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promoting liberal constitutional democracy

The Helen Suzman Memorial Lecture

2010

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promoting liberal constitutional democracy

Vision

Promoting liberal constitutional democracy in South Africa.

Mission

To create a platform for public debate and dialogue – through publications, roundtable discussions, conferences, and by developing a research profile through an internship programme – with the aim of enhancing public service delivery in all its constituent parts. The work of the Helen Suzman Foundation will be driven by the principles that informed Helen Suzman's public life.

These principles are:

- Reasoned discourse;
- Fairness and equity;
- The protection of human rights.

The Foundation is not aligned to any political party and will actively work with a range of people and organisations to have a constructive influence on the country's emerging democracy.

> *"I stand for simple justice, equal opportunity and human rights; the indispensable elements in a democratic society – and well worth fighting for."* — Helen Suzman

The Helen Suzman Foundation, in association with the Gordon Institute of Business Science, the Kaplan Centre for Jewish Studies and Research at UCT and the Friedrich Naumann Foundation for Liberty, hosted the Annual Helen Suzman Memorial Lecture.

Photography: Caroline Suzman

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Franics Antonie

Director

It is with great pleasure that the Helen Suzman Foundation, in association with its partners, the Gordon Institute of Business Science, the Kaplan Centre for Jewish Studies and Research at UCT, and the Friedrich Naumann Foundation for Liberty, presents you with this copy of Judge Meyer Joffe's Lecture.

This is the third lecture in honour of Helen Suzman. These Lectures seek to honour not only Helen's extraordinary contribution to public life as a very public figure in Parliament, but they also seek to uphold the values which she brought to public life in and out of Parliament. These values embody amongst others, informed and reasoned discourse, fairness and equity and above all the protection of individual human rights.

Helen's dedication to public service was a defining feature of her great Parliamentary career and it is only fitting that this memorial lecture by Meyer Joffe has as its title, "Promoting the Constitution through Judicial Excellence".

Meyer Joffe was born in Pretoria and educated at Pretoria Boys High School and the University of Pretoria where he obtained the BA and LLB degrees. He was admitted to the Bar in 1970 and elevated to Senior Counsel in 1984. He was appointed to the then Supreme Court of South Africa (the Transvaal Provincial Division) and served in the Witwatersrand Local Division from 1988. He served for two terms in the Labour Court of Appeal and served in the Competition Appeal Court in 2010. He served as Deputy Judge President of the South Gauteng High Court for one term and remained a Judge of that court until he was released from active duty on the 31 October 2010. Earlier this year, in April, he was appointed to be the first Director of the South African Judicial Education Institute.

Promoting the Constitution through Judicial Excellence

Judge Meyer Joffe

We are gathered here this evening in tribute to one of the heroines *of South African history. The physicist, philosopher and author, Albert Einstein, once stated that a desire for knowledge for its own sake, a love of justice that borders on fanaticism and a striving for personal independence are aspects of the Jewish people's tradition that allow him to regard his belonging to it as a gift of great fortune. These character traits were so evident in Helen Suzman.*

She graced the South African political landscape at a difficult time. It was a time when dissent and disagreement were categorized by those in power as akin to a lack of patriotism. It was a time when it was dangerous to oppose the prevailing political ideology. At its worst time, statutorily created deeming clauses made crimes out of conduct which would not otherwise attract the attention of the criminal justice system and where active opposition to those in power was equated with terrorism. It was a time when only a relative few stood up and made their views known. Helen Suzman was one of the few. It could not have been easy for her as is evident from an extract from her autobiography. On 6 September 1966 the then Prime Minister of South Africa was assassinated. The then Minister of Defence, who later became President of South Africa, P W Botha, dashed down the aisle of the House of Assembly. According to Suzman in her autobiography his arms were flailing and his eyes bulging. He stopped opposite her, shook his finger at her and yelled in Afrikaans, "It's you who did this. It's all you liberals. You incite people. Now we will get you. We will get the lot of you". Suzman states she was angered by the uncalled for comments. I venture to suggest that in addition to anger, there must have been an element of fear, as well as a result of so explicit a threat, for which a proper apology was never received.

