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Education and Licensing Attorneys in South Africa

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EDUCATING AND LICENSING ATTORNEYS IN SOUTH AFRICA

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INTRODUCTION

In January 2004, the Georgia State University Law Review sponsored a Symposium on alternatives to the bar examination. At the invitation of the Symposium organizers, I wrote this Article to describe the licensing of legal professionals in South Africa generally and my personal experiences in this system as a black South African attorney specifically. This Article is further supplemented by a companion article written by Ms. Peggy Maisel.[1]

The practical training of South African lawyers was traditionally the province of the profession. As a result, persons wishing to qualify as attorneys were required to serve articles of clerkship for at least two years under the guidance of an experienced attorney known as a "principal."[2] Law schools were required only to provide a "sound legal education," which meant providing a grounding in theoretical precepts. The system has been changing, with the lines between school and the profession becoming blurred. Now, we have (1) an increase in the use of skills training in both the law school curriculum and post-graduate practical training programs, (2) a shortening of the period of articles, and (3) the creation of community apprenticeships.[3]

To give you a sense of how this system has and still operates, I will share my experiences as a black female seeking to become an

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1. *See* Peggy Maisel, *An Alternative Model to United States Bar Examinations: The South African Community Service Experience in Licensing Attorneys*, 20 GA. ST. U. L. REV. 977 (2004).

2. *See* Attorneys Act 53 of 1979, § 1.

3. *See* Interview with Yuosuf Vawda, Director, Law Clinic, University of Durban Westville (on file with Author).

attorney in South Africa.[4] This description should be relatively complete because I have served in all of the different types of settings available for the training of aspirant attorneys in both the old and the current forms of our legal system. Furthermore, I have lived my entire life in South Africa, a society rich in diversity in terms of language, culture, ethnic origin, and religion, as well as social and political experience. This diversity encompasses both negative experiences (particularly during the apartheid repression years) as well as positive experiences (both before and after the advent of the constitutional democracy). Through my personal experiences, I will demonstrate in Parts I through V of this Article the practical aspects of a South African lawyer's education and qualification as an attorney through four stages: (1) university education for four years leading to an L.L.B. degree; (2) attendance at a practical legal training school ("PLTS"); (3) service of articles of clerkship under a practicing attorney; and (4) employment in a public interest law firm. Part VI will discuss the four-part bar examination an attorney must pass for admission.

Before describing each of these stages, I will briefly complete the picture of my legal career so far. After my admission to the profession in 1999, I trained as a property lawyer, or conveyancer, for two years and wrote an exam to be registered as the first black woman and one of only three black conveyancers in the entire Eastern Cape Province. Beginning in 2001, I obtained my current position as the Deputy Director of a university-based law clinic. The clinic's goals are to (1) supplement and complement other indigent legal services available in the province; (2) improve legal education by providing practical skills and experience; (3) encourage students to pursue public interest law careers, thereby enlarging and strengthening the public interest bar; and (4) increase the number and skills of black legal professionals.[5]

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4. For a further description of South Africa's divided bar and brief legal history, see Maisel, *supra* note 1, at 978-88.

5. *See* Stephen Golub, *Battling Apartheid, Building a New South Africa*, *in* MANY ROADS TO JUSTICE: THE LAW-RELATED WORK OF FORD FOUNDATION GRANTEES AROUND THE WORLD 19, 38 (Mary McClymont & Stephen Golub eds., 2000).

I. LAW SCHOOL

After leaving high school in 1989, I attended law school for two years at Fort Hare University ("Fort Hare"), a traditionally "black" university. I then spent five years at the University of Natal, Durban ("UND"), a traditionally "white" university, where I was awarded both a BProc and an L.L.B. degree.[6] My experiences at the two law schools have shaped my legal career and continue to influence the way I practice law.[7]

My two years at Fort Hare were filled with political demonstrations, protests, and mass meetings. With the focus on the struggle for freedom, the popular slogan then was "Liberation first, education later." Our activities resulted in class boycotts and Fort Hare closing down two times during the time of my study there. Many participants' academic work suffered, resulting in a number of law students, including myself, failing a year and being excluded from the law school. I was forced to reapply the following year as an arts student majoring in law. It was at Fort Hare that I observed broader societal issues in their relation to the legal and political problems in our country. Regrettably this happened not within the classroom but instead within student political organizations.

After my second year at Fort Hare, I decided to transfer to UND because I wanted to receive training that I believed would enable me to better compete with my counterparts from "white" law schools.

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6. The Qualification of Legal Practitioners Amendment Act of 1977 discontinued the BProc degree. Now, all law students graduate after four years of study with an L.L.B. degree, instead of the five years previously required for the degree. The major reason for this change was to have only one route to qualification as an attorney so that students who could not afford five years of university education, who were mostly black, could compete on an equal basis with students graduating with a five-year L.L.B. degree. In moving to one degree, the law schools also agreed on a standard curriculum, supplemented by electives that would be required for graduation from any law school. *See* David J. McQuoid-Mason, *The Delivery of Civil Legal Aid Services in Sourth Africa*, 24 FORDHAM INT'L L.J. S111 (2000) [hereinafter McQuoid-Mason, *Civil Legal Aid*].

