

Pretoria Bar

Contributed by Megan Moodley

THE PRETORIA BAR/ PRETORIA UNIVERSITY STUDENT TRIAL ADVOCACY COURSE

by John Mullins SC and Julianna
Themane

THE START

The Pretoria Bar/Pretoria University Student Trial Advocacy Course isn't called that anymore – for the last few years it's had a broader university involvement, and its name has changed with that broader involvement. But it had its origins with Pretoria University in 2008, when Gerhard Naude SC gently (okay; maybe not that gently) challenged John Mullins SC, who was then the convener of the Pretoria Bar's training committee. John was musing for the umpteenth time that Bar and university should be working closer together as centres of excellence. Gerhard's challenge was to stop talking and start doing. That led to a meeting of John, Gerhard and Piet van Niekerk SC with Profs Christof Heyns, Pieter Carstens and Andre Boraine of Pretoria University (Tuks).

Truth to tell, we were hoping for some sort of an exchange where the Bar would offer something and the university would in exchange offer bridging courses to pupils from universities that were at that stage (we honestly don't think that is the case anymore) delivering students with a poorer level of legal knowledge. But John is an extraordinarily poor negotiator, and so what we came out of the meeting with was something like this: "And what can we at the Bar do for you?" – "Well, if you could offer a course in advocacy, that would be great" – "Okay".

THE COURSE

The content of the course hasn't changed much over the years.

What we developed, from the start, was a week-long (Monday to Thursday) microcosm of the pupils' Practical Advocacy Training programme, to be offered during the last week of the July recess (coincidentally also the last week of the students' vacation – usually, quite appropriately, in the week of Mandela Day).

The course consists of lectures on the Monday and the Tuesday, starting with the more general (having a judge speak to the students about the courtroom in general; a session explaining the advocates' and attorneys' professions; sessions on written and oral advocacy including an overview of pleadings and drafting affidavits; sessions on approaching cases, preparing witnesses, the procedure of a trial) and proceeding to the more specific aimed at the trial of the Thursday (case analysis of Thursday's case, with the students broken up into those representing the plaintiff and those representing the defendant; opening addresses; evidence in chief; cross-examination; re-examination; objections; closing arguments), culminating in a session in which the faculty (lovely term for a group of advocates, a judge and the odd academic) and the students talk about law, life, jobs and advocacy.

The Wednesday has always been given over to coaching; a number of good – but still young, enthusiastic and not yet fully jaded – advocacy trainers give up their day to coach the different teams, with each team getting an average of an hour or two's coaching; we suspect this is what the students have enjoyed most; John says that Julianna can confirm that because she is one of the most popular of Wednesday's coaches.

The Thursday involves the students being broken up into 10 groups of six each (three for the plaintiff; three for the defendant; as we will explain below, we usually accommodate a few extra, so in practice in some groups it runs to four a side), to run the trial. Each group will have at least two good advocacy trainers and, usually, also a sitting judge (the enthusiasm which the Pretoria bench – with a spread of infectious enthusiasm to the Johannesburg bench – has shown for the course has been really gratifying).

The trial is an exercise borrowed from the Australians but South Africanised (South African names and expressions; a bit more corruption; no ball-tampering). It's a very well-balanced exercise involving a secretary's allegation that her boss stole money from her handbag that was on her desk (some of the readers will be familiar with



the exercise). The exercise requires good opening address skills; good leading of the plaintiff herself; careful cross-examination of her; clever leading of the plaintiff's second witness, a policeman; incisive/brutal cross-examination of him; good leading of the defendant; and then good cross-examination of him. Every year we keep a tally of the wins and the losses, and they've generally been evenly spread.

The course has always been open only to final year LLB students, with pupils playing the roles of the witnesses (although in years when the pupils' exams are too close for them to participate as witnesses for the Thursday – a participation which is in itself beneficial to them, because they are again exposed to Practical Trial Advocacy – we have used third-year students, and every year Mullins suggests – so far without any success; what he needs is Gerhard to remind him about the difference between talk and action – that

we should bring in final-year drama students to be the witnesses).

Since Covid-19 made us so much more electronic, the pupils have sat in on the lectures electronically – the lectures merely reinforce what they already know; but reinforcement is always good.

THE ENTRANT LIMITS, AND THE COST

We have always limited the numbers to 60 students (the limit is imposed by the need for one-on-one training; as we said above, to be honest, every year we bend our rules a bit and take a few more than 60), and the course has *always* been over-subscribed within the first day of registrations opening. The course is offered at a fee (presently R3,000; we offer subsidies and usually subsidise about 10 of the students), only to cover overheads (the lecturers and trainers are of course unpaid).

