

The ABA Advanced Trial Advocacy Coaching methodology

A description of the approach and methodology adopted by the Australian Bar Association for the coaching of experienced practicing barristers.

Contents

Introduction	2
The ABA Trial Advocacy courses	3
The ABA philosophy, goals and objectives	3
ABA Advanced Trial Advocacy Course administration and structure	4
The coaches	5
The briefs	6
Structured discussions/Lectures	6
Demonstrations	7
Case analysis group discussions	7
Performances	7
The in-court coach	8
Location	8
During the performance	8
At the conclusion of the performance	9
The selection of the major and minor comments	9
Delivery of the comments	10
Structure of the comments	11
Duration of the comments	12
Demonstrations by the in-court coach	12
The review coach	12
Location	12
Commencing the review	12
Content and structure of the review	13
Disagreement about comments	14
Duration	15
Assessment of the courses	15

Introduction

1. Advocacy coaching is not a new phenomenon. Ancient Greek orators were coached meticulously in the art of rhetoric. Ongoing coaching was available from the Masters. Public and political success, or otherwise, encouraged further refinement of techniques to deal with the differing audiences.
2. In more recent centuries trial advocacy has taken place in courts where the members of the practising legal profession have been involved in the initial education of people commencing practice. New trial advocates (Readers or Pupils) were encouraged or required to spend significant periods of time in the service of more senior practitioners (Masters or Tutors) accompanying them to court and observing them and others practising their court craft.
3. Such a system depends, however, on the Master or Tutor regularly appearing in Court and a willingness of, or the ability to compel, new barristers to undertake such service. Forty years ago, in the United States of America, neither of those factual circumstances existed. So the National Institute for Trial Advocacy (NITA) was formed to conduct programs for new and experienced trial advocates. A specific teaching methodology was developed by NITA that entails short performances and a structured comment in four steps.
4. In Australia over the past 30 years there has been increasing support for the view that a more formalised education program is appropriate for people wishing to commence practice as barristers in Australia. The reasons for this are manifold. One is an increased sense of accountability to the public. Another is a concern about the varying quality of instruction and experience gained through the Master/Pupil relationship. Hence the development of formal reading programs and bar practice courses in Victoria, NSW, Queensland and more recently in Western Australia and South Australia.
5. These programs and courses have all sought to include elements of advocacy training for new practitioners. Different approaches have been taken. Sometimes the participants are required to appear in court before real judges using materials from past (or current) cases. In other situations they perform in mock courts with mock case materials.
6. Different approaches to advocacy instruction have also been adopted. In some instances the judges or experienced advocates provide their personal comments and suggestions and at other times a more formalistic approach has been adopted utilising the NITA method.
7. The Australian Advocacy Institute (AAI) was created in 1991 under the auspices of the Law Council of Australia to provide a forum for all Australian legal practitioners to receive advocacy training. It has conducted specialist and general advocacy courses for inexperienced and experienced advocates. In those courses, it employed a refined version of the NITA method. It also conducted many training courses for people wishing to be effective advocacy trainers.
8. In England in the late 1980s, recommendations for reforms led to the granting of the right of appearance to solicitors in English and Welsh superior courts. That change refocused the attention of the Bar of England and Wales on the need to ensure the pre-eminence of barristers as advocates. An Advocacy Training Council was established to oversee and accredit people offering advocacy training services. Whilst the master/pupil relationship continues to operate in England and Wales, a variety of advocacy training opportunities are provided through the Inns of Court and many other service providers. One such advocacy course is conducted annually by the South Eastern Circuit of the English Bar at Keble College in Oxford. The course is not limited to practising barristers and receives participants from Commonwealth countries around the world.
9. In 2006, the ABA decided it was time for it to become more involved in advocacy training. It created its own Advocacy Training Council and conducted a five day residential advocacy course in Perth in January 2007. Since that time, it has successfully conducted Advanced Trial Advocacy residential courses over five days in Sydney, Brisbane and Melbourne, Essential Trial advocacy courses for Readers in the Barossa Valley, Perth and Adelaide, and for the past three years, Appellate Advocacy courses in Sydney.

10. The ABA ATC also offers workshops for the development of the State and Territory advocacy coaching faculties. Those courses have been conducted for the NSW, Western Australian and South Australian bars.

