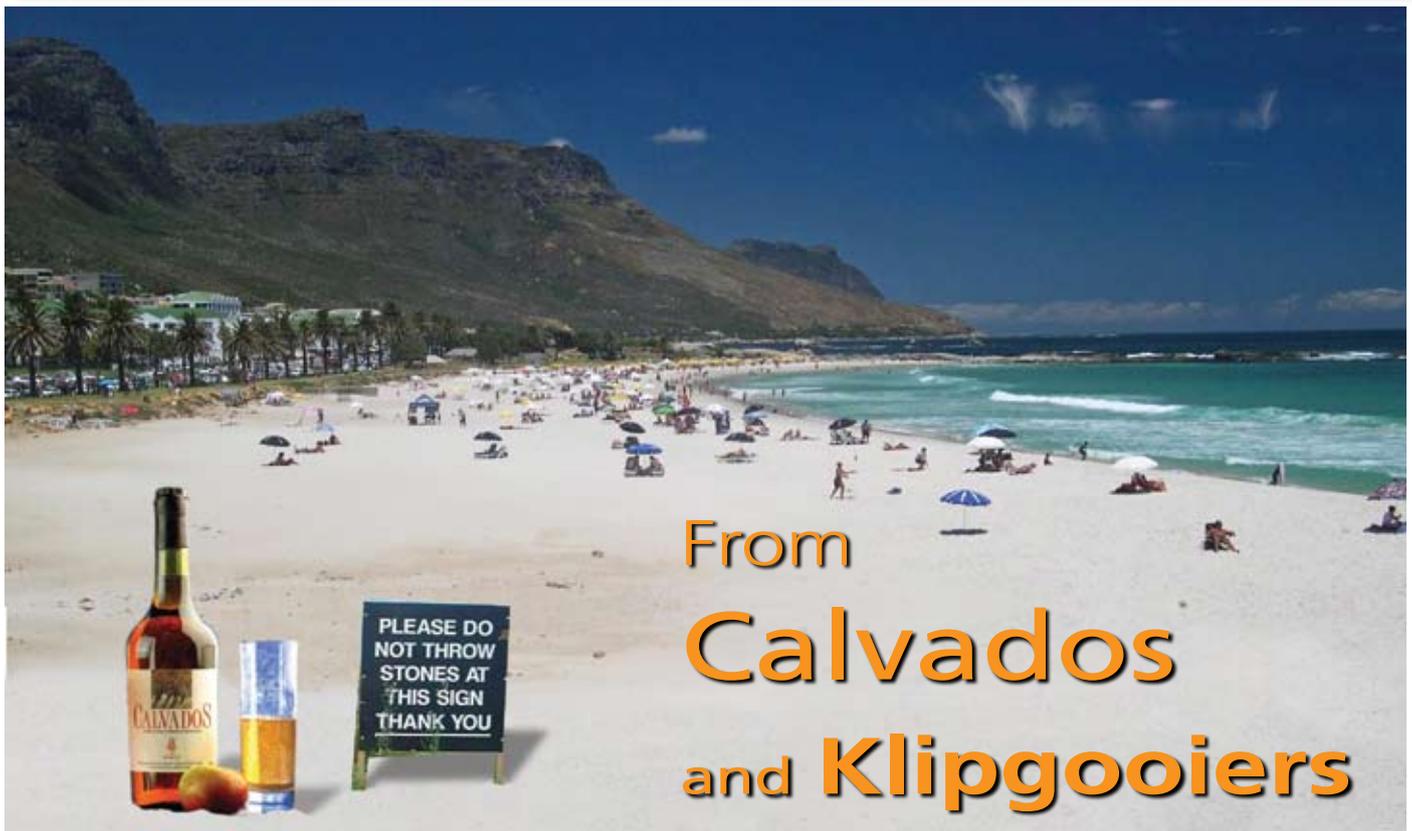


tional law jurisprudence is supposed to mean that judges pronounce what the Constitution says is the law. This combination of pronouncing what the Constitution says is the law, on the one hand and the precedent on the other hand, catapults the judiciary and makes it to occupy a position it has never occupied and empowers it to occupy space normally reserved for the policy and political decision-makers. It is a new space attracting friction. The response to these challenges demands creativity and patience. It requires vision, wisdom and no panic reactions.

