



The Inns of
Court College
of Advocacy

The Council of the Inns of Court

ADVOCACY TRAINING

“Training the Trainers” Manual and DVD

The Method: Argument Advocacy – Timothy Dutton QC (narrator), Sarah Whitehouse QC (trainer), Peter Harrison QC (trainer), James McCreath (trainee), Yasmeen Ul Haq (trainee), Anesta Weekes QC (narrator), Julian Goose QC (narrator)

(transcript of [video](#))

A **Timothy Dutton QC:** Teaching submission advocacy presents its own set of challenges, many of the challenges which you face as a trainer are similar to those you face as an advocate who's undertaking any exercise in oral

B presentation - but they're not the same. Also, the approach to teaching oral and written argument varies as between the two.

C In this talk I'm going to concentrate on teaching oral submission but I shall also briefly cover written submissions.

D Preparation - as you've already heard - is the key. As with all advocacy teaching so with submission advocacy. You must know the law which is applicable, I tend to note the key elements of the case, listing them for each party - but I don't think it's wise for you to conduct a full preparation of the actual submission itself.

E If you do that you can tend to become bogged down with your own particular slant on the case. Whereas a good advocacy teacher works with the trainee on the basis of the trainee's work and performance.

F There's actually nothing worse than a trainer dictating to a trainee his or her own subjective theory of the case, on a pet point, in circumstances where an intelligent trainee may have a much better point to make than your own.

G If you can, please try to ensure that the classroom is set as near as possible to the tribunal the advocate is supposed to be addressing. If for example the advocacy is to a single judge, make sure that the advocate is sitting or standing as appropriate for the forum - opposite the judge - and that those who are teaching

H are to one side. You will be observing to see whether or not the advocate is engaging the judge from the very start of the exercise.

Make sure that you've allocated the judge - assuming you have two trainers - before the start of each exercise, and that the judge and the advocate each know their respective roles. With submission advocacy there are fewer gaps in the

- A** performance to enable you to catch up in your note writing, so you must therefore note accurately what is being said. The advocate will be working from his own notes, and if you make an error in your note keeping your teaching will
- B** lack credibility when it comes to you replaying the exercise. And remember; as with witness handling, it's a single point per review.
- C** The use of the method is therefore the block, upon which you will want to build your teaching, but it will be adapted to suit the fact that we are dealing with submissions.
- D** You're going to be aiming to produce:
- A good headline
 - To playback material
 - To give a rationale
 - And to provide a remedy
- E**
- F** The key to the teaching is in the creation of the material from which you teach. That is to keep a careful, accurate note of the performance, listening carefully as you note, and keeping a weather eye on the tribunal. You must of course note carefully, but you've got to do all three of these things so that you can for
- G** example, find that a fluent, persuasive submission starts to go wrong the moment a judge asks a question. You need to be ready - as trainer - to diagnose why that is occurring, and vice versa.
- H** Some terrible pre-prepared submissions start to improve the moment the judge intervenes and the advocate becomes engaged, more natural and less nervous - that may then provide the focus for your teaching.

- A** Immediate - as opposed to delayed - replay is not very valuable. The trainee will need time to absorb what is said and to rework his or her submissions. If you're going to ask the advocate to replay, use a delayed replay.
- B** One of the key points to look out for in submission advocacy; the handbook which accompanies this DVD gives some suggested headlines, and I'm just now going to give a few suggestions indicating some of the problems which you will encounter regularly.
- C** In any oral submission you'll find advocates whose submissions lack structure, where organisation breaks down, or where logic goes wrong - where one proposition simply doesn't follow from another
- D** These points may tend to indicate a larger, more serious issue; that the advocate has not developed a coherent case theory, and may not have prepared thoroughly enough to get his route map sorted out.
- E** Very often the advocate does not actually say what he or she is seeking and why. Again this may be symptomatic of a larger issue relating to poor case analysis.
- F** Language can go wrong, or it may be inapt. Sentences may be long, or lawyerly, and unpersuasive. The advocate may simply fail to address the hardest point in the case against him, or may even misstate the evidence.
- G** A common problem is that the advocate does not answer the question orally to the judge as to why he or she should win the case. Be ready also to deal with how the advocate treats the tribunal; if the judge is asking questions which the advocate cannot answer this tends to demonstrate poor case preparation or poor case analysis.
- H**