The ABA Trial Advocacy courses

11. When conducting its trial advocacy courses, the ABA has sought to employ an approach which is different to the approaches adopted elsewhere.
12. It is a fundamental tenet of effective advocacy that one must have regard to the audience one is addressing. The audiences being addressed in the ABA's courses are different to a greater or lesser degree, from the audiences addressed by the NITA, AAI and other courses conducted elsewhere around the world. For that reason, this document has been created. It describes the approach adopted by the ABA in the courses that it conducts. It is not proffered as a model for others to adopt, although some aspects of the approach may strike a chord for similar audiences.
13. Three types of trial advocacy courses are presently conducted by the ABA.
14. The ABA Advanced Trial Advocacy courses are held annually for a week in January on the eastern seaboard. To date they have been held in Sydney, Brisbane and Melbourne. These courses are designed for experienced advocates (over five years experience) who are interested in further developing their advocacy skills.
15. The ABA Essential Trial Advocacy Courses are held in June - July in Adelaide or Perth. They are intended to complement the Readers' programs or Bar Practice Courses conducted by the smaller bars. They provide new barristers with an opportunity to receive training in the skills of presenting an application, opening a case, examining in chief, cross examining and making a closing address. The bars of the Northern Territory, Tasmania, ACT, South Australia and Western Australia do not have large intakes each year and the number of people wishing to commence practice in those jurisdictions may vary from one to about 12. The ABA Essential Trial Advocacy Course is optional for some and mandatory for others. Some of the people attending these courses have practised for many years as solicitors. Some have not practised at all. Some have undertaken extensive trial advocacy whereas others have done none.
16. The ABA Appellate Advocacy Courses are held in September in Sydney. They run for two and a half days and is designed for senior advocates (eight years plus).

The ABA philosophy, goals and objectives

17. The underlying philosophy of each ABA course is that the skills of a barrister are best learned through a deep understanding of the relevant objectives for each performance task, thoughtful preparation and an ongoing process of practise and review in an environment of interest, challenge and respect.
18. The aims of the ABA courses are to provide a useful framework for each barrister to consider and develop *as they see fit* in their ongoing professional lives. The goal is to inspire the barristers to continually examine the way they practise during the whole of their careers and to pursue excellence in their performances.
19. Those objectives are best achieved when experienced practitioners provide assistance that is tailored for the individual barrister and offered as part of a respectful, supportive, professional, peer endeavour. The barristers, judges and other professionals who are invited to participate as coaches all respect and reflect those aims and objectives.

20. It is a given that the participants attending the ABA's courses are intelligent people who are committed to being the best they can be as barristers. They are acutely aware of their professional responsibilities to clients and the court. As sole practitioners conducting their practices, they appreciate that their own abilities and performance skills will largely determine their future success. They want knowledge and they want guidance about how to implement that knowledge in practice. They have extensive life experience and they have all been advocates, in one way or another, during their professional and non-professional lives.
21. Being an effective barrister involves cognitive, organisational and performance skills. Each is tested and assessed in the ABA courses. Experienced practitioners and other experts assist by providing suggestions and guidance about what is expected of barristers and how they, individually, might meet those expectations. For each person, the way in which these matters are approached will be subtly different.
22. This marks the difference between an individualised program and a generalised approach. A simple analogy is the inexperienced woodworker who treats all pieces of wood the same. By contrast, a craftsman closely examines the timber before commencing work. The particular characteristics of the timber will determine what the craftsman can and cannot achieve with that wood and how they should best handle it. All the more so when dealing with the complexities of individuals with their own unique personalities, backgrounds, intellectual and emotional strengths and weaknesses.
23. This is an ongoing process. When the craftsman cuts the wood, he or she watches to see its movement and its reaction to the release of tension. He or she will allow for that on the next occasion or modify their techniques to allow for those characteristics. The inexperienced woodworker is blissfully unaware and proceeds apace. So the ABA coaches must be attuned to the needs and characteristics of each barrister attending a course in the same way as barristers performing in court must be attuned to the needs and characteristics of the bench and the witnesses.
24. Overall, the attitude of the coaches to the barristers and the quality of the coaches' comments are the most important factors in determining the success of the course. As the barristers see that the coaches are **highly competent and genuinely interested** in assisting the barrister to improve, a relationship of professional respect and trust develops that enables the barristers to perform at their best and strive for improvement. On the other hand, if either aspect is perceived by the barristers as lacking in a coach, the barristers will develop scepticism and resentment which may be irretrievable and can infect the course.
25. The methodology to be adopted in an advocacy course must be determined by the aims and philosophy underlying that particular course. The methodology described below has been developed over the last 25 years. It is founded on personal experience and the wisdom of others undertaking similar tasks to mould an approach that is suitable for Australian barristers.

