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Vol 1 No 1
Spring 1989

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STREET WISE

THE STREET LAW MAGAZINE



Some of the Delegates to the
1989 Space Colony Conference.
More photos on the centrespread.



- ◆ SPACE COLONY PROJECT
Legislating for the Future
- ◆ THE DEATH PENALTY: Can it be Defended?
- ◆ YOU BE THE JUDGE in
A Case of Mob Violence

Get hip to your Rights with **STREETWISE!** Featuring **MAX MBOYA** the Street Lawyer

STREET CORNER

Hi,

and welcome to the first issue of **Streetwise**, the Street law Magazine. Some people may say that law is a strange thing to have a youth magazine about. Shows how much they know. The law touches every one of us, every day of our lives. Sometimes it touches us in ways that we would rather not be touched. Sometimes it makes us feel so helpless and frustrated because it seems like the law is being used by those who are rich and powerful to make themselves richer and more powerful, while those who are poor and without power are unable to use the law to protect themselves.

Well, there may be some truth in that, but it's far from the whole truth. The law is not like a political party. It is not there to serve the interests of a particular political or social group, to the detriment of others. If the law is used like that, then it is being misused.

JUST LAW

The most most important thing about the law is that it is, or should be, based on the concept of justice. And justice is even-handed. Just law (law that is truly based on justice) should favour no person above another.

Why then, all over the world, and especially in our own country, do people openly challenge or defy the laws of the land, risking all kinds of punishment in the process? If you think about it, there can really be only two reasons: either the people who defy the law are criminals, or the laws which they take such risks to defy are not truly based on justice.

PEOPLE VS PEOPLE

The other important thing about the law is that it is written by people, and can be changed by people.

Some laws are so old that many people believe that they were given to us by God. These ancient laws are common to most cultures and have been the cornerstones of many different civilisations through the ages. Examples are laws against stealing, murder, adultery, sexual abuse and assault. Few law-abiding people ever challenge these ancient laws: they are the glue that holds society together!

But there are thousands of other laws, rules and regulations which govern the lives of people living in modern societies. Many of these laws are written for a specific purpose, by people or groups whose power or influence in the society puts them in a position to alter the law.

It is these kinds of laws, which appear to favour some people at the expense of others, that a lot of people have problems with. We have seen many examples recently in our own country, where large numbers of otherwise law-abiding people have become so outraged by what they believe to be unjust laws, that they are prepared to go to almost any lengths to challenge or undermine these laws.



When this happens, the thin line that separates law from politics is broken. When law becomes politicised in this way, justice itself hangs in the balance.

DAINGEROUS TIMES

We live in exciting times. Dangerous times, when justice loses its grip on the minds and consciences of the people. Tragic times, when frustration and emotion explode into violence, and even the ancient laws which protect the lives of each and every one of us from danger, are overturned. Challenging times, when we all have to make serious choices about what we want.

Because we are young, we stand to inherit the society which is presently governed by our elders. If they've made a hash of it, they may be too old, too set in their ways, too lacking in imagination, to put it right.

So what do we do about it? Well, for starters, we don't ignore it, that's for sure. We find out about it. Talk about it, argue about it if we have to. And read about it. Read the newspapers, magazines, whatever we can get our hands on, and try to form our own opinion. The issues are complex, and there are no easy answers.

MESSAGE ON A SERVIETTE

So it's over to you. My hand is aching from scribbling this message to you on the back of a serviette in the cafe where I normally have my breakfast. I hope my secretary, Sibongile, can read it. She has to type it and get it over to the editors by noon, so they can get this magazine to the printers. Myself, I'm going to be up to my ears in a case. A very interesting case, but that's another story. I'll tell you about it sometime.

Keep in touch, and remember, "the law is fragile, don't break it!"

Sincerely,
MAX

STREET WISE

VOLUME ONE NUMBER ONE SPRING 1989

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Edited and designed by Andy Mason.

Associate Editors: Prof. David McQuoid-Mason & Mandla Mchunu.

Contributing Editors: Carole Baekay, Karthy Govender, Prof. Nico Staytler,
Prof. Mike Robertson, Samory McDonald.

Assistant Designer: Arvind Sardar.

Illustrators: Grant Cresswell, Mzwakhe Nhlolani, Jef Rankin, N.D. Mazin.

Photography: Barry Comber.

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FROM THE PUBLISHERS

What you are holding in your hands is an experiment. For a long time we have been talking about publishing a magazine for young people which has nothing to do with fashion, pop music, sport, or any other kind of fun. We believe that young people in the 15 to 20 age group are not only excitable and fun-loving, but that they are also seriously interested in the world in which they are soon to take their place as adults. Through the Street law programme, through events such as the recent Space Colony Project (see page 17), we have seen school pupils display a level of maturity, understanding, imagination and tolerance which puts many members of their parents' generation to shame.

We believe that **Streetwise** is a very special magazine because:

☛ It is colour-blind.

Streewise is a magazine for **all** young South Africans who are interested in their future and the laws which govern their lives. We are not in the slightest bit interested in the colour of your skin, whether your hair is curly or straight, or whether your eyes are blue, green or brown. But we are interested in the person underneath that skin of yours, in the ideas roaring around under that straight or curly hair, in what those eyes are seeing around them.

☛ It is a two-way magazine.

Just like a two-way radio, this magazine is as concerned with receiving ideas from you, as it is with sending ideas out. A number of the features have been designed to find out what you think. We are giving away cash prizes to readers who send us their opinions. Some of these opinions will be published in the next issue. Some features, like **STREET BEAT** (our letters page), and **ASK MAX** (our legal advice column), will only come into operation next issue, once we have heard from you.

☛ It doesn't provide easy answers.

You'll find a lot of questions, arguments and opinions in the pages of **Streetwise**, but you won't find too many answers. As Max Mboya says in his message on the opposite page, the issues facing us all are complex, and there simply are no easy answers. You'll notice that in most of the articles we've left it up to you to form your own opinion from the facts and arguments presented.

☛ It's serious!

Friends may try to kid you that it's dumb to be serious, when you could be having fun. Don't mock them for their lack of understanding. Just give them a copy of **Streetwise** to read. They'll soon discover that it's hip to be serious sometimes, especially when there's so much at stake.

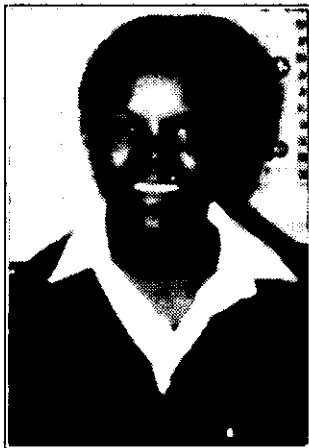
We'd like to thank the contributing editors, artists and photographers who have all taken time off from their busy schedules to help us put this issue together. And a special vote of thanks goes to Max Mboya, who has given freely of his time, despite his heavy case-load, to assist us in adapting some of his cases into comic strip form. The first of these strips appears in this issue, and there are plenty more where it came from!

The following question was put to a number of Street Law pupils at Durban Schools. Should euthanasia be legalised since it is an act of mercy? Following are the responses of some of the Street Law pupils. What do you think? Write and tell us your views.

SHOULD MERCY KILLING (EUTHANASIA) BE LEGALISED?

Euthanasia or "mercy killing" is a crime and usually takes place when very sick people ask a doctor or friend to kill them to "put them out of their misery". This is called "active euthanasia". It has been suggested that it should be allowed where the person is so ill that he or she will soon die anyway. The law regards "active euthanasia" as murder - usually murder with extenuating circumstances. Where a person who will die anyway is allowed to die it is called "passive euthanasia" and is not usually a crime. This sometimes happens when physically or mentally deformed babies are born who have no chance of surviving and are allowed to die earlier than they might if given medical assistance.

Seriously injured or very ill people who are still able to think clearly may insist that they do not receive medical attention so that they can die. Allowing them to die would be "passive euthanasia" and is not usually a crime.



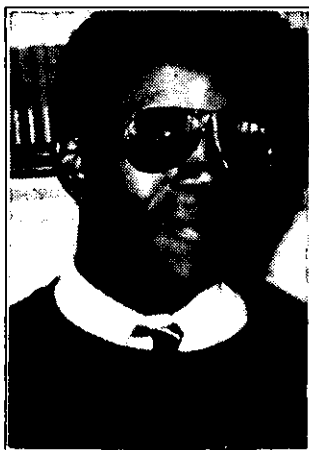
Kholeka Mabuya :
Ohlange High School

"I think euthanasia should be legalised because it is an act of mercy that puts an end to suffering. People who commit euthanasia should not be prosecuted because more often it is also the wish of the suffering person to be put out of his or her misery by being killed."



Pravin Sookdoe :
Greenbury Secondary School

"Mercy killing should not be legalised. No-one has a right whatsoever to take another person's life however critical the condition of that person might be. Nature must be allowed to take its course."



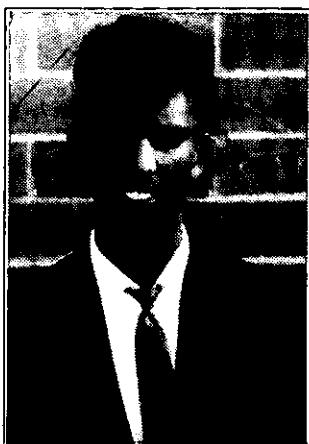
Bhakubhale Gumede :
Ohlange High School

"Taking away a person's life with or without his or her consent is a crime and should remain so. If a doctor or anyone else misjudges the state of illness or injury of a person and erroneously kills that person, the family of the deceased would then have to suffer unnecessary loss."



Allistair Llundal :
Sparks Estate Secondary School

"Euthanasia should be legalised, but medical doctors should, before deciding to take a life, explore all other remedies to preserve a life. If they are satisfied that there is no other possible solution but to take a life they should not be made to pay for an act of mercy. Sometimes one has to be cruel to be kind."



Ganasen Reddy :
Greenbury Secondary School

"Euthanasia should be legalised only on condition that certain circumstances exist that justify mercy killing. For instance if the person has been subjected to intensive medical tests by experts and has thereby been declared terminally ill or injured."



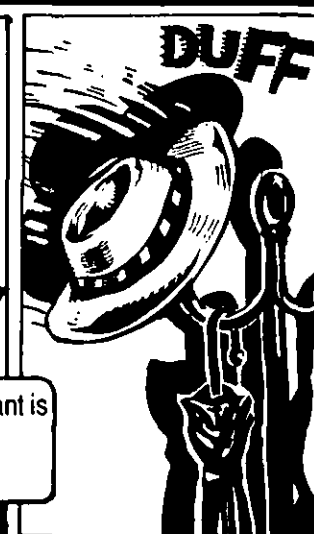
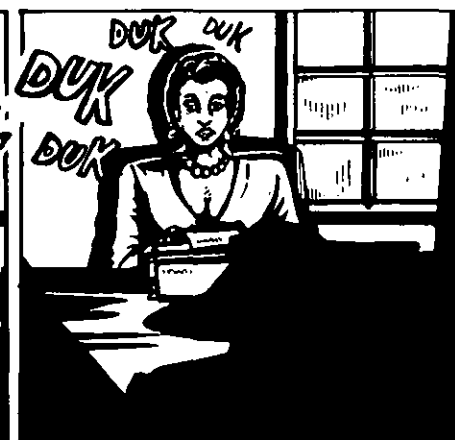
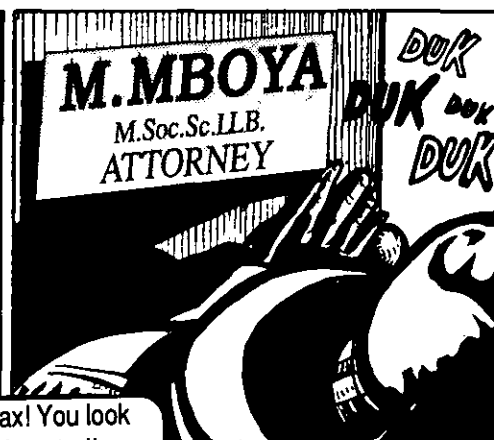
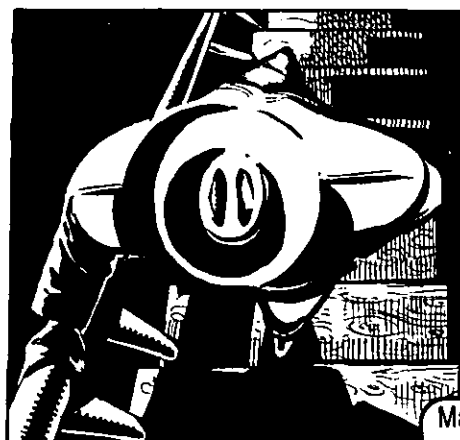
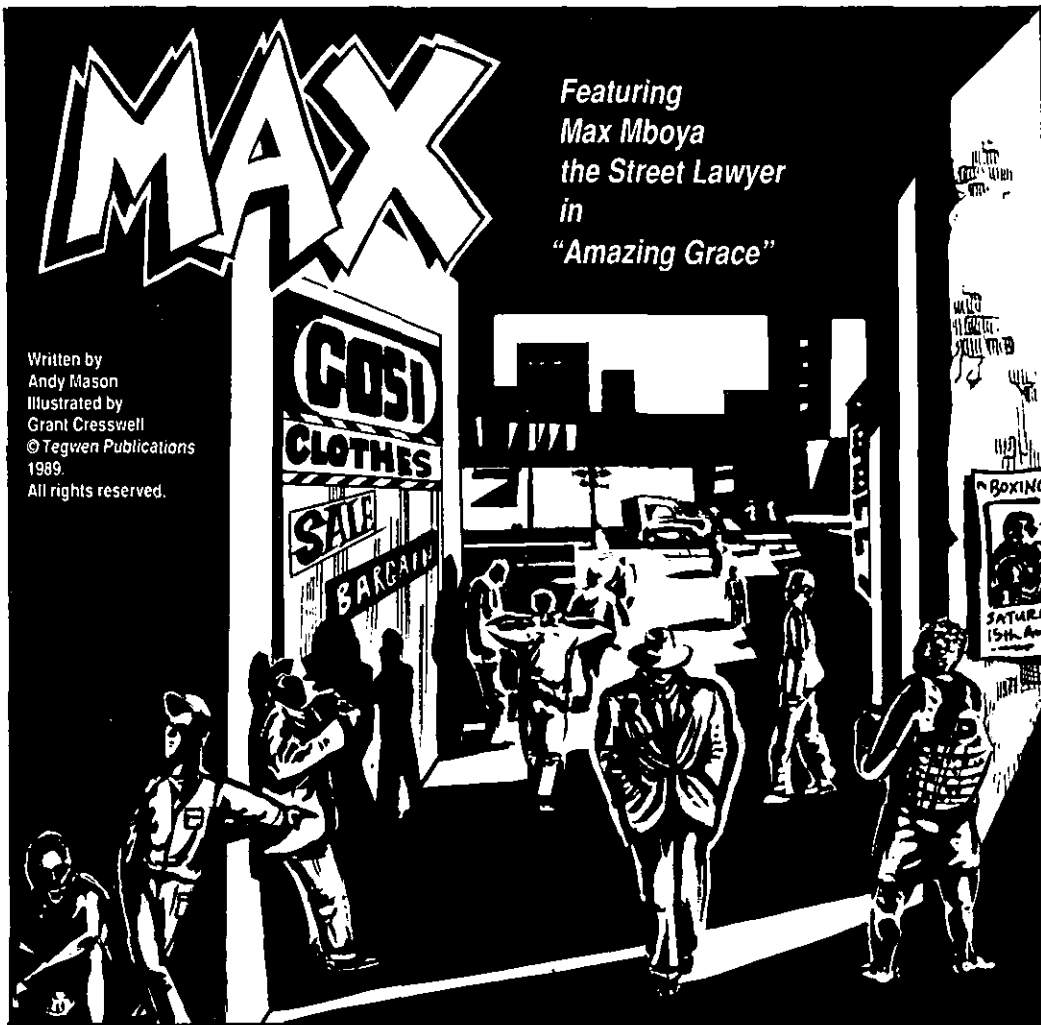
Jenny Day :
Brettonwood High School

"Euthanasia should be legalised only if it is the person's choice to die. If the person is in such a state of illness that he or she cannot give consent the immediate family should have the right to stipulate for or against euthanasia. Medical doctors or anybody else should not have the right to decide."

