical staff shortage in the Department of Justice would mean difficulty in getting qualified personnel to preside in the proposed intermediary courts, a former Attorney-General of the Cape, Mr E O K Harwood, told the Hoexter Commission

Mr Harwood said that in Cape Town and on the Reef alone, 75 new magisterial posts would have to be created when the new courts were introduced

While he favoured intermediary courts, he was concerned about the qualifications of those to be appointed

Mr Harwood said he was perturbed about the many junior members of the Bar who had drifted away from work in criminal matters because of the financial lure of civil work — Sapa

Court reform is a subject that usually raises yawns — but the proposal for an intermediate court has raised howls of protest. CRAIG CHARNEY reports.

Court reform sparks off a legal row

STAR 1/12/80

252

The Hoexter Commission's inquiry into the establishment of a new court between the existing district and Supreme Courts has sparked one of the liveliest rows in recent times in the legal profession.

Some officials and lawyers have spoken out in favour of the move, while a variety of groups, including the Pretoria Advocates' Association and the entire Cape judiciary have expressed their opposition.

The fuss is about a plan to replace the Regional Magistrate's Court with a new intermediate court.

The presiding officers would be judges, outside the Public Service, instead of magistrates employed by the Department of Justice.

In criminal matters, appeal to the Supreme Court would be by leave of the court, rather than by right as at present. And the new court would handle a wider variety of civil cases than the existing one.

A measure of the seriousness of the proposal is the fact that the Secretary of Justice has several times gone on record urging magistrates to equip themselves for service in the new court.

While it would be improper to anticipate the finding of the Hoexter Commission, it is worth spelling out the pros and cons of the issue.

Proponents believe the intermediate court would provide speedier and cheaper justice than at present.

Opponents fear that it would blur the distinction between magistrates and judges, restricting judicial independence and diluting the quality of judgments.

Mr A Vaatz, a Windhoek lawyer, says "The Supreme Court with all its trimmings and vested interests has priced itself out of business. The ordinary white person — let alone any black citizen — cannot afford the kind of funds he must raise just to get a ruling."

He says an application to the court costs at least R3 000, and a trial a minimum of R10 000.

One major reason, he says, is the requirement that parties must employ advocates and attorneys, which would not hold in an intermediate court.

Costs in such a court would run to one-third of those in the Supreme Court, he says.

Other proponents say the new court would be able to take on some of the case load of the Supreme Court, speeding up its machinery.

But the opponents of the intermediate court idea think greater efficiency will not be worth the cost.

For the establishment of the new court, the chief source of personnel available would have to be the magistrature, and it is estimated that at least 130 magistrates would have to be promoted.

It appears unlikely the new court could attract outside talent to the Bench.

One Johannesburg attorney says "If only a handful of senior counsel earning more than R100 000 a year are accepting appointment as Supreme Court judges for R40 000 a year, who would agree to serve in a court that has a lesser status?"

However, opponents fear the magistrates-turned-judges will not be truly independent.

A related concern voiced by opponents of the proposal is the competence of magistrates in complex civil cases.

Four years ago, a one-man commission of inquiry into Supreme Court civil practice headed by Mr Justice Galgut concluded that an intermediate court was not necessary.

The current debate on the subject continues daily as one group after the other makes submissions to the Hoexter Commission.

After the commission weighs up the evidence, its verdict is expected about May.

The Star

The great silence on the erosion of law

A READER'S letter yesterday took the legal profession to task for its long silence while the fine traditions of Roman Dutch law have been eroded. The letter follows Mr Justice Rideout's memorandum to the Hoexter Commission in which he held that the profession's silence had facilitated the tampering with the law.

In mitigation it should be noted that lawyers and judges shun controversy as a matter of professional course. Political controversy, in particular, is anathema to a profession whose members' views would be divided anyway and whose code demands anonymity. Yet it behoves individuals to examine their consciences and to question whether they are being asked to adjudicate on laws that are palpably unjust.

Only rarely does the Bench protest that it must pass judgment based on the law and not on justice. Judge Rideout emphasised this judicial impotence when he said: "Parliament has the power to pass the statutes it likes and there is nothing the courts can do about that. The result is law. But it is not law the same as justice. The only way Parliament can ever make legislation just is by making just legislation."

Last week we commented on remarks by British High Court judge Lord Denning who would like British judges to have the same powers as the US Supreme Court to review legislation. We pointed out that the judiciary has a well developed sense of justice and fair play. We do not expect South Africa's legislators to react positively to such a suggestion. "They are playing for high stakes ... to win they must make up their own rules. However, they need to be reminded, for it is short-sighted to deviate from the concept of a just society. Should power ever change hands, a future white society would have reason to be grateful for the protection of a legal system that respects the sanctity of human rights.

Waiting for help at the LRC's Hoek Street Law Clinic

Mr Khazamola Samuel Chauke had a good day last Thursday — he was granted the right to live permanently in Johannesburg — the city in which he had worked on contract for one employer for 12 years. His successful appeal was handled by the Legal Resources Centre. He is one of many who have reason to be grateful to the LRC. PAT SCHWARTZ reports.

And justice for all...

THE STORY goes that the reporter, posing as a disgruntled employer, asked the labour bureau clerk whether she had to give her departing domestic notice pay. The response "I'm afraid so, otherwise they (domestics) will go to the Legal Resources Centre."

The headlines read. "Department bans prison labour from farm", "Court order on aid society", "Group Areas Act slammed at Putco fare hearing", "Section 10 appeal — wife can remain"

Both the story and the headlines reflect something of what Johannesburg's Legal Resources Centre has come to mean to many people. The headlines are the climax to months of legal struggle, the most positive testimony to the achievements of the infant centre, established nearly two years ago and thriving in the cause of public interest

During a 15-month period, the LRC took on more than 300 cases and its law clinics dealt with many more

Late last week it published the first report of its director, Mr Arthur Chaskalson SC and, in doing so, answered many questions about what South Africa's first public interest law firm has been doing for the past year and why

Why? Ask Mr Petrus Mofokeng who gave evidence of assault and abuse at the hands of a farmer during his time as a prison labourer on the farm

After investigation the Prisons Department has banned prison labour from the farm and the case was settled after three days in court

Why? Ask Mr Ephraim Dubasi whose application for the liquidation of Gulf SA Trading Company, an aid society which purported to provide funeral benefits for black people succeeded, saving possibly hundreds of others from being defrauded

Why? Ask Mr Veli Komani and his wife Nonceba, able at last to live together legally thanks to a milestone Appellate Division judgment declaring an urban areas regulation ultra vires and smoothing the path to family life for thousands of couples

Ask bus commuters in Cape Town and Johannesburg what the LRC tried to do for them Another major issue for the LRC in its first year was the fixing of bus fares under the Motor Carrier Transportation Act

At the request of community leaders in Cape Town and Johannesburg, the centre objected on their behalf to applications made by local bus companies for increased tariffs

Although ultimately in Cape Town the bus company got most of what it asked for, important points were made during the argument and attention was focused on inequities and the hardships caused by the Government's group areas policies

In Johannesburg, the objections reaped greater rewards — an application to set aside Putco's new tariff was successful and the company had to apply again In the nine months it took before the new application was made, Soweto commuters were saved a total of nearly R4-million in increased fares — instead, the Government subsidised the bus company.

In his report, drafted before the new application had been set down, Mr Chaskalson said that "the long delay suggests that the Government may possibly be considering new ways of subsidising or supporting bus fares for black commuters in urban areas" Victory? Perhaps

Recent developments seem to bear this contention out In September, Mr A B Eksteen, Secretary for Transport, was quoted as saying it was time "the Government interfered and had some say in the management" of Putco He had, he said, submitted proposals to the Minister of Transport, aimed at fragmenting Putco into four separate companies

Those are the high points But the activities of the LRC in the past year have not only consisted of headline-making success-stories.

At a quieter level, it has made representations to the wage board in regard to minimum wages, has helped in settling a dispute between the Krugersdorp Town Council and the local black community in regard to the maintenance of a rubbish dump which constituted a nuisance

Through its clinics, it has handled actions involving debt collectors, hire purchase dealers, salesmen and "businesses which appear in a variety of ways to have taken advantage of people ignorant of their rights and unable to afford legal representation"

It has also turned away cases, been accused of being too picky, too selective in the problems it chooses to handle

What are its criteria for accepting cases? The now famous Komani decision is a good illustration of that — one man's battle has resulted in an easing of restrictions for thousands

The most important criterion is the use of the centre's limited resources and limited staff as efficiently and effectively as possible So many of the cases it takes on are those which have a particular community interest in the sense that they affect a large number of people and the ruling in one case can help many others in a similar position

Others, while only affecting individuals, are accepted because they are typical of the exploitation of a group — the clinics have had some success for instance, in helping domestic workers fired without notice or notice pay

"Where the need is absolutely overwhelming, you can only make impact if you are selective," says one of the centre's attorneys

A great deal of the nitty-gritty work of the LRC is carried out by law students at the centre's clinics

The Hoek Street Law Clinic, now just over a year old, is run by employees of the LRC and by students from the University of South Africa and, more recently, students from the Rand Afrikaans University

Between July and March, 1 111 new cases were taken on and, since then, new cases have been accepted at an average of 200 a month

The LRC also supervises other clinics run by law departments of the three universities

It has appointed three fellows, offering these law graduates from the University of the North, the University of Fort Hare and the University of Cape Town post-graduate training through a year's employment at the LRC

The philosophy behind it all is gradually emerging as the centre grows and its role develops

Some of this philosophy is summed up by Mr Chaskalson in his report

Lawyers, he says, "are uniquely placed to play a creative role in social progress

"To do so they must involve themselves not only in the concerns of the rich who have been their traditional clients, but also in the affairs of the poor"

Young people entering the profession, he contends "are particularly well-placed to assume a responsibility in providing legal services in the public interest They have the idealism and the energy which are important attributes for the work and also by virtue of their youth, possibly a greater freedom to think and act in new ways than older practitioners might have

"Ways must be found of incorporating these talents and ideals into conventional legal practices"

He has no time for those who claim that "this type of work should be done for charity, as it were, by young lawyers in their own time outside of office hours" Any such claims need "to be discredited"

"Such ideas have no place in a legal system which aspires to provide services to all sections of the community and not only to the rich."

"Cases affecting the public interest should be seen as being worthy of the attention of the leaders of the profession and not as acts of charity to be performed by young lawyers in their spare time"

Mr Chaskalson argues for the important role of law schools in providing an opportunity for young lawyers to become involved in "socially rewarding work"

"The establishment of law centres is one way of coming to terms with these problems But other ways must also be found of mobilising the profession to meet the needs of the community and it would be appropriate for the three branches of the profession — the attorneys, the Bar and the teachers of law — to meet and decide upon the means and methods of doing this

The urban poor, he says, a steadily growing and essentially black community "have to contend with intricate rules and relationships which affect their day-to-day lives They are often ill-equipped to handle this task alone for ignorance and illiteracy are products of poverty

"The feelings of helplessness, resentment and ultimately anger, generated by exploitation and over-reaching or by intricate statutory controls which inhibit and constrain an individual's freedom are ignored by any society at its peril"

It's a grim and realistic warning But the LRC at least will be able to say that it made a start

DEPARTMENT OF JUSTICE

No R 2527 5 December 1980

RULES REGULATING THE CONDUCT OF THE PROCEEDINGS OF THE SEVERAL PROVINCIAL AND LOCAL DIVISIONS OF THE SUPREME COURT OF SOUTH AFRICA

The Chief Justice of South Africa, after consultation with the Judges President of the several divisions of the Supreme Court of South Africa has, in terms of section 43 (2) (a) of the Supreme Court Act, 1959 (Act 59 of 1959), with the approval of the State President, made the following amendments to the rules regulating the conduct of the proceedings of the provincial and local divisions of the Supreme Court of South Africa, promulgated under Government Notice R. 48, dated 12 January 1965

The substitution for rule 68 of the following rule

"TARIFF FOR DEPUTY SHERIFFS

68 (1) The fees and charges contained in the appended tariff shall be chargeable by and allowed to deputy sheriffs Provided that no fees shall be charged for the service of process in *in forma pauperis* proceedings (but the necessary disbursements for the purpose of such service may be recovered) Provided further that the maximum fees and charges chargeable by and allowed to deputy sheriffs under paragraph 5 (c) (xiv), 5 (d) (i), (vi), (vii), (viii) or (x) of the said tariff shall be R50 000

(2) Where there are more ways than one of doing any particular act, the least expensive way shall be adopted unless there is some reasonable objection thereto, or unless the party at whose instance process is executed desires any particular way to be adopted at his expense

(3) Where any dispute shall arise as to the validity or amount of any fees or charges, or where necessary work is done and necessary expenditure incurred for which no provision is made, the matter shall be determined by the taxing officer of the court whose process is in question

TARIFF

1. For registration of any document for service or execution, upon receipt thereof 60c

2 For service, or attempted service, of summonses, petitions together with notice of motion or notice of set down, notices, orders or any other documents, each R5

Provided that—

(i) whenever any document to be served with any such process is mentioned in the process or forms an annexure thereto, no additional fee shall be charged for the service of such document, otherwise a fee of R3 may be charged in respect of each separate document served,

(ii) an attempted service of more than one document on the same person shall be treated as an attempted service of one document only, and

DEPARTEMENT VAN JUSTISIE

No R 2527 5 Desember 1980

REELS WAARBY DIE VERRIGTINGS VAN DIE VERSKILLENDE PROVINSIALE EN PLAASLIKE AFDELINGS VAN DIE HOOGGEREGSHOF VAN SUID-AFRIKA GEREEL WORD

Die Hoofregter van Suid-Afrika het, na oorlegpleging met die Regters-president van die onderskeie afdelings van die Hooggeregshof van Suid-Afrika, kragtens artikel 43 (2) (a) van die Wet op die Hooggeregshof, 1959 (Wet 59 van 1959), met die goedkeuring van die Staatspresident, die reels waarby die verrigtings van die provinsiale en plaaslike afdelings van die Hooggeregshof van Suid-Afrika gereel word, afgekondig by Goewermentskennisgewing R 48 van 12 Januarie 1965, soos volg gewysig

Die vervanging van reel 68 deur die volgende reel

'TARIEF VIR ADJUNK-BALJU'S

68 (1) Die gelde in die onderstaande tarief kan deur adjunk-balju s gevorder word Met dien verstande dat geen gelde gehef word vir die betekening van pro sesstukke in *in forma pauperis*-verrigtinge nie behalwe die nodige uitgawes daaraan verbonde Met dien verstande verder dat die maksimum gelde wat deur adjunk-balju's ingevolge paragraaf 5 (c) (xiv), 5 (d) (i), (vi), (vii), (viii) of (x) van bedoelde tarief gevorder word, R50 000 is

(2) Waar 'n besondere handeling op meer as een wyse kan geskied, moet die goedkoopste manier gevolg word tensy daar redelike beswaar teen is of tensy die party ten behoewe van wie prosesstukke uitgevoer word, op eie koste 'n bepaalde wyse verkies

(3) Geskille oor die opeisbaarheid of omvang van enige gelde of koste, en vergoeding vir noodsaaklike werk en noodsaaklike uitgawes waarvoor geen voorsiening gemaak is nie word beslis deur die takseermeester van die hof waarvan die prosesstukke uitgegaan het

TARIEF

1 Registrasie van 'n dokument vir betekening of tenuitvoerlegging by ontvangs daarvan 60c

2 Betekening of gepoogde betekening van dagvaardings, petisies tesame met kennisgewing van mosie of van terrolleplasing, ander kennisgewings, bevele of enige ander dokumente, elk R5

Met dien verstande dat—

(i) wanneer 'n dokument saam met 'n prosesstuk beteken moet word en in die prossestuk genoem word of 'n aanhangsel daarvan is, geen addisionele gelde gevorder mag word vir betekening van die dokument nie Origens mag R3 gevorder word vir elke afsonderlike dokument wat beteken word;

(ii) 'n gepoogde betekening van meer as een dokument aan dieselfde persoon beskou word as 'n gepoogde betekening van slegs een dokument, en

'Magistrates capable of hearing murder cases'

8/12/80

By David Breier
Pretoria Bureau

Many murder trials are heard by regional court magistrates under the guise of culpable homicide cases, a Pretoria regional magistrate said today

Mr C F Klopper was addressing the Hoexter Commission, which is examining the structure and functioning of the courts.

But he said the intermediate court — falling between the present magistrate's and supreme court should not have the power to pass the death sentence

He said that regional court magistrates already effectively heard murder cases under the "mantle of culpable homicide cases," and so such cases were not beyond the capabilities of magistrates.

Mr Klopper said that the Supreme Court, while considering whether or not to impose the death sentence, should also have the right to alter the verdict of the intermediate court.

He asked for the Intermediate Court to have a jurisdiction in civil cases of up to R20 000

Mr Klopper said the intermediate court should not fall under the Civil Service, but should have the same independent status the juridiciary enjoyed

This would erase the stigma which might be attached by the public to members of the Civil Service who were sometimes thought to be prejudiced in favour of the State.

Mr Klopper also said that all judicial officers from district magistrate upwards should be called "judges" as this was the practice internationally

He said the use of the word "magistrate" and "landdros" in Afrikaans to denote judicial officers was historically incorrect

He also called for higher pay for judges and other judicial officers in order to make them financially independent

Commission told of 'little Hitlers' in closed courts

252
SCAR
9/12/80

By David Breier
Pretoria Bureau

Johannesburg maintenance court magistrates had been described as "little Hitlers," the Hoexter Commission heard yesterday

This was said by a Johannesburg man, Mr D J L McWhirter, who has been through the mill of the divorce and maintenance courts for some time

Mr McWhirter was addressing the Hoexter Commission which is examining the structure and functioning of the courts

He said that maintenance courts operated in camera and the Press was not allowed to attend

"The magistrates in the maintenance court have been described to me as 'little Hitlers'," he said

He added that once they were in a court closed to the public, they could do what they liked

Judges who acted in public courts behaved differently, he said

Mr McWhirter pleaded for a new family court to which any family cases could apply when their problems began to escalate.

He proposed that this court be open to the Press which should not be allowed to report names or the financial standing of the parties concerned

However the Press should be allowed to report all other details, he said

This court should have the power to determine divorces, at present the prerogative of the Supreme Court, as well as matters dealt with at magistrate level such as maintenance

Mr McWhirter said the family court should have three people on the bench on a rotation basis

Call for magistrates' independence

A Pretoria regional court magistrate has called for all magistrates to be separated from the public service as is the case with judges

The magistrate, Mr C F Klopper, was addressing the Hoexter Commission examining the structure and functioning of the courts

Mr Klopper proposed all judicial officers, including those in the proposed intermediate courts, be separated from the public service

He said the public sometimes believed judicial officers as civil servants were prejudiced in favour of the State

"As long as we remain in the public service, the public will continue to label us," he said

Mr Klopper proposed higher pay for judicial officers to make them financially independent and free from possible bias on the Bench

Mr W F Krugel, Chief Magistrate of Pretoria, said statistics showed local magistrates dealt with 98 percent of trials in the city Of these only 0,085 percent of cases went on appeal, he said

This showed the high quality of work done by magistrates, he added.

GENERAL NEWS

9/12/80

Judge-President calls for 'expert' court body

252 STAR

By David Breier, Pretoria Bureau

The Judge-President of the Transvaal today publicly criticised aspects of court administration and called for a secretariat of experts to take over administration of the Supreme Court

Mr Justice W G Boshoff, told the Hoexter Commission that

- Department of Justice officials had asked him to motivate requests for books needed for court work
- Docks in the new Supreme Court building in Johannesburg had been built without doors.
- There was a serious shortage of interpreters in the Supreme Court
- The quality of work done by Transvaal judges was affected by their heavy work burden

"It is shocking when you ask for a book at the Department of Justice and you are asked to motivate why you need the book," Mr Justice Boshoff said.

The commission is investigating the structure and functioning of the courts

Mr Justice Boshoff said that officials in the Department of Justice and the public service were not always expert of the needs of court administration

When he asked the Department of Justice to provide Supreme Court interpreters he was told there was not enough money

Mr Justice Boshoff said the proposed secretariat should operate on its own budget and should be manned by "technical people who know courts".

The secretariat should have a say on the salaries of court officials and provide inspectors for magistrate's courts

The Judge President pleaded for higher salaries for judges and magistrates

He also pleaded for more judges for the Transvaal which at present had 30 judges who were expected to perform a major portion of the country's Supreme Court work

- **Page 9: Commission told of "little Hitlers" in closed courts**

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...allies, now enemies, in the various conflicts that flared in the period 1890 to 1910 all over British Africa. More often than not, when such studies were offered to men of political action, the ethnographers were simply rebuffed.

A good example is furnished by the South African War of 1899 to 1902. Soon after the war against the Boers of the Transvaal Republic had begun, the Royal Anthropological Institute and the Folklore Society made urgent representations to the Minister of Foreign Affairs, Joseph Chamberlain, to allow "at least one person, unconnected with South Africa, of recognized eminence in the study of savage customs and superstitions," to be appointed to study all parties to the conflict, White and Black alike. The report said that, since the natives did not "tend to die out in consequence of contact with Europeans," but "on the contrary (were) prolific, and hence likely to remain a permanent element of the population," they must be studied "as soon as the condition of the Transvaal and Orange River Colony permits, and prior to any legislation affecting the natives". This was thought to be especially important, not because the natives were in danger of losing land and political independence, but because, although they were "in a somewhat advanced social state", contact with Europeans tended to "break up their organization, (and) to destroy their customs." The issue, in other words, was a moral one. The ethnologists meeting in London in 1900 were more seriously exercised by "contact", levels of "social State', and "destruction of customs" than with the effects of combat. This in itself is unremarkable, but it serves to illustrate once again that warfare sets men to thinking of the trajectory of morality more than that of lethal projectiles. J.L. Myres (1929 41) in narrating this history of the British Anthropological establishment's attempts to offer its services, concludes, "But Mr. Chamberlain was too busy."

-In-

Judges on commissions with political links queried

Argus Correspondent

PRETORIA — A South African legal expert has sharply questioned the appointment of judges on commissions that may have political undertones

Professor Ellison Kahn, deputy vice-chancellor and honorary professor of law at the University of the Witwatersrand, has also criticised the appointment of a judge as Acting Advocate-General.

In an article in the latest edition of the official publication of the Department of Law of the University of Pretoria, he says that a judge's political values may find full expression in the report of a commission of which he is a member Not only does this lay him open to controversy off the Bench, but he returns to the Bench with an expressed political outlook.

Professor Kahn says the judiciary should not be used to shield, protect or enhance the standing of members of the Cabinet A judge should not be asked to conduct inquiries to clear a member of the Cabinet's name, when a 'mere denial in Parliament would have sufficed.'

'It is part of the tribute to our judges' very reputation for impartiality, integrity and capacity to ascertain the true facts that they are often sought for work off the Bench, but, the more they undertake to do it, the less they will be considered suitable to do so,' he says.

'Judges should keep a low profile,' he says, referring to their extra-judicial activities.

Professor Kahn says that the appointment of judges to extra-judiciary positions has also been criticised in Australia and America One of the reasons is the increase in the backlog of cases, caused by the absence of a judge from the Bench.

Of the 102 judges on the Bench in this country, about 90 had or have been a member of a commission of inquiry as chairman.

In a footnote to his article, Professor Kahn mentions that in 1978 to 1979 nearly R500 000 was spent on commissions of inquiry, according to the Auditor-General's report

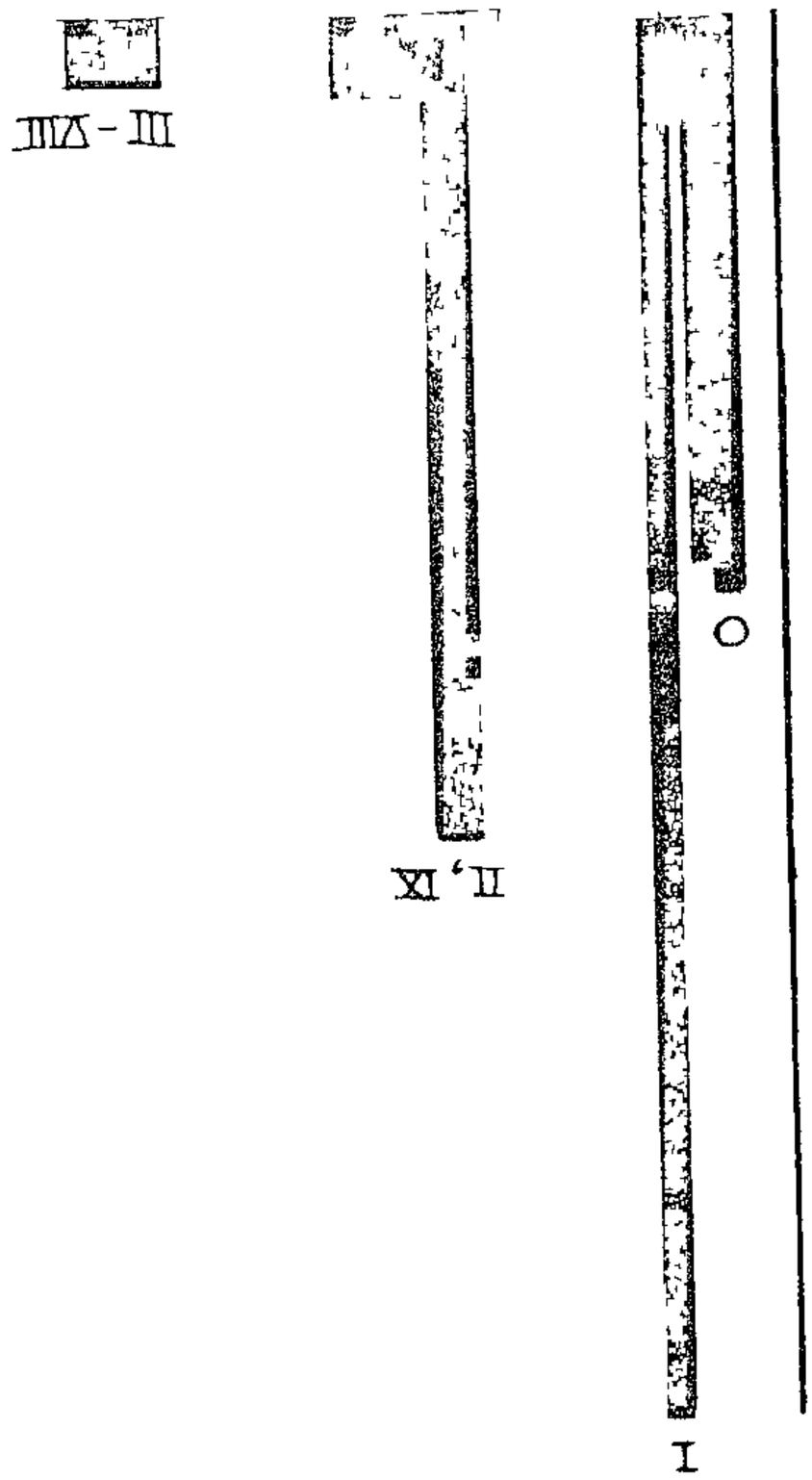


FIGURE 1: DISTRIBUTION OF INCOME AMONG AFRICANS 1976

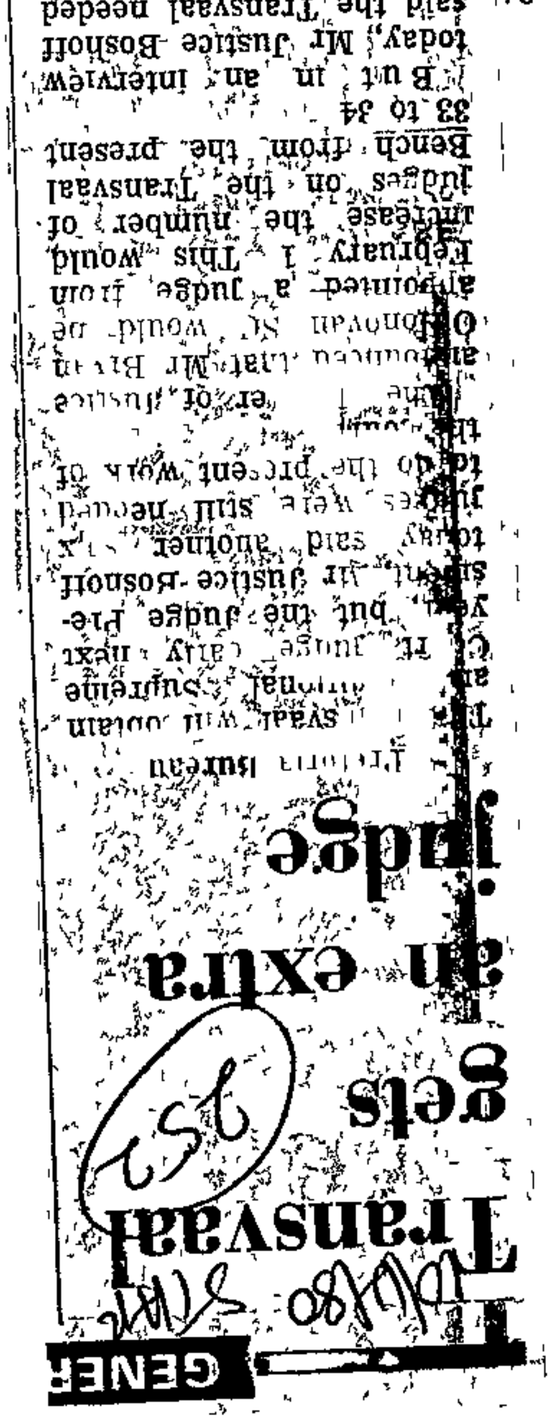
DEAL SALES (PTY) LIMITED - BALANCE SHEET (continued)

The company is in arrear with the dividends amounting to R2 000 payable to preference shareholders for the period 1 July 1979 to 31 December 1979.

2. Investments	No. of Shares	Cost or Value	Market Value	Directors' Valuation
Listed				
Scuppa Limited	5	5	375	
Unlisted				
Duppa (Pty) Limited	0	0		900

3. Stock

Stock amounting to R22 00 is valued at the lower of first in first out cost or net realisable va



NOTE :

MARKETING RESEARCH 1, which replaces Economic Statistics, consists of

(a) Survey Design (Semester 1)
and (b) Analytical Techniques (Semester 2)

MARKETING RESEARCH 11 consis

(a) Advanced Analytic emester 1)
and (b) Experimental Desi lding (Semester 2)

ION
NESS SCIENCE

28th July, 1980
JDH/ms

Many quit, so courts in trouble

West Rand Bureau

Magistrates' courts on the West Rand are facing a severe staff shortage in the New Year because of a spate of resignations by prosecutors and officials

Krugersdorp Magistrate's Court has been hit the hardest, senior officials said yesterday One criminal court at Krugersdorp has had to close down for indefinite periods and was out of operation for a month recently.

The situation had since improved and the court was now operating on a regular basis, a spokesman said.

"However, it would not be incorrect to describe the overall situation as critical," he said.

Senior prosecutors at other West Rand courts have had to act as magistrates because of the staff shortage, which also extends to administrative staff

The situation is expected to worsen in the New Year, when resignations come into effect

One court official said low salaries were forcing experienced prosecutors to join legal firms, where they were able to earn up to twice as much as in the Department of Justice

"Teachers are always complaining about their profession and it seems the child who complains gets the sweets. Compare their pay increases with ours," the official said.

Apartheid signs that could bring down a court

4/12/80 STIMES

252

By GEORGE MAHABEER

A MAGISTRATE says he would like to remove racially discriminatory signs in his court but is afraid "the building will fall down" if he did so

Unlike many other courts in South Africa, petty apartheid is still applied at the court in Port Shepstone, on the South Coast

Mr L Streicher, chief control magistrate, said this week that he had been surprised to see that the signs had not been removed

"I cannot take them down, as it may cause the building to fall down

"The court seems to have been built before the Anglo-Boer War and is in a dilapidated condition

"The Public Works Department is expected to renovate the building soon, and I expect it to take down the signs," said Mr Streicher

Mr L H Knaggs, regional representative of the Durban branch of the PWD, said he had a standing instruction from the Department of Justice to remove all apartheid signs

"The removal of the offending signs will be done when we renovate the building next April. The renovation is on our programme," said Mr Knaggs.

He said it was the department's policy to remove discriminatory signs at all buildings when they did repair and renovation work.

'Relics'

When I visited the court this week, I found that, although apartheid was not being actively enforced, people were obeying "whites" and "non-whites" signs.

The building's apartheid measures included signs at the entrance instructing blacks and whites to use different doors to enter the courts.

Outside, other signs direct racial groups to their respective entrances Inside the courts, high partitions separate the two groups.

Toilets are also separated.

An attorney told me. "We don't take notice of the signs, but the public do follow them My colleagues and I would like them scrapped, as it is an embarrassment."

Another attorney said he was shocked that the signs had not been removed

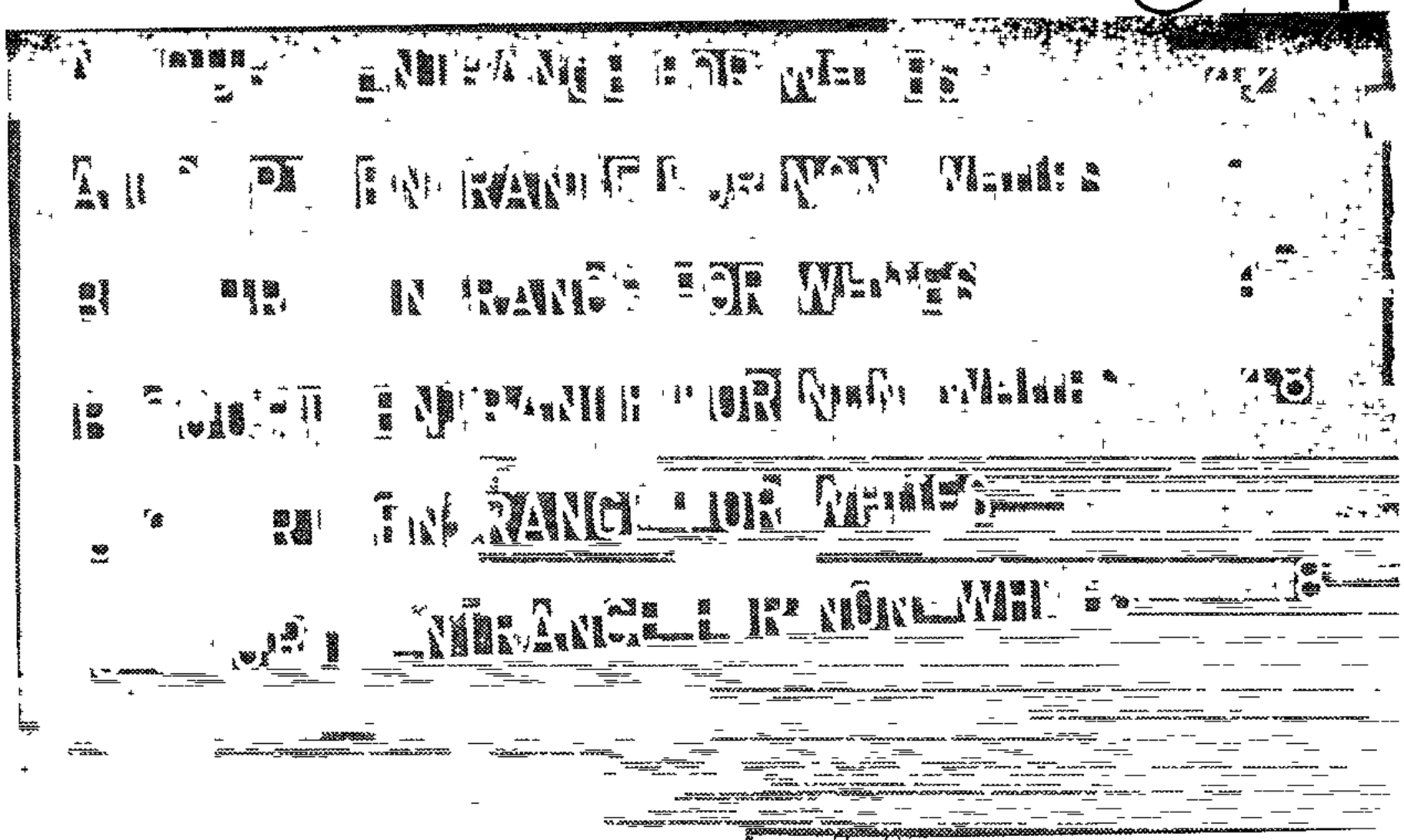
"The Prime Minister, and other Ministers, have recently been outspoken about petty apartheid. But it seems that this South Coast town is slow," he said

In 1977, petty apartheid signs were removed by the PWD from the corridors of Johannesburg, Durban and Alberton magistrates' courts.

A chief Johannesburg magistrate described the signs at the time as "antiques".

An Alberton magistrate said the signs were a relic of the past and, to prove it, he removed them personally.

In Durban, signs were hastily removed shortly after the opening of the new magistrate's court in Somsteu Road.



Offending signs at Port Shepstone magistrate's court

14-12

PUBLIC SECTOR - GOVT. JUSTICE

3 JAN. 1981 — 11 DEC. 1981

TIME FOR SOCIETY

PETTY offenders should not become prison statistics. This is the opinion of judges, magistrates, academics and civil servants, who advocate an alternative to prison and reformatory sentences in certain cases.

By KERI MOLLOY

In an experiment to impose sentences of community service six convicted people have been placed in organisations in Cape Town where they are paying for their crimes by working for society instead of serving terms locked up in institutions.

Organisations implementing the scheme are Nicro (the National Institute for Crime Prevention and the Rehabilitation of Offenders) and the Department of Social Welfare and Pensions.

Such schemes are already under way in America and Britain.

South African law — Section 297 of the Criminal Code — makes provision for 'the rendering of some service for the benefit of the community' but there are difficulties in implementing this section.

'There are too few welfare facilities, staff and a lack of awareness at court and public level, according to Miss Justice Leo van den Heever, who has urged the public to become involved to make the idea workable.

SCREENED

'I have come across very few occasion in which any attempt has been made to use the powers given the courts under this section,' she said.

In recent months, six carefully screened offenders have been placed in community service in Cape Town. Aged between 17 and 62, white and coloured, their convictions were for drunken driving, housebreaking and theft.

They have been placed at St John's Ambulance, the NSRI, home for the aged, an institute for the handicapped, Nicro and with a minister of religion.

The average sentence is 200 hours, 'several' during weekends and in the evenings.

FIRST-AID

An offender placed with St John's Ambulance has been trained in first-aid and is now a member of the organisation.

Mr Justice J J Fagan, of the Cape Supreme Court, claims South Africa tops world prison population figures with 440 in every 1 000 people being in prison.

LINKS

He agrees with Miss Justice van den Heever that the problem lies in lack of facilities and manpower. He says 'I would welcome links between the courts and community centres.'

Author of a paper, Alternatives to Traditional Incarceration, Mrs Linda Küpper-Wedepohl of the Institute of Criminology at University of Cape Town, says the effectiveness of prisons and reformatories in rehabilitating offenders, especially juveniles, has been questioned in several countries.

Offenders are taught to adapt to the rules and regulations of the prison or reform school system and to the criminal subculture of fellow inmates, not to life in society, she says, and claims that a high percentage of juvenile offenders who serve his time by doing something useful, it can only benefit him, his family and the community. He shows no sign of resentment and I think it is proving successful. We would be happy to accept other people referred to us, providing we know the crime.'

Mr Justice J J Fagan

Cape Town branch director of Nicro Miss Linda Christiansen says she sees the experiment as a challenge that could have very positive results.

A spokesman for the Department of Social Welfare and Pensions agreed. 'We must look to alternatives for a more positive solution that will improve the chances of rehabilitation and at the same time help the community and be more economic for the State.'

A member of the department, who has researched the subject, said funds, a full-time co-ordinator to oversee the screening of offenders, more supervisors and more comprehensive legislation were needed.

CLARIFIED

There is a problem of interpretation. The law as it stands should be clarified — particularly regarding juveniles — and regulations are needed to safeguard the offender, the organisation involved and the State,' he said.

Initial stages of the project had been positive. 'The alternative to prison has helped create a social purpose, lacking in the typical offender, and has alleviated guilt feelings. It's wrong to imprison people who show remorse.

'Some people think our alternative is a soft option.

'It's not.

'We need a change of attitudes and education into the benefits. The idea must be sold to society as it has been in Britain,' he said.

HESITANT

He said some agencies were hesitant to accept offenders but their fears of difficulties arising were unrealistic.

'The placements are carefully screened,' he assured.

Rotary has volunteered their help in finding agencies willing to join the project. Director of Nicro, Mr J V Pegge said he felt it was so valid that he envisaged the appointment of a full time co-ordinator.

252

For immediate release on 10 February 1981

PRESS STATEMENT by the Secretary to the Commission of Inquiry into the Structure and Functioning of the Courts.

The Commission of Inquiry into the Structure and Functioning of the Court will sit on the dates and at the times and place respectively stated hereunder in order to hear certain interested parties who have so far indicated a wish to make representations in person to the Commission.

DATE	TIME	PLACE
12.2.1981	09h00 - 17h00	CONFERENCE ROOM 7th FLOOR VERITAS BUILDING VOLKSTEM AVENUE PRETORIA
13.2.1981	09h00 - 17h00	CONFERENCE ROOM 7th FLOOR VERITAS BUILDING VOLKSTEM AVENUE PRETORIA

Those intending to make representations in person before the Commission have not yet conveyed such intention to the Commission, are urgently requested to communicate forthwith with the Secretary of the Commission, Private Bag X81, PRETORIA, 0001 (TELEPHONE 264567 or 282931 x 154)

RELEASED BY THE DEPARTMENT OF FOREIGN AFFAIRS AND INFORMATION AT THE REQUEST OF THE SECRETARY TO THE COMMISSION OF INQUIRY INTO THE STRUCTURE AND FUNCTIONING OF THE COURTS.

PRETORIA
10 February 1981

ARCHITECTURE
(Continued)

Mrs. Thornton White Prize
For the best work in first year.
Miss M F J Sandilands

S A Brick Association Prize
For the student who has made best use of bricks in his design work.
J G Kirkman

R Stubbs Award
For the best project in structure and design.

M.D.J.

First Year
J A L Chapman

Second Year
C S Jones

Third Year
B de Jong

Justice on verge of collapse, says State prosecutor

Court chaos: guilty freed

252 STAR 13/1/81

By David Breier, Pretoria Bureau

Criminals are going free at the Johannesburg Magistrate's Court as the city's administration of justice threatens to collapse in chaos.

This was said today by Mr A P de Vries, the senior State Prosecutor at the Johannesburg Magistrate's Court, when he gave evidence to the Hoexter Commission in Pretoria.

The commission is examining the structure and functioning of the courts.

"The crisis caused by an alarming shortage of qualified prosecutors, has resulted in many guilty people being acquitted," said Mr de Vries.

"If there is not a very drastic salary increase, I predict an exodus which will lead to chaos," he added

Mr de Vries said that more than 60 percent of district court prosecutors and 39 percent of regional court prosecutors had court experience of a year or less

He added that this inexperience meant prosecutors were unable to cross-examine properly and many cases were postponed, meaning that another prosecutor who had not heard the original evidence took over the case

Magistrates were forced to enter the arena and to cross-examine on behalf of the prosecutor, he said

Mr de Vries said resignations from Johannesburg were so great that the Department of Justice had ordered that no more prosecutors from outside were to be transferred to Johannesburg.

This was because many people sent to Johannesburg resigned because of the high cost of living in the area

He pointed out that a young prosecutor with a degree earned only R5 070 a year.

Even those with families had often had to live in hotels as they could not possibly afford houses, and family life was suffering as prosecutors had to work at night on numerous occasions.

Collapse

Mr de Vries said another new directive from the Department of Justice was that unqualified prosecutors should not be permitted to prosecute.

"At the moment we have about 21 of them and if they are removed, the whole place will collapse," he said. He added that this directive had not yet been implemented and if it was it would be "disastrous" for the courts

In the past two months 19 prosecutors had resigned and another five had already resigned this month

In one instance, said Mr de Vries, a Johannesburg person who laid a charge of robbery found himself accused of robbery by mistake

He gave this case as an example of the "shambles" that sometimes exists due to the shortage of experienced prosecutors.

He added that due to inexperience, the prosecutors often persisted with cases which had long collapsed

The serious shortage even extended to the Regional Court which has the power to jail people for up to 10 years

● **Page 11 — Criticism a feature of inquiry into courts.**

Criticism a feature of inquiry into courts

By John Murray

Strong criticism of the South African judicial system has punctuated proceedings of the Hoexter Commission of Inquiry into the structure and functioning of the courts which reopened in Pretoria yesterday.

The hearings opened in November, went into recess over the holidays, and have now resumed.

Among the criticisms last year, the most severe came from Mr Justice Didcott of the Natal Bench

"Parliament has the power to pass the statutes it likes and there is nothing the courts can do about that The result is law," he said

"But it is not always the same as justice. The only way Parliament can ever make legislation just is by making just legislation."

Criticising the system of maintenance, child and juvenile courts, Mr Justice Didcott told the commission family courts should be created to perform their duties.

He said the same courts could handle divorces where the Supreme Court acted as a mere rubber stamp unless a case was opposed or a child was involved.

● Senior Johannesburg State Prosecutor Mr A P de Vries said in his evidence that "justice has been wiped out" by a situation that had critically worsened in the last few years

Inexperienced prosecutors had combined with a police shortage to intensify the poor quality of prosecutions

He blamed poor salaries and an erosion of status, showing that a bus driver could earn more than a prosecutor.

● Professor Francis Bosman told the commission "too many social problems are dealt with as crimes" by juvenile courts Many petty thefts by black children were motivated by extreme hunger, she said A total of 90 percent of those appearing in juvenile courts were unrepresented

Where parents could not be traced, black backup services fell far short of those for whites.

● A former defence lawyer, Mr Norman Patterton, told of "savage sentences" and "fatal irregularities" in South African Defence Force trials

● Mr Justice Friedman, for the Cape Provincial Division of the Supreme Court, said personnel shortage would make intermediary courts being investigated impractical

● Former Cape Attorney-General, Mr E O K Harwood, said the proposed new courts could mean 75 additional magistrates' posts in Cape Town and the Reef alone.

● Windhoek lawyer Mr A Vaatz said these courts would be a lot cheaper than the Supreme Courts, which had effectively priced themselves out of the market

Intermediary courts would cost a third of the R3 000 charged now for a Supreme Court application and the minimum R10 000 for a trial

● "Little Hitlers" presiding over in camera maintenance courts were described by Mr D J L McWhirter who had had experience of them and of divorce courts for a long time He called for family courts open to the Press as long as no names or details of financial status were reported

The Hoexter Commission findings are expected to be published about May.

Varsity Latin law course a bluff, says deputy A-G

Pretoria Bureau

A one-year Latin course for law students at university was "a bluff" the Deputy Advocate-General, Mr J C Ferreira said yesterday

Mr Ferreira is a member of the Hoexter Commission which is examining the structure and functioning of the course

The remark was made during yesterday's sitting in Pretoria when Professor W J Hosten, Dean of the Faculty of Law at the University of South Africa, addressed the commission and explained why Unisa had made a Latin I course optional for the LLB degree instead of compulsory as in the past

He said Latin was not necessary for all branches of the legal professional although it was necessary for advocates

He said a Latin I qualification was not enough for a student to be able to read the Latin Law writers and that a least Latin III was necessary

Mr Ferreira then said that the reason given for including Latin I in LLB courses was so that students could read Latin law texts

DEVALUED

"That means Latin I is a bluff," Mr Ferreira said

Unisa's decision to make Latin optional had aroused fears that the degree would be devalued

But Professor Hosten denied this and said students could take other courses such as Modern Languages and that some universities recognised a preliminary course in Latin as sufficient

Professor Hosten also said magistrates who wished to improve their qualifications, had been discouraged in the past from taking an LLB because of the compulsory Latin course

Now they were able to improve their qualifications without having to take Latin, he said.

Professor Hosten added, however, that he believed law students with ambitions should still study Latin and that judges on the highest Bench should be able to read Latin law authority

Your rights under proposed new law

Many people getting married today wonder, as they deliberate about signing an antenuptial contract, when a new matrimonial property law will come into being. When it does, what could be some of its implications? Women's Page spoke to experts on the matter.

By SUE GARBETT

Speculation about whether the draft Bill to amend the matrimonial property law will come before Parliament this session is mounting as the opening of Parliament draws nearer

It seems, however, that the Bill which was hailed as a "charter of women's rights" when it was published in the Government Gazette in November 1979 will not make an appearance this session

Mrs Helen Suzman, MP who has followed the progress of the Bill with great interest, said that according to the Department of Justice it was unlikely to come up this year

"This is because the SA Law Commission has still to publish its re-draft of the Bill," said Mrs Suzman

"I think it is a pity that these very important changes to the social structure of South Africa are taking so long to introduce Many women's organisations are waiting anxiously for the introduction of the new matrimonial system," said Mrs Suzman

Benefits

Under the proposed new marriage regime, women would enjoy many benefits of which they are now deprived

These include

The abolition of the marital power This includes

2 With an antenuptial contract subject to the accrual system Here parties share all the assets acquired during the marriage but keep their own property

3 With an antenuptial contract which excludes the accrual system. Here a woman who has no property of her own can end up with nothing

The accrual system is the one which the Women's Legal Status Committee says it would like to see become the automatic system of marriage, "and not Community of Property which is the present case," said Mrs Babette Kabak, co-convenor of the WLSC

The abolition of the marital power could have far reaching effects and is considered the most contentious section of the draft Bill

However in spite of it, the husband's position as head of the household is still maintained when it comes to domicile and guardianship

changing the law, why not make a clean sweep of it?" she asked

Mrs Nathan said the new Bill regulated marriages in community of property

"It gives spouses equal powers For example, before selling immovable property (a house) either spouse has to obtain the written consent of the other"

The new Bill also makes it possible for the first time for the matrimonial property regime to be changed by the court if the husband and wife make joint application showing sound reason for it and provided it does not prejudice anybody else

Professor June Sinclair of the Wits Faculty of Law, said she did not think this would help those women already married with the standard form of antenuptial contract, who can be disinherited or inadequately provided for on divorce

"It is the JOINT application part that kills it," SA Courts here should have the residual power to override the matrimonial regime if they find it is causing hardship This is the case in the United Kingdom, in Australia and in some states in the US If it works there, why not here?"

Mrs Nathan said that the PRESENT marriage laws work harshly for the woman married in community of property because she loses her full legal status and as far as the woman married out of community of property is concerned, it works unfairly because she doesn't share in the gains of the marriage

"But black women suffer worst of all Under our present law they are automatically married out of community of property, but they are also subject to the marital power," said Mrs Nathan

Professor Sinclair said she was fairly sure the effect of the draft Bill would be to abolish the

crual regime

Mrs Carmen Nathan, senior lecturer in law at the University of the Witwatersrand said that much of our present marriage law was based on ideas that, "made sense 100 years ago, but which are not realistic today."

Under the proposed new law there are three ways of getting married

gets to Parliament and that it remains unchanged in our male dominated Parliament," said Mrs Nathan

Joint

She said it was a pity that guardianship was not shared equally between parents Mrs Kabak agreed "We feel in this day and age with women too being financially res-

ly take a step backwards

"We've lost the ability to compel a generous settlement because of the no-fault divorce law The household necessaries amendment of 1976 deprived us of the bargaining power we had with this section

Rigid

"I'm not complaining

system which she felt could be interpreted to exclude blacks

Mrs Nathan and Mrs Kabak said the new law was worth waiting for if it was going to be a good law for everybody

"But point out that we will have waited until the mid 1980s to modernise our marriage laws when the rest of the Western world did so some time

Staff crisis threatens the courts

14/11/81

STAR. 252

By John Murray and Rashid Chopdat

The administration of justice is threatened with disruption as the national staff shortage which is crippling the teaching and nursing professions spreads to the courts, say officials

And Transvaal's attorney-general, Mr J E Nothling SC, Johannesburg's chief magistrate, Mr J A van Dam, and two leading Supreme Court officials have backed a call for drastic salary increases to avoid a collapse

The call was made by Johannesburg's senior State prosecutor, Mr A P de Vries, to the Hoexter Commission of Inquiry into the structure and function of the courts

Mr de Vries said "An alarming shortage of qualified prosecutors has resulted in guilty people being acquitted

"If more regional prosecutors resign we might just as well close our doors"

Mr Nothling said: "There is a serious shortage and I have been forced to ask the Department of Justice and the Commission for Administration (formerly the Public Service Commission) to take steps to alleviate the situation"

He said there was difficulty staffing courts and this caused long delays in the tabling of cases

"But we are still doing the job," he insisted

He said there was a "regular, large number of resignations" from staff attracted to the more lucrative private sector

For the first time Mr van Dam disclosed there was a shortage of magistrates and prosecutors but declined to give details.

"There is also an increasingly grave shortage of vital administrative personnel and court interpreters," the chief magistrate said

He endorsed the call for higher pay and said staff was working at half strength and long after hours

But he denied that the course of justice had collapsed

The head of the Supreme Court commercial section, Mr M T van der Merwe, SC, said that the problems described by Mr de Vries also applied to his branch as well

Deputy attorney-general Mr I P McNalley SC, heading the Criminal Section, agreed that private sector salaries were three to four times higher than those offered by the A-G's department.

But, he said, turnover was not serious and the staff situation was reasonably stable

Brigadier Theuns Swanepoel, Acting Divisional Commissioner of Police for the Witwatersrand, would not comment on the Department of Justice's problems "They have their problems and we have ours"

Commission won't comment

Pretoria Bureau

The Commission for Administration today refused to comment on low salaries earned by prosecutors — salaries which have resulted in a drastic staff shortage, particularly in Johannesburg courts

A spokesman said the commission could not comment on whether prosecutors would receive pay increases this year or whether they would receive special allowances for moving to the more expensive cities

Johannesburg's Senior Prosecutor, Mr A P de Vries, said this week the prosecutors could not afford the high cost of living in Johannesburg on their low salaries.

Newly qualified people with law degrees start at R5 070 a year

Charges against magistrates rejected

Pretoria Bureau

Pretoria's Regional Court president, Mr M J Prins, today rejected charges that magistrates were influenced by the State.

Mr Prins, who presided over the Steve Biko inquest, today addressed the Hoexter Commission which is examining the structure and functioning of the courts

Mr Prins said that "John Citizen" had been led to believe that magistrates who were public servants, were influenced by the State

He suggested that to end this unjustified criticism, magistrates should be made independent of the Public Service so that they could be seen by the public as being separate from the State

PLEA

Mr Prins's proposal to separate the magistracy from the Public Service comes after similar suggestions to the commission during the past few months

Mr Prins pleaded for the existing Regional Court to be given greatly increased jurisdiction in civil cases and he predicted that regional magistrates would acquit themselves well in civil matters.

NO NEED

Mr Prins said he saw no need for separate ethnic courts for blacks and added magistrates would be able to preside over these, as they had in the past

Ethnic courts were now run by local commissioners for Co-operation and Development

ARCHITECTURE
(Continued)

Mrs. Thornton White Prize
For the best work in
first year.

Miss M F J Sandilands

S A Brick Association Prize
For the student who has made
best use of bricks in his
design work.

FINE ART & ARCHITECTURE

ARCHITECTURE

Cape Provincial Institute of Architects' Prize
For the best student in :-

Sixth Year

P F Dunckley

Helen Gardner Travel Prize
For a student who has satisfactorily completed 1st, 2nd and 3rd major courses.

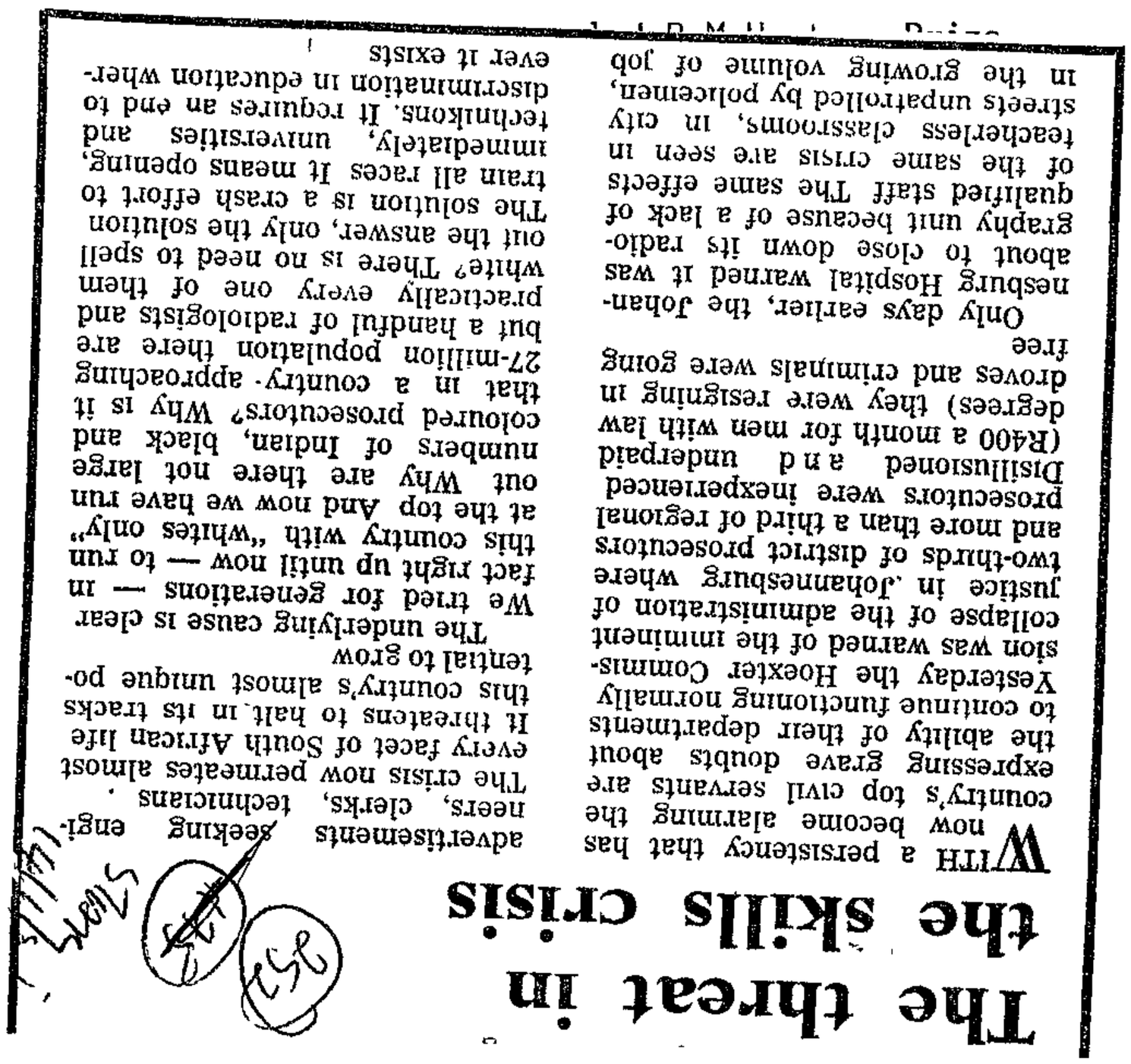
P A Rappoport

Molly Gohl Memorial Prize
For the best woman student in third year.

