

Learning the art of court performance

Ben Katekar, barrister, interviews Lucy Cornell about the value of performance coaching for advocates.

Advocacy is a skill. It is also an art.

The skills can be taught. Lessons can be given for things like how to structure an opening; how to frame your questions during examination in chief by asking open questions but getting exactly what you want from a witness; how to control your witness in cross-examination. The list is endless.

But there are those among us who possess a certain magnetism and aura. They are spellbinding. There is a magic about what they do. An artistry.

Many of us, including me, are not blessed with natural thespian gifts, so we search for the secret to this magic. This search is the topic of this article.

Artistry can be taught

There is a school of thought that the art of advocacy is a natural gift, which is un-teachable.

That is, with respect, simply wrong.

My search for the techniques that enable artistry to be expressed through advocacy has led me to the art of the actor. Not for acting as we might experience it on stage, but for the heightened mode of speaking that is required for court.

In the right hands, the techniques of actors can be translated into what we do as advocates in the courtroom.

Institutes of dramatic art devote themselves to developing and teaching the art of speaking and moving an audience. There is an ocean of learning in those institutions, drawing on literally centuries of practised and highly developed methods.

Barristers – like actors – need to communicate with their audience in a way that captivates them, and engenders a sympathetic reaction, so the audience is carried along with the argument. The barrister commands rapt attention and engenders a sympathetic response in the bench or jury. This aspect of the art of the advocate lies in subtle and invisible persuasion.

Acquiring the capacity to express this art can take us to another level as barristers. It can also bring exhilaration and joy to the work.

Are acting methods any use to barristers?

Absolutely.

But the methods need to be translated. This has to be done in a sophisticated way, by an experienced practitioner who has a



good handle on the idiosyncrasies of the court environment.

Many barristers fear that an acting coach will make them pretend to be a tree. There's an expectation that the acting coach will suggest exercises that are useless, and make you feel totally uncomfortable.

When Phil Greenwood SC first introduced performance coaches into the Australian Bar Association's (ABA's) Advanced Trial Advocacy

Intensive in 2008, the leaders of the International Advocacy Training Council were sceptical. Edwin Glasgow QC is a pioneer of international advocacy training, particularly the course at Keble College, Oxford – a rite of passage for all London counsel. He arrived to teach at the Sydney course in 2008, imagining that Phil Greenwood's experiment with Lucy Cornell and Josephine O'Reilly, voice and performance specialists, would meet with the same kind of failure he had seen elsewhere. His view was quickly transformed.

Doubtless, acting techniques do not apply directly to barristers. The context is different, the audience has a different role, and the participants (i.e. the barristers) are in a different emotional place from most actors. Barristers are seeking to get across a difficult message in a challenging environment, against an opponent whose goal is to tear him or her down.

Often, a barrister has no particular aptitude for performance, nor any desire to participate in asking questions about it, or experimenting with it. It is a foreign, uncomfortable concept. Yet it is an inescapable fact that all barristers perform.

So a performance coach for barristers needs to translate all of the methods, concepts, techniques, and teaching strategies, into an entirely new educational environment.

In reality, what is required of a performance coach for barristers is a completely new set of techniques and teaching skills, which are carefully adapted to the nature of the students and the challenges they confront.

Performance coaching at the ABA Advanced Trial Advocacy Intensive

Since 2007, the ABA has conducted an Advanced Trial Advocacy Intensive. An Appellate Advocacy Course has also been conducted by the ABA each year since 2012. The Advanced Trial Advocacy Intensive has been modelled by Phil Greenwood on the South Eastern Circuit's annual course at Keble College, Oxford. It is a vital source of advocacy training available to experienced Australian barristers.

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Phil Greenwood's introduction of performance coaching to the ABA Advanced Trial Advocacy Intensive in 2008 was a courageous initiative. Edwin Glasgow is now an ardent believer, and was instrumental in the introduction of performance coaching at the Keble course in 2011.

From the start, Phil was acutely aware of the need to substantially modify the methods of performance in the thespian space into advocacy training for barristers. He took a firm and dedicated hand. Hours and hours of consultation and planning were spent with Lucy Cornell and Josephine O'Reilly before they were given permission to work with a single barrister.

Those hours have been spent each year since 2008, crafting and experimenting with performance coaching strategies, which are useful and palatable for Australian barristers. The language of actor performance has been simplified and modified so that barristers can understand the concepts and have confidence to assimilate them in their practice. It is a process of continuous learning and improvement.