MAX

Featuring
Max Mboya
the Street Lawyer
in
"Amazing Grace"

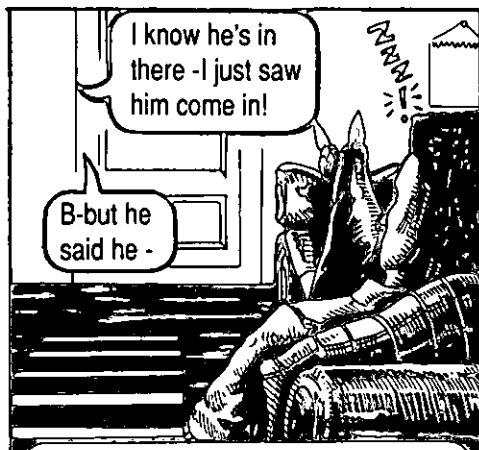
Written by
Andy Mason
Illustrated by
Grant Cresswell
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Hi there,
Sweetheart

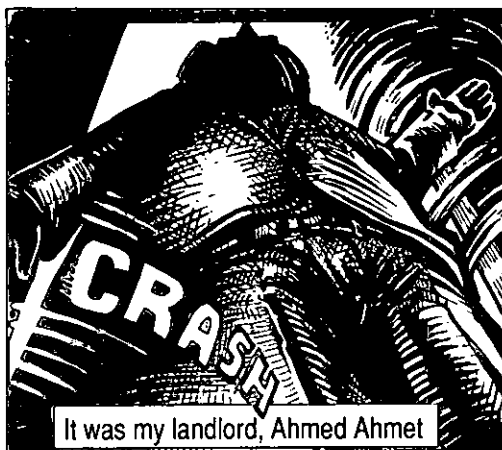
Max! You look
exhausted!
Where have you
been all night?

Tell you later. Right now, all I want is
an hour's rest. That means no
disturbances, O.K.?



I know he's in there - I just saw him come in!

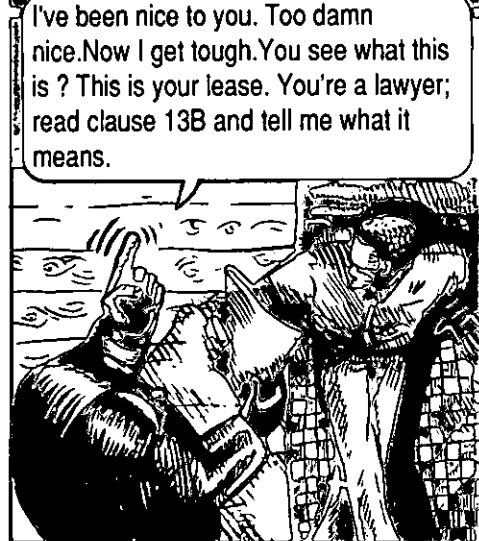
B-but he said he -



It was my landlord, Ahmed Ahmet



O.K. Mboya! this time I'm not playing! I want you out by midday! Oh You Tea OUT! Understand?



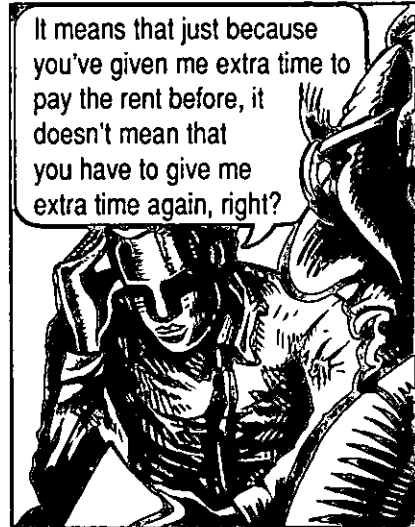
I've been nice to you. Too damn nice. Now I get tough. You see what this is? This is your lease. You're a lawyer; read clause 13B and tell me what it means.

13B Any indulgences, extension of time or any other latitude granted by the Lessor to the Lessee shall not be construed as a waiver to the Lessor's rights under this Tenancy, nor constitute any novation thereof.

14 In the event of the Lessor's death, the Lessor's Attorney to collect any over-due rent by the Lessee or to take proceedings for the recovery of any amount due or to be due.

Any indulgence ... allowed by the Lessor to the Lessee shall not be construed as a waiver to the Lessor's rights...

for the rent, the Lessee shall be liable for the recovery of any amount due or to be due.



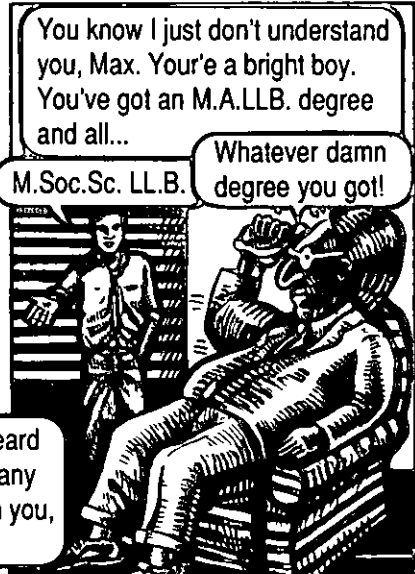
It means that just because you've given me extra time to pay the rent before, it doesn't mean that you have to give me extra time again, right?



DAMN RIGHT! I want the cash right now - or out you go. You can set up your practice on the pavement. Then you'll be a real street lawyer!



Ha ha, very good joke Mr. Ahmet. Now look, I've got some money coming in the next few days or so...

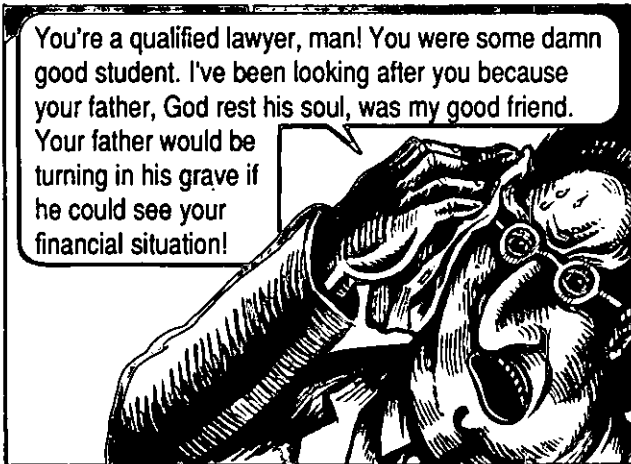


You know I just don't understand you, Max. You're a bright boy. You've got an M.A.LLB. degree and all...

M.Soc.Sc. LL.B.

Whatever damn degree you got!

Ha! I've heard that too many times from you, Mboya!



You're a qualified lawyer, man! You were some damn good student. I've been looking after you because your father, God rest his soul, was my good friend. Your father would be turning in his grave if he could see your financial situation!



Do you really think so?

Do I think so? Listen to me Max. With your qualifications you could be running this practice real good - lucrative, I mean. You could be driving a B.M.W., not that scrapheap of yours. You could be a wealthy man! But what do you do?

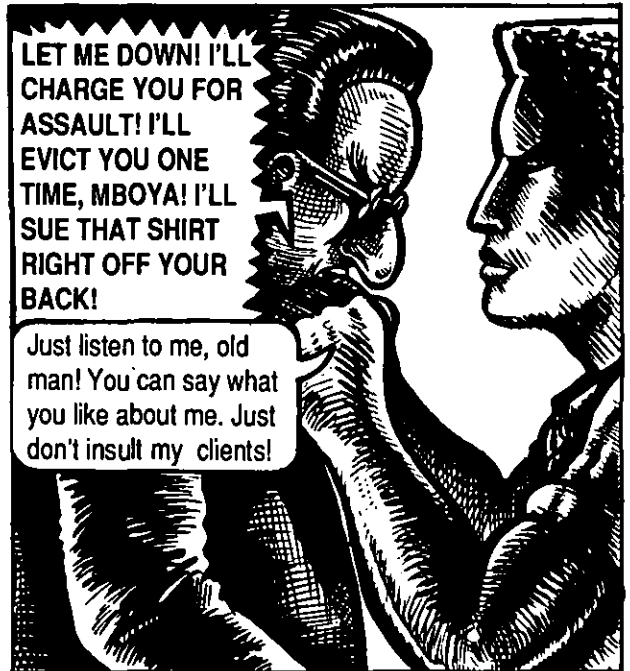


You spend your time on these hopeless cases, this riffraff and rubbish that can hardly afford to pay you one cent for your serv-



LET ME DOWN! I'LL CHARGE YOU FOR ASSAULT! I'LL EVICT YOU ONE TIME, MBOYA! I'LL SUE THAT SHIRT RIGHT OFF YOUR BACK!

Just listen to me, old man! You can say what you like about me. Just don't insult my clients!



O.K. O.K. O.K.!
ALRIGHT I SAID! JUST PUT ME DOWN MAN!



Let me tell you about my clients. They are poor, ordinary people, with more problems than you or I have ever had. They don't have education like me; They don't own three buildings like you. But their problems are real. And they come to me because they have nowhere else to go... You know how I started this practice, with money paid out after my father's death. My father was imprisoned for a crime that you and I know he didn't commit. He had a heart complaint, but the authorities would not listen. They forced him to do hard labour. He died in prison, an innocent man.



May his soul rest in peace...

It was only because of an unselfish lawyer who was his friend that we won the case. The authorities paid out in the end, but it was a long, tough struggle. And our victory did not bring my father back. I vowed that if we won the case I would use the money to help other innocent people get justice done. And that's exactly what I'm going to carry on doing. Kick me out if you want, but it will be on your conscience.



Besides, I know you won't do it...



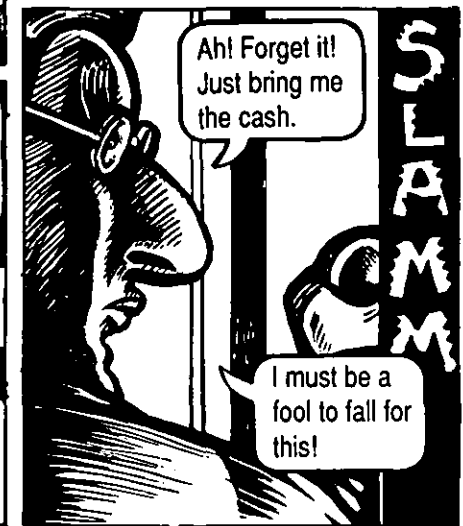
Hell man Max, you put me on the spot. I'll give you another week. But don't try to feed me this line again next month. Enough is enough!

Thanks Mr. Ahmet. You've got a big heart...



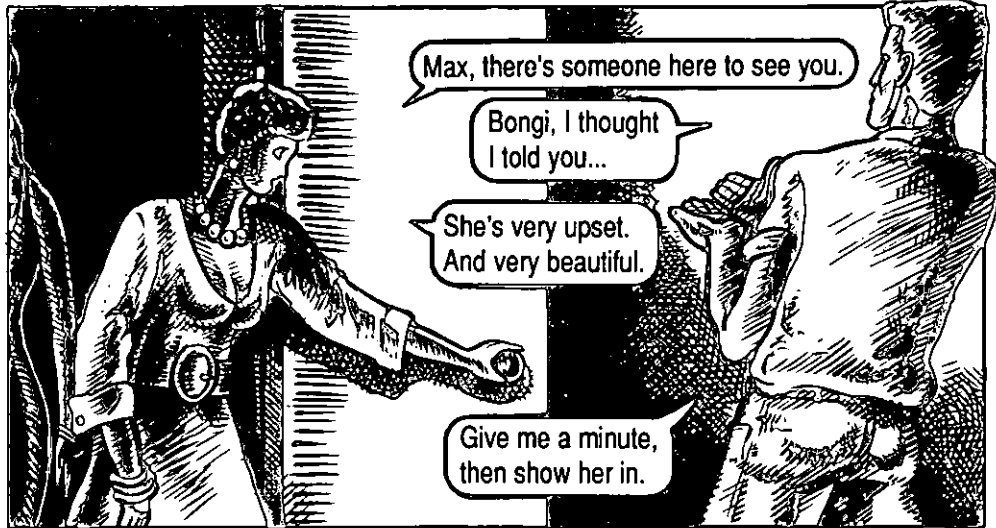
Ah! Forget it! Just bring me the cash.

I must be a fool to fall for this!





YAWN -
Now maybe I can
get some sleep!



Max, there's someone here to see you.

Bongi, I thought
I told you...

She's very upset.
And very beautiful.

Give me a minute,
then show her in.

