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Reconceputualising security strategies for courts: developing a typology for safer court environments

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Reconceptualizing Security Strategies For Courts: Developing A Typology For Safer Court Environments

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Abstract:

There have been heightened concerns about security in courts in recent years, prompting a strong response that has largely been focused on perimeter security. This paper draws on recent research conducted in Australian on court user's safety needs, to propose a typology for designing safer courtroom environments that moves beyond the entry point to the court, and incorporates consideration of process and design elements.

Keywords: Court Security; Court Users; Courtroom Design; Court Safety; Australia

1. Introduction

Courts in Australia have experienced heightened concerns about security over the past 30 years.[2] These arose, initially, as a result of a number of serious incidents of violence in court buildings and the shooting of a judge at their private home,[3] and more recently, a senior civil servant in their workplace.[4] The aftermath of 9/11 and the Bali Bombings and the trial of a number of alleged terrorist cases in Australian courts have further increased concerns about the possibility of terrorist attacks on court buildings.[5]

A strong response to these concerns has seen 'a massive … injection of public funding into court security, along with training and infrastructure and research into the science of security.'[6] Its major focus has been the taking of 'extraordinary steps to ensure that those entering our courts pass through a secure point of entry.'[7] These perimeter security systems usually involve tools such as scanners and metal detectors to search for weapons.[8] Court staff are issued coded security cards for entry and required to carry photographic identification. Inside the court building, separate circulation zones for court staff, judicial officers, defendants, jurors, and the public are designed to avoid the risk of confrontation[9] and surveillance tools such as CCTV cameras are used to monitor risk.[10]

These measures have largely been reactive, with a focus on physical safety. There has been little research into the actual and perceived safety needs of court user communities,[11] the psychological impact of court environments[12] and the extent

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[2] Sarre, R. and Prenzler, T (2012) 'Issues in courtroom security: A key role for the private sector in Australia and New Zealand' *Security Journal* 25(a), 25.

[3] Ibid 25-6; see also: McQueen, R. (1998) 'Of Wigs and Gowns: A Short History of Legal and Judicial Dress in Australia.' *Law in Context,* 16(1), 50-1; E. R. Baker and P. I. Rose, 'Opas, David Louis (1936–1980)', Australian Dictionary of Biography, National Centre of Biography, Australian National University, <http://adb.anu.edu.au/biography/opas-david-louis-11310/text20189> accessed 12 June 2013.

[4] Melissa Sweet, 'I've been Shot, I've been Shot', (SMH, May 26, 2006) at <http://www.smh.com.au/news/national/ive-been-shot-ive-been-shot/2006/05/26/1148524888490.html> accessed 10 May 2013

[5] For a listing of some of these cases see Australian Parliamentary Library, 'Terrorism Court Cases' at <http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/Browse_by_Topic/TerrorismLaw/Courtcases> accessed 10 May 2013; see also cases referred to in Tait, D. 2011, 'Glass Cages in the Dock?: Presenting the Perpetrator to the Jury', *Chicago-Kent Law Review,* 86(2): 467-495.

[6] Sarr and Prenzler, above n 1, 27.

[7] Ibid 25-6.

[8] Ibid 26.

[9] Cooper, C. (2007) 'The Evolving Concept of "Court Security"' *Justice System Journal,* 28(1), 40.

[10] Sarr and Prenzler, above n 1, 26.

[11] Most of the literature on courthouse safety and security focuses on threats to the staff and judiciary (e.g: Griebel, M. & Phillips, T., 'Architectural Design for Security in Courthouse Facilities,' Annals of the American Academy of Political and Social Science, Vol. 576,

to which those environments increase stress or discomfort for participants in the justice system. The terms "safety" and "security" have often been used interchangeably in public debate and in the formulation of responses.

This article draws on recent Australian research into the safety needs of court users, using a broad definition that, in addition to physical safety, encompasses psychological safety, cultural safety[13] and safety of access, commonly termed "accessibility". In our view, "safety" and "security" are distinct concepts and "security" is better understood as the range of strategies that might be deployed to address threats to safety. These include processes, such as risk management strategies and the deployment of security guards, and the installation of equipment, such as CCTV cameras, x-ray machines, walk-through scanners and other physical measures. While security measures are intended to ensure the safety of court users, the one does not necessarily flow from the other. This distinction is implicit in some of the existing discourse concerning safety in courts; for example, the Family Court of Australia's 2004-5 Family Violence Strategy policy document, refers to the "primacy of safety", that:

> … requires a comprehensive, integrated approach to the management of security at Court premises and during all Court events. Security policy needs to be comprehensive to ensure that safety is a factor that is considered in relation to all Court processes as well as the Court's physical environment.[14]

Key themes and issues identified from our research findings are analyzed using a "hard" versus "soft" system approach, outlined below. This enables us to identify what types of security strategies might be directed to particular safety concerns, and where responsibility might lie for their implementation. A key finding is that safeguarding court users often requires a collaborative approach that moves beyond perimeter security.

