

casualties of our courts

It is standard practice in our legal system (and many others) for a lawyer's cross-examination to turn into relentless grilling, aimed at drawing out the slightest inconsistency or weakness in a witness's evidence.

This practice is usually condoned as part of the process of getting to the truth and exposing false evidence. But it can also lead to grave abuses.

The commonly cited example is the rape victim who is further victimised in the witness box. But there are other areas of equal concern.

Here we publish accounts of two court cases, by Janet Small and Sbelagh Hurley, that exemplify the ordeal thousands of people face in their passage through our courts – even if they are not accused of any crime.

Black Sash court monitors regularly report on cases in which witnesses are at an extreme linguistic, cultural and social disadvantage, with little understanding of court procedure. In most cases, the present system seems incapable of taking their circumstances into account or tempering convention with compassion. This is probably one of the major reasons why our legal system is rapidly losing legitimacy. It also underscores the fact that a legal system cannot stand neutrally outside the arena of power relations in our society.

We will focus on this theme in depth in the next issue of SASH.



janet small's
account

Captain Gerrit Grobbelaar (right) who was recently acquitted on eight counts of assault, accompanies his advocate, Gideon Huisamen to court.

In August this year a police station commander, Captain Gerrit Grobbelaar of Fort Beaufort in the Eastern Cape, was acquitted of eight counts of assault. This judgement came after a two-year battle by black residents of the town to place checks on the seemingly unbridled power of the local police force.

Fort Beaufort is set in the heart of the Eastern Cape, 143 km east of East London and just a 3/4 hour's drive from Grahamstown. It is a small town with a total population of about 20 000 people. Of these, 15 000 are black and live in two main townships, Tinis and Dorrington. Although their's is a familiar story, the black residents of Fort Beaufort have suffered repeatedly severe attacks from various forces without, until recently, any outside support. The horror of uncontrollable vigilante violence has been well documented in Fink Haysom's *Mabangalala*.

Some of those vigilantes have been recruited into the municipal police force that is now responsible for the implementation of 'law and order'. When the news of Dr Wendy Orr's courageous stand against the police and prison authorities in Port Elizabeth in 1985 reached Fort Beaufort, a representative group from the townships decided to seek assistance in Port - Elizabeth. Lawyers from Johannesburg saw them and agreed to help. The Albany branch of the Black Sash was then approached to assist the lawyers in affidavit- and statement-taking in Fort Beaufort. During this process police presence and harassment were a constant reminder of the vulnerability of the people of Tinis and Dorrington.

Despite the hovering presence of the police, a comprehensive dossier of alleged assaults was compiled and sent to the Attorney-General for his attention. And his attention it did get. The police launched their own investigation and finally charged Captain Gerrit Grobbelaar with eight counts of assault, calling township residents as witnesses. A state prosecutor took over the case and the witnesses became his clients.

At the first appearance the case was postponed because the local magistrate, being too involved in the dynamics of the situation,

recused himself. Finally, in March 1987, two years after the alleged incidents, the case began.

Grobbelaar had engaged the services of an aggressive, experienced Port Elizabeth attorney, Gideon Huisamen, described by another lawyer as 'a real street-fighter'. This was no understatement. Huisamen used an array of clever tactics which seemed to have the effect of confusing the often unsophisticated witnesses. At times it was like watching a slaughter as Huisamen slowly and carefully shredded the witnesses' stories.

Freelance journalist *Sam Sole* had previously spent some time in the Fort Beaufort area and was present throughout the trial. The following extracts, from an article he has written for *Frontline*, vividly capture the atmosphere of the courtroom:

'At 2 p.m. the court rises for magistrate Nelson. The witnesses' supporters are squeezed into 'their' side of the gallery. A woman from the Black Sash in Grahamstown takes her place among them — a solitary white face amidst the rows of black ones. With smiles of welcome they squash up to make room ...

The trial begins. Grobbelaar is allowed to leave the stand and sit next to his lawyer.

Sixty-five year old Mrs Eunice Nyakatya gives evidence:

She was awakened in the small hours by the sound of voices outside her window. Two men were arguing about whether or not to "shoot". She assumed they meant her. Next thing she became aware of a figure standing at the end of her bed. She got up and switched on the lights, recognising Captain Grobbelaar from a previous visit to the police station when she had been arrested.

He pushed her back onto a couch and beat her, shouting, "Waar's Temba!" (her son) "Waar's Temba!" Her daughter Tembisa was brought to the room and witnessed the assault. Other policemen then brought in Temba and Captain Grobbelaar assaulted him. Thereafter they left, taking Temba with them.

The assaults were carried out with a black object — neither sjambok nor baton — none of the

other policemen had carried such a weapon.

Before requesting an adjournment until the following day, Mr Huisamen asks just one question, "How long was Temba in detention after his arrest?"