- A** Now for written advocacy; all advocates must be proficient in written advocacy - it's becoming ever more important in our court, tribunal, mediation and arbitral proceedings. As a trainer you must be able to teach written advocacy well.
- B** The method will provide you with the basic structure for teaching, so you'll choose a single significant point to teach on - your headline - identify examples of the point in the text itself - which is your playback, give a reason as to why you
- C** are saying what you're saying, and provide the remedy.
- Make sure that you've arranged to receive all written submissions before the class gets underway. This means that there must ideally be four copies of the
- D** submission, one for the trainee, one for his opponent, one for the judge, and one for the trainer.
- Allocate a person to conduct a review of the written work before the session gets
- E** underway. So, when you teach in a classroom context you must give a short introduction to the skeleton itself, so that everyone understands the points you are about to make about the text.
- F** So, for example, if your headline is "make your submission shorter", you will say as follows: "this is a road accident case, your skeleton is 75 paragraphs long,
- G** spreading over 23 pages, with 30 footnotes". The classroom at least then knows the introduction to the skeleton, and then say "I've identified in the text the passages which can be removed or significantly reduced", and if time permits give a single example from a section of the skeleton - that'll be your playback.
- H** Then you might say "the reason why you need to do this, is that you must focus the skeleton on what the judges needs to decide and to keep his attention" - and there's your rationale.
- Their remedy would be to say "go for brevity, only put in what the judge needs to know in order to decide the case and no more". Then, as trainer, make sure that

A you hand the trainee your marked-up copy of his or her submission so that he or she can take the teaching away.

B A major problem for trainee advocates is how they relate their written and oral advocacy. Be aware of trainees who simply read from or recite their skeleton arguments - or whole chunks of it. Usually the cause of that is that the trainee has not identified what must specifically go into the written submission, and

C what must specifically be addressed orally.

You, with your experience as an advocate and trainer must help to solve that problem.

D Finally, can I wish you good luck?

E *Screen Text:*

Opening Speech

F *Trainer: Sarah Whitehouse*

Sarah Whitehouse QC: James, your opening speech.

G **James McCreath:** Good afternoon ladies and gentlemen of the jury, I'm James McCreath, and I'm representing the prosecution. My learned friend Mr Green will be representing the defence.

H Peter Jones; the defendant, is charged with burglary. It is alleged that on the sixth of February last year he entered the house of John Smith at 39 Manchester Road Camberwell, with intent to steal.

You will hear the prosecution case first ladies and gentlemen, and then the defence. We will both close our case and the judge will sum up the case and

- A** direct you on the law. Then ladies and gentlemen it will be up to you to reach your verdict.
- B** Your verdict ladies and gentlemen will be a verdict on the facts - you decide the facts - the judge ladies and gentlemen will decide the law and will direct you on it fully later.
- C** But let me at the outset tell you what the prosecution must prove if you are to convict Peter Jones of burglary. We must prove three things ladies and gentlemen:
- D**
- First; that Peter Jones entered the house that is 39 Manchester Road, Camberwell
 - Secondly; that he did so as a trespasser; that he wasn't invited in there
 - And thirdly; that he went into the house intending to steal from them
- E**
- Ladies and gentlemen I've used the word "proof" a lot, and let me say what that means. Before you can convict, you must believe beyond reasonable doubt that
- F** Mr. Jones did indeed commit the burglary. Ladies and gentlemen that means that if you have any doubt which is reasonable you must acquit Mr. Jones.
- Let me tell you a couple of things about the case ladies and gentlemen:
- G**
- It is not disputed that Mr. Jones was found by Mr. Smith - that is the owner of the house - and a police officer; PC Dixon, hiding under a car a short distance away from where the burglary happened, shortly after it happened.
- H**
- The prosecution's case ladies and gentlemen and the case that we must prove to you - is that Peter Jones was the man who Mr. Smith pursued from the scene of the burglary, and who was later found under the car.

