

KBP-12

INSTITUTE OF CURRENT WORLD AFFAIRS

HOMELAND COURT

African legal system as slow as anywhere else

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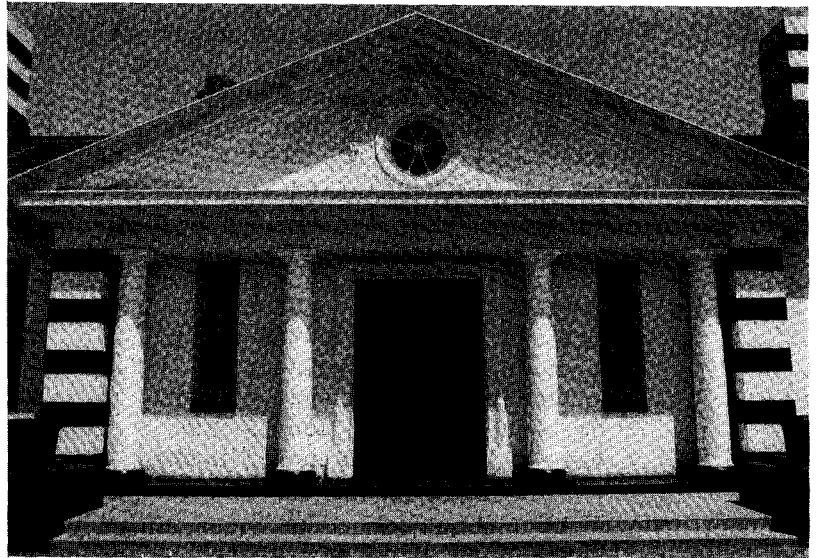
Mr. Peter Bird Martin  
Executive Director  
Institute of Current World Affairs  
Wheelock House  
4 West Wheelock Street  
Hanover, New Hampshire 03755

Dear Peter,

Almost exactly a year ago two Tswana fellows who were mechanics then, and perhaps are still employed as such, destroyed the engine of my Volkswagen. This was accomplished by driving it with no water in the radiator. There is not a whole lot of water in this arid bushveldt located approximately 350 kilometers west of Johannesburg. There was enough water in the region to put a little in my car that day. They just forgot.

I remember clearly what it was like to be without a car for a month in this dusty little town on the edge of the Kalahari Desert. I did a lot of walking under a very late summer sun.

The sun is at the same intensity it was a year ago, and once again I am on foot. This time though, I am walking with a lawyer from his office to Mafikeng's



Mafikeng's colonial era court building

Municipal court building. My case against the firm that employed the two mechanics has finally come to trial. I do not feel the heat as much as I did a year ago, and today I am wearing a coat and tie.

Kendal Price is a fellow of the Institute studying the cultures of South Africa, her black homelands, and the bordering African states.

It is a typically clear, cloudless day in Mafikeng. The tin roofs, cars, and stretches of concrete sidewalk that are in the direct sunlight look as if they might ignite, while as soon as we step into shade the world looks and feels cooler.

Municipal court is held in a proper colonial building with only one story, large windows and round, white pillars at the entrance. The yard or garden as it is called here is well-watered despite the drought, and manicured like a fine poodle as is just about every yard in this still predominately white frontier town. That most of the houses, which are very attractive, are still owned by whites in a town that has been incorporated into an independent black state, shows how white economics still carry more weight than black politics. However, that is not to say black politics are not making headway in some areas.

My lawyer is an English speaking white who makes sure we are standing outside the magistrate's office precisely at the scheduled 8:30 am even though, he assures me, he doubts our case will be heard until hours later. He is correct, and after consulting with the magistrate another appointment is made for later in the morning. As we walk together out of the darkened corridor, squinting into the morning brilliance, the lawyer makes it clear that I must be on time for the next appointment—even though he doubts we will be heard then either.

I am not at all surprised by news of a delay in anything

official in South Africa or one of its homelands. I am surprised by the respectful attitude of the lawyer toward the magistrate, who is black. Very few magistrates in this homeland are black, and to judge from the people I have met very few white people take them seriously.

