Report by Prof Lovell Fernandez on Visit to the University of Missouri Law School, Columbia, from 14 to 22 October, 2008

Given the fact that, for several years now, Professor Rod Uphoff and I have jointly taught the course on comparative criminal justice to both South African and American students, I became interested in learning at first hand how American law is applied in practice. I was particularly keen to find out more about how plea bargaining works in the US, particularly because statutory plea bargaining was introduced in South Africa only recently. Also, plea bargaining is a component of the law of criminal procedure, which I have been teaching to undergraduate law students.

I profited hugely from my visit to the Missouri Law School, thanks to Professor Uphoff who, together with his wife, Marsha, went out of his way to make my stay in Columbia a rewarding experience. My academic host was Professor Frank Bowmann III, a renowned criminal justice scholar, and a leading expert on US sentencing policy. He is also a former public prosecutor, specialized in prosecuting white collar crimes.

In the first few days, Professor Bowmann, co-author of the authoritative work, Federal Sentencing Guidelines, gave me a thorough run down on present penal dispensation in the US, stressing how the formal regulatory sentencing framework has made criminal trials more transparent and their outcomes more predictable. The bringing of law to sentencing proceedings, I learnt, has not only reduced sentencing practices between district and regional courts, but equally importantly, it is beginning to impact considerably on the prosecutorial function. Of course, for me these insights were mightily important, given the fact that the most notorious feature of the South African criminal justice system is its unpredictability. Professor Bowmann provided me with a raft of literature on this topic, a great deal of which I spent my time reading whilst in Columbia.

But to come to grips with how the functionaries themselves handle plea bargaining at the court level, Professor Bowman arranged meetings for me with the Boone County assistant prosecutor, Richard Hicks. In addition I met with the State public defender of Columbia, Larry Miller. In both instances I was introduced to the nitty-gritty of the plea negotiation process, from the point of view of both the State and defence counsel. It was in these interviews that the difference between theory and practice became apparent. In between, I had a chance to meet up again with Professor Kandice Johnson, who had been to UWC before to teach the comparative criminal justice course with me in 2007. Professor Johnson is in charge of the clinical criminal law education program, and I used this opportunity to hear more from her on how the program works in practice.

Towards the tail end of my stay, Marcia Uphoff kindly offered to drive me to Jefferson City, where she had arranged a meeting for me with Supreme Court Judge Mary Russel, an alumnus of the Missouri Law School and widely acclaimed Judge of the Missouri Supreme Court. The discussion here revolved mainly around how courts are managed, cases processed, and about the kind of cases that fall within the jurisdiction of the Supreme Court. What I learnt here, too, was the critically important role that judicial education plays in the American court system – a culture which has yet to be cultivated more assiduously at all levels of the South African court system.

I was bestowed the honour of giving a public address to both students and staff of the Missouri Law School. I spoke about what changes have occurred in the South African criminal justice system since the dawn of democracy, pointing out our achievements and failures. For the rest of my stay, I divided my time between meeting up with erstwhile comparative criminal justice students who had taken the course at UWC, reading in the magnificently resourced law library, and attending professor Uphoff’s lectures on American criminal procedure.

My stay was not consumed by law alone. There was more on offer. Thanks to the supreme instrumentality of the Uphoffs, whose prowess at entertaining guests on the extramural plane I shall continually extol, my evenings and weekend were chock-a-block with joyously diverting outings. A scintillating highlight that befell me, and one which for which the remarkably versatile Professor Jim Levin deserves full honours, was an early Saturday morning two-hour drive to St Louis, to be part of a hundred–thousand-big crowd that had gathered there, under the gigantic Gateway Arch on the banks of the Mississippi River, to see and hear the then Senator Barack Obama deliver a moving oration on why he desired that America vote him into the White House.
More than just educating me on the ins and outs of American procedural law, Professor Bowmann lent me a bicycle, without which I would have come away from Columbia without having explored the exhilarating countryside in its rioting of autumnal colour. It was on this bicycle that I wheeled my way to attend a lively, chorally delightful, and abundantly uplifting Southern Baptist church service at which I met a married couple who invited me to dinner at their home, together with several of their friends. The talk that evening went everywhere, but was mostly awash with the then impending election and what a win for Obama would mean for the Black people of America.

For the rest, let me add how hospitable and accommodating I found the Missouri Law School. The colleagues there gave generously of their time and their ability to help me find my way around the academic grove. I thank them for this.

In sum, my stay in Columbia was worthwhile. I thank Professor Jan Persens, director of the UWC Office for International Relations, and his very competent staff, for arranging this visit. I encountered no problems whatsoever, something I value a lot.

Most importantly, this exchange trip will not result in nothing. I have every intention of integrating the knowledge I gleaned there into UWC’s new LLM course on the combating of corruption and the law relating to money laundering. Plea bargaining is a core component of the pre-trial give and take when it comes to complex economic crimes. Now that the UWC Law faculty has a video conferencing outfit, I plan to involve colleagues from the Missouri Law School who are versed in the appropriate fields, in the distance teaching of some of our classes. Equally, much of what I learned in Missouri I intend to publish in an article next year that will, I trust, help to augment our South African efforts to enhance the practical workings of our law of criminal procedure.

Finally, I owe much thanks to the tangible existence of our UWC-Missouri partnership. I consider it a very effective mechanism for growing the highly enriching reciprocal benefit that both universities are deriving under its auspices.