

## Chapter 4

# COURT ENVIRONMENTS AS LEGAL FORUMS, WORKPLACES AND SYMBOLS OF JUSTICE

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### 1. INTRODUCTION: THREE WAYS OF READING COURT BUILDINGS

Court buildings can be analysed from several perspectives. First as places where justice procedures are carried out –where citizens come to resolve grievances, settle disputes or get protection; where administrative decisions are reviewed, judicial officers or juries decide on the guilt of accused persons, sentences are handed down and appeals heard. They are also workplaces for judges, court staff, support workers, ‘regulars’ like prosecutors, police, lawyers and interpreters and ‘occasionals’ like jurors or expert witnesses. Further, they may also have a less tangible role in embodying community values about the rule of law, transparency of justice or reconciliation.

A full appreciation of court environments requires engaging with each of these approaches. A focus on the *judicial and administrative activities* carried out in the building is likely to raise such questions as: is the mix of rooms and other spaces appropriate for the business of the court (and for future uses), do the courtrooms support the range of technologies required, does the layout of the building make for effective processes?

A focus on the *court as workplace* may direct attention, in terms of the everyday occupants of the building, to working spaces and meeting rooms, support facilities and the comfort of furniture. For the occasional visitors, the legibility of the design, accessibility of services and quality of waiting areas could be of particular importance. For all users, the air quality, thermal comfort, lighting and acoustic qualities of the building are relevant, as well as safety – both actual and perceived - from injury, accident and violence.

A focus on the *symbolism of the building* may invite interpretation of the aesthetics, design principles and materials used in the building, the organisation and relationship of spaces, and the use of art. In respect for the Crown or the original inhabitants of the land reflected in the design of the building, how important are jurors or witnesses in the delivery of justice, are accused people seen as innocent until convicted, are poor litigants equal to rich litigants, are judges independent of political control – these are all principles that may be addressed to some extent in the design features of the courthouse and its spaces.

Courts that are successful according to one criterion do not necessarily work as well from another perspective. Spaces that permit speedy procedures might not be comfortable to work in – stand-up counters or assembly-line application processing, for example. The 1960s and 1970s saw court buildings that placed high priority on functionality, standardisation and cost; some of them were indistinguishable from office blocks. The wave of court buildings in the 1990s saw courts that were more service-oriented, providing a welcoming face to court users and an agreeable

working environment for staff. One important issue for court administrations is whether the building provides sufficient flexibility for new or changed uses.

But how do these buildings work at the symbolic level, what messages do they convey to the public, to court users, and to those who work in the legal precinct? To some users, nineteenth century courts convey an impression of imperial authority, intimidation and remoteness. Others, particularly those who work in them, find them dysfunctional at times, but elegant and calming spaces, with the generous ceilings both imparting and commanding respect. The 'messages' communicated by court buildings may also depend somewhat on whether one is being led up from the cells, sitting patiently in a waiting area or looking down over a hushed courtroom under a cedar canopy. Contemporary courts have their own messages. Richard Roger's Bordeaux courthouse recalls the major industry of the area by designing the courtrooms as wine vats. The celebrated Nantes courthouse designed by Jean Nouvel reminds visitors that the island on which the court stands was once a major centre of the slave trade, using moving text that slides along columns in the vast waiting area typical of French courts, the *salle des pas perdus*<sup>1</sup>. Words also figure prominently in the recent Düsseldorf local and district court – inscribed on the windows of courtrooms is the constitutional reminder that everyone is equal in the eyes of the law - *Alle Menschen sind vor dem Gesetz gleich*.

The analysis provided in this essay is based on the experience of researching and working with courts over several years, running court architecture tours and debating the issues with architects, judges, court executives and others. The author is the co-ordinator of the Court of the Future Network, which provides a forum for exploring issues about justice environments in Australia and New Zealand. The issues raised here therefore partly reflect ongoing debates within court communities in Australia, but also considered reflections about emerging trends that will become increasingly relevant to courts in the future.

## **2. COURTS AS SITES OF JUSTICE**

Court buildings in Australia have undergone a quiet revolution in terms of supporting a range of justice processes. Three main trends can be singled out.

