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# TRIALS

## CHAPTER 6

UTAH STATE BOARD OF EDUCATION
CAREER AND TECHNICAL EDUCATION

# CHAPTER SIX: TRIALS

## COURTS

Our nation has a dual court system with two independent levels, state and federal courts. Federal courts hear cases where a violation of federal law has occurred, while the various state courts hear cases regarding violations of the state's laws. Thus, we have 52 different state courts but only one federal court system. Each state court has jurisdiction for its individual state, while the federal court has jurisdiction in all states. Each system consists of a general jurisdiction trial court, an appellate court, and individual supreme courts. The appellant and supreme courts are considered courts of review, in that they do not hear evidence but review the actions of the courts below them. The State Supreme Court is considered to be the highest court for that state. The U.S. Supreme Court is the court of last resort and has the definitive power to make the final decision on all cases they review. A very small percentage of cases are accepted to be reviewed by the U.S. Supreme Court. The U.S. Supreme Court also has a second power known as judicial review. This is a policymaking action where the Court can interpret the law and make decisions on whether an action is constitutional or not. The Court can also review the actions of other branches of the government to decide on the constitutionality of actions.

Each state has two courts where trials occur. The first is the trial court, known as the district court, which is the fact-finding body for all crimes committed within its jurisdiction; it focuses mainly on felony-level cases within its geographical area. An important part of the Utah district courts' caseloads is domestic relations. These are cases that deal with divorces, child custody and support, adoption, and probate matters.

The second state court is known as a court of limited jurisdiction. It has a geographical boundary on cases it can hear, similar to the district court, but is limited in the types or subject matter of the cases it can hear. In Utah these are known as Justice Courts. They have authority to only hear class B and C misdemeanors, violations of ordinances, small claims and infractions that occur within in their geographical jurisdiction.

When a person is arrested and directed to answer to the Justice Court, he/she can immediately enter a plea and have his/her case settled, or enter a plea of not guilty, in which a case trial will occur. If the person commits a felony-level crime and is sent to the District Court, he/she can enter a plea and have his/her case settled. If he/she enters a plea of not guilty, his/her case will be set for a preliminary hearing before a trial can occur. The preliminary hearing is similar to a trial, but is heard by the judge only (no jury), and the judge will decide whether probable cause exists for the case to proceed to a trial.

## PRINCIPLES OF CRIMINAL RESPONSIBILITY

Chapter 2 of the Utah Criminal Code defines criminal responsibility, or culpability. The statutes or laws within the Criminal Code require a culpable mental state or state of mind to be present in order for a specific law to be violated. The four levels of responsibility or culpability, as defined by the Utah Code, are *intentional*, *knowing*, *reckless*, and *negligent*. The culpable mental state required in a statute may determine the seriousness or classification of the crime. For instance, if an intoxicated individual walks into your residence accidentally, he could not be charged with burglary since the act was not done intentionally. However, the individual could be charged with criminal trespass, which requires a culpable mental state of recklessness.

The prosecution must prove that the required culpable mental state for the offense was present in order to obtain a conviction. (If the required mental state cannot be proven, then the prosecutor must find another statute that will meet the test of culpability.) In cases requiring an intentional or knowing culpable mental state, the prosecution must prove that the defendant possessed a guilty mind, which is called *mens rea.* Along with the guilty mind *(mens rea),* the court will also require a guilty act, or *actus reus.*

The criminal homicide statute is an example of the four categories of criminal states of mind or culpable mental states. The criminal homicide statute includes the crimes of aggravated murder, murder, manslaughter, negligent homicide, and automobile homicide. The first two criminal acts, aggravated murder and murder, require a mental state of *knowing* or *intentional*, meaning that the perpetrator knew what the outcome of his actions would be and took the life of another consciously and with *premeditation*. In addition to other aspects of the case, the prosecution would also have to prove that the defendant had a guilty mind *(mens rea)* and had committed a guilty act *(actus reus).* Manslaughter requires a mental state of recklessness, inferring that the person took another's life without malice aforethought, meaning that there was no premeditation. Negligent homicide requires that the person was *negligent* in his actions, causing the death of another through failure to exercise the proper care that a reasonable person would use under the same circumstances.

Most laws found outside of the Criminal Code do not require a culpable mental state for a law to be violated; these are known as street liability crimes. An example of this would be a motor vehicle traffic violation. An officer, having issued a traffic citation, need not prove that the violator *intended* to run a red light. When testifying in court, he need only prove that the violator *did* run the light.

## LAWYERS

A *trial* is the process of resolving a dispute between two or more parties. There are two types of trials, civil and criminal. In a criminal trial, the state, a county, or a city brings a charge(s) against one or more defendants. A prosecutor represents the state, county, or city and presents the evidence in an attempt to prove beyond a reasonable doubt that the defendant is guilty as charged. The prosecution has the burden of proof to show that a crime has occurred and that the defendant has committed it.

A criminal trial in the United States utilizes the adversary system. This means that both sides can use skilled advocates to present their case. These chosen advocates present the best points of their own side of a case and point out the weaknesses of the other side. This adversary process is designed to aid the judge or jury in determining the truth.

Because the United States Constitution deems the assistance of counsel to be a necessary part of the criminal trial process, a defendant is allowed to retain an attorney at government expense. Although the right to counsel is provided for in the Sixth Amendment to the U.S. Constitution, this particular right was not guaranteed until 1963 (*Gideon v. Wainwright*). The need for an attorney usually begins long before a trial; therefore, the right to an attorney is an element of the Miranda warning which an officer reads to a suspect prior to questioning. This right to counsel prior to questioning by an officer came about due to *Escobedo v. Illinois* and *Miranda v. Arizona.*

If an individual cannot afford an attorney, a judge will assign the case to the Legal Defender Service. A public defender, who is a defense attorney under contract to the government to provide defense services, is then assigned to the case. On occasion, such as in a major felony case or a complex trial, a judge may appoint a private practice defense attorney to provide the defense.

