

Mexico's Traditional Criminal Justice System

A Layperson's Guide

By Jane Kingman-Brundage



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About Justice in Mexico:

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About this Publication:

This paper introduces the legal logic underpinning Mexico's traditional 'mixed inquisitorial' Criminal Justice System in the tradition of Civil Law. The discussion begins by comparing salient characteristics of the Civil Law and Common Law traditions. Three fundamental features alien to Common Law are identified: authoritarian nature, reliance on a deductive process anchored in both a Penal Code and a Code of Criminal Procedure, and a formal documentary focus. Mexico's traditional Criminal Justice System is then examined against this broad framework. A description of the Criminal Justice System's structural components—including roles, responsibilities of various court officials—sets the stage for examining how the Criminal Justice System actually *works*—its four major procedural phases and the steps within those phases.

About the Author:

Jane Kingman-Brundage holds a MA in Psychology (Columbia U.) and Sociology (The New School). A 30-year career in the Service Sector is distinguished by pioneering work in Service Mapping—a focused flowcharting technique for diagnosing and finding solutions to service quality problems. Information and logic taken from Service Maps was used to present technical information in language readily understandable by technical sales personnel and knowledgeable clients, who included the major money center banks (New York City), Xerox-Canada, Swedish National Railroad and a two-year project with Pemex, *Petróleos Mexicanos*.

In 2012 Jane began translating articles from the Mexican press for *Mexico Voices* founded by her husband, Reed. In the context of increasing violence arising from the Drug War, pieces involving the judicial system stood out. Efforts to understand news reports of legal proceedings in the traditional ('inquisitorial') criminal justice system led to development of this paper.

Acknowledgements:

The paper's serendipitous origin deserves mention. The author happened to admit to a houseguest her inability to make sense of references in the Mexican press to Mexico's criminal justice system. In response, the guest, retired Massachusetts State Court Judge R. Peter Anderson—who spent ten years bringing mock trials to Chinese attorneys and judges to familiarize them with adversarial trials conducted in the tradition of Common Law—offhandedly remarked that the tradition of Civil Law predominates in a majority of the world's countries; whereas the Common Law tradition prevails only in the United Kingdom and in England's former colonies.

Cultural assumptions thoroughly upended, nothing would do but track down what this meant in practical terms. Thus began a four-year investigative adventure aided at every turn by Mexican and U.S. legal professionals. Every effort has been made to ensure the accuracy of the information presented here.

In the earliest stages of the research, Mexican lawyer Samantha Magdalena Toro Sánchez drew on her experiences working in the court to adapt the traditional Federal Code of Criminal Procedures (*Código Federal de Procedimientos Penales*) into a Spanish this Anglo writer could understand, then patiently corrected and expanded on early drafts in English. U.S. attorney Gregory K. Gomes reviewed a later version, his comments providing not just the much-needed U.S. legal perspective but reflected the discerning eye of the 'first reader' which greatly improved the readability of the procedural description. But the paper could not have achieved its stated goal of describing the judicial logic grounding Mexico's traditional criminal justice procedure without the keen insight of Mexico City attorney Edilberto López Martínez, who had the patience to deal with difficult questions intended to tease out underlying juridical assumptions.

The paper owes its final form to the critical review provided by a third Mexican lawyer, Octavio Rodríguez Ferreira, coordinator of the University of San Diego's Justice in Mexico project, who saw the paper's potential for explaining Mexico's traditional Criminal Justice System to U.S. attorneys serving as trainers in a course for Mexican lawyers designed to improve oral skills needed for success in the new 'adversarial' system calling for cases to be argued before the Judge in open court.

J. Reed Brundage merits special mention not just as founding editor and guiding spirit of *Mexico Voices*, but as the author's understanding and ever-supportive husband across the decades.

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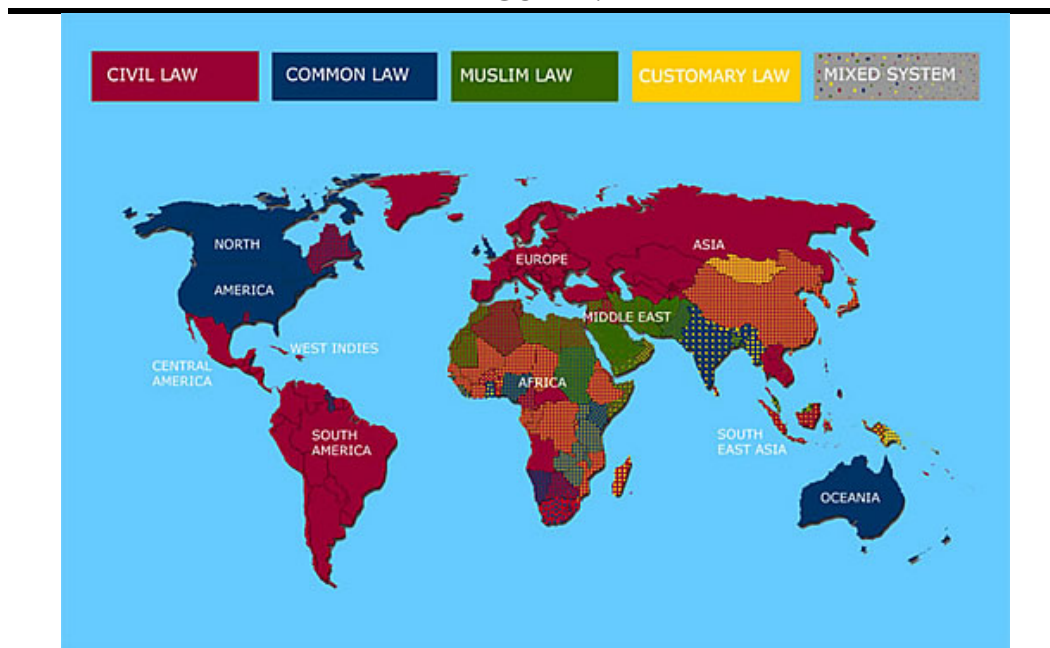
Mexico's Traditional Criminal Justice System

Jane Kingman-Brundage

INTRODUCTION

Getting a handle on the logic of Mexico's Criminal Justice Procedure poses a real challenge for anyone unfamiliar with the tradition of Civil Law based on the Napoleonic Code—derived, in turn, from Roman law. The Civil Law tradition is significantly different from the Common Law tradition that grew up in Britain and the English-speaking colonies, including the United States. Notably, Common Law is not the world's dominant legal system. Below is a world map depicting the distribution of the world's major legal systems (JuriGlobe—World Legal Systems Research Group, n.d.).

FIGURE 1:



SOURCE: [JuriGlobe—World Legal Systems Research Group](#).

At a fundamental level, the disparity between the traditions of Common Law and Civil Law come down to whether the system is top-down or bottom-up. In "Inventing Freedom: How the English-Speaking Peoples Made the Modern World", Daniel Hannan (2013, p. 77) explains the difference:

“What distinguishes the common law from the Roman law that predominates in Continental Europe and its colonial offshoots? Chiefly this. The Continental legal model is *deductive*. A law is written down from first principles, and then those *principles are applied to a particular case*. Common law, to the astonishment of those raised in the Roman or Napoleonic systems, does the reverse. It builds up, case by case, with each decision serving as the starting point for the next dispute. It applies a doctrine known to lawyers as *stare decisis*: previous judgments should stand unaltered, serving as precedent. Common law is thus empirical rather than conceptual: it concerns itself with actual judgments that have been handed down in real cases, then asks whether they need to be modified in the light of different circumstances in a new case.”
Emphasis added.

