

# Advocacy: The Courage Component

By John Lawrence, President, CLANT

When I first started work as an advocate, which was in the equivalent now of Summary Prosecutions here in Darwin, I read all the books and articles I could which “taught” the “Art of Advocacy”. As you would expect some are better than others and I benefited in some way from all of them. Mind you Ian Barker QC’s words of advice still ring in my ears when he told me at my admission dinner how I was to become an advocate. He said the thing you do now is go down to the Magistrates Court for three or four years and have buckets of proverbial poured all over you. No amount of reading and learning can better experience as a way to learn how to be an advocate.

One thing that struck me from most of the books and articles on advocacy which I read was that most of them stressed courage as an important component for an advocate. I didn’t quite “get it” when reading about it but as soon as I started preparing cases and presenting them in court before Magistrates and against more learned and experienced opponents I realised how necessary a part of the armoury it was. And what’s more it’s not something you merely need at the beginning of your learning. It is something you need at all times. It’s not an aspect of advocacy, like some, which through experience you thereby become less reliant. That courage component is required at all times if you choose to continue to be an advocate.

There is no shortage of examples historical and contemporary

which illustrate the component in action. I was recently floored when I read an amazing illustration of this component.

An area of history which has always interested me is Weimar Germany, being the period of Germany’s history from 1919 to 1933. In January 1919 in the small eastern German town of Weimar a democratic constitution for the new German Republic was agreed. That phase of German history lasted only 15 years. In 1934 a certain Adolph Hitler made himself President and proclaimed The Third Reich.

More specific to our profession is the history of the German legal system and how it performed through that period and subsequently in the new Third Reich. That story is not a good story but like so much of history it does present lessons for all for the future. Within that story there is the story of Hans Litten, Advocate.

Hans Litten was a Prussian whose family were prominent and privileged. His father was the Dean of the Law School at Konigsburg. His mother’s family consisted of Lutheran Pastors and University Professors.

In 1931 Hans Litten was running his own criminal practice in Berlin. He was 27 years of age and had been a lawyer for all of 2½ years. He was fiercely political, left and furiously anti-Nazi. He was involved in the major criminal trials which flowed from the turbulent politics of the time. He would often defend



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communist defendants charged with crimes committed against Nazi party members, being crimes of violence committed in beer halls and on the streets of volatile Berlin. He also prosecuted privately Nazi’s, specifically brown shirts for similar crimes committed by them against communists and others.

One trial in particular made Hans Litten famous, sealed his fate and illustrates this component of an advocate of which he had no shortage.

The trial was called “The Eden Dance Palace” trial and it was held in Berlin in May 1931.

Four Nazi brown shirts were charged with attempted murder and other crimes of violence. The particulars were that they had entered the Eden Dance Palace, which was a notorious beer hall for communists and the like, situated in the working class suburb of Charlottenburg, Berlin.

When in there they shot three people who were injured but not killed. The state prosecuted and Hans Litten joined forces to privately prosecute. In those days this was Litten's bread and butter. What was different here was that Litten used his power to subpoena witnesses.

The politics of the time need to be understood to appreciate Litten's stratagem. This was a period when the Nazis were rising in the polls. Thanks in the main to the depression which mangled German society worse than most the Nazis had emerged from being crackpots to potentials. Hitler realized he could win the popular vote and, having been bitten in Munich in 1923 with his unsuccessful putsch and short jail sentence, insisted that the Nazi party was acting legally within the Republic's Constitution. No jack boots, whips or uniforms at this stage. Mr Hitler was seen in 1931 in a suit and tie. "Trust me I'm legal" was his message. He could see the middle class would hop into bed with him if he were able to sell this message. And ultimately of course they did. Meanwhile his rabid storm troopers were on the streets killing, maiming and destroying their political opponents.

Hans Litten used The Eden Palace trial to expose the lie that the Nazi party was a legal political party. The component we are talking about here brought about this stunning hand written document by Hans Litten.

**"In the name of the private prosecutors I request the summoning of the following witnesses:**

**The party employee Adolph Hitler, Munich 45**

**Briener Street"**

The description as employee was deliberately demeaning as old Adolph in those days described himself as "a writer" to distance himself from the gritty party politics.

At the bottom of the document was a signature:

**"Litten. Advocate"**

It was dated April 17, 1931. The trial was on 8 May 1931.

