DOWNLOAD PDF THE JUDICIAL ROLE IN CRIMINAL PROCEEDINGS

Chapter 1 : Who Are the Players in the Courtroom? | The Judicial Learning Center

The comparative and international book considers the future of the judicial role in criminal proceedings.

Many other judges have provided summaries of the qualities of a good judge, and these usually include professional competence legal abilities and intellect , integrity, and judicial temperament neutral, decisive, respectful, and composed. Note that these qualities are hard to define. Yet we all have a conception of what a judge should beâ€"a distinguished person presiding over a trial. The Umpire The classic image of judge as neutral arbiter has its roots in the adversary system. The very conception of courts, and the expectations we have of them, is derived from the adversary process, especially the criminal trial. Trials are just too slow and costly for resolving the vast volume of ordinary cases. They are, however, the last resort when all other efforts at reaching agreement have failed. And from these television reports, as well as movies, the public derives its conception of what a judge should be. Full-blown trials exist today, but for a very small percentage of cases. Yet this image of a judge in trial provides the standard for measuring all judges. The role of the judge in the adversary process is to preside over the proceedings and maintain order. During a trial, the judge rules on whether the evidence the parties want to use is illegal or improper. If the trial is before a jury, the judge gives instructions about the law that applies to the case; if the trial is before the court, the judge determines the facts and decides the case. In a criminal trial, the judge metes out the sentence to those convicted. Note the role of the judge in this idealized conceptionâ€"a passive umpire enforcing procedural rules. For courts to be impartial, judges must be free to decide cases based upon the laws and facts of the case uninfluenced by either external pressures or internal preferences. Impartiality is impossible unless judges are independentâ€"free from external threats, intimidation, or fears of sanctions based upon their decisions. Impartiality is also threatened to the extent that judges permit their personal conceptions of justice to influence their decisions, rather than setting aside personal predispositions in deference to law as written. One object of law school is to socialize potential judges to defer to law rather than their own conceptions of justice. The role of the judge is to apply the law to different sets of facts raised in various cases and to rule accordingly. About half of the judges responding to various questionnaires by different researchers consider themselves law appliers, implying that most cases can be decided by analogy to cases decided earlier Flango, Wenner, and Wenner, Neutral arbiter, impartial and independent, swayed by neither personal predispositions nor external pressure. Most appropriate for a court of general jurisdiction. Judges in trials in serious cases must listen intently to testimony and ensure procedures are fair and impartial, including deciding what evidence to admit. The Adjudicator The criminal justice system would simply break down if most cases went to trial. As case volume increased, a more streamlined, disposition-oriented process supplanted the adversary process for ordinary cases. The role of the judge as umpire gives way to reality for observers more familiar with actual court processes. This latter role is not trivial because it provides a safeguard that the plea agreement was reached using a fair process, i. Misdemeanor cases have always been handled quickly and summarily without much technicality Friedman, Approximately 80 percent of criminal cases are misdemeanors, and more than 70 percent of them are handled by municipal judges, justices of the peace, or magistrates in limited-jurisdiction courts. One Albany lawyer Redlich, describes in his blog the situation in the lower courts of New York: The biggest problem with our court system is the volume of cases. The volume is so large that the courts have to rely on assembly line justice. It really is an assembly line. The police officer prepares the initial papers and files them with the clerk. The clerk gives the papers to the prosecutor who reviews them and discusses the case with the lawyer or the pro-se defendant. The papers then go back to the clerk, who then hands them to the judge. The judge calls the case. Then the papers go back to the clerk, who then processes the result fine notice, schedule next date, etc. If a court has cases [set]. Most courts end up at about minutes per case. These types of cases require facts to be established so that the law can be quickly applied; sentences and financial penalties are limited so that dispositions can be expeditious Henderson et al. Clearing the docket then becomes very important, and the task is processing a large number of individual cases, a more bureaucratic process not unfamiliar to executive-branch administrative agencies. Judges must decide large numbers of lower-stakes