Those of you who, like me, studied classical history by reading Goscinny and Uderzo's monumental works on those famous and heroic characters, Asterix and Obelix, will know that every work commences with the following statement: "The year is 50BC. Gaul is entirely occupied by the Romans. Well not entirely… One small village of indomitable Gauls holds out against the invaders. And life is not easy for the Roman legionnaires who garrison the fortified camps of Totorum, Aquarium, Laudanum and Compendium…". Applied to South Africa with some

licence it would read: During the years 1961 to 1974 the South African parliament is entirely occupied by National Party members of parliament. Well not entirel… . A lone member of parliament, Helen Suzman, holds out against the National Party members of parliament. And life is not easy for the National Party members who occupy the seats of parliament. Indeed life was not easy for them for as Helen Suzman herself said

"I am provocative, and I admit this. It isn't as if I'm only on the receiving end, a poor, frail little creature. I can be thoroughly nasty when I get going, and I don't pull my punches".

The topic of my address this evening is **Promoting the Constitution through Judicial Excellence.**

I was recently appointed the first director of the South African Judicial Education Institute and I am presently attempting to establish the Institute. No easy task.

The daunting task facing the Institute is to establish, develop, maintain and provide judicial education and professional training for judicial officers so as to promote, through education and training, the quality and efficiency of services provided in the administration of justice in South Africa, and to promote the independence, impartiality, dignity, accessibility and effectiveness of the courts in South Africa. In essence, the function of the Institute is to ensure that the judiciary earns and maintains the respect of all South Africans in performing its judicial function. What must be considered is why it is necessary for this to be done.

One of the reasons for the existence of the judiciary is the maintenance of the rule of law in a free society. Sir Gerard Brennan, a former Chief Justice of Australia, put it thus in a speech which he made in 1996 at the New Zealand High Court and Court of Appeal Judges' conference:

"It is axiomatic that peace and order in society can be maintained only by the rule of law. Peace and order exist when there is general conformity with a priori rules, breaches of which result in penalties, nullifications, or other disadvantages imposed by the State. If the miscreant goes unpunished by the State, the victim will take the remedy into his own hands. So will the unpaid creditor, the wronged spouse, the injured casualty and the disgruntled citizen. To achieve peace and order, a government must provide laws that, broadly speaking, tend to diminish injustice and a mechanism to redress injustice by application of those laws. The provision of such a mechanism is not an optional benefit which parties in dispute must obtain for themselves at

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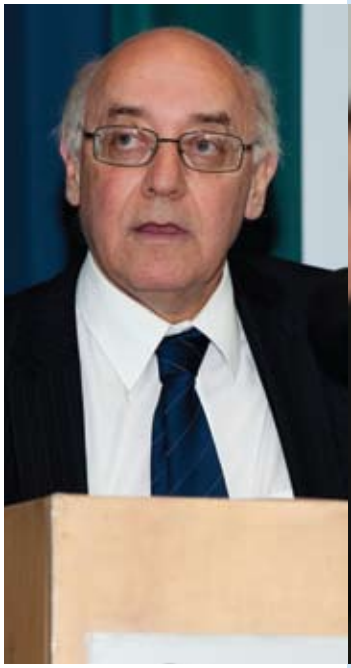

their own expense. To the extent to which the machinery of government does not provide for the application of law in the binding resolution of disputes, the rule of law is jeopardized. The resolution of disputes then depends upon the actions taken by the disputants: the choice between resolution by raw force or by fairer methods depends on the election of the more powerful party or the desperation and opportunities of the more oppressed. The most basic, the most important and, happily, the least remarkable function of the judiciary is the binding resolution of disputes according to law."

In a constitutional democracy such as South Africa is today, the maintenance of the rule of law does not fully describe the function of the judiciary as it does not give sufficient emphasis to the testing jurisdiction vested in the courts. The Constitution of the Republic of South Africa confers upon the courts the power to determine the constitutionality of the product of the legislature and the exercise of power by the executive. As has been repeatedly stated by the Constitutional Court, the Constitution requires courts deciding constitutional matters to declare any law that is inconsistent with the Constitution invalid to the extent of its inconsistency. It is not only the Constitutional Court that has this power. The High Court, likewise, has this power, albeit that an order of constitutional invalidity made by the High Court has no force and effect unless it is confirmed by the Constitutional Court. In addition, in terms of the South African Constitution socio-economic rights are enforceable. Our judicial officers are required

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to enforce socio-economic rights. This constitutional jurisdiction has the potential to create a tension between the executive and legislative branches of government, and the judiciary. In addition it has the potential to bring the judiciary into areas of controversial debate.