DEVELOPMENTS OVER THE YEARS

Initially, the course was offered at the law faculty at Pretoria University, and was limited to Tuks students.

Our first convener (aka patron saint) was retired former DJP Willie Hartzenberg. When he decided to retire from this as well (even the threat of an interdict wouldn't stop him – Judge Willie was entitled to his rest) his shoes were perfectly filled by retired former DJP (he had taken up the post after Judge Willie) Willem van der Merwe. On Judge van der Merwe's much-mourned passing away from Covid in 2020, retired Judge Cynthia Pretorius took over. Each of these judges has brought a different, but in each's own way, extremely valuable, facet to the course, and the students clearly value the ability to interact with a judge (and, on the Thursday, with judges).

Judge Willie was a Matie alumnus. And had regularly to apologise for it. But judges Willem and Cynthia both graduated from Tuks (apparently the saying is "Tuks of niks"; Julianna knows that, because she went to Tuks. John doesn't, because he is a Unisa Boytjie).

JULIANNA'S INVOLVEMENT

Julianna became involved as a student in 2016. She was inspired by it to join the Bar. She became one of our best trainers, and was whisked into training on the Tuks course before she knew it.

WILLEM GRAVETT'S INVOLVEMENT

One of the biggest developments over the years of the course was Tuks' introduction of Dr (he was then plain Mr) Willem Gravett in 2013.

Willem was a member of the New York Bar (and he sounds like it – an accent that is the most atrocious mix of Afrikaans and New York – Sol Kerzner's Bronx/Natal would have sounded positively mellifluous next to Willem) who went through the NITA training in the United States and had returned to South Africa to join the law faculty at Tuks, and he brought – and brings – with him a wealth of trial and training ability.

It really pains your authors to say this (and we know how much it pains our colleagues). The fact is that Willem's

lecture on the art of cross-examination is a level or 10 above the best any of our experienced advocacy trainers can muster – in fact, we surreptitiously take notes whenever Willem lectures!

RIANI FERREIRA'S INVOLVEMENT, AND THE UNIVERSITY INVOLVEMENT BECOMES BROADER

Riani Ferreira (a Tuks alumnus) is one of the Pretoria Bar's top trainers. She is also a marketing force of note. Riani became involved in 2012 pretty much as soon as she became an advocacy trainer. Whereas John had before that done a pedestrian roadshow to publicise the course at Tuks (accompanied by Dikeledi Chabedi SC; she wasn't pedestrian – just John), that changed when Riani got involved. At first we had to turn more away, such was the enthusiasm Riani was able to generate. Then Riani started spreading the love to North West University. Tuks, to its credit, was quite happy with this and the course retained its "Pretoria Bar/Pretoria University" name even though it was now also catering to students from North West. But then in about 2019, once the Bar's pupil facilities opened at Steven House (next to Circle Chambers), the course moved there and, more or less at the same time, a number of Tuks lecturers moved to the new university in Pretoria,

Akademia, and with them Willem Gravett and a member of the Pretoria Bar and excellent trainer on the course, Alex Politis (now Dr Alex Politis).

So much broader has the university involvement become as a result of Riani's endeavours that the 65 students (yes, we said we always allow in a few more) on the 2024 course (15-19 July 2024) came from Pretoria University, North West University, Akademia, Varsity College, Boston College, Unisa, Wits and even Stellenbosch (spreading the joy to the Cape).

That said, the bonds between Tuks and the course remain very strong; bonds of a shared history, and of a deep loyalty – in a real sense, the course will always be the Pretoria Bar/Pretoria University Course.

Riani also took over the running of the course from John in about 2015 (simultaneously doubling the energy of the course and introducing things that John would never have thought of, like electronics, videos, various student awards – the most difficult; the most sunny; the fashion icon; etc).

THE JUDGES, AND THE DJP

Have we mentioned the enthusiastic involvement of sitting judges? Mpumalanga's now-retired JP Judge Legodi was a very enthusiastic annual participant until his move

to Nelspruit. Pretoria's DJP, Judge Aubrey Ledwaba, is always there to give a heartfelt speech at the closing function on the Thursday (last year he spoke movingly about his youth in Mamelodi, and the distance from those days to these days).

THE FEEDBACK

Below we will tackle the difficult question of why we actually do this – a question to which most of us admit we don't have the answer.