On the other hand, I have no trouble taking the magistrate, my lawyer, and the hunger pangs in my stomach very seriously. Arrangements for the former are set, so in order to attend to the latter I hurry directly to the Grand Cafe and a guaranteed weighty and perhaps even tasty breakfast. I am in dire need of a meal because I just drove nearly a thousand miles from Cape Town. I travelled all through the night to be in Mafikeng for the morning court appearance. All-night diners or even 24-hour supermarkets have not yet caught on in this part of the southern hemisphere, so from 8 pm to 8 am it is crackers and luke-warm Coke when you are on the road.

As if to make sure I would work up a good appetite during the trip the Volkswagen decided to allow the starter motor to be temperamental. Three times during the night I had to push-start the car. Nothing makes you more aware of how flat the terrain than push-starting a loaded car by yourself. In the sprawling, flat, bushveldt of the northern Cape Province there are stretches of road where the grade variations can be measured in centimeters...per kilometer. So, gravity was of no use at all. The weather for that matter, was not much more helpful.

At one point during the night I noticed the car seemed to pick up speed, and I attributed the change to the engine running better in the

cool night air. When I stopped along an isolated stretch of road for one of the various reasons you stop during a long drive, I heard a faint whistling noise. I thought nothing of it until I unlatched the door and had it ripped out of my hands by a terrific gust of wind. The door remained pinned open, straining at the hinges as I tried using both hands to pull it shut. But I could not close it. This was no gust of wind, this was a constant 40-50 mile an hour blow. Yet while this tailwind had obviously been a great boost to my mileage, when the Volkswagen dutifully stalled, the wind did not seem to help much when I had to push to get the car rolling again.

The Grand Cafe on Main Street, Mafikeng, Bophuthatswana, within the borders of the Republic of South Africa is perhaps the dullest looking eating establishment you can imagine. It serves a great, greasy breakfast of eggs, bacon, fries and toast for about three dollars. It also has the friendliest, slowest, and ugliest waitresses south of the Molopo River.

I ask my waitress if she might bring my order a little faster than usual as I am in a slight hurry—but I don't push it. Half an hour later breakfast arrives, leaving me five minutes to eat and five minutes to walk back to the courthouse. As I might have expected, when I get to court the hearing has been postponed another hour. An extremely vivid image comes to mind of that half cup of coffee and last slice of toast I left behind on the plate.

After a brief walk around

outside to make sure the sun is still excruciatingly hot I decide to wait in the courtyard of the courthouse. The mechanic from the garage where I eventually had the car fixed is waiting on a bench in the shaded part of the foyer. He is a witness for me so we are not supposed to talk about the case with one another. When the lawsuit is about a car, the witness is a motor mechanic, and it has not rained in a month ("Hot today, huh?" Right.) there is not a whole lot to talk about. To the mechanic's obvious relief a clerk walks up and tells him he does not have to hang around the courthouse and he can go back to the garage where he will be called when his testimony is needed.

Finally at noon the magistrate can take us. Court will be held in his office because the courtrooms are busy with trial cases. I walk in behind my lawyer who walks in behind the lawyer for Dada motors, which is the firm I have sued. The magistrate, a short wiry man who I guess to be in his forties, is behind a massive wooden desk. He is a Tswana, which is a tribe of southern African blacks who are not-so-distantly related to the bushmen. Often they are small, thin but muscular, and appear almost ageless as adults. I have seen seventy year old Tswanas who look thirty. That is why I can only guess at the age of the magistrate.

My lawyer sits directly across from the magistrate, and in front of me. He has a Ph.D. in sociology as well as a law degree. He has taught at universities in Israel, France, and America. He also teaches at the University of Bophuthatswana in Mmabatho. He is a very learned man, but even learned men have to make money, which is the only reason I can

think of for his having taken so small a case as mine. He is also a Jewish South African, which among Afrikaners here makes him only slightly more popular than blacks, coloreds, and Indians.