Rather than describing the Civil Law tradition as *conceptual*, we might prefer the term *formal*. As discussed later, the tradition of Civil Law adheres to first principles through the formal presentation of documents that conform to those principles. In Mexico's federal criminal law, these principles are organized in two codes:

- Federal Criminal Code [[Código Penal Federal](#)] (1931); and
- Federal Code of Criminal Procedures [[Código Federal de Procedimientos Penales](#)] (1934).

Each state also has its own codes of criminal law and criminal justice procedures. The goal here is to present the basics of the traditional Mexican Criminal Justice System, grounded in the tradition of Civil Law, in lay language to English-speaking readers. The discussion is presented in two parts:

- **Part I:** What the Criminal Justice System is, i.e., its *Structure*; and
- **Part II:** How the Criminal Justice System Works: *Who, What, Why*.

Mexico's traditional Criminal Justice System hews to the tradition of Civil Law. Simply put, the Public Prosecutor and Defense Attorney submit documents to the Judge, who is responsible for assessing evidence *represented in those documents* and handing down a ruling to dismiss, convict or acquit. It cannot be stated too strongly: in the Civil Law tradition, for reasons to be discussed later, *the paramount concern is ensuring that documents conform to the letter of the law*. In this sense, then, the Civil Law tradition is *formal*.

The implications of this strict documentary focus are far-reaching. As will be shown, it affects everything from definition of the various stages in the judicial procedure to the organization of judicial support staff and their respective roles. These differences, at times dramatic, are especially marked in the procedure for prosecuting criminal cases.

Radical transformation of Mexico's traditional, mixed inquisitorial¹ criminal justice system is scheduled to be fully implemented by June 18, 2016, when the country's new criminal justice procedure based on oral ('adversarial') judicial proceedings is due to go

¹ At the beginning of the 20th century, judicial reforms were passed (1934) that adopted some features of the adversarial system, giving rise to what is described as the 'mixed inquisitorial' system.

into effect. The reform law was passed in 2008, but implementation of the new system is proceeding slowly. Scholars and practitioners have taken advantage of this ongoing transition to undertake an active assessment of the traditional (mixed inquisitorial) system. Judges and attorneys specializing in criminal defense and human rights have published insightful critiques in the public press.²

Thoughtful discussion of Mexico's criminal justice system inevitably makes reference, directly or indirectly, to the sometimes considerable gap between the formal Criminal Justice Procedure and actual practice; i.e., how the criminal justice system *really works*. A popular Mexican saying is apropos: "We treat the law with respect (i.e., we defer to the authority that concretely represents it), but we don't comply with it."

In the report titled "In the Name of 'War on Crime': Analysis of the Phenomenon of Torture in Mexico", researched and published in 2012 by the French organization Christian Action for the Abolition of Torture (ACAT, French acronym), the report's author, Anne Boucher, writes of a gulf between the progressive set of human rights laws brandished (Boucher's word) by Mexico's government and the prevailing reality. In her report, Boucher, head of ACAT's Americas Department, trenchantly summarizes Mexico's current Criminal Justice Procedure (cited in [Mergier](#), 2012):

"Completely written and secret, judicial proceedings are characterized by their slowness, by their bureaucratic nature, by their opacity, and especially by the *unequal treatment afforded to prosecution and defense*. Rather than favoring objective investigation of the facts, public attorney and police are clearly seeking criminal prosecution and conviction, and that bias tends to favor the practice of torture. Judges should be impartial *a priori*, but in many cases, their interventions support the prosecution. Even if not openly specified, the defendant actually appears 'guilty until innocence is proved.'" Emphasis added.

Law Professor [Javier Dondé Matute](#) (n.d.), School of Law, National Autonomous University of Mexico, describes one significant anomaly:

"In our traditional [*mixed inquisitorial*] system, the Public Ministry [*charged with the prosecutorial and investigative functions*] should establish a much broader threshold of proof [*of guilt*], but it is also endowed with public faith [*fe pública*], such that its actions are almost incontrovertible, or what is worse, it biases the burden of proof against the defendant, since it falls to the *defense team to rebut assertions of the Public Prosecutor compiled during the Preliminary Investigation*. This violates the principle of presumption of innocence and constitutes the Public Prosecutor as *de facto presiding judge*". Emphasis added.

Dondé Matute is not alone. Mexico's internationally esteemed legal scholar, Miguel Sarre, corroborates his remarkable charge. In the article [Mexico Criminal Justice Reform in Few Words](#), Sarre (2013) writes that the 2008 criminal justice reform provides

² [Mexico Voices](#) has translated and posted many of these critiques. This paper draws on those sources and provides links to the translation and to the original article in Spanish when available to non-subscribers.

“...greater assurance of justice both for persons accused and for victims. To do this, the model adopted strengthens the role of judges: all evidence will be presented in public trials in his or her presence. This will give more credibility to justice...Procedural changes also aim to strengthen the role of the defense, while the Public Ministry will lose the procedural advantages by which they are *able to condition or determine the direction of the trial even before it starts*. Thus, the “preliminary” (or rather “final”) investigation is eliminated in which prosecuting counsel seeks, clears and assesses means of evidence *for itself and by itself*; whereas, now [*under the reform*] the prosecutor will have to present its findings to the judge, subject both to the possibility of defense rebuttal and submitted for public scrutiny.” Emphasis added.

The constitutional judicial reform law went into effect on June 18, 2008. In recognition of the need for gradual implementation, the law mandates full implementation by June 18, 2016. In 2006, however, some states began incorporating additional features of the adversarial system into their own judicial systems. The 2008 judicial reform legislation was developed, in part, by drawing on the experiences of those states.

Once the 2008 reform law went into effect, other states began implementing immediately, such that today four states (Chihuahua, Morelos, State of México and Yucatán) are classified as ‘fully operational’. At the other end, implementation is reportedly seriously lagging in three states (Michoacán, Baja California Sur and Sonora). Implementation in the remaining twenty-five states is classified as ‘partially operational’. Notably, under the traditional mixed inquisitorial system the courts are located inside prison facilities; thus, a key component for implementing the accusatorial system is construction of courthouses, termed ‘infrastructure’ in the following comment ([Martínez, 2015a](#)):

“Implementation of the new criminal justice system will be gradual. Although the law anticipates that it should be in effect throughout the country by June 18, 2016, the ‘ideal’ infrastructure will be completely ready within a decade. ...

“The commitment by the federal authority to the June 2016 legal deadline is to have in place the ‘basic infrastructure’ for the operation of oral [*adversarial*] trials”

Former public prosecutor Alicia Beatriz Azzolini (cited in [Sánchez, 2015](#)) recently commented:

“The worst that could happen is that if the model doesn’t work well, they’ll say ‘it doesn’t work, it failed,’ and then we would remain with the old [*mixed inquisitorial system*] that we had. That would be very serious.”

