



NADGE

I thought this
might be of
interest to you

Richard R

Th
te
re
st

its values, its challenges, its

As
Re
of the LRC's case work, I am again made aware of the enormous achievement which each person present, and in fact anyone who at any stage has been associated with this Organisation, can be justly very proud.

I believe that the LRC has been, and remains, one of the most imaginative and successful initiatives yet launched by lawyers to demonstrate and to vindicate their proper and honourable role as members of what has been for such a long time a very dishonourable society.

It has been founded in the perhaps naive, but nonetheless magnificent belief, that the legal system in this environment can be made to serve, however reluctantly and imperfectly as what Sydney termed "a true bulwark" of human and individual rights ranged against the power and the abuse of power of the State and its various organs.

I think that Arthur, Sydney, Felicia, Zim and Geoffrey (who is unfortunately not here) and those others who were involved in the establishment and genesis of the LRC 13 years ago, must look at this gathering today as I do with very great satisfaction and pride, but no doubt also with an awareness that in some measure at least, its very success had posed fundamental questions affecting its future purpose and relevance.

LEGAL RESOURCES CENTRE - THE FUTURE

ADDRESS GIVEN BY RICHARD ROSENTHAL AT THE ANNUAL CONFERENCE
OF THE LEGAL RESOURCES CENTRE

CALEDON : FRIDAY 24 APRIL 1992

File - general

The Legal Resources Centre, at the age of 13 years, is in fact a Barmitzvah boy - a teenager - and as behoves a child of such exceptional lineage, it is reviewing and reflecting upon its future life - its mission, its goals, its values, its challenges, its strategies, and its past achievements.

As I read and listened once again to the truly remarkable case reports delivered by the Regional Offices this morning, and last night to Sydney Kentridge's eloquent overview of the LRC's case work, I am again made aware of the enormous achievement which each person present, and in fact anyone who at any stage has been associated with this Organisation, can be justly very proud.

I believe that the LRC has been, and remains, one of the most imaginative and successful initiatives yet launched by lawyers to demonstrate and to vindicate their proper and honourable role as members of what has been for such a long time a very dishonourable society.

It has been founded in the perhaps naive, but nonetheless magnificent belief, that the legal system in this environment can be made to serve, however reluctantly and imperfectly as what Sydney termed "a true bulwark" of human and individual rights ranged against the power and the abuse of power of the State and its various organs.

I think that Arthur, Sydney, Felicia, Zim and Geoffrey (who is unfortunately not here) and those others who were involved in the establishment and genesis of the LRC 13 years ago, must look at this gathering today as I do with very great satisfaction and pride, but no doubt also with an awareness that in some measure at least, its very success had posed fundamental questions affecting its future purpose and relevance.

I see this discussion and no doubt others that have preceded and will follow it, the LRC looking at itself in a mirror, and at the world out through the window. Although our complexion is not, I am sure, devoid of those regrettable excrescences which adorn the adolescent face, I venture the opinion that the LRC is in fact looking very good indeed at this point in its life.

The purpose of this discussion is, I am sure, not merely to indulge in a little entirely forgivable and well-deserved self-congratulation; but also to pose the question as to what changes of emphasis, direction and style may now be appropriate; and as to how we might under these new conditions that are emerging in this society, enhance our relevance and improve our effectiveness.

I see this process as completely appropriate and timely. It is not either devaluing past achievements, nor necessarily assuming that the future will be inherently different. I recall travelling on a Swiss train a number of years ago and finding myself sitting opposite one of those extremely earnest pallid righteous Swiss ladies who had on her lap a handbag, on which she had meticulously embroidered "Zuid-Afrika - der Zufunkt ist Schwartz" (South Africa - the future is Black), and I thought at the time "Ja/Nee" - the future is black, but it is also bright. Nor am I afraid that this process of self-examination, and of asking certain fundamental questions will lead the LRC to befall the unfortunate fate of Hillaire Belloc's water beetle, which "moved upon the water's face with ease, celerity and grace, until it stopped and thinkt 'How is this done', for then it sinkt!"

The society in which the LRC was originally conceived and born was one that was infamous for its depravity, a society which like almost none other before or since (with one notable exception during this century) had built itself and drafted its laws upon the profane belief that certain people were inherently of greater and of lesser value than certain others. I believe that in time to come - and having regard to the almost alarming speed with which our nefarious past is being obfuscated and forgotten, and purportedly forgiven, perhaps sooner than we think - people will come to marvel how it was possible at such a time in history, and for such a nation calling itself christian (although why that

particular denomination should be so maligned, I do not know), to devise and inflict upon its citizens a system of laws and practices so utterly reprehensible and lacking in equity, compassion, humanity and civilised values.

