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Courtroom Architecture and Human Beings

By Robert Sanger[1]

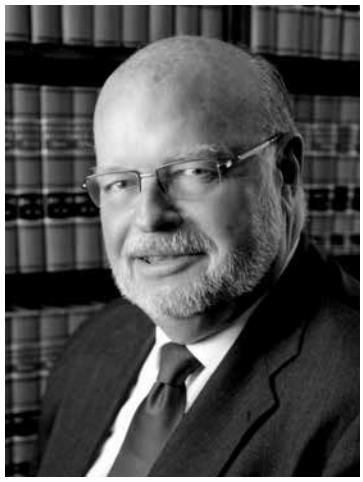
All of us who visit courtrooms have encountered some frustration with the manner in which they are designed. I had occasion to have a brief discussion about this with a Judge form the United Kingdom which, in turn, led to researching the literature on courtroom architecture.[2] In this *Criminal Justice* column, we will explore some of the current themes (or themes that should be current) regarding what courtrooms look like, why they look that way and how we can do better.

For the purpose of this column, we will look at the broad historic trends in development of the modern courtroom in the context of Anglo-American law. We will focus on the treatment of criminal cases in particular and then look at some of the more disturbing trends in dealing with people in custody, the non-judicial courtroom participants and the public. We will use as examples some local and other California examples.

Courtroom Architecture in the English Tradition

The concept of the Anglo-American courtroom is derived from the process of seeking an audience with the King or the feudal lord. Courts of equity were places where the Lord Chancellor, usually a bishop, could be approached as the keeper of the King's conscience to address situations in which remedies in the King's courts of law were inadequate. Family law matters were addressed directly to the authorities of the Church where cannon law applied. The political and social dynamics of these court settings placed the individual litigants in a position of supplicant to noble or religious authority figures.

Criminal law, in the Western sense, was a departure from the sort of community justice that prevailed before the feudal systems took hold. Most criminal wrongs were resolved between members of the community in the name of those who were harmed. There is much written on this and it is not a linear progression.[3] The state or polity was involved in enforcing serious criminal wrongs in ancient Greece and Rome, but most prosecutions were brought by or in the name of the person harmed. For instance, citizens could go before the assembled members of the community to try others whom they accused. Famously, in the trial of Socrates, his accuser Miletus and others brought him before the jury of 500 fellow Athenian men chosen by lot to accuse him of impiety and of corrupting the youth of Athens by his teachings.[4] Instructive also is the dialogue with Euthyphro where the interlocutor is in the process of prosecuting his own father for murder that involved impiety.[5]



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This paradigm, of the community taking on the accused shifted as feudal structures were imposed over community life in Europe and England. It was a matter of consolidating power, raising revenue and commanding a fearful respect from the population that feudal lords and eventually kings took over the criminal law. Crimes were no longer a matter of restoring justice to members of the community who were harmed by the crimes but became a matter of offending the king. Ultimately, in England, crimes were prosecuted in the name of the King or Queen and still are to this day.

In fact, the "court" was synonymous with the courtiers, retinue, and the household members of a sovereign's family. The place at which they resided was known as the court. Both civil disputes and crimes against the king were a matter of offending the royal court. Eventually, as time went on in England, the court would include the councilors and minions of the royal government. The King or other nobles would designate magistrates and judges to hold court four times during the year, called assizes, in each county of England and Wales to administer civil and criminal law. The regular sitting of a magistrate or judge to hear cases, gave rise to courthouses in each county.

In the United States, federal crimes are still prosecuted in the name of "The United States" and state crimes are prosecuted by "The Commonwealth," "The State," or, with slight deference to populism, "The People of the State." We have federal courthouses, as a result of Article III of the Constitution and the Federal Judiciary Act. And throughout the country we have county courts which form the network of state level trial courts. For the most part, the civil aspects of ecclesiastical courts, like family law, and the chancery

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courts in their entirety, have been consolidated with the courts of law in this country. However, they all display the legacy of their royal and ecclesiastical heritage.

Hence, the environment of the typical American courtroom is what social scientists call a "hard environment."[6] It is replete with symbols of authority and the vestiges of heraldry. There are symbols of the great seal of government. There are banners or flags. The bench is elevated so that the litigants can come before it to seek the government's mercy. The judge is decorated as a lord wearing a robe. He or she is referred to in the third person as "Your Honor," a throwback to those days when the person judging was the King, a noble or a bishop.

Treatment of Criminal Defendants

The "hard environment" is not one that is conducive to the comfort of the litigants. To the contrary, the environment reinforces their status as supplicants in the presence of royalty or its representative. In England, prisoners were and still are placed in the dock, isolating them in a way that empirical research, not surprisingly, conveys a presumption of guilt.[7] It is a practice that is under current attack in England and by other members of the British Commonwealth.