2. Methodology
The data referred to in this article derives from a three-year study '*Fortress or sanctuary? Enhancing court safety by managing people, places and processes'* funded by the Australian Research Council and supported by industry partners, including the Family Court of Australia, the Western Australia Department of Justice and Attorney General, the Courts Administration Authority of South Australia, Magistrates Court of Victoria, the New Zealand Ministry of Justice, Myriad Consultants Pty Ltd, PTW Architects, Lyons Architects and security consultants Connley Walker Pty Ltd.[15] The project that sought to investigate the safety needs of court participants, to provide a comparative analysis of safety processes, practices and designs in five jurisdictions, document the safety experience and expectations of stakeholders, and to develop best practice guidelines for providing safer court environments.

This article draws on key themes emerging from interview and "court user jury" focus group discourse.[16] Eighty-seven stakeholders were interviewed, using a semi-structured interview format. They include judges, magistrates, court officers, court security staff, prosecution and defense lawyers, specialist court staff who liaise with, or support, court users, victim support officers, community advocates and volunteer court support workers. 66 stakeholders participated in "user juries" who, after inspecting particular court facilities, were de-briefed on their observations and perceptions in a focus group using a semi-structured question format. They included stakeholders from community advocacy groups, and support services for victims of sexual assault and family violence, the physically and intellectually disabled, refugees and members of indigenous communities. Axial and thematic coding[17] of the qualitative discourse disclosed a number of elements that, based on the experiences narrated by the interviewees and "user jury" stakeholders, were analyzed by the research team as impacting upon perceptions of safety within the court environment. Further grouping and analysis of these elements led to the development of a new typology of safer court environments.

Courthouse Violence: Protecting the Judicial Workplace (July. 2001), 118-131). There is large body of literature concerned with the safety needs of court participants such as victims of family violence, vulnerable and child witnesses, but little on the broader court user population. Security strategies involving environmental design focus on physical separation, segregation and the use of physical barriers to limit 'breaches, with little attention is paid to design elements that might de-escalate violent situations, such as those suggested in the environmental-behavioural literature.

[12] For a notable exception, see: Missingham, G., Heywood, C. & Brawn, G., 'Architectural Psychology and Courts Buildings', (unpublished report prepared for Department of Justice, Western Australia, 2002). On file with authors.

[13] Papps, E., & Ramsden, I. (1996), 'Cultural safety in nursing: The New Zealand experience' 8(5) *International Journal of Qualitative Health Care*, 491-497.

[14] Family Court of Australia, *Family Violence Strategy,* 2004-5, <http://www.familycourt.gov.au/wps/wcm/connect/FCOA/home/about/Initiatives/FV/FCOA_fv_Strategy>, accessed 26 June 2013.

[15] ARC Linkage Project LP0882179 (2008-11).

[16] Tait D., Missingham, G., Vernon, A., Rowden*,* E., 'Court Safety Draft Key Themes: (31 January – 1 February 2012)'*,* last updated April, 2012. Unpublished document on file with authors.

[17] Pandit, N.R. (1996). 'The Creation of Theory: A Recent Application of the Grounded Theory Method'. *The Qualitative Report*, 2 (4), http://www.nova.edu/ssss/QR/QR2-4/pandit.html, accessed 2/12/2012.

3. Developing a Typology for Safer Court Environments

Initially the elements identified in the qualitative data, or discourse, were grouped into broad themes. These themes highlight the key concerns of court users and court staff in relation to creating feelings of safety in court environments. The analysis below should be read not solely as a critique, but also as a way of categorizing current policies which, in some cases, are making steps in the right direction towards an integrated approach to providing safer environments for all court users.

To illustrate, we take an example mentioned frequently in the interview discourse: the fear voiced by victims of family violence about the potential for physical, verbal and other forms of intimidation on encountering the perpetrator in the court room or court building.[18]

Table 1: Common themes in relation to safety of victims:

Preparation for the hearing/appearance: There is a need for sufficient briefing information and support for the victim to be provided to ensure that their stress is not added to by inadequate preparation for the court event.