### **2.1 Trend towards 'e-justice'**

Justice participants increasingly carry out legal transactions online, including filing documents, paying fines or filling out forms. Jurors in Queensland do not have to report for jury duty every day; they are sent an SMS to tell them where and when they are required. When parties to a family dispute turn up to a Family Court registry, they usually do so with the background information already completed, allowing the interview to focus on the key issues. Vulnerable witnesses appear by video link into the courtroom as a standard procedure in Victoria. In Western Australia sentencing may be done remotely, where travelling long distances would cause hardship to the accused. In the Northern Territory Supreme Court, the judge

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<sup>1</sup> Nouvel J, Le point de vue du concepteur, La nouvelle architecture judiciaire: des palais de justice modernes pour une nouvelle image de la Justice, Paris, 2002, 62-63

is frequently sitting in Darwin for hearings in Alice Springs. E-justice does not always mean justice at a distance. Courts increasingly provide on-site computer access to litigants to prepare for their case and download or file relevant documents. Professionals, including judges, counsel and expert witnesses access their own databases, sometimes using cloud technology. Court buildings are therefore becoming both part of a dispersed network of justice-related activity and also information centres for court users. With mega-trials for civil cases, involving scores of lawyers, it is likely that many of the lawyers will be able to participate on-line, though perhaps keeping visual contact with the court through offices on a mezzanine floor.

## **2.2 Diversity of tasks**

Early colonial courthouses consisted primarily of courtrooms plus a jury room and chambers for the judge. Registry and other services now occupy a major part of the space of the courthouse. Intermediate spaces, like meeting and conference rooms, mediation spaces and private areas for justice participants to confer or wait, are becoming more widely available and demanded by court users. Interpreters may be given designated waiting/rest areas. Some newer courts, like the Sydney West Trial courts in Parramatta, provide working spaces for legal teams during long trials. Multi-storey court buildings tend to group functions according to level, with busy courtrooms on the lower floors, judicial chambers on the higher levels, and registry and other spaces in between. This division can be organised vertically — in the Commonwealth Law Courts in Melbourne, courts are grouped on one side of a high central atrium, while most of the office and service functions are grouped on the other side, with bridges crossing the divide.

Less visible perhaps, but very important in the justice landscape of Australia, are tribunals, both protective and administrative. Sometimes these are closely connected to courts – such as small claims and housing disputes tribunals. Other tribunals are more closely tied in to health processes and resource issues, government decisions or human rights issues. To optimise the efficient sharing of resources, super-tribunals like the Victorian Civil and Administrative Tribunal or the West Australian State Administrative Tribunal have developed. These tribunals often have their own buildings, and have radically different space requirements from those of courts – more conference-style meeting rooms and less security.

## **2.3 Purpose-built buildings**

Justice agencies sometimes occupy buildings designed for other purposes and turn them into courts, such as the two major department stores that in the early 1980s became the Downing Centre in Sydney and the Sir Samuel Way courts in Adelaide. The Collingwood Neighbourhood Justice Centre in Melbourne made imaginative re-use of an old boot making training centre. Magistrates in Adelaide have sat in various times in spaces that were otherwise used as a billiard hall, pub,

harbourmaster's house, theatre, native school, destitute asylum, post office, town hall or tram shed<sup>2</sup>.

However, increasingly, courts are purpose-built. The Melbourne County Court is remarkable for several things — it was a successful example of a public-private partnership, it has a jury assembly area that opens off a high arcade, providing comfortable areas for jurors to wait, work and eat in comfort, its art work combines indigenous and colonial themes into a mural in the entrance area<sup>3</sup> and the ceremonial court is one of the only courtrooms in the state suitable for high-security uses.

### **3. COURTS AS WORKPLACES**

#### **3.1 Security screening**

The most obvious change to courts over the last decade has been the increase in perimeter screening for visitors, plus surveillance by security cameras and other means. Buildings that once allowed the public open access are now characterised by bottlenecks at the entrance as people queue to be scanned, questioned and sometimes patted down. This elaborate screening reportedly does provide some assurance of safety to those who work in the building. The impact on visitors who may be stressed or confused is more complex, with some finding the presence of security reassuring, while others become more anxious because of it.

