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**S**OUTH African universities have until recently disclaimed any responsibility for the practical training of lawyers and the professions have had to find their own way to train their novice members. There was a large gap between the academic training students received at university and the practical training they needed for a successful entry into legal practice. Attorneys were only admitted to their profession after completion of articles of clerkship and passing the Board Examination. Prior to 1973 the Bar had no equivalent. Between 1973 and the present many changes have been introduced in order to give pupils the practical training required by the novice advocate. The systematic training of advocates at the Durban Bar has now reached a fairly advanced stage, having regard to what training was available before 1973, and what is generally thought to be an adequate regime for the training of practical advocacy skills. But, it will be contended, there is always room for improvement<sup>2</sup>.

Formal and compulsory training of pupils at the Durban Bar started in 1973. Prior to that an informal, optional system applied. As far as can be ascertained Malcolm Wallis SC was the last advocate admitted to membership of the Durban Bar without having undergone compulsory pupillage. He had won the Moot Court Finals of the University of Natal (Durban) the year before<sup>3</sup>. The Moot Court programme at that time con-

stituted the only overt recognition by the local university of the need to teach advocacy skills at a practical level. Compulsory pupillage was already being considered at the time and Wallis's pupillage in many respects followed what was soon to be introduced. He was required by his pupil-master to attend consultations, to draft opinions, pleadings, advice, heads of argument and such other documents counsel ordinarily has to prepare. He kept copies of his own drafts as well as his master's. He had to prepare for trials, appeals and motions. He accompanied his master to court and appeared with him, robed, as his unpaid junior in *pro deo* matters. When his master's practice could not introduce him to an area of practice which would have to be covered by a junior advocate, he was farmed off to another advocate with a case or practice in that field. He also had to keep a diary in which he noted everything he did in pursuance of his training. Others had prepared for practice in the same way as Wallis. So far so good, but this informal system could only work with a dedicated pupil-master and a hard-working pupil. And it could work only for those who participated voluntarily.

### Compulsory pupillage

In 1973 a four-month pupillage became compulsory. Initially three pupil-masters were appointed for each pupil. The idea was that there would be some co-ordination between them to ensure that the pupil was exposed to all the relevant aspects of practice. The pupil could start on any date he or she chose with the result that a steady stream of advocates entered the system on different dates throughout the year<sup>4</sup>. During this period pupils had to complete all the tasks in the prescribed syllabus, which included drafting, preparation and attendance of appeals, reviews, trials and motion court. Finally the pu-

pil-masters had to report to the Secretary of the Society of Advocates that the pupil had completed the prescribed syllabus in the four-month period. During this period pupils no longer appeared as unpaid and robed juniors but they often appeared on their own in *pro deo* cases as there was a shortage of counsel to undertake such defences<sup>5</sup>. From July 1976 this practice was terminated. During this phase ever larger numbers of pupils arrived at the Bar. In January 1977 no fewer than ten pupils commenced their pupillage on the same day<sup>6</sup>. Allocating three masters to each of them immediately exhausted the available supply of masters! The system was therefore modified slightly in that only one pupil-master was appointed per pupil.

There were some obvious deficiencies in the system during this period. There was little co-ordination between the pupil-masters and pupils were very much left to their own devices. Pupils also received no formal training in trial advocacy. They had to learn, second hand so to speak, from what they witnessed in court on the occasions when they attended. There were no means of testing whether the pupil had learnt anything beyond his LLB. The fact that a pupil could commence pupillage on a date determined by him also made it impossible to devise a sustainable programme which could be used to train pupils in a group setting and thus to reduce the effort required by the masters proportionately. There were very few pupils of African origin during this period.

Some of these deficiencies were addressed when the National Bar examination was introduced with effect from 1981. From this time onwards there were two terms for pupillage which commenced on 1 March and 1 August respectively, with examinations in the last month. Beyond that there was no change

## *Pupillage at the Durban Bar: the last twenty-five years<sup>1</sup>*

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to the system which had been introduced in 1973.

The introduction of the National Bar Examination brought its own problems, many of which have not yet been resolved<sup>7</sup>. The format and content of the papers which were set were discussed at many meetings. The allocation of marks remains, as with all examinations in which a number of people contribute to the teaching process, problematic. What happens, for example, when the pupil-master teaches the pupil that "*further or alternative relief*" is a nonsensical prayer in an action for damages for personal injuries when the examiner holds the view that such a prayer is the cure for all ills, even defective or incompetent pleadings? And what is the purpose of trying to teach a pupil good style, for example, by pleading a denial simply, as "*the defendant denies each allegation in paragraph 4*", when the examiner wanted to see his favourite "*as if specifically traversed herein and puts the plaintiff to the proof thereof*" added for a mark? In some ethics papers there were also confusing double negatives in Yes/No questions.