Miss C Tredgold

David Haddon Prize
For the best student of Architecture (or Quantity Surveying) in the subject of Professional Practice.

D H Pryce Lewis



The threat in the skills crisis

WITH a persistency that has now become alarming the country's top civil servants are expressing grave doubts about the ability of their departments to continue functioning normally Yesterday the Hoexter Commission was warned of the imminent collapse of the administration of justice in Johannesburg where two-thirds of district prosecutors and more than a third of regional prosecutors were inexperienced Disillusioned and underpaid (R400 a month for men with law degrees) they were resigning in droves and criminals were going free

Only days earlier, the Johannesburg Hospital warned it was about to close down its radiography unit because of a lack of qualified staff The same effects of the same crisis are seen in teacherless classrooms, in city streets unpatrolled by policemen, in the growing volume of job advertisements seeking engineers, clerks, technicians

The crisis now permeates almost every facet of South African life It threatens to halt in its tracks this country's almost unique potential to grow

The underlying cause is clear We tried for generations — in fact right up until now — to run this country with "whites only" at the top And now we have run out Why are there not large numbers of Indian, black and coloured prosecutors? Why is it that in a country approaching 27-million population there are but a handful of radiologists and practically every one of them white? There is no need to spell out the answer, only the solution The solution is a crash effort to train all races It means opening, immediately, universities and technikons. It requires an end to discrimination in education wherever it exists

Call to train more black court officials

DD 14/1/81

JOHANNESBURG — It was vitally important to involve blacks in the judicial administration in South Africa, Mr M J Prinsl president of the Pretoria Regional Court, said yesterday

Giving evidence before the Hoexter Commission of Inquiry into the structure and functioning of the courts, Mr Prins said there was a "tremendous manpower shortage" in the Department of Justice

"We will have to intensify the training of blacks and they will have to be increasingly involved in the administration of justice in this country," he said.

While commissioners courts had done "good work" in the past, it was doubtful whether it was fair still to have courts which were separated along racial lines.

The administration of justice had to be on the same level for blacks and whites

Another witness described conditions among prosecutors at the Magistrate's Court here

Mr A. de Vries, senior prosecutor at the Regional Court here, said many of these prosecutors had so little experience that they found it difficult to prove even a car theft There were also not enough prosecutors to handle important cases like robbery, rape and murder.

Many people who were appointed as prosecutors resigned to take up positions in private law firms If proposed salary increases were not drastic, a flood of resignations would follow He said an increase of 16 per cent would be inadequate.

Mr Prins, who was the magistrate at Mr Stephen Biko's inquest, was "saddened" by the fact that the impartiality and quality of judicial administration of magistrates had been questioned recently He was convinced that no magistrate would "bend" the law because he was a civil servant

"We shall continue to fulfil our task despite the criticism against magistrates who are employed by the Department of Justice.

It was desirable that magistrates be drawn from outside the ambit of the civil service — this was the only way in which confidence in the judiciary could be restored.

But if people from the private sector were appointed in the lower courts, they would have to be remunerated accordingly.

Mr Prins said the civil jurisdiction of the regional courts should be extended and the criminal jurisdiction of the district courts should also be extended — DDC.

RDM 15/1/81 (252)

Prosecutors ordered not to answer the 'charges'

By CHERYL VAN EYSSEN

THE Chief Magistrate of Johannesburg, Mr J A van Dam, yesterday prohibited Johannesburg Magistrate's Court prosecutors from reacting publicly to submissions made to the the Hoexter Commission this week about their alleged inexperience

The senior public prosecutor at the court, Mr A de Vries, had told the commission it was a "disturbing fact" that many prosecutors found it difficult even to prove a car theft, and that there were insufficient prosecutors equipped to handle serious cases

Approached yesterday for permission to interview the prosecutors, Mr Van Dam refused, saying he would speak for them

A number of prosecutors referred the Rand Daily Mail to Mr Van Dam for his permission for them to comment

A young prosecutor said she was bitterly upset by the report, but was not allowed to comment further

Mr Van Dam supported statements by Mr De Vries to the commission emphasising that the serious shortage of experienced prosecutors and the lack of mature experience among newly-appointed prosecutors were problems

He said the prosecutors were not ignorant, but lacked insight in trying to prove the essential elements of the State's case This tied the hands of the magistrates, for whom it was essential to remain unbiased and impartial

The newly-appointed prosecutors were competent in academic "knowhow", but lacked practical experience

He added that one could not expect them to have "mature experience in a brief spell of time"

He stressed it had become "a grave problem" that most of the more senior prosecutors were attracted into private law firms

Referring to the "inexperienced" prosecutors, Mr Van Dam said they lacked insight into the right questions to ask to prove the State's case

He said this placed a magistrate or judge in "an invidious position", as he was obliged to remain impartial

It was especially in statutory cases that essential elements were not proved, and the magistrate must not cross-examine to establish the facts

Mr Van Dam also refused to allow the Johannesburg magistrates to comment

He said magistrates did call in prosecutors after cases had been settled to point out their errors, but during hearings they had to remain impartial

Prosecutors were lectured on various aspects by senior judicial officials, but there was a shortage of these senior people, Mr Van Dam said

Poor pay scares off prosecutors

Own Correspondent

CAPE TOWN. — Public prosecutors at three of the Peninsula's Magistrate's Courts are dissatisfied with working conditions and many are leaving

This reflects evidence given to the Hoexter Commission of Inquiry into the structure and functioning of the courts in November last year

Mr A de Vries, Senior Public Prosecutor of the Johannesburg Magistrate's Court, told the commission his department could no longer serve the community adequately as the staff shortage had led to a deterioration of prosecutions

He said most had left for higher salaries elsewhere

One local prosecutor said yesterday he was extremely dissatisfied and intended leaving as soon as possible He said his sentiments were widely shared by his colleagues

"Mostly we are the victim of incredibly bad organisation in the department," he said

He added that a junior clerk in Pretoria was responsible for seeing they got their salaries or even raising them

"Anyway, who wants to work for such low salaries when you can go into private practice"

A spokesman for the Department of Justice, Mr D Swanepoel, said nine prosecuters from the three courts had resigned in the past six months

He was not prepared to comment on the situation, but said "Perhaps the general reason for the problems is the same as in other places, as reported to the Hoexter Commission

"I don't know of any particular grievances with the Cape Town courts, but the figures are not as high as in other places" The staff shortage was not critical as there was an influx of newly-graduated bursary holders

'Poor pay behind staff loss'

Own Correspondent

Poor salaries were entirely to blame for the steady stream of resignations by prosecutors from the Pretoria magistrate's courts.

This was said today by the city's Senior State Prosecutor, Mr P H H Fick.

Either 19 or 20 prosecutors had resigned over the past year, he said, and the same reason was always given — too little money.

This meant that inexperienced prosecutors were doing jobs for which they were not qualified, and that the courts were not functioning properly.

He said prosecutors were taking over partly-heard cases and magistrates were having to assist them during cross-examination of witnesses.

"At the moment we are waiting for the outcome of the Hoexter Commission," said Mr Fick.

The Commission is examining the structure and functioning of the courts.

Awaiting trial prisoners held for too long—judge

BLOEMFONTEIN — There was concern in Free State legal circles because people awaiting trial were sometimes held far too long before they appeared in court, Mr Justice Smuts of the Free State Supreme Court said in Bloemfontein yesterday.

Mr Justice Smuts, who was giving evidence before the Hoexter Commission inquiring into the work and structure of the courts, said the reason for this was that there were not enough public prosecutors to do the work, and some of them were not sufficiently trained.

He had first come across the problem when he had been a judge in the Circuit Court at Odendaalsrus in November last year.

He had asked for the prisoners' roll and found that people who were arrested and had been held since April last year had not yet appeared in court.

He then asked the Attorney-General of the Free State to investigate.

A lot of those who had then been in custody for some time without appearing in court were then released on bail.

It appeared from the Attorney-General's investigation that the situation was the result of having too few prosecutors to cope with the work, and because some of them did not have enough experience, Mr Justice Smuts said.

He suggested advocates be used to prosecute in Circuit Courts so that the Attorney-General's staff could help to speed up cases that were dragging.

Until recently it had been the ruling that advocates handled the prosecution but nowadays staff from the Attorney-General's office dealt with all the prosecutions.

He did not know why the system had been changed, Mr Justice Smuts said.

He also felt that even if the salaries of judges were to be doubled, they could not work harder than they were at present.

Most judges spent as much time as possible at their work.

"The most important reason why judges should receive better pay is to enable them to live in a manner worthy of their profession and to draw the best advocates from the Bench."

Mr Justice Smuts said an allegation that judges worked only 162 days in a year showed a "total lack of insight into what the work of a judge really involved." — Sapa

Hansard 1 Ques. Col 252

28/11/84

Matrimonial property law

*3 Mrs H SUZMAN asked the Minister of Justice

Whether he intends to introduce legislation during the current session to give effect to the recommendations made by the Law Commission in regard to matrimonial property law?

The MINISTER OF JUSTICE

The Law Commission has as yet made no recommendations in regard to matrimonial property law I am therefore not in a position to reply either in the negative or the affirmative

Hansard 1 Dec 61

252

(b) 38
Hansard Col 2
Commission of Inquiry into Security Legislation (Question
327 (852) 28/11/61

Mrs H. SUZMAN asked the Minister of Justice:

(1) Whether he has received the Report of the Commission of Inquiry into Security Legislation, if so,

(2) whether he intends implementing any of the recommendations during the current session?

The MINISTER OF JUSTICE

(1) No

(2) Falls away

FINE ART & ARCHITECTURE

ARCHITECTURE

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For the best student in :-

Sixth Year

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Helen Gardner Travel Prize
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For the best woman student in third year.

Miss C Tredgold

David Haddon Prize
For the best student of Architecture (or Quantity Surveying) in the subject of Professional Practice.

D H Pryce Lewis

General J B M Hertzog Prize
For the best final year student.

S A Read

Osbourn Prize
For the best work in fourth year.

D H Pryce Lewis

John Perry Prize
For the best work in

Judge moves to Foundation

JOHANNESBURG — The Urban Foundation announced yesterday that Mr Justice J H Steyn had resigned from the Bench to become its chief executive officer

Mr Justice Steyn was granted leave to retire as Judge of the Supreme Court with effect from February 1 In 1976 he was seconded from the Cape Bench to the foundation for three years This term was extended last year for a further two years — Sapa

More prosecutors quit for better pay

STAR 3/2/81

252

The exodus of experienced prosecutors from the Johannesburg magistrate's courts for higher pay is increasing by the month

There have also been reports of poor morale among those remaining

The Star learns that seven prosecutors — two from regional courts and five from district courts — have resigned this month and three have been transferred

But three new prosecutors started yesterday, while three "relief prosecutors" arrived for a one-month stint

It is believed that more than 125 prosecutors have resigned since August 1979 because of disillusionment over pay. Most are now training to become attorneys and advocates, others are serving as legal advisers to private firms

There are reports of a backlog of trials in the regional courts, several of which are closed daily because of inadequate trained staff

Internal training courses are being arranged for all prosecutors

A prosecutor said that even the less experienced ones were now leaving. Another said that morale among the staff was "poor". A third said this was so among the experienced staff

One prosecutor blamed the Department of Justice for the crisis, saying it should have foreseen this when the walkout started two years ago

Most prosecutors are pessimistic about receiving a decent increase this year.

FACULTY OF ENGINEERING

Corporation Medals
For the best student in each of the 2nd, 3rd and final years.

Second Year (Bronze Medal)

Miss G C Littlewort

Third Year (Silver Medal)

Miss N C Davidson

Fourth Year (Gold Medal)

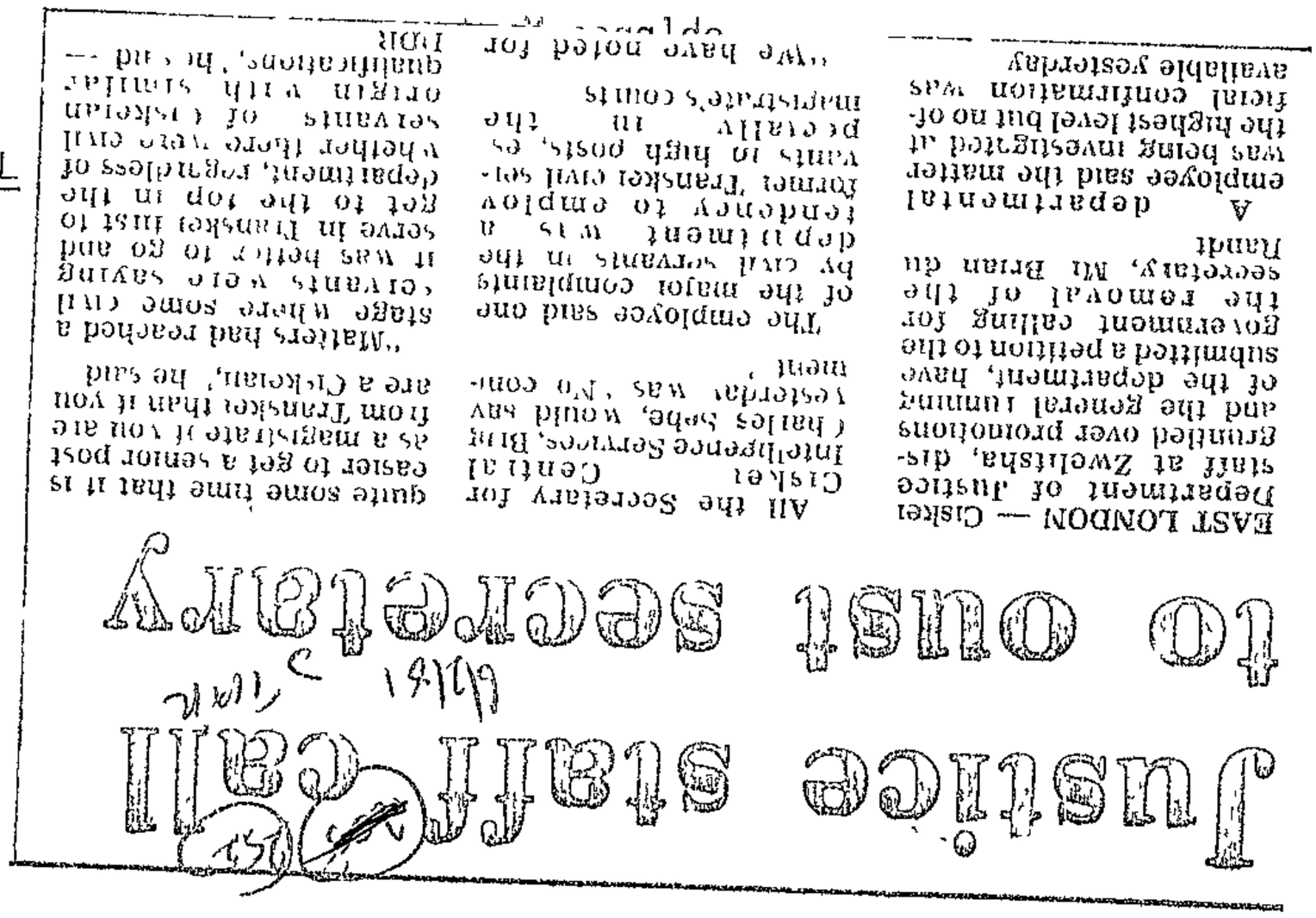
P M Salmon
I J Cumming
D P Weeks
J H Rens
B F McCleland

Professor George Menzies Prize
Awarded on results of final examinations to the best male student in Land Surveying or Civil Engineering.

J H Rens

Sammy Sacks Memorial Prize
Awarded to the student with the best classwork in Engineering Drawing.

CHEMICAL



Justice start call to oust secretary

$$q = e^{-at} \quad .....1.$$

taking logarithms,

$$\ln q = -at \ln e \quad .....2.$$

this simplifies to,

$$\ln q = -at \quad .....3.$$

This is a straight line graph of ln q against 't', 'a' representing the slope of the line.

The results of the Reaf tests are given in Table 4 and the rate of infection is shown diagramatically in Figure 2. The rate of infection up to the age of 10 years is estimated at 10,5% per annum (the 90% confidence limits being 12,96 - 8,64% per annum). This figure is higher than that estimated by C. de Ville de Goyet (1974) for the Transkei as a whole. However, the figures of the South African Tuberculosis Study Group (1974) which he was using show great variation from one site to another (Grade III and IV reactors comprising 65% of the children tested in Site III, but only 28% of those tested at Site VIII). From the figures for schools in the Tsolo district given in Table 2, it seems that Ntshiqo might be considered a location with a high prevalence.

Mortality

As the survey lasted less than two months mortality could not be measured directly. At each household, however, an inquiry was made as to how many had died in the household since the previous Christmas, that is in a period of just under one year. The age and the sex of the dead, and the nature and the place of the last illness were also ascertained.

In a population of 1,503 (mid-year estimate), including those who were away from the location, there were 32 deaths during the period (2,1%). Of these 14 (45%) were said to have died from some disease symptomatically related to the respiratory tract; 8 (25%) were said to have died of 'tuberculosis'.

While admitting that terminal respiratory symptoms do not imply a primary respiratory pathology, and also that the relatives' statement that someone had died of tuberculosis must be taken with some scepticism, it is notable how closely these figures accord with the mortality estimates from within the hospital itself.

From the 1st January to the 10th September 1976 there were 289 deaths in St. Lucy's Hospital. The principal cause of death attributed to 91 (31%) of these was tuberculosis. A further 19 bore a diagnosis before death of tuberculosis, but this was not thought to be the principle cause of death. Thus 37% of those dying at St. Lucy's Hospital during this period had tuberculosis. Only 44 (15%) died of the next most commonly attributed cause, malnutrition.

In the Transkei at least tuberculosis is still the 'Captain of the Men of Death'.

The Social Parameters of Infection

The question as to whether the incidence of tuberculosis is correlated with any social or economic parameters was studied by dividing the sample of children under 11 years old according to answers given on the questionnaire, and re-estimating the incidence for the several groups. In this study three parameters were selected as being of special interest: sleeping density, family income, and cattle ownership.

There is a generally held belief that tuberculosis will have a greater incidence where sleeping conditions are crowded, this hypothesis was tested in this survey by dividing the children into groups according to how many slept in their hut at night and then reestimating the incidence for the different groups of children (Table 5, figure 3). Surprisingly there was no correlation between crowding and infection. The most crowded 20% (that is those sleeping 7 or more to a hut), the most crowded 40% (that is those sleeping 6 or more to a hut), and the least crowded 20% (that is those sleeping

Crisis in training of magistrates and prosecutors

By David Breier
Pretoria Bureau

Most lecturers who train magistrates and public prosecutors are less qualified than the people they are supposed to educate, the Hoexter Commission heard yesterday.

The commission, which is examining the structure and functioning of the courts, heard submissions by Dr N J van der Merwe, head of the Justice Training Section at the Department of Justice.

Dr van der Merwe said that lecturers in the training section had very little promotion prospects and they resigned as soon as they achieved their LLB degree.

Even those with lower qualifications than the LLB resigned because of better prospects in the private sector as well as better promotion prospects in other government departments.

The result was that the lecturers who instructed magistrates in civil law and trained public prosecutors were less qualified than the people they taught.

Dr van der Merwe said that despite increasing the number of courses for public prosecutors from three to seven yearly the number of students entering these courses was dwindling.

He attributed this to the very poor pay prospects for public prosecutors.

Dr van der Merwe's submission follows evidence to the commission last month by Mr A P de Vries, Johannesburg's chief public prosecutor on the alarming shortage of magistrate's courts

at 14% (the 90% confidence limits being 18,56-10,24%).

Finally we looked at the effect of cattle ownership on the incidence of tuberculosis in children. Although it is well established that tuberculosis can be passed from cattle to man through infected milk, it was the general consensus of local medical opinion that this was not a problem in this area. This consensus is shared by doctors in other parts of Africa, even where there is considerable infection amongst the cattle (Waddington, 1967). As cattle ownership is associated with wealth, and as the richer children had a lower incidence of tuberculosis, there was further evidence for believing that there would not be any association between cattle ownership and tuberculosis. The findings of this survey contradicted this supposition (Table7; figure 5), for the incidence among those children whose families did own cattle was 13,3 (90% confidence limits: 18,28-9,40%), whilst among those children whose families did not own cattle it was 10,45% (14,88-6,96%). These figures suggest the need for further studies of bovine and human culture in the area.

Executions 252 327

Mrs H SUZMAN asked the Minister of Justice:

Hans 3 Qns at 113

(a) How many (i) males and (ii) females of each race group were executed in the Republic during 1980 and (b) for what crime or crimes had each of them been sentenced to execution?

11/2/81

The MINISTER OF JUSTICE

	Whites	Blacks	Coloureds	Indians
(i) Males	1	85	43	1
(ii) Females	0	0	0	0
(i) Murder	1	59	40	1
(ii) Murder and rape		6	2	
(iii) Rape		1	1	
(iv) Murder and robbery		16		
(v) Robbery and rape		1		
(vi) Housebreaking with intent to rob and robbery with aggravating circumstances and murder			1	
(vii) Housebreaking with intent to rape with aggravating circumstances and rape			1	

Death penalty inquiry urged

EDM 12/2/81

252

Political Staff

CAPE TOWN — Mrs Helen Suzman last night called for a commission of inquiry into the abolition of the death penalty after being told that 130 people were hanged in South Africa last year.

Mrs Suzman (PFP Houghton) stressed that hers was a personal view and not necessarily that of her party.

She said South Africa's executions were not only the highest in the western world, but probably higher than all countries in the western world combined.

The number of hangings last year, revealed in a parliamentary reply by the Minister of Justice, Mr Kobie Coetsee, was 130.

No women have been hanged in the past two years.

Last year 85 black men, 43 coloured men, one white and one Indian went to the gallows.

The executions included 101 for murder, eight for murder and rape, two for rape, 16 for murder and robbery and one for robbery and rape.

130 people executed last year

Parliamentary Staff

LAST year 130 people were executed in South Africa for crimes ranging from murder to housebreaking with aggravating circumstances, Mr Kobie Coetsee, Minister of Justice, disclosed yesterday.

Mr Coetsee, who was replying to a question asked by Mrs Helen Suzman (PFP, Houghton) said that of the 130 executed, 85 were blacks 43 coloured people, one Indian and one white.

The majority of the executions resulted from convictions of murder with 101 people being sent to the gallows. Eight people were executed for murder and rape with two people executed for rape. For murder and robbery, 16 people were executed.

In reply to another question from Mrs Suzman Mr Coetsee said 187 people were prosecuted under the Immorality Act last year.

RDM 13/2/8 (252)

'Too many go free too soon'

By JOUBERT MALHERBE
Pretoria Bureau

SOUTH Africa's CID chief, Lieutenant-General J C Visser, yesterday criticised the parole system in South African jails, saying it was a "negative factor" in combating crime

Giving evidence before the Hoexter Commission of Inquiry into the structure and function of the courts, Gen Visser also criticised the "liberal way" in which accused were granted bail

He said murder and robbery squads had great difficulty apprehending suspects These people often "disappeared" after being granted bail

"Few policemen in the country are more deserving of praise than the people in the murder and robbery squads They take their lives in their hands and find it frustrating to follow the same path again after a suspect has broken his bail conditions,' he declared

The general said that in one month, August 1979 murder and robbery squads had searched for 31 suspects who disappeared after being granted bail In 14 of these cases the police had opposed the granting of the bail

Concerning the release of prisoners on parole, Gen Visser said he realised how serious jail overcrowding was

He asked, however, how a policeman could explain to someone who had been robbed the early release of the robber

Under cross-examination, the general conceded that whites "who were of fixed abode" could be released on bail while the police investigated the case It was also possible to finish the investigation of the case before arresting him

With blacks it was different If he investigated the matter while the suspect was free, the general said, it often happened that the investigating officer had a case after his investigation -- but no accused

Blacks often fled to countries like Lesotho after being released on bail and telephoned the police from the neighbouring country to taunt them he said

A Klerksdorp advocate, Dr F C Nel, told the commission it was undesirable that a single magistrate be empowered to impose heavy jail sentences

Compared to European courts, it was a 'shocking and an unheard of state of affairs' that a single magistrate could impose prison sentences of up to 15 years, he said

In Europe,' a single judge presiding over a case could not pass a sentence exceeding one year If one assessor assisted a judge no sentence exceeding three years could be passed

'In the light of this I must ask whether it is desirable that a single magistrate can have as much power in deciding on the fate of another person'

Dr Nel cited the case of a black man with no previous convictions who had stolen a record player from one of his friends He had been sentenced to three years' jail

I felt extremely hurt that day" he said He would not have imposed a sentence exceeding six months in that case

Refering to jail overcrowding, Dr Nel said one of the reasons why the number of long-term prisoners had doubled since 1961 was the heavy sentences imposed by regional magistrates

Court action could be halved with innovation — Judge

252
STAR
14/2/87

By Chris van Gas
Pretoria Bureau

Civil court actions could be almost halved if more use was made of sworn statements in litigations a judge told the Hoexter Commission yesterday

Mr Justice G T van Rhyn, the Chief Justice of Venda, was speaking in his personal capacity.

He said he was convinced much time and money could be saved through such a practical innovation

He said unnecessarily long evidence which eventually had little to do with the central issue of a case could be shaved

Another suggestion he made to improve the overload in the Supreme Court was to extend the civil jurisdiction of Regional courts.

Magistrates serving on these courts, except for those already in service, would be required to have a minimum LLB degree and 10 years' service

Judge van Rhyn said there were too many appeals before the Appeal Court and the Supreme Court which showed from the outset little hope of success for appellants.

He said there should be some mechanism to establish at the outset whether an appeal had much chance of success

He said, however, that the status of the Supreme Court should remain the same

But the commission's task was to see that it presented a structure for the next 50 to 100 years

As the country's economy develops, it should be able to absorb a structure which would hold way into the future, he said

He also called for as much decentralisation in the structure of the courts as possible especially where it affected the platteland

He said he had seen the ageing effect that long-distance travel had had on Regional Court magistrates whose tasks were "very demanding"

Judge van Rhyn singled out three aspects which affected the status and work of the Supreme Court, and which he said could be tackled in a Regional Court

These were divorces, insolvencies and liquidations.

'Make more use of sworn statements'

Judge says time and money could be saved

JOHANNESBURG—Civil court actions could be almost halved if more use were made of sworn statements in litigations, a Judge told the Hoexter Commission yesterday

Mr Justice G T van Rhyn, the Chief Justice of Venda who was speaking in his personal capacity, said he was convinced that much time and money would be saved through such a practical innovation

'Many court days presently occupied by unnecessarily long evidence which eventually had little to do with the central issue of a case will be saved,' he said

Another suggestion he made to improve the overloaded situation of the Supreme Court was to extend the civil jurisdiction of Regional Courts Magistrates serving on these courts, except for those already in service, would be required to have a minimum LL B degree and 10 years service

Some mechanism

Judge van Rhyn said there were too many appeals before the Appeal Court and the Supreme Court which showed from the outset little hope of success for appellants

He said there should possibly be some mechanism for trying to establish at the outset whether an appeal had much chance of success

Judge van Rhyn said that any changes to the courts' structure should be an extension of the present structure and should not be a completely new structure

He said the status of the Supreme Court should remain the same as the highest Court in the country

Very demanding

He also called for as much decentralisation in court structure as possible, especially where it affected the platteland

He had seen the ageing effect that long-distance travel had made on Regional Court magistrates whose tasks were 'very demanding'

Judge van Rhyn said 'That which applies to our judges, that they must not work under pressure, also applies to the magistrates'

Three aspects which affect status and which are dealt with by the Supreme Court were singled out by Judge van Rhyn for explanation as to how they would be tackled through a Regional Court with wider civil jurisdiction

These were divorces, insolvencies and liquidations But he said that most of the cases arising in the three categories were uncontested and could easily be handled by such a Regional Court with extended jurisdiction — (Sapa)

Reason for choice of source	Indian adult (F>50)	Coloured female adult (F15-50)	Coloured male adult (F>50)	White female adult (F15-50)	White male adult (F>50)	Other*	Total
Auto	6	3	24	13	2	5	53
[illegible]	3	[illegible]	[illegible]	[illegible]		0	[illegible]
[illegible]		3	[illegible]	5	2		21
[illegible]			[illegible]	[illegible]		1	15
Total	11	13	60	23	5	6	124

[illegible] were [illegible] a [illegible]

[illegible] are [illegible] the [illegible]

Prosecutors at the Johannesburg magistrate courts "are not elated but are happy they are getting something"

"We don't know exactly how much we will be getting in our pay packets Hopefully this will become clear within a week," said a prosecutor

Mr A P de Vries, the senior public prosecutor, said he was glad there was some sort of increase, but he was unsure in exact terms what his staff would be offered

Prosecutors are in the dark about reports of special additional treatment

It is believed they may receive new fringe benefits

[illegible]	[illegible]	Other*	Total
[illegible]	[illegible]	[illegible]	54
[illegible]	[illegible]	[illegible]	29
[illegible]	[illegible]	[illegible]	23
[illegible]	[illegible]	[illegible]	19

Total	17	53	25	15	10	6	2	125

* Other refers to [illegible] practitioner, traditional [illegible] etc.

‡ Figures underlined show that doctor was the nearest.

Ó Those respondents who gave [illegible] of one hour doctor on Wednesday afternoons.

+ No doctor [illegible]

From Table 3 can be derived the proportion of occasions in which treatment

. / ...

[illegible] to treatment at all or home treatment	[illegible]
[illegible] went first to a clinic	[illegible]
[illegible] went first to the nearest doctor	51,2%
[illegible] went first to a doctor elsewhere	10,6
[illegible] went first to a hospital	4,8%
[illegible] went first to some other type of practitioner	[illegible]
	100

It would seem from the above that as a Tierdoctor for nearly [illegible] the [illegible] of those who are not [illegible] Asian [illegible] the nearest doctor first to a nearest doctor. It would [illegible] and/or go first to a clinic. Among the reasons reported for this were

[illegible] Respondent [illegible] a private doctor other than a clinic	
Private [illegible] doctor	7
[illegible] treatment complaint/[illegible] were cases	5
Doctor [illegible] properly/better/at all	5
[illegible] to clinic/[illegible] one doctor	[illegible]
Register as [illegible] doctor	2
Perceptions [illegible] doctor (Sundry) only	

It was clear too, that [illegible] mentioned [illegible] there was a marked tendency for men to prefer a doctor - perhaps or [illegible] consulted with [illegible] screen for the [illegible] practitioner. Men also felt the doctor to be a superior practitioner where [illegible] to prefer the clinic for [illegible] or [illegible] and family planning problems, especially in this [illegible] where their first contact with family planning occurred. It is also likely that the above [illegible] of the aged biased the sample in a conservative direction

. / ...

FACULTY OF ENGINEERING

Corporation Medals
For the best student in each of the 2nd, 3rd and final years.

Second Year (Bronze Medal)

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Third Year (Silver Medal)

Miss N C Davidson

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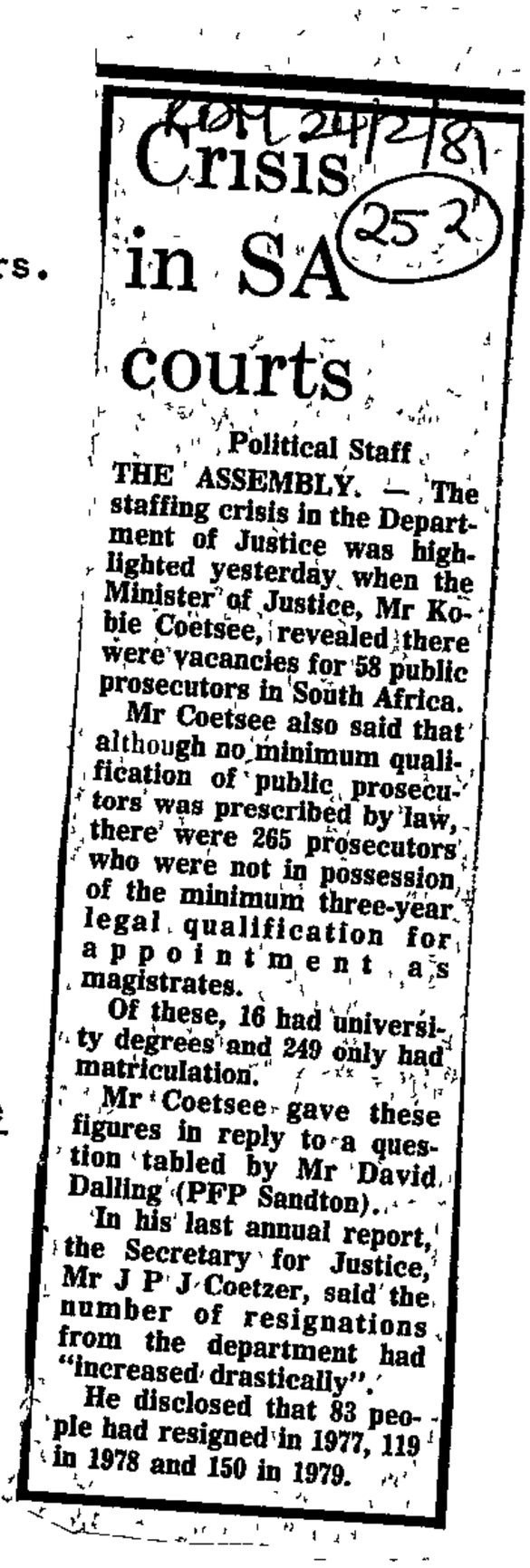
P M Salmon
T J Cumming
D P Weeks
J H Rens
B F McCleland

Professor George Menzies Prize
Awarded on results of final examinations to the best male student in Land Surveying or Civil Engineering.

J H Rens

Sammy Sacks Memorial Prize
Awarded to the student with the best classwork in Engineering Drawing.

L Menegaldo


RDM 24/2/81
Crisis in SA courts (252)

Political Staff

THE ASSEMBLY. — The staffing crisis in the Department of Justice was highlighted yesterday when the Minister of Justice, Mr Kobie Coetsee, revealed there were vacancies for 58 public prosecutors in South Africa.

Mr Coetsee also said that although no minimum qualification of public prosecutors was prescribed by law, there were 265 prosecutors who were not in possession of the minimum three-year legal qualification for appointment as magistrates.

Of these, 16 had university degrees and 249 only had matriculation.

Mr Coetsee gave these figures in reply to a question tabled by Mr David Dalling (PFP Sandton).

In his last annual report, the Secretary for Justice, Mr J P J Coetzer, said the number of resignations from the department had "increased drastically".

He disclosed that 83 people had resigned in 1977, 119 in 1978 and 150 in 1979.

CHEMICAL

A E & C I Prize
For the first year student obtaining the highest average mark.

G L Cragg

252
25/2/81

Justice, lecturers

199 Mr D J DALLING asked the Minister of Justice

(1) Whether there are any vacancies in the Department of Justice for lecturers involved in the training of (a) magistrates and (b) public prosecutors if so how many in each case,

(2) (a) how many lecturers are employed by the Department and (b) what qualifications are such lecturers required to have,

(3) whether any lecturers employed by the Department do not have the required qualifications, if so, (a) how many and (b) what are their qualifications,

(4) what are the salary scales in respect of lecturers employed by the Department?

The MINISTER OF JUSTICE

(1) (a) No

(b) No

(2) (a) 20

(b) At least the Diploma Iuris or equivalent qualification The qualifications of the present incumbents are
BA LLB LLD—1
BA B Iuris LLB—1
B Iuris LLB—3
BA B Iuris—1
B Iuris Diploma Legum—5
B Com Diploma Iuris—1
B Iuris—3
Dip Legum—2
Dip Iuris—3

(3) No
(a) and (b) Fall away

(4) 1 × R24 000 (Fixed)
1 × R22 200 (Fixed)
5 × R14 220 × 660 – 17 520
(Progression scale R16 200 × 660 – 18 840)
4 × R11 100 × 450 – 12 900 × 660 – 15 540
1 × R11 100 × 450 – 12 900 × 660 – 14 220
(Progression scale R12 450 – 12 900 × 660 – 15 540)
7 × R7 740 × 330 – 8 400 × 450 – 11 580
1 × 7 080 × 330 – 8 400 × 450 – 10 650
(Progression scale R9 300 × 450 – 11 550)

Bar Council supports new court system

RDM 26/2/81 (252)

By CHERYL VAN EYSSEN

THE chairman of the Johannesburg Bar Council, Mr Jules Browde, SC, yesterday supported a decision to implement a system of continuous court rolls in the Johannesburg Regional Court

The system is similar to that used in the Supreme Court, where an unfinished case continues from day to day until completed

It has been in operation on an experimental basis in the Johannesburg Regional Court since the beginning of this month

Mr Browde said the system was "a good idea if it succeeds in hastening criminal court proceedings"

He said it remained to be seen whether the system would cause advocates any difficulties

The Chief Public Prosecutor at the Johannesburg Regional Court, Mr Andre de Vries, said yesterday that cases in the past had taken too long to complete because of postponements

Some cases had been postponed for trial five times in one year

He said he and the president of the Johannesburg Regional Court, Mr Lourens de Kock, had been holding discussions since last November and that he had met members of the Bar and Side-bar Councils and the police force

They had discussed "the institution of a whole new system of completing cases in as short a period as possible"

He said the system had been introduced for the minimum disadvantage of accused and the maximum advantage for justice

People in custody would benefit, he said, if cases did not drag on over a long period

Also, if cases were not postponed over a period of time, it was less likely that prosecutors would be asked to take over cases they were not familiar with, or that magistrates would "lose impressions of witnesses"

Mr De Vries said accused would still appear within 48 hours of their arrest and that cases would be postponed pending further investigation

Once an investigation had been completed, the police would hand over the docket to the prosecutor, who would have a week to become acquainted with the case and arrange for a trial date

A trial period which suited both defence and State witnesses could then be set aside

He said magistrates would refuse to postpone cases after trial dates had been set

Mr De Vries also said a system of checking officers had been introduced to the Johannesburg courts

He said senior prosecutors with experience sat in on cases with less experienced prosecutors and assisted them

252

Judges' Remuneration Am. Bill –
2nd reading Cls. 2605-2610
26/2/81

(252) CT 26/2/81

Judges' salaries to rise

HOUSE OF ASSEMBLY — The salaries of Supreme Court judges are to be increased as from April 1 in terms of a bill published yesterday.

The Judges' Remuneration Amendment Bill, introduced by the Minister of Justice, Mr Kobie Coetsee, provides for the salary of the Chief Justice of South Africa to be increased by R45 000 to R53 700 a year.

The salary of a Judge of Appeals is to be increased from R43 200 to R47 100; that of a Judge President from R37 200 to R41 000, while a Deputy Judge President's salary is to be raised from R34 300 to R38 100

The bill, which has been read a first time, also provides for the salaries of judges to be raised from R32 100 to R36 000 — Sapa

Four not guilty of robbery

EAST LONDON — Four men appearing in the local circuit of the Supreme Court on allegations of murder, rape, three counts of theft and one of robbery were found not guilty on some of the charges after the state closed its case

Mr Alfred Gxeko, 25, of Guquka Housing Scheme Alice, Mr Kamani Bonase, 20, of Dimbaza, Mr Mhlangabezi Thongo, 22, of Bele Location, and Mr Thandabantu Gwenqu, 26, of Mamata, near King William's Town, pleaded not guilty to all the counts when they appeared before Mr Justice Cloete, the Eastern Cape Judge President, and two assessors, Mr J J L de Villiers and Mr H F Redpath

They are accused of murdering and raping Ms Caroline Xintolo, 25, stealing goods worth R400 from Ms Xintolo, Mr Mziwakhe Michael Halana and Mr Mzwamadola Hamilton Nqevu on February 2, 1980, and robbing Mr Wellington Tafeni of R2,50

At the end of the state case Mr Bonase was found not guilty on two counts of theft involving Mr Halana and Mr Nqevu and one of robbing Mr Tafeni while Mr Gxeko was found not guilty of one theft charge involving Mr Ngevu

Mr Thongo and Mr Gwenqu were found not guilty of robbing Mr Tafeni and stealing Mr Nqevu's watch

Earlier, Mr Halana said he missed his belongings shortly after the train had left Queenstown

He had taken away a defence spray gun from Mr Billy Manene who had been warned as an accomplice and he later handed it over to the police

The police also recovered his jacket which was among the items stolen

Mr Tafeni said while he was washing himself in the train's toilet Mr Gxeko arrived and accused him of being silly

Mr Gxeko slapped him across the face and took his purse from his pocket He removed R2,50 and returned the empty purse to him

In his defence, Mr Gxeko denied all the allegations against him He could not understand why Mr Manene was now trying to implicate him

Mr Gxeko said he had given Mr Manene his own train ticket to travel to King William's Town after Mr Manene had told him he was short of money to buy a ticket

He said he also went out of his way to assist Mr Manene who was robbed of his clothing He then borrowed a track suit from Mr Thongo so that Mr Manene could clothe himself properly

Mr Gxeko further claimed that some of his possessions were stolen on the train including his jacket

The hearing continues today — DDR

Judge hits out at interpreter

EAST LONDON — The Eastern Cape Judge President, Mr Justice Cloete, criticised remarks made by an interpreter while interpreting to four men in the district court

The interpreter, who was not named, had interpreted to Mr Alfred Gxeko, 25, Mr Kamani Bonase, 20, Mr Mhlangabezi Thongo, 22, and Mr Thandabantu Gwenqu, 26, when they appeared in the magistrate's court during a preliminary hearing into the basis for their defence and pleas involving allegations of murder, rape, robbery and theft

At the time the interpreter had to interpret from Afrikaans into Xhosa and from Xhosa into Afrikaans, when Mr Gxeko, Mr Bonase, Mr Thongo and Mr Gwenqu gave their replies

At one stage during the questioning the court asked the interpreter if there were problems between him and the four men

The interpreter replied "It is just deliberate."

Mr Justice Cloete said this was an uncalled for comment by the interpreter as it was his sole duty to interpret

The magistrate should have pointed this out to the interpreter

Referring to another remark made by the interpreter after one of the four men had used the word "boer", Mr Justice Cloete said it was not the duty of the interpreter to reprimand the accused

"That was the function of the court if it was found that the accused was being disrespectful"

The interpreter had said the world "boer" was a swear word against whites — DDR

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REPUBLIC OF SOUTH AFRICA
GOVERNMENT GAZETTE

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Vol 188] PRETORIA, 27 FEBRUARIE / FEBRUARY 1981 [No 7440

PROKLAMASIE

van die Staatspresident van die Republiek van Suid-Afrika

No R 34 1981

KOMMISSIE VAN ONDERSOEK NA DIE STRUKTUUR EN FUNKSIONERING VAN DIE HOWE

Kragtens die bevoegdheid my verleen by artikel 1 (1) (b) van die Kommissiewet 1947 (Wet 8 van 1947) wysig ek hierby die regulasies uitgevaardig by Proklamasie R 47 van 7 Maart 1980 soos volg

1 Deur die invoeging na regulasie 10 van die volgende regulasie

"10A Niemand mag, sonder die skriftelike toestemming van die Voorsitter, 'n dokument wat in verband met die ondersoek deur enige persoon aan die Kommissie voorgelê is, versprei of die inhoud of 'n gedeelte van die inhoud van so 'n dokument publiseer nie"

2 deur die vervanging van paragraaf (b) van regulasie 12 deur die volgende paragraaf

"(b) die bepalings van regulasie 10 of 10A oortree"

Gegee onder my Hand en die Seel van die Republiek van Suid-Afrika te Kaapstad op hede die Vyfde dag van Februarie Eenduisend Negehonderd Een-en-tagtig

M VILJOEN Staatspresident

Op las van die Staatspresident-in-raade

H J COETZEE

PROCLAMATION

by the State President of the Republic of South Africa

No R 34 1981

COMMISSION OF INQUIRY INTO THE STRUCTURE AND FUNCTIONING OF THE COURTS

Under the powers vested in me by section 1 (1) (b) of the Commissions Act 1947 (Act 8 of 1947) I hereby amend the regulations made under Proclamation R 47, dated 7 March 1980, as follows

1 By the insertion after regulation 10 of the following regulation

"10A No person shall, without the written permission of the Chairman, disseminate any document submitted to the Commission by any person in connection with the inquiry or publish the contents or any portion of the contents of such document

2 by the substitution for paragraph (b) of regulation 12 of the following paragraph

'(b) contravenes the provisions of regulation 10 or 10A

Given under my Hand and the Seal of the Republic of South Africa at Cape Town this Fifth day of February, One thousand Nine hundred and Eighty-one

M VILJOEN State President

By Order of the State President-in-Council

H J COETZEE

GOEWERMENTSKENNISGEWINGS

DEPARTEMENT VAN FINANSIES

No R 379 27 Februarie 1981

DOEANE- EN AKSYNSWET, 1964

WYSIGING VAN BYLAE 3 (No 3/654)

Kragtens artikel 75 van die Doeane- en Aksynswet, 1964, word Bylae 3 by genoemde Wet hierby gewysig in die mate in die Bylae hiervan aangetoon

D W STEYN, Adjunk-minister van Finansies

GOVERNMENT NOTICES

DEPARTMENT OF FINANCE

No R 379 27 February 1981

CUSTOMS AND EXCISE ACT, 1964

AMENDMENT OF SCHEDULE 3 (No 3/654)

Under section 75 of the Customs and Excise Act 1964 schedule 3 to the said Act is hereby amended to the extent set out in the Schedule hereto

D W STEYN Deputy Minister of Finance

Alternatively, it is the view of a wide and probably dominant segment within medicine and the social sciences that medical services have peculiarities whichpreclude effective allocation via supply and demand forces. In the remaining paragraphs of this section I list a selection of these purported features by way of illustration.

Coetzer backs 'independent' lower courts

By Chris van Gass, Pretoria Bureau

Far-reaching proposals to create an "independent" lower court system in South Africa by removing judicial offices from the public service were today made to the Hoexter Commission of Inquiry into the function and structure of the courts.

The Director-General of Justice, Mr J P J Coetzer, the country's top legal administrative man, told the commission it was wrong in principle for a public servant to fulfil important judicial functions The creation of "independent" lower courts for

dependent" was vitally in the nati he said.

Mr Coetz cism from often been South Africa point.

"However explain that gives his de ly and with fluenced by ment or de cannot expl fact that he servant and administrative nate to, the the departm

fore ostensibly susceptible to manipulation," said Mr Coetzer.

He said in terms of generally accepted principles the judicial arm of the State authority had to be kept separate from the executive arm, which included the public service.

It was therefore wrong that magistrates, as public servants, should perform judicial functions, especially when it was considered that 90 percent of all court work was performed by them.

Mr Coetzer said not

To Page 3, Col 1

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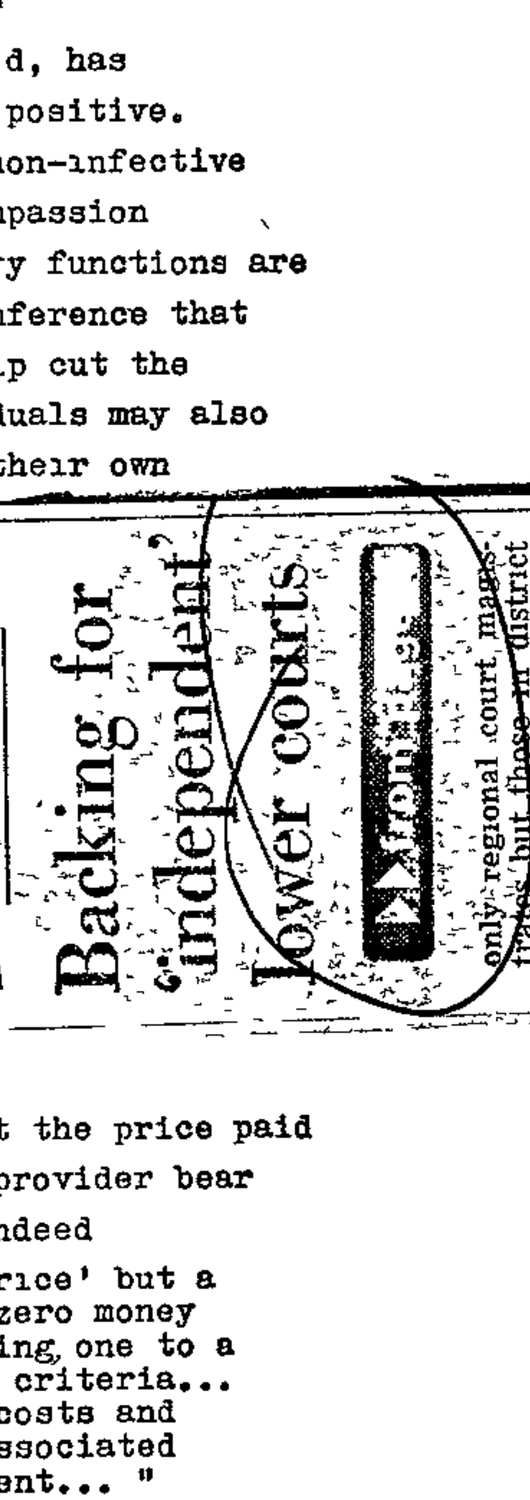

Backing for 'independent' lower courts

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with gaining access and undergoing treatment... "
(Williams 1977: 308-9, emphasis added).

(D) The commodity in this sector is health <u>care</u> not health improvement. A provider's activity - whether

hospital or doctor - has joint technical and non-technical effects. There is an illusion that we are buying only the former, the physical properties that prolong life, relieve pain, improve physical comfort: in the flow chart below, the M - H connection. But we are also buying the latter, the reassuring and emotional effects which have the "psychological property of signifying something... the retreat of illness and death ... [and] that the doctor takes responsibility for the patient" (Dupuy 1974 : 491). This is the M - Z link in the flow chart. Not only are these non-technical outputs jointly produced - a potential source of market failure - but Dupuy argues they are a key ingredient in understanding phenomena like the prescription of drug therapy, the low price elasticity and high income

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mechanisms is pervasive in South Africa. The "free and independent practice of medicine" financed through the market for private services on a fee basis would appear to be a delusory ideal.(7) This is so quite apart from questions of social utility and social justice, the subject of the next section.

V Equity considerations

The title of this paper is allocation and finance but distributive considerations are integral to any attempt at clarity of thinking. Economists make a distinction between efficiency and equity as objectives of social

'Draw magistrates from the public'

RDM 4/3/87 252

Pretoria Bureau

THE Director-General of the Department of Justice, Mr J P J Coetzer, suggested yesterday that magistrate's courts should function outside the public service

He warned that unless necessary changes were made, the courts would be unable to operate properly — the crisis in some district courts had reached such proportions that unqualified people were manning them

He said it was never the intention of the Department of Justice to try to undermine the authority of the Supreme Court by proposing the creation of intermediate courts — it was made to help to lessen the workload of the Supreme Court

Mr Coetzer was giving evidence before the Hoexter Commission of Inquiry into the structure and functioning of courts

He said it was wrong that magistrates, who were members of the public service, should perform judicial functions

He and his department had no satisfactory answer to criticism that the administration of justice in lower courts was in the hands of the public service — the situation had to be rectified

"We cannot refute the criticism because it is justified We cannot explain away the fact that a magistrate is, at least, administratively, subordinate to the Minister of the department — and therefore ostensibly susceptible to manipulation"

Mr Coetzer testified at length about the manpower shortage in his department, and said the shortage could be solved if judicial officers were removed from the public service This would probably lead to more lawyers from all population groups becoming involved in the administration of justice in the lower courts — and this would help to ease the manpower shortage

Mr Justice G Hoexter, chairman of the commission, remarked that it was an absolute prerequisite to involve blacks because there were not enough whites to man the courts

Mr Coetzer said that he would like to see a separation in the legal and administrative functions of magistrates

He proposed the creation of two offices a "landdrost" office which would fulfil an adminstrative function, and a "magistrate's court" where cases would be tried

The "landdrost" office should continue to exist within the public service, but would be stripped of its judicial functions Under the new dispensation, personnel in these offices would not have to be legally qualified

The presiding officers in the magistrate's court (outside the public service) would be called "magistrates" and "regional magistrates"

Mr Coetzer said "magistrates" should be appointed from among the public and private sector — and the limit of their jurisdiction should be penalties of two years' jail or a fine of R2 000

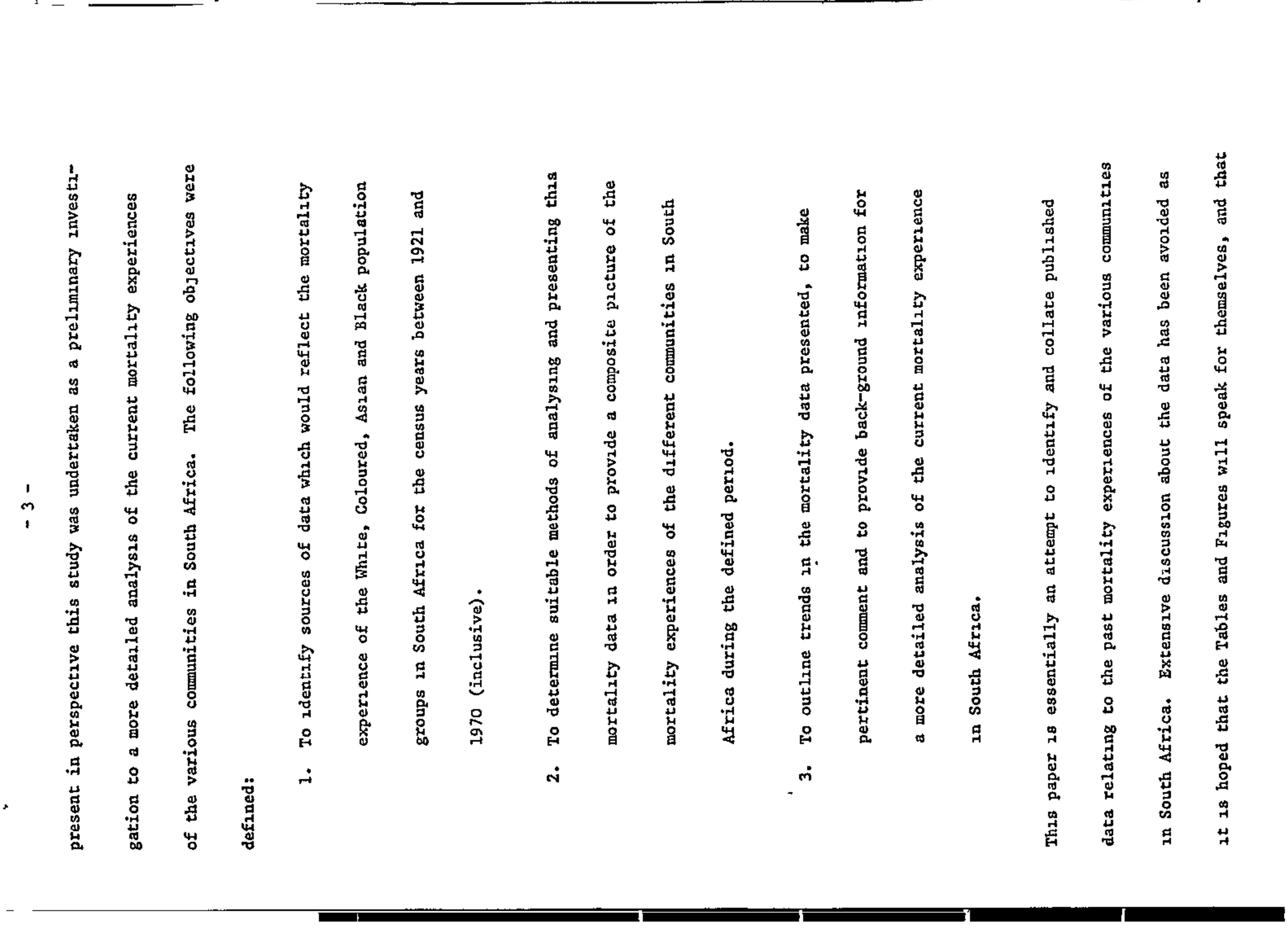
Regional magistrates, he said, should also be drawn from the public and the private sector, and could be appointed by the State President on the recommendation of a board which had a judge as chairman Their authority of sentence should not exceed 10 years' jail or a fine of R10 000

But, Mr Coetzer, said, they should also have the jurisdiction to try murder cases which the Attorney-General did not consider would warrant a death sentence

With civil cases, Mr Coetzer said, regional courts should receive jurisdiction to hear divorce cases and other matters related to the family

By strengthening the lower courts, he said, the Supreme Court would automatically be strenghtened

* For details of sources of deaths before 1926 see reference 3, volume for 1938, page XVIII.