#### **3.2 Multiple zones**

Court buildings are segregated into multiple zones, with separate areas reserved for particular groups, and sometimes separate entrances, lifts, corridors, lunchrooms and car parks. Judges, jurors, prisoners, vulnerable witnesses and the public may have their own dedicated spaces. Colonial courthouses typically had separate entrances off the street, or the verandah for the judge, jury and the public, with the prisoner usually escorted through the public entrance by the police, or in more sophisticated courts, brought directly into the courtroom from the cells below. The Victorian County Court was retro-fitted with a special building exit for jurors. A swipe card allows empanelled jurors to come back into the building without meeting families and friends of the parties. (They may nevertheless, it might be noted, be identified as jurors if observed from the opposite footpath, since they are using the door designated for jurors' use.)

#### **3.3 User-friendly processes**

One of the major changes in court organisation over the last decade has been the implementation of consumer charters and a service approach to court users. In part this reflected the Parker Report<sup>4</sup> and the priority it gave to the court experience of

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<sup>2</sup> JMA Cramond (former Chief Magistrate), Magistrates' court history, <http://www.courts.sa.gov.au/courts/magistrates/history.htm> [Last accessed 28 November 2011].

<sup>3</sup> Liberty Group, Artworks, Victorian County Court Facility, [http://www.countycourt.vic.gov.au/CA2570A600220F82/Lookup/Artists\\_and\\_Artwork/\\$file/artworks\\_ccv.pdf](http://www.countycourt.vic.gov.au/CA2570A600220F82/Lookup/Artists_and_Artwork/$file/artworks_ccv.pdf) [Last accessed 28 November 2011].

<sup>4</sup> Parker, S, *Courts and the Public*, Australian Institute of Judicial Administration, 1998.

ordinary users. This is evident in the Family Court of Australia, where the service orientation has resulted in stylishly designed registry areas with open counters, typically angled to provide privacy, at which clients sit down. In jury courts, the quality of jury facilities has improved, with provision of more comfortable seating, access to tea and coffee facilities, views from jury rooms, and private bathroom facilities. Vulnerable witnesses increasingly have their own separate waiting areas, remote witness rooms when required and staff to support them. The change in attitude towards court users as consumers rather than litigants has shifted attention to public spaces — both waiting areas and points of contact between the public and court staff.

#### **4. COURTS AS SYMBOLS OF COMMUNITY VALUES**

##### **4.1 Continuity with the past**

The court system represents a link with a common law system of justice that dates back (at least in the popular imagination) to the Magna Carta. However very few Australian courthouses were built in a Gothic style to indicate this link with the English past; the former Melbourne Magistrates court (now part of RMIT), with stone lions guarding the entrance, was one of the few. The predominant use of classical architecture motifs in nineteenth century courts provides a connection to Roman and Greek antiquity, following the practice of American courts of the period. In general, Australian courts were simpler than their American counterparts. In the Queensland towns of Mackay<sup>5</sup>, Charters Towers<sup>6</sup> and Bowen, the Tuscan columns used at the front of the arcade, sheltering the building from the sun, represented the plainest form of this tradition, and one that was typically accompanied by a corrugated iron roof<sup>7</sup>. Internally, timber wainscoting continues to create a 'traditional' ambience in most Australian courtrooms. In terms of court design, this link with the past means that older court buildings (and courtrooms in particular) sometimes embody social relationships that were dominant at an earlier period.

##### **4.2 Access to justice**

One of the key design principles for contemporary courts, as indeed for most public buildings, is promoting public access. At a literal level, this includes removing barriers that prevent persons with disabilities entering the building. Culturally, it means providing information in a form that people from different language backgrounds can understand. In terms of design, it means representing openness through the use of glass or other materials that are thought to symbolise principles of transparency and accountability. Some federal courtrooms in Melbourne used for commercial cases look out over the financial heart of the city, while ordinary citizens can look in through the glass walls of the High Court in Canberra as they walk along the lakefront.

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<sup>5</sup> Queensland Government, Department of the Environment, Queensland heritage register, CHIMS600673, <http://www.epa.qld.gov.au/chims> [last accessed 28 November 2011].

<sup>6</sup> Ibid, CHIMS600403.

<sup>7</sup> Ibid, CHIMS600044.

