

DESIGN AND CHILDREN'S COURTS

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The ideal of a 'right to a fair trial' is a fundamental element of our criminal justice system.¹

While there has been no judicial attempt to exhaustively list the attributes of a fair trial, it is uncontested to assert that a fair trial should allow an accused the opportunity to participate in a meaningful way. For young people understanding and participating in proceedings may be especially challenging. Factors affecting this may include their maturity, intellectual and emotional capacities, physical size, capacity to concentrate, and the fear and intimidation generated by the legal process itself.

The ideal of the opportunity for participation is enshrined in international principles. *The Beijing Rules* indicate that:

proceedings shall be conducive to the best interests of the juvenile and shall be conducted in an atmosphere of understanding, which shall allow the juvenile to participate herein and to express herself or himself freely.²

At the international level, there is an increasingly recognised need to adapt courtrooms to enable children to participate, including:

innovations such as more informality in the physical design of the court and the clothing of judges and lawyers, the videotaping of evidence, sight screens and separate waiting rooms, and the special preparation of child witnesses.³

This article focuses specifically on how the *design* of courtrooms can either undermine or assist the participation of young people in criminal matters. The physical environment of a court, both within the courtroom itself and the courthouse as a whole, can greatly shape a young person's ability to understand and participate in proceedings.

The Australian Law Reform Commission examined young people's participation in their *Seen and Heard* report.⁴ This considered participation in terms of the right of young people to a fair trial. The ALRC asserted that young people might find the legal system 'practically incomprehensible':⁵

When young suspects face trial, they must be able to defend themselves properly if they are contesting a charge. No matter what their plea, they must be able to understand the proceedings. Factors that can contribute to a child's level of comprehension are the physical environment of the courtroom, the approach of the prosecutor, defence lawyer and judicial officer, and the effective representation of the child.⁶

Part of this report specifically examined the interrelationship of court design and meaningful

participation. Issues noted by the ALRC included the significance of the size of the courtroom. It was recommended that the size of the courtroom enable all persons involved to address each other at a normal conversational level.

The ALRC also expressed concern that children's criminal and care matters were at times held in the same courtroom, and that this may negatively affect both young offenders and children who are the subject of care proceedings. Young offenders may be exposed to angry outbursts by families under emotional stress involved in care proceedings, while children who are the subject of care proceedings may get the impression that they have done something wrong as a result of the association with young offenders.⁷ The ALRC recommended that, if court facilities are limited in this way, care proceedings should be heard on alternate days to criminal matters.

In addition, the ALRC noted that the court environment can impact upon children's experience of the legal system. Young persons are often left waiting for hours and they should be able to do so in a calm and reasonably private environment. It was consistently noted that children and their families left the court building to wait elsewhere. It was reported that facilities at the Melbourne Children's Court were so inadequate lawyers were advising children to use the casino across the road as a waiting area.⁸

The ALRC accepted that there was a certain symbolic and deterrent value in the formal court environment, but that it was imperative that the physical layout of the courtroom not be so threatening or overwhelming as to affect the young person's conduct and ultimately affect their case and their right to a fair trial. Thus, the court should:

have a bench that distinguishes the role of the magistrate but that does not dominate the room by its height, size or ornateness and be carefully laid out so that there is a clear line of sight between the bench and all others.⁹

This recognition of the symbolic and deterrent value of the formal courtroom environment appears to draw on the welfare/justice model dichotomy. Traditionally, juvenile justice has been perceived as alternating between the ideal models of 'justice' and 'welfare'. Briefly, the welfare model emphasises the needs of the young person over their deeds, with rehabilitation as the primary goal of sentencing. In contrast, the justice model emphasises the offence rather than the offender. It focuses upon the responsibility of the young offender

REFERENCES

1. *Dietrich v R* (1992) 177 CLR 292, 299 (Mason CJ and McHugh J).
2. *United Nations Standard Minimum Rules for the Administration of Juvenile Justice* ('The Beijing Rules') adopted November 29, 1985, GA Res 40/33, annex, 40 UN GAOR Supp (No 53) at 207, [14.2], UN Doc A/40/53 (1985).
3. Rachel Hodgkin and Peter Newell, 'Manual on Human Rights Reporting' in *Implementation Handbook for the Convention on the Rights of the Child* (1998) 151.
4. Australian Law Reform Commission, *Seen and Heard: Priority for children in the legal process Report No 84* (1997) ('ALRC').
5. ALRC 4.22.
6. ALRC 18.178.
7. ALRC 18.187.
8. ALRC 18.189.
9. ALRC 18.188.

and punishment that is appropriate for the crime. This model places an emphasis upon due process, applying the same rules of procedure to young people as are applied to adults.

