

REGINA

V

QIU YEU

KHI-SAN VOONG

QIANG XUE

DAU YEE CHENG

Miss Roxborough, I will address you if I may, as during the course of this trial you are the only one of the 4 solicitors representing these defendants that I have had no cause to criticise. What I have to say therefore does not arise from your conduct of the case. Conspiracy to Defraud is on any view a most serious allegation and on conviction, on the facts of this case, merits a substantial term of imprisonment. It follows that each of the parties, including the prosecution, should be represented by an advocate, that is, a barrister or solicitor, who is experienced enough and competent enough to properly represent their respective client. Mr Fitzgerald has demonstrated that he has both those qualities essential to prosecute the case. As I made clear, during the course of the trial, I have been concerned that when prosecuting originally 5 defendants, 4 at trial, he should have had more assistance – either in the form of a junior or at least a representative of the CPS in Court. For much of the trial he has only had the help of the officer. Whilst that help has obviously been invaluable, there have been times when it has not been enough.

You will recall that during the prosecution case, I have on a number of occasions been critical of your colleagues who represent the other defendants. Basic rules, both of law and procedure, have been regularly broken. One solicitor in cross examination on 2 occasions addressed the jury directly. Another clearly had no idea what the rules of re-examination were. The jury were misled about one of the defendant's bad character, until it was corrected by prosecution counsel. Some of your colleagues appeared to have little or no understanding of hearsay. The list goes on and on. At one stage I was so concerned with the cross examination of a prosecution witness, that I had to rebuke your colleague in rather stark terms. I was concerned that that solicitor had neither the experience nor competence to adequately represent his client. I was also concerned that if his representation continued in a similar way, the stage would be reached when I would conclude that the defendant was not

properly represented and that I would have had no alternative in those circumstances but to discharge the jury. Fortunately, that stage was not reached.

When I raised these concerns, I asked your colleague whether his client had been advised that under the rules governing the Legal Aid scheme, the defendant he had a choice of representation – either an independent barrister with sufficient experience and competence to conduct the case, or a solicitor with higher rights who had the necessary experience and competence. At first your colleague declined to answer the question. I will put that down to simply been taken by surprise at being asked the question. When I pointed out that I was not asking him to breach his client's privilege, but simply to tell me whether he or his company had fulfilled their duty, he told me that his client had been told of his right to choose the advocate who represented him in court. His reluctance to answer the question has caused me to consider asking the defendant the same question directly. In the event, I have decided not to do that.

I have also considered requiring the senior partner of your solicitors to attend and explain how and why this solicitor was selected to represent this defendant on such a serious charge. I have no doubt that that solicitor has done his best to fulfil his duties. However, his knowledge of the law, procedure and advocacy skills fall below that which is needed in this case. Of course, he did not deliberately flout the law and the rules. He simply does not have the experience necessary to conduct such a serious case. No doubt with time he can acquire those skills. I very much doubt that he had little if any say in whether he undertook this case. I suspect he was told that the case had to be kept in house and he was going to do it. Similar observations of the experience of your other colleagues could be made.

Why then was the solicitor selected to represent this defendant. Several considerations would have come into play. Firstly, the prosecution case was largely admitted and the defence was relatively straight forward and so it might have been thought that little experience of Crown Court trials was needed. With a moments thought, if that was a consideration, it was a very naïve approach – as indeed the events occurring during the trial have demonstrated. Perhaps more importantly, finances played an important role in deciding who would conduct the defence. By instructing an in-house advocate, the fee for representing the defendant at trial, the litigators fee, would be paid to the company, rather than to a barrister or HCA from without the company. The solicitors would therefore get both the preparation fee and the litigators fee, in effect doubling the income

from the case. I am well aware that recent reductions in the rates of Legal Aid have hit solicitors particularly hard. On a practical financial level, it must be sorely tempting to keep the trial within the company. I understand that. However, if the consequence is that an accused person is not adequately represented, it is simply not acceptable – not acceptable to the defendant, and not acceptable to the public as it is not in the interests of a fair trial and therefore not in the interests of justice. In some cases, neither will it be in the interests of the solicitors company, because if a jury has to be discharged, they risk having Wasted Costs Orders been made against them.

This is not a question of a judge favouring barristers against solicitors, or one solicitor against another. It is about the principal duty of a trial judge to ensure that each of the parties have a fair trial. Every defendant who has the benefit of Legal Aid should be clearly informed of their right of choice of advocate, and that advocate, whether barrister or solicitor, should have the appropriate experience and competence to conduct the trial.

In the circumstances, I have decided not to ask the senior partner to attend court. The remarks I have made speak for themselves. I hope they are widely distributed through the criminal legal professions.