### **4.3 Separation between judicial and executive authority**

In the early colonies, police commissioners often doubled as police magistrates. Police stations sometimes served as courts, until special purpose ‘police courts’ were built. The design of contemporary courts illustrates a clear demarcation between the role of the judicial officer and prosecutors (who are police officers in lower courts in several states) with separate doors and work areas. (In France by contrast, judges and prosecutors typically share entrances and robing areas, and exchange notes before the trial.) The coats of arms used in most courtrooms in Australia signal the jurisdiction within which the court operates. However sometimes there are subtle changes made to this. In South Australia, for example, the design of the coat of arms used in courtrooms is slightly different from the version used for government purposes; this represents the independence of the judiciary from executive government in terms of individual decisions, while recognising the role of Parliament as lawmaker.

### **4.4 Fairness**

There are several ways that court design supports the perception of fairness of the process. First, consistency in the design and use of materials between the different participants. Generally this is achieved by use of similar timber panelling for the Bench, the witness stand, the jury box and the dock. Second, referring to the equality before the court possessed by all parties, placing the legal representatives at the same level as the parties to the proceedings and members of the public, with equal visual access to the judge (and jury, when present) and with equivalent furniture. Third, whether all relevant parties are given space within the courtroom. This issue has been raised with particular reference to victims and others who have a strong interest in the outcome, but little or no legally-recognised role in the process.

## **5. CHALLENGES FOR AUSTRALIAN COURT DESIGN**

The previous sections identified some of the key contemporary issues that dominate debates about court buildings. This section identifies two issues that are likely to generate controversy and cause fundamental re-thinking of the way courts are designed.

### **5.1 Tradition or privilege?**

Court buildings are some of the most hierarchically-organised buildings in contemporary Australia. Even the Cardinal walks in the front door of a cathedral, and the CEO of a major hospital parks in the same car park as an ordinary patient. Multiple circulation spaces in courts are justified as being essential for security, but it might be suggested that privilege might also play a role. The intense zoning of courts significantly increases building costs and space requirements, with duplication of lifts and corridors, and is particularly expensive when judges enter the courtroom at a higher level than other participants. An extreme version of this hierarchy is reported by Melbourne architect, John Denton, in his firm’s design for

the Manchester Civil Justice Centre – High Court judges needed longer car parks than other judges in order to accommodate their Rolls Royces<sup>8</sup>.

The hierarchically organised courthouse can be contrasted with most German courts where corridors in courthouses are open to all, including those where judges or prosecutors have their offices; where cafeterias are shared by all; and car parks are common to all court users. Even if it is accepted that there needs to be some separation, there are other models for achieving this. In the high-security court building in Düsseldorf, protected witnesses share entrances and corridors with professionals within the zonal arrangement. In the International Criminal Court in The Hague, interpreters and other professionals share the same entrances as the judges, but they are brought through at different times. In many regional courts in Australia, magistrates and court staff share lunchrooms, toilets and other facilities.

Our challenge to court administrations is to justify each circulation system. Do judges really need to have separate spaces from court staff? Do juries really need to have separate spaces from judges? Why can't vulnerable witnesses use judicial corridors? Why can't separation *by time* be used to move people around a building rather than the more costly separation by space? It could be replied that Germany is unduly 'democratic', and should not be used as a model for a constitutional monarchy like Australia. Or that citizens can't be trusted in Australia not to burst into judges' offices and interrupt their work. The author witnessed precisely such an event in the office of a *juge des enfants* in Paris – the judge calmly but firmly told the person to leave and explained the process of appealing a judicial decision. Jurors in Adelaide adjourn for lunch, often repairing to the nearby markets, where they sometimes come across other participants in their trial – they are asked not to talk to them, and jury managers report no problems.

In several new court buildings in NSW, including one in Coffs Harbour, spaces have been designed to be used by a range of users, using the time separation principle outlined above. A suite of meeting rooms (with associated toilets and eating facilities) can be used as jury rooms, judicial conference rooms or mediation facilities, as required. When a jury is empanelled for a long trial, two rooms can be allocated – one for deliberation, the other for lunch, leaving personal items and relaxing.