Although let me observe that the latest, and I hope the last member of the Broederbond to be an incumbent of the Presidency, acknowledges nothing worse at this stage than "mistake" or some kind of miscalculation. (A view which the LRC of the future may have some role in addressing.) En passant, I cannot help but wonder how Jews might have reacted to such a qualified statement of contrition by the leaders of Nazi Germany.

And in this context I am reminded of the words of a wise man called Rabbi Harold Kushner who observed, "Hitler was only one man, and even his ability to do evil was limited. The holocaust happened because thousands of other could be persuaded to join him in his madness, and millions of others permitted themselves to be frightened or shamed into co-operating. It happened because angry, frustrated people were willing to vent their anger and frustration on innocent victims, as soon as someone encouraged them to do so. **It happened because Hitler was able to persuade lawyers to forget their commitment to justice**, and doctors to violate their oath. And it happened because democratic governments were unwilling to summon their people to stand up to Hitler as long as their own interests were not at stake."

And so, not without pain, this society is being reborn, and although the gestation is by no means complete, I think that we can safely ask and presume certain of the attributes of the new progeny - without necessarily being able to discern either its gender or its name.

What then are the attributes and values of this new society?

Firstly, I think - and hope - it is clear, that it will be a society founded upon the sanctity of law as the custodian and the defender of human rights - rights which will be

embodied and clearly defined in a Bill or Charter that our Courts will be called upon to interpret and enforce. In this the LRC of the future clearly has a pivotal role.

Secondly, it will be a society in which the qualities and rights and opportunities of all its citizens, whatever their colour, gender or creed, are categorically affirmed - and once again I believe that the role of the LRC as watchdog and as advocate of these qualities, rights and opportunities is self-evident.

Thirdly, it will be a society which - I hope - will concern itself not merely with the pious pronouncement of lofty truths, but with hard realities of translating those truths into the practical experience of millions of our countrymen, who have been historically deprived, oppressed, disadvantaged and devalued in their own country, in their own home, and let me say in our presence. I think it was a man who now calls himself Ram Dass - a true guru - who said, "What is allowed to happen in your presence, is a function of the kind of person you are".

Alas, the advent of the new South Africa will do no more than create the possibility, maybe even the probability, of a better South Africa of which we may all one day hope to be proud citizens.

On that marvellous day towards which we now all look with impatience and expectation, when a new democratic, non-racial and non-sexist Constitution is finally adopted, we will wake up to a country emerging like Rip van Winkle from an extremely long nightmarish sleep, with our social situation no different than it was yesterday or the day before.

Millions of people will still be living in poverty, squalor, ignorance and hunger under conditions which constitute a disgrace to any so-called civilised, let alone christian, society.

Millions of people will still be without jobs, without skills, without education, and without hope for the future.

Millions of people will still suffer from the huge historic black legacy of apartheid - which, as its architects always intended, rendered them unfit for any role in their own society other than a subordinate one.

But the really frightening thing is, that if I am wrong, and they wake up that morning believing that everything will in fact be different, then one can be even more afraid of the consequences, for it will inevitably lead to disillusionment, rage, and ultimately anarchy.

These are fundamental realities, and it is part of the new paradigm, that we have to start precisely from the position where we are, and begin to move, sometimes by large dramatic steps but more often, I fear, slowly and hesitantly, along that path which leads to true justice between man and man, woman and woman.

Therefore it seems to me that there are likely to be at least three distinct but complementary roles for the LRC in the new society :

1. As heretofore, a role as the attorney and advocate for the oppressed and the dispossessed - asserting and enforcing and articulating - as the LRC has always done in the past - the rights and prerogatives of those who are otherwise mute and unrepresented in the Courts and Councils of our society - not merely as lawyer but also as intermediary, negotiator, interlocutor and representative for whole communities and for individual victims of this historic injustice.
2. A role as resource, that is, providing by means of workshops, publications, the dissemination of information, provision of training or otherwise, the knowhow, the wherewithal to get things done, to implement programmes, to undertake development, and to exercise the inherent right of self-determination, and to start the laborious incremental process of reconstructing our fragmented and dispersed communities.

3. A role as the means for enabling and empowering those who have been historically disadvantaged, to gain redress (dare I say it, reparation) from those of us who were, willingly or unwillingly, the undue beneficiaries of this immoral system, which to varying degrees they condoned and sustained.

Now I do not mean to propose that the LRC should itself assume what I believe to be quintessentially a political prerogative - namely, the advocacy of specific economic fiscal or structural strategies to bring about social change. But I do believe that the LRC has an important, even a pivotal role, in facilitating and enabling and empowering that essential process of restoration, redress and rehabilitation - of making good what was bad (and what a lot there was!)

In the pursuit of its firstmentioned role - as lawyer - I imagine the LRC will continue to make that distinctive contribution for which it is already renowned across the world - no doubt, improving and honing its skills, developing its weapons and its armour, and searching always for new and innovative ways to harness the legal system as a servant of its true purpose.

