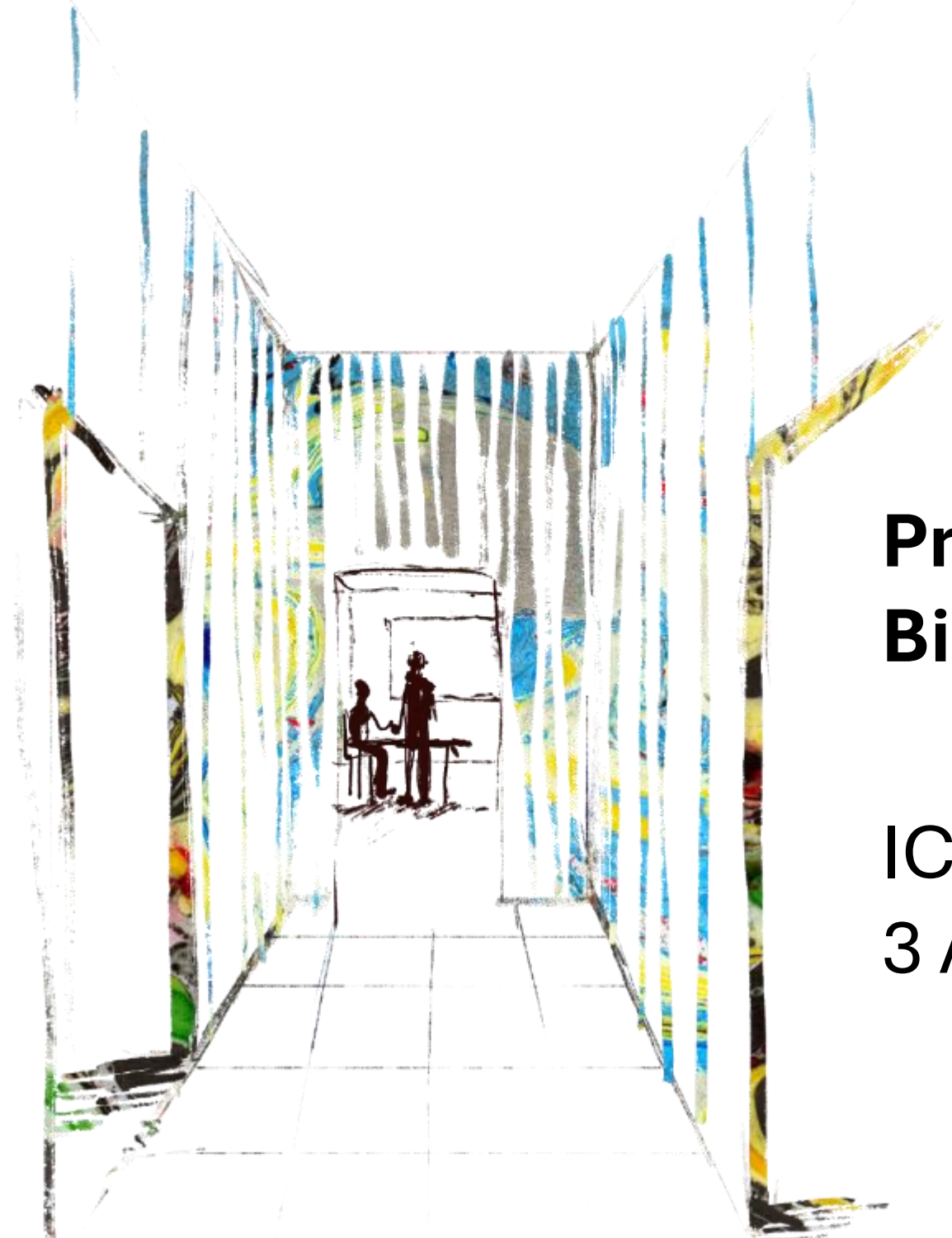


Reimagining the courtroom



Professor Jessica Jacobson
Birkbeck, University of London

ICPR Annual Lecture
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Justice is a law unto itself. It doesn't make any rhyme nor reason... Being a simple-minded person, I suppose, I don't understand. It's all trickery. It's not about telling the truth; it's not about being honest any more, or perhaps it never has been.