cases every day, rather than spending days or weeks on one case at trial, and so the procedures must be streamlined. Consequently, judges may take a more active role in all phases of case processing to move the case along while ensuring that the attorneys, many of whom are court appointed, are devoting the proper attention to their clients. Judges simply cannot rely on parties to frame disputes. Timely resolution is a positive outcome if it does not inhibit litigants from seeking information, including clarification and follow-up questions, or make them feel that their concerns are not taken seriously. Adjudicator who achieves finality through expeditious case resolution. The courtroom scene may be tumultuous, e. This role is most appropriate for limited-jurisdiction courts. Multitasking to the extreme, making rapid decisions, and keeping the cases flowing. Judges do not have much time to spend reflecting and contemplating before making decisions and are impersonal because there is not much time for communication with litigants, even those who are not represented by counsel. The Problem Solver With the advent of more treatment-oriented problem-solving court processes, judges who are assigned, or more likely volunteer, for those courts assume a more active role as treatment team leader. Spurred by the perceived inadequacies of the adversary process, some legal leaders have promoted a more cooperative approach to dispute resolution. Particularly in family law, once a fertile source of trials, there have been calls to abandon adversarial proceedings Murphy, Some types of cases, such as those involving juveniles, have never fit comfortably within the traditional law-court framework. Separate courts for juveniles were created first in Chicago in Stevenson et al. From the opening of the first drug court in Dade County, Florida in , drug courts spread rapidly based upon anecdotal reports of success in reducing recidivism and the infusion of federal dollars Berman and Feinblatt, By the end of , there were 2, drug courts and an additional 1, problem-solving courts in the United States, such as DWI, mental health, domestic violence, truancy, child support, homelessness, prostitution, reentry, and gambling courts Huddleston and Marlowe, In most instances, they involve a single judge periodically handling a single type of case. Problem-solving courts require judges to be more active, less formal, and personally engaged with each offender, which creates a tension with the traditional role of the judge as a detached, neutral arbiter. One New York Times article summarized: The judges often have an unusual amount of information about the people who appear before them. These people, who are often called clients, rather than defendants, can talk directly to the judges, rather than communicating through lawyers. And the judges monitor these defendants for months, even years, using a system of rewards and punishments, which can include jail time. Leader of treatment team. Decisions are made in language understood by the parties, and there is open communication because litigants can tell their stories. The judge may have direct dialogue with the litigants, in direct opposition to the traditional conception of judge as passive recipient of information from attorneys. For example, problem-solving judges need to praise and sanction defendants, rather than remain aloof, but this active engagement could create the perception that they are not impartial. The problem-solving judge role is most appropriate for special-jurisdiction courts. Each of these processes would be best governed by a judge with the characteristics that matched the requirements of the different court processes. Current methods of judicial selection do not consider these different requirements or factor them into the selection process, but would benefit from doing so. Opinions herein are those of the authors, not necessarily of the National Center for State Courts.

Chapter 2 : House Judiciary Committee

The role of the judge in criminal proceedings is a multifaceted one that is subject constantly to new demands and challenges. In recent times,for example, judges have been accorded greater responsibility for case management in advance of trial, adaptations to the rules of evidence have enhanced the.