We argue that good design principles are consistent with the ideals of welfare and justice. In relation to the welfare model, without a child's participation, it would be difficult to ascertain their needs and appropriate rehabilitation. The emphasis of the justice model upon due process requires at a minimum meaningful participation. The reliance upon symbolism in a courtroom where an accused does not understand and cannot participate raises the question: what kind of justice is envisioned? Reliance upon formal intimidation appears more consistent with a Wizard of Oz-like exercise of power, dependent on bells and whistles with nothing behind it, rather than a concept of justice based on due process and reason.

Primary research

This article presents some of the findings of our primary research undertaken to gain insight into how the design of children's courts encourages or undermines participation. The research consisted of studying the design and layout of designated Children's Courts in New South Wales at Bidura, Parramatta, and Campbelltown. We collected information on the size and features of each courtroom, elevation of the magistrate, position of court personnel, location of the bar table, where the young defendant was seated or stood, the use of audio visual links, and any interaction and communication between parties during the proceedings. In addition, we considered the courthouse itself and the general facilities available.

The ALRC noted that many of the difficulties associated with court design are particularly acute in rural and remote areas where the community has outgrown court facilities or children's matters are held in adult courtrooms.¹⁰ The research generated by our project demonstrates that design issues are not isolated to remote communities. More importantly, many of the design problems highlighted in this project would be easily remedied. The ALRC recommended in 1997 that guidelines should be developed:

to be used when new children's courts are established and existing facilities are modified. These guidelines should ensure that court rooms and waiting areas are designed and modified with the needs of child witnesses and defendants in mind.¹¹

This project goes some way towards illuminating practical steps that could be undertaken immediately and generating recommendations for the design of children's courts in the future.

Size of the courtrooms

Size influences the ability of young people to participate. The ALRC has recognised that generally, smaller courtrooms assist participation as young people are capable of hearing and being heard at normal conversational level and the room is less intimidating¹². However, this ideal of intimacy must be balanced with

matters where more seating may be required, there is more than one defendant, or many supporters of the legal parties are present.

Bidura Children's Court has two courtrooms, one of which is designated for criminal proceedings. It provides a small and intimate environment with seating for the magistrate, court personnel, witnesses and legal representatives and additional seating at the rear of the room for family members and other parties with an interest in the case. There are 24 seats located towards the rear of the courtroom for young defendants who are not in custody, their families and any other persons. The small size of the courtroom provides an inclusive environment in which parties to the proceedings are able to hear one another. The limited size of the courtroom was effective in terms of allowing for the participation of the young person; however at times it led to over-crowding and would be inappropriate for matters involving several defendants.

At Campbelltown there is one modern courtroom conducting both criminal and care proceedings on alternate days.¹³ The courtroom has seating for the magistrate, solicitors, court personnel, the alleged offender, family and other persons who may have an interest in the proceedings. The Campbelltown courtroom appears larger than Bidura, in part because less seating is provided, and also because of the higher ceilings and natural light. Unlike Bidura, the parties' voices cannot be heard at a conversational level.

Parramatta Children's Court is the largest in NSW with ten courtrooms, the majority for criminal proceedings. The newly developed custom-designed complex opened in 2006 and has fairly large courtrooms, with seating for magistrates, solicitors, the alleged offender and other legal representatives and family. The size of the courtrooms allowed for adequate space for all people involved. Although effective in this respect, these larger courtrooms lose the close conversational environment required for children to participate adequately in court.

Recommendations

Smaller courtrooms are more desirable for matters of young people, creating an intimate and less intimidating environment. Designers need to consider how to retain a conversational environment whilst meeting seating needs. As discussed below, improving waiting rooms and the listing of matters would also reduce the number of extra people in courtrooms awaiting matters.

Noise and distractions

A young person's capacity to participate may be affected by noise and other distractions. The child may not be able to hear proceedings, or due to boredom, incomprehension or lower attention span, may be distracted from the trial by noise or people entering and leaving the courtroom.

At Bidura, extraneous noise could be heard within the courtroom. While this noise was usually minimal, it could prove distracting at times. The majority of the disruptive noise flowed from the front desk reception

10. ALRC 18.186.

11. ALRC 18.190, Rec 234.

12. *Ibid.*

13. Campbelltown Children's Court, See lawlink.nsw.gov.au/lawlink/childrens_court/ll_cc.nsf/pages/CC_contactuscampbelltownchildrenscourtchildpage at 11 November 2008

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and staff areas which adjoined the courtroom. At Bidura there is no PA for calling cases, instead staff walk through the court to call matters. This can be disruptive to proceedings in terms of the movement of court personnel throughout the courtroom, the noise created through this method of calling cases, and the flow of noise which travels into the room by having the door kept open.