To enable the judiciary to perform these important functions, the judiciary must have the respect of the general public in the performance of its judicial function. This respect cannot be legislated for or prescribed by administrative fiat. It cannot be imposed by force. It has to be earned and once earned it has to be jealously protected. The respect is based on the legitimacy of the judiciary and the trust reposed in it.

The judiciary earns this respect by the method of the performance of its judicial function. Justice cannot be determined in secret. The proceedings in the courts must be open to public scrutiny. It must, subject to extremely limited exception, be sought under the intense and critical inspection of the general public, the press, the legal profession, academics and students of law. During the proceedings the presiding judicial officer is placed under the spotlight and is him or herself on trial. This is not a bad thing. On the contrary it has enormous potential benefit for the judiciary. It should act as a deterrent to judicial deviant behaviour in court. The public scrutiny should preclude judicial rudeness, failure to painstakingly keep to court session times and the maintenance of judicial alertness. The public and professional scrutiny, as to the nature of the proceedings in court will, if it is deserved, result in the courts maintaining the respect that they have hopefully earned. Careful and correct application of the law of procedure, be it criminal or civil, and the law of evidence, will enhance the confidence in the courts. Likewise a demonstrable lack of bias and even-handedness in the hearing of a matter will equally result in the court retaining the respect of the general public. It is not only the proceedings in court that have to take place open to public scrutiny, but also the judgments of the courts have to be given in the light of day. They have to, likewise, be subjected to scrutiny so that their standing can be determined. This requirement was described as follows by Sir Frank Kitto in a paper entitled *"Why Write Judgments"* delivered to an Australian Supreme Court Judges' Conference and reported in the 66 Australian Law Journal 787 at 790:

"The process of reasoning which has decided the case must itself be exposed to the light of day, so that all concerned may understand what principles and practice of law and logic are guiding the

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courts, and so that full publicity may be achieved which provides on the one hand, a powerful protection against any tendency to judicial autocracy and against any erroneous suspicion of judicial wrongdoing and, on the other hand, an effective stimulant to judicial high performance".

The judgments are not only scrutinized by the immediate parties to the dispute giving rise to the judgment, but by the judicial officer's peers, judges in higher courts, the general legal profession, law academics, the press and the general public. This constitutes a substantial review body. Clearly every judgment delivered by a court cannot be correct. Many will be overturned on appeal. Despite the fact that the judgment is overturned, its functionality should not have to be imputed. A finding or conclusion in the judgment may be wrong. It should still have all the elements that a judgment should contain in a logical and concise form. All the relevant law and facts should be carefully considered in the judgment. The reader of a judgment should not cringe when reading it, even if he or she disagrees with the conclusion arrived at.

Prior to 1994, appointments to the bench came practically exclusively from the ranks of practicing senior counsel. They were white and, with one or two exceptions, male. The Constitution now only requires that an appropriately qualified man or woman, who is a fit and proper person, may be appointed as a judicial officer. The Constitution, furthermore, highlights the need for the judiciary to broadly reflect the racial and gender composition of South Africa. The result of these two constitutional provisions is that appointment to the bench is no longer the prerogative of senior counsel and that the composition of the bench is in a state of transformation. Whilst this process takes place, the confidence of the general public in the judiciary must be maintained. It is against this background that judicial education must be examined.

An initial question that must be addressed is what judicial education is. The question is best answered by analyzing the objectives of judicial education. In the short term its objective is to foster a high standard of judicial performance. In the long term its objective is to ensure a fair and efficient administration of justice. In a paper delivered at the 13th Commonwealth Law Conference in 2003 by the veteran Canadian judicial educator Judge Sandra Oxner, she described the objectives of judicial education under the following broad headings:

- first impartiality and independence;

- secondly competency;
- thirdly efficiency;
- fourthly effectiveness.

The first objective of impartiality and independence is to reinforce and where necessary inculcate in the judicial character and state of mind the requisite independence and impartiality. The independent judicial officer tolerates no improper pressure or interference in the decision-making process from any quarter. The impartial judicial officer is able to eliminate open and hidden bias from the judicial mind in fact-finding, particularly in relation to gender, ethnic, religious and racial issues.

The second objective of competency, relates to the requisite knowledge of substantive and procedural laws. As Oxner states, this is no easy task for a generalist judicial officer in a complex modern legal world.

