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DRESSING AND ADDRESSING THE KENYAN JUDICIARY: REFLECTING ON THE HISTORY AND POLITICS OF JUDICIAL ATTIRE AND ADDRESS

*Dr. Willy Mutunga**

I. THEORETICAL FRAMEWORK AND INTRODUCTION

A historical, socio-economic, environmental, security, cultural, and political analysis of judicial attire and formally addressing the Judiciary should assist the Kenyan judiciary in reaching a consensus on the raging debate on judicial dress and address. Such analysis will lay bare the ideas of the ruling classes over time—political struggles in society; the dictates of the market as reflected in fashion; the impact of religion, climate, and class; dominant masculinities over time and gender inequality; and the subsequent imposition of European and English ideas on judicial attire and address in the various dominated and exploited regions of the world. The majority of the people in many countries, who are the main consumers of justice have historically, never participated in the dress and address of the judiciaries. Judicial attire and address impact access to justice, although this aspect is rarely historicized and problematized. There has been a good deal of writing on the issue and how other jurisdictions have dealt with this issue and arrived at solutions. These jurisdictions include Britain- the mother of imposition of the judicial attire and address.

In the Kenyan case, judicial attire and address has been a colonial and neo-colonial imposition.¹ The Kenyan judiciary has not had any occasion

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1. *Lawyers seek audience with Mutunga over dress code*, STANDARD DIGITAL NEWS, September 11, 2011, http://www.standardmedia.co.ke/?articleID=2000042569&story_title=lawyers-seek-audience-with-mutunga-over-dress-code&pageNo=2 (last visited Oct. 8, 2013).

before the promulgation of the new Constitution in 2010 to see the issues as critical to the administration of justice. The Kenyan people had the occasion to address this issue when they were consulted in crafting of the Bomas draft of the Constitution of Kenya Review Commission. Kenyans called for the change of judicial attire and address.² The idea to change judicial attire and address is one whose time has come. We cannot, under the new Kenya Constitution, impose a dress code and new formal title on the Judiciary. In the word and spirit of the Constitution, we as Kenyans must debate this issue, engage the public and reach a consensus on it.

On June 20, 2011 the Chief Justice and the Deputy Chief Justice, who are also the President and Vice-President of the Supreme Court of Kenya respectively, were sworn in by the President Mwai Kibaki.³ Both wore business suits, were neither robed nor wigged.⁴ Immediately after this ceremony a national debate emerged on the dress code for the Kenyan judiciary. The debate still continues.⁵ Both judicial officers were of the view that the newly established Supreme Court did not have a dress code and there was need to discuss the issue with the Supreme Court judges. Both felt very strongly that the promulgation of the new constitution on August 27, 2010, overthrew the colonial and neo-colonial constitutions that had been crafted without broad participation of the Kenyan people. Both felt that there was need to rethink the relevance of the colonial relics, reflected in the judicial attire and address, under the new constitution.

On May 31, 2012, the Chief Justice launched the *Judiciary Transformation Framework, 2012-2016*.⁶ This Framework lays the foundations for the transformation of the Kenyan Judiciary. The first of the four pillars un-

2. Former Deputy Chief Justice, Lady Justice Nancy Baraza was one of the Commissioners and confirms this fact.

3. Pamela Chepkemei, *Mutunga sworn in, vows to clean up the judiciary*, THE STAR, June 21, 2011, <http://www.the-star.co.ke/news/article-59733/mutunga-sworn-vows-clean-judiciary>.

4. Macharia Gaitho, *Were Mutunga and Baraza signaling an end of the old order with their attire?*, DAILY NATION, JUNE 20, 2011, <http://www.nation.co.ke/oped/blogs/Were-Mutunga-Baraza-signalling-end-of-old-order/-/446672/1185970/-/rpl1ho/-/index.html>.

5. James Mwamu, *Consult Before Changing Dress Code of the Judiciary*, THE STAR, October 6, 2011, <http://www.the-star.co.ke/news/article-46676/consult-changing-dress-code-judiciary>; *See also Facelift May be Good for Justice*, ARCHITECTURE KENYA (February 29, 2012), <http://kenarch.wordpress.com/2012/02/29/facelift-maybe-good-for-justice/>.

6. Republic of Kenya, THE JUDICIARY, Nairobi, 2012 Judiciary Transformation Framework 2012-2016: Laying the foundations for the transformation of the Kenyan Judiciary, 2012, Kenya, available at http://csis.org/files/attachments/120907_JudiciaryTransformationFramework.pdf.

dertakes a people-focused delivery of justice. The Framework states its mission pertaining to this pillar thus:

The philosophical and cultural orientation of the Judiciary has reflected its founding history of dominance, power, prestige and remoteness, as opposed to service and equality. Further, its architecture, rules, dress code and other rituals have uprooted its from social reality. As a result the public perceive the Judiciary to be alien and insensitive.

In seeking to change this image, the Framework will provide a clear philosophical compass for the Judiciary founded on the Constitution and informed by the country's social context. The Judiciary must be eternally conscious of its 'near-sacred' role as the temple of justice and, in dealing with the public, must realize that the people are not only the source of its authority but also the target of its service. The Framework seeks to create a Judiciary that is sensitive and responsive to the needs, feelings, and aspirations of the people. Further, it seeks to create an institution that is friendly and fair to people, both in the hardware of its outlook and in the software of its decisions and processes.⁷

Judicial attire has changed throughout history, adapting to newly empowered governments, populist movements, and popular fashions.⁸ Robes, wigs, hats, gloves, and medals have been added to and subtracted from judges' wardrobes after the English Civil War, the American and French Revolutions, and Napoleon's conquests.⁹ New leaders often seek to set the tone for their reign by introducing new customs or reviving them from more prosperous times.¹⁰ Because courts are the point of immediate contact between society and a government's laws, leaders have often changed their judges' attire to portray an image of dignity, strength, authority, wealth, or populism that they choose to project on their citizen.¹¹ However, modern judges often contemplate the effect their garb has on citizens who appear before

7. See *id.* at 15. In interrogating the architecture of the Court buildings the Judiciary commissioned a 'Judiciary Court Prototype Competition' that would give the Judiciary courthouses that reflect the values of the new constitution.

8. See generally MRS. CHARLES H. ASHDOWN, *BRITISH COSTUME DURING XIX CENTURIES (CIVIL AND ECCLESIASTICAL)* (1910).

9. See generally JOHN CORDY JEAFFRESON, *A BOOK ABOUT LAWYERS* 172 (1867).

10. See *id.*

11. Tom Whitehead, *Judges give new robes a dressing down*, THE TELEGRAPH, March 26 2009, available at <http://www.telegraph.co.uk/news/uknews/law-andorder/5056426/Judges-give-new-robes-a-dressing-down.html>.

them.¹² Formal changes in recent years often have occurred as a result of thorough research and citizen interaction, as opposed to the unilateral whims of leaders.¹³

Literature explicating the rationale for judicial attire focuses on trends in Europe and the United States, and this article will follow suit, while focusing less on chronology and more on the reasons that particular changes are made. Part II of this article chronicles European movements through the 18th century, while addressing English changes through the present day. Even though English attire has remained largely the same for the last six hundred years,¹⁴ slight deviations have been met with well-documented criticism that can provide readers context with which to view modern attire. Part III addresses American traditions, and highlight the lack of uniformity and formal requirements in most courts. Part IV analyzes whether a relationship exists between judicial attire and access to justice. Part V analyzes judicial address and salutations and changes that are taking place in some countries under common law systems. Part VI addresses the project being undertaken by Kenyan artists, lawyers, cultural activists and designers to dress the Supreme Court of Kenya. Part VII narrates responses of the judges during their colloquium held in Mombasa on August 14-19, 2011 and the consequent emerging consensus on the attire and salutations of the judiciary. Part VIII reproduces the responses of the Kenyan public on the new green robes worn by the judges of the Supreme Court of Kenya. Finally, Part IX concludes that overly formal attire has an inverse relationship with citizens' access to justice. There is need for change in the judicial dress and address to reflect the patriotic efforts in the country aimed at implementing our social democratic constitution. This part, further, concludes that more in-depth research must be undertaken on the entire Kenyan judicial culture if judicial dress and address is to be understood and demystified within that broad context.

12. See *UK Supreme Court throws out legal dress*, BBC NEWS, November 21, 2011, <http://www.bbc.co.uk/news/uk-15816497>; See also *Civil judges ditch wearing wigs*, BBC NEWS, October 1, 2008, http://news.bbc.co.uk/2/hi/uk_news/7644034.stm.

13. See New South Wales Law Reform Commission, *Report 31-First Report on the Legal Profession: General Regulation and Structure* (1982), available at http://www.lawreform.lawlink.nsw.gov.au/agdbasev7wr/lrc/documents/pdf/report_31.pdf (last visited Dec. 3, 2013); For an evaluation of court room dress based on student moot court presentations see Oscar G. Chase & Jonathan Thong, *Judging Judges: The Effect of Courtroom Ceremony on Participant Evaluation of Process Fairness-Related Factors*, 24 YALE J.L. & HUMAN., 221-246 (2012).