A defendant may conduct his/her own defense if qualified, as determined by the trial judge. The defendant also has the right not to have counsel, although this is seldom a wise practice. Even if a defendant is guilty, an attorney has a familiarity with the system and can assist in ensuring that the defendant is treated fairly. A lawyer may also be able to arrange a plea bargain, an acceptable probation, a reduced sentence, etc.

A defense attorney works for the defendant and may know that his/her client is guilty, but such information is privileged, meaning that the attorney may not reveal it, even in court. Many citizens do not understand why a defense attorney would or should defend someone known to be guilty. However, it is the responsibility of the judge or jury to determine guilt. The role of the defense attorney is to act in the client's best interest. Without proper representation, the adversary system would not function properly, because only one side would be heard. If the prosecutor's claims and arguments were essentially unchallenged, due process would not be served.

It is impossible to list all of the functions of a criminal attorney. However, the following list indicates the primary functions of both the prosecutor and the defense attorney in a trial process. Remember that less than 10% of all cases go to trial. The other 90% are handled in a variety of ways involving numerous other lawyer interactions.

## ROLES OF THE PROSECUTOR AND DEFENSE ATTORNEY

PROSECUTOR

1. Determine whether, and what, law violation has occurred.
2. Determine whether a case should be taken to court.
3. Determine what evidence and witnesses are needed for trial.
4. Prepare appropriate legal papers—information, summons, subpoenas, etc.
5. Negotiate a plea bargain, if appropriate.
6. Prepare witnesses and secure evidence for trial.
7. Present the prosecution's case in court.
8. Argue for specific rulings by the judge.
9. Present information with regard to how to appropriately punish the guilty.
10. Appeal rulings that have a questionable legal basis.

DEFENSE ATTORNEY

1. Gain the confidence of the client.
2. Act in the client's best interest, regardless of apparent or admitted guilt.
3. Become familiar with the case.
4. Seek release from jail or bail reduction.
5. Plea bargain or enter a guilty plea if this is in best interests of the client, with client's permission.

6. Determine what type of defense to use.

7. Locate witnesses and/or evidence that will aid the client.

8. Counter the case of the prosecution.

9. Argue for specific rulings.

10. Present information with regard to minimizing the penalty to the client if found guilty.

11. Appeal the decision at the request of the client or in the interest of justice.

## PLEA BARGAINING

A *plea bargain* occurs when a judge allows a defendant to plead guilty to a lesser offense or to fewer charges, or to arrange a lesser penalty in exchange for a guilty plea. This works to the advantage of a guilty defendant by minimizing the penalty. The major advantage for the prosecution, the court, and society is the savings in time and money that would otherwise be consumed if the case went to trial. Plea bargaining can also be used to get a guilty plea when evidence is not strong, or when police conduct may have made certain evidence unavailable for court use.

A plea bargain is usually worked out between the defense attorney and the prosecutor. It must then be approved by the judge, who is the final authority. It is the responsibility of the judge to ensure fairness for all involved. Often, the investigating officer is allowed input as well, offering such information as the attitude of the defendant, the severity of the crime, and prior criminal activity. With increasing interest in victims' rights, many victims are being allowed to address the court with regard to appropriate punishment for the defendant.

### PLEA BARGAIN ROLE PLAYING ACTIVITY

The role-playing activity that follows will simulate the roles of those involved in a typical plea bargain. Each participant will bargain based on the suggested concerns and goals of the individuals listed below.

The investigating officer has solid physical evidence that the defendant burglarized the residence of the victim. However, none of the property that was taken from the house has been recovered up to this point. The defendant has been incarcerated in jail for eight months awaiting trial. The time spent in jail awaiting trial may be counted toward any sentence imposed by the judge. The court now has a backlog of thirty felony cases on the calendar, which may take as long as six months to clear.

#### Victim

You lost $2,000 worth of belongings in the burglary. Your insurance company only reimbursed you in the amount of $1,500. One of the missing items was an irreplaceable charm bracelet given to you by your deceased mother. You find that you no longer sleep comfortably at night due to the fear that someone else might break into your home.

Goals:

- Recover the $500 net loss that you sustained.
- Recover the charm bracelet.
- See that the criminal is severely punished for the crime.
- Receive counseling in order to regain peace of mind.

Defense Attorney

Goals:

- Have your client found not guilty.
- If a not guilty verdict cannot be achieved, minimize the punishment as much as possible.
- Make a favorable impression on colleagues and future clients.

Prosecutor

Goals:

- Obtain a conviction, make a favorable impression on colleagues and supervisor, and contribute toward a high conviction rate.
- Accept a guilty plea for a lesser crime if needed to gain a conviction.
- Help the victim feel that the defendant was punished appropriately.

Judge

Goals:

- Administer a judgment that ensures justice is served.
- Ensure that innocent defendants escape punishment.
- Ensure that the guilty are found guilty and punished.
- Clear the backlog of cases.
- Look good to your peers and to your superiors if you can clear the calendar.
- Avoid having a trial to save time and money if the defendant will plead guilty, even to a lesser charge, as long as justice is served.

Defendant You are guilty of a burglary, and the detective has a good case against you. You have already spent eight months locked up in jail awaiting trial.

