



S.A Chapter: **I**nternational **A**ssociation of **W**omen **J**udges
advancing human rights and equal justice for all

THE SOUTH AFRICAN CHAPTER

International Association of Women Judges

REPORT

Mentorship Programme 2015

WESTERN CAPE



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Mentors in attendance (from left): Magistrate Alta Fredericks, Acting Senior Magistrate Anthea Ramon, Acting Civil Regional Magistrate Cathy Page, Acting Regional Magistrate Feroza Bruck.

INTRODUCTION

Seeing the need for more mentorship between women in the legal profession and female law students, I contacted Professor Bernard Martin at the University of the Western Cape as well as Tabeth Masengu of the Democratic Governance and Rights Unit at the University of Cape Town with the view of inviting female law students to attend the programme. Information about the International Association of Women Judges (IAWJ) as well as the aims and objectives of the mentorship programme were forwarded to the above contact persons to disseminate to the interested students. A very positive reaction was received from students, with thirty students confirming their attendance of the programme.

The members who were interested in assisting were Magistrate Alta Fredericks, Senior Magistrate Anthea Ramos, Acting Regional Magistrate Feroza Bruck and myself. The above-mentioned mentors as well as Senior Magistrate Sammy Maku (also a member of IAWJ) contributed financially towards refreshments. I contacted Retired Judge of Appeal Belinda van Heerden who was more than willing to be our guest speaker.

The mentorship event took place on 29 May 2015 at the Cape Town Civil Regional Court. After registration, the program commenced with an unexpected turn in the events, as an opposed application was on the roll and had to be heard. This proved to be good opportunity for mentees to experience the law in practice. I introduced the South African chapter of the IAWJ to the students, explaining its origins and objectives. I also explained the aims and objectives of the mentorship program.

The mentors who were all seated in view of the students were introduced with reference to their experience and expertise. The guest speaker, retired Judge of the Supreme Court of Appeal Belinda van Heerden was introduced and delivered her inspiring address. Students listened intently to the speech, the transcript of which forms part of this report. Under the heading *What are the challenges faced by women in the legal profession?* she suggested the value in mentoring and other solutions to meet these challenges:

“Why do many women law graduates end up leaving the profession or not advancing in the profession to the same degree as their male counterparts? The CALS report to which I have already referred found that throughout a lawyer’s career, there are a series of ‘points of exclusion’ that particularly affect black and female lawyers. It would seem that black and female lawyers are often not appointed to senior positions in law because of barriers,

behaviour and unwritten rules of the profession that impede talent and promote stereotypes throughout the lifespan of a legal career.”

Each mentee received a document comprising of the full contact details of the mentors for future contact and to ensure that the communication between mentor and mentee is maintained. It was also agreed that further joint meetings between the five mentors and all the mentees would be planned and scheduled. Mentees were invited to shadow at the various courts where mentors are situated, which has already taken place with mentees shadowing at Civil Regional Court Cape Town during the winter vacation.

After the formal program, provision was made for informal interaction amongst the mentors and mentees while refreshments were served. The students were very excited to be able to talk to the mentors about their challenges and expectations of a mentor.

I received much feedback about the program from students and from Tabeth Masengu of UCT. It is my impression that should more mentors become involved in the program it could prove to become a cornerstone in gender transformation in the legal profession. I have envisaged further ways in which the program could assist female students in becoming formidable future leaders in the profession, and believe that what is required is more interest and commitment by members of the IAWJ and the legal profession.

The launch of the mentorship program was however a great success and contact between mentor and mentee has in fact been sustained since the event.

Cathy Page
Acting Regional Magistrate
Provincial Coordinator
SAC-IAWJ

PROGRAMME

Mentorship Programme: 29 May 2015	
10:00	Registration
10:15	Welcome by Regional Magistrate, Ian Yuill
10:30	Introduction of the IAWJ and mentorship programme by Cathy Page
10:45	Introduction of mentors by Cathy Page
11:00	Keynote address by retired Judge Belina van Heerden
11:30	Regional Magistrate Ian Yuill on mentorship
11:45	Tea and interaction
12:30	Final remarks and arrangements



All mentors and students in attendance, with Judge van Heerden front centre.