7. South Africa's 21 law schools produce about 3000 law graduates annually, the majority of whom intend to enter the legal profession. One of the accomplishments of the last ten years has been the increasing access of the previously marginalized groups of students to tertiary education. During apartheid, South Africa had separate universities for Africans, Indians and so-called "colourds" or people of mixed race origins. These universities are still characterized as historically disadvantaged universities. Although the percentage of black students at "historically white universities" has increased to a significant portion of the total intake, many black law graduates qualify through HDUs.

Given the country's history of prejudice and the under-resourcing of the historically black or disadvantaged universities ("HDUs"),[8] the perception in the profession was that a law degree obtained from Fort Hare was inferior. Of course, even if I overcame the hurdles needed to graduate at a historically white university, I still would face a wall of racial exclusion in trying to obtain articles of clerkship employment. This is so because, even though the majority of South Africa's population is black, white males, most of whom work in big corporate law firms, still dominate the profession.[9]

I entered UND in 1992 as a second-year Bachelor of Laws student. Political unrest continued at UND, but at this point education came first in my mind. The major personal challenge I faced was being part of a heterogeneous student population, in which there was no sense of unity among the different races. We were on the same campus, but we lived very different lives. This became evident especially during political demonstrations. The majority of the white and Indian students continued with lectures as normal, and the black students demonstrated and fell behind in their studies.

The teaching methodology at both universities was the same: highly formalistic classroom lectures in which the lecturer deliverers the content of the course with usually little or no participation from the students.[10] Further, my university education never challenged me with the problems affecting the underprivileged members of society,[11] nor was I asked to engage in critical thinking, to extend the

8. It is common knowledge that HDU faculties have suffered in the past as a result of insufficient resources, lack of support networks, and their location, which is often far from the main centers. Because of this, HDUs often have difficulty in introducing new programs or systems. As a result, they cannot compete with the more advantaged faculties, or even other legal institutions, in the recruitment of sufficiently qualified or experienced staff.

9. *See* McQuoid-Mason, *Civil Legal Aid*, *supra* note 6, at S111.

10. A professor at the University of Natal once wrote: "Apart from the social aspects of justice courses in Jurisprudence most other law courses teach students how to operate in a First World commercial legal environment rather than a Third World poverty law situation. . . . '[P]overty Law' is often neglected in the formal law curricula which tend to focus on 'rich people' law." David McQuoid-Mason, *Teaching Social Justice to Law Students through Community Service: The South African Experience*, *in* TRANSFORMING SOUTH AFRICAN UNIVERSITIES, 89, 91-92 (P.F. Iya, N.S. Rembe, & J. Baloro eds., 2000) [hereinafter McQuoid-Mason, *Teaching Social Justice*].

11. I might be called a previously disadvantaged individual, because I am black and a woman, but I came from an affluent family. It was easy for me to forget about the broader societal issues because I did not face the same reality, both on campus and at home, as the majority of black South Africans.

parameters of the possible, or to examine both positive and negative areas of law and practice. Instead, I learned to be comfortable in the culture of conformity. Overall, I received a good grounding in the laws of my country, and I passed with relatively good marks.

I left the university after graduation in 1996 knowing that I was not ready to practice law. However, I believed that "articles" would fill this deficiency. The one thing I was sure of was that I was ready to make money, and I therefore made a decision to only deal with clients who could compensate me adequately for my service. Realizing my shortcomings in terms of finding suitable articles, I chose to register first for the full time (six months) course at the Practical Legal Training School in Durban.[12]

II. PRACTICAL LEGAL TRAINING SCHOOL ("PLTS")

There are currently nine schools for legal practice throughout South Africa approved by the provincial law societies.[13] Currently, all law school graduates are required to supplement their L.L.B. degree with compulsory attendance at a five-week practical course at one of these schools. A law graduate who is able to attend an additional five-month PLTS course need only serve one year of articles, instead of two.[14] The objective of these courses is to supplement the training provided by law firms regarding the knowledge, skills, and attitudes required of a competent candidate attorney. Emphasis is also placed on preparing for the Admissions Examination.[15]

12. The current requirements for admission as an attorney are an L.L.B. degree and two years of articles of clerkship. The clerkship may be reduced to one year upon graduation from a five-month full-time course at one of the Practical Legal Training Schools and 12 months of community service at a public interest legal organization. The Legal Practice Bill of 2002 recommends that attorneys be required to complete only one year of post-graduate vocational training in order to qualify for registration and admission to practice: the attorneys will receive as wide a range of practical training options as is possible. McQuoid-Mason, *Civil Legal Aid*, *supra* note 6, at S209.

13. Legal Education and Development (L.E.A.D), *at* http://www.lassalead.org.za (last visited June 8, 2004)

14. These schools were established pursuant to the Attorneys Act of 1979, as amended in 1993.

15. *See* Interview with Nic Swart, Director of the PLT Schools in South Africa (Jan. 1998).

