

Lessons from New York

On the eve of the second Visiting Lawyer Program, three of the fellows who attended the first programme share their experiences and perspectives.

The November 2003 issue of *De Rebus* carried an advertisement by the Association of the Bar of the City of New York (the City Bar) which sought applicants for the South African Visiting Lawyer Program, under the fellowship of the Cyrus R Vance Centre for International Justice Initiatives (the Vance Centre).

The programme was conceived in 2001 by a group of high-powered New York City attorneys (including the then President of the City Bar, Mike Cooper, the subsequent President of the City Bar, Evan Davis, the Chairman of the Vance Centre, Todd Crider, and the Executive Director of the Vance Centre, Joan Vermeulen, who were devising means of contributing to the acceleration of the transformation processes, particularly skills development, then taking place in South Africa.

The Vance Centre was named after the late Cyrus R Vance, a former president of the City Bar and US Secretary of State under three administrations. The main purpose of the program is to expose historically disadvantaged individuals to high-level commercial and corporate law work in a working fellowship at Wall Street law firms and investment banks, with a view to furthering skills development in South Africa.

In early 2002 an interviewing panel of two South African Constitutional Court judges, one South African attorney and three New York attorneys selected a group of six attorneys and one advocate to be the first participants in the program. Prior to our departure to New York, we attended a seminar on US corporate practice in order to bridge the gap between South African and American practices.

The programme started in September 2002 with seven inaugural fellows – Avania Maharaj of

Durban placed with Shearman & Sterling for the first half of her time in NY and Credit Suisse First Boston for the other half, Lerato Mokgosi of Johannesburg placed with Simpson Thatcher & Bartlett and then with JP Morgan Chase, Masizakhe Mathai of Johannesburg placed with Cleary Gottlieb Steen & Hamilton and then with Salomon Smith Barney, now Citigroup Global Markets, Tembinkosi Bonakele of Johannesburg placed with Clifford Chance, Vele Mulangaphuma of Johannesburg, placed with Weil Gotshal & Manges, William Mokhari of Sandton placed with Cravath Swaine & Moore and Xolisa Beja of Johannesburg placed with Simpson Thatcher & Bartlett and then with Morgan Stanley. In addition to placement at the law firms and investment banks, fellows attended periodic seminars in international commercial practice. Topics were varied and included most corporate law practice areas.

While in New York we were involved in various aspects of corporate law, with particular focus on capital markets, mergers and acquisitions, banking and project finance, securitisation/derivatives and financial products, antitrust and other commercial litigation. The main focus in areas of practice for each of us depended on a particular participant's area of interest.

We would receive work from the assigning partner responsible for allocating work to all associates in a particular class. This system allows the partners to monitor and continually adjust the quantity and type of work being handled by each associate. Work had its own challenges as the commercial transactions are

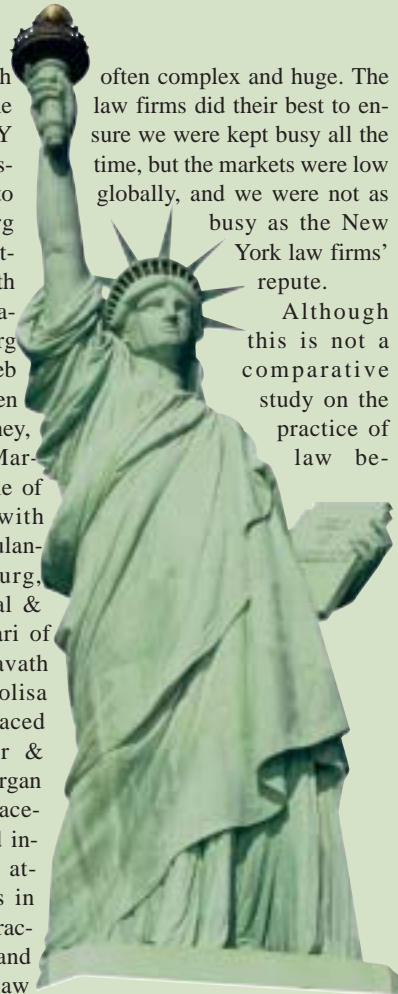
often complex and huge. The law firms did their best to ensure we were kept busy all the time, but the markets were low globally, and we were not as busy as the New York law firms' repute.

Although this is not a comparative study on the practice of law be-

involved in most aspects of the lives of junior lawyers. Junior lawyers too are highly involved in the activities of the City Bar, particularly in its many committees. In South Africa, only senior attorneys/partners are generally involved in the law society's activities, and junior practitioners usually participate only in the annual general meetings.

We were impressed with the fact that all lawyers in the US law firms are treated as extremely important assets, on whom the current and future growth of the firm depends. As a result, American junior associates are highly confident, while many South African junior practitioners, particularly candidate attorneys, either lack confidence or have very little, largely because they are treated as if they are being done a favour by senior attorneys where they are articulated. Lawyers with this type of an attitude are doing more harm than good to our young lawyers. For articles to be more effective, it is important that there be a close monitoring system. Candidate attorneys must, more than anything else, get the necessary training. The legal profession must, by itself, root out the exploitation of candidate attorneys by certain law firms.