Waiting: There is a requirement for both victim and perpetrator to wait for the matter to be heard. The provision of adequate waiting spaces within the court to avoid contact with the perpetrator is important for the safety of the victim while they wait for the court event.

Intimidation: How are concerns about non-verbal intimidation, or 'code' that would be familiar to the victim, as well as direct physical or verbal threats identified and handled, is a significant issue that impacts upon perceptions of safety for victims.

Separation and segregation: How the victim and the perpetrator might be kept separate, both prior to their respective appearances in the courtroom, and in the courtroom has safety implications. Former victims expressed the impossible situation faced in the public areas of the courthouse and having to choose between feeling fearful of becoming a 'sitting duck' waiting for the court appearance in waiting areas that are easily surveilled by court security staff, or risk being 'cornered' in the more hidden public areas, where harassment could occur out of the sight of security guards.

Security presence: The visible presence of security staff, for example, in court waiting areas is a factor that might reduce the risk of violence or intimidation.

Intelligence gathering, planning ahead: The collection and analysis of data on case types and court users is a strategy employed by some courts to gather intelligence on the risk of violence and intimidation in order to make appropriate plans to prevent incidents. For example, all family violence cases might be listed in a particular court on a particular day, so that security resources could be concentrated in that area.

Breaches and escalation: The need for clear guidance, not just for court staff, but for court users, as to when and how to report safety fears, is a significant factor in how breaches of security or escalation of violent behaviour is minimised. Stakeholders view a timely response to escalation of threats to safety as important.

Closer inspection and interrogation of the discourse revealed that there were two distinct ways of classifying these themes. The first method of classification identifies whether security measures to improve safety relate more to a particular physical location or more to a process operating within the court. The second uses "hard" versus "soft" systems analysis. We then combine both methods of classification to devise a typology that aims to recognize how responsibility for devising appropriate security measures might be identified. We argue that this provides a useful typology for analyzing, and improving upon, current court security strategies designed to provide safer court environments.

4. Potential Interventions

One way of looking at potential security interventions is to categorise them as either relating more to place or more to process.

- **Place** was where the potential safety solutions were aligned to the actual building or its layout.
  Examples relevant to the perpetrator-victim scenario include: the location of security screening; the use of CCTV cameras to monitor movement through the building; the routes in and out of a building; the design of a waiting room;

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[18] Such an encounter might occur in relation to criminal proceedings for an assault, on a civil or criminal process for a restraining order, or for family court proceedings un-related to the violence itself..

the location of the front desk; the form and location of signage; design that creates potentially unsafe corners or corridors; and floorplan layouts that restrict opportunities to separate parties.

- **Process** was where safety solutions were aligned to processes that operate within the court building.
  Examples relevant to the perpetrator-victim scenario include: "gatekeeper" reception staff who advise timings and locations to court users; processes that do or do not enable anonymity, require court users to "wait your turn", or do not enable separation; the availability of child-minding support; the clarity and application of rules; court users' perceptions of acceptable behavior in the court building; the tension inherent in public proceedings about personal matters; providing sufficient preparation for the court appearance; and the level of empathy displayed by court staff.
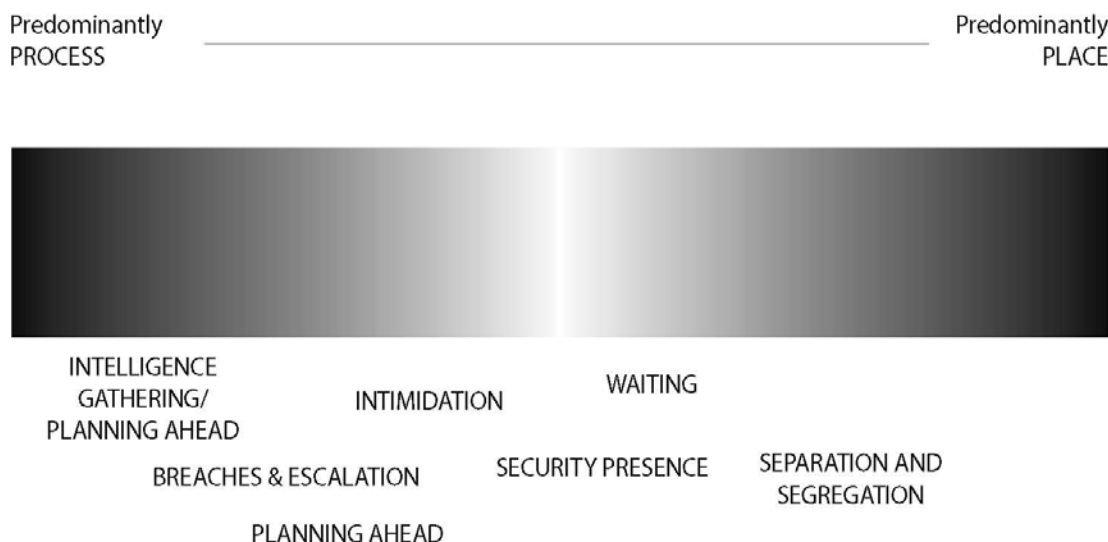

