# Inside the Criminal Courts

# Inside the Criminal Courts

### SECOND EDITION

David R. Lynch

CAROLINA ACADEMIC PRESS

Durham, North Carolina

Copyright © 2009 David R. Lynch All Rights Reserved.

#### Library of Congress Cataloging-in-Publication Data

Lynch, David R. (David Richard)
Inside the criminal courts / David R. Lynch. -- 2nd ed. p. cm.
Includes index.
ISBN 978-1-59460-744-8 (alk. paper)

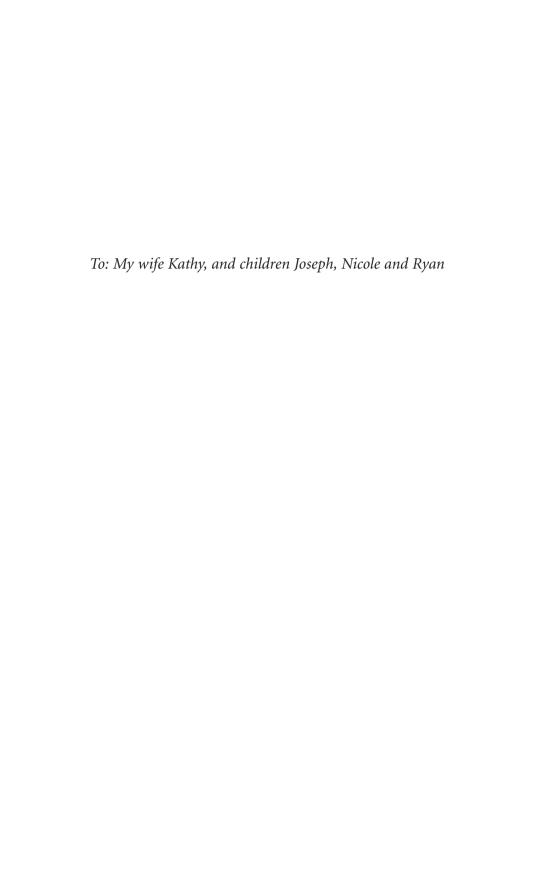
1. Criminal procedure--United States. 2. Criminal courts--United States. 3. Criminal justice, Administration of--United States. I. Title.

KF9619.L96 2009 345.73'01--dc22

2009029353

Carolina Academic Press 700 Kent Street Durham, North Carolina 27701 Telephone (919) 489-7486 Fax (919) 493-5668 www.cap-press.com

Printed in the United States of America.



# **CONTENTS**

Acknowledgments	xiii
Chapter One • The Legal Education of Lawyers and Judges	3
Getting Admitted to Law School	4
Law School Curriculum	8
The Dampening of Idealism	11
Competition for Grades	13
Persevering to the End	18
Finding Employment	20
Preparing for the Bar Exam	21
Questions for Class Discussion	22
Chapter Two • A Day in Juvenile Court	27
The Hearing	31
The Judge's Disposition	41
The Extent and Future of Delinquency	44
Questions for Class Discussion	46
Chapter Three • Justice Delayed	49
The Court Administrator: Life in the Slow Lane	49
The Right to a Speedy Trial	50
The Human Desire for Delay	52
Harms of Delay	54
Scheduling Trials	55
Moss's Pathologies	58
Post-Script on Moss, Executive Administrator	59
Bail: Solution to Delay or Modern Form of Ransom?	60

