**Sociology 3395: Criminal Justice & Corrections**

**Class 15: Key Players in the Justice Process 1**

\* Today we will begin our look at the experiences/opinions key players in the criminal court system

**(1) Brian Manarin: The Role of the Prosecutor**:

\* Outlines decisions confronting prosecutors on a daily basis in a busy provincial court

\* While earning their living in the courtroom, many important actions take place elsewhere (e.g. drafting documents, advice to police)

\* Not openly partisan: goal is not to gain conviction, but to see a just result based on evidence presented (e.g. duty of disclosure)

\* Three areas dealt with “during a normal week” in a Crown’s office:

(1) Charge screening and disclosure;

(2) Bail hearings;

(3) Sentencing

\* Charge screening and disclosure. Considerations:

- whether reasonable prospect of conviction

- whether in public interest

- whether proper charge laid

- whether investigation complete

- whether diversion should be offered

\* Bail Hearings:

- Can be very challenging when court busy (e.g. Monday AM)

- Outcome of bail hearing often pivotal to case itself

- Onus on Crown to prove detention necessary (with exceptions)

- Considerations:

(1) Whether detention necessary to ensure appearance in court

(2) Whether detention necessary for protection/safety of public

(3) Whether detention necessary to maintain confidence in the

administration of justice under the circumstances

\* Sentencing:

- a “troubling” experience: Crown’s reputation at stake

- need to balance need to appear “unconcerned” with forcefulness

- most hearings largely fact-generated: no 2 the same

- conditional sentences controversial / some prosecutors object

because of:

(1) societal value systems;

(2) lack of resources;

(3) perception of “second class punishment; &

(4) conditional sentences being used as bargaining chips in plea

bargains

- yet prosecutors must professionally apply this law/ lead by example

\* Ultimately: Crown prosecutors play a key role in making busiest courts function / upholding a cornerstone of adversarial process

\* “Not always an easy task”

**(2) Paul Burstein:**

**The Importance of Being an Earnest Criminal Defense lawyer:**

\* Defense counsel often asked how they can work for someone they know is guilty. The following is Burstein’s response

\* But first, it is necessary to describe defense counsel’s typical activities regarding:

(1) The client at the police station;

(2) Release of the client on bail;

(3) Defenses

(4) Preparing for trial

(5) Constitutional Issues

\* The client at the police station:

- police obliged to help detainee who asks for lawyer

- necessary to remind client of importance of right to silence

- not only the guilty confess/ provide information to skilled

interrogators

- defense counsel must also help client build courage to remain

silent when confronted by police

\* Release of the client on bail:

- counsel must attempt to persuade police to release client

- if not, then find out when bail hearing scheduled

- counsel must help client find a surety

- counsel must also function as social workers/ counselors

\* Defenses:

- next, counsel must consider whether client has a defense

- factual defenses: challenging the evidence

- legal defenses: was the accused’s action criminal?

- to establish defenses, counsel must gather information from

Crown, police reports, client, witnesses, etc.

- legal research also necessary before advising client

- client then presented with 2 options:

(1) plead guilty in the hope of a lesser sentence; or

(2) go to trial / fight the charges

- counsel must always get client’s input before accepting/ rejecting

plea bargains (their cost-benefit analysis is always different:

but most accept)

- if client decides on trial, it will be scheduled

\* Preparing for trial:

- much like producing a film or play: preparing an “innocence

narrative” to compete with the Crown’s “guilty narrative”

- not easy: much research / amateur sleuthing necessary

- examining/ assembling the “cast of characters” with limited

investigative resources

- carefully planning cross-examination

- preparing diagrams/ photos/ exhibits to maintain jury’s interest

- efficacy of the “production” depends on time invested in planning

\* Constitutional issues:

- the outcome of some cases depends more on the law than the

evidence (e.g. Morgentaler case)

- constitutional challenges significant (e.g. to Marijuana laws;

prostitution laws)

- often requires much research/ study of new disciplines

\* Back to major issue: why defend people who may well be guilty?

- increasing number of wrongful convictions

- CJS can’t be allowed to cut corners like in some countries

- defense counsel fight arbitrary detention and imprisonment

- defending the “guilty” a necessary part of this

- basing our procedures on whether a person “bad” or “good”

would lead to problems: either leads to an arbitrary, discretionary

system, or determinations of who is responsible.

- in the latter case, either a similar system would arise, or

uncomfortable questions would be asked about responsibility

**Judge David Cole:**

**A day in the Life of a Provincial Court Judge:**

\* Typical day in the life of a judge:

- Arrive at court to review the docket

- Paperwork on each case extensive / don’t see until case heard

\* After entering court:

- Dealing with duty counsel (who deal with unrepresented accused)

- Crown first checks on cases where status unclear

- Problems dealing with unrepresented accused/ inquiries re: pleas

- Many plead guilty despite having defenses to charge: conduct a “plea comprehension inquiry” before accepting vs. reschedule?

- Time allocation dilemmas/ efficiency issues / case priorities

exacerbated by administrative overloads (14 v. 8 “official”

hours)

- Problems in enforcing orders due to this

\* Cases not completed on same day:

- For example, motions to exclude evidence/ Charter violations

require more time/ rescheduling / “arm-twisting” of counsel

-Judges must take good notes for use at later date

\* Scheduling problems:

- Reduced somewhat by aggressively pre-trying cases

- No more resources available in many cases

- Procedural slip-ups considered in this light / second-guessing

counsel’s real motives / filing for future reference/ implications

for justice

\* Court clerk supposedly ensures documents brought to court / orders accurately recorded.

\* Procedures to prevent typos/ inaccuracies result in large

number of signatures needed each day / little chance to proofread

\* Errors still get made / some don’t get noticed even with training

\* Judges worry about making such errors given their heavy caseload

\* Trial coordinators put more cases on docket than can be dealt with. Results:

- Plea bargaining vs. pressure by community groups for harsher

minimum sentences in certain offences

- Judges may not go along if they find bargains offensive, but

usually go along

\* More serious cases get more extensive treatment (e.g. violent young offenders):

- Questions of police action/ admissibility of evidence adjudicated

- Questions of witness cooperation/ parties testifying against each

other in return for promises on charges

- Questions of which charges to proceed on

- Meetings with counsel in chambers to discuss case/ range of

potential sentences

- Judge-shopping by counsel as part of pre-trial maneuvering

- Formal submissions, pre-sentence reports, and victim impact

statements given

- Adjournments prior to adjudication of sentence

\* These are some of the things a busy judge deals with day to day.