Allegations of criminal behavior should be brought to the local police, the FBI, or another appropriate law enforcement agency. At the beginning of a federal criminal case, the principal actors are the U. Attorney the prosecutor and the grand jury. Attorney represents the United States in most court proceedings, including all criminal prosecutions. The grand jury reviews evidence presented by the U. Attorney and decides whether it is sufficient to require a defendant to stand trial. Burden of Proof In a criminal trial, the burden of proof is on the government. Defendants do not have to prove their innocence. The standard of proof in a criminal trial gives the prosecutor a much greater burden than the plaintiff in a civil trial. Pretrial At an initial appearance, a judge who has reviewed arrest and post-arrest investigation reports, advises the defendant of the charges filed, considers whether the defendant should be held in jail until trial, and determines whether there is probable cause to believe that an offense has been committed and that the defendant has committed it. Defendants who are unable to afford counsel are advised of their right to a court-appointed attorney. Defendants released into the community before trial may be subject to electronic monitoring or drug testing, and required to make periodic reports to a pretrial services officer to ensure appearance at trial. The defendant enters a plea to the charges brought by the U. Attorney at a court hearing known as arraignment. More than 90 percent of defendants plead guilty rather than go to trial. If the defendant pleads not guilty, the judge will schedule a trial. Trial Criminal cases include limited pretrial discovery proceedings, similar to those in civil cases, but with restrictions to protect the identity of government informants and to prevent intimidation of witnesses. If a defendant is found not guilty, the defendant is released and the government may not appeal. The person may not be charged again for the same offense in a federal court. During sentencing, the court may consider U. Sentencing Commission guidelines, evidence produced at trial, and also relevant information provided by the pretrial services officer, the U. A sentence may include time in prison, a fine to be paid to the government, and restitution to be paid to crime victims. Supervision of offenders may involve services such as substance abuse testing and treatment programs, job counseling, and alternative detention options, such as home confinement or electronic monitoring.

Chapter 3 : Criminal procedure - Wikipedia

Their key actors are not states, but the prosecution and defence. The main way in which other actors states, international organisations, civil society actors and individuals can participate directly in proceedings before international criminal tribunals is as an amicus curiae, or friend of the court. The practice of allowing an amicus curiae to participate in proceedings is included in the rules of procedure and evidence of most international and internationalised criminal tribunals, including the ICC. Practice suggests an increasing reliance on amicus curiae submissions to provide information to the court that may be otherwise unavailable and to advocate certain objectives or views of how international criminal law should develop or be interpreted. However, over the past two decades a number of challenges concerning the amicus curiae in international criminal tribunals have arisen, reflecting larger issues in the representation, integrity, and fairness of international criminal proceedings. Each of these developments raises important issues concerning the role of the amicus curiae in international criminal proceedings. These include who is able to participate or be represented in proceedings, why actors seek to directly intervene in trials, whether the amicus curiae is an appropriate avenue for certain types of submissions or for all parties and what obligations and responsibilities such interveners might hold. Here I aim to provide an overview of these pressing issues. This research stems from an ongoing project on which I am collaborating with Dr Sarah Williams, examining the role of the amicus curiae in international criminal tribunals. We are in the process of collating and analysing all amicus applications and submissions at the major international criminal tribunals. We are also conducting interviews with stakeholders involved in making and using amicus submissions in international crimes trials, including representatives of civil society groups, states, and practitioners. These interviews will be drawn on alongside the analysis of the amicus submissions to assess the role and impact of amicus interventions on international criminal proceedings and the development of the law at these tribunals, as well as to make proposals to guide the use of amicus submissions at international crimes proceedings in the future. The Amicus Curiae in International Courts and Tribunals The amicus curiae was traditionally admitted to domestic common law proceedings to act as an impartial adviser to the court. While an advocacy function has increasingly been accepted in amici in some domestic jurisdictions, such as the United States, the traditional role of the amicus was to inform, rather than to advocate. This allowed the representation of interests beyond those of the parties, filling a gap in common law judicial procedure. Over time, the amicus curiae mechanism also became an accepted part of international judicial proceedings. Amicus curiae interventions are now permitted before most of the major international courts and tribunals, including the International Court of Justice, the European Court of Human Rights, the Inter-American Court of Human Rights, and the dispute settlement mechanisms of the World Trade Organisation. While the criteria for admission as amici and the rules governing amicus submissions differ from tribunal to tribunal, there is a clear trend of increased admission and reliance on amicus submissions in international courts. These rules allow for the admission of amici when desirable for the proper determination of the case â€” a standard that provides for considerable discretion on the part of the tribunal. Having collated the amicus submissions at the ad hoc and hybrid tribunals, the practice shows a generally welcoming stance to applications for admission as an amicus. There were also several instances of different Chambers issuing open invitations for amici. In addition, once admitted, the practice of these tribunals indicates that the amici at times had a significant impact on the proceedings and development of the law. This influence is seen in several key decisions where amicus briefs were heavily relied on and cited, including the decisions of the ICTY Trial Chamber and Appeals Chamber in the Blaskic subpoena decision, and the decision of the SCSL in the Taylor case concerning the validity of immunities before international criminal tribunals. Amicus briefs also had a significant impact on important decisions by the Prosecutor at these tribunals. There were also several instances where comparison of amicus briefs with decisions of these