But what in a sense answers that question is the feedback, year after year, from the students.

From the very beginning the feedback has been hugely enthusiastic and rewarding – to put it at its lightest. Year after year students have written to us after the course describing it as "life-changing", saying that they now know why they took up law, speaking of their renewed enthusiasm for a career in the law, and so forth.

For a smattering (of course we threw out anything that was even vaguely unfavourable) of this year's feedback, see the following:

- This was an extraordinary experience.
- You have given me keys to take with me into the future.
- The highlight of my academic career.



- Now I remember why I decided to take up law – you have inspired me.
- I was becoming despondent with my studies. Now I look forward to my future career path.
- I feel sorry for those who missed out.
- I could never have imagined that I could have learned so much in just four days.
- Thank you so much for what you have given me. I so much appreciate your spirit of developing young minds, and your commitment to be inclusive. The wisdom and selflessness I have seen on this course have been inspiring and I will take them along with me for the rest of my life.
- This truly was a life-changing event. The passion of all the advocates and judges was contagious. Not only did we learn so much about the profession, and drastically improved our skills, but I also discovered the deep love you have for the work you do, and which I hope will be the work I will one day be doing. Thank you all for your time and investment. You gave me four life-changing days.

THE SPARKLE OF THE COURSE

The course isn't aimed at recruiting pupil members to the Pretoria Bar. But it is a pleasant consequence to have seen over the years how many young graduates were inspired by the course to join the Bar. And the course seems to take on a life of its own, attracting younger members who always avail themselves to assist. Every year the students tell us that they wish the course could be offered over two weeks. And every year we tell them that *four free days is enough*. Which brings us to the real question – *why do we do it?*

WHY DO WE DO IT?

That's a good question. Your authors ask themselves this question every year when they look in their diaries for a break in July and there, staring balefully back at them, is the week they gave up for "The Course" (it's now called The Pretoria Bar Student Trial Advocacy Course).

To start with, we emphatically don't do it in order to attract recruits to the Bar – we are acutely aware of the fact that a life at the Bar can be hugely fulfilling and rewarding, but it can also be very precarious. We only want people to join the Bar who are ready for that high-wire act, and year after year we tell the students that (admittedly we also say things like "if you're really good you're going to end up here anyway";

"nobody makes movies about banking law specialists"; and our annual favourite, that if a participant should decide not to become an advocate but instead to become something excruciatingly boring like a conveyancer or a banking specialist – we do tend to disparage conveyancing and banking law, for which we apologise; it just comes naturally – then "at least on your deathbed you'll be able to say 'for one day in my life, I was an advocate'").

We do it, the consensus between John, Pieter and Gerhard who started it all those years ago is, (a) because John was such an extraordinarily poor negotiator, but (b) because of our conviction that the Bar must stand out as a centre of legal excellence, from which it stands to reason that it must partner with universities that are centres of legal excellence.

Grand vision aside, though, we do it year after year, happily and enthusiastically, because Mandela Day invariably falls in the week of the course and the course fits in perfectly with the spirit of Mandela Day. Seeing those enthusiastic students (all of whom, remember, gave up a week of their vac to be there), hearing their enthusiastic feedback, witnessing how South Africa is changing and getting better every year, seeing the future in these bright and enthusiastic young faces, maybe that alone is sufficient justification.





BUILDING CONNECTIONS AND FOSTERING GROWTH A TRANSFORMATION INITIATIVE

A note from the Convenor of Transformation at the Pretoria Society of Advocates, **Dikeledi Chabedi SC**

At the Bar visibility is key and, as the saying goes, “perception is everything”. To attract clients and build a successful practice, it is essential to be seen in court and practising.

The Covid-19 pandemic and extended lockdown from early 2020 to mid-2022 presented significant challenges for junior advocates, who were unable to gain the traditional in-person experience in open court and chambers. This limited their exposure to attorneys and ultimately to securing briefs.

To address this issue, the Pretoria Society of Advocates (PSA) Transformation Committee, with the support of the bar council under the leadership of our chairperson, Gerhard Cilliers SC, initiated a “Meet and Greet” event in 2023. This social event provided a platform for junior advocates (0-3 years) to connect with senior colleagues and potential clients in a relaxed and informal setting.





The event has been a resounding success, fostering new connections and providing valuable opportunities for junior advocates. It has not only helped to boost the visibility of young advocates but has contributed to a more inclusive referral environment.