Goal:

- Get off with as little additional punishment as possible.

**COSTS OF CONVICTION**

The following are various potential costs that a defendant could incur upon being convicted of a criminal offense.

1. Jail or prison

2. Fine and/or restitution cost

3. Other court ordered penalties such as *forfeiture*, counseling, community service, etc.

4. Cost of legal counsel

5. Loss of reputation

6. Loss of certain civil rights, such as the right to vote or hold certain jobs

7. Effect on education and employment opportunities

## THE TRIAL PROCESS

It is impossible to describe all of the legal processes that could be involved in a criminal trial. The following pages highlight significant steps in a felony criminal trial. Misdemeanor trials do not involve all of the steps, but the basic process is the same.

It is important to remember three crucial elements of the American criminal justice process. A basic understanding of these tenets helps to explain why the trial process operates the way that it does.

1. A defendant is presumed innocent until proven guilty.

2. The burden of proof is on the prosecution.

3. The trial activity itself must be fair (due process).

### INFORMATION

The prosecuting attorney prepares an *information* after the defendant has been arrested without a warrant, or in order for the investigating officer to have an arrest warrant or summons issued. The information is a legal statement specifying what law it is alleged that the defendant has violated and the details of the offense, such as the time, date, and location involved. This statement must be sworn to under oath by an officer or a citizen who has been able to demonstrate that there is probable cause to believe that the defendant committed the alleged offense. This serves as notice to the defendant and his/her attorney of the charges that have been filed against him or her.

### PRELIMINARY HEARING

A defendant is entitled to a hearing where the prosecution is required to present sufficient evidence before the judge to establish that there is probable cause to believe that a crime has been committed and that the defendant committed it. A defense attorney will often use this hearing to see what kind of case the prosecution has. The defendant does not have to testify, nor does the defense present its case. If there is sufficient evidence presented, the judge will bind over the defendant for trial. If not, the charge is dropped and the defendant freed.

The standard for admitting evidence may be different at a preliminary hearing, and in some cases hearsay evidence is admissible. Since most testimony is recorded, the defense attorney will verify testimony given at the preliminary hearing to ensure that prosecution witnesses do not change their testimony during the trial. After a strong prosecution presentation at the preliminary hearing, a defense attorney may be persuaded to attempt a plea bargain. A defendant will waive his/her right to a preliminary hearing in approximately 50 percent of all cases.

To ensure that witnesses do not alter their testimony as other witnesses testify, only the witness actually testifying is allowed to remain in the courtroom. There is also a growing tendency for judges to attempt to limit pre-trial publicity by restricting media coverage, a practice found legal in some circumstances by the Supreme Court.

## ARRAIGNMENT

At the arraignment, the defendant is given a chance to enter a plea after being fully advised of the charges. If the defendant pleads not guilty, a trial date is set. If a guilty plea is offered, the judge will question the defendant to make sure he/she understands the consequences of such actions. In some states, a defendant can plead *nolo contendere*, or no contest. This plea means that the defendant does not wish to contest the action. It is the same as a guilty plea, except that a conviction cannot be used as evidence against a defendant in a civil proceeding.

## DISCOVERY

In *Jencks v. U.S.*, the Supreme Court stated that the prosecution must provide information regarding its case in order for the trial to meet the due process standard. In order to ensure fairness, the defense attorney can request copies of prosecution documents and reports, examine evidence, etc. This allows the defendant a chance to locate rebuttal evidence or secure expert witnesses with different opinions. Officer reports are routinely reviewed by defense attorneys.

Since *discovery* can be misused if witnesses can be persuaded to commit perjury, notice of an alibi defense is usually required in states having liberal discovery laws. Prior to trial, the defense must indicate the alibi to the prosecution. This allows the prosecution time to investigate the alibi prior to the start of the trial.

## SUPPRESSION HEARING

If there is a question of legality regarding admissible evidence at a trial, the defense may request a suppression hearing. A judge will then review how the evidence was obtained. If it was not obtained legally, it is excluded as required by the *exclusionary rule*, meaning it cannot be used or even mentioned in the trial. The exclusionary rule was developed by the Supreme Court in response to improper search and seizure by law enforcement officers in the cases of *Weeks v. U.S.* (federal) and *Mapp v. Ohio* (state). A suppression hearing commonly hears challenges to a confession and/or the probable cause for arrests and searches and seizures.

A suppression hearing is frequently requested in cases such as narcotics possession or distribution or a criminal homicide case, where the entire case may hinge on acquired evidence. If a package of drugs is illegally seized by officers and is later excluded, the entire case against a defendant could be dismissed due to the exclusion.

The burden of proof at a suppression hearing is on the prosecution. However, the defendant must have the *standing*, or legal right, to object to certain evidence. If a defendant is charged with possession of marijuana based on the search of a stolen car that he was driving, he has no right to object to such evidence being introduced because the vehicle was not his.

**THE JURY**

The jury system as we know it probably originated in Spain. As it evolved in England, the jury was selected from a defendant's friends and neighbors, who were considered to be the defendant's peers. It was believed that this would allow the jury members to accurately discern who was telling the truth, based on their knowledge of the character and reputation of the defendant and witnesses.

From the middle ages in England, a jury has traditionally been made up of 12 members. In a criminal case, the jury members are required to reach a unanimous decision, although several state legislatures have discussed the possibility of changing or modifying this particular requirement. In a civil case, the decision or *verdict* does not need to be unanimous, requiring only a three-fourths vote.

