

Peter Hodes SC

BEFORE considering the future of the Bar it is necessary both to reflect on the past and to cogitate for a moment about the present.

The past

Throughout the darkest days of the apartheid years the Bar managed to retain its independence. Despite the fact that their views covered the entire political spectrum of the country, members of the Bar strove to maintain the idea of individual rights and liberties against the might of the state and battled constantly against the steady erosion of the rule of law. Regularly the profession was heard to protest publicly against steps taken by the executive to diminish the rule of law, although with hindsight it is clear that we should have done a lot more.

In the courts, counsel would invariably be found to represent litigants with most unpopular causes, whose political views were considered anathema by the ruling party's adherents as well as by many others. The foundation for this preparedness was the cab-rank rule, which is still rigorously applied today.

All the while the Bar continued growing from strength to strength as a referral profession, honing its specialised advocacy skills. In the recent past entrants to the profession have been assisted in mastering these skills by undergoing advocacy training as an integral part of the pupillage system. We were extremely fortunate to be helped by the English Bar in launching this programme. Its arrival has been wel-

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comed warmly by all who have been lucky enough to undergo such training.

The present

Miraculously the body politic broke free from the shackles of apartheid on 27 April 1994, ushering in a new era of the supremacy – not of Parliament – but of the law. Constitutional and human rights have taken on a new meaning in South Africa, with the Bar being at the forefront of propagating the rights of the individual against the might of the state in the courts.

Innovative argument by members of the Bar has often been the order of the day, assisting the Constitutional Court in heralding the start of a journey on the path of constitutionalism.

Rights of audience for attorneys have come with barely a ripple. Members of the public now have a choice of whether or not they wish to be represented in the High Court by an attorney or by counsel. The constant refrain by the attorneys' profession that we maintained a monopoly of appearances in the highest courts of the land is no longer to be heard. The public is well-served by having such a choice available to it. It is not, however, well served by a legal aid system which is inadequately funded, especially when it comes to civil litigation. At long last, however, the Bar's constant agitation for the *pro deo* system to be incorporated in that of legal aid has been rewarded.

Transformation of the Bar and of the Bench has commenced, although obviously far too late. There are many more blacks and women at the Bar and a number of blacks and women have been elevated to the High Court, whereas but a few years ago there was one woman judge and not a single black. Today we

have our first black Chief Justice who has been welcomed with acclaim.

Currently the GCB is preparing submissions on the legal system to the Legal Working Group of the Truth and Reconciliation Commission prior to a hearing before the Commission on 27, 28 and 29 October 1997. This is a matter of some significance to the profession. Hopefully our submissions will constitute a link between the past and the present and be a beacon for the future of our profession.

The future

While the complexion of the Bar is changing and male dominance is diminishing, much has still to be done in this area. It is imperative that more members of the formerly disadvantaged groups join the Bar and that suitably qualified individual Bar members coming from those sectors of society be found to take up positions on the High Court. Failing this the necessary greater representivity on this Bench will be but an unfulfilled hope, with perceptions as to its lack of legitimacy growing apace.

In the near future representatives of the Scottish Bar will be visiting South Africa to furnish further assistance in developing our advocacy training programme.

On the more mundane, but practical level, except for certain notable exceptions, the judiciary has not taken the lead in helping to modernise the practice of law before the courts. In particular I refer to the idea of case management. As long ago as July 1991 the GCB appointed six Bar leaders to consider and report on the Bar's policies and strategies for the future. The report of the Bar Leaders Committee was submitted to the GCB in

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Praktiese advokaatskapopleiding


PRAKTIESE advokaatskapopleiding het sedert die aanvang daarvan in 1996 stewig gevestig geraak en dit ontvang die entoesiastiese steun van pupille, advokate en regters. Dit is bemoedigend dat soveel advokate en regters bereid is om hulle tyd en talente beskikbaar te stel in 'n poging om die graad van bevoegdheid van beginneradvokate te verbeter. Die praktiese opleidingsprogram het daartoe gelei dat 'n nuwe belangstelling in advokaatskap ontstaan het – 'n belangstelling wat gedeel word deur almal wat betrokke is in die program.

Die onderskeie Balieverenigings het

ooreengekom dat dit voortaan verpligtend sal wees vir alle pupille om 'n opleidingswerkessie in saakvoorbereiding, die hantering van getuies, opening van 'n saak, slotbetoog en betoog in 'n aansoek te voltooi. Benewens die verpligte werkessies word daar ook by sommige van die Balies opleidingswerkessies aangebied wat 'n skynhofmosie en 'n appèladvokaatskapwerkessie insluit.

Die opleidingsprogram het geweldig gebaat by die skakeling met kollegas van die Balie van Engeland en Wallis en die internasionale opleidingsimposium in Londen in Januarie 1997. Toenemende

getalle seniors raak betrokke in die program soos blyk uit die groot getal senior advokate en regters wat aan die werkessie vir dosente-opleiding in Julie 1997 deelgeneem het.

Die praktiese opleidingsprogram verg aansienlike tyd en inspanning deur lede van plaaslike Balieverenigings wat plaaslike werkessies organiseer. Die voorsitter van die Nasionale Opleidings-Koördinerende Komitee, die lede van die komitee, en veral die nasionale koördineerder wat in Durban gebaseer is, lewer 'n enorme bydrae en hulle moet krediet kry vir die sukses wat die program tot dusver behaal het. 

Practical advocacy training


PRACTICAL advocacy training has since its inception in 1996 become firmly established and has received enthusiastic support from pupils, advocates and judges. It is encouraging to see how many advocates and judges are prepared to give their time and talents in an attempt to increase the level of competence of beginner advocates. The practical training programme has also awakened a fresh interest in advocacy on the part of all those involved in the programme.

By agreement between the various Bars it is now compulsory for all pupils to complete a training workshop in case

preparation, witness handling, opening a case, closing argument and argument in an application. In addition to the compulsory workshops, training exercises have been conducted at some of the Bars which involve a moot motion and an appellate advocacy workshop.

The training programme has benefited enormously from contact with colleagues at the Bar of England and Wales and the international training symposium in London in January 1997. An increasing number of senior members are becoming involved in the programme, as is demonstrated by the

large number of silks and judges who took part in the July teacher training workshop.

The practical training programme demands considerable time and effort from the members at the local Bars responsible for organising the local workshops. The chairman of the National Training Co-ordinating Committee and his committee, and especially the national co-ordinator, who is based in Durban, does an enormous amount of work in this regard and should get the credit for the success which the programme has achieved. 

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December 1991. One of its recommendations was that attempts be made to persuade the South African judiciary to adopt a system of case management in order to promote efficiency and reduce delay in the then Supreme Court. This would bring us in line with countries such as England and Wales, Australia, Canada and the United States. Sadly

these entreaties fell on deaf ears, save in the case of the Cape Provincial Division where the first guarded steps were taken along the road to case management, and further measures are in the process of being adopted. The Rules Board has been approached, but without any results.

The Bar must continue to raise its voice in this regard. By the advent of

the new century we must not have fallen further behind other countries in our efforts to bring about a more efficient disposition of Court rolls, with earlier settlement of cases and a lightened work-load for the judiciary. This we must do so that the public may be better served, which is after all the *raison d'être* for the Bar's very existence, and should be its continued aim. 