14. See J.H. Baker, *A History of English Judges' Robes*, 12 COSTUME 27 (1978).

II. EUROPEAN HISTORY

European courts in the 13th century began to derive their authority from monarchies or feudal lords – a new development, as religious institutions wielded much of the power previously.¹⁵ These new leaders sought to obtain uncontested power and galvanize the support of their citizens.¹⁶ To achieve this end, leaders aimed to create laws emanating from the crown, rather than the church.¹⁷ Although new leaders sought to distinguish their reigns from churches, they kept an article of clothing traditionally worn by clergymen to project dignity for their laws: a robe, which provided detached dignity that a military uniform could not.¹⁸

European judges have worn robes since the 13th century.¹⁹ Italian and German judges dressed to emulate the noble classes of their time, and in the monarchical countries of Austria, Spain, Portugal, France, and England, ruling monarchs controlled judicial attire at their whims.²⁰ Austria, France, North Germany, and the Scandinavian countries abandoned robe-wearing during periods of enlightenment or revolution, but eventually resumed wearing them.²¹ Countries often copied their neighbors' societal norms and fashions, and, therefore, judicial dress was often similar across Europe.²²

A. *Italy & France through the 18th Century*

Prior to the Renaissance, Italian law was administered by feudal leaders in nation-states, and by religious leaders in church-states. During this period, judges dressed like nobles.²³ In the 14th century, judges distinguished themselves by wearing a small skull-cap, which was circular and covered the top of the head.²⁴ This black skull-cap sat atop a white linen coif, which also covered the top of the head, but had flaps hanging over the ears, and strings that tied below the chin to hold it in place.²⁵ Otherwise, their attire resembled other nobles like doctors, knights, and senators: a

15. See JEAFFRESON *supra* note 10 at 267.

16. *Id.*

17. See W.N. HARGREAVES-MAWDSLEY, A HISTORY OF LEGAL DRESS IN EUROPE UNTIL THE END OF THE EIGHTEENTH CENTURY 2 (1963).

18. See *id.* at 3.

19. See *id.*

20. The attire, however, still closely resembled that worn by nobles. See *id.* at 2-3.

21. See *id.* at 3.

22. See *id.*

23. See HARGREAVES-MAWDSLEY at 5.

24. See *id.*

25. See *id.*

robe, worn under an *armelausa* – a cape-like garment that opened on the right side, with an attached hood draping behind.²⁶ Interestingly, judges wore scarlet robes in the monarchial and more stylish regions, but not in rural areas where democratic principles were held.²⁷

In the 15th century, a scarlet *pileus* – a hat, which at this time was flat-topped and round – replaced the skull-cap, and robes' sleeves were turned back to reveal stylish fur.²⁸ Judges added white gloves, a gold chain, and an ebony baton, which were thought of as symbols of authority.²⁹ For ceremonies, 16th and 17th century Venetian high judges wore scarlet robes, which were pink silk-lined in the summer and fur-lined in the winter, a standing collar, and a small round black *pileus*.³⁰ The high judges wore black robes on ordinary occasions, while lower judges wore violet.³¹

Italian judges resembled English judges in the 18th century, and wore white wigs, black robes, and white bands – hanging neck wear that resembles a modern-day tie.³² After Napoleon's invasion in 1797 though, judges were given a new military-style costume: a green coat, white pants, black boots, a white-feathered and black cocked hat, and a sash with red, white, and green horizontal lining.³³

In 14th century France, trials were conducted in various levels of Parliament. Its members were called presidents and functioned like judges.³⁴ They wore a cylindrical hat known as a *mortier*, and over their robes of varying colors, a scarlet fur-lined *manteau*,³⁵ which was closed on the left (sword) side but open on the right.³⁶ The *manteau's* open right side has military origins, and provided its wearer greater arm mobility and easier access to his sword.³⁷ By the 15th century, the two high parliamentary presidents – those who administered justice – distinguished themselves by having three stripes of gold rows and three stripes of fur rows on either shoulder of their *manteau*. In addition, if their black velvet *mortier* was

26. Hargreaves-Mawdsley refers to the robe as a tunic, but there is no meaningful distinction between the two. *See id.* at 4-5.

27. *See id.* at 6.

28. *See id.*

29. *See HARGREAVES-MAWDSLEY* at 6.

30. *See id.* at 9.

31. *See id.* at 10.

32. *See id.* at 11.

33. *See id.* at 14.

34. *See id.* at 19-20.

35. *Manteau* is the French version of the *armelausa*, the cape-like garment slung over one shoulder, with one side open.

36. *See HARGREAVES-MAWDSLEY* at 24.

37. *See id.*

worn, a gold band circumscribed the upper part.³⁸ The Chancellor was a high officer who oversaw the presidents and the keeping of public order. He wore scarlet robes in the 15th century and violet by the middle of the 16th century.³⁹

In a picture depicting a 1458 trial, the two high presidents wear scarlet fur-lined robes, scarlet *manteaus* with horizontal gold bars on the left shoulder, fur hoods, and black skull-caps.⁴⁰ The lower presidents wear robes of pink, green, violet, and blue. Scarlet robes were thought to be ceremonial, as a 1589 picture of a Parisian parade shows the presidents in scarlet robes.⁴¹ Below the presidents, lower ranked magistrates' colors varied depending on who their feudal lords were.⁴²

In 17th century France, presidents wore fur-lined scarlet robes during the winter, and black robes during the summer; however, scarlet was also worn for special occasions, such as the end of a trial.⁴³ Bands also appeared in 17th century France among all nobles – legal, religious, academic, businessmen – but legal bands tended to hang lower than those worn by the clergy.⁴⁴

Wigs became fashionable in the 17th century, and the legal profession subsequently adopted them.⁴⁵ Initially, wigs were naturally colored, but powdered wigs were adopted when they became fashionable. However, the French legal profession discontinued their use when wigs fell out of popular fashion in the late 18th century.⁴⁶

During the 18th century, the rigid, pyramid-shaped, black velvet *mortier* was worn not only by the presidents, but was also worn by all important officials and lawyers. The hats were “associated with the dignity of legal office in its widest sense.”⁴⁷ For distinguishing purposes though, the first president's hat contained two gold lace rings, and the other presidents had only one ring.⁴⁸ When in the presence of royalty, judges attached a feather or medal to the front of their *mortiers*.⁴⁹

38. *See id.* at 29.

39. *See id.*

40. Nobles also wore these gold bars; fittingly, these presidents were referred to as “noblemen of the law.” *See id.* at 22.

41. *See id.* at 24–26.

42. *See* HARGREAVES-MAWDSLEY at 33.

43. *See id.* at 26–27.

44. *See id.* at 40.

45. *See id.* at 41.

46. *See id.*

47. *See id.* at 27.

48. *See* HARGREAVES-MAWDSLEY at 27.

49. *See id.*

In 1790, near the beginning of the French Revolution, trials were conducted by tribunal judges who wore a black robe, a black round hat raised in front and surmounted by black feathers, and a *tricouleur* (red, white, and blue-striped like the French flag) ribbon around their necks, from which hung a medal with the inscription *La Loi* – the law.⁵⁰

Courts were reorganized after the French Revolution. Judges sitting on the High Court of Justice – which adjudicated disputes between the new bodies of government – wore a long white robe with *tricouleur* edging, a white *manteau* with *tricouleur* edging, a white bonnet, and a white sash with *tricouleur* tassels.⁵¹ Judges of the *Tribunal de Cassation*– the highest appellate court – wore a light blue robe with red edging, a round light blue bonnet, a red sash, and a white *manteau* with *tricouleur* edging.⁵² Trial judges wore black robes and a black hat with black feathers.⁵³

Under Napoleon's rule in the early 19th century, the courts were again reorganized.⁵⁴ He sought to ensure that the judiciary did not remind the public of the recently removed monarchy, and ordered all judges to wear black robes and a black hat without feathers.⁵⁵ Higher judges wore cloaks laced with purple silk, and gold braids lined the edges of their three-cornered hats, which were also circumscribed by a gold line.⁵⁶

B. *England*

Before discussing English judicial attire, it is important to understand the ranks of the English barristers and judges. From the 14th century to the late 19th century, sergeants-at-law were the premier rank of barristers. For a time, judges were only selected from the ranks of the sergeants-at-law, who were known for their long robes, hood, and white linen coifs that sat atop their head; they were known as the Order of the Coif.⁵⁷ Upon promotion to judge, a 15th century sergeant-at law's robe lining was changed from white lamb to miniver, a luxurious fur, his hood was removed, and a cloak was

50. See *id.* at 42.

51. See *id.* at 43.

52. See *id.*

53. See HARGREAVES-MAWDSLEY at 43.

54. See *id.* at 44.

55. See *id.* at 45.

56. See *id.*

57. See JEAFFRESON, *supra* note 9, at 283; See *id.* at 285-86 (The coif often had flaps that covered the ears, with strings that tied below the chin to hold it in place); see also HARGREAVES-MAWDSLEY, *supra* note 17, at 59; JEAFFRESON, *supra* note 9, at 286 (stating that there are rumors that the coif was used to conceal the tonsure – a religious haircut, where the top of the skull is shaved – so that clergymen could practice in secular courts. However, the author Jeaffreson thought this suggestion ridiculous).

hung from his right shoulder.⁵⁸ The coif remained, but a black skull-cap was added on top.⁵⁹

Some accounts highlight the relationship between English judicial headwear and the death sentence. In 1867, the coif-cap was usually worn when a judge handed down a death sentence,⁶⁰ but some judges would don a larger black cap.⁶¹ This would allow the judge to pull it down over his eyes and conceal his face and emotion for the grim sentence he was handing down.⁶² As of 1945, judges wore a cornered-cap when passing the death sentence.⁶³

The *armelausa* became associated with English judges in the 14th century.⁶⁴ Although traditionally worn by French nobles and other religious heads, Kings bestowed the loose-fitting garments upon their judges, who were to be allies of the King.⁶⁵ The *armelausa* denoted high standing.⁶⁶