tribunals indicated an influence on the content thereof, though the court did not cite these briefs. The amicus practice at these tribunals allowed for wider participation beyond the parties to the case in the proceedings, including by states and civil society actors. This enabled the representation of interests and perspectives beyond those of the Prosecution and Defence, which can be crucial in mass atrocity trials to properly understand the context, character, and consequences of international crimes. Nonetheless, the frequent use of amicus submissions and the significant impact of such submissions on key decisions raises concerns relating to the legitimacy and transparency of decision-making, and the impact of external actors at these tribunals. These concerns are compounded by the inconsistent citation of amicus submissions in these decisions, even when we can detect the influence on decision-making through more careful examination. As with the ad hoc and hybrid tribunals, therefore, the ICC Chambers have a broad discretion to admit amici. According to the figures that we have compiled for applications made up to early , approximately 85 applications for amicus status have been received by ICC Chambers. We have analysed these applications to determine the actor, subject-matter and alignment of the proposed submissions, as well as whether the applications have been successful. These applications have been made by a variety of actors, including States, intergovernmental organisations, defence representatives from other cases, academics and other individuals, and civil society organisations. The proposed submissions deal with a wide range of subject-matter, including submissions on both legal and factual issues, such as: Interestingly, the practice at the ICC has, up to this point, been less welcoming to applicants for amicus status than the earlier international criminal tribunals. First, the provision for victim participation in the Rome Statute may go some way to explaining this trend. The right for participation of victims in ICC proceedings may lessen the need to rely on amici for the representation of perspectives beyond those of the parties to the case. Also, the equality of arms concerns that existed at previous tribunals are possibly amplified at the ICC due to the provision for victim participation - the defence now must not only counter submissions of the prosecution, but, often, those of victims as well. The additional burden of further submissions from amici curiae, when aligned with the interests of the Prosecution or the victims, may be seen as generally unnecessary for this reason. There are other reasons that may explain the less frequent use of amicus briefs at the ICC. Since the ICC Chambers have the benefit of more accumulated jurisprudence it may be that additional assistance from amicus submissions is needed less frequently. Alongside the low rate of accepting amici at the ICC, the judicial practice that we have examined indicates that criteria for the admission of amici may not be consistently applied. Without further practice directions or guidelines, the Chambers have used seemingly divergent criteria when assessing amicus applications. This suggests that some amicus applications are subject to more stringent tests for admission than others, making it difficult to predict which applications will be successful. One issue that requires attention is whether the test for admission varies depending on who is applying for amicus status â€” in particular, whether States and intergovernmental organisations have been given more lenient treatment than civil society organisations when seeking to appear as amici before the ICC. Similarly, the Appeals Chamber admitted the African Union Commission as an amicus in the same case without explaining why their application was granted, or indicating whether the submissions would assist the Court. Given that both the Government of Kenya and the AU Commission clearly had vested interests in the Ruto and Sang proceedings, as the case concerned the Kenyan Deputy President, their admission as amici undermines the supposed impartial nature of the role. In addition, as has been made clear in interviews that we have conducted with representatives of civil society groups, the stringent and unpredictable character of the test for admission of amici at the ICC deters civil society groups from investing the time and resources necessary to compile amicus applications. This creates a barrier to potentially important contributions that such groups can make to the jurisprudence of the Court. Further Analysis and Conclusions We are now set to undertake further analysis on the impact that amicus briefs have had at the ICC. Central to this analysis will be an examination of whether the significant impact of amicus submissions that was observed at the ad hoc and hybrid tribunals has carried over to the ICC, and perhaps even been augmented, given the more discriminating approach to the admission of amici at the ICC. The African Union, for instance, has recently resolved to seek amicus status in all cases involving African leaders, indicating that the AU believes this to be a possible means to shape these cases.

