

## CHAPTER 1

# INTRODUCTION

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This monograph is born out of two distinct processes. On the one hand it has emerged from a series of interactions with role-players in the criminal justice policy development field, inside and outside of government, who consistently identified the Specialised Commercial Crime Court as one of the most successful innovations in the delivery and administration of justice since 1994. Generally, however, these role-players did not have all that much information on the nature and character of its success, nor the reasons for it. The general view seemed to be that ‘they’re getting really good conviction rates because they’ve integrated the police and the prosecutors’.

How this had happened, what this integration meant in practice, what its concrete results were, and what others might learn from all of this, were questions for which there were seemingly no adequate answers. It appeared, therefore, that, if nothing else, a monograph on this court would help policy-makers and practitioners think through the objectives of criminal justice transformation in a way that would help to identify various pointers to success.

There was a second motivation for this monograph. In the course of another project for the Department of Justice and Constitutional Development, it transpired that policy on the desirability and purpose of specialised or dedicated courts did not exist. It seemed that a monograph, setting out some of the issues that ought to be considered, would make a useful contribution to the process of reform. This motivation was only reinforced by the somewhat unedifying spectacle of Justice Portfolio Committee members having to object to some proposals in the Immigration Bill, which called for the creation of specialised immigration courts.

These two motivations for this monograph have meant that, broadly speaking, the document deals with two issues, hopefully brought together in a way that is both interesting and practical. The first half of the monograph looks in quite abstract terms at the arguments for and against court specialisation, while the second half looks more directly at the functioning and impact of the Specialised Commercial Crime Court.

While saying that these are the two broad themes of the monograph, it is important to add that what is unique and successful about the Specialised Commercial Crime Court is not, in fact, that it is a specialised court. More exactly, what sets this court apart from other regional courts—besides the fact that it hears a narrow range of cases—is that the work of the prosecutors who lead evidence on behalf of the state at this court, and the work of the investigators of the SAPS Commercial Branch in Pretoria, is so well integrated.<sup>1</sup> Thus, what started out as a report on the success of a specialised court, turns out to be a report on how the integration of investigation and prosecution can have important positive effects on the productivity of the criminal justice system.

Thus, throughout this monograph the aim has been to separate comments on the functioning and performance of the court, from comments on the functioning and performance of the investigation and prosecution teams. It is important to bear this in mind so that comments relating to the prosecution—the Specialised Commercial Crime Unit (SCCU)—are not confused with comments relating to the similarly-named Specialised Commercial Crime Court.

The Specialised Commercial Crime Court consists of two regional courts—courts 18 and 19—in Pretoria. It was set up at the end of 1999 with the assistance of Business Against Crime (BAC), which had taken a decision to assist the state in a number of areas in the development of criminal justice policy and the delivery of services. BAC has mainly played a facilitating role, helping the three parties central to this court (the SAPS, National Prosecuting Authority and Department of Justice and Constitutional Development), to develop appropriate working relationships in the face of this form of crime. In addition to this role, however, BAC has also provided some resources to the departments involved, including funds to secure skilled investigators and legal practitioners to mentor and assist the staff of these units.<sup>2</sup>

The main innovation of the Pretoria court is that investigators and prosecutors are put on project teams tasked with completing the investigation of crimes reported to the Commercial Branch. This integrated way of working, which might be alternatively described as prosecution-led investigation or prosecutor-serviced investigation (described in chapter four), means that case preparation and presentation in this court appears to be much more thorough than in other courts. The result is that cases are turned around faster, and more of them result in convictions. This improved efficiency and effectiveness, which is described much more fully in chapter five, can largely be accounted for by the fact that the joint investigations/prosecutions are so expertly and thoroughly executed.

Before discussing the functioning and performance of the Specialised Commercial Crime Court, however, the theoretical cases for and against court specialisation are considered. In doing so, some time is spent in chapter two reviewing what it is that courts are expected to achieve. It is argued that the objectives of a judicial process are neither unified nor free of contradiction. It is for this reason too that courts cannot be understood as unified organisations, but can be more fruitfully thought of as a 'informal workgroup'. This is somewhat of a paradox, given the formality of court practice, which comes together to process cases, but is shot through by conflicts over the goals of that process.

Chapter three examines the case for and against court specialisation, distinguishing between specialisation proper, in which a court is set up by statute, and court dedication, where an otherwise 'normal' court is dedicated to the hearing of cases of a specific nature. It is argued that the establishment of the latter is generally less difficult than the former.

Given the nature of this monograph, much of it emerges out of a combination of working through the existing literature and interviewing experts and practitioners in courts, court management and the criminal justice system generally. These interviews, with dozens of policy-makers, practitioners and users of the court, were unstructured. No attempt was made to ensure that those interviewed were somehow representative of the people working on these policies or in these courts, nor was any attempt made to use a survey instrument which would provide numerical measures of the attitudes of survey respondents. In addition to the interviews, a number of days were spent in court or with investigators and prosecutors, talking about their work and observing them in action.

Although there has been some attempt to assess the performance of this court quantitatively, the absence of adequately comparable data means that such an effort offers little real reward.

Given the rather unscientific nature of the methodology, this monograph is open to the criticism that the results were filtered through the pre-existing beliefs of the writer. That said, it is hoped that the views and opinions offered have been captured and conveyed as accurately as possible. Key individuals in the SCCU have reviewed a draft of this monograph in the hope that some errors may be eliminated; Antoinette Louw and Martin Schönteich of the ISS also reviewed early drafts. All the same, the writer takes full responsibility for any remaining faults.