

Book Review

The Devil's Advocate. A short polemic on how to be seriously good in court, Iain Morley (Sweet & Maxwell Ltd, 2005 (reprinted, 2007), £14.95, paperback, xii + 235 pages). ISBN 978-0-421-91480-3.

The first decision made by the author of any new book on advocacy is to identify their audience. Does the author follow the English tradition of books on advocacy as beginner's guides, confined to the oral part of criminal proceedings, or contemplate the novel proposition of a book to instruct the experienced advocate or to deal comprehensively with written and oral advocacy? Mr Morley's book is traditional in concept as a beginner's guide, but defines a new standard for the genre in its execution.

"Advocacy is a skill", namely "the skill of persuasion" (p.6); "[t]he modest aim of this book is to teach you competence" (p.11); "Advocacy without errors is no small achievement" (p.7). In pursuing these objectives, Mr Morley presents the foundations of advocacy as a set of techniques, guided by some professional precepts, to be understood, learnt, practised and perfected by the young advocate. These techniques and precepts are distilled to their essence and presented as briefly and directly as possible. The book adheres to the assumption that the young advocate

will begin to practise in minor criminal proceedings. The challenge in this framework is to place familiar material in the most instructive manner possible, and Mr Morley succeeds brilliantly. Further, and notwithstanding the familiar material and the brevity and charm of this book, it also introduces new and welcome ideas.

The presentation of this book is the key to its success. It is written

"in pretty much my style of speech from when I teach advocacy students. The book should read like I am talking to you, with colour and enthusiasm" (p.2).

The text is set out on the page as if it were a conversation or a relaxed lecture. Short, bulletpoint-like sentences. One point per page. An easy charm, and occasional wry humour. The style achieves the effect of a slow delivery which enters the consciousness easily and with a certain pleasure and is therefore remembered. The structure and style of the book means that it is easy also to refer to and refresh the memory. The "user-friendliness" of the style extends even to its size, small enough to fit in a coat pocket, and so to be on hand for consultation during periods of waiting or travel.

The clarity of the presentation and analysis ensures that the reader can see that advocacy involves choices

and risks, and therefore a responsibility for making difficult decisions. Another strength of the book is its attention to the proper treatment of all other participants in the trial. The techniques of advocacy and the objective of persuasion are applied to other people, and they must be treated with the courtesy, respect, tact or control appropriate to their relationship with the advocate and his case. The chapter on "Tribunal Psychology" (Ch.V) suggests persuasiveness is achieved through assisting rather than instructing the tribunal, so the modern advocate projects themselves as a "facilitator". The next chapter addresses persuasiveness directly, but in repackaging conventional advice on presentation and delivery seems to miss the essence of this much desired quality.

The chapter on case preparation (Ch.VII) explains the imperative of an early draft of a closing speech so as to guide the opening, examination and cross-examination and therefore give a unity to the advocate's case. Different parts of the case require mastery of different techniques. There are different styles of opening and the advocate must know when and how to open "high" and "low" (Ch.IX). Questions should be kept short and confined to a single fact (Ch.XI). There is a particularly succinct discussion of the nature of leading questions (Ch.XII), and the techniques of cross-examination (Ch.XIII) are also covered well. What is said in these chapters might not be novel, but this reviewer has not seen it better done.

What is novel, strange though it might seem, is the insistence that advocacy is a learnt skill, or more accurately a set of learnt skills, requiring practice. Not the traditional concept of practice, which is accumulated

experience at the expense of clients, but practice in the form of learning exercises. Chapter XV entitled "Improving Questioning" describes a "drill" to improve the ability to ask leading and non-leading questions, requiring three participants. Chapter XIX ("Improving Advocacy") describes a method for constructive feedback between friends. "In an ideal world, students of advocacy will receive training in this method from their professional governing body. . . But practising is surely better than doing nothing" (p.220). The importance of these chapters is not simply their practical utility to the novice, but the demystification of advocacy which they imply. In a gentle indictment of the way advocacy has been learnt at the Bar for generations, Mr Morley states that, "Techniques and ideas which a senior by trial and error took years to perfect, could be taught in an early evening" (p.233). The development of advocacy skills is not a rite of passage, as perhaps it has been viewed historically in England (*cf.* David J.A. Cairns, *Advocacy and the Making of the Adversarial Criminal Trial 1800-1865* (Oxford University Press, 1999), p.6), but a set of techniques, aided by certain professional qualities, that are a proper subject for study, instruction and practice. This concept of advocacy has long held sway in the United States, and it is a pleasure to see its introduction, so deft and indeed irresistible, in an English guide to advocacy.

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