Elaine, prosecution witness, Crown Court



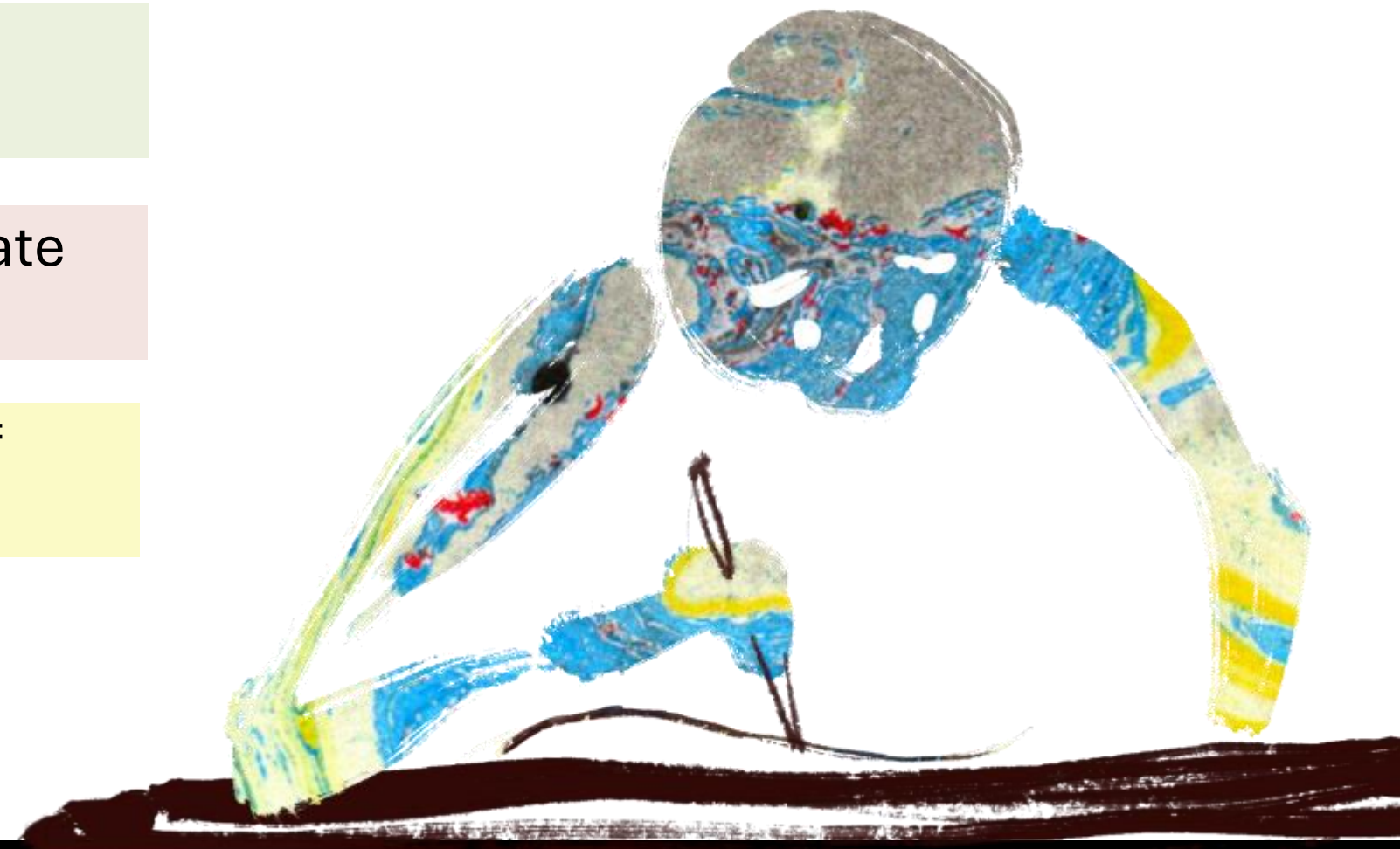
It was like justice was **done to me** rather than for me or even with me ... Not involved, no idea how serious it was going to be, what effect it was going to have on me and the rest of my life, family. No one really explained it, and still no one's really explained it.