KEYNOTE ADDRESS

SOUTH AFRICAN CHAPTER: INTERNATIONAL ASSOCIATION OF WOMEN JUDGES

Launch of Mentorship Programme – May 2015

BJ van Heerden (Supreme Court of Appeal Justice, retired)

Good morning to all of you. I am delighted to be with you at the launch of this important mentorship programme and I thank the Western Cape Provincial Co-Ordinator of the South African Chapter of the International Association of Women Judges, Magistrate Cathy Page, for inviting me to address you.

I have been asked to look at challenges faced by women in the legal profession and how mentoring can assist in meeting these challenges. As we launch this mentorship programme, it would, I think, be useful to examine the extent to which the noble promises of equality contained in our Bill of Rights have been and are being realised in the profession in which you have made or are hoping to make your careers.

As you are all aware, section 9 of the South African Constitution provides that everyone is equal before the law and has the right to equal protection and benefit of the law. Equality includes the full and equal enjoyment of all rights and freedoms. Both the State and every individual are prohibited from unfairly discriminating against any person on the grounds of, inter alia, race, colour, gender, sex, pregnancy, marital status or sexual orientation.

South Africa has also ratified the 1979 Convention on the Elimination of All Forms of Discrimination against Women which contains far-reaching provisions designed to promote the eradication of gender discrimination and the participation of women on equal terms with men in all fields.

At the outset, it must be remembered that, in gauging the realisation of women's rights against women's realities, **formal** or paper equality is not the criterion. Formal equality simply requires that everyone has the same entitlement to rights – it does not take in account underlying structural and material inequalities, nor does it aspire to remedy the socio-economic disadvantages and power relations which reinforce and perpetuate inequalities between different groups in society. Progress in the advancement of gender equality must be measured against **substantive** equality,

taking into account the lived reality of women's lives and the impact of societal structures and attitudes upon such lives.

Let me take you back in history to the Roman era – why were women under Roman law prohibited from practising as lawyers by a special Praetor's Edict?

What had they done to deserve this? Well, let me introduce you to two women, Carfinia and Calphurnia, who at this very early stage offended the delicate sensibilities of the Roman courts – the former '*vexed the soul of some too nervous praetor with her strident pleading*' and the latter, pleading before the Senate, lost her temper and, in an act of supreme contempt of court, turned her back to the judges, lifted her robes and displayed her posterior! An unfortunate gesture indeed and one which, it may be said, kept women out of the legal profession for centuries to come. I quote from the Digest of Justinian:

'On the ground of sex, the praetor prohibits women from appearing as advocates for other persons, and the reason given is, lest contrary to the proper modesty of the female sex, they should mix themselves up in the affairs of others; and lest women should take upon themselves the duties of men . . . thus, although, for example, we find in many females a praiseworthy modesty of sex, yet from the shameful manner in which a certain Carfinia pleaded a suit, and annoyed the judges, we may see that other women might be given to the same vice of immodesty. Therefore it was rightly enjoined that a woman should not appear as an advocate for another person.'

The 'vice of immodesty' displayed by Carfinia and Calphurnia could not be tolerated and had to be firmly squashed! And so effective was this squashing that, over the centuries in Europe, women were totally excluded from the legal profession, this practice seemingly going more or less unchallenged.

The matter of women's entry into the profession was first raised in South Africa before the Transvaal High Court in 1909. One Sonya Schlesin, articled to none other than Mohandas Gandhi, the great Mahatma, applied to the court to compel the Law Society to register her articles of clerkship. To no avail. Bristowe J interpreted the word 'person' in the relevant legislation governing admission of attorneys to mean 'men' only, despite another statute which provided that, 'in all laws passed since the annexation of the Transvaal, words of the masculine gender shall include females . . . unless the contrary intention appears'. The judge speedily found such a contrary intention and Ms Schlesin was sent away empty-handed.

A temporary victory came in 1912 when one Madeline Una Wookey applied for an order compelling the Cape Law Society to accept her registration as an articled clerk. Her advocate was WP Schreiner, the former Prime Minister of the Cape Colony. Ms Wookey won on round 1, as Judge-President Maasdorp ordered that she was entitled to enter into articles of clerkship and, upon attaining the required qualifications, to be admitted as an attorney. Her victory was short-lived, however,

and all four Law Societies were so incensed by the JP's decision that they clubbed together to take the case on appeal to Bloemfontein. In the Appellate Division, Innes ACJ summed up the position thus:

'The real point at issue is whether a woman is disqualified from being enrolled as an attorney . . . if it was rightly answered in the court below, the result will be materially to widen the area of women's economic activity, though that be done by opening to a host of new competitors the doors of an already congested profession. If it was wrongly answered, then the law of the country will be denying to one half of its citizens, on the mere ground of sex, the right of employing their natural abilities in the pursuit of an honourable calling.'