- 3 -

present in perspective this study was undertaken as a preliminary investi-

gation to a more detailed analysis of the current mortality experiences

of the various communities in South Africa. The following objectives were

defined:

1. To identify sources of data which would reflect the mortality experience of the White, Coloured, Asian and Black population groups in South Africa for the census years between 1921 and 1970 (inclusive).

2. To determine suitable methods of analysing and presenting this mortality data in order to provide a composite picture of the mortality experiences of the different communities in South Africa during the defined period.

3. To outline trends in the mortality data presented, to make pertinent comment and to provide back-ground information for a more detailed analysis of the current mortality experience in South Africa.

This paper is essentially an attempt to identify and collate published data relating to the past mortality experiences of the various communities in South Africa. Extensive discussion about the data has been avoided as it is hoped that the Tables and Figures will speak for themselves, and that

Black leaders and SA Bench

BLOEMFONTEIN. — Leaders of black national states often embarrased South African judges appointed to those countries because they made the appointments without the knowledge of the Chief Justice concerned, Mr Justice V G Hiemstra told the Hoexter Commission into the structure and functioning of the courts yesterday.

Mr Justice Hiemstra, who is Chief Justice of BophuthaTswana, testified after a memorandum drawn up by the Appeal Judges was tabled before the commission.

The chairman of the commission, Mr Justice G G Hoexter, said the contents of the memorandum could not be made public until all the Appeal Judges had testified before the commission.

Mr Justice Hiemstra told the commission of an incident where the President of a black state approached another judge about an appointment.

The introduction of intermediate Appeal Courts should be avoided at all cost because a situation could be created where a junior judge must pass an appellate decision on the judgment of the most senior judge in the division.

Mr Justice Hiemstra said the existing Appeal Court should rather be extended and eventually divided into sections that specialised in certain types of cases.

It was often said that magistrates' courts had to handle cases with political elements, but in reality these constituted only about 1% of these types of cases. — Sapa.

Kruger blamed for mishandling the Biko case

Own Correspondent

BLOEMFONTEIN — The fault in the Steve Biko case was with the Minister, Mr Jimmy Kruger, who should have appointed a judge to handle the case, the Chief Justice of Bophuthatswana said yesterday.

Mr Justice F G Hiemstra, testifying before the Hoexter Commission of Inquiry into the structure and functioning of the courts, said that although the law made no provision for a judge to preside over an inquest, a special commission, with a judge as chairman, could have been appointed.

The commission yesterday heard evidence in Bloemfontein from Mr Justice Hiemstra and four Appeal Court judges.

Mr Justice Hiemstra rejected a Full Bench of the Supreme Court or an intermediary court between the Supreme and Appeal courts as a solution to the easing of the burden on the Appelate Division.

He said with a Full Bench hearing appeals more acting judes would have to be appointed. It was therefore possible to have juniors deciding on the decisions of seniors.

He suggested the Appeal Court be enlarged and divided up into sections.

Asked whether it could be considered part of the commission's brief to look at the position of advocates, Mr Justice Hiemstra replied "Yes, because advocates are the substratum (voedingsbodem) from which judges are drawn."

Earlier, four Appeal Court judges, Mr Justice P J Wessels, Mr Justice M M Corbett, Mr Justice G T C Kotze, and Acting Justice Mr W G Trollip, added comment to their first memorandum to the commission.

"I feel strongly that the present situation cannot be allowed to continue. The answer is not just to increase the size of the appellate division," said Mr Justice Corbett.

The solution was either some form of intermediary tribunal or a Full Bench of appeal. The Transvaal was the most important division, and as no objection to a Full Bench of Appeal had been raised, he supported such a solution unless practical problems were involved.

Mr Justice Corbett said the introduction of no-fault third party insurance was not an immediate solution. It could be seven or eight years before the benefit of such a move was felt.

Mr Justice Kotze was in favour of trial judges being given a valuation role. He said they would be able to issue a certificate referring certain cases to the appeal court which they felt would go to the appeal court in any case.

The Chief Justice, would have the right to dispute any such decision.

Turning to the use of smaller benches, that is, three judges instead of five, Mr Justice Trollip said he missed the collective wisdom of five judges in the appeal court.

He said five judges of appeal would be more likely to reach a correct decision and expression of reason for that decision.

1) Date: the agricultural census refers to 1972-73, the Unisa survey to January and February 1975 and this survey to end-1975 and early 1976.

2) Area: the ll holdings in four Karoo magisterial dis survey includes 300 farms scattered all o akdown by district is not given and t Land farms, where cash earnings for me est, may draw the average upwards), and t es farms scattered in four magisterial dist ly distributed.

3) The Unisa s loured domestic workers only, and both t s survey also include Africans.

But these d adequately explain the enormous diverge s. It seems that if the census figures er cash wages must have risen extremely census date (although the Theron Commissi percent of all women workers had nev at all and the average increase for 61 kers was only 6,5 percent in 1974)[15] or rvey and this survey must have been based ges paid were well above the average for thei

19/3/81

Minister replies to plea for black judges

Mercury Reporter

HOPES are high among Indian legal men that South Africa's first Indian Supreme Court judge may be appointed soon.

The Minister of Justice, Mr H J Coetzee, yesterday replied to a query by Mr Ismail Moolla, an Umzinto businessman, saying he was giving immediate attention to the question of appointing more black magistrates and also the appointment of the first black judge.

Lawyers spoken to yesterday said the minister's reply had given the impression that a breakthrough for senior black advocates to become judges could be expected. They said there were at present two Indian senior counsel — Mr H E Mall in Durban and Mr Ismail Mohammed in Johannesburg who had acted as a judge in Botswana.

There are at present several black magistrates in Natal's black townships, and two Indian magistrates serving in the Chatsworth Magistrate's Court.

Mr Moolla wrote to the minister earlier saying that to remove discrimination in the South African judiciary he should look into the question of appointing not only more black — including Indian — magistrates, but also black judges.

The minister should take steps to ensure that any black judge or new magistrate should be allowed to preside at trials involving people from any race group, and not be confined to people from their own ethnic groups, he said

STAATSKOERANT

VAN DIE REPUBLIEK VAN SUID-AFRIKA

REPUBLIC OF SOUTH AFRICA

GOVERNMENT GAZETTE

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Vol 189] KAAPSTAD 11 MAART 1981 [No 7471
CAPE TOWN 11 MARCH 1981

Ser stil tot sa 8g

KANTOOR VAN DIE EERSTE MINISTER

No 495

11 Maart 1981

Hierby word bekend gemaak dat die Staatspresident sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word —

No 28 van 1981 Wysigingswet op Landdroshowe, 1981

OFFICE OF THE PRIME MINISTER

No 495

11 March 1981

It is hereby notified that the State President has assented to the following Act which is hereby published for general information —

No 28 of 1981 Magistrates' Courts Amendment Act, 1981

252

Background

Colour and justice

By BRIAN BAMFORD SC, MP

MANY people are concerned that a white man is jailed for 15 years for killing a black schoolboy (and severely wounding another), whereas a coloured man rapes a white nurse and is sentenced to death; and they note also that a Boland farmer who sjambokked a black man nigh unto death is released after serving 18 months of a three-year sentence

Is there, in fact, an inconsistency in South African criminal justice based on race? This is a question which recurs again and again, it is an extremely sensitive area, but the community dare not shirk an answer

One point must be made at the outset Ask any man of the law, be he judge, magistrate, prosecutor, advocate, attorney or professor What is the most difficult aspect of justice? There will be an overwhelming reply: It is not the assessment of credibility or demeanour in the witness-box, nor the finding of a fact, nor the sifting of evidence, nor an understanding of the law as a set of principles, nor the application of the law to the particular facts of the case It is without doubt the proper sentence upon a convicted offender.

There is good reason for this. Every lawyer knows of the danger of a subjective approach — that the sentencing officer will allow his own personal feelings if not prejudices to prevail over the firm guidelines which the law has laid down

SPECIFIC

Those guidelines are at once general and specific In general, each case must be considered on its merits, rules of thumb, sliding scales must not be used

On the contrary, there is an almost limitless number of specifics that have to be taken into account — the circumstances of the offence, the age of the accused, the frequency of the crime in the area, the likelihood of a repetition, previous convictions, the family situation of the accused, his state of mind, the availability of alternative penalties, the justifiable anger of the community, whether the accused was in a position of trust, the trend of previous sentences, whether the accused was in custody pending trial

These examples are enough to indicate the daunting task required of the sentencing officer And through and above them, as the Appeal Court has consistently laid down, is the need for the element of mercy.

All this is perhaps skirmishing to the central question of race There are experts, both practitioners and academicians, who have proved, to their own satisfaction at least, that the dice in South African courts are heavily loaded against a black man, others that there is scrupulous equality before the law Statistics can be, and are, used on both sides

Let us take a test case — which also highlights the South African dilemma the offence of *crimen injuria*, which consists in unlawfully, intentionally and seriously impairing the dignity of another person. This is what the leading textbook says:

It is plain that conduct which between persons of the same race would not be regarded as criminal may become criminal injuria as between persons of different colour. It is not a question of whether South Africans' colour-consciousness is right or wrong It is simply a recognition of the fact that the subjective impact of insulting conduct in our society is as a fact strongly influenced by considerations of colour.

In specific cases, however, South African courts have refused to give the colour-bar factor the weight which community attitudes suggest For example, where a black male has made overtures to a white female there will be no *crimen injuria*, notwithstanding that she may feel highly insulted, if the conduct falls short of sexual impropriety, as with mere requests for friendship, proposals for meetings, familiarities and impertinences

To return to recent events It is possible, indeed it is imperative, to argue that the young army lieutenant had imbibed liquor, that the rape was of the worst possible kind, and that the Boland farmer sitting in jail was aged 75 It must also be remembered that we have an effective and efficient system of appeals and reviews to correct inequities.

No doubt, as in any country, the odd sentence will cause extreme disquiet. But for anyone who has actually at first hand seen our courts at work the overwhelming impression is that justice remains blind, to fear and favour — and race

'Complacency' over hangings

CT 17/3/81 (252)

PORT ELIZABETH — Capital punishment, in spite of its moral significance, was a "non-issue" in South Africa because the victims were black, the national conference of the Black Sash heard in Grahamstown yesterday

According to a paper read at the conference, it frequently happened that on one day, six or seven condemned persons were executed without it being mentioned on the press

The paper, prepared by the Natal coastal region of the Black Sash, said that over the centuries, innocent people all over the world had gone to their death on a wrong conviction

"With the increasing awareness of the irrevocable horror of the death sentence, and its ineffectiveness as a deterrent, the nations of the Western world seem to be moving away from imposing the ultimate penalty"

In South Africa, which carried out more than half the world's executions, there was a complacency, lack of public debate and little official inquiry

Even more disturbing was the wide disparity between black and white hangings and the increasing number of crimes for which the ultimate sentence could be passed

These now included, in addition to murder and rape, robbery with aggravating circumstances, kidnapping, child-stealing, housebreaking with possession of a dangerous weapon, sabotage and offences under the Internal Security Act and Terrorism Act

"The racism that bedevils our constitutional structures and institutions is also evident in our courts where sentences do not seem to take into account all the in-built factors of racial inequality"

There were repeated executions of blacks for rape, whereas only three white men had beeen hanged since Union, all for raping young children

The conference decided that the Black Sash head office would examine the issue of the capital punishment, trends in the passing of the death sentence, the number of people executed and racial composition of condemned people

All regions were asked to keep a careful record this year of reported sentences passed on whites and blacks for the same offences, so that disparity of sentence could be studied

(Report by J Hyman, Old Mutual Building, Church Square, Grahamstown)

Juvenile court claim rejected

THE Department of Justice has rejected a claim that children have no legal representation in juvenile courts.

Mrs Elinda Bramwell, chairman of the Committee of Concern for Children made the claim last week when she announced that representations are to be made to the Minister of Co-operation and Development, Dr Piet Koornhof, on the protection of children

Mrs Bramwell called on Dr Koornhof to look into the rights of children

This week the Justice Department told **SOWETAN** that children can have legal representation in juvenile cases and the department ensures that the children's parents are informed of the child's appearance in court so they may accompany the child

The parents could instruct an attorney to represent the children, and this was normal practice, the spokesman said,

The spokesman also pointed out that there was no sitting juvenile court, but any court could be used for juveniles

Pressure to send farmer back to jail

By Z B MOLEFE

MOVES to send a white farmer who was convicted for the murder of his black labourer two years ago back to prison, gained momentum when Mr Eugene Roelofse addressed a student meeting yesterday.

The meeting on Torture on South African Farms was held at the University of the Witwatersrand and was illustrated with slides collected by Mr Roelofse during his investigations. Mr Roelofse is the "ombudsman" of the South African Council of Churches

"Some farmers believe that they can maintain their pride through their colour, while others believe they can maintain this pride through the sjambok and electric shocks," said Mr Roelofse.

He added: "We need eyes and ears throughout the country to bring these people to book We have to stamp out this sadism."

Yesterday's meeting stems from the court appearance of Mr Phillipus du Toit, a farmer from Rustfontein in the Cape's Rawsonville district who was convicted of assault, assault with intent to do grievous bodily harm and culpable homicide in 1978

Evidence was that he had chained a 12-year-old black boy to a post by neck after accusing the boy of stealing 80 cents. He had also flogged one of his labourers with a length of hosepipe while the labourer was suspended from a rafter by a rope around his neck Another labourer who rescued the 12-year-old boy was also hanged by the neck and flogged with a hosepipe by Mr Du Toit

The labourer was then beaten for over an hour with a walking stick by Mr Du Toit each time he collapsed Mr Du Toit was sentenced to one year imprisonment. He later appealed to the Appellate Division of the Supreme Court

Mr Du Toit's sentence was increased to three years after the court found that:

- He had acted sadistically towards his workers.
- It was totally unrealistic and unacceptable for the trial court to have said that this case had nothing to do with colour.
- Workers on his farm did not regard serious corporal punishment as something unusual
- He had "significantly not given evidence" during his trial,
- He had shown no remorse, and
- He had only escaped a long term imprisonment because of his age and health

The case for legal aid

RDM 19/3/81

BY BRUCE COHEN

NEARLY 99% of people who appear in British courts on criminal charges have legal representation

Records of a Cape Town court show that most blacks and coloureds in the dock are undefended — and almost 90% of accused without counsel are found guilty

These facts emerge in a study, "Justice For All Prospects and Problems", by Mana Slabbert published by the Institute of Criminology at the University of Cape Town

The book examines the existing legal aid structure in South Africa, surveys cases in the Cape and makes recommendations for improved law services for the poor

Stressing the necessity of legal aid and the expansion of services, Slabbert quotes Mr John Ayotte's address to a conference on law and poverty held in Ottawa in 1971 He said

"An individual cannot go to court without a lawyer if he really wants to win his case, unless it is something too minimal even to mention I've seen it myself — I've seen others appear before judges without lawyers and get sentenced If someone goes with a lawyer he gets off with a very light fine, or he gets off completely"

Back home, the Athlone Advice Office stated in its 1979/80 report 'Most people are undefended and are shunted through (the Langa Commissioner's) court at the rate of one case per minute In many cases those who attempt their own defence are remanded in custody while their stories are checked by the authorities This checking can go to extreme lengths'

And Sydney Kentridge SC at a Natal University conference, pointed out that 'of the plus minus one-and-a half million people who are processed particularly through Magistrate's Courts every year at least half-a-million should not have been in court at all"

Slabbert looks at legal aid groups in the country, such as the Legal Resources Centre in Johannesburg Law Student Clinics the Urban Training Project Legal Clinic the Athlone Advice Office the Black Sash Advice Office and the Legal Aid Bureau

These organisations handle about 38 000 cases a year and, according to their directors cannot cope with demand

Slabbert writes "One only has to remind oneself of the fact that there were 81 009 sentenced prisoners in custody in June 1979 and 13 865 awaiting-trial prisoners for the same period to realise how serious the problem is"

The study shows that the State Legal Aid scheme handles less cases a year than some private legal aid organisations with limited funds and that only a 'small percentage of black people are served by this scheme at present'

This Slabbert says could be due to the fact that blacks 'are reluctant to ask help from a State legal aid scheme because they do not believe they will get a fair hearing

Surveys in the book show that the majority of blacks appear in court without legal representation and are ignorant of court procedure, their rights — and legal aid

A survey of 425 cases in the Cape Town Magistrate's Court showed that only 15,5% of blacks and 21% of coloureds had legal representation, compared to 58% of whites

A survey of 400 cases in the Retreat Regional Court showed that 0,08% of blacks were represented, 7,7% of coloureds and 28 5% of whites

Significantly, 89,9% of accused of all races who did not have legal representation were found guilty, as against 64,58% of those who had counsel

The survey also found that the pleas of those who had legal representation corresponded more closely with the actual outcome of sentence than the pleas of unrepresented people

Records from the Athlone Advice Office showed that "not more than 12%" of people appearing in commissioner's courts in the Cape (where only influx control and related cases are heard) were represented

And, 'apart from not being legally represented, very few accused persons (about 5%) know basic court procedure or what their legal rights are"

The ramifications of this are spelt out in a report by the London Department of Justice 'There can be no doubt that an unrepresented defendant often suffers from severe disadvantages He is scared, inarticulate, unfamiliar with the procedure and commonly unable to understand what is going on

Slabbert says problems are often encountered with interpretation of language to the accused, which makes the proceedings very confused for some

She adds that the reply to the magistrate's question 'Have you anything to say?' is often "I am sorry, your Honour"

The book offers practical recommendations to improve legal aid services, such as

- Improved liaison between the various organisations,
- Greater involvement of lawyers in the service of the poor
- Greater emphasis on the training of law students in legal aid,
- The expansion of legal aid centres
- Better dissemination of legal aid information by stationing advisers at all courts, and
- Paying more attention to methods of reducing the flow of people through the courts

The report also found that there was a strong animosity towards the criminal justice system among blacks and coloureds

"They see the courts as an extension of the status quo and unfortunately many believe that the expansion of (legal aid) services will not enhance their chances, as the process of detection, apprehension and arrest is based on a system of privilege, ie the person with 'standing' in the community, financial resources, legal aid of own choice has a better chance of a lighter sentence and/or acquittal'

This raises the problems of suspicion of free legal aid and whether legal aid can develop in South Africa without becoming involved in the civil rights and social change issues

The study quotes Mr Vincenzo Ligenti, who told an international conference on law and civil procedure held in Belgium

"Legal assistance to the poor is not an ideologically neutral question and it cannot be seen as a simple organisational question'

In her recommendations Slabbert says a succesful legal aid scheme can only be developed if there is an awareness of the need to work for a more just society "address issues of inflation, chronic unemployment, structural causes of crime, such as the Group Areas removals etc"

She also stresses the need to provide legal services to those who are in need while "debates and negotiations on justice continue"

The rules that hold thousands in prison cells

MAJOR irregularities affecting the trials of hundreds of thousands of people under the pass laws have been revealed in a report to the Transvaal Attorney-General by a former Pretoria prosecutor, Mr Adam Klein.

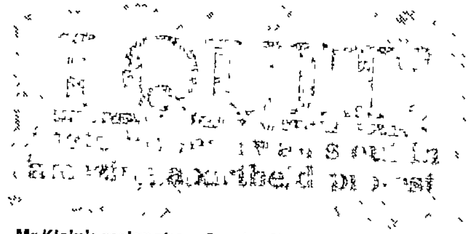
In the report Mr Klein, who dramatically walked out on his job at the Pretoria Commissioner's Court last year, discloses, for the first time, the existence of documents and circulars from the Department of Administration and Development which prove·

● That there is a standing instruction from the Department of Co-operation and Development to the commissioners' courts, — the courts that try pass-law cases — to routinely postpone all pass-offence trials for "at least three working days" before passing sentence, to enable the department to bring its records up to date while the accused are held in custody

Aid Centres

Besides depriving the accused of their liberty for non-judicial reasons — a gross irregularity — the measure has resulted in hundreds of thousands of people spending unnecessary time in detention over the past ten years

● That the Aid Centres, instituted in all major centres by the Government ten years ago ostensibly to help uneducated blacks avoid prosecution under the pass laws, are routinely used to investigate charges and prepare cases against blacks without having to comply with



Mr Klein's resignation, Sunday Times, August 31 1980

judge's rules — the rules which entitle an accused to refuse to answer questions by the police

South Africa's pass laws, and the system of commissioners' courts that enforces them, must inevitably result in irregularities, said Mr Klein in his report last year

"In a system designed to lock up hundreds each day, how can you possibly try all those cases according to normal judicial principles?" he asks in the conclusion to his 60-page report detailing his experiences in the Pretoria Commissioner's Courts

Besides recounting scores of cases in which he alleges legal irregularities occurred Mr Klein suggests that the system of aid centres has "crept in through the back door", to enable the pass system to be enforced "in the dark"

"The accused are misled," he says In the guise of "aid" they are questioned without access to legal representation and under circumstances where "no judicial eye can be kept on the proceedings"

In this way blacks arrested under the pass laws are persuaded to provide all the necessary information, not only for the State's information and records, but also for use in prosecuting them

He quotes at length from departmental documents which prescribe aid-centre interrogation procedures aimed at covering the entire range of pass offences to establish whether a man under arrest can possibly be found guilty of an offence

Contradictions

The information gleaned by the aid centre is then handed to the prosecutor and forms the basis of all prosecutions

Mr Klein quotes from a general departmental circular dated January 19 1978 in which court officials are ordered to prosecute cases to "the stage of judgment"

"Cases must then be adjourned for sentence to the third working day after judgment is given" — and the aid centre informed of progress to enable it to complete its work

Custody

Mr Klein's disclosure contradicts a statement made by the Director-General of Co-operation and Development, Mr J H Mills, last year after the Sunday Times disclosure of irregularities in the Pretoria courts

The Sunday Times reported that people accused under the pass laws spent an average of seven days in custody from the time they were arrested until they were sentenced Cases appeared to be routinely adjourned for at least four days after an offender was found guilty

Mr Mills said at the time "if this was so" at the Pretoria court, it clearly was an "irregularity that could not be tolerated"

It appears that far from being an irregularity in the Pretoria courts, the procedure was fixed departmental policy

Mr Klein says a great deal of time was lost in drawing up his report because he feared prosecution

He was arrested shortly after his walkout in September last year, on a charge of theft of court documents The charge was later withdrawn.

His report, he says, is based on fragments of notes he retained after the police had raided his home and office 'Further evidence is available at the commissioner's court in Pretoria

"I am aware that I may be attacked because of this report, but need only point to the general trend of the evidence I put before you A personal attack will only be aimed at diverting attention from it"

A spokesman for the Attorney-General's office in Pretoria confirmed he had received Mr Klein's report a month ago

Mr Mills, said yesterday that his department had not received a copy of Mr Klein's report to the Attorney-General

Until his department had received a copy and had time to study it, he could not be expected to comment

Circular

Asked about the 1978 circular from his department instructing commissioners' courts to remand accused for three working days after judgment, Mr Mills said

"That was before my time I have never set eyes on it and cannot be expected to comment"

On the earlier Sunday Times reports of irregularities at the Pretoria Commissioner's Court, he said the department had investigated each case

The Pretoria commissioner had been summoned to head office

Mr Mills said he had also personally sent out a circular

A parking charge is the equivalent offence'

SENIOR member of the Johannesburg Bar Council reacted with shocked amazement this week to the Klein report on irregular practices in the Commissioners' Courts, the courts that try all black pass offenders

The whole

a Russian novel of insanity

"Imagine the rage of a white citizen if he were to be summarily arrested and routinely held in custody for seven days while the traffic department investigates a parking charge against him — that is the equivalent

heed such a warning are very severe indeed

"Instead, tens of thousands of black people are deprived of their liberty and suffer the gross humiliation of imprisonment for several days while the

the impact on race relations is devastating

"The fact that Aid Centres are used to investigate and prepare cases against accused is a gross invasion of their legal rights And so one can go on

appointed by him to prosecute in the Commissioners' Courts"

Mr Klein's report will be referred to a number of committees of lawyers in the Transvaal in the coming weeks and the Sunday Time

Shock trials of aged and infirm

SEVERAL aged and insane black people were tried for pass offences at the Pretoria Commissioner's Courts last year without regard for their age or mental condition, and one of the magistrates at the courts judged cases with the aid of a pendulum, a former prosecutor at the courts has claimed in a shock report to the Transvaal Attorney-General

These and scores of other shocking irregularities are recounted in a 60-page report by Mr Adam Klein Pretoria prosecutor who walked out of court in protest last year

Nearly 12 000 pass-offence cases were tried in the Pretoria Commissioner s Courts last year

In a wide-ranging analysis indicating how practice in the Commissioner s Courts deviates from the law and accepted legal practice Mr Klein includes these examples

● During the trial of a young man a woman stood up in the public gallery and said that the accused her brother was insane and under medication The magistrate ignored her and postponed the case to a later date with the accused held in custody Shortly thereafter the accused suffered an epileptic fit in the court cells

● On one occasion, Mr Klein was instructed to try a foreign man in his absence, itself a serious irregularity On investigation he found that the accused was 93 senile and in hospital The case was withdrawn and the court file has disappeared

● A presiding magistrate was ordered by the chief commissioner to issue a deportation order for an elderly foreign black man despite his age and poor health A few days later, the official escorting the man to the border telephoned from Waterval Boven to report that the man had died on the train The court file cannot be traced

man was brought before court in his pyjamas His case was postponed and four days later he was brought back to court — still in his pyjamas

● Mr Klein quotes a number of cases where accused whose passes had been damaged by handling or rain — blacks are required to carry their passes at all times — were found guilty of defacing their reference books

● Accused awaiting trial in the court cells receive a ration of only two slices of dry bread in the morning and again two slices of dry bread at midday

Dealing with the courts themselves, Mr Klein says that one of the magistrates at the Pretoria court swung a pendulum over case dossiers as an aid to determine the guilt or innocence of accused

"This magistrate also told me that he always observes an accused's 'aura — the region above his forehead — to determine guilt '

Magistrates were frequently given case dossiers to study before they heard the cases in court a major irregularity and prosecutors were summarily withdrawn from cases if they did not carry out the chief commissioner s instructions he says in the report

In one case the prosecutor was withdrawn and replaced by

SOWETAN, Wednesday, March

Ex-prosecutor wants pass

By NORMAN NGALE

MR Rudolf Klein, former prosecutor at the Pretoria's commissioner's court, expressed a wish yesterday that he had been invited to the Sharpeville commemoration services.

"I would challenge the Nationalist Government to issue me with a reference book so that I could carry the mark of humiliation, having seen the realities of the passbook," Mr Klein said.

HAD ENOUGH

Mr Klein, who resigned as civil servant with the court claiming he had had enough serving apartheid recently submitted a scathing indictment of the court to the attorney general

He told **SOWETAN** in an interview that he would rather associate with the people who had experienced the hardships of apartheid

In his 62-page report, he submitted a record of what transpired at the 439 commissioners' courts that deal with passbook offences

His wish, Mr Klein said was to see the passbook vanish and be substituted by identity cards for all races.

He said that while prosecutor at the Pretoria commissioner's court he was subjected to the horror of seeing about 120 innocent people pass daily before him without any single offence committed

No prosecutor can remain at the court without being insane, Mr Klein said.

In Pretoria alone, he said, 40 060 people had been convicted on pass offences in the past decade out of a total 244 901 throughout South Africa

He described the reference book as the "key-hole" through which the authorities would probe all records, statistics, documents and personal history of the black man

He lashed at Dr Piet Koornhof for telling an overseas audience that apartheid was dead, while it was still alive and well back home

And when the Minister of Co-operation and Development's first smoke-screen backfired — namely the Free Concept Act 1980 — the minister referred to it a select committee for the creation of another smoke-screen

"My personal conviction is that Dr Koornhof will never remove the hurtful passbook, nor the restrictions entailed in it and that no human rights will be given to a black man under this government's rule," Mr Klein said.

After completion of his articles of clerkship he intends practising among blacks and would handle certain cases without charge he said.

STAATSKOERANT

VAN DIE REPUBLIEK VAN SUID-AFRIKA

REPUBLIC OF SOUTH AFRICA

GOVERNMENT GAZETTE

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CAPE TOWN, 27 MARCH 1981

KANTOOR VAN DIE EERSTE MINISTER

No 630 27 Maart 1981

Hierby word bekend gemaak dat die Staatspresident sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word —

No 52 van 1981 Wysigingswet op Besoldiging van Regters, 1981.

OFFICE OF THE PRIME MINISTER

No 630 27 March 1981

It is hereby notified that the State President has assented to the following Act which is hereby published for general information —

No 52 of 1981: Judges' Remuneration Amendment Act, 1981

STAATSKOERANT

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VOL 189] KAAPSTAD, 27 MAART 1981 [No 7506

CAPE TOWN, 27 MARCH 1981

KANTOOR VAN DIE EERSTE MINISTER

No 624 27 Maart 1981

Hierby word bekend gemaak dat die Staatspresident sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word —

No 45 van 1981 Huwelikswysigingswet, 1981

OFFICE OF THE PRIME MINISTER

No 624 27 March 1981

It is hereby notified that the State President has assented to the following Act which is hereby published for general information —

No 45 of 1981 Marriage Amendment Act, 1981

For full text see Gg 7506 252 clerks box

Natal Mercury's Publication

SA courts 'play the game of apartheid'

By Jon Qwelane
Pretoria Bureau

Adam Klein is a young Afrikaner who has flouted tradition and shocked South Africa

In a surprise move last year, he resigned as a public prosecutor because he felt he could not "execute apartheid in the guise of justice"

As a result he has been alienated from his family and received obscene telephone calls and "hate" mail

He tells of the time he was at a police station to pay a traffic fine — and claims he saw policemen lash four black children aged between nine and 11

He began wondering whether whites were subjected to the same treatment and it was then he decided to take up legal practice

His aim — to see that blacks had a fairer deal

"The deeper I went through court records, the deeper the whole exercise became an experience of apartheid," says Mr Klein

He was born and educated in Pretoria 25 years ago

After being threatened by the right-wing group, the Wit Kommando, and after differences with the Departent of Justice, he is not bitter.

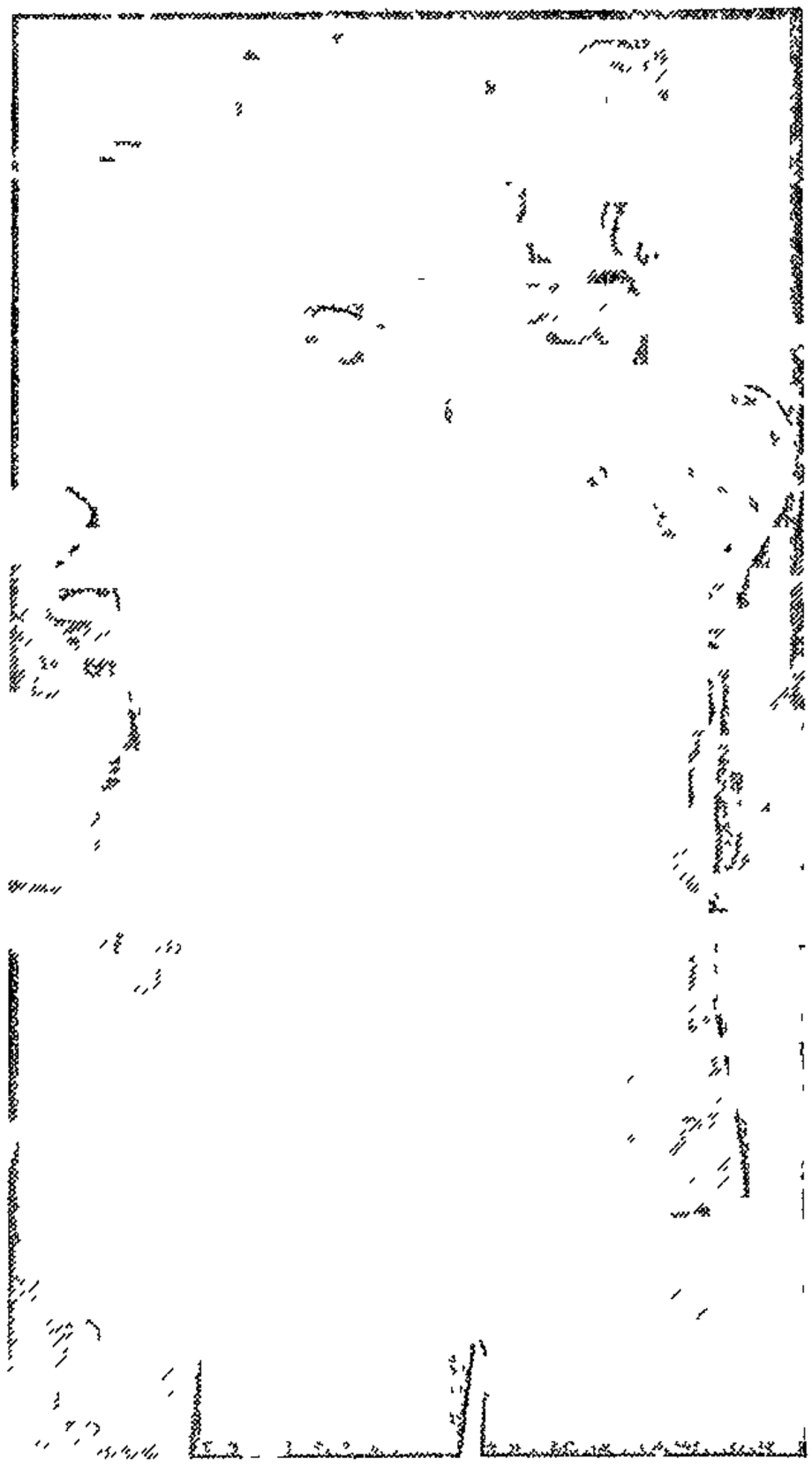
What made him change his outlook?

"The arrest and eventual conviction of the poet Breyten Breytenbach, and the incident when black children were lashed by policemen in a Pretoria police station were a shock to me. It was after that I made up my mind to follow the black man's trial," he says

He studied Bantu law and went to work at the "Bantu" courts

"Within two days as prosecutor, I discovered apartheid in its reality," he says

At the Commissioner's Courts he claims he discovered the "anger and hatred" of the prosecutor who had to execute the "unjust" laws, and the only one section of the community which is made to carry passes"



Mr Adam Klein, the Pretoria prosecutor who resigned his job because he felt he could not go on "practising apartheid under the guise of justice"

He sees the prosecutors, the accused as "playing the game of apartheid The prosecutor executes the law of apartheid, and the accused has no power But both know that what is happening is bad"

He feels that in South Africa the courts mete out the law to the letteer, note justice

The soft-spoken man who comes from a family of five brothers and one sister says his resignation shocked his family

"My family rejected me because it was not expected of an Afrikaner. Two weeks after the first report of my resignation, my sister had a birthday. I was not invited

"I think it was better for my family to keep away from me, but in the end they assisted me," he says

He has had obscene wanted to close his account and repossess his car. When he demanded to know the reasons he was told the bank had received a letter saying that he was on his way out of the country

He has written a report, at the request of the Attorney-General, in which he lays out alleged abuses in the Commissioners' Courts

The 62-page report relates to cases heard in the Pretoria Commissioner's Court and lists trials from January 1979 to September 1980 It quotes case numbers, names of the accused and verbatim court testimony.

The report also quotes from official circulars. One dated January 19 1978, instructs court officials to postpone cases for four days with the accused held in custody so that officials at the Government's "aid centres" could updatee their records

Adam Klein con-

Star

1/4/81

252

up my mind to follow the black man's trial," he says

He studied Bantu law and went to work at the "Bantu" courts

"Within two days as prosecutor, I discovered apartheid in its reality," he says.

At the Commissioner's Courts he claims he discovered the "anger and hatred" of the prosecutor who had to execute the "unjust" laws, and the accused who felt he was getting a raw deal

Adam Klein wants a reference book — "If it is such a good thing to have, why is it

one sister says his resignation shocked his family

"My family rejected me because it was not expected of an Afrikaner Two weeks after the first report of my resignation, my sister had a birthday. I was not invited.

"I think it was better for my family to keep away from me, but in the end they assisted me," he says

He has had obscene telephone calls and "hate" mail in which he was called "kaffir-boetie"

After his resignation, he claims, his bank

1980 ,,It quotes case numbers, names of the accused and verbatim court testimony.

The report also quotes from official circulars. One dated January 19 1978, instructs court officials to postpone cases for four days with the accused held in custody so that officials at the Government's "aid centres" could updatee their records

Adam Klein contends that the centres are anything but "aid" centres, and they often see that blacks are endorsed out of urban areas.

Judge: Allow us more discretion

CT 3/4/81 252

Staff Reporter

A JUDGE yesterday suggested it was time that Parliament allowed judges more discretion on the question of mandatory death sentences

Miss Justice Van den Heever made the suggestion before giving judgment on an application by a defence counsel that the court be told of his client's criminal record before judgment in the case

An accused's criminal record is handed into court after judgment and before sentence

The judge's comments yesterday followed comments on procedure in South African courts involving consideration of extenuating circumstances

In murder cases, consideration of extenuating circumstances follows judgment If it is found that there are no extenuating circumstances, courts do not have a discretion, but have to impose the death sentence

Miss Justice Van den Heever said an article in the Criminal Procedures Act which included this ruling was out of step with developments in the legal system

Sentencing in other cases followed a 1969 judgment in which it was said that a triad comprising the nature of the crime, the criminal and the interests of society should be considered when sentences were passed

She said "Perhaps it is time that the legislature trusted the judiciary in murder cases with the same degree of discretion that applies in other capital offences"

In the case before court, she could not see how the defence counsel was entitled to have the document he wanted handed in, to be handed in In addition, she could not see its relevance at that stage

The application was refused

In the case before the court, Frederick Diedericks, 20, of Wellington, was sentenced to 15 years for murdering Mr Joey Abrahams, 46, also of Wellington, in the town on March 8 last year

The court found there were extenuating circumstances in Diedericks' youth; that he had been provoked, that he had not directly intended to kill, and that he had been drinking

Stabbed twice

Diedericks, who pleaded not guilty to murder, stabbed Mr Abrahams twice in the chest after an argument over a gambling session that had been held the previous day

Miss Justice Van den Heever told Diedericks he had come within the "shadow of the gallows" That he was a first offender was largely cancelled out by the life style he had adopted

Mr Abrahams, who had been drinking heavily, had not expected the attack Diedericks had tried to blame the stabbing on a friend A long term of imprisonment was necessary to rehabilitate him and to protect the community

Miss Justice Van den Heever sat with two assessors Professor G F Lubbe and Mr H van Huysteen Mr R B Rorich appeared for the State. Mr P Roux appeared pro Deo for Diedericks

Pay boost for court staff

Court Reporter

Certain magistrates and prosecutors throughout South Africa are likely to get an allowance of R400 a month in addition to their normal pay, say informed sources

It is understood that the allowances are based on legal qualifications, and are likely to be included in this month's pay cheque.

Prosecutors said that they were expecting a confirmation of the allowances and details of new pay increases soon

Sources say that legal staff holding posts as prosecutors, magistrates, State advocates, assistant Government attorneys and State legal advisers are to receive the R400 allowance, provided that they have been admitted as attorneys or advocates.

Legal advisers with the Department of Foreign Affairs and Information are also believed to qualify for this allowance

Magistrates and prosecutors with a three-year legal qualification and who have worked at a court where a minimum of 500 hours work on criminal cases was done, qualify for an allowance of R300 per month

The allowances will scale down as the salaries increase

For example, when a salary reaches R22 000, the allowance drops to R150 a month for all staff members previously receiving an allowance of R400 or R300

It is understood that the allowance has been designed to attract people with experience in law and also to induce students to obtain higher qualifications at university and to serve a longer period of service with the department.

No R 849 GG 7549 16 April 1981

REGULATIONS IN TERMS OF THE ~~MARRIAGE~~ ACT, 1961 (ACT 25 OF 1961) 252

I, Pieter Gerhardus Jacobus Koornhof, ~~Minister~~ of Co-operation and Development, by virtue of the powers vested in me by section 38 read with section 1 of the Marriage Act 1961 (Act 25 of 1961), hereby amend Government Notice R 115 of 28 January 1972 in accordance with the accompanying Schedule

P G J KOORNHOF, Minister of Co-operation and Development

(File B1/2/5)

SCHEDULE

1 Substitute the following definition for the definition of "the Secretary" in regulation 2

" 'the Director-General' means the Director-General Co-operation and Development

2 Substitute the word "Director-General" for the word "Secretary" wherever it occurs in the regulations

3 Substitute the prefix "DSO" for the prefix "BA" to the form numbers wherever it occurs in the regulations and the Annexures

No R 849 16 April 1981

REGULASIES KRAGTENS DIE HUWELIKSWET, 1961 (WET 25 VAN 1961)

Ek, Pieter Gerhardus Jacobus Koornhof Minister van Samewerking en Ontwikkeling, kragtens die bevoegdheid my verleen by artikel 38 gelees met artikel 1 van die Huwelikswet 1961 (Wet 25 van 1961), wysig hierby Goewermentskennisgewing R 115 van 28 Januarie 1972 ooreenkomstig bygaande Bylae

P G J KOORNHOF, Minister van Samewerking en Ontwikkeling

(Lêer B1/2/5)

BYLAE

1 Vervang die woordomskrywing van "die Sekretaris" in regulasie 2 deur die volgende woordomskrywing

" die Direkteur-generaal' die Direkteur-generaal Samewerking en Ontwikkeling"

2 Vervang die woord "Sekretaris" waar dit ook al in die regulasies voorkom deur die woord "Direkteur-generaal

3 Vervang die voorvoegsel "BA" tot die vormnommers, waar dit ook al in die regulasies en die Aanhangsels voorkom, deur die voorvoegsel "DSO

Fairly honest and fairly dishonest

(252) 16/4/81

What the public and attorneys think of the legal profession

Mercury Reporter

THE legal profession is not regarded as honest by the public or by members of the profession itself, according to a survey conducted the Department of Communications at the University of the Free State.

In a paper delivered at the South African law conference in Durban yesterday, Prof H C Marais said the results of an opinion survey showed that the public regarded attorneys somewhere between 'fairly, honest and fairly dishonest' In a survey conducted among attorneys themselves the results were much the same.

Of the attorneys questioned, 64 percent said they were unhappy with their public image and 34 said it presented no problem to them.

They believed the image could be improved by better provision of information about the profession to the public, improved instruction and examining of attorneys and the adoption of stricter measures against irregularities in the profession.

Other conclusions from the survey were that the public was completely ignorant of the wide variety of services offered by attorneys, that the public was reluctant to approach attorneys with their problems; that there was much room for improved communication between attorney and client and that in his personal contact the attorney failed to improve or change his image

Ninety percent of attorneys questioned said Press coverage of the profession was objective, balanced and positive. They felt the profession could make more use of the media to supply information to the public.

Silence on inquiry into judges' expenses

252 S. Express 19/4/81

last year, when he was still Minister of Justice

Mr Schlebusch revealed at the time that he had discussed the alleged misuse of public funds by certain Supreme Court judges with former judge Mr Mervyn King, who had resigned from the bench four months earlier

Mr King, 42, one of South Africa's youngest and most brilliant judges, quit in the prime of his career because of his dissatisfaction over the alleged misuse

Making a special announcement to the House, Mr Schlebusch said the Bar Council was satisfied Mr King's belief was "bona fide", and announced that Mr Justice Rumpff, aided by practising chartered accountants, would investigate subsistence and travelling allowances of judges

(It appears from Mr Coetsee's statement to the Sunday Express this week that the commission also investigated allowances of some judges' clerks)

Mr Schlebusch said he had also discussed the allegations with Mr Justice Rumpff, the chairman of the Johannesburg Bar Council, Mr Acting Justice J C Kriegler and an advocate, Mr W H R Schreiner

Mr Schlebusch said he and the Bar Council had agreed that the facts available should not be made known as it would be unfair to sow suspicion about the honesty of judges

also appealed to the

By KITT KATZIN

THE Commission of Inquiry into allegations of irregularities by some Supreme Court judges involving the alleged misuse of public funds, has completed its investigations and has submitted a top-level, confidential report to the Department of Justice.

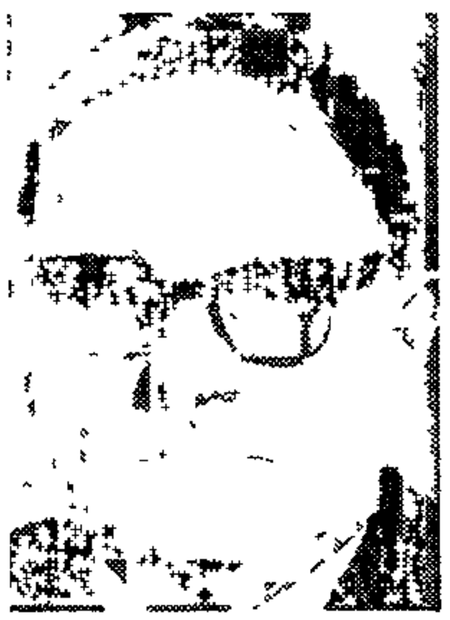
The Minister of Justice, Mr H J Coetsee, told the Sunday Express this week that the commission, which sat for nearly a year under the Chief Justice, Mr Justice F L Rumpff, had forwarded a report to his department on March 24

But the Government, Mr Coetsee said, had not yet decided whether it would publicise the commission's report

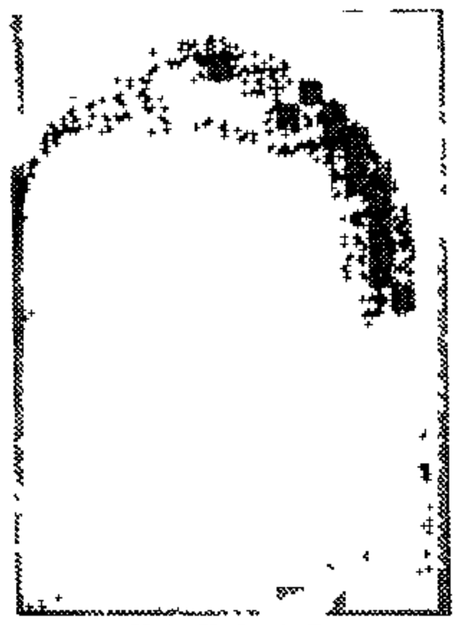
Commenting on allegations that the Government had decided to hold over the findings until after the election, Mr Coetsee said "The election has nothing to do with the way in which the Government will deal with the report"

He added that the necessary documents for submission of the report to the State President, and a memorandum on the matter, were being prepared

The appointment and terms of reference of the commission were announced by Mr Alwyn Schlebusch, chairman of the President's Council, in May



● Mr Alwyn Schlebusch ... formed commission.



● Mr H J (Kobie) Coetsee ... took over the reins

COMMISSION HAS FILED TOP—LEVEL SECRET REPORT

Press to exercise the same circumspection in its reporting on the matter as it had done up to that stage

Mr King also discussed the allegations with the Judge President of the Transvaal, Mr Justice W G Boshoff, and informed legal sources said at the time that the alleged irregularities involved an appreciable amount of money and had apparently occurred over a number of years

The commission began work immediately after its appointment and held several sittings

However, it is not known whether it called any judges or witnesses to give evidence, nor the extent of the public funds said to be involved.

Mr Coetsee took over responsibility for the commission from Mr Schlebusch in October last year

He told the Sunday Express this week that the Government would consider the commission's recommendations and how to act on the report itself after it had been submitted to the State President

However, Mr Coetsee said, there was little likelihood of the report being released to the public "before and unless it is tabled in Parliament"

At the time of Mr Schlebusch's announcement, the Judge President of Natal, Mr Justice N James, said he was satisfied that no allegations imputing dishonesty to any Natal judges had been made

News by Kitt Katzin, 171 Main Street, Johannesburg

integration can be analyzed in terms of the collective goals set and pursued in the different sectors of a society in terms of the relations between these goals and in terms of opposition to them

> Power refers to the capacity of some unit acting as an agent of the system to overcome the resistance of system members in setting pursuing and implementing collective goals (Lechman 1969 455 456)

This definition implies the existence of effective sanctions Since the scheme being developed here is concerned of within the four sectors of a society, Parsons's (1963) scheme of four sanction types will be used Each sanction type corresponds to one of these sectors Furthermore the above definition of power can be so specified that four analytically differentiable types of power can be obtained, each of which will also correspond to one of the four sectors of a society

> We thus distinguish between four main types of power— economic military or political social and cultural Within this general framework we may say that the ultimate basis of economic power is control

Intentional Column C has control over R's attributes
C can therefore change these to R's advantage (Positive)
C can therefore change these to R's disadvantage (Negative)

(For a further discussion of these four types of sanctions see 'On the Concept of Political Power', (Parsons 1963 232-262)

Problems of system integration can be analysed in terms of the power which is wielded in each of the four sectors, in possibly clashing collective goals set and pursued within these four sectors, and in the amount of control over the power-bases in these sectors

Social integration depends upon the effectiveness of cultural and social power, which in turn, depends upon the scope of the two power bases The first, control over societal values, and the second, control over the means of status attribution, are problematic in a plural society It is to be expected, therefore, that little effective intentional sanction can be used, at a societal level, over members of a plural society The most effective sanctions (and, consequently the most effective power-wielding) in such a society will probably be situational coercion and inducement [8]

Therefore it is to be expected that goals set and pursued within the four sectors of the society will create tensions and imbalances because they are set for all members of the society It becomes important, then to inquire which persons and groups are in power-wielding positions, and which persons and groups have gained control over the bases of power as they have been defined Those who have gained control over such bases are in a position to apply effective sanctions when wielding power

To analyse this problem, the concepts of centre and periphery are introduced The centre refers to "the structural aspect of power and comprises those organizations, groups and individuals who exercise most 'power' in a given social system" (Jessop, 1972 65) The centre, then, refers to the coincidence, in the four sectors of a society, of power-wielding positions A leading politician who is also a leading businessman and church-elder may serve as an example Each position this person fills, taken separately, defines a position of power within one sector The strength of the centre is measured first, in terms of the amount of control such positions have over the bases and sanctions allied with the power-type Second, a centre is strong insofar as the capacity compatibly to wield all four types of power coincides in such positions

Broadly speaking, then, the critical decision-making and goal-setting positions in each of the four sectors tend to overlap The units filling these coincident positions control a broad base from which collective (societal) goals can be set pursued, and implemented

The positions such units occupy constitute the centre of the society Such units attempt, by using these positions of power, to maintain peaceful co-operation between the institutions of that society

Units in the centre are faced with two critical and recurrent problems Both are brought about to a large extent by the process of development in the society First, developing out of the inherent problem of system integration (especially in developing societies) there is a constant possibility that collective goals set in institutions within the four sectors clash Under such circumstances the centre is liable to split into a number of competing centres (and *élites*) [9] To avoid the formation of opposing centres, units turn to their control over the means of value creation, interpretation, and maintenance--in other words, to cultural power Social power may also be used Consensus (or social integration) amongst the units in the centre is critical here

Second, units in the periphery are constantly attempting to gain control over (especially) the reward structure of the society Thus, they attempt to gain a greater control over the means of production, distribution, and exchange of goods and services, in other words, they seek economic power Though other sanctions types are also used, those in the centre tend in this case to apply coercion (or the threat of coercion) It is political power that is critical in the handling of centre-periphery relations

These problems concerning social order are interdependent The gravity

2. cont.....

(1) Plot this demand curve as accurately as possible, preferably using graph paper.

(2) Now suppose that over a period of ten successive years the annual "crop" amounted to outputs of 80, 60, 70, 40, 50, 80, 60, 50, 40, and 70 million bushels respectively. Calculate and tabulate the gross value of the crop in each of these years, if the demand curve scheduled above was the demand curve of each of the ten years.

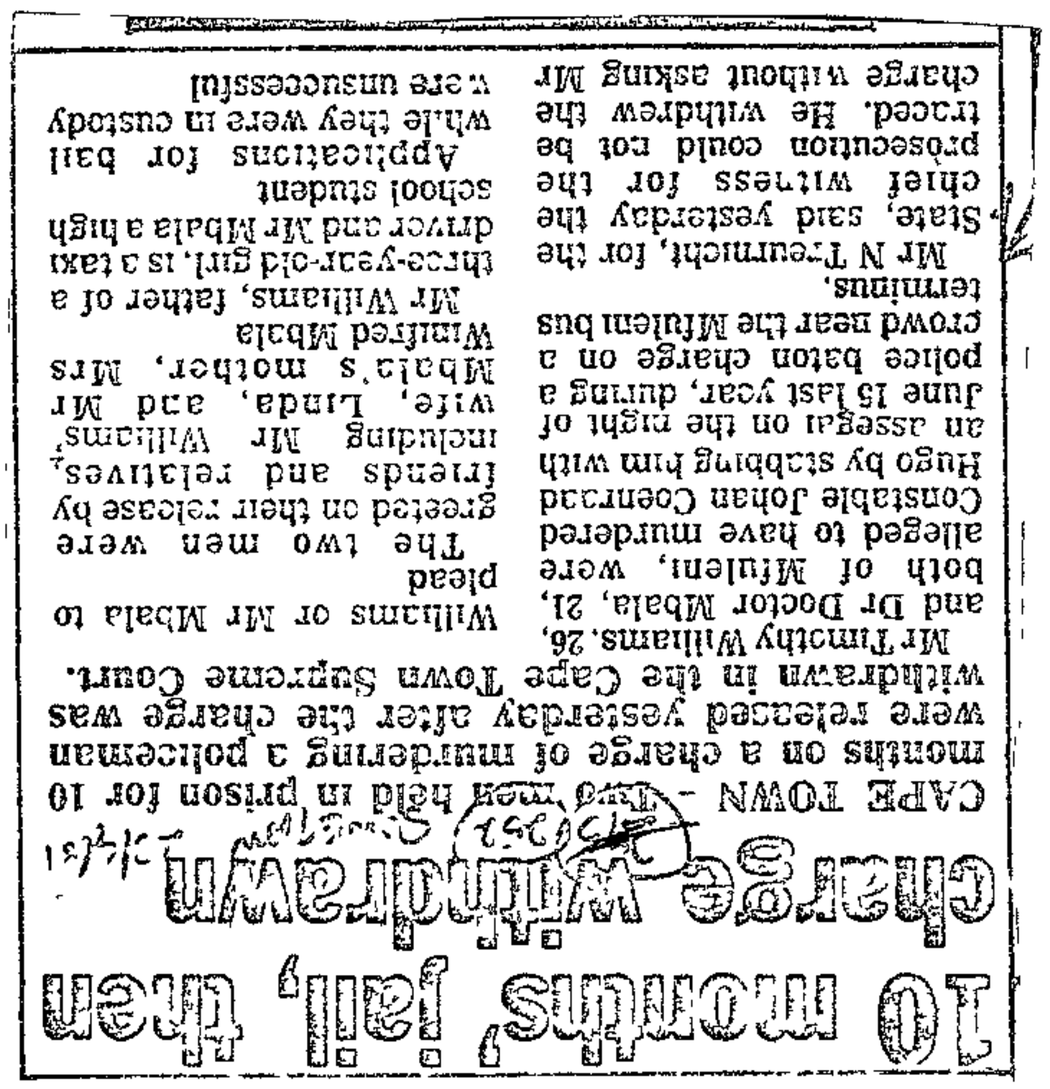
(3) Calculate the average annual gross value of the crop over the ten years, and the output and price which would yield this value.

(4) Construct a schedule showing what price would have to be received for each of the outputs in the demand schedule in order to make the gross value of the crop in each year equal to the average annual gross value. Plot this schedule on the same paper as the demand curve. (It will be a curve of unit elasticity).

(5) From the demand curve find the total amount which must be offered on the market in order to fetch the prices discovered in part (4). From these amounts make a schedule showing how much the government would have to buy or sell for each total output.

(6) Draw up a schedule showing how much the government would have to buy or sell in each of the ten successive years of part (2). Would the government have to sell a total greater than the amount it would have to buy over the ten years? Does the answer mean that stabilization of the gross value of a crop is impossible?

* * * * * * * * *



10 months' jail, then
charge withdrawn

CAPE TOWN – Two men held in prison for 10 months on a charge of murdering a policeman were released yesterday after the charge was withdrawn in the Cape Town Supreme Court.

Mr Timothy Williams, 26, and Dr Doctor Mbala, 21, both of Mfuleni, were alleged to have murdered Constable Johan Coenraad Hugo by stabbing him with an assegai on the night of June 15 last year, during a police baton charge on a crowd near the Mfuleni bus terminus.

Mr N Treurnicht, for the State, said yesterday the chief witness for the prosecution could not be traced. He withdrew the charge without asking Mr Williams or Mr Mbala to plead

The two men were greeted on their release by friends and relatives, including Mr Williams' wife, Linda, and Mr Mbala's mother, Mrs Winifred Mbala

Mr Williams, father of a three-year-old girl, is a taxi driver and Mr Mbala a high school student

Applications for bail while they were in custody were unsuccessful

DRAFT

DEGREE OF DOCTOR OF ECONOMIC SCIENCES

1. Subject to the provisions of section 13 of the Act, the degree may be conferred upon -

   (a) a graduate of this University of not less than eight years' standing;

   (b) a graduate [illegible] ersity recognised [illegible] the purpose of [illegible] nt years' standing.

2. A candidate sha[illegible] approval of the Senate o[illegible] ork or original work a[illegible] tion in a subject or sub[illegible] the Senate which mus[illegible] istinction by some origina[illegible] the advancement of science [illegible]

3. The work must be[illegible] atisfactory form. Six bound[illegible] resented.

Mr A P de Vries, Jonannesburg's senior public prosecutor and one of many top legal men who warned the Hoexter Commission of impending judicial chaos if salaries were not improved, said he was delighted with the allowances.