Chapter 4 : The judicial role in criminal proceedings | Books | Encyclopedia of law

The role of the judge in criminal proceedings is a multifaceted one that is subject constantly to new demands and challenges. In recent times,for example, judges have been accorded greater responsibility for case management in advance of trial, adaptations to the rules of evidence have enhanced the scope for discretionary decision-making, while legislative developments in the sentencing field.

This provision, known as the presumption of innocence , is required, for example, in the 46 countries that are members of the Council of Europe , under Article 6 of the European Convention on Human Rights , and it is included in other human rights documents. However, in practice it operates somewhat differently in different countries. Such basic rights also include the right for the defendant to know what offence he or she has been arrested for or is being charged with, and the right to appear before a judicial official within a certain time of being arrested. Many jurisdictions also allow the defendant the right to legal counsel and provide any defendant who cannot afford their own lawyer with a lawyer paid for at the public expense. Difference in criminal and civil procedures[edit] Most countries make a rather clear distinction between civil and criminal procedures. For example, an English criminal court may force a defendant to pay a fine as punishment for his crime, and he may sometimes have to pay the legal costs of the prosecution. But the victim of the crime pursues his claim for compensation in a civil, not a criminal, action. The standards of proof are higher in a criminal action than in a civil one since the loser risks not only financial penalties but also being sent to prison or, in some countries, execution. In a civil case , however, the court simply weighs the evidence and decides what is most probable. Criminal and civil procedure are different. Although some systems, including the English , allow a private citizen to bring a criminal prosecution against another citizen , criminal actions are nearly always started by the state. Civil actions , on the other hand, are usually started by individuals. In Anglo-American law, the party bringing a criminal action that is, in most cases, the state is called the prosecution, but the party bringing a civil action is the plaintiff. In both kinds of action the other party is known as the defendant. A criminal case in the United States against a person named Ms. Sanchez would be entitled United States v. Sanchez or People v. In the United Kingdom, the criminal case would be styled R. Sanchez and a Mr. Smith would be Sanchez v. Smith if started by Sanchez and Smith v. Sanchez if begun by Smith. Evidence given at a criminal trial is not necessarily admissible in a civil action about the same matter, just as evidence given in a civil cause is not necessarily admissible on a criminal trial. For example, the victim of a road accident does not directly benefit if the driver who injured him is found guilty of the crime of careless driving. He still has to prove his case in a civil action. If the accused has given evidence on his trial he may be cross-examined on those statements in a subsequent civil action regardless of the criminal verdict. Once the plaintiff has shown that the defendant is liable, the main argument in a civil court is about the amount of money , or damages , which the defendant should pay to the plaintiff. In common law systems, the trial judge presides over proceedings grounded in the adversarial system of dispute resolution , where both the prosecution and the defence prepare arguments to be presented before the court. Some civil law systems have adopted adversarial procedures. Proponents of either system tend to consider that their system defends best the rights of the innocent. Conversely, there is a tendency in countries with an inquisitorial system to believe that accusatorial proceedings unduly favour rich defendants who can afford large legal teams, and are very harsh on poorer defendants.

Chapter 5 : International Judicial Monitor - Special Report

essays cover a wide range of criminal justice topicsallows the richness and interconnections of the criminal process to racedaydvl.com is a valuable collection for all that are interested in the Anglo-American criminal process and the evolving, dynamic and often controversial role of judges in that process.