Kevin, defendant, Crown Court

Researching court experiences

What is it like to attend court as a member of the public?

- **Criminal courts** (Crown, Magistrates', Youth) – defendants, witnesses, victims
- **Family Court** – parents involved in care proceedings or private law proceedings
- **Coroner's Court** – people attending an inquest into death of someone they are close to



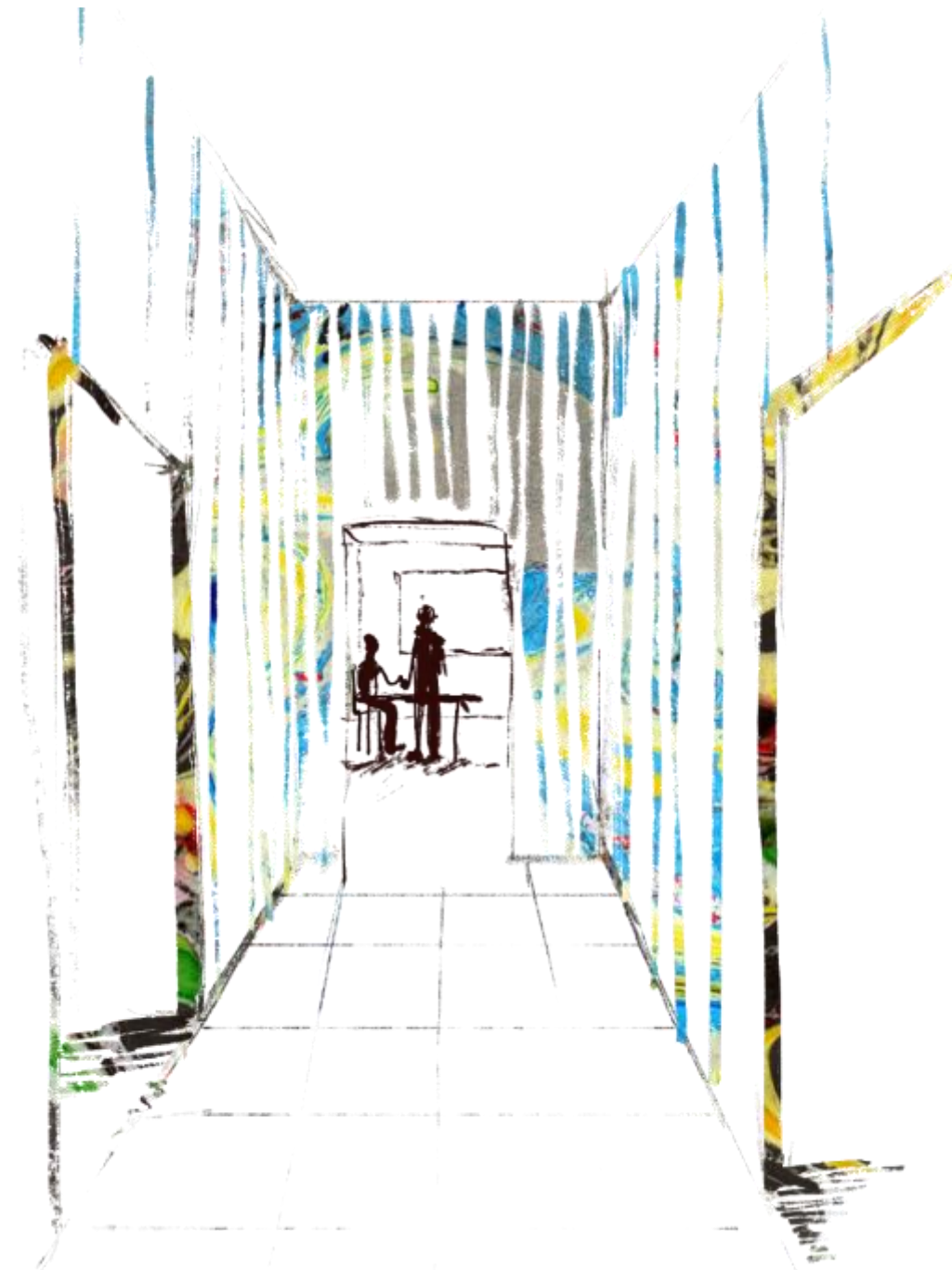
What are courts for?

