



**Avocats sans Frontières
Italy**

**Training Course Project
for those who carry out judicial and legal functions**

Sirs,

On behalf of ASF Italy it is my pleasure to propose a project aimed at training in ethics and professional conduct of defence counsels, prosecutor's counsels and judges.

The scope of this work is very broad given the number of factors involved for those who will be carrying out such an important role in any justice system.

This project only tries to push who carry out judicial and legal functions towards a deeper knowledge of the *advocacy* to discover its need and aims.

Theoretical and practical training courses

Training Advocacy

Knowledge of Advocacy

The word advocacy is often unfortunately translated in a way which fails to convey its significance and its weight. As often happens when a term is translated from one language into another, for historic and social reasons the term is in some cases unable to be translated in a single word. It is however, necessary to use paraphrases until a new term comes into common usage.

In the meantime and for the sake of brevity we can borrow the word from the Anglo-Saxons without making any mistake of semantics: advocacy is an umbrella term for all those who work with the exercise of the law in court.

Advocacy in brief can be translated as “**Principles of professional conduct and technical-professional rules for those who carry out judicial and legal functions**”

Advocacy deals with the rules of conduct for the application of trial procedure.

Scope of advocacy

As has already been stressed, advocacy is about style not results.

Advocacy was developed to give a more organized format to the trial, the parties involved in which often include advocates, witnesses, experts, court staff and so on

The primary objective of advocacy is to lay down rules of conduct and communication for the parties, who must stick to them fairly and with respect for others. When an application is made fairly and with respect for the other parties it holds the attention both of the other parties and of the person who is required to rule on the application. This applies both to prosecuting advocates and for those of the defence as well as for the judge who is making the ruling, who must comply with the same rules of conduct.

The scope of advocacy is therefore to create an etiquette of respect and fairness in the trial which is a stage on which the most passionate of human emotions are played out. A second objective of advocacy is the concern for the most correct application of the rules. The advocate's conduct will be all the more correct and fair if the application of the rules are strictly observed . The parties must without exception acquire a profound knowledge of the development of the proceedings to be able to speak, object or make a challenge at the correct moment.

Ethics

The relationship between the parties in a trial is often distorted by personal involvement. Advocacy imparts a message of impartiality and distance in order to render the contribution of each party more impartial and less oppressive.

Advocacy and Review

In the criminal trial the parties become the protagonists, arguing their points through communication and persuasion.

Communication is the instrument which is used to make contact with the audience, in whatever stage, moment or phase of the civil or criminal proceedings. It represents the static method of dialect, aimed solely at achieving the results.

Advocacy is the combination of communication and persuasion, an instrument with which every advocate must be familiar in order to put across his argument with style and obtain the best results. The term advocate covers any type of legal representative, whether on the side of the defence or the prosecution.

Simulation

The training course aims to:

Teach rules of conduct

Demonstrate principles of social communication

Suggest techniques of examination in chief and cross examination to improve the ability of the public speaker

The training is designed for groups. The ideal group is made up of 5 people. The principle is role-play.

Each participant will be given a role, either defence or prosecution, which they will maintain throughout the course. At the same time, each one will also be given other roles which are needed for the exercises.

The role play is based on case studies which are adopted in every course.

At the beginning of the course every participant receives the case study material and a videocassette which must be used during the individual exercises.

The individual exercises are carried out as part of the group and with the help of the tutors.

The presentation is based on the following rules which represent a method of teaching based on the principles of **presentation, observation, study and repetition, which is named Review.**

The Review is the presentation on a particular subject carried out by one of the participants with the assistance of the videocamera.

Review phase

Headnote:	Identification of the problem
Playback:	Examination of the individual performance
Rationale:	Identification of the reasons for the problem
Prescription:	Suggestions by the tutor

Demonstration: Brief demonstration by the tutor who shows how the performance could have been carried out correctly

Replay: Opportunity to repeat the presentation

During the replay phase the participant must be able perform the exercise in a better way.

At the end of the presentation, which should have lasted about 30 minutes , and in which all the participants will have been involved, each person will have the opportunity to compare their own presentation with those of the others.

This also applies to each intervention which the lawyer makes during the trial, both as performer and observer, and as defender or prosecutor.

At the end of the course and following various repeat performances the participant must be able to carry out the final roleplay in front of real judges. Each group must be made up of 5 people.

Every group is led by two tutors:

Equipment required: 5 video cameras

10 televisions sets

Structure for presentation

10 rooms for group exercises

1 large meeting room (for 70 people) for tutors, lecturers and participants

Accuracy during every presentation and meeting is vitally important.

It is also fundamentally important that the courses involve advocates for the defence, prosecution as well as judges to ensure collective training .

Training Need Analysis (TNA)

The subject of the presentation may be the result of preliminary research in which all those taking part in the course will be involved.

This phase is called **Training Need Analysis (TNA)**

The TNA must involve all participants at plenary meetings. The TNA will be carried out over more than one session.

For example:

The participant carries out the role of the prosecutor or defence advocate.

The TNA identifies the need for presentations on particular subjects.

This phase is based on a preliminary study which should precede each training course

It is important to identify the particular areas needed to work on to improve the professional ability of the participant.

A preliminary training study can identify the topics which will be the subject of the presentations, but carrying out a training need analysis actually involves, in terms of the organisation of the course, the precise areas of work and the priorities. Basically, if the TNA reveals that the priority of the presentation should be the examination in chief and cross examination, those areas will take priority over other areas.

