

CHAPTER 8

The Courtroom Work Group and the Criminal Trial

Teaching Outline

I. Introduction (p.226)

II. The Courtroom Work Group: Professional Courtroom Actors (p.226)

Trial: In criminal proceedings, the examination in court of the issues of fact and relevant law in a case for the purpose of convicting or acquitting the defendant. (p.226)

Courtroom Work Group: The professional courtroom actors, including judges, prosecuting attorneys, defense attorneys, public defenders, and others who earn a living serving the court. (p.226)

A. The Judge (p.228)

1. The Role of the Judge (p.228)

- The judge's primary duty is to ensure justice.
- The judge holds ultimate authority on matters of law, the admissibility of evidence, and court decorum, and may also decide guilt or innocence and sentence offenders after a verdict has been returned.

Judge: An elected or appointed public official who presides over a court of law and who is authorized to hear and sometimes to decide cases and to conduct trials. (p.228)

2. Judicial Selection (p.228)

- Federal judges are nominated by the U.S. president and confirmed by the Senate.
- State judges are generally selected through popular election, political appointment, or the Missouri Plan.
- Judges elected via popular election must campaign, run along party lines, and generate campaign funding.
- Politicians, usually the governor, select political appointees.
- The Missouri Plan (or Missouri Bar Plan) is a form of merit selection that combines election and appointment. Candidates are first chosen from a nonpartisan nominating committee; the governor then selects the final candidates. After a period of time in office, these judges run unopposed and will be reappointed based on their records.

3. Judicial Qualifications (p.229)

- Today, judges in almost all states (appellate and general jurisdiction courts) must hold a law degree, be licensed attorneys, and be members of the bar association.
- Many states require professional training as well.

B. The Prosecuting Attorney (p.229)

Prosecutor: An attorney whose official duty is to conduct criminal proceedings on behalf of the state or the people against those accused of having committed criminal offenses. (p.229)

1. Prosecutorial Discretion (p.230)

- Prosecutors have significant influence on a case because they decide what charges to file, accept or reject plea bargains, bring evidence before the grand jury, decide what witnesses should appear, and make sentencing recommendations to the judge.
- Prosecutors must assist the defense in preparing a case for trial by providing evidence in their possession.
- In *Brady v. Maryland*, the Supreme Court held that the prosecution is required to disclose exculpatory evidence that relates to the guilt or innocence of a defendant.
- In *U.S. v. Bagley*, the Supreme Court ruled that the prosecution must disclose any evidence that the defense requests.
- Prosecutors are generally immune from civil liability (*Imbler v. Pachtman*) but are not completely immune when giving legal advice to the police (*Burns v. Reed*).

Prosecutorial Discretion: The decision-making power of prosecutors, based on the wide range of choices available to them, in the handling of criminal defendants, the scheduling of cases for trial, the acceptance of negotiated pleas, and so on. The most important form of prosecutorial discretion lies in the power to charge, or not to charge, a person with an offense. (p.230)

Exculpatory Evidence: Any information having a tendency to clear a person of guilt or blame. (p.231)

2. The Abuse of Discretion (p.232)

- There is considerable potential for abuse of discretion by prosecutors
- The U.S. Department of Justice recently created a new internal watchdog office, the Professional Misconduct Review Unit, to oversee the actions of federal prosecutors.

3. The Prosecutor's Professional Responsibility (p.232)

- Prosecutors are expected to abide by standards of professional responsibility and serious violations of rules of professional conduct may result in disbarment.

C. The Defense Counsel (p.233)

- Defense attorneys represent the accused after arrest and ensure that the defendant's civil rights are not violated.
- The defense attorney is involved in all stages of the court process.

Defense Counsel: A licensed trial lawyer, hired or appointed to conduct the legal defense of a person accused of a crime and to represent him or her before a court of law. (p.233)

1. Private Attorney (p.233)

- Lawyers who have their own legal practices or work for law firms.
- Privately retained criminal lawyers can be very expensive.

