The Bench

Those South Africans who were not part of the reviewing panels were allowed into the various sessions as observers. Never having taken part in an appellate advocacy training exercise before, we all found it extremely interesting. In particular, we were struck by the ability of the tenants, very few of whom had, in fact, ever argued an appeal before. They were, almost without exception, confident and articulate and able to argue on an impressive level. Secondly, it was interesting to note the degree to which the English Bench is committed to such training programmes. Among the trainers were Lord Hoffman, a Law Lord, four Lord Justices of Appeal and two High Court judges. The South African contingent were all particularly pleased at the opportunity to meet Lord Hoffman, who is one of two South African-born Law Lords (Lord Steyn being the other), and who started his illustrious legal career at the Cape Bar. All in all, the general feeling was that this was a most worthwhile training exercise, which can certainly find a place in our own evolving training programme.

We have now decided to include an appellate advocacy workshop in the pupil training programme for the current pupil intake and hope to involve our judges in the workshops to give the sessions a genuine atmosphere and allow the pupils to get an idea of what a real "judicial intervention" feels like!

Learning the art of persuasion

Dali Mpofu
Membership and Pupillage Committee
Johannesburg Bar

THERE is no greater contribution that a barrister can make to the future and standing of the Bar and to the quality of the administration of justice, than to participation in advocacy training programmes. (Michael Hill QC ,Gray's Inn, London)

My favourite anecdote from *The Seven Lamps of Advocacy* is the one about the judge who was proposing that his court would be sitting on Good Friday. The advocate (who obviously had made other plans) replied politely, "As Your Lordship pleases, but Your Lordship will be the first judge to do so since Pontius Pilate". The court did not sit.

Advocacy is the art of persuasion. It is not only an art, it is a skill. These basic truths formed the "grundnorm" of the First International Advocacy Training Symposium held at Gray's Inn, London, on 6 to 8 January 1997. Bar Associations and advocacy training institutes represented came from as far afield as Australia, Canada, Hong Kong, Ireland, Israel, New Zealand, Scotland, Singapore, South Africa and the USA. The ten-person South African delegation representing the South African Advocacy Training Committee (SAATC) of the General Council of the Bar was led by GCB Chairman Malcolm Wallis SC and Johan Ploos van Amstel SC (both of the Durban Bar) and included Gerrit Grobler SC (Pretoria Bar Council Chairman) and James Goodey (Pretoria Bar); Ben Ford (Grahamstown); Louis Pohl (Free State Bar); Jeremy Muller (Cape Bar) as well as Peter van Blerk SC, Sherise Weiner SC and Dali Mpofu (all of the Johannesburg Bar). SAATC Administrator, Lyn Ploos van Amstel, was also part of the delegation.

International dimension

To say that the experience was educational and an eye-opener would be understating the case. In its international dimension it was profoundly significant. There is already talk of the International Bar Association (IBA) formalising an advocacy training chapter under its major activities. There is a growing worldwide "movement" of practitioners who have dedicated their professional lives to the methodic teaching of advocacy skills. We approached the symposium with the feeling that, in the context of this "movement" and by comparison to the others, we South Afritons were the greenhorns. By the time we left the symposium this "feeling" had graduated into a "fact".

Just to give perspective, in January 1997, it was exactly one year since the South African Bar was introduced to the advocacy training method which was the subject of the symposium. The Americans introduced it about thirty years ago. The Australians adapted the Americans' version some twenty-five years ago. In Australia the "movement" is led by the very impressive Judge George Hampel (elevated to the Bench in 1976) and his wife, Felicity Hampel QC, both of whom were at the symposium. They have developed, and are running advocacy training courses aimed at all levels of the profession. They have courses to train pupils, articled clerks, juniors and various levels of silks. This is what one may call the vertical dimension of their courses. The horizontal dimension is characterized by specialised courses in leading witnesses, cross-examination, urgent interdicts, case analysis, the expert witness, appellate advocacy, trial management techniques, etc. All this one might call the technical side of advocacy training.

The proverbial other side of the coin consists of something more and very significant. Unlike in our anecdote, the persuasive skills of the advocate are not usually used to achieve the advocate's own ends. At the Bar generally and specifically in the curial setting, the complete advocate is not one who is only technically competent in the sense that he or she never asks leading questions in chief, but one who is constantly and equally mindful of his duty to the >

client, to the court, to his profession, to his follow professionals and to the wider society.