A

Screen Text: *Headline*

Sarah Whitehouse QC: James, tell the jury the story

B

James McCreath: Mhmm

Screen Text: *Playback*

C

Sarah Whitehouse QC: What you did was; you made your introductions and then you explained to the jury that Peter Jones was charged with burglary. You said it was alleged that on the 6th of February he had entered the house - and you gave the address - with intent to steal.

D

You then told the jury that they would hear speeches from you and from the defence council, that they would hear evidence and that the judge will sum the case up to them.

E

You then went on to explain what the prosecution had to prove, and you gave the three elements; entering the house, as a trespasser, with intent to steal.

F

And it was only right at the end - the last few lines before you ended - that you actually told the jury what it is that you say the defendant's done.

G

Screen Text: *Rationale*

Sarah Whitehouse QC: And the reason why it's very important to bear in mind always in an opening speech that you're telling a story, is because it's your opportunity to grab the attention of the jury; to make them sit up and really hang on to your every word, and want to hear what you've got to say next. It's your chance to stamp your authority on the case and keep their attention on you.

H

Screen Text: *Remedy*

A **Sarah Whitehouse QC:** And the way in which to make sure that you always do do that is imagine you're explaining - perhaps to a friend in the pub, or to a child at bedtime - what it is that the defendant did. It's as simple as that.

B So in this case you might try doing something like this:

Screen Text: Demonstration

C **Sarah Whitehouse QC:** Members of the jury, I appear to prosecute this case and my learned friend Mr. McCreath appears on behalf of the defence.

D The defendant Peter Jones is a burglar; on the sixth of February last year two men came home. They were called John and Joseph Smith, and when they reached their house at about six O'clock in the evening they saw that the front door had been smashed. They went into the house and immediately began to

E look around, and they saw this defendant making off through the kitchen window, racing down the garden and climbing over the fence at the back.

F John Jones chased him, and although he lost sight of him for a short time he eventually came round a corner and into a quiet residential street. There he waited...

G **Sarah Whitehouse QC** (to James McCreath): You see?

James McCreath: Mhmm

H **Sarah Whitehouse QC:** Now just tell the story to the jury - don't worry about *and the law...* and what you have to prove; tell them what happened.

Screen Text: Topic for Delayed Replay

A So when you come back for your replay later on, what I'd like to hear from you is a story. A descriptive, imaginative - in words that is - story, about what the defendant did.

B **Anesta Weekes QC:** I'm now going to review Sarah's review of James.

C Sarah correctly identified the level at which she should review this advocate, and the very helpful headline was "Tell the Jury the Story". When it came to Sarah's explanation of how this advocate could improve she used clear, concise language - so he could easily follow.

D She had adequately replayed his performance - it was verbatim, but most importantly when she came to get up to do the demonstration - and that's often very difficult for the trainer - that demonstration worked because she immediately began to tell the jury the story.

E So this review was a good one and it worked.

F **Screen Text:**

Opening Speech

G *Trainer: Peter Harrison QC*

Peter Harrison QC: Yasmeen you're going to be doing an opening speech for the prosecution for us?

H **Yasmeen UI Haq:** Yes

Peter Harrison QC: So when you're ready.

A **Yasmeen UI Haq:** Members of the jury I appear on behalf of the prosecution and my learned friend Ms. Carpenter appears on behalf of the defendant Mr. Peter Jones.

B The defendant is charged with burglary contrary to the theft act and the particulars of the offense are that on the sixth of February 2008 the defendant entered Mr. Jones Smiths... Mr. John Smith's home as a trespasser - namely 39
C Manchester Road Camberwell - with intent to steal therein.

On the evening of February the sixth Mr. Smith and his brother; Mr. Joseph Smith, arrived at Mr. Smith's home and found that the front window had been smashed.
D When entering the property and subsequently entering the kitchen Mr. Smith had seen a man in the back garden, which Mr. Smith will testify was the defendant.