2. Court-Appointed Counsel (p.233)

- The Sixth Amendment guarantees defendants the effective assistance of counsel.
- A series of Supreme Court decisions has established that defendants who are unable to pay for private defense counsel will receive adequate representation at all stages of criminal justice processing.
- *Powell v. Alabama* (1932) held that if state defendants charged with a capital crime are unable to afford counsel, the court would appoint one for them.
- *Johnson v. Zerbst* (1938) held that all defendants unable to afford counsel would be appointed one in federal criminal proceedings.
- *Gideon v. Wainwright* (1963) held that all felony defendants unable to afford counsel would be appointed one in state criminal proceedings.
- *Argersinger v. Hamlin* (1972) requires legal representation for anyone facing imprisonment.
- *In re Gault* (1967) granted juveniles the right to appointed counsel.
- In *Alabama v. Shelton* (2002), the Court expanded the right to counsel to all defendants in state courts facing even the slightest chance of incarceration.

Instructional Cue

Be sure to explain to students why defendants need the assistance of counsel. Discuss the complexity of court proceedings, and point out that the majority of defendants are poor and uneducated. In the same way we rely on doctors when we need medical treatment, defendants need attorneys, as educated and trained professionals, to cut through legal complexities on their behalf.

a. Assigned Counsel (p.234)

- Court-appointed defense attorneys drawn from a roster of all practicing criminal attorneys within the trial court's jurisdiction.
- They are paid at a set rate by the government but the low fees may affect the amount of effort an assigned attorney puts into a case.

b. Public Defenders (p.234)

- Lawyers who are employed full-time by the state to defend indigent defendants.
- The public defender system is the primary method used to provide indigent counsel for criminal defendants in the U.S.

Public Defender: An attorney employed by a government agency or subagency, or by a private organization under contract to a government body, for the purpose of providing defense services to indigents, or an attorney who has volunteered such service. (p.234)

c. Contractual Arrangements (p.235)

- A system through which individual attorneys, local bar associations, or law firms are paid to provide defense services to indigent defendants on a contractual basis.
- The least widely-used form of indigent defense.

d. Problems with Indigent Defense (p.235)

- State systems are underfunded, although this is not true of the federal system.
- Defendants who are not pleased with their court-appointed defense attorney may request that a new lawyer be assigned to them but few judges honor this request unless there is clear reason for reassignment.

3. The Ethics of Defense (236)

- The American Bar Association has provided guidance in the areas of legal ethics and professional responsibility through their *Model Rules of Professional Conduct*.
- In *Nix v. Whiteside*, the Court held that lawyers have a duty to reveal known instances of client perjury.

D. The Bailiff (p.238)

Bailiff: The court officer whose duties are to keep order in the courtroom, to secure witnesses, and to maintain physical custody of the jury. (p.238)

E. Trial Court Administrators (p.238)

- Court administrators facilitate the smooth functioning of courts and provide uniform court management.

F. The Court Reporter (p.239)

- The court reporter creates the record of all that occurs at trial.

G. The Clerk of Court (p. 239)

- The clerk of court (or county clerk) maintains all court records, prepares a jury pool, issues jury summonses, subpoenas witnesses, marks physical evidence for identification, and swears in witnesses.

H. The Expert Witness (p. 239)

Expert Witness: A person who has special knowledge and skills recognized by the court as relevant to the determination of guilt or innocence. Unlike lay witnesses, expert witnesses may express opinions or draw conclusions in their testimony. (p.239)

III. Outsiders: Nonprofessional Courtroom Participants (p.240)

A. Lay Witness (p.240)

- May be called to testify by either the prosecution or defense.
- Many states pay witnesses for each day that they spend in court.
- An increasing number of states have instituted guidelines to protect victims and witnesses. Victim-assistance programs protect the rights of these witnesses.

Lay Witness: An eyewitness, character witness, or any other person called upon to testify who is not considered an expert. Lay witnesses must testify to facts only and may not draw conclusions or express opinions. (p.240)

Subpoena: A written order issued by a judicial officer or grand jury requiring an individual to appear in court and to give testimony or to bring material to be used as evidence. Some subpoenas mandate that books, papers, and other items be surrendered to the court. (p.240)

Victim Assistance Program: An organized program that offers services to victims of crime in the areas of crisis intervention and follow-up counseling and that helps victims secure their rights under the law. (p.241)

B. Jurors (p.241)

- Most states use 12-person juries but can use as few as 6 persons.
- Jury duty is a responsibility of citizenship.
- Ideally, the jury is a microcosm of society, representing diversity in race, economic class, age, education, background, and so on.