The third objective, of efficiency, includes efficient judicial court room management. Where the presiding judicial officer retreats into him or herself and allows a void to be created in the management of the proceedings, the more dominant of the practitioners appearing before the judicial officer will take over the control of the proceedings. Clearly this is not in the interest of justice. The judicial officer, and not the practitioners appearing before the judicial officer, must be in charge of the proceedings. The objective of efficiency seeks amongst other objectives to attain this.

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The fourth objective of effectiveness is described as follows by Oxner:

"It is not enough for a judge to be impartial, efficient and competent. He or she must also be effective in interpreting and shaping the law to achieve a just solution. This may be achieved by the use of judicially developed techniques such as domestic application of international human rights norms, interpretation of constitutions, or through the judicial exercise of discretion. Integrity, legal competence and valour are required to bridge the gap between the law and a just solution or to prevent decisions on technicalities that unnecessarily avoid the merits of the case…."

I would venture to suggest that the objective of effectiveness is not an entirely separate objective, but is, to a large extent, the product of the first three objectives. The confident, effective, independent and impartial judicial officer will feel comfortable in interpreting and shaping the law and will not have the need to seek out technicalities to avoid hearing a matter to its conclusion and then having to give a judgment in the matter. Likewise the unmerited postponement of matters will not be granted as a welcome release from having to try a matter which may be perceived as too complicated. Trials and other matters will be conducted swiftly and judgments will not be endlessly reserved. It goes without saying that if these objectives of judicial education are met, the judiciary will have earned and retained the respect of the general public.

As is apparent from the objectives of judicial education which, in turn, indicate what judicial education is, the use of the word 'education' is deliberate. Training only encompasses an element of judicial education, albeit an important element. Judicial training connotes the teaching of skills which assist the judicial officer in carrying out the judicial function. Examples of such training would be computer literacy, use of electronic media in research and judgment writing, skill in delivering ex tempore judgments and in writing judgments and skills in managing a court. Judicial education includes, but goes far beyond, such judicial training. It includes programs designed to expand directly or indirectly the life experience and understanding of the human condition of the judicial officer. It is designed to make the judicial officer aware of societal conditions and needs. It is designed to make the judicial officer relevant in the society in which he or she performs the judicial function.

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It is perhaps this latter aspect of judicial education that resulted in judicial education not always being welcomed.

There were those who saw judicial education as an affront to, and an attack on, judicial independence. Those who did and still see judicial education as an attack on judicial independence would perhaps subscribe to the view expressed by the Canadian Supreme Court in the matter of The Queen in Right of Canada v Beauregard (1986) 30 DLR (4TH) 481 (SCC) where it was stated that

'Historically, the generally accepted core of the principle of judicial independence has been the complete liberty of individual judges to hear and decide the cases that come before them; no outsider– be it government, pressure group, individual or even another judge should interfere in fact, or attempt to interfere, with the way in which a judge conducts his or her case and makes his or her decision. This core continues to be central to the principle of judicial independence'.

Representative of the views of those who were opposed to judicial education were the views of the then Lord Chancellor, Lord Hailsham ((Hamlyn Revisited (Stevens 1983)) when reacting to a proposal to establish a Judicial Studies Board in the United Kingdom. The proposal in effect was to provide for judicial education in the United Kingdom. The Lord Chancellor said:

'I also regard with a degree of indifference verging on contempt the criticism of judges that demands for them a type of training which renders them more like assessors or expert witnesses than judges of fact and law…. The Judge's function is to listen intelligently and patiently to evidence and argument…. To evaluate the reliability and relevance of oral testimony…. and

finally to reach a conclusion based on an accurate knowledge of law and practice…. The capacity of being a judge is acquired in the course of practising the law'.

It should be added that notwithstanding the views of the Lord Chancellor, the Judicial Services Board was established in the United Kingdom and there appears to be widespread acceptance of its work.

The general view held today is for judicial education to be welcomed. The welcome is, however, not unconditional. The condition is that the judicial education should be judicially controlled and certainly free of Government control. This is a minimum, non negotiable requirement for judicial education. Indeed at the conclusion of a conference held in London in June 1998 the Latimer House Guidelines for the Commonwealth were adopted by twenty Commonwealth countries. One of the guidelines adopted was that: an independent, impartial, honest and competent judiciary is integral to upholding the rule of law, engendering public confidence and dispensing justice. Thereafter, the following guideline is set out in regard to the judiciary. "A culture of judicial education should be developed. …The curriculum should be controlled by judicial officers who should have the assistance of lay specialists". Clearly this guideline is predicated on the prior guideline postulating independence of the judiciary. The emphasis of judicial control of judicial education appears also from the view expressed by a former Chief Justice of Australia, Chief Justice Gleeson, in an article which appeared in the Judicial Officer's Bulletin, which is a publication of the Judicial Commission of New South Wales, of February 1999. He stated that:

"The purpose of the independence of the judiciary is to ensure both the reality and the appearance of impartiality in decision-making. That purpose would be undermined if the training and continuing education of judicial officers were in the hands of people who do not share the judiciary's independence".

