

In the Dock

Reassessing the use of the dock in criminal trials

A report by JUSTICE



Established in 1957 by a group of leading jurists, JUSTICE is an all-party law reform and human rights organisation working to strengthen the justice system – administrative, civil and criminal – in the United Kingdom. We are a membership organisation, composed largely of legal professionals, ranging from law students to the senior judiciary.

Our vision is of fair, accessible and efficient legal processes, in which the individual's rights are protected, and which reflect the country's international reputation for upholding and promoting the rule of law. To this end:

- We carry out research and analysis to generate, develop and evaluate ideas for law reform, drawing on the experience and insights of our members.
- We intervene in superior domestic and international courts, sharing our legal research, analysis and arguments to promote strong and effective judgments.
- We promote a better understanding of the fair administration of justice among political decision-makers and public servants.
- We bring people together to discuss critical issues relating to the justice system, and to provide a thoughtful legal framework to inform policy debate.

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Executive summary

The use of the dock for adult defendants in our criminal courts is unquestioned. Secure docks – with high walls made of glass panels – are most common, although some defendants will be held in open, wooden docks. While some courts will allow the defendant out of the dock in narrow circumstances, this is a far from uniform practice. Despite their use being an accepted norm, particularly among the legal profession, the dock has not always been so embedded within the courtroom.

The established use of docks was not cemented until as late as the 1970s, while the secure dock now in use did not arrive until 2000. Even today, there is no statutory requirement or judicial authority requiring their use in our courts. Rather, it is simply recommended Ministry of Justice policy that they be available in all criminal courts. The rationale for these increased security measures in recent decades has not been documented in the public record.

JUSTICE is concerned that the use of the dock impacts upon the defendant's right to a fair trial, in particular: effective participation in one's defence; preserving the presumption of innocence; and maintaining dignity in the administration of justice. These rights have long been protected by our domestic legal system, the European Convention on Human Rights and international human rights law.

Notably, a number of other jurisdictions, including those that share our common law heritage, have abandoned the use of the dock. These jurisdictions offer useful examples of discreet and humane alternatives, which are used on a case-by-case basis. Available statistical evidence for the Netherlands and the United States demonstrates security incidents rarely occur, and the same can be expected of England and Wales.

Moreover, the adverse impact of the dock on the defendant's right to a fair trial has been explicitly recognised by appellate courts in both the USA and Australia; in fact, the rejection of the dock in the USA is safeguarded by reference to constitutional guarantees. The findings of a recent experimental study in Australia aimed at assessing the prejudicial impact of the dock on juries further support JUSTICE's concerns.

In light of our legal obligations to secure the right to a fair trial in practice – and taking into account the experience of comparative jurisdictions – JUSTICE calls for reconsideration of the use of the dock in our criminal courts. At a time when HM Courts and Tribunal Service is reviewing the use of its estate, attention should be given to how our courtrooms are designed, by reference to actual need, rather than tradition.

Recommendations

1. There should be a presumption that all defendants sit in the well of the court, behind or close to their advocate;
2. Open docks should no longer be used and defendants should sit with their legal team;
3. Where security concerns exist, a procedural hearing should be held to satisfy the court that additional security is required;
4. In cases where there is no security risk, defendants should also sit with their legal team;
5. We invite the Lord Chief Justice to consider issuing a practice direction with regard to the above recommendations;
6. We invite HM Courts and Tribunal Service, the Ministry of Justice and other appropriate agencies to explore alternative security measures to the dock, mindful of the need for such measures to be concealed from the judge/jury and comfortable for the defendant; and
7. We invite the Ministry of Justice and other relevant agencies to review prisoner escort custody contracts to ensure appropriate security can be supplied to the courtroom.

Introduction

The defendants sit in this dock because... [i]t is the way in which the court is laid out and it certainly is nothing to...a defendant's detriment that he sits in a dock. It is convenient from the court layout, as it is convenient for me to sit there and you to sit there and he then to give evidence.¹

Such a direction will be familiar to criminal court advocates. Its intention is to avoid juries prejudicing the defendant during criminal trial as a result of where they have been ordered to sit. This in itself indicates that there may be a problem with the dock, known to the legal profession, but largely ignored. The direction goes on to assert that the defendant does not suffer any detriment from the dock. But do the parties at trial actually consider whether defendants will be affected by it?

Judicial discretion determines whether a defendant should be placed in the dock. While some judges and magistrates will consider the exercise of their discretion in individual cases, there is no uniform guidance on how the question of security should be addressed. The standard approach therefore is that all adult criminal defendants remanded in custody are placed in a secure dock for the duration of their trial. The secure dock resembles a large glass box, with high walls made of glass panels. If the defendant is not remanded in custody, he or she will almost always appear in an open dock, rising to waist height.



A standard magistrates' court with secure dock to the right.

In this Report, JUSTICE examines the emergence of the dock in criminal trials, and its recent transformation into the secure dock. We question its need and its impact on the fairness of the trial, as well as its interference with the dignity of the accused person who is, of course, innocent until a pronouncement of guilt.

On entering court it is hard to avoid the presence of the dock as it dominates the room. A brief trial visit can demonstrate that a person encased in the dock is isolated from the proceedings. As a consequence, an independent observer would struggle to avoid the impression that the enclosed defendant appears guilty.

The advocates and tribunal are concerned with the fair presentation of evidence during trial, and as such are focused on the papers before them, or the evidence given in the witness box. The jury, however, is in the position of the independent observer. Invariably new to the courtroom, for them the dock can be a formidable unknown.

The dock has failed to elicit much critical comment, at least partly because it is not a primary focus for the legal practitioners in the courtroom. The use of the dock in criminal trials has quickly become an accepted norm, and as a result its use is rarely challenged. In this manner, the dock as a standard element of court design has simply become ‘part of the furniture’. This is perhaps surprising when it is considered that the dock also inhibits communication between lawyer and client.

The dock has not always been so embedded within the courtroom; its history is rather brief when positioned along the timeline of our common law heritage. Even today there is no legislative or judicial requirement that courts utilise docks. A number of common and civil law jurisdictions do not use the dock at all. In the United States of America the dock is seldom, if ever, used.

The reason for the modern, widespread use of the dock is to prevent escape or violence. Therefore, what started out as a mechanism of delineating places in the courtroom has, in our view, become a disproportionate solution to meeting this perceived threat. Moreover, this threat does not appear to be borne out through evidence. A growing body of academic criticism, supported by empirical evidence, maintains that the use of the dock has a direct bearing on the fairness of the criminal trial. While security concerns and the prevention of witness intimidation are necessary considerations, in JUSTICE’s view,

the enclosure of the defendant in the dock in all circumstances is a wholly disproportionate response that undermines the fairness of the proceedings.

As the conclusion to this Report demonstrates, JUSTICE believes that the justification for the use of the dock is flawed. It risks an unfair trial by preventing effective participation in one's defence and offending the presumption of innocence. Furthermore, it undermines the sense of dignity in the administration of justice. We expect that, ultimately, removing the dock from criminal courts would allow for more flexible use of the court estate and provide cost savings to Government. At the end of this Report we set out recommendations for reform that would see an end to the use of the dock.

Emergence of the dock

It is often assumed that the dock is the traditional and necessary place for the defendant, determined through judicial or parliamentary process. As a consequence, it is accepted by society, not least the legal practitioners appearing in the courts every day. It is not often that they will make applications for their client to come out of the dock and sit at the bar table and almost unheard of that they will challenge the dock on appeal.

However, the use of the dock is not based on long standing precedent. On the contrary, its presence in our courtrooms was not standard until relatively recently. Extensive research by Professors Linda Mulcahy and David Tait has found that prior to the 1980s there was little consistent practice in the use of the dock in criminal proceedings in England and Wales.²

Historical development

Accused people in England and Wales have long been excluded from the ‘bar’ (now ‘well’ of the court) during criminal proceedings. This was the court’s inner space, within which justice was deemed to be done and this largely remains the case today. In the early trial system this designated space was occupied solely by the judge and court officials, but it gradually expanded to accommodate lawyers.³

It was not until the seventeenth century that a separate enclosure for the criminal defendant began to be used and even following the introduction of the dock, its use in courts was sporadic and patchy. Its development is likely the result of a need to distinguish the defendant from the public, who also gathered at the other side of the bar.⁴ As trials became lengthier, those waiting to stand trial started to be held outside of the courtroom, until the court was ready to hear their case. By the 1840s a separate corridor led the defendant from the cells to the dock in most Assize courts and Quarter sessions. During the nineteenth century, docks gradually became more elaborate and fortified, the structure of some dominating the courtroom.

The dock's design and positioning differed between courts; nor was it used in all criminal proceedings. Multipurpose spaces such as shire and town halls continued to play host to criminal trials throughout the nineteenth and twentieth centuries where there were no separate enclosures for defendants.⁵ Even where docks did exist, few resembled the fortified structures seen in our courts today. In magistrates' courts the dock was often little more than an iron rail,⁶ or a small platform surrounded by a railing.⁷

During this period, a gradual separation of lawyers and their clients in the courtroom also began to take place. It is worth recalling that defendants were not allowed to be a witness in their own defence until 1898⁸ as they were not deemed reliable. Until about 1730 defence lawyers were not generally accepted in criminal proceedings⁹ and permission to address the jury directly only arose from 1836 onwards.¹⁰ As defence barristers took on a greater role in the adversarial process and started to demand more space within the courtroom, they came to be the 'main actors' in the criminal trial. An innovation in court design by John Soane then saw lawyers placed in rows facing the bench, with their backs to their client. This quickly became a popular design during the nineteenth century and it became routine for lawyers to sit in a separate part of the court to their client with their backs to them.¹¹ It seems, therefore, that the emergence of the open dock in England and Wales, and consequentially the gradual marginalisation of the defendant within their own trial, can be explained by the necessity to identify the defendant, the rise in the right of the defendant to legal representation, and grand architectural design, rather than any concern to preserve security.