Maybe the spectre of the 'host of new competitors in an already congested profession' was all too compelling – Innes ACJ, like Bristowe J before him, held that the word 'person' in the section of the Charter of Justice dealing with the admission of attorneys meant only 'male persons' – Ms Wookey too was turned away.

The Wookey case provoked a veritable storm of debate in legal journals, giving a whole new meaning to the term 'chauvinistic' and revealing the very strong feelings which the prospect of women colleagues evoked in the ranks of some male lawyers. In 1914, RPB Davis, later a judge, rejoiced at the exclusion of women from the legal profession on the grounds that the profession of law was quite unfit for the female sex:

'There are employments in life not unfit for the female character. The profession of law is surely not one of these. The peculiar qualities of womanhood, its gentle graces, its quick sensibility, its tender susceptibility, its emotional impulses, its subordination of hard reason to sympathetic feeling, are surely not qualifications for forensic strife. Nature has tempered women as little for the juridical conflicts of the courtroom, as for the physical conflicts of the battlefield. Womanhood is moulded for the gentler and better things.'

Four years later, in 1918, one Melius de Villiers went even further, concluding that 'it is absolutely most undesirable that women should be allowed to become practising members of the legal profession.' His reasoning? A women's entrance into the profession was incompatible with the sacred ideals and duties of motherhood. A woman who practises as a lawyer would have to remain unmarried, or if she marries, must agree not to have children. A woman who ignores these injunctions will practise at such a disadvantage to herself, her clients and her children that she ought to be prevented at all costs from practising. Considering all these serious disadvantages to the community at large and to the State, women must remain debarred from the legal profession. The good Professor does, however, concede some relief to post-menopausal women – since they can no longer procreate, any objection to their entering the legal profession falls away. But he takes open comfort from the fact that it is questionable whether any woman would care to start a legal practice at that time

in their lives. The threat to male lawyers – and their pockets – had for the moment been averted.

Poor Melius de Villiers! Whilst he was formulating his arguments, the first woman LL.B student who graduated from UCT in 1914 was none other than the daughter of WP Schreiner who had so ably fought Ms Wookey's cause in the CPD. Frances Lyndall Schreiner was also the niece of the renowned South African feminist and author, Olive Schreiner. Olive extracted a promise from General Smuts that he would support a bill enabling women to be admitted to the legal profession even before they had secured the franchise. Smuts was as good as his word – albeit somewhat tardy – and in 1923, he was instrumental in getting the Women Legal Practitioners Act passed. For the purposes of the legal profession, women became persons for the first time. And in 1926, Constance Mary Hall became the first woman to be admitted as an attorney in South Africa. In the same year, two women were called to the Bar as advocates, Irene Geffen (née Newmark) and Bertha Solomon (née Schwartz). In 1967, more than 40 years after the admission of the first white female attorney, Desiree Finca, who came from Umtata, was admitted as the first black female attorney in South Africa. The first black woman advocate, Cissie Gool, was awarded her LL.B degree in her 65th year and was admitted to the Bar in 1963. Tragically, she died later that same year.

Time marches on – in 1968, South Africa had its first women SC (Leonora van den Heever) and, in 1969, Ms van den Heever became the first woman judge in South Africa. Some years later, she was elevated to the Appeal Court, the first woman to serve on that court. After Justice van den Heever's appointment to the Bench in 1969, 25 years would pass before another woman judge was appointed: Judge Jeanette Traverso, three months before the first democratic elections in 1994.