Another feature of tradition in Australian courts is the spatial hierarchy in the courtroom. The elevation of judges in nineteenth century courtrooms made sense when they had to control unruly galleries. Maintaining sightlines for judges (and other participants) is a key design principle, but there are several ways of achieving this. One approach, used by Spanish courts in Catalonia, places all the participants in a trial on a stage, with the judge at the same level as the parties on either side. The witness stands at a microphone just in front of the stage, one step lower, in the centre of the room, with the audience behind. Again, it might be argued that Spain is unduly democratic and has a legal system that is not comparable to that in Australia, but, on the other hand, like Australia, Spain is also a constitutional

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<sup>8</sup> Denton J, "Courts in the UK", *Architecture Australia*, September/October 2009, 53-57 at 53.

monarchy. The separate status of the judge could be registered by having a different chair – such is the case in the family court in Templehof-Kreuzberg in Berlin, where the judge has an ergonomic chair while the other participants make do with the elegant, but uncomfortable, chairs designed by the architect.

One argument for retaining ‘traditional’ features of a courtroom like an elevated Bench, dark wood panelling and heavy fixed furniture is that these features have a familiar, ‘court-like’ appearance. However, as an example of how a different approach operates in practice, the use of lighter-coloured wood in the new Court 15 of the Supreme Court of Victoria, is well received by court users. It can be argued that indigenous courts, where the magistrate sits at the same level as the other participants, can be just as solemn and dignified as other court proceedings. These hearings may be given the necessary dignity by the rituals of respect and recognition that are shown by participants in the proceedings and attending members of the public and further promoted by the craftsmanship of a timber table and appropriate indigenous cultural symbols (such as a flag or artworks) in the courtroom.

A third feature that, it might be suggested, is based more on tradition than reason is the co-location of prosecutor and defence counsel in most Australian courts, and the separation of lawyers from their clients. American courts abandoned this practice in the late nineteenth century, and Ireland in the last twenty years. It made sense for barristers to sit together at a time when their codes of conduct discouraged social mixing with the inferior caste of solicitors, but is this remnant of a caste system still relevant to Australia? It is not efficient for lawyers to wait for a break to talk to clients, to have to walk across the courtroom to the dock to confer, or, as the author himself observed in a court hearing in Port Augusta, shouting across the courtroom to the accused "you are pleading guilty, aren't you?"

## 5.2 SECURITY AND FAIRNESS

Design guidelines for courthouses typically emphasise the importance of security in the building. The Western Australian guidelines prescribe "minimum risk in relation to security, OH&S and public safety within the Facility".<sup>9</sup> At the same time, however, they also prescribe "ease of access" for court users, and "de-stressing" interiors. Fairness is referred to in several sections – judges should be seen to be impartial, proceedings should be in public, the accused should be able to see and hear all the participants and jurors should have comfortable seats to prevent physical discomfort distracting them from their task. However, it can be argued that security trumps fairness in several aspects of court design and management.

In many courtrooms throughout Australia accused persons are routinely presented to the court through a glass screen, justified on grounds of security. In two recent Australian cases where lawyers challenged this situation, judges of the Victorian and NSW Supreme Courts ordered that the glass screens be removed, finding that jurors viewing the accused through a glass screen might consider them dangerous,

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<sup>9</sup> Government of Western Australia, Department of the Attorney General, Courts Standard Design Brief, March 2009.



undermining the presumption of innocence, a key element of a fair trial<sup>10</sup>. The judges in both cases found that, unless there was specific evidence suggesting that an individual accused posed a current threat, such security measures should not be used. Yet in many courtrooms through Australia, defendants are placed inside glass boxes in the courtroom. It can be argued that if jurors are likely to conclude that the accused looks 'guilty' behind a glass screen, other members of the public are likely to feel the same. So the principle developed for jury trials can also be applied to non-jury trials in magistrates' courts.

US courts provide the most logical alternative – placing the accused at the bar table beside their counsel. This has the additional advantage of improving lawyer-client communication, and provides an implicit security control, with the lawyer acting to keep the client calm. In over a century of experience, very few security incidents have been reported – of those incidents that have occurred, most have happened before or after the court proceedings.