In contrast Campbelltown had double doors, and Parramatta had soundproofed double doors which assisted in reducing interruptions when people entered or left the court, with noise from outside greatly reduced. In addition, Parramatta had TV screens at the entrance to each courtroom listing matters being heard. This meant that, in comparison with Bidura and Campbelltown, there was much less traffic by legal representatives at Parramatta, greatly reducing distractions.

Despite these advantages, Parramatta has a poorly designed PA system. Until recently, the system was connected to the emergency announcement system, resulting in announcements that were at the sound level of an emergency siren and frequently interrupt sensitive interviews in the interview rooms. The PA system has recently been replaced with a stand alone system, but the ability to limit zones and volume has not as yet been fully utilised. Care and protection and criminal matters are constantly called on the PA system, so that eventually parties suffer from announcement fatigue and calls become meaningless. In addition, care and protection proceedings often have multiple parties resulting in long lists of names being called in an announcement. The soundproofed double doors largely protect the courtrooms from the sound, but can create a sense of emergency and alarm for young people awaiting a matter or being interviewed. This can prove highly distracting and stressful. Legal representatives have commented that the PA system greatly undermines the possibility of receiving instructions.

Recommendations

Courts should be designed to reduce the noise and distractions that may reduce a young person's capacity to concentrate and thus participate. Measures include double soundproofed doors and effective means for announcements. This would include TV monitors at entrances to courtrooms. Designers need to consider an effective way of announcing matters that is appropriate for the size of the court complex. The Parramatta PA system must be disconnected from the

emergency system, and appropriate volume levels and zones should be utilised.

The position of the Magistrate

Each of the children's courts had a magistrate's bench that was slightly elevated and situated centrally at the front of the room. In each courtroom everyone was able to see or be seen by the magistrate, unless they were seated behind the legal representatives.

Recommendation

It is recommended that the bench should be distinguished to highlight the role of the magistrate but should not dominate the room.¹⁴ There needs to be a clear line of sight between the bench and all other persons in the courtroom.¹⁵

The proximity of parties

Parties need to be close enough to facilitate communication during proceedings. Young people should be sufficiently near to their legal representatives to communicate without difficulty, and also close enough to their family to get support.

Children in custody

There is no legislation in NSW which states when the dock should or should not be used in the children's courts. At Parramatta, children in custody would be seated in the dock for criminal proceedings. The dock is large and dominating. Children seated in the dock could not be involved in the proceedings and were hardly addressed by the magistrate and their lawyers. Communication with their legal representatives was completely obstructed due to the considerable distance between the dock and the bar table. Additionally, young people in the dock were away from their family.

At Bidura, there were four seats on the left hand side of the courtroom for young people in custody and their escorts. Children are not close enough for the solicitor to be able to either obtain instructions or provide advice without causing interruptions to the proceedings. Campbelltown also has four seats on the left hand side of the courtroom for young offenders in custody. This designated seating has a glass barrier, further inhibiting communication with legal representatives and participation in the proceedings.

Children not in custody

At Parramatta and Bidura, there was no designated seating for young people who were not in custody. Young defendants were often directed by their

14. Rod Blackmore, *The Children's Court and Community Welfare in NSW* (1989) 40.

15. *Ibid.*



16. ALRC 4.20.

legal representatives to sit in close proximity. If the defendant sat behind the solicitor then they were able to communicate with their legal representative but had no clear line of sight to the magistrate. If young defendants sat opposite the legal representative then they had a clear line of sight to the magistrate and legal representative, but communication was more difficult.

When children sat behind the legal representative, or towards the back of the room, family members were able to sit with them throughout the proceedings. Whilst the support of family members is important, problems occurred when young persons sat towards the back of the courtroom. This distance between the alleged offender and their solicitor made communication almost impossible, as solicitors would rarely interrupt proceedings to ensure the child understood and could participate in the proceedings.

The ALRC expressed concern that children who sat behind their legal representatives often seemed to lose personal involvement in the proceedings.¹⁶ Additionally, lack of allocated seating could make it difficult for the magistrate to communicate with young offenders if they did not know where the child was seated.

Recommendations

The dock is an isolating, daunting experience which greatly undermines the possibility of young people participating. The dock should be avoided in the matters of young people unless reasons are provided to justify its use. Designers need to consider a way to facilitate the participation of children in custody in court proceedings whilst meeting security and occupational health and safety needs.