In the 15th century, judicial robes assumed the shape that remains today.⁶⁷ High judges wore violet robes in the winter and green in the summer,⁶⁸ and scarlet for formal occasions.⁶⁹ They wore fur-lined hoods, *armelausas*, and a coif-cap.⁷⁰ In the 16th century, the hood grew to an enlarged size, and a *pileus* – a small conical hat – was added atop the coif-cap.⁷¹ Toward the end of the 16th century, the Collar of SS was added to the Lord Chief Justice's and Chief Baron's costume.⁷² The Collar of SS was a medal that hung around the neck, and is thought to have originated in either a military or religious context; it was generally known, though, to signify being in the King's favor.⁷³

At the beginning of the 17th century, robes were sometimes black, violet, or scarlet, and their cuffs were turned back to display fur lining in the winter or silk in the summer.⁷⁴ Some judges wore the *pileus quadrates*

58. See JEAFFRESON, *supra* note 9, at 283.

59. See HARGREAVES-MAWDSLEY, *supra* note 17, at 70.

60. See JEAFFRESON, *supra* note 9, at 286.

61. See *id.*

62. See *id.*

63. See F.H. Newark, *Judicial Robes*, 6 N. IR. LEGAL Q. 206, 211 (1946).

64. See HARGREAVES-MAWDSLEY, *supra* note 17, at 49.

65. See *id.*

66. See *id.* at 50.

67. See *id.* at 51; see also J.H. Baker, *supra* note 14, at 27.

68. See HARGREAVES-MAWDSLEY, *supra* note 17, at 48.

69. See *id.* at 51.

70. See *id.* at 52–54.

71. See *id.* at 54.

72. See *id.* at 57.

73. See *id.* at 56.

74. See HARGREAVES-MAWDSLEY at 59–60; Gloves were also worn. See *id.* at 60.

(cornered-cap) over their coif-cap, instead of the conical *pileus*.⁷⁵ Like the Italian and French, English judges wore bands, a symbol of the wealthy in the 17th century.⁷⁶

In 1635, a judicial dress code was adopted to promote uniformity and emphasize that courts were offices of the Crown.⁷⁷ This was especially important during the period of social unrest leading up to the English Civil War,⁷⁸ and the monarchy sought to distinguish the English courts from European courts; distinguishing judges' attire hopefully would reinforce the judges' allegiance to the Crown.⁷⁹ The dress code provided that high court judges were to have a scarlet robe.⁸⁰ This robe was worn on red-letter days, criminal trials, in Sunday church, in the presence of royalty, and when dining with the sheriff.⁸¹ For day-to-day matters, judges wore violet or black robes, with a scarlet hood that hung over the right shoulder.⁸² It is said that wearing the hood over the right shoulder signified temporal dignity, for if worn to the left, it would be priestly.⁸³ The robes were to be lined with fur during the winter, and silk during the summer.⁸⁴ The day-to-day attire included a stole that hung around the neck and was said to signify the power of a judge to try religious causes.⁸⁵ Above the familiar coif-cap sat a black cornered-cap,⁸⁶ and for the Lord Chancellor, a conical *pileus*.⁸⁷

Judge Bradshaw tried King Charles for treason in 1649, and he wore a beaver hat lined with plated steel for this unusual trial, which resulted in the execution of the King.⁸⁸ While some accounts allege that the hat was worn to ward off blows from potential assailants, others argue that the judge sought to dignify his position, or that the hat was to highlight the exceptional character of the proceeding, or possibly to signify that he was acting

75. See *id.* at 59.

76. See JEAFFRESON, *supra* note 9, at 294-96.

77. See *id.* at 283; see also Newark, *supra* note 63, at 206; Rob McQueen, *Of Wigs and Gowns: A Short History of Legal and Judicial Dress in Australia*, 16 LAW IN CONTEXT 31, 33 (1999).

78. 1642-51.

79. See McQueen, *supra* note 77, at 32-33.

80. See Newark, *supra* note 63, at 207.

81. See *id.*

82. See HARGREAVES-MAWDSLEY, *supra* note 17, at 62-64.

83. See *id.*

84. See Newark, *supra* note 63, at 207-208.

85. See *id.* at 208.

86. See HARGREAVES-MAWDSLEY, *supra* note 17, at 64-65.

87. See JEAFFRESON, *supra* note 9, at 287.

88. See *id.*

with the authority of Parliament.⁸⁹ The reaction was decidedly negative; some saw the wearing of this hat as cowardly, an act to curry favor with parliament, or signifying a willingness to defy all laws.⁹⁰

The 1635 code was short lived though. Charles II – exiled in France after his father’s execution⁹¹ – ignored the code in 1660 after assuming the throne.⁹² Charles II sought to restore grand traditional customs and pomp in society.⁹³ Full-bottomed wigs and falling bands of dainty lace became fashionable in French and English society, and popular among judges.⁹⁴ Wigs were introduced to English courts in 1663, and most fashionable and high-ranking members of society wore them by 1673.⁹⁵ Generally speaking, the larger a person’s wig, the higher his or her societal rank.⁹⁶

Upon wearing the initially naturally-colored wig, many judges gave up wearing the skull-cap and cornered-cap,⁹⁷ and coifs shrank for stylistic and logistical reasons until they became a tiny piece of black silk on the crown of the wig.⁹⁸ Almost all judges wore wigs by 1700, and by 1705, the powdered wig came into fashion.⁹⁹ However, because the rest of fashionable society wore full wigs during this period, they were not representative of the legal profession until 1720, when full-bottomed wigs fell out of style.¹⁰⁰ When short wigs came into style, judges kept the full wigs to signify their dignity.¹⁰¹

After 1720, the full-bottomed wig was emblematic of judges and sergeants-at-law: powdered white or grey, with lappets – rows of curls – fall-

89. See *id.*; William Sachse, “Black Tribunal”: An Analysis of the Regicide Court, 12 J. BRIT. STUD. 69, 72-73 (1973); see also JEAFFRESON, *supra* note 9, at 288.

90. See JEAFFRESON, *supra* note 9, at 313 (stating that a similar reaction was had when the Irish Chief Justice Lord Norbury issued a death sentence to a nationalist leader without wearing his robes – the public found this dress inappropriate for the occasion).

91. See generally EVA SCOTT, THE KING IN EXILE: THE WANDERINGS OF CHARLES II FROM JUNE 1646 TO JULY 1654 22-37 (1905).

92. See *id.*

93. See *id.*

94. See HARGREAVES-MAWDSLEY, *supra* note 17, at 66-67.

95. See *id.* at 66.

96. See Charles Yablon, *Judicial Drag: An Essay on Wigs, Robes and Legal Change*, 1995 WIS. L. REV. 1129, 1134 (1995).

97. See HARGREAVES-MAWDSLEY, *supra* note 17, at 67.

98. See JEAFFRESON, *supra* note 9, at 287; see also McQueen, *supra* note 77, at 35.

99. See HARGREAVES-MAWDSLEY, *supra* note 17, at 67; see also JEAFFRESON, *supra* note 9, at 289.

100. See JEAFFRESON, *supra* note 9, at 292; See HARGREAVES-MAWDSLEY, *supra* note 17, at 67.

101. See HARGREAVES-MAWDSLEY, *supra* note 17, at 67.

ing over each shoulder.¹⁰² This wig was the badge of office, and King George III regarded it as a status symbol and distinction for judges.¹⁰³ The formal full-bottomed wig has not changed since this era, but smaller versions were sometimes worn.¹⁰⁴ In 1770, for example, many judges took to a smaller wig for ordinary occasions, with a single vertical curl running down the back.¹⁰⁵

In the middle of the 18th century, full-bottomed wigs were mocked by the satirists of the day for being out of style and out of touch with contemporary society.¹⁰⁶ But the movement to abolish wigs did not begin in earnest until the 20th century.

In recent years, the English have attempted to reform judicial attire.¹⁰⁷ In 1990, Lord Chief Justice Taylor opined that the English judiciary "could disarm a good deal of public misunderstanding of the legal profession if [judges] stopped wearing wigs and gowns in court,"¹⁰⁸ and he argued that wigs made judges "look antique and slightly ridiculous."¹⁰⁹ In 1992, the commercial bar requested that the English Commercial Court abandon wearing wigs, and pointed out that wigs had already been abandoned in family courts.¹¹⁰ However, the Commercial Court did not decide the issue, and instead, the British House of Lords commissioned a paper to study the arguments for and against retaining distinctive judicial attire.¹¹¹ The 1992 consultation paper summarized the main arguments:

- Judicial attire preserves "respect for authority" and the "status of the court."¹¹²
- "[T]raditional judicial garb imbued in laypersons a sense of the solemnity and dignity of the law," especially important to instill in criminal defendants, because they "tend, as a group, to be under appreciative of the law's dignity and solemnity."¹¹³
- The garb has a theatrical aspect, and seeks to impress on laymen that the law is a serious, impartial and magisterial process.¹¹⁴

102. *See id.*

103. *See id.*; *See* JEAFFRESON, *supra* note 9, at 293.

104. *See* HARGREAVES-MAWDSLEY, *supra* note 17, at 68.

105. *Id.*

106. *See* McQueen, *supra* note 77, at 36.

107. *See* Yablon, *supra* note 96, at 1135.

108. *See id.*

109. *See id.* at 1137.

110. *See id.* at 1135.

111. *See id.* at 1138.

112. *See id.* at 1140.

113. *See* Yablon, *supra* note 96, at 1139.

114. *See id.* at 1140.