A basic understanding of the traditional mixed inquisitorial system thus improves the ability to make sense of whatever takes place in Mexico’s criminal justice system not just in 2016, but also in the years to come. It is worth noting that Mexico is joining other Latin American countries engaged in moving toward an accusatorial criminal justice system; namely, Argentina (1991), Bolivia (2001), Colombia (2005), Costa Rica (1998), Chile (2000), Ecuador (2001), El Salvador (1998), Guatemala (1994), Honduras (2002), Nicaragua (2001), Paraguay (2000), Peru (2006), Dominican Republic (2004) and

Venezuela (1999) ([*Análisis Comparado del Sistema de Justicia Penal de México con América Latina*](#), n.d.).

Our goal here is to explain Mexico's Criminal Justice System on its own terms, which is optimally achieved by describing its underlying, internal logic. This description is the result, first, of independent research conducted by consulting publicly available (often online) Spanish language documents, including Government, sources. The select few documents in English are by attorneys credentialed both in Mexico and the United States.

Finally, careful attention has been paid to translating Mexican legal terms from the Spanish in ways that elucidate for English-speaking readers the sometimes subtle meanings inherent in terminology associated with the tradition of Civil Law. Hence, we are sensitive to translations of legal terms in standard dictionaries, which often seem subtly biased in favor of the Common Law framework. Three examples immediately come to mind. *Juicio* is often translated into English as *trial*, but the translation is misleading, since to the Anglophone reader steeped in the Common Law tradition, it suggests a process where cases are argued in open court, with witnesses testifying and undergoing cross-examination. Since this is not the case in the inquisitorial system based on the Civil Law tradition, we use the term *judicial procedure or judicial proceeding*.

Facing the same cultural challenge, the verb *declarar* and the noun *declaración* are often respectively translated as *to testify* and *statement or testimony*. In the legal context, however, these terms are more precisely understood as meaning *to make a formal, legal statement* before prosecutorial officials. Transcribed by clerks, the statement is presented to be signed by the person who made it. This signed formal statement becomes part of the *expediente*, which brings us to the third example. Often translated as record, the *expediente* is the formal, legal case file containing all documents and exhibits pertaining to a given case. As discussed later, this file can run to five hundred or even a thousand or more pages.

We turn now to consider Mexico's traditional 'mixed inquisitorial' Criminal Justice system.

PART I: WHAT THE CRIMINAL JUSTICE SYSTEM IS

Understanding how the criminal justice procedure works is facilitated by familiarity with the procedure's major structural components and roles performed by key actors.

Overview

One Mexican source is the 83-page booklet titled, "What is the Judicial Authority of the Federation?" ([*¿Qué es el Poder Judicial de la Federación?*](#)).³ The Introduction to the Fourth Edition states:

³ First published in 1999 by Mexico's Supreme Court of the Nation (SCJN).

"The Supreme Court, aware of the importance of civil society being familiar with the functioning of the Judicial Authority, has decided to publish, for the fourth time, this work ... whose acceptance by the legal profession and the general public has been evident since its initial publication in 1999.

"The widespread acceptance of this work is due to the simplicity of its descriptions of the comprehensive agencies of the Judicial Authority and to its educational qualities" (SCJN, 2005, pp. 15-16).

The constitutional reform for the 'adversarial' judicial system was not adopted until 2008, but starting in 2006 a few states began anticipating that reform by implementing their own versions. Thus, the description of the structure and functions of the Federal Judiciary set forth in the 2005 booklet is a valuable source of information on the traditional, 'mixed inquisitorial' system. When cited here, the abbreviation SCJN is used.

The fundamental structure of Mexico's legal system is laid out clearly and succinctly in the opening paragraphs. In short, the:

- Federal Constitution is the Supreme Law of the Mexican Union; it is divided into two parts: *dogmatic* and *organic*; the
- Constitution's *dogmatic* part assembles the individual rights, i.e., guarantees granted to individuals, that must be respected by the State; the
- Constitution's *organic* part organizes public authorities to prevent abuse of power; the
- Federal Constitution created the Judicial Authority and charged it with defending constitutional order, which is guaranteed by the *amparo* (SCJN, 2005, pp. 17-19).

Procedurally, the *amparo* arises in connection with the process of reviewing any court order, ruling or resolution, up to and including the court's Final Resolution (i.e., of guilt or innocence) that concludes a criminal procedure. It is, however, appropriate to introduce *amparo* here as a legal concept precisely because of its crucial role in the logic supporting the entire criminal justice procedure. *Amparo*⁴ is defined as:

"... the means of protection *par excellence* of individual rights established in our Constitution. Through this [*amparo*], we can protect ourselves from laws or acts of the authorities that violate our individual rights" (SCJN, 2005, p. 39).

Another essential component of the criminal justice system is the *juicio*, judicial procedure:

"The *juicio* is the set of actions carried out before an agency of the State, namely a court, in order that this court, based on proven facts and through application of the law, might resolve a conflict or dispute arising between two or more subjects with opposing interests" (SCJN, 2005, p. 29).

⁴ *Amparo* is discussed in Part II when it arises in connection with the process of review contesting the Judge's Final Resolution in a criminal case.

In accordance with the documentary nature of the civil law tradition, the stated 'set of actions' is a series of documents formally submitted by the Public Ministry (performing its prosecutorial function) and Defense Attorney to the court. To be clear, the term 'documents' also covers such items as charts, maps, photographs, videography, etc.

The court responds to documents submitted:

- First, by reviewing them to assure their conformity with legal requirements; underscoring the significance of this point, a Mexican attorney observed, "Even many Mexicans do not understand the importance of submitting documents that *strictly conform to the law*"; and
- Second, by issuing a series of judicial orders that are, of course, also documents; these judicial orders conclude with the Final Resolution, or ruling, of guilt or innocence in criminal cases.

Finally, two additional legal concepts are key for understanding the basics of the traditional Criminal Justice System. Mexican lawyers will explain that there is *historical truth*, *legal truth* and *what actually happened*. Two case studies (see text boxes) illustrate the tension between the legal concepts and scientific forensic and standard crime investigation procedures.

Historical Truth

The Public Ministry is responsible for performing prosecutorial and investigative functions within the Office of the Attorney General. When its findings are issued at the conclusion of its Preliminary Investigation, these findings become the *historical truth* in the case.

Reflecting on the current transition from the traditional 'mixed inquisitorial' to the coming 'adversarial' criminal justice system, [Mario Alberto Martínez Pérez](#) (n.d.), a Judge in Oral Proceedings at the Superior Court in the State of Oaxaca, observes that the traditional mixed inquisitorial criminal procedure considered that the primary purpose of the criminal justice process was to obtain the *historical truth* of the events reported as a crime, and it considered other values and interests to be subordinate to the goal of obtaining absolute truth, which is by its nature historical. Remarkably, Judge Martínez Pérez adds that within the traditional mixed inquisitorial criminal justice system, this intention has served to justify the violation of fundamental rights without taking into account the power of the State.

The high-profile case of the enforced disappearance of 43 Ayotzinapa Rural Normal School (Teachers College) students in the municipality of Iguala, Guerrero, in 2014 is a case in point.

CASE STUDY 1: 43 AYOTZINAPA STUDENTS DISAPPEARED

What actually happened in Iguala, Guerrero, the night of September 26, 2014, remains murky. What is known is that 43 students disappeared; they have not been found. The government has announced the arrest of 104 people, including 64 municipal police and 40 presumed members of the *Warriors United* cartel operating in the region. Iguala's former mayor is in prison facing charges of having masterminded the disappearance; the mayor's wife is charged with links to organized crime.