ABA Advanced Trial Advocacy Course administration and structure

26. In order to create the most effective learning environment for barristers, the aims and philosophy of the course must be manifest at all stages by everyone involved in the course. This includes the preparation of the materials for the course and administrative aspects as well as the running of the course. From the start to the finish, the barristers must be engaged by what they encounter.
27. Hence, the ABA's approach is to use materials that closely resemble what a barrister is likely to see in practice, both in substance and in form. Performances are conducted in court rooms, in business attire.
28. Dealings with the barristers in advance of the course and the provision of information about the course must be professional - concise, complete and courteous.
29. The course has a civil and a criminal stream. Advocates select whether their performances will be based on a civil case or a criminal case. Lectures and demonstrations apply to both the civil and criminal cases.

30. The briefs are provided to the barristers approximately one month before the course. They are exhorted to prepare the matter as if it was a real case. An estimate of *at least* three full days preparation is given. The barristers are required to submit several outlines in the week before the course starts.
31. The courses commence for the barristers in the late afternoon with an opening session that pays regard to the experience and expectations of the particular barristers attending the course. It reinforces the underlying philosophy of the course and the methodology to be used. The principal emphasis is stated to be upon the content of performances. This is an important occasion to secure the barristers' mental and physical participation in the joint task of listening, observing, reflecting and performing. The opening session is followed by a lecture and demonstration related to the performance task to be undertaken the following day, as explained further below.
32. The ABA Advanced Trial Advocacy Course has a seven-step approach for each performance task:
 - (a) a structured discussion on the requirements of the task and how they may be best achieved;
 - (b) two demonstrations of the task, with explanations;
 - (c) an opportunity for the barristers to reflect and modify their intended performances;
 - (d) 10-15 minute performances by the barrister as part of a group of six;
 - (e) about 7 minute review and demonstration by an in-court coach;
 - (f) follow-up one-on-one coaching for about 20 minutes using the video of the performance;
 - (g) two or three repeated performances of the same task, as per (c) to (f) above.
33. Each of these steps is discussed in detail later in this paper.
34. The barristers are arranged in groups of six. The grouping reflects diversity in home jurisdictions but similar levels of seniority at the Bar. The ratio of coaches to barristers is 1:2. Three coaches are allocated to each group for a particular performance. The coaches rotate between groups so that almost every coach comments on each barrister at least twice.

The coaches

35. At the Advanced Trial Advocacy courses, the "legal" coaches comprise a cross-section of male and female senior judges (approximately 15% of the faculty), international senior counsel (approximately 15%), senior counsel from around Australia (approximately 40%) and junior counsel from around Australia (approximately 15%). Where possible, there is at least one legal coach from each Australian State and Territory.
36. As well, it is a feature of the Advanced course that the faculty includes several professional performance coaches who are trained in teaching actors and other professionals the effective use of voice and movement to gain, or lessen, impact. The performance coaches offer expert feedback on individual delivery style.
37. The coaches are all highly regarded in their own field and, importantly, are temperamentally suited to providing the kind of guidance and support that the course offers and the sense of equality and community that the course engenders.
38. On the first day of the course, before the barristers attend, coaches collaborate for most of the day to discuss the way the course will run and to refine the approaches that will be used. The profiles of the barristers are considered and the brief is discussed in detail. The coaches undertake performances and are reviewed by each other. The perceived strengths and weaknesses of the reviews are discussed and techniques are honed.

The briefs

39. The briefs are based upon real cases which have been modified to provide anonymity for the original parties. They are not intended to be legally very complex as the emphasis in the courses is upon advocacy skills. However, good advocacy depends upon sound legal knowledge and analytical skills. Hence the barristers must acquire an understanding of the relevant legal principles. The briefs involve disputed questions of fact and ethical issues. Careful case analysis is required.
40. The instructions to Counsel provide for the evidence of the witnesses to be given orally, in line with the statements served.
41. The pleadings in the civil brief should be complete and suitable to be used by the barristers subsequently as templates for that type of case. Regrettably, many pleadings in real-life practice do not exhibit those characteristics and briefs used in past ABA courses have reflected those common deficiencies. However, the use of poor pleadings creates an unnecessary level of uncertainty and complexity in courses that are focussed on the presentation of a case. Defects in the pleadings should be corrected well before a hearing, and case analysis and preparation for presentation is better conducted in these courses if the pleadings are clear and appropriate.
42. There are at least three witnesses for the Applicant or Prosecution and the same number for the Respondent or Defence. Witness statements are provided to each side. The statements include some objectionable material such as hearsay, irrelevant material, unsupported or inexpert opinions and conclusions.
43. Documentary evidence is also provided to both sides, some of which is objectionable.
44. Shortly before the course commences barristers are required to prepare and submit by email an outline opening address that, amongst other things, identifies the issues in the case as well as a list of topics to be covered in cross-examination with each witness. Those documents may be refined during the course but this requirement compels a high-level of preparation. The documents are provided to the in-court coach for review before the relevant performance.