- Court dress gives judges a useful anonymity and conformity; indeed, the robes obscured “differences of gender, race, and age, creating an edifying sameness among all the participants.”¹¹⁵
- Wigs disguise judges to protect them from revenge-seeking defendants.¹¹⁶
- Distinctive judicial garb is a brand symbol for English courts, perpetuating a competitive advantage in an era when entities can move from country to country to choose which legal system to be governed by.¹¹⁷
- Robes make the clothing underneath irrelevant and equalize judges.¹¹⁸

In 1992, 85% of the English public felt that robes lent dignity to court proceedings, 71% felt the robes emphasized the importance for witnesses to tell the truth, and, ultimately, 79% were in favor of retaining the robes.¹¹⁹ Alas, the English did not abolish their formal attire.¹²⁰

Lord Chancellor Laing revisited the topic again in 2003. He recognized that the role of the courts was to deliver justice, and that it was important that those unfamiliar with the courts feel comfortable there.¹²¹ Therefore, another study was commissioned to measure how court dress impacts public confidence.¹²² This consultation paper stressed the negative effects that formal attire might have: intimidation of victims and witnesses, encouragement of self-importance, and provoke mockery of the legal system as outdated or backward.¹²³ Again though, no changes were made in 2003.

115. *See id.* at 1141.

116. This is no longer applicable because short wigs are now worn during all but ceremonial occasions, and the short wigs do not conceal one’s face. *See id.* at 1141.

117. *See id.* at 1139–1142; This echoes an argument dating back to the 16th century, where the legal dress code ensured dignity, “but also . . . conveyed the special character of the common law as compared with other European systems of law.” *See also* McQueen, *supra* note 77, at 31.

118. *See* McQueen, *supra* note 77, at 37.

119. *See* Yablon, *supra* note 96, at 1138.

120. *See id.* at 1139.

121. Department for Constitutional Affairs, *A Lord Chancellor’s Department Consultation Paper: Court Working Dress in England and Wales* (May 2003) [hereinafter 2003 Consultation Paper], available at <http://webarchive.nationalarchives.gov.uk/+http://www.dca.gov.uk/consult/courtdress/index.htm> (last visited July 19, 2011).

122. The paper revisited the rationale for judicial dress: to signify authority, to instill respect for the law, to remind the legal profession that their role is solemn, to emphasize the impersonal and disinterested nature of the judge, to identify the parties, and to preserve anonymity in criminal cases. *See* 2003 Consultation Paper, *supra* note 121.

123. *See* 2003 Consultation Paper, *supra* note 121.

The English finally changed their judicial attire in civil and family courts in 2008 for simplification purposes.¹²⁴ Wigs and traditional bands are no longer worn in these courts.¹²⁵ These judges simply wear a dark navy gabardine robe, with small, square bands.¹²⁶ Middle appellate judges wear gold bands, while the High Court wears red bands.¹²⁷ Most judges were in favor of the abolition, and the judges who were not generally did not want to make another change, as they believed another swift change could be damaging to the judiciary's image.¹²⁸

III. AMERICAN HISTORY

When the United States became independent from England, Thomas Jefferson and other founders opposed official garments for the judiciary because they saw the wig and robe as symbols of a rejected system.¹²⁹ Thus the "aristocracy of the robe was eliminated."¹³⁰ While there are no rules requiring federal and most state judges to wear robes, status clothing has always been part of American society,¹³¹ and judges have often worn them.

United States Supreme Court justices have always worn robes, starting with Chief Justice John Jay in 1789, who wore a fur-lined scarlet and black robe with silver trim.¹³² When John Marshall became Chief Justice in 1801, he controversially donned a plain black silk robe— a seemingly radical departure at the time, as the other justices continued to wear fur-lined scarlet robes like the English.¹³³ Chief Justice Marshall preferred the black robe's simplicity over the extravagant and pompous scarlet robe.¹³⁴ Supreme Court

124. *Lord Chief Justice Models New Gown for Judges*, TELEGRAPH, May 13, 2008, <http://www.telegraph.co.uk/news/1951169/Lord-Chief-Justice-models-new-gown-for-judges.html>.

125. *See id.*

126. *Judges Give New Robes a Dressing Down*, TELEGRAPH, Mar. 26, 2009, <http://www.telegraph.co.uk/news/uknews/law-and-order/5056426/Judges-give-new-robos-a-dressing-down.html>.

127. *Lord Chief Justice Models New Gown for Judges*, *supra* note 124.

128. *Judges Give New Robes a Dressing Down*, *supra* note 126.

129. Glenn W. Ferguson, *To Robe or Not to Robe? A Judicial Dilemma*, 39 J. AM. JUD. SOC. 166 (1955-1956).

130. *See id.*

131. *See id.* at 168.

132. *See* John Eligon, *Behind the Gavel, a Sense of Style*, N.Y. TIMES, Sept. 6, 2008, <http://www.nytimes.com/2008/09/06/nyregion/06robes.html?adxnnl=1&adxn-mlx=1311138214-PFFRfNh17o3AKcy7tSj3IA>.

133. *See id.*

134. JEAN EDWARD SMITH, JOHN MARSHALL: DEFINER OF A NATION 286 (1996).

justices have worn black ever since, and they are even known as “Supreme Court-style” robes.¹³⁵

In the highest courts of Massachusetts and Maryland, robes were worn from the colonial era until shortly after the American Revolution ended.¹³⁶ New York Court of Appeals judges also shed their robes after the Revolution to distance themselves from the “pomp and ceremony” of English traditions.¹³⁷ Most judges followed this trend, and through the era of Jacksonian democracy of 1828–1850, most judges wore business suits because formal garb was disfavored.¹³⁸

In 1884 though, New York’s Bar Association passed a resolution – at the insistence of elite conservative lawyers – that Court of Appeals judges were to wear “the black silk robe when in session in accordance with the historical traditions of our judicial institutions and agreeable to a cultured taste.”¹³⁹ After a similar petition from the Massachusetts bar in 1900, future Supreme Court Justice Holmes, sitting then as the Chief Judge of the Massachusetts Supreme Judicial Court, adopted the practice of wearing black robes in 1901.¹⁴⁰ Many states followed suit, and by the middle of the 1960s, high court justices in every state wore robes.¹⁴¹

Judge Frank, a former federal appellate judge, argued that the 1884 mandate in New York, like the English judicial attire mandate in 1635, was rooted in the desire to thwart democracy.¹⁴² He argued that conservative elites sought to use the “courts as a bulwark against the rising Populist movement,” and that the black robes dignified the judiciary.¹⁴³ In a book

135. See Eligon, *supra* note 132.

136. Frank W. Grinnell, *Comments on Four Recent Articles in the Journal*, 32 A.B.A. J. 786 (1946); Rudolf B. Lamy, *A Study of Scarlet: Red Robes and the Maryland Court of Appeals*, at 2 (2006), available at <http://www.courts.state.md.us/lawlib/aboutus/history/judgesrobes.pdf>.

137. See Eligon, *supra* note 132.

138. See Lamy, *supra* note 136.

139. Jon C. Blue, *A Well Tuned Cymbal? Extrajudicial Political Activity*, 18 GEO. J. LEGAL ETHICS 1, 43 (2004).

140. See Grinnell, *supra* note 136, at 787; One author remarks that a 1900 photograph of the Massachusetts Supreme Judicial Court showing its judges in business suits makes them seem more approachable and human than a robed jurist. See Blue, *supra* note 139, at 42.

141. See Blue, *supra* note 139, at 43.

142. JEROME FRANK, *COURTS ON TRIAL: MYTH AND REALITY IN AMERICAN JUSTICE* 255 (1950).

143. See FRANK, *supra* note 142, at 255; Professors Green and Roiphe echoed this sentiment, pointing out that some saw courts as “tools of the new robber barons, facilitating the concentration of wealth and power at the expense of the less privileged.”

chapter titled "The Cult of the Robe,"¹⁴⁴ Judge Frank highlighted the robes' negative consequences and arguments against wearing them:

- Robes hide their wearer, and can affect a false dignity and nourish pomposity, while shielding judges from rational inquiry.¹⁴⁵
- Robes convey uniformity in the law in a way that he does not believe exists; if laws were uniform, he argues, judges would not write dissenting opinions.¹⁴⁶
- Robes have adverse effects on justice, by intimidating unaccustomed citizens and inexperienced lawyers.¹⁴⁷

He concluded that the robe was an outdated remnant of ceremonial government and should be discarded, thereby humanizing judges.¹⁴⁸

A number of Judge Frank's critics and proponents of robes in the United States take the opposite position. One commentator argued that all trial judges should wear robes to promote uniformity, as it would "enhance the prestige of judicial office, foster cooperation between the bench and the bar, and reassert the dedication of the judiciary to the goal of justice."¹⁴⁹ In addition, since the public views the legal system in trial courts, robed judges would show the public that the American legal system is a dignified one.¹⁵⁰ Other critics of Judge Frank opine that:

- Robes serve to differentiate the role of the wearer, and emit an aura of dignity.¹⁵¹
- The robe "announces the judge," and makes clear that a court of justice is in session.¹⁵²
- When appearing before a robed judge, we expect justice and not favoritism.¹⁵³

Bruce A. Green & Rebecca Roiphe, *Tradeoffs of Candor: Does Judicial Transparency Erode Legitimacy?*, 64 N.Y.U. ANN. SURV. AM. L. 497, 517 (2009).

144. See FRANK, *supra* note 142, at 254.

145. Frank also alludes to the fact that the United States has separate branches of government which are supposed to be equal; however, he points out, there are no token garments of the executive or legislative branch that command dignified respect, while judges can choose to adorn themselves in the dignity-inspiring robes. See *id.* at 256.