No matter how difficult it has been in recent months, no matter

how difficult it can be in future, the judiciary and legal profession must deepen the commitment to the value that the courts should be independent and that once that value is destroyed, our democracy will equally have fallen. It is our job and our duty to rally our people around the concept and values of judicial independence and the need to protect our courts against any forms of influence from any quarter. But it is equally our duty to make sure that the judiciary plays the role that it is supposed to play in terms of the Constitution, namely, expounding and applying the law. Law making by judges is a by-product, something that in the words of Van den Heever 'sometimes' takes place. It is not a norm. a



From Calvados and Klipgooiers to Cape Town

By Frans Rautenbach, Cape Bar

Frans Rautenbach is a former member of the Johannesburg Bar who, like many others, rediscovered life at the foot of the Mountain.

In many ways it was the best of times and the worst of times. The fury with which the Apartheid state still clung to its precarious power position in that latter half of the decade of the eighties, was matched only by the delirium of the hope that, perhaps finally, change was coming.

We, the class of '85, were already aware of the little cracks in the edifice of the old regime even as, in other ways, life was carrying on as before. This made for an eclectic mix of characters at the Johannesburg Bar who were as different from each other as they were entertaining. My co-pupils included Arnold Subel (currently a

silk at the Johannesburg Bar), Jonathan Watt-Pringle whose master was Johnny Myburgh, Alistair Franklin (then predictably nicknamed 'Blen,' and now a silk at the Johannesburg Bar), Reenen Potgieter (now a silk at the Cape Bar), Gerhard van Tonder and Sean Naidoo (both of whom, like Jonathan Watt-Pringle, later moved to the London Bar).

Perhaps a sign of the changing times was our first meeting at pupils, when Max Labe SC welcomed everyone and remarked that Sean Naidoo was not able to attend the meeting through a prior commitment. 'But don't worry,' Max re-assured us, 'You will easily recognise Sean ... He is the gentleman who is, well, always very well dressed ...'

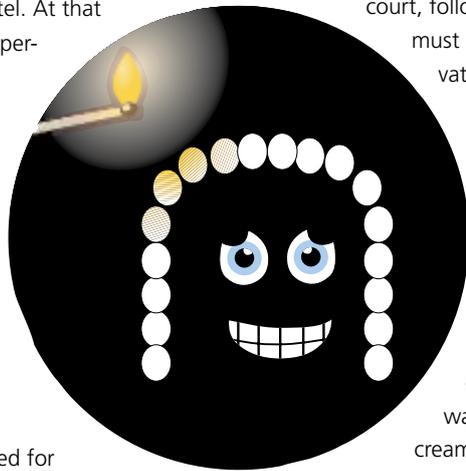
Like all groups of newly admitted advocates, we had one thing

available in abundance: spare time. No wonder then, that we spent our time - apart from agonisingly rearranging the two or three blue brief covers on our sparse desks, over and over - finding ways to entertain ourselves. And of course, like all newly-admitted advocates, we were deeply under the impression of our own learned importance. In those days the Bar was still housed in Innes Chambers and Schreiner Chambers in Pritchard Street. In the building just behind Innes Chambers was the Dawson Hotel. At that stage it was still a fairly smart institution, desperately clinging to a fading glamour that was threatened by the socio-economic changes through which the centre of Johannesburg was going even then. One of the stratagems employed by the Dawson at this time was to provide a very generous buffet lunch for the princely sum of about R30. As befitted important advocates, we liked to spend lavishly not only on the buffet, but also on the drinks to accompany it. On one such occasion, while drinks were ordered to round off the sumptuous meal, I grandly asked for some Calvados apple brandy, which I had ordered there before. A minute later Reenen Potgieter came across and reported back from the barman: '*Calvados c'est finis.*' Not one to display my ignorance without good reason, I quickly responded: 'Whatever, I'll have one ...'

Work consisted of the odd *pro deo* murder (R75 a piece), and soon afterward bail applications and postponements of public violence trials (R150 each) for attorney Priscilla Jana in such far-flung and exotic venues as Nylstroom, Koppies, Heilbron, Wolmaransstad and Welkom. This soon led to the step-up to fully fledged 'klipgooier' and terrorism trials. This was also the heyday of labour law disputes, hard-fought between tough adversaries like Hans van der Riet, Willem le Roux of the attorneys' profession and Pieter Pauw, once described by Bulbullia DP of the Industrial Court as 'one of the leading luminaries of labour law.'