Structured discussions/Lectures

45. Structured discussion is the first in the seven-step approach for each performance task.
46. The purpose of these sessions is to remind the barristers of the essential elements that comprise the particular performance task and to provide guidance on, and suggestions for, the delivery of that performance. The emphasis to be placed on each aspect depends upon the expertise of the barristers attending the course. Ethical considerations relevant to the performance are discussed.
47. The barristers can use these sessions to check that their intended performances contain each of the essential elements. They can see and consider other ways that they might approach the performance.
48. The sessions are accompanied by concise notes that provide a useful reference point for the barristers in the future.
49. Each session is approximately 45 minutes with questions and comments as the session proceeds. It is immediately followed by performances by coaches that specifically demonstrate the matters covered in the discussion (described further below).
50. These sessions are conducted in the evenings on the day before the barristers perform. The barristers then have time over drinks and dinner to discuss what they have seen and heard. They can reflect and refine their performances overnight and in the morning.

Demonstrations

51. Immediately after hearing what is required in a performance and how it may be done, the barristers see two demonstrations by coaches, each of which includes the essential elements of the task.
52. These performances are intended to also illustrate contrasting styles - both of which are appropriate for the case at hand.
53. The performances are about 10 minutes in duration and concise in content. They are intended to be of a high quality, not demonstrations of what not to do. The level of the performance varies depending upon the experience of the barristers attending the course. The essence of the performance should be something that the attending barristers can reasonably aspire to.
54. Some people express a concern that demonstrations lead to slavish copying by observers. That has not been our experience. Barristers are interested in developing their own styles. They adopt and adapt aspects of a performance that they consider to be effective. That is to be encouraged. They cull aspects that they consider to be undesirable or unsuitable for them.
55. The barristers are urged to critically analyse the performances, noting aspects that they find impressive and those that they do not. They are invited to discuss their perceptions, openly and frankly, with the coaches. This invitation demonstrates the theme of peer parity running through the course - that the coaches are willing to be reviewed by the barristers in the same way that the barristers are reviewed by the coaches.

Case analysis group discussions

56. After the barristers do their opening addresses and before they examine in chief, small group sessions are held to discuss the barrister's case analysis. Each group comprises three barristers (who have the same role) and one or two coaches. These sessions are two to three hours in duration. Each barrister's case theory is explored and challenged by the coaches with a view to testing the depth of the analysis and exposing aspects that the barrister may not have considered and may need to address.
57. The timing for this session means the barristers must do their opening addresses on the basis of their own case analysis and then have that analysis scrutinised and tested.

Performances

58. The fourth step is the performance.
59. Although these performances are "mock", they are usually more difficult and more stressful for the barristers than an equivalent "real" performance in court. The circumstances are fundamentally different. The extent of knowledge of the surrounding material beyond the brief is necessarily more limited. In addition, the performances are being video-recorded and scrutinised far more closely by one's peers and colleagues than usually occurs in court.
60. The key to these performances working effectively as a learning experience is to make them as close to reality as possible *and* to ensure that they are done in an atmosphere of genuine professional support, making a mistake should be seen as a learning opportunity, not a cause for embarrassment.
61. Experience in one's professional and personal life, as well as psychological research, teaches that we perform best when we are focused but relaxed. A little anxiety is fine and can improve performance, but being over-anxious dramatically impairs performance.

62. Each barrister performs a nominated task for approximately 10-15 minutes depending upon the session timing. That amount of time is allowed to enable the barrister to “work into” the performance and demonstrate a command of the material, an appropriate structure, and the essential elements of the performance. In ABA courses which are conducted over 5 days with complex materials, confining performances to less than 10 minutes is frustrating for the barristers and unrealistic.
63. The other barristers take the roles of opposing counsel, witness, associate and/or judge. Every barrister is able to closely observe and/or be involved in each performance. Opposing counsel are instructed to interrupt/object as they think would be appropriate in a real hearing.
64. Three coaches are allocated to each group of six barristers. The roles of these coaches are described below.