The woman who walked into my office was enough to wake any man up. She was not merely 'beautiful'. She had a fragile, haunting quality in her eyes, which was heightened by her obvious distress. I felt the blood quicken in my veins; my body shrugged off the tiredness in its bones.



How do you do. Please call me Max. Something to drink? Bongi, please run down to the cafe for-

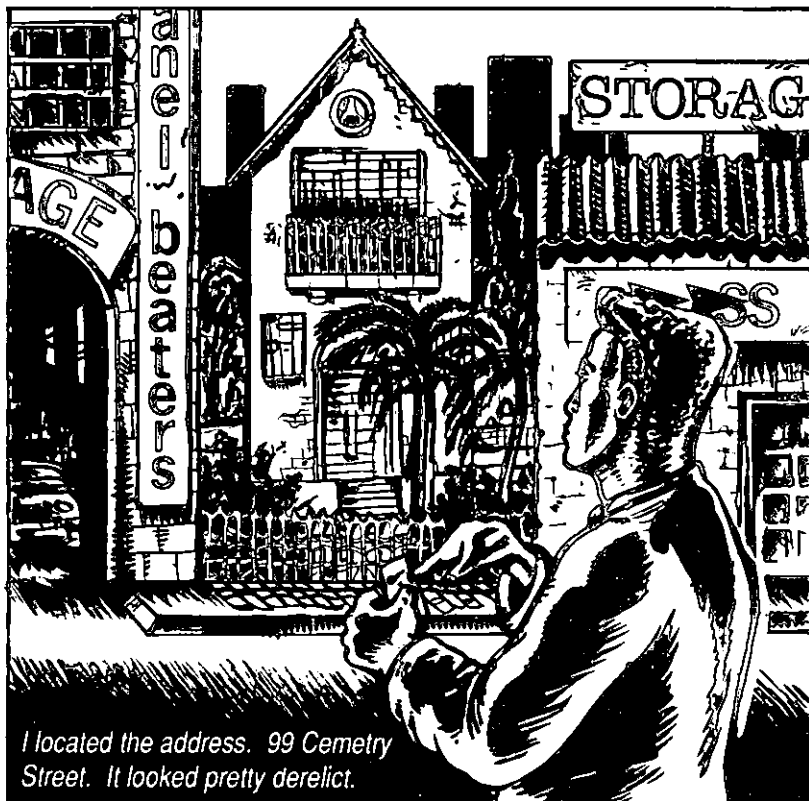
No, no, Mr. Mboya - Max. I cannot stay. I am taking a risk just coming here. I am in trouble, but I cannot talk now. Please can you meet with me. Tomorrow morning. I think it will be safe then. I have written down the address.



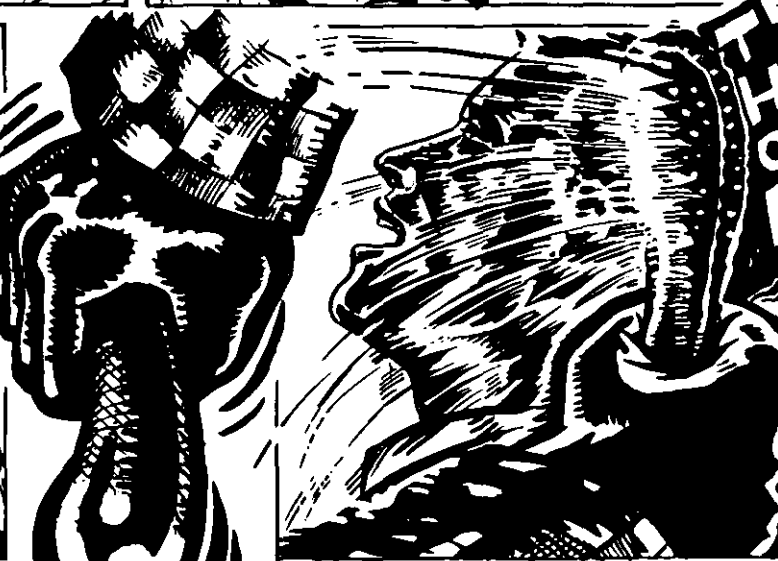
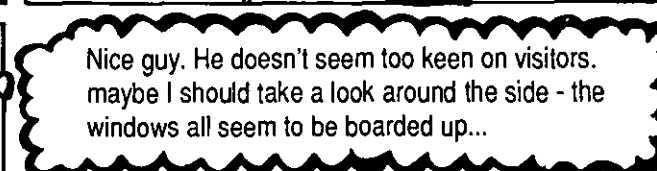
And she was gone. Leaving me with an address, but no name. Would I meet her? Nothing on heaven or earth could stop me.



Next day I made my way down to Cemetery street. It was a rough neighbourhood. The scrap paper, empty bottles and debris on the street was matched by the human debris - addicts, vagrants and pickpockets - who loitered in the alleys.

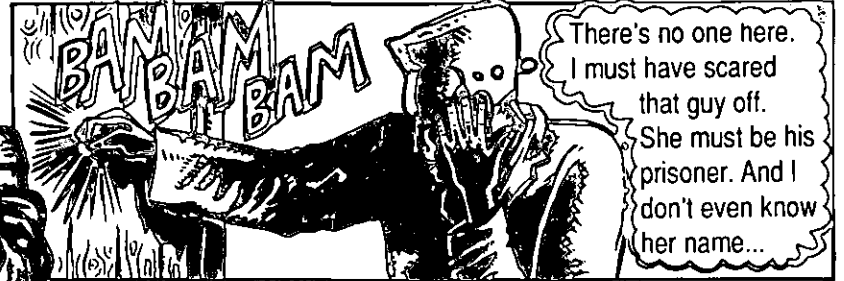


I located the address. 99 Cemetery Street. It looked pretty derelict.



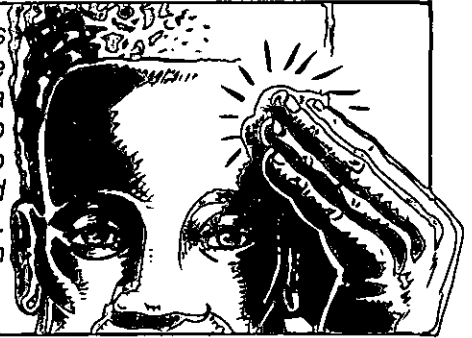


I woke up in the cemetery... I knew I wasn't dead because of the pain in my head. They say the dead feel no pain, and I was feeling plenty. Then I remembered the woman in the room. It WAS the same person who came to my office; I was sure of it. And she was in trouble. My headache could wait until later...



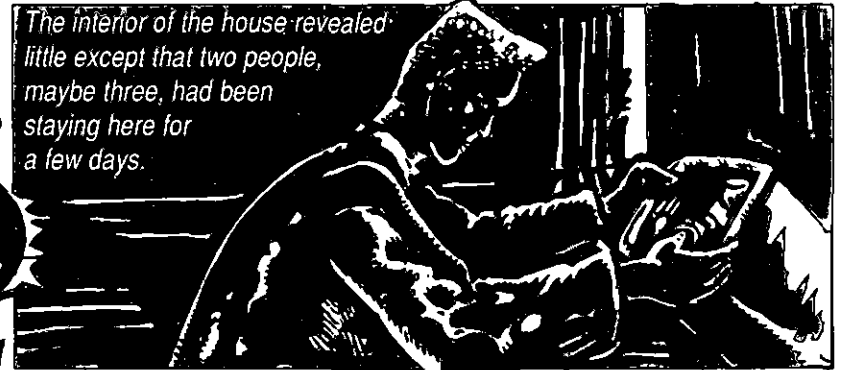
There's no one here. I must have scared that guy off. She must be his prisoner. And I don't even know her name...

Sometimes a street lawyer has to face a difficult decision. Like whether on not to waste hours at a police station trying to get them to come and search the place... or to bust the door down. Breaking and entering is definitely against the law. But sometimes the law allows it in emergencies, to save a life... and this is an emergency...

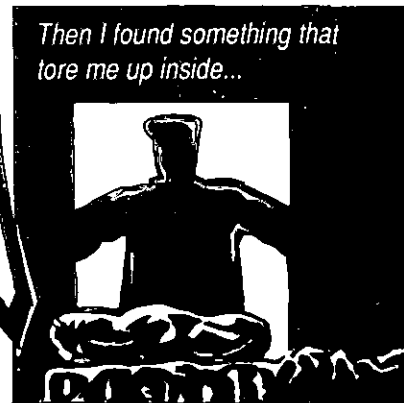


YEE-HAH!

The interior of the house revealed little except that two people, maybe three, had been staying here for a few days.



Then I found something that tore me up inside...



What's this on the pillow? Tears...



After a lot of fruitless questioning up and down the street, I eventually got a lead from a streetcorner drunk - in exchange for five bucks. He pointed me to the panel beaters shop.

I'd already been there, and spoken to a large and surly mechanic who had rudely told me he knew nothing.

Someone wasn't telling the truth...

Excuse me, why did you lie to me earlier when I asked you about the big bald guy?

Hey! Who are you calling a liar? GET OUT MAN!

Don't push me mister.

YOU STUPID FOOL! YOU'LL PAY FOR THIS! BIG BOB WILL TEAR YOU APART!

Big Bob?
Who is Big Bob?

Everybody has the right to defend themselves. It's called private defence. I'm rather good at it.

The thing about private defence is that it must stop as soon as the attack ends. But with this bruiser how could I be sure he wouldn't attack me again? Besides, I'd got what I came for. He'd dropped a name. Big Bob. I decided to leave while I was still in one piece.

I made my way to the public library. That mechanic had given me a name to go on, and my memory and a few back issues of the local papers did the rest.



Robert 'Big Bob' Ngcobo was a big taxi king, recently involved in the taxi war during which a rival taxi owner was shot. He had been charged as an accomplice in the murder, but the case was withdrawn through lack of evidence.

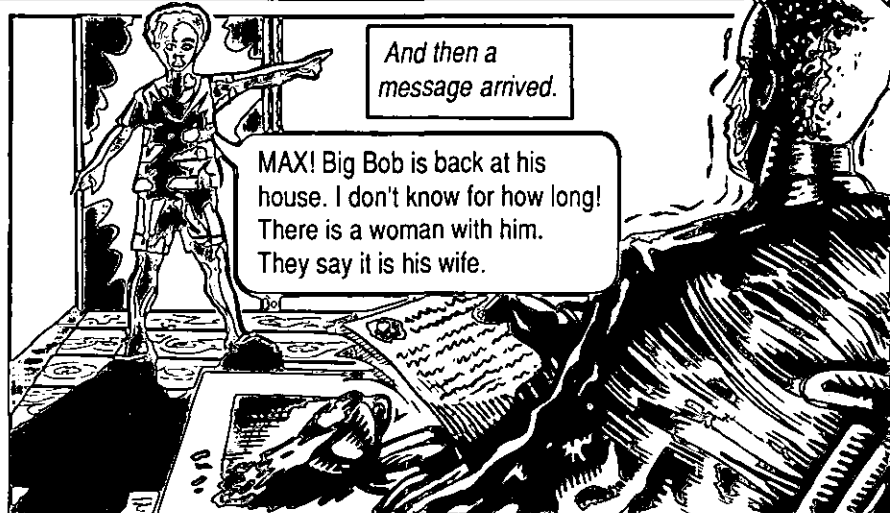


It only took me a few hours to find out where Big Bob lived. According to my sources, Big Bob was away 'on leave'. In other words he was hiding out until the heat died down.



But sooner or later he would have to come home for one reason or another. All I could do was hire a couple of the local kids to stake the place out for me, and wait.

Two days went by. I couldn't concentrate on my other cases; I would sit down to prepare some papers and a picture of her face - those deep haunted eyes - would swim in my mind.



And then a message arrived.

MAX! Big Bob is back at his house. I don't know for how long! There is a woman with him. They say it is his wife.

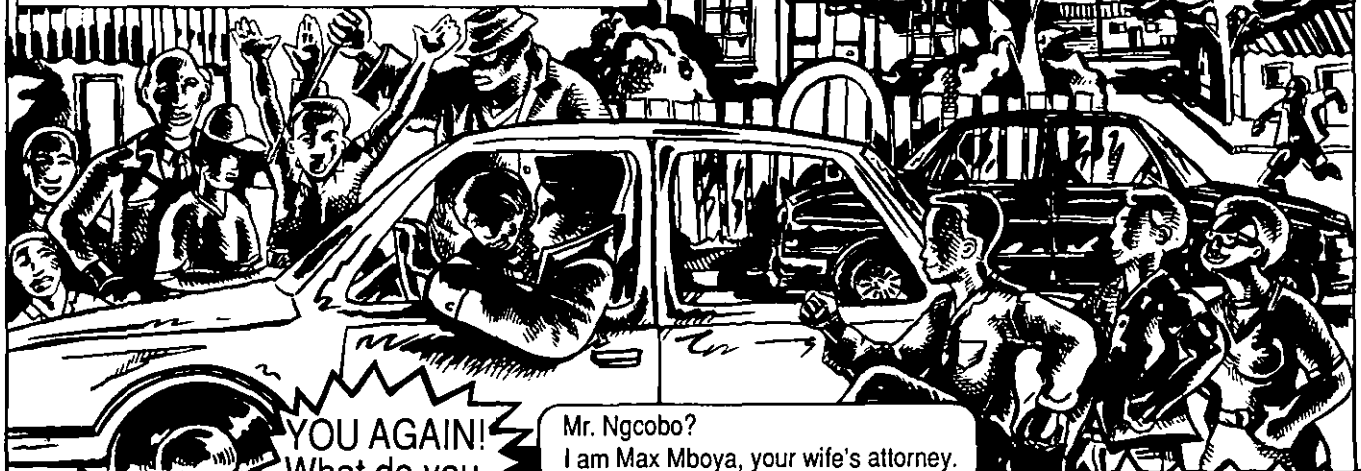
What does she look like?

Ah - She's gorgeous!

OK - LET'S GO!
Bongi, I don't know how long I'll be gone.



Quite a crowd had gathered to see me take on Big Bob ...



Mr. Ngcobo?
I am Max Mboya, your wife's attorney.

She doesn't have
an attorney.

Yes, she does.

You talk trash!
She is my wife.
She does what I
tell her!



I have reason to believe you
are holding her against her
will.

Not so, my friend. She is
free to do as she wishes.
Even to leave you, if she
wants.

Now may I speak
to her?

She's not here.



Continued on page 27

THE DEATH PENALTY

CAN IT BE DEFENDED?

There are few questions which are likely to raise such heated emotions as the question of the right of one human being to kill another.