While the immediate impact on junior practices may be difficult to quantify, the event was overwhelmingly positively received by our junior members. This enthusiastic response has led the PSA Transformation Committee to make the “Meet and Greet” initiative a regular feature of our annual transformation activities.

The PSA hosted its second annual “Meet and Greet” event on 5 September 2024. This event was made possible by surplus funding from stakeholder partners from the private sector from the previous year and generous additional support from Investec Bank.

We were honoured to have the esteemed Judge Pehane, a former pupil and member of the PSA, as our guest speaker. Her insightful and inspirational address on “A Uniquely Transformative Journey” was a highlight of the event.

Another key highlight was the keynote address by Mrs. Lynne du Toit-Koen, an attorney and partner at Maponya Inc. Mrs. Du Toit-Koen shared valuable insights into attorneys’ and clients’ expectations of advocates.

The PSA’s “Meet and Greet” initiative demonstrates the power of connection and the importance of creating opportunities for junior advocates to be seen by their peers and mentors. By fostering an inclusive and supportive environment, we aim to ensure the continued success of the profession.

We would like to express our sincere gratitude to all attendees for their enthusiastic participation in our second annual “Meet and Greet” event. Your presence made this event a memorable success.

We are particularly grateful to our junior members, whose passion and dedication contributed significantly to the event’s success. Your active engagement fostered new connections, sparked insightful conversations, and created lasting relationships.

Thank you again for your support and participation.



NEW SILK AT THE PRETORIA BAR

by Megan Moodley

The Pretoria Bar extends its congratulations to the Society's newest Senior Member, Sybrand Gouws SC, who was presented with the letters patent by the chairperson of the Society, PG Cilliers SC, on 10 October 2024.

The society welcomes the newly appointed silk to the ranks of Senior Council.

Sybrand Gouws SC

Groenkloof Chambers

Date of Admission: 1 August 2000

Date of Membership: 1 December 2000



TRIBUTE TO LERAKO JOSEPH KANYANE

by Gift Mashaba SC

I first met Lerako Joseph Kanyane in 2000 while doing pupillage. Admittedly there was nothing out of the ordinary about him. He was short in height, never compromised when it came to dress code (a smart dresser) and a man of very few words. When he said something, he would hardly raise his voice. One would be forgiven for thinking that he was too reserved or was an introvert. We did pupillage together and took up chambers in Momentum Building, 220 Pretorius Street, in Pretoria. During those days junior advocates survived mostly on *pro deo* briefs from the Legal Aid Board. In one instance we were both briefed by the Legal Aid Board to represent six members of a community who were charged, amongst a myriad of offences, with two counts of murder for the vigilante killing of two young boys suspected of housebreaking and terrorising the community. The matter was set down in the Phalaborwa Circuit Court before one of the most dreaded judges in our division, Judge Smit, from the former Transvaal Provincial Division. The evidence against our clients was so overwhelming and the investigating officer's confidence in getting a conviction against our clients was inflated by his admittedly

thorough investigation. The evidence he had gathered was so incontrovertible that he pompously and arrogantly reassured us that it would take a miracle to get an acquittal from his collected evidence against our clients. Our clients were facing an inevitable conviction with the possibility of life imprisonment.

This was the first occasion I observed the brilliance of Joseph. Witness after witness stumbled in their testimonies due to Joseph's cross-examination. But his greatest trait was his preparation. Just as the investigating officer and the state advocate thoroughly prepared and meticulously presented their case as the defence team we also had our ducks in a row. As the trial progressed his confidence grew, and his on-point cross-examination intensified. He was able to, amongst many things, elicit material contradictions from the many affidavits deposed to by State witnesses. Hidden underneath his calm voice and illusive smile lay a vicious, accurate, and calculative cross-examiner. Witness after witness conceded to the many versions he put to them not realising that they were falling into his trap of weakening the State's case. Inch by inch the State's case collapsed. At the end of the State's case, we applied for discharge in terms of Section 174 of the Criminal Procedure

Act, which was summarily refused.

Fearing that our clients would implicate one another if we put them in the witness box we made one

of the most daring risks of our careers by closing our client's cases without calling them to testify. The risk paid off. At the conclusion of the matter, my client was acquitted on the main two charges of murder. As far as Joseph's client was concerned not even a single charge could stick. The wonder of Joseph Kanyane!

The late Lerako Joseph Kanyane was born on 8 January 1975 at Doornlaagte (Klopper), Mpumalanga. He began his schooling journey at Mmakoa Primary School and matriculated at Refilwe High School. He obtained his LLB degree from the University of Limpopo. He was a dedicated advocate of the High Court of South Africa and passed away peacefully on 14 July 2024. He dedicated 22 years of his life to the legal profession. May his soul rest in eternal peace.





