



30 Years of Advocacy Training



by **JUSTICE MALCOLM WALLIS***
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Thirty years of training. Thirty years of memories. Dozens of courses, hundreds of hours of intense work and many more hours spent cementing lifelong friendships around the world. Most of the history was written by the action of others and has been recorded elsewhere.¹ But like the Bible I can commence with “in the beginning”. It all began in 1994 with a pamphlet by George Hampel at an IBA conference in Melbourne and conversations with Donald McFadyen and Andrew Hardie, respectively the Vice Dean and Dean of the Faculty of Advocates. In Edinburgh the following year I met John Sturrock, who had taken a sabbatical from his practice to be the Director of Training and Education in Scotland. John’s enthusiasm rubbed off on me, so that when Peter Goldsmith, then Chair of the English Bar, asked what they could do to help South Africa in those initial heady post-apartheid days, my answer was “Advocacy Training”. Five months later I was sitting in Michael and Kitty Hill’s home in London, rather bizarrely watching the infamous interview of Princess Diana by Martin Bashir.

The following evening I was thrown headfirst into advocacy training at the end of a Gray’s Inn course when, unwarned

and unprepared, my – I should say our – great friend, Edwin Glasgow, sadly not with us this evening, announced that I would do the last review of a stunningly brilliant young pupil’s cross-examination – and then filmed my demonstration to my later embarrassment. Funding was found through the Foreign and Commonwealth Office and in January 1996 a party of 12 advocates went to Gray’s Inn to be trained as trainers.² I say 12, but that became 13 once they arrived in London, because Johan Ploos van Amstel, whose wife and fellow advocate Lyn had already been employed as the co-ordinator of advocacy training, was so enthused by what he saw that he joined in and became the first convenor of advocacy training in South Africa. Rashid Vahed, who succeeded Johan, and Andre Gautschi who are with us tonight, are survivors from that group. Andre has an obsession with 30 years because he has not only spent 30 years doing advocacy training, but this year will swim his thirtieth Midmar Mile. I think he’s trying to decide which is more difficult.

* Retired Justice of the Supreme Court of Appeal.



Pupils and members who attended the first advocacy training workshop in Durban in February 1996.

Back to the facts. The cold of a London winter gave way to the heat of a Durban February with the arrival of Michael Hill and his initial team of seven trainers,³ who were supplemented during their journey by three others, all busy practitioners, half of them in silk. The group travelled from Durban to Johannesburg and then Cape Town, with a flying visit by Michael Hill to Bloemfontein to persuade a surprisingly positive group from the Appellate Division of the merits of advocacy training. By the time they left we had trained over 50 advocates as trainers and more than 125 pupils had undergone training. From there advocacy training snowballed. A further "training the trainers" workshop was held in July 1996 and the GCB AGM that month decided to make advocacy training a compulsory component of pupillage. Workshops for pupils were held at every constituent bar. In January 1997, a group of trainers attended an international advocacy training conference at Gray's Inn and in December 1997 a team from the Faculty of Advocates⁴ led by John Sturrock came to conduct further training and reinforce and upgrade the skills of our trainers.



Some of the participants at the December 1997 workshop in Durban. **front row, left to right** Alan Turnbull QC, Michael Jones QC, Johan Ploos van Amstel SC, Leeona Dorrian QC, Malcolm Wallis SC, John Sturrock; **middle row, left to right** Shelly Walker, Terence Seery, Sean Geraghty, Mulder van Eck, Michelle Poseman, Ian Dutton, Stuart Humphrey and Judge Rashid Vahed; **back row, left to right** Spicko Dickinson SC, Cheryl Smart, John Pammenter SC, Roshni Punchoo and Vos Voormolen.



Members of the Inter-Inn Advocacy Training Committee leaving Durban for Johannesburg in February 1996. **Left to right** Kitty Hill, Stephen Lloyd, Michael Hill QC, Sarah Foggitt, Anesta Weakes, Edwin Glasgow QC, Sue Hunt, Lincoln Crawford, James Hunt and Janet Glasgow.



Left to right Spicko Dickinson SC, Rashid Vahed (both from the Natal Bar) and Chris Loxton SC from the Johannesburg Bar at the National Advocacy Teacher Training Workshop in July 1996.



Left to right Ben Ford, Sharise Weiner SC, Jeremy Muller, Lyn and Johan Ploos van Amstel at the January 1997 international advocacy training conference at Gray's Inn.



Judge Edwin Cameron, Judge Robert Nugent, Judge Suretta Snyders and Judge Fanie Mynhardt took part in the advocacy teacher training workshop at AFSA in July 1997.



The faculty and helpers at the advocacy-training course for pupils on KZN's South Coast, July 2017.