A SPIRAL OF VIOLENCE

Human beings are no strangers to violence. The history of all nations is marred by incidents of horrific violence by people against their fellows. Wars, massacres, vendettas, purges and persecutions all bear testimony to the violent and often vindictive nature of our species.

We live in a violent world. And in South Africa, we live in a society where violence is an everyday reality. Ours is a society torn apart by conflict in which people regularly lose their lives as a result of political violence.

THIRST FOR REVENGE

Everybody wants the violence to end. But the thirst for revenge stands in the way. For every political killing, there is the possibility of a killing in revenge. It is a spiral of violence.

In a peaceful society, people would naturally turn to the law, and to those entrusted with upholding the law - the police and the courts - to put an end to violence and bring those responsible to justice.

CAUGHT IN THE SPIRAL

But in a society which is gripped in a spiral of violence, it may appear that the guardians of the law themselves become caught up in this vicious spiral.

There have been many cases in our recent history in which the security forces have argued that they have had to use violence to end violence; when the police say they have been forced to open fire on people in order to return a violent situation to normal.

DEATH FOR VIOLENCE

And, very recently, there have been court cases where people have been

The right to life is the most basic and sacred of all human rights. South African law says that a person who takes the life of another should pay the supreme penalty: he or she should forfeit his or her own life in return. And yet all over the world, governments have outlawed or severely limited the power of a court of law to sentence a person to death. And recently in South Africa, influential people such as lawyers and clergymen have been vigorously campaigning for the abolition of the death penalty.

In this article we look at some of the arguments presented by the "Abolitionists" (those who wish to abolish the death penalty) and the "Retentionists" (those who wish to retain it).

sentenced to death for their role in political violence. In one recent case, which we shall look at in another article, 14 people have been sentenced to die for the murder of one man.

Many people are asking the question: Does the power of the South African Supreme Court to apply the death penalty serve to prevent criminal and political violence in our country, or does it in fact contribute to the spiral of violence?

SHADOW OF THE GALLOWS

In South Africa today, the shadow of the gallows looms over the land. Between the years 1980 and 1988, 1164 South Africans (including people from the "independent homelands") were hanged by the neck until they were dead.

In 1987 alone, 164 people were hanged. Of the people hanged, 0,2% were Asian, 3% were White, 29% were "Coloured" and 67% were African. According to a survey conducted by the Black Sash, a human rights organisation, most of the people hanged were under the age of 25.

DEPRIVED BACKGROUND

Most of the people hanged appear to have come from deprived backgrounds. According to the Black Sash research report, out of a sample of 100 people hanged, 92 lived in crowded conditions (5 or more people to a house), and 92 had not been able to complete matric. Of these 92, 65 had reached no further than standard 7. Of the 100 people surveyed, 55 were not allowed to appeal against their death sentence. Eight of the trials lasted for less than a day, and 33 lasted a week or less. The sample included 77 Africans, 15 "Coloureds" and 8 Whites.

WRONG PEOPLE

Many organisations, lawyers and churchmen have been campaigning vigorously against the death penalty in recent months. Speaking at the launch of the Society for the Abolition of the Death Penalty last November, Catholic Archbishop Dennis Hurley had this to say: "We seem to be hanging the wrong people."

VICTIMS OF POVERTY

He argued that the people being sent to the gallows in South Africa are mostly the victims of "appalling poverty" and "colossal misery". He questioned whether the death sentence was in any way a solution to the problems that had resulted in these generally young, poorly educated people turning to violence, and as a result, ending up on Death Row.

The Archbishop pointed out that since capital punishment had been abolished in Western Europe and Canada and restricted in the USA, there had been no significant increase in serious crime in these countries.

DEATH NOT A "CURE"

He argued that the high rate of violence in South Africa could not be "cured" by the use of the death penalty.

In presenting these points, the Archbishop was giving voice to arguments which have for years been central to the "Abolitionist" campaign around the world.

ABOLITIONISTS VS RETENTIONISTS

1. The Argument for Deterrence

The argument for "deterrence" is one of the strongest arguments put forward by those who support the death penalty. They argue that the knowledge that people can be executed, will "deter" a person from committing a capital offence.

This has been challenged by many influential writers. In a famous article in the *SA Law Journal*, Professor B. vd. van Niekerk tackled this question in some depth.

DEATH FOR PICK-POCKETS

He tells how, in the early 1800's

in England, the death penalty could be imposed for over 200 offences, including associating with gypsies, damaging a fishpond, pickpocketing and unlawfully cutting down trees! When this law was abolished, there was no increase in these "crimes".

He pointed out that in South Africa, where there were more than 6,000 cases of homicide a year, the death penalty had clearly had little effect as a deterrent.

In the USA during the 1960's there were some States where the death penalty had been abolished,

and others where it had not. Studies of these States showed that even where there were similar populations, there was no noticeable difference in capital crime between States with and without the death penalty.

OBSESSED BY CUNNING

A South African prison chaplain who ministered to many condemned men gave the benefit of his personal experience to a Commission of Enquiry into the death penalty. He said that the murderers he had spent time with were all far too obsessed with their own cunning in avoiding detection to think of possible punishment by death.

According to van Niekerk, these and many other instances which he referred to, show that the argument in favour of "deterrence" is not a good enough reason for retaining the death penalty.

If "deterrence" is not a good reason for keeping the death penalty, what are the other reasons?

2. The Argument for Removal

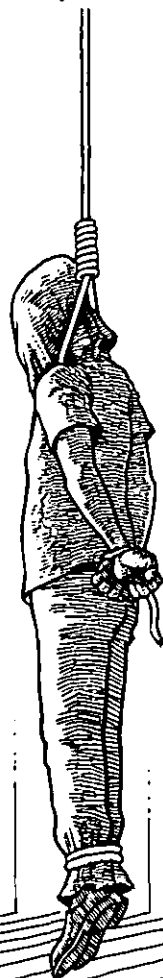
Retentionists argue that the death sentence is the only sure way that the criminal can be removed from society, so that people are protected from the possibility that the person might repeat the crime. If imprisoned, he or she might escape. Or the person might be released, years later, and then commit a similar crime.

HIGH SECURITY PRISONS

The Abolitionists reply that there are other ways to solve this.

Criminals convicted of capital crimes should be kept in high security prisons where there is no chance of escape.

They should not be released, even after long periods, unless the authorities are



absolutely sure that there is no chance that they will repeat a similar crime again.

The retentionists then usually argue that it is very expensive to keep a prisoner in a high-security prison for life. The taxpayer has to bear the burden of all this expense.

The abolitionists reply that, no matter who the person is, or what he or she has done, his or her life is still sacred - the gift of life cannot be measured in financial terms.

3. The Argument for Retribution

Retribution is very much like revenge. It involves the idea that a person should "pay" for his or her crimes. If a person kills, he or she should be killed in return. And yet in the modern world, even the most ardent retentionists are reluctant to use this argument too freely.

RETRIBUTION OR REVENGE?

Retribution clearly does not do a single thing to reduce the problems that have led to violence in our society. Instead, it can be argued, retribution actually contributes to the vicious cycle of violence and revenge.

A recently formed organisation, "Families of People on Death Row" is a group of people whose lives have been affected by the death penalty. In a recent statement, the organisation said: "Judicial killings teach society the lesson that death and violence are acceptable solutions to the problems facing us. Such killings create the impression that retribution is justifiable."

RACIAL BIAS

If revenge or retribution is one of the reasons for keeping the death penalty, this raises very serious questions about the function of justice in our legal system. What if the judge was, without even being aware of it perhaps, biased or prejudiced against people of other racial or social groups? Could the judge's deep-seated attitudes to people of other racial or social groups affect his judgement?

In the article referred to above, van Niekerk argued that the continued existence of the death penalty in South Africa was justified by retentionists, whether they

Mistakes can happen, even in the most controlled of circumstances. Normally, mistakes can be rectified later. But no one can bring an executed person back to life.

would admit it or not, on racial grounds. To prove his point, he quoted a statement by the Lansdown Commission, which was appointed by the government in 1947 to look into prison conditions:

"...in the mind of the undeveloped Native but recently brought into contact with western civilisation and ideas, the sanctity of human life is a matter of less concern that it would be to the western civilised man".

SENSITIVE ISSUES

In South Africa today, where people are extremely sensitive to the issue of racial discrimination, sentiments such as these would be seen by many to be racially prejudiced in the extreme. And yet the Lansdown Commission remains to this day the only official investigation appointed to consider the question of the death penalty in South Africa. The Commission reported that "the Abolitionists have not made out a case which would justify a recommendation for an amendment of the law in this country".

Is it possible that judges in the past may have allowed feelings about "Natives" similar to those expressed by the Lansdown Commission to affect their judgement? Would it have been easier for them to send a "Native" to the gallows than to execute a member of their own racial group?

There are no African judges in South Africa. The vast majority of people sentenced to death in South Africa are Africans. Could these facts, when seen against the possibility of racial bias, even unintentional racial bias, suggest that the law has not been fairly applied to people of all races in the past?

Anyone who is serious about examining the role of the death penalty in the South African legal system must consider these questions.

HUMAN ERROR

Another question raised by van Niekerk is the question of human error. In South Africa, where there is no jury system, it is up to the judge to decide, sometimes with the help of assessors, whether a convicted person will be sentenced to death. He has to take all the facts into consideration. But sometimes, not all the facts are admissible as evidence. Sometimes there may be conflicting evidence presented by the prosecution and the defence, and he has to decide which is more likely to be correct.

INADEQUATE REPRESENTATION

Sometimes the accused, because he or she is very poor, is not adequately represented. Very often, neither the judge, nor the prosecutor, nor the defence lawyer, can speak the language of the accused, and the accused may not be able to express himself or herself clearly in English or Afrikaans. A translator has to be used. There is always the possibility that some information may be misinterpreted.

Many court cases which have resulted in a sentence of death have been of very short duration. A significant number have lasted for less than a day. Considering the difficulties mentioned above, and the fact that many accused people may be too poor to be able to afford the best defence, many Abolitionists have questioned whether in such a short time all the facts of the case, including the extenuating circumstances which might have allowed the accused to escape the gallows, could have been adequately considered by the court.

MISTAKES CAN HAPPEN

Mistakes can happen, even in the most controlled of circumstances. Normally, mistakes can be rectified later, by the payment of compensation or in other ways. But no-one can bring an executed person back to life. Abolitionists argue that even the possibility of human error should be enough to cause the death penalty to be abolished. If one innocent person was sent to the gallows, this alone should be sufficient reason for the legislature to seriously reconsider the existence of this law.

SPACE COLONY PROJECT

THE TIME: 200 YEARS INTO THE FUTURE.

THE PLACE: THE SPACE COLONY FUTURA.

THE PARTICIPANTS: HAND PICKED DELEGATES TO THE MOST DIFFICULT
NEGOTIATIONS OF ALL TIME...

THEIR MISSION: TO PREVENT THE DEVESTATING CONSEQUENCES OF

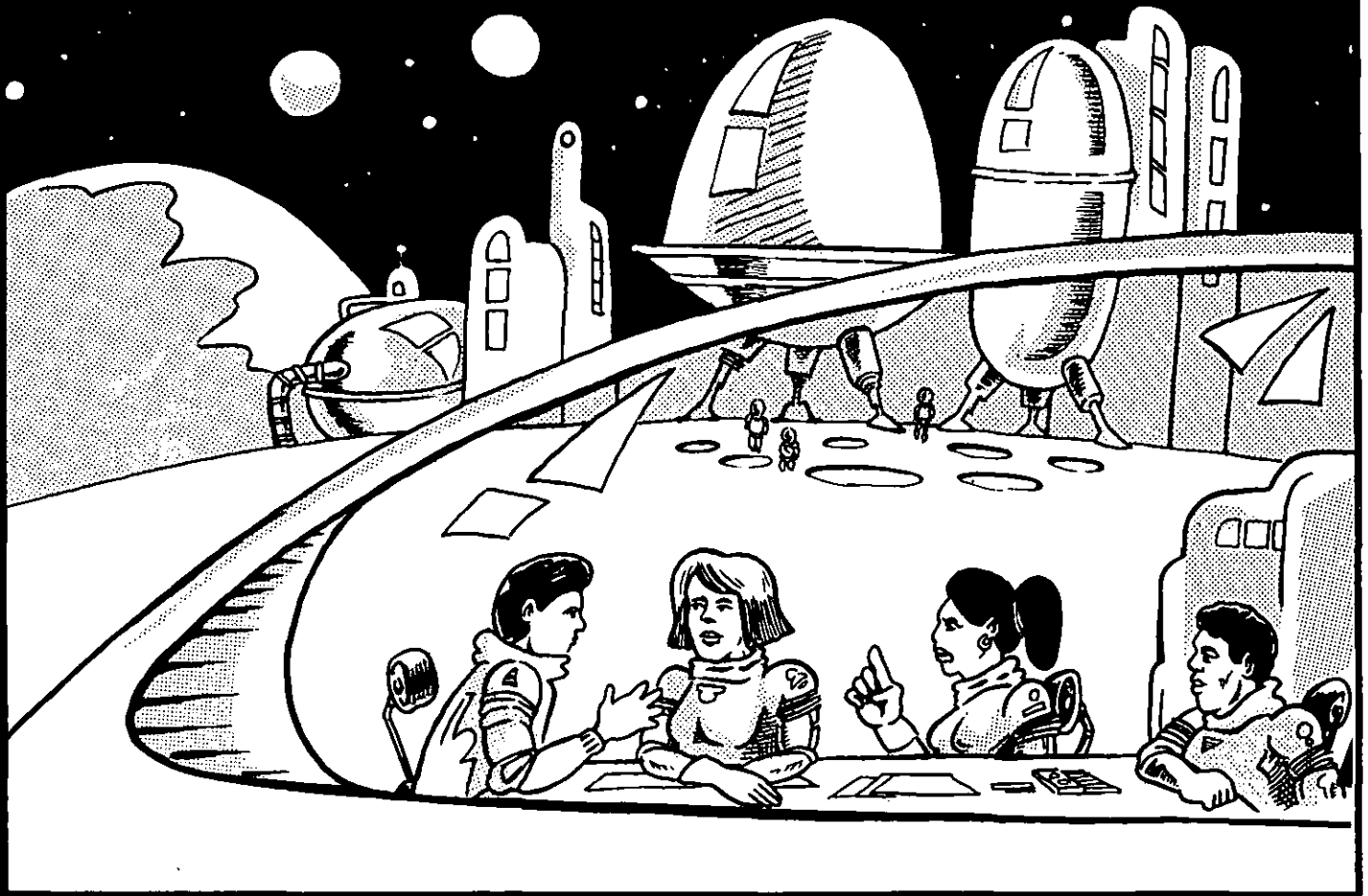
INTERGALATIC NUCLEAR WAR!

