

New practitioners' advocacy training

Two of the Johannesburg Bar's advocacy trainers, Sherise Weiner SC and Craig Watt-Pringle were invited by Gray's Inn to take part in their new practitioners' advocacy training weekend, held on 15 to 17 January 1999 at West Dean College in Sussex, England. These are some of their observations.

West Dean College is a 17th Century manor house, set in the rolling hills of West Sussex. It was donated to a trust which runs it as an educational facility for anything from pottery classes to advocacy training.

The new practitioners' programme in the UK is compulsory for all barristers in their first three years of practice ("new practitioners"), as part of their continuing education.

The programme

This particular programme run by Gray's Inn involved 36 new practitioners divided into groups of six and the training was conducted in each group by a judge, two trainers (senior barristers) and a solicitor. The participation of no less than three Lords Justice of the Court of Appeal and eight QCs amongst the trainers demonstrates the high level of commitment of senior judges and barristers to Gray's Inn's Advocacy Training.

The programme commenced after dinner on Friday, with lectures on ethics and heads of argument and ran for the whole day on Saturday (finishing at 18h20) and until 15h30 on Sunday. From the outset, all participants from the most junior barrister to the most senior judge, were invited to address one another on a first name basis. This advanced the spirit of collegiality and co-operation which prevailed for the duration of the weekend.

In preparation for the programme, new practitioners were required, several days before the programme commenced, to file "skeleton arguments" (concise heads) in respect of two appeals and one opposed motion respectively. In order to do so, it was necessary for them

not only to read the "papers" but also a limited number of decided cases. The amount of time spent in preparation was between 15 and 18 hours. The course material was considerably more taxing than that to which we are accustomed, with emphasis on points of law. By way of illustration, one of the advocacy exercises involved the issue of whether immunity of expert witnesses from civil actions arising from their opinions furnished or evidence given, extended to an expert witness guilty of altering his opinion or evidence fraudulently or in bad faith.

During the advocacy exercises, arguments were directed to the judge in each group and the judge would pose questions and engage in debate with the new practitioners. This lent authenticity to the exercise and enabled the trainers to gauge the new practitioners' ability to stray from a pre-planned script and deal effectively with the essence of the judge's questions.

Ethics

The programme included a session on ethics in which short ethical problems were posed to each of the new practitioners in turn and the trainers attempted to elicit the correct answer by debating the issues posed with the new practitioner. The judge and solicitor in each group participated fully in this exercise, with the solicitors bringing their particular perspective to bear on issues which frequently affected the solicitor in his relationship with his client, counsel and the court respectively.

A further ethics session involved instructions to counsel in a criminal matter in which the

client was a relative of the solicitor and the solicitor (not versed in criminal matters) had unsuccessfully acted in the court below. Numerous ethical problems arose from the somewhat naive conduct of the solicitor and the intention of the client to alter his version at the re-hearing of the matter on appeal. Counsel was instructed first to meet with his solicitor and to advise on his ethical problems and thereafter to meet with the client. This exercise tested both the new practitioners understanding of ethics and ability to deal with the issues firmly, but without alienating the solicitor or the client. These methods of imparting ethics to the new practitioners seemed to us to be very valuable and more worthwhile to the new practitioners than if a "lecture" method is used.

Pub fare

This somewhat dry account of the weekend may leave the impression that it was all hard work and no fun. Not so! Born of prior experience, our friends from Gray's Inn built a two hour lunch break into Saturday's programme, enabling all 24 trainers to travel a short distance to a local country pub and restaurant, the White Horse Inn, where the superb table was surpassed only by the magnificent wine list which fitted neatly into a leverarch file.

Demonstrating an admirable sense of priority, West Dean College sports a pub offering no less than six types of beer on tap and a full size billiards table. Although training commenced at 08h45 and finished at 18h20, a hard core of trainers, including several judges, our old friends from Gray's Inn and



Sherise Weiner SC playing a (hopeless) snooker shot with Lord Justice Mark Potter looking on.

the enthusiastic, but unskilled South African contingent propped up the billiard table until the wee hours of Sunday morning.