Amidst unrelenting Mexican and international media attention and the tireless activism of the disappeared students' parents, then Attorney General Jesús Murillo Karam (cited in [Castillo García, 2015](#)) held a press conference in January 2015 during which he asserted that the 'historical truth' of what happened in the so-called Iguala case is already known—namely, that the bodies were incinerated at the Cocula garbage dump; the remains were thrown into the San Juan River. Thus, he said, the case should be 'closed'. Murillo Karam also confirmed that, according to expert opinions, evidence and detainee statements, the 43 students from Raúl Isidro Burgos Rural Normal School of Ayotzinapa were killed and incinerated by members of the *Warriors United* cartel.

The Attorney General thus attempted to close the case despite serious questions raised by the Argentine Forensic Anthropology Team (EAAF) about the forensic evidence—e.g., the EAAF cannot confirm the chain of custody of the human remains and has criticized the government for failing to secure the Cocula garbage dump ([Turati, 2015b](#)). Additionally, the Interdisciplinary Group of Independent Experts (IGIE) from the Inter-American Commission on Human Rights is also seeking, so far without success, to interview military personnel on duty that night in order to assess the military's role in the events.

Apparently, the former Attorney General's attempt to impose 'historical truth' has not yet succeeded. In a meeting with victims' parents in July 2015, current Attorney General, Arely Gómez González, stated that the case remains open, and new investigative lines are being pursued (cited in [Díaz, 2015](#)). The case is ongoing.

Legal Truth

When a First-Level Court Judge issues the Final Resolution (*Resolución definitiva*) establishing the guilt or innocence of the Accused, that resolution and the entire legal file on which it is based become the *legal truth* in the case; as such, the case cannot be revisited in light of subsequent findings. This legal concept is amply illustrated in another high-profile case: Alberto Patishtán, indigenous Tzotzil from Chiapas.

CASE STUDY 2: ALBERTO PATISHTÁN

Alberto Patishtán, indigenous Tzotzil from the municipality of El Bosque, Chiapas, was a long-time bilingual (Tzotzil, Spanish) teacher known for his activism ([Mandujano](#), 2013).

The three weeks before the July 2, 2000, presidential election—in which the PRI [*Revolutionary Institutional Party*] would lose both the presidency (ending its 70-year hold on power) and the governorship of Chiapas—were tumultuous. In the course of this campaign, Patishtán accused El Bosque's mayor, Manuel Gómez Ruiz, of corruption.

On the morning of June 12, 2000, a group of nine officials heading to El Bosque were ambushed in a nearby hamlet. Seven were killed. The van's driver, Rosemberg Gómez Pérez—son of Mayor Gómez Ruiz—was one of only two survivors.

On June 19, 2000, State Police—acting without an arrest warrant—detained Alberto Patishtán. The Chiapas government charged him with organized crime, homicide, possession of weapons for exclusive Army use and aggravated assault.

Much later, Patishtán would comment that his biggest mistake was antagonizing PRI Mayor Manuel Gómez Ruiz, whose son provided the eyewitness testimony on which the judge would base his Final Resolution of guilt. Patishtán has said that he suffered violation of his individual rights, including physical and psychological torture, from the first moment of his arrest.

Many witnesses testified that on the day of the ambush, Patishtán was teaching his classes at the town's elementary school. The judge, however, accepted as damning the sole testimony provided by the Mayor's son—despite evidence presented by the defense that the testimony was possibly 'induced', i.e., the witness lied; and by circumstantial evidence indicating 'irregularities' in how the testimony was obtained. The judge also rejected the exculpatory evidence presented by the defense on the unsubstantiated grounds that it was 'instructed'.

Ultimately, the judge ruled that Patishtán was guilty and sentenced him to 60 years in prison. This Final Resolution of guilt, together with the entire case file (*expediente*), thus became the 'legal truth', which meant that *evidence compiled in the case file could not be revisited in light of subsequent findings*.

Patishtán spent thirteen years in prison before Alberto Leonel Rivero, attorney with the Office for Strategic Defense of Human Rights, AC, succeeded in arranging for the case to be reviewed by the Supreme Court. On March 6, 2012, by a vote of 3-2, the Justices turned down the request and sent the case to the Collegiate Circuit [*Appeals*] Court in Tuxtla-Gutiérrez, Chiapas.

Interviewed about the Court's decision in Patishtán's case, Supreme Court Justice Olga Sánchez Cordero (cited in [Mosso](#), 2013) explained that Patishtán's petition relied on reassessing the proof of guilt [*evidence*], which is not technically permitted in either a motion for recognition of innocence or in the Supreme Court's case law. For these reasons, the Supreme Court denied the petition.

On September 2013, the First Collegiate Circuit Court ruled that Patishtán's petition was unfounded, since it asked for the *invalidation* of evidence against him based on jurisprudence [*precedence in case law*], and arguments and judgments issued by the Supreme Court and Collegiate Circuit Courts. The courts

thus consistently denied Patishtán's petitions explicitly on the grounds that they were in violation of the '*legal truth*'. On October 31, 2013, President Enrique Peña Nieto pardoned Alberto Patishtán Gómez based on violations of his human rights ([Monroy, 2013](#)), specifically those relating to due process.

We turn next to consider the Judiciary System.

Judiciary System

Jurisdictions

Jurisdiction refers to the kinds of cases a court is authorized to hear. Under the U.S. Constitution, federal courts decide disputes involving the Constitution and laws passed by Congress. State courts have broad jurisdiction deriving from statutes passed by the state's legislature; hence, the cases that individual citizens are most likely to be involved in—robberies, traffic violations, broken contracts, family disputes—are usually tried in state courts. In the United States, then, most criminal cases violate state laws and are tried in state courts ([Federal vs. State Courts – Key Differences](#), n.d.).

Mexico handles jurisdictional issues similarly, but with important differences:

"Mexico's Constitution establishes two levels of government subordinated to it: the federation and the states. There is no subordination between them; each makes decisions within its jurisdiction. Each state has its own Constitution, which may not contradict the federal Constitution.

"Laws are made at the federal, state and municipal levels by, respectively, the federal Congress, state legislatures and by councils of the municipalities. Federal laws apply throughout the country; state laws apply only in the states; municipal ordinances apply only in the municipality" [[SCJN](#), 2005, pp. 21-22].

Similar to the U.S. system, criminal activity in Mexico falls under either federal or state jurisdiction, but the Mexican system classifies criminal activity based on *who* or *what* is affected, and *where* the crime takes place. All Mexico's airports, for example, are under federal jurisdiction; hence, any criminal activity that occurs in any airport is prosecuted in federal court:

- **Federal Jurisdiction (*Fuero Federal*)** refers to actions that affect the health, economy and overall national security or interests of the Mexican Federation, including its structure, organization, operation and heritage. Examples include such actions as attacking public roads, smuggling, tax fraud, environmental crime, drug trafficking and other drug crimes, illegal possession of firearms, illegal audio and video cassettes, theft of property of the nation (i.e., breaching Pemex oil or gas pipelines), money laundering, human trafficking, electoral fraud, theft or damage to archaeological, artistic and historical heritage sites, etc. ([PGR-Ministerio Público de la Federación](#), n.d.).

