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Winter 2011

# Courting Justice

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## Recommended Citation

Hannah Brenner, *Courting Justice*, 6 Yale J. Int'l Aff. 118 (2011) (film review).

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spotlight on women

## *Courting Justice*

Created by Ruth B. Cowan,  
Directed by Jane Thandi Lipman.

Women Make Movies, 2008. 54 minutes, \$29.95.

*Reviewed by Hannah Brenner*

The South African Constitution, created to help guide the nation in the post-apartheid era, includes specific guarantees of equality based on gender and race.<sup>1</sup> Enumerated throughout the constitution, these equal rights are justiciable, and thereby subject to protection by the nation's courts. Comprised of the Constitutional Court, the Supreme Court of Appeal, and the twenty-four High Courts, the Superior Courts are an inherited feature of the new democracy. As such, they are characterized by a complex dichotomy. On the one hand, the judiciary today plays a pivotal role in the movement toward a more just and equitable society, upholding the new constitution and representing, symbolically, the potential for change. At the same time, the courts are plagued by perceptions of illegitimacy and secretiveness, characteristics retained from the role they played during apartheid.<sup>2</sup>

Even with an explicit constitutional commitment to address the gendered and racialized aspects of the judiciary, few women are represented on the courts today, almost fifteen years since the adoption of the new constitution.<sup>3</sup> As of 2008, only 18 percent of the country's Superior Court judges were women. The documentary film *Courting Justice*, created by Ruth B. Cowan, offers a rare glimpse into the lives of seven female judges, telling pieces of their individual, and collective stories.<sup>4</sup> Issues of identity, diversity, past, future, hope, and struggle emerge from the voices of these women throughout the fifty-four minute film.

*Courting Justice* offers a profound contribution to the global study of law and gender, and adds a critical gendered perspective to the research on the evolution of democracy

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in post-apartheid South Africa. Perhaps most significantly, the film contributes to an important body of work on women in the world's legal professions, a field that has to date not focused on South Africa as a site of exploration.<sup>5</sup> Many of the themes found in the literature on women lawyers across the globe emerge throughout the documentary, suggesting the existence of shared experiences, at least in some contexts. The fractured segments of conversations with the featured judges reveal the power of the court as an instrumental agent of change in the new democracy, and how, specifically, the female judges fit into this framework.

*Courting Justice* opens with a short segment focused on a schoolteacher and his cohort of students; the group is in the midst of a tour of the Constitutional Court, the highest judicial body in South Africa, located in Johannesburg. The teacher describes the Court to the pupils, framing it as a place where fundamental rights are protected, representing the past, "where we are coming from," and the future, "which is the constitution."<sup>6</sup> He explains how freedoms and rights are protected by the Constitutional Court, which was built on the same site as the Johannesburg Fort, a high-security prison that was an icon of apartheid.<sup>7</sup> Conceptually, this preliminary footage establishes a backdrop against which the stories of the seven Superior Court judges emerge. The judges featured in the documentary include: Justices Bess Nkabinde and Yvonne Mokgoro of the Constitutional Court; Justice Mandisa Maya of the Supreme Court of Appeal; Deputy Judge President Jeanette Traverso, and Judges Patricia Goliath and Tandazwa Ndita of the High Court, Cape Town; Judge T. Masipa of the High Court, Johannesburg.

Throughout the film, the judges discuss the role of the apartheid courts in enforcing unjust and discriminatory laws. At the High Court in Cape Town, Deputy Judge President Traverso, who, by her own admission, comes from a privileged Afrikaner background, reflects on the evolution of this court. She revisits the painful history of the courtroom as a place where "terrible" cases were once tried during apartheid, like those in which couples were convicted of crimes because they belonged to different races. To illustrate, the documentary includes photographs of famous prisoners and video of a joyful commemoration of ex-political prisoners. Judge Goliath explains the role of courts during apartheid and how they functioned to enforce oppressive laws; she provides context for the difference between past and present, how judges today operate within a constitutional framework: "We make that constitution alive."<sup>8</sup>

The film conveys how the female justices on the South African courts bear a significant responsibility in conjunction with their professional roles. They are part of a powerful movement that has the potential to serve as a catalyst for effecting real social change. Judge Mokgoro was the first African female law professor at the University of the Northwest and one of the first judges appointed to serve on the Constitutional Court. Emphatically, she states, "I am on a mission," and describes how powerful it can be to have commitment and passion for one's work.<sup>9</sup> The visual elements in the film add an important dimension to the judges' voices. The film captures a conversation between Judge Mokgoro and her colleague Judge Goliath, in which their images are cast against a backdrop of framed photographs of the (white male) judges who ruled during apartheid. The women reflect on the challenges faced by these men, who were routinely called on to enforce unjust laws, perpetuating massive human rights violations.

