LEGAL REPRESENTATION: WHO IS FAILING WHO?

from L A W Y ER NEW ZEALAND issue 10 22 March 2001

by Marie Dyhrberg

Chief District Court Judge Ron Young is concerned that some counsel appearing in the Manukau District Court are having difficulties learning the skills needed for effective courtroom representation.

In fairness to counsel appearing in that Court, these difficulties are not unique to them. They reflect a growing national concern that there has been a decline in the quality of representation provided by criminal lawyers. This problem will not be solved unless constructive measures are put in place to educate and train lawyers working in courtrooms.

Every Court lawyer can tell at least one "The day I humiliated myself in a courtroom and was never going to step inside one again" story - hilarious, roll-on-the-floor- and-die-laughing stories consisting of equal parts of enthusiasm, effort, fear - and no real idea of what you are doing. And all Court lawyers roar with laughter when they hear those stories, because they all know exactly what that "public death" feels like.

We all come out of law school with one huge gap in our education.

We all remember when we knew so little and were so nervous we staggered off to court, filled with fear and dread, clutching in our hands a soggy, sweat-stained piece of paper. The first thing we had written down was our name and what to call the Judge. The second thing was the straightforward and simple request we needed to make, such as, "I am seeking an adjournment". If anything happened that we hadn't been told to expect, that we hadn't written down, we invariably fell apart and didn't know what to do.

We all come out of law school with one huge gap in our education. None of the theory we have learnt or the practice we have had in the mock Courts teaches us what we now need to know. What we need to know is the procedure; the sheer range of client issues we now have to incorporate effectively into our legal framework. These skills can only be learned by practice, and with effective support.

Until we can dramatically increase the amount of effective, practical training in law schools, most Court lawyers need the opportunity to be mentored; to have someone who will watch over what they are doing; show them what they need to do and why. It is unfair when Court lawyers are attacked - and particularly when South Auckland Court lawyers are singled out and publicly or privately attacked. I have worked in South Auckland for 17 years and I am well aware of the difficulties faced, and the modest rewards earned, by most

Court lawyers here.

Manukau District Court now serves probably the largest population base in New Zealand. And it would have to be one of the poorest populations in New Zealand.

Manukau District Court now serves probably the largest population base in New Zealand. And it would have to be one of the poorest populations in New Zealand. Many clients in South Auckland, in all forms of Court proceedings, require the assistance of legal aid. Any Court lawyer working in South Auckland will have a large proportion of clients on legal aid.

The recent threat that lawyers who do not "measure up" face being removed from the Legal Aid Provider List must be of real concern to any South Auckland lawyer, and indeed any lawyer, because "if they come for you this morning, they will come for us this evening". It is interesting to consider how the Legal Services Agency could remove a lawyer from the Legal Aid Provider List. Any lawyer currently on the list is there because they fulfilled the criterion set for inclusion. So what would be the justification for removal? Is the Agency now proposing to change the criterion? Does the Agency imagine it could alter the criterion, and in effect backdate it, to remove any counsel they wish to assert no longer meet the new criterion? Does the Agency really imagine it is not going to face every legal challenge available if it attempts to do this? Has the Agency budgeted for the legal costs it will incur in trying remove counsel from the Legal Aid Provider List?

There are obvious, fairer, wiser, and less expensive solutions to the “measure up or get off” approach which the Legal Aid Agency appears to be considering.

MORE EFFECTIVE PRACTICAL TRAINING

It would be really helpful for Court lawyers to have far more practical experience during their law school years. In order to improve the level of courtroom skills, law students should do at least four moot or mock Courts each year. To mimic real life, students would not get the facts or research material until two days before the moot.

They would not be required to prepare any written materials. The purpose of these mock Courts would be to teach students how to stand on their feet and get the job done while getting smacked around by a Judge who wants to interrupt all the time. In professional courses, this type of moot or mock Court should happen every day. The materials could be given out the day before, and instead of being judged by a friendly academic, students should be confronted with senior experienced counsel who enthusiastically accept the brief to “show no mercy”.

MENTORING

Until a far greater level of practical Court experience can be introduced into the law degree or professional course, a formal pupillage or mentoring system needs to be established. This

should be a government-funded formal system set up through the Law Society which ensures barristers could not elect to go to the Bar until they had demonstrated two years' experience with a law firm or had a written agreement with an approved, experienced mentor who would be paid to take responsibility for training or supervising all work undertaken by the barrister for an agreed period, such as two years.

REMOVING LAWYERS NOT A SOLUTION

It is easy to criticise. It is easy to identify a problem and wish it would simply go away. On some occasions it may even be easy to imagine the problem can simply be ordered away. Removing lawyers from the Legal Aid Provider List is not a solution. It is not fair, it is not just and it does not solve the problem. So long as the current regime is failing to provide the practical support and training we all know effective Court lawyers need, we are asking Court lawyers to "learn the hard way". Who really is failing here?

Marie Dyhrberg