These crimes fall under federal jurisdiction; therefore, they are investigated and prosecuted by the *federal* Public Ministry and tried in federal courts.

- **State Jurisdiction (*Fuero Común*)** refers to actions committed between individuals, i.e., those in which the criminal effect falls only on the victim. Examples include threats, property damage, sexual crimes, fraud and embezzlement, homicide, assault, robbery in all its forms—household, business, cars, etc. ([PGR-Ministerio Público de la Federación](#), n.d.). These crimes are under the jurisdiction of the state Public Ministry. They are therefore investigated and prosecuted by the state Public Ministry and tried in state courts.

Federal Judiciary

Mexico's Federal Judiciary is essentially a three-tier system organized to hear and decide cases involving harm to government interests (Federal Jurisdiction). The structure is similar to the U.S. system—Supreme Court; Circuit Courts; District Courts ([Vargas, 2008, III](#)). One notable difference deserves mention: unlike the United States, it is *Magistrates* who sit on Circuit Courts and *Judges* who sit on District Courts. In other words, Magistrates occupy a higher level in the judicial hierarchy than do Judges.

Supreme Court of the Nation (SCJN): Mexico's highest court, the Supreme Court is made up of eleven justices (*ministros*), one of whom one is elected to serve a four-year term as president of the Court. Mexico's President nominates three candidates for the Supreme Court. A two-thirds vote of the Senate taken within thirty (30) days is required to elect a justice. If the Senate fails to act, the President designates the candidate to occupy the post of justice.

Supreme Court justices serve for fifteen years and may not be reappointed. Justices may leave their post for misconduct by order of Mexico's President with approval of the Senate and Chamber of Deputies.

The Supreme Court meets in plenary session for cases involving jurisdictional issues, constitutional issues and agrarian issues. The Supreme Court also meets in panels or chambers (*salas*) comprised of five justices who hear criminal, civil, administrative and labor cases. The president of the Supreme Court does not participate in chambers.

Of the kinds of cases heard by the Full Supreme Court, the principal ones relating to criminal justice are Constitutional controversies and actions of unconstitutionality. In addition, the Supreme Court may vote to 'take' (*atraer*, attract) any case deemed sufficiently important to the nation as a whole to warrant review by Mexico's highest court ([SCJN, 2005, p. 55](#); also see [Vargas, 2008](#)).

Supreme Court responsibilities include:

- Interpreting the law;
- Resolving conflicts arising between individuals when matters of federal jurisdiction are involved;

- Intervening in conflicts arising when a law or official action violates individual guarantees (rights); and
- Resolving conflicts between authorities; i.e., when a violation of jurisdiction is charged.

Circuit Courts: These federal courts are spread across Mexico in thirty-two specific geographic areas called judicial circuits. Some circuits cover a single state (Mexico City, Nuevo León, San Luis Potosí and Guanajuato). Others cover two states (Jalisco-Colima, Zacatecas-Aguascalientes, etc.). Circuit Courts are either:

- **Collegiate:** made up of three Magistrates; or
- **Single:** headed by one sole Magistrate.

Magistrates are appointed to four-year terms by the Council of the Federal Judiciary (see below) and may be reappointed or promoted to a higher position at the end of their four-year terms. Magistrates may be dismissed for misconduct ([SCJN](#), 2005, pp. 67-71).

Collegiate Circuit Courts: Three Magistrates, assisted by secretaries and other court officials, hear such cases as:

- Petitions for direct *amparo* against final rulings (i.e., of guilt in criminal cases)—i.e., for [*Constitutional*] violations committed in those final rulings or during the preceding judicial procedure—are heard in specialized *amparo* courts (*La Jurisprudencia: Su Integración*, [SCJN](#) 2004, p. 30);
- Appeals arising against [*the legality of*] orders and resolutions handed down by District Judges and Single Circuit Courts when, for example, a petition for *amparo* is turned down or a permanent postponement is denied.

Collegiate Circuit Court decisions are made by unanimity or majority vote of its members, who may not abstain from voting unless there is a legal reason for doing so. Magistrates may be specialists, or they may be generalists familiar with several juridical areas, i.e., civil, criminal, administrative (involving the government), labor law ([SCJN](#), 2005, pp. 67-70).

Single Circuit Courts: A single Magistrate, assisted by secretaries and other court officials, hears cases in the areas of both civil and criminal law. Single Circuit Courts hear and rule on Appeals contesting the *Legality* of the Final Resolution—for Conviction or Acquittal—issued by a District Court (see below). In their performance of this Appellate function, these Single Circuit Courts thus serve as Second-Level Courts.

Single Circuit Amparo Courts: A single Magistrate, assisted by secretaries and other court officials, reviews and rules on the *Constitutionality* of the Appeal Process adjudicated by a Single Circuit Appeals Court (described above).

District Courts: A District Judge, assisted by secretaries and other court officials, run these First-Level Federal Courts. Like Magistrates, Judges are appointed to four-year terms by the Council of the Federal Judiciary (described in next section) and may also be reappointed or promoted to a higher position at the end of their four-year terms. Judges may be dismissed for misconduct.

In some major cities that are essentially business and technology hubs, such as Mexico City and Guadalajara, District Courts are specialized (criminal, civil, administrative, labor, etc.). In less populated regions, District Courts hear all cases brought before them, including cases arising from the execution or enforcement of federal laws in the areas of civil, criminal and administrative (governmental) matters. Petitions for indirect *amparo* in civil, criminal and administrative (government) matters are heard in special District *Amparo* Courts.

Table I on the following page summarizes the structure and functions of the Federal Judiciary (SCJN, 2005, pp. 46-57).

TABLE 1: FEDERAL JUDICIARY: STRUCTURE AND FUNCTIONS

Supreme Court of Justice of the Nation – In Full (Suprema Corte de Justicia de la Nación en Pleno) May Vote to ‘Take’ (<i>atraer</i>) Any Case Deemed Sufficiently Important To Warrant Review by Nation’s Highest Court	
First Chamber (Primera Sala) Resolves Civil and Criminal Matters	Second Chamber (Segunda Sala) Resolves Administrative (involving Federal Government Agencies) and Labor Matters
Circuit Courts (32 country-wide) (Tribunales de Circuito)	
Single Circuit (Amparo) Courts Review and Rule on <i>Constitutionality</i> of Appeal Process adjudicated by Single Circuit Court; i.e., Indirect Amparo . Single Circuit (Appellate) Courts <i>(Tribunales Unitarios de Circuito)</i> Review and Rule on Appeal Contesting <i>Legality</i> of Final Resolution for Conviction or Acquittal issued by District Court.	Collegiate Circuit Courts <i>(Tribunales Colegiados de Circuito)</i> Review and Rule on <i>Constitutionality</i> of: (1) <i>Amparo</i> Ruling issued by District <i>Amparo</i> Court on any Intermediate Order, Ruling, or Resolution; i.e., ‘Amparo in Review’ . (2) Final Resolution issued by District Court; i.e., Direct Amparo . (3) Appeal Process adjudicated by Single Circuit Court; i.e., Indirect Amparo .
District Courts – First-Level Courts <i>(Juzgados de distrito):</i>	
District Courts <i>(Juzgados de distrito)</i> Hear and rule on Cases arising from the execution or enforcement of federal laws in the areas of civil, criminal and administrative (government) matters.	District (Amparo) Courts <i>(Juzgados de distrito)</i> Hear and Rule on <i>Constitutionality</i> of: Amparo petitions contesting Intermediate Orders, Rulings, Resolutions issued by District Court; i.e., Indirect Amparo .