In court, members of the judiciary, & sometimes a jury, undertake fact-finding & adjudication ...

... for purpose of delivering justice

Process of translation of messy human realities into legal questions & legal answers

And communication: law is (fairly) upheld; social order maintained; public can & should trust the authorities





Participation by court users

To what extent are court users included & able to participate in proceedings?

Long-standing legal principle: court users' **effective participation** in proceedings is integral to justice

Popular understanding: having one's 'day in court'

But what happens in practice?

Our research has found:

Court process often excludes, alienates & silences those it should engage: court users seeking answers, justice, redress or protection

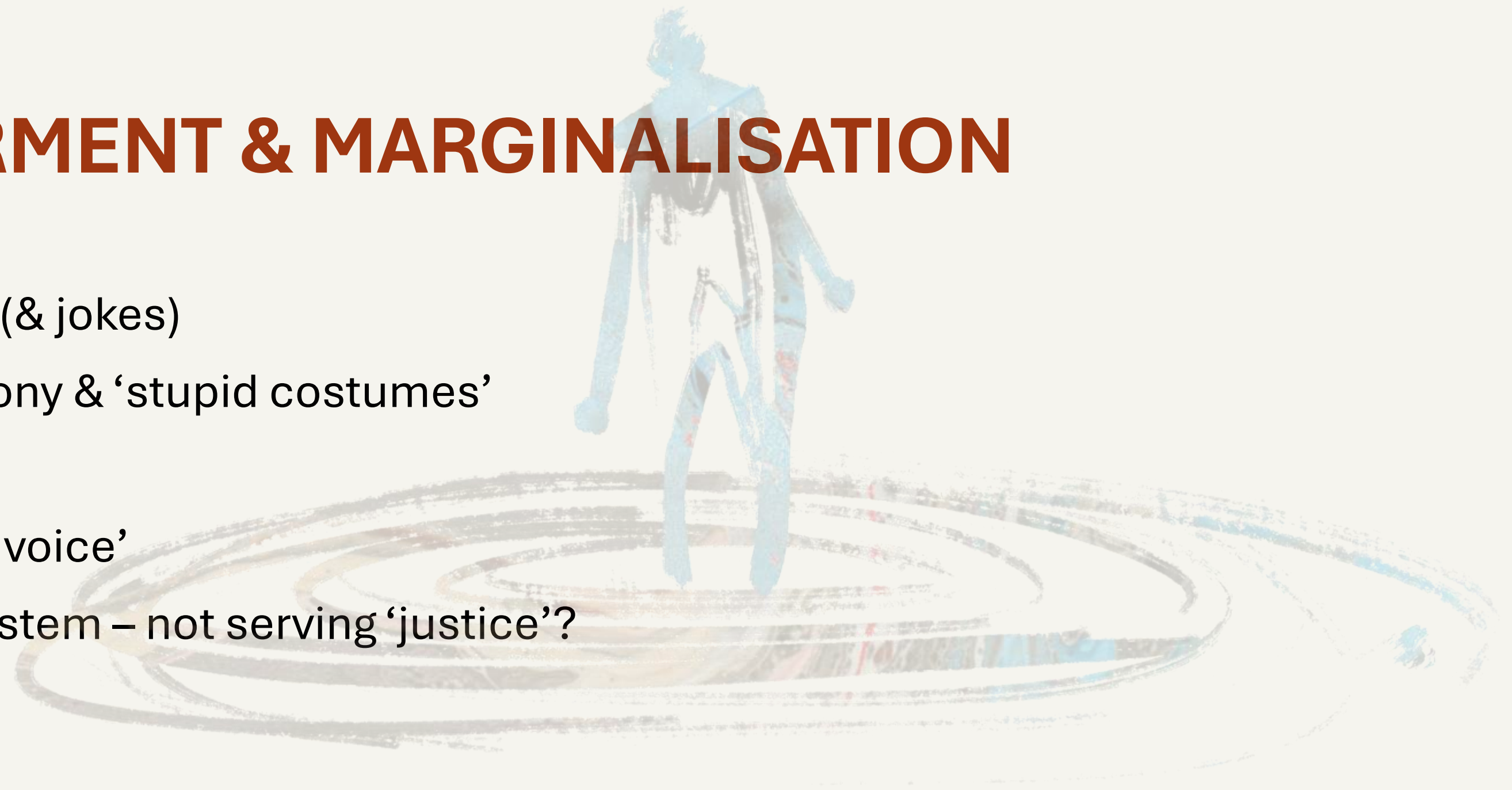
This lecture:

- Court users' experiences of disempowerment & marginalisation
- What should change?



7 DISEMPOWERMENT & MARGINALISATION

- Legal 'games' (& jokes)
- Pomp, ceremony & 'stupid costumes'
- 'Long words'
- 'Didn't have a voice'
- Serving the system – not serving 'justice'?



Legal ‘games’ (& jokes)

Just prepare for the absolute frustration of not getting the answers you want, & playing these legal word games.

Bereaved relatives, Coroner’s Court

There was a sense of playing a game you didn’t fully understand, by their rules.

There’s so much that is unfair because it hinges on your ability to play a game and a role within that game.

Defendants, Crown Court

I was never good at games, so I could never play the game.

They should remember: it’s not a game. They’re playing with people’s emotions and people’s lives... It’s not a human rights exercise or a game.

Victim, Crown Court



Counsel: That seems like a sensible suggestion.

Judge: Thank you – I shall treasure that.

Crown Court
observations

Judge: I'm just pausing for thought, which is sometimes wise.

Counsel: I should pause for thought more often.

Judge: It is quite a difficult case for your client to present.

Counsel: Yes, but the Bar is known for its fearless advocacy,





I see [the lawyers]
coming in and they're
laughing and joking.
I'm thinking: What's
this? Like you're going
for some drinks or
something?

Defendant, Crown Court

Why did all the
[witnesses from the
health trust] stand in
the corridor chatting as
though they were at a
nightclub?

Bereaved relatives, Coroner's Court

My child died. So, what are you laughing at
autocorrect for? We don't need to bring any
lightness to this proceeding, thank you. We
don't need to at all.

They had a good giggle and
a good laugh, talked about
what they had for lunch ...
It felt very unprofessional
for solicitors and barristers
to be behaving like that.

Parent, Family Court (care
proceedings)

Pomp, ceremony & 'stupid costumes'

I didn't realise it was going to be set out like a court ... and that you stand up and you sit down... It's all got a bit of pomp and ceremony about it, hasn't it, and you don't really feel like it, do you? Like, 'all rise' and all this ... They're a bit too up themselves, aren't they?

All this nonsense: 'My learned friends', and the way they address people. It's so antiquated, pompous and full of ceremony. ... I shouldn't have to stand up when that man walks in a room when he won't even look me in the eye to discuss my daughter.

Bereaved relatives, Coroner's Court



It used to be like, 'My learned friend.'
And I'd be like, well, that's my
barrister – how is he your learned
friend – are you all friends?

Parent, Family Court (care
proceedings)

Years ago, I used to try and justify
why barristers wore silly wigs and
capas and judges as well, but
now, I just haven't got time for it
any more. They say they're
overworked, but they've got time
to put on their stupid costumes.

Defendant, Crown Court





Well, it's posh innit. The courts are posh. It's all posh to me; everyone in wigs; everyone talks in this funky language.

Defendant, Crown Court

It's a bit pomp and ceremony... I just remember sitting there, and I just looked at my solicitor, I was like, 'What does that fucking mean?' Now, I'm smart, but I'm obviously not able to follow, because it is a different language. I know it's English, but it's a different language.

Parent, Family Court (care proceedings)

Defendant, Youth Court

I just thought when you're in court you've got to sit silent... You don't really have a clue what they're saying... because they're using all these big terms and big words and stuff.

I'm not used to all those big words, and that is the biggest struggle when it's in court ... I don't understand none of it. I did not understand what the words meant

Parents, Family Court (care proceedings)



I was undergoing a severe panic attack. ... Most of the time, I was sitting down on a bench, slumped over and, sort of, shaking, and sweating, and let's say I was in complete confusion... I just didn't know where I was supposed to be, what I was supposed to do, or anything like that.