So there you have it: Hitler was 42 and the leader of a surging Nazi party based largely on his own oratory and ability to speak. Litten was 27, a lawyer of 2½ years experience and willing to bring the Fuhrer into the witness box so that he could cross-examine him.

And it happened. The trial was in the Berlin Court House of Moabit, being in the North West District of Berlin and the busiest criminal court in Germany. This was Litten's world. Mr. Hitler and a Stenographer, which illustrates his anxiety, turned up. It was massive news. Thousands thronged the streets around the court house. Nazi storm troopers fought with communists in the streets. Mr. Hitler snuck in the back door with his cronies wearing a blue suit and tie.

And yes, he hopped the witness box and 27 year old Hans Litten had a go. Can you imagine in your wildest dreams standing up to cross-examine Adolph Hitler? Can you imagine being able to stand up? But Litten did and he went for it. There is no official transcript of the trial like we enjoy now. The reports of the cross-examination are from the various stenographic

reports published in the various German newspapers. The first questions actually asked of Mr Hitler were from the Presiding Judge Ohnesorge. Following those Hans Litten stood up and cross-examined Hitler for three hours. The main issue that Litten pursued was the sham of Hitler's claim that the Nazi party was a political party operating legally. He questioned him on the role of a group of Nazi henchmen known as "**Rollo Commandos**", a term from the frontlines of World War 1 that had come to refer to small groups of Nazis whose task was to kill political opponents. The four defendants were members of such a Rollo Commando.

Hans Litten pursued Hitler relentlessly. He used publications from Goebbels that talked about violence and physical retribution to the Nazi party's enemies. At times the reports have Hitler's answers being described as "shouting" and "Mr Hitler, red with rage".

Other witnesses followed Mr Hitler and the verdicts were for three of the defendants not guilty of attempted murder but guilty of breach of the peace and trespass. The other defendant was acquitted of everything. The three defendants were each sentenced to 2½ years jail.

Of course that's not really the point. Hans Litten's employment of the component sealed his fate.

His mother, Irmgard Litten, wrote her son's biography and called it "**A Mother Fights Hitler in the UK**". In it she makes two chilling comments:

"Hitler's first victims were Germans", and the



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## CRIMINAL LAWYERS ASSOCIATION NORTHERN TERRITORY (CLANT)

Kafkaesque Line "My son was arrested on the night of the Reichstag Fire".

The Reichstag Fire was on 27 February 1933. By that time Hitler was Chancellor but not yet President or Fuhrer. The next day Hitler issued a decree suspending all civil liberties and declaring a state of emergency. The game was up and Germany became thereafter lawless.

Litten was on a list already drawn up. At 4am the next day he was arrested in his flat by German Police and taken into what was described as "protective custody". He was never released.

Litten's subsequent story of his period of incarceration is again full of raw courage and resistance. Typical of the man he was warned by friends and family to leave Germany well before his arrest. Hitler hated lawyers and had been publicly humiliated in the witness box by this Advocate. Litten was

a marked man and he knew it. But he remained in Berlin practising advocacy until his arrest and incarceration in various concentration camps. During that period he was beaten and tortured. He refused to give information about his former communist clients. To avoid answering questions he attempted to take his own life by slashing his wrists only for his captors to revive him. He attempted a gallant escape but was unsuccessful. He lasted five years. Throughout that period he was unfailingly generous and a loyal comrade to his fellow prisoners. He shared the food packages and the money that his family sent him.

A one man university, he taught his friends, most of them working class young men who had never had a chance at higher education, about literature and art. When Jewish prisoners at Dauchau were locked in their barracks for weeks at a time Litten kept them sane by reciting passages from the works of favourite authors,

all stored in his photographic memory, and lecturing in a wide range of subjects.

His dedication to his fellow prisoners and his passion for the life of the mind were also forms of resistance, humane, stubborn and unrewarded.

On 5 February 1938 after enduring five years of torture and mistreatment Hans Litten hung himself in the latrine of Block 6, Dauchau Concentration Camp.

In recent years Litten's contribution to advocacy and the rule of law have been acknowledged in Germany, Europe and the rest of the world.

Since 2001 the German Bar Association has had its head office in Berlin in a building called Hans Litten House which stands on Hans Litten Street.

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