The in-court coach

65. The role of in-court coach is to observe each performance and provide comments to the barrister (and the group) at the end of each performance.
66. The comments will, in general, be limited to one major comment and one minor comment. The nature and form of the comments is discussed below in detail. These comments are intended to achieve four distinct goals:
 - (a) informing the barrister of a perceived area of strength or weakness;
 - (b) explaining why it is seen to be a strength or weakness;
 - (c) showing the barrister, by words and actions, how he or she might improve on that performance; and
 - (d) inspiring the barrister to change their behaviour, or at least consider it closely.

Location

67. The in-court coach must be able to observe the barrister’s rapport with the judge and/or the witness.
68. Subject to what appears below, it is usually undesirable for the in-court coach to take the role of judge. It inhibits that coach’s ability to come to the Bar table and demonstrate. It is preferable for one of the review coaches to be the judge for the first two performances. The judge’s intervention should be kept to a minimum.
69. Thereafter the barristers in the group who are not performing as an advocate can take it in turns to assume the role of the judge. That gives each barrister the benefit of experiencing performances from the judge’s perspective.
70. The exception is when the barrister is addressing the court. In those instances, it is usually better for the in-court coach to sit as the judge. It lends verisimilitude to the hearing to have a senior person sitting as the judge. More importantly however, it allows the in-court coach to test the barrister with questions that are appropriate for that barrister’s level of competence.

During the performance

71. During the performance, the in-court coach observes the barrister’s manner and demeanour, checks that each of the essential elements for that performance have been included, assesses whether the minimum level of competence has been attained, and determines what is the most important aspect of the performance that needs to be addressed. The coach looks for the advocate’s strengths as well as weaknesses.
72. The coach needs to take a verbatim record of questions asked by the barrister (or important submissions).

73. Whilst doing that, the coach considers:
- (a) the structure of the presentation (or lack thereof);
 - (b) the barrister's apparent objective and the validity of that objective within the case theory;
 - (c) the form of questions/words used; and
 - (d) the barrister's manner, presence and mannerisms.
74. A particular type of presentation calls for certain aspects to be scrutinised. Some of these are set out more fully below.
75. During the performance, the in-court coach may interrupt the barrister if it seems efficacious to do so. This will depend upon the in-court coach's assessment of the barrister's ability to deal with such an interruption. For example, some performances start very badly or go off track early. With some barristers it is better to stop the performance, talk about the problem, give them a moment to collect themselves and let them start again.
76. The in-court coach will stop the performance after about 10-15 minutes at a point which seems appropriate. It may be when the barrister is about to move to another topic or when something has been said or done which allows an interruption.

At the conclusion of the performance

77. When the performance ceases, there is an important moment. The barrister's mental state moves from performance-anxiety to relief. Then, almost immediately, it shifts to a level of heightened apprehension about the possible negative comments that will be made. This is perfectly normal. It applies to anyone who cares about their ability to perform. The coach needs to ensure that the best possible learning environment is created immediately after the performance. The coach has to *connect* with the barrister, otherwise the comments will be, at best, worthless. At worst, they will be damaging to the barrister and the others in the group.
78. Accordingly, the coach will allow a short period for the barrister to settle, observe the barrister's demeanour after the performance and then tailor the opening comment to suit. For example, if the barrister appears uneasy, the coach can start by identifying what the barrister did very well and then move to the major comment. Another approach is to engage with the barrister by asking the barrister how they thought the performance went and then run off those comments.
79. Most people find it very difficult to listen to and fully comprehend what is said to them when they are apprehensive. They are too busy waiting for the experience to end. Barristers are typically defensive about their performances. They tend to be resistant to comments that they perceive as being critical of their abilities. So the need to *connect* is paramount if the barrister is to get any benefit. The recording of the coach's comments allows for later and deeper reflection.

The selection of the major and minor comments

80. The selection of what to comment upon is simple in theory - the aspect of the performance that, in the coach's opinion, most needs to be addressed. Some common matters (not in any particular order) include:
- opening addresses
 - matters that should be included in such an address, such as relief sought, cause of action, basic facts ...
 - structure - so that the judge understands where the barrister is going
 - the way of telling the story
 - examination in chief
 - the relevance of the evidence led
 - the order of the evidence

- the use of leading questions
- creating a rapport with the witness
- watching the judge's reactions

cross examination

- the relevance/focus of the topic(s) covered
- the use of direct questions
- the form of questions
- the extent of questioning required to "close gates"
- the barrister's demeanour
- watching the judge's reactions

closing addresses

- structure - so that the judge understands where the barrister is going
- stating propositions succinctly
- validating propositions
- accurately summarising the evidence - testimony and documents
- dealing with adverse testimony
- citing and referring to the relevant law.

