

Course Learning Outcomes for Unit III

Upon completion of this unit, students should be able to:

4. Analyze the roles and operations of courts in the criminal justice process flow.
 - 4.1 Discuss the collection and handling of evidence.
 - 4.2 Describe why evidence is a vital part of the trial process.
6. Describe criminal court processes and procedures.
 - 6.1 Explain the role of evidence in criminal trial proceedings.

Course/Unit Learning Outcomes	Learning Activity
4.1	Unit Lesson Chapter 12 Unit III Case Study
4.2	Unit Lesson Chapter 12 Unit III Case Study
6.1	Unit Lesson Chapter 12 Unit III Case Study

Reading Assignment

Chapter 12: The Criminal Trial

Unit Lesson

Criminal Trial Procedures

Criminal defendants have a right to choose whether to be tried by a jury or a judge. A trial by a sitting judge is referred to as a bench trial. This type of trial occurs with only a judge; there is no jury present. The judge facilitates the role of being both the fact finder and the final word on all matters of law. In a jury trial, the jury determines guilt or innocence, and the judge rules on law and procedures.

Most jurisdictions follow the general rule that there is no right to a jury trial in matters of civil contempt, infractions, and various sub-issues including whether the defendant has a prior conviction and whether the alleged prior offenses were *serious* or *violent* and affect the defendant's competency to be tried. Research California Penal Code § 1368 as an example.

Bench trials: Criminal defendants, based on mathematical odds, are better off opting for a jury trial. In a bench trial, the judge determines the facts of the case. This means the prosecution and defendant provide their interpretations of an event or relevant fact. For example, a car that hit a pedestrian was blue; the prosecutor argues that the defendant's car is blue, and the defendant argues that the car that hit the pedestrian was actually black. The judge must decide the color of the car based on the weight and quality of the testimony regarding the color of the vehicle. If the defendant opted for a jury, all jurors—generally 12 people—must agree on the color of the car. Only one juror needs to hold out on the color issue, which would cause a hung jury, and the case would have to be dismissed and, possibly, litigated a second time.

Jury trials: As noted above, juries decide which facts presented to them are accepted as true and which are not. The court (judge) will always determine matters of law and procedure. The focus of a jury trial will be the matching of facts, as determined by the jury, to the specifications of the criminal act of which the defendant is accused. These specifications are provided in the jury instructions provided by the judge. The following is a simple model jury instruction used by federal courts; see below.



An Attorney Addressing a Jury
(Photographerlondon, n.d.)

8.69 FIREARMS—SHIPMENT OR TRANSPORTATION BY PERSON UNDER INDICTMENT FOR FELONY (18 U.S.C. § 922(n))

The defendant is charged in [Count _____ of] the indictment with [[shipping] [transporting]] [a firearm] [ammunition]] while under indictment for a felony in violation of Section 922(n) of Title 18 of the United States Code. In order for the defendant to be found guilty of that charge, the government must prove each of the following elements beyond a reasonable doubt:

First, the defendant was under indictment for [specify felony]; and

Second, the defendant willfully [[shipped] [transported]] [[specify firearm] [specify ammunition]] [[from one state to another] [between a foreign nation and the United States]].

(U.S. Courts for the Ninth Circuit, n.d., para. 1)

The procedure for using the model jury instruction above generally requires the prosecutor and defendant to agree on the following before submitting the form to the court (judge):

- the identification of the indictment (e.g., Count 1 of 2),
- the subject contraband was shipped from point A to point B (i.e., points identified),
- the mode of transportation used, and
- the identification of the firearm(s) and/or munitions.

The specific felony would be shipping and/or transporting firearms while under indictment for a felony. The subject matter of the indictment must have been transported or shipped between states or a foreign nation and the United States. If the subject matter was shipped or transported within a state, the federal government would not have jurisdiction.

The jury's task would be finding that the elements listed above were true or not. If all were found true by the jury, then the defendant would be guilty of violating 18 U.S.C. § 922(n). If one juror was not convinced of one element (e.g., identification of the firearm), then the jury would be hung. If all jurors were convinced that one

element of the instruction was not true, then the defendant would be acquitted (Firearms – Shipment or Transportation by Person Under Indictment for Felony, 2010).

Selection: Juries are selected from jury pools. The formation of the pools varies by state, and the most common method is using voter registration lists or drivers' licenses to provide a broad cross section of possible candidates. The jury panel (those selected to hear a case) is selected from the pool based on questions presented by the judge, prosecutor, and defense. Many jurisdictions have an opposing counsel present questions for the judge to ask; this technique is designed to eliminate any stigma attached to a question when posed by the prosecutor or defendant. (Be sure to check your jurisdiction on what procedure is used.)

The prosecutor and defendant may request the judge dismiss a member of the jury pool based on *cause*, and the judge decides whether to allow the dismissal. For example, if a defendant asks to dismiss a jury pool member based on religious bias, then the judge will have to decide whether to allow the dismissal. A significant number of appeals have been filed based on the selection process of jury members who were possibly biased against one side or the other. The number of peremptory challenges, where no reason has to be provided to the judge, is limited in number based on jurisdictions.