Figure 1: Strategies and interventions as identified for the victim safety example, as sorted by Place and Process.

 Applying this classification to the themes identified in the data for our example revealed several limitations. While it is possible to identify some themes (such as intelligence gathering/planning ahead, breaches and escalation) as pertaining more to "process", other themes (such as security presence, waiting, intimidation) could be supported or hindered by both the nature of the place or the process – see Figure 1. For example, "waiting" is often a requirement of the process by which cases are heard and managed. However, it also occurs in a physical place, such as foyer, or seating area outside a courtroom. "Intimidation" as a process, may occur in that physical space, where the perpetrator, their family or other supporters, are co-located with the victim witness. A victim might seek out a separate space or might be offered a separate, secure, waiting space, supported by a process within the court to enable waiting victim witnesses to be identified and offered that support. A "security presence" in the waiting area might detect, or deter, intimidation to some extent. Such a presence would relate to that particular physical space, but would be arranged by a process that identified the need for it. It might also ensure, for example, that security staff was alerted to look for more subtle signs of intimidation, such as non-verbal signals passing between the perpetrator and their supporters, and the victim witness.

The overlap also reveals another limitation: a "process" / "place" classification might suggest that responsibility for security can be clearly identified as either something that must be addressed by those responsible for writing courthouse design briefs for architects, (court administrators, building owners/operators, judiciary, or other stakeholders) or by those responsible for managing the people employed within the building or the cases heard in the court. In practice, identifying responsibility for devising and implementing solutions to safety concerns in court buildings is more complex.

5. Responsibility for Devising and Implementing Solutions
To overcome those limitations, we drew on Checkland's work on systems thinking[19] and the concept of "hard" versus "soft" thinking to analyze the discourse in terms of responsibility for devising and implementing solutions. This approach has been widely applied to decision-making across a range of fields.

In this conceptual framework, a "hard" system is one in which the observer or manager observes the system's elements and assumes that they can manage it in such a way as to optimize its capacity to achieve pre-planned goals[20]; it becomes

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[19] Checkland P.B., Scholes J. 1990. *Soft Systems Methodology in Action.* Wiley: Chichester; Checkland P. 1981. *Systems Thinking, Systems Practice.* John Wiley: New York; Checkland P.B. 1999. *Soft Systems Methodology: A 30-year Retrospective.* Wiley: Chichester.

about configuration and order. A specific application of hard versus soft, found in systems engineering, includes a sequence of problem solving steps: (a) define what is needed in the context of the existing system; (b) generate alternate systems that may satisfy the identified need; (c) select and implement one of these alternate systems; (d) monitor the effectiveness of the alternate system in meeting the identified need; (e) modify the alternate system based on feedback from the system; (f) introduce wider implementation of the alternate system and repeat the last two steps, as required.[21] Soft systems, by contrast, are defined as those where the observer considers the system to be complex and created by those within it[22]; change will emerge through learning about the system in conjunction with those who are a part of the system. Because it is assumed that individuals vary in beliefs and values, then improvements are expected to emerge through improved communication, collaboration and coproduction of the ideas[23].

The concept of hard versus soft systems has been applied more widely to a range of disciplines. Of interest to us in this paper is the application within the human resources arena ('HRM'). Legge[24] for example suggested two different models or orientations: "Hard" HRM orientation which is represented by the structure, functions and processes; and the "Soft" HRM orientation which focused on culture and behavioral orientations of organizational members.[25] Consequently, hard HRM is unitary, focusing upon the resource side of human resources, that emphasizes costs in the form of "head counts" and places control firmly in the hands of management; the goal is to effectively align the human capital and numbers with the organizational requirements.[26] Conversely, soft HRM assumes that the system will be more effective if employees are treated as valued assets who are an integral part of the system; improvement results from their commitment, adaptability and high quality skill and performance.[27]

The themes identified in Table 2 below can be categorized as issues where *managers* can "do" something to apparently improve safety both in terms of Places and Processes. These are then determined as "hard". Where the way that Place or Process is discussed implies a *collaborative approach* with multiple stakeholders, then this will be classified as soft – see Table 2 below.

