

Advanced international advocacy course

Contributed by Carlos da Silva, Pretoria Bar

The Advanced International Advocacy Course was presented by the South Eastern Bar Circuit Mess Foundation at Keble College in Oxford from 28 August 2001 to 1 September 2001. The course was attended by a group of South African advocates consisting of Roland Sutherland SC, Izak Smuts SC (as trainers), Carlos da Silva, Macrae Glaeser, Jannie van der Merwe, Christopher Whittcutt and Philip Zilwa (as trainees).

The course was attended by 56 trainees. Apart from the South African group, there were three lawyers from the Florida Bar as well as a group of six trainees from the International Court of Justice in The Hague. The English barristers who attended the course as trainees consisted mostly of young practitioners who had practised for five to seven years at the Bar. Some English barristers have been practising for approximately thirteen years.

The Advanced International Advocacy Course loosely resembles the model which is used in South Africa for pupil training at the pupil training workshops. The trainees were divided into six groups and during each session each group would be tutored by at least three trainers. The trainers were drawn mostly from practising Queens' Counsel. During some sessions five trainers were present. One trainer would act as judge, the other trainer would deliver a critique on the trainees' performance and a third trainer would do a video review of the trainee's performance. This procedure was followed during each exercise undertaken by a trainee.

The six groups of trainees were again divided into three different classes according to the different subject-matter of the case to be presented by the trainee, namely: criminal work, calling medical experts as witnesses; civil work, calling medical experts as witnesses; and civil work, calling accountants as experts.

Highlights

The following is a brief summary of the highlights of the course:

Day 1

- A demonstration was given by Philip Shorrock and Geoffrey Nice QC of an examination-in-chief and a cross-

examination before HH Judge Neil Denison QC.

- A case analysis was conducted of the specific case with which one was dealing. The case analysis dealt with what was common cause between the parties, what were the issues between the parties, what evidence was available to prove those issues and how the evidence would be presented.
- The trainees then undertook an examination-in-chief and a cross-examination based on the model referred to above.
- A demonstration was given on how one should conduct an opening speech in a civil case.
- Two sets of skeleton arguments had to be filed which dealt with:
 - an interlocutory application for an injunction;
 - the opening speech for the particular case which had been selected by the trainee.

Day 2

Interlocutory applications were argued. Within each group the trainees were divided into trainees acting for the claimant and trainees acting for the defendant. One trainee would present argument as to why the injunction should be granted and another trainee would present argument as to why the injunction should be refused. Opening speeches in the civil action were

then delivered by the trainees. This was followed by examination-in-chief and cross-examination exercises.

There was a demonstration of a cross-examination on previous inconsistent statements by Johanna Korner QC, and a demonstration of a closing speech in a criminal matter by David Ethrington QC. David Ethrington showed quite convincingly that being a good orator is still part of the armoury of an advocate.

Day 3

Cross-examination by trainees on inconsistent statements; also, closing speeches by trainees. A talk was given by Charles Hadden-Cave QC and Timothy Dutton QC, who is the course director, dealing with the use of expert evidence. (Notes were also handed out which dealt with the introduction of exhibits and documents.)

During the evening a short consultation was conducted with the expert witnesses, who arrived from various hospitals from around London and from Arthur Andersen. The purpose of this consultation was to familiarise oneself with the problem and terminology to be used in the case. The trainees were divided according to the different areas of the expert testimony. With reference to the accountants, the following were some of the areas of testimony: lost profits and ancillary matters; reasonable royalty claims; incremental sales; and price erosion.

Day 4

Conferences with expert witnesses; leading in chief and cross-examination of expert witnesses.



Advocacy training participants at Keble College, Oxford, from left to right: Carlos da Silva (Pretoria); Izak Smuts SC (Grahamstown); Macrae Glaeser (Johannesburg); Roland Sutherland SC (Johannesburg); Christopher Whittcutt (Johannesburg); Jannie van der Merwe (Cape Town) and Philip Zilwa (Umtata)

An ethical exercise was also conducted. The trainees were divided into two groups, those dealing with criminal matters and those dealing with civil matters. With reference to civil matters a panel was constituted of five members. The moderator was Toby Hooper QC and the panel consisted of amongst others: Judge Gower, Judge Denison, Stephen Rubin QC and Andrew Hopper QC. (Andrew Hopper is the first solicitor who has been appointed as Queen's Counsel in England.) The moderator dealt with the ethical problem step by step. He would take the group through a portion of the facts and then pose ethical questions as they arose, the questions would be open for discussion by the group and would then be referred to the panel for their input. The South Africans came to the conclusion that the solutions provided by the panel would be similar in South Africa.