Sceptics

Of course everybody knows and accepts all those premises. The question is: Can these things be taught? Or do they descend naturally upon those who possess LLB degrees and have undergone a four-month pupillage (reading the High Court rules and occasionally sitting in court and watching the masterful performance of their pupil masters)? In my view the answer to the first question is a big "YES", and to the second a big "NO".

Naturally there are sceptics. It was most interesting for us to hear that in every country that came before us the initial reaction of the profession was "Advocacy skills cannot be taught in the conventional way. These are skills which are acquired in practice, etc". Similar voices are to be heard in South Africa. In most cases abroad the advocates of these sentiments have turned out to be the most ardent supporters of methodical advocacy training. Some have literally dedicated their professional lives to this worthy cause.

One can only imagine what the initial reaction of the English Bar was. Yet, today it would be fair to say that the words of Michael Hill QC, quoted above, represents the conventional wisdom not only at the English Bar but on the English Bench. The number of Law Lords, Honourable Justices, Benchers and other bigwigs (the pun is intended!) representing the *crème de la crème* of Her Majesty's Counsel who are enthusiastic participants in the Inns of Court Advocacy Committee and programmes who were present at the symposium, bear testimony to this.

We learnt also that teaching advocacy, like advocacy itself, is a skill and a discipline. It is incremental in the sense that it improves with practice. The best and most eloquent performer is not necessarily the best advocacy teacher. As with advocacy itself, there is something new to learn every day as advocacy trainer. Few can profess to have reached the enviable stage achieved by Rumpole, who once said, asked by an opponent, with faked surprise at the beginning of a case "Horace, are you still practising?" "No my dear man," retorted Rumpole with equal sarcasm, "I've stopped practising. I think I can do it now."

Approaches

An amazing amount of theory has been developed over the years around the subject. The issue at hand was approached from psychological, methodological, business, and even "jurisprudential" angles. For example, a paper was presented by a British professor (who is also solicitor) about the peculiarities of teaching something to adults (who often come with "a baggage of experience") as opposed to teaching children, who have nothing to "unlearn". Also, there was a bit of tension when the Australians shared their experience of using psychologists and other consultants to balance their approach to training. The English found this idea "a rather startling proposition".

It must be said that despite the difference in approach, the differences between those jurisdictions which have jury trials and those which do not, between advocates from a split bar and those from a fused system, it soon became clear that the foundational basis of advocacy training bears a universality which transcends these differences. This was a very valuable and encouraging lesson for us.

Excursus: the way forward

IN terms of the way forward, one would recommend that the SAATC should urgently embark upon an intensive campaign aimed at –

(a) increasing the quality and quantity of South African advocacy trainers;

(b) widening the ambit of our training both "vertically and horizontally", in the sense suggested above;

(c) canvassing the active participation of the South African Bench in advocacy training (an area in which we, sadly, are still lacking); and

(d) formalising advocacy training as a compulsory and integral part of the entrance requirements to the profession. (This would ensure a certain basic and minimum level of competency which the public is entitled to expect from any person offered by the South African Bar as an advocate.)

The last-mentioned issue raises a huge challenge to all those who care about the future of the profession. It is this which now prompts me to pose a question.

Holistic approach

Has the time not come for us to look holistically at our current system of pupillage? I propose that the period of pupillage be extended to a full year (or ten months). The first half of the period would constitute pupillage as we know it today, with the examination in June. The second half would be a more practical semester concentrating on a structured advocacy training programme. In the second semester, and once they passed their examination, pupils should be allowed supervised appearances in prescribed matters in the district court and the magistrates' civil court for nominal reward. The last-mentioned aspect would require co-operation between the Bar, the Minister of Justice, the Public Defender's Office, the Legal Aid Board and the University Law Clinics. Such court appearances would, in my view, serve the twin purposes of giving the pupil hands-on practical training in real court settings (thereby putting to practice what they would have learnt in their advocacy classes) as well as ameliorating the obvious economic consequences of extending the pupillage period.

I raise this issue in light of the changes that are permeating the profession, not least of which is the impending fundamental restructuring of the LLB degree. I intend to develop this proposal further in the next issue of *Consultus*. The idea now is to spark debate, which is hereby invited, and which can only serve to enrich the final product.

We owe it to ourselves, to the youth of this country and to no less a cause than the improvement of "the quality of the administration of justice", to confront these and related issues. 🕮