Solicitors should be aware of including young people in the proceedings. Young persons need to be seated with

a clear view of the bench and other key areas of the courtroom, and have the ability to easily communicate with legal representatives, while retaining contact with family members.

The use of audio visual link

There has been increased reliance on audio visual links in Children's Courts. Benefits of audio visual link include decreasing the number of young people in holding cells, avoiding long waiting periods at court, and reducing the costs of transportation to and from court. Disadvantages include difficulties in communication between clients and solicitors prior to and during the proceedings, feelings of isolation, and disconnection from the proceedings.

The quality of these links has a tremendous impact on the capacity of young people to participate. Bidura and Campbelltown use the audio visual link system for numerous matters such as bail applications. There are five cameras on a screen directed towards different parts of the courtroom which enable the alleged young offender to see the entire courtroom while allowing those inside the courtroom to see the young person.

Parramatta utilises audio visual links in a number of matters, on average about 120 times a month. There are five cameras directed to different areas of the court, which allow the young person to see the courtroom. There are also two screens inside the courtroom, which allow people inside the courtroom to see the young person. The use of audio visual links at Parramatta is highly problematic because the sound quality is poor, making it difficult for the young defendant to follow court proceedings. In one case a young defendant was observed waiting 25 minutes for

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the audio visual link system to work due to technical difficulties. The sound quality remained poor and, throughout the course of his bail application, the young person continually asked the magistrate and his legal representative to repeat themselves as he could not hear what was being said. At the conclusion of the matter, the young person asked what the magistrate's decision meant as he had not understood proceedings. In this case the use of audio visual link actually prevented the effective participation and understanding of the young person in proceedings. This is particularly problematic given the recent amendments to the *Bail Act 1978* limiting an accused to only one bail application, except in special circumstances.¹⁷

One of the other issues associated with the use of audio visual link is that mental health assessments, usually carried out by Justice Health upon intake, cannot be conducted. This can result in mental health issues being undiagnosed and children 'getting lost in the system'. Another concern is the tendency to discuss matters while awaiting the connection of the audio visual system. This can occur due to a desire to save time and may lead to a discussion of the likely outcome of the case in the absence of the child. By the time the child appears on the audio visual link, they are merely told of the result and not given an opportunity to participate.

Recommendations

Although audio visual links can be seen as advantageous in some matters, it limits the child's ability to be involved in their proceedings because they do not have the opportunity of more effective face-to-face interaction. At a minimum, the quality of the audio visual links needs to be improved so that poor sound/visual quality does not preclude young people from participating. Technology should be improved to maximise the young person's ability to participate in proceedings. Legal representatives should not discuss matters in the child's absence.

The courthouse and general facilities

Young people will frequently spend a great deal of time waiting for their matter to be heard — whether in custody or general waiting areas. Parramatta Court has introduced the listing of criminal matters, intended to reduce waiting periods. However, despite this, young people usually wait hours before their matter is heard at all the courts.

Holding cells

Young people in custody will be kept in holding cells. The holding cells at Parramatta usually hold about two young offenders per cell. Each cell has a TV and DVD player. There are couches, with a toilet and a bubbler in each cell. There is no soundproofing in the cells so the holding area is quite noisy.

Interview rooms

Existing courts have problems in relation to the number of interview rooms. The ALRC noted that some communities may have outgrown their court facilities. Practitioners in rural Wagga Wagga advised the ALRC that solicitors felt unable to take proper instructions from their clients as a lack of interview rooms meant the only place they were able to confer was on the steps of the courthouse itself.¹⁸ The findings of the ALRC were reiterated in our research. We were repeatedly advised that the number of interview rooms needs to be increased. There were insufficient interview rooms for the number of cases being heard at Bidura and Campbelltown. In addition, Campbelltown had only three interview rooms with free-moving chairs. The ability to move chairs around in interview rooms is important as it facilitates interaction between the young defendant and their legal representatives and/or social worker.

Although Parramatta is a custom-designed, relatively new court complex, the conference rooms are particularly inadequate. The interview rooms in Parramatta for children in custody are in either contact or non-contact rooms. In the contact areas, all the furniture is bolted to the floor so as to prevent alleged offenders using them as weapons. The rooms are not soundproof. The acoustics are very bad as the rooms echo and the sound travels through to other rooms, which can potentially harm solicitor/client confidentiality. There have been proposals to make the rooms soundproof; however this also raises issues with regard to the safety of solicitors/social workers etc. If an incident occurs in one of the rooms, juvenile justice officers may not be able to hear any conflict from outside the rooms.