Hard	• Waiting • Security Presence • Separation and Segregation • Breaches and escalation
Soft	• Intimidation • Intelligence gathering, planning ahead • Preparation for the appearance/hearing

Table 2: Strategies and interventions identified for Safety sorted by Hard and Soft

6. Integrating the Classification of the Themes

By combining our two approaches to classification we have developed a typology to capture the themes and ideas emerging from the discourse. The purpose of this typology is to identify where influence and responsibility for improving court safety lies, and in doing so, assist courts in devising strategies to achieve it. We suggest that enhancing safety in courts requires collaborative approaches between those who create court spaces, those who manage them, those who devise court processes and the court users.

Table 3 below represents what we have called the four quadrants of court safety. On one axis, we have places and processes. Place denotes buildings but also includes architectural spaces, immovable objects, such as signs, furniture

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[20]   Yan Zexian and Yan Xuhui (1996). A revolution in the field of systems thinking—a review of Checkland's system thinking. *Systems Research & Behavioral Science*. Mar/Apr 27 (2): 140-155.
[21]   Checkland (1981) above n 20.
[22]   Zexian, Y. and Xuhui, Y. (1996). 'A revolution in the field of systems thinking—a review of Checkland's system thinking.' *Systems Research & Behavioral Science*. Mar/Apr 27 (2): 140-155.
[23]   Johnson, G.M. (2008). 'Firm systems thinking: unifying educational problem solving.' *Systems Research & Behavioral Science*, Nov/Dec 25 (6): 797-805.
[24]   Legge, K. (1995). *Human Resource Management: Rhetorics and Realities.* Basingstoke: Macmillan.
[25]   See also Fombrun, C.J. (1983) 'Strategic Management: Integrating the Human Resource Systems into Strategic Planning'. *Advances in Strategic Management*, 2. Greenwich, Conn.: JAI Press; Fombrun. C.J. and Tichy. N.M. (1983) 'Strategic Planning and Human Resources Management: at Rainbow's End'. In Lamb. R. (ed.) *Recent Advances in Strategic Planning*. New York: McGraw-Hill.
[26]   Storey, J. (1987) 'Developments in the management of human resources: an interim report', *Warwick Papers in Industrial Relations*, 17, IRRU, School of Industrial and Business Studies, University of Warwick (November); Bach, S. (2005). *Managing Human Resources: Personnel Management in Transition.* Oxford, UK.: Blackwell Publishing.
[27]   Barney, J. (1991). 'Firm Resources and Sustained Competitive Advantage', *Journal of Management*, 17 (1): pp. 99-120; Gill, C. (1999). 'Use of Hard and Soft Models of HRM to illustrate the gap between Rhetoric and Reality in Workforce Management'. *RMIT Working Paper Series*, http://mams.rmit.edu.au/d4lhtsmk45c.pdf accessed 2/12/2012; Barney, J., Wright, M. and Ketchen, D.J. (2001). 'The resource-based view of the firm: Ten years after 1991'. *Journal of Management*, 27, 625–641.

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and equipment. Processes refers to any regulation, system or practice designed to frame the behavior of individuals. What becomes clear, as we develop the typology, is that a third "p" — people — is the subject of the other two, that is, places and processes. This includes those who use courts — litigants, media, members of the public, lawyers — and those who work in them — judicial officers, court staff, security personnel.

On the second axis, we use the word "hard" to denote something that is immovable, fixed or inflexible. It is likely that the people who are supported by hard processes are the court officials, judges and professional users, such as lawyers and prosecutors. "Soft", on the other hand, denotes something that is focused upon ordinary court users and clients and is flexible, supportive and usually adaptable. The four quadrants are:

1. **Inflexible Environments** where the solutions are designed for the users through the architecture, building layout etc.;
2. **Regulatory Systems** where there are regulated, legislated and enacted processes which are designed and enacted for the users by others;
3. **Flexible environments** where the users are able to use and influence the places in ways that make them feel safer; and
4. **Supportive practices** where all involved work together to make the users feel as safe and secure as possible.

