


converts a devil's service into employment by the members requesting such services is undesirable. Thus, although it is not improper for the member requesting such services to show his appreciation therefor in tangible form, any form of payment which obliges the devil to do the work is undesirable.

4.26.2 It is not within the etiquette of the profession for a devil to be obtruded on the notice of an attorney in respect of any brief worked up by the devil. The latter should not be present at a consultation, nor should he take any active part in the conduct of the case in court."

Is it not time that we revisit the above rule? I believe devilling can be utilised as an effective tool of training new advocates. I have in mind, making it obligatory to all senior advocates briefed by the state attorney to take a new advocate to "devil" for him or her with payment of a certain percentage of his or her fees. This will assist especially black advocates immensely in acquiring the necessary skills and at the same time, enable them to pay their Bar fees. The day I take silk and if the ban on devilling is effectively lifted, I will be the first to volunteer to take a new advocate to "devil" for me for a fee. 

Endnotes

- 1 Seth Nthai "Fusion of the legal profession" 1999 December *Consultus* South African Bar Journal 32
- 2 Georgina Kent "The man for all reasons" 2002 February *Counsel* Journal of the Bar of England & Wales 8. The article is on the profile of David Bean QC, the new chairman of the Bar of England and Wales
- 3 Barbara Whittle "Two draft Legal Practice Bills for Minister?" 2002 January / February *De Rebus* South African Attorneys' Journal 19, see also CDA Loxton SC and WHG van der Linde SC "The draft Legal Practice Bill" 2002 April *Advocate* South African Bar Journal 15
- 4 Lord Denning *The Family Story* Butterworths (1981) 93
- 5 WHG van der Linde SC "What the Bar does" 2002 April *Advocate* Journal of the South African Bar 9-10
- 6 JF Mullins SC "Pupillage: the face of the future" 2002 April *Advocate* South African Bar Journal 29
- 7 On the issue of devilling generally, see Edmund Heward *Lord Denning: a biography* 2nd Edition Barry Rose Law Publisher (1997) 20-21. See also Glanville Williams *Learning the Law* 11th Edition Stevens and Sons (1982) 198

Justice College – training judicial officers

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In terms of the regulations issued under the Magistrates Act of 1993, no person shall be appointed as a magistrate unless he or she — "... has successfully completed an applicable course (the duration, content and extent of which shall be specified by the Chief of the Justice College after consultation with the [Magistrates] Commission) to the satisfaction of the Chief of the Justice College or a person designated by him [her]."

On 1 May 1997 the current head of the college, Ms MC van Riet, took office.

Soon after Ms Van Riet's appointment a separate directorate responsible for judicial training was created to give effect to the principle of judicial independence. This directorate is accountable to the Magistrates Commission and receives direction from the commission as concerns policy and training content.

Further restructuring has been proposed to remove the college from the realm of the executive. What is envisaged is the creation of an autonomous statutory body governed by a college council which is to be representative of all role players. Different faculties are to be responsible for *inter alia* judicial training, prosecutorial training, general legal training and administrative, management and leader-

ship training. These proposals are presently receiving the attention of the executive committee of the Department of Justice and Constitutional Development.

A system of "rolling needs assessments," which entails continuous consultation of all role players on their training needs, has also been introduced. A result has been the expansion of training programmes for persons to be appointed as magistrates and of the centralized seminars for aspirant regional magistrates, serving regional magistrates and civil magistrates. As a result of feedback, training interventions for criminal court magistrates have been made shorter but more frequent and have been decentralized to at least one seminar in each of the nine provinces.

The current composition and functions of the Directorate: Judicial Training are as follows:

Sub-Directorate Judicial Training: Criminal Court

The section is staffed by five senior magistrates and two magistrates. Their task is to present training programmes for regional magistrates, aspirant regional magistrates, presiding officers in criminal courts and



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magistrates presiding at inquests. They also present the criminal component of the training programme for those who are to be appointed as magistrate. As a result of a generous contribution from the *United States Agency for International Development* (USAID), it also became possible to appoint a number of tutors, each responsible for in-service training of individual magistrates in designated areas.

The main areas of focus of this section are the general principles of criminal law, selected specific offences, criminal procedure, principles of sentencing, law of evidence, judgment writing and inquests.

The training programmes include the presentation of seminars (centralized and decentralized), moot court exercises, refresher courses, emergency in-service training interventions, mentoring of individuals, the furnishing of telephonic advice and attending to enquiries received from individuals. Lecturers are also responsible for the compilation and continuous revision of practical notes, manuals and other study material.

In the recent past, this section also embarked on special projects relating to the amendment of the provisions of the Criminal Procedure Act 51 of 1977 regarding bail, and to the provisions of sections 51, 52 and 53 of the Criminal Law Amendment Act 105 of 1997 concerning the imposition of minimum sentences for certain offences. Other special projects focused on drug trafficking, money laundering, the application of legal principles as they relate to juvenile offenders and children as witnesses and/or victims (child law), forensic evidence and medico-legal aspects. The section also commissioned a comprehensive *Bench Book* for criminal court magistrates.