The substantive role of the courts, during and after apartheid, is contrasted against the racial and gendered dimensions of the bench.

What becomes clear is that the power of the judiciary is derived not only from its role upholding the new constitution and democratic laws. The presence of women and black judges on the court suggests that the constitutional guarantees of equality are alive. In the film, several of the judges characterize themselves as the “first woman” or “first woman of color” to occupy a judicial appointment. Justice Mandisa Maya speaks to the strong sense of community and collegiality among the three women who sit on the Supreme Court of Appeal in Bloemfontein. As the first black woman to sit on that court, she hopes that her service in this capacity will inspire young women to pursue careers in law. In her words, “We need them.”<sup>10</sup>

The film also includes repetitive imagery of the judges putting on their traditional robes and dress. These visual images, which are scattered throughout the documentary, represent issues of identity. In the words of Judge Goliath: “Once they are robed, and you are robed, we are equal in the full sense of the word, and I’m no longer a wife, or a mother, or a woman; but now I’m a judge and I’m 100 percent equal to my male counterparts.”<sup>11</sup> These words help contextualize and connect the visual representations of robing, suggesting the unification of a diverse group of people working toward a set of shared, common principles inherent in the new democracy. Against this backdrop, however, other judges see their role differently. Judge Goliath describes herself as being in a position to bring a unique perspective because she is a black female judge. She explains that diversity is important not just in its own right, but as something that the constitution respects. Judge Mandisa Maya who comes from Umtata, Transkei, is interviewed in the rural village where she lives. She explains her role as a judge: “I’m here in this world generally to serve as an African woman.”<sup>12</sup>

Each of the seven judges in the film is a minority, with regard to race or gender, on her respective court. The progress of adding women to the bench has been slow. Judge Traverso, the Deputy Judge of the High Court in Cape Town, speaks to the tragedy inherent in the paucity of women, and specifically a lack of black women, in the judiciary. For Traverso, the lack of women in judicial leadership roles is also problematic. Some of the judges share the bench with other women or judges of color, while others truly serve alone. Judge Traverso reflects on the earlier judicial environment as one that was largely made up of white male judges, and discusses the gradual transformation she has witnessed over time. Judge Goliath describes the court as a “boy’s club” but also acknowledges the tremendous progress that has been made in the few years since the end of apartheid. Proudly, she describes a sense of achievement that comes from breaking through the glass ceiling.

The documentary tangentially explores the inspiration behind how some of the judges found their way into the profession of law. Each of these stories is marked by a sense of hesitation or tentativeness in thinking about becoming a lawyer. Judge Tandazwa Ndita, who sits on the Cape High Court, remembers her childhood growing up in a remote village. In her own words, she described herself as an “unlikely candidate” for such a highly respected role; prior to sitting on the Cape High Court, she had served

as a magistrate in a rural town. As a child, she never could have imagined that she would one day be a judge. Judge Maya similarly dismissed law as a potential career choice. As a young child she could not have envisioned being on the judiciary. The film travels back to her rural village where she reflects on the importance of remembering her roots and where she came; she admits that thinking about her past helps her to wake up every day. Judge Mokgoro shares her own story, invoking memories about her encounter with Robert Sobukwe, a famous lawyer who himself had been imprisoned; he provided legal defense following her own political arrest. She laughs as she recalls telling him that more young men should pursue careers in law. He reframed her comment, insisting instead that she should become a lawyer—his words ultimately inspired her to do just that.

