

Further Thoughts on the Advocacy Institute Workshop

Brian Donovan QC reports his experience at the first Advocacy Teacher Training Workshop

On 17 and 18 July 1992 the first of the Advocacy Teacher Training Workshops at the NSW Bar Association was carried out by the Australian Advocacy Institute. There have been workshops previously at the Bar for advocates but not for teachers of advocates. I have previously written about the workshops for advocates.

The moderator for the workshop was Mr Justice George Hampel of the Victorian Supreme Court. The first session on Friday evening dealt with some guidelines for what teachers should be able to do for advocates. This involved the nature of communication from teacher to advocate rather than the communication from advocate to tribunal. The purpose is to teach advocates technique. Perhaps eighty per cent of our craft is technique and the balance is that sometimes elusive concept of art.

Important features of effective teaching were emphasised, some absolutely fundamental. First, the teacher must convey only one, or at most two, messages to the advocate. Thus, if the advocate has a number of problems on technique, select only one problem to discuss with the advocate; for example, leading questions during examination in chief. Then do not generalise on that topic, but rather pick one flawed question asked by the advocate and explain *specifically*:

- (a) What was wrong with the question;
 - (b) Why it is best not to ask such questions;
 - (c) How the question could be asked properly;
- Then actively demonstrate to the student how to do it.

On the Saturday, the teacher workshop practice took place. These workshops were similar in format to the advocacy workshops. Advocates presented their extracts of evidence in chief and cross-examination. The trainee teachers offered their guidance to the advocates but in the presence of instructors who then criticised the trainee teacher. It was no place for fragile egos.

The advocates then were requested to say what they had learnt from the trainee teacher and this was a revelation to many of the trainee teachers. The advocates' responses showed frequently that we had failed to convey what we intended to convey, we had tried to cover too much material, we had confused and overloaded the advocate and, disaster, we had even conveyed the opposite message - eg, do not use leading questions in cross-examination. The importance of the teacher's ensuring that the advocates received the right message became obvious.

Humiliation for the trainee teachers arose when the teacher was not able to stand up and demonstrate how to ask the question properly.

Further, it was important in indirect ways to illustrate a point to the advocate, for example, if the advocate had shuffled papers, the teacher, when commenting on the performance, had to ensure he or she did not shuffle papers.

There was more humiliation for the teacher when the advocate was asked to do the performance again and made the same error. Obviously, the instruction had not been effective

for that advocate.

An area of difficulty for the trainee teacher was making sure that, when correcting or assisting, the teacher first of all checked with the advocate that the teacher understood what the advocate was trying to do or to achieve. Thus, if the advocate was trying to do one thing and the teacher thought he or she was trying to achieve something else, the two ended up at cross purposes and this left the advocate in confusion.

There were 6 guidelines put forward for advocacy teachers to use. These were:

- (a) "Headnote" - ie, tell the advocate at the start what is the point the teacher wishes to raise.
- (b) "Playback" - on what the advocate did. Point specifically to the faulty question and even quote it.
- (c) "Rationale" - explain what was wrong with the question and why it is better to do it differently.
- (d) "Prescription" - or how to do it differently. Tell the advocate how to correct the question, including saying the question correctly. It is most important that this be done slowly and clearly.
- (e) The emphasis on correcting or assisting advocates should be on substance, not matters of mere style.
- (f) Make the point shortly. Many of us tended to go on and elaborate and, in elaborating, we blurred the point.

As a trainee teacher, I found I learnt a great deal about my own technique and ways of teaching technique. For example, Mr Justice Hampel in the Friday session suggested that in chief it was generally preferable to use "when", "where", "how" and "why" questions rather than "did you", "were you" type of questions.

For many older advocates the use of leading questions allows us to tell the story in our way as counsel. Yet it was suggested that the more convincing, and less self-centred way may often be to let the witness tell his or her own story but with our assistance. The telling of an ordered story is central to the leading of evidence, not just for the tribunal, but for the witness as well so that the witness can recall and recount the sequence of events.

Later on Saturday, the advocates presented applications to a mock court. In examining the presentation of applications, Mr Justice Hampel explained how important it was to remember that judges are persuaded by the feeling of the need to act. The object is to move the judge from inaction to action and this will be done best by creating in the judge the feeling for the need to act. This may be created sometimes by conveying the sense of urgency, the sense of danger, the sense of justice, the sense of the rights of the person. In general, judges feel the requirement to act first and the intellectual reasoning and justification come later. A method of doing this is to ensure that in the first 30 to 60 seconds only the salient points are mentioned and there is no digression into detail.

All who were involved in the workshop found it stimulating and, more importantly, challenging to many of our long-standing attitudes. □