The established use of the dock was not cemented until as late as the 1970s, when national guidelines provided for its uniform position at the rear of the court, enclosed on three sides, and recessed into the wall.¹² The standardised installment of the dock took place in the aftermath of the Beeching Commission.¹³ The Commission recommended the abolition of the Assize system, the establishment of the Crown courts and the centralised management of judicial property. A large-scale, centrally coordinated court-building programme followed. This programme led to the creation of the first government planning guide for courts, a process through which architects,

civil servants and the judiciary were encouraged to combine their collective experience of court design into templates for uniform application. The rhetoric which permeated this process emphasised ‘democratic design principles’ and focused on ‘lightness’ and ‘dignity’.¹⁴ Despite this apparent progression towards modern, inclusive and approachable court design, the use of the dock was not questioned and, in fact, became firmly entrenched.

Secure docks

The process of securing docks began in 1985 with the use of a rolling bar top to prevent defendants from climbing into the well of the court. The dock remained in an alcove placement at the rear of the court. Likewise, the writing desk in the dock was removed for fear that the defendant would use it as a step to get out of the dock. The rolling bar was subsequently replaced with a glass ledge. The dock also moved out of its alcove and into the room in a peninsular arrangement where it was only connected to, rather than embedded in, the wall. The Home Office recommended the installation of glass barriers atop the dock as a consequence. The secure dock familiar to practitioners today was only initiated through a pilot scheme as late as 2000. Since then, the *Court Standards and Design Guide* has required that either ‘standard’ (open) or ‘secure’ docks be available in all criminal courtrooms, dependent upon ‘security needs’.¹⁵

The rationale for these increasing security measures and their almost universal roll out has, so far as we are aware, not been documented in public record. Research to date suggests that there is a paucity of rigorous data demonstrating that the threat of violence on the part of the defendant or attempts to escape the dock are regular problems. Likewise, incidents of public harm towards defendants are rarely known. While there may have been localised security concerns that led to the development of secure docks, it is not easy to discern an ongoing justification for their blanket application.

There continues to be no statutory requirement or judicial authority demanding the use of docks in the courts in England and Wales. It is simply recommended policy that docks be available in the courtroom. It is therefore entirely within the discretion of the courts, upon application by the defendant, or upon their own volition to dispense with the dock in any trial and allow the defendant to sit with their legal representatives.¹⁶ In reality, the vast majority of defendants are put in the dock whether charged with minor or serious offences. This was seen

particularly starkly when three MPs appeared at court on charges of expenses fraud in 2010, and despite a request by their barrister that they be excused from the dock, the Chief Magistrate at Westminster determined that to be the usual place for defendants to sit:

It looked slightly like the bulletproof conservatory the Israelis built for Adolf Eichmann. A tiny woman, a court attendant, locked them in, possibly in case they tried to flee in time for a crucial Commons vote.¹⁷

Most court buildings now only contain courts with secure docks, though some large ones have both. This means that people who are no risk at all may be required to sit in the dock. In Crown courts, the recommended design puts the dock at the back of the room, while in the magistrates' court it is at the side.¹⁸ There are examples in magistrates' courts of bailed defendants being allowed to sit behind the advocates' benches, or elsewhere in the well of the court, perhaps as no open dock is available.¹⁹ Some magistrates' courts continue to have no dock at all and consideration is given as to whether a case should be held in a secure courtroom. In a survey conducted by Dechert LLP (the Dechert questionnaire) for this report, which shows a snapshot of current practice and attitudes, the majority of barristers said that their clients had rarely been allowed out of the dock. When they were, it related to specific types of crime, notably long and complex fraud cases, or the defendant's age or disability.²⁰ However, almost all said that the defendant was required to sit in the dock for jury empanelment and verdict, suggesting that the dock continues to hold a formal purpose in all cases.

Challenging the use of the dock

There have been relatively few challenges to the use of the dock in England and Wales, neither on a policy level nor through the courts. Historical challenges have been found in court reports in the eighteenth and nineteenth centuries, with the presiding judge acceding to requests to enter the bar and sit beside counsel from those hard of hearing or accused of a misdemeanour rather than felony, or for litigants in person. However, there are no reported challenges in modern times.²¹ A number of law reform campaigns in the 1960s and 1970s gained some traction but did not succeed in influencing meaningful change. It now seems that an invigorated challenge to the use of docks, led by the practitioners

in the courtroom, is necessary. This has already started to emerge,²² supported by concerted academic effort. The higher threshold for legal aid eligibility may also result in more litigants in person, whose positioning in the courtroom will have to be re-visited.

Other jurisdictions

It is perhaps unsurprising that the positioning of the defendant in a criminal trial is far from uniform across other jurisdictions; as with the trial itself, security and demarcation has been approached in varying ways. Different practices regarding the dock are apparent in both common and civil law jurisdictions. It is true to say that England and Wales is not alone in using the dock; several countries use a similar glass structure to that used here.

However, a number of jurisdictions manage security concerns without relying on the dock, including those that share our common law heritage and continue to hold adversarial, jury trials. The staunchest example is the United States where the defendant appears next to counsel at the bar table. In Ireland, South Africa and the Australian Capital Territory – all common law jurisdictions – the defendant sits just behind, or next to the bar table, also unconstrained. A similar situation can be witnessed in Denmark and the Netherlands.

A range of comparative experience, without being comprehensive, is considered in more detail below and throughout this report.

Europe

Many European nations have applied more draconian security systems than that adopted in England and Wales, but are now moving away from these. A ‘metal cage’ has historically been used as a standard security measure for defendants appearing before a court while in custody in a range of predominantly Eastern member states of the Council of Europe, such as Armenia, Azerbaijan, Georgia, Moldova and Ukraine. Armenia and Georgia have now abandoned its use. Moldova and Ukraine are in the process of doing so, replacing with ‘glass or organic glass screens’. Azerbaijan continues to use the ‘metal cages’, although they have been replaced with ‘glass barriers’ in some courts. Some other member states use ‘cages’ for security reasons in certain circumstances or in certain courts. For example, in the Serious Crimes Court in Albania the accused

may be placed in a dock enclosed by metal bars. In France, some courts use glass docks, which in rare cases are reinforced with steel cables and only used pursuant to a decision by the presiding judge of the court. In Latvia, although a minority of tribunals still have metal cages, that practice is falling into disuse. In Italy, metal cages installed in the 1980s for trials of alleged mafia or terrorist group members are no longer used.²³ In other European jurisdictions, such as Denmark, Ireland and the Netherlands, it is not used at all.

Ireland

Ireland's history was of course linked with the British experience until the 1920s, and the dock emerged in Ireland's courts in a similar way. However, following independence courts were largely built without the dock.

In Irish courtrooms the defendant sits in a designated area opposite the jury and close to their legal representatives, without being enclosed and without prison guards. In the District Court, where a single judge has sentencing powers up to two years, defendants are permitted to sit in the public benches.

The dock remains in historic courthouses, such as Green Street in Dublin. From the 1980s onwards, Green Street housed the Special Criminal Court, which comprises judge only trials. The defendant continued to be placed in the dock, flanked by prison officers. However, on occasion, the Court would accept applications for the defendant to sit outside of the dock, adjacent to their lawyers. These trials were transferred to the Criminal Courts of Justice five years ago, where the courts do not have secure docks, though the seating for the defendant is surrounded by what some may consider to be an open dock.²⁴

Netherlands

There is no evidence of docks ever having been used in Dutch courts. Before the 1970s the defendant was positioned behind a waist high fence, and had to stand there during the entire trial. In 1971 this practice was abandoned. Since then, defendants have sat in front of the judge. Their lawyer sits either next to them, or behind them. Direct contact between lawyer and client, as well as the judge, is possible in all cases.²⁵

The United States of America

Despite its shared common law heritage with England and Wales, the United States abandoned the use of the dock almost completely, half a century ago. For this reason it is a useful jurisdiction to consider, both for the principled arguments made against the dock and also as a source of viable alternatives. The United States has the largest prison population in the world,²⁶ with many more serious offences being tried there than in the UK. Nonetheless, defendants are not put in a dock – secure or otherwise – during trial. Accused persons sit at the table with their lawyer, without any visible sign of shackling or confinement. Docks are not used in federal courts, are unheard of in 42 of 50 states, and are only used sporadically in the remaining ones.²⁷ Despite heightened security concerns, this position was not affected by the 9/11 terrorist attacks. In a recent study, at least one respondent admitted having to look up the definition of ‘dock’, while others described the practice as ‘an anachronism’, and ‘extreme’.²⁸

The dock never filled an integral space within US courtroom design, certainly not in the wholesale manner now seen in the courts of England and Wales. There are a number of likely reasons for this, one of which is that when the American colonies were first being established under English rule in the seventeenth century, the dock was still a rarity in the English courts, and so there was no practice to imitate.²⁹ More compelling for our purposes, the rejection of the dock is embedded in constitutional guarantees, indicative of the struggle against colonial powers and due process abuses.³⁰

Australia

Most states in Australia still permit and use the open dock in criminal proceedings. Most jury trials do not use the glass dock, although the majority of courts have some form of secure dock. Ninety five per cent of matters are heard in magistrates’ courts, and for the majority of these, defendants sit at the bar table, or just behind it. In the Australian Capital Territory all defendants are able to sit directly behind counsel. While in the majority of Australian states the practice of placing the defendant in some form of dock is therefore ongoing, there has been an increase in research and the collection of empirical evidence concerning the dock.³¹

Far from justifying resort to the dock, this mixed practice demonstrates that there are a range of approaches which can be taken to ensure the security of all the participants in criminal proceedings – the dock is just one, and perhaps the most draconian, of these. A significant proportion of the jurisdictions that still put defendants in a separate enclosure for the duration of the trial have begun to consider the implications of doing so.³²

What emerges from a consideration of the history of the dock and its use in other jurisdictions is that there are different approaches to the layout of the courtroom and role of the defendant in it. Far from clear is that the dock serves an ongoing, legitimate purpose in the modern criminal trial.