The South African Constitution entrenches '*the need for the judiciary to reflect broadly the racial and gender composition of South Africa*'. This is supposed to be a key consideration in the appointment of judges. More than twenty years have passed since the advent of this constitutional requirement, so it is interesting to examine how well - or otherwise – this injunction has been implemented. Looking at recent statistics, the figures show that, of our country's 243 judges, only 79 are female. That's only 32.5%. A mere seven of the 23 judges of the Supreme Court of Appeal are women. The gender representation on the Constitutional Court is even less impressive – although the racial diversity of this court in over 20 years of democracy has gone from seven white judges and four black judges to a bench where the majority of judges are black and two are white, the same has certainly not been achieved in terms of gender. The number of women on the Constitutional Court has remained quite unchanged – two in 1994 and two in 2015.

At the most recent sitting of the JSC in April this year, only three of the 20 persons interviewed for judicial appointments were women and of these, only one woman (Judge Nambitha Dambuza) was recommended for appointment. UCT's Democratic

Governance and Rights Unit has made the point that, over the last five years, only a third of those interviewed for judicial positions have been women and, of the total number of people appointed, only about 38% have been women.

It is often said that the 'pool' from which women judges can be selected is small. This 'pool' is the subject of a very interesting study released in September last year (2014) by the Centre for Applied Legal Studies at the University of the Witwatersrand. It is the first academic study to look at transformation in both the advocates' and attorneys' profession, although it unfortunately focuses only on Johannesburg. The numbers reveal that during the course of their legal careers women and black people drop out of the profession in alarming numbers. In 2014, there were more black candidate attorneys than white and more women candidate attorneys than men. This pattern is repeated all the way back to 2008. This is not surprising - it is now common for women law graduates to outnumber male law graduates and the number of black law graduates has increased very significantly over the last decade. However, when it comes to attorneys in private practice, the profile is still predominantly white and male. Of all admitted attorneys, 64% are white and 36% are black, 63% are men and 37% are women. White males account for 40%, black males for 23% and white women for 24%. Only 13% of attorneys in private practice are black women. The figures become even more skewed when it comes to senior positions in the attorneys' profession. The CALS study cites 2013 research, which found that 80% of chief executives in law firms were white men, as well as 72% of managing partners. 53% of all equity partners were white men.

These figures must be viewed against the fact that, looking back seventeen years, figures for 2008 show that 63% of all attorneys admitted that year were male and 71% were white. So generally, over the last seventeen years, there has been a 20% increase in female attorneys and a 21% increase in black attorneys admitted to the profession.

The advocates' profession is faring even worse when it comes to race and gender. According to figures provided by the General Council of the Bar, 770 of the 2 571 advocates at the Bar are black (approximately 30%), 645 are women (approximately 25%) and of these, only 116 (4.5%) are black women. Out of 451 senior counsel – the mark of excellence bestowed on advocates by their peers - only 65 are black (about 15%) and only 27 are women (about 6%), of which 19 are white women.

Better progress has been made in the ranks of the magistracy. The number of female magistrates has increased from a total of 284 in 1998 to 667 in 2014 – this means an increase of 134%. There were only 62 African female magistrates in 1998, in 2014 there were 285 – this means an increase of 359%. Of the 285, two are Regional Court Presidents and nearly 50 are regional magistrates. Since 1998, the number of Indian female magistrates has increased by 363%, Coloured female magistrates by 120% and white female magistrates by 17%. In 2014, for the first time in the history of the magistracy in South Africa, there were more women than men at

the level of Chief Magistrate. Moreover, of the 9 Regional Court Presidents, 4 were women.

What then are the challenges faced by women in the legal profession? Why do many women law graduates end up leaving the profession or not advancing in the profession to the same degree as their male counterparts? The CALS report to which I have already referred found that throughout a lawyer's career, there are a series of 'points of exclusion' that particularly affect black and female lawyers. It would seem that black and female lawyers are often not appointed to senior positions in law because of barriers, behaviour and unwritten rules of the profession that impede talent and promote stereotypes throughout the lifespan of a legal career.

At the entry point, barriers include a **shortage of jobs and few connections to established members of the profession**: because the profession remains largely male and white, it is less likely that women, and in particular black women, will have longstanding connections with people in the profession. Connections remain an important part of entering the profession – not necessarily because of nepotism, but rather to learn the standard modes of behaviour and how best to conduct oneself within a very particular law culture.