When the original elements identified in the discourse (Process and Place) are mapped to the typology the result is illustrated in Table 3 below:

	Places	**Processes**
Hard	Inflexible Environments	Regulatory Systems
Soft	Flexible Environments	Supportive Practices

Table 3: Four quadrants of Court Safety

Having applied the typology it becomes clear that the fundamental difference between the quadrants lies in who is responsible for the enactment of the safety solutions. To return to our example to illustrate:

The legal process involved will determine whether the victim and the perpetrator are required to be present at the same time in the same vicinity, which will in turn determine whether they have to wait (*process)* and where *(place)*. The physical features of the court building will influence the extent to which an interaction between the victim and the perpetrator might occur: are there separate waiting rooms for witnesses and their supporters; are there discrete entrances for vulnerable witnesses? In terms of preparation, legal rules that apply for alternative methods such as video-link might play a role, (*process*) as might the availability or otherwise of those facilities *(place).* The provision of information to the victim about the processes and facilities could be important. The court itself might gather intelligence in a number of ways about the likelihood of encounters between a victim and the perpetrator (and their respective supporters) (*process)*, and might use surveillance systems to monitor the movement of the parties (*place and process).* The availability and form of support for the victim can be important in ameliorating stress and providing timely information on safety strategies (*process).* Screening systems at the courthouse door can detect weapons that might be used in a physical attack *(place).*

These can be further classified into safety issues that are aligned to the building and its layout and those aligned to processes that operate within the building.

Applying the typology (see Figure 3 below) helps us to see how safety might be analyzed, in order to be improved upon, in the given example:

	PLACES	**PROCESSES**
HARD	**Inflexible Environments** Separation Security Presence	**Regulatory Systems** Breaches & Escalation Waiting Security Presence
SOFT	**Flexible Environments** Waiting	**Supportive Practices** Intelligence/Advance planning Preparation Separation

Table 4: Victim of Violence: a safety typology

Table 4 demonstrates that there are certain aspects that are "inflexible" or difficult to adjust; they are "hard". For instance, the physical limitations of buildings may or make not make it easy to provide separate and secure waiting areas to segregate victims and perpetrators, and to station security personnel at strategic points, although most courts provide perimeter-screening security. Surveillance systems and safety procedures for identifying and dealing with breaches of safety will exist; generally these might be capable of being adjusted over time, but not in the immediate situation. Waiting is an inevitable aspect to court processes.

However, supportive "soft" practices can make victims more informed about the process, their rights, the facilities and support available to them to deal with, or report, intimidation and make choices that will assist to keep them safe in the court environment. Intelligence planning enables the court to plan ahead minimizing potential conflict situations. These solutions require collaborative approaches between victims, their support groups, court and security staff. Enabling environments will also be user centric, they will be designed to assist users to easily find their way to places and facilities within the building that provide information or meet other needs: for example witness support facilities, legal aid and, importantly, facilities that provide for basic human needs such as toilets and drinking water, while they are waiting.

This example illustrates the application of the typology to only one situation where court users may experience safety concerns (although one that emerged frequently in the data.) Obviously what type of security measures are required to achieve safety for each individual court user in each court may depend on a large number of variables: the nature of the particular safety concern, the physical environment of the court, the type of matters dealt with by the court, the volume of cases, the demographic characteristics of the court's users, its resources (both physical and human), the nature and availability of legal and support services, to name but a few.

7. Conclusion
In this paper we have used definitions of safety from court users to develop a four-quadrant typology of court safety. We use the axes Hard/Soft and Process/Place to establish the range of options available to court designers and managers in developing security strategies.

Current court security strategies are still often focused on hard systems, principally centered on aspects of place, such as "airport style" security screening and other features that emphasize perimeter security. However, in recent years there has been growing awareness that flexible environments and supportive practices can also play an important role in ensuring the safety of court users. This was borne out by the findings of this research, where court users were very clear that they need a combination of what we would describe as soft and hard approaches to assure long term, effective safety. Such approaches may also give the courts more flexibility to adapt to changing safety concerns in the future.

The typology we have developed is a useful way of identifying the elements of a court security strategy that encourages a holistic analysis of court user needs, and not just the provision of signifiers that a courthouse is "secure" or that a court process will be "safe" to participate in. In any given scenario all four quadrants should have entries addressing what is needed to ensure user safety. In order to ensure effective implementation of the strategies identified it will be critical to ensure that there is a focus on collaboration with the court users thereby enabling the co-creation of court safety. We advocate that further research is required to establish how to integrate court users into the development of these soft elements approaches to ensure that a full range of possible safety solutions is available to meet their needs.