

Foundations of Law 2007 Court Observation Assignment

CLSS EXAMPLE – Distinction

Introduction

The criminal proceedings in local courts and the Court of Criminal Appeal are carried out in an impartial and neutral manner to ensure equality before the law. However, these proceedings are vastly different in conduct due to the nature of the cases handled in the respective courts. My observations of their distinctive formalities and legal advocacy reinforce McBarnet's view that 'the law has created two tiers of justice, one ... geared in its ... structures of legality, and one which ... is not'¹. Furthermore, they substantiate Anleu's 'concept of emotional labour'² in local courts and validate their use in maintaining the law's neutrality.

The similarities for procedural fairness

Despite the division of the courts, they contain similar attributes for the fairness of judicial procedure. The proceedings in both courts were observed to be well structured, with the judges taking full control. In the Court of Criminal Appeal the presiding judge conducted the court even-handedly through conversational, yet orderly exchanges with the barristers. Strict court procedure was followed to enable each party to present their case fairly and maintain the court's focus on the scrutiny of legal arguments. This concurred with Anleu's view that 'superior courts...sustain the law's impartiality and neutrality'³.

Similarly, in local courts, procedural fairness was achieved through the judges' eminent position in both Examination and List courts. The relations between judges and court participants were also conversational yet orderly, allowing impartiality and speed to deal with numerous cases. The judge in the List Court gave direction through short, succinct instructions that were often hard to understand due to their speed. In the Examination Court, the judge presided by instructing the lawyers and civilians on the established order of proceedings throughout the hearing. This enabled a fair trial for civilians representing themselves as they were more aware of court procedure and thus their case justly heard.

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Conclusion

The need for impartial law is at the core of all devices used in both courts to ensure a fair trial. My observations of local court and the Court of Criminal Appeal concur with McBarnet's view of justice being divided into two tiers. While the Criminal Court of Appeal tier puts the 'ideology of justice is put on display'⁴, the local court tier must employ the use of emotional labour in magistrates for civilians to fairly represent themselves and maintain the impartiality of the law.

Appendix

List of the Court Observation Times:

- Supreme Court of NSW – Court of Criminal Appeal (Court A)
22nd of February 2007 10 am – 12 pm 1 pm – 3 pm
- Parramatta Local Court – Examination Court
23rd of February 2007 9:30 am – 11:30 am
- Parramatta Local Court – List Court
23rd of February 2007 11:45 am – 12:45 pm

¹ Reference omitted

² Reference omitted

³ Reference omitted

⁴ Reference omitted