Klippe in die bos

Uittreksels uit 'n toespraak gelewer deur appèlregter Leo van den Heever in September 1995 by die jaarlikse baliedinee te Bloemfontein

Poor court administration

ACCORDING to an article in an American journal poor administration resulted in judges being "kept idle as they waited for defendants to be brought before them from detention facilities; witnesses either failed to appear or were not notified that they were due in court; defense counsel failed to show up, alleging that they had conflicts in scheduling; police officers were unavailable; and prosecutors were often not prepared to proceed" – all, of course, at enormous cost to the state. This has a distressingly familiar ring about it, it smacks of the magistrate's courts where I learned a great deal about human weakness, wickedness, wiliness and woes while also indulging in a crash breeding course on the then brand new Free State Goldfields. The position in the magistrates' courts seems to be unchanged except that the situation is more so, judging by such records as come before the AD from time to time. New York in those years instituted a criminal justice co-ordinator's office, which helped. Since we are behind America in most fields, it would be sensible to find out which of their experiments have been moderately successful before we blindly follow their lead. But this one sounds commonsensical. I'd root for a criminal justice co-ordinator in the magistrate's court, and suggest that the most successful candidate will probably turn out to be an efficient housewife, kindly but brooking no nonsense, sort of forty-something years old, bored at home because she has all mod cons and her children are off her hands, who ran her home and her husband and her children and their rugby and dancing and music lessons and dentists appointments, and the rest, efficiently and comfortably ...

"... interesting times."

Ek gaan julle nie op baie voorstelle vergas nie van hoe die regstelsel wat uit die vasteland hier aan die suidepunt van Afrika ingevoer is, met prosesreëls uit Engeland afkomstig, verbeter kan word nie om 'n reënboognasie ten beste te dien, want dan sal ek werklik aanhou totdat ek in julle slaap praat. Dat die regstelsel gaan – en moet – verander, is gewis. Foute sal ons maak, inderdaad maak hulle alreeds, maar ons sal hopelik daaruit leer, vinniger nou in die wroeging van verpligte verandering as wat dalk vroeër moontlik was, omdat die regsberoep geweldig konserwatief

(Vir die heel bitterste hou jy: "May you have builders in your house all the days of your life".)

is en soms aan verkalkte are ly. Ek besef terdeë dis maklik vir my om te praat, ek word binnekort verlos van aktiewe diens waarna ek slegs jaarliks 'n "kamp" moet doen. Dis die jonges onder julle wat aan die opwinding, maar ook stres van verandering sal moet 'n aandeel hê en hopelik ook daaraan rigting gee. Dis mos glo 'n Sjinese vloek wat jy op die hoof van jou tweede-bitterste vyand afbid: "May you live in interesting times". (Vir die heel bitterste hou jy: "May you have builders in your house all the days of your life".) Veranderings is reeds daar, ongemerk ingevoer sonder dat Jerichosmure omgeval of die stelsel vergaan het. Toe ek – kort voor die runderpes, vir my voel dit soos gister – tot die Balie toegetree het, was daar geen vrou wat landdros of aanklaer was nie, nog minder 'n Tswana of Zulu. Die veranderings gaan slegs vinniger kom, pleks van insypel. Mits die regte persone vir die regte take aangewys word, kan dit slegs goed inhou. Ons het alreeds parallelle regstelsels, sonder dat ons dit erken. As voorbeeld, die ingewikkelde regsreëls van toepassing op al die fasette van die formele verwerkte voedselbedryf het niks op aarde te doen nie met ongelisensieerdes op straat wat ook verwerkte voedsel verkwansel, en niemand probeer om daardie regsreëls daar toe te pas nie. Plakkers bodder nie met plaaslike bouregulasies nie, sjebiens doen, sover ek weet, nie aansoek om dranklisensies nie. Ordening van sulke aktiwiteite – op 'n ander grondslag as die gesofistikeerde westerse – word noodsaaklik, anders gedy "war-lords" en taxi-oorloë.