ACCESS TO JUSTICE

A CONSTITUTIONAL PROMISE, AN UNFULFILLED REALITY

A commentary by **Azraa Vally** (Pupil)

South Africa's Constitution, revered for its commitment to human dignity and its strides towards equality and freedom, enshrines the cornerstone right of access to justice. Section 34 guarantees each of us the right to have our disputes resolved by purveyors of law. Yet, for many, this right remains an abstract ideal, distant from the daily struggle of the average South African.

Consider a mother fighting to claim maintenance for her child – left frustrated by complex legal procedures that don't seem to facilitate her cause. Or that of a disabled child in need of a curator to manage their affairs. These are not rare cases; they are the reality of a system that fails to adequately

serve those who need it most. The right to justice may be enshrined in our Constitution, but, like so many other rights, it is not equally accessible.

We may be cognisant about the legal remedies that exist to aid those in need, but many a layman remains unaware of such remedies and more so, of how the law may benefit them. There are too few avenues to educate citizens about their rights and the resources at their disposal when it comes to legal justice. The law is a powerful tool – but what good is a tool that remains on the top shelf? The harsh reality is that access to justice and access to this knowledge is often limited to those with financial means or the privilege of formal education. Unfortunately, we lack effective

programmes that may open the eyes of citizens to the rights available to them. Bridging the knowledge gap is vital. It is not enough that the law exists, people must be educated on its use, value and effectiveness.

Above and beyond “access” in itself, the judicial process is a system buckling under strain. Court backlogs cause cases to drag on for years, while the parties who seek help remain in limbo. Delayed hearings and protracted litigation damage more than just the litigants, they erode public confidence in the justice system as a whole. The axiom “justice delayed is justice denied” (that we all know too well) has never been more apt. When cases remain pending for years, when litigants are left waiting

in the wings of a fractured system, when it becomes too late for a victim to witness the fruits of the adjudication they sought, access to justice becomes a hollow promise.

Technological advancements that swept through our courts during the Covid-19 pandemic show glimpses of what the future could hold, yet they remain out of reach due to the digital divide in our country and have the potential to widen the gap for those without access to technology. The promise of a digitised legal system must strive for inclusivity over convenience.

Though the journey to realising a seamless judicial system is seemingly a far-reaching concept, all hope is not lost. The Gauteng High Court Efficiency Enhancement Committee addresses some of these critical inefficiencies in our court system. This committee, operating through both the Pretoria and Johannesburg Bars, comprises of various stakeholders within the legal world. The committee holds quarterly meetings overseen by the Judge President of the Gauteng Division of the High Court, as well as the Deputy Judge President of

the respective courts in Johannesburg and Pretoria. These meetings provide an opportunity for members to raise issues impacting the functioning of our courts ranging from the lack of working air conditioning in courtrooms, to improving virtual court systems, to the alarming delays in trial dates.

For many outside of the legal profession, it may come as a surprise that trial dates in Pretoria are currently being allocated as far into the future as 2029. In response to this, the Pretoria Bar has offered the assistance of over 70 of its senior counsel who are willing to serve as acting judges, many even on a *pro bono* basis, in an attempt to alleviate the pressure on ever-growing court rolls. This initiative exemplifies the proactive steps being taken within our profession as advocates to tackle systemic challenges head-on. While progress is being made on some level, much of this work remains behind the scenes and the broader community may not be aware of the role we play in improving court efficiency and the ultimate goal of access to justice.

The Pretoria Bar has furthermore shown its commitment to the future of our

profession through its robust pupillage programme – it is a wonderful reflection of the Bar’s ethos of giving back and to expanding the legal system as a whole. The members who volunteer their time to join the training committee and serve as mentors, lecturers and coaches, ensure that the next generation of advocates is well-equipped to serve the public. Their dedication fosters values within us, as pupils, that underpin access to justice and will trickle down into generations to follow.

As advocates, it is our responsibility to continue to push reforms that promote both independence and accountability of the judiciary to the people it seeks to serve. It is not enough for us to merely know and apply the law, we must actively engage in transforming the system to reflect the words in our Constitution. Justice can only be achieved through empowerment, not exclusion and thus finding ways to bridge the gap delivers hope and an accessible reality for all South Africans, especially the most vulnerable.

To be an advocate is to serve, to serve is to empower. **A**