Juror: A member of a trial or grand jury who has been selected for jury duty and is required to serve as an arbiter of the facts in a court of law. Jurors are expected to render verdicts of “guilty” or “not guilty” as to the charges brought against the accused, although they may sometimes fail to do so (as in the case of a hung jury). (p.241)

Instructional Cue

Stress that juries can be unpredictable. Even in cases in which there is overwhelming evidence in support of a conviction, jurors have been known to return not guilty verdicts, reacting more to emotional testimony than facts. One of the best movie portrayals of jury decision making is 12 Angry Men.

C. The Victim (p.242)

- The victim is often one of the most forgotten people in the courtroom and may not even be permitted to participate directly in the trial process.

- Victims may experience a variety of hardships in the criminal court process.

Instructional Cue

Have your students imagine what it would be like for a victim to testify at trial. Explain that many victims have to sit outside the courtroom waiting to be called as witnesses. Explain that the process is intimidating, frightening, and overwhelming for victims. Remind students that it is the responsibility of the defense attorney to raise some doubt in the minds of jurors about the suspect's guilt. This can often result in a very painful cross-examination for the victim.

D. The Defendant (p.243)

- Defendants must be present at trial and may not be tried in absentia (*Crosby v. U.S.*).
- Defendants have the right to represent themselves, but most choose to use attorneys.
- Defendants suffer from a number of disadvantages, including the tendency of others to assume that anyone on trial must be guilty as well as the often-substantial social and cultural differences separating the offender from the professional courtroom staff.

E. Spectators and the Press (p.243)

- The Sixth Amendment requirement of a public trial supports the right of reporters and spectators to be present at a criminal trial.
- Pretrial publicity may make it difficult to find jurors who have yet to form an opinion on innocence or guilt.
- Cameras in the courtroom can also disrupt proceedings.

Change of Venue: The movement of a trial or lawsuit from one jurisdiction to another or from one location to another within the same jurisdiction. A change of venue may be made in a criminal case to ensure that the defendant receives a fair trial. (p.244)

IV. The Criminal Trial (p.244)

A. Procedure (p. 244)

- Modern courtroom procedure is highly formalized, both by formalized rules of evidence and by informal rules and professional expectations

Rules of Evidence: The court rules that govern the admissibility of evidence at criminal hearings and trials. (p.244)

B. Nature and Purpose of the Criminal Trial (p.244)

- The primary purpose of a criminal trial is the determination of the defendant's guilt or innocence.
- Criminal trials are built around an adversarial system – central to this is the advocacy model.

Adversarial System: The two-sided structure under which American criminal trial courts operate that pits the prosecution against the defense. In theory, justice is done when the more

effective adversary is able to convince the judge or jury that his or her perspective on the case is the correct one. (p.245)

V. Stages in a Criminal Trial (p.246)

A. Trial Initiation (p.246)

- The Sixth Amendment requires a speedy trial but clogged court calendars, limited judicial resources, and general inefficiency often combine to produce what may appear to be unreasonable delays in trial initiation.
- In *Klopfer v. North Carolina*, the Court held that the right to a speedy trial is a fundamental guarantee of the Constitution.
- Based on *Barker v. Wingo*, the right to a speedy trial can be violated even in cases when the defendant does not object to the delays.
- *Strunk v. U.S.* established that denial of a speedy trial could result in the dismissal of all charges.
- In *U.S. v. Taylor*, the Court held that willful delays by the defendant do not apply to the requirements of the Speedy Trial Act.
- *Fex v. Michigan* found that the 180-day period begins when the prisoner's disposition has been delivered to the court.
- *Doggett v. U.S.* established that a delay of nearly nine years resulting from governmental negligence violated speedy trial provisions.