Council of the Federal Judiciary

The Council of the Federal Judiciary (CFJ, *Consejo de Juridicatura Federal*), comprised of six advisers, is presided over by the President of the Supreme Court. The CFJ is the administrative agency for the Federal Judiciary. As such it carries out such important functions as the monitoring and discipline of judicial personnel. It is also in charge of the Federal Judicial Institute responsible for training Magistrates, Judges and Secretaries (attorneys performing specialized functions), such that “they might possess the constitutional attributes of independence, impartiality, objectivity, professionalism and excellence that must regulate judicial performance.” Through its regional offices, the CFJ addresses such administrative matters as selection of candidates for judicial posts and evaluations of judicial personnel ([SCJN](#), p. 27; [Vargas](#), 2008).

State Judiciaries

As stated earlier, each state is “supreme” as a decision-making entity within its own jurisdiction, with the caveat that no state governance structure or law may contradict the federal Constitution. Each state thus has its own judicial system for processing violations of state law ([Vargas](#), 2008, [III.3.2](#)).

TABLE 2: STATE JUDICIARY: STRUCTURE AND FUNCTIONS

<p>State Superior Court (<i>Tribunal Superior</i>) System: Made up of Second-Level Chambers: Hear and Rule on Petitions for Review of the Legality of Resolutions and Rulings issued by First-Level Courts</p>
<p>First-Level Courts (<i>Juzgados de primera instancia</i>): Hears Cases involving violations of state law brought between individuals</p>

Each state also has its own Judiciary Council, which performs administrative functions roughly comparable to those performed by the Council of the Federal Judiciary.⁵

First-level Judges are selected by means of competitive examination. The Judiciary Council in each state tends to make appointments based on scores achieved by candidates on the competitive examination.

It has been observed that the Federal Judiciary in Mexico “has a much larger share of judicial power” vis-a-vis state judiciaries than in the United States. At the day-to-day level, however, it is the Public Ministry function inside the Office of the Attorney General (PGR) and state-level PGR’s that largely control the traditional criminal justice procedure. For this reason, we next direct attention to the Public Ministry.

⁵ A typical example of a state structure is the organization chart for the State of Michoacán ([Poder Judicial de Estado de Michoacán de Ocampo](#) [Judicial Authority of State of Michoacán de Ocampo], n.d.).

Public Ministry (*Ministerio Público*)

Actions of the Public Ministry are governed by the Constitution of the United States of Mexico, Articles [16](#) and [21](#), which authorize the Public Ministry to investigate crimes and exercise a monopoly of prosecution for violations of federal law. The Public Ministry carries out its constitutionally-mandated prosecutorial ‘monopoly’ by conducting preliminary criminal investigations whose final step is determining whether or not to consign a case to the Judiciary; that is, whether or not to send the case to a First-Level Court to initiate the criminal justice procedure.

The Attorney General (*Procuraduría General de la República, PGR*) heads the Public Ministry.⁶

Historically, the function of the Public Ministry extends back to Greece and Rome, but Mexico’s legal scholars locate the roots of their own country’s Public Ministry in the 14th century French monarchy:

“... where the prosecutor and king’s attorney were created to protect the prince’s rights and interests, with the goal, practically speaking, of increasing his treasure. [Over time,] its nature changed such that its representatives came to be organized, not on behalf of the monarch but of the State, with the object of punishing crime in the name of social interest” ([Concepto](#), n.d., p. 16).

The word *institution*—in the sense that marriage is an institution—is often used to describe Mexico’s Public Ministry. As an institution, the Public Ministry arches over the entire Mexican justice system; i.e., over both federal and state judiciaries in the areas of both criminal and civil law. The twin aspects of this key Mexican institution ([Concepto](#), n.d., pp. 13-14) are captured in these words:

“The Public Ministry is a State body with various functions: it is an essential piece of the criminal procedure, in which it enjoys the so-called ‘monopoly of criminal action’ ... *prosecuting crime and looking out for society’s highest interests.*” Emphasis added.

Only in the very broadest sense is the Attorney General’s Office roughly comparable to the U.S. Department of Justice. Mexico’s President appoints, and may remove, the Attorney General, who serves as a member of the President’s Cabinet. The President also appoints, and may remove, Federal Public Attorneys.

⁶ One interesting point is that nowhere on the PGR’s organization chart ([PGR: Estructura Orgánica](#), n.d.) does the term *Public Ministry* appear. What *does* appear are five divisions; each made up of several departments. One division is labeled “Deputy Regional Prosecutor for Criminal Procedures and *Amparo*” (*Subprocuraduría Regional de Procedimientos Penales y Amparo*); within this division is a department titled the “General Department of Preliminary Investigations” (*Dirección General de Averiguaciones Previa*). But no Public Ministry.

Public Ministry: State Level

Each of Mexico's thirty-one states and Mexico City (an entity, not a state) also has a Public Ministry charged with investigating and prosecuting violations of state law. The Attorney General for a given state (*Fiscalía General de Estado* or *Procuraduría de Estado*) is appointed by that state's governor.

At the state level, day-to-day operational control is exercised by the Chief of Agents of *Fuero Común* (State Jurisdiction), who is responsible for crimes between individuals and reports to the state's Attorney General.⁷

Deriving their authority from state governors, state police are assisted by municipal police called Preventive Police (*Policía Preventiva*). Preventive Police have primary responsibility for patrolling cities and arresting people caught in a criminal act. They are also called in to help the Ministerial Police (defined below) in apprehending a suspect(s) known to be violent.

Structure

Attorneys performing the function of the Public Ministry are called 'Agents'. Depending on jurisdiction, these attorneys are either Agents of *Fuero Común* (State Jurisdiction) or Federal Agents (Federal Jurisdiction). Regardless of jurisdiction, Agents perform three primary functions:

- Directing the investigation of crimes;
- Carrying out orders (i.e., arrest warrants) issued by a Judge; and
- Bringing criminal cases before Courts of the First Instance.

In carrying out these functions, Agents direct the activity of personnel in two other areas of the Public Ministry:

- Ministerial Police (*Policía Ministerial*) are investigative police [i.e., roughly comparable to detectives] who, under the direction of Agents, conduct inquiries into criminal acts;
- Expert Services is a unit made up of technical and scientific experts (*peritos*) responsible for gathering evidence to be used in building cases for criminal prosecution.

The following chart shows the organizational structure of the Public Ministry and its relationship to the Attorney General of the Republic.

⁷ Chief of Federal Agents is responsible for federal crimes (Federal Jurisdiction) and reports to the state's Federal Public Prosecutor.