Procedural rights of the accused

The right to a fair trial has long been recognised in the courts of England and Wales. This incorporates the fundamental safeguard of the right to be presumed innocent until proven guilty, the burden upon the Crown to prove the ingredients of the offence, and the right to remain silent. It also includes the right to mount a defence and have the assistance of counsel to do so, as well as in the last 60 years, the right to legal aid where the defendant is unable to pay. Equally intrinsic to the justice system is the respect for human dignity. These principles are enshrined in the European Convention on Human Rights and in international human rights law, but drawn heavily from our common law values and safeguards. In order to ensure that a trial is fair in practice, these principles have to be effective, their exercise facilitated by the court, and their importance respected not undermined.

JUSTICE has three key concerns with the dock. These relate to the way in which its use may impact upon the defendant's right to a fair trial: in relation to effective participation in one's defence, preserving the presumption of innocence, and maintaining dignity in the administration of justice.

Effective participation

For a trial to be fair, a defendant should be able to participate in the proceedings in a number of ways. Article 6 of the European Convention on Human Rights³³ (ECHR) requires that the defendant be able to understand the nature of the charge laid against them; be appointed a lawyer; have the benefit of an interpreter; have adequate time to prepare a defence; be able to defend themselves; and be able to challenge the prosecution. The European Court of Human Rights (ECtHR or Strasbourg court) considers the principle of equality of arms as one of the features of the wider concept of a fair trial, meaning that each party must be afforded a reasonable opportunity to present his case under conditions that do not place him at a disadvantage vis-à-vis his opponent.³⁴ The rights in the Convention must be effective in practice.³⁵

The use of the dock in criminal trials interferes with the proper enjoyment of these rights. The dock essentially excludes the defendant, placing him or her in a structure which is physically removed from the proceedings. Locking the defendant away in the dock in all courts unfairly distances the defendant from

their legal representatives and prevents them from meaningfully taking part in their own trial. Putting forward a defence is not just about speaking from the witness box, especially since the right to silence affords the defendant the right to choose whether to speak at all. In the adversarial system, the evidence that can be relied upon primarily comes from live witnesses who are led through their evidence at trial. This makes the role of the defendant far more significant than in the civil systems where the dossier of evidence is prepared pre-trial with little witness evidence given during trial. Even then, in the Netherlands, for example, importance is given to the ability of defendants to interact with their legal team throughout the trial process, sitting defendants next to or in front of them.

Communication with legal representatives

The positioning and fortification of the dock in England and Wales makes it very difficult for the defendant to communicate with their lawyer during the trial proceedings. Every legal practitioner in the criminal courts is familiar with the efforts of defendants to communicate from behind the glass at the back of the courtroom. The defendant in the secure dock can only communicate by passing notes via security officers in the dock,³⁶ knocking on the glass, or gesticulating in an attempt to grasp the attention of their lawyer. It is often the judge who notices that the defendant wants to communicate with their lawyers, and must draw attention to it. This difficulty in communicating has arguably been exacerbated in recent years as legal aid cuts have meant that solicitors or solicitors' clerks are in Crown courts less often and so many defendants no longer have a go-between to pass notes to counsel from the dock.

On a visit to the Old Bailey, JUSTICE staff witnessed this communication challenge; one defendant becoming frustrated to the point where he asked us to get the attention of his solicitor. The barrier created by the dock can lead to delayed or failed communication; an answer may not have been challenged or a different question may have been asked. Defendants are rarely asked their view during trial on what questions should be put to witnesses or on the answers given – the set up prevents this. It is therefore hard to know how often a lack of communication impacts upon the outcome of the trial. In the survey of barristers conducted by Dechert LLP, the majority said it would assist to be able to take instructions throughout proceedings in complex matters, such as fraud.

It therefore seems obvious that the defendant, if given the opportunity, may have constructive challenge to the evidence being heard.

Advocates may say that they have taken full instructions from their clients ahead of trial and that they are fully prepared. Some may argue that the positioning of the defendant allows defence counsel to present the defence without being distracted by the defendant. They do not need to converse, nor does it matter if the defendant can fully hear or be heard from inside the dock as a consequence.

This argument was in fact endorsed by the Strasbourg court in *Stanford v UK*.³⁷ There the Court considered that the defendant's right to effective participation could be satisfied by his legal team, observing that no complaint about the dock was made to the judge during trial and his counsel would have had every opportunity to discuss with the applicant any points that arose out of the evidence which did not already appear in the witness statements. It observed that article 6 ECHR requires the Contracting States to intervene only if a failure to provide effective representation is manifest.

The Strasbourg court has continued to hold that the dock, or enclosure, does not undermine the presumption of innocence or equality of arms protected in article 6 ECHR *per se*.³⁸ This is because the proceedings as a whole must be considered unfair, pursuant to article 6(1) ECHR. In reaching this conclusion in *Ashot Harutyunyan v Armenia*, the Court noted that the applicant benefited from the assistance of two lawyers and that nothing in the arguments before the Court indicated that the applicant could not communicate confidentially and freely with his lawyers or with the Court from his confined position.³⁹ However, in a subsequent case the Court found that restrictions hindered the right to confidential communication between defendant and lawyer, due to the permanent presence of escort officers and a prohibition on the lawyer approaching the client within 50cm, in addition to the secure enclosure.⁴⁰ Although the Court has been conservative in this area it is clearly prepared to consider the hindrance of the dock on a case-by-case basis.

It frequently occurs in the courts of England and Wales that live witness evidence will take on a different tenor, or further details will emerge during questioning, that could benefit from the instructions of the defendant. In cases where there are multiple defendants with alternative defences, the problem of taking confidential instructions from the dock is readily apparent and

exacerbates an already difficult procedure. In our view the Strasbourg court in *Stanford* did not consider the effective exercise of participation by the defendant in their own trial in the UK system. If it had, in our view, it would have found that communication is in practice hindered by the dock.

Defendant's active involvement from the dock

Notwithstanding the relatively conservative approach of the ECtHR, it is apparent that the use of the dock plays a key role in further marginalising the defendant from their trial. This was witnessed during a JUSTICE visit to the Old Bailey. At one point in the proceedings the prosecution handed out copies of a document containing cell-site evidence, but did not have enough copies to share with the defendants in the secure dock. No application was made for the trial to stop while further copies were made; the defendants had to do without. This seems to be a clear sign that there is no expectation that the defendant should be able to properly follow the proceedings, but it is a problem that would not have arisen had the defendant sat with their solicitor.

The case of *Stanford* concerned a trial that took place in 1988, in a new Crown court in Norwich, which incorporated a form of glass dock. The applicant argued that he had a hearing problem which was exacerbated by his position in the glass dock, making it difficult for him to hear the testimony being given, and therefore his trial was unfair. The dock officer also said he could not hear the witnesses. The complainant, in particular, was softly spoken and bowed her head during evidence. She had already been moved closer to the judge and jury to be heard. A report commissioned by the UK Government during the case found that acoustic design targets in the courtroom had been met. Yet it was accepted by the parties that Mr Stanford could not hear.

Most lawyers say it can often be difficult to hear the defendant from inside the secure dock, which would suggest that it is also hard for the defendant to hear what is being said outside. A very experienced court interpreter informed us during the course of the project of the strain and concentration required to interpret inside a secure dock because of the sound barrier it can create, a problem many interpreters have raised. Intermediaries have also reported that hearing and being heard from inside the secure dock can be difficult.⁴¹ It may seem surprising that this argument has not been raised in trials before as a reason for defendants to be sat elsewhere. In our view, the dock is so entrenched in court custom that it is likely that defendants just resign themselves

to being unable to fully follow what is happening. If defendants cannot hear the case being made against them, this raises serious concerns about effective participation in their own cases. As Lord Reading pronounced in 1916:

The reason why the accused should be present at the trial is that he may hear the case made against him and have the opportunity ... of answering it. The presence of the accused means not only that he must be physically in attendance, but also that he must be capable of understanding the nature of the proceedings.⁴²

Effective participation in other jurisdictions

In the other jurisdictions identified above, defendants sit with their lawyers throughout the trial. In the US great effort is often made by the defence lawyer to appear engaged in discussion with their client, keen to show their involvement to the jury. In 1914 a court in Pennsylvania decided as a matter of principle that sitting at the bar table was necessary for a defendant to enjoy the common law right to freely consult with counsel.⁴³ In *People v Zammora*⁴⁴ the Court of Appeals of the State of California found that the challenges faced in that case – namely the distance between counsel and their clients due to limited courtroom space and multiple defendants – were ‘the result of the failure of the court,’ and held that ‘under such circumstances, it is not the Constitution or the rights guaranteed by it that must yield.’

In the Australian case of *Benbrika*, considered further below, the judge found that the screen arrangement isolated ‘the dock and its occupants from the body of the Court’ making client-lawyer communications impossible without the lawyer entering the dock.⁴⁵ He viewed the screens as cutting off the accused from the courtroom in such a way as to render their presence hardly more real than if they appeared by video link. Similarly, the judge in *Baladjam* identified the right to a fair trial and communication with lawyers as being compromised by the dock arrangement.⁴⁶

Domestic comparators

The argument that the defence advocate may be distracted from presenting the case by ‘interference’ from the defendant sitting next to them seems weak when one considers the situation of other courts in England and Wales. In the youth court, defendants sit at the bar table with their lawyers. The same

is true of military courts, parole board hearings and disciplinary hearings at prisons. Likewise in any civil proceeding – be it divorce, public law child neglect, immigration removal or mental health review tribunal. None of these proceedings has been critiqued as being impeded by the presence of the client, but all can involve similarly serious and emotive disputes.