Speedy Trial Act: A 1974 federal law requiring that proceedings against a defendant in a criminal case begin with a specified period of time, such as 70 working days after indictment. Some states also have speedy trial requirements. (p.246)

B. Jury Selection (p.247)

1. Challenges in Jury Selection (p.247)

- The court recognizes three types of challenges by prosecution and defense attorneys.
 - Challenge to the array is a challenge of the entire jury pool.
 - Challenge for cause argues that a juror cannot be fair or impartial.
 - Peremptory challenge is a challenge without a reason being given.
- During jury selection the prosecution and defense attorneys question potential jurors through the *voir dire* process.

Peremptory Challenge: The right to challenge a potential juror without disclosing the reason for the challenge. Prosecutors and defense attorneys routinely use peremptory challenges to eliminate from juries individuals who, although they express no obvious bias, are thought to be capable of swaying the jury in an undesirable direction. (p.247)

Jury Selection: The process whereby, according to law and precedent, members of a particular trial jury are chosen. (p.247)

Scientific Jury Selection: The use of correlational techniques from the social sciences to gauge the likelihood that potential jurors will vote for conviction or for acquittal. (p.248)

Sequestered Jury: A jury that is isolated from the public during the course of a trial and throughout the deliberation process. (p.248)

2. Jury Selection and Race (p.248)

- Race alone cannot provide the basis for jury selection, and juries may not be intentionally selected for racial imbalance.
- Based on *Batson v. Kentucky*, the use of peremptory challenges for purposeful discrimination is a violation of the defendant's right to an impartial jury.
- In *Powers v. Ohio*, the Supreme Court ruled in favor of a white defendant who claimed his rights were violated by excluding blacks through the use of peremptory challenges.
- *Edmonson v. Leesville Concrete Co., Inc.*, found that peremptory challenges in civil trials are not acceptable if based on race.
- *Georgia v. McCollum* established that defendants cannot use their peremptory challenges to exclude jurors based on race.
- In *Campbell v. Louisiana*, the court held that a white criminal defendant can raise equal protection and due process objections to discrimination against blacks in the selection of grand jurors.
- In *Miller-El v. Cockrell*, the Court held that a prosecutor's intentional efforts to remove eligible African Americans from the pool of potential jurors violated the defendant's constitutional rights.

C. Opening Statements (p.250)

Opening Statement: The initial statement of the prosecution or the defense, made in a court of law to a judge, or to a judge and jury, describing the facts that he or she intends to present during trial to prove the case. (p.250)

- The purposes of opening statements are to advise the jury of what the attorneys intend to prove and to describe how such proof will be offered.

D. The Presentation of Evidence (p.250)

1. Types of Evidence (p.250)

Evidence: Anything useful to a judge or jury in deciding the facts of a case. Evidence may take the form of witness testimony, written documents, videotapes, magnetic media, photographs, physical objects, and so on. (p.250)

Direct Evidence: The evidence that, if believed, directly proves a fact. Eyewitness testimony and videotaped documentation account for the majority of all direct evidence heard in the criminal courtroom. (p.250)

Circumstantial Evidence: The evidence that requires interpretation or that requires a judge or jury to reach a conclusion based upon what the evidence indicates. From the close proximity of the defendant to a smoking gun, for example, the jury might conclude that he or she pulled the trigger. (p.250)

Real Evidence: Evidence consisting of physical material or traces of physical activity. (p.250)

2. The Evaluation of Evidence (p.250)

Probative Value: The degree to which a particular item of evidence is useful in, and relevant to, proving something important in a trial. (p.251)

3. Testimony of Witnesses (p.252)

- Witness testimony is generally the chief means by which evidence is introduced at trial.
- Defendants do not have to take the stand, and if they do not, prosecutors and judges cannot comment on this fact (*Griffin v. California*).
- Direct examination takes place when a witness is first called to testify.
- Cross examination refers to the questioning of a witness by someone other than the direct examiner.