TABLE 3: PUBLIC MINISTRY AND ATTORNEY GENERAL: STRUCTURE

Attorneys General: State-Level (PGJE)	Attorney General of the Republic (PGR)
State Public Prosecutors: Regional or municipal (if applicable)	Federal Public Prosecutors: State-level (<i>Delegados</i>)
Chief of Agents of <i>Fuero Común</i>	Chief of Agents of <i>Fuero Federal</i>
Agents of <i>Fuero Común</i> Carry out function of Public Ministry	Federal Agents Carry out function of Public Ministry
Ministerial (Investigative) Police and Expert (Technical) Services (<i>Peritos</i>)	Ministerial (Investigative) Police and Expert (Technical) Services (<i>Peritos</i>)

The federal Public Ministry has no supervisory authority over a state's Public Ministry, but the federal Public Ministry may take on (*atraer*) a case when its investigation and prosecution affect the entire nation.⁸

Function

As society's representative, Agents of the Public Ministry exercise control over the criminal process on behalf of the State and seek to fulfill the intent [*i.e.*, "*letter*"] of the law. In all criminal actions, it is the function of the Public Ministry, duly commissioned by the State, to press for punitive action against those who commit criminal acts and, where possible, to gain redress or compensation for damages (Federal Code of Criminal Procedures [*Código Federal de Procedimientos Penales*] [Article 2](#), 1994).

In carrying out this function, the Public Ministry possesses legal attributes termed Public Trust [*Fe Pública*] (What is Office of the Attorney General? [*¿Qué es PGR?*] n.d.):

- **Independence:** Its function is not to be subordinated to any other agency; it monopolizes criminal action and is the agency that decides whether or not to admit the complaint or grievance; it has no superior in undertaking an investigation.
- **Good Faith:** It is a righteous body, such that Mexican society may rely on its sense of justice, honesty and common sense.
- **Non-Liability:** Its performance does not make it liable; even though the person it recommended be detained with an arrest warrant might subsequently be found innocent, it cannot be prosecuted or charged with negligence.
- **Non-Refusal:** It cannot be disqualified, but it can be recused if necessary. Staff cannot be accused of having a familial or friendship relationship with the Accused;

⁸ The national and international significance of the case of the 43 Ayotzinapa students who disappeared in Iguala, Guerrero, on September 26, 2014, was such that on October 4, 2014, the Office of the Attorney General (PGR) announced that the PGR's Special Prosecutor for Investigation of Organized Crime (SEIDO) was taking on the case ([Castillo García](#), 2014).

staff can, however, ask to be excused from knowing about a particular matter [case] if it is advisable to the interests of the Public Ministry.

At a practical level, the net impact of *Fe pública* is often described like this: "If the Public Ministry states it, then it is true."⁹ According to the law, the Public Ministry is an independent function before both Judicial and Executive authority, and it is charged with investigating the evidence of criminal activity. As a practical matter, however, the Public Ministry answers to political power. Mexico's President may decide if someone is either to be held or released for lack of evidence; on many occasions, deputies or senators also claim this privilege.

CASE STUDY 3: NESTORA SALGADO

The case of Nestora Salgado is one recent example of political pressure. Salgado, a commander in the Community Police established under Guerrero State Law 701, was arrested [August 2013] for performing her legal role. Despite the fact that last March [2014] a federal judge dismissed the federal charges against her and ordered her release, Salgado remains in prison on outstanding charges brought by the Guerrero State Prosecutor.

In an interview, Leonel Rivero Rodríguez, Salgado's lawyer, described the political and social dynamics that keep her imprisoned (cited in [Petrich, 2015a](#)): "As elsewhere, the emergence of Community Police with roots among the people led to a rupture in a system of local powers that threatened the climate of impunity by which organized crime operates. But not only that, they also operate by self-managing organizational processes that also threaten political fiefdoms. Hence the desire to impose on Nestora an exemplary punishment" (emphasis added).

SUMMARY

This discussion of jurisdiction, structure and function of the Judiciary and Public Ministry at both federal and state levels concludes Part I. Part II addresses how the Criminal Justice System works, who participates in it and the legal logic that drives it.

⁹ Speaking to the findings arising from the PGR's preliminary investigation of the 43 disappeared Ayotzinapa students, Roberto Gil Zuarth, chair of the Senate Justice Committee, commented ([Becerra, 2015](#)): "We assume that the Public Ministry works in *good faith*, as laid down in the law. We expect that the evidence might be convincing in the case." The PAN (National Action Party, conservative) Senator's invocation of the *good faith* tenet of *Fe pública* put him into direct conflict with the findings and open questions of international experts called in to conduct independent investigations ([Villamil, 2015](#))—Argentine Forensic Anthropology Team ([Turati, 2015](#)); Interdisciplinary Group of Independent Experts from Inter-American Commission on Human Rights ([Díaz, 2015](#)). On July 24, 2015, Mexico's own National Human Rights Commission (CNDH) presented its report, *State of Investigation of the Iguala Case*. At that time, CNDH President Luis Raúl González Pérez stated that "errors and omissions were committed in the ministerial [*Public Ministry*] inquiries for getting to the bottom of the events of September 26" (cited in [Martínez, 2015b](#)).

PART II: HOW THE CRIMINAL JUSTICE SYSTEM WORKS: WHO, WHAT, WHY

Overview: What Happens, and Who Takes Part (Civil Parties)

Traditional (mixed inquisitorial) criminal procedures are conducted in conformance with the Federal Code of Criminal Procedures (FCCP). Once again, it bears recalling that the *entire judicial proceeding is carried out primarily by means of documents* submitted to the court, respectively, by the Public Ministry performing its prosecutorial and investigative functions and the Defense Team. The Judge reviews them in private, then issues a series of orders, rulings and resolutions grounding each in the applicable law:

- Interlocutory orders (*Sentencias interlocutorias*) are intermediate rulings issued by the court at key moments in the course of the criminal proceeding;
- Definitive resolution (*Sentencia definitiva*) is the judge's final ruling of guilt or innocence that concludes the First-Level Criminal Justice Procedure.

The procedure begins with a criminal complaint made by the victim(s) and received by an Agent in the Public Ministry. This complaint triggers the legal process, which is initiated by the Agent in the Public Ministry who received the report or complaint. The same Agent then initiates a preliminary investigation, which the Agent directs through the activities of Ministerial (investigative) Police and experts, *peritos*. The Agent-Prosecutor compiles a case file (*expediente*) containing documents and other exhibits (maps, drawings, photos, videos, tape recordings, etc.) representing evidence collected during the preliminary investigation. Based on the evidence, the Public Ministry develops a recommendation for legal action and presents the recommendation and the case file to the Judge.

A process of validation is then conducted under the jurisdiction of the Judge, who issues a series of judicial orders confirming or overruling actions by the Public Ministry.

At the conclusion of the validation period, the Judge delivers the case file to the Defense Team, which compiles documents challenging and/or disproving the accusatory evidence. The Defense Attorney submits these exculpatory documents to the Judge. In the formal tradition of Civil Law, the Accused is innocent until proved guilty; as a practical matter, however, judicial personnel tend to regard the Accused as a criminal. For this reason, competent Defense Counsel is likely to petition for *amparo* protection against an anticipated adverse judicial ruling.

The Judge and his or her staff are responsible for assessing the evidence contained in documents submitted by the Public Ministry and challenged, or refuted, by exculpatory documents, including exhibits, etc., submitted by the Defense Attorney. Based on this analysis, the Judge issues a Final Resolution, which may be to dismiss the case for lack of evidence, to acquit or convict the Defendant. In the event of a decision to convict, the Judge hands down the sentence.

This sketch of what happens during a criminal justice proceeding invites a closer look at the participants. People involved in the judicial proceeding are termed *civil parties*, legal subjects, with associated rights. Each is described below.