During the early years of practice, there are also barriers – the CALS study found that, due to **racism, sexism, prejudice and pre-conceived notions of ability or inability**, many black and female practitioners believe that they have to work twice as hard to disprove these negative assumptions but, even in doing so, they only get half as far as their white and male counterparts. All young lawyers make mistakes, but it would seem that a mistake made by a young black or female lawyer would reinforce negative perceptions, whereas if the same mistake was made by a white male lawyer, it would be shrugged off as mere inexperience or a simple error in judgment.

Discrimination on the grounds of pregnancy seems to be the norm in the legal profession. Women advocates and attorneys – often at the mid-point of their careers – feel that starting a family could damage their career. Absence for reasons of maternity interrupts the process of building a practice and also has significant other disadvantages – for an advocate, for example, the woman may have to pay chambers rental and Bar dues during the period of maternity absence and, if she takes leave of absence, she may lose domestic seniority. It is only since 2009 that the Cape Bar has a proper maternity policy to deal with these issues and the Johannesburg Bar apparently still has no such policy. Furthermore, women lawyers face barriers caused by a **lack of childcare facilities**: work/family dynamics and social imperatives continue to preference female childcare over male childcare.

Latent discrimination and 'otherness' are also significant barriers. It is recognised that prejudices are often unconscious or unintentional. The CALS study noted that male senior partners may be protective of their female juniors, treating them more

like a daughter than a professional colleague. Unintentionally, however, this practice undermines the female colleague and categorises her as a child in a parent-child relationship.

Another aspect is that of **cultural alienation**: black and/or female lawyers face **invisible rules determined by social interaction outside of work**. So, example, for advocates, a good relationship with an attorney, which is encouraged by social interaction, leads to more work. The 'old boys' network' is well documented and understood: groups of similarly placed people support, interact and protect each other. The support that individuals gain from these networks provides significant advantages in career progression. Interestingly, the absence of a women's network arises in part because of discrimination **by** women (particularly senior women) **against** other women. This may be because of the perceived need for women lawyers to act like men and to relinquish their gendered identity to fit into the hegemonic norm.

The CALS study also found barriers caused by **behaviour based on gendered roles**: for example, women are still asked to pour the tea in meetings, even if there are other junior men present, reinforcing domestic assumptions regarding women's roles.

Sexual harassment is a problem across the profession, with insufficient structures in place to address it, insufficient understanding of the range of behaviours that constitute sexual harassment and a lack of understanding of the manner in which it impedes advancement. There is a very real concern that being too vocal in raising concerns around sexual harassment will 'rock the boat' and the individual will be seen as a troublemaker. This creates a de facto situation in which there is sexual harassment of varying degrees but no consequences for such violations. Because there is little relief for victims, the imperative of silence remains. Quite simply, complaining about sexual harassment is seen as having the result of impeding the flow of work to the complainant. Here too, it was only in 2012 that the Cape Bar adopted a sexual harassment policy, whereas the Johannesburg Bar apparently still does not have such a policy.

'Fronting' or 'window dressing' also occurs – using black and/or female lawyers to solicit and obtain work from clients, but then not including them in the performance of the work thus obtained.

While **briefing patterns and work allocation** have long been recognised as a barrier to gender transformation of the legal profession, the CALS study paints a more complex picture. It is not just about getting work, but about the kind of work obtained. Effective training as an advocate means exposure to a mix of smaller manageable cases in which the lawyer can grow her confidence and larger matters in which she can get exposure. But sometimes black and/or female advocates, especially those perceived to be competent, are brought into larger matters only,

often only formally on brief, but not really involved in the case. The risk of not developing properly is that, after say ten years at the Bar, one should have certain general skills, but juniors who have spent those ten years battling to keep their heads above water in large matters with poor mentoring or supervision, may not have developed those skills. Law firms often show problematic work assignment patterns – the women are assigned administrative or company secretary type work, while their male counterparts are included in meetings with clients and are given ‘real’ substantive legal work. Family law and trusts and estates are often seen as ‘women’s work’, so that gaining exposure to and experience in commercial and corporate work can be difficult for female lawyers.

Ironically, there is also the **‘trailblazer phenomenon’**: exceptional women who have by way of exception reached the upper levels of the profession set a standard of excellence which other women are then required to emulate. This standard does not, however, apply to male colleagues. Female lawyers feel that that they are expected to relinquish their femininity and individuality, and channel their energies into being these trailblazers who demonstrate few of the characteristics traditionally associated with women.

