



Expat Counsel

By James Finch and Nilobon Tangprasit

We've talked earlier about the players and the kind of proof that is required to be introduced in a criminal trial. Now we will give you an overview of some of the principal steps in a criminal trial.

As discussed earlier, most criminal cases are initiated by the public prosecutor. We'll discuss this in depth next time, because how this happens goes to the heart of the criminal process in Thailand.

The trial starts when the accused is brought to court to be charged with the crime by the public prosecutor. The judge may at this time have a preliminary examination of the case, but, as a practical matter, usually just rules on whether the charge conforms to the law. If the judge accepts the charge, he or she may ask the accused to give a statement and, with the public prosecutor and defence, set a date for trial.

At the time appointed for the trial to begin, the prosecutor, judge or judges and the defendant and his or her lawyer meet in the courtroom. The judge or judges sit facing the public prosecutor, the defendant and his or her lawyers, who sit at separate tables.

The public sits behind the tables occupied by the parties. Normally, the public is allowed to attend criminal trials, but the judge may on his or her own, or at the request of either of the parties, close the trial to the public if he or she thinks doing so would be in the interest of public order, good morals, or state security. An example of when a judge might close a trial to the public is where the victim of a sex crime is a child and the judge doesn't wish the child to be exposed to negative publicity as a result of the trial.

If a member of the public, including the press, wants to record, photograph or video any portion of the trial, he or she must apply in a letter to the chief judge of the court, giving the case number, date and the reason for the recording. Without prior permission, recording, photographing or videoing any portion of a trial is considered in contempt of court and will expose the person doing it to punishment.

The judge announces the beginning of the trial. The judge makes a recording of the entire trial and a clerk enters all testimony into a computer. The exact method of recording the trial is set by regulations made by the Chief Judge of the Supreme Court.

The first formal statement is made by the prosecutor. Generally, he or she will start with a statement of the facts and law on which he or she intends to rely. Then the factual evidence, discussed in earlier columns, from witnesses and physical evidence such as fingerprints, documents, weapons, contraband and photographs, is introduced.

Generally, the judge has discretion to admit any evidence likely to prove the guilt or innocence of the accused. The court may require expert testimony on any fact that constitutes a substantial issue in the case. Likewise, the parties may introduce expert testimony on substantial issues.

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Part XLI: The criminal trial — how it is conducted



Documents may be presented as evidence. Copies of official documents such as government records certified by officials are acceptable. Otherwise, if the original of the document to be presented is not available, a certified copy or oral evidence of what was in the document will be admissible.

Evidence introduced by the prosecution may be questioned by the defence. Witnesses may be cross-examined after they have given testimony for the party who asked them to appear. For example, the prosecution might introduce a witness who says he witnessed the crime. When the prosecution has finished questioning this witness, the defence might then confront that person about evidence to the effect that he was out of the country at the time of the crime and couldn't possibly

have witnessed it. As will be explained later, it is the judge who will eventually decide who to believe.

Parties may object to the introduction of evidence by their opponents. We will cover what can be introduced and what can be objected to later, but suffice to say here that the judge has discretion on what to accept or reject as evidence.

If the judge excludes something, he or she must explain this in the written record of the trial so that, if necessary, it may be evaluated by other judges if the case is appealed.

Then the defence may put on its case, first with a statement, then with witnesses and other evidence, just as with the prosecution. The same rules mentioned above apply and the prosecution may cross-examine witnesses and object to evidence.

Next time we'll begin a discussion of important points along the road of the trial and how it's all resolved. ■

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