

Advocacy and the Vulnerable

International Advocacy Teaching Conference
Nottingham Trent University
HH Judge Peter Rook QC

24th June 2016

Pan Profession Course

- Late 2013 Invitation from ATC
- Course design for all those who undertake cases involving the vulnerable
- Barristers/ Solicitors
- Prosecution/ defence
- Publicly funded/legally aided

Daunting task

- 12,000 to 16,000 advocates
- Implementation

Objective

- Design a course that is sufficiently rigorous (a) to ensure that all advocates are completely aware of the appropriate approach to the vulnerable whether witness or defendant
(b) they are equipped to follow that approach

Guiding principles

- Every delegate undertakes some advocacy themselves during the interactive part of the training
- Course must be relatively easy to deliver (constraints of time and cost)

Continued resistance?

- General acceptance that ‘traditional’ advocacy is inappropriate in respect of young/ vulnerable witnesses
- Pockets of resistance
- Lipservice acknowledgement of need for change without actual changing

Long gestation period

- Necessary for consultation (Barnardos, NSPCC, Victim Support, Kids4law)
- Advice from experts in the field of effective communication with the vulnerable/ young
(Michael Lamb, Professor of Child Psychology, Cambridge, Professor John Spencer , Eileen Vizard, Joyce Plotnikoff.)
Materials needed to be considered by intermediaries

Course is NOW ready

- Lead Facilitators are being trained
- Cascade will begin in the autumn
- Delivery by providers in the next 2 years
(The Inns of Court, the Criminal Bar Association, the Circuits, Larger Chambers, Law Society, CPS, Universities?)

Course falls into 2 parts

- Part 1 On-line 4 to 5 hours
- Part 2 Question construction/ Advocacy
- Part 2 can be delivered in approximately 3 hours so that it can be done during a weekday evening.

Part 1 Talking heads/ Ground Rules Hearing

Fulford LJ, Senior Presiding Judge

- Professor Michael Lamb
 - John Spencer on the ground-breaking decisions of the Court of Appeal
- (Critical that all delegates are aware of the firm and clear line taken by the C of A to head off any argument during Part 2.)

Ground Rules Hearing

- End of on-line training
- GRH so the particular needs of each vulnerable witness can be addressed
- Informed by successful s.28 YJCEA 1999 pilots (pre-trial cross-examination)
- 4 vulnerable witnesses
- Judge's ruling giving guidance

Part 2 Advocacy

- To embark on Part 2, essential to have completed the on-line training
- All delegates **MUST** draft written questions for each of the 4 witnesses
- All delegates **MUST** prepare for cross-examination of each witness (although they may only undertake the cross-examination of 1 of the witnesses.)

Question construction

- Critical
- Delegates paired off to discuss each other's questions
- Questions must be relevant
- Questions must be short
- Questions must comply with the Advocates Gateway.

Putting the defence case

- No rule defence case has to be put
- BUT in virtually every case it can be put in appropriate sensitive way suitable for the particular witness
- Experience of s.28 pilots

Advocacy

- Every delegate takes part
- Expense saved by role-playing
- Lead facilitators/ facilitators
- No intermediaries required

Implementation

- 2 years starting this autumn
- Hugely important to demonstrate (i) that the adversarial system can adapt to the needs of the vulnerable and (ii) Special measures (which have bedded down well) are now being matched by higher advocacy standards in respect of these witnesses.

Acknowledgements

- The Course Directors – 2 remarkable criminal barristers Angela Rafferty QC and Gillian Jones.
- The programme director – Lynda Gibbs (ATC, now the Inns of Court School of Advocacy.)

Continuing ambassadorial role

Public relations in respect of all those who deal with the vulnerable throughout the Criminal Justice System

Public education – no more horror stories!

Ultimate objective that this or similar training becomes embedded in every advocates' basic training.