**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