Defendant, Crown Court



You sweat, you shake. You feel sick... Because you're sitting there and obviously, the local authority is there. They know what they're doing. They go through it thousands of times, and you're sitting there, and you just don't know. It feels really surreal.

Parent, Family Court (care proceedings)

Male defendant sits in dock, hands over his ears for most of plea hearing. Interpreter tries in vain to communicate with him. Magistrates remand him in custody pending his next appearance, at Crown Court in a few months.



Female defendant is sentenced to short prison sentence for assault. She sits in dock with hood up; hand covering her face. Magistrate tells her to stand up & look at him. She gets to her feet, but closes her eyes.

Magistrates' Court observations

Judge: ... It seems to me that I should ... grasp the nettle today ... The interim threshold is crossed by a long margin... That doesn't mean that I am making any findings on the threshold facts, because it is not appropriate for me to do so at this interim stage...

Mother: Sorry your honour – sorry your honour –

Judge: That's all right... These are highly emotional occasions & sometimes the court has to forgive certain behaviour in light of that. I was addressing the threshold and ... I was about to say that harm doesn't just encapsulate physical harm but also psychological, emotional & developmental ... comprehensively set out in the interim threshold document ...

Family Court observation



‘Didn’t have a voice’

I wasn’t even allowed to speak ... All the control had gone. Your voice had gone. Everything. You just sat back, and best you could hope for is that if you do as you're told, things will work out.

Parents, Family Court (care proceedings)

Well, you’re not allowed to speak. A couple of times, I tapped my barrister on the shoulder and whispered in her ear, and she would just be like, ‘No, no,’ because she was, obviously, speaking for me to the judge and was saying it in the right context for the Family Court – because the judge doesn’t want to listen to normal people. They have their own language, don’t they, in court?



I didn't have a voice. They didn't want to hear what I had to say.

During the whole process, as a family we became shadows.



I hardly had any voice at all. Hardly any voice at all. They just didn't ask.