It is the year 2189. The space colony Futura is agitating for independence from the Earth Countries which had founded the colony on the planet Osiris 100 years before. Many Futurans are bitter and angry about what they see as Earth's exploitation of the planet's considerable economic resources. They are angry too about the control exercised by Earth over the political and economic destinies of the space colony's 2.5 million people.

The Universal Nuclear War of AD 2005 had brought serious devastation to Earth and the home planet has only recently begun to recover from the effects of the war 184 years ago. Earth knows that it cannot afford another war. Successful negotiations between Earth and Futura are the only way of avoiding the high costs of armed intergalactic conflict. Four Earth countries have been appointed by the Joint Space Exploration Team to attend a Conference to negotiate

independence and a constitution with the Futuran delegation. The Earth Countries and Futura have very different strategic, economic, military and political interests, and each has their own idea about what independence for Futura should mean.

Failure to negotiate could mean the ruin of Earth economies and the possibility of another devastating Intergalactic Nuclear War. The responsibility resting on the shoulders of the delegates to the Conference is totally awesome...



PROJECTED INTO THE FUTURE

From 4 - 7 July, 60 pupils in standards 8, 9 and 10 from Street Law Programmes in the Transvaal, Natal and Cape Province were projected 200 years into the future. Delegates to the Space Colony Conference came together from South Africa's many different cultural and economic backgrounds. The venue for these difficult, interplanetary negotiations was the Uthongathi School in Natal. The Space Colony concept was developed by Mandla Mchunu and Carole Baekey of the University of Natal's Street Law Programme.

Delegates were evenly divided into groups representing the space colony of Futura and the Future Earth countries: the Democratic Republic of Pu Dai, the Autonomous Republic of South Wykiki, the People's Republic of Savoonga and the Glorious Baobob Empire. They were briefed as follows:

CONFLICTING INTERESTS

Since its founding by 164 miners 100 years ago, Futura has been dependent on Earth, despite its considerable economic resources. The Earth countries, themselves representing a variety of political and economic structures, all have different agendas and conflicting long-term plans for Futura.

The delegates projected into this scenario had to identify their groups' interests and how best to protect their considerable investments and hopes for the future. Delegates representing each country had to establish their priorities before breaking into subcommittees representing economic and political structures, education and social welfare, and human rights interests.

INTENSE DISCUSSIONS

The grim determination of delegates to protect their various interests was reflected by raised voices and intense discussion. For three days the 60 delegates worked through and fought about the issues, struggling to determine where and how they could compromise and yet still protect critical interests.

Delegates demonstrated their understanding that their group interests had to be weighed against

SPACE COLONY PROJECT



There was an electric tension in the air as Delegates read out their final statements, the results of hours of intense negotiation... And then, the drama over, the mood changed to relaxation and emotion, as new friends realised they would soon be parting company... enriched by the experience of sharing ideas and working together... carrying with them the seeds of hope for a future founded on understanding and tolerance... and reaching towards the common goal of peace in this troubled corner of Planet Earth.



the horrible consequences of another intergalactic nuclear war, and the larger interplanetary interests to be protected.

Eventually Futura was granted independence and the four countries and Futura formed an interplanetary commonwealth.

RIGHT TO VOTE

All Futurans from age of 18 years were granted the right to vote. Equal rights were established for all people. The judiciary was given the sole right to interpret the constitution and overrule laws conflicting with the constitution.

ECONOMIC INDEPENDENCE

Futura is to be economically independent from Earth and in control of its resources. Essential services, mines, the arms industry and transport services were nationalised. The tax structure is progressive, with the Futuran government levying and collecting all taxes. Individuals have the right to private property.

WORKER RIGHTS

Trade unions and the right to strike were guaranteed. Unemployed people on Futura are entitled to temporary compensation in the form of a loan to be repaid to the government on re-employment.

HUMAN RIGHTS

The delegates adopted a broad human rights platform, including the right to life and legalized and available contraception and abortions. Also granted were freedoms of association, assembly, religion, and employment. Rights to education, freedom from censorship, immigration and emigration are embodied in the document. Both polygamy (the right to marry more than one wife) and polyandry (the right to marry more than one husband) are allowed. Sex education is compulsory.

CRIMINAL PROCEDURE

Broad rights were granted in the area of criminal procedure. Delegates imposed strict search warrant requirements. Other protections were no detention for more than 48 hours without trial, the

right to a lawyer in all criminal proceedings and the appointment of a lawyer if a defendant has no money.

FREE EDUCATION

All schools on Futura will be non-racial and admit students irrespective of race, colour or religion. Education through Standard 8 is compulsory, but the Futuran government will provide both special education for impaired students and free education for all students through matriculation. The medium of school instruction will be either the Fashala or Swahili languages and there is to be no religious instruction in the schools. Universities will admit all qualified students and bursaries or loans will be available to those who do not have the money for education.

HEALTH AND HOUSING

Medical care and housing will be made available to all people and payment will be on a sliding scale according to income. Research funds must be set aside for important work on new "space diseases" and the countries will work together in this new area.

HARD QUESTIONS

Space colony delegates are to be commended for their careful work. While "Planetary Advisors" were available as resources if delegates requested help, the constitution was the work of the delegates themselves. Difficult issues and hard questions were faced by all the delegates who responded with a high level of energy, enthusiasm and creativity.

VALUABLE EXPERIENCE

Many of the students and Planetary Advisors felt sad when leaving the highly-charged atmosphere of the Space Colony. As one student commented: "We never knew it was possible to disagree openly, negotiate and build something together based on our differences. We learned how to talk to each other even while fighting and disagreeing." Several students made similar comments. Hopefully the delegates will take this valuable negotiating experience home with them and put it to use in their diverse communities. The Constitution negotiated by the delegates is given alongside.

THE CONSTITUTION OF FUTURA

PREAMBLE TO THE CONSTITUTION OF FUTURA

We the people of Futura, Baobab, Pu Dai, Savoonga, and Wykiki, having come together in the interests of peace and believing in Futura's independence and mutual cooperation for intergalactic security and the protection of individual rights, hereby approve the following Constitution to be our supreme law.

POLITICAL STRUCTURES

1. Futura shall be totally independent and sovereign. It shall be free of any foreign control.
2. Futura shall participate in an interplanetary commonwealth, along with The Republic of South Wykiki, The People's Republic of Savoonga, The Glorious Baobab Empire and The Democratic Republic of Pu Dai.
3. There shall be a one person, one vote voting system, irrespective of race, sex or creed. All citizens shall have the right to vote upon reaching the age of eighteen.
4. Futura shall have its own independent military force to protect itself.
5. The Constitution shall be superior to the laws of the government. The Constitution may be amended. An amendment requires the support of seventy five percent of the citizens who vote on the amendment.
6. Minorities are guaranteed equal rights.
7. There shall be no discrimination on the basis of sex or sexual preference.
8. Police are required to have a search warrant to enter and search private property.
9. Judges shall be nominated by the Council of Lawyers and ratified by a two thirds majority of the Parliament. All Supreme Court Judges shall serve for life while lower court judges shall serve five year terms with the option of an extended period at the discretion of the Council of Lawyers and Parliament. The Judiciary shall have the power to interpret the Constitution.

ECONOMIC ISSUES

1. Futura will be economically independent. The Joint Space Exploration Organisation (J.S.E.O.) will pull out and Futura will pay compensation to the J.S.E.O. countries and guarantee that it will continue trading with them. There will be a commonwealth of all 5 nations.
2. There will be a mixed economy and the following will be nationalised:
 - 2.1 all essential services including hospitals and schools
 - 2.2 all mines
 - 2.3 the arms industry
 - 2.4 all transport services within Futura
 - 2.5 any enterprise which becomes a monopoly
 - 2.6 any enterprise which is too big for private enterprise.

There will otherwise be no trade restrictions unless negotiated between the Commonwealth countries.

3. The Futuran government will have the power to levy progressive taxes and collect all revenue.
4. Land relinquished by the J.S.E.O. will be equally distributed among all Futurans. There will be a right to private property.
5. Trade unions and the right to strike will be guaranteed. There will be no closed shop trade unions and strikes will only be legal if proper negotiations have failed. There will be no wildcat strikes. The government will have the power to intervene in illegal strikes but not in legal strikes.
6. There will be a right to work and freedom of choice as to the type of employment. People who are unemployed will be entitled to temporary

compensation from the government in the form of a loan repayable on re-employment.

BASIC INDIVIDUAL RIGHTS

1. Every person has the right to live.
 - 1.1 Abortions and contraceptives are legal and subsidised.
2. Each person has the right to liberty, unless he/she transgresses the laws of the Constitution.
3. Each person is entitled to freedom of expression in whichever manner he/she desires.
4. There shall be no censorship.
5. There shall be freedom of/from religion.
6. There shall be freedom of association.
7. Every person is given the right to engage in any enterprise, with exception of those controlled by the government. [Mining, Transport, Arms.]
 - 7.1 Should any enterprise become too large, the government has the right to nationalise it. This mechanism prevents the development of monopolies.
8. There must be educational, social and political equality.
9. Each person over the age of eighteen has the right to vote, irrespective of race, creed or sex.
10. Each person has the right to own a house.
11. Each person has the right to an education.
12. Employees have the right to be protected against exploitation by their employers.
13. Each person is entitled to a fair trial.
 - 13.1 There shall be no detention for more than 48 hours without a trial.
 - 13.2 Each person has the right to be represented in court by a qualified lawyer.
 - 13.3 A lawyer would be provided should the person be unable to afford one.
14. Police should not be permitted to enter anyone's premises without a proper search warrant.
15. Futurans have the right to amend the laws of the Constitution provided that 75% of the voters agree to the amendment.
16. Sex education shall be included into the subject, "Health", which is compulsory in schools.
17. Polygamy and polyandry are permitted provided there is one central partner.
18. Immigration and emigration are controlled by the Futuran government.

EDUCATION AND SOCIAL WELFARE

1. All schools will follow a policy of non-racialism and will admit students regardless of race, colour or religion.
2. Education is compulsory until Standard Eight.
3. Education will be paid for by the government until the end of matriculation level. The government will also pay for "special" education, e.g. schools of the arts; schools for handicapped children.

4. Medium of instruction is either Fashala or Swahili but these are both compulsory in all schools. There is the subject option of other languages (eg. Bebop) in addition to Swahili and Fashala.

5. Sex education and political literacy are compulsory, but not examinable subjects.
6. There will be no religious instruction in the schools.
7. There will be a central body governing education which establishes matriculation standards.
8. The decision-making (regarding syllabi, medium of instruction and co-education as opposed to single - sex education), vests in the various divisions, i.e. regional divisions.
9. Universities will be open to everyone provided the prospective students meet the academic requirements.
10. Universities will be subsidised by government.
11. State bursaries will be available to those who cannot afford the fees and there will be an option of repaying the money over a period of time or working for the state in lieu of such repayment.
12. State scholarships will be made available to exceptional students.
13. There will be a progressive charging system for medical aid, i.e. according to one's income. Those who cannot afford medical care, need not pay.
14. Health spas are run by a government parastatal system and the money generated by these spas will contribute to the state medical aid to cover the expenses of free medical care for the poor.
15. Hospitals will be upgraded and funds set aside for research on space diseases.
16. According to their incomes, people will receive subsidised housing.
17. Those who cannot afford housing will be given temporary free housing with a period of grace of up to five years after which they must start repaying their housing loans or forfeit the house.

TREATY

Pu Dai has guaranteed to implement safety measures in the mines in Futura in return for minerals at a low cost. This arrangement must only last for ten years. This will reduce the number of mining accidents.

Wykiki will provide medical facilities to Futura in return for pesticides. In order for Futura to develop a space diseases programme, Pu Dai will offer training facilities in Pu Dai to Futuran medical personnel.

Signed and witnessed on this day 6 July 2189 by
Authorised Representatives of:

Futura; The Glorious Baobab Empire; People's Republic of Savoonga; Democratic Republic of Pu Dai; The Republic of South Wykiki

The Space Colony Project was originally conceived by Prof. Jim Vache of Gonzaga University, USA and adapted for the S.A. Street Law Programme with the help of Prof. Ed O'Brien and Dan Gluck of Georgetown University, USA.

A Case of Mob Violence

It was 6am, July 21, 1985. In the dusty township of Woestynplaas, a crowd of over a thousand township residents had gathered. They were angry. Angry about many things: high rents and busfares, the lack of employment opportunities in the nearby town of Woestyn which forced many people to travel for hours every day to work and back, the lack of adequate services provided in this remote region of the Karoo. Local women who were trying to make a living selling food at the roadside were being harassed by the police. One of the local policemen in particular, was making it impossible for these women to ply their trade. On more than one occasion he had confiscated meat that was being sold at the roadside because these vendors had no licences, causing financial loss to these very poor women.



In the last few days, a situation of unrest had developed in Woestynplaas. The police had moved in to quell the disturbances, and the day before, two people had been shot dead.

At about 7am, the police who had taken up a position near the gathering, warned the people to disperse...

'This Meeting is illegal in terms of emergency regulations. You have ten minutes in which to disperse!'

The crowd began to sing.
Fists were raised...

Nkosi sikelele iAfrica...



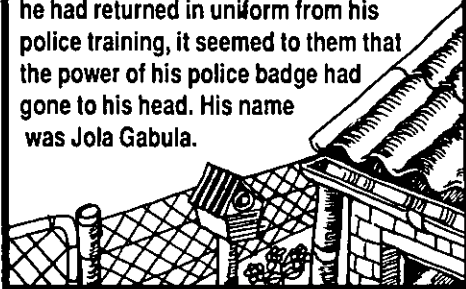
The police fired teargas into the crowd. People panicked, running in all directions...



Some people went home. Others reassembled into smaller groups. One group attacked the Beerhall, attempting to set it alight...



Another smaller group gathered near the house of the young policeman who had been harrasing the meat sellers. He had grown up in the township, and was well known to many in the crowd. But since he had returned in uniform from his police training, it seemed to them that the power of his police badge had gone to his head. His name was Jola Gabula.



Inside the house, which he shared with his family, Jola Gabula had become very nervous. Maybe he shouldn't have been so rough on those meat sellers...But hadn't he just been doing his duty ...?



But now it was too late for such thoughts. As he peered through the curtains, he felt real fear. The crowd was moving towards the house. He heard his name being shouted... Surely...surely they wouldn't...