The nature of the jury has changed considerably over time. Although it is still designed to allow a defendant the opportunity to be judged by peers, anyone knowing or related to any trial participant is not allowed to serve on the jury. This ensures that there will be a fair trial, with no bias for or against the defendant. To allow for those who would not be permitted to serve for this or other reasons, a larger number of prospective jurors are initially summoned into court.

With the exception of Juvenile Court, a defendant in a trial may choose to have the case decided by the judge or a jury. In either case, the judge will decide all issues of law, such as what evidence will be admissible. In a jury trial, it is the responsibility of the jury to decide the single issue of guilt. This is done by judging or determining which witnesses are more credible, how much weight to give to presented evidence, and what inferences can be drawn from the facts shown in the trial. In some states, the jury may also be called upon to recommend a sentence for those individuals who have been found guilty.

One of the responsibilities imposed on all citizens is that of serving on jury duty when called upon to do so. For many years, Utah jurors were selected from voter registration lists, requiring a juror to be a U.S. citizen, 18 years of age, and registered to vote. This particular system of jury selection was criticized in the mid-1980s because a growing portion of the citizenry was failing to register to vote. Those individuals who were failing to register were, generally, younger people. After some deliberation, the courts added a second selection process for determining prospective juror names. Effective January 1988, Utah began using both driver license and voter registration lists for potential jurors.

The following methods for selecting prospective juror names have been or are being utilized in other states throughout the nation. Think of an advantage and disadvantage for each of these additional methods.

| | ADVANTAGE | DISADVANTAGE |
|---|---|---|
| Property Tax Lists: | | |
| State Income Tax Lists: | | |
| Utility Customers: | | |
| Telephone Directories: | | |

Upon appearing in court, the judge will address the prospective jurors. The judge may immediately excuse some prospective jurors. Any prospective jurors familiar with the case or any of the participants will be dismissed immediately. Some professionals, such as doctors, may be excused because it is believed that they can serve the community more efficiently through their occupation. If the trial may be lengthy and the jury is going to be sequestered or housed in a place away from public contact, some jurors, such as mothers with young children, may be excused.

After the judge has spoken with the prospective jurors as a whole, each prospective juror is questioned by the defense and prosecuting attorneys. The final jury is then selected by a process involving preliminary examination and peremptory challenges, as well as the decisions of both the prosecutor and the defense attorney regarding each prospective juror.

Utah, like other states, sometimes utilizes juries numbering less than 12 members. A Justice Court will use a jury of as few as four members. A juror may be called for one specific trial, or for several trials over a specific period of time. Jury members are paid for their service as jurors, but not as much as most individuals would make at their place of employment. Many employers make allowances for jury duty so that the employee does not lose money as he/she serves the community.

Because of the requirement that a jury consist of the defendant's peers, it is illegal for the government to select jurors in such a way as to discriminate against the defendant. If, for example, the population of a city is 50 percent black, and black defendants are consistently being judged by juries that composed almost entirely of whites, a conviction could be appealed on that basis.

Some people dislike the responsibility of jury duty and do not wish to serve. Others believe that judges are fairer and less expensive to the community.

## JURY SELECTION

The defendant, with input from his attorney, chooses whether the trial is to be heard by a judge or a jury. A majority of the criminal trials in the United States are heard by a jury. There are advantages for a defendant in either case. If the crime is particularly sensational, has received extensive media attention, or encompasses complex legal issues, it may be preferable to request that a trial heard by the judge. On the other hand, since a jury decision must be unanimous, having a jury hear the case requires that only one of the jurors be convinced of the defendant's innocence.

The judge will address the prospective jurors with regard to general questions, and will grant dismissal for reasonable requests. Lawyers for each side will then question each juror. Questioning of prospective jurors is known as *voir dire* examination. If the judge or either attorney feels that a juror is not qualified to hear the case, the juror is excused for cause. There is no limit to the number of challenges for cause that an attorney may present to the judge. Both attorneys are also entitled to a certain number of *peremptory challenges*, which allow them to excuse prospective jurors without stating a reason. Possible questions asked of a prospective juror might be:

- Are you familiar with anyone involved with this case?
- Have you been exposed to any pre-trial publicity?
- Would you believe an officer's testimony over a citizen's?
- Are you prejudiced against minorities?
- Do you believe in capital punishment in a homicide case?

After a jury is sworn in, its members are prohibited from discussing the case with anyone other than other jurors until the case is decided. In high-profile cases, a judge may sequester a jury if there is a danger that the jury may be tainted by outside influences or media coverage.

## OPENING STATEMENTS

The actual trial begins with opening statements by both attorneys. Through his/her presentation, each attorney informs the court and jurors of the nature of the case, the evidence that will be presented, and the facts he/she expects to prove. The prosecution goes first, followed by the defense attorney—who may elect to wait to make an opening statement until after the prosecution has rested, or may choose not to make one.

## PROSECUTION PRESENTATION

The job of the prosecutor is to present the state's case regarding the allegations against the defendant. Since a defendant is presumed innocent until proven guilty, the burden of proving or demonstrating guilt beyond a reasonable doubt rests with the prosecutor. The prosecutor calls his/her witnesses for direct examination to state what they know of the alleged crime or injury. Physical evidence such as documents, pictures, and other exhibits are also introduced.

## RULES OF EVIDENCE

In preparing for the trial, both the prosecution and the defense must review the evidence available and how it will be presented. Relevance is the first concern. Attorneys may decide that some evidence that has been gathered is irrelevant and does not relate to the case at hand. The prosecutor will be interested in evidence that will incriminate the defendant, while the defense will attempt to locate evidence that will validate the defense position

There are a number of categories of evidence. Demonstrative evidence includes exhibits actually used in the commission of a crime or photos of the crime scene. The judge must decide which evidence has probative value in assisting the jury in reaching a verdict and which evidence will only prejudice the jury against the defendant. Black-and-white photos of a murder victim may be used rather than color photos to ensure that the jurors do not become overly emotional.