146. See FRANK, *supra* note 142, at 256-57.

147. See *id.* at 257.

148. See *id.* at 260. Other judges opposed to wearing robes argue that the additional formality can provoke political criticism, that there is precedent for wearing suits, and that the personal modesty of the judge precludes the wearing of the religious-looking garment. See W. Ferguson *supra* note 129, at 170.

149. See W. Ferguson, *supra* note 129, at 171.

150. See *id.*, at 168.

151. *Id.*

152. See *id.*

153. See *id.*

- Robes “serve as a constant admonition to the conscience of the judge himself in the discharge of his solemn duty as a minister of justice.”¹⁵⁴

A recent article highlighted the freedom American trial judges possess to choose their robes.¹⁵⁵ Robes are not required to be worn by New York trial judges, and one criminal judge has changed her wardrobe frequently; she has been seen without a robe in a lime-green suit on the bench, or accenting a partly-buttoned robe with a scarf or necklace. She likes to bring her personality to her courtroom, and other judges agree that their dress freedom is a humanizing factor.¹⁵⁶ Another trial judge wears her robe open like a bathrobe to stay comfortable.¹⁵⁷

Deviating from tradition is not limited to state trial judges. In 1994, Supreme Court Chief Justice Rehnquist added four gold bars to the upper part of his robes’ sleeves after attending a comic opera in which the Lord Chancellor wore similar sleeves.¹⁵⁸ He adopted the gold bars simply because he liked the way it looked. Some female judges, like Supreme Court Justice Ginsburg and former New York Court of Appeals Chief Justice Kaye, wear a lacy jabot around their necks.¹⁵⁹ Chief Justice Kaye felt that the V-cut robes were designed for the male figure, and that the hanging garment made for a less awkward look.¹⁶⁰

Although Supreme Court justices wear the standard black silk robes, some state courts have taken to different colored robes. In preparation for the 1976 bicentennial celebration of American independence, the Maryland Court of Appeals wanted to return to the scarlet robes worn during the revolutionary era.¹⁶¹ The Maryland Court of Appeals began wearing the scarlet robes in 1972, and have worn them ever since.¹⁶² Judge Clarkson, a Michigan state trial judge, researched the history behind judicial garb upon his election to judge; after discovering that red was the color most widely worn in England – where much American common law derives from – he took to

154. See W. Ferguson, *supra* note 129, at 169.

155. See Eligon, *supra* note 132.

156. Another judge comments that showing personality on the bench is important because it allows criminal defendants “to see her ‘as another human being, not just a rubber-stamp automation.’” *Id.*

157. *Id.*

158. See Linda Greenhouse, *William H. Rehnquist, Architect of Conservative Court, Dies at 80*, N. Y. TIMES, Sept. 6, 2005, <http://www.nytimes.com/2005/09/05/politics/politicsspecial1/05f1rehnquist.html?pagewanted=all>.

159. See Eligon, *supra* note 132.

160. See *id.*

161. See Lamy, *supra* note 136, at 1.

162. *Id.*

wearing red.¹⁶³ In 1993, after the Idaho Supreme Court discussed permissible judicial robe colors, they decided that any color would suffice; thereafter, Justice Johnson of Idaho wore a blue robe, and even quipped that he sat on the "black and blue court."¹⁶⁴

IV. RELATIONSHIP BETWEEN JUDICIAL ATTIRE & ACCESS TO JUSTICE

To analyze whether there is a relationship between judicial attire and access to justice, this section will synthesize the intentions of those who impose formal attire and examine the effects on citizens.

A. *Intentions of Those Who Require, Proscribe, or Maintain Judicial Attire*

After examining the history of judicial attire, it appears that those who impose changes generally intend to distinguish their judges, have their judges mimic others, or project an image to their citizens.¹⁶⁵ They may choose one, or even all reasons, but most of the reasons detailed fit into one of the aforementioned categories.

The most common and powerful historical theme of judicial attire changes is the desire to distinguish a new reign from a prior one.¹⁶⁶ New governments often make drastic changes to attempt to show they are unlike the predecessors they replaced. When Charles II assumed the English throne following their Civil War and his exile, he sought to distinguish his new monarchy by discarding reforms made during the populist movement.¹⁶⁷ Judges no longer adhered to the formal 1635 dress code,¹⁶⁸ and instead were encouraged to wear pompous falling lace bands and newly fashionable French wigs to display the new government's grandeur.¹⁶⁹ After

163. S. James Clarkson, *The Judicial Robe*, 1980 SUP. CT. HIST. SOC'Y Y.B. 148, available at http://www.supremecourthistory.org/docs/schs_publications-1980.pdf.

164. See James G. McLaren, *Judicial Robes and Idaho's "Black and Blue" Court*, 41 ADVOC. 14, 12-13 (1998).

165. The literature is voluminous — for a canonical list, see Louise Tsang, "History of Legal Dress in Canada, England, Ireland and Scotland," 24 CAN. L. LIBR. 55-59 (Summer 1999).

166. See HARGREAVES-MAWDSLEY, *supra* note 17, at 2.

167. See JEAFFRESON, *supra* note 9, at 171.

168. The 1635 dress code prescribed that Judges at Westminster would wear either black or violet gowns and a hood to cover their heads. For further details see Rt. Hon. Sir Victor Windeyer, "Of Robes and Gowns and Other Things" (1974) 48 AUST. L.J. 394, 398.

169. See HARGREAVES-MAWDSLEY, *supra* note 17, at 79.

the French Revolution, judges' scarlet robes and gold lace-decorated hats were discarded. Trial courts took to simple black attire, while the high appellate court wore the nationalistic *tricouleur*-trimmed light blue, and the intergovernmental dispute court wore pure white with *tricouleur* trim.¹⁷⁰ Napoleon, though, sought to break any potential monarchical resemblance of the judiciary: gone were the reforms of the Revolution, and all judges were to adorn simple black.¹⁷¹ After achieving independence from England, American judges eschewed the wigs and fur-lined scarlet robes they wore under English control, and instead wore simpler black robes or shed them altogether.¹⁷²

Attire can also distinguish judges from other judges, professions, and countries.¹⁷³ In the 15th century French judicial ranks, the high presidents wore gold bars and fur stripes on their shoulders and gold rings around their *mortiers* to show their superiority to the rank-and-file presidents.¹⁷⁴ Napoleon distinguished his high judges by adding purple cloaks.¹⁷⁵ The English Lord Chancellor and Chief Baron wore the Collar of SS to indicate their place atop their court system's hierarchy. English judges draped their hoods over their right shoulders to distinguish themselves from clergymen, who hung them over their left. Newly elevated 15th century English judges distinguished themselves from sergeants-at-law by adding a black skull-cap.¹⁷⁶ Some argue that English judges have kept their formal and distinctive attire to distinguish their legal system from other countries, in hopes of attracting forum-shopping entities.¹⁷⁷

Judicial attire can also distinguish court proceedings. Judge Bradshaw donned the unusual steel-plated beaver hat during the unusual trial of an English king for treason.¹⁷⁸ Skull-caps and cornered-caps have been worn at times in England when passing death sentences. And, even in the modern era, English criminal trial judges adorn the scarlet robes instead of the dark navy worn in civil trials.¹⁷⁹

170. See *id.* at 43.

171. See *id.* at 45.

172. See J.H. Baker, *supra* note 14, at 15-21.

173. See HARGREAVES-MAWDSLEY, *supra* note 17, at 94; See also *English and American Bar in Contrast: Mr. Oakey Hall's Opinions Considered*, 15 GREEN BAG 493, 493-97 (1893); See also Yablon, *supra* note 96, at 1134.

174. See HARGREAVES-MAWDSLEY, *supra* note 17, at 24.

175. See *id.* at 35.

176. See *id.* at 77; see also J.H. Baker, *supra* note 14, at 27-39.

177. HARGREAVES-MAWDSLEY, *supra* note 17, at 77.

178. See Sachse, *supra* note 89, at 69-85.

179. See HARGREAVES-MAWDSLEY, *supra* note 17, at 35.

Kings often clothed their judges in regal garments so they would resemble nobles or royalty.¹⁸⁰ Scarlet robes were thought of as monarchical in Italy and ceremonial in France, and both countries' judges adorned them. Italian judges were fitted with garments suitable for senators, doctors, and knights, and the English kings bestowed the *armelausa* upon their judges like French nobles or clergymen. English kings also bestowed upon the highest judges the Collar of SS – worn by military leaders and royalty – to signify the alliance between the crown and the judiciary.¹⁸¹

Another common theme with judicial attire is the desire to project dignity.¹⁸² From the very inception of secular courts, the robes, a holdover from church-rule, were kept for this purpose.¹⁸³ To gain support of citizens previously ruled by the church, it was important that new authorities be dignified. Robes are thought to project a respectful image to court users, in hopes that lay people like criminal defendants view the proceedings seriously, or that witnesses feel compelled to tell the truth. But, robes also have been used by powerful groups like robber-barons to project oppressive control over restless citizens, like in 1884 New York. In these cases, the dignified look which robes provide can be viewed by lay users as elitist or intimidating – an effect which some leaders might desire.

For those abandoning robes, the gesture can be interpreted as attempting to project less pageantry, and to make judges look more human.¹⁸⁴ Courts in the democratic rural regions of Italy did not adopt the monarchical scarlet robe.¹⁸⁵ The newly independent American courts shed their wigs and fur-lined scarlet robes because they saw the formalities as a symbol of aristocracy; the black robed jurists hence appeared more democratic.¹⁸⁶ In recent years, English reforms sought to project modernization and simplicity, to ensure that their own citizens maintained respect for their legal system.¹⁸⁷

180. See *English Judge's Dress*, 3 CAN. L. REV. 321, 332 (1904).

181. See HARGREAVES-MAWDSLEY, *supra* note 17, at 66; see also Walker J. Ferguson, "Judicial Costume in England," 12 GREEN BAG 615 (1900).