Turning to the judiciary, the general criteria for consideration for a judicial position, either as a judge or as a magistrate, are broad, including that the individual be ‘appropriately qualified’ and a ‘fit and proper person’. To this, one must add the Mohammed Guidelines – these include that the candidate should have personal integrity, energy and motivation, should be a competent person technically as a lawyer as well as giving expression to the values in the Constitution. It must also be considered whether the appointment would send a symbolic message to the community at large. However, traditionally, our judges come from the ranks of advocates. Since 1994, the net has theoretically been cast wider (including inter alia attorneys, academics and magistrates), but the bulk of current appointments are still drawn from the advocates’ profession. It would seem that an important criterion for becoming a judge is also that the individual must have acted as one, but the process of becoming an acting judge is not entirely transparent. The Judges Matter Coalition, a group of community organisations that aims to monitor and assist the transformation of the judiciary, points out that, to be asked to act as a judge, one has to be noticed by your Judge President. So you would ideally have had to appear in court. Advocates appear in front of judges all the time and they are more likely to be appointed as acting judges. As I have already discussed, the advocates’ profession remains biased towards white males. So it seems to be a bit of a vicious circle!

So how can a mentorship programme assist you in confronting and dealing with the challenges faced by women in the legal profession? Mentoring has existed at least since ancient Greek times. It is a personal developmental relationship in which a more experienced or more knowledgeable person helps to guide a less experienced or less knowledgeable person. It is a learning and development partnership between someone who is prepared to guide and someone

who wants to learn. The focus of mentoring is to develop the whole person, so the techniques are broad and require wisdom in order to be used appropriately.

Firstly, both the mentor and the mentee must make a commitment in a caring way, which involves taking part in a learning process side by side. While you are still at University, your mentor can be of assistance to you in a variety of different ways: in your choice of subjects, in researching and writing legal dissertations, in coping with language or other barriers, in preparing for moots. She can be a sympathetic ear and a font of practical advice. She can encourage you to produce good academic results, build your self-esteem and plan for the future. If possible, she can assist you to arrange work experiences with different branches of the legal profession. This is the first stage of the journey and it is here that solid foundations must be laid for later success. Even at this first stage, if your mentor takes up the mantle of promoting with you the ideals of transformation, there is a trickle-down effect and circumstances within the study place can be more empowering.

The members of the South African Chapter of the International Association of Women Judges comprise women who have experienced all the different spheres of the legal profession – some of the members are magistrates, some are judges, some have been advocates or attorneys, some have gone through the prosecutorial service, some have been legal academics. This means that your mentor, even if she has not necessarily had firsthand experience of the branch of the legal profession which you enter after graduation, she will be able to put you into contact with another member who has such firsthand experience should you need practical advice. She will also be able to offer you ongoing support, advice and encouragement. If you have to deal with gender discrimination in the workplace, for example, it is crucial to have a sounding board and a source of wisdom. And, as you make your way in your chosen sphere, confronting and dealing with the various challenges which I have discussed, your mentor can create a safe, open environment in which you can both learn from and teach each other. You in turn will be able to act as a mentor to women who come after you, creating a network of mutual support, knowledge and experience.

Personal credibility is as essential to quality mentoring as skill. Your mentor will be a person of integrity who will try to instil in you the best principles of the legal profession: hard work, diligence, compassion, energy, integrity, trustworthiness, honour, generosity, skill. These are the values and principles that you will need to make a worthwhile contribution to the legal profession, to promote the values enshrined in our Constitution and to achieve self-fulfilment.

It is very important that women have the benefit of mentorships in careers such as law – until recent years, men in dominant ethnic groups have reaped the benefits of mentorship without even consciously identifying it as an advancement strategy in the modern sense (the ‘old boys club’). In my view, mentorships can play a vital role in ensuring that women law graduates (who outnumber men) enter, stay in and

succeed in the different branches of the legal profession. Only in this way, will we reach a situation where women take their rightful place as equal participants in the legal sphere and where the South African legal profession is truly reflective of the racial and gender composition of the South African population.

I thank you.

ADDITIONAL PHOTOGRAPHS



Judge Belinda van Heerden addressing the students.



Mentees listening intently to the inspiring and informative speech delivered by the learned Judge.



Informal engagement over refreshments.



The mentorship team. Bottom photograph, left: Ian Yuill.