81. Often there are many aspects deserving of comment. Almost always it is not helpful to provide more than one major comment. This is for several reasons. The barrister's limited ability to listen and digest what is said has been addressed above. The ABA Advanced Trial Advocacy Course is designed on the basis that there will be multiple performances so barristers can develop their skills incrementally. It is demoralising for the barrister to be told of many aspects that require work. Often the modification of one aspect solves another apparent problem. Dealing with one area successfully provides satisfaction and interest in moving to the next one.
82. The selection of the item for major comment must be the most fundamental aspect of the performance that needs to be addressed. For more experienced barristers, the question for the coach is - "*what aspect of the performance do I think is the next thing that this barrister needs to address to be more effective?*"
83. In addition to making a major comment, the coach may also make another observation about the performance which may assist the group, as well as the barrister. It is referred to in this methodology as the "minor comment", not because it is unimportant, but rather to emphasise that one major point should be made for the barrister to focus upon and develop.
84. The minor comment may relate to the major comment or a matter of form. Examples include the speed of delivery, use of papers, stance, audibility etc.
85. The selection of the comments is done by the in-court coach in the knowledge that the review coach will be able to do more work, one-on-one with the barrister outside the court.

Delivery of the comments

86. Delivering the message is the next challenge. At one level, the coach is merely providing some observations and suggestions that the barrister can accept or reject as he/she sees fit. At another level, the coach is attempting to persuade the barrister that they would benefit by changing their behaviour.

87. Either way, the coach deals with the barrister as a peer. Hence the coach provides the comments from a position in the court room that is on the same level as the barrister's location at the bar table - usually at the end of the bar table - not the judge's bench. The coach speaks as a respectful colleague sharing ideas, not a teacher directing a student. The coach usually stands when commenting, so all the group can see the coach and hear what is said, but not close enough to anyone so as to be overbearing.
88. The first words used by the coach have an immediate impact on the barrister, they should encourage the barrister to listen further, not to close down or to react negatively and defensively. Commencing by identifying a strength in the barrister's performance shows respect by the coach for the barrister which will usually be reciprocated by the barrister attending (initially at least) to the coach's additional comments. By contrast, a patronising opening comment inhibits further attention from the barrister.
89. Like the barrister's performance, the comments are recorded for the barrister to review at a later time.

Structure of the comments

90. After an initial, introductory remark, the coach's comments include;
 - (a) a clear statement of what his/her major comment is,
 - (b) a relevant illustration of what the barrister did,
 - (c) an explanation of why it is important/beneficial to change that conduct
 - (d) an explanation of how it might be done, and
 - (e) a demonstration.
91. Apart from clearly enunciating the major comment at the start, the order of the other comments is not critical, although the above order is logical and often adopted.
92. What is critical is that the barrister is engaged whilst the discussion and demonstration take place. Repeating to the barrister precisely some of what he or she said is a powerful way of getting the barrister's attention. It shows the care that the coach has taken. It shows respect for the barrister. However it needs to be done with great accuracy otherwise the barrister will feel that the coach has not paid sufficient attention. Hence verbatim notes, or a very powerful memory, are needed.
93. The reception and digestion of what is said and done by the coach is best achieved if the cognitive aspects are addressed and then followed by a physical demonstration. This approach applies to effective learning of anything that involves a skill, whether it be playing sport, playing a musical instrument, creating an artwork or building something. The ongoing process is to understand what one is trying to achieve, attempt it, examine what was done, identify the problems of doing it that way, discover a possible better way, observe it being done and then do it for oneself.
94. The five aspects of the in-court coach's comments referred to above are sometimes described as:
 1. HEADLINE – state the point you are about to make
 2. PLAYBACK - repeat, verbatim, what they said that is relevant to that point
 3. RATIONALE – explain why they should change
 4. SOLUTION – explain how they should change
 5. DEMONSTRATION – show how they could have done that performance differently
95. Some organisations advocate comments being given strictly in the order listed 1-5 above, and only one point being covered. The ABA methodology places greater emphasis on connecting with the barrister and communicating effectively. Requiring adherence to an order for making comments can interfere with the natural and effective communication between the coach and the barrister - it can lead to form being given priority over content.