182. See HARGREAVES-MAWDSLEY, *supra* note 17; see also Yablon, *supra* note 96, at 1129-31.

183. See J. Ferguson, *supra* note 181, at 614-16.

184. See generally FRANK, *supra* note 142, at 254.

185. See HARGREAVES-MAWDSLEY, *supra* note 17, at 11-14.

186. See W. Ferguson, *supra* note 129, at 166-17; See also Richard S. Harvey, *Wig and Gown*, 16 AM. LAWYER 31-37 (1908).

187. This is also the case in other commonwealth countries such as New Zealand. For instance the New Zealand Royal Commission on Courts considered the question of whether or not to retain their court dress under the following headings:

- (i) formality, solemnity and tradition;
- (ii) neatness, uniformity and fairness;

It is also important to not overlook simple logistical reasons for changing attire. The smaller wig was cooler and more comfortable than the full-bottomed wig.¹⁸⁸ Robes were not designed for the female figure, so as they have risen to the bench, female judges have sometimes adopted hanging neckwear to make the robe look less awkward.¹⁸⁹

B. *Consequences of Requiring, Proscribing, or Maintaining Judicial Attire*

While those in power may have specific reasons for why they want distinctive judicial attire, there are consequences – sometimes unintended – that should be considered.

On the positive side, a robed judge might appear prestigious, cultured, or dignified.¹⁹⁰ Since no other profession wears them, judicial robes truly do announce that court is in session, and that its wearer will seek justice.¹⁹¹ Perhaps most importantly, the distinctive black robes can serve as a reminder to judges of the importance of their responsibility to administer justice and not perpetuate bias.¹⁹² On the other hand, judges who become less formal by removing robes or simplifying them might appear less pompous and more human.

The negative consequences of wearing formal attire seems to weigh heavier today. It is important to remember that when judges initially wore formal attire like robes and wigs, other professions wore them as well.¹⁹³ However, those fashions faded centuries ago. Today, when those who have never before walked into court make their first appearance, it is likely that the formally outfitted judge – perhaps wearing a wig and robe – is the only robed person they have ever seen. As the English documented when studying this issue recently people can, indeed, be intimidated by such formal attire. Instilling fear in a court participant – whether in criminal defendants, witnesses, or younger or inexperienced lawyers – undermines the very purpose of judicial systems: to administer justice.

(iii) expense, inconvenience and discomfort;

(iv) the position of solicitor advocates.

For further details see New South Wales Law Reform Commission, *supra* note 13.

188. See J. Ferguson, *supra* note 181, at 616.

189. See HARGREAVES-MAWDSLEY, *supra* note 17, at 66; see generally Elise Brunet, *Keeping Tabs on Courtroom Neckwear*, ONT. LAWYERS GAZETTE 24-25 (May/June 1988).

190. See Chase & Thong, *supra* note 13, at 221-246.

191. *Id.* at 222

192. See W. Ferguson, *supra* note 129, at 168.

193. See Yablon, *supra* note 96, at 1133.

Lord Chief Justice Taylor of England opined that their judges' formal attire made them look "antique and slightly ridiculous" – in 1990. Judge Frank felt the American black robe – much simpler than the English costume – nourished pomposity and was outdated and out of touch in 1950.¹⁹⁴ That was over sixty years ago, and societies and laws have advanced rapidly since then. Leaving legal systems vulnerable to mockery for appearing antiquated seems unnecessary, as the world around the courts has advanced so much.

V. JUDICIAL ADDRESS

In Elizabethan England,¹⁹⁵ citizens carefully chose titles and terms of address when speaking with other members of society.¹⁹⁶ "Your Honor" indicated that the addressee was a nobleman or of equivalent dignity, and the lesser title of nobility "Your Worship" indicated that the addressee was a knight or gentlemen.¹⁹⁷ English judges adopted these titles as well, and their use has been very similar throughout history. Since 1897, magistrate judges were addressed as "Your Worship," trial judges as "Your Honor," and High Court justices as "Your Lordship."¹⁹⁸ The titles distinguish members of the judiciary, and modern English judges are addressed today as follows:

- The Lord Chief Justice is addressed as "Dear Lord Chief Justice [Name]" in written correspondence and as "My Lord" or "My Lady" inside the courtroom.
- Judges in the Court of Appeal, known as Lords Justices of Appeal, are addressed as "Dear Lord Justice [Name]" in written correspondence and as "My Lord" or "My Lady" inside the courtroom.

194. A history of legal dress from saxon period.

195. This era was the time of Queen Elizabeth I's reign, between 1558-1603, *see e.g.* JOHN GUY, *TUDOR ENGLAND* (1990).

196. William A. Ringler, Jr., *Spenser, Shakespeare, Honor, & Worship*, 14 *RENAISSANCE NEWS* 159, 160 (1961), *available at* <http://www.jstor.org/stable/2858192>.

197. *Id.*

198. Herbert Harley, *Ontario Courts & Procedure*, 12 *MICH. L. REV.* 339, 358 (1914); "Lord" derives from the High Court Justices' former seats in the House of Lords, England's upper Parliamentary house; other members of the House of Lords, such as archbishops and life peers also are titled "Lords." House of Lords, *House of Lords Briefing: Membership* (2009), *available at* <http://www.parliament.uk/documents/lords-information-office/hoflbpmembership.pdf>. A clear timeline of the evolution of the House of Lords appears on page six, detailing the progressive elimination of hereditary membership and the increasing separation of powers between the judiciary and legislature. Though High Court Justices no longer sit in the House of Lords, they retain the title "Lord."

- Circuit Judges are addressed as “Dear Judge [Name]” in written correspondence and as “Your Honour” inside the courtroom.
- District Judges are addressed as “Dear Judge [Name]” in written correspondence and as “Sir” or “Madam” inside the courtroom.
- Magistrates are addressed as “Dear [Name]” in written correspondence and as “Your Worship,” or “Sir” or “Madam” inside the courtroom.¹⁹⁹

In the United States, all judges are addressed as “Your Honor” inside the courtroom, and should only be addressed with the less formal title “Judge” outside the courtroom.²⁰⁰ When outside the courtroom and in written form, Supreme Court justices are addressed as “Justice [Name],” and its leader is addressed as “Chief Justice [Name].”²⁰¹ Court of Appeals, district, and magistrate judges are addressed simply as “Judge [Name].”²⁰² When outside the courtroom and in the presence of a client, a lawyer who has a personal relationship with the judge should not call the judge by his or her first name, as it can be seen as demeaning the judge’s position of authority, and disrespectful.²⁰³

American proponents of the salutation “Your Honor,” particularly federal judges, argue that the address “is a constant reminder, not alone of the prestige of the office, but more importantly of the tremendous power and heavy responsibility and absolute independence of the federal judge.”²⁰⁴ Because they are appointed and not popularly elected, federal judges’ consciences are their only supervisor and censor, and “‘Your Honor’ is the trigger which commands [their] conscience to proper personal conduct and to the faithful performance of [their] duties,” and the salutation “encourages judicial patience, inspires industry, nurtures prudence and counsels [them] with the great virtue of common sense.”²⁰⁵ Another argument is that names and titles shape choices, opinions and views, and the nomenclature is “a

199. *What Do I Call a Judge?*, JUDICIARY OF ENGLAND & WALES, JUDGES, TRIBUNALS AND MAGISTRATES, <http://www.judiciary.gov.uk/you-and-the-judiciary/going-to-court/what-do-i-call-judge> (last visited May 12, 2010).

200. Catherine Therese Clarke, *Missed Manners in Courtroom Decorum*, 50 MD. L. REV. 945, 994-95 (1991).

201. Hon. Anthony J. Battaglia, *Sex, Lies, & Magistrate Judges: Common Misconceptions About the Federal Judiciary*, 54 FED. LAW. 48, 51 (2007). This author is a federal magistrate judge for the United States District Court for the Southern District of California.

202. *Id.*

203. See Clarke, *supra* note 200, at 995.

204. Edward J. Devitt, *Your Honor*, 55 JUDICATURE 144 (1971).

205. *Id.*

matter of showing respect for the office or title.”²⁰⁶ If the public identifies the position properly, they “will get the best picture of the office and its role in adjudicating the fate of their cases.”²⁰⁷

Some have argued that the institutional power of legal systems relies upon outward displays of dominance like robes, wigs, and the imposed terms of address described above.²⁰⁸ However, the titles, as well as others used in the courtroom, such as “learned friends” for lawyers and “public servants” for police officers, are thought by some to “perpetuate the hierarchical relationships between the agents of the state and ordinary citizens who bring grievances to court.”²⁰⁹

Indian Bar Associations in Punjab and Haryana abolished the practice of addressing High Court judges as “My Lord,” or “Your Lordship” in April 2011.²¹⁰ The Bar Association deemed the titles “‘relics of the colonial past,’” and, instead, the judges are now to be addressed as “Sir” or “Your Honour.”²¹¹ This change followed the acceptance of the more nationalist political ideology prevalent in modern Indian society, which has dedicated itself to “ending the hierarchies that the legal system reflects and reinforces.”²¹² Similarly, justices of the Canadian province of Ontario’s Superior Court of Justice are no longer addressed as “My Lord,” or “My Lady,” but are now addressed as “Your Honour.”²¹³

VI. DRESSING THE SUPREME COURT OF KENYA

The GoDown Arts Centre was initially a site for artists, but has since then become a site for artist movements and other civil society movements in Kenya. Though mainly accommodating middle class concerns in those movements, the GoDown is a bridge to other movements in rural and urban

206. See Battaglia, *supra* note 201, at 50-51.

207. *Id.*

208. James C. Scott, *Prestige as the Public Discourse of Domination*, 12 CULTURAL CRITIQUE 145, 150 (1989).

209. Mindie Lazarus-Black, *The Rites of Domination: Practice, Process, and Structure in Lower Courts*, 24 AM. ETHNOL. 628, 637 (1997).

