**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