

# **A defence advocate's commentary**

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## **Introduction**

As a Solicitor and Higher Court Advocate I draw upon forty seven years of experience as a criminal defence practitioner and advocate at both Magistrates' and Crown Court levels. To an ever-increasing extent that experience has included both interpreted cases and those with prison video link. When PVL was first introduced, it was professed to have been for non-evidential intermediate hearings only; then that was changed to include sentencing hearings subject to the consent of the defendant; shortly afterwards it was extended again to include sentencing hearings with no consensual requirement. I should add that these developments soon came rigidly to be applied whether or not the hearing was to be through the medium of an interpreter.

I find PVL a dehumanising experience. Recently, a client of mine was sentenced by video link to seven years' imprisonment. The case did not call for an interpreter but no matter. An overnight late listing for an appearance and sentence at 10.00 a.m. at the Crown Court had after close of business for the day been retimed for a live hearing scheduled for 2.15 p.m. that same day. The defendant's extended family had been notified of the original 10.00 a.m. listing by my office, and had attended for the morning session only to have me inform them of the delay; I had been made aware of the listing change too late to have been able to notify them of it until the morning, when encountering them at court. In the event, through close and persistent enquiries of the Court office that same morning I established that the hearing was to take place, not "live" but by video link. The sentencing process involved two defendants, each with his own advocate and each with extended family in attendance. The "courtroom" at the prison was designed for one defendant to be sentenced at a time; clearly these two defendants had to be sentenced together. Accordingly, a further chair and a second defendant were produced, so that both were squeezed on to the screen like a quart into a pint pot. The families were present and as I imagine able to see and hear the defendants. However, I find it inconceivable that the defendants would have been able to see their respective family members; had I not confirmed the presence of the client's family at the commencement of my address to the court my client would have had no way of knowing of their presence and interest on his behalf. Both my fellow advocate and I were able to address the Judge in extenuation of sentence; clearly, the family and friends present would have been able to hear us both. Afterwards there was no opportunity afforded me for a post-sentencing conference. I had had a video link conference with the defendant immediately before the

hearing but my major undertaking during it was to persuade my sceptical client that the juggling over listing arrangements and their ultimate impersonal nature were scarcely at my instigation and, rather, much to my disapproval. From their attitude towards me afterwards it rapidly became plain that the family and friends believed that my fellow advocate and I had colluded in these demeaning arrangements for our own reasons or convenience whereas nothing could have been further from the truth.

I am quite satisfied that this coarsening and dehumanising of the court process has speedily become the accepted norm. As to the architecture of the court and the positioning of participants in interpreted cases by video link, an interpreter seated at the Judge's or Magistrates' Bench would, in the eyes of the defendant or of any member of the public present, tend to impugn the independence and thus the integrity of the interpreter, or in my view ought to do so. A position next to the crown prosecutor carries with it the same negative; as arguably would similar proximity to the legal adviser to the court. Of all available options, proximity to the defence advocate is the least objectionable from the defendant's point of view, whilst acknowledging the problems of speaker-image mismatch. This is a technical problem, which should be addressed. With regard to the rationales of pre-and post-court consultations, defence advocates often have to insist in order to secure post-hearing opportunities; indeed, quite frequently the video link time allotted to any given case may have expired on the conclusion of the hearing, thus precluding any post-hearing consultation. Well-meaning though under-informed Judges and Magistrates, legal advisers and advocates do indeed, in my experience, fragment their speech in an unnatural manner, which adds to the complexity of the interpreter's task and makes court hearings more time-consuming.

Appendix 4 (pre-court consultation) strikes a distinct chord of memory with me. Some years ago, in a West Midlands Magistrates' Court in England, the interpreter and I were in a tiny pre-court consultation booth, passing the telephone handset between us for each turn. In this way I asked my question of the client and then was forced to relinquish the handset to the interpreter, so that she could interpret the question and receive the Client's answer, then interpret it for me. We were forced to repeat the process turn by turn as many times as I had questions to pose, or advice to administer. The whole process might best be likened to passing the baton in a relay race. The booth would have been a snug fit for either interpreter or advocate though not both and so this demeaning process had to be conducted with the door to the booth held wide open. Demeaning it may have been, but, worse, all pretence of confidentiality was forfeit. The court manager had issued a directive for the video link to be employed for all intermediate hearings, whether or not interpreted. On the hearing immediately following upon this consultation hearing, I urged the Magistrates to direct the defendant's production at the next hearing citing the above dilemmas and shortcomings, only to have them direct otherwise. It was only by written representations to the Area Director that I was able to have the court's direction countermanded. It is my contention that this demonstrates wanton ignorance and certainly heedlessness on the part of senior court personnel and indeed some other tribunals. Indeed, I go further: their aim in my firm view was to render the defendant's role as secondary and subordinate to the court's process as possible.

I am often acutely aware of the indifference to and acquiescence in discriminatory practices in the court on the part of many of my fellow defence advocates, who could and should identify communication problems to the court and fail to do so. I concur with

the perceptions and conduct of the defence advocate interviewees in appendix 10 of the preceding article, and, moreover, it is my view that bringing communication issues to the attention of the court is an inherent and indispensable part of any defence advocate's role.

A further under-regarded feature of video link hearings generally is the entitlement of observers in the public gallery (including friends and relatives, whether of the alleged victim or of the defendant) to see and hear everything that is happening in the courtroom. There are some courtrooms where family members who are present in the public gallery cannot even see the image of the defendant on the PVL. In addition, audibility is often poor. There is also inadequate or no sound equipment in the areas around the glass-screened docks. I frequently ask my client, the defendant, if s/he can hear, and, if not, I bring this to the attention of the court immediately. Equally, I complain if I become aware of the inability of those in the public gallery to hear what is transpiring in the name of their society. It is interesting to note that even in newly built courts audibility and visibility have not been taken into consideration, with some docks recessed deep into the rear walls of the courts and the public's direct view of the dock obstructed.

In my view, it is the clear duty of the defence advocate to ensure that all defendants can hear, see and understand legal proceedings, and this duty extends to bringing this to the attention of the court. Too many advocates do not enquire at the pre-hearing stage and later (if still necessary) in open court about an interpreter's suitability, qualifications and training, nor do they intervene when they see interpreters unable to cope with long stretches of discourse, or indeed, not interpreting at all. Defence advocates (alongside magistrates, judges and crown prosecutors) must accept that communication in court is a shared responsibility and they ought to be trained to work with interpreters so that justice can properly be done.