**Sociology 3395: Criminal Justice & Corrections**

**Class 14: The Courts & Criminal Trial Procedure 2**

\* Today we look at criminal trial procedure:

**Criminal Trial Procedure**

\* The plea:

(1) Guilty:

- 90% plead guilty

- plea bargains not necessarily accepted

- guilty plea must be free & voluntary

- offender may be sentenced or remanded

(2) Not guilty:

- trial date (or preliminary hearing) is set

- type of court depends on seriousness of offence

- some offences may be tried immediately before a

provincially appointed judge

\* Preliminary inquiry:

- accused may request preliminary inquiry for indictable offences to examine evidence /see if enough to warrant trial

- accused / prosecutor may request a publication ban until

case is finished

- accused may waive preliminary hearing to speed things up /

avoid negative publicity

- preliminary inquiries now must be explicitly requested

\* Prosecutorial discretion:

**Options**: **Factors:**

- drop charges - sufficient evidence?

- plea bargain - indictment vs. summary - type of offence

conviction - type of witnesses/ victims - offender’s record

- stay proceedings - informant in other cases?

\* Models for case processing:

- transfer model - unit model

- legal sufficiency - system efficiency

- trial efficiency - defendant rehabilitation

\* Plea bargaining:

- charge bargaining: lesser charge, drop some, drop charges against

relatives

- sentence bargaining: recommend lighter sentence, agree to

proceed summarily, not appeal, look for lenient judge

- fact bargaining: agree not to enter certain information in

evidence about offender or the case

- label bargaining: avoid negative label (e.g. child molester)

\* Jury trial:

- limited to offenses with maximum sentence of 5 + years

- usually at the request of accused but may be ordered by judge

\* Jury selection:

- list of eligible jurors is assembled (e.g. from voter’s list)

- those not eligible removed (e.g. criminal record, occupation)

- jury panel summoned from the list

- laypersons try prospective jurors for impartiality

\* Challenges:

- peremptory challenge: no reason required (maximum 20 for

murder, 12 for other offences)

- for cause: not common in Canada. Issues: prior incarceration,

relationship to accused, disability, non-citizen, racial bias

- stand aside: for personal hardship of juror (judge decides)

- need 12 jurors in all (can’t continue trial with less than 10)

**Legal Rights & Criminal Trials:**

\* At trial, prosecutor must prove, according to law, the guilt of accused.

\* Accused has right to be presumed innocent

\* Accused has right to confront the accuser: this includes

- right to be present at trial

- to cross examine witnesses (kids may testify behind screen or by

closed circuit TV, but not likely via video recording)

- hearsay evidence disallowed (with rare exceptions)

\* Accused has right to a speedy trial: “unreasonable delay” depends on:

- length of delay - whether a waiver was granted

- why delay occurred - whether delay harmful

\* Accused has right to a public trial:

- for the benefit of the accused

- not for public right to know / be entertained

- judge may order ban on publication or exclude certain

members of the public

- to protect witnesses & complainants in sex assault cases

- cameras & tape recorders are generally not allowed

**The Criminal Trial:**

(1) Opening statement:

- *prosecution*: outlines evidence & witnesses

- should not be inflammatory

- prosecution can’t mention accused’s prior record

- *defense*: may or may not make opening statement

- outlines case

- indicates s/he will show prosecution’s case inadequate

- *generally*: statements brief when no jury is involved

- guilt must be established beyond a reasonable doubt

(2) Trial evidence:

- *testimony*: eyewitnesses, expert witnesses, written & oral

statements

- *real evidence*: weapons, fingerprints, original & duplicates

- *direct evidence*: eyewitness observations

- *circumstantial evidence*: from which inferences possible

(3) Rules of evidence:

- hearsay evidence may not be used (generally)

- all witnesses may be cross-examined

- accused has the right to remain silent

- if the defense uses witnesses, including the accused, they

may be cross-examined

(4) Closing arguments:

- order depends on whether or not defense used witnesses or

introduced evidence

- may make inferences about the evidence presented

- may not introduce new evidence

(5) Charge to the jury: judge addresses:

- principles of law involved

- definitions of offences

- requirements of evidence

- the meaning of reasonable doubt

- presumption of innocence

- possible verdicts

(6) Verdict:

- Jury must be unanimous (hung jury=mistrial)

- Not guilty: accused faces no penalty

- Guilty verdict:

Judge sets sentencing date

Pre-sentence report may be ordered

Appeal may be started

Jury may make parole recommendation (only in 2nd

degree murder)

Victim impact statements allowed

- Jury nullification: judge instructs jury to find accused not

guilty due to legal/ procedural problems

(7) Appeals:

- convicted offender may appeal either verdict or sentence

- prosecution may also appeal

- offender may apply for release while case under appeal

- appeal court may order new trial or overturn conviction

- appeal court may also overturn an acquittal & convict

- supreme court only hears appeals involving important

points of law

- summary conviction appeals are usually heard in superior

courts

**Conclusion:**

\* Criminal trials involve a complicated series of actors & procedures

\* Both formal law & unofficial bureaucratic practices are important