The experience of other courts in England and Wales and the jurisdictions considered above demonstrate that the placement of the defendant with their legal team enables instructions to be taken throughout the trial. Irrespective of how helpful the advocate believes their client’s input might be during trial, the significant issue is that it is *their* trial, of which they are entitled to feel not only a part but also in control.

The presumption of innocence

The presumption of innocence is a right long recognised and protected in international human rights law, and in our domestic legal system. It lies at the heart of fair criminal proceedings. Lord Sankey famously described the duty upon the prosecution to prove guilt as the ‘golden thread’ running through English criminal law.⁴⁷ The principle is articulated in international human rights treaties binding the UK, including the International Covenant on Civil and Political Rights⁴⁸ (ICCPR) and the European Convention on Human Rights. It is also a norm of customary international law⁴⁹ and it is a non-derogable right, which cannot be limited in any circumstances, including public emergency.⁵⁰ In order to preserve the right, not only are procedures required to enable evidence to be considered in full before a verdict is reached, but the appearance of guilt must also be avoided before and during trial. In relation to Article 14 ICCPR, which sets out the right to be presumed innocent, the UN Human Rights Committee has held:

*[I]t is a duty for all public authorities to refrain from prejudging the outcome of a trial, e.g. by abstaining from making public statements affirming the guilt of the accused. Defendants should normally not be shackled or kept in cages during trials or otherwise presented to the court in a manner indicating that they may be dangerous criminals.*⁵¹

It is JUSTICE's view that the dock can taint the defendant with the appearance of guilt. This could have a significant impact upon the decision that a tribunal reaches, especially where the decision maker is a jury whose members are not familiar with the court system.⁵² It is acknowledged that magistrates receive specific training to assist them in identifying and avoiding any prejudices against a defendant. In this sense, they are more akin to judges than jurors, and less likely to perceive any prejudice as a result of the dock. Nevertheless, every tribunal is fallible, and is therefore open to succumbing to their personal biases, however much they think they have set them aside.

The dock is described as one of the 'generic aspects' of the courtroom by HM Courts and Tribunals Service *Court Standards and Design Guide*. In our view the dock is far from being a 'generic' structure. Rather, it is an imposing element of the courtroom that is likely to stand out as something exceptional to jurors, who have had little prior exposure to criminal proceedings and courtroom design. The dock is likely to signal to jurors that the individual inside it is different to them; a person who for some reason should not be permitted to sit amongst the other participants in the trial; a person who needs to be controlled; a person who ultimately could be dangerous. This impression is most likely exacerbated by the proliferation of American crime drama on British television. The placement of the defendant in a fortified glass cage in our courts may well cause some surprise if jurors expect to see the accused sitting at the front of the courtroom alongside their lawyer.

Presumption of innocence in other jurisdictions

Concerns about the dock and the prejudice it may engender were highlighted as far back as 1979 by the US Court of Appeals for the First Circuit. The dock continued to be used at the discretion of the judge in Massachusetts until the 1980s, though there was by then no record of any form of dock being used in other states during the trial.⁵³ The appellate court took a critical view of the practice:⁵⁴

Confinement in a prisoner dock focuses attention on the accused and may create the impression that he is somehow different or dangerous. By treating the accused in this distinctive manner, a juror may be influenced throughout the trial. The impression created may well erode the presumption of innocence that every person is to enjoy.

In reaching this view, it applied a contemporary US Supreme Court judgment that declared the clothing of defendants in prison uniform unconstitutional because it served as a constant reminder of the accused's condition.⁵⁵ The First Circuit Court later held that where no justification is given by the trial judge, and there are no security concerns, confinement in the dock is unconstitutional, both in terms of the presumption of innocence and the burden placed on effective consultation with counsel.⁵⁶

In Ireland, the Committee on Court Practice and Procedure recommended in 1966 that the trial of the most serious indictable cases be moved to the more modern Four Courts in Dublin from the historical court on Green Street, which provides raised, open, wooden enclosures in the theatrical style of Victorian courtrooms. Objections to this move based on the court layout were refuted, particularly the value of the dock⁵⁷:

We do not consider that a dock is an essential part of courtroom equipment for a criminal trial. On the contrary we consider that the dock is out of date and incompatible with the presumption that the accused is innocent until he is proved guilty. Moreover the presence of the accused in the dock hampers speedy communication with his legal advisers in court.

In Australia there is also appellate authority from the Queensland Court of Appeal considering both handcuffs and a floor to ceiling glass cage in the case of *Farr*.⁵⁸ Not only were the appellant and his co-defendants accused of a very violent crime, more than one of the defendants had engaged in violent conduct at a previous stage of the case. An earlier High Court decision had held that security precautions should 'be no more obvious than necessary' and every effort should be made 'to avoid or mitigate the prejudicial effect which such precautions may have on the mind of the jury.'⁵⁹ The Court in *Farr* held that the trial judge had accounted for both criteria, that a security measure was necessary and all of the accused should be contained with the same measures so as not to prejudice one more than the others.

However, more recently, Supreme Court judges of Victoria and New South Wales considered the secure dock in trials before them and reached different conclusions to that in *Farr*.⁶⁰ In both trials, the accused were charged under federal counterterrorism legislation developed in the wake of the 9/11 attacks. In *Benbrika*, 12 men were tried in Melbourne and in *Baladjam*, five men were

tried in Sydney. The courtrooms in both were adapted to accommodate multiple defendants. In one case the dock was a glass box structure, with further glass separations between the accused and multiple prison officers, while in the other it was a 'glassed-in room to the side of the court'. In both cases, the trial judges decided that the glass should be removed from the dock. In *Benbrika*, the judge found that the arrangement of the dock would 'materially diminish' the right of the accused to the presumption of innocence. Similarly, the judge in *Baladjam* said that the jury might get the impression that the defendants were 'dangerous' as a result of the setup. Interestingly, this judge highlighted the fact that juries are influenced by everyday experiences, including what they see on the television, and noted that this may reasonably give rise to expectations as to how a court should look.

Empirical research

Until recently there has been little empirical evidence to support what many courts in other jurisdictions have asserted to be a commonsense, objective observation. However, in 2014 a group of academics in Australia conducted an experimental mock jury study, designed to test whether the placement of the accused in a dock influences jurors' perceptions.⁶¹ The study involved an experiment in a trial court with over 400 participants. A trial was simulated multiple times by actors over the course of a few days in Sydney to jury sizes of 20 – 40 participants.⁶² In order to accommodate them, the jurors were seated in the usual jury seats but also in the public gallery. The experimental conditions put the defendant in three places in the courtroom: at the bar table with his barrister, in an open dock and in a secure, glass dock.

The research built upon a growing body of evidence that jurors' decisions can be influenced by stereotypes,⁶³ frequently without being conscious to the cues they use to assess credibility.⁶⁴ Building design – in this example, delineated areas of the courtroom and secure docks – can therefore accentuate the effect of these cues.⁶⁵ Participants were asked to complete a survey at the end of the trial and rate the influence of evidence in reaching their verdict, on a scale of 1-5. This was then compared against the position of the defendant during trial in each of the three scenarios. The results showed that where the juror rated evidence as either strong or weak, the positioning of the defendant had little impact on conviction/acquittal rates. However, where the strength of the evidence was rated as inconclusive, the dock played a significant role in the

outcome. In this scenario, a jury convicted the defendant 33 per cent of the time when sat at the bar table as compared to 67 per cent of the time when held in a dock. The findings suggest that where the evidence does not provide a clear-cut answer, the presentation of the accused takes on a decisive role in the jury's evaluation of guilt. Notably, the impact on conviction ratings remained the same whether the accused was held in an open or a closed dock. This study would indicate that an open, more dignified dock structure has the same impact on the presumption of innocence as fortified docks.

However, the secure dock did have more of an impact when the verdicts given were considered against jurors' prior rated levels of punitiveness – this had a small impact when the defendant was at the bar table but over twice as much in the glass dock.⁶⁶ The dock seems to therefore trigger prior prejudices. Likewise, when the defendant was at the bar table, the jury seemed to take considerably more notice of the evidence than when he was in the secure dock.⁶⁷ This may suggest that the visual cue of the dock reduces the need on the part of the jury to be convinced by the evidence.⁶⁸ The impact of the glass dock was particularly apparent upon women, those over 35 years of age, and those in professional employment.⁶⁹ For JUSTICE, the footage of the mock trials demonstrates another interesting result; placement of the defendant at the bar table allows interaction between defendant and defence counsel that appears to be impossible in the other scenarios. Seeing counsel treating the defendant as a participant in his defence also has an impact upon the impression one gains of him.⁷⁰

Given that this is the first study of its kind, the results must be cited with some caution. For example, the trial would have lasted much longer and the jurors would have been free to deliberate for as long as they wanted if it was a real trial; the courtroom was modern in design, with an integrated glass dock rather than the retro fitted secure ones found in Crown courts in England and Wales where the effects could be more pronounced; although the script was carefully controlled, the actors were not legal professionals and the defendant was not actually facing terrorism charges. Nonetheless, the study provides strong evidence of what common sense and other jurisdictions have been able to discern – placing the defendant in a separate enclosure can have a profound impact on jury prejudice. Moreover, that impact can occur whether the dock is open or closed.

The judgments from other jurisdictions did not require proof of the influence of the dock on the jury's decision. Instead, they relied on the principle that visible signs of restraint *may* influence decision making, thus deciding that marking a defendant with the 'brand of incarceration' should be avoided.⁷¹ It is therefore clear that the dock is, at the very least, 'one more layer of prejudice'⁷² and one that is easily avoided by taking the defendant out of it.

