



THE LAWYER'S PERSPECTIVE

CELEBRATING THE COURTHOUSE

George A. Davidson

THE COURTHOUSE IS THE LAWYER'S WORK PLACE, episodically or continuously depending on the nature of the lawyer's practice. That many of the design elements most important to lawyers respond to their practical, quotidian concerns does not mean that lawyers are unconcerned with majesty: the atmosphere of dignity, seriousness of purpose, and impartiality of the law created by a well-designed courtroom is treasured by lawyers at least as much as by litigants, witnesses, visitors, and court personnel.

As the preceding chapter makes clear, the courtroom is the heart of the matter, for lawyers and for everyone else. Lawyers may be in court all day. Families of litigants, reporters and similar representatives of the media, and other observers may also be in court for hours and days on end. Seating is a paramount concern: chairs

George Davidson chairs the litigation department at Hughes Hubbard & Reed, LLP of New York, and has tried cases and argued appeals throughout the United States. He is a fellow of the American College of Trial Lawyers and a member of the American Law Institute. Reprinted from CELEBRATING THE COURTHOUSE: A GUIDE FOR ARCHITECTS, THEIR CLIENTS, AND THE PUBLIC, edited by Steven Flanders. Copyright © 2006 by Steven Flanders. With permission of the publisher, W.W. Norton & Company, Inc. The only changes made for this republication were the removal of references to photographs that appeared in the original but that we were unable to acquire for ours.

should be comfortable and provide lumbar support. The pew style spectator seating common in prewar courtrooms is too uncomfortable to sit on for any extended period. Chairs at counsel table are at least as important, as are chairs for the judges. It is not uncommon to see judges in courthouses equipped with high-backed throne-style chairs replace them with ergonomically comfortable chairs, often something that looks like what a typist or court reporter would sit on. Courtrooms are more than ceremonial settings; furnishings should reflect functional needs at least as much as office furnishings do.

Sightlines often are not adequately addressed. Generally, witness stands are positioned to give the jury a good view of the witness; often this comes at the expense of the judge's view. Trial practice expert James W. McElhaney has suggested that witness stands be movable so that in a judge-trial case, the witness can be positioned facing the judge.

In the age of television, trial lawyers rely increasingly on visual aids in presenting evidence. In the standard courtroom configuration it is not easy to place an exhibit so that everyone can see it. If counsel facing the bench are looking, say, north, then the judge and the witness typically look south and the jury west, with the witness between the judge and jury. Thus a chart placed at a 45-degree angle (northeast), to be accessible to the judge, jury, and witness, may not be visible to opposing counsel.

Even worse than this standard arrangement is the placement of counsel tables one behind the other rather than side by side, common in many smaller courtrooms and a few large ones. This placement handicaps counsel at both tables: counsel at the rear table can see only the back of what is shown to judge and jury, whereas counsel at the front table cannot see what their adversaries are up to.

In the Isabella County courthouse in Mt. Pleasant, Michigan, an unusual courtroom arrangement poses additional sightline difficulties. In this rather large courtroom, the counsel are facing north and the jury is in the usual position looking west, the witness box is in the center of the courtroom facing south, and the bench is at a 45-degree angle in the northwest corner facing southeast. Here it is

The Lawyer's Perspective

very difficult for counsel to address the judge and the jury at the same time.

Providing clear lines of sight is not enough: distance introduces further difficulties. Some courts require counsel to stand behind a podium when questioning witnesses rather than stride about the courtroom. This practice introduces at least two design considerations. First, it should be possible to raise or lower the podium. Otherwise, short counsel will disappear behind it, and tall counsel will find his or her notes too far away to be read. Second, the podium must not be placed too far from the witness. People are comfortable conversing within a limited range of distance from one another. Standing too close is intimidating to a witness; standing too far away from one dissipates the rhythm of natural verbal interaction. Even if voices are amplified, distance destroys the intimacy on which civil exchange depends. Podiums in Manhattan's Moynihan Courthouse often are placed too far from the witness box; although the podiums appear fixed, they are in fact moveable, and counsel may be able discreetly to reposition them.

Determining the right distance between the elements of a courtroom depends on what takes place in the court. One of the courtrooms in the federal courthouse in Hartford, Connecticut, intended to accommodate a magistrate judge, was designed by shrinking the plans for a district judge courtroom. When expansion required that this room be reassigned to a district judge, it proved impossible to conduct criminal jury trials there. The witness box was so close to the jury that jurors felt menaced and the judge himself not terribly secure.