Another example is *circumstantial evidence,* which is indirect evidence from which the jury is to make a logical inference. A witness may have heard something not directly linked to the crime, but which is meant to lead the jury to conclude that there is a correlation with the case. Another example is *corroborating evidence*, which is evidence that confirms or verifies other previously introduced evidence or testimony.

Not all evidence will be admissible. To ensure that the evidence presented is reliable, there are many rules of evidence that the court must follow. An objection may be raised by either attorney with regard to a specific piece of evidence or line of questioning. The judge may agree with the objection and sustain it, thus disallowing the evidence. If the judge disagrees with the objection, he/she will overrule the objection and allow the evidence to be admitted.

Law enforcement officers and other witnesses are allowed to refer to notes and reports that they have written about a specific criminal investigation. This is particularly useful in ensuring accuracy when a trial takes place months or even years after the crime. This allowance reinforces the importance of an investigating officer writing a thorough and accurate report.

Most witnesses are not allowed to express an opinion. The normal witness is called to testify about facts relating to his/her five senses (sight, smell, touch, taste, and hearing). Only an expert witness can offer an opinion as to evidence, and only in the area in which he/she is considered an

expert. Although an officer has sufficient training to make a legal arrest of a suspect using an alleged controlled substance, only an expert witness can establish that fact in court.

Hearsay evidence is not normally allowed in a trial. There are some exceptions, however, such as confessions, dying declarations, recorded testimony from a prior trial, official statements of public officials, and day-to-day business transaction records.

## CROSS-EXAMINATION

The Sixth Amendment states that the defendant has the right to *cross-examine* a witness against him or her. After a witness has been questioned by the lawyer who called him or her to the stand to testify, the opposing lawyer can then ask him or her questions. This is a significant element of the adversary system, and is designed to ensure that all the facts come out. The opposing attorney will try to discredit the witness, or clarify facts in a way favorable to his case.

Cross-examination must be limited to questions about topics that were raised during direct examination. Judges, in the interest of justice, may also cross-examine a witness. After cross-examination, the lawyer who originally called a witness may conduct *re-direct examination*, asking further questions to clarify any points that the opposing attorney may have raised.

## DEFENSE PRESENTATION

After the prosecution rests, the defense has the opportunity to present its case. There are a number of standard defenses that can be used, depending on type of case, legal considerations, guilt or innocence, and the wishes of the defendant. If the prosecution's case is believed to be weak, the defense may focus on the credibility of the witnesses. Since guilt must be proven beyond a reasonable doubt, a defense attorney may present alternative explanations of the evidence that leave some questions in the minds of the judge or jury as to the defendant's guilt.

The defense attorney may attempt to prove that the defendant did not commit the crime charged. The argument could be that the defendant is on trial due to poor police investigation, coincidence, or mistaken identity.

Since every crime must legally be proven by establishing all of its elements, the defense attorney may attempt to show that no crime was committed. For example, a defense attorney may present evidence that a defendant who is charged with a burglary never entered the premises in question.

In an *alibi defense*, the defense attorney will attempt to prove that his/her client is not guilty by introducing evidence that the client was at another location when the crime was supposed to have occurred. This could be substantiated by producing witnesses to testify that the defendant was elsewhere at the time the crime was committed.

Self-defense can be claimed in the case of an assault or homicide; the defense does not deny that the action took place, but instead focuses on the provocation. The defense will attempt to show that the victim provoked or forced the defendant into defending himself/herself or others from threats and attacks. It then becomes a task for the jury to decide who to believe and what level of force was reasonable and lawful under the circumstances.

The defense of *entrapment* is common with drug arrests. A defense attorney will attempt to show that police conduct induced the defendant to commit a crime he/she would not have committed

otherwise. It is not illegal for an officer to lie about who he/she is when working undercover, nor is he/she prohibited from buying or selling drugs and other contraband. However, there are two main restrictions on police conduct. Police cannot use tactics deemed to be inherently unfair, nor can an officer offer incentives to induce criminal conduct which would lead a normal person to commit a crime. (For example, if an undercover narcotics officer offers to buy marijuana at the going price—say $100 an ounce—that is not entrapment. But if he/she were to offer $1,000 for an ounce of marijuana, then even a normally law abiding citizen might be motivated to sell to the officer.)

In order to succeed with the insanity defense, the defense must show that at the time of the crime the defendant was not able to distinguish right from wrong due to some mental illness. This type of defense relies heavily on the testimony of expert witnesses. Although a person may be found not guilty by reason of insanity, it does not mean the defendant will be set free. He/she is usually committed to an institution for the mentally ill in order to protect society. Release is then based on the opinion of staff psychologists that the individual's mental condition is no longer a danger to the community. Studies indicate that persons committed to mental institutions are often kept in custody longer than persons convicted of the criminal offense.

Sometimes a defense of diminished responsibility is presented. By introducing evidence that the defendant was intoxicated, under the influence of drugs, or otherwise not in full control of his or her actions, the defense attorney hopes to persuade the judge or jury to excuse the illegal behavior.

## JURY INSTRUCTIONS

It is the responsibility of the judge to instruct the jury in its specific duties. The judge will explain to the jury what evidence it may consider, what must be proven by the state in order to get a conviction, and what choices the jury has. For example, in a homicide case, the jury must examine the evidence to decide whether the defendant actually killed the victim, then decide whether it was murder, manslaughter, or justifiable homicide.