I attended the PLTS in Durban in 1996, its second year of operation. The bulk of the students were either previously employed law graduates who remained partly trained or recent law graduates who could not get articles or employment in law at all. There was an understanding that those with perceived inferior degrees or lack of contracts were made employable by this course. The Fidelity Fund sponsored the majority of the students at the school, including myself.[16]

The practice-oriented curriculum covered subjects such as motor vehicle accidents and wills and estates. The instructors were practitioners known for their experience and expertise. Students were divided into firms that "litigate" against each other. The school constantly monitored the students' progress through testing at the end of each module, followed by appropriate remedial action. Various awards were presented for exceptional performance. An example of these awards was the special certificate that the Law Society of South Africa awards. Students could enroll for a special assessment program that focused on learning more advanced skills, leading to receipt of an additional competency certificate.[17]

My personal experience of the training and supervision at the school was very different from what I expected and had been told. More importantly, it did not achieve its goal for several reasons. First, the teaching methodology utilized by the practicing lawyers was similar to that at law school. Thus, the practicing lawyers also used the "chalk and talk" model, and even though they shared some of their experiences, too much time was spent on substantive law and too little time on practical aspects.

Second, even though I took part as a witness in one mock trial prepared by our group "law firm," I gained little insight from the experience. There was an assumption that we could all work well in an unsupervised team, but this was not so. Rather, the more

16. The attorneys' Fidelity Fund sponsors practical legal training and law clinics in a net amount of 15 million per year; this amount includes financing indigent graduates. *See* Interview with Chairperson of the Law Society of South Africa's Standing Committee (Nov. 2001).

17. *See* Legal Education and Development (L.E.A.D.), *at* http://www.lssalead.org.za (last visited 8 June 8, 2004).

experienced members were generally impatient with the recent law graduates such as myself, and the one or few people who had previous knowledge or experience in the type of case we were assigned ended up performing the bulk of the work. I therefore participated only minimally. The competitive nature of these exercises did more harm than good because the focus was always on winning the best group prize at the end of the five-month period, not on learning skills. The reason for the competitive nature was that we were made to believe that big law firms chose potential candidate attorneys and professional assistants from the winning group.

Third, no accommodation was made for the different educational backgrounds of the students. Thus, while recent law graduates from all backgrounds appeared to have difficulty with some aspects of the training at the PLTS, I observed that black students had much more difficulty. This was especially true for those from HDUs, but it also included students who had graduated from traditionally white universities but had studied previously under the Bantu education system.[18] The problems arose mainly on tasks that required us to verbalize our thoughts and actively engage with ideas through consultation, discussion and feedback, or on written tasks such as the drafting of contracts or pleadings. Besides involving a form of learning that we had not been exposed to before, we were required to demonstrate a command of English that was difficult for many.[19]

At the end of my six-month period at the PLTS, I passed the written modules, primarily because I had learned very good study and examination techniques in law school. Furthermore, the program prepared me for the attorney's board exam because we had reviewed past papers and our lessons were presented with this specific outcome in mind. Unfortunately, I was no more ready to practice law than when I left the university. I had still not interacted with a live client, and I was still learning mostly through lectures and one mock trial.

18. This system of education has not ended. Most black students still study in segregated schools that are under-funded and often staffed by teachers with less training.

19. An additional deficiency of PLTS training for me concerned my lack of experience in the use of library resources. The necessary guidance on how to conduct legal research should have been part of the skills training but was not.

Most importantly, I lacked confidence in my ability to perform my role as a lawyer, especially regarding my communication skills.

III. THE ARTICLES OF CLERKSHIP: THE CONTRACT

Every law graduate must enter into a contract of clerkship with a principal, that is, a senior attorney who has practiced for more than three years.[20] In the present system, a graduate can fulfill his or her articles of clerkship requirement at a private firm, law clinic, justice center, or public interest law firm. In the contract, the candidate attorney undertakes to diligently, honestly, properly, and confidentially serve the principal and the profession. In return, the principal undertakes to use his best efforts to ensure that the candidate attorney is properly instructed in the practice, ethics, and understanding of the profession.[21]

Candidate attorneys must keep a diary or other written record of the training that they receive until they are admitted. After admission, they must keep the diary or other record available for inspection by their principal, by the Council of the Law Society, or by the examiners responsible for conducting the candidate attorneys' practical examinations.[22] A registered candidate attorney has a right to appear in any court in the Republic, excluding regional courts or

20. This contract of employment normally terminates after the candidate attorney's admission. However, the principal can dismiss the candidate if he or she does not serve articles properly, commits a breach of any of the terms and conditions of the agreement, or is guilty of misconduct.

21. This instruction is to include opportunities for gaining practical experience in:
Preparing legal opinions and brief for Counsel;
Interviewing clients and witnesses and drafting of witness statements;
Identifying and applying appropriate legal principles to facts;
Arguing elementary cases before courts and tribunals and effectively presenting certain legal arguments;
Negotiating the settlement of disputes;
Drafting letters, contracts, wills, and pleadings;
Keeping proper accounting records and handling of trust moneys;
Conducting routine office administration, including the proper handling of files and documents; and
Preparing statements of account for clients and bills of cist for taxation.
Kwa Zulu-Natal Law Society, *Contract: Articles—Examinations, Articles, & Admissions, at* http://www.lawsoc.co.za.