Testimony: The oral evidence offered by a sworn witness on the witness stand during a criminal trial. (p.521)

Perjury: The intentional making of a false statement as part of the testimony by a sworn witness in a judicial proceeding on a matter relevant to the case at hand. (p.253)

4. Children as Witnesses (p.253)

- The majority of states allow the use of videotaped testimony or closed-circuit television, in an effort to avoid what may be traumatizing, direct confrontations between child witnesses and the accused.
- In *Coy v. Iowa*, the Court decided that a courtroom screen used to shield a child witness from the defendant violated the confrontation clause of the Sixth Amendment.
- *Maryland v. Craig*, however, held that allowing a child to testify using closed-circuit television does not violate the confrontation clause.
- *White v. Illinois* allowed testimony by a medical provider and a babysitter, who repeated what a child had said, to be heard.

5. The Hearsay Rule (p.253)

- Exceptions to the hearsay rule include the dying declaration, the spontaneous statement, and the out-of-court statement.

Hearsay: Something that is not based upon the personal knowledge of a witness. Witnesses who testify about something they have heard, for example, are offering hearsay by repeating information about a matter of which they have no direct knowledge. (p.253)

Hearsay Rule: The long-standing precedent that hearsay cannot be used in American courtrooms. Rather than accepting testimony based on hearsay, the court will ask that the person who was the original source of the hearsay information be brought into court to be questioned and cross-examined. Exceptions to the hearsay rule may occur when the person with direct knowledge is dead or is otherwise unable to testify. (p.243)

E. Closing Arguments (p.254)

Closing Argument: An oral summation of a case presented to a judge, or to a judge and jury, by the prosecution or by the defense in a criminal trial. (p.254)

F. Judge's Charge to the Jury (p.255)

- Judge reminds the jury of their duty to consider objectively only the evidence presented and of the need for impartiality. Most also remind jury members of the statutory elements of the alleged offense, of the burden of proof that rests on the prosecution, and of the need for the prosecution to have proved the defendant's guilt beyond a reasonable doubt before the jury can return a guilty verdict.

Reasonable Doubt: In legal proceedings, an actual and substantial doubt arising from the evidence, from the facts or circumstances shown by the evidence, or from the lack of evidence. Also, the state of a case such that, after the comparison and consideration of all the evidence, jurors cannot say they feel an abiding conviction of the truth of the charge. (p. 255)

Reasonable Doubt Standard: The standard of proof necessary for conviction in criminal trials. (p.255)

G. Jury Deliberations and the Verdict (p.255)

1. Deliberations Process (p.255)

Verdict: The decision of the jury in a jury trial or of a judicial officer in a nonjury trial. (p.255)

2. Problems with the Jury System (p.255)

- Problems include emotions being confused with fact, confusion over legal technicalities, and inattention during long trials.
- A possible alternative is professional jurors.

Instructional Cue

Compile the facts and witness information for one specific case. Ask students to decide which witnesses would support the prosecution's case and which witnesses would support the defense's

case. Walk the case through the trial process; give examples of opening and closing statements and types of questions asked on direct examination, and highlight important points for cross-examination.

Learning Activities Utilizing the World Wide Web

The following are presented as instructor led activities, to be used in a classroom with online access.

Visit Cornell University Law School's Legal Information Institute at <http://www.law.cornell.edu>. In class, display each of the site's features and then lead a discussion of those the class finds most useful. Why are these features most useful as compared to the others?

This distance learning exercise will be challenging and time-consuming, but it is an effective way to highlight the stages of the criminal trial. Search the World Wide Web for information about a specific criminal trial. For class display, highlight the key facts of the case. To begin a class discussion, ask: What facts do you think the prosecutor will emphasize? What facts will the defense attorney emphasize?

Other websites for organizations and agencies related to the material in Chapter 8 include:

Office of the U.S. Attorney General <http://www.justice.gov/ag/>

American Bar Foundation
<http://www.americanbarfoundation.org/>

Federal Magistrate Judges' Association <http://www.fedjudge.org>

Illinois Office of the State Appellate Defender <http://www.state.il.us/defender>

National Jurist Online for Future Lawyers <http://www.natjurist.com>

New York State Defenders Association <http://www.nysda.org>

Citizens for Effective Justice
http://interceder.net/latest_news/Citizens-for-Effective-Justice

Public Justice: Righting Wrongs <http://publicjustice.net/>