

OBIER.....

by
viator



Removed from Bench

Florida County Judge Gary Graham has been removed from the bench by the State Supreme Court on the grounds of *inter alia* rudeness, vulgarity, arbitrary imposition of sentences and closing public sessions. His transgressions included the following:

- sentencing a man to 10 days in gaol because he didn't like his T-shirt;
- ordering a speeding boater who had killed a manatee to spend 32 hours by a river yelling at other boaters to slow down;
- taking 60 days off a reckless driver's gaol sentence when the offender agreed to destroy his own pick-up truck.

(*The Lawyers Weekly*, 23 July 1993)

Taalgebruik in die nuwe Suid-Afrika

Gesien die onsekere tydperk wat Suid-Afrika op taalgebied binnegaan, is dit interessant om daarop te let dat in die Kanadese provinsie Quebec, wat die Franse wortels het, die Engelse taal

steeds op die agtergrond geskuif word. Volgens die leier van die Montreal Balie, Casper Bloom, is daar trouens 'n progressiewe agteruitgang in Montreal se regsgemeenskap – met inbegrip van die houe – wat betref die gebruik en beskikbaarheid van die Engelse taal in daardie stad. Ter staving van sy standpunt het hy onder andere daarna verwys dat slegs drie of vier lede van die hofpersoneel van 1 000 persone Engelsgeoriënteerd is, dat die rekords van hofverrigtinge uitsluitlik in Frans voorberei word en dat Engelssprekende regsgeleerdes in toenemende mate daarvoor terugdeins om in sekere houe en voor sekere regters Engels te gebruik ondanks die feit dat hulle kliënte Engelssprekend is. (*The Lawyers Weekly*, 1 Oktober 1993).

Regsprekende beamptes en regspraktisyns sal in die nuwe Suid-Afrika klaarblyklik 'n belangrike rol speel met betrekking tot die handhawing of nie-handhawing van die verskillende tale in die houe en elders in die regswese.

Judges to forfeit pay rises

An agreement entered into in 1992 in Ontario (Canada) provided for a 2.5

per cent increase in judges' salaries with effect from 1 April 1993, and guaranteed annual increases for 1994 and 1995. However, Ontario's provincial judges have now offered to go without raises for three years in aid of the province's recently-enacted "social contract". The judges have also offered to make available an additional 3 000 sitting days per year – about 12 extra days per judge – until December 1995, in an attempt to cut down the backlog of judicial work. (*The Lawyers Weekly*, 16 July 1993)

Hopefully, the time will also arrive in South Africa that people will be prepared to forfeit salary adjustments and to work longer hours solely in the interest of the country and its inhabitants.

Judges and Justices

Members of the federal district courts in the U.S.A. are called "judges" while members of the U.S. Supreme Court are known as "justices". (Presumably because of the appearance of women on the bench the customary "Mr" before "Justice" has been dropped).

In lighter vein Judge Jerry Buchmeyer of

Texas remarked as follows on this distinction: "The best explanation I've heard is there is no justice in the U.S. district courts and there are no judges on the U.S. Supreme Court." (*ABA Journal*, October 1993)

Too beautiful

Denise Rousseau, a 36-year-old housewife from Toulon, France, is suing her doctor after he performed surgery which made her too beautiful. It appears that Mrs Rousseau asked the doctor to smooth out wrinkles around her eyes and remove her double chin. Instead, she claims, the plastic surgeon gave her a completely new face. "He made me beautiful – too beautiful," she said. "Now my husband is furious... I can't go out without men bothering me. I'm depressed and my husband is really jealous."

The doctor called the suit outrageous and said: "I charged that woman \$5,000 and gave her a face worth \$10 million," adding: "even if I wanted to restore her face to its original appearance – and I certainly don't – it's an impossible task." (*The Lawyers Weekly*, 26 March 1993)

Political killings in Haiti

On 14 October 1993, gunmen shot and killed Haitian lawyer and Minister of Justice Guy Malary, his driver and two of his bodyguards as they left the Justice Ministry in Port-au-Prince. According to bystanders, armed police and civilians chased away witnesses immediately after the shooting and threatened to shoot news photographers at the scene.