22. *See* Attorneys Act 53 of 1979, § 14.

any division of the High Court.[23] Finally, the principals agree to use their best efforts to procure the admission of the candidate attorney, provided the candidate attorney has served her articles properly and are, in the principal's opinion, a fit and proper person for admission to the bar.[24]

IV. THE LEGAL PROFESSION & LAW FIRM CLERKSHIPS

Preliminary findings of an investigation into the supply and demand for attorneys indicate that there is an oversupply of attorneys against what the public and the state are prepared to pay.[25] As a result, access to the profession is a major challenge for any law graduate. This situation is even worse for black graduates, especially those from HDUs.

The reasons for these difficulties have been described earlier. White males dominate the profession, and subtle barriers such as (1) differences in language, (2) perceived incompetence, and (3) educational discrepancies brought about by apartheid-era education policies make it harder for black candidates to get ahead. Furthermore, seeking articles with a black law firm is not as attractive because discriminatory practices often limit the scope of their practice. For example, black law firms in the apartheid era had little access to commercial work, and this situation, like so much else, has been slow to change.

Law firms are under no obligation to register candidate attorneys and many simply decide not to do so because of the added financial responsibility. Contrary to popular belief, law firms often consider candidate attorneys as more of a financial liability than an asset. This causes candidate attorneys to receive insufficient training and to

23. *See id.*, § 8 (1)(a).

24. *See id.*, § 2.

25. There are four provincial law societies in South Africa, and every attorney must be a member of one of these. Their combined membership in 2002 was 14,437. In recent years, South Africa's law faculties have graduated about 2700 students annually, while in 2002 some 2200 articles of clerkship and service contracts were registered. There are an average 2000 bar admissions each year. (The statistics in this Section were supplied by the school of Legal Practice, Head Office Pretoria, in October 2003).

suffer financial exploitation. Currently, there is no basic salary set for candidate attorneys. Clerks are paid starting salaries ranging from zero up to ZAR 6500 (currently about $870) per month in the big law firms in Johannesburg. These conditions have further limited the opportunities for black candidates to obtain articles and have therefore skewed demographics in the legal profession even more.

One can divide the firms of South African attorneys into three tiers. The first tier consists of small firms with four or fewer partners and comprises about 80% of the profession.[26] They serve mainly individual clients and small commercial enterprises.[27] "Black attorneys" firms historically fell into this least prestigious category.[28] The next tier consists of medium-sized firms with 4 to 40 partners, the bulk of whose work is commercially oriented, although not necessarily of a highly sophisticated nature.[29] The post-apartheid period has seen a growing number of black firms in this tier.[30] The top echelon includes what is often referred to as the "top five" or "big five" in Johannesburg; these are law firms with more than 40 partners and have multinational and international clients.[31] As one might expect, a recent study concluded that the percentage of black attorneys in these firms is lower than the demographic profile of black attorneys in the profession as a whole.[32] Although these firms may have been employing black attorneys since the 1970s, the study indicates that there has always been a "revolving-door phenomenon" with a few black practitioners moving in but quickly moving out of the firms.[33] I was a candidate attorney in both a small and a top echelon law firm. This Part will illustrate, through my experience and the experiences of my colleagues, the type of training and supervision we received and our experience in trying to obtain a clerkship.

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26. *See* Lisa R. Pruitt, *No Black Names on the Letterhead? Efficient Discrimination and the South African Legal Profession*, 23 MICH. J. INTL. L. 545, 569 (2002).
27. *See id.*
28. *See id.*
29. *See id.*
30. *See id.* at 569-70.
31. *See* Pruitt, *supra* note 26, at 570.
32. *See id.* at 580 (interviewing 75 South African practitioners over an 18-month period).
33. *Id.* at 572.

During my final year of law school in 1996, I applied to all the law firms in Durban listed in our local attorneys' registry. I had my heart set on working for a "white law firm" because I believed it would offer superior, highly sophisticated training opportunities in commercial law. To my surprise, some did not even respond. The few that did respond claimed that they were already fully staffed. I eventually gave up looking in Durban and decided to move back to Umtata, my small hometown in the Eastern Cape. Once there, I again sent applications to all of the law firms in town, with the same result. By the middle of 1997, I was clearly one of the many black graduates "roaming the streets" with an L.L.B. degree and a PLT certificate. This experience was surprising to me because I had studied at one of the so-called "best four" universities.[34] I was becoming desperate.

My parents eventually approached an attorney who attended our local church and was a partner in a small local law firm. He agreed to register me as a candidate attorney but could offer me no financial remuneration because the firm already had five candidate attorneys receiving nominal payments.

While the object of a contract of articles is the training of candidate attorneys, it is an open secret that small firms with candidate attorneys utilize them to take instructions and to do court appearances, thereby leaving the principal to concentrate on attracting more clients. Running a law office is difficult for solo practitioners or small firms, whose attorneys are often sitting in court for a whole day or conducting a trial. As a result, most small firms hire candidate attorneys to alleviate much of their administrative burden.

