

Forensic lip-reading

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A number of high-profile cases such as those of Sally Clark and Angela Cannings, whose convictions for the murders of their babies were quashed, have put a question mark over the way in which expert forensic evidence is used. This was also a matter referred to by the Chairman of the Criminal Cases Review Commission, Professor Graham Zellick, when he recently delivered his annual report, which followed in the wake of the Attorney General's review of infant death cases.

Lip-reading evidence is increasingly becoming a feature in criminal prosecutions, particularly intelligence led National Crime Squad and Customs & Excise investigations. In May this year [2004] the Court of Appeal heard consolidated criminal appeals, which involved the use of lip-reading evidence of CCTV footage (*R v Luttrell and others: R v Dawson and Hamberger*). The Court of Appeal rejected the appellants' initial argument that lip-reading evidence was so unreliable that it should not be admitted at all, and held that, subject to conditions, and a warning from the judge both as to its limitations and risk of error, this category of evidence could potentially be admissible.

It remains, however, a highly controversial and evolving area of expert evidence, which is hugely contentious in the deaf world.

Professor Ruth Campbell, who specialises in Communication Disorders in adults and children and whose work was considered on the *voire dire* in *Luttrell*, claims that the intrinsic unreliability of lip-reading

means that it should never be used evidentially. What was seen by lip-readers was always less than what was said. In her view, even a very good lip-reader could not overcome that limitation, hence its unreliability. The Association of Teachers of Lipreading for Adults strongly recommends that members should not undertake forensic work because lip-reading is unreliable.

So far as the admissibility of such evidence is concerned, according to the Court of Appeal, the conditions were, firstly that the study or experience of a witness would give that witness's opinion an authority which a person without that study or experience would lack and secondly that the witness was qualified to express the opinion.

Arguably the foremost proponent of this expertise, Jessica Rees, who gave evidence in the case of *Luttrell*, also acted as an expert – often for the prosecution – in many other cases. A recent case, however, has significantly damaged her credibility.

The case was *Becon and others*, tried at Snaresbrook Crown Court in October this year. Edward Henry defended a man, charged with conspiracy to rob, who was alleged to have been involved in an incriminating conversation, captured on video, which was lip-read by Miss Rees. The conversation, circumstantial as it was, was disputed by the defendant.

The first obstacle for the defence was both obtaining and collating the mass of material from her previous cases, referred to in *Luttrell*. Unfortunately, the Prosecution did not have a central or core file relating to this witness, which meant that the defence had to research

much of this independently by contacting other defence teams. From this exercise, with their co-operation, it appeared that this witness kept records of the rulings of the cases that she had been involved in and maintained a synopsis of her instructions. Numerous versions of the synopsis were obtained independently of the Prosecution. Curiously, when the Prosecution presented her synopsis it was initially upon the condition, apparently at her request, that it should not be disclosed to other parties. Analysis of that synopsis suggested a number of discrepancies where accounts of her involvement in previous cases did not seem entirely accurate.

“She appeared, for example, to have failed to disclose the exact reasons as to why her evidence for the Prosecution was not admitted in one case,” claims Edward Henry. “She stated in her synopsis that the defence could not get their own expert therefore the judge said it was unfair for her evidence to be adduced under S.78.

“But that was only part of the story. When I looked at the ruling in that earlier case, the judge had primarily excluded her evidence on the basis that he did not consider lip-reading to form a body of scientific knowledge that could be tested. He principally excluded it on that basis and then said that if he was wrong about that there was also the fact that the defence did not have their own lip-reader. But they did have the services of a forensic linguist, who disagreed with her conclusions, but that did not find its way into her synopsis either.”

He continues: “Looking at nearly all of the reports and rulings it is clear that the Courts have all proceeded on the assumption that she was a graduate of Oxford University with a degree. This is referred to

more than once in the Court of Appeal Judgment in Luttrell. It was discovered, however, that she in fact left Oxford without taking a degree. She was never more than an undergraduate, although she passed her Mods.

“Since there is no formal qualification in lip-reading, her academic record, allegedly all acquired through her skills as a lip-reader, made this unusually important. In cross examination in previous trials she did not correct the assumption that she had a degree and assented to Prosecution counsel leading the “fact” that she held one.

“Several times I referred to the “fact” that she had an Oxford degree and, at no stage did she correct me. She was also asked to explain its relevance to her expertise. Finally I confronted her. She then maintained in cross examination that if anyone had ever asked her specifically she would have told them she did not have a degree but said that ‘if they assume otherwise it is often not appropriate for me to butt-in.’

“The following day the prosecution withdrew her evidence from the Jury and the Judge directed them, in the strongest terms, to disregard it. Subsequently her evidence has been dropped in a number of pending and active cases, perhaps in consequence of the Judge’s view, expressed in the absence of the Jury, that she had misled them. The defendant was ultimately acquitted.”

He argues that this particular expertise, which is unverifiable in the absence of testing against an audio soundtrack, is inextricably linked with the witness’s individual reliability. If any question mark emerges

over the witness's credibility or professional judgment, then issues of admissibility will inevitably arise.

What this case teaches us, however, is the need for a central CPS Expert Witness Registry, to give some chance, however remote, of consistent disclosure and objective quality.

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