"This month, for the first time in more years than I can recall, there has not been a single resignation The average is three a month

"We are still short of 12 prosecutors of a complement of 107, but I think the allowances will stem resignations, keep people in the service and attract more and better qualified people."

Bid to end judicial staff crisis

The Government has announced generous allowances for officials in the Department of Justice — a move which comes in the wake of the staff crisis in the courts

Mr Coetsee, Minister of Justice, announced the new allowances to be paid to magistrates and State prosecutors in larger magisterial offices

They would also be paid to advocates and legal advisers for the State and to assistant State prosecutors

The announcement comes at a time of increasing militancy among public servants battling to maintain State administration which is threatened by mass resignations and staff shortages

CHAOS

Judges and unjust laws

CONSIDER YOUR ROLE, ASKS CIVIL RIGHTS BODY

S Tribune 26/4/81 (252)

BY TONY SPENCER-SMITH

SOUTH AFRICA'S judges are being asked to consider their role in applying unjust laws in a bold new campaign launched by the Civil Rights League.

The campaign is the first of its kind in the country, and is bound to be controversial.

The league — whose president is Sir Richard Luyt, former principal of the University of Cape Town, and whose patrons include Dr Alan Paton, Dr Oscar Woolheim and former Anglican archbishop the Right Reverend Robert Selby Taylor — has sent a pamphlet to all judges

It asks whether there is any hope "that the voice of the judiciary may at last be raised in an attempt to influence the legislature to amend or repeal laws which make it impossible for judges to carry out the terms of their oath of office, namely to administer justice?"

Copies have also been sent to the judge-presidents, who are asked in covering letters to convene meetings of all the judges in their divisions to discuss the situation

In an exclusive statement to the **Sunday Tribune** the chairman of the league, Brian Bishop, said that visitors to this country, however critical, had always praised the independence of the judiciary, but "such praise is no longer heard".

He said it was clear that, in the eyes of many South Africans, the courts were a vital part of a system of oppression. He said that because the Government used the courts whenever it wished for purposes that 'do not bring honour to the principles of law, we believe that judges must take steps to stop that abuse, and to proclaim their support for the true principles of the rule of law."

Sir Richard Luyt . . . president

responsibility of judges, when a succession of statutes has limited or removed the inherent jurisdiction of the supreme court, or when they are called upon to apply such blatantly unjust laws as the pass laws (which govern only certain people, because of their race, namely Africans) or the group areas and mixed marriages acts, or security laws which provide for banning and incommunicado detention without due process?

"Gustave Radbruch, a prominent German jurist, was compelled by the experience of the Nazi holocaust to argue that there is a stage at which the law ceases to be a law, when it sinks below a minimum level of humanity or justice.

"Commenting on the South African situation, a professor of law has written: 'It is almost as if the courts have invoked the contempt power to protect them from the memory of Nuremburg, to spare them the agony of deciding, or even considering, at what point a law ceases to be a law on account of its immoral content and at what point confrontation or resignation becomes the lot of the judge"

Mr Bishop said in his

S. Tribune

26/4/81

252

He said it was particularly important that judges did not participate in a system they knew to be wrong merely because parliament had passed a law.

"Our responsibility as human beings comes before our professional responsibilities, regardless of our profession"

The pamphlet singles out Section 6 of the Terrorism Act as epitomising the erosion of the rule of law in South Africa, and says the system of bannings and house arrests under the Internal Security Act is "inherently unjust".

It emphasises that in their oath of office, judges undertake to "administer justice".

Then it asks whether judges should not come together to "consider the implications of what to many is a manifest contradiction between the terms of their oath and their present hearing of cases under the above legislation?"

"Parliament is sovereign, and judges hold office to enforce and uphold a system created by that body.

"But increasingly the bulk of the population now regard the legal order as 'oppression'5 and a growing number of lawyers overseas and law students in South Africa consider that the legal profession here is 'collaborating with and lending respectability to a fundamentally illegitimate process'"

The pamphlet says the situation is deteriorating and the prime concern is that future generations of South Africans should retain respect for the rule of law and the value of an independent judiciary

Resignations of judges on grounds of conscience might then be seen retrospectively as the sparks which kept alight a fundamental belief in the best traditions of our Western legal heritage.

"What then is the statement to the Tribune: "If the Government wants to halt discussions on a subject, it refers the matter to a judicial commission and then claims that the matter is sub judice

"In that way a power that is intended to enhance the stature of our courts is used to debase it.

"Statements are obtained in questionable circumstances from people in solitary confinement and, when these statements are denied in open court, the witness is charged with perjury.

"Bannings reflect complete contempt for the rule of law, and yet it is the courts that are called on to sentence people who break their banning orders.

"Attorney-generals can now make rulings that are binding on the courts. It is horrifying that a prosecutor has more power than a judge," Mr Bishop said

In submissions last October to the Hoexter Commission — which is inquiring into the structure and functioning of courts of law and into the establishing of an intermediate court between the lower courts and the supreme court — Mr Justice John Didcott, of the Natal bench, warned of a "deliberate and determined strategy" to harness and control the supreme court

"Few communities, and none whose jurisprudence resembles ours, have gone as far as we have Few, and none with whom comparison would be welcome, have done so with less apparent reluctance or greater damage to the fabric of law"

In a review judgment in August 1979 Mr Justice Didcott challenged the capacity of the bench to certify that certain proceedings in terms of the Bantu (Urban Areas) Consolidation Act had been "in accordance with justice"

to direct projects to benefit the very poorest people, it will often find that the entrenched richer classes on the local level corrupt these projects to their own benefit.

(b) There is a widely held view that peasants are "traditionalist", "stubborn", "suspicious", and that they reject new ideas and projects One should consider here that this may be a logical response from people whose relation to technologicall has led to a long history

It is possible that total will only occur when poor can control their politica to the extent of being abl condition of their lives. having power and influenc

Notwithstanding that this one can discern factors wh response at a project leve projects are initiated and efficiently and benefit me discuss in this part of th

Any attempt to implement an int strategy must be based on an an situation:

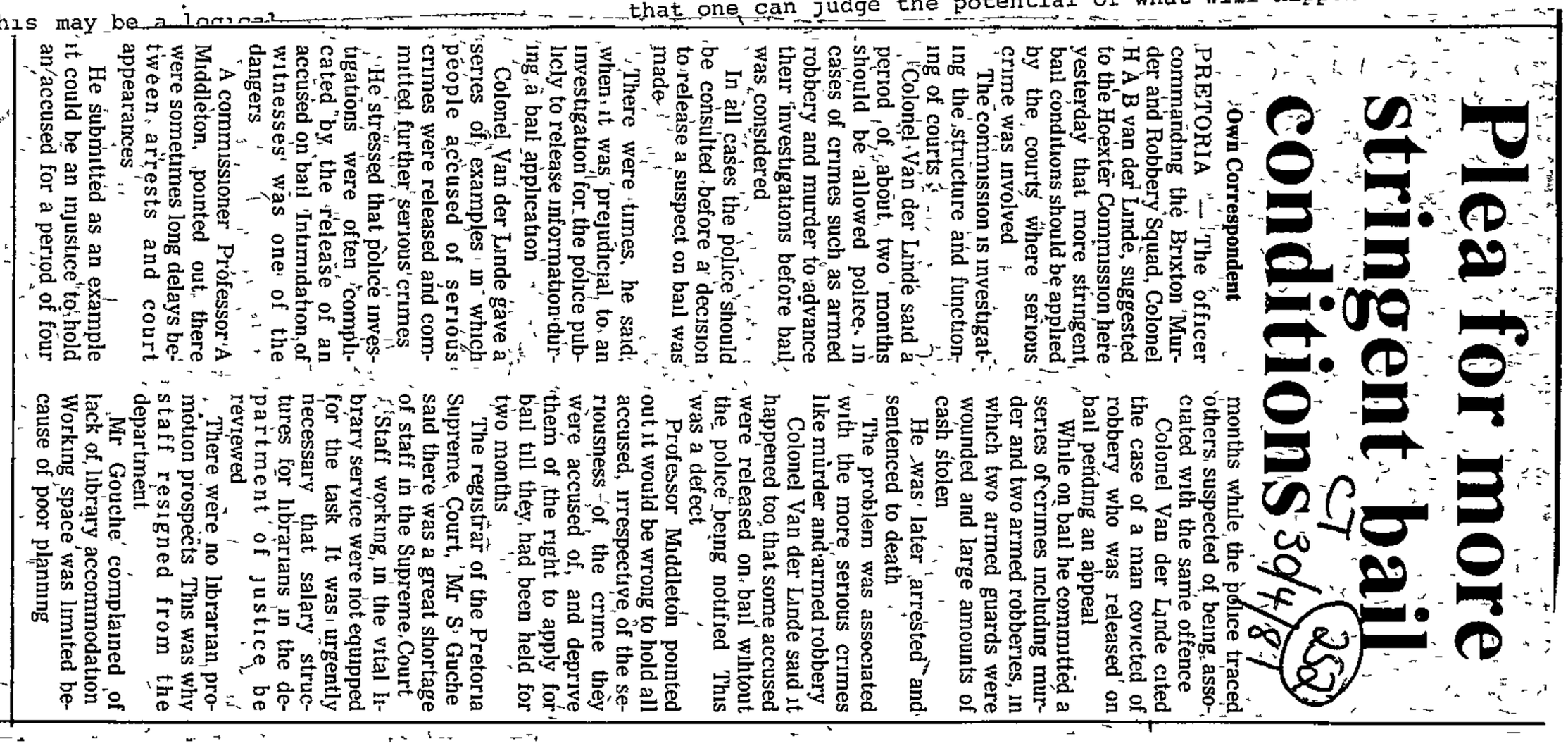
(a) To expose the workings of the present system and to look for places in the existing social order in the reserves where there seems to be potential for change.

(b) To try to discover through experience and assessment, types of projects which foster equitable development

and which work.

Thus, even considering the restrictions on how far projects can develop (vide Part I), involvement in them in the present situation is worthwhile at least as a learning process for all concerned.

One must not, however, make the mistake of believing that one can judge the potential of what will happen



Plea for more stringent bail conditions

Own Correspondent

PRETORIA — The officer commanding the Brixton Murder and Robbery Squad, Colonel H A B van der Linde, suggested to the Hoexter Commission here yesterday that more stringent bail conditions should be applied by the courts where serious crime was involved

The commission is investigating the structure and functioning of courts

Colonel Van der Linde said a period of about two months should be allowed police in cases of crimes such as armed robbery and murder to advance their investigations before bail was considered

In all cases the police should be consulted before a decision to release a suspect on bail was made

There were times, he said, when it was prejudicial to an investigation for the police likely to release information during a bail application

Colonel Van der Linde gave a series of examples in which people accused of serious crimes were released and committed further serious crimes

He stressed that police investigations were often complicated by the release of an accused on bail Intimidation of witnesses was one of the dangers

A commissioner Professor A Middleton, pointed out, there were sometimes long delays between arrests and court appearances

He submitted as an example it could be an injustice to hold an accused for a period of four months while the police traced others suspected of being associated with the same offence

Colonel Van der Linde cited the case of a man convicted of robbery who was released on bail pending an appeal

While on bail he committed a series of crimes including murder and two armed robberies, in which two armed guards were wounded and large amounts of cash stolen

He was later arrested and sentenced to death

The problem was associated with the more serious crimes like murder and armed robbery

Colonel Van der Linde said it happened too that some accused were released on bail without the police being notified This was a defect

Professor Middleton pointed out it would be wrong to hold all accused, irrespective of the seriousness of the crime they were accused of, and deprive them of the right to apply for bail till they had been held for two months

The registrar of the Pretoria Supreme Court, Mr S Guche said there was a great shortage of staff in the Supreme Court

(Staff working in the vital library service were not equipped for the task It was urgently necessary that salary structures for librarians in the department of justice be reviewed

There were no librarian promotion prospects This was why staff resigned from the department

Mr Gouche complained of lack of library accommodation Working space was limited because of poor planning

394/81

'Unjust laws' Plea to SA's Judges

By TONY SPENCER-SMITH

SOUTH AFRICA'S judges are being asked to consider their role in applying unjust laws in a bold new campaign launched by the Civil Rights League.

The campaign is the first of its kind in the country and is bound to be controversial

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It asks whether there is any hope 'that the voice of the judiciary may at last be raised in an attempt to influence the legislature to amend or repeal laws which make it impossible for judges to carry out the terms of their oath of office, namely to administer justice?'

Copies have also been sent to the judge-presidents, who are asked in covering letters to convene meetings of all the judges in their divisions to discuss the situation.

In a statement the chairman of the league, Mr Brian Bishop, said visitors to this country however critical, had always praised the independence of the judiciary, but 'such praise is no longer heard'

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He said because the Government used the courts whenever it wished for purposes that 'do not bring honour to the principles of law, we believe that judges must take steps to stop that abuse, and to proclaim their support for the true principles of the rule of law.'

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'Our responsibility as human beings comes before our professional responsibilities regardless of our profession.'

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Then it asks whether judges should not come together to 'consider the implications of what to many is a manifest contradiction between the terms of their oath and their present hearing of cases under the above legislation'

'Parliament is sovereign, and judges hold office to enforce and uphold a system created by that body.

'But increasingly the bulk of the population now regard the legal order as "Oppression" and a growing number of lawyers overseas and law students in South Africa consider that the legal profession here is "Collaborating with and lending respectability to a fundamentally illegitimate process."'

Mr Bishop said in his statement 'If the Government wants to halt discussions on a subject, it refers the matter to a judicial commission and then claims that the matter is sub judice

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'Bannings reflect complete contempt for the rule of law, and yet it is the courts that are called on to sentence people who break their banning orders.

Attorney-generals can now make rulings that are binding on the courts. It is horrifying that a prosecutor has more power than a judge,' Mr Bishop said.

Some prisoners may be freed to mark Republic day

By MANDLA NDLAZI

AMNESTY may be granted to "certain categories of prisoners" to mark the celebrations of the Republic of South Africa's 20th anniversary.

This was disclosed by Major A J Boshoff, liaison officer of the South African Prison Service. He said the Minister of Justice had made a statement on the issue. Quoting from the statement, Major Boshoff said

"As is customary on such occasions, I have decided to submit a proposal to the Cabinet for a recommendation to the State President that amnesty be **granted to certain categories** of prisoners on the occasion of the coming Republic festival"

Mr Boshoff said no further details could be made available at this stage.

Meanwhile, black consciousness organisations like Azapo, Cosas, Azaso, Soweto Committee of Ten, Peoples Candidates and many others have called for a boycott of the festival planned for May

A spokesman of the Southern Transvaal committee of Cosas recently addressed a gathering in Mamelodi township on the **boycott. The occasion was** the second anniversary of the execution of Solomon Mahlangu for his role in the Goch Street shooting

For the boycott to succeed, the spokesman said, "we have to launch an anti-Republic Day campaign We must march and carry placards and appeal to all blacks to do the same"

Appeal court releases Robben Island prisoner

A FORMER Soweto student sentenced last year to five years imprisonment, has had his sentence set aside by a Pretoria Appeal Court and is expected to be released from Robben Island soon.

Adam Masake (19), of Dube Township, won his appeal on Monday and his attorney, Mr M Basslion, said he would be released from prison yesterday

Masake was convicted in August last year after he was found guilty of receiving military training in Lesotho

A Johannesburg regional magistrate, Mr J L de Villiers, found that he received military training through the banned African National Congress and the Lesotho para-military police

But he was acquitted on a charge of recruiting other youths for military training in that country

Mr Basslian lodged an appeal

At the appeal hearing, Mr Justice Curlewis and Mr Justice Melamet set aside the convinction and sentence after they found there was no adequate evidence that Masake received military training

Masake alleged that while he was in detention at John Vorster Square, he was assaulted by police who forced him to admit the training allegations

As a result of the torture and solitary confinement, Masake alleged, he suffered from constant headaches and felt "insane"

He said he had no alternative but to admit the accusations and so he wrote a police statement confessing that he had received military training

Munnik is new Judge-President

(252)

CT 8/5/81

Staff Reporter

MR JUSTICE Munnik, first Chief Justice of Transkei, whose appointment as the new Judge-President of the Cape was announced yesterday, believes punishment should be a deterrent and is on record as saying it is the courts' duty to protect citizens against "despotic" and "unreasonable" bureaucrats

Cape Town-educated and a brother of the Minister of Health, Dr L A P A Munnik, Mr Justice Munnik will succeed Mr Justice Watermeyer

Announcing the appointment of Mr Justice Munnik in Pretoria yesterday, the Minister of Justice, Mr Kobie Coetsee, also made public the appointment of Mr Justice Hefer to judge of the Eastern Cape division — being seconded there at the request of the Republic of Transkei — and

Mr Justice Munnik

the appointment of Mr Justice Booysen in his place in the Natal provincial division

Mr Justice George Glaeser Anderson Munnik, 58, was educated at the South African College School and the University of Cape Town

He began practising at the Johannesburg Bar in 1946 and took silk in October, 1958

He first ascended the Bench in August, 1960, as an acting judge of the Transvaal Division, soon after appearing as defence counsel in the sensational trial of Sergeant Nic Arlow of the South African Police, who was found guilty of culpable homicide arising from the death by shooting of an African

In April, 1973, Mr Justice Munnik was appointed Chief Justice of Transkei in a special announcement which surprised Opposition parliamentarians, since the State had not yet achieved independence and had no high court of its own at the time

He was sworn in at Umtata's Palace of Justice on August 1 of that year

In March the following year, while sentencing a former Lusikisiki post office clerk for stealing R40 000, Mr Justice Munnik made headlines with a warning that in his nine months on the Transkei Bench he had become aware of "frightening" theft and corruption by Transkeians in positions of trust

He said that while some people spoke of rehabilitation as one of the main objects of punishment, he thought greater weight should be given to deterrent punishments

Two years earlier, Mr Justice Munnik had told members of the Afrikaanse Leeskring in Grahamstown that bureaucrats "do not like having their despotic or unreasonable actions placed under a searchlight and dissected by a judge who stands completely uncommitted in relation to state and politics"

Where a difference occurred between the citizen and the State, the official either acted against the individual or refused to act at his request

'Our task is to ascertain whether the official has acted within the law. It is the simple core of the matter which concerns us

'It is a cardinal rule that infringements of the rights of the individual must be strictly interpreted so as to impinge as little as possible on these rights'

Mr Justice Munnik added that meticulous interpretation of the law as laid down was the chief duty of a South African judge, and personal ideas or prejudices should never colour his judgment

He rejected the suggestion that some South African judges had been political appointments and said he treated the suggestion that judges sentenced blacks to death more freely than whites with "the contempt it deserves"

Hefer is new chief justice

UMTATA — The Prime Minister, Chief George Matanzima, yesterday confirmed the appointment of Mr Justice J. J F. Hefer of the Natal Provincial Division of the Supreme Court of South Africa as Chief Justice of Transkei

The announcement followed the withdrawal of Mr Justice G G. A. Munnik from secondment to the Transkei Government and his appointment to the post of Judge President of the Cape Provincial Division of the Supreme Court

Judge Munnik, 59, who is also chairman of the council of the University of Fort Hare, was seconded to the new High Court of Transkei six years ago — SAPA.

Judge slates attacks on Bench

Own Correspondent

PORT ELIZABETH — There had been an insidious and growing attack on the South African judiciary by people who had questioned the integrity of members of the Bench, the new Judge President of the Cape, Mr Justice Munnik said last night

He told the annual convention of Lions International in Port Elizabeth: "The attack runs along these lines the judges have to administer justice and how can they be said to administer justice if they apply unjust laws of which the Terrorism Act and detention without trial in terms of the Act are given as prime examples of unjust laws being applied by the Bench?"

"Then follows a call upon judges to meet and to speak out either in public as a body, or in individual cases against these so-called unjust laws

"Coupled with this is usually a snide reference to the conduct of judges in nazi Germany who acquiesced in Hitler's laws," Mr Justice Munnik said

It was a judge's function to interpret the law as he found it "The law may appear to be unjust, for example in relation to detention without trial, but judges have to assume that that factor has been weighed against the demands of what has been referred to as the supreme law, in other words, the safety of the State"

It was not for judges to question this, he said

Prisoners' sentences to be remitted

Certain categories of prisoners are to be granted remission of sentences from June 2 as part of the present Republic Festival, the Minister of Justice, Mr Kobie Coetzee, said in Pretoria last night

He said that among those who would not qualify were prisoners sentenced for transgressions against the security of the State

● Prisoners with sentences of up to four months and those sentenced to periodical imprisonment, will receive total remission of sentence.

● Prisoners with sentences of more than four months will receive one quarter of remission of sentence, apart from normal remission.

"With regard to violent crimes a maximum of one year of remission is granted while all other cases get a maximum of three years remission"

People imprisoned for corrective training and prevention of crime and habitual criminals will receive a remission of from six to 21 months

The most important categories of prisoners who do not qualify for remission of sentence are

● security prisoners who were guilty of crimes against the State

● prisoners sentenced for refusal to testify

● mentally disturbed prisoners who are receiving treatment in psychiatric hospitals

● prisoners who had been certified as psychopaths and were detained in hospital prisons for psychopaths

● prisoners sentenced for housebreaking with sentences of eight years or longer

● prisoners sentenced for rape if sentences of more than five years were imposed — Sapa

Wits prof criticises 'the law's iniquities'

252

57876
14/5/81

By Carolyn Dempster
Education Reporter

South African law was not noted for its display of justice, largely because of the excess of State authority, Professor J D van der Vyver told hundreds of University of the Witwatersrand graduates last night

In his address, "Accessories of Excessive Governmental Powers," Professor Vyver, a lecturer in law at Wits, said that the "statutory iniquities of contemporary South African law" centred on several issues.

Among these were

● Arbitrary powers of the executive to detain, ban or violate the privacy of technically innocent members of the community

● Excessive State control of religion, sport and domestic life.

● The sanctioning of discrimination based on political conviction, sex and race.

If, in the future, students of this generation were faced with a dismal failure — a failure to create a feasible political framework for the peaceful co-existence of all peoples in South Africa — they should not plead ignorance of the issues, said Professor Vyver

"The writing is on the wall for all to see"

Some instances of "objectionable" government conduct which appeared to thrive on excessive administrative powers included corruption of those in authority, mismanagement of the affairs of State, secrecy in acts of government, deception of the public by spokesmen of the Government, callousness by political rulers towards those in distress and an air of self-righteousness

Professor Vyver then offered examples of government "misconduct"

Among these he mentioned the handling of the defunct Department of Information as an ideal example of maladministration The good intentions of the Government had been slurred by its persistent refusal to accept collective responsibility for the debacle and by Dr Connie Mulder's calculated lie in Parliament about the financial backing of The Citizen

The clampdown on the Press in so many areas evidenced the Government's wish to conduct its affairs under a cloak of secrecy

Over the years, several statements by prominent Ministers had later proved to be untruths — among these were Mr P W Botha's denial of South Africa's involvement in Angola, Mr Jimmy Kruger's misleading statements about the death of Steve Biko in detention, and Dr Mulder's lie in Parliament

All led to a deliberate deception of the public

"In addition," said Professor Vyver, "disregard of the law by the Government is presumably as much the result of a sense of unlimited power as any of the other vices."

For instance the Defence Act of 1957 was amended retroactively to legalise the involvement of South African troops in the Angolan civil war, several times the Government had abridged the rights of provincial councils — as in the case of the takeover of black education in 1953

Academic calls for jail reform

Argus 22/5/81

252

Argus Correspondent

DURBAN — About 200 000 people awaiting trial are imprisoned each year in South Africa before being pardoned by the courts, Professor D J McQuoid-Mason of the University of Natal said this week

Quoting the Commissioner of Prisons, he said that in 1978 272 887 blacks were arrested for influx control offences and 89-059 were imprisoned.

'During 1976—77, 82 percent of sentenced and unsentenced offenders in custody were blacks,' he said

RACIAL BIAS

'This can easily be explained by a variety of factors including the fact that there are many more factors, including the fact commit,' he said

The directions to prevent crime and foster rehabilitation that Professor McQuoid Mason has called for include

- The decriminalisation of petty crimes' — such as pass offences, which are racially based In so doing the large number of blacks who are labelled criminals and exposed to prison culture would be cut back
- The accused must be informed that they may apply for bail
- Greater use of legal aid for accused who may be imprisoned
- Research into the administration of justice, the workings of the Criminal Procedure Act, and the sentencing process
- A charter of prisoners' rights
- Information should be provided to make research on rehabilitation in prisons easier

CRIME RATE

'Professor McQuoid-Mason said the improvement of the standard of living would result in a reduced crime rate as poverty caused people to turn to crime

Prisons, he said, became breeding grounds for crime.

'More than 80 percent of the 98 000 daily average of prisoners are short-term (serving sentences of less than six months) who receive no "treatment' or rehabilitation during imprisonment

'About 20 000 long-term prisoners (serving two years or more) admitted annually are eligible for the treatment programme

TRADE TESTS

'Of these, fewer than 350 sit academic and technical examinations, fewer than 450 sit trade tests, while more than 4 000 received specialised training as artisans

'The 250 prison institutions are served by fewer than 200 social and auxiliary workers and fewer than 30 clinical psychologists

'Fewer than 127 of the prisons have libraries,' he said

Professor McQuoid-Mason said that a former Deputy Commissioner of Prisons in South Africa had acknowledged that prison was an unsuitable place for rehabilitation and resocialisation of offenders

Divorce Act doesn't forget the wife — but is it enough?

By YVONNE STEYNBERG
Woman's Editor

LAST year, the effects of the new Divorce Act of 1979 were beginning to be felt, and many women learnt to their discomfort that they were not fully aware of all the implications of the new laws affecting divorce

In a previous article, in which I spoke to a woman attorney in Port Elizabeth it was pointed out that one could actually be divorced without knowing it!

Undoubtedly, the most important change introduced by the new Divorce Act is that the guilt principle has almost entirely been banished from the South African law of divorce

Not surprisingly, many women are now asking how a wife — who is the innocent party — could protect her marriage and future, if her husband (as the guilty party) were to insist on a divorce

It has also been suggested that the new Divorce Act may favour the guilty husband, in that it may facilitate divorce for him

Whereas the woman advocate whom I interviewed in Port Elizabeth, pointed out all the *pitfalls* of the new Divorce Act as it affects women, an article in the latest issue of Her Own Financial Forum, but written by a male advocate, points out the *advantages* of the new law

Whatever the pro's and con's of the issue — and it is a matter of vital importance when seen in the light of the soaring divorce rate in this country, and the number of "second" marriages which also go on the rocks — there are certain aspects of the new law which should be considered on merit

The advocate states that, to a certain degree we are still enslaved by the idea that it is 'unfair' that a 'guilty' party should be entitled to divorce

When however one tries to observe objectively the role of guilt in divorce certain truths come to the fore that simply have to be recognised in modern divorce law

In the first place one does not have to be a sociologist to know that the marriage relationship is far too complex to blithely label parties 'guilty" and 'innocent" when it comes to a matter of divorce

Under the old divorce law, the unsavoury search for evidence of guilt was often, to put it mildly an extremely unpleasant affair

All sorts of questionable techniques of detection were put to use and there were even cases where 'decoys" were used to produce evidence of guilt"!

Secondly, many a legal practitioner can testify to the extremely disadvantageous conditions that the guilty party was sometimes forced to accept

Under the old law the innocent party could for instance, prevent a divorce by simply withholding consent

This often resulted in a kind of blackmail, with the innocent party stipulating all sorts of unreasonable conditions, such as total control and custody of the children, as well as prohibitive maintenance payments in exchange for consent to divorce

Thirdly — and this is very illuminating — according to statistics, more than 90% of all divorces in South Africa prior to 1979 were actually undefended

The guilt-factor was, therefore, relevant in less than 10% of all the cases

Taking into consideration these deleterious results, it would definitely appear that statistically speaking, there was little to say in favour of retention of the guilt principle

Where both parties desired divorce, the guilt principle became nothing less than sheer fiction and as already mentioned, this was actually the position in 90% of cases

Under the old divorce law, retention of the guilt principle often led the parties involved to fabricate evidence, such as malicious desertion, or even adultery, in order that their case could be made to fit in with "letter of the law"

The irony was that both the parties, their legal representatives and with due respect, even the Judge himself, were fully aware of the fact that the whole thing was a complete charade

Obviously, such a state of affairs did little or nothing to enhance the public image of the administration of justice

Viewing it objectively, when one sees the abolition of the guilt principle against this background, it immediately becomes clear why the South African legislature thought fit to introduce 'the irretrievable breakdown of a marriage' as the basic ground of divorce

"At first glance it may seem "unfair" that the guilty party can force a divorce by simply alleging that the matrimonial bond has been irreparably broken, but the question is, after all, what is the sense in trying to keep alive, artificially as it were, a marriage which is already dead?

Sociologists agree that it is futile to force the existence of a marriage where it simply is no longer viable

In these circumstances, he breaking of the marriage bond is clearly in the best interests not only of the innocent party but of the children as well

In a report on divorce, the Archbishop of Canterbury said

"Divorce law founded on the doctrine of breakdown would not only accord better with social realities than the present law does, but would have the merit of showing up divorce for what in essence it is, — not a reward for marital virtue on the one side and penalty for matrimonial delinquency on the other, not a virtue for one spouse and a reverse for the other, but a defeat for both, a failure of the marital 'two-in-oneship" in which both its members, however unequal their responsibility, are inevitably involved together"

He referred to the criticism that the new law ostensibly favours the husband as guilty party, since he can now obtain divorce easily and leave his wife as it were impecunious

'In this regard it must be remembered very clearly that the new law does not completely do away with the guilt principle in our divorce system

"Provision is specifically made that the court may take cognisance of the parties' conduct in so far as it may be relevant to the breakdown of the marriage when an order for maintenance is granted" — (Section 7(2)

Provision is also made that the court may take cognisance of "any substantial misconduct" of the parties, when an order for the forfeiture of patrimonial benefits is made

The "innocent" wife fearing to be left destitute has therefore, not been forgotten by the legislator

However, despite this, a warning is necessary

It would be foolish for her to adopt a careless attitude when it comes to such questions as maintenance, or the forfeiture of patrimonial benefits and costs

The help of an able legal practitioner is *always* preferable to a do-it-yourself approach, however financially tempting

The man who dictates to famous women and all others who follow slavishly how they should wear their hair, does not seem to care about the appearance of his current girl friend. Famous hairdresser Vidal Sassoon and his latest girl friend, Jane Branneky, pose for photographers at Heathrow airport before flying to New York. Blonde Jane, 26, from California, rolled her cuddly leg warmers down to her ankles for photographers but firmly clutched her mink, while Vidal, 54, twice married, said: "We're just having fun."

'Integration' of traditional laws urged

By JOUBERT MALHERBE
Pretoria Bureau

THE possibility of white offenders being tried in traditional black tribal courts — "makgotla" — was mooted when four academic experts on indigenous law gave evidence yesterday before the Hoexter Commission of Inquiry into the structure of functioning of the courts

Professor M W Prinsloo, Professor B J Van Niekerk, Professor W P Vorster and Professor J Church submitted a memorandum to the commission on behalf of the department of indigenous law at the Institute for International and Comparative Law at the University of South Africa

They advocated the integration of indigenous law into the South African legal system

They said it was undesirable that the commissioners' courts, where blacks are tried for influx control offences among others, should function outside the ambit of the common law structure

They envisaged a thorough investigation into the possible widening of the powers of the makgotla

Prof Prinsloo, a law professor at the Rand Afrikaans University, told the commission the makgotla system had arisen in the townships because blacks did not accept the authority of white judicial officers

Blacks in urban townships saw police raids as "a game" and would not assist police

Blacks had also lost faith in the effectiveness of prison sentences

"Blacks generally regard corporal punishment as a very effective way to deal with offenders," he said

Prof Prinsloo said indigenous law should not apply only to blacks and there were cases in which there should be provision for whites to be summonsed to appear before indigenous courts

A commissioner, Mr J C Ferreira, remarked that a "difficult political situation" would arise should the makgotla have jurisdiction over whites

Prof Prinsloo and his three colleagues urged the commission to recommend that training in indigenous law be made compulsory for jurists.

They also urged the use of black assessors in certain cases in which black accused were involved

Prof Prinsloo added that blacks viewed the existing "dual" system, under which they might have to appear in the commissioner's court one day and the magistrate's court the next, as an anomaly

Cognisance had to be taken of developments in African countries where there had been a successful integration of a traditional legal system and a Western legal system

Developments such as the possible repeal of the Mixed Marriages Act meant indigenous law would have to be subject to continuous revision, Prof Prinsloo said

Another witness, Professor F A de Villiers, head of the law school at the University of BophutaTswana, warned that the integration of indigenous and common law systems in South Africa could lead to a negation of the role of the indigenous legal system

Prof De Villiers said he feared injustice would be done to blacks through ignorance of indigenous law among those in control of the integration process

Prof Van Niekerk said blacks were dissatisfied with the "dual" system in South Africa, and felt the system of commissioner's courts was inferior

DISEASE

It has been shown that the well trained general practitioner can handle 90% of illness presenting to him. It has also been shown that the under-graduate sees little of this pathology in the wards of the teaching hospital - something less than 1% The four groups of disease which are of special importance to the general practitioner have been identified

(a) Common disorders which usually have a benign outcome but which may occasionally have serious complications, e.g. rubella in the early months of pregnancy.

(b) Early diagnosis. Those conditions in which early diagnosis and treatment are necessary to forestall serious outcome, e.g. depression and malignant disease

(c) Chronic disorders like hypertension, diabetes and chronic bronchitis which require continuing care

(d) Emergencies where prompt and urgent treatment is essential and may be life-saving, e.g. myocardial infarction

Myocardial infarction is of special importance because the danger period is in the first four hours, usually before the patient has reached hospital. In a project carried out in Cape Town it was demonstrated that prompt treatment by the educated general practitioner diminished the deathrate from myocardial infarction to a level lower than any previously

reported (J H. Levenstein, 1976)[12]

Human Development.

This area of knowledge is concern
and emotional development from infancy to
important for two reasons.

(a) So that one can detect the e
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Human Behaviour.

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Education Reporter

A SYMPOSIUM on the role of the judiciary in South Africa at the University of Cape Town tonight promises to be highly controversial with three radically opposed views for discussion

A senior law lecturer, Mr Dennis Davis said it would be the first sympo sium of this sort in Cape Town

Issues

Three speakers will talk on for 15 minutes each on their own viewpoint. Mr Chris Forsyth senior lecturer in Roman Dutch law at UCT, will argue that the way the judiciary is constituted at the present time is quite in order Mr Davis said

Professor Julian Hoffman, senior lecturer in Roman law will argue that there is a clear separation of powers and that the law and morality should be kept separate

Mr Richard Erasmus, senior lecturer in criminal law, will argue that the judiciary is more than part of the

whole repression in the State

After the arguments have been presented the audience will be invited to comment, discuss and argue the points raised

The seminar starts at 8 pm in lecture theatre 4A in the Education Faculty building

Commissioner courts come under fire

Star 11/8/76

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Own Correspondent

The judicial function of commissioners' courts is considered inadequate for present-day black urban life

The Hoexter Commission of Inquiry into the structure and functioning of courts was told this in Pretoria yesterday by Mrs Deborah Mabiletsa, a prominent member of the black community

She said commissioner court officials were identified with the Department of Co-operation and Development, and are seen as administrative rather than judicial officials.

They were regarded as agents of a department whose primary function was to implement Government laws and punish those who break them

Commissioners had to implement the policies of resettlement, she said, and those who were resettled felt there was no judicial protection to which they could look within the framework of the resettlement laws

There was also a belief that the commissioners were not independent or impartial, she said.

ISOLATION

A former commissioner of child welfare in Johannesburg, Miss Jane O'Conner, told the commission that there was a feeling that commissioners' courts were courts of "very low standing"

She said the judicial quality of her office was severely affected by the lack of proper library facilities, isolation from other members of the legal profession, and the poor quality training of commissioners

Though she got immense satisfaction from her job, she had left because of "severe frustration."

Mrs Joy Hansen, field officer for the National Association of Child Care Workers, suggested that all commissioners of child welfare should have some kind of specialised training

A Sunday Times journalist, Mr Martin Welz, said there were shocking irregularities in the commissioners' courts, and they should be abolished.

UNDERMINED

He said he was shocked by his findings after investigating for his newspaper, cases against alien blacks and others in connection with influx control and identity documents

Mr Welz said the Department of Co-operation and Development interfered with the commissioners' courts

The commissioner himself was entwined in the administrative pattern and policy of the department.

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Commission told: lack of standards in court officials

By MONK NKOMO

THE courts are seen as agents of the administrative function of the Department of Co-operation and Development in the eyes of the black community

Giving evidence on attitudes towards commissioners' courts, Mrs Deborah Mabiletsa yesterday told the Hoexter Commission that the commissioners were not seen as judicial officers but as administrative officials

"There is a belief that they are not independent and that they lack impartially and this is contrasted with an attitude towards the magistrates' courts where there is a belief that a fair hearing will be given to persons brought before the courts," Mrs Mabiletsa said

She was giving evidence before the Hoexter Commission which is being led by Mr Justice G G Hoexter The commission, which is sitting in Pretoria, is inquiring into the functions and structure of the courts in South Africa

Mrs Mabiletsa added that the officials were identified through their employment by the Department of Co-operation and Development with the implementation of influx control regulations and in particular with the enforcement of permits for housing with all "its bureaucratic red tape and consequent lack of compassion for individual cases"

The commissioners, she said, were officials who had to implement the policies of resettlement.

"Where there is a dual function, there is always a risk involved that the one function overwhelms the other In this case the administrative function is dominant Consequently those who are being resettled feel that there is no judicial protection to which they can look within the framework of the resettlement laws," Mrs Mabiletsa said

The Government's most severe punishment such as banishment orders were carried out by commissioners, she said

"They are again associated with the punishment sector in Government and consequently cannot be regarded as impartial judicial officers," she said

In conclusion, Mrs Mabiletsa said, a further consideration which affected persons in their attitude towards the commissioners' courts was the lack of standards in the officials who ran the courts

"This means that although theoretically the commissioners' courts should be available to persons without the income for attorneys to use in resolving disputes in general, people do not feel that they can rely on the clerks of the courts to assist them in preparing their cases and there is consequently still a need to employ attorneys in these courts," she said

- 23 -

- 24 -

CERTAIN CAUSES OF PERINATAL MORBIDITY AND MORTALITY

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PLEASE CIRCLE ITEMS REQUIRED

Police (illegible) ed judge's bail order

An Umtata advocate Mr J D Pickering, took the order for the release of the couple on R150 bail each to Major Sipambo, but this was ignored by the policeman who said it was "a scrap of paper that could have been picked up in the streets".

Mr Justice van Coller was woken up again for a second order for the release of Miss Maree and Mr Coetzee, which also instructed Capt D Bam and Major Sipambo to appear before the Supreme Court for ignoring the first order The police set for their trial — Sapa

UMTATA — A Transkei Supreme Court judge was woken up twice on Tuesday night to issue a bail order for the release of a striptease artist and a hotel employee because two policemen kept ignoring the order

Mr Justice A P van Coller issued the bail order after the stripper, Miss R Maree, was arrested on Tuesday evening at the Holiday Inn for allegedly public indecency, and the assistant hotel manager, Mr Abe Coetzee, for allegedly obstructing the police

second order was also ignored

The two policemen were brought before Mr Justice van Coller on Wednesday morning to explain why they should not be sent to jail for contempt of court They apologised to the judge saying they had doubted the legality of the first order

They said they had not wilfully ignored the order to appear before the Supreme Court They had just overslept

Mr Coetzee and Miss Maree were then released and no date was set for their trial — Sapa

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Southern Africa.

PLEASE CIRCLE ITEMS REQUIRED

major political processes, the general political dispensation of South Africa has numerous negative social, psychological and economical consequences that (indirectly) contribute, in certain areas, to an unsatisfactory quality of life. Examples of this is the implementation of the Group Areas Act, the existence of job reservation and separate facilities, etc.

A very important and well-known contributo
development and especially the perpetuati
is the housing situation. A disturbingly
of the Coloured population is inadequatel
a very serious effect on both the social
milies and physical and mental health of

Within such a situation of institutional
inevitable that there will be numerous n
on both the individual and community le

Some of these are easily noticeable, e.
rate, broken family structure, a high i
rate, poor labour performance, and alas, a high incidence of alcohol and drug abuse.

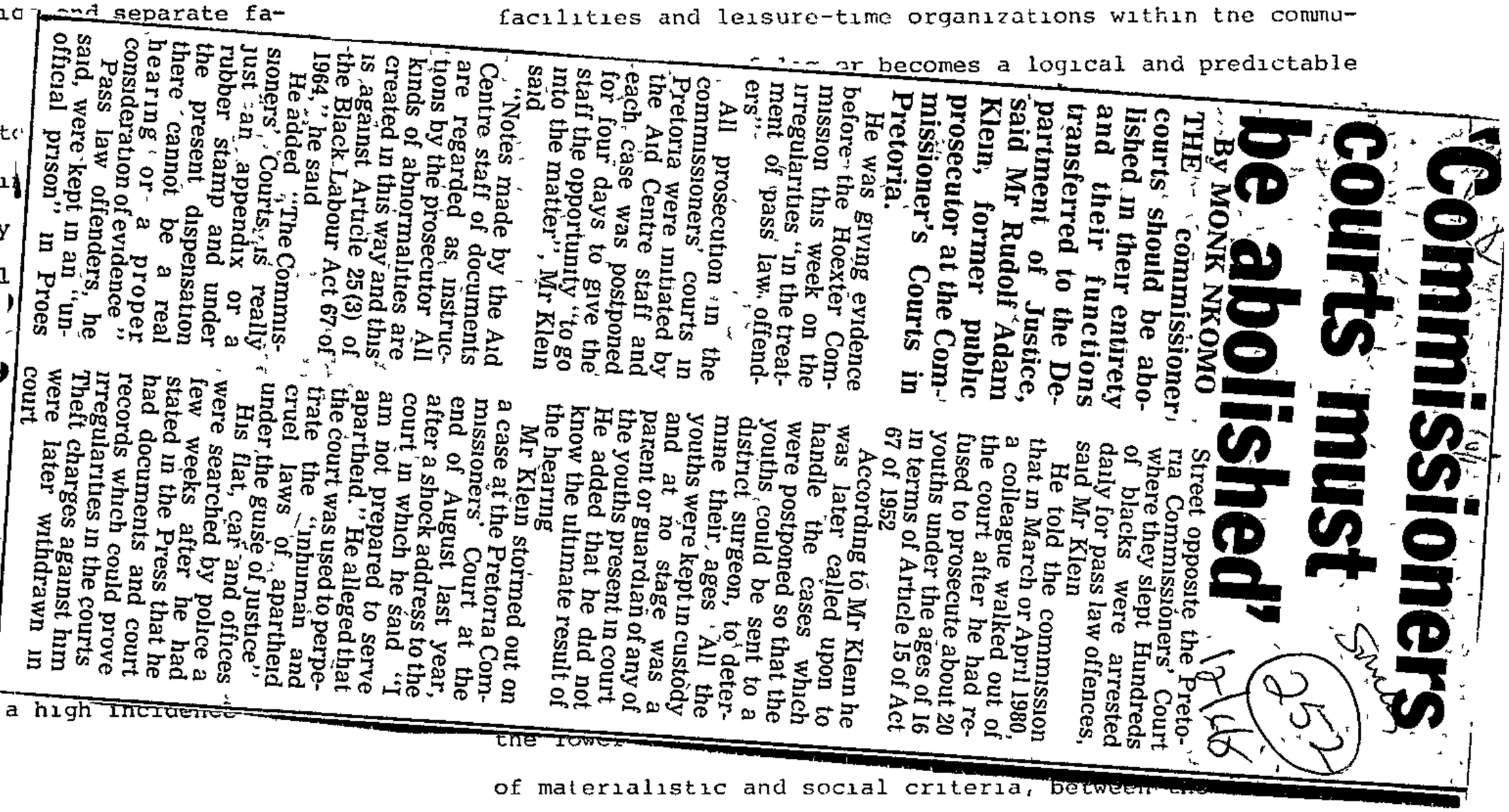
Any effort to build a theoretical construction about the incidence and aetiology of problem drinking in the Coloured community shall have to utilize insights and concepts from the different academical disciplines involved in alcohol-related research.

On a societal level, as has been demonstrated, certain fac-

tors can be identified that are conducive in creating alcohol problems insofar that a high level of anxiety is generated and maintained.

This anxiety must be channeled in some or other way to make life tolerable. With the lack of meaningful recreational facilities and leisure-time organizations within the commu-

...er becomes a logical and predictable



Commissioners courts must be abolished'

By MONK NKOMO

THE commissioners' courts should be abolished in their entirety and their functions transferred to the Department of Justice, said Mr Rudolf Adam Klein, former public prosecutor at the Commissioner's Courts in Pretoria.

He was giving evidence before the Hoexter Commission this week on the irregularities "in the treatment of 'pass' law offenders".

All prosecutions in the commissioners' courts in Pretoria were initiated by the Aid Centre staff and each case was postponed for four days to give the staff the opportunity "to go into the matter", Mr Klein said

"Notes made by the Aid Centre staff of documents are regarded as instructions by the prosecutor All kinds of abnormalities are created in this way and this is against Article 25(3) of the Black Labour Act 67 of 1964," he said

He added "The Commissioners' Courts is really unjust an appendix or a rubber stamp and under the present dispensation there cannot be a real hearing or a proper consideration of evidence"

Pass law offenders, he said, were kept in an "unofficial prison" in Proes Street opposite the Pretoria Commissioners' Court where they slept Hundreds of blacks were arrested daily for pass law offences, said Mr Klein

He told the commission that in March or April 1980, a colleague walked out of the court after he had refused to prosecute about 20 youths under the ages of 16 in terms of Article 15 of Act 67 of 1952

According to Mr Klein he was later called upon to handle the cases which were postponed so that the youths could be sent to a district surgeon, to determine their ages 'All the youths were kept in custody and at no stage was a parent or guardian of any of the youths present in court He added that he did not know the ultimate result of the hearing

Mr Klein stormed out on a case at the Pretoria Commissioners' Court at the end of August last year, after a shock address to the court in which he said "I am not prepared to serve apartheid." He alleged that the court was used to perpetrate the "inhuman and cruel laws of apartheid under the guise of justice"

His flat, car and offices were searched by police a few weeks after he had stated in the Press that he had documents and court records which could prove irregularities in the courts Theft charges against him were later withdrawn in court

Smuts 252 12/46

of materialistic and social criteria, between the rest of the population of Cape Town, creates strong feelings of inferiority, insignificance and uselessness This is especially true for adult males in a society where self-esteem and status within the family and greater community depends to a large extent on material and vocational success.

The situation of the Coloured male is very similar to the

Tribal courts in city areas criticised

Pretoria Bureau

BLACKS in the rural areas had great difficulty in comprehending the Western judicial system under which they were often tried, the Hoexter Commission of Inquiry into the structure and functioning of the courts was told yesterday

Giving evidence before the commission, Mr R J Mokgena and Mr L J Mabe urged that better training be given to people who man tribal courts

They also said that tribal courts could not function properly in urban environments

Mr Mokgena, a teacher from BophuthaTswana, described the Makgotla in urban areas as "barbaric"

It was totally unacceptable that adults were required to strip and that they were then beaten in public, he said This was done in the presence of small children

He said the Makgotla was not legally constituted and he suggested that it be brought under the auspices of the community councils

Mr Mokgena also decried the fact that certain clerks in the magistrates offices in the urban areas, accepted bribes and favoured some people

Mr Mabe, a former journalist who is now a public relations officer for the Zionist Christian Church near Pietersburg, said court procedure was totally alien to most rural blacks

It was an affront to older blacks to be sworn in as witnesses The mere fact that they agreed to appear in court implied that they would tell the truth

There was also a possiblity of interpreters misunderstanding the local dialect

"In a rape case the complainant was asked what she said after the man had raped her She replied that she had cried 'Help, I am in distress'

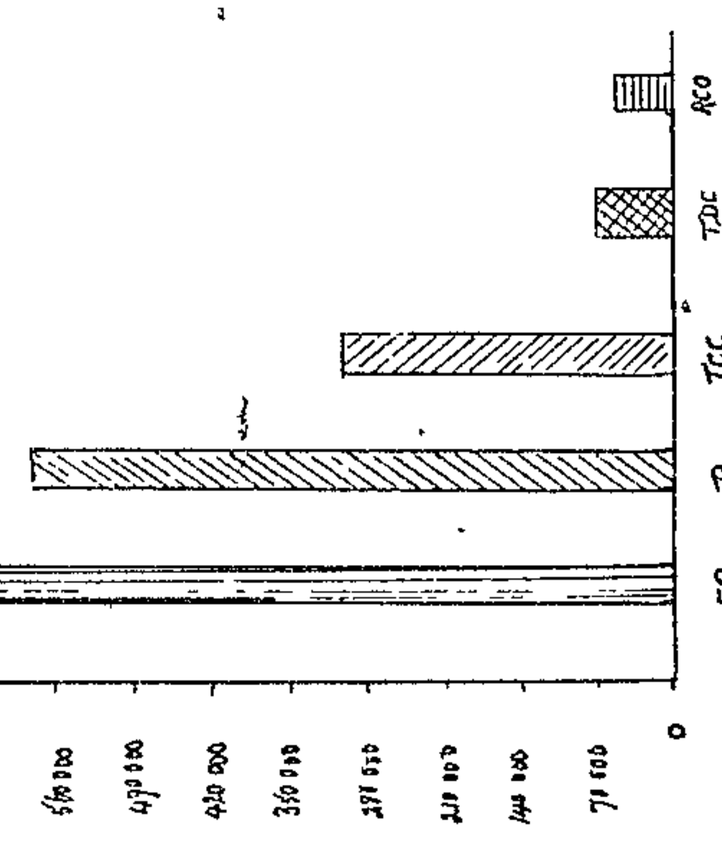
"In the interpreter's dialect the cry of help meant 'I am looking for an ox', and that was the translation that he gave the court"

The accused was acquitted on account of the misunderstanding which had arisen, Mr Mabe said

18.

17.

EP = EARNINGS PLUS PENSION
P = PENSION ONLY
Y = TOTAL CLINIC COST
TDC - TOTAL CLINIC DRUG COST.
RCO = REGISTRATION COST ONLY



EARNINGS AND PENSIONS VIS-À-VIS OUT-PATIENT COSTS.

TABLE 3

2. cont.....

(1) Plot this demand curve as accurately as possible, preferably using graph paper.

(2) Now suppose that over a period of ten successive years the annual "crop" amounted to outputs of 80, 60, 70, 40, 50, 80, 60, 50, 40, and 70 million bushels respectively. Calculate and tabulate the gross value of the crop in each of these years, if the demand curve scheduled above was the demand curve of each of the ten years.

(3) Calculate the average annual gross value of the crop over the ten years, and the output and price which would yield this value.

(4) Construct a schedule showing what price would have to be received for each of the outputs in the demand schedule in order to make the gross value of the crop in each year equal to the average annual gross value. Plot this schedule on the same paper as the demand curve. (It will be a curve of unit elasticity).

(5) From the demand curve find the total amount which must be offered on the market in order to fetch the prices discovered in part (4). From these amounts make a schedule showing how much the government would have to buy or sell for each total

(6) Draw up a schedule showing how much the buy or sell in each of the ten successiv

it would

Zulus to give equal status to women

ULUNDI. — Sharp differences of opinion emerged in the Legislative Assembly here during a debate on a Bill designed to alter radically the old Natal code on customary Zulu law.

The huge task of revising the code was undertaken because of a determination to change laws affecting women's rights, to a point where they are likely to enjoy equal status with men and even greater autonomy than women in white society.

In terms of proposals before the Assembly, women will become majors at the age of 21, will have the right to establish their own homes, and marriages will automatically be out of community of property unless the party signs a declaration stipulating that they prefer to be married in community of property.

SUPREME CHIEF

These radical proposals did not cause any dissension and several chiefs spoke out in favour of granting women equal rights

The problems arose because the code, as it stands, recognises the State President as the 'supreme chief' of the Zulus invested with huge powers, including that of military conscription.

Kwazulu sought legal advice and was told that it could not legislate on matters affecting the State President, and was therefore powerless to change these provisions in the revised code on Zulu law.

Mr Simon Mthimkulu formally moved on Wednesday that the sections dealing with the State President be excluded from the Bill and also suggested that sections conferring imaginary powers on the Kwazulu police to deal with faction fighting be deleted

He described these clauses as 'abominable' and said there was no room for them in Kwazulu statutes

But the Minister of Justice, Mr J Mthethwa, pleaded for their retention, saying the powers had been sought by the Kwazulu Cabinet and were needed because no headway had been made in curbing faction fighting

Chief Gatsha Buthelezi said the section dealing with emergency powers had caused many problems both at home and abroad, because he was accused of 'aping Pretoria' with security legislation

'Black life is regarded as cheap. There is a laxity in dealing with criminals who terrorise our people If whites had been involved, it would have been stopped long ago,' Chief Buthelezi said

His motion that the sections be left in the code was carried unanimously

roles adequately Accepting this challenge she views liquor as a luxury for which there is just not money.

Excessive drinking among the white population group is a grey area, in terms of existing knowledge. However, if the different roles and functions of alcohol in the leisure time activities, and organized entertainment are analyzed, it is quite apparent that alcohol is solidly integrated in the social activities of lower, middle and upper class white South

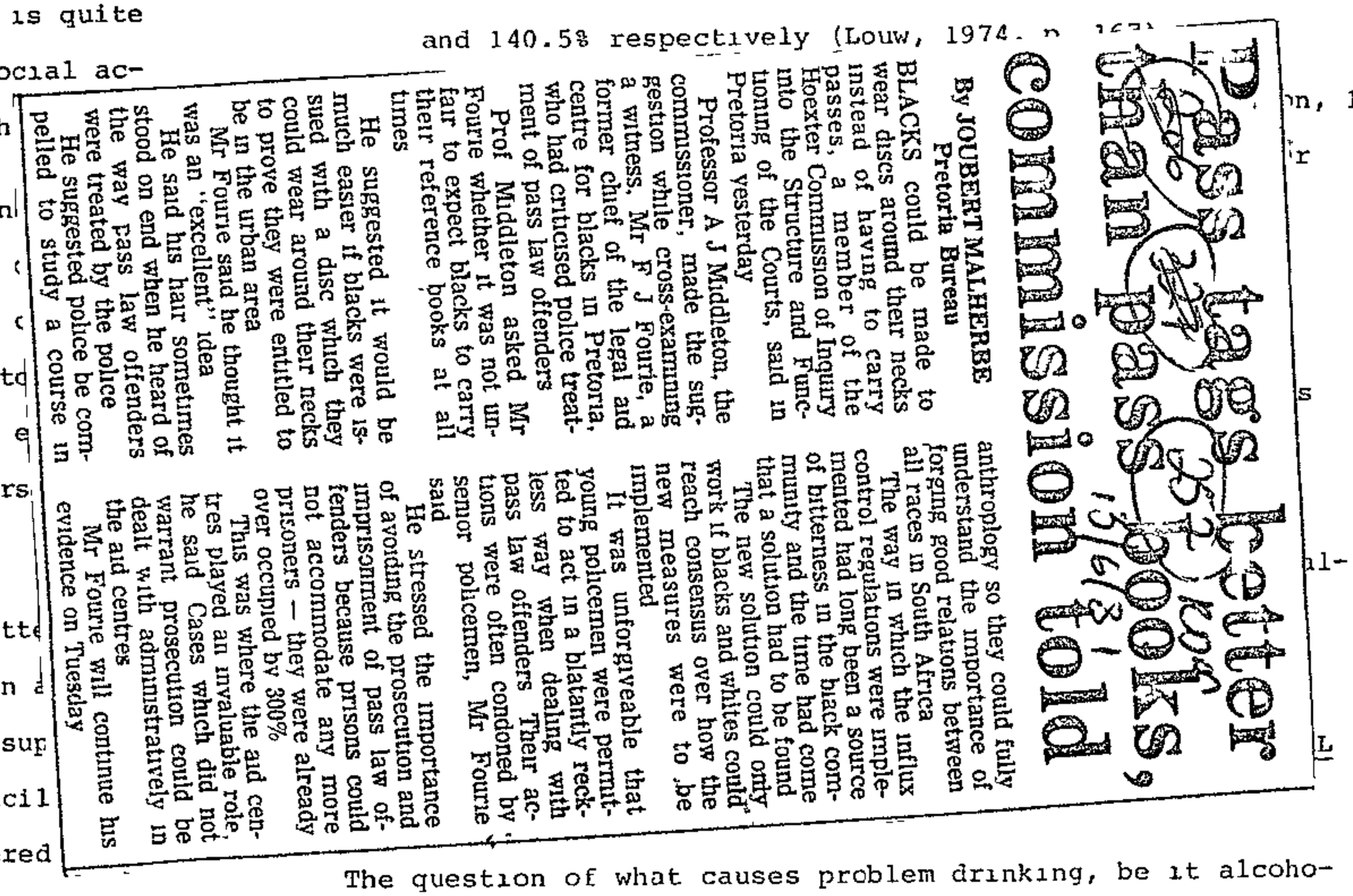
This phenomenon in itself need not be a cause for con
What is however very disturbing is the apparent lack
quate normative sanctions to facilitate a widespread
and attitude of moderation in alcohol intake. This to
sence of informal societal control and regulation is e
ly evident in the traditional stand-up, male-only bars
pubs.

Another factor indicating to a unhealthy drinking patte
among whites, is the number of traffic and pedestrian
dents in which alcohol plays a role annually. Data sup
to me by the South African National Road Safety Council
that in 42.5% of all motor vehicle accidents registered
1976 in South Africa (270 000) the driver had been drinking
prior to the accident. If this is combined with the fact that the overwhelming majority of vehicles are owned by whites, it becomes evident that whites are the main contributors to this disturbing statistics.

