



Our Title: Impact of Live Link Video Testimony on Court Architecture

Author's Title: The Unbearable Lightness of Being? Shifts Towards the Virtual Trial

Author: Linda Mulcahy

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Design Issue:

Purpose: This referenced position paper examines the impact of witness testimony via live video (“live link”) on traditional legal procedures, judicial process, and the traditional normative space-place dynamic of the courtroom in the United Kingdom (UK).

Rationale:

- The technological enhancements of the court are advancing and benefits of communication, witness protection, and efficiency/cost reduction are known. However, the impact of technology on the trial ritual and the influence of the courtroom’s physical presence on the participants and the public (the space-place dynamic) are largely unknown.
- Legislation has enabled live link video to be used in criminal cases in the United Kingdom. It is reserved for testimony by vulnerable (including persons under the age of 17 in trials regarding violent acts), threatened/at risk of harm, or incapacitated witnesses, who in the past were less likely to testify (33%) or were often intimidated to the point of giving poor testimony. Live link video has been adopted more quickly in the civil court, where it is anticipated to become the standard.
- It is possible that the inclusion of technology is marginalizing the importance and purpose of the courtroom as the place where public legal ritual occurs, making the delivery of justice seem more removed or casual and akin to watching television by omitting the in-person, dramatic conflict typical of courtroom trials.

Design Criteria:

The author identified the following design criteria:

- Consider accommodations within the courtroom for live link video testimony as its use will continue to grow.
- Consider that some design and layout decisions for the interior of the courthouse can be viewed negatively by the public, even if intended to transmit pride and respect.
- Security procedures and devices in the courthouse can appear to the public as evidence of the governments’ power and point out the lack of a place of refuge.
- Use of glass can signal a feeling of exposure to the public, even if intended to communicate the transparency of the courts’ procedures.
- Separate paths of travel (corridors) for judges, lawyers, defendants, and the public intended to enhance safety and security for all participants, can be viewed as hierarchical or class-based.



InformeDesign identified the following design criteria:

- Consider the impression made by the space where the live link video testimony is transmitted from, as it could impact the viewers' perception of the witness' testimony.
- Consider sightlines within the courtroom to live and transmitted testimony as well as the view of the courtroom as seen by those outside of the courtroom via live link video.

Key Concepts:

- Technology is transforming courtroom procedures and process: legal teams can participate in courtroom procedures globally; real-time transcriptions of testimony are available, making note-taking by the judge and others unnecessary; and visual evidence (via digital boards, e.g., Smartboard) as well as witness testimony are being provided from outside the courtroom.
- Benefits of technology include greater, more immediate communication among participants inside and outside the courtroom, enhancing the democratic aspect of legal proceedings. Enhancement of legal presentations that incorporate sophisticated visual media is also growing, placing emphasis on how the presentation is made to help win the legal argument.
- Past measures of providing witness testimony included use of divider screens to shield the witness, written instead of oral testimony, pre-recorded evidence, or delivery of evidence via an intermediary. Quality of testimony using live link is considered superior to these; it still protects witnesses and has not been found to alter the final verdict. However, concerns about live link video testimony include the difficulty in reading body language and building rapport, and suspicion that it is easier for witnesses to be dishonest when testifying outside the courtroom.
- The virtual courtroom is being explored by the Law School of the College of William and Mary and the National Center for State Courts in the United States via the Courtroom 21 Project. Many in the United Kingdom and the United States predict it will become the norm and create new meanings for due process, the work of the court, and the behavior of parties traditionally involved.
- Live link video testimony has also been found to increase efficiency of the court and/or cost savings. In criminal proceedings, it is used when making appeals to the court requiring less than 30 minutes of testimony, for delivery of sentencing decisions to prisoners, and for routine procedures for remanded prisoners that would normally require transportation to and from court (235,000 trips/annually) (Police and Justice Act, 2006).
- Until the late 18th-century, court proceedings occurred in public places such as guild halls, whenever and wherever needed. Since then, proceedings have been held in courthouses designed and constructed for that sole purpose and are intended to impress and garner respect based on their size/mass and aesthetic (Mulcahy, 2007). Victorian architects embodied the courts' traditions and procedures as the "temples of law" through their designs and reinforced the public's pride in the institution (Hennesey, 1984).
- The modern courthouse imparts the intersection of law, culture, and ritual as established over several centuries. Today, its layout and design are prescribed by the *Court Standards*



and Design Guide (Guide, 2004), which details the design, location, and placement of all physical elements in the courtroom; environmental features and qualities (light, air, acoustics); building materials and furnishings; placement and accommodation for all persons in the courtroom; and sightlines and physical accessibility among them. Regarding the architecture of the building, the Guide advocates for an exterior that creates a civic presence, symmetry and formality, generous use of volume and mass, an exterior gathering space, and use of exterior stairs to the entrance.

- Movement of defendants into the courtroom from cells is a designed experience, just as the movement from the outside of the courthouse into the courtroom is for participants. Visual prompts are intended to establish an impression, namely the power of the court; however, this impression is also viewed as counter-productive as it might symbolically reinforce the power of the privilege as linked to the court and general feelings of helplessness and loss of dignity.
- Some of the negative aspects of the current courtroom layout as prescribed by the *Guide* (2004) can be avoided via the use of live link video such as the limited sightlines of the public at the back of the courtroom and seating the defendant at the rear of the courtroom in a dock without an ability to see the faces of his/her barristers (legal representatives).
- The European Court of Human Rights has determined that the defendant's right to confront the witness is upheld when live link video is used, noting that in-person testimony is not required; this view is a topic of debate.
- The Civil Procedure Rules (CPR) developed by the Crown Prosecution Service dictates the process to be used when live link video testimony is employed: 1) delivery of evidence should be like delivery of evidence in the courtroom, 2) the seriousness of the testimony should be evident, 3) when the judge is being viewed, the royal coat of arms is to be visible (except in courts in Ireland), 4) the judge should be able to see everyone in the room to preserve typical sightlines via proper placement of cameras, 5) when anyone speaks the witness should be able to see that person, and 6) the judge will be the last to enter and the first to leave the video transmission to echo the procedure followed in the courtroom.
- The CPR is silent about other aspects relative to the physical environment where the video testimony is taking place (possibly a hotel room home, workplace, or police station), which does not echo recognition of the importance of the physical impression made by the courtroom.

Research Method:

- Criminal and civil justice literature was reviewed and historical perspective was documented as context for current practices relative to court design and the role of the physical courtroom as a possible influence in legal proceedings within the courtroom.
- Challenges and benefits of technological implementations inside and beyond the courtroom were discussed, with the focus being on testimony conducted via live link video and possible impacts.
- Synthesis of literature resulted in suggestions for further research and questions for consideration.



Limitations of the Study:

- The author did not identify any limitations.

Commentary: Author notes that the impact of the courtroom on how testimony is given and received, implications of what testimony is given without the influence of the defendant present, and determining design quality as an influential element (as documented by the *Guide*) as it appears in the background of live link video transmissions need further investigation. Also, the impact of the exclusion of the public's participation as part of the courts' ritual and citizens' civic duty in live link video testimony needs further examination. Additionally, further research is needed to explore the impact of losing face-to-face experience obviated by live link video testimony. The concept of the courtroom as theater and the drama it creates as both positive and negative influences on the delivery of justice are discussed.

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