To develop training need analysis sufficiently it is necessary to involve all those who work in the legal system, both those who play an active role as well as spectators, including advocates, judges, court staff, witnesses, defendants and the general public.

The TNA is developed over various sessions and the results of each single session will be amalgamated and analysed together.

Example of TNA:

A number of witnesses are gathered together and invited to make their observations on the prosecution and defence advocates or the bench, both regarding the professional aspect of their work as well as their conduct.

The result of the TNA will be the subject of the presentations. The subjects of the exercises may include any of the following:

Trial analysis, research and evaluation on the duration of the case, strategy and significance

Analysis of the various phases of the trial

Organisation and presentation of the trial

Knowledge of procedure and improvement of tactics

Relationship with clients

Relationship with the bench and with the other parties

Relationship with the public

Examination in chief and cross examination

Appeal procedure

Communication and persuasion

Discussion

Investigation techniques

Aspects of professional conduct

The court room is a place where many of those working in the legal system (judges, defence advocates, legal assistants.) are involved in a case involving a human life. For this reason it is important that all those entering must maintain respect, silence and courtesy.

General rules

- 1) Greet respectfully (perhaps with a nod) when entering and leaving the court room;
- 2) Never speak to colleagues or other persons or cause any disturbance during the trial
- 3) Do not comment on other trials or their conduct
- 4) Ensure the mobile phone is switched off
- 5) Attend court dressed appropriately and formally

6) Do not read newspapers or magazines during the trial. It is permitted to consult legal textbooks or files relevant to the trial in progress.

- Particular rules –

- do not interrupt the other party during examination in chief, cross examination and re-examination except in the case of making a challenge
- when putting questions using a low tone in a clear voice, not deafening or shrill
- use a low tone form the words at the base of the throat
- when beginning to speak it is always preferable to stand up
- always wait for the presiding judge to allow you to speak
- in making a challenge it is sufficient to use the word ‘objection’ without explaining the reason. If the presiding judge asks, explain the reason for the objection: misleading question, leading question, irrelevant question, incorrect reply, unfair question, incorrect challenge;
- during the testimony of a witness make notes of questions and replies which could form the basis of cross examination
- always carry out examination in chief with the aid of a note of written questions, and in cross examination use the list of points taken down during examination in chief.
- questions must be concise

- avoid explanations or justifications before posing a question
- before moving on to cross examination check carefully whether it is appropriate to continue and what question to ask . If examination in chief has not been exhaustive, abandon any cross examination such as to require the party which has called the witness to discharge the burden of proof
- do not interrupt the witness during a reply. If the witness replies in a verbose way it is because the question was verbose
- At the end of the contribution make it clear that there is nothing further to be said.

Standard programme for full immersion course (1 week)

<i>Monday</i>	11:00	Meeting of lecturers and tutors
	13:00	Lunch
	15:30	Participants arrive
	17:00	Welcome
<i>Tuesday</i>	09:30	Course presentation
	11:00	Formation of groups
	15:00	Projection
	16:00	Meeting of lecturers
<i>Wednesday</i>	09:30	Demonstration -examination in chief -cross-examination
	11:30	Meeting
	13:00	Lunch
	15:00	<u>Group sessions</u> Examination in chief/ Cross-examination

Each participant must be ready to carry out examination in chief and cross examination (5 minutes per presentation) relating to the problem contained in their personal file.

Presentation venue

Video

Review Rooms

Group A
Group B
Group C
Group D
Group E

17:30

TNA (Main room)

Thursday

09:30

Demonstration of an opening speech, either prosecution or defence.

M. (prosecution)

M. (defence)

Demonstration of an interlocutory application

M.

11:00

Break

11:30

Group session

The participants will prepare :

1- Introduction (which will take place in the afternoon; each participant will have 5 minutes);

2- Application and skeleton argument.

13:00 Lunch

15:00 Group session – Each participant must present:

1- Introduction

2- Application and skeleton argument.

17:30 Lecturers meeting

Friday

09:30

Demonstration of a closing speech (prosecution)

M.

(defence)

10:30 Break

11:00	Each participant must prepare a speech to be presented in the afternoon (about 5 minutes).
13:00	Lunch
15:00	Demonstration of production of documents and professional conduct in court.
16:00	Each candidate must present a closing speech
20:00	Course dinner

Saturday

09:30	Trial.
13:00	Close

Each participant will receive a video cassette with his own name, on which all his presentations will be recorded.

Each participant must study carefully the trial contained in his personal file and must be ready to play any part including a witness.

Each participant is requested to adhere to the programmed timetable

Each participant will be provided with a badge with his name which he must wear at all times.

Conclusions

The advocacy training course is based on a method aimed at the delivery of a new type of training and continuous education, moving from the old style of teaching where participants play a passive role of learning to active participation where the participant is the protagonist.

The old style teacher comes in to play only in certain moments during the course to give instructions and oversee co-ordination.

Once the participant has received his instructions he will perform his roleplay under the supervision of the tutor. Following a series of presentations the participant will improve his style, increase his breadth of knowledge and will be able through self-criticism to work on the areas and functions most relevant to his own development.

As far as the Court is concerned it is worth starting from the beginning given that we are dealing with a new jurisdiction with new law and new history.

We hope in the development of this project to have been able to give some support to the defence of and the administration of justice.

Avv. Paolo Iorio
ASF Italy
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