Let me pause there. Reciting events long past and names familiar to some, but not many, of you is not the right way to honour history. Nor is it right to focus on a single person. My part was to have an idea, that became a dream. Others bought into it, and my privilege was to be given three years to lead the GCB and realise that dream. But the idea was based on what others were already doing elsewhere and making it happen was due to the efforts of others. Sadly only four of that original party of 10 are still with us – several including Michael Hill himself, taken far too soon. Some of the locals, Johan, Rashid and Andre, I have already mentioned. Tribute must be paid to the successive national convenors: Sharise Weiner, who was one of the first trainers we trained, Tim Bruinders, Anna Annandale and Benny Makola, but they would readily acknowledge the efforts of many more. For all of us this room is populated by the spirits, if not the presence, of countless dedicated trainers, both advocates and judges, both local and foreign, because this has been part of an international movement stretching from Australia and New Zealand, via Hong Kong, Singapore, Malaysia, India and South Africa to England, Scotland, Ireland and Northern Ireland and across the Atlantic to the granddaddy of it all the National Institute for Trial Advocacy (NITA). Colleagues like Ian Roberson-Clark SC⁵ and Laura Thomson KC,⁶ Darrell Low⁷ and Shahareen Begum,⁸ Judge Sarah Whitehouse KC and Sarah Clarke KC⁹ have come to train with us and welcomed us to train with them. For that we are deeply in their debt. Jean Meiring described trainers as having become a sub-culture like hippiedom or bikers. There may be truth in that because of the close bonds forged by training across many nations, but generally speaking we are a very sober-sided sub-culture, if not always entirely sober – Wallenberg habits will have memories of nights spent on hotel verandas, where wine and beer was consumed until late into the night, tales were told and friendships made.



At the IATC Conference in 2018.



Delegates at Wallenberg in 2023.



Delegates at Wallenberg in 2019.



A group photo from January 2020.

The scope of training itself has changed. Weekend and evening courses have stretched into residential courses. Wallenberg started in 2011. Hand held video cameras have become tablets. The modest cases of *S v Brown* – selling liquor to someone already under the influence contrary to the provisions of the Liquor Act – and *Nathan v Naidoo* – a humble motor collision, have given way to the mysteries of accounting problems introduced to us by Simon de Quidt, another friend from the UK, with his “dog and pony” show and willing team of accountants from Deloitte, and now to the complexities of medical negligence expounded by Professor Damon Bizos and his medical team and grappled with in *Fortune v Havenga*. Appellate Advocacy and Motion Court work were rapidly added to the skills we sought to address. Written advocacy was recognised as central to what advocates do. The performative element of advocacy led to our bringing in performance coaches. A late night last glass of wine – or possibly more – at De Oude Werf with Sharise, Deanne Wood, John Pammenter, Tim Bruinders and others resulted in ethics gaining a particular focus on issues of gender discrimination and harassment at the Bar.



Advocacy training session in 2023.



The IATC Conference in 2020.



Justice Kriegler and Grace Goedhart SC in 2022.

From the start our trainers have been welcomed at courses elsewhere, especially at the Keble course, with which the name of Tim Dutton, a great friend of South Africa and sadly lost last year after a lengthy illness, is synonymous. To have the current director, Sarah Whitehouse and the previous director, Sarah Clarke, with us strengthens that bond. South Africans are now sought as faculty across the globe. But there is more. The connections made over advocacy training led to the establishment of the International Council for Advocates and Barristers (ICAB); to successive and successful World Bar Conferences – nine so far I think; the founding of ITAC and its World Conferences, the fifth one of which is to take place in Penang at the beginning of May.

That is the history, but enough of the past. What of the future? The late Donald Rumsfeld was regularly mocked for saying that:

“As we know there are known knowns; there are things we know we know. We also know there are known unknowns; that is to say, we know there are some things we do not know. But there are also unknown unknowns – the ones we don’t know we don’t know.”

At the risk of similar mockery what do we know? I would suggest that the known knowns are twofold. At a practical level there is the increased resort everywhere to online hearings. During the pandemic we taught basic advocacy online, but that was advocacy for the courtroom. More sophisticated use of online hearings in courts is a reality and we need to reflect on how we teach people to be effective online advocates. My second known known is that in this country, as has happened elsewhere, there will be ongoing, if not increasing, pressure from three sources, the Legal Practice Council, the Competition

Commission and the government, to regulate and control what the Bar does. We have experienced this with advocacy training itself and the difficulties of persuading the LPC to accept pupillage, the Bar Examination and advocacy training as satisfying the statutory training component under s 26(1)(d) of the Legal Practice Act. More can be imagined.

What are the known unknowns? My immediate thought was the jurisprudence of the Constitutional Court, but then I thought better of it. The most substantial one is AI and its existing and potential use by legal professionals. I’m not overly concerned by AI’s potent ability to produce hallucinations – after all I grew up in an era when a lot of people were experimenting with substances that induced hallucinations – and it was good for my academic self-esteem to discover recently in a student’s Master’s dissertation that respected academics in maritime law had written favourable learned articles about the impact of a judgment I wrote. However, like I believe the hallucinatory substances of my youth, the let-down when I discovered the articles didn’t exist was profound. More seriously, the unknown is that we have no idea of what AI will do, whether good or bad. My brief introduction during this recess to the much heralded AI-driven research function of one of our legal publishers, suggests that at this stage rather than simplifying your research it is more likely to lead you astray or drive you to distraction. But we know AI is out there and will have an impact. Advocacy training will have to adapt to it.

