

The first question is, of course, whether the trial lawyer should re-direct at all? Every re-direct examination necessarily implies that something was either forgotten, or needs fixing. Texas trial lawyer, David Berg, offers the following simple advice to trial lawyers faced with the strategic decision whether to re-direct: 'If it ain't broken, don't fix it. If you can't fix it, don't try.'

Re-direct examination in American trial practice can serve three useful purposes. Firstly, the trial lawyer may rehabilitate a witness who has been impeached with a prior inconsistent statement by asking the witness to explain why the inconsistency happened. Secondly, the trial lawyer can ask the witness to correct cross-examination testimony that was wrong or misleading. Thirdly, the trial lawyer can use re-direct examination to develop new matters brought out during cross-examination.

Re-direct should focus on key points that make a difference, not minor matters that the factfinder will soon forget. Therefore, the trial lawyer should immediately start with an important point, make it forcefully and efficiently, and then move on to the next important point. The re-direct examiner should end on a high note, then immediately stop. Because the re-direct examination usually touches on only a few points and the structure of a continuous narrative is absent, the re-direct examiner is generally given more leeway to ask leading questions than during the direct examination proper.

The trial lawyer should never re-direct merely because she has the opportunity. If there is nothing substantial to develop, the trial lawyer should not re-direct or re-cross solely to rehash already existing testimony. The trial lawyer should simply tell the court that she has no further questions from the witness and sit down. The factfinder will appreciate both her professionalism and brevity. 

STOP PRESS JUDICIARY

Attacks on the judiciary

Press statement issued by Patric Mtshaulana SC, chairman, GCB, Johannesburg, on 28 July 2008.

In the edition of the *Mail & Guardian* published on 21 July 2008 Professor Pierre de Vos wrote:

'Judges are not (and should not be) above criticism. The judiciary is one of the three branches of government and in a vibrant democracy the decisions and actions of judges must be scrutinised, debated and criticised - even harshly if need be.

But the judicial branch of government has a special place in our constitutional democracy because it acts as referee and - in the case of the Constitutional Court - as final interpreter and enforcer of the Constitution.

This means that the independence and integrity of judges must

be jealously guarded to ensure that their decisions command wide respect and legitimacy - even when a decision is unpopular, inconvenient or damn well infuriating to some.

Criticism of judicial decisions or the actions of judges should therefore be honest and principled and should not be based on petty self-interest or expediency.

While the independence of our judiciary is partly safeguarded by the institutional mechanisms contained in the Constitution, the judiciary can be said to be truly independent only if all important role players in society respect and protect the freedom of judges to do their job "without fear, favour or prejudice".

The independence of the judiciary - one of the three pillars of our democracy - is therefore threatened not only when its institutional independence is under attack through proposed constitutional amendment, but also when politicians and lawyers attack the integrity of individual judges in an unprincipled way to gain a short-term political advantage. Over time such attacks will erode confidence in the courts and in the judicial system.'

The recent attacks on the judiciary, oral, in print and by threat of action, examples of which include those by Mr Gwede Mantashe, Mr Julius Malema and Mr RW Johnson, are of great concern to the General Council of the Bar of South Africa. Such attacks not only 'erode confidence in the courts and in the judicial system,' but also threaten the very foundation of the rule of Law.

In endorsing Professor de Vos' sentiments the General Council of the Bar of South Africa calls upon all South Africans to deal with the judiciary, its conduct and its decisions in an "honest and principled" manner and, in the spirit of the Constitution, unreservedly and jealously to uphold and protect the rule of law. 

South African Law Deans Association

Professor Francois Venter, president of the South African Law Deans Association issued the following press statement on 1 August 2008: The South African Law Deans Association (SALDA) wishes to add its voice to those who have expressed concern over the unwarranted and in some cases irresponsible public attacks that have been launched in recent weeks against the integrity of the judiciary.

Although judges are not beyond criticism, and individual judges have indeed been accused of misconduct which, if proven and countenanced without censure, would seriously discredit the institution, much of the public disparagement of the judiciary is not aimed at the alleged transgressions of individuals, but at those who have a consistent record of honest and just adjudication.

For the sound education of the next generation of lawyers for the management of which the members of SALDA are responsible,

it is essential that the stature of judges as role models be preserved. Similarly law students should be convinced that they are preparing to work in a constitutional state in which the judiciary is cogently entrusted with the calling to provide justice and maintain social order, also in challenging social circumstances.

Political attempts at controlling the judiciary, be it by statute or by means of mob conduct, amount to an assault on an essential instrument and guarantee of democracy. We therefore call upon the political leaders of our country to set an example to the citizenry in upholding and defending the Constitution by honouring its provision in section 165(2) that the courts are independent and subject only to the Constitution and the law, which they must apply impartially and without fear, favour or prejudice.

Enquiries: Francois.Venter@nwu.ac.za. This statement is also subscribed to by the Council of the Society of Law Teachers of Southern Africa (Enquiries: Professor Evance Kalula, SLTSA President Evance.Kalula@uct.ac.za). 