The key point in the instructions will be the requirement that the jury find the defendant guilty beyond a reasonable doubt. This means that there is no rational doubt in a juror's mind as to the defendant's guilt. This standard requires more evidence than probable cause, which is the standard required to justify an arrest. There must be a logical explanation in a juror's mind for a perceived doubt.

Imagine that you are on a jury and are hearing a parking ticket case. The defendant claims that he should not have received the ticket because his mother drove his car that day and parked it illegally. Is this a possibility that could arouse a reasonable doubt in your mind?

Suppose the defendant claimed that his previous girlfriend was angry with him for dating her best friend. He claims that he left his car legally parked, but she rented a helicopter and had his car picked up and moved to the place where it was ticketed. Would this be plausible? What if evidence were introduced at the trial that her current boyfriend is a helicopter pilot?

## CLOSING ARGUMENTS

If it is deemed necessary, the prosecutor can present rebuttal evidence at the conclusion of the defense case, but this is not common. The prosecution will normally present a summary closing statement, reviewing the evidence presented and calling on the judge or jury to find the defendant guilty. The defense will then present its own closing statement, pointing out to the judge or jury why the defendant should be found not guilty. Emphasis will be placed on the weak points of the

prosecution's case. The prosecution can then offer a final concluding statement, since the government bears the burden of proof.

During the trial, if a mistake or error is made, the judge may be forced to declare a mistrial. The trial would be terminated at this point, and the jury would be released. The prosecution would then have to examine the circumstances and decide whether further prosecution would be justified.

## JURY DELIBERATIONS

After summation, the judge orders the jury to retire to the jury room for deliberation. While making their decision, the jury is not allowed to contact anybody except the judge. The jury will normally select a foreperson, who will control the discussion and voting. Several votes are required in order to reach a unanimous verdict. If, after a lengthy period of time, a jury cannot make a unanimous decision, it becomes a hung jury, and a mistrial is declared by the judge. At this point, the prosecution must decide whether to request another trial with a different jury.

## VERDICT

Upon returning to the courtroom, the foreperson will read the verdict. Each individual juror may be asked whether he/she concurs with the verdict. If acquitted of all charges, the defendant is freed. Otherwise, the defendant is scheduled for a sentencing hearing. In criminal cases, a verdict must be unanimous and must be given in open court with the defendant present, unless he or she chooses not to be. There are four possible verdicts in Utah:

- Guilty: The jury must find that the state has proven the elements of the offense beyond a reasonable doubt and that the defendant committed the offense.
- Not guilty: The jurors find that the state has not convinced them beyond a reasonable doubt that the defendant committed the offense.
- Not guilty by reason of insanity: The jury or the judge must determine that the defendant, because of mental disease or defect, could not form the intent to commit the offense.
- Guilty and mentally ill: The court or jury finds that the defendant was mentally ill, but was able to form intent to commit the offense.

## SENTENCING

After a conviction or a plea of guilty, the defendant has the right to be sentenced within no fewer than two days nor more than 30 days following conviction. If the defendant chooses, he/she may waive that time and may be sentenced the same day that he/she is convicted. Most judges order a pre-sentence report to be prepared by Adult Probation and Parole (AP&P). This confidential report may contain the defendant's adult and juvenile record, defendant's statements, drug and alcohol history, family history, and probation history. AP&P may also make a sentencing recommendation, which the judge considers when sentencing the defendant. In more serious cases, such an evaluation may take place at the prison or other institution. This is known as a 90-day evaluation, and goes into much more detail regarding the defendant.

At the sentencing hearing, the defense and prosecution will be allowed to present any aggravating or mitigating information with regard to an appropriate sentence. The victim(s) are also allowed to be present and make comments as to the sentence. The rules of evidence are not applicable during a sentencing hearing, and evidence that may have been suppressed during the trial will be

admissible during sentencing. The judge, using his/her discretionary powers, will then impose a sentence that may involve jail or prison, probation, fine, restitution, or a combination of these penalties. The sentence given by the judge cannot normally be appealed.

In capital cases, the counsel for the defense introduces evidence that attempts to show that mitigating circumstances outweigh any aggravating circumstances, thereby justifying a life sentence rather than the death penalty. The state introduces evidence attempting to prove that aggravating circumstances outweigh mitigating circumstances, thereby justifying the death penalty. The jury or judge then deliberates whether the person should be given the death penalty or a life sentence.

The following excerpt from a Supreme Court case explains what a sentencing judge should consider prior to sentencing an individual.

> The most serious question deals with the severity of the sentence. In determining whether probation shall be granted and, if a sentence is to be imposed, its severity, there are many factors to be considered. The primary function of the criminal law is to protect individuals and society from the depredations of the criminally bent. In furtherance of this purpose, it is deemed necessary to mete out punishment as a deterrent to others and to lock up incorrigible criminals. On the other hand, the rehabilitation of criminals is one of society's major safeguards. Among factors meriting consideration are the family ties, age, mentality, education, experience, and social and cultural background of the convicted individual; his willingness to work at honest labor; his past criminal record or law abiding conduct; the motivation for the offense, the nature of the offense, and the amount of violence, if any, circumstances aggravating or mitigating the offense; community attitudes toward the offense; and the individual's potentialities for reform or recidivism (*State v. Etchison,* 188 Neb 134, 195 N.W. 24 498, [1972]).