The lawyer for Dada motors is an Afrikaner. He is sitting at the edge of the desk so that he is at a right angle to the magistrate on one side and my lawyer on the other side. The Afrikaner lawyer for Dada motors—which is owned by Indians—is wearing a grey suit, glasses that slip down his nose, and a rather put-down expression of impatience and aggravation. He is probably a Christian, but his slouch and general demeanor suggest Philistine.

In the British style court system, after which South Africa's was modelled, a magistrate is referred to as Your Worship. My lawyer uses the term Your Worship when he speaks to the magistrate. After I am sworn in to testify I also use the term Your Worship. The Afrikaner lawyer representing the Indian-owned firm never once uses the term Your Worship when addressing the black magistrate. I figure he must get paid the same whether he wins or loses the case.

The British style court system is hard on the witness. While the attorneys ask you questions, and the magistrate writes down all testimony in his own longhand, you must stand with appropriate servility for the entire proceeding. Standing for two hours is difficult enough even for something pleasurable like watching the leggy secretaries in Jo'burg at lunchtime. But two hours of being grilled by a pugnacious Afrikaner on

the finer details of a car breakdown over a year ago is something I can do without.

Fortunately I have the consolation of knowing his crude and leadfooted cross-examination only increases the possibility of his losing the case. At the recess my lawyer expresses his surprise at just how bad was the other lawyer. After the recess the mechanic testifying for me is cross-examined, and when court is over my lawyer expresses his surprise that the mechanic could be even worse a witness than the Afrikaner a lawyer. "Didn't he know he was a witness for you?" my lawyer says glumly. "He might have lost our case for us." Apparently, the intelligent but suddenly reticent Afrikaner mechanic could have easily exploited the careless questions of the nearly incompetent attorney, but he did not.

I suddenly wonder about my own performance and ask my lawyer how I did. Because I might be called onto the stand again he says we are not allowed to discuss my testimony. Nonetheless, he adds quietly, "you were a good witness, though." I also ask whether it was really necessary to wear our jackets in that sweltering office and say Your Worship all the time. He shrugs and says with a thin smile, "I haven't lost a case with this magistrate yet."

Next morning my lawyer is in good spirits and jokes with the convicts in baggy green fatigues who are polishing the floors of the courthouse. As we wait for the magistrate to arrive we watch the fellows with a dust mop under each foot. Like ice skaters they slide across the slippery polished floor, their bodies bobbing up and down

and legs swishing back and forth. They move well and rythmically and when they notice us still watching they pick up the pace. My lawyer speaks to them again in Afrikaans and they just smile and nod as they did before. I do not know what he has just said, but it does not matter because I know it was well taken.

It is actually quite easy to generate a positive response from Tswanas. Whether you greet them in English, Afrikaans, or Tswana you will receive the same nod and smile. It is all in the gesture.

By afternoon I am not feeling particularly cheery. Today there is not even the excitement of being in court for the first time ever, so I find it tiring to sit, then stand, then sit again in the magistrate's hot, stuffy office. Also, watching him write down everything that is said is tedious. Although I was impressed when I learned of his ability to write in either English, Afrikaans, or Tswana, now I would be more impressed with His Worship if he would just write faster.

Near the end of the session the two hapless mechanics are brought in to be identified, and understandably they look very forlorn. If Dada motors loses the case it is likely these two will not be fired, but instead forced to work off the expenses. That might be a fair arrangement in many countries but here it would be unbelievably harsh. In South Africa and its homelands black workers are paid far below their



Convict polishes the court's floors with style

counterparts in other countries. Although automobiles and parts cost the same here as in Europe and the U.S., wages for even a mechanic are often less than a tenth of what they would be in those countries.

There will certainly be nothing to gloat about if we win the case. As in many aspects of life here, things cost far more for some people than for others.

Sincerely,

*Dendal*

Received in Hanover 9/23/83