### viii CONTENTS

The Bail Bondsman	61
Factors in Setting Bail and Types of Bail	62
Bounty Hunters	64
Post-Script on Bail Bondsmen and Bounty Hunters	66
Questions for Class Discussion	67
Chapter Four • The Criminal Defense Attorney	71
Role of the Defense Attorney	72
Stressors of Criminal Defense Work	74
The Right to Counsel	79
Types of Free Lawyers	80
The Private Criminal Defense Attorney	83
Ineffective Assistance of Counsel	87
Questions for Class Discussion	89
Chapter Five • The Prosecuting Attorney	93
Prosecutorial Discretion	93
The Prosecutorial Personality	97
Duties of the Prosecutor	98
Duty to Do Justice	100
Ethical Issues Confronting Prosecutors	102
Prosecutorial Pathologies	105
Leaving Office	106
Questions for Class Discussion	107
Chapter Six • The Judge	111
Part A: The Lower Court Judge	111
Duties of Lower Court Judges	112
Lower Court Advantages and Liabilities	116
The Lure of Money	119
Part B: The Criminal Trial Court Judge	120
The Selection of Judges	121
Duties of a Judge	124
Pro's and Con's of Being a Judge	125
Ethical Dilemmas and Judges	127

	CONTENTS	ix
Judicial Personalities		129
Conclusion		130
Questions for Class Discussion		130
Chapter Seven • The Witness		133
The Victim-Witness		133
The Defendant-Witness		137
The Eye Witness		139
The Character Witness		141
The Expert Witness		144
The Police Witness		146
Questions for Class Discussion		148
Chapter Eight • The Steps of Due Process		151
The First Appearance		153
The Preliminary Hearing		156
The Grand Jury		160
The Arraignment		162
Pre-Trial Motions		166
Remaining Steps of Due Process		169
Questions for Class Discussion		170
Chapter Nine • The Plea Bargain		173
Plea Bargaining and the Defense Attorney		173
Plea Bargaining and the Defendant		179
Plea Bargaining: The Victim and the Prosecutor		188
Questions for Class Discussion		194
Chapter Ten • The Trial (Part I)		197
Right to a Jury Trial		197
Jury Selection		198
Opening Statements		205
Prosecution Case-in-Chief		208
Questions for Class Discussion		213

Chapter Eleven • The Trial (Part II)	217
Theory of the Defense	217
Defense Opening Statement	222
Categories of Evidence	224
Defense Case-in-Chief	229
Closing Arguments	234
Instructing the Jury	239
Questions for Class Discussion	241
Chapter Twelve • The Jury Deliberates	245
Functions of the Jury Trial	256
A. Fact Finding	256
B. Other Functions	258
Questions for Class Discussion	259
Chapter Thirteen • Sentencing	263
The Pre-Sentence Investigation Report	267
The Sentencing Hearings	275
Questions for Class Discussion	281
Chapter Fourteen • The Appeal	285
Mechanics and Functions of Appeals	292
Stuart's Post-Trial Motions	297
Joan's Brief to the Court of Appeals	300
Oral Arguments	302
The Appellate Court's Opinion	305
Questions for Class Discussion	306
Chapter Fifteen • Problem-Solving Courts	309
Drug Court	311
Mental Health Court	315
Domestic Violence Court	318
Questions for Class Discussion	322

	CONTENTS	xi
Chapter Sixteen • Proposed Reforms		325
Legal Education Reforms (Chapter One)		326
Juvenile Court Reforms (Chapter Two)		327
Speedy Justice Reforms (Chapter Three)		328
Defense Attorney Reforms (Chapter Four)		329
Prosecuting Attorney Reforms (Chapter Five)		330
Judiciary Reforms (Chapter Six)		331
Plea Bargain Reforms (Chapter Nine)		332
Trial Reforms (Chapters Ten and Eleven)		333
Jury Deliberation Reforms (Chapter Twelve)		334
Sentencing Reforms (Chapter Thirteen)		334
Concluding Thoughts		335
Questions for Class Discussion		335
The Proposed Reforms		336
Index		339

### ACKNOWLEDGMENTS

The author wishes to acknowledge the assistance given by his three excellent research assistants—Brady Fitzpatrick, Jenifer Okey, and Chris Roberts—in the proofreading of this manuscript and in ideas for a teacher's manual and "Questions for Class Discussion."