**SOC 3395: Criminal Justice & Corrections**

**Lecture 2: Overview of the Canadian Criminal Justice System 2**

\* Now that we have introduced criminal justice & the major institutions of the CJS, today we will review:

(1) Processing cases through the CJS

(2) The informal operation of the CJS

(3) Values & the CJS

**Processing cases through the CJS**:

\* Criminal procedure is concerned with the way the CJS operates to bring offenders to justice while ensuring this is done fairly

\* *Pre-Trial procedure*: issues:

- law of arrest (with or without warrant). Key phrase: “reasonable

& probable grounds”)

- whether to issue appearance notices or summons instead (will the

accused likely show in court? Commit another crime?)

- whether bail is to be granted to an arrested accused: onus is in

police/ Crown to “show cause” why not

- fitness hearings: is the accused mentally competent to stand trial?

\* *Trial Procedure*: issues:

- first court appearance: arraignment of accused (charges read,

plea entered)

- in “election” offences: accused has option of a preliminary

inquiry to see if enough evidence exists to send case to trial

(evidence examined, witnesses testify, etc.)

- trial: judge alone vs. judge & jury

- trial: issue now whether accused is proven “guilty beyond a

reasonable doubt”

- if reasonable doubt exists, accused is acquitted

- if not, and accused found guilty, matter proceeds to sentencing

\* Sentencing:

- options include discharges (absolute & conditional), probation,

incarceration, suspended sentences & fines

- within limits, these may be combined by the judge

- sentencing judges often rely on pre-sentence reports, submissions

by counsel, the “range” set by the Criminal Code & case law,

victim impact statements, aggravating/mitigating circumstances,

& sentencing guidelines.

- if incarceration ordered, offender sent to federal or provincial

facility (2 years is the dividing line)

- parole: offenders can obtain:

- full parole at 1/3 point of sentence or 7 years (whichever is

less)

- statutory release at 2/3 point

- rehabilitation/treatment programs during incarceration

- community supervision/ support upon release

**The Informal Operation of the CJS:**

\* The “criminal justice funnel”:

- Many cases don’t enter system: offenders not reported, caught or

charged

- only 9.5% of reported incidents resulted in convictions in 2006-

07 (and just 32% of these were sentenced to custody)

- Some cases don’t proceed : dropped charges/ lack of evidence

- Some cases lead to acquittals

- Those who go to jail/ exit funnel are thus relatively few

\* Key point: there are many points in CJS where decisions can be made/ discretion exercised to deal with case before reaching bottom of funnel

\* While formal law *officially* governs, there are many routine, informal “*screening* points” used to move a case along efficiently

\* The “courtroom work group” involves key players with shared values/ working relationships cooperating to meet mutual goals & “get things done”

\* Informal points of discretion:

- not all victims realize they have been victimized

- many that do don’t report it (42% do according to 1993 GSS;

33% under the 2005 GSS)

- reported crimes may not be followed up by police with charges

(“unfounded” cases). Ericson (1982) found 52% of incidents

founded

- arrests/prosecutions only occur in 27% of cases

- many eligible for bail don’t receive it (despite legislation)

- review of charges by prosecutor result in many cases being

dropped

- plea bargaining: dropping some charges in return for guilty plea

on another

- sentencing: most accused plead guilty, but extralegal factors

come into play such as race & class to create disparities

**Values & the CJS:**

\* Packer (1968): two models of the CJS reflect different value systems: the due process & crime control models

\* The *crime control* model:

- like an “assembly line”

- emphasizes quick & efficient suppression of crime/ deterrence

- “getting tough on crime”/ jail criminals for long periods

- favors mandatory sentences, longer prison terms, elimination of

parole

- view that most arrested are guilty

- much trust placed in decisions of CJS officials: make few errors

- support for discretion/ disdain for legal technicalities

- little concern for legal rights

- preference to err on the side of societal protection instead of

accused’s legal rights

\* The *due process* model:

- like an “obstacle course”

- emphasizes protection of the legal rights of accused

- attempts to ensure that innocent people aren’t convicted

- favors limiting discretionary power of CJS officials

- every attempt must be made to treat accused fairly/ presume

innocent

- CJS officials must be constantly monitored re: abuse of power

- preference to let factually guilty go free rather than abuse rights

\* These models are ideal types, but illustrate different values/ tensions in our system. Emphasis can change over time