In the United States, we give deference on paper to treating defendants in criminal cases as presumed innocent, particularly when before a jury for trial. Generally, courts attempt to minimize the appearance that a defendant is in custody by allowing him or her to dress out in civilian clothes and to hide any restraints like handcuffs, often using a leg brace or other concealed restraint. Nevertheless, even in trial, American defendants are generally placed at the far end of the counsel table while the prosecutor and investigating officer sit next to the jury. An armed, uniformed bailiff, and sometimes more than one, hover beside and around the defendant giving subtle but perceptible clues that the defendant is not free to go.

Worse yet is the way in which defendants are treated prior to trial. In many courts, it has become the model of courtroom architecture to have a cage in which litigants are confined. In Santa Barbara, we have the "fish bowl" in Department 8. There, the litigants who are too poor to post bail or who are held for other reasons, are brought to a glass cage. The cage has metal benches, and a microphone and speaker system designed to allow the person to hear what is being said about him or her in the courtroom, when it works. The door to the cage is now locked and counsel is prevented from sitting next to their clients or to be able to answer questions during the proceedings. The prosecutor and other litigants can participate in the actual courtroom, but those in custody are degraded and treated like caged animals.

Ventura courts are now even worse, where they have large steel cages in the criminal courts that handle not only arraignments but most of the pretrial matters in criminal cases. Once again, people who cannot make bail are herded into the cages and made to sit on steel benches. When their cases are called, they come to the metal slats in the cages where they can only see the judge and the prosecutor with difficulty. In fact, the slats were so obtrusive, that one of the judges had to issue an order that the slats be modified so that he could see the defendants when they were pleading guilty or otherwise addressing the court.

In Orange County, in the Santa Ana Courthouse where arraignments are held, the lack of respect for the accused or for the entire process, for that matter, is almost complete. Arraignments are held in the basement of the Main Jail. The public is not allowed in the building so they have to go to the neighboring jail facility and watch what they can on closed circuit television. Lawyers go thorough jail security and then traverse a series of underground hallways until they come to a windowless dank room with old Government Issue metal and wood veneer desks which constitutes the place that the judge, the prosecutors and public defenders sit when not in the courtroom. Beyond that room is another green and gray walled jail basement room with a crudely erected stage, and another Government Issue desk perched on it about a foot higher than the concrete floor. There is barely room for a couple of small tables for the prosecutor and public defender and another for the clerk. In the back is a heavy duty, chain-link enclosure with a metal bench in it where they bring in two or three people accused at a time.

I have been in many other courts where defendants in custody are handled with varying degrees of dignity or indignity. Many courts have people in custody sit in the jury box and some have the people brought out to a side dock or special sitting area. Some courts are physically located in or attached to the jail, but have proper courtrooms accessible to the public and having traditional décor. A few courts will allow the client to join the attorney at the counsel table, especially if counsel makes the request. But very few accord the accused in custody the dignity of equal status as litigants with the government representatives accusing them. Courtroom architecture could and should be sensitive to treating criminal defendants and all litigants with respect.

Treatment of the Public, Jurors and Lawyers

It is said that criminal courtrooms in England were par-

ticularly hostile to the public. The story is that early assizes for criminal trials had no regular place to meet. The most accommodating structure was often a public house. The people of the area were not particularly hygienic by our standards and they would come from the countryside to see the spectacle of a trial. Drinks, of course, were served in the pub. When time came to design courtrooms, traditional English courtrooms had significant barriers between the unwashed masses and the trial participants. The large physical barriers in English courts did not carry over to American courts, although the public does have to remain behind a low wall generally with a swinging gate. However, there have been some reversions to antipathy for the public.

In recent years in Ventura, courtroom architects created Department 13. It shows a bizarre disregard for the public, lawyers and the accused. The accused, if in custody, are herded into the metal slat cages with the metal benches. The public cannot see the people in custody due to the intentional angle of the slats. The public is required to sit on convex metal benches with ridges between each seat – the sort that might be used in a bus station to prevent people from getting comfortable so that they might loiter. The space is wholly inadequate for the number of people who attend felony arraignments each day. Litigants out of custody have to force their way to the front to stand behind the wall often addressing the court form the middle of other members of the public who cannot find a seat.

The space provided for the lawyers in that courtroom, and many others, is wholly inadequate while the space behind the bench for the judge and his clerks is large enough to play volleyball. Once again, the architect's obsequious deference to authority, which is demanded by the judges, results in twice the amount of space for the judge and two clerks as there is for the entire public seating area. And, in the middle are two crowded counsel tables with barely enough room to slide to the podium behind them where all the lawyers – prosecutors, public and private defense lawyers—are required to do their work.