Mr Malary's assassination adds to the more than 100 political killings reported in Haiti since the signing of the Governor's Island Accord in July 1993.

The Lawyers Committee for Human Rights (Newsletter of October 1993) says that this campaign of violence, culminating in Mr Malary's murder, seriously undermines the authority of the newly elected government in Haiti. This violence – according to the Committee – points to the urgent necessity of supporting Haitian efforts to remove

human rights violence from the ranks of the military and police.

Lawyers' drinking habits

A federal study on professionals conducted in Canada revealed that almost a third of lawyers described themselves as problem drinkers, and over half said they have tried marijuana. Almost 10 per cent of the lawyers surveyed said they had used cocaine, and 25 per cent admitted to trying narcotics. The survey was done for the health department's bureau of dangerous drugs. (*The Lawyers Weekly*, 18 June 1993)

High levels of gender bias and harassment

A \$425 000 (R1 461 000) "Gender Equality Task Force" study carried out during 1991-1993 under the auspices of the Canadian Bar Association showed that female law professors in Canada are experiencing high levels of gender bias and harassment by both male faculty members and students. The Task Force was chaired by the former Supreme Court of Canada Justice Bertha Wilson. (*The Lawyers Weekly*, 25 June 1993)

"Dismissal" of Judges by abolishing their Court

In *The Bulletin* of 19 January 1993 Mr Justice Kirby, President of the Court of Appeal of New South Wales, noted *inter alia* the extraordinary actions of the new government of the State of Victoria in "dismissing" 11 Judges of the Compensation Court by the simple expedient of abolishing their Court. Mr Justice Kirby pointed out that this action of the Victorian Government was the most serious assault on the independence of Judges since Australia became a federal nation. (*New Zealand Law Journal*, 21 February 1993)

Will a government in the new South Africa be legally competent to "dismiss", for instance, all the Transvaal judges by simply abolishing the Transvaal Provincial Divi-

sion and creating new superior courts in the various new provinces; and thereafter appointing judges de novo for such courts? We hope not.

Detention of suspects for investigative purposes

In what is described as a "groundbreaking" decision, the Ontario Court of Appeal has recognised a common-law police power to detain people for investigative purposes without arresting them. The ruling also establishes that before a person can be detained for such purposes, the police must have "articulable cause", i.e. a reasonably-based suspicion that the detainee is engaged in criminal conduct. (*The Lawyers Weekly*, 5 March 1993)

In South Africa persons are also detained quite frequently for questioning. If such a person is not prepared to co-operate, he may withdraw but in such a case the police may possibly decide to arrest him. (Kriegler, Hiemstra: Suid-Afrikaanse Prosesreg, fifth edition, p 87). But as in Canada prior to the decision referred to above, there is no explicit recognition in South Africa of a power to detain that is short of arrest.

* The United States Supreme Court recently approved the investigatory detention of a woman who was suspected of concealing drugs internally. She was kept in a small room at an airport for 24 hours until she moved her bowels.

Female guards permitted to frisk male prisoners

The Supreme Court of Canada has ruled that male prisoners' rights (concerning equal treatment) are not breached when female guards frisk them or see them naked or on the toilet in their cells. One of the reasons given by the Court was that female guards have a "humanizing effect" on male prisoners. This conclusion was arrived at even though female inmates are not subjected to frisk searches nor to the surprise surveillance of their cells by male guards. (*The Lawyers Weekly*, 10 September 1993)



This judgment was vehemently criticised by Rob Martin in *The Lawyers Weekly* of 29 October 1993. He *inter alia* remarked:

"His (referring to the Judge who wrote the judgment) remark about the 'humanizing effect' of female guards left me gaping in amazement. I suggest an experiment.

Let (the Judge concerned) station a woman – a trained prison guard if he likes – at the door of the Supreme Court of Canada gents' loo to observe him the next time he is straining to relieve his learned bowels.

He can then report back to us on just how humanizing the experience was."