Dignity in the administration of justice

Respect for the inherent dignity of human beings is the foundation of international human rights law⁷³ and part of the very essence of the ECHR.⁷⁴ Treatment is considered to be 'degrading' within the meaning of article 3 ECHR when it humiliates or debases an individual, showing a lack of respect for, or diminishing, his or her human dignity, or when it arouses feelings of fear, anguish or inferiority capable of breaking an individual's moral and physical resistance.⁷⁵ Such treatment can also impact upon the exercise of a person's defence at trial, and interfere with article 6 ECHR. Contracting Parties must ensure that a person is detained in conditions which are compatible with respect for their human dignity and that the manner and method do not subject them to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention.⁷⁶

The Strasbourg court has, on many occasions, dealt with the use of separate enclosures for defendants in criminal trials, not only in the UK case of *Stanford* considered above. The enclosures scrutinised by the Court have varied in design across the different jurisdictions, but the most common form has been metal, barred, cage-like structures. This design has predominantly been used by Russia and former-Soviet states. The nature of the cages considered in these cases are plainly less humane and arguably more likely to impact jury bias than the dock types used in England and Wales. Nevertheless, the ECtHR draws out a number of fundamental principles in relation to both article 3 and article 6 ECHR which are of equal application in our courts.

The ECtHR in *V v UK*⁷⁷ considered the importance of conducting criminal proceedings in a manner which reduces the sense of intimidation and inhibition for defendants. While it did not find a violation of article 3 ECHR, it found that the right to effective participation pursuant to article 6 ECHR had been hindered due to the distress of the applicant during trial. The complaint arose

out of the trial of two young boys charged with the murder of Jamie Bulger. Their trial was conducted in the formal manner of an adult criminal trial, with the public and media present throughout the three weeks duration. It seems remarkable now, some twenty years on, that this was considered appropriate. While many elements of the trial were in question, the role the dock played was put under particular scrutiny. The Court noted the boys' 'immaturity and... disturbed emotional state', and commented that:⁷⁸

...there is evidence that certain of the modifications to the courtroom, in particular the raised dock which was designed to enable the defendants to see what was going on, had the effect of increasing the applicant's sense of discomfort during the trial since he felt exposed to the scrutiny of the press and public.

The Court considered it highly unlikely, in contrast to its finding in *Stanford*, that the applicant would have felt sufficiently uninhibited, in the tense courtroom and under public scrutiny, to consult with his legal representatives during the trial.

Following the court's decision in *V*, the Lord Chief Justice issued 'Practice Direction (Crown Court: Young Defendants)' dealing with children and young people in criminal trials.⁷⁹ The direction moved the juvenile defendant out of the dock in all cases:⁸⁰

A young defendant should normally, if he wishes, be free to sit with members of his family or others in a like relationship and in a place which permits easy, informal communication with his legal representatives and others with whom he wants or needs to communicate.

As with the jury direction that opened this report, the statement recognises the fact that a dock is not a place in which easy, informal communication with lawyers and others can take place. The factors mentioned in the passage are not, in our view, child-specific. As indicated above, the freedom with which an individual charged with a criminal offence should be able to communicate with their lawyer is in principle no different as between an adult and a child. Unfortunately, a number of respondents to the Dechert questionnaire indicated that not even young people are routinely sat outside of the dock in Crown court trials.⁸¹

In every case that has come before the Strasbourg court relating to the use of a barred enclosure to contain a defendant, a violation of article 3 ECHR has been claimed.⁸² The structure consists of metal rods on four sides with a wire mesh ceiling. This has been described as a cage by the Court and commentators. In the majority of these cases the Court has found a violation where its use could not be justified by security considerations.⁸³ However, over the years, the Court's acceptance of the cage in any circumstance has narrowed considerably. Last year, in *Svinarenko and Slyadnev v. Russia*, the Court finally decided that under no circumstances could the use of the cage be justified in criminal proceedings:⁸⁴

... holding a person in a metal cage during a trial constitutes in itself – having regard to its objectively degrading nature which is incompatible with the standards of civilised behaviour that are the hallmark of a democratic society – an affront to human dignity in breach of Article 3.

As the concurring opinions of Judges Nicolaou, Keller and Silvis indicate, the decision is particularly fortunate as the previous cases seemed to ignore the principle that once the threshold for severity has been passed for a violation of article 3, no arguments can justify the ill-treatment, as the article is non-derogable. The Judges also observed, *obiter*, that metal cages are being replaced with glass enclosures or 'organic glass screens' and suggested that "such 'cages' might raise issues under the requirements of procedural fairness in article 6(1) ECHR and the presumption of innocence in article 6(2) of the Convention".⁸⁵

Comments such as these mark a progression in the jurisprudence of the Strasbourg court towards an understanding of the dock as a structure which has a significant impact on the defendant's due process rights, in addition to offending the dignity of the individual placed in it, whether metal or glass. Irrespective of the Court's approach, enclosing a person in a glass box or wooden pen is clearly an objectively humiliating experience and its rationale must be questioned as an affront to the dignity of proceedings.

Out of the dock

In our view, the dock, in whatever form, interferes with effective representation, undermines the presumption of innocence and is an affront to the dignity of the administration of justice. This provides a cogent argument for its removal from the courts of England and Wales.

With respect to the open dock, its use has much declined with the arrival of the secure dock. But where it is still available, it is hard to see any argument for putting a person in an open dock, other than tradition. Such custom does little more than preserve public spectacle, by drawing attention to the raised and varying fortified box in which an accused person is required to remain throughout trial. Given that the open dock causes much interference with the fair trial of the defendant, historical custom holds little value. We therefore argue that open docks should no longer be used in any case.

By contrast, the secure dock responds to security concerns. However, the starting point for the adoption of any measure must be identification and quantification of actual risk. Our assessment of available information is that in most cases, security does not pose a challenge in the courtroom. Most people are remanded in custody because of a risk of committing further offences or interfering with witnesses. There are very few who can be considered to pose an actual risk of escape or violence in the courtroom. In JUSTICE's view, it is not appropriate for the majority of defendants to face interference with their right to a fair trial because of a minority. Furthermore, retaining the dock for the few will only enhance the potential prejudice of the jury and discriminate between defendants as to who can effectively participate in their defence. We therefore consider that the use of the dock should be abolished entirely.

However, people who do pose a real risk must be appropriately secured during trial. Careful handling of these cases will be critical in getting defendants out of the dock.

Alternative security measures

The dock is currently considered to be the only viable security measure in our courts. JUSTICE does not believe this to be the case and considers instead

that there are viable alternatives. Such alternatives must, of course, also avoid interference with the fair trial rights of the defendant.

A helpful starting point is to look at the alternatives to the dock used in other jurisdictions.

The US remains a risk-averse society. It is surprising that the secure dock has not crept into its courtrooms. Not only has this not occurred, other forms of security measure have likewise been subject to challenge. This is because three fundamental constitutional principles govern criminal proceedings: the presumption of innocence; the defendant's right to counsel; and the maintenance of the dignity and decorum of judicial proceedings⁸⁶ - the same principles in issue with regards to the dock. The US Supreme Court in *Illinois v Allen*⁸⁷ held that shackling a defendant offends that dignity and physical restraint impacts the defendant's ability to effectively communicate with counsel. The Court has further held that unless there are exceptional reasons for doing so, the accused should appear unrestrained before the jury.⁸⁸ Recently in *Deck v Missouri*⁸⁹ the Court found routine shackling during the sentencing phase of a capital trial to be unconstitutional in the same way as it is in the guilt phase, due to its inherently prejudicial nature; any visible restraints on the defendant would inevitably imply to the jury that the defendant was a dangerous person.

However, security remains an issue of the utmost importance to the US criminal justice system. The right to remain free of physical restraint may be overcome in a particular instance by essential state interests such as physical security, escape prevention or courtroom decorum.⁹⁰ The arrangements of the courtroom including security measures are solely within the trial judge's discretion, as in the UK. However, unlike the UK, the US Supreme Court has noted that the trial court must make a 'determination, in the exercise of discretion, that [restraints] are justified by a state interest specific to a particular trial.'⁹¹ While there is no definite rule as to the form of such a hearing, a number of federal appellate courts have impressed the need for a formal, evidentiary hearing with sworn testimony to determine whether a restraint is necessary.⁹² It must therefore be established whether a measure will interfere with a defendant's rights and if so, whether any particular security measure or restraint can be justified in the face of that interference.

