The Court's Layout and Advocacy

I read how the layout of the New Zealand High Court is such that the defendant's legal team is seated behind (instead of besides) the claimant's team. Therefore, defendant's counsel must speak over the claimant's team when addressing the judge (see the criminal court seating).

This got me thinking of how the court's layout factors into the preparation and performance of advocacy. Here are three examples of this relationship:

📌 The Old Bailey.

Befitting a system where jurors (instead of judges) determine guilt, counsel's rows face the jury-box (instead of the bench). Prosecution and defence counsel occupy the same row and (seem to) share the same desk.

Counsel must therefore crane to the right to look at the judge (the secondary recipient of advocacy), instead of straight ahead.[1]

I imagine that this must take some getting used to for counsel who are used to being face-to-face with the judge when submitting.

📌 The UK's Supreme Court.

The court was designed to encourage a conversational style of advocacy.

This was done by placing the bench on the same level of counsel, removing the need to wear wigs, positioning judges' and counsel's benches in close proximity, and doing-away with a fixed lectern.[2]

Hearings are described[3] as *'an academic seminar,'* or *'an informed dialogue'* conducted in a *'conversational and relaxed atmosphere.'* This is in contrast to (say) when counsel might submit in an uninterrupted monologue with judges as mere passive recipients.

📌 In-chambers proceedings.

Usually reserved for case management or interlocutory proceedings, the setting in chambers is more intimate than open court. Judge and counsel are seated across a table from each other, with no aisle in between.

Therefore the judge will have a close-up view of messy notes, fidgeting, or tics that the distance in open court may blur. The cosy setting also favours a conversational and interactive style of advocacy.[4]

- So how can counsel cater for these different layouts?

One suggestion[5] is for lawyers to take a leaf from the preparation of professional speakers who scout-out in advance the room that they'll be speaking in. They do this to be familiar with its dimensions, sample its acoustics, and to get comfortable in the space.

Lawyers are therefore encouraged to watch proceedings in the courtroom where they'll be speaking. This helps lawyers familiarise themselves with the layout of the courtroom and (not least) the culture in the room.

I accept that this is not a fool-proof suggestion as:

(a) The courtroom (and sometimes the building itself) that we are appearing in may be changed on the day of the hearing;

(b) There is sometimes no telling whether a particular proceeding (whether a case management or an interlocutory hearing) will be held in open court or in chambers, despite what the rules say;

(c) The pressures of time may prevent us from arriving earlier to suss-out the courtroom, especially if we are appearing out of town;

(d) There is simply no way to gain access to a judge's chambers beforehand.

So I suggest that this step be coupled with attempts to seek feedback from lawyers who routinely appear in the courtroom, or before the particular judge.

This feedback is no substitute for first-hand experience. But it may help provide vicarious experience of the courtroom and the culture in it.

[1] Page 5, *Court No. 1 The Old Bailey*, Thomas Grant, 2019.

[2] Pages 32 and 33, *Final Judgment (The Last Law Lords and the Supreme Court)*, Alan Peterson, 2013.

[3] Pages 32 and 33, *Final Judgment (The Last Law Lords and the Supreme Court)*, Alan Peterson, 2013.

[4] Para 4.048, *Presenting Oral Arguments in Interlocutory Applications, Modern Advocacy, Perspectives from Singapore*, 2008.

[5] Pg 159, *Making Your Case – The Art of Persuading Judges*, Antonin Scalia and Bryan Garner, 2008.