

its leader. In 1975 he was elevated to the Bench in the Eastern Cape Division of the Supreme Court of South Africa. He was the Chief Justice of this Court from 1984 to 1 February 1993. He believed that the final test is battle in some form. It is one thing to utter a happy phrase from a protected cloister, another to think under fire - to think of action on which great interests depend. This was the credo of Theal Stewart. A pragmatic lawyer, and a man of courage. His view was that freedom lies in the competition of ideas. He had a stoic fortitude for what we shall require to face in an incalculable future. The great questions were for him questions of here and now - let us get on with it was his call to action and activity.

He maintained that judicial valour involved intellectual courage without which no great judgment on important issues can be given. The tradition of the law, the ennobling tradition, though it be myth as well as verity, surrounds as with an aura the profession of the law, and is the bond between its members. One of its great concerns is the cause of justice in society. He believed that law was fashioned in the form of mighty tablets hewn and hammered out by successive generations of advocates and judges under the imperious drive of a passion to shape the content of justice. That is what justice meant to him. Justice is after all truth in action. If justice is subverted man's existence on earth lacks meaning.

Theal Stewart in his judgments on constitutional issues such as *Smith and Tshabalala and others*, displayed judicial valour and intellectual courage. His judicial mindedness was a matter of instinct reinforced by self-discipline.

His judgments contain well articulated phrases, are lucid, and completely lacking in hyperbole. There is no histrionic exaggeration in them nor do they contain pleonasm. He made a substantial and meaningful contribution to the practice and development of law in this country. As Chief Justice he fulfilled this role admirably. He was an active Chief Justice. He led. He brought *gravitas* to his position as a judge.

Apart from his attainments in the law he excelled in other pursuits; he was an excellent linguist in the Xhosa language, and had a profound knowledge of Xhosa customs and traditions. He was a pilot, and also owned an aircraft. He was a good craftsman and possessed a detailed knowledge of wood work. Nature was a great love of his, and his knowledge of bird life was extensive. Truly a most accomplished man.

As a man he presented a remarkable profile in courage. Courage has been defined as grace in adversity. This he had in abundance. For the past twenty years he was the victim of an incurable disease. He bore this with great fortitude. He suffered acute pain at times and underwent many surgical operations. He never complained or bemoaned his fate. He

loved life, his wife, family, friends and the law. His indomitable spirit had the strength to persist to eternity. Unfortunately his ravaged body could not contain this courageous lust for life and had to yield to the inevitability of death.

On a personal level Theal was one of my close friends. I was the recipient of his great friendship and kindness. Right to the end we were in communication with each other. I shall miss him. Lucille has always been at his side with dignity and graciousness. She always associated herself with functions and social activities of the Judiciary. We have enjoyed her wonderful hospitality. She brought to her status as wife of the Chief Justice a calm propriety. Her social work for the needy served as a source of inspiration to others.

To Lucille who nursed him so carefully and diligently through his long illness, to his sons and daughter and their families we extend our sympathy, and may you all be comforted by the memories of him.

I wish to conclude by quoting what he found as meaningful and inspirational, relating to his illness and to life.

'It takes three things to attain a sense of significant being:

God

A soul

and a moment.

And the three are always there. Just to be is a blessing. Just to live is holy. ☐

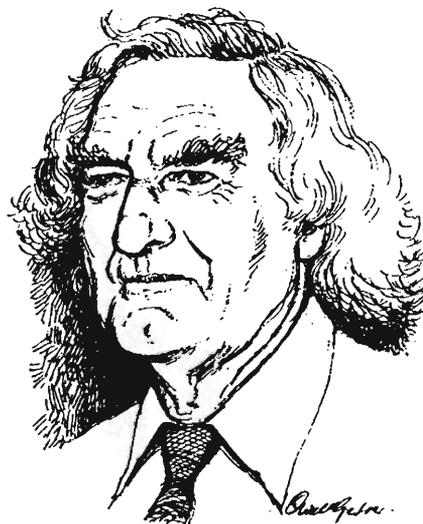
JUDGE DENEYS MOLTENO WILLIAMSON

(Extracts from the tribute paid to his memory by Judge President Friedman on 21 September 1995)

Deneys Molteno Williamson was born in Cape Town on 9 October 1927. He completed his schooling at the Diocesan College at Rondebosch in 1945. In 1946 he enrolled as a student at the University of Cape Town and by the end of 1950 he had obtained the

BA and LLB degrees.