Jola reached for his police-issue shotgun as stones and rocks began to land on the house.



Shots rang out. There were screams. A young boy in the crowd fell to the ground, wounded by Jola's gun...



Jola knew his gun was useless against the mob. Further shots would only enrage them more. He could not understand it. In the crowd were his friends, people he had grown up with. Did they hate him so?



Jola fled from the house. He knew that if he stayed inside, his whole family would be in danger. His only hope was to get back to where the police were positioned, some distance away. But he had to get past the mob first. Firing his gun wildly into the air, he ran straight through them...



And then the chase began...



A man caught up with him, grabbed his gun and smashed him to the ground with it.

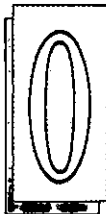


The mob descended on his body. It is not known whether the blows from the rifle butt had already killed him, but his body was repeatedly kicked and stabbed, before being burnt in a petrol fire.



The crowd turned away, leaving the remains of Jola Gabula to burn in the fire...

THE TRIAL



f the crowd of more than 200 people who had stoned Jola Gabula's house, 25 were arrested for their part in his murder. According to witnesses, they had all been at the scene of the stoning of the house, but it was not clear whether they had all been at the scene of his death. At the Trial, the following arguments were presented by the prosecution and the defence. You be the Judge. Read the arguments, and make your judgement.

EVIDENCE FOR THE PROSECUTION:

1. Of the 25 people arrested, it was proved to the satisfaction of the Court that 15 had taken part in the stoning of Jola Gabula's house.

2. The prosecution argued that it was not important to establish which of these people had been at the scene of the actual killing of Gabula.

It was at the house that the crowd had formed the intention to kill him. By stoning the house they had intended to drive him out into the open so that he could be killed.

Therefore, according to the legal doctrine of "common purpose", they were guilty of his murder whether they had actually participated in the physical act of killing him or not.

3. The prosecution also argued that the murder of Gabula was politically motivated.

The incident at Woestynplaas, they said, was a part of the political unrest that had gripped the country, and which had resulted in the "necklace murders" of many people identified by angry mobs as "collaborators" with the "System".

The murder of Gabula, said the prosecution, was part of this general political uprising: it was a conscious, calculated political act.

4. The prosecution concluded that the accused had acted with full knowledge that the death of Gabula would result from their actions. They had thought that they could get away with their crime because they were part of a crowd, and therefore could remain anonymous.

5. For the above reasons, the

doctrine of common purpose could be rightfully applied to this case, and everyone who had been at the stoning of Gabula's house was equally guilty of his murder.

They should all hang, said the prosecution.

EVIDENCE FOR THE DEFENCE

1. The defence challenged the prosecution's application of the "common purpose" doctrine to the case.

The prosecution had not proved, they argued, that every person who was at the scene of the stoning of the house had the intention to drive Gabula from his house so that he could be killed. Maybe they had only intended to assault him, or maybe they only wanted to give him a fright.

2. The defence also challenged the prosecution's opinion that the accused had thought they would be able to remain anonymous, and therefore escape the consequences of their actions. The attack had occurred in broad daylight, with the police in the vicinity.

Surely, if the attack had been a calculated, pre-meditated act, the accused would have acted under the cover of darkness, where they would have more chance of escaping detection?

3. The defence drew the court's attention to the character of many of the accused. They were practising Christians of good character with no previous record of violent or criminal behavior. Two of them were very friendly with the Gabula family. One was described as Jola's "best friend".

Jola Gabula's treatment of the

women meat sellers could not be seen as sufficient motive for people who were his friends to kill him in such a brutal way.

4. The defence argued that there was another force at work: the force of "mob psychology". The defence called on the expert testimony of psychologists who reported that it was a known fact that people behaved differently when in a mob. As a result of being caught up in the angry mood of the crowd, they might do things that they would otherwise never do.

Frustration, provocation, anger and rumours are some of the factors, said the psychologists, which may combine to make the members of a mob behave as if they were drunk or hypnotised.

5. These factors, said the defence, supported their argument that it could not be proved that every single person who took part in the stoning of Gabula's house had formed the conscious intention to kill him.

6. The defence concluded that, if it could not be proved beyond doubt that every one of the accused had the intention to kill Gabula, the prosecution had no right to apply the doctrine of common purpose to the case.

7. The defence added that, should any of the accused be found guilty of the murder, the effects of "mob psychology" should be taken into account by the court as an "extenuating circumstance" which would diminish their responsibility for what they had done, and allow the court to pass a sentence other than the death sentence.

APPLICABLE LAW

MURDER is defined as "the unlawful and intentional killing of another human being".

An "intentional" killing means that the murderer killed the person on purpose. The law says that a person found guilty of murder must be given the death sentence.

The only thing that can save a person convicted of murder from the death sentence, is the presence of "extenuating circumstances". These are special facts that might allow the court to show mercy and reduce the sentence. A person who is found guilty of murder with "extenuating circumstances" need not be sentenced to death.

THE "COMMON PURPOSE" DOCTRINE

The law says that where two or more persons combine in an undertaking for an illegal purpose, each one of them is liable for anything done by the others, if that thing was done with the intention of furthering their common aim.

For example, if two men decide to commit an armed bank robbery, and one person drives the getaway car while the other goes into the bank and commits the actual robbery, both people will be guilty of armed robbery.

The law says that it is sufficient that, if the people who are involved in a crime know or should know what the probable outcome of their action might be, they are liable for what happens as a direct result of the actions of any one of them.

For example, if the robbers decide to commit an armed holdup, they should know that there is the possibility that someone might be killed as a direct result of it. If someone is killed, then both the hold-up man and the driver may be held liable for the murder.

However if any of them commits an act which is not "reasonably incident" to the crime, then those people not personally responsible for that act are not held liable for



that act. In other words, if one of them does something which is not necessarily a part of, or a direct result of their common purpose, then the others will not be held responsible for that act.

For example, in the case of the bank robbery, if the robbers ask someone to steal a car for them, but do not tell that person that the car will be used in a robbery, then that person cannot be found guilty of having a common purpose with the bank robbers to commit the bank robbery, but will be found guilty only of the car theft.

YOUR JUDGEMENT

Below we give some guidelines as to how your judgement should be written.

1. Briefly give a clear outline of the facts and circumstances which led up to the commission of the crime.
2. State the issues on which your judgement will be based. Include only those facts or arguments which you regard as relevant to your judgement.
3. State whether you accept or reject the application of the principle of common purpose to the case. Give reasons for your decision.
4. Deliver your verdict. Are the accused guilty or not guilty of the murder of Jola Gabula?
5. If you find them guilty:
 - (i) will you accept that extenuat-

ing circumstances may have diminished their responsibility?

(ii) will you allow them the right to appeal to the Appeal Court?

(iii) how will you sentence them?

Give reasons for the sentence you have decided upon.

RULES

1. Your entire judgement should not be longer than 600 words. It should include answers to all 5 questions given above.

2. Your judgement should be clearly written and should include your name, address, age, educational institution at which you are studying and standard or year of study.

3. The editors will select the two judgements which we find to be most interesting, logical and clearly expressed. These judgements will be summarised in the next issue of **Streetwise**.

PRIZES

1. The authors of the two judgements selected for publication will each receive a prize of R30. Four other judgements may be selected for mention by the editors in the next issue. The authors of judgements selected for mention will each receive a prize of R10.

2. There are no right or wrong answers. The editors will be looking for judgements which show a clear understanding of the facts of the case and the legal issues involved.

3. The closing date for entries to the competition is 30 November 1989.

The above case is based on a real case. Names, places and some of the details have been changed, and some of the arguments have been simplified. But the circumstances and arguments are basically the same. In the next issue of **Streetwise** we will go into some detail about the actual judgement given by the judge in this case, and the reasons given by him for his decisions.

LEGAL UPDATE

THE RIGHT TO A LAWYER

It is estimated that about 100,000 people in South Africa go to prison each year without being defended by lawyers. In countries like England and America the State has to make sure that poor people are given lawyers if they cannot afford them and are likely to go to prison. In 1988 a Natal Judge, Mr Justice Didcott, gave a very important judgement in a case called *State v Khanyile*. In this case the Judge said that Magistrates in criminal cases must make sure that people without lawyers are given lawyers if:

1. The cases involve difficult facts and difficult law.
2. The people charged with crimes appear as if they will not be able to defend themselves.
3. The charges are serious and the people will be severely punished if found guilty (eg. go to prison or lose their jobs).

During June 1989 Khanyile's case was approved by two Judges with a third Judge disagreeing, and in July 1989 three Judges said that they did not agree with the case. The Appellate Division (see **Street Law Book 1**) will now have to decide whether the Khanyile case was right.

The Khanyile case brings South Africa's law into line with the law of civilized countries which believe in freedom and justice.

However, until the Appellate Division has decided whether the Khanyile case is correct, people charged with crimes should always ask the courts for a lawyer even if the courts do not ask them whether they want a lawyer (see **Street Law Book 2**).

PROTECTING CHILD WITNESSES

Child abuse (see **Street Law Book 4**) is becoming a big problem in South Africa. The Adversary System that operates in South Africa (see **Street Law Book 2**) means that the State must prove beyond a reasonable doubt that a person has committed a crime. Sometimes it is very difficult for the State to prove that somebody has assaulted or sexually abused a child because child witnesses are often scared by what happens in court.

Children find court proceedings frightening because:

1. They are held in a bare court room with nobody nearby to help them.
2. They may have to look at the person who assaulted or sexually abused them.
3. They may have to give evidence against relatives or friends.
4. They are cross-examined (see **Street Law Book 1**) by defence lawyers who try to show that they are lying or confused.

In April 1989 the SA Law Commission made some suggestions to make court experiences less frightening for children. These are:

1. Child witnesses should be helped by people called "child investigators" who are specially trained to look after children (eg. psychologists and welfare workers).
2. Child witnesses should give evidence in special rooms where only the child witness and the child investigator are present.
3. Magistrates, prosecutors and defence lawyers should sit behind a one-way mirror so that they can see the child witness but the child cannot see them.
4. Magistrates, prosecutors and defence lawyers should not be allowed to ask the child questions. They should ask the child investigator questions which he or she would then ask the child.

What do you think of these suggestions? Write and tell us. If you have been a witness in court tell us about your experience.

LOOK OUT FOR OUR NEW WRITE-IN FEATURES NEXT ISSUE

Ask

OUR LEGAL
ADVICE COLUMN

MAX

- Do you have a legal problem about which you need some legal advice?
- Have you had an experience with the law that you would like to ask someone about?
- Write to MAX.
- Our team of legal advisors will reply to your letter, giving their opinion and telling you where to go for help.
- We will publish one or two of the most interesting enquires in the next issue of **Streetwise**.
- Write to **Streetwise Magazine**, c/o Centre for Socio-Legal Studies, University of Natal, Durban.

STREET
BEAT

**SEND US A LETTER. ALL LETTERS PUBLISHED
WILL WIN R20.**

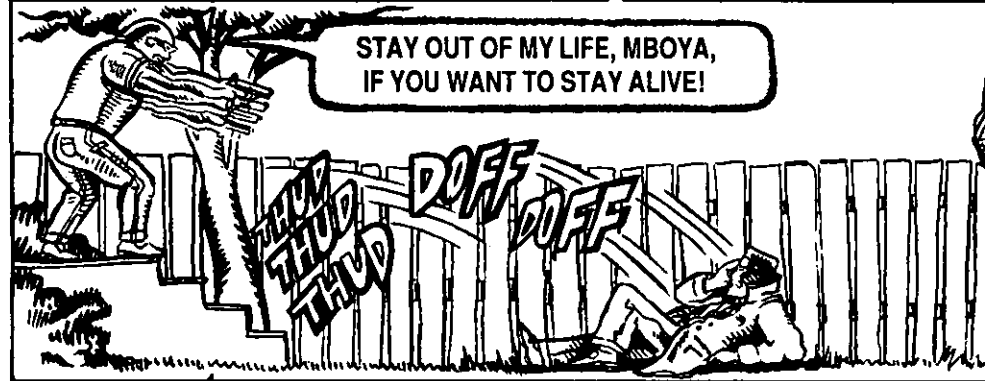
STREET BEAT is our letters page. Write to us to tell us what you think of the magazine. Give us your thoughts about legal issues which interest you. Tell us of your experiences.

We will give a cash prize of R20 to each person whose letter is published in our STREET BEAT page.

STREET BEAT is your feature. Write to us now!



Big Bob was a violent man. I'd already been coshed on the head, attacked with a spanner and now punched on the chin...

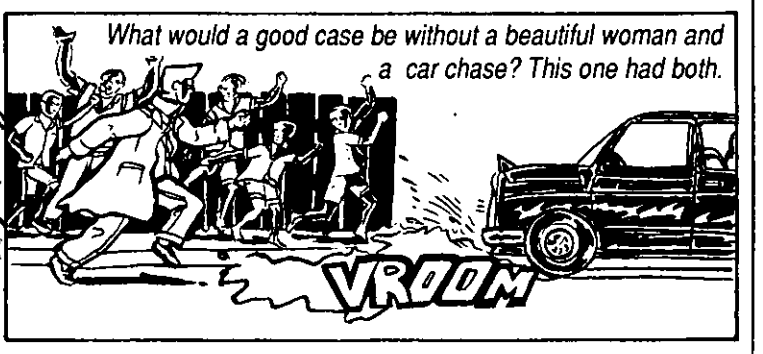
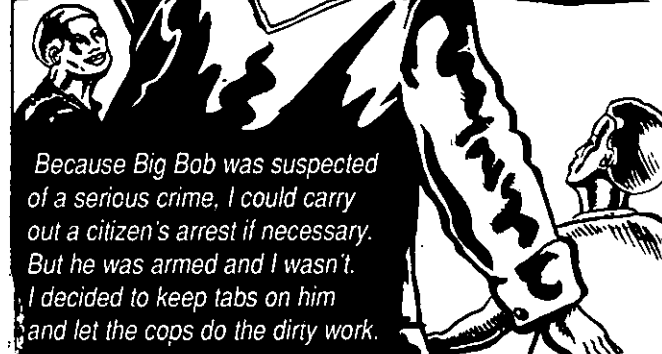


When he pulled a gun on me, I decided to cool it with the heroics...