By the middle of the eighties the system was bursting out of its seams. There were simply too many pupils to cope with, many from outside the province. African pupils arrived in larger numbers. The system was not suited to take care of their special needs. At the same time members began to lose interest in training pupils. Some took the view that all the pupil had to do was to work through the syllabus for the examination, which the pupil could just as well do in the library. Many pupils followed a similar approach, regarding the examination as the sole purpose of pupillage. The practical aspects of an advocate's work came to be neglected. A fair degree of hostility was also engendered in the attitude of those who bore the heaviest burden in providing training for pupils. Some members openly questioned the wisdom of training pupils. "Why should we train potential competitors?" they asked. The benefits of a vibrant and skilled Bar to all its members were too intangible to provide a persuasive response. So members continued to participate in the training process, many reluctantly.

Numerous pupils who had no intention to practise in Durban also arrived and demanded pupillage under local members for the training they perceived they were unlikely to receive elsewhere. At one stage more than half of the record number of twenty-five pupils were from Umtata and Bisho and they intended to return to practise there<sup>8</sup>. However, when it came to taking on pupils who did not intend to practise in Durban after completion of their pupillage, only the most dedicated members could be persuaded to participate<sup>9</sup>.

In 1987 Mark Harcourt, who had a pupil at the time, started to give informal lectures in *ethics*. The writer started lectures in *legal writing* in 1988<sup>10</sup>. These lectures were undertaken with the permission of the society but were not compulsory and lacked a formal structure. Generally the lectures covered all the material in the syllabus. Within a few years the practice grew so that lectures also were provided by other members in *criminal court procedure*, *motion court practice* and *civil practice and procedure* respectively. The whole syllabus was covered. Towards the end of the eighties these lectures, about one hour per subject per week, had become compulsory. The structure and content of the lectures soon became an added attraction for pupils from outside Durban who were looking for a good place to train and work towards passing the Bar Examination. The numbers of pupils increased accordingly. Ultimately a fair number of the current Umtata and Bisho advocates received their training at the Durban Bar and the training of pupils became an export business for the Durban Bar!

### Deficiencies

Yet there were still some serious deficiencies in the system. A number of pupils came from disadvantaged backgrounds and found it difficult to communicate in English. This was most apparent during the legal writing lectures and in their answers to the legal writing papers. The Bar was, and remains, unable to cope with this problem, which deserves urgent attention but needs to be addressed with some tact. There was also insufficient emphasis on teaching practical advocacy

skills. Such skills cannot be taught in a lecture hall, and, since pupils no longer appeared as robed juniors, there was a limited, if not nonexistent, opportunity to teach pupils how to present a case or argue an appeal. Help came rather unexpectedly from three unrelated sources.

Professor Robin Palmer of the Faculty of Law, University of Natal, Durban, having been through pupillage and the Bar Examination himself in the eighties, realised that a more practical approach to the education of law students was required during the pupil's university years. So he introduced and stepped up the training of students in more mundane but essential matters such as practice and procedure, evidence, legal writing and the conduct of trials, opposed motions and appeals. This fits in well with the university's Moot Court Finals, which are conducted at a very high standard. The Law Faculty is also intimately involved with the Practical Training School for attorneys, which is situated on the campus. Couple this with the Legal Aid Clinic of the university and a dramatic shift could be detected in the attitude to the teaching of law; from an academic and theoretical approach to a practical, *hands on* approach. The result is that pupils now arriving at the Bar from this university have had a fairly sound introduction to practical advocacy.

### Advocacy training

The second important development was introduced at the beginning of 1996 when the General Council of the Bar sent a small band of advocates to London to be trained as trainers for the Bar's own advocacy training programmes<sup>11</sup>. Ploos van Amstel SC, Pammenter SC and Vahed SC represented the Durban Bar on this mission. They have since established a vibrant and financially healthy advocacy training committee in Durban, which conducts regular sessions for pupils, advocates already in practice, other trainers and, on one occasion, even for attorneys who wish to improve their advocacy skills. This system complements the pupillage system by filling the void between theory, legal writing, ethics and procedure on the one hand and courtcraft on the other. >

In a third development senior judges<sup>12</sup> have enthusiastically participated in mock motion court sittings during which pupils, fully robed and appearing in court, appeared as "counsel" before a real judge. The briefs are specially chosen and the cases before the "court" are the actual ones which are on the roll for that day. All of this takes place under the supervision of lecturers and members<sup>13</sup>. Over and above that the Bar has set aside Thursday afternoons as a special and compulsory training session for pupils in Motion Court Procedure. The cases on the Friday roll are copied and each pupil gets an opportunity to read through the papers and to prepare as if he or she were to be counsel on brief the next day. Then the pupils attend motion court under supervision to see how the individual cases are actually determined. This simple method has greatly improved the quality of the training pupils receive in this otherwise bewildering subject.