Plaintiffs usually have an attorney to represent them, though some plaintiffs represent themselves. Prosecuting Attorney In a criminal case , the government is bringing a suit against someone accused of breaking the law. In federal district court, this is the U. Attorney or an Assistant U. There is a United States Attorney for each of the federal districts. He or she is assisted by several Assistant United States Attorneys, each of whom brings cases against defendants within the geographic area. Attorneys and Assistant U. Attorneys are experienced lawyers who investigate and prosecute federal crimes. They usually have an attorney to represent them, though some defendants represent themselves. Criminal Defendant and Attorney In a criminal case, the accused person is called the defendant. There is a Federal Public Defender for each of the federal districts. He or she is assisted by several Assistant Federal Public Defenders, each of whom represents defendants within the geographic area. Federal Public Defenders and Assistant Federal Public Defenders are experienced lawyers who assist accused persons with their defense against federal charges. The Federal Public Defenders Office is within the judicial branch of government because it provides a service to the courts. But they represent the defendants, not the judges. Want to know more about a career as a Federal Public Defender? The judge rules on issues of law that come up in trial. District judges determine the appropriate punishment and sentence those convicted of crimes. The Jury The Jury is made up of ordinary citizens. Their job is to consider all of the evidence in an unbiased way, and render a verdict for one side or the other. In federal criminal trials, there are always 12 jurors. In federal civil trials, the number of jurors varies, but there will always be at least 6 and no more than The Public With only a few exceptions, all hearings and trials are open to the public. You are welcome to observe at almost any time. Are you interested in reading court documents? Click here to visit the U. Courtroom Deputy Clerk This person makes sure everything in the courtroom is in place and that the trial flows smoothly and according to plan. The clerk swears in anyone who must be placed under oath before testifying. The clerk also takes care of the members of the jury, ensuring they can move from place to place within the courthouse, and acting as a courier if the jury has questions to ask the judge during deliberation. The clerk is in charge of all forms, documents, and evidence that might be needed during the course of a hearing or trial. Each district has one supervisory Clerk of Court , who then has one or more deputy clerks who assist with case management and courtroom duties. The clerk works for the judicial branch of government. Court reporting is a specialized skill that takes years of preparation and practice to master. Documenting everything that is said correctly for the court record is very important because it ensures accountability for all parties. A party who has a question about what was said, or not said, can request the transcript from the court reporter. If one of the parties files an appeal, the higher court must have access to the court record so it can be reviewed for errors. Some courts use electronic sound recording instead of a court reporter, but even in those courts a written transcript will be prepared for any appeal. Because what takes place in the courtroom may affect the parties for years to come, everyone involved must be able to hear and understand the proceedings. The court interpreter may be present in the courtroom, or may interpret over the telephone. The court interpreter must swear to accurately interpret everything that is said. Most courts hire interpreters on an as-needed basis. Pretrial Services and Probation Pretrial and Probation Officers assist the judges in gathering specific information about defendants in criminal cases. Both interview the defendant, and also research their background and lifestyle. They use what they learn to prepare reports for the judge. The information from the U. Pretrial Services Officer helps the judge decide whether or not to release the defendant on bond until their trial, and to set any conditions the defendant must adhere to while awaiting their court date. The pretrial officer supervises defendants who are living in the community, and assists them with services like job placement and drug treatment. If, after trial or plea agreement, the defendant is found guilty of the crime, the U. Probation Officer then researches and prepares a pre-sentence report. This report is used

by the judge to determine punishment for the crime. The probation officer and judge use the U. Sentencing Guidelines , and consider other factors, to determine the appropriate sentence for each individual situation and person. If the judge sentences the defendant to probation, or to a jail sentence followed by supervised release, the probation officer supervises the defendant in the community. The probation officer also provides assistance for rehabilitation, which may include drug or alcohol treatment, help getting a GED, or job training. Pretrial Services or Probation Officer? The Marshals Service is a law enforcement agency, and thus works for the executive branch of government rather than the judiciary, though it provides a valuable service to the courts. Marshals provide security at the courthouse, and for judicial functions outside the courthouse. They serve warrants, arrest people, and apprehend fugitives. They transport defendants who are in custody to and from their court hearings and trials. There is a U. Marshal for each federal district, who is supported by a staff of Deputy U. Marshals, as well as Court Security Officers. Click hereâ€¦ The Players in the Courtroom Directions: Start Congratulations - you have completed The Players in the Courtroom. Question 1 Imagine you are expelled from school for writing inappropriate content in an essay for English class. Who is the plaintiff in this case?