Sequestration: Sequestration of juries is intended to eliminate outside courtroom pressures from tainting the jury. The impact of social media has affected this issue, but the question remains constant—should the parties to a criminal trial trust the jury to abide by its oath not to allow any information not presented in court to affect their decisions? Very seldom do you read in the news and on social media about the impact on jury members when they are sequestered. Many feel tremendous pressure to hurry decisions due to being isolated from family and friends. Either party may request sequestration of a jury, but the court must make the decision. Sequestration is rare.

Some jurisdictions require sequestration of juries in certain types of cases. For example, Missouri requires sequestration in death penalty cases (Broniec et al., 2007).

Misconduct—ethics violations: Jurors are always sworn in with an oath that affirms that they will give a verdict according to the law. Misconduct and ethics violations by any juror are evaluated and analyzed based on the oath. A major violation of the oath is the use of social media to review progress of the trial and public opinion of the case. The difficulty comes when determining whether exposure to social and news media has affected the votes of a particular jury. Prosecutors and defense counsels are required to notify the judge if misconduct or ethical violation of the juror's oath is suspected. If counsel takes no action, it is possible to find the defendant guilty, notwithstanding the juror's misconduct (*United States v. Daugerdas*, 2016).

What if a juror lied during initial questioning? What is not commonly known and not intuitively obvious is that the examining counsel is held accountable, and the decision of the juror will stand. For example, in a complex patent trial involving Samsung, a juror lied about not having prejudicial feelings toward Samsung. Additionally, the juror introduced incorrect and extraneous legal standards to the jury during deliberations. The appellate court found that counsel should have done a better job during initial questioning, and the misconduct of the juror was not allowed to affect the decision of the jury (*Apple, Inc. v. Samsung Electronics Co, Ltd.*, 2012).

No historian is sure when juries were first used, and the best guess focuses on the 12th century in England. Criminal justice professionals keep trying to improve on the jury system, but one aspect will probably never change; the criminal justice system depends heavily on the honesty of citizens in rendering verdicts.

Note-taking: Controversies exist over whether or not jurors should be allowed to take notes during a trial. The objection against note-taking is that jurors may write notes detailing non-relevant data and not note important data. By so doing, when reviewing their notes, a wrong decision may be made. Distraction during writing notes is also a major concern for some judges.

The *Journal of Criminal Law and Criminology* contains an excellent article on this subject and is listed in the Unit III Suggested Reading section.

Sequence of Events

Criminal justice professionals should be familiar with common terminology used by court personnel. The following short statements are intended to provide a description of each stage in a criminal trial and are not intended to be a complete explanation of each.

Opening statements: Opening statements never contain arguments or analysis of the case. The purpose of the opening is to present an overview of the case. The key now is not to bore the jury but to provide them with sufficient information so the presentation of the prosecutor may be easily followed. The American Bar Association (ABA) recommends that the elements below be included in opening statements.

- Present the theme of the case—an outline of how the prosecutor intends to prove the defendant guilty.
- Do not bore the jury by wasting time getting to the framework of the case.
- Set the scene of the crime by providing facts that the prosecutor intends to introduce during the trial.
- Relate the evidence that the prosecution intends to introduce during the trial to the criminality of which the defendant is being tried while always being careful not to argue or attempt to help the jury members to form opinions.
- Be persuasive without arguing, which is easy to write and recommend but requires experience to accomplish.
- For defense counsel, attempt to humanize the defendant by using names and players in the intended evidence production.
- Prepare the jury for facts that are not supportive of the position of the client (government or defendant), exposing the jury to bad facts that should not be a surprise during trial.
- Take advantage of the opposing counsel when important facts are omitted that are beneficial to the government or the defendant.
- Conclude by asking the jury to find in favor of the government or the client (American Bar Association, 2003).

Prosecution: The prosecution has the burden of proof and will go first and last for all sections of the trial.

Defense: The defendant's case is always presented last and, technically, does not have to provide any evidence, analysis, or arguments. It is possible, but not probable, for defendants to only provide an opening statement and closing argument. This normally only happens in movies, novels, and television programs but not in reality.

Judge's rulings: During jury trials, judges act as a referee, ensuring that opposing counsels follow rules, procedures, and customs as provided by each jurisdiction. Criminal justice professionals may, at times, be called upon to testify concerning admissibility of evidence or to verify written reports. When testifying, no decisions will be made by the witness who is in the box concerning procedures; only testimony requested by the counsel is provided. For those criminal justice professionals working in law firms or in the court system, practical and hands-on training will provide necessary familiarization with the local rules, procedures, and customs of the court.



A Judge Hitting a Mallet
(Janpietruska, 2016)

The majority of rulings made by judges concern questions proposed by the attorneys, admissibility of evidence, and decorum in the courtroom.