In South Africa the relevant Correctional Service Regulation provides that a prisoner may only be searched by a member or temporary warder of the same sex.

Advertising of judicial vacancies

The Lord Chancellor of Britain has announced a new policy of open advertising for lower-level court vacancies. He said advertising for judges would reform what is currently seen as a secretive, "old boys' network" selection process.

The positions advertised will include circuit judges, deputy district judges and recorders.

Applications from women and minorities will be encouraged but there will not be a quota system, the Lord Chancellor said.

Final selections will be made by the senior judiciary and there is a possibility that lay persons will be included in the process. (*The Lawyers Weekly*, 10 September 1993)

Shrinking Crown Court caseload

In 1992/93 the number of accused committed to the Crown Court in Eng-

land fell by 13.6% against the previous year – despite the ever-increasing crime rate. Many observers attribute this fall to declining police morale in the face of PACE (Police and Criminal Evidence Act – which, as a result of amendments introduced in recent times, is said to be hampering police work), "softer" sentences and the mountain of paperwork. The increased use of the cautioning system is also given as a factor. Another factor would seem to be the creation of Youth Courts and the recent extension of their jurisdiction to seventeen year olds. This resulted in the diversion of many young offenders who would formerly have reached the Crown Court. (*Criminal Bar Association Newsletter*, September 1993)

Racist attitudes in Canada

A recent Ontario Court of Appeal decision has recognised the existence of racism in Toronto and held that a black accused may question potential jurors on whether their impartiality is tainted by racist attitudes. Citing research studies that suggest racism is "part of the community's psyche", the Judge in question decided there was a realistic possibility that potential jurors might be affected by racist attitudes. (*The Lawyers Weekly*, 22 October 1993)

Disciplinary inquiries against judges

The Judicial Council of Manitoba has reprimanded a Provincial Court Judge for a series of comments made at the Bench. The inquiry by the Council was sparked by a ruling wherein the Judge concerned told an accused charged with assaulting a woman:

"I can tell you from 60-odd years of experience that there isn't a woman worth the trouble you got yourself into."

Other charges involving remarks by the Judge on women were also levelled against him. (*The Lawyers Weekly*, 8 October 1993).

- The Judicial Council hearing was the first ever to allow television cameras at such an inquiry. Videotaped footage of the hearing was thereafter shown on television news.

No provision has thus far existed in South

Africa for disciplinary inquiries against judges. However, section 105(2)(a) of the Interim Constitution empowers the Judicial Service Commission to make recommendations regarding inter alia the removal from office of judges whilst section 104(4) provides that a judge may only be removed from office by the President on the grounds of misbehaviour, incapacity or incompetence established by the Judicial Service Commission. It would therefore appear that complaints regarding the behaviour of judges may after the commencement of the new dispensation be lodged with the Judicial Service Commission and that the Commission will have the authority to institute an inquiry in appropriate circumstances.

Judges entitled to free parking

The Quebec (Canada) Superior Court granted a declaration, sought by the Chief Justice of Quebec and other judges, that provincial and superior court judges were constitutionally entitled to free parking as a matter of judicial independence. The court also granted an injunction permanently enjoining the government for charging for parking, and ordered it to provide parking at or near all courthouses in the province. The judges' application had been made in response to a government announcement made without consultation with the judges, that it was raising the judges' subsidized \$40 a month parking rate to the market rate of \$135 a month. The government's action was perceived as an attack on judicial independence, and as a precedent which could lead to further erosion of the judges' working conditions. In finding in favour of the judges, the court stated that secure and convenient parking was essential for judges to fulfil their functions, particularly to protect family and criminal court judges from violence. Judges were not government employees, and expecting them to pay for parking was as ridiculous as expecting them to pay for other necessities such as hearing rooms, secretaries and offices. (*The Lawyers Weekly*, 22 October 1993)

From a South African perspective it is absolutely unthinkable that a judge would ever be charged for parking at official premises. It is amazing that judges in Canada had to rely on their constitutional "independence" to avert such charges. Good manners on the part of governments demand that such charges should not be levied. ○