This is exactly what occurred at the law firm where I worked. The firm was struggling financially and had limited resources. For example, only one secretary served the two partners and six candidate attorneys. She also doubled as the firm's receptionist and had the only computer in the office. There also was little organization, and all legal workers maintained their own filing system by keeping most

34. The "best four" universities are the University of Natal, the University of the Witwatersrand ("Wits"), the University of Cape Town, and Rhodes University.

files on their desks. The two partners, in addition to being in court, were running two satellite offices in rural towns outside Umtata. They were effectively in the office for a very short time each day. The five candidate attorneys in the office saw all the clients who walked in from the street and took care of all the office administration. The firm's policy on client intake was that we took every case so long as the client could pay for our services. More often than not, the junior staff had to take the clients' initial instructions, counsel them on their options, and independently decide on the legal strategy to follow. We signed our own letters, but one of the partners had to sign all of our court papers, often in haste and without having applied his mind to it.

The bulk of the law firm's work came from cases paid for by Legal Aid Board ("LAB") and was therefore mostly criminal.[35] Our firm also dealt with a large number of divorces, maintenance issues (child support), debt collection, simple sale contracts, motor vehicle actions, and the administration of estates. The candidate attorneys performed legal research and drafting, drew bills of costs, conducted negotiations, and attended taxations.

In this setting, I finally interviewed my first client. I quickly discovered that the secretary had precedents of every type of letter, court process, and agreement used in the office. To ease the pressure of the work, I readily used these templates and often took instructions from a client in a manner that would fit the precedent I was going to use. The secretary would mostly change the names, addresses, and amounts in the existing document to incorporate the new client. The procedure was the same for the drafting of letters, court process, or contracts. I handed over to one of the two partners' files that required any complicated drafting or files for which we had no precedent.

35. The LAB is the nationally-funded organization charged to provide attorneys, in both civil and criminal matters, for people who are indigent. In practice, because of the need and desire to provide counsel to those facing a loss of liberty, the LAB primarily paid for criminal defense work. Until South Africa recently began a gradual changeover to a staff attorney model similar to legal services or public defender offices in the U.S., all of these cases were handled by private attorneys assigned by the court and paid by the LAB.

Our interaction with the partners consisted mainly of them putting a note on a file, usually in the evening, that gave instructions without proper guidance to do some work or legal research for a case. When asked questions, the principal would likely give a hurried, unclear response. We did accompany the partners when they appeared in the magistrate courts, regional courts, and the High Court, but this rarely provided much of a learning experience because we were never involved in the planning and preparation of the case. At most, we learned court etiquette or, if the case was in the High Court, the partners would ask us to prepare the brief for the advocate arguing the case. I never had an opportunity to see a case from start to finish, and during my entire stay at this law firm, I never prepared and litigated a case of my own. I only appeared in court to postpone or adjourn matters for one of the partners, usually because they were appearing in another court.

I believe my principal at the firm never felt obligated by the contract of articles he signed. In reality, he was doing me a favor, and he never felt pressured to give me or the other candidates registered under him proper training. Nonetheless, it was at this law firm that I developed my potential to become a competent attorney and gained some insight into the profession. I learned to be very resourceful and had the opportunity to develop my interviewing, case analysis, and legal counseling skills. Finally, I often had to use alternative dispute resolution skills because the partners were never in the office.

At the end of my period at this firm, I felt I could not choose a career path that required litigation skills. I also wanted to practice in a less demanding area of law in order to be able to combine my career with my family life. Therefore, I decided to practice as a conveyancer, a move that required me to relocate to another town and find another principal. Moreover, to train as a conveyancer, I needed to work in a firm with an established conveyancing department, and that meant a "white firm." To avoid the trauma of rejection, I approached an advocate who had recently been appointed Judge President of the Province for help. He arranged a job interview with one of the big firms in the city.

Since 1994, white law firms in South Africa have had both a moral and a legal imperative to hire and train black attorneys. Legislation such as the Employment Equity Act 55 of 1998, which compels employers to develop and implement internal equity plans, imposed the legal imperative.[36] Even more importantly, these firms had an economic incentive provided by the post-apartheid procurement policies imposed on public and private entities by the same Act. Furthermore, many international clients were setting similar standards and requiring firms to integrate to obtain their work. I believe these reasons motivated a law firm of ten white, male partners to hire me. They gained one of only two black conveyancers in the city—a factor that would translate into more business coming from banks and government departments.

I started working for the firm four months before the end of my period of articles. I was one of two black professional staff in a firm of about 50 employees. I agreed to start out as a candidate attorney and continue my training to be a specialist conveyancing attorney after my admission. I received a nominal salary, and at the beginning, the firm saw me as a financial liability mainly because I had never been exposed to the language and concepts of commerce.

Despite my lack of experience, I experienced considerable pressure, both from the firm and myself, to be the "black superstar" who could attract business because of my skin color. At the first meeting of the professional staff I attended, the firm placed substantial emphasis on making money and on "profit per partner." This emphasis was new to me because I had no financial responsibility in the previous firm. The firm directed me to look for ways of building my own client base to contribute to the budget of the property department.