The measures adopted in the US have been wide ranging and include the use of handcuffs, leg shackles, a leg restraining device worn under a trouser leg that locks when the wearer attempts to run, or a chair restraint. Mouth gags, spit masks, belly chains and stun or shock belts have also been used in extreme cases of last resort.⁹³ Though many of these have been heavily criticised, and regularly overturned on appeal as an abuse of trial discretion, none have been ruled unconstitutional *per se*.⁹⁴

When restraints are imposed, courts attempt to ensure that procedural safeguards are in place to mitigate any potential prejudice and ensure a fair trial. These methods include concealing or otherwise hiding restraints from the jury, such as by draping a cloth around counsels' table to obscure defendants' shackles, or hiding them under clothing; and giving explicit instruction to the jury to disregard any visible restraints.⁹⁵

Clearly a number of these alternatives may sound objectionable for use in our courts. However some of the devices used, such as a leg or chair restraint may provide a humane and discreet alternative to the dock. The law in England and Wales in this regard is very similar to that of the US:

*Unless there is sufficient reason (which usually means a real risk of either violence or escape), a defendant ought not to be visibly restrained by handcuffs or otherwise either in the dock or in the witness box. Even if there is some relevant risk, alternative forms of avoiding it ought to be investigated before resort is made to visible restraint. A secure dock; the interposition of prison officers between defendants or either side of a single defendant; police officers inside or outside the courtroom; and in an extreme case... armed officers to be in the court building are all alternatives which are routinely employed. The reason for that approach is, we hope, obvious. The jury must be free to decide upon the guilt or innocence of the defendant without the risk of being influenced against him by sight of restraint which in their minds suggests that he is regarded with good cause as being a dangerous criminal.*⁹⁶

In the English case of *Horden*, from which the above *dicta* is drawn, the trial judge had failed to make enquiries as to the need for restraint, relying simply on a written application from the prison escorts that he had a marker for escape. Court of Appeal enquiries showed such concern to be historic, and no

more than an assumption based on the defendant's senior position in organised crime. As the Court indicated, such applications are made routinely, but should be made with supporting evidence and investigation – a serious history of drug offending does not automatically equate with escape. Moreover, a warning of risk on a prisoner escort record relates to a number of scenarios outside of the courtroom. As noted by Lord Justice Hughes, as he then was, 'The situation in a courtroom is different. Of course a determined attempt to escape is very occasionally made from a court-room, but it is a very public and a very unusual thing to do.'⁹⁷

All of this reasoning can be applied to the use of the dock itself, rather than the dock being seen as a suitable alternative to handcuffs. We would argue that a secure dock in fact creates a much worse impression than handcuffs – it is a constant visual reminder that the defendant is presumed so dangerous that they must be locked in a sealed enclosure.

The *Horden* judgment underlines that where a proposed measure is likely to interfere with the fair trial rights of the defendant, careful scrutiny is required before it can be imposed. This should take place upon a pre-trial application, with a procedural hearing convened to determine whether any measure is necessary. Post *Horden*, any security measure requires the reasoned direction of a judge in order to be imposed. By contrast, the use of the dock has become so engrained that no procedure ever takes place to determine whether its use is necessary.

In the majority of cases, the security measure adopted in the US is the placement of more law enforcement officers in the courtroom. Indeed, in Ireland when there are security concerns, this is the only security measure deployed in the courtroom. If the defendant is particularly disruptive they will be removed, which can of course also happen in our courts whether or not they are behind glass.

The same is true of the Netherlands. Where the defendant has been remanded in custody, or where a particular risk has been identified, at least two armed police officers are usually present in the courtroom. Handcuffing a defendant during the hearing is very rare, usually as a result of a psychological/psychiatric evaluation and applies only to those defendants who are considered very dangerous, as it is generally believed to be contrary to the presumption of innocence, despite there being no jury.⁹⁸ Additionally, every courtroom is

equipped with an alarm device under the tables of judges and prosecutors. Once that is activated the court is quickly isolated by the officers present. These measures are very rarely used.⁹⁹

There are two high security courts in the Netherlands, in Amsterdam and Rotterdam, for extremely dangerous defendants and very serious cases. These court buildings have additional security checks at the entrance, armed security officers in the courtroom and usually only one public court. The public, rather than the defendant, sits behind a glass screen. This same approach is taken in the International Criminal Court in The Hague. Headphones or an intercom connection are used to hear the proceedings.

Prevalence of security incidents

Statistics on security breaches in US courts during the period 2005-2012 record 406 court-targeted acts of violence and other incidents.¹⁰⁰ Of these, 131 (34%) occurred in the courtroom, though the data does not distinguish between civil or criminal courts, or who the perpetrator was. These figures should be considered in the context of 96 million cases being filed in the courts during 2012 alone, of which 19 million were criminal.¹⁰¹ Assuming all the courtroom violence occurred in criminal trials and was carried out by defendants, 17 incidents a year out of 19 million cases would be barely perceptible.

These statistics also have to be considered against the backdrop of security standards in the US generally, and the prevalence of guns in society. Court building assessments reveal that in a majority of areas, court security for state courts is sorely lacking, with 55 per cent of courts having no security officers in courtrooms during proceedings, 70 per cent having no CCTV cameras in the courtrooms and 26 per cent having no security screening at the entrance to the court building whatsoever.¹⁰²

In the Netherlands, research has shown that the Dutch courts have approximately 1.7 million trials per year (including civil and administrative cases) and receive around 2.5 million visitors in the public areas. Around 17 incidents involving aggression or violence take place per year. Most of these incidents concern verbal aggression, violence without weapons or injury or physical aggression. Again, it is not clear how many of these are caused by defendants in criminal trials. Following serious incidents in 2003 and 2013, by both defendants and

members of the public, reviews of court security were carried out. The secure dock was not considered as an option. Rather, more police presence, surveillance cameras and screening of all entrants to the courts were recommended.¹⁰³

We have been unable to identify similar statistics to the US and the Netherlands for England and Wales. However, many fewer cases are being heard in the criminal courts of England and Wales.¹⁰⁴ With screening on entry to our courts and alarm devices in courtrooms routinely available, it can be expected that security related incidents will be far less likely if the dock were removed from our courts than their counterparts in the US.

Viability of alternatives in England and Wales

We consider that there is a range of viable alternatives to the secure dock that could be utilised in the courts of England and Wales. The experience of other jurisdictions supports this position.

If assessment begins to take place, in our view, the cases in which a security measure is actually needed in England and Wales will be demonstrably rare, and therefore require a small amount of additional resource, that would otherwise be spent on the dock in every case. Whether a security measure is required should become an ordinary part of the pre-trial application process, and be considered at the plea and case management or other necessary hearing along with other applications.

In the Leicestershire magistrates' courts we understand that bailed defendants are usually sat in the second row of benches so that they can see and hear, as well as be seen and heard. Intermediaries, McKenzie friends and parents or guardians of children sit beside them. They are not invited to sit on the front row due to concerns about being too close to prosecutors, legal advisers and magistrates, and technical equipment that could be damaged or used as weaponry.¹⁰⁵ Although this practice relates only to bailed defendants, and has emerged because there are no open docks in the courtrooms, it has caused no difficulties in this context, and has become custom.

Where it is deemed necessary, additional security officers can be utilised in the courts, as the Court of Appeal observed in *Horden*. In our view, in the vast majority of cases this will be the most appropriate response. Currently prisoner escorts or dock officers are already present in the secure dock with the

defendant. They could be sat, discreetly, in the courtroom to act as a deterrent from escape, or placed outside the courtroom by the door. Where no risk at all is present, these officers could be utilised in the courts where security is required, thereby minimising any cost of deploying additional officers. We understand that current prisoner escort custody contracts may make redeployment difficult. We therefore invite the Ministry of Justice and other relevant agencies to review these contracts to ensure that appropriate security can be supplied to the courtroom.

Discreet and humane restraints could be explored in the rarest of cases where serious danger of violence is present. Such devices could be leg or chair restraints rather than handcuffs, since they can be easily concealed from the tribunal.

In new court buildings, consideration could be given to including courtrooms where the public is situated behind a glass screen, such as in the Dutch example, or in a gallery above. This would further minimise the risk of harm in cases where security is legitimately a concern. It would also address the legitimate concern that the risk of harm is assessed to be towards the defendant from the public. Whether the jury is also placed behind such a screen would require research, perhaps in a mock trial similar to that recently conducted in Australia. This would determine whether it would isolate the jury from proceedings and hinder their decision making process, as well as engender prejudice against the defendant in the same way as the dock has been shown to do.

Our expectation is that removing the dock from criminal courts will ultimately provide significant costs savings to the justice system. The secure dock itself is an expensive construct – with each costing around £30,000 – and requiring a number of security guards to staff it. But beyond the direct costs, maintaining the dock undermines flexibility in the allocation of courtroom space. Removing the dock from criminal courtrooms would provide for greater flexibility in the use of the estate of HM Courts and Tribunal Service, and would allow for the development of new multi-use court facilities.

Clearly the enhanced security measures we propose for a minority of cases would require resources, at a time when provision for spending is limited. However, with fewer people subjected to such measures than now used (i.e. through the secure dock), we would anticipate a more modest spend on security than is currently the case.

Placement of the defendant in the court

If the defendant is not required to sit in the dock it is necessary to consider the best position in the courtroom for them. As identified above, one critical concern regarding the dock is that it prevents effective participation in one's defence by inhibiting communication with the defence legal team. The defendant should therefore be situated with that team, as in the US and Dutch examples.

One additional concern raised with us has been cases with multiple defendants raising different defences in close proximity, having the opportunity to cause harm to each other. Arguably, once placed among their legal team in the well of the court, defendants will feel more engaged in their own defence and may be less concerned about their co-defendants. In cases of serious concern, concealed leg restraints and the positioning of defendants at a distance from each other between solicitors or counsel should diffuse and prevent any risk.

Some concern may exist that movement of the defendant will cause intimidation of witnesses and victims giving evidence or sitting in the public seats, that is otherwise managed by the dock. It has been emphasised that witnesses must be confident enough to appear in court and feel safe while giving evidence. Thought is required to ensure sightlines are maintained and in the case of vulnerable witnesses giving evidence from behind a screen, the defendant cannot see them.

However, in our view, the dock can amplify the sense of intimidation as much as create a sense of safety. We consider that if the defendant is seated on the second row of the advocates' benches, amongst the lawyers in the well of the court the likelihood of intimidation of witnesses will be reduced. The positioning of the defendant in court should be identified ahead of trial through Witness Service liaison, so that it does not come as a surprise for witnesses, and every usual step should be taken to make the giving of evidence as comfortable for them as possible. We believe that the defendant's position can be flexible in the case of vulnerable witnesses so that the least intimidation is felt. Nevertheless, witnesses must expect to see the defendant in the courtroom in any other case and understand that it is them on trial.

Conclusion

Rather than being a generic part of courtroom furniture, the dock in fact forms an extension of the prison cell into the courtroom. When considered against the longstanding fair trial rights of the effective participation in one's trial, presumption of innocence, and dignity in the administration of justice, it is difficult to see how the dock can be justified. Having considered the available research and approach in other jurisdictions, we have reached the conclusion that it cannot.