I would hope that the LRC of the future would look again, as it has no doubt done in the past, at the traditional values and style of this archaic profession, and look critically at the possibility of introducing changes which would render it more relevant, more accessible and more comprehensible to ordinary mortals.

If one looks at our profession and asks, what are the traditional values and perceptions which have come to be associated with LRC lawyers in particular, I would suggest they include the following :

1. High standards of ethics and professionalism.
2. Close fraternal bonds with the established legal community.

3. A conformance with a number of ethical and professional conventions which may in fact not deserve as much respect as we give them, for example:
 - 3.1 A principle of governance of professionals by professionals.
 - 3.2 A principle that imposes certain self-restraints based upon a notion of touting, which in a civil rights context is irrelevant.
 - 3.3 A salutary principle that lawyers should not assume the prerogative of making client decisions.
 - 3.4 The curious gospel that there should be either "a full fee or no fee at all". I can see no reason why every client of the LRC, however poor, should not be called upon to make some contribution appropriate to his means.
 - 3.5 An operating style involving a relatively hierarchical structure.
 - 3.6 A Bar divided traditionally into two species - attorneys and advocates.
 - 3.7 A principle that we should not undercut fees. Although when considering the position of the poorest members of our society, I cannot believe that their interests are best served by the collegial non-competition rule which maintains fees and tariffs. Why, for example, should the LRC not be in a position to undertake its own conveyancing at considerably reduced tariffs - particularly in respect of those schemes which involve the acquisition by the poorest members of our communities of serviced sites, for example, in terms of schemes funded by the Independent Development Trust?
4. A structure which limits the opportunity and ability of non-professionals or para-professionals to participate in the prerogatives and responsibilities of decision making.
5. Certain criteria for client/work selection, including a concern with issues like:
 - 5.1 the indigence of the client community;

- 5.2 the relevance of the matter to a group or community.
- 5.3 An avoidance of competition or duplication of existing services and resources provided, for example., by other private practitioners and by organisations such as Lawyers for Human Rights, the Independent Mediation Service of South Africa, University Clinics and Advice Offices.
6. A principle that it should represent a response to requests for assistance rather than a proactive or initiating role.
7. And last, but in my view perhaps one of the most important, a principle that it should maintain and assert complete independence from and non-affiliation to any political or community organisation whose members it may from time to time represent. (I believe this to be relevant to information we were given earlier today that certain of our lawyers serve as members of the Boards of Community Trusts.)

Regrettably, however hard we may try, the LRC is part of a much flawed legal tradition which incorporates attributes and has invited perceptions which are by no means commendable. In this regard I refer to the fact that the traditional perception of lawyers includes the fact that they are :

1. Endowed with special knowledge and skills.
2. Expensive.
3. Inaccessible, remote and housed in high-rise offices with forbidding security entrances (and if one penetrates these entrances, one finds that prior appointments are essential and one is confronted by the atmosphere of upper-class establishments and an intimidating style which affects not merely the manner and language in which clients are addressed but also the dress and demeanour of lawyers themselves).

4. That they are generally remote from working class realities.
5. That they regard work undertaken in the so-called "inferior" courts as inferior work.
6. That they generally speak an incomprehensible language understood only by members of their fraternity.
7. That they cultivate and enjoy a certain mystique which is characterised by shamanic utterances in Latin and other archaic language.
8. That they affirm a little understood trilateral loyalty to the client, the Courts, and their profession.
9. That in general they operate their monopoly in an autocratic, hierarchical, self-satisfied and self-serving manner.

What then might be the alternative values which could characterise the Legal Resources Centre of the future? Without attempting to provide an exhaustive answer, and without necessarily affirming each item mentioned, I would draw attention to the following possibilities :

1. A notion that legal representation constitutes a right and not merely a privilege.
2. A concern to ensure that legal services are always affordable, but never free.
3. A concern that language employed by lawyers and by the Courts is always respectful of the client's own preference, forbids the use of Latin phrases, five syllable words and five line sentences; attaches the death penalty to such

abhorrent phrases as "anything to the contrary hereinbefore contained notwithstanding . . ."; forbids tautology, for example "demand and insist", "give and donate", "state and declare", etc. etc.

