

The value of fair procedures

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The value of fair procedures

“Justice must not only be done, it must also be seen to be done”

Procedural criminal law

- ✓ Substantive law
- ✓ Independent position
- ✓ More than regulating justice

Witnesses in the Criminal Justice System

- ✓ Historical outline
- ✓ Personal interaction between the witness and the judge
- ✓ Compliance

What do witnesses want from the Criminal Justice System?

Witnesses want

- ✓ To perceive justice/fairness
- ✓ They do not want to influence it

The perception/experience of fairness depends on

- ✓ The judge affability (*friendliness*) ★ ★
- ✓ Shown interest in the witness' well being ★ ★
- ✓ The given opportunity to voice an opinion or ask questions
(*voice*) ★

Note: In the Netherlands we do not have a jury. The judge does the examination of witnesses.

Why do witnesses want to be treated with respect?

Group membership

- ✓ Group identity
- ✓ Group procedure
- ✓ Procedural justice

Why is it important for legal authorities to treat witnesses with respect?

- ✓ Public support
- ✓ Unfair procedures
- ✓ Self-regulation

In which ways can proper treatment of witnesses hamper justice?

To answer that question it is relevant to know whether or not the witness' interest (namely, fair treatment) might clash with interests of other trial participants

Those interests would include

- ✓ The finding of the truth (*the fact-finding process*)
- ✓ Expeditious processing of witness testimonies to save costs for the government
- ✓ The defendant's interest in his own defense, which is aimed at obtaining a judgment that serves his best interest

Note: A fine balance: but treatment with respect never harms anyone

Human rights issues

The opportunity to voice an opinion or ask questions (*voice*)

versus

- ✓ Finding the truth
- ✓ Defendant's interests
 - Article 6 of the European Convention on Human Rights
(e.g. *Lucà v. Italy*, 2001; *Unterpertinger v. Austria*, 1986)
 - Article 8 European Convention on Human Rights
(*Doorson v. the Netherland*, 1996)
- ✓ Expeditious processing

The judge affability and shown interest in the witness' well

being versus

- ✓ Finding the truth (impartiality)
 - Article 6 of the European Convention on Human Rights

Major challenges

In countries where the criminal justice system is embedded in a well-established democracy, issues of witness/human rights are often a question of fine-tuning a system that on the whole already works.

But in today's world we have many new countries/nations without long tradition of legitimate authority, and there are also still countries struggling with these issues.

✓ Questions and challenges

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