Dorian Lovel-Pank QC delivered an excellent after dinner speech at the banquet

that evening which had everyone rocking with laughter.


Day 5

Mock trials were held based on the set of facts referred to above. Trials were conducted in the morning and counsel not involved in the morning trials were witnesses in those trials. The same arrangement was reached in regard to the trials which were to be held in the afternoon. Most advocates were divided into pairs. Each advocate would at least deliver a speech, either an opening or closing speech; an examination-in-chief and a cross-examination.

The criminal trials were held in front of juries constituted from members of the public from Oxford. The jury in one of the criminal trials deliberated until almost 19h00. In one of the civil trials Judge Denison delivered a full judgment and held for the claimant. The

trials were recorded on video and the trainees are to be furnished with copies of the video.

Conclusion

The course was well organised. All the trainers were very dedicated and prepared to answer all manner of questions. The course, when viewed from a South African perspective, was very interesting especially in the determination of what similarities and differences exist between the English legal system and the South African legal system. If one wants to revert back to basics the Advanced International Advocacy Course is highly recommended. It was clear, taking into account the manuals provided by the Inns of Court School of Law to young English barristers and the content of this course, that a young English barrister has a distinct advantage over his South African counterpart. 

Trial advocacy training in Florida, USA

Contributed by Tanya Golden and Ron Paschke, Cape Bar

Advocates for Transformation (AFT) was afforded the opportunity to attend an advanced trial advocacy training course at the University of Florida in the USA from 15 to 19 May 2001. Albertus SC, Arendse SC, Williams, Schippers, Mohamed, Golden, Paschke, Ganey, Lizani and Ramabulana attended the course. Firstly, it presented an opportunity for junior members of the AFT delegation to acquire practical trial advocacy skills and, secondly, it presented all members of the delegation with the opportunity of learning a method of instruction in trial advocacy techniques used by the Florida Bar in order that a similar training programme can be developed and offered upon the return to South Africa. Attendance at the course was endorsed by the Department of Justice and the Director for Public Prosecutions.

The course involved a number of practical exercises that a trial lawyer would normally encounter. These included making an opening statement, examination in chief and cross-examination of witnesses (both lay and expert) and closing argument. Before the commencement of the programme, participants were given a bundle of depositions, reports and other discovered documents which all formed part of particular case study. These documents were forwarded to all the participants in their respective countries prior their arrival in the US.

Participants were divided into groups of

eight and each assigned a role of representing a particular party in the case. Over a period of about four days, each participant performed approximately eight exercises involving an aspect of the trial which lasted about ten minutes each. Members of the academic and professional faculty, comprising senior judges and experienced trial lawyers with 15 years or more experience, conducted a critique of the participant's performance. These feedback sessions were extremely constructive and supportive, yet critical in key aspects.

During the performance of a particular exercise, the participants were videotaped and their performance were reviewed in an audiovisual room, played back and a second critique was given by a member of the faculty who had not seen the live performance/demonstration. This exercise afforded the member of faculty to discuss his critique with the participant in private. After the video review, each participant returned to the same group to observe other performances and to conduct the next part of the trial.

The intensity of the training programme and the methodology used exposed all the participants to advanced advocacy skills which resulted in a marked improvement in overall performance and a boost in self-confidence. The fact that this was an American course conducted in terms of the laws of Florida, did involve some differences in technique and procedure, but ultimately did not detract from the value of the training.

The University of Florida organised an extremely efficient and well organised management team for the training programme. The programme administrator whose duties involved not only the co-ordination of the various groups, but also had to arrange that all the foreign practitioners received their materials prior to their arrival at the Levin College of Law. The arrangement of expert witnesses, seminars arranged in the evenings on the various topics that the expert witnesses were to testify on, the booking of the video room facility, arrangements of the technicians to operate the video equipment and the overall administration and co-ordination of the training programme was an obvious indication that ongoing legal professional training is a priority for the Bar Association of Florida.

It is with this experience in mind, that the adoption of a similar training program be introduced for legal practitioners in South Africa. Legal education and training skills, the methodology used and the calibre of trainers that participated and contributed to the success of the training course highlighted various deficiencies in our own training programmes. It is clear that ongoing advocacy training for professional practitioners is a priority for the Florida Bar as it also should be a priority for the various Bar associations in South Africa. To develop, nurture and ensure the calibre of advocacy skills locally, it is imperative that we embrace the introduction and adoption of a similar training program for practitioners at the Cape Bar. 