The present view in respect of and motivation for the acceptance of such judicial education is perhaps best encapsulated by the remarks made by Dame Silvia Cartwright at the Latimer House conference held in London in June 1998. She is recorded to have said (see Hatchard and Slynn (1999) at 42) that:

"There can be very few jurisdictions which do not now accept the need for judicial training. The euphemisms of the past where judges attended programmes of judicial 'studies' rather than education, would be addressed only by other judges, and genuinely believed that any form of compulsory study would interfere with their judicial independence to determine cases impartially, has given way to an appreciation that this was a recipe for stagnation or for the idiosyncratic decision-making that arises from isolation.

Judges no longer burst onto the judicial stage fully trained and knowledgeable in all aspects of the law and its application. Not only does the law change too rapidly to enable the modern judge to keep abreast, but the very breadth of judicial work does not permit, except in a small proportion, a claim of expertise or even a level of comfort. There is now a demand from the newly appointed judge for the sort of integrated and systematic programme of judicial studies that can be had from the Bar Associations or Law Societies while still in the profession. Programmes can usefully be developed for study of the law, including both refresher courses and new developments in legislation or the common law".

The current general acceptance of judicial education does not mean that it does not constitute a potential risk to judicial independence. It is my view that even where the judicial education is controlled by the judiciary there is a line in judicial education which still cannot be crossed. This line constitutes the tension between properly independent judicial education and judicial independence. The line is not, and cannot be, clearly demarcated, but that does not detract from its existence. As an illustration, a rule of court or statute may confer discretion on a court. It would, in my opinion, be appropriate for judicial education to be conducted on the issues that may be considered in the exercise of that discretion. These issues would generally be elicited from the participants to the judicial education

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programme themselves. Debate can take place whether a particular issue may properly be taken into account in the exercise of the discretion. No final conclusion can and should be arrived at. The debate is what is required. It serves to alert the judicial officers to the relevant issues. It would not be appropriate to suggest that the issues so determined are the only issues that can be taken into account in the exercise of the discretion nor how the discretion should be exercised. Likewise a section in a statute may have an obscure interpretation, a not uncommon phenomenon. Various interpretations thereof can be considered during a programme of judicial education relating thereto. It must, however, be kept in mind that it would not be uncommon when the section actually came before a court for interpretation for the parties' legal representatives to advance interpretations not considered during the judicial education programme. So none of the interpretations considered during the judicial education programme can be proclaimed at the programme as the correct interpretation. That is the sole prerogative of the judicial officer ultimately seized with the matter where the interpretation of the section is relevant. The interpretation of that judicial officer, until upset on appeal or not followed by a court of equal jurisdiction on the basis that it is clearly wrong, is the correct interpretation, irrespective of the views that may have been expressed at the judicial education programme. Those views constitute no more than possible interpretations. Indeed the interpretation of the judicial officer may not have found favour during the judicial education programme.

The benefit for the judiciary from the judicial education relating thereto is the becoming aware of relevant issues in the relative calm of an education programme as opposed to the tension of a court room. If judicial education went beyond what I have suggested is appropriate, it would impact negatively on the independence of the judiciary even though controlled by the judiciary. Judicial education does not seek to create robotic judicial officers. It seeks to assist judicial officers to be inter alia competent and effective judicial officers. It goes without saying that those who provide this type of judicial education must be vigilant, not to cross a line which impinges on judicial independence and, likewise, the recipients of the judicial education must jealously guard this independence and not permit any impairment of it.

Judicial officers in South Africa comprise judges who constitute what can broadly be referred to as the High Court and the magistrates who constitute what can broadly be referred to as the Lower Court. The magistrates are divided into two courts, the regional court and the district court. The number of judges and regional magistrates are roughly of the same order. The district court magistrates constitute by far the majority of judicial officers.