Although the Ventura example is an atrocious example of disdain for the public and those who work as lawyers in the courts, there are many other courts where the allocation of space for the ceremonial deference to the judge and symbols of authority result in lawyers, witnesses and jurors being confined to pathetically little room. Federal courtrooms and some like those of the Los Angeles Superior Court sitting in the Clara Shortridge Foltz Building are exceptions to the rule. It is amazing how many courtrooms are designed without any room for lawyers to do their jobs. Multiple defendant cases are not unexpected, yet there is seldom room for the personnel. Even in a single defendant case, some courtrooms will not accommodate a couple of banker's boxes for files or room for an investigator or paralegal.

Jurors are also often forced into small quarters. In San Luis Obispo, for instance, some courtrooms are not large enough to accommodate a venire panel of more than 50 or so people. After that, selection using a six pack results in jurors crammed in front of the counsel table with their backs to counsel. Once selected, they are relegated to jury boxes where they cannot easily lean back or move from side to side. Many courts do not have regular seating for more than one alternate requiring moveable chairs to be perched in corners of the box. Once the case is submitted to them, the jurors are taken to a deliberation room where there is a conference table and twelve chairs leaving no room to move around once everyone is seated. The deliberation rooms have no windows and are conducive to engendering claustrophobia. Other places, like federal courts and the Foltz building, have better sized jury rooms with windows and, since the jurors are locked in, there is a kick-out panel or emergency release on the door in case of emergency.

Conclusion

Courtroom architects should take notice. So should court administrators and judges who have a hand in planning courthouses and courtrooms for criminal cases. Court buildings themselves are usually fairly large to grandiose. There is no requirement that they dedicate so much space to the judicial bench officer and staff within the courtroom. And, other than a result of tradition, there is no reason that courtrooms have to be so ceremonial and symbolic at the expense of function. Yet, the courtrooms continue to be designed without the working needs of all of the participants.

Specifically, criminal courtrooms should be built with concern for the needs of the lawyers and the jurors as well as for the public. Some deference can be made to authority and there should be respect for the process. However, that does not mean that the symbols of respect have to interfere with a situation where human beings are supposed to tell their stories and have others make intellectual decisions based on law and fact. Judges do not need a space the size of a volleyball court, they do not need to sit three feet higher than everyone else, they do not need a bench that looks like a battleship bearing down on the litigants. The defendant should be allowed, even if in custody, to come out into the courtroom and sit in the upholstered seats, just like all other litigants. There should be plenty of room for lawyers, investigators and paralegals in front of the bar, not only in single defendant cases but in multi-defendant cases as well. Jurors should be treated with respect but

also with a great deal of deference for the sacrifice they are making by serving. And, the public should be welcomed and not be treated like unwashed and rowdy spectators of centuries gone by.

There is a psychological price for not getting it right. There is a price for the injustice that comes by treating people without respect. Empirical research shows that judges are more autocratic and less just based on their surroundings. Jurors are less open and able to exercise good judgment when confined by a hard environment. Lawyers and litigants are less able to express themselves and tell the story that needs to be told. The public comes to think of the courts as another instance of elitist government and pompous authority. All this can be avoided. ■

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Endnotes

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2 There is much written on how we have gotten to where we are in courtroom architecture and how it is, to one extent or another, a manifestation of social and political influences. See, e.g., Jonathan D. Rosenbloom, *Social Ideology as Seen Through Courtroom and Courthouse Architecture*, 22 Columbia-VLA Journal of Law and the Arts 463 (1998).

3 E.g., see, John Braithwaite, *Crime, Shame and Reintergration*, Cambridge (1989).

4 Plato, *The Crito* and *The Apology*, Plato: The Collected Dialogues, Princeton (1961) 3-26, 27-39. See also, I.F. Stone, *The Trial of Socrates*, Anchor Books (1989).

5 Plato, *The Euthyphro*, Plato: The Collected Dialogues, Princeton (1961) 169-185.

6 The "hard environment" rather than a "soft environment" that is more compatible with perception, cognition and social interaction. See, e.g., H.M. Proshansky, W.H. Ittelson, and L.G. Rivlin, (Eds.), *Environmental Psychology: People and their physical settings*, 2nd ed. Oxford (1976).

7 Merideth Rossner, *Does the Placement of the Accused at Court Undermine the Right to a Fair Trial?* London School of Economics, Policy Briefing 18 (2016).

Chowder Fest 2017

The People's Choice award winners, Jalama Beach Grill, flanked by (L-R) Phil Kirkwood, Garry Tetalman and Alan Blakeboro, Legal Aid President

Betty L. Jeppesen

Phil Kirkwood and Garry Tetalman flanking the winners: Three Pickles

Lynn Goebel and Mike Lyons