The research skills of American first-year associates, particularly their electronic research abilities which reflect technological advancement in the US, were also very impressive. However, we think that US junior lawyers tend to be slower to develop, largely because, on the one hand, US law firms tend to be very specialised and, on the other, there generally are too many associates that one partner supervises. Overall we are of the view that SA junior attorneys compare well with attorneys at the same level in the US.



tween the US and South Africa, we made the following observations:

Education and training

There were compulsory continuing legal education (CLE) seminars presented by both law firms and the City Bar. In certain cases, these seminars could be watched on video tapes if associates were unable to attend, while in other cases seminars had to be attended live. CLE seminars ensure continuing legal education and are very detailed and, for the most part, highly specialised. They are presented by senior practising lawyers, usually partners at Wall Street law firms. The City Bar is very visible and is highly in-

Diversity

The challenge of creating diverse law firms has clearly gone beyond the two traditional considerations of race and gender to include other marginalised groups, such as the disabled, gays and lesbians, etc.

We also learnt in the US that the market itself cannot sufficiently deal with the challenge of creating a diverse legal profession without deliberate interventions both within the legal profession and from outside. Of course, if the profession can deal with this problem by itself, it would be better. In law firms where the top management of the firm is driving the diversity programmes, there is a notable success, and those law firms that did not make serious interventions to change their diversity profiles have seen very little change. If the US is a model for SA business to follow, then as business in SA appreciates the value of diversity in their conduct of business, SA law firms must avoid the pitfalls of being 'too far' behind their clients when it comes to diversity issues. Here too, the organised profession can play a very constructive role. The City Bar plays a leading role in promoting diversity in US law firms, and some firms have diversity committees (consisting of influential partners and senior associates of the firm) that are tasked with dealing strictly with diversity issues, and these are making progress.

Pro bono work

Nothing is more striking in the US than the commitment and involvement of law firms in community work, mainly through *pro bono* programmes. Those law firms in the 'capitalist capital' of the world are leading the way when it comes to social responsibility. It is standard practice in the US for law firms to compete in *pro bono* programmes, and these firms take pride in their rankings – which they take very seriously. They are also widely covered in the relevant law journals.

Many firms have *pro bono* committees with at least one senior partner and various senior as-

sociates and coordinators dedicated to the quality control and the administration of *pro bono* work. These Wall Street law firms don't just pay lip service to *pro bono* work, but treat it very seriously – particularly with regard to saving ordinary people from the death penalty and unfair treatment of refugees/asylum seekers. According to Evan Davis, two of the main reasons why lawyers should also render legal services on a *pro bono* basis are firstly, because they have a monopoly over such legal services in the sense that only lawyers can render legal services and secondly, because they get satisfaction from the knowledge that they are doing some good for their fellow human beings.

We applaud the Cape Law Society in this regard, which recently took the lead in South African *pro bono* initiatives when it announced that its attorneys would now be required to provide a minimum of three days' obligatory *pro bono*, or free, service each year. It is hoped that this trend will soon be followed by the other statutory law societies. If New York lawyers can, in such a fiercely capitalist environment, get actively involved in *pro bono* activities, surely there is no good reason why South African lawyers, as a matter of policy, should not be actively involved in such activities in their own country. We hope that the Law Society of South Africa will take a leading role in this regard.

The first Visiting Lawyers Program was a success. However, the Law Society of South Africa has not been as actively involved in the programme as we would have liked to see it. We have raised this with the City Bar and steps are being taken to ensure that this programme is used partly to strengthen the relationship between the legal professions in South Africa and the US.

**Masizakhe Mathai and
Tembinkosi Bonakele,**
*attorneys, Johannesburg,
and Avania Maharaj.*

SOUTH AFRICAN VISITING LAWYER PROGRAM

**Sponsor: The Cyrus R. Vance Center for
International Justice Initiatives
of The Association of the Bar
of the City of New York**

The Association of the Bar of the City of New York (the Association) is seeking applicants for the South African Visiting Lawyer Program. The Program will bring up to eight lawyers from historically disadvantaged backgrounds to participate as Vance Center Fellows in a working fellowship program at corporate law firms and the legal departments of investment and commercial banks in New York City for one year.

The 2004/2005 program year will begin in September 2004.

Applicants should have a minimum of two years practice experience. Some corporate practice experience is desirable. Only attorneys will be considered for participation in the Program.

Applicants are requested to provide the following information:

- Curriculum vitae;
- Law school transcript;
- A written statement by a lawyer familiar with the applicant's work indicating his/her capacity to work well at the junior level in a commercial transaction; and
- A cover letter indicating how participation in the Program will assist the applicant's professional development, and how the applicant will share the skills upon return to South Africa.

The Visiting Lawyer Program will provide transportation and initial lodging for the participants. The Vance Center Fellows will receive an annual fellowship stipend of \$85,000 along with health benefits provided by the firms and/or banks at which they are placed. After an initial two-week period they will be expected to provide for their housing and living expenses.

In addition to placement at the law firms and banks, the Vance Center Fellows will participate in periodic seminars in international commercial practice organized by the Center. Prior to their departure to New York, participants will be required to attend a two day seminar in US corporate practice.

Attorneys interested in applying for the Visiting Lawyer Program should send the required materials to:

Arno Botha
Law Society of South Africa
P O Box 36626
Menlo Park 0102

A copy of the cover letter and CV should also be sent by e-mail to Rachel Ellenport, Program Assistant at the Vance Center: rellenport@abcny.org.

Applicants should submit the required materials no later than March 15, 2004.

Candidates who have been selected for interviews will be notified in early May. Interviews will take place in Johannesburg on May 15 and 16, 2004.