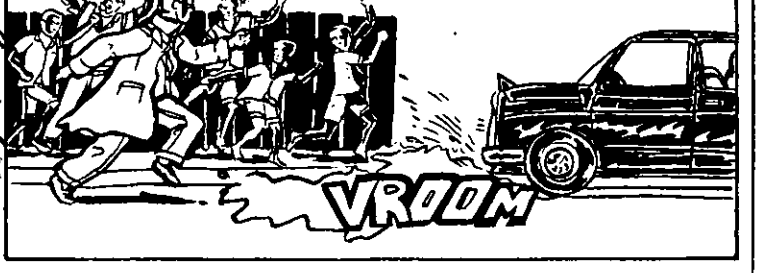
...and call in reinforcements before I got seriously hurt. A quick call to my friend Detective Warrant Officer Jake Naidoo of the C.I.D. did the trick.

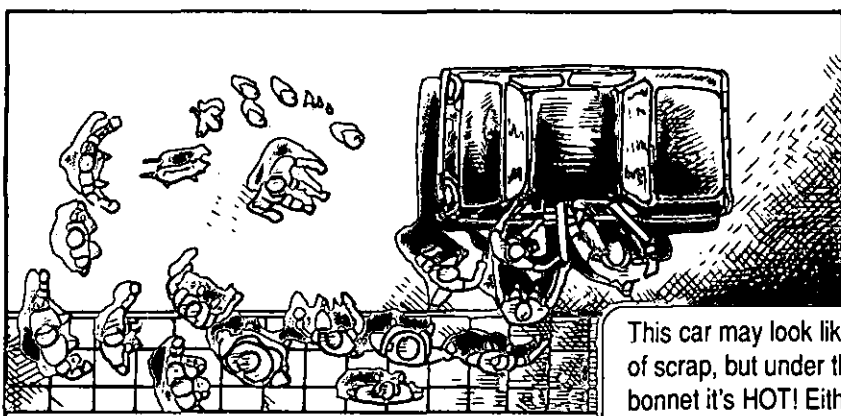
Jake told me to try and keep track of Big Bob in case he made a run for it. Which he did.



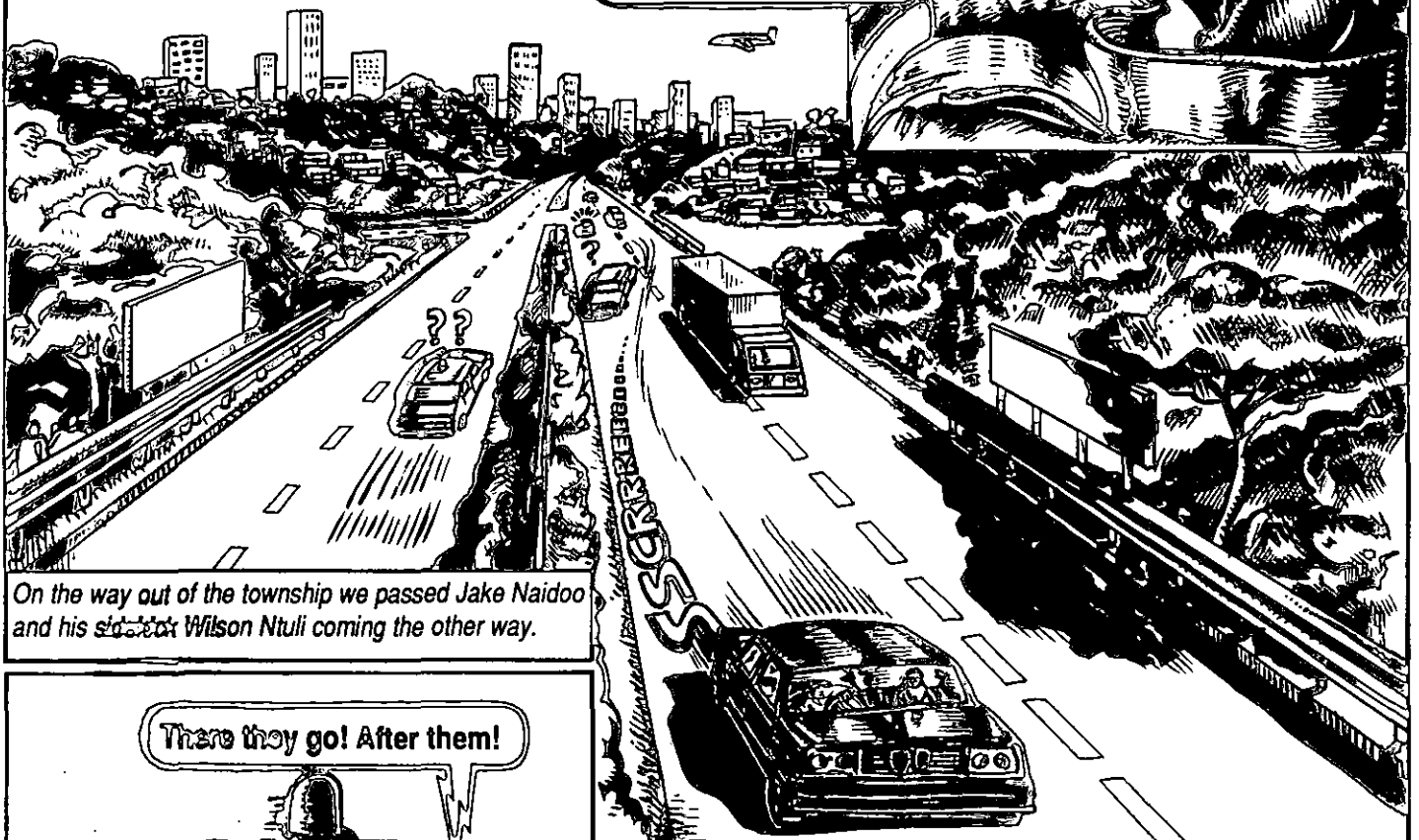
Because Big Bob was suspected of a serious crime, I could carry out a citizen's arrest if necessary. But he was armed and I wasn't. I decided to keep tabs on him and let the cops do the dirty work.

What would a good case be without a beautiful woman and a car chase? This one had both.

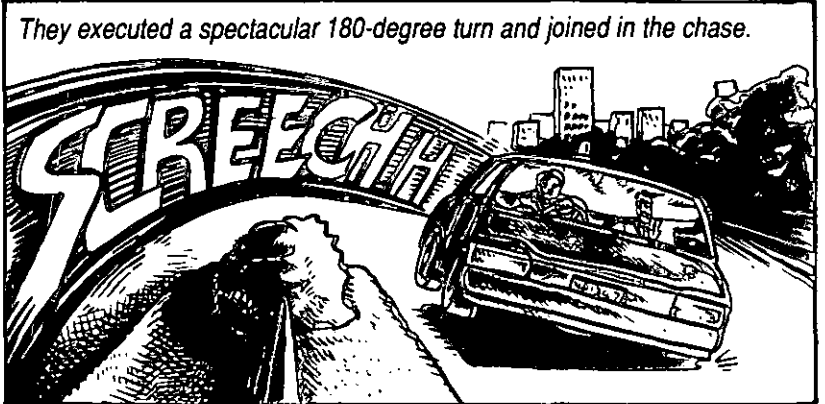




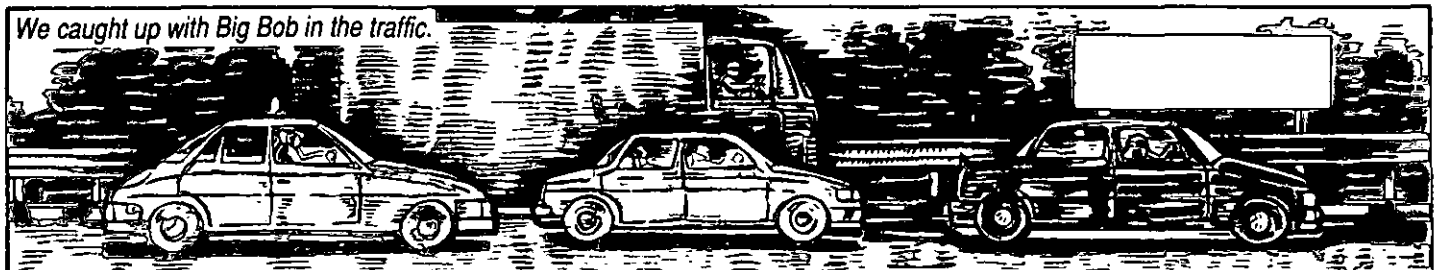
This car may look like a pile of scrap, but under the bonnet it's HOT! Either pile out now or grab tight!



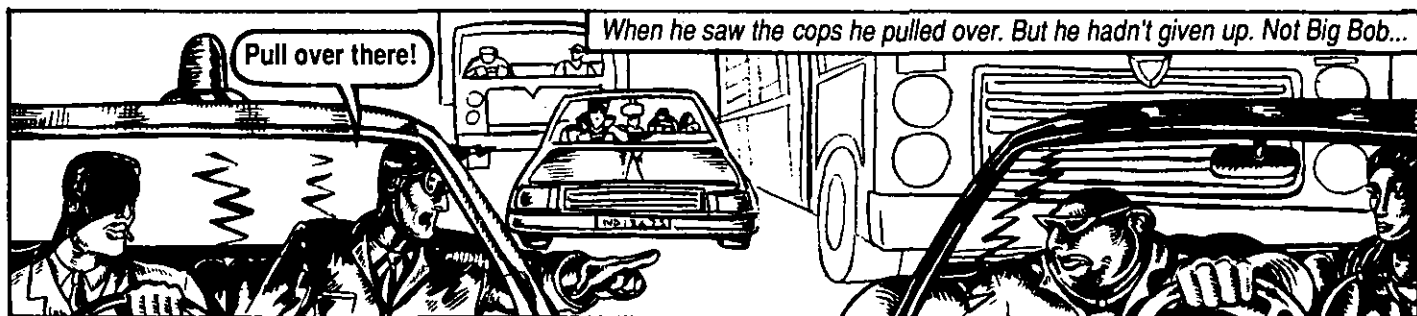
On the way out of the township we passed Jake Naidoo and his ~~slacker~~ Wilson Ntuli coming the other way.



They executed a spectacular 180-degree turn and joined in the chase.



We caught up with Big Bob in the traffic.



Pull over there!

When he saw the cops he pulled over. But he hadn't given up. Not Big Bob...



Officer, arrest this man! He has been harassing my wife and me!

Jake was playing it cool; Not letting on that he knew me. Which was fine by me. I played along.

Is this true, sir?

On the contrary, officer. This man has assaulted me and pulled a gun on me. And I believe he is also guilty of assaulting his wife.

Well... It all sounds very complicated. I think we should all go back to the police station where you both can make statements. We would also like to hear your wife's side of the story.

And what if I refuse?

Well then I will simply arrest you.



You've got nothing on me ...

What's the matter, Big Bob? Are you nervous about coming down to the station to answer a few questions?



I could arrest you right now on any one of a number of charges, believe me...



Rather let us avoid such unpleasantness. Constable Ntuli will drive your car. Your weapon please?



You two may follow us ...





Oh I am so confused... he is my husband. I do not wish to send him to prison. But he has done some terrible things...

What are you referring to? His assaults on you?

Oh, I am so frightened to speak about it. But it has been troubling my soul so much!



I-I heard something... It proves that my husband was behind the taxi murder.

"I was asleep on the night before the killing took place. I heard voices and got up to see who was there. My husband was at the door. He was talking to a man - a very big man. I think it was that terrible man from the panel beater's shop on Cemetery Street."



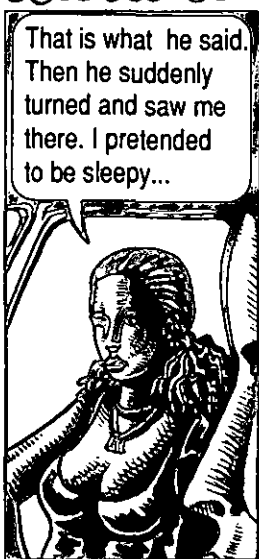
We gave him a chance to come over to us. No more games. Send him to drive his taxi in Hell!



To drive his taxi in Hell?



That is what he said. Then he suddenly turned and saw me there. I pretended to be sleepy...



WHAT ARE YOU DOING HERE WOMAN?

I-I heard voices... I didn't know..



GO TO BED! THIS IS MEN'S BUSINESS!



After that I couldn't sleep. Then when I heard about the taxi-man killing I became very scared. I told my husband I wanted to go back to my family in the Transvaal.

WHAT! DO YOU WANT TO LEAVE ME? ARE YOU PLANNING TO TRAP ME?

No!No!Please let me go,Bob! I don't want to be a part of this!

He became very abusive...

A PART OF WHAT? WHAT DID YOU HEAR? TELL ME, WOMAN!

He began to beat me... I-I had to tell him what I'd heard... After that he would not let me out of his sight. We stayed for a few days in the "safe house" next to the panel beater's shop. Then one day he went out and it was my chance to come and see you. But when I got back he was waiting for me. He threatened to kill me if I didn't tell him where I'd been.

Did you tell him?

I-I had to...

No wonder he was so unfriendly..

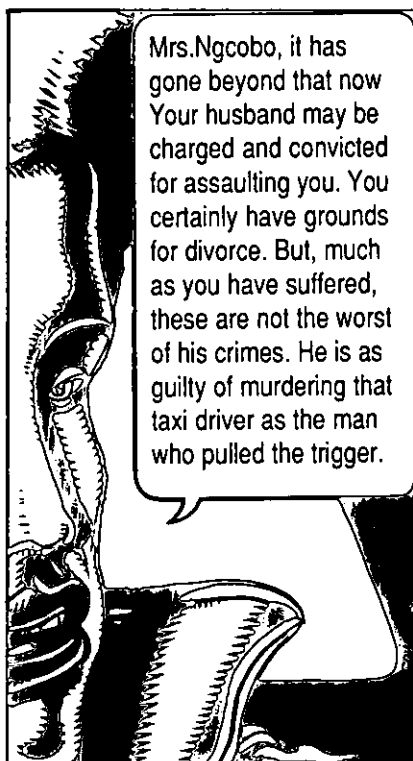
I'm so sorry - that you got hurt-

Occupational hazard. It goes with the job.