All of this made me uncomfortable because I was in an environment totally different from any I had known before. On the other hand, I was sitting for the first time in a large office by myself with my own computer that had Internet access and e-mail, my own telephone line, and every type of stationary resource imaginable. I

36. *See* Employment Equality Act 55 of 1998.

also had my own secretary to do my typing. What was missing was the pile of files on my desk. I began to feel that I was a mere affirmative action appointment, rather than a competent hire.

I received specialist training as the only candidate attorney under a principal who was the managing partner of the property department and who had been practicing as a conveyancer for over ten years. His method of training was very directive.[37] I also spent some time working on several commercial law cases that were linked in some way to a conveyancing transaction in the property department. Beyond my legal work, I acted as the firm's interpreter whenever anyone had to take instructions from a Xhosa-speaking client.

On my first day at the office, I studied several large files full of conveyancing precedents spanning many years. During the second week, I was invited to watch the principal interview clients while he was taking initial instructions on what he called simple conveyancing transactions. After each of these consultations, I had to research and write a legal opinion regarding which conveyancing process to follow.

After sitting in on a number of preliminary consultations with the principal, I was permitted to take initial instructions from black clients on my own. He sat with me during the first consultation, after which he critiqued the interview. Although I managed these files, I could not sign any correspondence or court process. Nevertheless, because I was repeatedly undertaking similar tasks, I quickly developed expertise in this area of law. Also, I had constant supervision because my principal did not go to court and therefore was in the office most of the time. Finally, I quickly realized that I could learn a great deal from the conveyancing secretaries in the office, who were more informed on some subjects than the principal.

37. For example, I could not liaise with the clients or write a letter to them without his instruction or approval. We arranged for all the correspondence from me to be on his desk at the end of each working day. He usually worked on these letters that same evening, and they would be on my desk first thing in the morning with the corrections that he wanted me to make. He had his own style of drafting and was critical of mine. He expected me to follow his style because this was what his clients had come to expect from his department. We had an hour-long meeting each Monday morning during which the principal would give me instructions for the week and review my work from the week before. I was required to prepare for these meetings by setting an agenda and carrying out the items on it.

For simple transactions, for example, the secretaries filled out the relevant forms (which then only required a signature from the principal).

Taking part in the office traditions was an important requirement of becoming part of the firm. One of the most important traditions was spending time at the office pub after every working day. There, we discussed our cases and asked for help from colleagues or partners in the office. This was also the only place where we could relax and socialize with other members of the professional staff.

While most of the training and supervision at this law firm helped my legal career, it is also necessary to present a balanced perspective. There is a perception that black attorneys can never be effectively integrated into white institutions, and I would have to agree with this perception. While my principal was a good teacher who tried to ensure that I received proper training in the practice, ethics, and understanding of the profession, I always felt that he was not really interested in me as a person but only as the black name on the firm letterhead. With him, I could never forget that I was an affirmative action appointment whose hiring was driven by commercial considerations. Further, he expected me to be the first person to arrive at work and the last one to leave; this, to him, was a sign of a black superstar in the making.

Things became even more difficult when the firm transferred one of the attorneys in its debt collection department to train under the same principal to become a conveyancer. This attorney quickly became much more involved in the department, and most of the files I would have received were allocated to him. Even though we were both newly-admitted attorneys and had the same level of training, the firm asked him to supervise me and to sign my correspondence. Contributing to our different treatment was the fact that I did not play golf, and therefore, I always ended up being the outsider when they organized golf days for big corporate clients. On the other hand, if we had to do anything that required government contact, or if we needed to advertise the firm as politically correct, I would be put in the front line to ensure that my picture appeared in the papers.

When I raised my concerns about the different treatment in one of our Monday supervision meetings, my principal stated that the different treatment was a result of my underperformance and a lack of assertiveness and intelligence, which was required to interact with the corporate clients. In addition, he said he was holding back assigning more responsibility to me because black people tended to leave white firms as soon as they qualified. His closing comment was: "I have a gardener at home and I like him. We get along very well. It does not mean that just because he works for me and sometimes with me in the garden I have to invite him to my house for dinner. People are different, and you just have to learn that it is just human nature that people will always take care of their own." What made matters worse was that my peer in the department passed the conveyancing exam the first time around, and I did not. I am sure this confirmed the principal's assessment of my ability and dismissed any notion that his racism had anything to do with my failure.

I worked very hard during this time of my life and eventually passed the conveyancing exams, but I was an emotional mess. I had confidence in my abilities as a conveyancer, but as a person, my self esteem was at its lowest point. The local and provincial papers wrote an article about me.[38] Fortunately, I had moved to Durban around that time because of family commitments. The firm released me from the contract because I would not be using my skill in direct competition with the firm as I was living in a different province.

On my arrival in Durban, I sent out applications to organizations outside the profession. I also responded to an advertisement posted by the University of Natal Law Clinic. On the same day I interviewed at the Clinic, a major corporation in the city offered me a position. I accepted the position at the Clinic because I did not want to take on another position as an affirmative action employee in a white organization. I wanted to work in a place where my services were really needed.

