

Pre-trial services and awaiting trial prisoners

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Background

THE large number of awaiting trial prisoners currently in detention is a main area of concern for the Government and especially the Department of Justice. At the same time it is of the utmost importance that accused persons who are deemed to pose a threat to society, are not released on bail. However, bail decisions are never easy. The rights of an accused person to be released must be weighed against the concerns of the public to live free from fear of crime. It is also a fact that most bail decisions are made shortly after an arrest has been made with little information about the accused person or useful information from the witness or community about the incidents surrounding the arrest.

Pre-trial services system

The Department of Justice feels obliged to do all that is possible to reduce the number of prisoners awaiting trial. The Minister of Justice, Dr Dullah Omar, has launched a new structure in the criminal justice system, namely Pre-trial Services to enable our courts to make more informed decisions about bail.

This new bail administration system is designed to do two things:

- make the justice system more *accountable*; and
- provide the opportunity for meaningful *participation* in the justice system by the community.

What is the Pre-trial Services system?

The Pre-trial Services system was designed by the Department of Justice with the support of the Bureau of Justice Assistance. Pre-trial Services Offices, staffed by bail officers and supervision officers, interview and photograph every accused person to get demographic information, asking questions about where they stay, where they work, names of references and any assets which the accused may have. This information is stored into a custom-built computer database, the first of its kind in South Africa. This database is the first link in a national justice information system, linking justice to the South African Police Services, Correctional Services

and other justice-related government agencies as it expands and paves the way for efficient criminal justice administration, moving justice into the twenty-first century. The Pre-trial Services officers check on the information given by the accused, making phone calls, talking with family members and visiting homes to check on addresses and jobs. Once verified, this information is given to the court. The Pre-trial Services does not take away the discretion of the magistrate to make a bail decision, but simply provides the court with more information. The office also recommends conditions for release if the accused is granted bail.



Success of the Pre-trial Services system

Pre-trial Services offices are at present located at the Mitchell's Plain and Johannesburg Magistrate's courts. Over 4 000 accused persons have already been placed on the Pre-trial Services database since the Mitchell's Plain office was opened in late August 1997. The system has already picked up a number of repeat offenders who have committed a second or third crime while out on bail.

At Pollsmoor Prison the awaiting trial population from Mitchell's Plain who had been released on bail but who could not afford to pay, has declined from 75% in July 1997 to just under 47% in January 1998.

Awaiting trial prisoners

A task team has been established under the auspices of the National Crime Prevention Strategy (NCPS). This task team, comprising representatives from the Departments of Correctional Services and Justice and the South African Police Services, will compile a management plan on awaiting trial prisoners.

Measures already in place

- Public prosecutors have to lodge monthly returns of awaiting trial prisoners who have been in custody for longer than three months.
- Presently the Division: Court Management at the National Head Office in Pretoria has taken over the function of monitoring court roll statistics on a monthly basis.
- There are forums in certain magistrate's offices where role-players meet regularly to discuss causes of delays in the finalisation of trials.
- Any court before which a charge is pending in respect of which bail has been granted may, upon the application of the prosecutor or the accused, increase or reduce the amount of bail determined, or amend or supplement any condition imposed, whether it was imposed by that court or any other court.

The problem

At present it appears that the main problems are the following:

- The majority of awaiting trial prisoners are those charged with crimes which are not serious.
- The majority of awaiting trial prisoners are granted bail but cannot afford to pay it.
- Delays in the finalisation of trials are in certain areas due to shortage of staff.
- Prisons are overpopulated with sentenced prisoners and prisoners awaiting trial.

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yer and less too than the more moderate \$16 000 000 he had hoped for later in the trial. Each family got something like \$475 000. Schlichtmann's firm paid off its debts, Schlichtmann took \$30 000. This was after several years' work.

Morals

This is a book full of morals and therefore questions for lawyers. Start with the "truth". How far does that give way to the need for finiteness? At one stage the judge directed the jury to establish a date before which some hydro geological event would not have occurred. Pluck it almost out of the air. A necessary fiction for the resolution of the case perhaps but "the truth"? A document which may well have had a bearing on the question of contamination by Beatrice came to light only after the conclusion of the case: should it have led to a re-opening of a very long trial?

Then contingency fees. In the UK contingency fees relate only to the lawyer's fees. The solicitor is not obliged to fund the case for example by paying expert witnesses' fees or travel expenses. In this case the expenses funded by Schlichtmann and his firm amounted to more than a \$1 000 000,

an impossible sum if the plaintiffs had had to finance the case themselves. In the UK the poorest can undertake this type of litigation because Legal Aid pays. In the USA anyone can litigate if they can find a lawyer who will take the gamble upon him/herself. In the UK and SA plaintiffs are liable for costs awarded against them in the event of losing the case, another deterrent. In the USA there is no such rule.

The lawyer who gets too involved. The lawyer obsessed. Was this because of the financial investment/gamble that was going on? Or a feeling for justice? There are not many clues to the answer in the book. There are pages devoted to detailed descriptions of Schlichtmann pacing, wearing his "lucky" suit or tie, but the reason for his obsessive behaviour is not explored. He clearly wanted the "truth" recognised; he wanted to win but did he want that so badly because of a passion for justice or for his clients or because he had embarked on that case and put so much into it?

Client control of the case: this vanished and it later led to bitterness over the style in which the trial had been conducted particularly in relation to expenses. It is true that the clients did not

pay any of these but the amount which each family obtained from the settlement was noticeably diminished by the expenses which had to be deducted.

Law as a business. Schlichtmann, the lawyer, did not take his fee of 40% of the damages agreed upon initially. He took much less and ended up bankrupt. Other parties, once there was a settlement, who had had a peripheral or initial involvement in the case, appeared like harpies making their demands.

Was legal process the best way to have approached the situation at all? Some years after the trial was over, a government agency made the corporations clean up the aquifer. How far did the publicity attendant on the trial push the political action?

Contingent fees may be a way out of the impasse which faces the huge mass of society which falls outside Legal Aid limits but cannot afford litigation. Its advantages and perils are made clear by example. I have said that this is a dull book. It is written in pedestrian prose. But it is immensely interesting and involving. It is to be recommended for those worrying about legal services, and also for those in any way concerned over environmental damage. 

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Proposed steps to solve the problem

- The Department of Correctional Services will be approached to furnish the Department of Justice with the following information:
 - Statistics of prisoners awaiting trial for a period of three months and over;
 - statistics of prisoners awaiting trial who, though granted bail, cannot afford to pay the amount determined.
 The information obtained from the Department of Correctional Services will be brought to the attention of Attorneys-General and they will be advised to take

the necessary steps to solve the problem.

- The Department of Correctional Services will be asked to advise prisoners awaiting trial who could not afford to pay bail to apply for reduction of the bail amount to an affordable amount or even to be released on their own recognisance.
- The Department of Justice will establish whether certain magistrate's courts are less occupied than others with the aim of temporarily re-deploying court officials to areas with an overload of work to expedite completion of trials.

- Certain divisions and sections at the national and regional head offices will be approached to release some legally qualified officials to offer relief services at areas overburdened with court work.

Conclusion

All indications are that the new Pre-trial Services System is a resounding success. At present these services are provided at the Mitchells Plain and Johannesburg magistrate's courts, while the planning for the introduction of the same structure in Durban and Port Elizabeth are at an advanced stage. 