Spesialisasie

Om Julie Andrews aan te haal "Let's begin at the very beginning, a very good place to start." Opvoeding kort opknapping (wat nou nic juis iets met regsgleerdes te doen het nie, behalwe in ons eie tuistes). Indien kinders reeds op skool 'n paar basiese regsbeginsels leer, met die klem daarop dat elke reg ook 'n verpligting impliseer, sou die las op ons howe waarskynlik reeds verlig word. Wat opleiding van regsgeleerdes betref, indien standaarde vir toelating tot die beroep dan verander moet word, behoort die vereiste van "horses for courses" in gedagte gehou te word. En waarom nie arbitrasie-tipe howe nie? As voorbeeld: ingenieurs wat aangestel word om die wetenskaplike meriete van patente-geskille te besleg, met regsgeleerde assessore om die statutêre bepalings op hul feitelike bevindings toe te pas? Of geoktrooieerde rekenmeesters om die quantum van skade te ➤

bepaal, met dieselfde soort van assessore, in plaas van anders om? Dit kom geweldig omslagtig voor om regters vir elke afsonderlike saak deur twistende en partydige deskundiges te wil oplei, ten aansien van spesialiteitsake waaroor regters veronderstel is om geregtelik onkundig te wees, in plaas van om onpartydige deskundiges te vind wat daardie deel van die twis besleg. Dit kan miskien net so min – of veel – kwaad doen om 'n prokureur-generaal op die regbank aan te stel, as om 'n advokaat aan te stel wat slegs kommersiële werk vir die jongste twee dekades gehanteer het, afhangende daarvan of elkeen van hulle by sy besondere lees gehou word. Spesialisasie is waarskynlik ons voorland. En ek is Goddank bly dat ek dit gespaar gebly het, want die vreugde van die nering was en is vir my geleë in die enorme verskeidenheid aangeleenthede wat aandag geverg het en verg. Die lewe word nie saai nie. Maar spesialisasie het sy eie probleme, omdat dieselfde menslike vraagstuk tot totaal verskillende advies kan lei, afhangende van die deskundigheid van die persoon wie se raad gesoek word.

Were a young wife to pose the question: "If I take out this particular policy on my husband's life and he dies within a week what could I expect to get?" the reply of an actuary will sound in money and depend on the terms and conditions of the policy. Were the young wife to ask a criminal lawyer the same question, he would be more interested in the marital relationship than the terms of the policy, and answer "perhaps ten years". Cases would have to be wisely channelled, or specialization not that narrow, since overlapping is often unavoidable. What wears the garb of a divorce matter may require the attention of a chartered accountant in a commercial court rather than of social workers and psychiatrists in a family court, depending on whether custody of children or division of property is what is preventing a settlement.

Oor taalgebruik

Waaroor ek egter ernstig is, is die eerste en grootste fout wat die regsberoep in Suid-Afrika na my mening wil begaan. Dit gaan nie oor regsreëls nie, maar oor taal. Jammer, dit gaan oor regsreëls, en juis daarom gaan dit oor taal. In *De Rebus* (Augustus 1995) verklaar die VPO se president dat hy "... welcomed the scrapping of the language requirements for entry to the attorney's profession, stating in a media release that it was one of the ways of making the profession more accessible". Die advokatuur gaan blykbaar dieselfde vrystelling kry, as die wetsontwerpe nie reeds tot wetgewing verhef is nie.

Enigiemand wat wil prokureur of advokaat of regter in watter land ookal wees, moet kan kommunikeer. Kommunikasie beteken taal. Taal beteken hier minstens Engels, waarskynlik beide Engels en Afrikaans, en hoe meer van die ander nege tale mens kan behartig, hoe beter. Oorloë word ontketen deur misverstande net so dikwels as deur magsug. Kontrakte en testamente wat nie duidelik is nie, lei tot litigasie en familietwis en bankrotskap. Helfte van ons probleme word veroorsaak deur wetsopstellers wat dit wat hulle werklik beoog, met lang woorde en ellelange sinne en heen-en-weer verwysings na ander artikels en subartikels, probeer oordra. 'n Ware verhaal, wat Mark Kumleben, was hy maar hier vanaand, sou bevestig, was toe hy as jong advokaat om 'n regsmening gevra is oor die betekenis van 'n nuwe Vrystaatse Ordonnansie wat pas gepromulgeer is. Hy het kop gekrap en probleme met die dubbelsinnigheid daarvan ondervind. Hy probeer toe 'n onortodokse kortpad sny en bel die wetsopsteller, wat hy persoonlik al ontmoet het, en vra wat die heer nou eintlik in die besondere artikel bedoel het. Daar was 'n oomblik se stilte aan die ander kant van die draad, toe kom die verontwaardigde antwoord: "Ek kan nie vir jou sê nie, die hof het die artikel nog nie uitgelê nie."