Sub-Directorate Judicial Training: Civil and Family Courts

This section is currently staffed by one senior magistrate and six magistrates, with a vacancy for another senior magistrate. They present seminars to presiding officers in civil courts (intermediate and advanced level) and divorce courts. They also present courses on *capita selecta* of the law of delict and the law of contract, and courses for clerks of the civil and divorce courts and for registrars of the high court. They are responsible for the presentation of the civil component of the training programme for persons to be appointed as magistrate. The lecturers of this section are also responsible for training on the Promotion of Access to Information Act 2 of 2000, the Promotion of Administrative Justice Act 3 of 2000, the Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000, the Domestic Violence Act 116 of 1998, and on conflict and alternative dispute resolution. The *Deutsche Gesellschaft für Technische Zusammenarbeit* (GTZ) was involved in the drafting process of the Promotion of Administrative Justice Act

2000 and also assisted in its implementation, *inter alia* through various training interventions. It also collaborated with the college in the publication of *The Promotion of Administrative Justice Act Benchbook* by Iain Currie and Jonathan Klaaren.

The training programmes included seminars and courses, refresher courses, the furnishing of telephonic advice and attending to enquiries received from individuals. Lecturers are also responsible for the compilation and continuous revision of practical notes, manuals and other study material.

Special projects that will be implemented by the section in the near future include a fast track training programme for civil magistrates which will be funded by the Danish Government and a comprehensive training programme in civil adjudication for regional magistrates, many of whom have experience only in criminal adjudication. The latter intervention will be funded by the Canada-South Africa Justice Linkage Project.

Sub-Directorate Quasi-Judicial Training

This section is staffed by two senior magistrates, one magistrate and two legal administration officers. They train commissioners of child welfare (usually senior magistrates or heads of the judiciary in a particular magisterial district), presiding officers in misconduct enquiries, maintenance officers, clerks of the criminal and small claims court, probation officers, intermediaries and control officers.

Training is presented by way of seminars, courses, the furnishing of telephonic advice and attending to enquiries received from individuals. Lecturers are also responsible for the compilation and continuous revision of practical notes, manuals and other study material.

Apart from the services of the permanent component of eight senior magistrates, nine magistrates and two legal administration officers mentioned above, the directorate has continuous recourse to the expert knowledge of other lecturers at the college on topics such as the administration of deceased estates, the provisions of the Recognition of Customary Marriages Act 120 of 1998 and the law of evidence. Ample use is also made of guest lecturers on a variety of topics such as social context training, judicial independence, ethics and accountability, forensics and medico-legal aspects. Justices of the Constitutional Court and judges of the Supreme Court of Appeal and the High Court have also, in the past, been invited to participate in various training interventions. The Directorate aims to maintain this practice.

The Canada-South Africa Justice Linkage Project is based at Justice College and renders financial and other assistance on human resource capacity building within the administration of justice. The following projects and publications have resulted from, or are envisaged to result from, this collaboration:

Projects

- Study visits to Canada by a number of magistrates and lecturers;
- Training interventions on judicial independence, ethics and accountability;
- A programme on constitutional and human rights law;
- A training programme on social context and judicial decision making;
- Training interventions on the arts and crafts of judicial skills;
- A workshop on credibility assessment;
- A seminar for regional magistrates;
- A judgment preparation programme; and
- A programme for the mentoring of magistrates.

The following projects are planned for the near future:

- Aspirant judges training for regional and civil court magistrates;
- A training programme on child law;
- Development of training material on ethics and a pilot training programme;
- Development of training material and a training programme on HIV/AIDS;
- The development of a screening procedure for the appointment of new magistrates; and
- A symposium on equality courts.

Publications

- *Ideological Virgins and Other Myths* by Joanne Fedler and Ilze Olckers;
- *Mentoring for Magistrates Directory*;
- *Criminal Court Bench Book* (in process of compilation);
- *Civil Court Bench Book* (in process of compilation);
- *Child Law Manual for Magistrates* (in planning phase); and

An exchange programme has been established in terms of a funding agreement with the French Government. Mr Justice BM Ngoepe, Judge President of the Transvaal Provincial Division of the High Court, Dr JA van S D'Oliveira, Deputy National Director of Public Prosecutions and the Chief Director of Justice College, and two directors from the college have already undertaken study tours to the *Ecole Nationale de la Magistrature* in Bordeaux, France. At present Judge PGL Fievet, a leading French judge, is based at the college to oversee *inter alia* the following:

- The presentation of a box containing a copy of the Constitution of the Republic of South Africa 108 of 1996, copies of twelve of the most important and frequently used legal text books, and a set of Justice College notes to a number of the most under-resourced magistrates' offices;
- An exchange programme in terms of which tutors will be trained at the *Ecole Nationale de la Magistrature* in Bordeaux and in South Africa by lecturers from this school after which they will commence with the training of magistrates; and

Continued on page 40

tion who takes over from us has the same uncompromising acceptance of an absolute standard of behaviour in the conduct of our cases.”*

The involvement of the judiciary at all levels of advocacy training has a huge advantage, but specifically with regard to ethics as they are the victims of unethical behaviour, and are exposed to unethical behaviour more often. They are thus extremely useful in this teaching process.