Prior to 1994 no judicial education programmes were directed to the judges. Subsequent thereto, a number of orientation courses have been held for recently appointed judges. In addition various divisions of the High Court conducted peer led judicial education programmes with varying degrees of success. In addition two programmes for aspirant judges were held. These programmes are designed to increase the pool from which judges may be appointed to achieve the constitutional objectives already alluded to. To date, however, no all embracing judicial education programme has been devised for the judiciary.

Judicial education for magistrates commenced in 1953 when the first official course for criminal court magistrates was held at the Johannesburg Magistrates' Court. This was followed in 1957 with the establishment by the then Department of Justice, of a training institution, which was located within the Department, which was then called Justice Training. Justice Training continued providing training courses for criminal court magistrates. Training for civil court magistrates commenced at Justice Training in 1981. In 1989 Justice Training was renamed Justice College. It still remained located within the Department. The obvious difficulty with Justice College was its location in the Department and the real or at least perceived lack

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of independence in the judicial education offered by it. An attempt was made to resolve this by the Magistrates Act of 1993. In terms of the Act, the Magistrates Commission was mandated to promote 'the continuous training of magistrates in the lower courts'. The Magistrates Commission delegated this obligation to Justice College. The judicial education provided by Justice College is provided by magistrates who I will refer to as magistrate educators. These magistrate educators are, in the main, magistrates of the district courts of different ranks. Justice College provides certain judicial education programmes which aspirant district magistrates and newly appointed regional magistrates are obliged to attend. In addition, Justice College offers a year round pre-programmed extensive programme of judicial education and provides ad hoc programmes to deal with new legislation which impacts substantially on the procedure in the Lower Courts.

Unfortunately, other than for the compulsory judicial education programmes devised for them, there is little, if any, buy-in from the regional court magistrates in the education programmes offered by Justice College. They have preferred to seek budget from the Department of Justice and other sources and advance, by and large, peer led education programmes of their own. With the establishment of the Institute all budget that is available for judicial education will be directed to the Institute.

Unfortunately, other than for the compulsory judicial education programmes devised for them, there is little, if any, buy-in from the regional court magistrates in the education programmes offered by Justice College.

The South African Judicial Education Institute was established by statute. A council is responsible for its governance. The council comprises the Chief Justice as chairperson, the Deputy Chief Justice, the Minister of Justice or his or her nominee, a judge of the Constitutional Court, a judge or other person designated by the Judicial Service Commission, the President of the Supreme Court of Appeal, two Judges President and two other judges designated by the Chief Justice, a judge who has been discharged from active service, five magistrates, an advocate, an attorney, two university teachers of law, two other members who are not involved in the administration of justice, a traditional leader and the director of the Institute. The constitution of the council adequately and demonstrably provides for the independence of the Institute, in so far, as it relates to the content of the judicial education provided by the Institute, and accordingly, this essential requirement for credible judicial education is in place. The Act in its present form does not provide for the administrative and financial independence of the Institute from the Department of Justice. The Institute can at present only access its budget, which is provided

by Parliament, through the Department of Justice. The present administrative and financial dependence does not impact negatively on the independence of the Institute to provide credible judicial education pending the amendment of the Act. It is, however, prudent and would result in the more efficient functioning of the SAJEI for it to be both administratively and financially independent of the Department of Justice. I am assured that the Act will, in due course, be amended to provide for the administrative and financial independence of the Institute.

The statutorily stipulated functions of the Institute are:

- to establish, develop, maintain and provide judicial education and professional training for judicial officers;
- to promote entry level education and training for aspiring judicial officers to enhance their suitability for appointment to judicial office;
- to conduct research into judicial education and professional training, and
- to liaise with other judicial education and professional training institutions, persons and organizations in connection with the performance of its functions;
- to promote, through education and training, the quality and efficiency of services provided in the administration of justice in the Republic;
- to promote the independence, impartiality, dignity, accessibility and effectiveness of the courts;
- to render such assistance to foreign judicial institutions and courts as may be agreed upon by the Council.

These functions are directly or indirectly replicated in all judicial education institutions throughout the world, in

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one form or another, save for the second function which is to promote entry level education and training for aspiring judicial officers to enhance their suitability for appointment to judicial office. As already alluded to, this function arises from section 174 (2) of the Constitution which provides that the 'need for the judiciary to reflect broadly the racial and gender composition of South Africa must be considered when judicial officers are appointed".