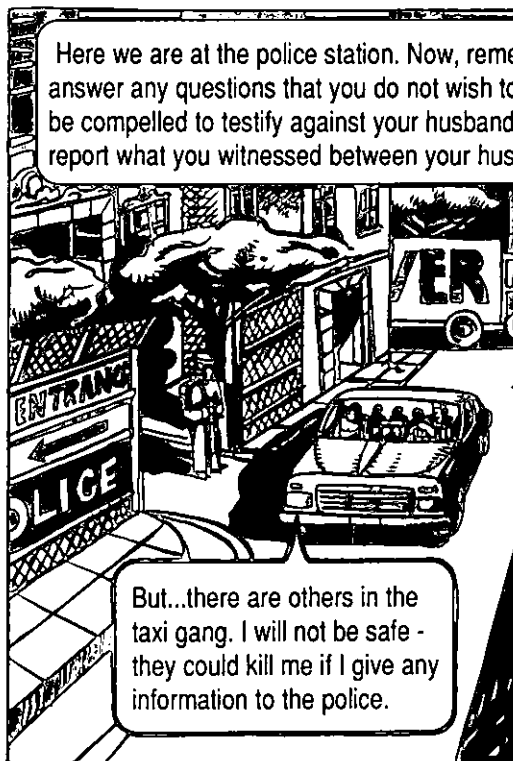
But why, if he has done such terrible things to you, are you so reluctant to see him behind bars?

I-I I really don't know... maybe I'm just old fashioned... He is still my husband...

All I wanted was to be free of him. A divorce, so I could start a new life away from him...



Mrs.Ngcobo, it has gone beyond that now Your husband may be charged and convicted for assaulting you. You certainly have grounds for divorce. But, much as you have suffered, these are not the worst of his crimes. He is as guilty of murdering that taxi driver as the man who pulled the trigger.



Here we are at the police station. Now, remember, the police cannot force you to answer any questions that you do not wish to answer. It is a fact of law that you cannot be compelled to testify against your husband. Neither are you under any obligation to report what you witnessed between your husband and the mechanic that night.

Before you decide, please bear in mind that these are dangerous men. They have killed, and they could do so again. If they remain free, your life may be in danger.

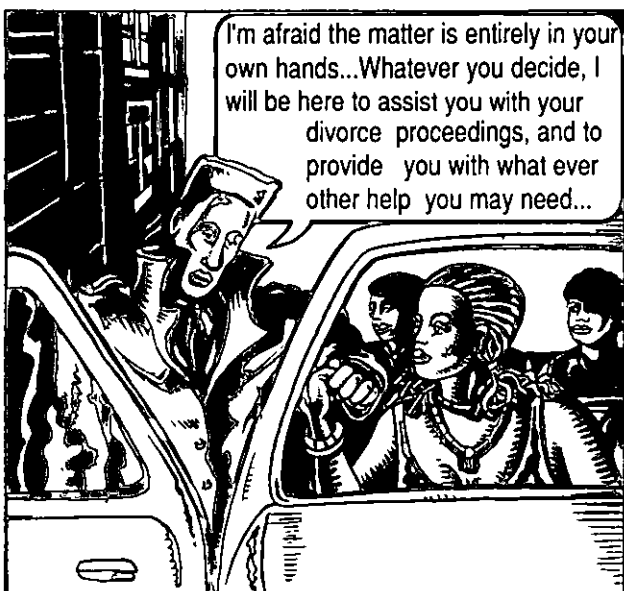
But...there are others in the taxi gang. I will not be safe - they could kill me if I give any information to the police.



She was right. Either way, her life was in danger. She would have to leave town... begin again somewhere new. I couldn't tell her what to do. I could only tell her what I believed to be right.



Crime perpetuates itself, Mrs.Ngcobo. I believe that it is our duty as citizens to combat crime to the best of our ability. But the law gives us a choice.



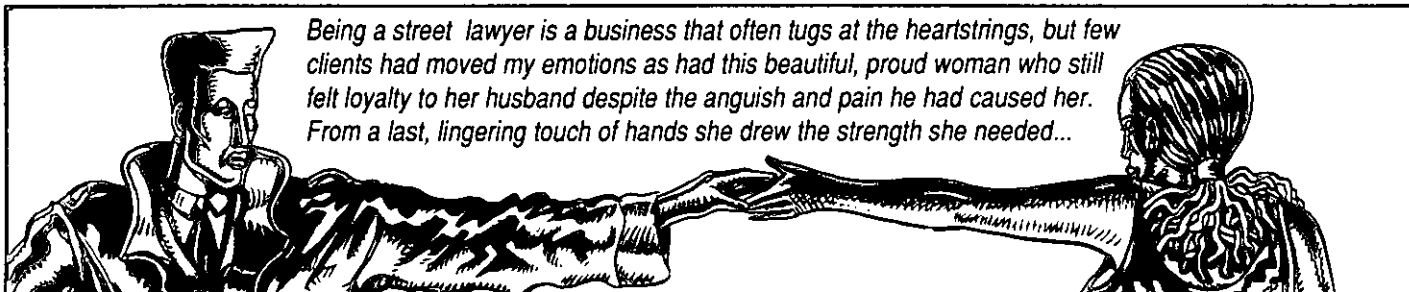
I'm afraid the matter is entirely in your own hands...Whatever you decide, I will be here to assist you with your divorce proceedings, and to provide you with what ever other help you may need...



OH - MR. MBOYA - MAX!



Thank you. You have given me the strength I need. I know what I have to do.



Being a street lawyer is a business that often tugs at the heartstrings, but few clients had moved my emotions as had this beautiful, proud woman who still felt loyalty to her husband despite the anguish and pain he had caused her. From a last, lingering touch of hands she drew the strength she needed...



There are some stories that simply cannot have a happy ending. Whatever Mrs. Ngcobo decided, she was bound to suffer. Crime is like that. It is like a disease which, unless it is checked, spreads to afflict everyone in contact with it... Our only defence against it is the truth.

I've related this case to you because I think it illustrates some important points of law and justice. It shows how important the evidence or information of ordinary people can be in bringing criminals to justice. But it also shows that the law gives us a choice. Without this element of personal freedom, the law would not be able to function as it should.

There are certain set procedures by which you may be required by the law to give evidence in a criminal trial. If the prosecution is convinced that you may have evidence which could lead to the conviction of a criminal, you may be subpoenaed (officially instructed) to testify in a court case. But short of this, no-one, not even a policeman, can force you to give information against your will.

No-one can be compelled to give evidence against their spouse, which is why Mrs. Ngcobo was faced with such a difficult choice.

She made her choice according to the dictates of her conscience, even though it caused her much suffering and hardship. I saw her again, on the day of her divorce. She had moved away: Not even I was privileged to know her new address. The trauma over, she was more reserved, aloof and formal than before.

Big Bob and the mechanic were in prison, awaiting trial for murder. The police, acting on information supplied by Mrs. Ngcobo, had found the murder weapon in the panel beaters' shop. Piece by piece, the evidence was fitted together.

For me, at least, it was over. Mrs. Ngcobo and I shook hands, politely, once the divorce proceedings were concluded. She handed me an envelope, climbed into a waiting taxi, and was gone.



I opened the envelope she had given me. Inside was a cheque. A generous cheque. Enough to pay my rent for the next three months. Ahmed Ahmet would be happy.



There was a note addressed to me. "Dear Max, thank you. I will never forget you." Signed: Grace Ngcobo.



Amazing Grace. I would never forget her either...



No matter how hard I tried.



Street Law

NEWS

• AROUND • AND • ABOUT • WITH • THE • STREET • LAW • PROGRAMME •

WHAT IS THE STREET LAW PROGRAMME?

The Street Law programme originated in Washington D.C. in 1972. Today Street Law is a high school curriculum subject in the U.S.A.

ON THE STREET

The objectives of the programme in the U.S.A. are similar to those of the South African Street Law programme. The Street Law programme is aimed at making people more aware of their legal rights. The name of the programme is derived from the phrase "the man in the street" which means a common person or a layman. Street Law tells people about the laws

that affect them in their everyday life "on the street". It helps them understand how the law works and how it can possibly protect them.

HELP WITH LEGAL PROBLEMS

Street Law also explains what the law expects people to do in certain situations. It tells them about the kind of legal problems they should watch out for and how they can solve them. For example, what to do if one purchases a defective product or is arrested by the police.

NON-RACIALISM

Since the programme is implemented on a non-racial basis it has

the effect of promoting understanding and tolerance between the different racial groupings who through legal information get to know the daily predicaments of other fellow South Africans.

A CAREER IN LAW

The programme also shows pupils the vocational opportunities that exist if one wishes to pursue a career in law. Most of all Street Law builds in a true sense of justice in the minds of pupils. Street Law is mainly targeted at high schools but it is implemented amongst a small number of community organisations.

STREET LAW IN SOUTH AFRICA

Street Law came alive in South Africa through a meeting of minds between Professor Ed O'Brien, who is the co-founder of Street Law in the U.S.A., and Professor David McQuoidMason, Dean of the Law Faculty at the University of Natal in Durban. Their 1985 meeting resulted in the Association of Law Societies agreeing to fund a pilot project which was implemented in five Durban schools of all races by Mandla Mchunu, the Street Law Co-ordinator. The success of the pilot project led to the extension of Street Law into the Transvaal and the Cape provinces. In the Transvaal Street Law is run by Glenda Fick at the University of Witwatersrand; Cecil van Riet at the University of Pretoria; and Phinda Dube of the South African Legal Rights Foundation in Johannesburg. In the Cape, Nape Dalomo at the University of the Western Cape and Wayne van der Vent at

the University of Cape Town lead the programme. The O.F.S. will hopefully join the programme in 1990. Rhodes University has appointed Brenda O'Brien to co-ordinate the programme in 1990. Wendy Paton of NICRO in Port Elizabeth is implementing the programme in that area.

THE STREET LAW BOOKS

As mentioned earlier Street Law is mainly targeted at high school pupils from Standards 8 to 10. Pupils use the Street Law books, which are simply written, easy to read and illustrated with cartoons. These are six books:

1. An Introduction to South African Law and the Legal System
2. Criminal Law and Juvenile Justice
3. Consumer Law
4. Family Law
5. Welfare and Housing Law
6. Employment Law

Volumes 1 to 3 have been published and volume 4 is due out soon. The teaching techniques that are used for Street Law are structured so that pupils actively participate during the lessons.

MOCK TRIALS

The highlight event of Street Law is the annual mock trial competition, an exercise during which pupils play the roles of attorneys, prosecutors and witnesses. These events are presided over by a Supreme Court judge. This year's Mock Trial winners were the Transvaal Street Law pupils.

SPACE COLONY PROJECT

1989 has seen the emergence and success of the Space Colony project (see page 15). The Space Colony project will hopefully become an annual event.

REGIONAL NEWS ROUNDUP

PRETORIA

In Pretoria the Street Law programme is picking up momentum. After the wonderful time we had with the other Street Law kids at the Space Colony Project in Durban, we feel very enthusiastic and the thrill of winning the trophy with the Johannesburg programme has motivated us tremendously.

Ten schools are participating in the programme at the moment and interest is growing. Street law is happening at the YMCA, the Education Support Programme in Waltoo near Mamelodi, and the SOS Children's Village in Mamelodi.

We are also conducting Consumer Law workshops for adults at three factories.

WESTERN CAPE

Street Law is presently running at High Schools in Cape Town and the Cape Flats, Stellenbosch, Grabouw and Wellington. Plans are afoot to extend it to other areas in the region and to include progressive community organizations such as labour unions, church organisations and youth groups.

Twelve Cape Town Schools are participating in Street Law on a weekly basis, and 40 on a monthly basis. The schools vary from Bishops to Mannenberg High.

Twelve community organisations are taking part in the Street Law programme, some of which have seven to eight different branches. The aim is to train the community organisations to run the programmes themselves and articles are published fortnightly in

publications like 'Grassroots' and 'South'. Seven factories will be using the Street Law programme by the end of July 1989.

Plans for the year include :

i) Putting together a Space Colony Project and a mock trial for the region.

ii) Involving lawyers in this region in the activities of the programme.

iii) An extensive instructors' training programme involving teachers and other community workers.

iv) We have realized that there are some people who are not yet aware of the existence of the Street Law programme in the region. We are busy taking care of that!

JOHANNESBURG

Street Law began at the University of the Witwatersrand in May 1988.

Since then we have worked with about 50 groups, including secondary schools, teachers, trainee teachers, social workers and employee groups. We have also worked with students in a number of post-matric programmes, as well as with groups of street-children.

At the moment, about 60 law students who have been trained as Street Law tutors are responsible for conducting workshops in and around Johannesburg.

Aside from the regular Street Law workshops we have also organised visits to the Johannesburg Magistrate's Courts, the Supreme Court and a prison close to Johannesburg.

Also, in conjunction with the Campus Law Clinic at Wits, the Street Law programme is assisting

in a workshop in Alexandra Township in September. The aim of the workshop is to prevent people from being taken for a ride of by unscrupulous salespeople selling various benefits, such as burial schemes.

We are also busy arranging our second annual mock trial which will be held at the University of the Witwatersrand in September.

NATAL

The programme in Natal is working with 50 schools in the greater Durban area. All Legal Aid final year law students at the University of Natal in Durban are involved in the implementation of Street Law. They visit Street Law schools to assist the teachers in conducting classes. The teachers in turn attend a monthly seminar at the university for training.

Street Law also works with a number of community organisations like youth groups and trade unions.

Street Law in Durban is part of the Centre for Socio-Legal Studies at the University of Natal, and conducts paralegal courses in conjunction with the Legal Resources Centre. The education and social work departments of the university also request Street Law training for their final year students. Natal University in Pietermaritzburg is running its own Saturday session on Street Law.

The Natal programme has run a phone-in programme for Radio Zulu on Black Marriages and the Law. A legal advice column written by the co-ordinator appears as a monthly feature in a monthly women's magazine.

FURTHER INFORMATION CONTACT YOUR LOCAL STREET LAW CHAPTER:

UNIVERSITY OF
WESTERN CAPE
UWC COMMUNITY
LAW CENTRE
University of the
Western Cape
Private Bag X17
BELLVILLE, 7535
Tel: (021) 959-2298
9592756

UNIVERSITY OF
PRETORIA
STREET LAW
Centre for Human
Rights Studies
Faculty of Law
University of Pretoria
PRETORIA, 0002
Tel: (012) 420-3151

WITWATERSRAND
UNIVERSITY,
JOHANNESBURG
STREET LAW
School of Law
University of the
Witwatersrand
P.O. WITS, 2050
TEL: (011) 716-5586

UNIVERSITY OF
NATAL, DURBAN
STREET LAW
School of Law
University of Natal
King George V Ave.
DURBAN, 4001
Tel: (031) 812358

UNIVERSITY OF
CAPE TOWN
UCT Institute for
Criminology
University of Cape Town
Private Bag RONDEBOSCH,
7700
Tel: (021) 6502676