Size plays a role in creating majesty, ceiling height being perhaps most important. As a young lawyer, my first trial was against a pro se (self-represented) litigant in New York City's Civil Court. The assigned courtroom, in blond wood, was very small and narrow with only three rows of spectator seating. A small American flag on a wooden dowel hung on the wall, and a tiny rail separated spectators from tiny counsel tables and a tiny bench with a tiny door behind it. When the door opened and a tiny judge emerged, I felt much like Alice after she went down the rabbit hole.

Courtrooms should be designed to permit unobtrusive entrances and exits, to avoid distractions to court, jury, and counsel. Doors in the rear of the room are thus preferable to doors on the side. And the doors themselves should be designed to open and close noiselessly.

Courtrooms should have windows, even if the windows are so high on the wall that only sky is visible. Lawyers involved in lengthy trials put lack of windows at the top of their list of complaints, finding it dispiriting to not even be able to tell whether it is day or night.

The choreography of movement in and out of a courtroom is complex. There are individuals and groups that should be kept separate from one another, and courtrooms therefore usually are designed with several doors for entry and exit. Think of a French bedroom farce played very quietly and very slowly. Whereas civil litigants, lawyers, and witnesses may mingle, the jury should be able to move from the courtroom to the jury room without encountering others, incarcerated defendants must be escorted to detention facilities, and judges should be able to access at least a robing room and perhaps their chambers without passing through a public hallway.

Courthouses in general have too few signs, but the Herkimer County Courthouse in Oneida, New York, perhaps takes signage too far. The door behind the bench to the judge's robing room has a frosted glass panel through which those in the courtroom can make out the words

To Bench

Designers who are content to leave the ordinary citizen to stumble unguided through the courthouse might have had more confidence in the judges, who are there every day.

It is essential to provide some accommodation for the occasional big case. Most courtrooms were designed for a world in which every case had two parties and each party had one or perhaps two lawyers. In today's world of class actions and multi-defendant asbestos conspiracy cases, numerous parties and dozens of lawyers may

The Lawyer's Perspective

be present in court for conferences, oral argument, or trial. Although it would be wasteful to design every courtroom to accommodate extraordinary cases, special temporary courtrooms can be created, as was done for the massive asbestos insurance coverage litigation in California and the DuPont Plaza fire litigation in Puerto Rico. At least one or two courtrooms in every courthouse should be designed to accommodate cases involving a dozen or more lawyers.

Courtrooms for specialized proceedings present special problems. The best appellate arguments are those that become discussions between the judges and counsel, and a well-designed courtroom will create an environment conducive to such discussions. At the same time, the design must reinforce the dignity and sense of security of the judges on the bench by horizontal and vertical separations between counsel and the judges, reinforced by physical barriers. The challenge for the architect is to create both a sense of intimacy and a sense of separation at the same time.

Cass Gilbert's United States Supreme Court very successfully reconciles these somewhat conflicting goals. Its high ceilings, rich ornamentation, and liberal use of dark wood confer an atmosphere of dignity, whereas intimacy is achieved by positioning counsel close (but not too close) to the bench. The original bench has been replaced with one that has a gentle arc, thereby permitting the Justices to better see and hear one another during the course of the arguments. New York's highest court, the Court of Appeals in Albany, also successfully achieves both of these objectives, although the bench might better have been placed at a higher elevation in this large courtroom.

Another magnificent appellate courtroom is the rather prosaically named Courtroom No. 1 of the United States Court of Appeals for the Ninth Circuit in San Francisco. Constructed in 1905 by Italian craftsmen, the courtroom has white Pavonazzo marble walls, mosaic murals, skylights, and an ornamental plaster ceiling. A riot of decoration, it resembles a Roman bath converted to courtroom use with the addition of rich red drapery and generous use of warm woodwork. The room is literally irreplaceable; to its eternal credit the federal government restored the courthouse, at great expense,

following heavy damage in a 1989 earthquake. Most appellate courtrooms have a more muted feel, relying primarily on substantial use of dark wood. The courtroom in the Mosk Courthouse in Sacramento, used both by the California Supreme Court and the regional court of appeal, employs wood extensively to create an atmosphere of dignity and seriousness while preserving a sense of warmth. Cass Gilbert's Second Circuit courtroom on the seventeenth floor of New York's Foley Square Courthouse does likewise but is less assertive, leaving the focus on judges and lawyers.