There are unfortunately, to my krowledge, no reliable figures

available concerning the incidence of alcoholism and excessive drinking among urban blacks in South Africa. Some indicators of an increasing liquor abuse problems are the following.

1) Between 1963 and 1971 the number of South African Black men and women prosecuted for drunkenness rose by 114% and 140.5% respectively (Louw, 1974. p. 167)



Pass laws 'a
Transkei
commission
Letter
25/2/80
13/6/81
to tell

By JOUBERT MALHERBE
Pretoria Bureau

BLACKS could be made to wear discs around their necks instead of having to carry passes, a member of the Hoexter Commission of Inquiry into the Structure and Functioning of the Courts, said in Pretoria yesterday

Professor A J Middleton, the commissioner, made the suggestion while cross-examining a witness, Mr F J Fourie, a former chief of the legal aid centre for blacks in Pretoria, who had criticised police treatment of pass law offenders

Prof Middleton asked Mr Fourie whether it was not unfair to expect blacks to carry their reference books at all times

He suggested it would be much easier if blacks were issued with a disc which they could wear around their necks to prove they were entitled to be in the urban area

Mr Fourie said he thought it was an "excellent" idea

He said his hair sometimes stood on end when he heard of the way pass law offenders were treated by the police

He suggested police be compelled to study a course in anthropology so they could fully understand the importance of forging good relations between all races in South Africa

The way in which the influx control regulations were implemented had long been a source of bitterness in the black community and the time had come that a solution had to be found

The new solution could only work if blacks and whites could reach consensus over how the new measures were to be implemented

It was unforgiveable that young policemen were permitted to act in a blatantly reckless way when dealing with pass law offenders Their actions were often condoned by senior policemen, Mr Fourie said

He stressed the importance of avoiding the prosecution and imprisonment of pass law offenders because prisons could not accommodate any more prisoners — they were already over occupied by 300%

This was where the aid centres played an invaluable role, he said Cases which did not warrant prosecution could be dealt with administratively in the aid centres

Mr Fourie will continue his evidence on Tuesday

The question of what causes problem drinking, be it alcoholism or excessive drinking, is obviously complex. The validity of this statement is demonstrated by the fact that although an immense amount of scientific endeavour has gone into attempting to answer the most basic question as to why some people drink alcohol in a manner which appears to cause some problem for them or others, the ultimate answer(s) is

Blacks angry at neckdisc pass suggestion

Tribune Reporter

BLACK leaders have reacted with anger to a suggestion by a Hoexter Commission member, Professor A J Middleton, that blacks be made to wear discs around their necks instead of having to carry passes.

Bishop Desmond Tutu, secretary-general of the South African Council of Churches, described the suggestion — reported in daily newspapers yesterday — as insensitive and said blacks would be made to feel like dogs with collars around their necks if the measure were implemented

According to reports, Prof Middleton made the suggestion in Pretoria on Friday while cross-examining a witness, Mr F J Fourie, a former chief of the legal aid centre for blacks in Pretoria. The Hoexter Commission is investigating the structure and functioning of courts

Mr Fourie said he thought the suggestion was an "excellent" idea.

Prof Middleton refused to comment yesterday, saying the reports were "misleading".

"I would suggest you obtain a copy of the transcript of what I said at the hearing I am not prepared to engage in a debate with the Press," he said

But according to reports, Prof Middleton suggested it would be much easier if blacks were issued with a disc which they could wear around their necks to prove they were entitled to be in the urban area.

Mr Fourie said at the hearing his hair sometimes stood on end when he heard of the way pass law offenders were treated by police

He suggested police be compelled to study a course in anthropology so they could fully understand the importance of forging good race relations in South Africa

Bishop Tutu said yesterday he was shocked at what he described as the insensitivity of Prof Middleton.

He's unbelievable," he said. "If Prof Middleton's suggestion is implemented, we will be made to feel like dogs with collars around our necks.

"The basic issue is to scrap the pass laws. Nothing else will satisfy blacks"

He equated Prof Middleton's sugestion to the time in nazi Germany when Jews were forced to use armbands to identify themselves.

Dr Nthato Motlana, chairman of the Soweto Committee of 10, said he was horrified when he read the reports

"It's monstrous I can't imagine blacks using discs around their necks in 1981 It would have been possible when blacks were slaves in America," he said

He also said the only solution was to abolish the pass laws Any attempts to "humanise" the offensive laws would only worsen the situation

"If Mr Fourie went along with the disc idea, I can only imagine what kind of assistance he had been giving blacks at his legal aid centre in Pretoria," he said

Judge praises court reporter

Sunday Times Reporter

A SUNDAY TIMES reporter, Mr Martin Welz, was praised this week by the chairman of the Hoexter Commission for his action "in the cause of justice in South Africa".

The tribute was made at the end of Mr Welz's evidence to the commission about a Sunday Times investigation into alleged irregularities in the Pretoria Commissioner's Court.

Mr Justice Hoexter's remark was a comment on Mr Welz's action in obtaining legal assistance for a foreign black man, Mr Eugenio Chauke, who had been found guilty after a trial in which various irregularities had apparently taken place.

Mr Chauke's conviction was set aside by the Supreme Court.

The Hoexter Commission is investigating the structure and functioning of all South Africa's courts.

Evidence was also given this week by Mr C Welman who was commissioner in charge of the Pretoria courts at the time of the Sunday Times investigation last year.

Mr Welman gave evidence to refute various allegations made in a report to the Transvaal Attorney-General by Mr Adam Klein, a prosecutor at the Pretoria court who dramatically walked out on his job last year.

He denied any knowledge of two cases in which Mr Klein alleged he had been instructed by Mr Welman to prosecute a senile man in his absence, and in which a magistrate was ordered to deport a sickly old man who later died on a train to the border.

Mr Klein's allegations were politically motivated and "part of the buildup to his 'I-quit-opera'", Mr Welman told the commission.

He confirmed his intention of instituting civil action against Mr Klein after the commission had completed its report.

Mr Welz gave the commission details of scores of case records of blacks tried for pass offences. These he had analysed at the Pretoria Commissioner's court.

It appeared from these records, he told the commission, that irregularities took place in most cases heard at the Pretoria court.

The commission was also referred to documents and practices of the Department of Co-operation and Development which, Mr Welz suggested in his evidence, indicated that commissioner's courts were used not only to apply the law, but also as an aid to achieving the department's political and administrative objectives.

The chairman of the commission described Mr Welz's evidence as "very important".

He indicated that the commission may allow representatives of the Department of Co-operation and Development to cross-examine Mr Welz.

With the introduction of compensation of simple tuberculosis in 1916, another precedent was established. If it is believed that any form of minework - and in particular underground work - is responsible for the worker contracting a disease, that disease will be identified by legislation and compensation will be afforded. In 1973 chronic obstructive lung (airways) disease was listed as a separate identifiable disease. However, although this had not been the case in 1962, mineworkers suffering from the disease were compensated if there was any suspicion that exposure to dust had been of sufficient duration to cause this impairment. In 1974 progressive

troduced as a separate compensatable

which an irritant rash spreads in

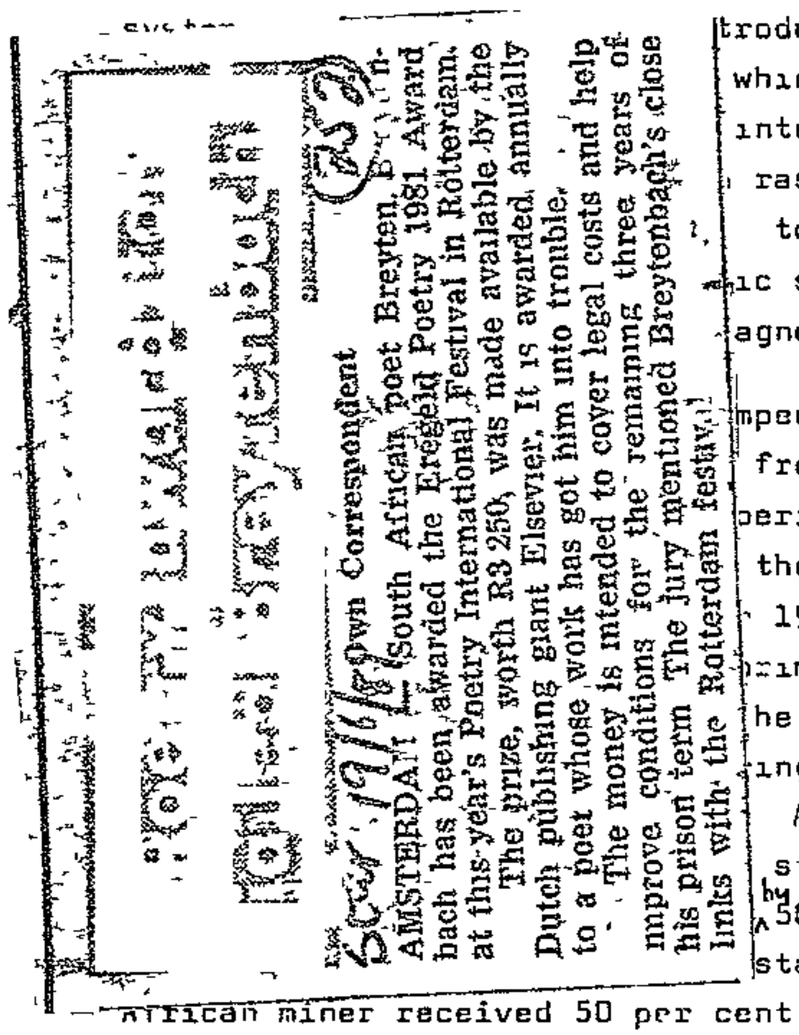
internal organs. However scleroderma,

rash only on the skin, will also

to have been caused by mining

ic sclerodermis is a very rare condi-

agnosed in 1974. (234)


Own Correspondent
South African poet Breyten Breyten
AMSTERDAM Tuesday
has been awarded the Freedom Poetry 1981 Award
at this year's Poetry International Festival in Rotterdam.
The prize, worth R3 250, was made available by the
Dutch publishing giant Elsevier. It is awarded annually
to a poet whose work has got him into trouble.
The money is intended to cover legal costs and help
improve conditions for the remaining three years of
his prison term. The jury mentioned Breytenbach's close
links with the Rotterdam festival.

mpensation awards paid to Whites and

from 1912 to the present day, which

period 1912 to 1925 compensation

the pimary stage rose from £96 in

1917. In 1919 , when the ante-

primary-stage compensation was

he three categories of awards

ing the same period there were

Africans from 1912 until the

stage, over which their primary

50 per cent more- but only of the

stage awards. This meant that an African miner received 50 per cent more than twelve times his monthly wage provided the wage was not more than £29 3s. 4d.

When annual life pensions awarded on a monthly basis for Whites based on a specific schedule were introduced for secondary stage cases, this did not apply to Africans. Instead they received 100 per cent more than that provided for them in the ante-primary stage schedule, quoted above, and this was paid in a one lump sum.

Today the same differences in lump sum awards, which have replaced the former life pensions, between Whites and Africans are very marked. Whites who have silicosis in the first degree receive R12 000, while Africans receive R1 200.

For compensation awards in the first degree there must be silicosis or any other disablement of the cardio-respiratory organs from between 20 to 50 per cent.(236) Whites who have silicosis in the second degree, silicosis coexistent with tuberculosis or any disablement of the cardio-respiratory organs ranging from 50 to 75 per cent are granted R18 000; and Africans receive R1 200. Finally, Whites receive R5 000 compensation for tuberculosis while Africans are awarded R600. None of the sources consulted provide the principles on which the money awards are made, or why there are discrepancies between grants to the different racial groups. An examination of the actual figure is therefore necessary to see whether compensation for Africans bears any relationship to compensation for Whites as is the case in awards made to Coloureds. Since 1914 compensation for Coloureds bears a strong correlation with awards for Whites. Coloured awards are not allowed to rise to amounts exceeding 50 per cent of those granted to Whites.

The introduction in 1963 of awarding compensation according to degrees of disability to the cardio-respiratory organs, excludes the analysis of awards made to workers with silicosis either in the first or second degree. From 1916 to 1976 tuberculosis has, however, always been compensated as a separate disease. Therefore compensation for tuberculosis is the only constant standard which can be used to measure and analyse disparities in compensation awards. In order to do so schedule A of the 1919 Act, reconfirmed in 1925, and the lump sum awards for tuberculosis in 1973 and still operative in 1978 must serve as indices of measurement for the early period and that of today. Schedule A, detailing the awards for the ante-primary stage of silicosis in 1919, has been simplified and reads as follows:-

(a) That compensation is twelve times monthly earnings, for earnings of £29-3s-3d to £37-9s-11d.

(b) That compensation is six times monthly earnings, for earnings of £29-3s-4d to £37-9s-11d.

(c) Compensation is three times monthly earnings, for earnings exceeding £37-10s-0d. (237)

Section (a) obviously applied to Africans and Eurasians, as white underground miners did not earn less than £30 per month.(238) Section (b) obviously applied to most of the White underground mining occupations; while Section (c) obviously applied to White officials.(239)

In the primary stage of silicosis and simple tuberculosis the same table was applied to Blacks and Whites, but 50 per cent more was added to each category. Finally category (a) was applied to Africans who had secondary silicosis, but increased by 100 per cent.

GENERAL NOTICES

NOTICE 439 OF 1981

SOUTH AFRICAN LAW COMMISSION

The following Bill is published for general information Any person desiring to submit any comments on the Bill should kindly submit such comments to the Secretary, South African Law Commission, Private Bag X81, Pretoria, 0001, on or before 15 July 1981

Repeal of Laws Act, 1981

BILL

To repeal certain laws of the Republic; and to provide for incidental matters

Be it enacted by the State President and the House of Assembly of the Republic as follows

Repeal of laws

1 The laws specified in the Schedule are hereby repealed to the extent set out in the third column of the Schedule

Short title

2 This Act shall be called the Repeal of Laws Act, 1981

ALGEMENE KENNISGEWINGS

KENNISGEWING 439 VAN 1981

SUID-AFRIKAANSE REGSKOMMISSIE

Onderstaande Wetsontwerp word vir algemene inligt gepubliseer Enigiemand wat kommentaar wil lewer, asseblief sodanige kommentaar voor of op 15 Julie 1981 die Sekretaris, Suid-Afrikaanse Regskommissie, Privaats X81, Pretoria, 0001, stuur

Wet op die Herroeping van Wette, 1981

WETSONTWERP

Om sekere wette van die Republiek te herroep; en vir bykomstige aangeleenthede voorsiening te ma

Daar word bepaal deur die Staatspresident en d Volksraad van die Republiek van Suid-Afrika, soos vol

Herroeping van wette

1 Die wette in die Bylae vermeld, word hierby herro in die mate in die derde kolom van die Bylae uiteengesi

Kort titel

2 Hierdie Wet heet die Wet op die Herroeping v Wette, 1981

252

SCHEDULE

Number and year of law	Title or subject of law	Extent of repeal
Act 7 of 1910	Appropriation (1910–1911) Act	The whole
Act 8 of 1910	Railways and Harbours Appropriation Act	The whole
Act 5 of 1911	Additional Appropriation (1910–1911) Act	The whole
Act 6 of 1911	Appropriation (Part) Act	The whole
Act 7 of 1911	Railways and Harbours Appropriation (Part) Act	The whole
Act 24 of 1911	Appropriation (1911–1912) Act	The whole
Act 25 of 1911	Railways and Harbours Additional Appropriation (1910–1911) Act	The whole
Act 27 of 1911	Railways and Harbours Appropriation (1911–1912) Act	The whole
Act 28 of 1911	Loans Appropriation (1910–1912) Act	The whole
Act 31 of 1911	Railways and Harbours Capital and Betterment Works Appropriation (1910–1912) Act	The whole
Act 33 of 1911	Railways Construction Act	The whole
Act 2 of 1912	Railways and Harbours Appropriation (Part) Act	The whole
Act 3 of 1912	Appropriation (Part) Act	The whole
Act 4 of 1912	Additional Appropriation (1910–1912) Act	The whole
Act 7 of 1912	Natal Bank (Limited) Laws 1888 to 1912 Private Act	The whole
Act 9 of 1912	Second Appropriation (Part) Act	The whole
Act 10 of 1912	Second Railways and Harbours Appropriation (Part) Act	The whole
Act 11 of 1912	Unauthorized Expenditure (1910–1911) Act	The whole
Act 21 of 1912	Appropriation (1912–1913) Act	The whole
Act 22 of 1912	Railways and Harbours Appropriation (1912–1913) Act	The whole
Act 23 of 1912	Railways and Harbours Capital and Betterment Works Appropriation (1912–1913) Act	The whole
Act 24 of 1912	Loan Appropriation (1912–1913) Act	The whole
Act 25 of 1912	Railways and Harbours Unauthorized Expenditure (1910–1911) Act	The whole
Act 26 of 1912	Railways and Harbours Additional Appropriation (1911–1912) Act	The whole
Act 30 of 1912	Railways and Harbours Capital and Betterment Works Additional Appropriation (1910–1912) Act	The whole
Act 1 of 1913	Appropriation (Part) Act	The whole
Act 2 of 1913	Additional Appropriation (1912–1913) Act	The whole
Act 3 of 1913	Railways and Harbours Appropriation (Part) Act	The whole
Act 4 of 1913	Railways and Harbours Additional Appropriation (1912–1913) Act	The whole
Act 5 of 1913	Railways and Harbours Capital and Betterment Works Additional Appropriation (1912–1913) Act	The whole
Act 12 of 1913	Maclear and Elliot Districts Further Provision Act	The whole
Act 13 of 1913	Second Railways and Harbours Appropriation (Part) Act	The whole
Act 17 of 1913	Railways and Harbours Unauthorized Expenditure (1911–1912) Act	The whole
Act 21 of 1913	Unauthorized Expenditure (1911–1912) Act	The whole
Act 23 of 1913	Railways Construction Act	The whole
Act 26 of 1913	New Fiscal Division (Cape) Act	The whole
Act 28 of 1913	Appropriation (1913–1914) Act	The whole
Act 32 of 1913	Railways and Harbours Appropriation (1913–1914) Act	The whole
Act 33 of 1913	Public Works Loan Act	The whole
Act 34 of 1913	Loan Appropriation (1913–1914) Act	The whole
Act 35 of 1913	Railways and Harbours Capital and Betterment Works Appropriation (1913–1914) Act	The whole
Act 38 of 1913	Loan Redemption (1910–1911) Validation Act	The whole
Proclamation 179 of 1913	Seal Fisheries (Union of South Africa) Order-in-Council, 1913	The whole
Act 1 of 1914	Indemnity and Undesirables Special Deportation Act	The whole
Act 1 of 1914 (Special Session)	Public Welfare and Moratorium Act	The whole

for full text see GG 7630

'Nothing' to stop blacks presiding over trials of whites

Mercury Reporter

THE legal profession was open to qualified people of all races and there was no technical law preventing black magistrates or prosecutors presiding over trials involving white accused, the second vice-president of the Natal Law Society said last night

Mr A M Brokensha was reacting to a report from Johannesburg that severe shortages of public prosecutors in South African courts have meant that Government regulations were being swept aside to allow blacks to practise in urban courts and, if necessary, at white trials

The report stated present Government regulations restricted magistrates or prosecutors to practise only in cases not denied to them in terms of the Group Areas Act.

Need arose

Black, coloured or Indian magistrates could preside only over cases involving black accused

Mr Brokensha said many magistrates and prosecutors of all race groups practised in urban courts in and around Durban and, when the need arose, at white trials.

'If a magistrate presides over a particular area he naturally deals with accused regardless of colour,' he said 'A white accused may well fall under the jurisdiction of a black magistrate'

When asked if this was against the law Mr Brokensha replied. 'As far as I am aware, there is no part of the Criminal Procedure Act, the Supreme Court Act or any other Act involving the law profession that stops black magistrates or prosecutors from presiding over white accused.

Not aware

'There may be laws in the Department of Justice, but I am not aware of them and never have been.'

The present Government regulations were criticised strongly recently by Prof F A de Villiers, dean of the law faculty at the University of Bophuthatswana, when he gave evidence before the Hoexter Commission of Inquiry into the structure and functioning of Courts

The Johannesburg Magistrate's Courts recently had employed one black and two coloured prosecutors who, he said, would prosecute in cases with white accused if necessary.

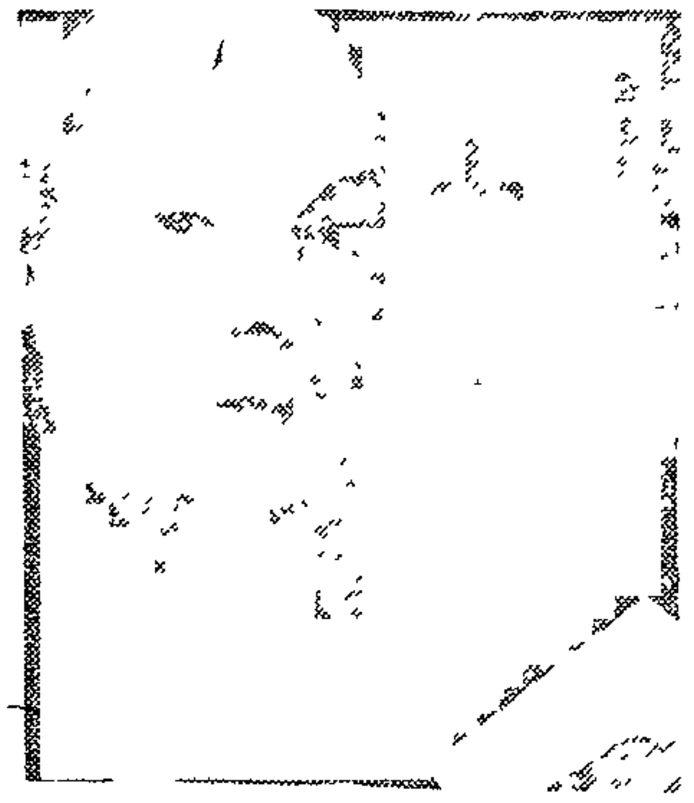
No posts

But the Department of Justice and the Commission for Administration said that officially there were no posts for blacks as magistrates or prosecutors in the public service

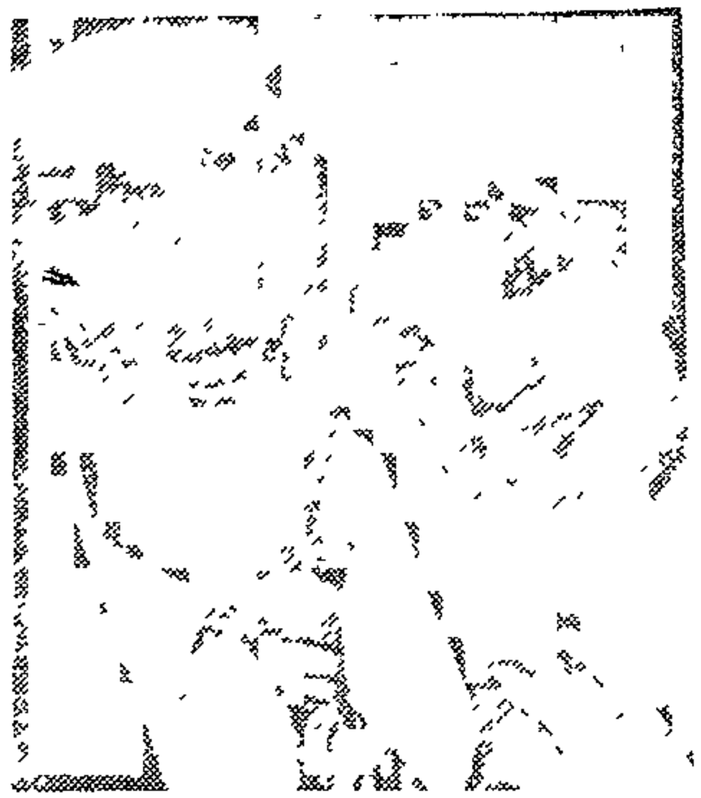
A senior member of the law profession in Pietermaritzburg and a former president of the Natal Law Society, Mr Oliver Hart, said last night it 'would be right and proper for suitably qualified people of all races to be appointed accordingly'.

A WEEKEND IN JAIL AFTER SHOOTING SOLDIER

Army corporal gets remission due to Republic Festival amnesty



Mrs Joan Rees .. angry



Colin and Sue were due to marry

A WEEKEND in prison — that is all an army corporal has suffered for killing a national serviceman.

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By KEN DANIELS

at the Bossiesspruit shooting range near Kroonstad

The court heard that Rademeyer fired three plastic rounds and a live round which struck Rees in the head. The court dismissed Rademeyer's evidence that he had fired the shots to test the reaction of the troops under fire

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"I do not think I my family or friends can ever be expected to view Republic Day as a celebration as it will always be the day on which my son's killer was released without serving any sentence

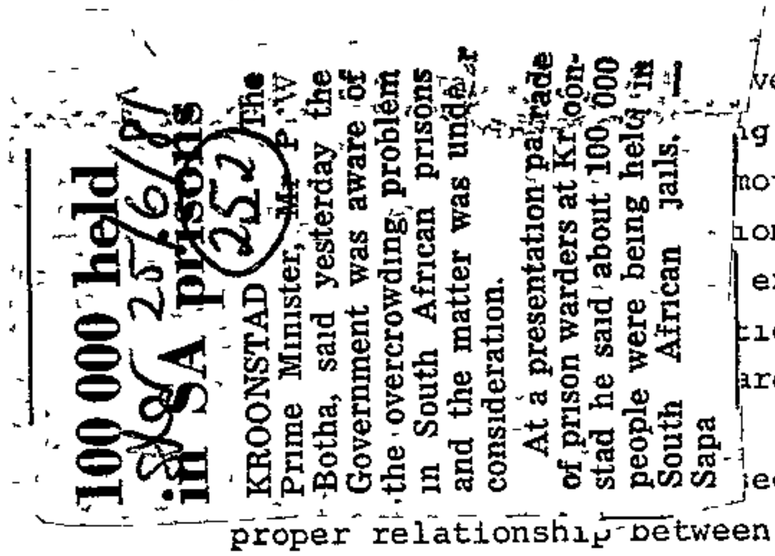
Colin was due to marry Sue Dallas

CHEMICAL (Continued)

CIVIL

"The Modern Conception of Health", which seems to have lost nothing of its actuality during the past 35 years. It is a very comprehensive account of the various types of health services, which are necessary.

In this chapter, a fundamental distinction is made between personal health services, which deal with persons and non-personal health services, which deal with things. Personal health services were divided into promotive, preventive, curative and rehabilita[illegible] services.


100 000 held in SA prisons
25/6/81
KROONSTAD — The Prime Minister, Mr P W Botha, said yesterday the Government was aware of the overcrowding problem in South African prisons and the matter was under consideration.
At a presentation parade of prison warders at Kroonstad he said about 100 000 people were being held in South African jails.
Sapa

[illegible]ve and preventive health factors [illegible]g the health of the individual and [illegible]motive health services, the importance [illegible]ion, general education etc, is men- [illegible] examinations, antenatal care, infant [illegible]tions, health-education, school and [illegible]are listed under preventive services.

[illegible]ed the tremendous importance of a proper relationship between promotive, preventive, curative and rehabilitative services:

"Today in short, advanced medical thought everywhere has come to realise that there should be no sharp division, even in administration and still less in presentation to the people, between promotive, preventive, curative and rehabilitative health services. All should be integrated in a comprehensive planned health service. Such a service would aim to secure not only the absence of disease, but also the maximum degree of physiological and mental efficiency."

The chapter ends with the following vision:

"The ultimate aim of our recommendations is to bring these services within reach of all sections of the population, according to their need, and without regard to race, colour, means or station in life."

. / ...

Part II of the Report of the Commission contained a detailed survey of the health needs of the population of S. Africa and to what extent these needs were met by the existing health services. The Commission observed that from 1919 onwards there were 3 different kinds of public authorities, which dealt with health services: local authorities, Provincial Councils and the Department of Public Health.

Their conclusions at the end of this survey about existing health services were very straight forward:

"The services are NOT 'organised on a national basis' - they are disjointed and haphazard, provincial and parochial.

The services are NOT 'in conformity with modern conception of Health - for they are mainly directed not to promotion and safeguarding of health, but to the cure of ill health.

The services are NOT 'available to all sections of the people of the Union of South Africa' - they are distributed mainly among the wealthier sections who, on account of their economic potentialities should need them least. and are but poorly supplied to the under-privileged sections who require them most.

Moreover, existing 'administrative legislative and financial measures' are NOT adequate to provide, by any mere process of expansion a national health service of the range and quality demanded by our terms of reference."

Part III of the Commission's Report dealt with the fundamental question of whether a National Health Service would be the best solution for the health needs of the people. The answer of the Commission was affirmative in order to ensure unified direction, a redistribution of health resources and to make the best use of the limited economic resources available.

It was realised that massive ill health means decreased economic productivity and an increased expenditure on curative health

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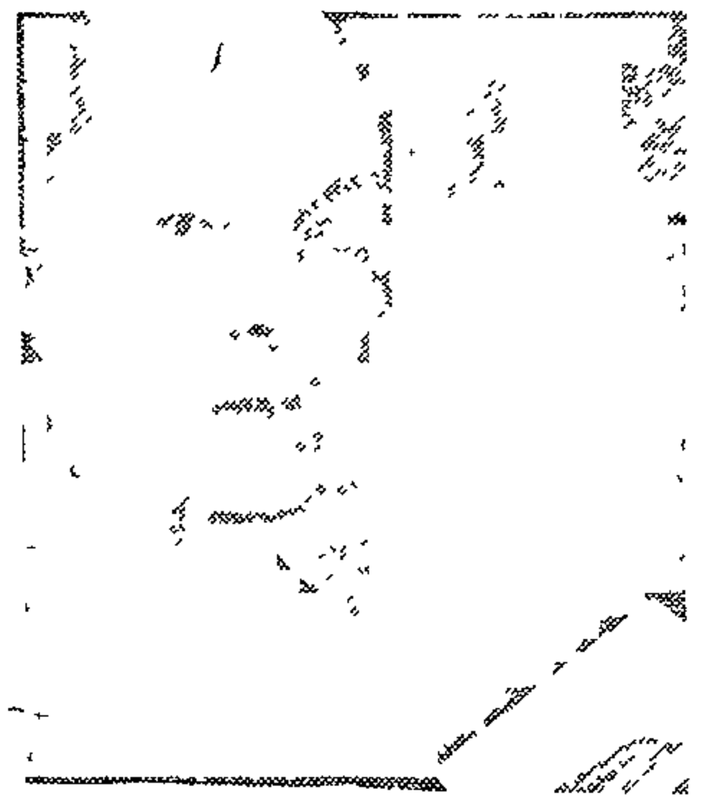
A WEEKEND IN JAIL AFTER SHOOTING SOLDIER

Army corporal gets remission due to Republic Festival amnesty



Mrs Joan Rees . . . angry

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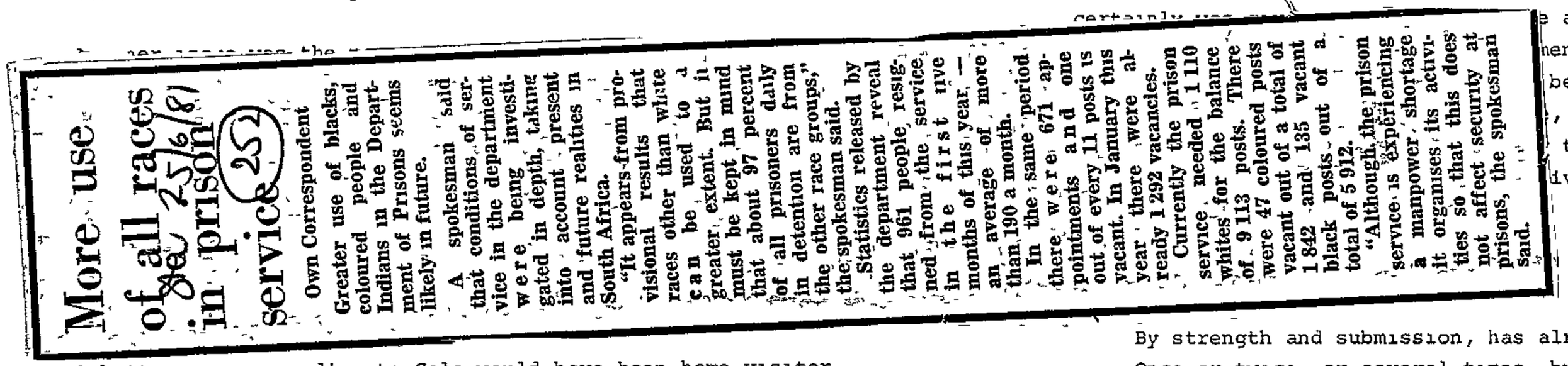
CHEMICAL (Continued)

CIVIL

Criticism on the Health-Centre Experiment.

A lot of criticism has been voiced on the Health-Centre service by contemporaries, especially by the medical profession itself.(II) Dr Gale has commented on a few occasions about the issues involved.(IO) There seems to have been great confusion about the term social medicine, which has become associated with the Health-Centre service. Some doctors even equated the term social medicine with socialized medicine, others equated it with preventive medicine and advocated that social medicine knew nothing and even cared less about curative medicine. The confusion went so far as to convince the Minister of Health that he should drop the use of the term social medicine in connection with Health-Centres in favour of the more general term of Health-Centre practice.



More use of all races in prison service

Own Correspondent

Greater use of blacks, coloured people and Indians in the Department of Prisons seems likely in future.

A spokesman said that conditions of service in the department were being investigated in depth, taking into account present and future realities in South Africa.

"It appears from provisional results that races other than white can be used to a greater extent. But it must be kept in mind that about 97 percent of all prisoners daily in detention are from the other race groups," the spokesman said.

Statistics released by the department reveal that 961 people resigned from the service in the first five months of this year, — an average of more than 190 a month.

In the same period there were 671 appointments and one of every 11 posts is there, vacant. In January this year there were already 1 292 vacancies.

Currently the prison service needed 1 110 whites for the balance of 9 113 posts. There were 47 coloured posts vacant out of a total of 1 842 and 135 vacant black posts out of a total of 5 912.

"Although the prison service is experiencing manpower shortage it organises its activities so that this does not affect security at prisons, the spokesman said.

A better name according to Gale would have been home visitor, or health educator, to describe the Health-Centre category of health assistant, who operated on a considerably more advanced level than the municipal type. The minimum educational requirement for African health assistants was standard VIII, in practice however, many had been matriculants.

The health assistant training course for them took first 6 months, later I year and was finally extended to 3 years at the Institute in Durban. There were certainly quite a number who in the early stages of the Health-Centre experiment proved to be disappointing in practice. This facilitated the criticism that their training course was too ambitious for them. There

. / ...

was also concern that there was too much overlapping with the training of social workers. The training of new health assistants at the Institute of Family and Community Health in Durban was finally terminated by the government in I954.(I2)

Finally there was the criticism on the cost of the Health-Centres. Individual Health-Centre cost figures may have seemed high, but when they were placed against the background of the promotive and preventive function of the Health-Centre as compared with hospital expenditure on curative medicine, the picture changed profoundly.(6)

EPILOGUE.

The Health-Centre concept, though not invented in South Africa, certainly [illegible] and unique meaning [illegible]ment. Health experts [illegible] been influenced by it [illegible], Cassel, Slome etc.) [illegible] to take up key positions [illegible]ive and social medicine

By strength and submission, has already been discovered.
Once or twice, or several times, by men whom one cannot hope
To emulate - but there is no competition -
There is only the fight to recover what has been lost
And found and lost again and again: and now, under conditions
That seem unpropitious. But perhaps neither gain nor loss.
For us, there is only the trying. The rest is not our business."

T.S. Elliot: Four Quartets.

. / ...

SECURITY LAWS

FM 26/6/81

252

321

Defending the indefensible

SA's business community, particularly those with foreign connnections, have had the task of explaining, or even defending, events in this country made even more difficult by the spate of recent bannings and detentions without trial These steps have also weakened the position of pragmatists in the Reagan administration who seek constructive relations with SA

Such methods have always been abhorrent means of protecting national security Even the government, which uses them so widely, professes no love for the methods it claims are essential to public safety

Whether the government is wise to use such methods, as it has done in the widespread security crackdown of recent weeks, is open to question — even if one is prepared to disregard their essential immorality, which the *FM* is not

The slogan ' Try or release has been used so widely in protests against detention without trial that it has lost much of its force Nonetheless, no South African should be prepared to settle for less than a system in which a person suspected of any crime is faced with his accusers in open court and given the opportunity to defend himself

This is no more than a restatement of the basic principle of justice Unfortunately, it has been necessary in SA to restate that principle again and again — usually in the knowledge that government will pay little or no attention

Recently, there seemed hope that circumstances were changing Pretoria remained the polecat of the world — but a polecat that had found some powerful friends in Washington and had also started a process of rapprochement with its own, once largely alienated, business community

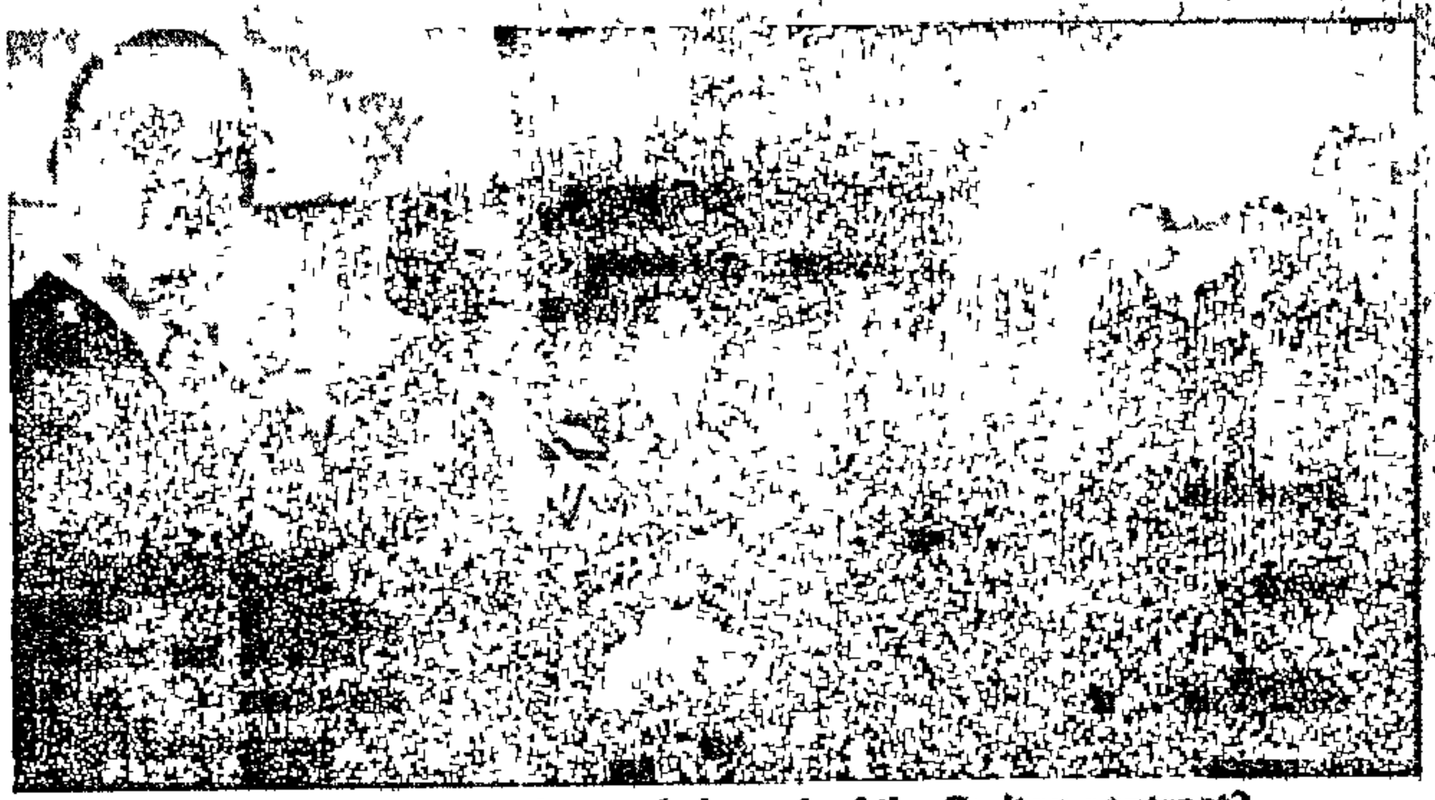
Washington's friendship cannot be regarded as unconditional. The Reagan administration has shown willingness to reward signs of virtue along the banks of the Apies, but the policy of "constructive engagement ' could be endangered by Pretoria s refusal to change it's authoritarian habits,

It hardly seems wise to knock the weapons from the hands of friends who are prepared to defend you

As far as the business community is concerned, it is entitled to regard itself as having a contract with the government. The contract came into being at the Carlton conference of November 1979, when Pretoria bartered support for free enterprise and promises of reform in return for the business community's aid and cooperation

Without becoming apologists for apartheid, many businessmen have since argued that Prime Minister P W Botha and his Cabinet should be given time to make good their promises

Unfortunately, time keeps passing with little sign of real reform As Opposition leader Frederik van Zyl Slabbert told the *FM* this week, Pretoria refuses to even admit that measures like the Group Areas Act and the pass laws have an enormously harmful effect on free enterprise



Prime Minister Botha . . . in breach of the Carlton contract?

They haven t even been prepared to abolish measures like the Immorality Act and the prohibition of mixed marriages, which at least would have symbolic value while leaving the basis of apartheid unchanged Van Zyl Slabbert said.

Businessmen could well be entitled to regard government as being in breach of contract Certainly, they would be justified in putting all possible pressure on Pretoria to follow through on promises of reform and on the institution of a freer and more just society

Unfortunately, many businessmen hesitate to apply pressure where security is concerned A spokesman for one top businessman with a well-earned liberal reputation told the *FM* this week that he would comment on the need for black training, for improved housing and for better education "but not on purely political matters like detention without trial

This hardly seems good enough with a government that regards silence as acquiesence,

From government's point of view, bannings are useful in taking opponents of the regime "out of circulation, while detentions make possible in-depth secret interrogations which sometimes uncover real plots Occasionally, they can even lead to a "security coup such as the arrest last week of the alleged leader of the South African Youth Revolutionary Council (SAYRC), Khotso Seatholo, and seven others.

Following the arrests, security policemen, usually close mouthed about the reasons for their actions, were suddenly prepared to say the detentions of the former news editor of *Sunday Post* Zwelakhe Sisulu and the news editor of the *Sowetan* Thami Mazwai were in connection with the probe into the SAYRC

There were also hints that the detentions of Wits Black Students Society leader David Johnson, Congress of SA Students president Geiwimizi Malindi and student leader Ernest Mpho Kgaone — and possibly those of Wits SRC president Sammy Adelman and SA Council of Churches mission and evangelism director the Rev Sol Jacobs — were connected with the same investigation

It is impossible for outsiders to know the truth. South Africans don t even know the identity of the seven people arrested with Seatholo

Eventually there may be a trial If so, it will take place against a background of detention under the security laws and will probably be accompanied by the usual allegations of torture by the Security Police — allegations are impossible to prove or refute due to the lack of legal safeguards for detainees

The image of South African justice — and of South African society — will be further damaged, no matter how correct the court procedures

A government as strong as P W Botha s claims to be should not need harsh and unjust security laws The courts exist to judge issues of guilt or innocence Except in the most exceptional circumstances there should be no provision for administrative imprisonment or banning that is not authorised by a court of law

IN

EWS

Inquiry hears clash on pass laws debate

RDM 26/6/61 (252)

By JOUBERT MALHERBE
Pretoria Bureau

OFFICIALS of the commissioners' courts should refrain from expressing views about the "necessity" of influx control — "a politically-based" measure — and should be concerned solely with applying the law, a senior journalist told the Hoexter commissioners yesterday

Mr Martin Welz, a senior Sunday Times reporter, also gave exhaustive evidence about irregularities he had found in the commissioners' courts while investigating allegations made by a former prosecutor, Mr Adam Klein

Mr Welz' comments on influx control followed statements before the comission in Pretoria by a former Chief Commissioner, who backed the retention of these laws

Mr N C J Welman, former Chief Commissioner at Pretoria, told the commission influx control measures were introduced "in the national interest" and forecast grave consequences should they be abolished

The whole basis of influx control measures was political, Mr Welz said It was perilous for judicial officers to become embroiled in a debate over the necessity of these laws

The aim of the laws was to keep blacks out of white urban areas — the fact that building of houses for blacks in urban areas was frozen in 1964 supported this view

Giving evidence on irregularities at the commissioners' courts, Mr Welz supported the view of Mr Klein — a former Pretoria Commissioner's Court prosecutor — about irregularities at the aid centres, ostensibly created to assist people arrested under the pass laws

It was irregular that the aid centres could recommend to the commissioner's court prosecutor what sentence should be sought for an accused, he said

He handed in a form on which an aid centre director had written "He is a first offender — caution and discharge him"

The form filled in during interrogation at the aid centre was also studied by the presiding officer

The rights of accused to remain silent were not explained to them when Department of Co-operation and Development officials interrogated them at the aid centre

Mr Welz said there were frequent instances of aliens going to the commissioners' offices to apply for a residential document and being arrested, convicted and endorsed out

He told of a case in which there was confusion over the country of origin of a senile, 78-year-old man

The man told the court he had been living in South Africa since 1937, but he was convicted and given a suspended sentence on condition that he did not return to South Africa

"Details of this case are so scant it is uncertain what happened to him — and it is in cases like this where I would like to ask whether these measures are really taken in the national interest," Mr Welz said

He also handed in forms to refute an earlier denial by Mr Welman that bail was not always refused to aliens on influx control charges

On these forms, Mr Welz, said, Mr Welman had clearly given a written directive that no bail could be granted to aliens

TABLE IV

Year	White	%
1919	606	75
1920		
1925	910	74
1930		
1935	I 244	74
1940	I 353	62
1945	I 190	61
1950		
1955	I 524	62
1960	I 785	55
1965	2 077	55
1970	I 623	42
1976		

Inquiry asks for court file — and gets it

252 Rom 27/6/81

By JOUBERT MALHERBE
Pretoria Bureau

THE Hoexter Commission of Inquiry into the structure and functioning of the courts issued an order yesterday for a file to be handed over by the Pretoria Commissioner's Court — the second such order this week

The file requested yesterday was found

But earlier this week a similar order for another file produced the file folder, but no contents

The commission had been requested to make the orders by Mr Martin Welz, a senior journalist on the Sunday Times

In making his request for the first file earlier this week, Mr Welz told the commission the file would support his view that there were irregularities at the commissioner's court

Although the folder was found, the contents of the file were missing

When the commission continued hearing evidence yesterday, Mr Welz requested an order for the second file

This file, which dealt with the deportation of a 90-year-old black man, was found

Mr Welz will give evidence on this case on July 30th

The commission also granted an application by Mr Welz to cross-examine Mr H L J Welman, former Pretoria Chief Commissioner, on the evidence he gave to the commission

In his evidence yesterday, Mr Welman denied most of the claims of irregularities at the commissioner's court made earlier by Mr Adam Klein, a former prosecutor of the commissioner's court

Mr Welman said Mr Klein's testimony amounted to a political tirade It was apparent that Mr Klein had been influenced by ultra-Leftwingers

Commissioners merely applied the law passed by Parliament and they did this as humanly as possible, Mr Welman said

He also claimed he had no knowledge of some of the cases to which Mr Klein had referred in his evidence and said these cases were probably "fabricated" by Mr Klein

Mr Welman blamed some of the irregularities at the commissioner's court — for example, where a 28-year-old man was sentenced to seven cuts with a cane — on the "inexperience" of some of the commissioners

On Mr Klein's claim that tax offenders were summarily given jail sentences, Mr Welman said it would be "a waste of good time" to give them suspended sentences

"In cases where the addresses of the accused's employers are known, we do give the accused the opportunity to pay his overdue amount in instalments"

Mr Welman denied that a presiding officer had said in court "Tax offenders are too bad to pay for themselves and they expect the white man to support him"

If these words were said, he would have cautioned the presiding officer, Mr Welman said

A Pretoria lawyer, Mr E Bertelsmann, told the commission in his evidence that there were times when Mr Welman had clearly interfered in the workings of the commissioner's court

In one instance, Mr Welman "climbed into" a commissioner and a prosecutor who had granted bail to a client of Mr Bertelsmann who had appeared under the Aliens Act

It was clear that the presiding officers as well as the prosecutors, often discussed problems with the chief commissioner — and that the opinion of the commissioner could sway the finding in the case concerned, he said

The independence of the commissioner's court was seriously affected by the policy and administrative persuasions of the Department of Co-operation and Developement

Mr Bertelsmann suggested that the commissioners'courts be placed under the Department of Justice

TABLE III

(1) Proportion of rate
(2) Proportion of inpa

Year	No. Beds at State Mental Hospitals as Fraction of Population		Black.White Beds as Fraction of Population	No. Inpatients Resident in State Mental Hospitals as Fraction of Population			Black White Inpatients as Fraction of Population	Degree of over/under Population at State Mental Hospitals %		
	Total	Black	White		Total	Black	White		Total	Black	White
1919	1 1088	1:1581	1:537	1.3	1·1088	1 1660	1.570	1·3	0	-1	+2
1925	1:1190	1 1652	1.589	1 2.5	1.1100	1.1540	1:570	1:2,7	+7	+8	+5
1930	1 780	1:1325	1:370	1:4	1:850	1.1330	1.350	1:4	-4	+1	-10
1935	1:873	1.1493	1.339	1:4	1 820	1:1290	1·350	1:3,6	+8	+17,6	-2
1940	1.828	1:1344	1:337	1:3 9	1.1020	1.340	1 3	1:3,6	+12	+32	-32
1945	1:877	1.1396	1:362	1.3,8	1.750	1:980	1·350	1:2,8	+13	+43	+3
1950	1 772	1:1204	1·328	1 3,6	1 730	1 980	1:370	1.2,6	+7	+22,5	-11
1955	1.855	1.1260	1·367	1.3,4	1:810	1 1070	1:390	1:2,7	+7	+23	-5
1960	1·985	I					10	1 2,4	+25	+72	-2,4
1965										+70	-6,9
1970	1·1210									+33	-3,4
1976	1.1600									+14	-6,5
(1)	1.760										

APPENDIX I

Legislation 1833-1977

The earliest legislation regarding the management of mental disorders in Southern Africa was the Cape Lunacy Laws from Ordinance 5 of 1833. This was changed to the Cape Lunacy Act of 1879. Natal introduced the custody of Lunatics Law in 1868. The Transvaal introduced the Lunacy Proclamation in 1902 which was subsequently changed to the Asylums Board Act of 1908. The Orange Free State introduced the Lunacy Ordinance in 1908.

Vaal judges silent on call

By MARIKA SBOROS

TRANSVAAL judges, including the Judge President, have failed to respond to a call from the Civil Rights League (CRL) to question their responsibility in applying "unjust" laws in South Africa

Mr Brian Bishop, CRL chairman, said yesterday letters were sent to judges throughout the country last month with a pamphlet on "The responsibility of judges in applying unjust laws in South Africa"

Mr Bishop said the Government exploited judges' silence on the issue of unjust laws like bannings and detentions to erode the Rule of Law.

"Courts are asked to punish those who disobey banning orders, although these orders make a mockery of the judicial system," he said

In the letter the league had recommended a judges' meeting to talk about the issue

Mr Bishop said replies had been received from four judge presidents and judges throughout the country

"From the Transvaal, there has been a screaming silence"

Mr Bishop said most judges who replied said their personal independence made meetings undesirable "In view of this independence, the complete silence from the Transvaal bench is surprising"

Replies to the league were confidential However, one judge had said that "the judicial function is a topic of public importance in which the public has a legitimate interest, and the undoubted right to debate".

Mr Bishop said the league did not seek to attack the courts "We want our courts and judges to be honoured throughout the world."

The league had always opposed bannings and detentions, and called for

- Punishment to be applied only through the courts
- Just laws to be applied justly
- The courts' power to be increased

"Power and law can imprison anyone Only justice can ensure the release of the innocent," Mr Bishop said

Sir Richard Luyt, CRL president and former principal and vice-chancellor of the University of Cape Town, was disappointed at the silence from Transvaal judges

The Transvaal Judge President, Mr Justice W. Boshoff, is on leave, and could not be contacted for comment yesterday

All the previous [illegible] the establishment of the J.T. van Wyk commission of inquiry into the prospects for the reorganization of the administrative controls of mental hospitals and services. As a result of the findings of this commission, the Mental Disorders Act in 1973.

The Mental Hygiene Act was passed in 1977. It aims at bringing the Provincial hospital services into closer co-operation with other levels of mental health care delivery.

TABLE VI

EXPENDITURE ON MENTAL HEALTH

	PRICES INDEX	CORRECTED	CORRECTED AVERAGE AMOUNT SPENT PER INPATIENT PER DAY (R)
1919	434	12 69	1.34
1935	567	6 57	1.36
1940	493	7 78	1.23
1945	386	8 331	1.73
1950	320	12 614	2.11
1955	252	14 723	2.14
1960	226	16 988	2.25
1965	204	20 669	2.35
1970	175	30 532	3.50
1976	-	38 092	3.40

CT 17/8 (253) (252)

Pandemonium in PE court

Own Correspondent

PORT ELIZABETH — Pandemonium broke out in the Port Elizabeth Magistrate's Court yesterday when a youth cried out after he and others had been refused bail

The youth, a member of Roots, an African cultural organization based in Port Elizabeth, was appearing with 14 other members charged with culpable homicide

The magistrate, Mr W L Visser, refused bail applications for 10 of the 15 Mr Michael Fononda, 18, was granted bail of R100

On hearing the refusal of the bail applications, the youth shouted that he and the others in custody had been denied food while at the North End prison

A scuffle followed in which the screaming youth was slapped He was then grabbed by a policeman who used a baton The youth was pushed out of the court to a cell across the corridor, where the scuffle continued

The magistrate had left the court Before leaving he ordered everyone out of the court-room, except the Roots members and a guardian of one of them

No evidence was led and they were not asked to plead The hearing was adjourned to July 29

Mr G Huisamen appeared for Fononda and Mr L H Bendelstein for the rest

'There are laws that I consider to be unjust'

Law professor urges judges not to remain silent

NM 2/7/81

252

Pietermaritzburg Bureau

A PROFESSOR in law urged South African judges to activism in their legal capacity because by remaining silent they were lending credibility to the system, he said

Prof John Dugard, Professor of Law at the University of the Witwatersrand was speaking at a dinner for the Society of Law Teachers held in Pietermaritzburg on Tuesday evening

He emphasised that he was not calling on judges to participate in radical or revolutionary issues, but merely to play a more active role in their judicial function.

'There are laws in South African that I consider to be particularly unjust. They are the Pass Laws, the Group Areas Act, the Prohibition of Mixed Marriages Act, the banning provisions of the Internal Security Act and Section Six of the Terrorism Act These laws violate the principles of Roman Dutch Law on which our system is based and the basic human rights of equality, dignity and freedom from torture and cruel punishments,' he said.

Quoting extensively from a pamphlet issued by the Civil Rights League, Prof Dugard said there were several options open to judges who wished to become more active.

'Judges can draw attention to the unjust consequences of the application of a law It has been done in the past, as happened when laws related to whipping were amended because of judicial comment. It is part of the judicial function to draw attention to the unjust application of the law'

He added that judges could make representation to the executive behind the scenes

Prof Dugard said that the judiciary was 'extremely careful' of a prospective judge's political identity when it came to the appointment of the Judge President.

Facing loud and persistent interjections from the floor he said there was also a tendency to appoint judges to political cases 'who were close to the executive'.

He said that in the Transvaal political cases were given to the same four or five judges time and again, although there were about 30 judges in that province

'These judges should complain, the failure to act is an act of participation,' he said

Another option open to judges was to either resign or to refuse the appointment

'Although I respect this decision, I am personally in favour of judicial activism rather than resignation''

Concern at high rate of executions

Star 3/7/81 (252)

By John Murray, Law Reporter

Previously unpublished figures show that 114 people were hanged in South Africa in the 12 months up to June 10 this year, according to information released on request by the Prisons Department

The department was approached after complaints from law experts that no statistics on the death sentence in the Republic had been published for five years.

Professor Ellison Kahn, deputy vice-chancellor of the University of the Witwatersrand and editor of the South African Law Journal, said the annual report of the Commissioner of Prisons from the statistical year mid-1976 to mid-1977 onwards had omitted information previously contained about hangings

Based on figures gleaned from questions asked in the House of Assembly he had discovered that the number of hangings for each of the past three years had been an average 132.

A spokesman for the Prisons Department said "It was decided in 1977 that only those statistics required for the Prison services' own administration, planning and organisation purposes will be recorded and published.

"You will notice that various statistics have not been published since for example the sub-division of prisoners into age groups."

When asked for the missing information he said that 114 people had been hanged up to June 10 this year since mid-1980

From mid-1979 to mid-1980 the total number of people hanged had been 128, The Star learned

Unpublished figures on reprieves by the State President show that in the past statistical year up to June 10 from July 1, 1980 there had been 29.

There were 24 in the following 1980 statistical year, 24 in 1979, five in 1978; eight in 1977 and eight in 1976 from mid-1975

The Prisons spokesman said that over the same period several death sentences had been changed by the Appellate Division in Bloemfontein to either a jail term or acquittal.

In the statistical year from mid-1975 to mid-1976 there were 12 changes; from mid-1976 to mid-1977 only three; 15 were changed between mid-1977 and mid-1978, the following year another 15 were changed, from mid-1979 to mid-1980 12 were changed and from mid-1980 to June 10 this year 14 sentences were changed.

Professor Kahn said that as far as he had been able to ascertain, at present one convicted murderer out of 12 convicted murderers was hanged representing an increase from one in every 17 in previous years.