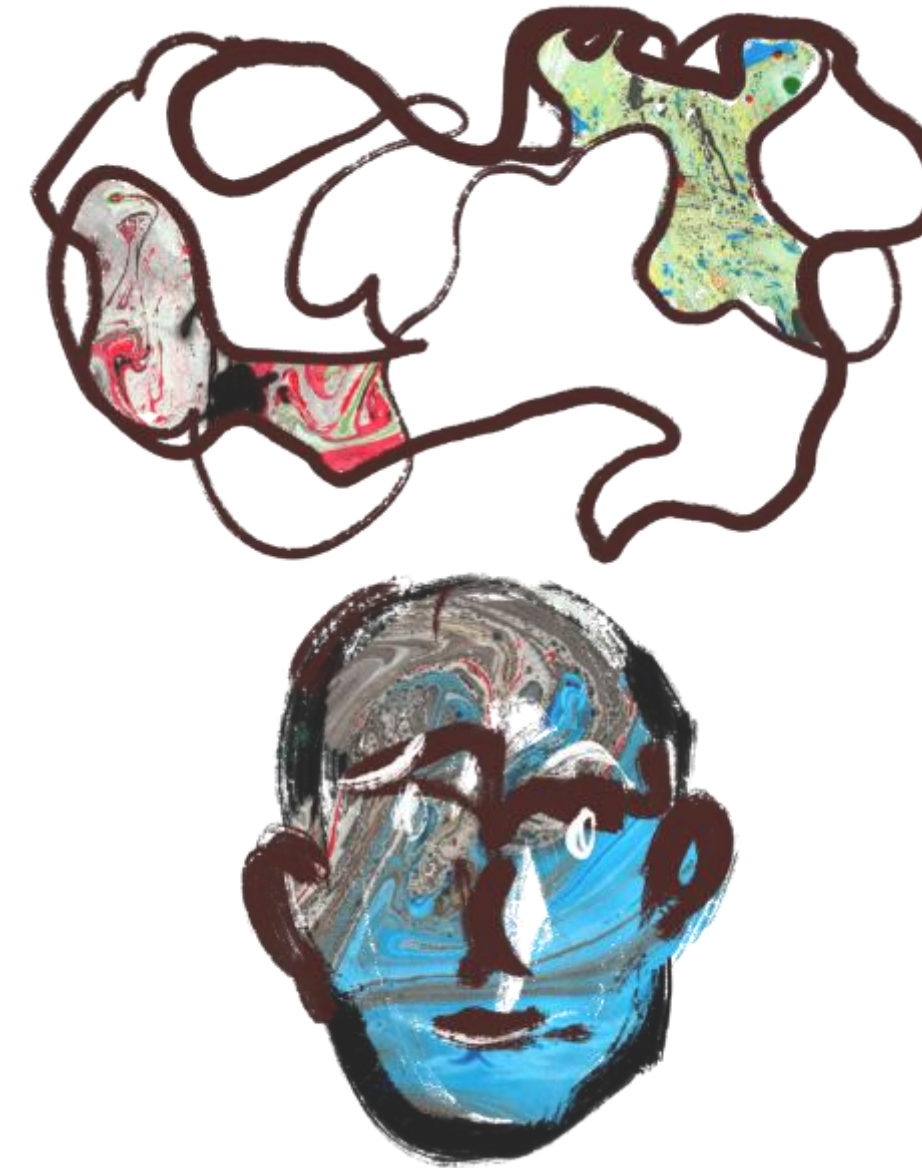
Bereaved relatives, Coroner's Court

Defendant shouts:
‘Where’s the TV, where’s
the jury? It’s all a load of
shit, innit ... I’m just stating
the facts, d’you know what
I mean?’ Judge threatens
to mute him, after which
he sits quietly for the rest
of the hearing – just saying
‘OK, thank you,’ at the end.

Observation, Crown Court

I’ve got a shaved head and
I’m bald ... All you could see
[of me on screen] was the
top of my head. It looked
like, when I was being
sentenced, they were
sentencing a boiled egg.
[My lawyer] was on video
link as well ... so he’s on the
screen, in the corner. The
boiled egg is up in the other
corner, which is me and my
head.

Defendant, Crown Court



I think it could have
been [better attending
the inquest in person].
Because [the coroner]
would have seen my
perplexity, my
distress. It’s easy to
look away from a
screen.

Bereaved relative, Coroner’s Court

Serving the system – not ‘justice’

It's a system, and the system is cold.

[The inquest was] just another hoop that we had to jump through, and another set of people that we had to parade our loss in front of.

Bereaved relatives, Coroner's Court

It's a rubber stamping: 'Let's get this over as fast as possible, please don't ask any questions.'



... They always say leave [a violent partner], but leaving isn't leaving. ... This is, like, you're still trapped. It's a different kind of entrapment.

... So, apart from all the money, all the time, the whole thing is completely pointless ... Nothing has changed. My court order is basically exactly the same as it was in that February after I left.

Parent, Family Court (private proceedings)



Defence solicitor: There's nothing satisfactory about this case ...

Magistrate: It really is a very difficult situation ...
... We're trusting you, OK? ... So, Maya, please adhere to the [new bail conditions] ... and look after yourself as well.

Maya doesn't reply; is taken back down to the cells from the dock, to be released.

Observation, Youth Court





WHAT SHOULD CHANGE?

- Direction of current reform
- Principles for change:
 - Reconfigure courtroom space to support participation
 - Prioritise humanity
 - Looking beyond the courtroom

Reconfigure courtroom space to support participation

➤ Physical space

- the dock in criminal courts
- lay-out

➤ Social space

- language
- ritual (inc wigs etc)