The outcome has been extraordinarily successful. Performance coaching has made a substantial contribution to Advanced Trial Advocacy Intensive, and has proved to be immensely appealing and valuable to many who have attended the course. It is an innovation which has since been successfully introduced at Keble in 2011, and has been fully implemented at the South African course at Stellenbosch since 2012 – in each case under the guidance of Lucy Cornell with the imprimatur of the respective course leaders. The Australian performance faculty has set the benchmark, and the strategies, which have been developed and applied at the Australian course, are being exported to those courses.

The drive for excellence

Phil Greenwood does not suffer mediocrity. All the performance coaches permitted to teach at the ABA courses are carefully screened, selected and supervised.

Lucy Cornell has coached at each of the ABA courses for the past 8 years, and has taught at Keble and Stellenbosch. Along with the other remarkably talented and capable coaches teaching at the ABA courses, including regular coaches Josephine O'Reilly, Tanya Gerstle, Shannon Dolan and Corinna May, this performance faculty has spent those years re-crafting techniques, improvising and experimenting, to develop a sophisticated approach to performance skills for advocates. Each of these faculty members has a remarkable pedigree as a performer, as well as a trainer of actors, and mainstream executives and professionals.



Lucy Cornell on the lawns of Keble College with, from left, Sir Charles Haddon-Cave, Edwin Glasgow QC and Justice Glenn Martin of the Queensland Supreme Court.

Sir Charles Haddon-Cave, now a judge of the High Court in England, was Chairman of the Advocacy Training Council of the Bar of England and Wales from 2007 to 2010. He was a faculty member at the ABA's 2010 course in Brisbane, at which he became a passionate convert. He offers this:

Performance coaching has been an inspiration to barristers in England and Australia. It helps them make their voices heard, and their presence felt, in court. The brilliant techniques have been a revelation and are highly recommended to all those who aspire to practise the art of advocacy.

Performance coaching is crafted to the individual needs of each barrister

Each performance coach has a vast array of techniques and ideas available to them. Performance coaching is an individual art, so how it works applies differently to each and every barrister.

Working with a barrister is a delicate process. It can be deeply personal, and sometimes confronting for the barrister. In that soft moment where the particular issue for the barrister is identified and explained, careful sensitivity is needed. The performance coach needs to find something to offer, that the barrister is capable of hearing, reaching beyond the barrister's defensive emotional wall. The barrister needs to permit that to happen. Then the barrister needs to take the next step, and try to assimilate the lesson into what they do.

Thus the task of a performance coach is a subtle and sophisticated craft. It takes a special breed of individual to do it well.

At my first ABA Advanced Trial Advocacy Intensive as a participant in 2008, I was wooden, anxious and timid. In one of my court performances, I had been given some feedback that I

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needed to be more committed and stronger in my performance. So the focus for the performance coaching session was to speak with clearer intention. Together with another barrister – who had similar issues – we were asked to walk around a room with a piece of paper crumpled up into a ball, and throw it to each other each time we asked a question.

This seems a random, aimless, 'acting' exercise on the surface, but it was incisive and deeply impactful. The physical movement kept us both energetically alive, the throwing of the paper ball as we spoke the words suddenly brought a brilliance to the words, lifting their dynamic. As we had to throw to each other, there was an immediacy in the desire to be heard. The physical action motivated the vocal and intellectual charge of the words spoken.

Once we had experienced our words 'in action', it opened us up to injecting that same energy and intention when we brought it back to the bar table and spoke as we would as barristers (without the ball of paper, of course). It helped me speak more boldly and succinctly. It gave me time to stop and think about what I planned to say next, instead of racing ahead and not really listening to the response. My imperative to speak was stronger. My communication was richer. My advocacy came to life.

I have not seen this exercise deployed again over the eight advocacy courses in which I have been involved, in Australia, England and South Africa, firstly as a participant and now as a coach. Perhaps this highlights the depth of skills and technical agility of a skilled performance coach. At the time I did this exercise in 2008, I was perfectly open to it and ready for that bit of kookiness – which the performance coach would have sensed. It was a simple and memorable approach, and an incredibly effective piece of teaching.

The role of a performance coach

Lucy Cornell explains the role of a performance coach this way:

Of course, we look at the mechanical aspects of speaking performance: voice, pace, pause, breath, body, gesture, dynamics, impact of words, expanding into your physical space. But, more significantly, we dig underneath these mechanical aspects to explore what is required for a meaningful communication, to ensure that the argument is received as intended.

Often, this means we discuss the advocate's personal understanding of their role in the communication. Are they really looking for a response from the judge? Do they allow



Lucy Cornell with Edwin Glasgow QC and Sir Charles Haddon-Cave at Keble in 2011.

space for an exchange to happen in order to truly assist the judge in his/her understanding of the argument? Do they really want to be heard? Are they really committed to this argument?

