**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.