210. Ajay Sura, *No More ‘My Lord’, ‘Your Lordship’ in Punjab & Haryana HC*, TIMES OF INDIA (Apr. 7, 2011, 5:11 PM), http://articles.timesofindia.indiatimes.com/2011-04-07/chandigarh/29391850_1_bar-body-bar-council-high-court-bar-association.

211. *Id.*

212. Lance Liebman, *Equalities Real and Ideal: Affirmative Action in Indian Law*, 98 HARV. L. REV. 1679 (1985).

213. *Handout: The Jurisdiction of Ontario Courts*, Ontario Justice Education, NETWORK, <http://www.ojen.ca/sites/ojen.ca/files/sites/default/files/resources/Jurisdiction%20of%20Ontario%20Courts.pdf> (last visited May 12, 2010). However, I was unable to find sources describing the rationale for or the exact date of this change.

areas of other social classes. The GoDown Arts Centre offered to convene designers and other stakeholders to propose a dress code for the Supreme Court. This was a continuation of efforts from cultural actors to engage with the new Constitution in concrete ways. Prior to the referendum on the Constitution, representatives from the culture sector debated and agreed on submissions to be put forward for inclusion in the Constitution on behalf of the sector, and after the promulgation of the Constitution, cultural actors continued to discuss the opportunities opening up in a new constitutional dispensation for their direct engagement in national matters, for example, in areas of identity and cultural/national expressions.

Dressing the Supreme Court, therefore, presented an opportunity to both interrogate the traditions of the judicial system, its practices and access to justice in Kenya, and to propose new ideas that portray the spirit of reform that the Constitution embodies. The GoDown set about doing this by convening three participatory focus groups. The sessions were attended by participants in such varied sectors as representing the cultural sector, designers, academia, the legal fraternity, and other structures of law and order, such as the penal system. The fourth meeting was with the Chief Justice and Deputy Chief Justice where aspects of the discussion and emerging design considerations were shared.

The first meeting brought out the following perspectives and issues: On the signification of legal robe/dress, representatives of the legal fraternity explained that they denote status, rank, achievement, and identification. The dress code also elicits responses from the public that clearly signals who the legal professionals are and helps distinguish learned representation from individual or citizen representation.

On the matter of utility and functionality of the gown, and perceptions of the robe and wig, observations made included that the robe can be cumbersome, hot and impeding; it has a distancing effect – distancing the public from justice; and its connotations are negative, from a bygone colonial era, a non-African heritage.

There was substantial debate about what aspects of the legal tradition should be retained and in what ways, what new interpretation? How radical could the new designs be? How far should they disengage with legal tradition? Should the design allow for the reflection of the unique and individual personality of the Supreme Court judges or should it present the idea of objective and neutral justice? Can justice really be objective and neutral?

A cautionary note was also made that there should not be an attempt to fit the whole of Kenya, and to maintain a sense of perspective even as the country sought to chart a new direction. It was agreed that the dress should be simple and ceremonial, dignified but not overworked, and not a politicization of art.

It was also noted that the concept of a robe is widely used in judicial systems across the globe. The designers looked at dress ranging from Western countries to Asian countries to confirm this fact. The question posed was could the fact of the wide use of the robe across the globe be taken as a universal marker? Therefore, should the task at hand for the designers be to localize/Africanize/Kenyan-ize this universal code, that is, the robe?

It was very clearly recognized that a reform of the judicial dress goes beyond the notion of attire and has deeper and wider implications, for example, on the environment/spaces where justice is meted out, and on the whole notion of the performance of justice – power play, hierarchy, and accessibility.

Reference was made to fundamental concepts of the Constitution that the Supreme Court dress could represent. Some of the concepts mentioned included, values and principles specifically provided for and implied in the Constitution, including equality, participation, access to justice, transparency, sovereignty of the people, and universality.

The designers, based on the discussions, debate, and their understanding of these conversations, left with the following considerations for design: take on board the seriousness and importance that the legal fraternity attaches to their judicial traditions and heritage; the need to denote the reality and importance of rank in the judicial system; the inclusion of African symbolism in the design; color symbolism; somehow embody in design, the 'new order' which the Constitution has ushered in; how to give attention to gender and justice; whether the dress be unisex; the functionality and practicality of the garment; and to encompass utility, ceremony and beauty.

In a separate meeting, a former head of the Magistrates and Judges Association made several points. The debate on legal dress code had been brought up before but was met with a very conservative and rigid attitude from High Court judges in particular. Other countries have tried to contemporize legal traditions – in the UK, for example, the robe is used only in ceremony, the language used in the courts is simplified in order to be better understood by the lay people, and efforts have been made towards having a court environment that exudes the idea of equality before the law. Dress code reforms were not the only reform overdue as the robe/gown change presents an opportunity for wider re-design of the justice and prisons systems. There was a need to make sure that the physical space of the court is not alienating to the public and clean public toilets, benches, plants, trees and areas children attending the court could play should be provided. It was important to show the levels and ranks of justice however the philosophy of the dress should demonstrate accessibility and fairness. A day-to-day dress and a ceremonial dress should be adopted. There could be other symbols to accompany the dress code, for example, a Supreme Court flag or emblem.

In this second meeting representatives for the Prisons system were invited, including a youthful ex-law offender, a retired justice, and a former magistrate. The idea was to provide, especially for the benefit of the designers, more understanding of the legal structure and its workings.

Perspectives coming from the legal/law and order representatives were as follows: The Supreme Court attire should represent the ‘authority and reverence’ of the law, the law as a ‘majestic entity’ and to reflect the ‘seriousness’ of the execution and delivery of justice; the former justice (Retired Justice Kuloba) felt that it was ‘far from the truth’ that the current judicial dress ‘intimidates and makes people fearful’ rather the symbolism is that ‘wigs and gowns are for serious people’; it seemed to be agreed (among those representing the legal system) that differentiation to reflect the positions and differences between the courts and their officers was desirable. For example, the High Court, Court of Appeal and Supreme Court colors should be different from one another. There was a proposal that the magistracy also have identification as judicial officers. Representatives from the Kenya Prisons system agreed that the image of justice needed to be clearly shown through a dress or uniform (“image is everything”), their view was that the officialdom or authority expressed must be one that gives assurance and does not intimidate. The youthful ex-offender stated that although the dress and what it represents could be understood, it was the actual integrity of the system and its accessibility that was important. A question posed at the meeting was whether a uniform can help one make better decisions. Other questions included: whether or not it was the values that the courts and robes represent that need to be built upon; whether the critical issues were how the courts need to come closer to the people and how the setting of justice - the physical space itself - needs reforming; what the dress should communicate, how communicate this and the most appropriate way to communicate this.

When the designers shared sketches of their first interpretations, based on the debates of the first meeting, reactions from those present included: care should be taken to ensure that, in adopting symbols (spears, shields, for example), justice is not portrayed as being masculine and violent; that real mock-ups of the sketches be presented as a next stage; that the design be sensitive to being misread as ‘expensive’ and ‘costly,’ that is, the idea of locally made, locally sourced and therefore putting money back into the pockets of Kenyans should be considered.

The third session was primarily for the designers to present their mock-ups and to rehearse their presentation and justification of their designs so far. The designers presented a mock-up, as well as several samples of fabric and elements to Africanize the dress – animal print, beads, embroidery, etc. They explained their design choices which were robustly interro-

gated by the academics present – why the selected inferences, why the attributions to the past, what interpretations and meaning can be made for today's global context, how do we 'own' our history which includes the colonial history that has given us our justice system?

The Chief Justice and the former Deputy Chief Justice attended the fourth meeting. Both justices provided key additional perspectives for the designers to draw upon. These additional perspectives stood out as follows: the Supreme Court should portray the de-linking with the past and this difference needs to be evident; and there is a lot of resistance coming from lawyers towards different attire but the opportunity and point to be taken is that the Supreme Court is new and this can be the beginning of thinking differently. With so much revolution going on (due to the new Constitution), the wig and gown surely cannot be an area of such vigorous preservation concern; authority can be shown in a lot of ways and therefore one need not be wedded to the robe – the robe is not necessarily essential; capturing the idea of a de-linking with the past is important so that people do not see the Supreme Court as just a continuation of what has come before; in the tour around the country (by the Constitution of Kenya Review Commission) Kenyans expressed the view that the present image of justice was a barrier, was alienating, was one which 'frightens', and it was even difficult to tell the gender of judges (some thought underneath the long wig of the Chief Justice was a woman!). The Constitution is the spirit of the people of Kenya and the design of the Supreme Court dress should embody this; there is an opportunity to bring in freshness, to show direction and to start a conversation through this process; and sometimes even if we do not succeed, we would have started an important discussion.

The meeting came away with the following understanding and questions, but also a way forward: it is important to take into account everybody's views, but to not shy away from making some radical proposals as long as the principles behind the choices can be explained. In other words, the dress code for the Supreme Court is not predicated on prior or existing traditions. Which begs the question – if the robe is to be discarded, what is the rigorously considered reason for this? The way forward based on the understanding and the information as gathered by the designers from various stakeholders was:

- Two kinds of designs should be developed: (i) a functional dress to be worn when hearing cases – this dress should be light and green in colour ('Yes' vote for the Constitution in the referendum), additional consideration would be given to the fact that blue as the majority color of Kenyans might be incorporated, and a sprinkling of red to depict the ruling class whose rights in the courts must be protected; and (ii) a ceremonial piece for occasions.