We also appeared in civil trials in the Magistrate's Court. In his first such matter Jonathan Watt-Pringle had to defend the driver in a 'crash and bash' action. The Plaintiff's counsel called his first witness, an eye-witness. When he asked him to describe what he had seen, the witness candidly responded: '*Nee, hel, Meneer, ek het niks gesien nie!*' The trial did not last very long.

One of my contemporaries at the Bar at the time was Jan-Hendrik Munnik, son of the former Judge President of the Cape Provincial Division. I knew Jan from Stellenbosch days, where as a student he had earned the nickname the '*Voice of America*' (VOA for short), by reason of his booming baritone voice, which according to Gerhard van Tonder rendered not only the telephone system obsolete, but also enabled him to move for a default judgment in the court across the road without leaving his chambers in Pritchard Street. On one occasion Jan was to prove not only that his voice was strong in terms of volume, but also in terms of endurance. Levison J was presiding in the opposed motion court, and Jan was lucky enough to get on his feet first. Some of us who had matters in the same court, occasionally popped into court to see how the argument was progressing, in the hope that we too would have an opportunity to be heard. But Jan was not going to lose his case for reasons of unnecessary brevity.



The result was that by 3 o'clock that afternoon, he was still on his feet, booming away.

All of which would have been quite unremarkable, but for the fact that Johannesburg and the Supreme Court (as it then was) had a sudden, unexpected power failure, which caused the entire courtroom to be plunged in darkness. Almost simultaneously Jan-Hendrik stopped talking, which led to a few seconds of complete silence in court, followed by His Lordship's remark from the Bench: 'I must say, I *thought* your voice was electronically activated, Mr Munnik ...'

A larger than life character who graced the Johannesburg Bar in those years, was George Bizos SC. I recall a case arising from a fight between two factions of a church, in which my master at the time, Louis Serrurier SC, acted for the one faction and George Bizos for the other. Because it was an urgent application (and George had not expected to go to court on that day) or simply because George was George, he was dressed in the most magnificent Mediterranean, cream-white suit. George will forgive me for saying that in those days he was not as slim and trim as he is today. The result was that when we finally set off for court, each leader with his team in tow, George was right in front with his wide and very stylish cream-white trousers, his black silk's waistcoat and his gown flapping behind him in the wind - a picture not unlike that of a Greek battleship under full sail.

Contrary to George, who did not receive any reprimand for his dress on the day, the somewhat corpulent René Kruger SC, who often appeared for the State Attorney in political matters, was once taken to task for the fact that he had not buttoned his waistcoat. This was not because he wouldn't, but simply that on the day in question, he couldn't. This prompted the judge to remark, as Kruger SC rose to his feet to address the court: 'I cannot see you, Mr Kruger ...' To which counsel was quick to reply: 'Ah, but your Lordship is flattering me ...'

Occasionally we were rudely reminded that we were not living and working in a normal society, after all. One such occasion was when I invited Sean Naidoo, during the salad days of leisure following our pupillage, to go to the movies in the Carlton Centre, which at the time was not only one of the smartest shopping centres in Johannesburg, but also housed a flourishing Ster Kinekor complex. Sean declined my invitation, and when I stupidly persisted in asking why, he just sighed deeply and said: '*Res ipsa loquitur* ...'

The best of times, the worst of times. But change was on the doorstep, and on 2 February 1990 at last it happened. The NP government announced the unbanning of the ANC and other political parties, and plans to free Nelson Mandela and other political leaders.

For reasons which I cannot now remember, I happened to be in the chambers of George Bizos at the time. Perhaps it was simply because George had a television set in his chambers. The fact is that a number of us were watching FW de Klerk's speech in Parliament on that day. What I recall most clearly, besides the obvious elation about the political changes announced, was George's reaction when F W de Klerk announced a moratorium on the death penalty. He stood up from where he had been sitting, and started pacing the floor. 'Now that is remarkable. That is really something, isn't it?'

Remarkable times, indeed. Something to behold.