In order to ensure that a fair trial is effective in practice, every defendant should, in our view, sit in the well of the court, next to or behind their legal representatives. This will enable defendants to actively take part in their own case, by being available to provide instructions and respond to evidence far more easily than the current arrangement allows. It will also remove any prejudicial effect that the dock might hold against defendants.

We have seen no evidence to suggest that the vast majority of defendants pose any security risk during trial. In the few cases of legitimate concern, a procedural hearing should be convened to assess the risk, borne out by cogent evidence. A judicial decision should be made as to the appropriate measure to address that individual risk, with the mechanism of least interference being adopted. In our view, this measure should no longer be the secure dock as the more rare its use becomes, the more prejudicial it will be in cases where security is necessary. In the majority of cases, additional court security officers will suffice. But where a restraint is considered necessary this should be discreetly concealed from view and as humane as possible.

We call upon the lawyers, judges and magistrates in our courts to consider whether the dock is necessary for each defendant appearing at trial.

Recommendations

1. There should be a presumption that all defendants sit in the well of the court, behind or close to their advocate;
2. Open docks should no longer be used and defendants should sit with their legal team;
3. Where security concerns exist, a procedural hearing should be held to satisfy the court that additional security is required;
4. In cases where there is no security risk, defendants should also sit with their legal team;
5. We invite the Lord Chief Justice to consider issuing a practice direction with regard to the above recommendations;
6. We invite HM Courts and Tribunal Service, the Ministry of Justice and other appropriate agencies to explore alternative security measures to the dock, mindful of the need for such measures to be concealed from the judge/jury and comfortable for the defendant; and
7. We invite the Ministry of Justice and other relevant agencies to review prisoner escort custody contracts to ensure that appropriate security can be supplied to the courtroom.

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Endnotes

- 1 *R v. Bajwa* [2007] EWCA Crim 1618, at [17], jury direction.
- 2 L. Mulcahy, 'Putting the Defendant in Their Place: Why Do We Still Use the Dock in Criminal Proceedings?' (2013) *British Journal of Criminology* 53(6), p.1140; D. Tait, 'Glass Cages in the Dock?: Presenting the Defendant to the Jury' (2011) *Chicago-Kent Law Review*, 86. In this paper we draw heavily on the work of Professors Mulcahy and Tait and we are very grateful to them and their colleagues Meredith Rossner and Emma Rowden for their assistance in the preparation of this report.
- 3 Lynal E. Doerksen, '*Out of the Dock and Into the Bar: an Examination of the History and Use of the Prisoner's Dock*', 32 Crm L.Q. 478 (1989-1990).
- 4 Doerksen, *ibid*, at 482.
- 5 See for e.g., Law Society, 'Memorandum by the Council: The Use of the Dock in Criminal Courts' (1966) London: The Law Society; L. Rosen 'Should the Dock Be Abolished?' (1966) *Modern Law Review*, 29 p.289; Home Office 'Draft Circular 'The Dock' (14 September 1967), LCO7/246, National Archives; Howard League for Penal Reform 'No Brief for the Dock, Report of the Howard League Working Party on Custody during Trial, Chair Lady James of Rusholme' (1976).
- 6 D. Kirk 'Up Before the Beaks' (2012) *Journal of Criminal Law* 76 JCL 1-3, p.1.
- 7 C. Hampton '*Criminal Procedure*', 3rd edn. (Sweet and Maxwell, 1982).
- 8 Criminal Evidence Act 1898, c. 36, s. 1.
- 9 J. H. Langbein, '*The Criminal Trial before the Lawyers*' 45 U. Chi. L. Rev. 263, 288 (1978), p. 307.
- 10 J. Beattie, '*Scales of Justice: Defense Counsel and the English Criminal Trial in the Eighteenth and Nineteenth Centuries*' 9 Law & Hist. Rev. 221, 231 (1991).
- 11 C. Graham, '*Ordering Law: The Architectural and Social History of the English Law Court to 1914*' (Ashgate, 2003); and L. Mulcahy '*Legal Architecture: Justice, Due Process and the Place of Law*' (Routledge, 2011).
- 12 The Consultative Memorandum 1971.
- 13 Royal Commission on Assizes and Quarter Sessions (the Beeching Commission), *Report* (1969) Cmnd 4153.

- 14 J. Brown, 'Design for Law and Order: A General Survey', *Architects Journal* (1980), at 1191-2; 'Design for Law and Order: Two Case Studies', *Architects Journal* (1980), at 1235.
- 15 Ministry of Justice, '*Court Standards and Design Guide*,' (Ministry of Justice, 2010).
- 16 This was emphasised in guidance from the Senior District Judge (Magistrates' Courts), Judge Riddle, *Defendant in the Dock* (2012).
- 17 S. Hoggart, 'MPs in the dock: from kings of the castle to a glass cage,' *The Guardian* (12th March, 2010).
- 18 *Court Standards and Design Guide, supra.*
- 19 Received from Leicestershire legal adviser.
- 20 The survey was sent to three chambers conducting a range of criminal work through all levels of seniority. 31 responses were received. More detail is contained in an annex, available on the JUSTICE website.
- 21 Doeksen, *supra*, at 483-486. Those facing a felony were required to 'stand trial' – standing throughout in the dock at the bar.
- 22 See for example: J. Stone, 'Is it now time to abolish the dock in all criminal proceedings in England and Wales,' *Archbold Review* [2015] 3, pp 7-9; M. Scott 'Docks are nasty relics of eighteenth century injustice. It is time to dismantle them' *Barrister Blogger* (04 February, 2015) available online <http://barristerblogger.com/2015/02/04/docks-nasty-relics-eighteenth-century-injustice-time-dismantle/> accessed 14 May 2015; and L. Mulcahy, 'Putting the Defendant in Their Place: Why Do We Still Use the Dock in Criminal Proceedings?' (2013) *British Journal of Criminology* 53(6).
- 23 Taken from a review by the ECtHR of the use of metal cages across the Contracting Parties to the ECHR in *Svinarenko and Slyadnev v. Russia*, App. nos. 32541/08 and 43441/08), (17 July 2014), (Unrep) at [75] and [76].
- 24 This information was provided by an Irish lawyer and academic colleagues.
- 25 This information was provided by Dutch lawyers and academic colleagues.
- 26 International Centre for Prison Studies, 'Highest to Lowest – Prison Population Total', available from http://www.prisonstudies.org/highest-to-lowest/prison-population-total?field_region_taxonomy_tid=All accessed 27 April 2015.
- 27 Howard League for Penal Reform 'No Brief for the Dock, Report of the Howard League Working Party on Custody during Trial, Chair Lady James of Rusholme' (1976).
- 28 The survey was administered by Mulcahy (2013). Experts from 43 of the 50 states responded to the survey and a number provided additional material.

- 29 M. McNamara, *'From Tavern to Courthouse: Architecture and Ritual in American Law, 1658-1860'* (2004, John Hopkins University Press).
- 30 See decisions of the US Supreme Court and Circuit courts considered below.
- 31 See D. Tait, M. Rossner, B. McKimmie, R. Sarre, *The Dock on trial: courtroom design and the presumption of innocence* (forthcoming) for a summary of the position in Australia, as well as significant research findings.
- 32 L. Mulcahy *'Legal Architecture: Justice, Due Process and the Place of Law'* (2011, Routledge); E. Rowden *'A Relic of Barbarism: Attempts to Remove the Dock from the Criminal Trial in New South Wales'* (2013).
- 33 Council of Europe, European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos.11 and 14, 4 November 1950, ETS 5, Article 6(2).
- 34 *Öcalan v. Turkey* (2005) 41 EHRR 45 at [140].
- 35 *Airey v Ireland* (1979-80) 2 EHRR 305.
- 36 This is sometimes not even possible, with pens and paper not readily supplied to the dock and the defendants explicitly prohibited from having a writing shelf inside the dock for fear it would be used to aid escape, L. Mulcahy (2013).
- 37 *Stanford v U.K.*, App. no. 16757/90, (23rd February 1994), *The Times*, 8th March 1994, (Unrep).
- 38 *Ashot Harutyunyan v. Armenia*, App. no. 34334/04, (15 June 2010), (Unrep).
- 39 *Ibid* at [138].
- 40 *Khodorkovskiy v. Russia* (2014) 59 EHRR 7 at [647].
- 41 C. Cooper et al. *'Getting to grips with ground rules hearings: a checklist for judges, advocates and intermediaries to promote the fair treatment of vulnerable people in court,'* [2015] Crim LR 6, 420 at 425.
- 42 *R v Lee Kun* (1916) 1 Kings Bench Reports 337, at 341; A trial judge may, if he considers that the accused in the dock may intimidate a witness, remove the accused from the presence of the witness, though not out of hearing, *R v Smellie* (1919) 14 Crim. App. Rep. 128. Both were cited by the ECtHR in *Stanford* but seemingly overlooked by the role of counsel.
- 43 *Commonwealth v Boyd* 92 A. 705 (Pa. 1914).
- 44 152 P.2d 180, 211-15 (Cal. 1944).
- 45 *R v. Benbrika*, 182 A. Crim. R 205, 226 (2008) (Austl.); (Ruling No. 12) [2007] VSC 524 (12 December 2007) at 4 [2007] VSC at 4.
- 46 *R v. Baladjam et al.*, [2008] NSWSC 1462, 22 (Austl') at 25-2 [2008] NSWSC at 25-26.