Lessons

Lessons learnt from participation in this programme include:

- that a “residential” training programme over a period of two or more days at a venue away from home results in the full and proper participation of both trainers and trainees;
- that the success of advocacy training depends as much on the commitment of trainees to prepare properly for training sessions and to maintain that commitment throughout the programme as it does on the commitment of trainers;
- written course material, including extensive instructions to trainers was of a very high standard and set the tone for the standard to be delivered by trainees; and
- the success of the programme further hinged on slick administration and strict adherence to the written programme. Although South African advocacy training has progressed in great strides over the past three years, there is certainly a need to devote greater resources in the form of funds and personnel (in addition to the voluntary participation of trainers) if we are to meet and maintain the standards set by Gray’s Inn.

Developing training

Over the past three years, the English barristers have through the financial assistance of the British Government, the IATC, and Gray’s Inn visited us on several occasions to assist our training programmes. Even more admirable is the fact that on several occasions, they have, totally at their own expense, flown to South Africa to offer this assistance. With the assistance of the GCB and the constituent bars several of our barristers have travelled to the UK at the invitation of Gray’s Inn. Some have also travelled there at their own expense.

This collegiality which has developed has been to the benefit of both South Africa and Gray’s Inn but obviously the vast experience which the members of Gray’s Inn bring to our advocacy training is immeasurable. Our advocacy training programme has developed from a few members to a vast number of committed trainers and trained barristers. Hopefully this development can grow and

flourish with the years to come.

It is now well recognised that pupils and junior advocates stand to benefit enormously from advocacy training. The need is perhaps more acute here due to enormous disparities in educational standards at our schools and universities and as a means of advancing the progress of previously disadvantaged members of the Bar.

In these times of transformation of both the Bar and the Bench, perhaps the time has come for the GCB to adopt a more pro-active and robust approach to advocacy training, by making it compulsory and by funding it properly.

We are immensely grateful to Gray’s Inn and in particular, David Hunt QC, Edmund Lawson QC, Edwin Glasgow QC, James Hunt QC and Sarah Foggitt for their unstinting support for our advocacy training programme and for their friendship and hospitality. 

National Bar Examination Board

The exco of the GCB considered the report of the convenor of the NBE, Archie Findlay SC, at its meeting on 30 January 1999

November 1998

A total of 99 candidates wrote the Bar examination which was the highest intake that there has been for the second half of the year. Fifty two passed (of whom seven passed with sufficiently high marks as to be exempted from oral examination). Of the remaining 45 who passed, 15 had repeated their pupillage. 47 failed, of whom 22 failed outright without being invited to an oral examination two of those who failed were candidates who had repeated their pupillage. This represents an overall pass rate of 52% which is low and of concern to the Board, particularly in respect of some of the smaller Bars.

This examination reflected (as in the past) a wide range of marks, which is tabulated on p 28. As a result of the Board having de-

ecided to make available the marks and, where available, information as to ranking of past pupils when this information is sought by an institution, whether for admission in another country or for bursary or scholarship purposes or entrance to a university, the following tabulation based on ranking of pupils on aggregate of all marks is of interest:

70 - 75%	1st to 6th
65 - 70%	5th to 19th
60 - 65%	20th to 35th
55 - 60%	36th to 45th

Resolutions

The NBE considered various other aspects of the examination. The following recommendations were accepted by the exco of the GCB:

- (a) To send a general circular to all Bars advising them that unless any pupil who repeats pupillage, produces a letter written on behalf of the Board confirming any exemption granted in respect of a prior examination, that pupil will be required to rewrite all subjects;
- (b) to invite its constituent Bars to adopt a uniform practice that at least examiners do not take pupils, nor do they act as lecturers or trainers;
- (c) to circularise all Bars to the effect that either the provincial convenor concerned or a responsible member of any other Bar, as the case may be, advise pupils at the commencement of their pupillage what is required of them in the examination.

The GCB also resolved that in the interim each Bar representative will arrange with his pupillage chairman to send lecture material to the secretariat from where it would be distributed to Bars who need it. Also, that the chairman of the NBE and his committee be asked what course material, similar to the *Motion Court Manual*, should be produced.

The disparity which has arisen in relation to the quality of the LLB degree conferred by certain universities will be investigated by the “Findlay Task Team”.

As an interim measure the GCB unreservedly accepted that a member from AFT may sit in as an observer during the oral examination at the discretion of the chairman of a particular Bar.

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