He said South Africa's execution rate remained "the highest in the West"

Totals peaked at 148 between mid-1978 and mid-1979. From 1973 to 1974 there had been only 43 hangings

"In five years the number of executions had trebled," Professor Kahn said.

He said there was much concern in South Africa because the increase since 1974 could not be attributed only to a population increase.

He said it was difficult to give reasons for the escalation.

"South Africa is a dreadfully homicidal society," Professor Kahn said," and it could be that for various reasons our society has become more homicidal."

There was nothing to suggest there was a greater number of homicidal prosecutions for every 100 executions, he said.

A possible reason was fewer reprieves with less inclination on the part of the courts to find extenuating circumstances.

"But the general impression is that the courts are willing to be generous in this regard," he said.

EXECUTIONS

(Statistics updated with previously unpublished information supplied by the Prisons Department)

Calendar Year	Executions	Statistical Year (1 July to 30 June)	Executions	Reprieves	Successful Appeal	Retrial
1969	64	1968-9	84	12	4	1
1970	81	1969-70	80	28	3	2
1971	76	1970-1	80	19	7	—
1972		1971-2	56	21	3	1
1973	129	1972-3	55	32	2	1
1974		1973-4	43	25	2	—
1975	68	1974-5	59	12	3	3
1976	61	1975-6	60	8	12	2
1977	90	1976-7	71	8	3	N/A
1978	132	1977-8	105	5	15	N/A
1979	133	1978-9	148	24	15	N/A
1980	130	1979-80	128	24	12	N/A
1981	N/A	1980-81 (Jun 10)	114	29	14	N/A

CT 7/7/81

Budlender call for use of 'legal tools'

252

Staff Reporter

MR GEOFF BUDLENDER of the Legal Resources Centre in Johannesburg yesterday disputed the 'oft-heard claim' that the South African legal system precluded lawyers from making useful contributions toward a 'democratic Republic'

Addressing delegates at a five-day conference on law in South Africa, organized by the University of Cape Town's Law Students' Council, Mr Budlender said that by using fully the legal tools provided in the South African system, lawyers could bring "the practice of law a little closer to the rhetoric of its stated principles" and thus advance the cause of social justice

Crossroads

The "Crossroads saga" was an example of what the lawyer could achieve by ensuring that the rights which the South African legal system guaranteed to the accused were properly exercized

"An entire community faced destruction, the routine processing of 'minor' trespass, squatting and pass law cases being an important part of the machinery of destruction

"When lawyers intervened on behalf of individual clients and did no more than was required of them by their professional ethics, the whole picture changed"

Mr Budlender, who was president of UCT Students' Representative Council in the early 1970s, admitted that an obstacle to lawyers' efforts for social justice was the fact that the procedure for the resolution of civil disputes was so expensive, time-consuming and uncertain that litigants were often better off conceding the point than engaging in extended litigation

'Dramatic' change

But these "cost calculations", changed dramatically when large numbers of complainants began to pursue their grievances

"Once a number of such claims are brought, and backed by an effective threat of legal action, the tables are often turned"

Mr Budlender emphasized the need for organizations to monitor cases of social injustice

Lawyers could do much to assist in the achievement of a just society in South Africa by making their services and skills available to individuals, groups and organizations who were themselves working for social justice

Argus 8/7/81 (252)

Call to reform SA penal system

THE humanity of South Africa's society was measured by her treatment of those who differed from her commonly-held beliefs and attitudes, a speaker on penal reform told the conference on Law in South Africa at the University of Cape Town last night.

Mr Sirk van Wyk, a former Cape Town branch director of the National Institute of Crime Prevention and Rehabilitation of Offenders (Nicro), was one of a panel of speakers who called for fundamental reform of the South African system

He said insufficient use was made of probation, periodic imprisonment, suspension or postponement of sentence, and community service orders.

The belief that all prisoners were offenders was one of the myths surrounding the 'closed institution' of the South African prison

Quoting official figures, Mr van Wyk said 48 percent of the half million people imprisoned between July 1977 and the end of June 1978 had been awaiting trial

'It is common knowledge that the courts are hard-pressed to deal with the cases at hand The result is that many people spend months in prison awaiting their trial.'

It was a reasonable inference that some of them were exposed to negative influences, homosexual rape, and pressure from habitual offenders to join gangs.

Mr van Wyk said it was a myth that all prisoners were dangerous. More than 200 000, or about 80 percent of sentenced prisoners in 1977-1978, had been given six months or less — mostly for influx control offences.

'Most prisoners are timid, bewildered and frightened by their insular environment. For many, prison life eventually becomes the only reality — and the outside world becomes threatening'

Mr van Wyk said facilities for treatment and training of prisoners were inadequate.

The legal aid system should be overhauled so that no one who appeared in court need fear his own impediments in stating his case.

'Too often in our courts the social worker has to be the poor man's lawyer.'

'Political trial court' mooted

CT 9/7/81 (252) 334

Own Correspondent

PRETORIA — Creation of a special court comprising three judges to hear serious "political trials" was suggested to the Hoexter Commission here yesterday by Professor John Dugard, head of the Centre for Applied Legal Studies at the University of the Witwatersrand

Professor Dugard said that since the conclusion of the Treason Trial in 1961, no special criminal court had been constituted and numerous "political trials", some of which resulted in imprisonment for life, had been heard by a judge sitting alone or with assessors

He said there were two major objections to a judge sitting alone in such cases

● A single judge on whom the full weight of publicity fell was more open to charges of bias than several judges with different backgrounds

● It was wrong in principle that an accused's guilt should be a matter for a single opinion, reached without discussion, where a substantial period of imprisonment was compulsory, as in the case of sabotage, terrorist activities and certain offences under the Internal Security Act

"Obviously trial by judge and two assessors is preferable to trial by a single judge but assessors lack the standing and secure independence of judges"

Majority verdict

Professor Dugard suggested that fairness in political trials would be best achieved by trial before a special criminal court constituted under the Criminal Procedure Act — that is before a court composed of three judges, required to reach a majority verdict

Judge-presidents, Professor Dugard submitted, should be particularly careful in the appointment of judges to preside over "political trials"

They should ensure that such trials were shared evenly among all judges in order to avoid suspicion of "political picking"

He asked that the problem should be drawn to the attention of the Chief Justice so that he too could ensure that suspicion of this kind did not arise in respect of the Appellate Division

Serious political trials such as terrorism and sabotage should be withdrawn from the jurisdiction of regional magistrates

It was a disturbing innovation in 1977 that regional magistrates were given jurisdiction over sabotage and terrorist trials and the sentencing powers increased from three- to 10-year jail terms

Civil servants

However competent regional magistrates might be, they were civil servants seen to be more closely linked with the executive than Supreme Court judges

As sabotage and terrorism were political crimes *par excellence*, it was particularly important that these crimes should be tried by persons lacking any apparent association with the executive

Professor Dugard said that political trials might be seen as fairly straightforward criminal trials which could be heard by any judge available He submitted that this was a short-sighted approach

"Reputation of our legal system is fast deteriorating among blacks In part this may be attributed to the handling of political trials"

The main purpose of the political trial was to eliminate or discredit a political opponent, according to established rules

Where a political opponent was removed from the scene for violation of the law after an open trial conducted in accordance with fair trial procedures by a judge not identified with the governing power, the public was far more likely to accept the decision

Impartiality

Professor Dugard emphasized that his observations were of general application, and did not apply to South Africa alone

He submitted that judges who presided over political trials should not only be impartial but should be seen to be impartial

Great care should be taken to ensure that judges who were viewed by the legal profession or the lay public as close to the executive in outlook were not appointed regularly or frequently to preside over such trials

A judge was seen to be close to the executive in outlook when he was an open and active supporter of the ruling National Party before his appointment to the Bench — for example when he was an MP, MPC or office-bearer of the party

A judge would also be seen to be close to the executive if he had revealed his support for the executive as opposed to the individual in previous hearings and judgments

Treated as if convicted, six men allege

Argus 9/7/81 (252)

SIX men who appeared in the Cape Town Magistrate's court yesterday on charges of attempted murder and robbery, claimed they were treated in prison as if they had already been convicted.

In a letter written by Mr Clive George, 38 and signed by the other accused, the men alleged that they were being held in solitary confinement, were not allowed to speak to each other, and were not allowed to exercise. The doors of their cells, they said, were open for only a few minutes each day when they received food.

'Are we already convicted of crimes or is it through the courts that we received such treatment,' the men asked the magistrate, Mr B Carroll.

Mr Carroll explained that the treatment of prisoners was the concern of the prisons administration and had 'nothing whatsoever to do with the courts' He asked the men to approach the commanding officer at the cells where they were held.

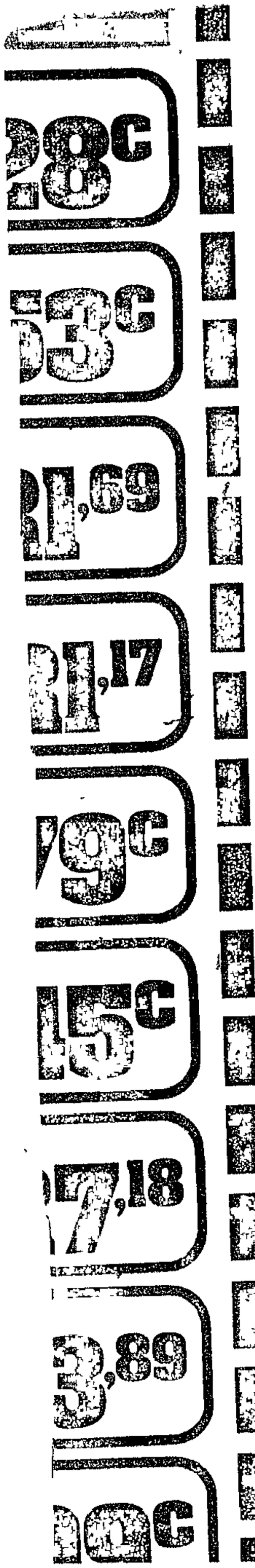
Told that such approaches had been made and had proved fruitless, Mr Carroll repeated that it was not within his power to do anything about the matter. It was, however, decided to forward the letter from the accused to the relevant prisons authority.

Mr George, together with Mr Mogamat Abrahams, 33, Mr Rudewaan Benjamin, 19, Mr Ronald Fortune, 24, Mr Leslie Williams, 27 and Mr Kenneth Fortune (all of Manenberg) pleaded not guilty to two charges of attempted murder and four charges of robbery with aggravating circumstances.

They declined to outline the basis of their defence. The charges against the men arise out of an incident in Kensington on May 10 when a woman was robbed of R3 000 and her watch and two policemen who attempted to stop a car allegedly driven by one of the accused were shot, wounded and robbed of their service-revolvers.

The hearing was postponed to August 5

Mr E E Smith appeared for the State Mr E Moosa appeared for Mr George



Hughes But the owner held out for what he felt was the car's true value — R136 000

Special court for political crimes: call by professor

Own Correspondent

Serious political crimes should be tried by a special criminal court composed of three judges, the Hoexter Commission of Inquiry into the Courts has been told

Professor John Dugard, director of the Centre for Applied Legal Studies at the University of the Witwatersrand said before the commission that the "political trial" was an inescapable phenomenon in any modern society

In contemporary South Africa members of groups opposed to the policies and practices of the present Government were often charged with offences that challenged the authority of the State before ordinary courts

It was unwise simply to view political trials as ordinary criminal trials, he said

RESPECT

Professor Dugard said respect for the judicial office alone restrained many critics from publicly voicing their concern

He submitted the commission should seriously consider recommending that

- Serious political trials be heard by a special criminal court composed of three judges, required to reach a majority verdict
- Judge Presidents be particularly careful in the appointment of judges to preside over such trials, to avoid any suspicion of "political picking"
- The problem be drawn to the attention of the Chief Justice so that he may likewise ensure that suspicions of that kind did not arise in respect of the Appellate Division
- Serious political crimes such as terrorism and sabotage be withdrawn from the jurisdiction of regional magistrates

Man killed wife's lover with his pocket-knife

Own Correspondent

PORT ELIZABETH — A man who fatally stabbed his wife's lover with a pocket-knife, was fined R600 (or 200 days) and sentenced to three years' imprisonment (suspended for five years) in the Port Elizabeth Regional Court yesterday

Christo Barker (33) of Neptune Street, Swartkops, Port Elizabeth, had pleaded guilty to a charge of culpable homicide arising from the death of Mr Trevor Dawson (34) on April 4

On a second charge of assault with intent to do grievous bodily harm to his wife, Mrs Virginia Barker, he pleaded guilty and was convicted of common assault

The court heard that, on the night of the stabbing, Barker returned home from Cape Town to visit his wife and children.

He did not find his wife but noticed two people in the spare room

The magistrate, Mr E de Beer, said that finding his wife in bed with another man must undoubtedly have been provocation for Barker

Vital need 'to balance SA scales of justice'

Argus 10/7/81 (252)

A MASSIVE scheme to ensure legal representation for all who need it is essential to balance the scales of justice in South Africa, a leading advocate said last night

Mr Arthur Chaskalson, SC, of the Legal Resources Centre was speaking to law students at the University of Cape Town

He said the legal system was a possible avenue for the redress of some of the grievances of the disenfranchised group But the way was blocked by ignorance and poverty

'It would be unrealistic to assume that in the foreseeable future the fundamental legal needs of the South African public will be met out of public funds

'There is neither sufficient money available for such purposes nor are there sufficient lawyers to render the services that are required'

POPULATION

Mr Chaskalson said the South African Legal Aid Board spent R1,15-million in the 1980 financial year on legal services for civil and criminal cases, and about R785 000 in 1979

In Canada, a country with a similar size population, more than R100-million a year were spent on the provision of legal services for people who could not afford to pay lawyers.

'The best must be made of available resources and programmes devised for the provision of legal services to unrepresented or under-represented persons and groups,' he said

'Public interest law centres, like the Legal Resources Centre, do not balance the scales of justice They do, however, have the potential to make a significant contribution to the unmet need of under-represented groups'

MORE STAFF

Mr Chaskalson said the centre's legal staff had grown from two lawyers when it was established in 1979 to three advocates, four attorneys, and four recent law graduates.

It had established a law clinic near the Johannesburg station and supervised another on the University of the Witwatersrand campus

The clinics held about 10 000 interviews a year and took on about 2 000 cases, most of which were resolved through negotiation.

The Legal Resources Centre had taken on about 750 cases since it started.

'These are typically cases in which a ruling can be of benefit to other persons in a position similar to the litigant, or cases which exemplify some form of abuse or exploitation which is commonly encountered by the communities which come to the clinics for assistance,' he said.

Secrecy

NM 11/7/8

252

Heavy bias of law in favour of State

Mercury Reporter

SOUTH AFRICAN laws are heavily biased in favour of State secrecy and against a policy of disclosure, according to Prof A S Mathews head of the law faculty at the University of Natal

Speaking at a symposium at the University of Durban Westville yesterday, Prof Mathews said that while the Steyn Commission on defence reporting recognised the need for a fair balance between secrecy and openess, it did not adequately reveal the present deplorable state of the laws or recommend changes which would provide an acceptable balance

In matters of national security, he said, the commission accepted the Government as the sole judge of what should be released This could lead to a situation where the co-operation between the Government and the Press would be completely one-sided

While other countries had laws authorizing excessive secrecy, in practice there was more information available in these societies as they were more fully democratic'

It was argued that the ordinary courts in South Africa could not be trusted to decide disputes about sensitive State secrets but the American and Israeli courts had evolved satisfactory procedures towards this end'

He said certain information had to be protected but this should be the exception and not the rule

'The citizen's right to know is more than an individual human right, though it is that as well It is also a social interest aimed at achieving good, efficient and incorrupt government,' he said

Prof J D van der Vyver, lecturer in law at the University of the Witwatersrand, delivered a paper dealing with the ways in which the South African political system deviates from the Westminster system of government and the effect this had on the issue of State secrecy

He said that while the South African political structure was based on the Westminster system of government, elements of that system had in the course of time been abridged in South Africa by 'adverse constitutional institutions and practices'

Manipulate

Two of the most serious results of this abridgement in South Africa were the limitations imposed on the principle of publicity and restrictions on the freedom of the news media to report on official administrative activities of the executive branch of the government

Prof van der Vyver saw the ability of bureaucracy to manipulate the publication of news relating to administrative activity as particularly disturbing in view of the instances in which State officials had released false information Prof van der Vyver said the Government had applied its sovereignty to promote the interests of a section of the population only, instead of furthering the rights and freedoms of all South African people

Because the free exchange of information and ideas was seen in South Africa as a threat, the news media had been subjected to sweeping restraints and were required to operate under constant Government threats of increased censorship, he said

URBAN & REGIONAL PLANNING

QUANTITY SURVEYING (Continued)

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Gallows toll 69 as six more hang

By PATRICK LAURENCE

THE execution of six men last week brought the number of hangings in South Africa this year to 69, according to figures released to the Rand Daily Mail by the Department of Prisons yesterday

In the latest executions, four of the men were black and two white

Professor John Dugard, of the Centre for Applied Legal Studies and an opponent of the death penalty, was "appalled" by the number of hangings since January

"They show that the South African courts and the executive remain totally insensitive to the movement away from this barbaric form of punishment in all civilised countries," he said yesterday

The six men hanged last week had been sentenced to death for murder — two of them for killing women and four for murdering fellow prisoners

Prof Dugard said "To the response that their own deeds were cruel and savage, one must reply that in stitutions of an avowedly civilised state should not model themselves on the behaviour of psychopaths and killers"

A recent article by Professor Ellison Kahn, of the University of the Witwatersrand, showed that the annual number of executions reached new peaks in recent years after declining markedly in the mid-1970s

Then the number of hangings dropped to below 60, having exceeded 100 several times in the 1960s Totals for the last three years, however, have been 132, 133 and 130 successively

Several crimes carry the death penalty in South Africa, including murder, treason, rape, robbery and/or housebreaking with aggravating circumstances, sabotage, undergoing training or obtaining information that could further an objective of communism and participation in terrorist activities

Murder is the most common crime leading to execution, Prof Kahn writes "Such data as are available for the last 12 years show it to account for some 97% of hangings "

Although analysis of executions showed seven men were executed for sabotage, there was "good reason to believe that all the criminals had been found guilty of murder as well "

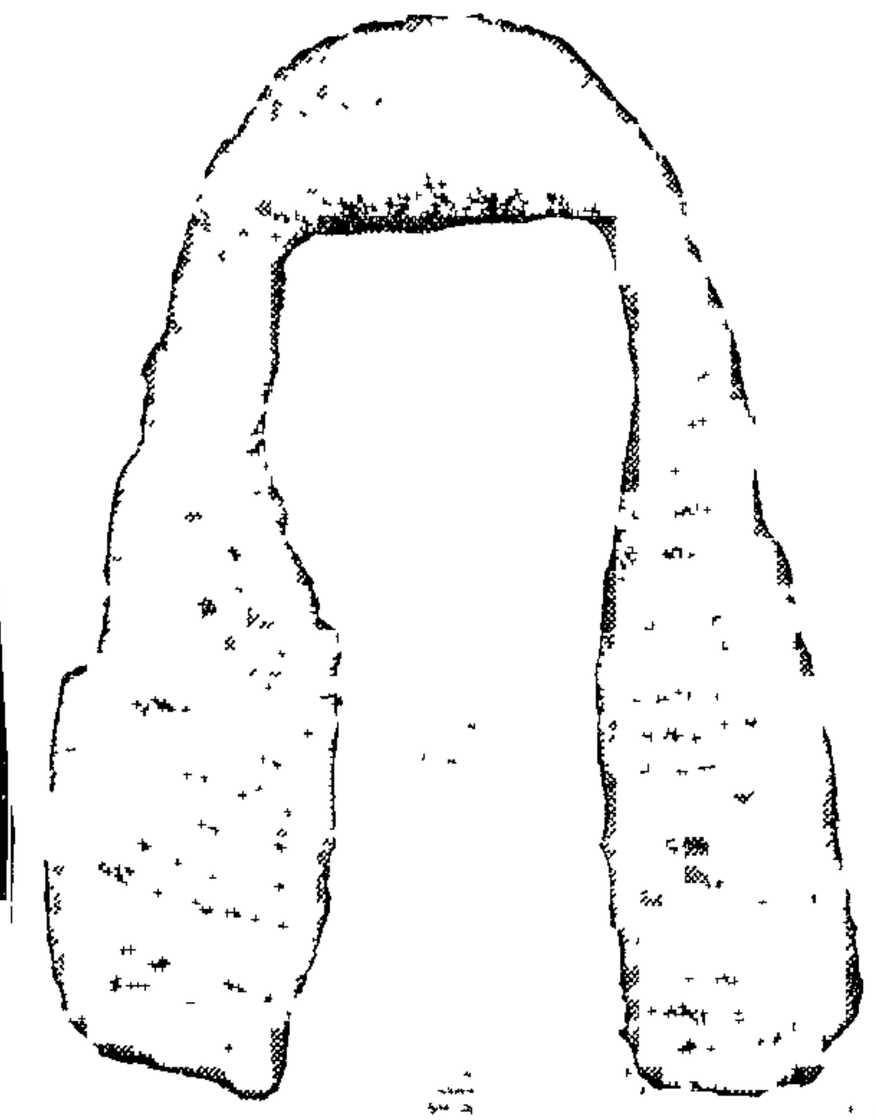
But not all murderers are hanged, Prof Kahn adds

"There appears to be little reason for a change to a statement I made in 1970 that a suspected murder results in capital punishment in only two cases out of 100

"Ours is a dreadfully homicidal country The noose remains pretty well as remote and chancy a punishment as ever it was This very uncertainty has often been an important cause of its abolition in other lands "

(252)

SUNDAY TRIBUNE, JULY 26, 1981



Gerald Gordon QC says judges should resign if laws conflict with their consciences

S. Tribune 26/7/81 (252)

JUDGES URGED TO QUIT IN DEFENCE OF JUSTICE

TRIBUNE REPORTER

LEGAL expert Gerald Gordon QC has called for more judges to come out "fearlessly and resolutely" against laws they have to apply which seriously offend basic freedoms.

Writing on "Judges and Justice" in the latest issue of SA Outlook, he says that if a judge feels unable in conscience to apply a law which suppresses individual liberty, he should resign

He says there is no record of a South African judge having resigned on this express ground.

His article follows closely the launching of the civil rights campaign to get the judiciary to raise its voice to try to influence the legislature to amend or repeal laws which the Civil Rights Campaign says makes it impossible for judges to carry out their oath of office to administer justice

The issue of SA Outlook is devoted to the theme "Making Law Just"

In his article, Gerald Gordon records how, when in Rhodesia the Law and Order Maintenance Bill, involving drastic circumscription of the Right of the Public Assembly was published in 1960, Sir Robert Tregold, chief justice of the Federation, said he had watched the build-up of the harsh law "with something approaching agony" and this was "the last straw"

He resigned and went into retirement

Mr Gordon said that in terms of their oath of office, judges vowed to administer justice, but had to do so in accordance with the "law and customs" of South Africa.

"I say **but** rather than **and** because, as will be seen, the law and justice are not always in harmony in this country

He said in Nazi Germany there was rule by law, but the rule of law was something quite different

"A government that has secured the enactment of a measure for detaining citizens without charge or trial is governing by law but it flouting the rule of law.

"The rule of law is an achievement of mankind in its fight for freedom against the tyranny of absolute rulers and postulates that any state action prejudicial to the freedom of the individual shall be taken only as the result of proof of a distinct breach of law before independent courts applying fair trial procedures.

"When one is heard to cry that 'law and order' must be maintained, what 'law' and what 'order' is envisaged

"Too often violence is, in the name of law, done to the rule of law. This has happened in the fields both of security and of race.

"Section 6 of the Terrorism Act which provides for indefinite detention without trial and [illegible] in legislation, more than anywhere else, judges should forfeit none of their independence to the appetites of politicians.

They should serve not as blind executors of the will of the State but as creative architects of both the law and justice.

Mr Gordon said the race laws were an area crying out for adverse judicial comment.

"A white man may have lived a dozen years with a woman who would be [illegible]ed as coloured.

QUOTE

An Act of Parliament creates law but not necessarily equity.

JUDGE MERVYN KING

Gerald Gordon . . . law and justice not always in harmony

[redacted]

or allegations which need never be disclosed, is an example of the former: Race classification, Group Areas provisions, the Mixed Marriages Act and the Immorality Act are examples of the latter."

Mr Gordon said that judges who had to apply these laws were severely limited in their powers — there was no Bill of Rights, no set of unbreakable principles which courts had to honour to the detriment of existing statutes.

In this country, as Judge Didcott said in Nxasana v Minister of Justice in 1976, effect had to be given to Act of Parliament, "However offensive to standards they may be."

But "adverse comment" was by no means denied to our judge, and Judge Didcott had availed himself of this in the same case, when he said of Section 6 of the Terrorism Act·

"In providing for the detention for indefinite periods of those who have not been convicted of crimes, for their isolation from legal advice and from their families, and for their interrogation at the risk of self-incrimination, the legislature has pursued its object by the enactment of measures which are undoubtedly foreign to the ordinary principles of our law

Controversial

"Whether the end justifies the drastic means that have been sanctioned because they are necessary in troubled times for the security of the State, as they are apparently thought by Parliament to be, is a controversial question.. "

Mr Gordon mentions another case in which an Indian was convicted of unlawfully hiring an apartment in a white area, although there was no alternative accommodation available in the Indian area of his city for him and his family

Judge Mervyn King, said on appeal "An Act of Parliament creates law but not necessarily equity.

"As a judge in a court of law I am obliged to give effect to an Act of Parliament Speaking for myself, and if I were sitting as a court of equity, I would have come to the assistance of the appellant

"Unfortunately, and on an intellectually honest approach, I am compelled to conclude that the appeal must fail "

Mr Gordon said that in the field of security

The union may have produced children In a prosecution under the Immorality Act the court will usually suspend the conviction on condition that the man and woman part.

"A home is thus broken up notwithstanding that the couple and the family may have been perfectly happy together. The laws are obeyed, but what kind of justice is this?"

S. Tribune 26/7/81
252
Liberty

Mr Gordon said there were judges who were by disposition executive-minded, and others who inherently leant towards individual liberty and rights.

"But whatever factors — or character or cause — may prompt some to speak out, it becomes invidious if this impulse throbs through the veins of only a few who might thus become labelled les enfants terrible of the judiciary.

"In 1971 Judge Marais of the Transvaal Bench suggested that a committee of the Chief Justice and Judges President should be set up to advise the Government on laws on the statute book of which they disapprove."

There was much to be said for such a body, but there seemed no good reason why other judges should not also serve on it

"Until, however, such official machinery for criticism is set up, and even thereafter, it is hoped that more and more judges will fearlessly and resolutely expres their adverse views individually on enactments they have to apply which seriously offend against basic freedoms, the unbreakable standards of human behaviour, fair forensic procedure and the inalienable rights of man."

An introductory editorial in SA Outlook by Cape Town attorney, Mike Richman, says most of the articles were written by members of the recently-formed organisation, Lawyers for Human Rights

He writes. "Through the medium of that association, lawyers have the opportunity to speak out against laws and practices which they consider to be unjst "

Instead of upholding human rights, the legal system has too often been a vehicle for the suppression of human rights, he adds

"A legal system should promote justice, but too often our legal system has allowed the suppression of justice "

QUANTITY SURVEYING

(Continued)

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For the best all-round student in any year of study.

P C Key

The Committee of the Western Cape Chapter of Quantity Surveyors' Prize
For the student obtaining the highest marks in Professional Practice.

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II : A R Low Keen

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URBAN & REGIONAL PLANNING

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Muslim marriages ruled out of SA law

Mail Reporter

IN THE first case of its kind to come before a South African court, a Pretoria Supreme Court judge has ruled marriages contracted according to Muslim custom have no legal status

He said the spouses could not expect the courts to enforce the marriage contract in the event of a dispute between them.

Mr Justice Van Reenen was giving judgment in a case last week in which a divorced Muslim woman, married by Muslim rite, was claiming R18 100 from her former husband as being due to her according to custom.

Included was gold jewellery from her dowry she gave to her husband for safekeeping and a deferred dowry of 7½oz of gold.

The judge rejected Mrs S B Ismail's claims, saying Muslim marriages were not acceptable in South African law because they were potentially polygamous.

The Islamic faith allows a man up to four wives.

The judge said people married by Muslim rites would have to marry again in court if they wished to contract a valid marriage.

Before 1961 the registration of a customary marriage conferred legal status on it

Star 30/7/81 (252)

A guide to moderate sentencing

A Johannesburg-based advocate, Mr Etienne du Toit, 30, has written one of the first handbooks on sentencing in South Africa. The Star interviewed the author whose book was published this month: Mr du Toit is attached to the office of the Attorney-General, Transvaal, in the Rand Supreme Court.

The imposition of jail sentences for persons committing offences of a less dangerous nature should be discouraged by courts in South Africa, said Mr du Toit

"Our courts are in many cases neglecting the use of alternative forms of punishment like higher fines, suspended sentences and postponement of sentences which will relieve the crowded jails," Mr du Toit said

This is one of the points that he stresses in "Straf in Suid Afrika," which he says is the first handbook to deal extensively with the general principles of sentencing and the South African approach to punishment.

"The book was prepared as a practical guide for use in court daily by presiding officers, lawyers, advocates and prosecutors during the sentencing phase of a trial

"The book discusses inter alia

- The general principles of punishment and the various forms of punishment;
- Guidelines to effective sentencing,
- Procedures during sentencing and the conduct of presiding officers, lawyers and prosecutors,
- The imposition of suspended sentences and postponement of sentences.

"We have one of the best criminal procedures in the world, but I cannot say the same of our approach to punishment

Mr du Toit said "The offices of Attorneys-General in the country and the Department of Justice are presently looking at alternative forms of punishment and effective sentencing My handbook is a contribution to these attempts"

"In the past jurists have spent years at university reading law but were given little background into this subject I am hoping my book will lead to the introduction of penology as a compulsory subject in all law faculties in South Africa

"When I started doing criminal work eight years ago, I found it strange that while it took days or weeks to establish a man's guilt, the sentencing phase could take only a few minutes And this happens in many trials

"I believe that sentencing is the most important phase of a trial because we have to determine that the sentence a guilty person will receive will be an effective one which will deter him from committing the same offence again," Mr du Toit said.

Mr du Toit said that in a number of cases — and in particular where persons are not represented — personal details of an accused person and the circumstances surrounding the crime were not placed before the court

"Hence the presiding officer, especially in the lower courts, sentences 'in the dark' This sometimes results in people receiving ineffective sentences and is another reason why our jails are crowded"

Mr du Toit said that the less dangerous type of offence he had in mind included theft, fraud (or where dishonesty is an element), violations under traffic ordinances and "pass" charges

He said, that "pass offenders" should not be kept in jail pending a trial nor should they be given a jail sentence as the alternative to a fine If people could not pay the fine, they should be given time to find the money

In cases where the violence was less serious, the guilty person should also be kept out of jail and the additional punishment should include a court order to pay the cost of the victim's medical bills and loss of earnings

Mr du Toit has included in his 620-page handbook copies of court documents to show for example how to prepare an appeal or to petition the chief justice or to apply for parole

"I have found that there are many counsel who do not know how to do this and who previously had no authorities to use for assistance," he said.

During this five-year research for the book, he had waded through law reports from 1919 to June 1981 and had read up thousands of cases. The 1 328 footnotes in one chapter indicated the thoroughness of the research.

Mr Etienne du Toit

Control only in theory, says A-G

JOUBERT MALHERBE

ATTORNEYS-GENERAL had control over prosecutors in the Commissions' Court only in theory, Mr C Rees told the Hoexter Commission of Inquiry into the structure and functioning of the courts in Pretoria yesterday.

Mr Rees, Attorney-General of Natal, said the fact that commissioners had to fulfil administrative duties as well as judicial functions placed the judicial aspect of their work

He said he was representing all the attorneys-general in the country in his evidence. He stressed the unfortunate effects of the attorneys-general in the legal process in the country.

He said an attorney-general had to regard all people whether they were cabinet Ministers or street sweepers as equals before the law.

If the Minister of Justice did have a right to interfere a decision taken by an attorney-general after the latter had applied his

Political

If a judge involved himself in politics he could easily be accused of having done so for party political reasons.

He said the status of the attorney-general should be put on the same level as that of the Director-General of the Department of Justice.

Mr Rees said it would 'create problems' to remove the office of the attorneys-general from the Department of Justice.

But if the commission recommended the removal of the magistrates' courts from the Department of Justice it should also consider the removal of the attorneys-general from the Department

Lawyer: courts forced into active role

By JOUBERT MALHERBE

MAGISTRATES unwittingly became agents of the State in trying to glean information from accused in cases which were not thoroughly investigated by the police beforehand, a senior Pretoria lawyer, Mr Ike Swartzberg, said yesterday

Mr Swartzberg told the Hoexter Commission of Inquiry into the structure and functioning of the courts that undefended accused often disclosed their defence when explaining their pleas, although magistrates warned them that they were not compelled to do so

It was alarming that confessions made before a magistrate after accused were arrested were never sent back to the investigating officer but were handed to the prosecutor

The work pressure in the regional courts had led to prosecutors being unable to prepare cases adequately and this meant magistrates were compelled to question accused to get a better understanding of the circumstances of the case, Mr Swartzberg said

Investigate

"The magistrate is placed in a difficult position if the State's case is inadequate because he has to acquit accused whom he might know to be guilty"

Police often did not investigate cases after an accused had indicated that he would plead guilty, he said

But if the accused pleaded not guilty when he appeared in court the case became an investigation in which the magistrate had to question the accused

This was undesirable and could create the impression that justice was not seen to be done because the magistrates' questioning often bordered on cross-examination

While he agreed that prosecutors were given adequate training, they were not seasoned in court procedure, and this meant that the onus of proof shifted to the accused

Mr Swartzberg supported earlier evidence that the magistrate's court be removed from the control of the Department of Justice

In later policy statements, it was made clear that the organisation deprecated violence, although knowing that capitalists were using the most repressive powers of all in order to suppress the workers' struggles. But, "the repudiation of violence, does not carry with it a repudiation of the use of force which is necessary for the overthrow of the present system".[149] By force or pressure was meant the organisation of the workers in the industries and the general strike, another 'ideological weapon' directly 'borrowed' from anarcho-syndicalism.[150] Stressing the usefulness of Leninism, on the other hand, the organisation made it clear that it would always be ready to re-evaluate its methods in accordance with a change in circumstances and the requirements of the struggle, although they maintained that direct action and industrial organisa[illegible]e methods to be used by the workers. [illegible]at the methods of struggle advocated b[illegible]an 'anti-parliamentarism' leading to a [illegible]the other labour and socialist organisati[illegible]examine its validity and relevance to [illegible]the workers.

Hitting at the 'cons[illegible]/ the Labour Party (which had 21 member[illegible]at the time), accusing it of colla[illegible]ying to exercise parliamentarism whic[illegible]the Soviets"[152] - this was the crux of [illegible]sophy of the organisation. At the sam[illegible]'idiocy' of the Johannesburg ISL to [illegible]s, using historical examples inapplicabl[illegible]nces[153] to back its points. But was [illegible]iamentarism, anti-alliance, anti-every[illegible]ty? Rather, it pushed it to an extr[illegible] politicians are but petty reformers, [illegible]he present system".[154] Additi[illegible]ctics unavoidably led to its isol[illegible] of uniting with the other organisati[illegible]common demands, strikes or other eco[illegible]

Anti-parliamentarism [illegible]position to the parliamentarism of S[illegible]arties which saw participation in ele[illegible]olitical action, was seen by the ISL-CT and the CPSA as the only true policy.

The MINISTER OF JUSTICE

(a) (i) White males 0
Black males 32
Coloured males 25
Asian males 0
Total 57

(ii) Females None

(b) Murder
Black males 28
Coloured males 22
Total 50

Murder and Robbery with aggravating circumstances
Black males 3

Murder and Rape
Coloured males 2

Rape and Housebreaking with the intent to rape
Coloured males 1

Robbery with aggravating circumstances
Black males 1

(a) How many (i) males and (ii) females of each race group were executed in the Republic during the first half of 1981 and
(b) for what crime or crimes had each death sentence been imposed?

23 Mrs H SUZMAN asked the Minister of Justice

Executions (252)

Hansard 3
12/8/81 Col 23

(d) the present value of future minimum lease payments (excluding payments for maintenance, insurance and the like) exceeds 90% of the fair value of the property (after deducting the benefit of any investment tax credit (similar to the investment allowance in South Africa))[10]

It is noteworthy that the portion of lease payments designed to meet costs borne by the lessor, such as insurance and maintenance must be excluded in computing this present value. This points to the desirability of obtaining a cash price to capitalise, rather than determining the amount capitalised on the basis of discounting lease rentals which have been inflated in making provision for covering future expenses such as maintenance.

FAS 13 also sets out detailed disclosure requirements for lessees. The Statement [illegible] the financial statements o[illegible] he most comprehensive c[illegible] nting body towards the [illegible] ion of information regar[illegible]

Yes

(i) Prisoners released as a result of the granting of amnesty from 2 to 15 June 1981

Up to one month	695
Over one month up to six months	6 172
Over six months up to under two years	5 476
Determinate sentences of two years and longer	9 134
Imprisonment for corrective training	6
Imprisonment for the prevention of crime	146
Habitual criminals	85
Imprisonment for life	1
	21 715

(ii) The required information is not readily available but it is expected that approximately 50 000 prisoners will eventually benefit by the said remission of sentence

Yes

The MINISTER OF JUSTICE

Whether any prisoners were granted amnesty as part of the Republic Day Festivat celebrations, if so, how many prisoners in each category were (i) released or (ii) granted reduction of their sentences under the amnesty?.

Amnesty 252

For written reply

6. Mrs H SUZMAN asked the Minister of Justice

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South

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6. Exposure Draft

6.1 Backgroun

Exposure [illegible]

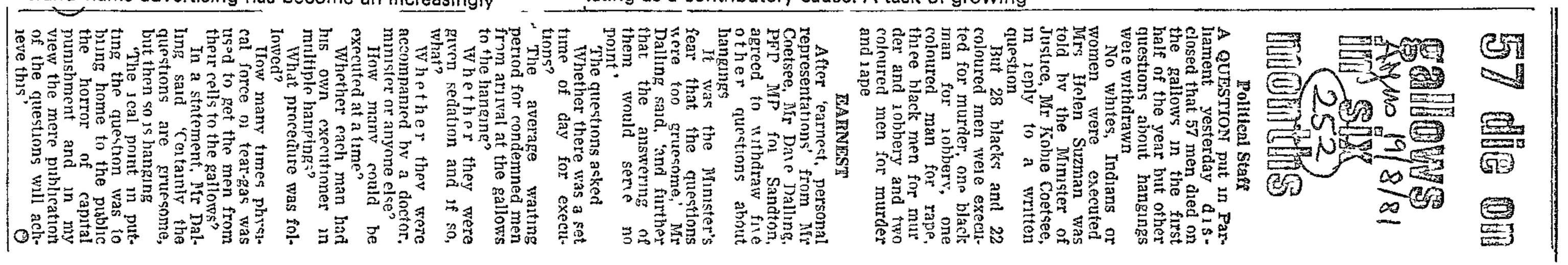
final docu[illegible]

Africa - t[illegible]

commercial interests. The risk of excluding controversial issues and minority opinions is considerably greater in a commercially controlled mass medium than in one which represents different sections of the community.

The tourist industry owes its explosive growth in the affluent industrial countries to the diffusion of opportunities for large masses to travel, not least to other countries Higher standards of consumption have been accompanied by a vigorously expanding advertising industry, where brand-name advertising has become an increasingly

will be even less need of it as industrial engineering continues to reduce the component of manual labour. The ever growing preference for locomotion by vehicle, especially by private car, makes greater the risk of obesity Higher standards of living will also be reflected in a tendency to overeat. The stepped-up tempo of life and the diverse causes of frustration associated with a more complex and rigidly bureaucratized society will make cardiosvascular diseases increasingly common, with over-eating as a contributory cause. A task of growing


57 die on
gallows
in 5½ years
SIX
252
victims
19/8/81
Politics Political Staff
A QUESTION put in Parliament yesterday disclosed that 57 men died on the gallows in the first half of the year but other questions about hangings were withdrawn
No whites, Indians or women were executed Mrs Helen Suzman was told by the Minister of Justice, Mr Kobie Coetsee, in reply to a written question
But 28 blacks and 22 coloured men were executed for murder, one black man for robbery, one coloured man for rape, three black men for murder and robbery and two coloured men for murder and rape
EARNEST
After 'earnest, personal representations' from Mr Coetsee, Mr Dave Dalling, PFP MP for Sandton, agreed to withdraw five other questions about hangings
It was the Minister's fear that the questions were too gruesome,' Mr Dalling said, 'and further that the answering of them would serve no point'
The questions asked
Whether there was a set time of day for executions? The average waiting period for condemned men from arrival at the gallows to the hangings?
Whether they were given sedation and if so, what?
Whether they were accompanied by a doctor, minister or anyone else?
How many could be executed at a time?
Whether each man had his own executioner in multiple hangings?
What procedure was followed?
How many times physical force or tear-gas was used to get the men from their cells to the gallows?
In a statement, Mr Dalling said 'Certainly the questions are gruesome, but then so is hanging
'The real point in putting the question was to bring home to the public the horror of capital punishment and in my view the mere publication of the questions will achieve this'

are taken promptly The enormous despoliation of nature inflicted by water contaminants has the undesired side effect of curtailing recreational opportunities Already by the mid-1960s air pollution was responsible for the smoggy atmosphere of many metropolitan areas The proliferation of gasoline-powered motor vehicles aggravates the problem, which is further compounded by many types of industrial activity It may be assumed that technicians and urban planners will soon be much more aware of the litter problems and health hazards posed by technology, and hence more willing than the present generation to deal with them effectively

The very style of life in modern society engenders health problems of its own As if activities requiring the exertion of muscle and sinew were not diminishing anyway, there

Bureaucratization

As observed earlier, an ever deeper impress is being stamped on society by the large units, the big organizations, within both the private and the public sector We are rushing headlong into an *organization society* Public agencies of government and administration will continue to expand, a consequence not only of the need for better planning, co-ordination and control of such activity in the increasingly complex society which its organs have decided upon, but also of the tendency towards empire-building' inherent in the bureaucratic system itself The bureaucrats will become more important persons because they tend to become more identified with 'their' agency and represent them vis-à-vis their clients This also holds true for the administrative hierarchies of private firms

No case for separate division — Boshoff

By Chris van Gass
Pretoria Bureau

The creation of a separate Provincial Division for the Rand Supreme Court would only aggravate the staff shortage among judges, underscored by the fact that the Transvaal Division was already operating with five judges too few, the Judge President of the Transvaal Mr Justice W G Boshoff, said today

He was referring to calls by Rand advocates to discuss the near chaos which is claimed to exist in the Rand Supreme Court and was mentioned in the Diemont Commission of Inquiry report tabled in Parliament this week

Mr Justice Boshoff said the references to "chaos" in the commission's report had come from the Registrar of the Rand Supreme Court Mr W P van Oudtshoorn He felt these claims had been exaggerated

Although there was a shortage of judges the Transvaal Division which included the Rand Supreme Court, had managed to do its work because of the system of the continuous roll where cases would commence as soon as a judge became available

There was a heavy burden of cases up to 15 civil cases a day in Johannesburg and 12 in Pretoria, but because of the continuous roll and the fact that many cases were settled before reaching court "we manage to a great extent to keep the work up to date"

Mr Justice Boshoff said of the 30 judges in the Transvaal Division only four had been in favour of granting the Rand Supreme Court provincial status

Advocates and certain other institutions were however, in favour of elevating the Rand Supreme Court status because of 'personal interest'

Mr Justice Boshoff felt there had been no case for a separate division

"If this was granted it would have meant the recruitment of more judges and the extension of various offices such as the registrar's office, which is already operating under the strain of not enough manpower, he said

Another problem was that advocates who qualified to be appointed as judges were reluctant to give up lucrative practices

Advocates to meet on court 'chaos'

Chief Reporter

Johannesburg's advocates will today discuss the growing row surrounding the "near chaos" at the Rand Supreme Court

Mr Jules Browde SC, chairman of the Johannesburg Bar Council, said the matter had become important and would be raised at today's bar council meeting

The issue comes after the report of the Diemont Commission which recommended that no separate division of the Supreme Court be formed in Johannesburg

At present the Witwatersrand Local Division of the Supreme Court is attached to the Transvaal Provincial Division in Pretoria

The commission's report referred to "near chaos" in the Rand Supreme Court

This allegation was rejected by the Judge President, Mr Justice Boshoff who criticised the registrar, Mr W P van Oudtshoorn, who had testified to the commission

Lawyers want new division

Star 21/8/81

(252)

Recent recommendations by the Diemont Commission on the reorganisation of the Transvaal Supreme Court would not resolve the difficulties facing the division, the Johannesburg Bar Council and Johannesburg Attorneys Association said in a joint statement yesterday.

Reaffirming their support for a separate Supreme Court division for Johannesburg, the two bodies said

"The Witwatersrand local division is the busiest Supreme Court in the country Nearly half of all advocates and attorneys in practice in South Africa practise in this division The court serves the needs of the Witwatersrand, the largest concentration of population in South Africa and the commercial and industrial hub of the country

"For many years the legal profession in Johannesburg has urged that a separate division in the Supreme Court be established in Johannesburg and it welcomed the appointment of the Diemont Commission to enquire into this question

"It made strong representations to the commission in support of a separate division of the Supreme Court in Johannesburg with sufficient judges to handle the ever-increasing demands made upon the Witwatersrand local division

"The objective was and is to ensure that cases are dealt with as expeditiously and cheaply as possible The existing system causes unnecessary delays and costs as it requires judges, advocates and attorneys to travel daily between Johannesburg and Pretoria

"The Diemont Commission has apparently recognised the unsatisfactory state of affairs affecting particularly the Johannesburg Supreme Court and has made certain recommendations which, if implemented, may possibly alleviate but will not resolve the difficulties

"It must also be stated that there are simply too few judges to handle the work, resulting in inordinately heavy expense, the crowding out of cases, inconvenience, and additional expenses" —SAPA

not be hit by the section as it was then worded. The 1959 amendments were intended inter alia to bring such transactions within the net of the section and based on the decision in Smith's case (supra) the amendment has achieved this result.

(2) Output

After execution of the following program

```
      COMPLEX CPX2, CPX4
      CPX2 = (-123.56, -3.45E-3)
      CPX4 = (789.56, -890.1)
      A = -456
      WRITE(3,5) CPX2, A, CPX4
5     FORMAT(E13.5,2X,E12.5,5X,F5.3/F8.2,2X,F6.1)
      STOP
      END
```

The first print line will be
−0.12356E+03bb−0.34500E+03bbbbb−.456

The second print line will be
b789.56bb−890.1

Note that the first character of each print line (a blank character) is interpreted as the form control character and is not printed.

6 3 3 3 Logical Type Conversion

On input, the basic field descriptor Lw is used for items to be represented internally as logical type data, on output, for items that are represented internally as logical type data.

Rules

(1) The internal field must be explicitly declared as logical type.

(2) On input the external field consists of optional blank characters, followed by either a T for true, or F for false, followed by optional characters which are ignored

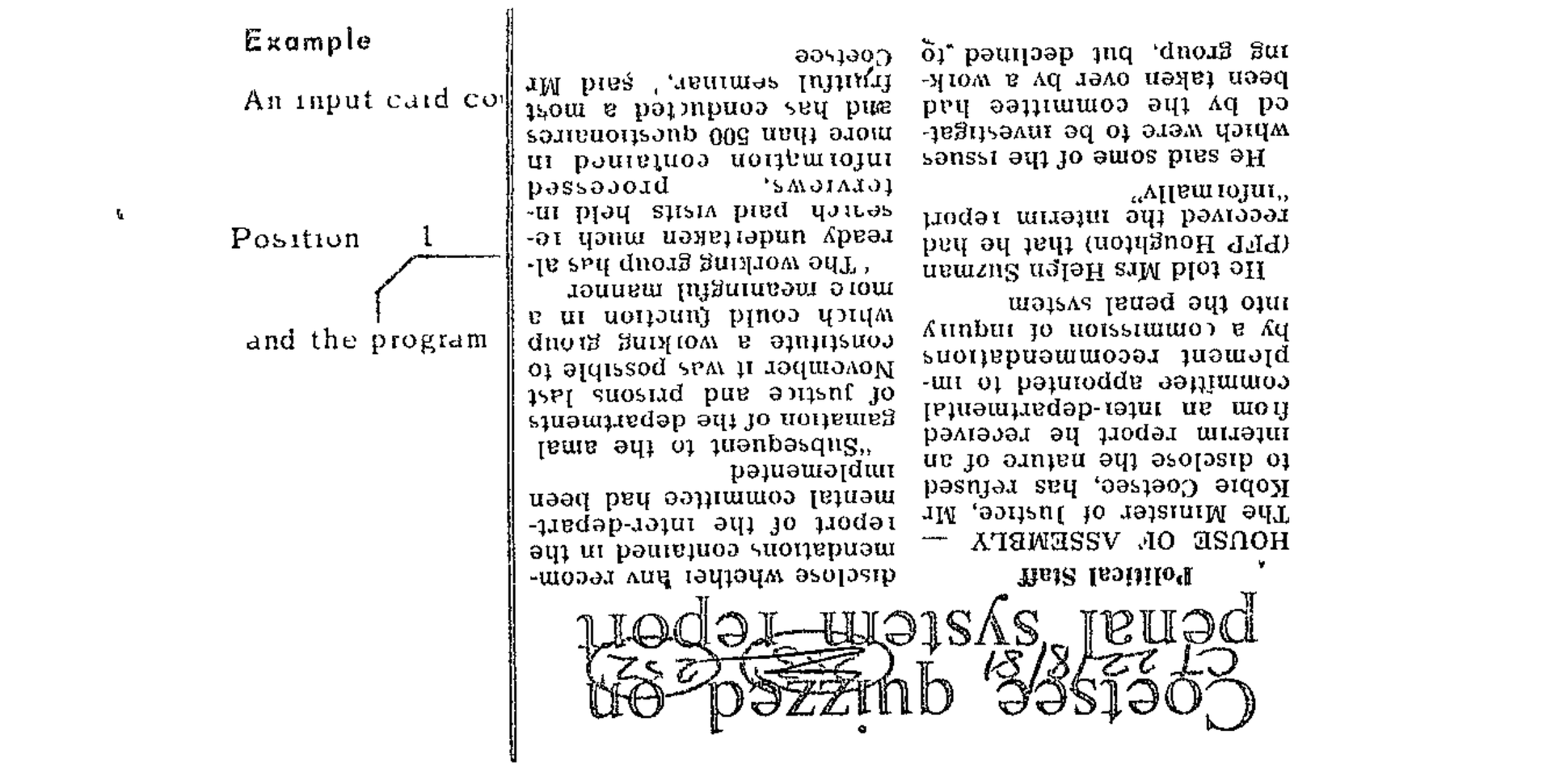
(3) On output the external field consists of w- 1 blank characters followed by a T or an F

Example

An input card co

Position 1

and the program



Can justice REALLY be done?

The Diemont Commission of Inquiry's finding against a proposal to separate the Transvaal Division of the Supreme Court into two provincial divisions has plunged the legal world into heated debate on issues surrounding the extent of chaos in the system and how it affects the quality of justice. EUGENE HUGO reports on the controversy which has already moved the Judge President, Mr Justice Boshoff, to accuse the Registrar in Johannesburg of "exaggeration".

A CATALOGUE of imperfections — bound up in the 15 pages of a commission of inquiry examination of the Transvaal legal system — seriously questions the type of justice meted out to the man-in-the street

It is a situation described as "near chaotic" as critical staff shortages, up the ladder from clerk to judge, and a steadily increasing overburden of work, causes inordinate delays and disruption to the detriment of the taxpaying litigant

Central to the issue is the long-standing argument — an argument that goes back to 1946 — that the vast Transvaal area requires two separate provincial divisions of the Supreme Court

Surrounding it is what one judge described as the "tale of two cities" and which emerges in the report by Mr Justice Marius Diemont as a tale of almost incurable woe

And at its root is the inadequate Department of Justice salary structure which allows not only more junior staff to be attracted away to the private sector but highly-paid advocates to scorn the honour of a call to the Supreme Court bench

An overwhelming majority of current judges (26-4), however, do not want a judicial partition in the Transvaal and they are backed by the Judge President, Mr Justice Boshoff, who vehemently denies that that "near chaos" affects the judiciary he runs

But Mr Justice Diemont found that the time was not "propitious" to make the far-reaching change of separating the two divisions Instead, he recommended the appointment of a Deputy Judge President permanently resident in Johannesburg to ease the everyday problems facing the Judge President

He also recommended that Johannesburg should be given appellate jurisdiction and that the districts of Vereeniging and Vanderbijlpark should be incorporated

The catalogue of imperfection

● **BACKLOGS** The Attorney-General of the Transvaal told the commission that there was a backlog of some 500 criminal appeals at the beginning of last year but the appointment of a number of additional acting judges had improved the the situation

Judge Diemont said there appeared to be no serious backlog in criminal trials but civil trials were being set down in Johannesburg at the rate of 75 a week, with cases being set down nine to ten months in advance and the backlog contiued to grow

● **POSTPONEMENTS AND DISRUPTION** The commission reported that it was contended that the public was not well served in that the work of the courts was disrupted, cases were postponed, costs were increased and there were delays both in the civil and the criminal courts — delays which caused anguish to litigants and hardship to prisoners

Johannesburg Supreme Court Registrar, Mr W P van Oudtshoorn, cited several instances where, as a result of judges being shuttled between Pretoria and Johannesburg, cases were not finished and postponement followed postponement

He said it happened from time to time that that a case set down on a Friday was postponed because the presiding judge would be returning from Johannesburg to Pretoria (or vice versa) in the following week and could not take a case unless there was an assurance that it would finish in one day

This evidence was backed by the Attorney-General and two Deputy Attorneys-General

Further corroboration for this complaint came from the Johannesburg Bar Council

In a minority memorandum to the commission, Mr Justice Coetzee confirmed the basic complaint and said that judges were unaware of the inconvenience and the "things that happened"

The Judge President disagreed, saying that this might have happened in isolated cases, of which he had no knowledge — but this problem had nothing to do with the existence of two divisions of the Supreme Court

But the commission chairman said he accepted there was substance in the submissions made by the Registrar and Deputy Attorneys-General

● **JUDGE PRESIDENT** Mr Justice Galgut told the commission that the state of affairs in the Transvaal was due to the fact that, for all practical purposes, the division had been without a Judge President for three years Judge Cillie was busy with a commission, Judges Boshoff and Hiemstra alternated as Judge President and then Judge Boshoff acted as Judge President But his hands were tied because Judge Cillie did not want changes

"I may add that the Judge President has been on long leave since he took office in January of this year (1980) and does not appear to have been kept fully informed when he was acting as Judge President"

● **COSTS** Judge Diemont said costs were increased in both civil and criminal appeals which emanated from a Magistrate's Court in Joahannesburg since the instructing attorney would appoint a correspondent in Pretoria to act on the matter This, according to Mr Gauche, the Registrar of the Transvaal Provincial Division, resulted in a duplication of costs To this had to be added the travelling costs of attorney and counsel

The travelling costs for judges, drivers and clerks are R64 198,23 a year Said Judge Diemont "I am not persuaded that an expenditure of approximately R64 000 a year is too high a price to pay or that it would bear comparison with the costs which would be incurred in setting up an independent provincial division in the Transvaal"

● **CHANGE** Judges were strongly opposed to change Mr Justice Curlewis said that to separate the courts "would do great damage", whereas Mr Justice Margo said to divide the Surpeme Court would lead to a "process of balkanisation" in the Transvaal

● **THE POLITICAL ARGUMENT** Former Judge Hiemstra told the commission that he hoped the old type of ultra-conservatism (bekrompenheid) which had people continually talking of the Johannesburg "liberal" or "Jewish" Bar would not again play a role in "bedevilling" the merits of the case

He said it was still being alleged that the Johannesburg Bar was too strongly English-unilingual — some had labelled it "liberalistic" — and there was a view that an "acceptable" Bench could not be established "It was even alleged that the character of the judicature in Johannesburg would assume a totally perverse direction"

This was a highly unjustified allegation because the tendency was in the opposite direction, said Judge Hiemstra

The racial composition of the Johannesburg Bar in October, 1979 was 143 non-Jews and only 108 Jews Of the 143 non-Jewish advocates, 81 were Afrikaans-speaking — making it close to one of the biggest Afrikaans-speaking Bars in the country

But despite all the arguments and the counter-arguments it is clear that even the Department of Justice, which has for so long resisted pressure for the Witwatersrand to become a separate provincial division of the Supreme Court, has accepted that there is a case for this move

The Director-General of Justice, Mr J P J Coetzer, told the commission "With the industrial and population explosion in the area, the pressure for a full (provincial) division will in the future steadily increase and the Witwatersrand will press harder for independence"

170.

'Family court could stem divorce rate'

Sample mean

Sample numbers

UCL

LCL

FIG 7

Pretoria Bureau

MARRIAGE break-ups led to moral decay in South African society and divorce should be limited at all costs, Pretoria academic Dr S H van Wyk claimed yesterday.

Giving evidence before the Hoexter Commission of Inquiry into the Structure and Functioning of the Courts, Dr Van Wyk said that spouses from broken marriages often became lonely after separations

"Lonely, divorced men often enter into relationships with women who are themselves married and this inevitably leads to the break-up of another marriage," she said

Commission chairman Mr Justice G G Hoexter, interjected and said with a smile "I know of a lot of lonely old women too."