Appellate courtrooms built more recently seek to achieve dignity through the use of space rather than rich materials and ornamentation. This approach sacrifices intimacy; the cavernous surroundings and substantial distances from the bench make effective dialogue more difficult to achieve. The courtrooms of the supreme courts of Kansas and New Jersey are examples. In contrast, the Michigan Supreme Court's courtroom, at the 2002 Hall of Justice in Lansing (fig. 7-3), has a round courtroom that evokes the sentencing circles of the Chippewa, Ottawa, and Potawatomic tribes native to Michigan. The wall of the courtroom is paneled in richly grained dark wood. High windows just under the domed ceiling provide glimpses of sky, softening the effect of the dark wood. The result seems fully satisfying to appellate advocates: the architects have successfully recaptured traditional virtues within the limits imposed by contemporary restraints, aided considerably by the Michigan legislature's willingness to invest in materials of the quality required to create a lasting monument.

Modern appellate courtrooms, apparently for aesthetic reasons, also place the podium, from which arguing counsel addresses the court, in the center of the courtroom, a considerable distance from the counsel tables at which counsel and assistants sit while not actually arguing. In older courtrooms, counsel tables immediately flank the podium, sometimes as part of a single piece of furniture. Here again, the older style is more serviceable because arguing counsel is physically close to supporting materials and in a position to read notes passed by colleagues.

The Lawyer's Perspective



7-3. A rare success among recent appellate courtrooms: the Michigan Supreme Court, Hall of Justice, Lansing Michigan, Albert Kahn Associates and Spillis Candella & Partners, 2002. Photography by Justin Maconochie.

Courthouses in urban environments often have courtrooms devoted to arraignments and other pretrial proceedings in criminal cases. Detention facilities for defendants in custody are typically adjacent or nearby. Most criminal cases are disposed of after arraignment or other pretrial proceedings. It is thus critical that there be interview rooms in these detention facilities, in which defendants can consult privately with their lawyers. It is helpful also to have a private conference room nearby, for conferences at which a proposed disposition can be worked out.

Courtrooms dedicated to arraignments or other pretrial criminal

proceedings are bustling places, with lawyers, family members, and court personnel coming in and out. Acoustics are frequently a problem. Where appropriate, amplification devices should be employed so that family members and other spectators can hear what is being said.

Ancillary facilities supporting the courtroom present distinct design issues. Robing rooms should be planned for the range of functions they must perform. Many robing rooms are designed as if their only purpose were to provide a private refuge for the judge, convenient to the courtroom for use during recesses. However, robing rooms frequently serve as places for the judge to confer privately with counsel for all the parties about legal or administrative issues. Room for a conference table and adequate seating should be provided.

Witnesses who have not yet testified at a trial typically are not permitted to sit in the courtroom but must remain nearby so as to be available when called. Few courthouses have suitable facilities. A witness lounge – or, ideally, two of them – equipped with a television set and reading material and connected to the courtroom by an intercom, through which witnesses can be summoned, would make the process of waiting far more comfortable.

Few courtrooms today have adequate storage facilities for the use of counsel. In trials of complex cases, the day begins and ends with a caravan of porters delivering or removing brief bags, client file boxes, tapes, and supplies. Courtrooms in which multiday trials are likely to be scheduled should have large, lockable closets for overnight storage of these materials.

Many courthouses have cafeterias for courthouse personnel, litigants, witnesses, jurors, visitors, and the bar. Many of these groups require privacy in their lunchtime conversations. Seating arrangements should be designed to permit groups to sit together out of earshot of other groups.

The courthouse must be designed in a fashion that reflects well-considered plans for security. Courthouses designed to welcome the public in recent years have had their entranceways marred with ugly and temporary-looking metal detectors and other security appara-

The Lawyer's Perspective

tus. It seems safe to assume that security screening will be with us for a long time to come, so security should be planned for, and integrated harmoniously with, the overall design.

Courthouses should be designed with the possibility of expansion in mind. Too many courthouses have accommodated expansion by awkward conversions of space – even closets – into makeshift courtrooms that have numerous deficiencies in function and appearance.

Design must allow for efficient maintenance. Courthouses are, of course, public buildings and are dependent on tax revenues for their upkeep. It may be expected that over the life of a courthouse there will be periods of straitened resources. Trial lawyers in urban areas are all too familiar with courtrooms whose motto has deteriorated to OD WE RUST, the ventilation system has failed, and the clock has not worked for years. Courthouses should be designed for easy, low-cost maintenance.

Judgment must be exercised in locating other facilities in courthouses. For many years, while federal jurisdiction was limited, it was very common for federal court functions to be located on the second floor of a post office building. Although the overall architecture of these buildings was typically dignified and even monumental, there is something about being a flight up from the parcel post window that seems not quite appropriate for a federal court. Federal courts today are typically freestanding facilities that sometimes, as in the case of the courthouse in New Haven, Connecticut, expand courthouse uses into the portion of the building formerly occupied by the post office.