However, from time to time there are notable courtroom incidents, now available to a wider audience through the internet. These include a Florida judge who jumped over the Bench and joined in a courtroom brawl, another judge who left the bench to punch a suspect, a defendant attacked by the victim's family after the judge declared a mistrial, and a convicted murderer being attacked by the husband of the woman who had been killed<sup>11</sup>. These incidents involved violence on the part of persons other than the accused. Incidents in which the accused was responsible include one in which a lawyer was 'knocked out by client', and another when a suspect was shot dead in court when he tried to attack a judge, and several suicide attempts. Security docks could prevent attacks against the accused (although screens in front of the public, as used in the International Criminal Court, would also serve this purpose), and could protect lawyers and judges against angry defendants. However security screens around the accused would not prevent members of the public attacking lawyers, nor self-harm attempts, nor judges leaping over the bench. This discussion suggests that security measures, where required, should be calibrated according to the extent and source of the individual threat.

In some US states an alternative security measure may be used – a stun belt that can immobilise a person with a 50,000 volt current for 8 seconds, causing extreme pain, defecation, urination and temporary paralysis<sup>12</sup>. While this device can avoid unfavourable impressions given to the jury – unless of course the device is activated - the threat of judicially-authorized torture might not pass the test of human rights standards, at least in Victoria and the ACT which have such legislation.

An approach to the issue of courtroom security which provides a compromise between the two approaches is to use high-security docks only when the judge

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<sup>10</sup> See Tait D, "Glass cages in the dock: presenting the defendant to the jury", *Chicago-Kent Law Review*, 2011, 86:2, 467-495.

<sup>11</sup> See [www.youtube.com](http://www.youtube.com) where details of each of these incidents can be found by entering the keywords used in the descriptions in the text above.

<sup>12</sup> Barry Yeoman, "Shocking Discipline", *Mother Jones*, March/April 2000.

expressly requires this, allowing for an ‘open dock’ in every courtroom. This is the position of the NSW Department of Attorney General and Justice, for courtrooms in new court buildings. Another compromise that involves non-visible constraint without threatening torture is used in Sydney’s King Street Courts, where a flap can be folded down in the dock when the defendant is seated, preventing or slowing down any attempt to leave the dock.

Another issue where security and fairness seem to come into conflict is the use of handcuffs in court. In South Australia, defendants in custody who appear before a magistrate are routinely handcuffed. Lawyers for the accused can apply to have the handcuffs removed, but according to a security officer in one Adelaide court, this has happened only three times in three years. While judicial officers can argue that they can set aside any prejudice arising from seeing a person in handcuffs, the same cannot be said for the public. Furthermore, there is usually some interaction between the Bench and the accused during a sentencing hearing, and defendants who cannot move their hands freely may be constrained in their ability to communicate effectively.

While there are arguments for the use of constraints such as security docks and handcuffs, these should be measured against possible impacts on a fair trial, as Supreme Court judges in Melbourne and Sydney have ruled.

## **6. CONCLUSIONS**

The challenges posed to the design and organisation of courthouses in the future are likely to go beyond those suggested here. These are likely to be increasingly resolved in consultation with the various publics that the Parker Report identified, not just traditional sources of authority.

The question of which traditions should be retained and which discarded is likely to provoke disagreement within the community. Arcades or colonnades in front of courts are sensible ways of providing shelter from the elements and protection from the sun in a sustainable way, so this building element can provide a potent link with the past, as well as being of practice use in the present. However, recent practices developed in indigenous courts, such as acknowledging the accused person’s lineage and link to the land, might become more widely accepted, while archaic language like ‘Mr Crown’ or ‘Ms Crown’, to refer to a prosecutor, might disappear. It is possible that some of the privileges currently accorded to groups within the legal profession might be extended to vulnerable witnesses and jurors, to interpreters and to registry staff. A first step might be to have a shared car park and bicycle stand for all those whose workplace is the court.

Many of the changes will probably be determined by how much of the court business goes on-line. Court buildings may, at least for relatively minor matters and pre-trial hearings, become simply communication hubs. Defendants, particularly if they are threatened with being presented in a glass cage or in handcuffs, are likely to prefer the ‘dignity’ of a prison video room to the indignity of the courtroom. Alternatively, judges may insist on the presumption of innocence being preserved in their courtrooms, giving greater respect to accused people in the courtroom, at the expense of a few colourful contributions to Youtube.