**WHO HAS TO TESTIFY**

In order to ensure that the defendant receives due process, the court will issue subpoenas requiring the appearance of witnesses for the defense. A witness must appear in court as required or be charged with failure to appear, which is punishable by the court. Once a witness is under oath, he/she is required to truthfully and completely answer all questions except those which may incriminate himself/herself personally.

There are several other exceptions to this rule. One spouse cannot be required to testify against the other, and the defendant's conversations with his/her attorney, doctor, or clergy (e.g., priest, minister, bishop) cannot be used in court. Another exception to the rule is the identity of a confidential informant used by law enforcement.

Why do you think each of these exceptions is made?

Husband/wife:

Doctor:

Priest/church member:

## APPEAL

A convicted defendant has the right to ask a higher court to review his/her case. The appeal must be filed within 30 days after the entry of judgment. This does not require a new trial. Most courts are a court of record, and a record of the proceedings will be forwarded to the specific appellate court of review. The appellate court will review the written proceedings of the previous trial and verify the legality of the trial proceedings. If there was a significant error, such as the use of evidence that was illegally obtained, then the conviction will be overturned and the case will be remanded or returned to the lower court. A new trial is held, correcting the error previously made.

The prosecution may also appeal a case in limited circumstances. This appeal is generally handled by the State Attorney General's Office. On occasion, an appellate court, usually the U.S. Supreme Court, will find a law unconstitutional. When this occurs, the law is no longer enforced, and no one can be convicted for violation of that particular law.

## TESTIFYING IN COURT

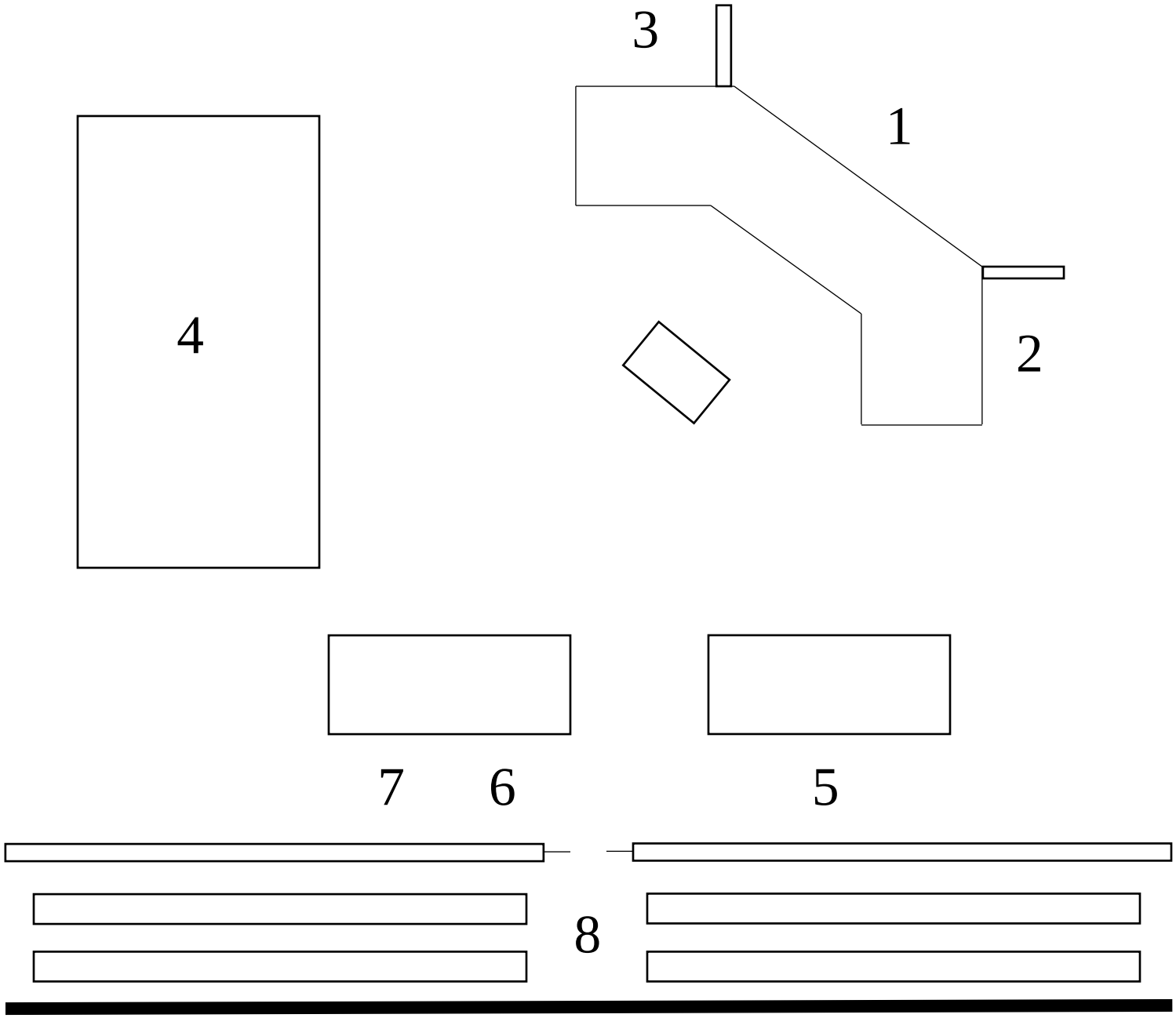
The testimony of every witness in a courtroom must be evaluated by the judge, or by every member of the jury. The credibility of a witness is crucial for a juror, who must decide whether the person on the witness stand is honest and telling the truth. Conduct, actions, appearance, and behavior will influence the jurors as they decide whether or not to believe the testimony of each witness.