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Punctuation can be a pitfall, and many contracts gabble along with no punctuation at all in the hopes that this will pass muster. Given the following seven-word sentence to punctuate correctly, "Woman without her man is a savage," a class of boys produced: "Woman, without her man, is a savage". The girls on the other hand wrote "Woman! without her, man is a savage".

Not only lawyers' language needs to be precise. Accurate translation is imperative if justice is to be done in our courts unless and until all involved in a trial speak the same language. Accurate translation in the heat of court-room battle is an extremely difficult task requiring concentration and knowledge of the subject involved as well as the legal concepts bandied there. How many injustices have been perpetrated because what the witness actually said was not rephrased exactly, one can only surmise – with apprehension if one has ever been roped in to interpret from one to the other of the languages accepted as the only official ones until recently. From the transcripts in records of sentences like "On the road I saw the glasses. It shows that that person was collided by a motor vehicle", it is clear that linguistically we have a long, long way to go, and should have more language study, not less, before we are turned loose in any part of the profession of the law.

Court interpreters should receive a good deal more than the few weeks' training offered them, and far more handsome salaries should be paid them to attract the right people into probably *the* most important job in the courtroom. Yesterday I read a petition dealing with a third party claim. The plaintiff alleged he was standing with his lady-love on an island between two carriageways where he was run down by the driver of the insured vehicle. The latter said that plaintiff ran across the freeway into his ➤

line of travel. This was the official court interpreter's version of what plaintiff said in reply to the question "What happened while you were standing there? --- After we stood there and after we had just kissed each other and about to part as it was already becoming dark my back was faced to the side from where the cars of Johannesburg came from. Whilst I was still holding her under her armpits I heard her scream and looking above or on the side of my righthand shoulder. When I just tried to look back I saw lights of a motor vehicle. When she was screaming I saw the lights being very much near me. I pushed her. When I tried to run away from this motor vehicle I was knocked down by this vehicle and thereafter I did not hear anything".

The typists who prepare court records should not produce startling transcripts – like "concepts used in generous" – for *eiusdem generis*. And it should be compulsory for each and every one of us involved in law to buy a new dictionary every now and then. Language lives, is not static – apart from Latin. Perhaps it was and is a mistake for lawyers to have abandoned that! When I was a junior, grass was what cows ate. Pot was something one either sat on or cooked in, depending on the room in which you were. A-i-d spelt a synonym for assistance, not a procedure related to IVF, and aids was the third person singular form of the verb meaning to help. Gay and fairy were associated with Grimm and Andersen. Crack meant a fissure, not a drug, and Lsd was slang for pounds, shillings and pence, erudite *nogal*, being the abbreviation of librae, solidi and denarii.

En wat ek sê is so elementêr dat meeste mense die mees ernstige struikelblok in die weg van geregtigheid in ons howe verbykyk.

Ten slotte, is dit natuurlik belangrik om te besef *wat* die taal is waarin kommunikasie gepoog word, voor mens die inhoud daarvan probeer bepaal. Ek dink aan die storie van Toon op 'n trein op 'n stasie in Engeland toe hy regsadviseur van generaal Hertzog was, en deur die generaal nader geroep is. "Toon, jy's mos 'n kenner van Latyn. Kom kyk na daardie leuse op die bord: *eat*, laat dit wees; *more*, volgens gebruik; *fruit*, laat hom geniet. Dis mos onsinnig." "Dis Engels, Generaal: Eat more fruit."

'n Kwessie dalk van *when in London, don't try to do as the Romans do*!

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