Many state or county or municipal courthouses are part of mixed-use government buildings. Some of these other uses are more compatible with a courthouse use than others. A litigant searching for a hearing room in the Chester County Courthouse in West Chester, Pennsylvania may encounter a sign for a room devoted to Dog and Doe Licenses. The courthouse is a place of serious business, where virtually every case seeks to compel change in human relations, putting at stake personal liberty, family relations, personal or real property, or money in amounts great or small. The

well-designed courthouse conveys a sense of history, of the continuity of the law, of principles and values transcending individual concerns – and in a realm quite apart from dog and doe licenses.

A golden age of building these secular temples ended about seventy years ago. The combination of design elements, favorable construction environments, and a growing nation that came together in the late nineteenth and early twentieth centuries produced magnificent courthouses throughout the country, culminating in Cass Gilbert's United States Supreme Court building in Washington, D.C. and his federal courthouse in New York City, both completed shortly after his death in 1934. But far more numerous than the federal examples are state courthouses in county seats across America.

The Marquette County Courthouse in Marquette, Michigan, a red sandstone neoclassical revival structure built in 1904 was the site of a libel suit brought by President Theodore Roosevelt and later served as the site for filming *Anatomy of a Murder* (fig. 7-4). A central section flanked by two wings is fronted by a two-story portico and topped with a large dome. As one Michigan lawyer remarked, if you don't feel like a lawyer when you walk into that building, you sure do by the time you come out. Other outstanding county seat courthouses include the 1911 Beaux-Arts Brown County Courthouse in Brown County, Wisconsin, the 1882 Tippecanoe County Courthouse in Lafayette, Indiana, the 1905 neoclassical Bourbon County Courthouse in Paris, Kentucky, the 1890 Second Empire limestone Hood County Courthouse in Granbury, Texas, the 1898 Adair County Courthouse in Kirksville, Missouri, and the 1909 Madison County Courthouse in Wampsville, New York. Some of these courthouses have become tourist attractions, and books containing photographs of state courthouses have been published.¹

¹ Mary P. Kelsey and Donald H. Dyal, *The Courthouses of Texas* (College Station: Texas A&M University Press, 1993); Herbert Alan Johnson and Ralph K. Andrist, *Historic Courthouses of New York State* (New York: Columbia University Press, 1977). An excellent source of county courthouse images can be found in the work of Calvin Beale of the United States Department of Agriculture Economic Research Service, available at www.ers.usda.gov/Briefing/Population/Photos.

The Lawyer's Perspective



7-4. *Marquette County Courthouse, Marquette, Michigan, Dimetrious F. Charlton and R. William Gilbert, 1904. Photograph by Calvin Beale.*

From the perspective of courthouse architecture, there is much to be said for the county seat remaining a backwater. Not much has happened in Wampsville in the last century or more, so the courthouse remains its magnificent self. In venues where rising populations have substantially increased court business, contemporary architects have faced the difficult task of expanding buildings that were never designed for expansion, that reflect the styles of earlier days, and that contain detailing and workmanship impossible to replicate under today's economic conditions. Sometimes this expansion has been accomplished successfully, other times not.

The Victorian era also gives the lie to Mae West's dictum that too much of a good thing is wonderful. To the modern eye the profusion of design elements can give a space a crowded, claustrophobic feel. The appellate division building on Madison Square in New York City comes close to going over the top, but somehow remains a successful space today. The 1909 James Brown Lord building in the Palladio style is full of statuary, marble, carved wood, murals, and stained glass. The impressive carved wooden bench is backed by

George A. Davidson

a carved wooden screen, over which are colorful murals, and the decorative ceiling is topped with a huge stained-glass skylight. The richness of the room suggests a debt to graft of a prior generation, but the project came in at more than 10 percent under its admittedly substantial budget.

In the Victorian era, the popular styles could be found pretty much anywhere in the country. Later, designers began to reflect a sense of place. The 1933 federal courthouse in Miami, for example, is in the Spanish Mediterranean revival style, whereas the Santa Barbara, California, courthouse is in the Spanish Moorish style. In Miami, caseloads have exploded far beyond the capacity of the original structure; the solution has been to leave the original courthouse intact and build a new courthouse on adjacent land to absorb the caseload increase.

Despite considerable variety in architectural styles, all of these courthouses share one thing in common: they make a lawyer feel like a lawyer. Most of the time, that's good for everybody involved.