An officer who is called to testify may be questioned about what he or she saw, what he or she did, or what he/she heard other people say. An officer might also be called to testify as an expert in a specific field in which he/she is qualified. Regardless of the type of testimony, if it is given in an unprofessional manner, it will weaken the case against the defendant.

An officer will be called to court many times in a typical career. The judge and jury, as well as the public, expect an officer's courtroom demeanor to be totally professional. The following suggestions indicate the professional courtroom demeanor that would be expected of an officer on the witness stand.

- Discuss the case with the prosecutor prior to trial, outside the courtroom.
- Arrive at to the trial on time, or early if possible.
- Have a good physical appearance. (Dress neatly and conservatively.)
- Do not laugh or joke while in the courtroom.
- Review notes before entering the courtroom.
- Keep notes where they can easily be found when needed during trial.
- When actually testifying:
    - Speak loudly and clearly.
    - Do not use slang or police lingo.
    - Make sure a question is understood before answering.
    - Do not volunteer information.
    - Address the judge or jury.
    - Do not argue with the defense attorney.
    - Do not show approval or disapproval of court proceedings or the judge's decision.
    - If a case is lost, have the prosecutor explain why so that future cases are better prepared.

# Criminal Trial Court

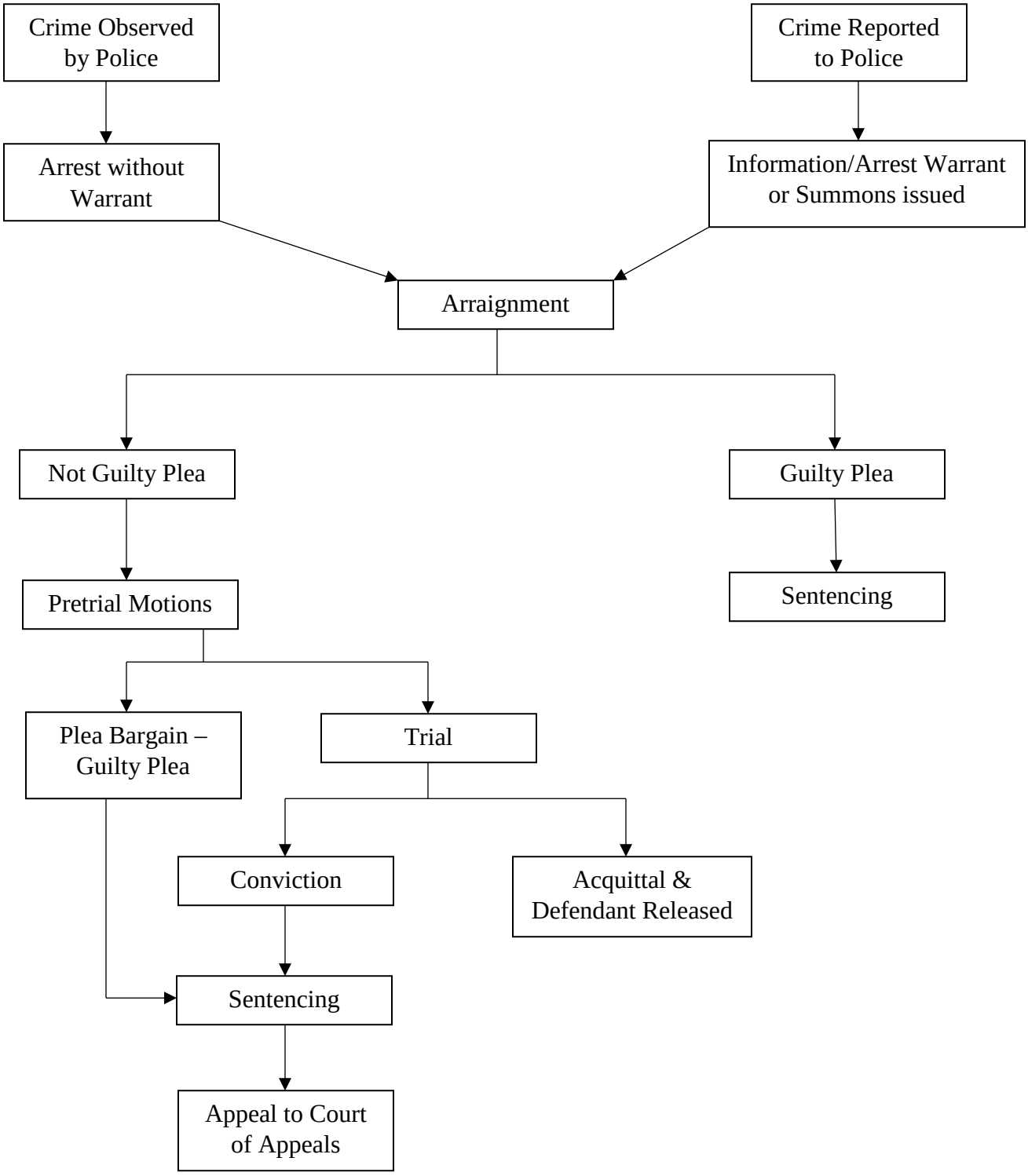



Personnel:

| | | |
|---|---|---|
| | Audience | Judge's Clerk |
| | Defendant | Jury |
| | Defense Counsel | Prosecutor |
| | Judge | Witness |

1. _____
2. _____
3. _____
4. _____
5. _____
6. _____
7. _____
8. _____

# Misdemeanor Case Process



# Felony Case Process