Mr. Smith followed the man over the back garden fence onto the main road.
E When turning into a corner on Rose Avenue Mr. Smith lost sight of the man. Whilst on Rose Avenue PC Dixon arrived in a police vehicle, responding to a 999 call given by Mr. Joseph Smith. After a search of the area the defendant was
F found underneath a vehicle on Rose Avenue by a Mr. PC Dixon and Mr. Smith identified him as the accused.

G Mr. Smith will be called on behalf of the prosecution to give evidence on what he observed, and PC Dixon will also be called on behalf of the prosecution to give evidence of the search for the defendant, and on Mr. Smith's positive identification of the accused.

H **Peter Harrison QC:** Thank you Yasmeen, just take a seat there.

Screen Text: Headline

A **Peter Harrison QC:** Yasmeen, slow down! Slow down. You started - and I'm going to exaggerate a little bit for the effect, but not very much - "Members of the jury I appear for the Prosecutioner's case my name is UI Haq, Jasmeen UI Haq and

B the defence is represented by Ms. Carpenter. The defendant is charged with burglary contrary to section 9(1a) of the theft act 1968, the particulars of the offense being that Peter Jones on the sixth day of February a year one entered as

C a trespasser a building, namely 39 Manchester Road Camberwell with intent to steal therein.

Yasmeen UI Haq: That was good.

D **Peter Harrison QC:** Now, you and I are in the same club, and I call it the machine gun club.

Yasmeen UI Haq: OK

E *Screen Text: Rationale*

F **Peter Harrison QC:** Because our first words come out like a machine gun, and it's obvious why that's a problem. People don't listen to what we're saying, people get the impression we're nervous, and people simply can't take in our first few words - which are absolutely golden.

G The first few words you say have to have that key impact, and if you say them too quickly you'll lose people straightaway.

Screen Text: Remedy

H **Peter Harrison QC:** It's not that easy to actually just say to yourself "slow down", because those nerves won't disappear, and in many ways they're a good thing.

Something that I try and actually works for me is quite simple, I simply write "slowly... slowly... slowly", in red pen, across the top of my page and down the side.

- A** And the other thing that I do is I write out word-for-word, literally word-for-word, my first 40 or 50 words.
- B** **Yasmeen UI Haq:** OK
- Peter Harrison QC:** So that I know that when I stand up I can do it at a pace which is going to command the attention of the listener.
- C** **Yasmeen UI Haq:** OK
- Peter Harrison QC:** OK so let's stand up and this is the kind of pace that you'll need for the first few words for the jury, and I'm going to try and use your actual words.
- D** **Yasmeen UI Haq:** OK
- E** **Peter Harrison QC:** Whether those are the words that I would use or not. So let's stand up together.
- F** *Screen Text: Demonstration*
- Peter Harrison QC:** Look them in the eye:
- G** Members of the jury, in this case I appear on behalf of the prosecution. My learned friend Miss Carpenter appears on behalf of the defence, and this is a case of burglary, the defendant being charged with burglary contrary to section 9(1a) of the Theft Act.
- H** *Screen Text: Topic for Delayed Replay*
- Peter Harrison QC:** OK? So have a seat and when you come back after the break what I want you to do is to think about the first forty words that you want the jury to hear from you - OK?

A

Yasmeen UI Haq: Yes

B

Peter Harrison QC: ...To actually write them down, and to put slowly on your paper, and then when you come back and do it again we're going to have them hanging on your every word, OK?

C

Yasmeen UI Haq: OK, thank you.

D

Julian Goose QC: That was an excellent headline; very well demonstrated through the playback, the reason or rationale was well explained, and the theme followed through well into the remedy, and the demonstration. In particular, the way that the trainer actually engaged the advocate in his own experience - so bringing them together - had a really striking effect, and no doubt the advocate in hearing it in that way will have felt even more part of the training process, to make it a success.

E

END

F

G

H

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