

Title:

In Search of Advice: (re)defining meaningful access to justice in the district courts of Johannesburg

Abstract:

Under apartheid access to justice was only available through private funding or the *judicare* system (a system which had the state pay private attorneys for their services to represent those who could not afford it at fixed tariffs). Despite the demand for legal representation, most people failed to gain meaningful access to justice because the judiciary failed to confront a racially-divided South Africa in which civil and political rights were denied to the majority of South Africans. With the introduction of the Constitution in 1996, the *judicare* model proved insufficient in addressing the increase in demand for criminal defence attorneys. With the new demand for providing legal assistance to all people facing criminal charges, the Legal Aid Board of South Africa introduced full-time salaried lawyers; offering legal interns and attorneys to the poor district courts to deal with criminal matters where the accused persons have a constitutional right to legal representation in trials and appeals.

Drawing on ethnographic data gathered from a year of research conducted among Legal Aid South Africa (LASA) attorneys and their clients in a Johannesburg district magistrates court, this research paper argues that despite efforts to provide representation in these courts meaningful access to justice remains a challenge in the courts, specifically legal representation for the poor (by understaffing the courts and overburdening the legal aid attorneys). Working through the reforms in legal aid provision, I offer insight to why these challenges exist in the current judiciary.

I am specifically concerned with how to provide equitable access to justice and to understand how the poor come to experience the current access that the state affords, I have chosen three comprehensive themes to organize the ethnographic materials. I focus on the themes of historical denial of access to justice, the client-attorney interactions and how these hinder and or assist access to justice, and how sharing advice in the courtroom may be a response to or symptom of inequitable access to justice. My argument is that at the heart of equitable access to justice in the district courts is the interaction of legal aid attorneys and their clients; pushed together through historical forces and reliant on an interwoven network of advice sharing in the courts.

Keywords:

Courtrooms, South Africa, Equitable access to justice, Legal aid, Advice, sharing, Lawyer-client interactions, state funded legal aid, Ethnography, Anthropology