38. Fred Esbend, WEEKEND POST (Port Elizabeth), 1999 (on file with Author).

V. THE COMMUNITY SERVICE APPRENTICESHIP MODEL IN PUBLIC INTEREST LAW CLINICS

The purpose of the South African Attorneys Act is to allow candidate attorneys to obtain practical experience by undertaking community service positions at law clinics accredited by provincial law societies.[39] These include public interest law firms such as the Legal Resources Centre, university-based law clinics, and justice centers run by the Legal Aid Board.[40] As in law firms, the clinics are required to employ a principal attorney with a minimum of three years practical experience to supervise law graduates in the community service program.[41] The candidate attorneys appear in the district courts, while the principals appear in the regional and the High courts.[42]

I have now worked at the UND Law Clinic for the past three years as a principal supervising three candidate attorneys as well as a large group of law students enrolled in the clinic as one of their fourth year classes. At this point, I will discuss the training and supervision of the candidate attorneys at my law office and will also give an overview of other opportunities for clerkships at public interest law firms like the Legal Resources Centre and the LAB Justice Centres.

A. University-Based Law Clinics and the UND

The Association of the University Legal Aid Institutions ("AULAI") represents 20 university-based law clinics whose main goals are to (1) provide free legal serves to indigent clients; (2) promote the training of law students and graduates in the skills and values required to practice law; (3) expose law students and candidate attorneys to the economic and social disparities that exist in South Africa; and (4) recruit them to practice public interest law after admission.[43]

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39. *See* Act 53 of 1979, § 2(1A)(b).
40. *See id.*, § 3 (1)(f).
41. Attorneys Amendment Act 115 of 1993, § 2.
42. *Id.*
43. *See* Golub, *supra* note 5, at 39.

Although the apartheid system has been dismantled, the legal profession still suffers from its effects. The effects of the old system reach even to the public interest law field that was until recently largely dominated by white males. To address this imbalance, the law clinics, including the UND Campus Law Clinic ("CLC") where I work, employ and train as many black graduates as possible and send the newly-admitted attorneys on to the Legal Aid Board Justice Centres and the other public interest law organizations.[44]

At the CLC, we have specialized projects featuring an admitted attorney who acts as the project manager and a maximum of two candidate attorneys under his or her supervision. The one exception is the Access to Land Project, which has five candidate attorneys. The three senior attorneys in the office are the principals. One supervises the HIV/AIDS and the Law, Child Justice, Law and Gender, and Children's Rights Projects; the second supervises the Access to Land Project; and the third supervises the Access to Housing and the Legal Support to Small, Medium, and Micro Enterprises Projects.

There are currently nine candidate attorneys in the clinic, eight of whom are from previously disadvantaged backgrounds, and all of whom spend either one or two years working under the direct supervision of a senior attorney. The project managers and the candidate attorneys provide the bulk of the legal representation at the CLC, but despite the large volume of cases at the clinic, we take great care not to over-burden the candidate attorneys.[45] Instead, the relevant supervisor scrutinizes everything they do, like giving advice or preparing a document, and when a case goes to court, the

44. *See* DAN BENGTSSON, JUSTICE FOR ALL 43-44 (2002). Candidate attorneys who have qualified in the last three years that I have been at the CLC are either working at the Clinic itself, as legal advisers for the Department of Land affairs in the province, in the Aids Legal Network in Durban, or at the Legal Resources Centre in Johannesburg.

45. In a developing country like South Africa, where vast economic and social differences exist between the rich and the poor and where the majority of the population does not have access to proper legal services, tension exists within clinics between the goals of training candidate attorneys and students and the representation of as many clients as possible. The danger is that high caseload pressures will compromise the quality of practical training provided to both students and law graduates. Law graduates carrying excessive caseloads without adequate supervision are neither learning how to practice law nor providing adequate legal services to clients. This is a reality that the CLC battles every day.

supervisor and the candidate act as co-counsel. Much of the supervision occurs during weekly file consultation sessions.

Candidate attorneys also participate in the CLC's community outreach program. This program includes interviewing clients at paralegal advice offices up to 100 kilometers away on Saturday mornings. During these circuit visits, the candidate attorneys also act as student supervisors. Further, the candidate attorneys attend and participate in all the clinical law lectures and the file consultations that the students have with the supervising attorney once a week.[46] Finally, because the candidate attorneys practice law only within their project assignments, they are required to attend staff forums that are held once a month where representatives from each of the projects share what they are doing. These forums build the confidence of the graduates and broaden their perspective of the law within a development law context.

Within their specialized practice, it is expected that, wherever possible, the graduates will be exposed to forms of advocacy beyond basic litigation that can address the root causes of poverty. These include impact litigation, legislative and media advocacy, and alternative dispute resolution.[47] At the end of their tenure at the CLC, both candidate attorneys and law students will have received exposure to the real-life problems of disadvantaged people, in

46. The legal education component of the clinic for undergraduate law students is run in the classroom, in the clinic itself, and in the community. In the classroom, a detailed curriculum is carried out which aims to:

- Develop lawyering skills, both litigation and non-litigation, that are necessary in the practice of law.
- Increase awareness of the problems facing low-income communities and develop skills and strategies to meet these challenges.
- Develop reflective and self-critiquing skills that will enable continued growth as a public interest lawyer.

