

# Era of transition for the judiciary

THERE will always be a tendency to place exaggerated emphasis on developments in one's own day. As the French philosopher, Teilhard de Chardin, observed "... In every epoch man has thought himself at a 'turning point' of history. Still... there are moments in history when such an impression is justified". This is particularly true in South Africa today - especially as far as the administration of justice is concerned.

The administration of justice has undergone changes as almost never before since 1994. The crisis in confidence in the legal system prior to 1994 has resulted in a multitude of reforms or proposed reforms in the fields of legal education (curricula and degrees), admission requirements, practical training, the structures of the attorneys' profession, the attorney-general's office, the rights of appearance in the courts, the selection and appointment of judges, the establishment of new tribunals and courts (including the Constitutional

Court) and the expansion of legal aid.

The courts are also in the midst of transition. A new dispensation awaits both the High Courts and the magistrates' courts. Also, the composition of the various divisions of the High Courts has changed - with many of the new appointments reflecting new selection criteria. In addition, the interim reports of the Hoexter Commission of inquiry


## A new dispensation awaits both the High Courts and the magistrates' courts.

on the restructuring of the High Courts are still being debated. Recently the Minister of Justice announced that judges and magistrates are to be "taken through a programme of reorientation to help them to adopt a culture of justice and human rights brought about by the new Constitution". This announcement followed shortly after the mooted inquiry of the Truth and Reconciliation Commission into the judi-

ciary during the apartheid era.

The Bar has always taken an active part in the reform of legal institutions, particularly the courts. (We must, however, concede that the present government has, in terms of their view of the needs of the day, made amazingly fast progress!) The legal lag in the movement to reform the institutions that adjudicate and administer the law has largely been overcome. It now remains for the judiciary and those involved in the administration and practice of law to meet the demands of our contemporary society.

...

In this issue we publish a number of contributions dealing with our court system and the judiciary. In an era of transition it is of the utmost importance that the members of that branch of the legal profession from whose ranks judges have traditionally been appointed should be informed of and involved in the current debates relating to the judiciary. 


# The courts and the media

IN a lecture, recently delivered at an Educational institution, Constitutional Court Judge Albie Sachs expressed the view that the reporting of and commentary on decisions of the Constitutional Court are inadequate. He analysed the Court's decision in *The President of the Republic of South Africa and Another v Hugo (CC) 18-4-97 (case CCT4/97 unreported)* and pointed out the constitutional significance of the decision - especially the enormous changes in the character of governmental power signalled by the decision. He concluded "The press carried either nothing, or else a few laconic paragraphs tucked away on inner pages giving the outcome. There was no mention at all on television".

We share the concern of Judge Sachs. The Constitutional Court has been established as an institution which plays a fundamental role in our democracy. Public understanding should be promoted by the media. There is a need for specialist journalists who can report intelligently on the activities of the Court - and not only that of the Constitutional Court but *all* other courts.

Perhaps the government should take appropriate steps in assisting the media in the provision of accurate, balanced and intelligent reporting. Media relations for courts have developed in several overseas countries. The Supreme Court of the United States of America established the office of cu-

rator many years ago. This office effectively performs the functions of media liaison and communication of information to the public about the court, its decisions and history. Similar models, all apparently extremely successful, exist in other countries.

Apart from the above considerations (which do not apply to the Constitutional Court only) a court information office could play an important role in speaking on behalf of the judiciary, especially in cases where decisions or individual judges are subjected to uninformed or unfair public criticism. 

*Continued on page 84*

# Oorgangstydperk vir die regbank

Die algemene neiging is om eietydse ontwikkelings oormatig te beklemtoon. Die Franse filosoof, Teilhard de Chardin, het die stelling gemaak dat "...In elke epog het die mens homself by 'n 'keerpunt' van die geskiedenis gesien. Tog... is daar tydstippe in die geskiedenis wanneer so 'n indruk geregverdig is". Dit is vandag die geval in Suid-Afrika – veral wat die regs-administrasie betref.