As far as the High Court, is concerned these functions will be fulfilled by the Institute conducting various programmes. These programmes are, by and large, peer led and guided by accepted principles of adult education.

Firstly, orientation programmes will be offered to all newly appointed judges. The orientation course is devised to assist the newly appointed judge to make the transition to the bench. It comprises sessions on the management of criminal and civil trials, as well as perhaps the most difficult court to manage, the motion court. The art of judgment writing and the delivery of an ex tempore judgment is a major focus of the programme. In addition, attention is given to ethics.

Secondly, the newly appointed judges are given lifestyle skills to assist them in coping with the pressure and tension of life on the bench. After the orientation course has been held, the Institute will remain in contact with the newly appointed judge to determine his or her needs which will, as far as possible, be met in follow-up programmes which will be advanced as part of skills training.

Thirdly, skills training will be offered to all judges. This training will be offered to the judges at their courts or as part of a short programme of two or three days provided at the Institute. Skills, such as enhanced computer literacy, will be offered at such training. Control of courts and judgment writing skills will likewise receive attention.

Fourthly, ongoing judicial education will be provided for all judges. This education will again be offered to the judges at their courts or as part of a short programme provided at the Institute. The object of this education is to acquaint judges with changes in the law, either, as a result of binding judicial authority or statutory enactments which they would be obliged to follow and apply.

Fifthly, social context education will be provided for all judges. Social context education was described by a former Chief Justice of Canada as follows:

"For those of you who are unfamiliar with this term, social context education is designed to make judges both more aware of and better able to respond to the many social, cultural, economic and other differences that exist in the highly pluralistic society in which Canadian judges now perform their important duties. It comprises or at least can comprise, the examination of a broad range of issues, from the need to ensure that judges treat everyone in the courtroom with respect, to ensuring proper access to justice on the part of the physically disabled; from exploring the dangers of stereotypes in dealing with witnesses and the evidence they give, to improving awareness of the manner in which different cultures think about the institution of the family members; from increasing awareness of the social and economic realities of groups that have tended to live on the margins of mainstream society, to ensuring familiarity with substantive law in areas like human rights legislation and the equality rights provisions of the Canadian Charter of Rights and Freedoms".

Social context education will be built in to all programmes advanced by the Institute. In addition dedicated social context programmes will be advanced to judges either at their courts or at the Institute as part of a short programme.

Social context education will be built in to all programmes advanced by the Institute. In addition dedicated social context programmes will be advanced to judges either at their courts or at the Institute as part of a short programme.

Finally, programmes for aspirant judges. These programmes will be conducted at the Institute. They will be conducted over approximately six months, followed by a period of mentorship of the aspirant judge by an experienced judge

for approximately three months and ended by a further programme at the Institute for a further three months.

As far as the Lower Courts are concerned, these functions will be fulfilled by taking over the judicial education function of Justice College and by advancing, by the Institute, the education programmes previously presented by Justice College. These education programmes will have to be modified so as to cater for the present needs of the lower court judicial officers and certified as compliant to the standards of the Institute. Where necessary they will have to be upgraded. The education programmes will be advanced either at the Institute or at centralized areas.

It is anticipated that the Institute will design and develop a comprehensive and coherent programme of educational programmes and resources, conduct research into best practice of judicial education and produce bench books and other publications. The bench books will be designed as a first reference for judicial officers and will aim to assist them in avoiding error.

And so at the end of all this you may well ask what the Institute has to do with judicial excellence and how does

judicial excellence promote the Constitution. The first question is relatively easily answered. The Institute was established to enhance the functionality of the judiciary. It intends to achieve this objective fully. In doing so the Institute will improve the functionality of the judiciary and will indeed create judicial excellence. General society will see that it is the judiciary that upholds the rights entrenched in the Constitution. They will see that the only issues of relevance are the alleged right and the alleged infringement. The identity of the person who seeks to enforce the alleged right and who allegedly infringes the right is irrelevant in the determination of the dispute. The most marginalised in society, those who are shunned and neglected, will know that the courts offer them protection, and because of their status will even be more astute to see that their rights are properly and fully protected. All of our society will see that the judiciary is independent and impartial, competent, efficient and effective. This will result in a judiciary that will have earned and retained the confidence of general society. It is only such a judiciary that will be sufficiently astute and able to protect the values of our Constitution. And so the slogan of the South African Judicial Education Institute is, as is the title of this address, Promoting the Constitution through Judicial Excellence.

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