Family court

Dr Van Wyk, who is attached to the Institute for Child Guidance at the University of Pretoria, advocated the creation of a family court to deal with welfare problems surrounding divorces

She believed that such a court, assisted by judicial officers, psychiatrists and psychologists, would help to reduce the divorce rate in South Africa

It was improbable that all couples seeking divorce would be prepared to appear before the family court voluntarily, Dr Van Wyk said

Couples should be compelled to seek guidance from the family court before the matter was referred to the Supreme Court for the final divorce proceedings, she said

Dr Van Wyk was convinced that if parents who were seeking a divorce were properly informed of the destructive effect on their children, many marriages could be saved

Necessary

She added, however, that not all broken marriages could be salvaged and said there were instances where divorces were necessary "to prevent the man and wife from killing each other"

Dr Van Wyk agreed with Prof A J Middleton, one of the commissioners, that the proposed family court should also deal with cases of alcohol or drug abuse by the parents or the children — sometimes a major cause for divorce

Couples intending to get married should be given the opportunity of seeking marriage guidance from the family court

"Many women who want to get married and have children simply do not know what they are letting themselves in for," Dr Van Wyk said

She also recommended that family court officials be paid adequate salaries

The process may be co
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7.2 Acceptance Sam

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59. Ordina

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26 AUGUST 1981

252

WEDNESDAY, 2[illegible]

Commissioners' courts: qualifications staff

*6 Mr D J DALLING asked the Minister of Co-operation and Development

(1) Whether (a) presiding officers and prosecutors in commissioners' courts are required to have (i) academic and/or (ii) legal qualifications; if so, what (aa) academic and/or (bb) legal qualifications are required,

(2) whether any (a) presiding officers or (b) prosecutors employed in commissioners' courts are not in possession of the requisite qualifications; if so, how many in each category?

The MINISTER OF CO-OPERATION AND DEVELOPMENT

(1) (a) Yes In terms of section 2(3) of the Black Administration Act, 1927, presiding officers in Commissioner's courts must have passed the civil service lower [illegible] examination or an examination determined by the Commissioner for Administration to be equivalent thereto These qualifications are the same as is required for presiding officers in magistrates' courts

(b) No prescribed qualifications required by law

(2) (a) Yes In terms of section 6 of the aforementioned Act the Minister may, when circumstances require, appoint any person to act temporarily as a presiding officer even though the person so appointed is not qualified for permanent appointment to the post

As such people are not appointed permanently to such posts the number differs from day to day

(b) Falls away

Langa Commissioner's Court: remarks

*7 Mr K M ANDREW asked the Minister of Co-operation and Development

(1) Whether there has been an investigation into the remarks allegedly made by two presiding officers at the Langa Commissioner's Court, if not, why not, if so, (a) by whom were such remarks made and (b) who is conducting the investigation;

(2) whether such investigation has been completed, if so, (a) what was the outcome and (b) what steps have been taken, if not, when will the investigation be completed?

The MINISTER OF CO-OPERATION AND DEVELOPMENT

(1) An investigation into the matter by my Department is in progress I will make an announcement as soon as I have received the findings emanating from the investigation

(2) Falls away

[illegible]nts, p.26.

52. Rochlin gives as source the [illegible]mber 1828. This could not be [illegible]air reflection on the political

[illegible] p.3.

1841 List of Wardmasters.

63. Cape Archives 3/CT/10/1 List of Commissioners.

64. Cape Archives CGHA, 1844 'Synopsis of the Population of Cape Town' frontpiece. When this symopsis was compiled, the compilers were concerned about the high number of 'Mohametans'.

65. S.A. Commercial Advertiser, 1838.

66. Cape Archives 3/CT/1/2/1 ff.

67. Bradlow, F.R. & Cairns, M., The Early Cape Muslims (Cape Town, 1978).

68. Davids, Mosques pp.66 and 68.

69. Davids, Mosques gives a description of the hierarchical order which emerged at the Cape: pp.124 - 126.

Abolition of commissioners' courts hinted at

By JOUBERT MALHERBE

THE possibility of the abolition of the commissioners' courts was hinted at yesterday by a member of the Hoexter Commission of Inquiry into the Structure and Functioning of the Courts

A deputation from the Federation of Messengers of the Court gave evidence and suggested the creation of a statutory body — a Council of Sheriffs — to control the functions of court messengers

Mr M S Vlok, the executive officer of the federation, said that all court messengers, including those in the commissioners' courts, should be forced to register with the proposed statutory body

Mr J C Ferreira, one of the commissioners, remarked "That is if the commissioners' courts continue to exist"

Mr Vlok said there was no control over messengers in the commissioners' courts because they were not forced to join the Federation of Court Messengers.

In consequence, there was no control over funds handled by them

Mr Vlok said that, currently, it cost the police R4 50 to deliver a summons and much money could be saved if this function were limited to court messengers

Mr Vlok told the commission of instances in which attorneys had handed summonses to private detectives who had then, purporting to be court officials, gone out and made arrests

"If control were in the hands of a statutory body, such conduct would constitute an offence," Mr Vlok said

Mr Ferreira said the name "Council of Sheriffs" presented problems because it meant that it would have to supervise the actions of court messengers who delivered summonses for traffic offences and also the actions of the hangman in Pretoria Central Prison

118. Cape Argus, 20th June 1925, p.10, col.10.

119. Cape Times, 19th June 1925.

120. Tatz, C.M., Shadow and Substance in South Africa, pp.139-140.

121. Davenport, South Africa.

122. Cape Times, 24th June 1925, p.13, col.4.

123. Cape Times, 18th June 1925, p.10, col.5.

124. Die Burger, 18th June 1925, p.8, col.4.

125. The Holy Quran, Chapter XLIX, verse 10.

126. Die Burger, 18th Junie 1925, p.8, col.4, "one of the great sons of our country".

127. Cape Times, 18th June 1925, p.10, col.4.

128. Van der Ross, 'Founding of the African People's Organisation' p.37.

129. ibid, p.38.

130. Die Burger, 19 Jun

131. Die Burger, 19 Jun

132. Davids, Mosques (

133. Cape Argus, 20th

134. Die Burger, 18 Ju

135. Cape Times, 18th

136. ibid.

137. Cape Times, 18th June 1925, p.8, col.5.

138. Die Burger, 18 Junie 1925, p.8, col.4.

139. Cape Times,

140. Die Burger,

141. Cape Times,

142. Cape Argus,

143. Die Burger,

144. Cape Times,

145. Cape Times,

146. Cape Argus,

nslation.)

The MINISTER OF JUSTICE

(1)(a) and (b) Not by the Department of Justice

(2) Falls away

(2) whether such (a) magistrates and (b) prosecutors will receive (i) extra remuneration and (ii) allowances, if so, (aa) how much in each case and (bb) what will be the total cost to the State of seconding such officials to Cape Town?

(1) Whether any (a) magistrates and (b) prosecutors have been seconded to Cape Town from other magisterial districts to assist in the hearing of cases brought against squatters from Nyanga, if so, (i) how many, (ii) from which magisterial districts have they been seconded, (iii) for how long will they be required to remain in Cape Town and (iv)(aa) where and (bb) at whose expense are they being accommodated,

Nyanga: magistrates/prosecutors

249 Mr D J DALLING asked the Minister of Justice

The current value of the land and buildings is R110 000. Plant and machinery is depreciated at 12½% p.a. on cost. The remaining life of the plant is considered to be 3 years, and the current realizable value is R40 000.

Debtors represent 30 days' sales. The directors believe that sales can be increased 50%, but that on average 60 days' credit will have to be given to finance this. The R45 000 owing to creditors represents 120 days' purchases. The directors wish to keep creditors at an average of 60 days' current purchases, so as to take advantage of certain discounts for early payment. The current level of stock is considered adequate to meet expected sales demand. However, it would be unlikely to realise more than R20 000 if the company were forced to liquidate.

YOU ARE REQUIRED

to suggest a suitable scheme of reconstruction, and to show the projected balance sheet of the company, after the scheme has been put into effect (assuming it could be effected as of 31st March 1981. Ignore taxation and expenses of the reconstruction.

(2) whether there is any access to such court by the (a) Press and (b) public?

†The MINISTER OF POLICE (for the Minister of Justice)

As regards courts administered by the Department of Justice, the reply is as follows:

(1) Yes

(a) I refer the hon member to Government Notice No 1328 dated 30 June 1978 wherein Pollsmoor Prison was appointed as a place within the district of Wynberg for the holding of a court in terms of the Magistrates' Courts Act, 1944 (Act 32 of 1944)

(b) (i) Weekly

(ii) Thursdays

(2) (a) Yes.

(b) Yes

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FRIDAY, 28 A

Pollsmoor Prison: court

Mr D J DALLING asked the Minister of Justice

(1) Whether there is a court situated within the confines of Pollsmoor Prison, if so, (a) what is its jurisdiction and (b)(i) how often and (ii) when does it sit,

DEPARTEMENT VAN JUSTISIE

No R. 1800 28 Augustus 1981

LANDDROSHOWE—WYSIGING VAN DIE REËLS VAN DIE HOF

Die Minister van Justisie het ooreenkomstig artikel 25 (5) van die Wet op Landdroshowe, 1944 (Wet 32 van 1944), onderstaande wysigings, wat op 1 Oktober 1981 in werking tree en wat deur die Reglementsraad kragtens subartikel (3) van genoemde artikel aangebring is aan die Reels van die Hof, afgekondig by Goewermentskennisgewing R 1108 van 21 Junie 1968, bekragtig Die wysigings is met die toestemming van die Administrateur-generaal vir die gebied Suidwes-Afrika aangebring en is ook in die Gebied van toepassing

1 Die wysiging van Bylae 1 deur—

(a) die vervanging van vorm 5A deur die volgende vorm

"(R1-inkomsteseel indien geen dagvaarding uitgereik is nie)

No 5A - VERSOEK OM VONNIS WAAR DIE VERWEERDER AANSPREEKLIKHEID ERKEN HET EN ONDERNEEM HET OM DIE SKULD IN PAAIEMENTE OF ANDERSINS TE BETAAL—ARTIKEL 57 VAN DIE WET OP LANDDROSHOWE, 1944 (WET 32 VAN 1944)

In die Landdroshof vir die distrik
gehou te
Saak No van 19
In die saak tussen

Eiser

en

Verweerder

Eiser versoek dat vonnis ingevolge artikel 57 (2) van die Wet op Landdroshowe, 1944, in bogenoemde saak ten gunste van hom soos volg teen verweerder aangeteken word

	Vonnisskuld R c	*Koste* R c
Uitstaande saldo van die skuld [artikel 57 (2) (c) (i)]		
Rente teen persent per jaar bereken vanaf		
Hofgelde (slegs wanneer hierdie dokument die eerste in aksie is) (artikel 59)		
Invorderingsgelde [artikel 57 (1) (c)]		
Dagvaarding, indien enige (prokureurskoste, hofgelde, geregsbodegelde en geregsbodegelde by heruitreiking) [artikel 57 (1)]		
Koste van beedigde verklaring of bevestiging deur eiser/sertifikaat deur eiser se prokureur [artikel 57 (2) (c)]		
Koste van geregistreerde brief [artikel 57 (1)]		
Koste van kennisgewing ingevolge reel 54 (1)		
Aanmaning, slegs indien geen dagvaarding uitgereik is nie (artikel 56)		
Versoek om vonnis (artikel 57)		
Totale	R	R
Totaal	R	

plus verdere rente teen persent per jaar vanaf datum van vonnis tot datum van betaling, en dat betaling daarvan ooreenkomstig verweerder se aanbod geskied

Die volgende dokumente is aangeheg

(a) 'n Afskrif van die aanmaning wat ingevolge artikel 56 van die Wet op Landdroshowe, 1944, aan die verweerder gestuur is (slegs indien geen dagvaarding uitgereik is nie)

(b) Die verweerder se skriftelike erkenning van aanspreeklikheid teenoor die eiser vir die bedrag van die skuld en koste wat geeis word (of vir 'n ander bedrag) en sy aanbod

(c) 'n Afskrif van die eiser of sy prokureur se skriftelike aanname van die aanbod

(d) 'n Beedigde verklaring (of 'n bevestiging) deur die eiser/'n sertifikaat deur die eiser se prokureur ingevolge artikel 57 (2) (c) van die Wet op Landdroshowe, 1944

Gedateer te op hede die
dag van 19

DEPARTMENT OF JUSTICE

No R 1800 28 August 1981

MAGISTRATES' COURTS—AMENDMENT OF THE RULES OF COURT

The Minister of Justice has, in terms of section 25 (5) of the Magistrates' Courts Act, 1944 (Act 32 of 1944), confirmed the undermentioned amendments, which shall come into operation on 1 October 1981 and which were made by the Rules Board, in terms of subsection (3) of the said section, to the Rules of Court published under Government Notice R 1108, dated 21 June 1968 The amendments are effected with the consent of the Administrator-General for the Territory of South-West Africa and shall also apply in the Territory

1 The amendment of Annexure 1 by—

(a) the substitution for Form 5A of the following form

"(R1 revenue stamp if no summons is issued)

No 5A —REQUEST FOR JUDGMENT WHERE THE DEFENDANT HAS ADMITTED LIABILITY AND UNDERTAKEN TO PAY THE DEBT IN INSTALMENTS OR OTHERWISE—SECTION 57 OF THE MAGISTRATES' COURTS ACT, 1944 (ACT 32 OF 1944)

In the Magistrate's Court for the District of
held at
Case No of 19
In the matter between

Plaintiff

and

Defendant

Plaintiff requests that judgment in the above-mentioned matter in terms of section 57 (2) of the Magistrates' Courts Act, 1944, be noted in his favour against the defendant as follows

	Judgment debt R c	*Costs* R c
Outstanding balance of the debt [section 57 (2) (c) (i)]		
Interest at per cent per annum accounted from		
Court fees (only when this is the first document in action) (section 59)		
Collection fees [section 57 (1) (c)]		
Summons, if any (attorney's charges, court fees, messenger's fees and messenger's fees on re-issue) [section 57 (1)]		
Cost of affidavit or affirmation by plaintiff/ certificate by plaintiff's attorney [section 57 (2) (c)]		
Cost of registered letter [section 57 (1)]		
Cost of notice in terms of rule 54 (1)		
Letter of demand, only if no summons has been issued (section 56)		
Request for judgment (section 57)		
Totals	R	R
Total	R	

plus further interest at per cent per annum from the date of judgment to the date of payment, and that payment thereof take place in accordance with defendant's offer

The following documents are attached

(a) A copy of the letter of demand sent to the defendant in terms of section 56 of the Magistrates Courts Act, 1944 (only if no summons has been issued)

(b) The defendant's written acknowledgement of liability towards the plaintiff for the amount of the debt and costs claimed (or for any other amount) and his offer

(c) A copy of the plaintiff's or his attorney's written acceptance of the offer

(d) An affidavit (or affirmation) by the plaintiff/a certificate by the plaintiff's attorney in terms of section 57 (2) (c) of the Magistrates' Courts Act, 1944

Dated at this
day of 19

TRIBAL COURTS FM 28/8/81

Makgotla power

Soweto has one of the highest crime rates in the world — over 600 murders are reported annually The community constantly cries out for stern and effective measures to curb the slide ' Some residents, indeed, have taken the law in their hands to handle petty crime at local levels — mainly through traditional tribal courts called Makgotlas, known for their rough-and-ready methods of doling out justice Now, it seems, Pretoria wants to incorporate these controversial bodies into local government, though precisely on what basis remains unclear

Makgotlas are held in the open on weekends Corporal punishment administered in public is common for offenders, though fines are also administered Some residents point to positive aspects of the courts — their efficacy in sorting out family disputes and neighbourhood problems that would not normally be taken to court But others have claimed corruption, arbitrariness, and the growth of tribal "Mafias "

Letsatsi Radebe, a Makgotla leader, has this thundering defence of the system "Whoever is less dedicated and dishonest to the traditional system of the indigenous people shall be branded an instrument to the destruction of the indigenous people "

Court warning

But the police have warned the Makgotlas that court action will be taken if charges of assault and extortion are laid against them So, for some years, they have been pleading for legalisation

It appears that Pretoria's thinking is that the Makgotlas should fall under the various black community councils, Soweto being the first The Department of Co-operation and Development (CAD) has appointed a committee to look into the matter Its report is due at the end of the month

This step has been severely criticised by Ramarumo Monama, a black lawyer at the Wits Centre for Applied Legal Studies "Transferring judicial functions from the Department of Justice to CAD would be unfortunate and should be condemned ". Such a step would make the councils even more unpopular than they are at present, he said, and begged the question of whether they would then have even more police powers conferred on them — those of influx control, for example

A CAD spokesman tells the *FM* that the granting of judicial powers is already implicit in existing legislation The Black Administration Act of 1927, as amended, which details the relationship between Pretoria and black chiefs and headmen, states that "the Minister may, after consultation with any community council confer on a black in respect of the area of such a council the same judicial power as in terms of Sections 12 and 20 of this Act may be conferred on a black chief and headman "

The former section deals with civil cases related to black custom, and the latter provides for the trial and punishment of common law offences

Another possible reason for legalising the Makgotlas could be Pretoria's stated desire to link the urban townships ever more closely with the ethnic "homelands " But this could backfire, and intensify opposition to the tribal courts

Example:

The following program has read in a list of telephone numbers into array NUMBER. Each telephone number contains seven decimal digits (no area code). To ensure that all values have been read in correctly, each number is checked to see that it is greater than zero and not greater than 9999999. If any such error is detected, control is passed to an error routine (which may print a message) and execution of the program is terminated. The second STOP statement is assumed to be the STOP statement encountered during normal execution and is included to show that a program may have more than one STOP statement.

```
      DIMENSION NUMBER(1000)
      DO 10 K = 1,1000
      IF(NUMBER(K) GT 0 AND NUMBER(K) LE 9999999) GO TO 10
        error routine
      STOP
   10 CONTINUE
      STOP
      END
```

The advantages of rotating and out-of-stock count methods are as follows.

1 The plant does not have to be shut down.

2 The count is not made under pressure, hence it may be more accurate.

3 Records are kept more nearly-up-to date when subject to a continuous check.

4 Errors and irregularities are discovered and adjusted more quickly.

One of the difficulties with this type of physical check is both the stores record section and the accounting department must have an accurate cut-off date for each transaction in order to co-ordinate the count with the exact status of receipts or material and issues of material. Thus the *Time of the count* in relation to receipts and issues immediately preceding and following it must be accurately specified.

9.6 *PROGRAMME FOR PHYSICAL INVENTORY CONTROL*

The taking of a physical inventory requires that certain arrangements and instructions be prepared in advance. Advance planning will greatly aid in producing an orderly and accurate inventory. One of the most important jobs in this regard is the preparation of inventory instructions. If the company takes inventories at frequent intervals, there may be *'Permanent Instructions'* covering matters of count, arrangement of inventories, and other points that do not change, and *'Temporary Instruction'* to include variable points such as

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At the president's banquet of the East London Attorneys' Association last night were (from left): Mr John Vermaak, the immediate past president of the association, Mr John Whitehead, the incoming president, Mr Justice J D Cloete, Judge President of the Eastern Cape Division of the Supreme Court, and Mr Justice S. de Wet, the Chief Justice of the Ciskei

New Ciskei court welcomed

252 ~~255~~

DD 1/9/81

EAST LONDON — The Ciskei High Court will relieve much of the criminal load in East London and King William's Town, the Judge President of the Eastern Cape Division of the Supreme Court, Mr Justice J D Cloete, said here last night

Speaking at the president's banquet of the East London Attorneys' Association, Justice Cloete said careful consideration would have to be given to the adjustments that the establishment of the Ciskei High Court would entail

The court, which is to be established on October 1, was a new development in the Eastern Cape and would affect the function of the Supreme Court in East London and King William's Town

Justice Cloete said he was deeply disturbed by the increase in violent crime at every level in South African society, though this was not a phenomenon unique to South Africa

"The lawyer has a duty to cope with this advance of ever-increasing anarchy," he said "He cannot escape involvement in it"

Quoting from the British judge, Lord Tomlin, Justice Cloete said the maintenance of the intellectual honesty of lawyers was a matter of the first importance

The new president of the East London Attorneys' Association is Mr John Whitehead who replaces Mr John Vermaak The new vice-president is Mr Hymie Touyz — DDR

continues as long as the investment is used. Bierman says that

> "interest during construction would be no different than interest during the operating period."[13]

Arthur Young & Co concur:

> "Interest is both an acquisition cost and a holding cost - as an element of asset cost it neither stops nor changes its character when an asset begins or ceases to be under active development. It is continuous and unchanging as long as the asset is owned."[14]

Call to avert justice breakdown

5/9/84 (2)

Interpreters stood in for prosecutors

Political Staff

STAFF shortages in Johannesburg Magistrates Courts were so bad interpreters were used as prosecutors and overworked prosecutors had nervous breakdowns

It would take two years to rectify the situation.

These details of a near breakdown in the city's courts were revealed in an interim report of the Hoexter Commission which was tabled in Parliament yesterday.

On November 6 last year, there were 25 prosecutors short in Johannesburg and interpreters had to be used instead "The quality of the State prosecutors is furthermore distressingly low," it said

On the same date, 51% of Regional Court prosecutors had had less than two years experience Prosecutors had to be brought in from other centres and of 33, three resigned immediately on arriving in Johannesburg Of the rest, 19 "had no previous prosecuting experience worthy of mention".

The complement of prosecutors was still 11 short in January

"Of the Regional Court complement of prosecutors, there are at present eight whose experience is one month and less, 14 have six months and less, and 20 have experience of one year and less," said the report

Prosecutors had laboured under such tensions that one had to take a week off because of nervous problems, another was put under observation in hospital, another was booked off for two months because of a general nervous breakdown, and another had to take days off because of a bleeding ulcer

By January this year the pressure on the handful of experienced prosecutors had become intolerable and "in addition to the casualties listed, two prosecutors were off for a month with heart problems, another was told to avoid strain, and another had treatment after losing consciousness"

In January the senior public prosecutor, Mr A P de Vries, said that if current staff could be retained, optimum service could be restored in two years

POLITICAL STAFF

THE Hoexter Commission warned in a report released yesterday that the staff crisis had forced the administration of justice to breaking point — and urged the Cabinet to authorise emergency pay relief.

In a hard-hitting second interim report on its inquiry, the commission pinpointed prosecutors' salaries as the basic cause, calling for a special monthly allowance to all prosecutors as a priority measure

And it said it considered "nothing whatever" was being done at present to ensure the Department of Justice retained its skilled personnel

It said only 2 477 posts out of an establishment of 4 739 for whites were 'adequately' filled, while only 400 of a total of 739 posts for blacks were "adequately filled"

The report tabled in Parliament yesterday said 'A critical situation exists in the lower criminal courts of the Republic of South Africa

"It cannot be allowed to escalate

'It is clear that the matter of salaries paid to prosecutors lies at the root of the problem

'In the view of the commission, it is vital that the Cabinet should give the matter top priority'

RDM
5/9/81

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The report said it was difficult to find suitably qualified candidates for all ranks in the Department of Justice, but the situation was worst in the prosecuting section

The present crisis in the prosecuting section impeded not only the proper functioning of the criminal court ... represented a serious threat to other divisions, particularly the magisterial division

The increasing outflow of skilled and trained personnel had resulted in a decline in the level of experience of officers in the department

"In certain professional sections it has already plummeted to a dangerously low level"

Younger

This tendency was evident in the senior ranks of the staff of the Attorneys-General, where officers were increasingly younger and lacking in experience

State advocates who were required to prosecute in Supreme Courts at present had an average experience of one year

The commission said the level of experience of prosecutors was even lower and gave cause for "even greater despondency"

"While criminal techniques become more and more sophisticated and while ever-increasing demands are made upon the skill of the prosecution, the courts witness the sorry spectacle of a steady decline in the standards of prosecution

It added "With an inexperienced prosecutor, the chances are strong that the State case — whose preparation may have involved a lengthy police investigation — will be scuttled

"The vast majority of accused persons in our country are not legally represented

No less disturbing is the possibility, in the case of an undefended accused, that the ineptitude of an inexperienced prosecutor may result in wrong conviction"

Warning

The commission warned "Should the lower criminal courts in any one or more of the large metropolitan areas cease to function for any appreciable length of time, the effect on the administration of justice in particular and on social stability in general would be catastrophic and the resultant harm incalculable."

In a statement issued shortly after the report was tabled yesterday, Mr Kobie Coetsee, the Minister of Justice, said new pay scales introduced in April had reduced resignations — although it had not stopped them — and recruitment had been stepped up

"The occupancy figure of legal posts in the magistrates' courts was stabilised to such an extent that the maintenance of the administration of justice is no longer threatened from this quarter," Mr Coetsee said

But Mr Dave Dalling, chief Opposition spokesman on justice, said later the report gave cause for "grave alarm", and that Mr Coetsee's statement was "totally inadequate to meet the serious problems which have been revealed"

Minister: Breakdown staved off

CT 5/9/81 (252)

Political Staff

HOUSE OF ASSEMBLY — Mr Kobie Coetsee, the Minister of Justice, said yesterday that a breakdown in South Africa's legal system had been staved off, but the Opposition called for further and more detailed assurances

Mr Dave Dalling, chief Opposition justice spokesman, said he was "far from satisfied" with the minister's complacency following the publication yesterday of the Hoexter Commission's second interim report which revealed near-chaos in the country's courts

The commission said an acute staff shortage had "prejudiced" the administration of justice and "the situation has now reached breaking point"

It said that the status of the legal officers was not properly recognized and that poor salaries were "grossly disproprotionate" to those of legally qualified people in the private sector

Unless something was done "the lower criminal courts throughout the country may soon lapse into chaos"

Staff were underqualified and this might lead to unfair convictions

Mr Coetsee issued a statement shortly after the report was tabled in Parliament yesterday saying that service conditions and salaries received continuous attention However, the staff shortage was due mainly to the general manpower shortage in a booming economy and the rising demand for legally qualified people

New pay scales from April this year had not stopped resignations but had reduced them and recruiting had been stepped up

"The occupancy figure of legal posts in the magistrate's courts was stabilized to such an extent that the maintenance of the administration of justice is no longer threatened from this quarter," Mr Coetsee said

Mr Dalling replied later saying that the report 'gives cause for grave alarm"

"The minister's statement is far from reassuring," he said

"We want to know in detail what steps he has taken to protect the country's legal system and what the exact staff position is right now'

'Inexcusable delay'

"We can also ask how a situation like this was allowed to develop over such a long time The commission points out that the critical staff shortage did not happen overnight"

He pointed out too that the government had received the report on February 5, 1981, and said "this inexcusable delay raises doubts about the seriousness of the government in combatting this breakdown and it is wondered if the April election had anything to do with the document being held back from the public view"

Mr Dalling said it was regrettable that the commission had not dealt with apartheid in the courts as he believed it had played a role

Mr Pat Rogers, the New Republic Party's legal spokesman, said the commission's report confirmed "the worst fears of a shocking breakdown" Many warnings about the serious staff shortage had been given but had been ignored by the government, he said

(Report by O Pollock, Press Gallery, House of Assembly)

Coetsee supports service

Staff Reporter

THE Minister of Justice has come out in support of the growing number of legal, academic and social welfare experts who have called for more extensive use of community service as an alternative to imprisonment

In a message read to a Lion's Head Rotary Club symposium on "Community services as an alternative to imprisonment" on Thursday night, Mr H J Coetsee, praised the Rotarians for their involvement in highlighting the scheme

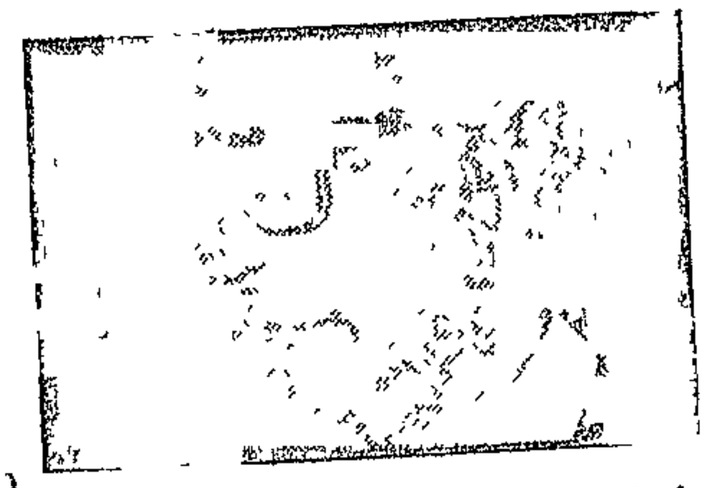
He said that when suspended sentences were "coupled with a condition compelling the offender to render some form of community service, the positive results have without doubt the best rehabilitative potential"

Two difficulties in sentencing offenders to periods of community work instead of imprisonment had previously been encountered

Courts on brink of chaos

Accused may not get fair trial — report

S-Tribune 6/9/81



MR JUSTICE HOEXTER . . . chairman of the Commission.

THE COURTS are on the brink of chaos and people who appear before them may not get a fair trial. 252

By PETER MAIN
Political Correspondent

An interim report of the Hoexter commission investigating the structure and the functioning of the courts — tabled in Parliament this week — found that:

- Some courts in Johannesburg, Durban and Welkom had to be closed because of a shortage of staff,
- Unqualified or underqualified people were acting as prosecutors and magistrates,
- The situation in the lower criminal courts which hear 90 percent of criminal cases, had reached breaking point The courts were about to collapse in chaos, and
- The Department of Justice was doing nothing to retain trained and experienced staff and the money it had spent on training had been fruitless expenditure

"It suggests people may not get a fair trial when it says: "The vast majority of accused persons in our country are not legally represented No less disturbing is the possibility, in the case of an undefended accused, that the ineptitude of an inexperienced prosecutor may result in a wrong conviction"

A PFP spokesman on justice, Harry Pitman MP, said yesterday "The proper standards of justice are not being applied Inexperienced prosecutors who are not aware of the rights of an accused may unwittingly infringe those rights.

"There are also magistrates who are not qualified and this also affects the chances of an accused. Because prosecutors are inexperienced, magistrates are forced to come into trials more and more This reduces their standing as impartial adjudicators"

A University of Cape Town criminologist, Mrs Mana Slabbert, gave evidence to the commission two weeks ago and presented figures showing that only three percent of blacks in the lower criminal court had legal representation

"The problem is we simply do not have enough legal aid The police arrest too many people, the courts are understaffed and the prisons are over full"

The report said the major problem was money. Evidence was that "the professional status of the department's legally qualified members is insufficiently recognised and in particular that the remuneration paid to such officers is quite inadequate and unrealistically low

"The commission finds and reports that the salaries of professional officers of the department (of justice) and more especially those paid to the lower ranks such as prosecutors are grossly disproportionate to the salaries of legally qualified persons in the private sector"

The commission said the loss of legal graduates had dealt the Department of Justice a crippling blow

It blamed the department, which, it said, was doing nothing to ensure it retained its skilled and trained manpower

The commission recommended as an emergency measure that a special monthly allowance be paid to every official performing the function of prosecutor

In a statement after the tabling of the report the Minister of Justice, Kobie Coetzee, said staff in his department were given an increase in April that reduced resignations, although it did not stop them

Occupancy of posts had been stabilised to such an extent that the maintenance of the administration of justice was no longer threatened

Mr Coetzee acknowledged that in some cases staff shortages meant that all the courts could not function every day and the completion of cases was delayed

"To rectify the position the following interim measures were taken. public prosecutors were withdrawn from offices where other arrangements could be made and sent to assist at those centres where difficulties were being experienced, magistrates were sent to those areas to man extra courts"

It was clear the report disclosed a situation that gave cause for grave concern, said Robin Marais, SC chairman of the general council of the Bar of South Africa

SUNDAY EXPRESS September 13, 1981

Misuse of money: Report on judges may be kept a secret

S. Express 13/9/81

282

MINISTER IS UNDECIDED — IT MUST COME OUT, SAYS MP

By KITT KATZIN

THE Minister of Justice has declined to say whether the contents of a top-level report on allegations of misuse of public funds involving a number of Supreme Court judges will ever be disclosed to the public.

The Minister, Mr H J Coetsee, who received a copy of the report from the head of the commission, Chief Justice Mr Justice F L Rumpff, on March 24, has still not decided whether the Government will publicise the contents or table the report in Parliament

The allegations are said to involve an appreciable amount of money and apparently occurred over a number of years

Yesterday the Progressive Federal Party's spokesman on Justice, Mr Dave Dalling, said he was totally opposed to any attempt by the Government to "cover up" important issues such as the findings of the Rumpff Commission

"This should be made public," Mr Dalling said

He said he had not read the report and was not aware of its contents, but disclosed that he had recently discussed the matter with Mr Coetsee

Saying he could not comment further on the discussions as they had taken place in confidence, Mr Dalling said it was his impression that Mr Coetsee shared his views

But when the Sunday Express asked Mr Coetsee this week if he intended making the report public, the Minister said it was "still under consideration"

He said that only after the report had been studied — and further consultations had taken place — would a decision be taken as to "how to go about it"

Meanwhile, informed legal sources believe Mr Coetsee intends to refer to the report in the debate on the Justice Vote in Parliament next week

Mr Jules Browde, chairman of the Johannesburg Bar Council, which is also aware of the allegations, is in Bulawayo, Zimbabwe and was not available for comment yesterday

The appointment and terms of reference of the commission were announced by Mr Alwyn Schlebusch, chairman of the President's Council, in May last year when he was still Minister of Justice

The commission is regarded by many prominent legal practitioners and academics as one of the most crucial in the history of the judiciary in South Africa

Members of the legal profession around the country — judges, senior counsel, advocates and attorneys — have been keenly awaiting the outcome of the commission's report

At the time of appointing the commission, Mr Schlebusch disclosed he had discussed the alleged misuse of public funds by certain Supreme Court judges with former judge Mr Mervyn King, who had resigned from the Bench four months earlier

It is understood Mr King, 42, one of South Africa's youngest and most brilliant judges, retired in the prime of his career because of his dissatisfaction over the alleged misuse.

Making a special announcement to the House, Mr Schlebusch said the Bar Council was satisfied Mr King's belief was bona fide and added that Mr Justice Rumpff, helped by practising chartered accountants, would investigate subsistence and travelling allowances of judges

It is believed the commission also investigated allowances of senior judges' clerks.

Mr Schlebusch told the Sunday Express a few months later that the Bar Council had agreed that the facts available should not be made known as it would be unfair to sow suspicion about the honesty of judges.

Mr Coetsee took over responsibility for the commission from Mr Schlebusch in October, and although no details were released on the commission's hearings, the Sunday Express established that several sittings took place in different parts of the country

In April Mr Coetsee, in response to questions submitted by the Sunday Express, denied allegations the Government was holding over the findings of the Rumpff Commission until after the General Election

Report on 'misuse' of judges' expenses

252

Angus 14/9/87

14. What major issues related to th udied, and why? Discuss the theoretical importa ithin the area of study.

Argus

252

14/9/81

Political Staff

THE official Opposition is likely to demand the tabling of a sensitive report over allegations of judges misusing their expense accounts.

The Rumpff Commission report — named for the Chief Justice, Mr Justice F L Rumpff — will come under discussion on Wednesday in Parliament.

Mr Kobie Coetsee, the Minister of Justice, has still not disclosed whether he will release the contents of the report to the public.

However, the Department of Justice budget vote is due to be discussed on Wednesday and indications are that the Progressive Federal Party will demand the tabling of the report.

Misused

Mr Justice Rumpff was called upon to investigate allegations that Supreme Court judges misused public funds after at least one judge resigned in protest.

The commission was announced by the former Minister of Justice, now the State Vice-President, Mr Alwyn Schlebusch, in May last year, and Mr Justice Rumpff's report was handed to Mr Coetsee in March this year.

Making the announcement about the commission, Mr Schlebusch said the Johannesburg Bar Council had informed him that the principal motivation for the resignation of former judge Mr Justice M E King was a belief that certain members of the Bench had been involved in fiscal irregularities.

Bona fide

This belief was bona fide and based on reasonable grounds, he said, so a preliminary investigation had taken place by Mr Justice Rumpff and a chartered accountant, but this investigation's report contained information indicating that a commission of inquiry should be appointed.

He said at the time that this should not be seen as a reflection on the integrity of judges.

Prisons: Media 'lack interest'

CT 15/7/81 (252)

Staff Reporter

SOUTH AFRICA'S prisons were 'overburdened and coming loose at the seams", and yet the right of judges and magistrates to monitor them through unannounced visits was "devoid of any importance' because these visits seldom happened according to the late Professor Barend van Niekerk

Only 24 judges and 338 magistrates in the period July 1, 1978, to June 30, 1979, exercised this right — and some of them were duplicate visits by the same judges

Writing in the August edition of the prestigious "South African Law Journal", Professor Barend van Niekerk — who was Professor of Law at the University of Natal when he died in Bolivia in June this year — said there was general apathy towards prisons and prison conditions in South Africa among the media and the public

The reason, he said, was that 'prisons being largely the unseen Gulag Archipelagos they are simply do not command the sympathy of ordinary citizens — least of all citizens of the white power-wielding" ruling group

'Litmus test'

This group could 'hardly identify psychologically with prisoners — from which springs the lack of pressure on the media for more robust reporting

Professor Van Niekerk said the 'litmus test' of an enlightened society was the way it treated its offenders Open and candid discussion on the subject of prisons should take place but this did not happen in South Africa

One of the reasons for the media's lack of interest in prisons stemmed from the conviction of a then senior Rand Daily Mail reporter and now assistant editor, Mr Benjamin Pogrund, under an obscure sub-paragraph of the Prisons Act, Professor Van Niekerk argued

Mr Pogrund was found guilty of publishing false information about prison conditions in a trial which gained widespread publicity and put an effective stop to news reports on prison conditions

- Professor Van Niekerk said the Pogrund case was in all probability no longer valid as a precedent, particularly outside the Transvaal He ascribed the media's non reporting of prison conditions to lack of interest

Recommendations

Referring to the subject of judicial visits to prisons Professor Van Niekerk made a number of recommendations to improve the present 'false sense of security and to provide adequate control against abuse

These were

- Judges president or their representatives should assume responsibility as convener of a system of judicial monitoring of prison conditions
- This convener must have full details of all places of detention in his her area
- Unannounced visits must occur regularly but at unpredictable intervals with responsibility for the visits being held by the convener and a panel of local judges Magistrates and acting judges should be fully involved in the scheme
- Rural areas must get special attention and judicial officers should be aware of the fact that local magistrates may not necessarily be the most effective monitoring agencies
- Unannounced visits should happen at night as well as by day
- In each place of detention there should be a sealed box in which prisoners can lodge anonymous or signed complaints without fear of victimization This box must only be opened by an authorized judicial officer
- Interpreters should accompany the visitors where necessary

Table 1 depicts a likely set of sequences in the implementation of the proposals. The key to the timetable is the responsibility of government to provide the enabling framework, to oversee the creation of adequate service capacities and to formulate suitable policies. Pilot projects and regional exercises would be needed to establish procedures and clarify rules. Major transformations, as the upgrading of the traditional right of access in African society to a share in the commonly held assets, the CLC would follow as outcomes of other programme benefits:

Table 1. Implementation - likely sequence

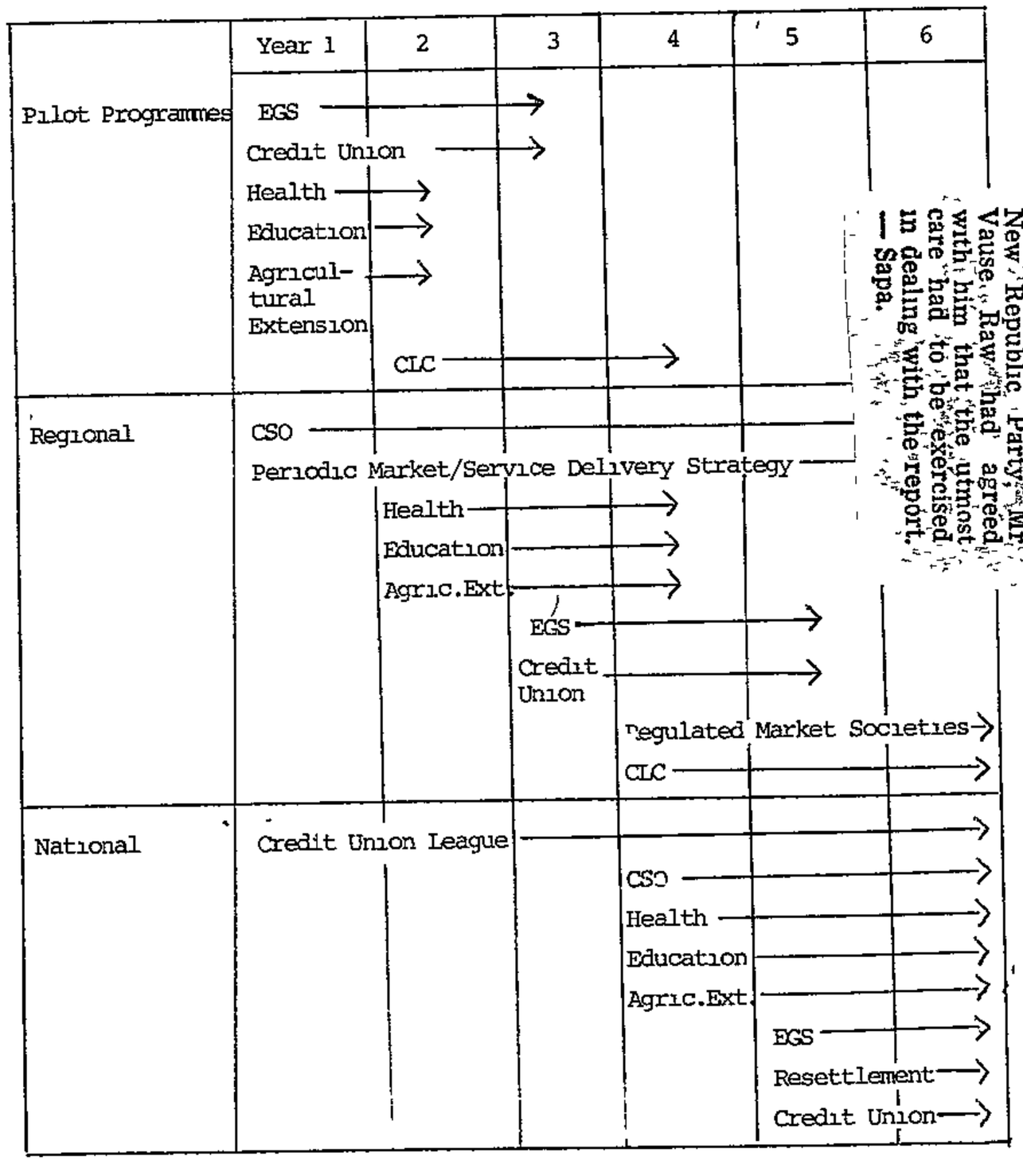
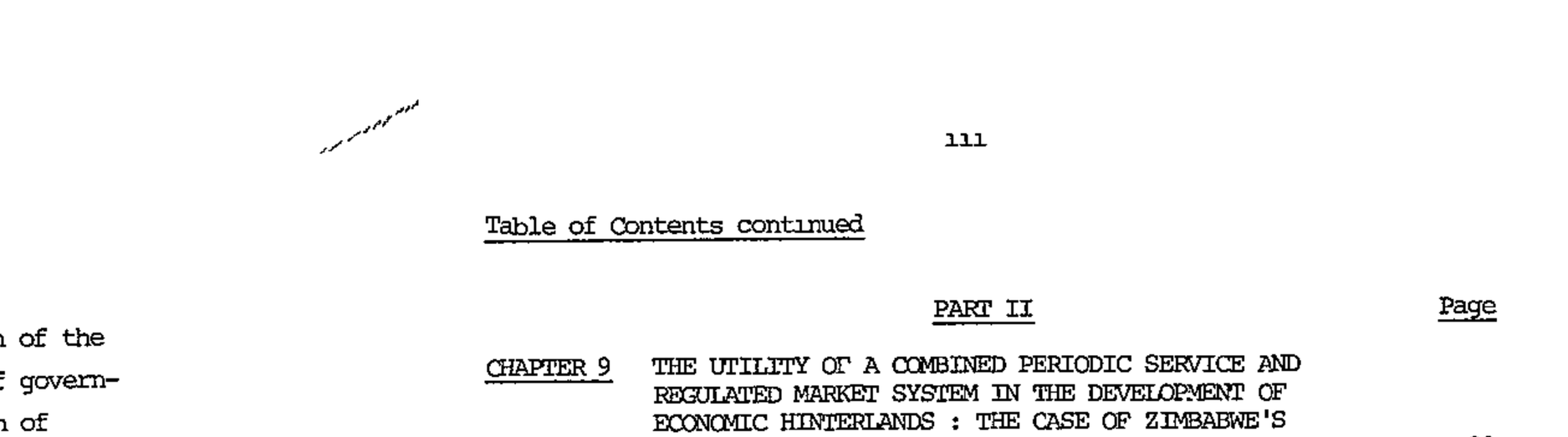


Table of Contents continued



'No cover on judges' expenses'

THE Rumpff commission of inquiry found no judge deliberately claimed illegal expenses, the Minister of Justice, Mr Kobie Coetsee, disclosed in the House of Assembly today.

Speaking in committee on his justice and prisons vote, he announced the Rumpff commission's report had been finalised and was being studied.

He gave the assurance there would be no covering up of any of the commission's findings but emphasised the matter required the most responsible attitude from members because it affected the judiciary.

CARE

The Rumpff commission was instituted to investigate and report on judges' travel and subsistance allowances and to report whether any irregularities had caused the incorrect payment of State funds.

Mr Coetsee said the Leader of the Opposition, Dr Frederik van Zyl Slabbert, the PFP member for Sandton, Mr Dave Dalling, and the leader of the New Republic Party, Mr Vause Raw, had agreed with him that the utmost care had to be exercised in dealing with the report.

— Sapa.

Staff shortage is 'seasonal'

CT 17/9/81 (252) (1985)

HOUSE OF ASSEMBLY — The shortage of staff, especially legally qualified people, in the Justice Department was of a "seasonal nature," Mr Tom Langley (NP Waterkloof), said yesterday

Speaking in committee on the Justice Vote, he said neither the minister nor his department should be blamed for this

It was clear from the second report of the Hoexter commission that staff problems existed in the department But these were of a seasonal nature, depending on the demand for legally qualified people in the private sector — Sapa

Courts 'crisis' threatens

Parliamentary Staff

A NEW crisis — to compound that already disclosed by the Hoexter Commission report — in the form of a dire shortage of administrative personnel was about to break on South Africa's lower courts, Mr. David Dalling (PFP Sandton) warned yesterday

In the debate on the Justice vote, Mr Dalling said the Hoexter report had revealed an 'alarming state of total disrepair and near chaos in the lower courts'

Courts had been closed; long delays in criminal trials led to the 'overstuffing' of prisons, unqualified people were acting as magistrates and prosecutors, and more private money had to be spent on legal costs.

This was a 'massive indictment' of the system of justice

'How is it conceivable that the Government could sit back until February this year before recognising that a crisis existed and required extraordinary and urgent action?' he said

One of the main problems was that the old recruitment channels and progression through the ranks had 'dried up'

In the past professional progress had followed a course from administrative assistant through to magistrate

Now, until a court official became a prosecutor, he did not receive a professional allowance

'No one with any legal qualification or experience will now start, or stay, at the administration level,' he said

This meant that although the professional side had been eased, the administrative court backup was deteriorating rapidly

Salaries at administrative and clerical levels — far from competing with private enterprise — were way behind and this caused bitterness

This heralded a new crisis in the lower courts

The vacancy level at every major centre was alarming Recruitment was virtually at a standstill Mistakes were being made at administrative level which were endangering the operation of the courts

Mr Tom Langley (NP Waterkloof) said neither the Minister of Justice Mr Kobie Coetsee, nor his department should be blamed for the shortage of personnel — it was difficult to do so

It was clear from the Hoexter report that there were staff problems in the department, but these were of a seasonal nature

The Minister said the 'once critical' staff situation had improved considerably since the new pay package was introduced in April this year

Parity of salaries for legally qualified white, coloured and Indian personnel had also been achieved with the new remuneration deal

Rumpf report under review

HOUSE OF ASSEMBLY — The Minister of Justice, Mr Kobie Coetsee, said yesterday the report of the Rumpf Commission of Inquiry had been finalized and was being studied

He said the commission had not found that any judge deliberately claimed illegal expenses

He gave the assurance that there would be no covering up of any of the commission's findings but emphasized that the matter required the most responsible attitude from members because it affected the judiciary

The Rumpf Commission was instituted to investigate and report on judges' travel and subsistance allowances and to report whether any irregularities had caused the incorrect payment of state funds

Mr Coetsee said that the Leader of the Opposition, Dr Frederik van Zyl Slabbert, the PFP member for Sandton, Mr Dave Dalling, and the leader of the New Republic Party, Mr Vause Raw, had agreed with him that the utmost care had to be exercized in dealing with the report

"The findings are clear that no judge deliberately made incorrect travel and subsistance claims," the minister said

Not everyone had studied the report, however, and the Opposition had still to be informed

"I will make an announcement at a later stage as to how the matter will be dealt with," he said

In the meantime he wished to appeal to all those concerned to remain calm and thanked the press for its balanced handling of the matter to date — Sapa

National

(Taxation

a certain way.

saved by depends on magic. effective, as

The effect is seen as follows:-

Government starts off with a balanced budget.

It increases expenditure (a budgetary deficit).

The net J into the economy increases National Y by $\frac{J}{MPW}$. (Multiplier effect).

Withdrawals are increased by $MPW \times \left(\frac{J}{MPW}\right) = J$,

and equilibrium is restored. What is dY. What is dW. Impact on Y.

Because of the rise in National Y, there is extra taxation, and the budgetary deficit ~~narrows~~. [It only closes up if MPT = MPW (highly unlikely)].

Surely adequate 8/11

PD 19/9/81

Sebe greets chief justice

KING WILLIAM'S TOWN — The Chief Minister, Chief L L Sebe, and his cabinet last night welcomed the newly appointed Chief Justice of the Ciskei, Mr Justice D. S de Wet, and other Supreme Court officials at a reception at the Legislative Assembly

In his speech, copies of which were released to the press, Chief Sebe said Mr Justice De Wet was no stranger to the Ciskei As a judge of the Supreme Court in the Eastern Cape Division for many years he had adjudicated on many civil and criminal matters relating to Ciskeians Before his elevation to the Bench he practised as an advocate in the same division of the Supreme Court and Ciskeians could not have wished for a more suitably qualified and equipped chief justice

"I can liken our chief justice to a person who has been born again, where in his capacity as one of the pillars of our constitution, he will share with us the responsibility of building a new nation," Chief Sebe said

"We will lean heavily upon him, and the wealth of his knowledge and experience over the years will be invaluable to us"

Chief Sebe said the chief justice's duties would not only be judicial He would also fill the role of an all-rounder as a father to the nation and ambassador for Ciskei

"Ciskei is a developing national state and, as is the case with other similar states, many cases which appear on the roll will stem from social problems Justice must always be done, and seen to be done, and standards and principles should never be lowered

"Working within this framework the chief justice will also have to call upon his skills as a social worker to unravel some of the matters which will be presented to him"

Chief Sebe said glory had befallen the chief justice to be appointed to his position when the Ciskei nation was rising from the dust

History would show that his name would figure high on the roll of honour of those who helped with the development of Ciskei

"The judiciary in our country rates with the highest in the world and as an independent Ciskei we aim to be included in this bracket Ciskeians in the Department of justice have accepted the challenge and it will be found that most of the judicial posts are filled by Ciskeians — some of whom have already reached the level of principal magistrate

"Through the assistance and guidance of our chief justice we hope to build on this foundation and rise to greater heights"

Chief Sebe also welcomed the attorney general, Mr W F Jurgens, the state advocate, Mr L J Langeveld, the registrar and master of the supreme court, Mr W F Galloway, and the personal clerk to the chief justice, Miss F Kruger — DDR

dat die name van die varieteite van die soorte plante aangedui in die onderskeie kolomme van die Bylae hierby in die varieteitslys gehou ingevolge artikel 15 (1) van die voorvermelde Wet onderskeidelik opgeneem en geskrap is

J F VAN WYK, Registrateur van Plantverbetering

the kinds of plants contained in the respective columns of the Schedule attached hereto have respectively been entered in, and deleted from the variety list maintained in terms of section 15 (1) of the said Act

J F VAN WYK, Registrar of Plant Improvement

BYLAE/SCHEDULE

Botanies en populêre naam Botanic and popular name	Byvoegings Additions	Skrappings Deletions
Brassica oleracea L convar botrytis (L) Alef var botrytis (Blomkool/Cauliflower)	Cauchamp	
Brassica oleracea L var capitata (Kopkool/Cabbage)	Dynasty Fabula, R I Cross, Riana Rolag Titanic 90 YR	
Glycine max (L) Merril (Sojaboon/Soya bean)	Hill, PNR 701	
Helianthus annuus L (i) (Sonneblom, hoe olie basters/Sunflower, high oil hybrids)	Hysun 31, PNR 199H, PNR 293 H, PNR 7203, PNR 7204, SO 205 SO 207	
(ii) (Sonneblom, lae olie basters/Sunflower, low oil hybrids)	SE 554, SE 575	
Phaseolus vulgaris L (Tuinboon-stam/Garden bean-dwarf)		Badie
Sorghum bicolor Moench (Graansorghum/Grain sorghum)	Gransor 80, PNR 8416, SNK 3144	
Zea mays L (i) (Witmielies/White maize)	AX 305, PNR 6303, PNR 6405, PNR 6501, R 219, RS 5207	R19, R65, R105, R203, SR 13
(ii) (Geelmielies/Yellow maize)	PNR 6300, PNR 6400, Pivot RO 430, SABI 308, SABI 488, SSM 2058 TX 390, CG 5200	R74, R78, R92, R208 R216, R218, R224

(25 September 1981)

KENNISGEWING 735 VAN 1981

SUID-AFRIKAANSE REGSKOMMISSIE

Onderstaande Wetsontwerp word vir algemene inligting gepubliseer Enigiemand wat kommentaar wil lewer of vertoe wil rig, moet asseblief sodanige kommentaar of vertoe voor of op 16 Oktober 1981 aan die Sekretaris, Suid-Afrikaanse Regskommissie, Privaatsak X81, Pretoria, 0001, stuur

WET OP REKENAARGETUIENIS, 1982

WETSONTWERP

Om voorsiening te maak vir die toelaatbaarheid in siviele sake van getuienis deur rekenaars voortgebring; en vir aangeleenthede wat daarmee in verband staan

Ingedien te word deur die Minister van Justisie

Daar word bepaal deur die Staatspresident en die Volksraad van die Republiek van Suid-Afrika, soos volg

Woordomskrywing

1 (1) In hierdie Wet, tensy uit die samehang anders blyk, beteken—

(i) "aanvullende beedigde verklaring" 'n beedigde verklaring wat voorgee en blyk 'n bevestigende beedigde verklaring ooreenkomstig artikel 3 aan te vul, (viii)

(ii) "bevestigde rekenaardrukstuk" 'n rekenaardrukstuk vergesel van die bevestigende beedigde verklaring wat daarop betrekking het en, wanneer artikel 3 dit vereis, vergesel van die aanvullende beedigde verklaring of verklarings wat betrekking het op sodanige bevestigende beedigde verklaring, (i)

(iii) "bevestigende beedigde verklaring" 'n beedigde verklaring wat voorgee en blyk 'n rekenaardrukstuk ooreenkomstig artikel 3 te bevestig, (ii)

NOTICE 735 OF 1981

SOUTH AFRICAN LAW COMMISSION

The following Bill is published for general information Any person desiring to offer any comment on the Bill or to submit any representation thereanent should kindly submit such comment or representations to the Secretary, South African Law Commission Private Bag X81, Pretoria, 0001, on or before 16 October 1981

COMPUTER EVIDENCE ACT, 1982

BILL

To provide for the admissibility in civil proceedings of evidence generated by computers; and for matters connected therewith

To be introduced by the Minister of Justice

Be it enacted by the State President and the House of Assembly of the Republic of South Africa, as follows

Definitions

1 (1) In this Act, unless the context otherwise indicates—

(i) "authenticated computer printout" means a computer printout accompanied by the authenticating affidavit which relates to it and, whenever section 3 so requires, by the supplementary affidavit which relates to such authenticating affidavit or the supplementary affidavits which do so, (ii)

(ii) "authenticating affidavit" means an affidavit which purports and appears to authenticate a computer printout in compliance with section 3, (iii)

(iii) "computer" means any device or apparatus, whether commonly called a computer or not, which by electronic, electro-mechanical, mechanical or other means is capable of receiving or absorbing data and instructions supplied to it, of processing such data according to mathematical or logical rules and in compliance with such instructions, of

Howick magistrate's court: boy convicted
H0915 9 QC 540-2 30/9/81 (252)

*9 Mr D J DALLING asked the Minister of Justice

(1) Whether a boy was recently convicted of an offence in terms of the Forest Act in the Howick magistrate's court, if so, what was the sentence passed by the maistrate concerned,

(2) whether the sentence was carried out, if so, when,

(3) whether the sentence was subject to automatic review,

(4) whether the sentence was reviewed, if so, (a) when, (b) by whom, (c) why and (d) what was the finding,

(5) whether any further action has been taken in this regard, if so, what is the nature of such action,

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

The MINISTER OF JUSTICE.

(1) Yes In terms of section 294 of the Criminal Procedure Act, 1977, a moderate correction of 4 strokes

(2) Yes, on 12 August 1981

(3) No

(4) Yes,

(a) 17 September 1981,

(b) Two judges of the Natal Provincial Division of the Supreme Court,

(c) The Judge-President of the Division concerned requested that the case be submitted for review.

(d) Both the conviction and sentence were set aside.