Die regsadministrasie het sedert 1994 soos weinig tevore veranderings ondergaan. Die vertrouenskrisis in die regstelsel van voor 1994 het tot gevolg 'n groot aantal hervormings en voorgestelde hervormings op die gebied van regsopleiding (curricula en grade), toelatingsvereistes, praktiese opleiding, die strukture van die prokureurs-professie, die amp van die prokureur-generaal, verskyningsregte in die howe, die keuring en aanstelling van regters, die daarstelling van nuwe tribunale on howe (insluitende 'n Konstitusionele Hof) en die uitbreiding van regshulp.

Die howe is ook midde-in oorgang.

'n Nuwe bedeling wag op beide die Hooggeregshof en die landdroshowe. Die samestelling van die verskeie afdelings van die Hooggeregshof het ook verander – baie van die nuwe aanstellings reflekteer nuwe keuringskriteria. Hierbenewens word die tussentydse verslae van die Hoexterkommissie van ondersoek na die herstrukturering van die hooggeregshowe steeds gedebatteer.


## 'n Nuwe bedeling wag op beide die Hooggeregshof en die landdroshowe.

Onlangs het die Minister van Justisie ook aangekondig dat regters en landdroste "begelei moet word deur 'n program van reoriëntasie om hulle by te staan om by 'n kultuur van geregtigheid en menseregte wat deur die nuwe konstitusie meegebring is, aan te pas". Hierdie aankondiging volg kort nadat 'n ondersoek deur die Waarheids- en Versoeningskommissie na die regbank gedurende die apartheidsera in die

vooruitsig gestel is.

Die Balie het nog altyd 'n aktiewe aandeel gehad in die hervorming van regsinstellings, in besonder die howe. (Ons moet egter toegee dat die huidige regering verbasend vinnig gevorder het in terme van hulle beskouing van die behoeftes van die dag!) Die regs-agterstand van die beweging om die instellings wat die reg moet bevoordeel en administreer is grootliks ingehaal. Dit volg dat die regbank en die instellings betrokke by die regs-administrasie en -praktyk moet voldoen aan die eise van ons hedendaagse gemeenskap.

•••

In hierdie uitgawe publiseer ons 'n aantal bydraes wat ons hofstelsel en die regbank bespreek. In 'n oorgangperiode is dit van uiterste belang dat die lede van daardie vertakking van die regs-professie uit wie se geledere regters tradisioneel aangestel is, ingelig en betrokke is by die huidige debatte oor die regbank. 

## Die howe en die media

In 'n lesing wat konstitusionele regter Albie Sachs onlangs by 'n opvoedkundige inrigting gelewer het, het hy die mening uitgespreek dat die verslaggewing en kommentaar oor uitsprake van die Konstitusionele Hof ontoereikend is. Hy het die hof se beslissing in *The President of the Republic of South Africa and Another v Hugo (CC) 18-4-97 (case CCT4/97 unreported)* ontleed en die grondwetlike betekenis van die uitspraak beklemtoon – in die besonder die omvangryke veranderings in die aard van regeringsmag wat deur die uitspraak ingelui word. Hy kom tot die gevolgtrekking dat die pers óf niks óf slegs in 'n paar lakoniese paragrawe, weggesteek in die binnebladsye, die uitslag verkondig het. Daar is hoege-

naamd geen melding van die uitspraak op televisie gemaak nie.

Ons deel die besorgdheid van regter Sachs. Die Konstitusionele Hof is daargestel as 'n instelling wat 'n fundamentele rol in ons demokrasie vervul. Openbare begrip moet deur die media bevorder word. Daar is 'n behoefte aan spesialis-joernaliste wat op 'n intelligente wyse oor die aktiwiteite van die hof verslag kan doen – en nie slegs dié van die Konstitusionele Hof nie maar *alle* ander howe.

Moontlik moet die regering geskikte stappe neem om die media behulpsaam te wees met akkurate, gebalanseerde en intelligente verslaggewing. Media-betrekkinge vir howe het in verskeie lande ontwikkel. Die Hooggeregshof

van die Verenigde State van Amerika het die amp van kurator baie jare gelede ingestel. Hierdie kantoor verrig in die praktyk die funksie van mediaskakeling en die verskaffing van inligting aan die publiek oor die hof, sy uitsprake en geskiedenis. Soortgelyke modelle wat blykbaar almal uiters suksesvol is, bestaan in verskeie ander lande.