Duration of the comments

96. The in-court coach's comments usually only last about six or seven minutes, including the demonstration, subject to the barrister demonstrating an understanding of the point.

Demonstrations by the in-court coach

97. The primary purpose of the demonstration is to illustrate to the barrister what has been explained by the coach. Also it is important for other reasons. First, it shows that the coach is prepared to get up and perform, not just criticise others. Second, the rest of the group may not have listened to the discussion but they become engaged with a demonstration. Third, if done well, it enhances the coach's credibility in the eyes of the group. Fourth, it provides interest and variation. Fifth, it often stimulates further comments and discussion.
98. The particular way that the coach demonstrates will be dependent upon the major comment being made. If for example, the comment is about the way to question a witness, the coach will usually stand at the bar table, but at a place where the barrister can see the coach, the witness and the judge. By contrast, if the major comment is about the preparation of notes for use during cross-examination, the in-court coach might show the group what notes that coach had prepared for cross-examining the witness, or use a white-board for that purpose.
99. The demonstrations should be short. One or two minutes is sufficient.
100. If a demonstration is not successful in illustrating the point, the in-court coach should candidly discuss what was not successful and why it was not successful. The coach may say something like:

That did not work. I should not have asked the last question in that way. I was over keen and ran two questions together. As a result, the answer was unclear. I should have asked "...

The review coach

101. The ABA review coach has the primary role of working with the barrister to develop practical approaches and techniques that are comfortable and effective for that barrister.
102. The role of the review coach in the ABA Trial Advocacy Courses is unique. Other courses provide for the primary coaching to be conducted in court followed by a short video review, which is often limited to matters of style. By contrast, the review coach in ABA courses provides intensive one-on-one coaching to develop techniques and skills for the next performance. In many ways, the sessions with the review coach are the most effective in providing the barrister with skills and strategies for improvement.

Location

103. When possible, the review coach should observe the performance in court and see the in-court coach's comments.
104. The review coach then goes with the barrister, and the recording of the performance, into a nearby court room where there are facilities to view a replay of the performance.

Commencing the review

105. As discussed above, there is a moment at the end of the performance in court when the in-court coach needs to connect with the barrister. So it is with the review coach.

106. The barrister has performed and been the subject of critical comment (and, hopefully, some positive comment). The comment might have been quite harsh, or very detailed, or perhaps confusing for the barrister. For the next twenty minutes or so, the review coach is the personal confidant whose job is to tease out how the barrister is feeling and how best to make progress to achieve a better performance on the next occasion.
107. It is therefore important for the barrister to feel supported and confident of trusting and working with the review coach. The review coach's first job to win that trust.
108. That is usually achieved by adopting an approach which shows the coach's willingness to work with the barrister in the way the barrister wishes to proceed. That means listening rather than talking.
109. A common first question by a review coach is "how did you go?" or "what did the in-court coach say?" The barrister should be able to state unequivocally the essence of the major comment.
110. That provides the starting point for a discussion about what the barrister did in the performance and why they need to change (which may be repetitive of the in-court coach's comments) or a discussion about how to go about structuring an opening address. Alternatively, if the message from the barrister is confusing or the barrister needs more time, the review coach can suggest looking at the recording together. If there is uncertainty about the in-court coach's comment, then the recording can be used to replay what the coach said and demonstrated.

Content and structure of the review

111. The essence of the review is to
 - discuss the meaning and purpose of the in-court coach's major comment,
 - explore practical ways for that barrister to achieve the desired objective, and
 - address the minor comment made by the in-court coach.
112. It might be necessary at first to understand the barrister's perception of the performance, particular problems that the barrister is experiencing, or even disagreements with the in-court coach's analysis or comments. There is no prescriptive approach. The intent of the session is to assist the barrister's understanding of what is needed and how to do it.
113. The in-court coach's comment provides a starting point and needs to be addressed closely.
114. To reiterate, the emphasis is on connecting with the barrister and providing practical suggestions for that barrister.
115. Different approaches will be required depending on the major comment.
116. The types of activities undertaken by barristers require different combinations of cognitive, organisational and performance skills. In order to enhance a person's ability to perform an activity, it is necessary to identify whether or not the aspect to be enhanced involves:
 - (a) the acquisition of knowledge,
 - (b) the application of that knowledge to the particular situation,
 - (c) the organisation of informational materials,
 - (d) analysis and planning; or
 - (e) performance inadequacies.
117. Identification of which one or more of these aspects is "deficient" for any particular task is essential before considering what might be done about it.
118. For example, if the major comment related to poor case analysis, the discussion will deal the problems with the barrister's analysis and a preferred way for the barrister to re-consider the case. The review coach can work with the barrister to develop an alternative structure to use for the next performance. The use of the recording may be very limited.