Jury Instructions

A simple jury instruction was provided above for analysis and study. The average jury instruction is complex and provides multiple options on how a jury may find guilt or innocence of defendants. Because of the effect that such instructions may have on the outcome of a trial, attorneys invest many hours in drafting instructions

so as to favor their clients. The independent tailoring of jury instructions leads to major conflicts in selecting which version should be presented to the jurors.

Charge conferences: It is bad form for each counsel to provide the presiding judge jury instructions without conferencing with opposing counsel. Each proponent wants the jury to be charged (given jury instructions) favoring the client's case and preserving all appellate issues in case the jury does not agree with the counsel's recommendations. Therefore, a conference between opposing counsels becomes a high-stakes issue.

Legislation: The best case for presiding judges is for the opposing counsel to submit jury instructions agreed to by both parties. The judge must still review current legislation and applicable *stare decisis* concerning the legislation. If the jointly submitted jury instructions conflict with the law, it is generally sent back to counsels for another round of the jury charge conference.

Presentation: Judges have different styles in presenting the jury instructions with two major variations. The first is reading the instructions from the bench (where the judge normally sits), and the other is from the well (the area between the bar, which is where the attorneys sit, and the bench). The judge will have a podium set up in front of the jury and will read the instructions directly facing the jury.

It is common practice for the judge to present the jury instructions and a verdict form to the members of the jury. The verdict forms will have boxes for the jury to annotate either for or against the defendant. The boxes are directly related to the elements necessary for the prosecution to prove beyond a reasonable doubt the guilt of the defendant.

Sentencing

Jurisdictions vary widely on sentencing procedures; some sentencing is done by the presiding judge and others by the jury with approval of the judge. It is recommended that jurisdictional sentencing procedures be a part of your criminal justice education.

Juvenile Court Differences

Common knowledge has established that children, as defined by statute, cannot commit crimes; they commit delinquencies. Other than the non-criminal aspect of juvenile courts, the main criminal justice procedure difference is the admissibility of evidence. All 50 states and the District of Columbia have accepted civil rules of evidence for juveniles in place of the more stringent standard for "criminal" evidence (*Pee v. United States*, 1959). Juvenile proceedings are civil in nature; therefore, juvenile court judges have a wide range of facilities to determine the severity of delinquencies and remedial action to help minors reform.

Since juvenile courts deal only with minors, the public is restricted from court hearings, and only parents/guardians and their attorneys may be in the courtroom during hearings.

Conclusion

This lesson provides a superficial description of the major phases of a criminal trial. Each, standing alone, is the subject of months of focused study for attorneys. For example, the subject of evidence requires two semesters of study to gain sufficient skills to start participating in simple trials. For our criminal justice professionals, the skills necessary will probably include one or more of the above divisions of criminal trials. Expertise necessary to perform well in these positions must be acquired on the job and be supplemented by targeted continuing legal education courses. Paralegals, clerks, attorneys, and judges attend such seminars annually to stay current with the changes in law. Criminal justice practitioners should do the same.

References

American Bar Association. (2003). Effective opening statements. Retrieved from <https://apps.americanbar.org/labor/lel-aba-annual/papers/2003/mcwilliams.pdf>

Apple, Inc. v. Samsung Electronics Co., Ltd., 2012 WL 6574785 (N.D. Cal. 2012).

Broniec, K., Lynch, G., Norris, D., Riley, J., Welsh, J., Williamson, J.D., & Wolff, M.A. (Eds.). (2007). *Trial judges criminal benchbook*. Retrieved from http://www.courts.mo.gov/hosted/resourcecenter/TJCB%20Published%20April%208.2011/TJBB.htm#MO_Trial_Judges_Benchbook_-_Criminal.htm

Firearms – Shipment or transportation by person under indictment for felony, 18 U.S.C. § 922(n) (2010).

Janpietruska. (2016). *ID 115406434* [Photograph]. Retrieved from <https://www.dreamstime.com/court-gavel-law-theme-mallet-judge-courtroom-judge-male-judge-black-mirror-background-image115406434>

Pee v. United States, 274 F.2d 556 (D.C. Cir. 1959).

Photographerlondon. (n.d.). *ID 29662894* [Photograph]. Retrieved from <https://www.dreamstime.com/stock-images-attorney-addressing-jury-image29662894>

United States v. Daugerdas, No. 14-2437 (2d Cir. 2016).

U.S. Courts for the Ninth Circuit. (n.d.). 8.69 Firearms – Shipment or transportation by person under indictment for felony. Retrieved from <http://www3.ce9.uscourts.gov/jury-instructions/print/book/export/html/527>

Learning Activities (Nongraded)

Nongraded Learning Activities are provided to aid students in their course of study. You do not have to submit them. If you have questions, contact your instructor for further guidance and information.

Visit criminal justice locations in your jurisdiction to include enforcement, adjudication, and correction facilities. Reflect on these visits, and relate what you have learned to what you observed during your visits.