

# “Of advocates”

“(Advocates) are jurists requested by the parties to present their suits to the Judge orally and in writing, and to prove and defend them artistically, being admitted for this purpose by public authority”

Ulric Huber *The Jurisprudence of my Time* (1686) Vol II (tr P Gane).

**T**HUS far Huber on advocates. Elaborating on the above, Huber defines a *jurist* as “a good and honourable man, such as a true jurist ought to be”, a *client* as “a person who is taken under protection” and *artistically* as “the art of a pure and stainless jurisprudence”.

Times have changed since Huber’s comments on advocates. The advocate’s tasks have multiplied. Courts have come to be only one of the arenas of advocacy. Advocate, mediator, arbitrator, negotiator, draftsman, counsellor, commissioner. Such are some of the generic descriptions of the tasks advocates perform for clients. A detailed list would run on endlessly.

The South African Bar of the late twentieth century differs greatly from the profession of advocate as contemplated by Huber in the late seventeenth century. The number of practising ad-

vocates has substantially increased – from 307 in 1948 to 1 456 in 1997. This represents an increase which is proportionately larger than that of the South African population as a whole. The methods and profile of law practice are changing. The legal profession has lost some legal work to others outside the profession. On the other hand there has

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been an increase in professional opportunities provided by the expanding law of our contemporary society. A whole set of new legal rights has emerged. These rights will be further developed and vindicated by lawyers, especially by the advocates’ branch. In addition, opportunities for the lawyer will increase with the continuing growth of

government and the economy – an administrative state means more law and more scope for lawyers.

The Bar in South Africa has evolved an exemplary set of rules of professional conduct and etiquette which promote the excellence which Huber had in mind. Can the professional ethos and status of the Bar be maintained in a period of transition and fundamental change in society? To what extent should the Bar change its rules and its organizational and operational methods – bearing in mind that this has been the century of the managerial revolution?

“To see what is in front of one’s nose,” said George Orwell, “needs a constant struggle”. This is particularly true when one seeks to

examine the contemporary situation in one’s own profession. It is for this reason that we have invited members and former members of the Bar to bring into focus some of the issues that the Bar is facing. We will continue to stimulate debate on these and other topical matters affecting the Bar in forthcoming issues of *Consultus*. 

## Consultus: Reader Survey

**T**HE *Consultus* Reader Survey which was conducted among members of the Bar only at the end of 1996 has been analyzed by a professional statistician. Some of the more interesting results are the following:

- The profile of percentage responses from the various Bars was a near match to the national profile, and although the response rate was relatively low, the survey can be regarded as sufficiently representative of a cross section of Bar members for readership assessment, publication planning and advertising market positioning.
- English (47%) and Afrikaans (45%)

speakers were about equally represented. Only 2% of respondents speak other languages while 6% speak both Afrikaans and English at home.

- No respondent wanted *Consultus* to be published completely in Afrikaans but 23% preferred English only. The majority were either in favour of a bilingual publication (37%) or were not concerned about the exact mix (40%). One respondent felt that some attempt should be made to publish in any of the other official languages.
- The majority (71%) felt that the main aim of *Consultus* should be “to provide information and guidance

on developments in the profession and the administration of justice.”

- Practice & Procedure, Portfolio and Obiter are the sections of *Consultus* where 62%, 58% and 49% of respondents, respectively, want more coverage. On the whole, respondents appeared fairly satisfied with the contents with no more than 15% wanting less content in any one section. As befits a professional journal, “Bar news” appears to be the most popular section. We have, however, gained valuable information on subjects not presently or regularly covered which

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## Consultus: Reader Survey *Continued from page 2*

readers would particularly like to see in the journal.

- At least 60% of *Consultus* issues are kept for possible future reference.
- More than 96% of respondents were happy with both the cover and lay-

out, with the majority (62%) in favour of more frequent publication of *Consultus*.