(5) No

(6) It is customary not to discuss the merits of particular court judgments in the House I am therefore not prepared to state my view on the merits of the judgments either of the Magistrate or of the reviewing Judges In the review judgment a particular aspect of the prosecutor's conduct of the case was criticized but it was stated that there was no doubt about his *bona fides* This portion of the judgment will nevertheless be referred to the Attorney-General for his report

Mr D J DALLING Mr Speaker, arising out of the hon the Minister's reply, could he tell the House what steps he is going to take to ensure that the corporal punishment section of a sentence is not carried out before the case has been reviewed?

The MINISTER Mr. Speaker, this is a most difficult and involved facet of this type of punishment No solution to it has as yet been found

Mr D J DALLING Mr Speaker, further arising out of the reply given by the hon hon the Minister and in view of the seriousness of this case, could he tell us whether he is considering taking any steps at all in order to ensure that this sort of case does not recur?

The MINISTER Mr Speaker, I shall take such steps as I may deem necessary after I have received a report from the Attorney-General, if it has any bearing on this issue.

Mr D J DALLING Mr Speaker, further arising out of the reply given by th hon the Minister, could he inform the House of the age of the young child who was caned for the offence of which he was initially found guilty? [Interjections]

The MINISTER Mr Speaker, the child is nine years old

Mrs H SUZMAN Scandalous

Mr D J DALLING Scandalous
[Interjections]

For written reply

Hans 9 QC 579 2/10/81 (252)

Black magistrates/assistant magistrates/public prosecutors

205 Dr A L BORAINE asked the Minister of Co-operation and Development

How many Black persons are employed by his Department in the Republic as (a) magistrates, (b) assistant magistrates and (c) public prosecutors?

The MINISTER OF CO-OPERATION AND DEVELOPMENT.

(a) Nil.

(b) 5.

(c) 36.

Hans 9 QC
538-4 26/8/87

Legal aid

435 Mr M A TARR asked the Minister of Justice:

(a) What is 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 12 months for which figures are available and (b) how many such 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?

(252)

The MINISTER OF JUSTICE

The following statistics were obtained from the Legal Aid Board

(a) 20 007 applications were made during the period 1 4 1980 to 31 3 1981

(b) (i) 12 526

(ii) Statistics as to the reason for refusal in respect of the balance of the applications are not readily available

STAATSKOERANT
VAN DIE REPUBLIEK VAN SUID-AFRIKA

REPUBLIC OF SOUTH AFRICA
GOVERNMENT GAZETTE

REGULASIEKOERANT No 3307 — REGULATION GAZETTE No 3307

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Vol 196] PRETORIA, 6 OKTOBER / OCTOBER 1981 [No 7823

GOEWERMENTSKENNISGEWING

DEPARTEMENT VAN SAMEWERKING EN ONTWIKKELING

No R 2136 — 6 Oktober 1981

REELS WAARBY DIE VERRIGTINGS VAN DIE HOERHOF VAN CISKEI GEREEL WORD

Die reels in die aanhangsel vervat (hierna die reels genoem), waarby die verrigtings van die Hoerhof van Ciskei gereel word, word hierby kragtens artikel 34 (2B) van die Grondwet van die Nasionale State, 1971 (Wet 21 van 1971), gelees met regulasie 35 van die Proklamasie op die Hoerhof van Ciskei, 1981 (Proklamasie R 151 van 1981), deur die Hoofregter van die Hoerhof van Ciskei uitgevaardig

AANHANGSEL

INHOUDSOPGAWE

GOVERNMENT NOTICE

DEPARTMENT OF CO-OPERATION AND DEVELOPMENT

No. R 2136 — 6 October 1981

RULES REGULATING THE CONDUCT OF THE PROCEEDINGS OF THE HIGH COURT OF CISKEI

The Chief Justice of the High Court of Ciskei hereby, in terms of section 34 (2B), of the National States Constitution Act, 1971 (Act 21 of 1971), read with regulation 35 of the High Court of Ciskei Proclamation, 1981 (Proclamation R 151 of 1981), makes the rules (hereinafter referred to as the rules) contained in the Annexure whereby the conduct of the proceedings of the High Court of Ciskei is regulated

ANNEXURE

INDEX

Lower courts: shortage of personnel (252)

427 Mr D J DALLING asked the Minister of Justice

(1) Whether any steps have been taken by his Department to alleviate the shortage of legally qualified personnel in the lower courts, if so, what steps;

(2) (a) how many resignations have been received from (i) prosecutors and (ii) magistrates since the introduction of new salary scales and (b) what was the number of resignations received during the corresponding period in 1980,

(3) how many officials who resigned prior to the date of the introduction of new salary scales have rejoined his Department since that date?

The MINISTER OF JUSTICE

(1) Yes Various steps have been taken over a number of years In this regard I refer the hon member to my statement during the debate of the Justice Vote Hansard, 16 September 1981, column 3896

(2) Separate figures in respect of magistrates and prosecutors are not available The total number of resignations received from qualified staff is as follows

A	April 1981	11
	May 1981	12
	June 1981	7
	July 1981	7
	August 1981	7
B	April 1980	6
	May 1980	17
	June 1980	12
	July 1980	25
	August 1980	8

(3) 8

Western Cape: Blacks employed by Justice/statutory bodies

Hans 10
6/10/81 QC 637

(252)

401. Mr P A MYBURGH asked the Minister of Justice.

(a) How many Blacks are employed in the Western Cape by (i) his Department and (ii) statutory bodies for which he is responsible and (b) what is the estimated average figure in respect of each such category for the preceding period of 10 years?

The MINISTER OF JUSTICE.

The figures in respect of the Cape Peninsula are

(a) (i) 25.

(ii) 1

(b) (i) 23.

(ii) 1

Lack of funds hampers legal aid

SAv 6/10/87

252

The days of one of Johannesburg's oldest legal aid organisations, the Legal Aid Bureau, were numbered because of dwindling funds, outgoing chairman Mr D Reichman said yesterday.

At the annual meeting he appealed for "constructive action by the incoming committee with regard to raising funds" to keep the organisation going.

Last year the small staff of the bureau had given an average of 56 interviews every working day and attorneys had acted free of charge in 356 civil cases, Mr Reichman said.

"Counsel was appointed to act in 171 matters and appeared in 130 criminal cases," he said.

Ninety-eight accused had been found guilty, 24 not guilty and in eight matters charges had been withdrawn — a firm indication of the need for the Bureau.

"But the Bureau's financial position has worsened.

"In spite of the fact that some staff members have not had a salary increase since 1978 and others have had only minimal increases, administrative costs have risen alarmingly," he said.

Increases included rental, printing and stationery costs.

Money bequeathed to the Bureau had not come through as expected last year, he said.

Last year the Bureau had just managed to cover its expenditure of R32 556 after being R2 408 in the red the year before.

The new committee of the Bureau for the coming year is: Mr A P Kruger (chairman), Mr A Schwarer (secretary/treasurer) and Miss P Kuper and Mr D'Arcy Ussher (committee members).

Appellate Division backlog 'alarming'

CT 7/10/87 (252)

HOUSE OF ASSEMBLY — The drastic increase in the backlog of work in the Appellate Division represented an alarming state of affairs calling for immediate action, according to the Hoexter commission of inquiry into the structure and functioning of the courts

In its third interim report tabled in Parliament yesterday, the commission said that on December 31, 1980, there were 286 appeals pending of which 246 were civil and 40 criminal

Pending appeals increased by 30 percent between 1978 and 1979 with a further increase of almost 20 percent between 1979 and 1980

"This alarming state of affairs calls for immediate action If any satisfactory and lasting solution can be found, the necessary measures should be adopted forthwith

"It is essential that the effect produced by such measures should be felt as quickly and as widely as possible"

The present workload of the Appellate Division was so heavy that the 14 judges of appeal were unable to cope with it

"The serious proportions recently assumed by this backlog are damaging the image and esteem of our highest court There is deep wisdom in the well-known adage Justice delayed is justice denied"

The overriding reality was that judges of appeal were snowed under with work which, though juridically insignificant, was time-consuming "The Appellate Division labours under a great number of appeals hinging essentially on questions of fact and being of a sort quite inappropriate for consideration by the highest court in the land

"This involves injudicious and uneconomic use of scarce manpower It detracts, furthermore, from the status and dignity of the Appellate Division"

In considering various solutions, the commission favoured one which extended the existing appellate jurisdiction of the provincial divisions of the Supreme Court over judgments of a single judge in Supreme Court proceedings and a limitation of the right to appeal

"In so far as it stipulates leave to appeal as a prerequisite, this solution restricts a litigant's right to appeal in respect of civil proceedings in the Supreme Court

"Viewed from the angle of public interest and the effective administration of justice, however, an unlimited right of appeal is not always an unmixed blessing"

It was common knowledge that a significant number of civil appeals lodged in the Appellate Division had no prospect whatsoever of success

"The hearing of such appeals represents nothing more than a waste of time, money and manpower

"In the second place, the hard fact of the matter is that, by reason of such untrammelled right of appeal, a plaintiff of modest means and a wealthy defendant are not fairly matched in conducting negotiations with a view to possible settlement

"A wealthy defendant, able to contest a case all the way to the Appellate Division, irrespective of the actual merits of the defence raised by him, or the prospects of success on appeal, will often manoeuvre a plaintiff of limited means, despite the fact that he has a valid cause of action, into a position in which the plaintiff is obliged to accept an unjust settlement"

The report recommends amendments to the Supreme Court Act, the Criminal Procedure Act and the rules of the Supreme Court providing for changes in the procedure in dealing with appeals

The provisions would include

- That appeals against the judgment of a single judge be heard by a full court consisting of three judges of any provincial division of the Supreme Court, except in certain circumstances when they would be heard by the Appellate Division

- That a trial court should not grant leave to appeal unless it considered the applicant had a reasonable prospect of success, and

- That a full court should not grant leave to appeal unless the case raised a substantial question of law or involved a complicated and intractable question of fact, the determination of which was of substantial importance to the parties, to third parties or to society

One of the circumstances in which an appeal would automatically be heard by the Appellate Division was in cases of accused being sentenced to death — Sapa

Appeal system changes proposed

Argus 7/10/81 (252)

Political Staff

IMPORTANT changes to the judicial appeal system have been suggested by the Hoexter Commission to overcome serious bottlenecks at Appellate Division level

Following its findings on the threat to the administration of justice at other levels of the judiciary, the commission of inquiry into the structure and functioning of the courts issued another interim report yesterday warning that the Appellate Division, too, was unable to cope with its workload.

'The serious proportions recently assumed by this backlog are damaging the image and esteem of our highest court,' the commission says Pointing out that by the end of last year 286 appeals were pending, it quotes the adage. 'Justice delayed is justice denied'

Solutions recommended to the commission include the creation of a super court of appeal of 'supreme council' consisting of five to nine judges to hear cases of rare exception and then only in cases raising matters of important legal policy.

Also suggested to the commission was the creation of intermediate appeal courts between the provincial divisions and the Appellate Division to hear most of the appeals at present heard by the Appellate Division or by the full court of the provincial divisions.

But the proposal favoured by the commission is the extension of the existing appelate jurisdiction of the provincial divisions in respect of judgments of a single judge of the Supreme Court, and a limitation of the right to appeal.

The solution would mount to appeals against any judgment of a single judge being heard by a full court consisting of three judges of the provincial division concerned, except in cases where the death sentence has been passed, which would be heard directly by the Appellate Division.

It would also mean that an appeal against a decision of a single judge would only be allowed to be lodged with leave of the trial judge, or, failing such leave, with leave of the full court

A further appeal to the Appellate Division against the judgment of the full court given an appeal would lie with leave of the full court, or, failing that, leave of the Appellate Division.

It would also be possible for an appeal against the decision of a single judge to leap-frog the full court and be directly heard by the Appellate Division if the judge-president of the provincial division concerned so decided

whom and (c) what was the import of such directives?

†The MINISTER OF JUSTICE (Reply laid upon Table with leave of House).

(1) and (2) The last occasion on which the Department of Justice sent out a general circular to the heads of its offices in this regard was on 2 September 1977 In it heads of offices were informed as follows:

"1 The Honourable the Minister of Justice has approved that segregation signs and partitions in existing office buildings under the control of the Department be removed when such buildings are renovated in future Separate toilet facilities and separate waiting rooms for White and non-White persons must, however, still be provided

2. The Secretary for Public Works has been informed of this decision and has been requested to advise all his regional representatives accordingly Heads of offices are nevertheless requested to ensure that segregation signs and partitions are removed when buildings are renovated or when alterations to buildings are carried out

3 For general information it may be mentioned that all new buildings to be erected in future will be planned without segregation facilities except as far as toilets and waiting rooms are concerned "

No general directives have been issued recently As a result of recent events, I found it necessary to refer officers to the policy in specific cases

Racial segregation in courts

*14 Mr. M. A TARR asked the Minister of Justice.

(1) What is his Department's policy regarding racial segregation in (a) the courts and (b) toilet facilities in the courts;

(2) whether any directives have been issued recently to ensure adherence to such policy, if so, (a) when, (b) by

Separate court system for blacks is urged

RDM 20-10 87 252

A STRONG plea for a greater acknowledgement of indigenous black law in law administration was made before the Hoexter Commission in Pretoria yesterday

The plea was made by the chief legal officer of the Department of Co-operation and Development, Mr J Lamprechts.

The commission is inquiring into the structure and functioning of the courts

Mr Lamprechts also stressed the importance of the commissioners' courts in the country's legal system

He complained that much of the evidence submitted to the commission was superficial The whole question of law administration for blacks should be approached more fundamentally, and not handled on an ad hoc basis

It could not be accepted that all aspects of the white culture were of necessity applicable to other population groups

Detrimental

He pleaded that more stress should be laid on the indigenous law of the black people, and a basic approach of the department was that their cases should be heard against this background

One law administration system for all could be detrimental to the black people

Mail Reporter

He stressed there were only limited numbers of blacks who lived totally according to white norms, and pleaded for a greater acknowledgement of their indigenous law

To remove the commissioners' courts from the jurisdiction of the Minister for Co-operation and Development, who had a high standing in the black community, would undermine the Minister's authority

Blacks were confused in a white court environment and procedures they did not understand There was, too, the possibility of their cases and situation being misunderstood This was less likely to happen in a commissioner's court

Mr Lamprechts said the ideal would be to have a whole separate structure for blacks from the court of first instance right up to an appeal court

Commission hears revolution warning

Own Correspondent

A bloody revolution would follow if laws for blacks are made without understanding of the black man and especially the variety of black cultures, the Hoexter Commission heard yesterday

Mr C J Grobler, former chief director of development at the Department of Co-operation and Development, said before the Hoexter Commission of Inquiry into the structure and functioning of the courts that lack of understanding and not the structure of the courts caused inefficiency in the Commissioner Courts

He recommended that commissioners should have at least one year's university training in ethnology and a working knowledge of black languages

Removing the Commissioner Courts and Makgotlas from the jurisdiction of the Department of Co-operation and Development would not be an instant solution

In fact it would severely criticise the authority of the Minister of Co-operation and Development and destroy the esteem in which he was held by the black masses," said Mr Grobler

It would also cause frustration and dissatisfaction for at least 80 percent of the black population

This in turn could lead to white courts becomming the target of "agitators and leftwingers," which could affect even the Supreme Court, Mr Grobler said

Courts misled by poor interpreters, probe told

RDM 21·10·81 (252)

By GERALD REILLY

THE LACK of properly qualified interpreters threatened the quality of justice — and interpreters often misled courts, the Hoexter Commission was told in Pretoria yesterday.

Giving evidence on behalf of the Department of Co-operation and Development, a former Chief Director of Development in the department, Mr C J Grobler, said often the magistrate and prosecutor did not have a complete understanding of the proceedings.

A commission member, Mr J Ferreira, pointed out that the situation amounted to obstruction of justice.

He said there was an urgent need for better qualified, better trained and better paid interpreters, and the issue should have been given close attention years ago

For example, on occasion there would be a Xhosa interpreter for a Zulu accused This could and did lead to misunderstandings

Mr Grobler, a former commissioner and magistrate, said he too would have made mistakes had he not had a knowledge of black languages

Because of the urgency of the situation, representations had been made to the Commission for Administration for more interpreters' posts

One difficulty was finding officials with the necessary background and knowledge of black languages to train interpreters

The communication problem in the courts was mainly due to the quality of interpreters available

Turning to family courts, Mr Grobler told the commission these should remain under the control of the Minister of Co-operation and Development

'The king'

He said the Minister was regarded as "the great leader, the king and the judge" by blacks to whom the State President was a remote figure

The Minister would "lose status" if the family courts were removed from his control, Mr Grobler said

[illegible] formal cou[illegible] more a valuable adjunct to the commissioner's courts, he said

These were extra-judicial proceedings where petty disputes and differences between blacks were speedily settled

Without the informal courts, the burden of civil cases on the ordinary courts would be greatly increased.

In 1980, more than 23 000 cases had been dealt with through informal court procedures

Mr Grobler also suggested the appointment of a "Judge-General" who would lead an independent inspectorate that would keep a watch on the quality and procedures of justice in the courts

Asked whether this would not be a costly innovation, Mr Grobler said it could be viewed as part of the price of justice, and need not interfere with the discretion of judicial officers

Courts misled by poor interpreters, probe told

RDM 21/10/81

By GERALD REILLY

re: photostat
SALDRU Justice files 1981

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Because of the urgency of the

Red tape dogs East Rand courts

Star 22/10/81

252

By Erik Larsen
East Rand Bureau

Serious staff shortages are crippling two East Rand magistrate's courts.

The situation is so chronic that the Edenvale magistrate's court, which falls under Germiston's magisterial control, could soon be closed down.

Germiston's magistrate's court has a 54 percent staff shortage on the administrative side. There are no shortages of magistrates or prosecutors.

Germiston's chief magistrate, Mr John Gildenhuys, said the situation had deteriorated rapidly since April and had now reached crisis proportions. "We just can't get staff, when someone leaves we can't find a replacement," he claimed.

Staff were being attracted to the private sector, he said

At present the Edenvale Magistrate's Court, the smallest court on the East Rand, was being run by one person and if the crisis worsened it would have to be closed down, explained Mr Gildenhuys

"All the Edenvale cases will then have to be dealt with at Germiston."

Mr Gildenhuys recently introduced measures in Germiston to reduce the staff's workload. The civil and criminal court offices, where payment and inquiries are made, are open only half-day and the maintenance complaints office closes at 11 am instead of 4.30 pm.

The administrative staff no longer handle the payment of admission of guilt fines for traffic offences. This is done by traffic officials operating from an office at the court.

Staff are also working a great deal of overtime

REPUBLIC OF SOUTH AFRICA

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VOL 196] CAPE TOWN, 28 OCTOBER 1981 KAAPSTAD, 28 OKTOBER 1981 [No 7855

OFFICE OF THE PRIME MINISTER

No 2250 28 October 1981

It is hereby notified that the State President has assented to the following Act which is hereby published for general information —

No 94 of 1981 Repeal of Laws Act, 1981

KANTOOR VAN DIE EERSTE MINISTER

No 2250 28 Oktober 1981

Hierby word bekend gemaak dat die Staatspresident sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word —

No 94 van 1981 Wet op die Herroeping van Wette, 1981

Onderafdeling 6 3 6 (e) en (f) soos hernommer Skrap "(uitgesonderd pens)" van die produktelys en die vereistes

Onderafdeling 6.5 1 Skrap "Sout beesvleis" en vervang deur "Soutbeesvleis"

Onderafdeling 6 5 2. Voeg die volgende sin voor die eerste sin in "Slegs beesvleis mag gebruik word"

Onderafdeling 6 5 5 Skrap "v n m " in die derde reel en vervang dit deur "produk"

Onderafdeling 6 7 4 Skrap "minstens" en vervang dit deur "hoogstens"

Onderafdeling 6 12 4 2 Wysig onderafdeling (b) sodat dit lui "die lewergehalte moet minstens 25 persent wees"

Onderafdeling 6 13 1 (a) Voeg "vleis" na "slegs" by

Onderafdeling 6 13 3 (e) Voeg "of garneersous" na "sous" by

Onderafdeling 6 14 1 Skrap "en" in die tweede reel en vervang dit deur "met of sonder"

Onderafdeling 8 2 3 Skrap "lek nie" in die vierde reel en vervang dit deur "onderwerp word nie" Voeg die volgende sin in voor die sin wat begin met "Ongebruikte" "Blikke met 'n diameter van meer as 99 mm mag nie lek as dit aan 'n vakuumtoets onder 'n maksimum negatiewe meterdruk van 50 kPa onderwerp word nie"

Onderafdeling 10 1 2 Skrap "dekselvlak" in die tweede reel en vervang dit deur "bovlak"

Onderafdeling 10 1 3 Skrap "geweefde" in die tweede reel en vervang dit deur "geweegde"

Onderafdeling 10 2 1 Skrap "dekselvlak" in die vierde reel en vervang dit deur "bovlak"

Onderafdeling 10 3 1 (a) Voeg "en afgeskeide vet" in die vierde reel na "sous" by

Onderafdeling 11 2 (d) Skrap "10,20 g" in die tweede reel en vervang dit deur "10–20g"

Onderafdeling 11 3 1 (h) Skrap "14,22 mℓ" in die tweede reel en vervang dit deur "14,2 mℓ"

Onderafdeling 11 14 5.1 Skrap µ/g in die formule en vervang dit deur µg

DEPARTEMENT VAN SAMEWERKING EN ONTWIKKELING

No 2309 30 Oktober 1981

VERANDERING VAN DIE GEBIEDE WAARIN KOMMISSARISHOWE REGSMAG HET

Daar word hierby bekendgemaak dat die Direkteur-generaal van Samewerking en Ontwikkeling, behoorlik daartoe gemagtig kragtens artikel 10 (3) van die Swart Administrasie Wet, 1927 (Wet 38 van 1927), die gebiede waarin die Kommissarishowe vermeld in bygaande Bylae, regsmag het, verander het soos in genoemde Bylae aangedui

Proklamasies 298 van 1928 en 8 van 1942 en Goewermentskennisgewings 1688 van 1971 en 1689 van 1971 word dienooreenkomstig gewysig

BYLAE

PROVINSIE DIE KAAP DIE GOEIE HOOP

Hof	*Gebiede waarin hof regsmag het*
Cathcart	Die distrik Cathcart
Fort Beaufort	Die distrik Fort Beaufort
Hewu	Die distrik Hewu
Keiskammahoek	Die distrik Keiskammahoek
Mdantsane	Die distrik Mdantsane
Middledrift	Die distrik Middeldrift
Oos-Londen	Die distrikte Oos-Londen, King William's Town en Stutterheim
Peddie	Die distrik Peddie
Queenstown	Die distrik Queenstown
Seymour	Die distrik Stockenstrom
Victoria-Oos	Die distrik Victoria-Oos
Zwelitsha	Die distrik Zwelitsha

In the second paragraph, first line, delete "Freezer" and substitute "Frozen"

Subsection 3 3 4 In the 16th line, delete "chillers" and substitute "cold storage rooms"

Subsection 6 2 5 (a) In the last line under "Product category", delete "borth" and substitute "broth"

Subsection 6 3 6 Delete the entire subsection (e), delete the letter subheadings (f), (g), (h), (i), (j) and (k), and substitute (e), (f), (g), (h), (i), and (j), respectively

Subsection 6 3 6 (e) and (f) (as renumbered) Delete "(other than tripe)" from the product category and the requirements

Subsection 6 3 6 (h) (as renumbered) In the first line, under "Product category", delete "stead" and substitute "steak", under "Requirements", delete "25" and substitute "35"

Subsection 6 5 2 Add the following sentence before the first sentence

"Only meat of bovines shall be used"

Subsection 6 5 5 In the third line, delete "d n m " and substitute "product"

Subsection 6 9 2 In the last sentence, change 12 °C to −12 °C

Subsection 6 12 4 2 (b) Delete "on chemical analysis"

Subsection 6 14 1 In the second line, delete the first "and" and substitute "with or without"

Subsection 9 1 2 1 (b) In the eighth line, delete "XX" and substitute "X"

Subsection 10 1 2 In the second line, delete "lid" and substitute "top"

Subsection 10 2 1 In the first paragraph, last line, delete "lid" and substitute "top"

Subsection 10 3 1 (a) In the third line, add "exuded fat," after "any"

DEPARTMENT OF CO-OPERATION AND DEVELOPMENT

No 2309 30 October 1981

ALTERATION OF THE AREAS IN WHICH COMMISSIONER'S COURTS HAVE JURISDICTION

It is hereby made known that the Director-General for Co-operation and Development, duly authorised thereto in terms of section 10 (3) of the Black Administration Act, 1927 (Act 38 of 1927), has altered the areas in which the Commissioner's Courts mentioned in the accompanying Schedule have jurisdiction as indicated in the said Schedule

Proclamations 298 of 1928 and 8 of 1942, and Government Notices 1688 of 1971 and 1689 of 1971 are amended accordingly

SCHEDULE

PROVINCE OF THE CAPE OF GOOD HOPE

Court	*Area in which court has jurisdiction*
Cathcart	The District of Cathcart
East London	The Districts of East London, King William's Town and Stutterheim
Fort Beaufort	The District of Fort Beaufort
Hewu	The District of Hewu
Keiskammahoek	The District of Keiskammahoek
Mdantsane	The District of Mdantsane
Middledrift	The District of Middledrift
Peddie	The District of Peddie
Queenstown	The District of Queenstown
Seymour	The District of Stockenstrom
Victoria East	The District of Victoria East
Zwelitsha	The District of Zwelitsha

SUNDAY EXPRESS November 1, 1981

EXPRESSCOPE LOOKS AT A NEW CRISIS IN COUR

Magistrates working overtime on chores

CRIPPLING shortage of administrative staff is threatening to plunge South Africa's magistrates' courts into a second crisis — and already some magistrates on the East Rand are being forced to do their own typing and attend to mundane chores like opening the morning

At least one court in Edenvale may be closed and at other courts magistrates and professional staff are sacrificing morning and afternoon teabreaks and working voluntarily through lunch-hours, at night and over weekends, in a desperate bid to cope with the workload caused by crippling staff shortages in administrative posts

This is the second crisis the courts are facing within a year, and several informed sources say unless administrative staff are paid more and their working conditions improved, this could be the worst yet in the administration of the country's magistrates' courts

The administrative court back-up system is deteriorating rapidly and existing staff are overburdened and working under intolerable conditions

When the Department of Justice was hit by an unprecedented number of resignations by magistrates and prosecutors earlier this year, the Government staved off the crisis by introducing special allowances for properly qualified people in the professional sections of the Department of Justice

But the allowances are only paid after those holding special qualifications are actually promoted into professional posts

The result, according to sources who spoke to the Sunday Express, is that few people with the qualifications, who are entitled to the new professional allowances are prepared to remain in administrative sections

So that while the introduction of special allowances has improved the salaries of those holding professional posts, like magistrates and prosecutors, it has created a second crisis by drastically draining the administration workforce

An investigation by the Sunday Express this week showed that

- The Germiston Magistrate's Court has 10 vacancies out of 24 administrative posts
- Germiston's Chief Magistrate, Mr John Gildenhuys, who is responsible for administering two regional, four district, one civil and one criminal court, is without a secretary and is having to type his own judgments and correspondence

His deputy and the control magistrate are having to do the same

Although the courts themselves are functioning reasonably, the additional typing by the magistrates could have an effect on cases referred to the Supreme Court

- Mr Gildenhuys' staff are sacrificing teabreaks, lunch-hours, and working at home at night and over weekends Magistrates are also helping to sort and distribute morning post
- One of his senior magistrates, who has had more than 20 years service, volunteered three weeks ago to attend to some of the functions of the clerk of the court to help maintain administrative functions
- The civil and criminal court offices are open only for half-days, and administrative staff no longer handle payment of admission of guilt fines for traffic offences This is done by traffic officers operating from an office at the court

Mr Gildenhuys paid tribute to the loyalty of his staff and said the Department of Justice was doing everything possible to help alleviate the situation

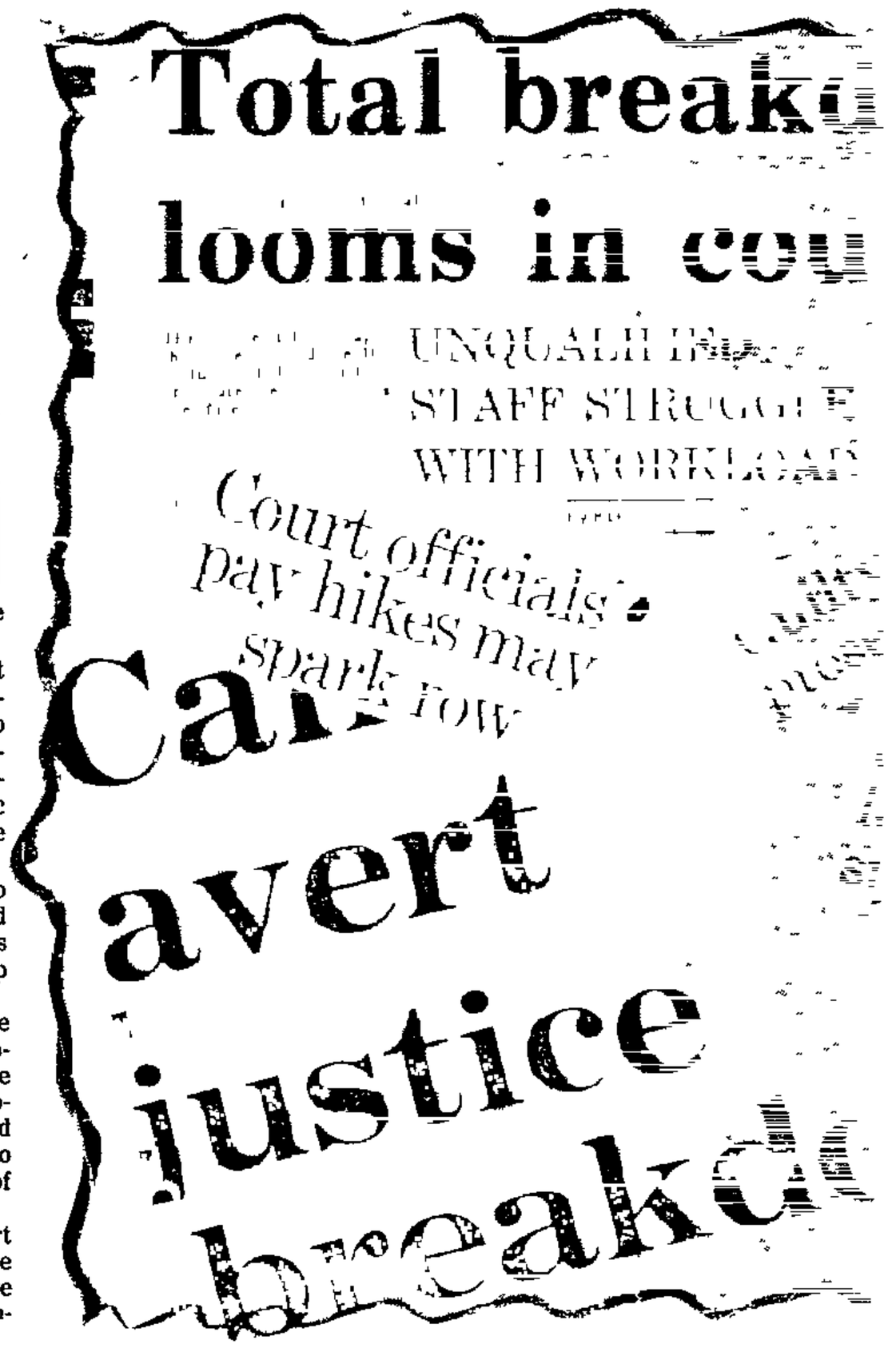
"We are not complaining," he said, "and we cannot let the public down We are dealing with the administration of justice, helping to maintain public order, and we have no option but to try to retain an efficient standard of service"

Staff at the Magistrate's Court at nearby Kempton Park, where shortages are not as severe, have volunteered to help Mr Gildenhuys with administrative work

- While Mr Gildenhuys and his over-burdened staff have been able to manage so far, the shortages have reached a crisis point at nearby Edenvale, where the Magistrate's Court, which falls under the jurisdiction of Germiston, may soon have to be closed
- In Johannesburg, many administrative personnel have left because of dissatisfaction with salaries and some sources say this section is 45% under-staffed

Johannesburg's Chief Magistrate, Mr J A Van Dam, confirmed that his courts were also faced by a serious shortage of staff in administrative posts but said this situation applied to the public service as a whole

"Thanks to a loyal and hard-working staff, we have been able thus far to keep our heads above water and the State is fully aware of our difficult position"



● Past headlines bear testimony to the critical state of the administra the desperate shortage of staff

- The Randburg Magistrate's Court has also been hit by administrative shortages

Meanwhile the shortage is spreading to other centres as well, including Cape Town, Pretoria, Durban, Port Elizabeth and Bloemfontein

Mr Dave Dalling, PFP chief spokesman on Justice, who made a study of the situation, described the interim Hoexter Commission report submitted to Parliament this year as one of the most massive indictments of the Government's administration of justice in South Africa

The report revealed that unqualified people acted as magistrates and prosecutors — "thereby," said Mr Dalling, "endangering the quality of law dispensation"

Mr Dalling called on the Government to

- Extend the (professional) allowances to those holding special qualifications while they were gaining experience in administrative capacities
- Recognise that the main problem was common to cities and large towns and introduce a major-centre allowance both for professionals and certain categories of administrative staff
- **Review the salary structure of administrative, professional and clerical staff in relation to salaries paid by other semi-Government and municipal agencies.**
- Eliminate the racial pay gap at administration and clerical

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Judiciary's visit to Soweto 'an eye-opener'

RDM 5/11/81

By MARTIN FEINSTEIN and EMIELIA JAROSCHEK

JUDGES, magistrates and other top officials of the Department of Justice say they now have a "better understanding" of conditions in Soweto — South Africa's crime capital — after a visit there on Tuesday

The officials — including the Judge President of the Transvaal, Johannesburg's chief magistrate and the Transvaal Attorney-General — were invited to see Soweto by the complex's Divisional Commissioner of Police, Brigadier Mulder van Eyk

Yesterday the Transvaal Attorney-General, Mr J Nothling, said the visit was "definitely beneficial"

"It gave me and my deputies the chance to see for ourselves what the conditions there are," he said, "and to hear what people there are doing about them I was favourably impressed by their work"

Several deputy attorneys-general from Johannesburg were also there, Mr Nothling said, "and they will no doubt convey to their prosecutors what they saw"

"Now, when we deal with matters coming from Soweto, we can picture the situation and be in a better position to understand what is going on"

Presided

Johannesburg's Chief Magistrate, Mr J A van Dam, said he had presided over township courts for a long time and had first-hand experience of conditions in Soweto

"But for those officials who did not have this background, it was very beneficial," he said

The president of the Johannesburg Regional Court, Mr L V de Kock, said the visit had brought home the high density of the population

"We now have a clearer picture of the circumstances in the area, for example the homes, the streets, the lighting

"What we saw will affect our knowledge while trying cases " he said

The Judge President of the Transvaal, Mr Justice W G Boshoff, told officials after the visit that there was a need for the public to "dig a little deeper' into its pockets to help uplift the residents of Soweto

In some parts of the world, he said, commissions were being appointed to recast judicial institutions to meet the quantitative burden of the "law explosion"

"South Africa is not a lawless state In fact we have an outgrowth of law and regulation to a point of shocking complexity

"If we have to look into the legal situation, we first have to look into its causes

"So solutions to this are not left with lawmen but with students of social science"

STAATSKOERANT
VAN DIE REPUBLIEK VAN SUID-AFRIKA

REPUBLIC OF SOUTH AFRICA
GOVERNMENT GAZETTE

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PROKLAMASIE

van die

Staatspresident van die Republiek van Suid-Afrika

No 222, 1981

PROKLAMASIE OM DIE SUIDWES-AFRIKA-AFDELING VAN DIE HOOGGEREGSHOF VAN SUID-AFRIKA IN DIE HOOGGEREGSHOF VAN SUIDWES-AFRIKA TE OMSKEP EN OM VIR AANGELEENTHEDE WAT DAARMEE IN VERBAND STAAN VOORSIENING TE MAAK

Kragtens die bevoegdheid my verleen by artikel 38 van die Wet op die Konstitusie van Suidwes-Afrika, 1963 (Wet 39 van 1963), maak ek hierby die wette in die Bylae vervat

Gegee onder my Hand en die Seel van die Republiek van Suid-Afrika te Pretoria, op hede die Vierde dag van November Eenduisend Negehonderd Een-en-tagtig

M VILJOEN, Staatspresident.

Op las van die Staatspresident-in-rade.

P W BOTHA.

BYLAE

Woordomskrywing

1 In hierdie Proklamasie, tensy uit die samehang anders blyk, beteken—

(i) ''appèlafdeling'' die appèlafdeling van die Hooggeregshof van Suid-Afrika, (i)

(ii) ''die gebied'' die gebied Suidwes-Afrika, (xiv)

(iii) ''die Hooggeregshof'' die in artikel 2 bedoelde Hooggeregshof van Suidwes-Afrika, (xiii)

(iv) ''eiser'' ook die een of ander party wat in 'n siviele geding om regshulp aansoek doen, (x)

(v) ''griffier'' ook 'n assistent-griffier, (xi)

(vi) ''hofdag'' enige dag wat nie 'n Saterdag, Sondag of openbare vakansiedag in die gebied is nie, (iii)

(vii) ''laerhof'' 'n hof (wat nie die Hooggeregshof is nie) wat notule van sy verrigtinge moet hou, en ook 'n landdros of ander beampte wat 'n voorlopige ondersoek in verband met 'n beweerde misdryf hou, (viii)

PROCLAMATION

by the

State President of the Republic of South Africa

No 222, 1981

PROCLAMATION TO CONVERT THE SOUTH-WEST AFRICA DIVISION OF THE SUPREME COURT OF SOUTH AFRICA INTO THE SUPREME COURT OF SOUTH WEST AFRICA AND TO PROVIDE FOR OTHER INCIDENTAL MATTERS

Under the powers vested in me by section 38 of the South West Africa Constitution Act, 1963 (Act 39 of 1963), I hereby make the laws set out in the Schedule

Given under my Hand and the Seal of the Republic of South Africa at Pretoria, this Fourth day of November, One thousand Nine hundred and Eighty-one

M VILJOEN, State President

By Order of the State President-in-Council

P W BOTHA

SCHEDULE

Definitions

1 In this Proclamation, unless the context otherwise indicates—

(i) ''appellate division'' means the appellate division of the Supreme Court of South Africa, (i)

(ii) ''civil summons'' means any summons whereby civil proceedings are commenced, and includes any rule *nisi* or notice of motion the object of which is to require the appearance before the court of any person against whom relief is sought in such proceedings or of any person having an interest in resisting the grant of such relief, (xii)

(iii) ''court day'' means any day not being a Saturday, Sunday or public holiday in the territory, (vi)

(iv) ''defendant'' includes any respondent or other party against whom relief is sought in civil proceedings, (xiii)

(v) ''full court'' means a court consisting of two or more judges, (xiv)

(vi) ''government service'' means the government service referred to in section 2 of the Government Service Act, 1980 (Act 2 of 1980), and the expression ''officer in the government service'' includes any person employed in a department as defined in section 1 (1) of the said Act, (viii)

Justice is too precious to leave to lawyers

RDM 16/11/81

Z48

252

THE law might not be the ass that Mr Bumble once termed it but it can be a pretty confusing animal, especially for the unfortunate amateur who tries to ride it without instruction

Over the years, the body of legislation catching up unfortunate and often innocent victims in its web, has grown to monolithic proportions and more and more people understand less and less about matters that may affect their most basic rights

Demystifying the law is an expression that slips often into Prof John Dugard's conversation

It is at least one of the intentions of the University of the Witwatersrand's Centre for Applied Legal Studies which he has headed for the three years since its inception

Appended to the pages of Prof Dugard's most recent annual review, detailing staff, funding and a year's worth of activities and publications is a bulky collection of Press cuttings

It covers a range of subjects from labour law through the Group Areas Act, influx control and citizenship, to censorship, the role of judges and the administration of justice

A wide range — all of them the concern of an institution that arrived more or less unheralded on the South African legal scene and has been working away, growing in size and scope, on the Wits campus ever since

Professor Dugard has cause for satisfaction His centre has made its mark in all these diverse spheres in a number of diverse ways

CALS was founded, says Prof Dugard, in response to a growing need for an organisation to do research into socio-legal aspects of the law, especially as it affects the black community

So, priorities have been labour law, civil rights influx control and, through force of circumstance, group areas

It all came together in 1978 when the Carnegie Corporation and Wits University established the centre, its main original role to undertake research into the field of human rights and to engage in public education in a variety of ways

The vehicles have been as varied as the subjects — publication in academic journals, Press comment, seminars, lectures conferences, even a play

And the centre has initiated a number of publications of its own — an industrial law journal a series on health and safety in various industrial situations, and occasional papers on aspects of human rights

PROFESSOR JOHN DUGARD
law should be demystified

The University of the Wiwatersrand's Centre for Applied Legal Studies has been going for three years In that time it has been involved in a wide range of legal affairs, including influx control, labour laws, group areas, censorship and the administration of justice. PAT SCHWARZ reviews its work and speaks to its head, Professor John Dugard

'Important role'

Functioning as they do out of the mainstream of legal practice, the centre's staff, all of them lawyers, are able to comment publically on the administration of justice The wad of Press reports is testimony to their success in that regard

"This is where the centre has played an important role," says Prof Dugard

"Lawyers often like to pretend that the public doesn't understand what the law is about and feel it shouldn't be discussed

"But the administration of justice is a matter of public concern Justice is too precious to leave to lawyers The public must be kept informed"

Litigation is not the chief aim of CALS though circumstances have, occasionally, brought them into the courtroom

This has happened most often in an area which has unexpectedly constituted a large portion of their work — the defence of victims of the Group Areas Act CALS, with Actstop, has been responsible for assisting in legal defence for people accused of contravening the Act — public interest is the determining factor

The labour field, though has become the keystone of the centre A grant from the Ford Foundation last year helped towards the expansion of that area and, with Assistant Director Halton Cheadle heading the section with two professional assistants and a trainee from one of the labour unions, the labour programme has taken off with a multi-dimensional approach

Apart from its teaching role in the university, the CALS labour unit is involved in giving courses to unions and undertaking research with, at present, a strong emphasis on health and safety

"We operate at two totally different levels," says Prof Dugard One is highly scholarly, the other is designed to educate the layperson

Another major area of operation is in the field of censorship

Prof Dugard is opposed to censorship because "if there is going to be peaceful change in South Africa I believe there must be a free circulation of ideas of both in respect of creative writing and of publications dealing with the political scene in South Africa

Still, he sees CALS' role in the field as "reformist" rather than "abolitionist"

"It believes that reform is possible within the existing system

"Generally, the whole machinery of the Publications Act doesn t receive serious attention from lawyers because the ordinary courts have been excluded and the Publications Appeal Board, an administrative tribunal constitutes the final court of appeal," Prof Dugard says

Censorship

The centre tackles the problem both by undertaking appeals against bannings of publications and by "encouraging informed and critical debate" on the subjects

Another important service is the publication of PAB decisions in digest form, making them available for reference to lawyers involved in censorship cases

"We ve also tried to monitor the system to show what standards are applied by the various bodies operating under the Act Generally our conclusion is that publications committees behave in an arbitrary, unpredictable manner while it's possible to discern the standards of the PAB

"We try to encourage appeals and have handled a number with some measure of success"

Among the successes are the unbanning of Wessel Ebersohn's "Store up the Anger" and Christopher Hope's "A Separate Development"

Grassroots

CALS is also appearing in defence of Dan Roodt, the young Afrikaans writer who has been charged with producing an "undesirable" publication called "Taaldoos"

"One of the satisfying things about anti-censorship work," he muses, "is that it's the one area that unites black and white, English and Afrikaans writers"

At a far more grassroots level, one of the main focuses of the centre is the infinity of laws that in one way or another affect race relations

Influx control problems are the chief concern of one of the centre's lawyers, his time divided between monitoring procedures in commissioners' courts, public education and, occasionally, defending people caught up in the influx control net

CALS staffers have written on the subject drawing attention to the fact that procedures followed in other courts are not followed in the commissioner's court and have given evidence of their findings to the Hoexter Commission of Inquiry into the structure and functioning of the courts

Deprivation of citizenship, resettlement, the problems attendant on the formation of 'independent" states are related and important areas of operation for the centre

And, as Prof Dugard sees its role, it is not simply to try to remedy the ills of those who fall victim to the laws but to inform those responsible for creating and perpetuating the situation of its effect on human beings

So, a publication went out from CALS to all Members of Parliament before the debate on Ciskei independence This article was referred to both by Government and opposition MPs and Prof Dugard believes "the whole question of citizenship was possibly debated with more awareness this year than in previous years."

In the area of security legislation, CALS monitors the system, gave evidence to the Rabie Commission, has made public statements and has issued a publication called "Outcasts from Justice — the consequences of banning orders under the Internal Security Act"

Prof Dugard himself has "concentrated on the debate over the role of the judiciary in South Africa", writing widely on the subject "in order to demystify the judicial role and make the public more aware

Human rights

"One of the things that interests me is the question of applying international human rights standards in the courts In England and the United States, courts, in interpreting the law, will often refer to the human rights clauses in the UN charter

"It's an idea that I'm trying to publicise This illustrates one of our functions, to make the profession aware of the legal strategies that may be employed in order to promote human rights"

As the centre has dug itself in and made its presence felt, one of the problems it struggles with is an increasing demand for its services from a variety of quarters

In an attempt not to diversify too widely, Prof Dugard says, he and his colleagues have tried to focus attention on specific areas

"Here we have been guided by our own interests and also by the advice of the Board of Control consisting of lawyers and community leaders

Some of the areas in which they have become involved could not have been foreseen 1978 when the centre started

One such is its work with Group Areas Act cases "which was a response to an immediate situation in 1979" and which illustrates the soundness of Prof Dugard's maxim that "in a research project of this kind you can't plan too carefully because you must respond to immediate needs"

The centre played a major part in the challenge to the validity of the Johannesburg Group Areas proclamation, which gave many victims a reprieve, until the challenge was finally rejected by the Appellate Division in October last year

One of Prof Dugard's hopes for the future of his centre is that it will be able to reach out into the community of practising lawyers, drawing them into a closer working relationship

Meanwhile, he is hesitant about making any great claims about the success of his centre

"In South Africa in an operation like this it's very difficult to say one has succeeded or one is happy with what one is doing

"But I think it could be said that since we were created we've succeeded in contributing to the development and awareness of areas of the law that have previously been neglected — like labour law, censorship and the whole field of influx control where non-legal groups have been engaged, but lawyers, with few exceptions, have generally not been involved"

And he'd like to think the centre has served some function in the field of public education — "made the public aware of the extent to which our own legal system falls short of international standards and the ways it should be reformed

"We like to think that we have introduced a socio-legal dimension by dealing with the law as it really operates in society"

For the rest, Prof Dugard has little cause for regret

"We think the areas we have selected are important and should receive continued attention No doubt we'll have to respond to new needs and deal with new subjects"

RDM 23/11/81 (282)

Lifeline for the helpless

By PAT SCHWARTZ

THE name Mehlolo Tom Rickhoto may mean nothing at all to those comfortably ensconced in permanent homes in "white" areas.

But to thousands of people whose livelihood depends on spending 11 months of the year as "non-residents" of the city and a month back "home" with wives and families, it blazes the way to the possibility of a better deal.

It was a Rand Supreme Court judgment in the case brought by Mr Rickhoto against the East Rand Administration Board that gives them hope

Mr Justice O'Donovan granted him an order in terms of Section 10 (1)(b)of the Black Urban Areas Act declaring that he was entitled to live permanently in the Germiston area on the grounds that he had worked for one employer for 10 years

So the name Rickhoto joins the names Komani and Moitse in the growing list of landmark court decisions handed down as the result of the work of Johannesburg's Legal Resources Centre

Ordinary people

The two-year-old centre, whose second annual report has just been published has rapidly established itself as an increasingly important lifeline for the ordinary people who so often find themselves helplessly floundering in inequity

In this latest report, Legal Resources Trust chairman, Mr Charl Cilliers, notes the growing public acceptance and esteem for the work done the Legal Resources Centre"

And that's not just words The figures tell the ..y In the year between March 1980 and March ..1, the LRC s legal clinics, staffed by 40 law ..dents who work there during the academic ..r, took on about 2 000 new cases, conducted ... 10 000 interviews and referred 400 of them ... the LRC for litigation

People came with influx con..ol problems, and transport and ... problems, tussles with ... and anger over consum- exploitation

On their behalf, the LRC has ..ught cases against the police ... wrongfully arresting people ... "pass offences", its clinics ...dled claims by industrial ...kers for unemployment in..ance, workmen's compensa...on pensions, leave, sickness ... notice pay

And one of its important in..olvements has been in the ...ght of domestic workers who ...ege they have been dismissed ...out receiving proper notice

Domestic servants, says LRC rector Arthur Chaskalson in latest report "are an exploit- group and have never had the ...urces to take their former ...loyers to court

Breakthrough

"The work of the LRC in this ... has served to bring to the ...tention, both of domestic ...kers and employers, their re...tive rights and obligations ... it is hoped that this will help improve the position of do... workers and their condi... of service"

Another breakthrough was in ... case in which counsel from ... LRC appeared on behalf of a ...ker who alleged victimisation because of her association with a trade union

The Supreme Court held that a worker dismissed in contravention of industrial legislation which protects workers against dismissal for such reasons could sue her former employer for damages for wages and could also institute a private prosecution for breaching the statute under which 'victimisation' is prohibited

The worker duly brought the private prosecution, with financial assistance from her union, and the employer was convicted and agreed to make a payment in settlement of her claim for wrongful dismissal

Other cases handled successfully by the LRC in the last year have been applications for the reinstatement of people unlawfully evicted from their houses by administration boards

Then there are the hundreds of consumer complaints "This type of exploitation," says Mr Chaskalson, "is the source of much resentment and the work done by the LRC in this field is valuable not only to the individual assisted but also because it spreads awareness that the legal system can provide relief against commercial exploitation"

A great deal is happening in the Legal Resources Centre But, with few exceptions it's all happening in Johannesburg

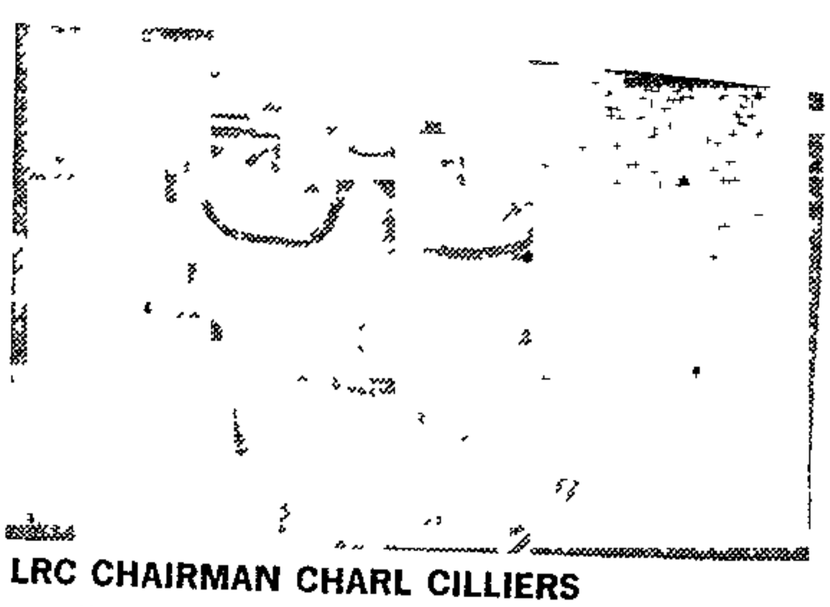
Now, there are thoughts of expansion — of setting up offices in otner cities

And it is time, Mr Chaskalson feels, for the centre to support the establishment of citizens' advice bureaux which would spread the work among "paralegals" — people who will function in areas where the services of a qualified lawyer are not required This would free lawyers and law students to concentrate on issues that require legal training

There is a great need for such bureaux in black townships where "para-legals" can give advice and assistance in connection with comparatively simple issues like unemployment insurance and pension claims, the formulation of claims for notice pay and routine inquiries about housing problems and influx control, says Mr Chaskalson

A great deal has been done in two years but with all the dedication in the world, it still scrapes only the surface of need and there still remains a very great deal to do

LRC DIRECTOR ARTHUR CHASKALSON
... "domestics exploited"



LRC CHAIRMAN CHARL CILLIERS
"growing public acceptance"

HOW THE LRC PERFORMS ITS RESCUE ACTS

TYPICAL of the cases handled by the LRC in the past year is that of Mr EZ In February, 1978, he joined a "burial society" on the basis that if he paid it R6 a month, it would pay for the funeral of any family member who might die and would also lend him money to pay his rent if he lost his employment through illness.

He had to sign a "contract", the contents of which bore little or no relation to the promises which had been made to him — all the "benefits" of any substance were entirely discretionary.

He subsequently contracted tuberculosis and lost his job His wife went to the society's offices on three occasions to try to get a loan but on each occasion she was turned away

She went to the Hoek Street Law Clinic for help In reponse to a summons issued against it, the society (which had ignored a letter of demand) repaid the sum of R186 which Mr EZ had paid to it

□□□

MR LS was arrested in Hillbrow during January 1980 for allegedly failing to produce his reference book on demand After some days his employer got him released on bail and then approached the LRC for help The LRC had him represented at the criminal trial at which he was acquitted. He then instituted action against the Minister of Police for wrongful arrest and imprisonment

At the civil trial, Mr LS claimed that his reference book had been at his place of work a few kilometres away and that he should have been given an opportunity to fetch it

The court found in favour of him on the facts and the law and he was awarded damages of R1 000

New court system sets justice record

CAPE TIMES 28/1/81

252

Chief Reporter

IN a dramatic speeding up of the judicial process, the number of criminal cases disposed of monthly in the Cape Supreme Court has been virtually trebled since August, and the total number in the past three months has already exceeded the total for the whole of last year

In fact, the number of cases dealt with since August is said to be higher than in any entire year in the court's history

In a new system introduced in September, maximum use is being made of court hours, and through close co-operation between the judiciary, the Attorney-General's staff, advocates, attorneys and the police, cases are being brought to court quicker than ever before

This fact, noted by the Cape Times, was confirmed yesterday by the Attorney-General, Mr D J Rossouw, SC, and also by the Judge-President of the Cape, Mr Justice G G A Munnik, who said he wished to pay tribute to everyone who was contributing to making the new system work so effectively

He emphasized that there was no question of individual cases being "rushed", or of the civil roll being adversely affected by the new system In fact more civil cases would have been dealt in the second half of this year than in the first, he said — 516 cases in the August-December period as against 412 in the February-June session

"What it boils down to is that we are making maximum use of available court time, and I have had excellent co-operation from everyone concerned in achieving this"

The Judge-President said that in helping to make the system work, members of the Bar had been readily taking on *pro Deo* work, at a relatively low fee, and in so doing had been "upholding the highest traditions of their profession"

Mr Justice G G A Munnik

Mr F W Kahn, SC

He added "We have now got to the stage where we are hearing most cases within three or four months of the commission of an offence — and I think that is good for everyone concerned It makes for a better dispensation of justice, with accused persons being brought before the courts with a minimum of delay

"I trust that this most encouraging state of affairs will continue"

The Attorney-General, in his confirmation of the Cape Times' facts, said the two people primarily responsible for the success of the new system were the Judge-President and the Deputy Attorney-General, Mr F W Kahn, SC

Mr Kahn had, for all practical purposes, been working full-time on it

The prosecutors in the lower courts, the police and the staff of the Attorney-General's office were also to be commended for their "selfless co-operation in this matter"

Mr Rossouw said that as a result of a heavy inflow of appeals, a sizeable backlog of criminal appeals had built up by September 1980 in the Cape Supreme Court To cope with this backlog, 35 additional courts had been made available by the previous Judge-President

By February this year the backlog had been eliminated, but by July the number of serious cases to be heard by the Supreme Court had become disturbingly high, largely because of an escalating crime-wave in the Cape

This had the effect of making the period between the commission of a crime and the disposal of the case unacceptably long

"To deal with this situation, the present Judge-President and the Bar were approached for their co-operation in achieving greater productivity without the creation of additional posts

"The results achieved have exceeded all expectations

"Not only has a backlog been wiped out in three months where this would normally have taken nine months, but the average period for the disposal of a Supreme Court case has been reduced to a minimum"

EXAMPLES:

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@ASG,CP
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@FIN
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RUNA,1234,PROJX
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. External Filenames
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.) WRITE KEYS
. PROJX*FILEB)

b.

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@RUN,/TP
@ASG,T
@ASG,A
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@ASG,CP
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People searched at court building

Crime Reporter

PEOPLE were searched on entering the Cape Town Magistrate's Court building yesterday morning in an attempt to prevent lawless and drunken elements from gaining access to it with weapons and liquor

There had been a spate of drunkenness in the court building recently because of the shortage of policemen on duty said the Chief Magistrate of Cape Town Mr C F W van Zyl

He told of empty liquor bottles being found in toilets and of a "noisy person being found outside a court room with a loaded pistol

Yesterday morning there was speculation that the new security measures were a result of Wednesday morning bombing in Observatory

After other bomb attacks and incidents various security measures were taken by police and private business

This was denied by a police spokesman who referred the Cape Times to Mr Van Zyl

A Cape Times reporter who went to the court yesterday said afterwards that people entering the building through a side door were stopped and questioned by a policeman and their bags were searched

The policeman said these were "security measures

The main entrance to the building was closed and a notice attached to the gate asked people to make use of the Caledon Street entrance

Mr Van Zyl said he could not comment on the search of people entering the building, but described the build up of disturbances which eventually caused him to ask the commander of Caledon Square for a guard

He said there had always been four policemen watching the two entrances to the building keeping an lookout for people carrying danger ous weapons or liquor but for a time they had been withdrawn because of staff shortage