These aims are achieved through the modules designed to teach the basic lawyering skills of interviewing, counselling, fact investigation, case analysis and planning, negotiation, legal drafting, litigation, and advocacy. Each of these skills is taught in the classroom through simulations and problem solving in small groups. Thereafter, the students explore the skills further in the specialized units. Once the students complete this classroom work, students practice the skill with "live clients" in the clinic, under the supervision of an attorney.

47. Power shifts can take place in many ways; for example, a change in law, effective representation, or the right to participate in decision-making can change power relations. *See* GEOFF BUDLENDER, AULAI WORKSHOP (2001).

addition to types of legal practice that can lead to a shift of resources and a change in the power relations between the powerful and the poor.

B. Other Opportunities for Candidate Attorney Training through Public Service

The Law Societies have also approved several other public interest law firms as sites where candidate attorneys may do their clerkships. One is the Legal Resources Centre ("LRC"), a non-profit organization established in Johannesburg in 1979 during the height of apartheid. The mandate of the LRC was and is to defend the rights of historically disadvantaged people in South Africa using law in pursuit of social justice.[48] The LRC is located in five cities and provides opportunities for 15 to 20 young black or female law graduates to gain experience in the practice of public interest law each year.[49] The goals and type of supervision generally parallel those of the University law clinics.

By far the largest entity providing public service clerkships is the Legal Aid Justice Centers. They are fully state-funded and staffed by persons in the employ of the LAB.[50] The number of legal aid offices has greatly expanded over the past five years as the Board decided to move from the Judicare model of service delivery to a primarily staff attorney model. As a result of this change, the LAB currently operates 58 Justice Centers around the country, with more projected.[51] These offices primarily provide representation to persons accused of serious crimes, but limited representation is also provided in civil matters.[52] In March of 2003, the LAB employed a total of 288

48. *See* Legal Resources Center 4, *available at* http://www.lrc.co.za.

49. The five cities are Cape Town, Port Elizabeth, Grahamstown, Durban, and Pretoria.

50. *See* LAW AND DEVELOPMENT: FACING COMPLEXITY IN THE 21ST CENTURY, ESSAYS IN HONOR OF PETER SLINN 212 (2003). The Legal Aid Board is an independent statutory body established by Section 2 of the Legal Aid Act, 1969. Legal Aid Board, *Legal Aid Overview*, Stakeholders' Forum Held in Kayalami, Johannesburg (July 23, 2003).

51. *See* Legal Aid Board, *Legal Aid Overview*, Stakeholders' Forum Held in Kayalami, Johannesburg (July 23, 2003).

52. The National Prosecuting authority of Southern Africa finalizes an average of 400,000 criminal cases per annum. Of these, the Legal Aid Board is responsible for representing defendants in 220,000 matters. *Id.*

candidate attorneys, a figure that is projected to rise to 602 by March of 2004.[53]

VI. THE BOARD EXAMINATION

In addition to serving a clerkship after graduation from law school, Section n14 of the Attorneys Act 53 of 1979 ("the Act") requires that a candidate applying for admission as an attorney must have passed a four-pronged examination that includes estates, ethics, bookkeeping, and court procedure. Graduates may take these examinations at different times, either before or during the clerkship. The examinations aim at determining whether a law graduate has the necessary professional competence to practice law. Areas not covered in the exams are those areas where reasonable competency cannot be expected from candidate attorneys at the beginning of their practice.[54] It is my belief that the attorneys' admissions examination should not be the final criterion to determine an individual's ability to become an attorney because by their very nature, written exams are not scientifically proven mechanisms for determining a person's knowledge of a particular subject.

I attempted the board examinations after graduating from the Practical Legal Training School. I passed accounting, ethics, and administration of estates. I wrote the other two papers, Magistrates Court Practice and High Court Practice, after my articles in the small form in Umtata. I passed the second time around because I had been doing the work, so it was more than just theory.

The Law Society of South Africa ("LSSA") is aware that there are deficiencies in the current examination system and has appointed a task team to investigate the entire area of assessment of candidate attorneys to ensure that only competent people are admitted to practice. The task team is expected to make submissions to the LSSA shortly. Hopefully, these submissions and recommendations will

53. *See id.*

54. *See* Interview with Chris Petty, Chairman of the Law Society of South Africa (Nov., 2001).

address the problems surrounding the use of an exam in assessing a candidate attorney's competence to practice.[55]

CONCLUSION

I am a strong proponent of simply using an improved and effective training program that combines successful completion of the practical legal training course and one year of articles, preferably in the public interest context. Law teachers,[56] together with the legal profession in South Africa, need to take responsibility for the effective training of law graduates in South Africa. There is an obvious gap that exists in the present system of training law students. This must be acknowledged and addressed without apportioning blame. Law schools should continue laying the foundation by teaching sound theoretical precepts to students; however, I submit that this can be done by utilizing different teaching methodologies that are much more indicative of the profession and the practice of law. For example, if law schools in South Africa use interactive teaching methodologies in teaching their substantive law courses, this would make the transition from law school to clinic, and from practical Legal Training School to practice, much smoother for students.

55. *See id.*

56. By law teachers I mean both clinicians and academe, as there seems to be a separation between the two.