

Sociology 3395: Criminal Justice & Corrections
Class 14: The Courts & Criminal Trial Procedure 2

* Today we continue with Chapter 8, beginning with 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:

- drop charges evidence to
- plea bargain
- indictment vs. summary offence conviction record
- stay proceedings witnesses/ victims cases?

Factors:

- sufficient convict?
- type of offender's
- type of informant in other

* Models for case processing:

- transfer model
- legal sufficiency
- trial efficiency
- unit model
- system 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 videotape)
 - hearsay evidence disallowed (with rare exceptions)
- * Accused has right to a speedy trial: "unreasonable delay" depends on:

<ul style="list-style-type: none"> - length of delay granted - why delay occurred harmful 	<ul style="list-style-type: none"> - whether a waiver was granted - whether delay harmful
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* 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