The answers to these questions will fuel the approach we take with each individual, ensuring we tap into the core of what is driving a mechanical performance issue.

Moreover, we offer more than an observation of a performance issue. We offer tailored strategies to manage it. As we are dealing with behavioural change, we must support a strategy with an ongoing practice plan, so that the practical experience they have with us has an opportunity to be repeated and embedded neurologically.

Hundreds of barristers have attended the ABA Advanced Trial Advocacy Intensives over the years. Many of them will attest to the profound insights they have obtained from their performance coach. They will be able to repeat what they learned, and explain how they have assimilated the lesson into their practice, and what a difference it has made.

Performance coaching engages with different concepts

Lucy Cornell's many qualifications include her designation as a Linklater voice coach. In the Linklater work, it is a fundamental premise that how you feel about what you say is transmitted through your voice, whether you know it or not. If you don't believe what you are saying, you cannot be persuasive.

It is well understood that the words you say in an oral presentation are less than half of what is communicated. The rest is through your body and your voice.

Effective performance extends beyond the script and lies in the energetic space between the performer and the audience. The

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performer must have the courage and vulnerability to move into this space and expose themselves to scrutiny. To me, this is where the thrill is, and where magic can happen.

These principles are an essential part of performance coaching.

Making yourself available to participate in the drama in the courtroom

Lucy Cornell considers that this is one of the central issues for many barristers.

The biggest performance mistake I see barristers make in court is to blindly know where they are going and not adjust their performance based on what is required in that moment: a judge's glance, a moment of intuition, an unexpected rise in a witness' voice, a difficult question from the judge.

This is the skill: being able to adjust with agility and therefore stay in control. Control in these situations does not come from clinging onto your argument. It comes from relaxing and letting go of where you are heading, so you can find a wise response and move in that direction.

The art is in what you do in these moments. This is where you can make creative, artistic choices to serve your need to persuade. This is the art of persuasion.

When an advocate shifts their understanding of advocacy from imparting information to sharing information in real time, then the exchange becomes meaningful and persuasive.

In my experience, in almost every trial, there is a moment of persuasion. It's a tiny, fleeting moment, a spontaneous confluence of information and emotion, when the tribunal has a sudden change of heart, or is ephemerally available to make it. There is no telling when that moment may arrive. A skilled advocate has the availability to meet that moment and turn it in the right direction.

Availability in that fleeting moment requires attention, breath, physical relaxation, connection and responsiveness to what is happening in the room at every single moment.

Here lies the key to artistry in advocacy. Performance coaching helps you unlock your capacity to be available.

Lucy Cornell explains:

As with any art form, an artist improves with practice. Barristers practise their art by appearing in court. But what sets an excellent artist apart is their continuing investigation of their art form through training, feedback and support.

The artistry of advocacy depends on examining moments and by making adjustments. It is an endless quest for self-examination and self-improvement.

Performance coaching is not something to be done just once. It is an ongoing exploration. All professional sportspeople have coaches. All leading actors continue to train throughout their careers. Improvement is a perpetual quest.

Performance coaching is now an integral part of advocacy training

Johann Kriegler is a legend in the South African legal profession. Before he retired, he was a member of the country's highest court, the Constitutional Court. While there, he withstood all kinds of political pressure and interference to uphold the principles of human rights, which he held inviolable. He is held in universally high esteem in all quarters in his divided country. In December 1993 he was appointed chairperson of the Independent Electoral Commission, whose task it was to deliver South Africa's first elections based on universal adult suffrage.

Mr Kriegler is now in his 80s, but he continues to teach advocacy in his country. I had the pleasure of meeting him when I was teaching at Stellenbosch a few years ago. He is a man of wondrous insight and humility.

Mr Kriegler is an unqualified and vocal supporter of performance coaching. He asked to be quoted about it in this way:

Voice and performance coaching should in my view form an integral part of all advocacy training.

While thorough research and careful preparation of a barrister's case are certainly important, the acid test lies in its presentation.

Advocacy is not merely a cerebral exercise; ultimately – and crucially – it is about persuasion. Persuasion, finally, through personal presentation, employing the whole panoply of rhetorical tools.

Since 2008, performance coaching has become increasingly accepted as a hugely valuable component of advocacy training for experienced barristers. It began here, with Phil Greenwood's courage, diligence and persistence.

The highly developed skills of the ABA's performance coaching faculty are available to all those who attend the ABA's Advanced Trial Advocacy Intensive each January.