- There would be no wigs or head gear of any type.
- Advocates appearing before the Supreme Court would be expected to wear suits of the somber colors decreed by the Law Society of Kenya. No robes or wigs would be allowed.
- The team would visit the proposed court room for the Supreme Court and help in the design that reflects equality, access to justice, proximity, fairness and all values enshrined in the constitution.
- The two kinds of designs would be discussed by all Supreme Court judges.
- The views of the Kenyan public will be sought by the team.
- There still remains the possibility of subjecting the issue of dressing the Supreme Court to national competition.
- The final product will be glorified and publicized in song, dance, and art as one of the strategies of creating a different public image of the judiciary; and
- The team would thereafter turn its attention to the other courts and the legal profession if there is enthusiasm for dialogue.

VII. THE JUDGES' COLLOQUIUM AND ITS RESPONSES

On August 14–19, 2011 judges convened in Mombasa for their annual colloquium. I read the paper in this workshop and it generated great and robust discussion. Most of the responses reflected the historical arguments for and against the retention of judicial attire and address that have been canvassed in the paper. I will confine myself to what turned out to be the emerging consensus.

The judges decided to discard the wigs because in their words they are “torturous,” “colonial relics,” “cumbersome,” “lack uniformity,” “uncomfortable,” and “antique.” The judges decided to retain robes although they could not agree on the colors. It was suggested that each of the superior courts could decide on the colors of their respective robes. As for the Kadhis and the magistracy, it was suggested that they too should be robed. The various courts would henceforth continue the conversations on the color of the robes and conclude it.

Public participation in dressing and addressing the judiciary is anticipated and encouraged. The initiative already seized with the project will be asked how this public participation can be expanded. It was suggested that a national competition could be undertaken under the auspices of the initiative being led by Joy Mboya of the GoDown.

The judges did not find it their place to impose a dress code on the Law Society of Kenya and its' members. It was decided that the Society participates in the debate as a critical stakeholder and gives its views. It is

important to bear in mind that some of its membership are participating in the Joy Mboya team.

As to the issue of judicial address, a consensus emerged that we all be addressed as “Your Honor,” that is, all of us from the Kadhis and Magistrates to the Judges of the Supreme Court.²¹⁴

VIII. PUBLIC RESPONSES TO THE NEW ROBES OF THE SUPREME COURT JUDGES

The Joy Mboya team came up with a functional robe for the judges of the Supreme with the understanding that the discussion to dress the Supreme Court would continue. The robe was green in color with some minor gold embroidery. It was a simple cotton robe, light and inelegant. The Supreme Court judges picked the green color because it was the color of those who voted YES in the referendum in 2010. The 67% YES in the referendum paved the way for the promulgation of our progressive constitution on August 27, 2011. More importantly, the judges chose the colors that the South African Constitutional Court has chosen. At the time the South African court seemed the obvious model court in its attire, their building, and their jurisprudence.²¹⁵ Green also symbolized healthy environment, beauty, plenty, freshness, and the colors of the peasantry, common folk, the wealthy and the mighty, a color that promoted the constitutional value of inclusiveness. The Supreme Court wore its new robes in its first hearing on November 15, 2011. The responses from the public as published by the press were not at all flattering! The public comments reflected the tensions revealed in the historical discussion above and similarly verbalized by the judges in their colloquium.

The *Star* in its gossip column, appropriately called “Corridors of Power,” wrote of the robes: “The new robes of the Supreme Court Judges, which sat officially for the first time on Tuesday, have been the cause of debate in the court corridors. A senior lawyer who watched the proceedings from a vantage point said the robes-green and gold with a black binding and

214. A newly appointed judge was understandably upset by this consensus. As a Magistrate, he had been addressed as “Your Honor” for many years. As soon as he was elevated to the status of a Judge, he hoped he would be addressed as “Your Lordship” for many years to come! The consensus received support from not an unexpected quarter, the Christian clergy. The view of the clergy was that it was high time judges stopped playing God!

215. While this remains by and large true in terms of jurisprudence the Indian Supreme Court and Colombian Constitutional Court have joined the ranks of admired jurisdictions.

cowl—made judges look like the Prison’s Choir and did not reflect the dignity and somberness of the Supreme Court.”²¹⁶

The *Sunday Nation*, quoting a reader in its popular column, “The Cutting Edge” wrote, “They [Supreme Court Judges] wear a robe that is mainly green and resembles that donned by Catholic Priests during Mass. Who designed this robe and what do the colours signify? Is the cult of colonial wigs being replaced by one of robes? Why can’t judges wear plain suits? Over to you, CJ Mutunga.”²¹⁷ The *Daily Nation* in the same column quoted yet another reader saying: “The green attire would have been okay for members of a choir from the Forest Department singing about trees, or officials of a school or college environmental club. I prefer the red attire which displays authority and sanctity of the court. CJ Mutunga, let’s change with a touch of style if we must change.”²¹⁸

A blogger²¹⁹ repeated similar negative comments on the robes appearing in various media and concluded: “There you have it: Kenyans are not impressed with [sic] this activism!”

The Supreme Court has continued to wear the green robes and nobody seems bothered by that these days. The judges have added a green sash with golden embroidery, but they are not particularly happy with the robes. Some of the judges are happy that the public criticism likened them to ordinary, humble and people with a calling. Others feel it is time to choose robes that will restore the dignity of the Supreme Court. The Chief Justice is of the view that the Court should settle for elegant suits as suggested by one of the individuals quoted in the press. He is also happy with the Supreme Court being likened to common folk. In his view it would have been worse for the new judiciary if the Supreme Court judges were likened to some pompous, arrogant, snooty and insensitive individuals. The public participation on dressing the Supreme Court and the Judiciary in general has started in earnest and it will continue.

Meanwhile the Court of Appeal has settled for black robes, while the High Court and the Magistracy are yet to make up their minds. The Kadhis have compromised on brown robes.

216. *Corridors of Power*, STAR (Nov. 18, 2011), <http://www.the-star.co.ke/news/article-41018/corridors-power>.

217. *Cutting Edge*, DAILY NATION (Nov. 20, 2011), <http://www.nation.co.ke/oped/Cutting-Edge/-/440802/1276360/-/15uicu3/-/index.html>.

218. The Watchman, *Cutting Edge*, DAILY NATION (Nov. 23, 2011), <http://www.nation.co.ke/oped/Cutting-Edge/-/440802/1278116/-/15ujos9/-/index.html>.

219. *Of Green Gowns and a Diplomatic Spat*, HARD TALK KENYA: TELLING IT LIKE IT IS (Dec. 1, 2011), <http://hardtalkkenya.wordpress.com/2011/12/01/of-green-gowns-and-a-diplomatic-spat>.

IX. CONCLUSION

While I have not found materials that squarely address whether there is, in fact, a relationship between judicial attire and access to justice, my research leads me to believe that overly formal attire has an inverse relationship with access to justice. From the early days of secular courts, authorities were concerned not with providing access to justice for the benefit of their citizens, but with reinforcing support for their own power. Robes and other formalwear were borrowed from clergymen to create the perception of a dignified reign, or from nobles to display their reign's wealth and power.

The intentions of states enhancing judicial formality have often appeared manipulative rather than benevolent, and the consequences for citizens are more often negative. Simply put, formal attire that lingers from different countries, centuries, and global structures does not symbolize access to justice for the public. A humanizing and contemporary approach seems more appropriate. Indeed, the consensus reached by the judges reflects such an approach. As for judicial address, the judges have followed the Indian, Canadian and American experiences of addressing all judicial officers as "Your Honor." In Kiswahili they will be addressed as "Mheshimiwa." Languages of all Kenyan nationalities have their Kiswahili equivalents that can be popularized, a reflection in part to the access of justice.

Speaking for myself, I love it when Kenyans address me as "Ndugu Jaji Mkuu" [My brother the Chief Justice] because this expresses and denotes the Nyererean, and our constitutional values of humility, modesty, patriotism, inclusiveness, and humanity. For those who feel I am old enough to be their grandfather they are welcome to address me as "Babu Jaji Mkuu" [My granddad the Chief Justice] as, indeed, my grandchildren do!

The security of the judicial officers will trump the debate on judicial attire and address. Implementing the new constitution will soon dawn on us that we may discard robes and wigs and spend money on bullet proof vests, as well as Kevlar jackets as we interpret and rule on the implementation of our progressive social democratic constitution.

Finally, this debate on dress for and address of judicial officers hardly scrapes the surface of the conservative judicial culture of the Kenyan Judiciary that is slowly being transformed. This culture has its hallmarks in its insularity, impunity, judicial and intellectual laziness, self-centeredness, arrogance, insensitivity, and failure to recognize its pro-people calling. Transforming this culture is fundamental in the transformation of the Judiciary. The Judiciary Transformation Secretariat in the Office of the Chief Justice

has recognized this fundamental fact and transformation workshops focus on this issue. It is this culture that can stifle the nurturing of a robust, indigenous and patriotic, progressive jurisprudence that is decreed by the Constitution and the Supreme Court Act²²⁰ that can build on the strengths of comparative jurisprudence the world over while rescuing the limitations of such jurisprudence. Undertaking an historical, socio-economic, political and cultural research into this culture cannot be delayed any longer if the transformation of the Judiciary is to have a permanent, indestructible, irreversible and irrevocable foundation.

220. The Supreme Court Act, (2011), No. 7 (Kenya).