Thus the training of pupils at the Durban Bar has grown considerably since 1973 into the extensive programme we have now. It can safely be postulated that pupils today receive far more comprehensive training than their predecessors did. So what can be done to improve the system further? Is any improvement necessary? In the writer's view there is still room for improvement.

The duration of pupillage has been extended to five months this year. That was inevitable with the additional amount of training pupils now receive. If it were not for the fact that the December-January recess sees most advocates away from chambers, a period of six months could have been introduced. The cry during pupillage is always: "So much to do. So little time." Five months may still be too short.

### Examination

The examination remains problematic. It is written towards the end of the period of pupillage when it should perhaps be written as an entrance examination for acceptance into pupillage. Its format should then be changed to approximate the California Bar Exam. There the candidate studies the relevant material in his or her own time. The study material

is available in printed form. The examination has a known format, with multiple choice questions the order of the day. The examination should not be too difficult. Its purpose should be to give an opportunity for candidates to improve their education in a structured way by providing them with useful guides and a standard test to determine their readiness to commence practice on their own. It should under no circumstances be perceived to be a device to exclude candidates from membership of the Bar. The real training should be of a practical nature and should follow in pupillage.

A problem which has been there from the start of the pupillage system is the wide disparity in the experience of the individual pupils. Many have had some experience, as prosecutors, magistrates and as attorneys, some of all these occupations. Others have arrived for pupillage straight from university without any experience at all. It is difficult to devise a training regime for the experienced and the inexperienced. It is equally difficult to set a tempo for training programmes which have to cater for both the slow and inexperienced and the sometimes, but not necessarily, quicker, experienced pupils. It is doubtful whether this problem can be solved.

Then there is the problem of the disadvantaged pupil, whose primary and secondary education may well have left him or her unable to communicate clearly in English when very fine language and communication skills are required of an advocate. It is impossible to bridge that gap in the current pupillage system. How past pupils from such a background coped is not always apparent as many entered the profession even with such handicaps and still survived. Perhaps the answer is that more advocates of similar background who are now successfully ensconced in practice should take an active and even prominent part in the training of pupils. Their input and advice on how to overcome the disadvantage would be invaluable, not only to the current crop of pupils, but also their lecturers and masters.

It appears likely that some form of community service will be made compulsory for lawyers in the near future,

as for doctors. What form that will take is not so clear now, but the Bar will have to start devising a programme which will allow it to participate actively in the training of advocates for service in the community. Ideally pupillage should precede community service to ensure that the advocates who render specialist advocacy services to the public should be appropriately qualified.

Pupils are not yet given any instruction in the administration of an advocate's practice, namely how to set up chambers, what accounting records to keep and how to keep books complying with the Bar's own rules, the requirements of the Receiver of Revenue with regard to Value Added Tax and income tax returns, or even the returns to be rendered to the Metro Council. This appears to be a defect which needs to be addressed sooner rather than later.

Prospective pupils are uncertain of the expenses they are likely to encounter during pupillage and when they set up practice afterwards. The Society of Advocates of Natal has gone some way in addressing this problem. Each pupil now receives a letter prior to the commencement of pupillage in which pertinent information is given<sup>14</sup>. To alleviate problems individual pupils may have, prospective pupils are given individual interviews by a pupillage committee. During these interviews pupils are given the fullest information about pupillage and are given an opportunity to raise any difficulties they may have so that a solution may be sought with the assistance of the Bar. Pupils are made aware at this stage of the GCB's bursary scheme for needy pupils.

It is apparent that the Durban Bar has over the years refined its system for the training of pupil advocates to a considerable degree. Important contributions are made by a large number of members. Some problems remain and need to be addressed. Notwithstanding the remaining shortcomings the Durban Bar has every reason to be proud of its effort and the achievements of its pupils over the past twenty-five years. Deputy President Langa, Justice Madala and Justice Yacoob of the Constitutional Court, numerous judges of the High

Court<sup>15</sup>, some sitting in other jurisdictions, Selby Baqwa SC, Public Protector, Neville Melville, the Police Reporting Officer, and many others who have achieved high office and standing in the legal world have been pupils at the Durban Bar<sup>17</sup>. It would be interesting to know what comments they have and what proposals these ex-pupils of the Durban Bar may make for the further improvement of the system through which they have qualified. As we near the millennium, could this article perhaps be the opening of a public discussion of the future of advocacy training in the interests of the public and the threatened profession of the advocate?