Then there is the most difficult. The unknown unknowns are just that – unknown. They are our attempt to peer into a future unseen. It is relatively easy to think of incremental ways in which advocacy training can be advanced. A greater focus on how we can impart the skills of analysis in depth of the issues and preparation, which is where so many cases fall down, is



Key learning points in 2023.



Witness handling training session in 2023.



A group photo from January 2019.

my substantive concern. When advocacy training commenced in South Africa, we deliberately excluded training on substantive issues of law. Can we continue to do so, given the state of academic teaching of law in the universities and the problems occasioned by failings further down the educational ladder in South Africa? What of our training methods? The underlying principle is similar to coaching in other areas of performance skills, but they are in many ways dissimilar. Do we need to look afresh at teaching methods, especially in a society where the picture on a screen holds sway as both the source of information and the basis of communication for the vast majority of the coming generations.

However these are not unknown unknowns. They are all issues of which we are aware, although solving them will not be easy. Earlier I said that I had a dream. Others in this room and elsewhere have shared that dream and helped to realise it some for 30 years, others for 20 years and yet others for a decade or more, but with all of them the fire of the dream still burns. So I look round this room and wonder. Who here will tell the story of the next 30 years; who will carry the torch of advocacy training and bear the responsibility for ensuring that as far as possible the advocates who go into our courts at every level will do so equipped to perform the fundamental task of any advocate, that of providing full, fair and fearless representation to all who need it and most importantly, to the weak, the powerless and the oppressed. The ultimate task of any advocate is to stand up for those who are unable to stand up for themselves. Our ethical rules were not designed with corporate behemoths in mind, but for the widows, orphans and strangers at the gate of whom the Old Testament prophets wrote.

One last word. We live in an age of anxiety and uncertainty. Events in the past year in the US have caused us to expect the unexpected, or even the inconceivable. The rule of law is threatened in countries we regarded as its bastions. I wrote this as news came in that the USA had invaded Venezuela and kidnapped its president and his wife. This evening before coming here I saw a news report in which President Trump said that the USA would take Greenland, whether by soft means or hard. And this was about a country that is an ally of the US. Before the advent of democracy we experienced many things in South Africa that we now see happening in the USA. Internationally there are signs of a sickness at the heart of many democracies and of the tectonic plates on which the post-World War II world has stood shifting. We are not immune to this. The world faces the prospect of threats to much that we hold dear and potentially battles to restore what has been taken. Perhaps we are too fearful, but perhaps we are not fearful enough. These are the unknown unknowns. What I do know is that courts and the advocates who appear in them will be part of the struggles that lie ahead. It is therefore a time to hold fast to our values, not our habits. I am reminded of the words I first saw 50 years ago carved¹⁰ on a wall near the Weteringsplaatsoen in Amsterdam, where 30 resistance fighters were executed by the Germans in the final days of the war. They read: “*Een volk dat voor tirannen zwicht, zal meer dan lijf en goed verliezen dan dooft het licht*”. In English: “A people that yields to tyrants, will lose more than life and property, then the light is extinguished.” Let that warning stand as our lodestar and inspiration in the next 30 years. **A**

Notes

- For those of an historical bent see the following editions of *Consultus* Vol 8(1) p 9 and pp 54-55; Vol 8(2) pp 145 and 156; Vol 9(1), p 5 and pp 44-49; Vol 9(2) pp 146-150; Vol 10(1) pp 44-48; Vol 10(2) pp 146-149; Vol 11(1) pp 61-63 and *Advocate* Vol 20(3) p 11; Vol 30, pp 30-33.
- Peter van Blerk SC (Johannesburg), John Pammenter SC and Rashid Vahed (Durban), Solly Sithole and James Goodey (Pretoria) Andre Gautschi and Dali Mpofu (Johannesburg), Ben Ford (Grahamstown), Pieter Geldenhuys (Bloemfontein) and Ben Griesel SC and Sven Olivier (Cape Town).
- Michael Hill QC, Edwin Glasgow QC, David Hunt QC, James Hunt QC, Lincoln Crawford, Stephen Lloyd and Anesta Weekes. During the visit they were joined by Bruce Brodie and David Dabbs in Johannesburg and Cape

- Town and Robin Simpson QC in Cape Town. I'm saddened to say that six of the ten are no longer with us – only Edwin Glasgow, David Hunt, Anesta Weekes and Stephen Lloyd remain – but others have risen up in their place.
- John Sturrock, Michael Jones QC, Leeona Dorrian QC and Alan Turnbull SC.
- South Australia.
- Scotland.
- Singapore.
- Malaysia.
- Both United Kingdom.
- The words are those of the poet and resistance fighter Henk van Randwijk.