- The information gained for advertising purposes will enable *Consultus* to approach prospective advertisers with concrete informa-

tion, e.g. on the use by Bar members of computers, banking and travelling facilities.

The Reader Survey has been a necessary exercise, providing the editorial committee with a clear picture of the needs of readers. We will try to satisfy those needs. 

## Consultus: Lesersopname *Vervolg van bladsy 3*

Soos dit 'n professionele tydskrif betaam, blyk dit dat "Balienuus" die mees populêre rubriek is. Ons het egter waardevolle inligting verkry oor onderwerpe wat nie tans of gereeld gedek word nie en wat lesers besonder graag in die tydskrif wil sien.

- Ten minste 60% van *Consultus*-uitgawes word gehou vir toekomstige

verwysing.

- 96% van respondente was tevrede met die buiteblad en die uitleg, met die meerderheid (62%) ten gunste van veelvuldiger publikasies van *Consultus*.
- Die inligting wat vir advertensiedoeleindes ingewin is, sal *Consultus* in staat stel om voornemende ad-

verteerders met konkrete inligting oor byvoorbeeld die gebruik deur baliëde van rekenaars, banke en reisfasiliteite, te nader.

Die lesersopname was 'n noodsaaklike oefening wat die redaksiekomitee 'n duideliker prentjie gee van die behoeftes van lesers. Ons sal probeer om aan daardie behoeftes te voldoen. 

## The Bar: facing change *Continued from page 5*

others. Their services are available through small or large firms of attorneys to individuals and giant corporations. They can freely (and must under our rules) take the difficult and unpopular cases which a practitioner subject to the prejudices and pressures of other clients would be compelled to turn away. The history of civil rights litigation in South Africa speaks eloquently of the need for such a resource.

It is this vision of advocacy, as a profession offering specialised legal skills and advice, available to all on a referral basis, which I have tried to pursue. It is not I think a vision which requires to be buttressed by statutory fortifications. That does not mean that there is no reason for differentiating between those lawyers who choose to deal directly with the public in their professional lives and those who do not. The former handle their clients' money and there is a well established need for financial safeguards. The latter do not and are merely paid *ex post facto* for the services they have rendered. My point is simply that in the long term it is the ability to provide a necessary professional service that will ensure the survival of the Bar not the protection of statute or out-moded business practices.

### Cause for satisfaction

Looking back in that light over the past three years there can I think be some cause for satisfaction. The advocacy training programme in conjunction with pupillage and the Bar examinations reasserts that advocacy skills are not only the bedrock of our profession but the justification for its very existence. The Bar's involvement in the formation and development of AFSA expands the scope within which disputes can be resolved in our society. The growing role of the Bar in international legal organisations acknowledges the fact that law is increasingly international in its scope. The submissions made on a variety of legislative measures have had and will continue to have an impact.

What then lies ahead? As a profession we have realised that we can no longer function out of the public eye. We will in the future play an increasingly public role. Fortunately we have managed over the past two years to overhaul our organisation and place it on a sound footing under the competent leadership of Elize van den Heever and I am glad to take the opportunity of paying tribute to her and her staff for their work. *Consultus*

itself has undergone both a change of editor and a change of style as it seeks to be more representative of the news and the views of advocates. I believe we are well positioned to meet the challenges that lie ahead.

Those challenges lie in pursuing our vision. Future changes in the structure of our courts brought about by the Hoexter Commission will soon be upon us. Initiatives are under discussion in regard to judicial case management. Advocacy training will advance and must extend to continuing legal education. The current negotiations between the ALS, NADEL and BLA will bring about changes in the attorneys' profession and no doubt new challenges for the Bar as we engage with our colleagues on the matters that concern us all.

Change can be both breathtakingly fast and painfully slow. Either can be frustrating. We must not permit our frustration to lead us to turn our backs on change for in doing so we turn our backs on the future. What we need to do as we approach a new century is to pursue our vision more vigorously and more effectively. If we do that we need have no fear for the future of our profession. 