He was admitted to the Bar in Johannesburg in 1951. There he succeeded in building up a sound trial practice. In December 1974 he took Silk and the following year he was appointed as an acting judge in the Transvaal Provincial Division.



Although Deneys practised at the Johannesburg Bar for almost his entire professional career, his roots were always in the Cape. His great grandfather, Sir John Molteno, had been the first Prime Minister of the Cape. It was from him that Deneys's second name was derived. Deneys's father, Arthur Faure Williamson, who eventually graced the Appellate Division, had practised at the Cape Bar from 1922 until 1940.

And so in August 1977, Deneys left Johannesburg and returned to Cape Town where he joined the Cape Bar. He was very soon briefed in heavy civil cases. One of these was *Euroshipping Corporation of Monrovia v Minister of Agriculture and others* 1979 (2) SA 1072 (C). Another was *List v Jungers* 1979 (3) SA 106 (A).

In 1979 he was appointed as a judge of the Cape Provincial Division, a position which he held until his death.

Deneys was an unassuming man of imposing stature. He had a wonderful nature: he never lost his temper; he was softly spoken, had a disarming smile and was always calm, collected and unruffled. These attributes, together with his outstanding intellect, made of him a highly talent-

ed judge.

He was assigned many difficult and contentious criminal cases. These he handled with tact and fairness that was apparent to everyone concerned. It was therefore not surprising that he gained the respect of the accused, the prosecution and members of the general public. One such case was *The State v Mpetha and others* which began in March 1981 and went on until June 1983. Another well-known case in which he presided was the private prosecution in what was popularly referred to as the Trojan Horse case.

Much as Deneys was devoted to the law, he had other consuming interests as well. His main interest throughout his life was rock climbing and general mountaineering. He was an active member of the Mountain Club of South Africa which he joined at the beginning of 1944. He was a member of both the Transvaal and Cape Town sections of the Mountain Club and was a past chairman of the Transvaal section. As a mountaineer he went on a number of first ascents of peaks in the Western Cape. He was also part of the party that first climbed the main waterfall at the top of the Groothoekklouf near De Doorns. His climbing was, however,

not confined to the Western Cape. There is hardly a mountain range in South Africa that Deneys has not climbed.

Another sport that claimed Deneys's attention during the eighties was board sailing. He was a familiar figure at Sandvlei and Zeekoevlei with his wetsuit and his sailboard. Deneys was a great lover of nature. He was an expert on the flora of Table Mountain and knew the names of every plant and flower that is to be found on Table Mountain.

Deneys was a very religious person. He was a warm person with a friendly disposition. On the Bench he conducted himself with great dignity, but off the Bench he was sometimes a very informal person.

Deneys's last illness was a protracted one which first manifested itself in April last year. Throughout this period he insisted on continuing with his judicial duties and persistently refused to apply for sick leave. Even at the end he was determined to leave no unfinished work. He dictated his last outstanding judgment to his secretary at his hospital bedside a few days before he died. The typed judgment was signed by him in hospital and delivered by a colleague on his behalf. □

JUDGE BRYAN O'DONOVAN



Bryan O'Donovan was born in Johannesburg on 26 May 1915. He was the son of Alice Blake and George Clarke O'Donovan. His younger brother, Michael, who now lives in Harare, was a war pilot and was awarded the Polish Cross for bravery.

Bryan went to Parktown Boys High School. He lost both parents at the age of 15, and he paid for his university studies by working as a judge's clerk during the day and studying at night. He obtained his B.A. (Hons) in Philosophy at the University of the Witwatersrand, and his LL.B at the University of South Africa, the youngest student ever to graduate with a Law degree.

After graduating he went to England where he was admitted to the

Middle Temple. Shortly before World War II he moved to Kampala, Uganda, to join an uncle, Dennis O'Donovan (a solicitor) and practise Law. He had many friends including Basil Sebley and the Kabaka, an influential African leader.

When the war broke out he joined the 7th King's African Rifles and served in Ethiopia, Somalia, Mauritius and Madagascar. He was assigned to the DJAG, the judicial branch of his regiment.

While stationed in Madagascar he met his future wife, Geneviève Barbier, the eldest daughter of Dr Georges Barbier, a medical doctor and Marguerite Barbier, a gynaecologist. They had emigrated from France, fearing the start of another war.