Chapter 6 : The Judicial Role in Criminal Proceedings by | eBay

Judicial proceedings refer to any proceedings that take place in a court of law in which a judge presides. The proceedings can be either criminal or civil. The proceedings can be either criminal or civil.

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Chapter 7 : How the Rulemaking Process Works | United States Courts

The comparative and international book considers the future of the judicial role in criminal proceedings. Author Biography Sean Doran is Professor of Law at the Queen's University of Belfast.

Can you see through these real-life optical illusions? Judicial proceedings refer to any proceedings that take place in a court of law in which a judge presides. The proceedings can be either criminal or civil. The judge need not even be the one making the final decision on the case in order for proceedings to be considered judicial proceedings, as long as the action is occurring in a court room where the judge has authority. In a criminal context, judicial proceedings involve a trial in which a defendant is tried by a prosecutor, such as for murder. The judge may not have the opportunity to make a final verdict on guilt or innocence in such a case, since the Sixth Amendment guarantees accused criminals the right to a jury of their peers. This means that, although a judge presides over the proceedings and has control over certain aspects of the trial, the ultimate decision is made by the jury. Civil litigation is also considered a form of judicial proceeding. Unlike criminal law , the state is not involved in bringing a civil lawsuit. An individual who was wronged by another individual, corporation or legal entity, brings the lawsuit in civil cases. The defendant is summoned to court after a plaintiff sues and the trial is heard in front of a judge. Again, the judge may not be the one to make the decision on whether the defendant is guilty or not, as a jury trial is common in civil litigation as well. Ad Although juries make the ultimate decision about guilt or innocence, the proceedings in a court are still referred to as judicial proceedings. The name exists because the judge plays a very important role in proceedings brought before the court. The judge, essentially, enforces the rules of the courtroom. He does this by ruling on what evidence can be presented to the jury or by making a determination on whether a given question asked by one attorney is appropriate. He also gives instructions to the jury based on the nature of the trial. Finally, he may even be responsible for sentencing a criminal if the jury decides that the criminal is guilty, or he may have to modify or determine whether a punitive damages award is appropriate in a civil case. Judicial proceedings are especially important in the appellate level, in which the judges actually determine how the law applies to a given situation or case. In common law countries, the judicial decrees â€” the statements about what a law means â€” in appeals actions actually become the law.

Chapter 8 : Judicial Roles for Modern Courts

The role of the judge in the adversary process is to preside over the proceedings and maintain order. During a trial, the judge rules on whether the evidence the parties want to use is illegal or improper.

Role of the Judge and Other Courtroom Participants The Judge The judge presides over the trial from a desk, called a bench, on an elevated platform. The judge has five basic tasks. The first is simply to preside over the proceedings and see that order is maintained. The second is to determine whether any of the evidence that the parties want to use is illegal or improper. Third, before the jury begins its deliberations about the facts in the case, the judge gives the jury instructions about the law that applies to the case and the standards it must use in deciding the case. Fourth, in bench trials, the judge must also determine the facts and decide the case. The fifth is to sentence convicted criminal defendants. The Lawyers The lawyers for each party will either be sitting at the counsel tables facing the bench or be speaking to the judge, a witness, or the jury. In criminal cases, one of the lawyers works for the executive branch of the government, which is the branch that prosecutes cases on behalf of society. In federal criminal cases, that lawyer is the U. Attorney or an assistant U. On relatively rare occasions, defendants in criminal cases or parties in civil cases attempt to present their cases themselves, without using a lawyer. Defendants in criminal cases have a constitutional right to be present. Parties in civil cases may be present if they wish, but are often absent. The Witnesses Witnesses give testimony about the facts in the case that are in dispute. During their testimony, they sit on the witness stand, facing the courtroom. The Courtroom Deputy The courtroom deputy, who is usually seated near the judge, administers the oaths to the witnesses, marks the exhibits, and generally helps the judge keep the trial running smoothly. The Court Reporter The court reporter sits near the witness stand and usually types the official record of the trial everything that is said or introduced into evidence on a stenographic machine. Federal law requires that a word-for-word record be made of every trial. The court reporter also produces a written transcript of the proceedings if either party appeals the case or requests a transcript to review. However, transcripts will not be available to jurors because there is not enough time to create a transcription. Notice Regarding Juror Scams.