Through some of the conversations, the judges reveal a tension that exists between serving as a judge and being a mother; the duality of these roles is something the judges largely endure alone. The responsibility inherent in a judicial appointment requires many hours away from home—juggling personal relationships and the demands of a judicial career are challenging. In an interview with the young daughter and son of one of the judges, they reflect on the long hours kept by their mother since she accepted this role. Judge Traverso talks about the challenge of persevering in a man's world; she laments that the men don't understand, for example, when a woman has to take time off to be with her children. Another judge reveals her own difficulty in making this sacrifice, particularly as a single parent; she speaks to the challenge of finding quality time to spend with her children. While reading a bedtime story to her young child, however, she admits that being a good judge requires being a "whole person," something that she seems to achieve at least in part by her maternal identity.

The film assumes some knowledge of the new South African democracy and history of apartheid generally. Without this background, some elements of the film are more difficult to understand. While *Courting Justice* is wholly effective in providing a snapshot of the lives of seven women who serve on the Superior Courts in South Africa, many questions remain unanswered; ideally this film will prompt additional inquiry and further study of this important field. Since the film's release in 2008, there has not been a profound shift in the gender demographics of the Superior Courts. Today, the Constitutional Court is still comprised of two female justices—Justice Bess Nkabinde who was featured in the film, and Justice Sisi Khampepe, who was appointed in 2009. The Supreme Court of Appeal saw an increase in the number of female judges from three to four since 2008.

While the film alludes to the slow progress toward racial and gender equality on the bench, there is little attempt to offer an explanation or place it in a broader context, either within the borders of South Africa or in a global perspective. Several of the judges speak to the need to expand the pool of eligible lawyers from which the judiciary is selected but stop short of addressing the phenomenon specifically, or proposing solutions. One wonders, for example, about gender representation among law students. Are there women entering the legal pipeline in significant numbers? How do the gendered dimensions of the judiciary compare with other parts of the

legal profession in South Africa? Finally, the film pays no attention to the process by which members of the judiciary are appointed to the courts. How might this process contribute to the lack of diversity on the courts? While these gaps in information leave many questions unanswered, the film nonetheless serves as a starting place for a valuable conversation about gender and racial equality in the South African judiciary. Ideally, it will inspire others to take up these issues as South Africa moves toward its second decade of democracy.

The final moments of *Courting Justice* include a kaleidoscope of images from the apartheid era, interjected with glimpses of the judges donning their traditional judicial robes. This visual conceptual framework for the film's conclusion provides a powerful illustration of the contrast between the injustice perpetuated during apartheid and the potential for social change and equality inherent in the new democracy, the constitution, and the courts. ■

– David Bargueño and Deirdre Shannon served as lead editors of this film review.

## NOTES

- <sup>1</sup> The new constitution, adopted in final form in 1996, provides numerous references to racial and gender equality. Constitution of the Republic of South Africa, Act 108 of 1996.
- <sup>2</sup> Ruth B. Cowan, "Women's Representation on the Courts in the Republic of South Africa," *University of Maryland Law Journal of Race, Religion, Gender and Class* 6, no. 29 (2006): 291-317.
- <sup>3</sup> Chapter 9, Section 174 addresses the appointment of judges. Section 2 recognizes "the need for the judiciary to reflect broadly the racial and gender composition of South Africa must be considered when judicial officers are appointed." Constitution of the Republic of South Africa, Act 108 of 1996.
- <sup>4</sup> Ruth B. Cowan is a political scientist and a Senior Research Fellow at The Ralph Bunche Institute for International Studies, The Graduate Center of The City University of New York. She is the founding President of Pro Mujer, an organization that facilitates capacity building with poor women in Latin America.
- <sup>5</sup> Internationally, a growing body of research, scholarship and general interest on women in the legal profession is emerging. In a recent book on women in the legal profession across the globe, the editor specifically laments the lack of representation of women on the African continent. Ulrike Schultz & Gisela Shaw, eds., *Women in the World's Legal Professions* (2003). The film's creator, Ruth B. Cowan, has written several law review articles on the subject.
- <sup>6</sup> *Courting Justice*, DVD, directed by Ruth B. Cowan (South Africa: Women Make Movies, 2008).
- <sup>7</sup> Hundreds of thousands of individuals were housed at the prison, including political prisoners such as Nelson Mandela and Mahatma Gandhi.
- <sup>8</sup> *Courting Justice*.
- <sup>9</sup> Ibid.
- <sup>10</sup> Ibid.
- <sup>11</sup> Ibid.
- <sup>12</sup> Ibid.