"Six months," replies Mrs Nyakatya.

Huisamen leaves the answer to take root in the mind of the magistrate overnight

From the start, Huisamen dominates. One complainant testifies, wearing the green garb of a prisoner. Concluding his cross-examination, Huisamen asks:

"Why are you in jail?"

"Because I was shot," the man replies.

"They don't put people in jail for being shot. You were jailed for public violence, weren't you?"

"Yes"

"The court didn't accept your evidence, did they?"

"No"

"Let me put it to you: firstly, you made up your story; secondly, you are a liar; thirdly, you are a weak liar; fourthly, you have clearly lied to a court before."

Huisamen is a big man, bigger than Grobbelaar. It was striking to see the police captain — nobody's lackey — carrying the lawyer's cape and briefcase for him on one occasion.

He would stand skew to the witness, leaning on a lectern, taking his time, marshalling the twists of his questioning. Then one foot on a chair and an elbow on the lectern as he turns head on to direct his question, sometimes using the whole frame of his body to make a point, to give the word physical weight. And using his voice: with sarcasm, menace, anger, ridicule, to immense effect ...

Siphiwo Rangule testifies that he had spent two weeks in hospital and still suffered epileptic attacks after an assault at which Grobbelaar had been present.

Huisamen reads Rangule his statement, asking him to confirm each paragraph. In the middle, he substitutes a paragraph of his own to the effect that Grobbelaar had not witnessed the assault. Rangule confirms as for each previous item. Suddenly his testimony lies in ruins. A corroborating witness is asked to identify the accused. He points to

where Grobbelaar is sitting, his back turned. "Did Captain Grobbelaar look exactly like this the day of the alleged assault, was his face exactly the same?"

Grobbelaar turns and stares hard at the witness for a few seconds.

That stare! I found it almost unbearable — carrying with it all the weight of cell, sjambok and shotgun, of Emergency and detainment without trial. And he had taken off his glasses.'

Captain Grobbelaar was trans-

ferred to Cradock as district officer when the investigation was launched, where he continued to do active duty. He was later acquitted on all eight charges of assault, and has since moved.

We do not know of his movements since his acquittal. □

shelagh hurley's account

In October 1986, Temba Grootboom was shot dead by Mxolisi Yantola, a municipal policeman in the Bricksfield township near Jansenville, Eastern Cape. Shelagh Hurley, who attended the inquest, reports that Temba was playing soccer with his children in a churchyard when he was shot. And the tragedy continued in the courtroom

The hearing was conducted in Afrikaans with no interpreter. Apparently there isn't a permanent interpreter and the municipal police are sometimes used as such — but people object to using them.

It was the first time I have attended anything like this and it was interesting to see how Mr Jooste, the attorney representing the municipal police, operated.

All six witnesses said similar things, and three of them were actual eye-witnesses to the murder. All three eye-witnesses were definite about who had a gun in his hand and who fired the gun and who shot Temba in the head from approximately six paces away. What they were uncertain about were some of the details, which Jooste pounced on. He would go on and on if he found a minor difference in the statements of the witnesses. He would say for instance: 'So and so said this and you say that. Who is telling me the truth? Come on — you said you wanted to tell the truth.'

These people are all very poor, and you can see that all their lives they have had to agree with what their 'Baas' and 'Miesies' say to them. Now here is an obviously well-educated 'baas' dressed in a black gown behaving in an



Judy Chalmers

A photograph of Nellie Magee, Temba Grootboom's mother, in happier circumstances. She collapsed in the witness box after aggressive cross-questioning tactics were used on her at Temba's inquest.

aggressive manner and who is representing the municipal police. And they have to stand there and actually say to him that what he is suggesting is not so and might in fact even be a lie. The tragedy and crime of apartheid is shown in a scene like this:

The white attorney, who calls the witnesses by their first names, and mocks (or plays with) the way they express themselves in a second language. And the black witnesses having to deal with their conditioning.

The inquest ended on the second day abruptly with Nellie Magee (Temba's elderly mother) collapsing in the witness box after Mr Jooste had used the same aggressive cross-questioning tactics on her. He showed no compassion or recognition for her as the mother of the deceased who was very obviously tense and agitated. When she said she was 'deurmekaar' after seeing her son shot, he said 'Ah, deurmekaar eh!' as if perhaps she was drunk or not really all there. Nellie Magee tried to explain that she meant she was terribly upset by what she had seen, but he wouldn't acknowledge her explanation and kept on and on at her.

When Nellie Magee collapsed I ran across the courtroom and caught her. We sat in the witness box like that. She felt like a little feather.

After that Advocate Pillay, acting for Temba's family, asked for an adjournment because Nellie Magee said she didn't feel strong enough to carry on. □