The non-contact rooms have the same problem with regard to acoustics. As the rooms are smaller and more restricted, the acoustics are worse and echoing causes severe problems. For young offenders with mental illnesses the echoes may be particularly disturbing. The rooms are also very intimidating in that the whole room is metal with a small glass window through which the other room can be seen. Sound is carried through a

17. *Bail Act 1978* (NSW), s 22.

18. Wagga Wagga Practitioners' Forum 9 May 1996, in ALRC 18.186.

small mesh gap just below the glass. These non-contact areas also pose problems as they do not allow mental health workers to do a proper psychiatric analysis as they cannot smell¹⁹ or talk to the offender in a way that is appropriate. Such psychiatric assessments are vital in determining the sentences for children. Information regarding the mental health of young offenders collected by the police is not given to the courts.

Accordingly, mental health workers do not know about any mental health issues that the young person may have unless the court or lawyers decide that psychiatric analysis would be appropriate. Therefore enhancing the design of the interview rooms is extremely important for the safety and well being of the child.

Recommendations

A structural recommendation is to increase the number of interview rooms available. Interview rooms can also be improved through interior design. Interview rooms should not echo. Where possible, chairs should be able to be moved to facilitate communication. Designers should also consider ways in which security can be improved, while soundproofing rooms. There is no need to lock legal representatives in with clients, as there is so much security throughout the court complex already. The use of non-contact rooms should be limited unless absolutely necessary.

Waiting areas

The waiting rooms at Bidura and Campbelltown are small and do not offer sufficient seating. This means that many young people wait outside and on the street. As a consequence, young people may miss their hearing as they do not hear their names being called and the anonymity of the child may be hindered. The waiting rooms at Parramatta are large with adequate seating for those waiting for their matters. However, the seats are very high and not very comfortable.

All courts had vending machines and toilets. Parramatta had televisions screening free to air programs and educational DVDs on court procedure in the waiting rooms. Campbelltown also had photocopying facilities, but at a prohibitive rate; photocopies cost \$2 a page, with a minimum charge of \$10.

The waiting rooms also fail to satisfy the separation of criminal matters from care and protection proceedings. At Parramatta the proceedings are held on the same floor, which means that children awaiting criminal and care matters are in the same waiting areas. Instead, care and protection proceedings would have been better placed on different floors of the building.

Recommendations

Court design is important in terms of the facilities available when the child is not required in the courtroom itself. Children often have to wait hours for their matter to come on. 'They, and their families, should be able to do so in a calm, reasonably private environment.'²⁰ In 2001 the NSW Children's Court Facilities Report Card stated that these major improvements needed to be implemented in children's courts:

- More interview rooms;
- Appropriate holding rooms;
- Safe witness rooms;
- Child care facilities;
- Installation of basic communication lines such as pay phones;
- General upgrade and backlog maintenance of court facilities.²¹

These recommendations, identified in 2001, have not been implemented uniformly throughout all courts in NSW. Implementation of these procedures is needed to improve existing facilities. This is of particular significance in rural and remote parts of NSW where juvenile justice matters are heard in courtrooms built to accommodate adult indictable trials.

Other recommendations include:

- Adequate seating in waiting rooms;
- An effective system in place to call young people to the courtroom to have their matter heard;
- Victim's rooms to be available, to reduce the anxiety felt by victims of seeing the offender;
- Provision of other services such as photocopying at an affordable;
- Separate waiting rooms for criminal and care matters;
- Provision of services and entertainment to assist children awaiting matters.

Conclusion

The design of courtrooms can have a significant impact upon the capacity of young people to participate and understand proceedings. The ALRC recommended guidelines should be developed 'to be used when new children's courts are established and existing facilities are modified' to ensure that courthouses are designed and modified with children in mind. Parramatta highlights the need for the articulation of general design principles for children's courts. This court complex was custom-designed and completed in 2006 and yet its children's courts do not facilitate meaningful participation due to a lack of intimacy in the size of the courtroom, reliance on the dock, linking of the PA to the emergency system, very poor audio visual equipment, and highly problematic interview rooms. Many problems at the Parramatta Court Complex could be easily remedied through good design and technology. We need to articulate design principles to ensure existing children's courts are improved and that future courts facilitate participation. These principles will assist and guide designers and architects in creating effective and appropriate courts. The organisation of courtrooms according to good design principles cannot guarantee a fair trial, but it goes some way toward assisting in meaningful participation.

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19. Mental health workers commented that being able to smell young offenders allows them to assess whether they have been taking drugs or alcohol, and properly taking care of themselves.

20. ALRC 18.189.

21. NSW Law Reform Commission, *Young Offenders*, Report 104 (2005) [9.33] lawlink.nsw.gov.au/lawlink/lrc/ll_lrc.nsf/pages/LRC_r104chp09