➤ Virtual space

- here to stay!
- **not** about replicating physical space





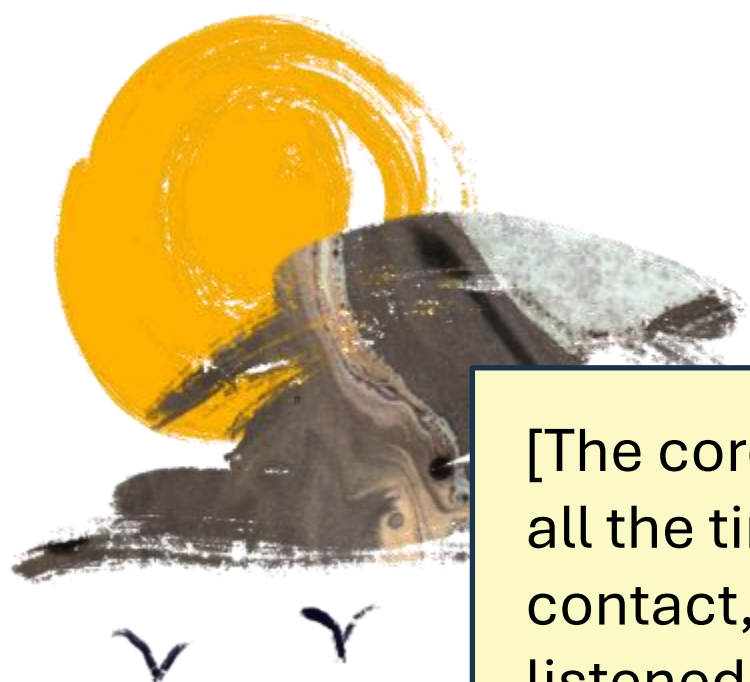
Prioritise humanity

Procedural justice theory (eg Tom Tyler): critical importance of **quality of treatment** within justice process

Helps build trust in justice, legitimacy

Humanity = essential aspect of good treatment

‘Small’ gestures have far-reaching consequences



[The coroner] looked at me all the time, gave eye contact, listened to me, listened to everyone else, and you just came out feeling you'd really been supported.

Bereaved relative, Coroner's Court

The Judge kept saying to me, 'Do you need to sit down? Are you okay standing? If you need to sit down, just sit down. Let me know.'

Defendant, Crown Court

The judge was like, 'I can tell you love your boys, and I can tell you didn't want this to happen.' That's what I remember.

Parent, Family Court (care proceedings)



Juror: I think you were very brave to run on to the carriageway to try to save Mr Fraser ...

Coroner: I echo that ... Please do take a moment to calm yourself ... It has been very upsetting to give evidence ... I want to publicly thank you for everything you did after this incident.

Observation, Coroner's Court



Looking beyond the courtroom

Don't expect too much of the court process

Therapeutic jurisprudence

- can court proceedings produce therapeutic outcomes?
- or aim to **avoid anti-therapeutic** outcomes?

Provision beyond the courtroom – including restorative justice



I have been treated like a person; I was not just processed.

Offenders
Involved in RJ

[Conventional criminal justice is like] the mass breeding of chickens in a warehouse ... [Restorative Justice] gives you the opportunity to express yourself ... I listened but **she** [the victim] listened.

Victim involved in RJ

I felt moved, seeing someone listen.

We were in the little waiting room area. ... [The psychiatrist] came to us and just said, 'I am so sorry. This has had a huge impact on me and my team, and I am so sorry this happened to your family.' I was able to say to him ... 'I know – I get it.'

Bereaved
relative,
Coroner's Court



Thank you for listening!

Artwork by Tyla Scott Owen,
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Examples drawn from the following ICPR studies:

Jacobson, Hunter & Kirby (2015) *Inside Crown Court* (BUP)

Kirby & Jacobson *Pre-sentence restorative justice pathfinder* (Restorative Solution)

Wigzell, Kirby & Jacobson (2015) *Youth Proceedings Advocacy Review* (Bar Standards Board)

Jacobson & Cooper (2020) *Participation in Courts & Tribunals* (BUP)

Hunter, Ely, Robin-D'Cruz & Whitehead (2020) *Time to get it right: Enhancing problem-solving practice in the Youth Court* (Centre for Justice Innovation & ICPR)

Jacobson, Templeton & Murray (2024) *Voicing Loss* (outputs at <https://voicing-loss.icpr.org.uk/>)

Lived experience of the law – current ICPR project (Hunter, Kirby, Campbel, Jacobson) with Revolving Doors

Improving the experiences of care proceedings – current ICPR project (Hunter, Murray, Jacobson)

Visit <https://icpr.org.uk/>