Despite the resistance encountered when advocacy training was introduced in South Africa, where judges and senior and junior members of the Bar had to be persuaded that advocacy skills could be taught, we think we can confidently state that the method works and that the basic skills of advocacy can and have been taught and learnt. This is seen in the improvement in the advocacy skills of the people that have attended the work-

shops, and in the increasing number of judges and senior counsel that are participating in the programmes.

Through advocacy training we are providing something that was never given to most of us when we started. We are providing something to the young that will illuminate everything that they do and that our profession does in the future. We are afforded an opportunity to raise the status of our profession in the eyes of the public because we are seen to be serious about what advocacy training is really all about, that is to provide a service to our clients, to the administration of justice and to our society, which is after all the only justification for our existence.

The aim of advocacy training is not to teach master lawyers. The people that we teach might become master lawyers if they have their skills, but we need to give

everyone who comes to us to study, the skills to be a mediocre but an efficient, competent and ethical lawyer. We cannot ever really hope to teach great advocacy or to produce great advocacy. That comes with time, dedication and ability as well as training. But we can aspire to eliminate the incompetence and wrong-headed approaches that result from lack of basic technique and foundation. A lawyer in the United States was fond of saying, “he learned right from wrong, but he started from wrong.”

Advocacy training can help to provide the techniques to learn right from wrong, but by starting from right.



* Extracts from the paper presented by Michael Lawson QC to the First International Advocacy Training Symposium, Gray's Inn, January 1997.

Compromising fundamental values

‘There were government officials and legislators who, in the name of expediency or for the sake of purported effective governance, have been too ready in compromising fundamental values of the Rule of Law that we lawyers treat as inviolable and have held dearly to our hearts. Rule of Law and Independence of the Judiciary were what we had taken for granted. But, can no longer. Fairness, due process and respect for fundamental human rights

and freedom were values we assumed to have been shared by all. But, can no longer. It has become increasingly clear that, if not being closely watched and scrutinized, these institutions on which Hong Kong has depended for her success would be undermined and threatened more than ever.’

From *The challenge of independence*. Paper delivered by Alan Leong, chairman of the Hong Kong Bar Association at the World Conference of Barristers and Advocates, at Edinburgh, June 2002.

Justice College

Continued from page 46

- An international conference to compare South African and French criminal procedure.

Regional co-operation and international profile

Justice College has presented training courses in Swaziland, Botswana, Namibia and Uganda and officials from these countries attend our courses on an ongoing basis. In terms of an agreement with the Judicial College of Zimbabwe and the United Nations Office for Drug Control and Crime Prevention, the College presented courses for magistrates and judges from fifteen African countries on international and regional issues associated with drug control and trans-national prosecutions.

The United Nations Development Programme requested the head of the college to visit both Mozambique and Bosnia Herzegovina to assist with the setting up of training institutions similar to Justice College. The

head of the college also serves on the Advisory Board of the Commonwealth Judicial Education Institute.

The way forward

Apart from continuing and expanding the existing training programmes, the college aims at:

- Finalising the restructuring of the college into an autonomous statutory body governed by a college council representative of all the relevant role players and the creation of faculties responsible for the training of the various components within the justice family;
- Maintaining and extending the existing links with the donors and other institutions mentioned above but then with the clear understanding that the relationship should culminate in the building of the capacity of the college to maintain the particular programmes; and
- Forging links with other institutions, countries and donor organisations to enhance our current capacity.

The mission and goals of the college in respect of judicial training:

- Fostering a culture of continuous development and learning;
- Keeping abreast of and providing training in the latest developments in the law;
- Developing and implementing effective entry level training programmes for judicial officers in the lower courts;
- Redesigning existing training programmes through continuous consultation to ensure that the training needs of the lower court judiciary are addressed;
- Developing a human rights culture by integrating constitutional values and human rights into all training interventions;
- Sensitizing judicial officers to issues of social context, age, race and gender by facilitating specific training programmes in this regard and by including these issues in all training interventions presented by the college; and
- Dealing with compelling issues such as domestic violence, maintenance, and issues concerning children.

The college will continue to endeavour to become a centre of excellence and specialisation where the whole is greater than the sum of the individual parts. In order to attain this, the assistance of the total legal fraternity will be essential.