## Endnotes

- 1 The views expressed in this article are the writer's own and do not necessarily reflect those of any other member of the Durban Bar, nor the views of the Society of Advocates of Natal.
- 2 It may be suggested that an even more concerted effort is required if the combined onslaught of the inroads made by the attorney's profession into the traditional domain of the advocate and the Minister of Justice's desire to create a single legal profession were to be avoided.
- 3 Other members of the Durban Bar who have won these Moot Court Finals in their final LLB years are Broster, Jeffrey, Wild, Saunders (now in California), Nirmal Singh SC, Skinner, Salmon, Annandale. Annandale achieved the highest marks in the National Bar Examination for quite a while, in June 1998.
- 4 For example, in 1976 Smart and Frank (until recently Mr Justice Frank) completed pupillage at the end of June, Feitelberg and Van der Berg a month later, the writer on 8 September 1976, Poswa SC a month later and Niles-Duner (now Ms Justice Niles-Duner) yet another month later.
- 5 At this stage many cases which are now tried in the Regional Court went to the Supreme Court, now the High Court. Many of them were indicted as murder but pleaded down to culpable homicide, and such cases were almost invariably dealt with by way of an agreed statement of facts and disposed of promptly.
- 6 They were Wild, Horn, Simpson, Pretorius (now SC), Pillemer (now SC), Rajesh Choudree, Woodford, Hutton, Anscombe and Roshni Harikissoon. Of these only the first six are still in practice, with Simpson at the Auckland Bar, Pretorius SC in Johannesburg and Horn in Port Elizabeth. Anscombe is a senior legal advisor to the Chamber of Mines and Harikissoon is a member of the legal faculty at the University of the Witwatersrand.
- 7 Some of these are discussed in Van Dijkhorst J's article in 1996 May *Consultus* 50.
- 8 The first of these pupils arrived at the invitation of Findlay SC and Broster, who suggested that pupils who were experiencing difficulty with their training at the Umata and Bisho Bars could spend a month of their pupillage with a member of the Durban Bar. This proved so inviting that many chose to do the entire pupillage here!
- 9 Madala, now Justice Madala of the Constitutional Court, was pupil to one such member, Pammenter SC.
- 10 Both still lecture the same subjects. In legal writing pupils are given assignments requiring them to draft the documents in the syllabus. Past papers are used to set the questions, with or without modifications. The answers are marked and returned to the pupils after discussion of the common mistakes at the next lecture.
- 11 This was initiated by Malcolm Wallis SC during his term as Chairman of the General Council of the Bar. See Lyn Ploos van Amstel's article in 1996 May *Consultus* 44.
- 12 The participation of Broome DJP, now retired, was particularly significant. It not only set the example for other judges but also demonstrated a willingness on the part of the judiciary to participate actively in meaningful programmes to give aspiring advocates training of a practical nature. Other judges of the Natal Bench have also given unselfishly of their time and expertise at various seminars and training sessions and relations between the Bar and Bench in this jurisdiction are all the better as a result.
- 13 The joint effort of the Bar and the Bench in this particular area has produced good results, not only in assisting pupils to overcome their fear and apprehension when having to appear in open court, but also in acquiring the invaluable advice of judges on the proper way to conduct a motion court matter.
- 14 The information provided includes: the duration of pupillage; details of the National Bar Examination and the orals; requirements for pupillage, such as removal from the roll of attorneys, the prohibition against holding down other employment during pupillage, and admission as an advocate; expenses at the commencement of pupillage, such as the examination fee (R285), a deposit for the Constitutions of the Society and the GCB (R55), and the cost of a motion court manual (R60); details of bursaries; an estimate of the costs to be incurred in practice, such as PI insurance, rent, Bar Council levies, group expenses, stationery, books and subscriptions, telephone, fax and computer costs and robes, (altogether about R4000 per month at the lower end of the scale). This letter also advises that no pupils will be accepted unless they intend to practise as members of the Society in Natal, but the writer believes that this requirement is not enforced or is ignored. And it is a good thing that it is too.
- 15 Ex-pupils of the Durban Bar currently on the Natal Bench are Magid, Van der Reyden, Niles-Duner, Mthiyane and Jappie JJ.
- 16 Frank J of the Namibian High Court (recently resigned), Miller J of the Transkei High Court and Ngcobo J of the Cape Provincial Division spring to mind.
- 17 A full disclosure needs to be made, even if only in the small print of an endnote! The Durban Bar has experienced its embarrassments too. The activities of one pupil, who disappeared two weeks into his pupillage one hop ahead of numerous creditors and the police, caused the Smuts Commission of Inquiry to be appointed to report on his activities and their consequences when he, the pupil, had himself admitted under a false name and on the degree certificate of his university room mate. Another pupil who also did not complete his pupillage appeared before the Full Court in Pietermaritzburg in March this year in prison garb to argue his appeal against an indeterminate sentence on a charge of fraud. He had more than a hundred previous convictions for fraud! The appeal could not be heard by the Bench as then constituted because one of the judges knew him too well from the time when he was a pupil. This particular pupil is reputed to have got every single answer to the questions in the Ethics paper wrong!