Afgesien van bovermelde oorgangswegings (wat nie slegs op die Konstitusionele Hof van toepassing is nie), kan 'n hofinligtingskantoor 'n belangrike rol speel om namens die regsbank kommentaar te lewer, veral in die geval van uitsprake of individuele regters wat onderwerp word aan oningeligte of onbillike openbare kritiek.

>

# Praktiese advokaatskapopleiding


**P**RAKTIESE advokaatskapopleiding het sedert die aanvang daarvan in 1996 stewig gevestig geraak en dit ontvang die entoesiastiese steun van pupille, advokate en regters. Dit is bemoedigend dat soveel advokate en regters bereid is om hulle tyd en talente beskikbaar te stel in 'n poging om die graad van bevoegdheid van beginneradvokate te verbeter. Die praktiese opleidingsprogram het daartoe gelei dat 'n nuwe belangstelling in advokaatskap ontstaan het – 'n belangstelling wat gedeel word deur almal wat betrokke is in die program.

Die onderskeie Balieverenigings het

ooreengekom dat dit voortaan verpligtend sal wees vir alle pupille om 'n opleidingswerksessie in saakvoorbereiding, die hantering van getuies, opening van 'n saak, slotbetoog en betoog in 'n aansoek te voltooi. Benewens die verpligte werksessies word daar ook by sommige van die Balies opleidingsoefeninge aangebied wat 'n skynhofmosie en 'n appèladvokaatskapwerksessie insluit.

Die opleidingsprogram het geweldig gebaat by die skakeling met kollegas van die Balie van Engeland en Wallis en die internasionale opleidingsimposium in Londen in Januarie 1997. Toenemende

getalle seniors raak betrokke in die program soos blyk uit die groot getal senior advokate en regters wat aan die werksessie vir dosente-opleiding in Julie 1997 deelgeneem het.

Die praktiese opleidingsprogram verg aansienlike tyd en inspanning deur lede van plaaslike Balieverenigings wat plaaslike werksessies organiseer. Die voorsitter van die Nasionale Opleidings-Koördinerende Komitee, die lede van die komitee, en veral die nasionale koördineerder wat in Durban gebaseer is, lewer 'n enorme bydrae en hulle moet krediet kry vir die sukses wat die program tot dusver behaal het. 

# Practical advocacy training


**P**RACTICAL advocacy training has since its inception in 1996 become firmly established and has received enthusiastic support from pupils, advocates and judges. It is encouraging to see how many advocates and judges are prepared to give their time and talents in an attempt to increase the level of competence of beginner advocates. The practical training programme has also awakened a fresh interest in advocacy on the part of all those involved in the programme.

By agreement between the various Bars it is now compulsory for all pupils to complete a training workshop in case

preparation, witness handling, opening a case, closing argument and argument in an application. In addition to the compulsory workshops, training exercises have been conducted at some of the Bars which involve a moot motion and an appellate advocacy workshop.

The training programme has benefited enormously from contact with colleagues at the Bar of England and Wales and the international training symposium in London in January 1997. An increasing number of senior members are becoming involved in the programme, as is demonstrated by the

large number of silks and judges who took part in the July teacher training workshop.

The practical training programme demands considerable time and effort from the members at the local Bars responsible for organising the local workshops. The chairman of the National Training Co-ordinating Committee and his committee, and especially the national co-ordinator, who is based in Durban, does an enormous amount of work in this regard and should get the credit for the success which the programme has achieved. 

## The Bar: approaching the new millennium

*Continued from page 85*

December 1991. One of its recommendations was that attempts be made to persuade the South African judiciary to adopt a system of case management in order to promote efficiency and reduce delay in the then Supreme Court. This would bring us in line with countries such as England and Wales, Australia, Canada and the United States. Sadly

these entreaties fell on deaf ears, save in the case of the Cape Provincial Division where the first guarded steps were taken along the road to case management, and further measures are in the process of being adopted. The Rules Board has been approached, but without any results.

The Bar must continue to raise its voice in this regard. By the advent of

the new century we must not have fallen further behind other countries in our efforts to bring about a more efficient disposition of Court rolls, with earlier settlement of cases and a lightened work-load for the judiciary. This we must do so that the public may be better served, which is after all the *raison d'être* for the Bar's very existence, and should be its continued aim. 