

The Advanced Trial Advocacy course

By Jonathan Clark

It was a Sunday afternoon in the middle of January. I had just showered off the beach sand, was gathering shirts and ties, and marking up a brief - a flurry of last minute preparation for the Advanced Trial Advocacy course in Melbourne.

The course took place over the week of 19 to 23 January. Yes, in January - that sacred and (generally) litigation free month when many of us are allowed to switch off our brains and place them in a cupboard, preferably under the beach towels. Although I'd seen the course advertised in previous years, I'd dismissed it as unnecessarily masochistic. The last thing I had wanted to do in January was more legal work. But this year was different and, as I made my way to the airport, I found myself looking forward to the week ahead.

The course is one of three intensive advocacy training courses run each year by the Australian Bar Association Advocacy Training Council. Its aim is to help barristers be excellent advocates. It is designed for experienced advocates but, in my view, you only need some trial experience to cope with, and benefit from, the course.

Like the litigation it seeks to mimic, the course starts with the receipt of a brief - criminal or civil depending on your selection. Both briefs are based on real cases that have been tweaked to make the competing merits of each party more finely balanced. The material is realistic and far from simplistic. The civil brief comprised the pleadings, six affidavits and two expert accounting reports. The observations at the front of the brief give you some feel for how the trial should be run. There are a few red herrings thrown in for good measure. You are expected to run the trial when the course commences and to meet this expectation you need at least three days to prepare.



L to R: Simon Davis (WA), Susan Downes (Qld), Michael Flynn (Vic), David Purcell (Vic - via webpage), Jonathan Clark (NSW), Carl Moller (Vic) and Rodney Garrett QC (Vic).

We were introduced to the advocacy and performance coaches at the opening session. This year there were 19 advocacy coaches, including senior barristers from England, New Zealand, South Africa, Malaysia and most Australian jurisdictions. Four judges from the Federal and state Supreme courts gave an aura of reality to the proceedings. With 42 course participants, the coach-to-participant ratio was almost 1:2. This meant you were never idle. It was humbling to see so many busy professionals giving up their time to help us become better advocates. If I had any lingering resentment about the encroachment of my holiday time it quickly evaporated at this point.

So what did the course involve? Running the trial meant doing an opening, examination-in-chief of two lay witnesses and an expert, cross-examination of two lay witnesses and an expert, and a closing. In fact I did most of these things more than once. Before we performed, however, the advocacy coaches provided a demonstration of each of these essential advocacy tasks. This was done to inspire and to encourage refinement of our own performances overnight. For many of us who had nothing yet to refine, the

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demonstrations galvanised us to finally prepare!

Over the course of the week every portion and aspect of my advocacy was reviewed and critiqued. Every time I was on my feet my performance was recorded by video and then assessed by coaches in the court room. This critique mainly focused on the content of my advocacy - e.g. the form of my questions, the purpose of my line of enquiry and how that purpose might be more effectively achieved.

Subsequently, my performances were reviewed by coaches watching the video footage. This process can be quite confronting and there is nowhere to hide. It is surprising what you learn when you're able to observe your performance and have it scrutinised by someone else. For example, I observed that in cross-examination I raised my eyebrows at the tail end of almost every question - it

PRACTICE

Jonathan Clark, 'The Advanced Trial Advocacy Course'

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came across like a plea to the witness to give me the answer I wanted. Others learned to unshackle themselves from the lectern so as to more effectively project their presence in court. In the past, when I have prepared for trials, I have had an almost exclusive focus on the content of my advocacy. So I found the focus on my actual performance both interesting and valuable.

A special feature of the course is its use of specialist performance and voice coaches. This provided me with an opportunity to forget about the case for a while and give full attention to the physicality of

my court room performance: posture, breath, voice projection and energy. During one of my performance sessions I experimented with relaxing my stance. As soon as I did my voice projected far more powerfully. This may be the sort of stuff that seems obvious in hindsight but when it unexpectedly happens it is a revelation.

The week is a very social one. Everyone, participants and coaches alike, stays in the same hotel. Most nights there's a dinner and the wine flows freely. The theory presumably being that if you can prepare a decent cross-examination late at night while under the influence, you can prepare one anytime. Everyone I met approached the course with humility and open-mindedness so that the atmosphere for learning was supportive rather than competitive.

It was, however, a tiring week. I found myself working late into the nights

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and then again early in the mornings to be properly prepared for each day's performances. While the feedback I received was very valuable, it was quite challenging to take it all in and then try to apply it. But because of the quality of the course and the coaches I felt well rewarded for doing so. Overall the course led me to realise that I had sub-consciously held back performing advocacy in the way I in fact aspired to do it. I'm optimistic that I'll approach it with more confidence and enjoyment from now on.

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