119. By contrast, if the major comment related to the form of questions asked, the recording can provide a convenient way of “replaying” what was done and, after discussion, the review can comprise a series of mini-demonstrations by the review coach and replays by the barrister.
120. Hence the structure of the review is to:
 - ascertain what were the major and minor comments made by the in-court coach
 - obtain the barrister’s reactions to the major and minor comment
 - discuss the meaning behind those comments
 - develop strategies or provide suggestions as to what the barrister may change
 - demonstrate those suggestions
 - encourage the barrister to replay part of the performance using one or more of those suggestions
 - discuss the pros and cons of making the change.
121. These personal coaching sessions enable barristers to discuss openly any concerns they may have about their abilities or other topics that they are reluctant to raise in the group sessions. These include personal mannerisms and anxieties.
122. Likewise, these sessions provide an opportunity for the review coach to speak candidly about aspects of the barrister’s performance that might be unduly embarrassing if raised by the in-court coach in front of other members of the group.
123. The recording of the performance provides a focus for the discussion about what went well, and what did not, in the performance. Depending upon the major comment and the barrister’s wishes, a large section of the recording may be played or only a particular part. The review coach can watch the recording with a view to identifying matters that illustrate the major comment and discussing the rationale for changing that behaviour. The barrister’s performance provides a guide for the review coach suggesting particular ways that may work for that barrister. Laboriously replaying the recording can be an agonising and humiliating experience for a barrister who knows they have not performed well.

Disagreement about comments

124. There may be occasions where the review coach does not agree with something that the in-court coach has said, or at least what the in-court coach is reported to have said. This needs to be dealt with carefully and openly.
125. First, it is important to ascertain what the in-court coach actually said. This can be done with the recording.
126. Next the context for the comments must be properly understood - that involves viewing the performance.
127. If the review coach still has a different opinion and that coach feels it is an important matter, the review coach should inform the barrister of the opinion and the reasons for it. The in-court coach should also be informed.
128. It is desirable not to give contradictory comments to the barristers because it causes confusion. However the simple reality is that people have their own perceptions of what is good advocacy and what is not and sometimes coaches (despite exhortations to the contrary) may express those views in emphatic terms which others feel obliged to qualify. The best course is to discuss such matters candidly so the barrister can decide how best to proceed in the future.
129. As we all know, judges differ in their views about how things may best be done. Barristers have to be able to adapt to suit the audience. So hearing different perspectives can be helpful, even if a little bewildering when one is trying to work out what to do on the next occasion.

130. However it is desirable to inform the in-court coach of the difference of opinion lest there has been a misunderstanding or misinterpretation.

Duration

131. The timetable enables review sessions to last up to 30 minutes. However being concise and to the point with comments is often best, otherwise the barrister suffers from an overload of information. Most of the time can be used by the barrister doing replays.
132. Sometimes the review can be short to allow the barrister time to reflect and prepare before returning to court. Other times, 30 minutes does not seem long enough to cover everything that needs to be done. Remember this process is incremental. Work on one aspect and get that right before moving to the next stage.
133. These can be the most valuable sessions in the course for the barristers. However, sometimes they can be the most intense and difficult for the barristers. It can be a time when the barrister feels most vulnerable and distressed. They need to be handled sensitively by the review coach.
134. If, for any reason, the session is not providing assistance to the barrister, it should be terminated. This can be done by saying to the barrister *I really don't think you are getting any benefit from this. Why don't I give you some time on your own?* If the barrister wants your assistance, he or she can ask for it. Otherwise the review coach would be better utilised going back into court and watching the next performance.

Assessment of the courses

135. During the courses the barristers are asked to provide their comments on any aspect of the course that they consider could be improved. At, or after the conclusion of each course, the barristers are surveyed for their opinions about the course generally and any suggestions that they may have for improving the course.
136. The opinions are collected by the Course Director, reviewed, discussed and, where seen fit, implemented. To date, the comments have been enormously supportive and helpful.
137. Of course, the coaches are constantly asked to provide suggestions for improvement. As a result, each course conducted by the ABA since 2007 has been modified slightly with benefit. We expect that this will continue in the future.

Philip Greenwood SC

Chairman

ABA Advocacy Training Council

October 2014