- 47 *Woolmington v DPP* [1935] 1 AC 462, 481-82 (HL).
- 48 Council of Europe, European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos.11 and 14, 4 November 1950, ETS 5, Article 6(2).
- 49 Human Rights Committee General Comment 24, para.8. ICRC Study on Customary International Law, Vol 1 Rule 100, pp357-358.
- 50 Human Rights Committee: General Comment 24, para.8; General Comment 29, para 11 and General Comment 32, para. 6.
- 51 Human Rights Committee, General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair trial, U.N. Doc. CCPR/C/GC/32 (2007). See also Standard Minimum Rules on the Treatment of Prisoners, Rules 17 and 94; Body of Principles on Persons Deprived of Their Liberty, Principle 36.1.
- 52 Seven per cent of trials in 2014 were conducted with a jury, MoJ, *Criminal Justice Statistics 2014, England and Wales* (MoJ Statistics Bulletin, 21 May 2015).
- 53 US Court of Appeals for the 1st Circuit research conducted for the decision in *Young v Callahan*, 700 F.2d 32, 36 (1st Cir. 1983), fn 6.
- 54 *Walker v Butterworth*, 599 F. 2d 1074, 1080 (1st Cir. 1979). The Court described the prisoner's dock as being about four feet square and four feet high, open at the top so that the defendant's head and shoulders can be seen by the jury.
- 55 *Estelle v Williams*, 425 US 501 (1976).
- 56 *Young v Callahan*, 700 F.2d 32, 36 (1st Cir. 1983), fn 6.
- 57 *Sixth Interim Report of the Committee on Court Practice and Procedure: The Criminal Jurisdiction of the High Court* (1966: TSO, Dublin).
- 58 *R v. Farr* [1994] QCA 266, 2 (Austl.).
- 59 *Smith v. The Queen*, 159 CLR 532, 532 (1985).
- 60 *Benbrika and Baladjam, supra*.
- 61 D. Tait et al 'The Dock on trial: courtroom design and the presumption of innocence', *supra*. This study is the first major empirical study designed to determine how the location of the accused in the criminal courtroom impacts on the presumption of innocence.
- 62 The mock trial was loosely modelled on terrorist conspiracy trials which had taken place in the same courtroom six years previously, an associated trial in Melbourne, and a more recent trial in Germany. Much of the evidence was

largely circumstantial and offered a credible defence so that the decision of the jury could go either way. The study population was reflective of the jury-eligible population in Victoria, save that university education was over represented.

- 63 R. A. Schuller et al, 'Judgments of Sexual Assault: The Impact of Complainant Emotional Demeanour, Gender and Victim Stereotypes,' *New Criminal Law Review*, 13 (2010) 759-780.
- 64 G. Matoesian, 'Language, Law and Society; Policy Implications of the Kennedy Smith Rape Trial,' *Law and Society Review*, 29:4, (1995) 669-701.
- 65 J. Correll, et al, 'Dangerous Enough: Moderating Racial Bias with Contextual Threat Cues,' *Journal of Experimental Psychology*, 47 (2010) 184-189; Fierro, A., *The Glass State: The Technology of the Spectacle, Paris 1981-1988*, (2003, MIT Press).
- 66 For those who scored highly on a previous survey of punitiveness, the variance over verdict of guilty was 5% at the bar table, 8% in open dock and 13% in secure dock respectively.
- 67 With variance of guilt accounted for by strength of evidence at 49% at the bar table, 38% in open dock and only 30% in the secure dock.
- 68 This variable considered whether the positioning of the defendant itself impacted the weight given to other influences over verdict and the authors caution that it would have to be tested with a larger sample size for the conclusion to be confirmed.
- 69 At, 22%, 22% and 27% more likely to convict respectively than if placed at the bar table. The combined effect of gender and age saw older women 39% more likely to convict if the defendant was in the glass dock than at the bar table.
- 70 Filigree Films, *Just Spaces Mock Trial Excerpts*, <https://vimeo.com/110636037>
- 71 *Young v. Callahan* 700 F.2d 32 (1st Cir. 1983).
- 72 *R v. Baladjam et al.*, [2008] NSWSC 1462, 22, at 78.
- 73 Preamble and article 1 to the Universal Declaration of Human Rights 1948; preamble to ICCPR and the International Covenant on Economic, Social and Cultural Rights 16 December 1966, United Nations, Treaty Series, vol. 993.
- 74 *Pretty v. U.K.* (2002) 35 EHRR 1.
- 75 *M.S.S. v. Belgium and M.S.S. v. Greece*, App. no. 30696/09, (21 January 2011) (GC) at [220], (Unrep).
- 76 *Kudła v. Poland* (2000) 35 EHRR 198 (GC) at [92] – [94].
- 77 *V. v U.K.* (2000) 30 EHRR 121.

- 78 *Ibid*, at [88].
- 79 Practice Direction (Crown Ct: Trial of Children and Young Persons) [2000] 1 W.L.R. 659.
- 80 *Ibid*, at 10.
- 81 See Annex, on JUSTICE website.
- 82 See for example: *Sarban v. Moldova*, App. no. 3456/05, (4 October 2005), (Unrep); *Ramishvili v. Georgia and Kokhreidze v. Georgia*, App. no. 1704/06, (27 January 2009), (Unrep); *Castravet v. Moldova*, App. no. 23393/05, (13 March 2007), (Unrep); *Ashot Harutyunyan v. Armenia*, App. no. 34334/04, (15 June 2010), (Unrep); *Khodorkovskiy v. Russia* (2014) 59 EHRR 7, *Svinarenko and Slyadnev v. Russia*, App. nos. 32541/08 and 43441/08, (17 July 2014), (Unrep).
- 83 In a case where a violation of Article 3 was not made out, the Court accepted that the applicant was accused of a particularly violent crime against police officers and was not exposed to excessive publicity. *Titarenko v. Ukraine*, App. no. 31720/02, (20 September 2012), (Unrep).
- 84 *Svinarenko and Slyadnev v. Russia*, App. nos. 32541/08 and 43441/08, (17 July 2014), (Unrep) at [138].
- 85 *Ibid*, Joint concurring opinion of Nicolaou and Kellerat [2].
- 86 *Illinois v. Allen*, 397 U.S. 337 (1970); *Deck v. Missouri*, 544 U.S. 622, 630-31 (2005).
- 87 397 U.S. 337, 344 (1970).
- 88 *Coy v Iowa* 487 U.S. 1012, 1021 (1988).
- 89 544 U.S. 622, 628-29 (2005).
- 90 *Deck v Missouri*, supra.
- 91 *Deck*, 544 U.S. at 629. See also *Holbrook*, 475 U.S. at 568-69; *Illinois v. Allen*, 397 U.S. at 344.
- 92 *Deck*; *Kennedy v. Cardwell*, 487 F.2d 101, 110-11 (1973); *United States v. Miller*, 531 F.3d 340 (6th Cir. 2008); *United States v. Honken*, 541 F.3d 1146 (8th Cir. 2008).
- 93 Mulcahy (2013).
- 94 Douglas R Kendrick, ‘*United States v. Durham: Are the Criminal Defendant’s Rights at Trial Violated by Wearing a Stun Belt?*’, 26 American Journal of Trial Advocacy, 711 2002-2003; Randall E. Tuskowski, ‘*Spain v. Rushen: Shackles or Showtime? A Defendant’s Right to See and Be Seen,*’ Golden Gate University

- Law Review, 175 1990; Westman, D. Handling the Problem Criminal Defendant in the Courtroom: The Use of Physical Restraints and Expulsion in the Modern Era, *San Diego Justice Journal*, 2 507-529, 1994.
- 95 *State v. Tolley*, 226 S.E.2d at 368; Cal. Crim. Jury Instructions No. 204.
- 96 Per Hughes, LJ in *Horden* [2009] 2 Cr. App. R. 24, citing *R v Vratsides* [1988] Crim LR 251 and *R v Mullen* [2000] All ER(D) 618, [2000] Crim LR 873.
- 97 *Ibid.*
- 98 An example given to us is that recently there was a case where a defendant attacked a judge and tried to suffocate him. As a consequence, he was handcuffed for the rest of the hearing.
- 99 Eindrapport van de commissie ‘Onderzoek veiligheid en beveiliging gerechtsgebouwen’, 2014 - *Final report of the commission ‘research on safety and security of court buildings’* (2014), p. 17. A very senior and experienced lawyer informed us that in 35 years he had seen only one incident, where the mother of a murdered girl pointed a gun at the defendant, which the judge resolved very quickly; the gun being identified as plastic.
- 100 National Center for State Courts, *Status of Court Security in State Courts, a National Perspective* (June 2013), including shootings, bombings, arson attacks, prisoner escapes, courtroom disruptions, knifings, murder-for-hire, violent assaults, etc. For a list of all incidents between 2005-2011 see, Swensen, S, “Disorder in the Court—Incidents of Courthouse Violence,” (CJES-JCVI, 2012) available at <http://www.cjesconsultants.com/assets/documents/CJES-JCVI-Disorder-in-the-Court-Incidents-IV.pdf>.
- 101 R. LaFountain, R. Schaufler, S. Strickland, K. Holt, & K. Lewis, *Examining the Work of State Courts: An Overview of 2012 State Trial Court Caseloads*, (National Center for State Courts, 2014), http://www.courtstatistics.org/~/_media/Microsites/Files/CSP/NCSC_EWSC_WEB_NOV_25_14.ashx
- 102 National Center for State Courts, *Status of Court Security in State Courts, a National Perspective* (June 2013), pp 7-11 – 13.
- 103 See note 99 above.
- 104 Last year, 1.47m defendants were proceeded against in the criminal courts of England and Wales, MoJ, *Criminal Justice Statistics 2014, England and Wales* (MoJ Statistics Bulletin, 21 May 2015).

44 In the Dock / Reassessing the use of the dock in criminal trials

105 The reasons given by the legal adviser were that many defendants have some degree of mental health and/or personality disorder. Others are affected by substance misuse. Some are stressed and reactive simply by the position in which they find themselves.



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