Chapter 9 : The Judicial Role in Criminal Proceedings - Google Books

The Judicial Process Criminal cases differ from civil cases. At the beginning of a federal criminal case, the principal actors are the U.S. Attorney (the prosecutor) and the grand jury. The U.S. Attorney represents the United States in most court proceedings, including all criminal prosecutions.

Legal procedure[edit] Although different legal processes aim to resolve many kinds of legal disputes, the legal procedures share some common features. All legal procedure, for example, is concerned with due process. Absent very special conditions, a court can not impose a penalty - civil or criminal - against an individual who has not received notice of a lawsuit being brought against them, or who has not received a fair opportunity to present evidence for themselves. The standardization for the means by which cases are brought, parties are informed, evidence is presented, and facts are determined is intended to maximize the fairness of any proceeding. Nevertheless, strict procedural rules have certain drawbacks. For example, they impose specific time limitations upon the parties that may either hasten or more frequently slow down the pace of proceedings. Procedural systems are constantly torn between arguments that judges should have greater discretion in order to avoid the rigidity of the rules, and arguments that judges should have less discretion in order to avoid an outcome based more on the personal preferences of the judge than on the law or the facts. Legal procedure, in a larger sense, is also designed to effect the best distribution of judicial resources. For example, in most courts of general jurisdiction in the United States , criminal cases are given priority over civil cases, because criminal defendants stand to lose their freedom, and should therefore be accorded the first opportunity to have their case heard. European history and concepts[edit] "Procedural law" and "substantive law" in various languages[edit] "Procedural law" in contrast to " substantive law " is a concept available in various legal systems and languages. Similar to the English expressions are the Spanish words derecho adjetivo and derecho material or derecho sustantivo, as well as the Portuguese terms for them, direito adjetivo and direito substantivo. The same opposition can be found in the Russian legal vocabulary, with for substantive law and for procedural. Similar to Russian, in Bulgarian " " means substantive law and is used for procedural. In Chinese, "procedural law" and "substantive law" are represented by these characters: In Germany, the expressions formelles Recht and materielles Recht were developed in the 19th century, because only during that time was the Roman actio split into procedural and substantive components. In ancient times the Roman civil procedure applied to many countries. One of the main issues of the procedure has been the actio similar to the English word "act". In the procedure of the legis actiones the actio included both procedural and substantive elements. Because during this procedure the praetor had granted, or denied, litigation by granting or denying, respectively, an actio. By granting the actio the praetor in the end has created claims. Such priority procedure over substance is contrary to what we think of the relationship nowadays. But it has not only been an issue of priority and whether the one serves the other. Since the actio had been composed of elements of procedure and substance it was difficult to separate both parts again. Even the scientific handling of law, which developed during medieval times in the new universities in Italy in particular in Bologna, Mantua , did not come to a full and clear separation. The English system of "writs" in the Middle Ages had a similar problem to the Roman tradition with the actio. However, after World War II the expression formelles Recht obviously was found to be "contaminated" and to a broad extent has been replaced by Prozessrecht, narrowing the idea behind it to "law of litigation" thereby excluding e.