4. A concern to ensure that legal services are always accessible both geographically and financially. (I suggest that every LRC office should have a casualty/emergency desk at which clients may be interviewed without appointment).
5. And here I am treading on more controversial ground, a principle of democratic accountability of public interest lawyers for their services. For example, why should the decisions regarding the selection of clients and the appropriation of resources which are publicly funded be made only by the lawyers themselves? Why should there not be a mechanism to accommodate the participation of staff, public representative and client communities? (I noted incidently the presence of certain clients in that august body that listened to Sydney Kentridge last evening, but wondered how they could express their views as to what was being said, and the questions that were being asked.)
6. A principle that clients should not be the beneficiaries of "mountain-top wisdom" but that our practice should be focused upon client empowerment - that is, providing information, illuminating options and enabling communities to make their own intelligent choices.
7. A principle that those others involved in the LRC organisation who do not have law degrees, are also enabled to make inputs with regard to important decisions affecting the organisation as a whole and its commitment of resources.
8. A principle which involves assisting and enabling - for example para-legals, community advisors, and others - to become valuable of information and legal resources, which are characteristically the closely-held prerogatives of fully-fledged lawyers.

9. A concern with the development and dissemination of support services, for example :
 - 9.1 Appropriate materials, including publications, videos, charts, fliers and basic literature.
 - 9.2 The holding of workshops conducted at a level appropriate to the participants.
 - 9.3 The provision of training and supervision of para-legals and the development of their status and the regulation of this important supplementary service.
 - 9.4 The propagation and fecundation of the culture of public interest law, not only within this country but also possibly beyond its borders.
10. A greater emphasis upon development law as constituting the growth point of the future, as compared with our necessary but obsessional preoccupation with the abuse of rights.

It must be recognised that certain risks and dangers do exist in developing new paradigms of this nature. For example :

1. A possible loss of status, independence, and objectivity.
2. A possible decline of professional standards and ethics.
3. A possible excessive deference to the will and wish of the democratic majority, to the neglect of the legitimate prerogatives of minorities.
4. A threat of inundation - becoming overwhelmed by the magnitude and number of needs and wants.

5. Invoking the professional hostility which would undoubtedly arise from any murmur that we might undercut fees in the sacred terrain of conveyancing.
6. A possible inefficiency and lowered productivity, arising from the endless debating and consulting which seems an inescapable consequence of the democratic process.
7. A greater feeling of staff insecurity, arising from the fact that they might become accountable to the public perception of their effectiveness and style.

As the debate opens up this afternoon, I would like to pose certain questions to which others may wish to respond :

1. Should the LRC not include client representation at all levels of the Organisation, including the Board of Trustees, the Regional Offices and even at the National Office?
2. Should certain offices within the structure of the Legal Resources Centre be subjected to the "Green" principle, involving a rotation of office bearers, or appointments of limited duration.
3. Should it be incumbent upon every Legal Resources Centre to have an emergency or casualty ward to deal with persons without appointment?
4. Should a unit be set up with a particular mandate to develop materials, promote workshops, commission publications and generally disseminate and propagate the culture and ethic?
5. Should certain short-term posts be created within each Centre - in the nature of fellowships - not merely for those who are newly qualified or about to be qualified, but also for those who are (hopefully) more mature but who have

latterly become conscience-stricken practitioners at some later stage in their life, hoping to give some new direction to their practice, to acquire more relevant skills, and perhaps to atone for the past!

6. Should there be a principle of "always some fee"? (I leave aside the implications in relation to the LRC's tax status and in relation to the present dispensation and conditions attaching to the LRC's relationship with the Law Societies and Bar Councils.)

7. Should there not be a debate regarding the desirable appropriation of the funding base of the LRC, for example :

25% by South African donors
25% by overseas donors
25% by the State (the new State!)
25% by the Fidelity Fund.

(In this last regard, I believe the time is overdue when we should make a carefully prepared submission to this particular body which presides over vast sums of money, which are continuing to mount almost miraculously, despite the penchant and popularity of theft by attorneys from their trust accounts.)

8. Should there not be a Board of Management or some other forum where important policy matters affecting the Legal Resources Centre are regularly debated with representatives of the legal profession, the client community, the donor community, and the judiciary?

9. Should there not be within each Centre or at the National Office, a newly constituted "Department of Development Law", which would specialise in aiding community initiatives, and facilitating the establishment of appropriate organisations to undertake programmes and schemes for empowering and developing historically disadvantaged communities?

10. Should there not be a greater concern to articulate and manifest independence from, or any semblance of affiliation to, particular community or political organisation? (In this regard I recognise that the LRC will appropriately and necessarily find itself from time to time representing an interest and making an input which may be perceived superficially as partisan. All the more reason therefore, I believe, that we should reiterate and emphasise and propagate the truth that we are founded upon the principle of principle and not party.)

In conclusion, I can do no better than to quote Edward Burroughs, who in 1659 (he was a contemporary of Jan van Riebeeck!) made the following eloquent statement:

"We are not for names, nor men, nor titles of Government; nor are we for this party nor against the other . . .

But we are for Justice, and Mercy and Truth and Peace and True Freedom;

That these things may be exulted in our nation; and that goodness, righteousness, meekness, temperance, peace and unity with God and with one another,

That these things may abound."