Victim

A person who suffers the effects of the criminal action or event.

Accused

According to the traditional Federal Code of Criminal Procedures, the 'status of Accused' refers to any person arrested or identified in any way as part of a crime. Under the traditional 'mixed inquisitorial' system, the legal concept of 'presumption of innocence' is problematic. In the context of explaining the Supreme Court's decision not to hear Alberto Patishtán's case (discussed earlier), Justice Olga Sánchez (cited in [Mosso](#), 2013) observed that "the Code of Criminal Procedures is very technical in this area"; i.e., regarding "recognition of innocence". The ACAT report ([Mergier](#), 2012) concluded: "Even if not openly specified, the defendant actually appears 'guilty until innocence is proved'".

The status of 'Accused' may disappear with dismissal; that is, when substantial evidence of the alleged crime is not legally proved in the course of the judicial procedure. In such cases, the Federal Code of Criminal Procedures provides that the Judge must rule that the legal process *not affect the good name and honor* that may be enjoyed by the Accused; i.e., the legal record of the Accused is to be cleared or expunged.

The status of the Accused progressively changes as the Criminal Procedure advances:

- **Probable Responsibility (*Probable responsable*):** Person identified in report or complaint presented to Public Ministry as 'likely responsible' for criminal act [*i.e.*, 'Suspect'];
- **Accused (*Acusado*):** When Public Ministry undertakes Preliminary Investigation;
- **Processed (*Procesado*) or Charged (*Inculpado*; *i.e.*, *indicted*):** When Judge issues order of subject to legal process [*i.e.*, case 'goes to trial'].

At a formal level, it can thus be concluded that any person declared 'guilty' has been previously and necessarily accused, but not every Accused is always guilty. A person has the status of Accused from the beginning of the Preliminary Investigation to one of the following conclusive determinations:

- **Dismissal of legal action:**
 - Without Prejudice [*sobreseimiento definitivo*];
 - Final dismissal, or non-suit, *i.e.*, charges dropped [*sobreseimiento libre*];
 - Temporary stay [*sobreseimiento provisional*];
- **Acquittal (*Sentencia absolutoria*):**
- **Ruling of Guilt (*Sentencia definitiva*):** Final Resolution.

Public Ministry

As previously discussed, the Agent in the Public Ministry comes under the Executive Branch and is responsible for representing society's interests. In criminal matters, the

Public Ministry is charged with investigating and prosecuting criminal activities; in its performance of this function the Public Ministry enjoys Public Trust, *Fe pública*.

Witnesses

Person present at, and witness to, the criminal act. Such a person is asked to make a formal statement and may be asked to participate in a confrontational meeting (described later) regarding the events.

Judge

The Judge is the ultimate authority whose principal function is to administer justice by means of an exhaustive analysis of evidence presented, respectively, by the Public Ministry and Defense Lawyer. The Judge bases the analysis on the applicable law founded on moral principles and his or her knowledge of human behavior. Judges perform their function by issuing orders, rulings and resolutions; specifically:

- **Interlocutory orders (*Sentencias interlocutorias*):** Intermediate rulings issued by the court at key moments in the course of the criminal proceeding;
- **Final Resolution (*Sentencia definitiva*):** Judge's final ruling of guilt-conviction or innocence-acquittal that brings a criminal procedure to an end.

Given the high volume of cases and the quantity of documents that can be involved—attendant legal files can be in excess of 500 pages—Judges do not participate directly in the judicial procedure, but instead rely on a staff of secretaries, clerks and other employees (SCJN, 2004, 82). Key roles performed by court officials on the Judge's staff are described below.

Secretary of Agreements (*Secretario de Acuerdos*): The Secretary of Agreements has primary responsibility for managing and verifying the document-intensive judicial procedure. The signature of the Secretary of Agreements confirms 'I agree' (*acuerdo*). The following description of the functions performed by this role is adapted from an online description of the Superior Court, [Sonora State Judicial Authority](#) (n.d.):

- Verifies that events (hearings, etc.), judicial rulings and court orders (arrest warrants, detention orders) took place;
- Prepares in a timely manner the formal receipt (*acuerdo*) of documents submitted to the court by parties in a criminal case (Experts, Witnesses, etc.);
- Verifies in a timely manner that records and documents received by the court comply with the letter of the law and hence merit agreement (*acuerdo*);
- Verifies that resolutions are official notifications of, for example, a hearing (*acuerdo*).

The work of the Secretary of Agreements is supported by a team of Assistant Secretaries of Agreements.

Secretary for Drafting Final Resolutions (*Secretario proyectista*): Attorneys who write judgments, i.e., final resolutions for guilt or innocence. Draft resolutions are

presented to the Judge who, after reviewing and finalizing them, issues the Final Resolution of a case.

Officer of the Court (*Actuarios*): Responsible for notifying involved parties of rulings issued by Judges and Magistrates in cases pending before them, *Actuarios* are also responsible for assuring compliance with the orders of Judges and Magistrates that must take place outside court facilities.

SUMMARY

This brief description of how the Criminal Justice Procedure is conducted, and who takes part in it, ended with a discussion of the Judge's role and roles taken by various court officials on his or her staff. Thus, with the stage set and actors in their places, it's time to raise the curtain on how a criminal case makes its way through these institutions of justice—i.e., to a consideration of how the Criminal Justice System actually works.

Procedural Phases and Steps

People outside Mexico struggle to understand the logic of the traditional ('mixed inquisitorial') Criminal Justice Procedure; thus, a brief pause to parse the Spanish is useful for getting to the internal logic.

Consistent with the essential nature of the Civil Law tradition, the judicial logic is *deductive*; that is, it is a "logical process in which a conclusion is drawn from a set of premises [*that*] contains no more information than the premises taken collectively" [[Unabridged Dictionary of American English](#), 2015]. As will be shown, this is a critical point: the applicable law is first identified in the Penal Code, then applied to the case at hand in strict conformance with the Federal Code of Criminal Procedures.

Two root Spanish verbs (Royal Academy of Spanish Dictionary, RAE, n.d.) are also key for understanding this process:

- *Inquirir*: to investigate or examine something closely [Transl.]—'inquisitorial' is derived from *inquirir*; and
- *Instruir*: to put in order a process or expediente, file, in compliance with determined rules [Transl.]—*Instrucción* is derived from *instruir*.

The Federal Criminal Justice Procedure is comprised of the *four* major phases (*Código Federal de Procedimientos Federales*, 1986, [Article I](#)) listed below.

- **Preliminary Investigation (*Averiguación previa*):** Legal procedures by which the Public Ministry conducts its investigation prior, *previa* (translated as 'Preliminary'), to determine whether or not to take criminal action; i.e., to consign, or send, the case to the First-Level Court. At the conclusion of this phase, the Public Ministry submits the legal file (*expediente*) together with its determination to the Judge of the First-Level Court.
- **Validation (*Preinstrucción*):** First-Level Judge reviews actions taken by the Public Ministry during Preliminary Investigation against the Federal Code of Criminal Procedures. During this review, the Judge rules on the material facts—events—by

classifying them in terms of the applicable criminal law; in this way, confirming the *likely responsibility* of the Accused. Alternatively, the Judge may determine that the Accused be released for lack of evidence to proceed. The Judge transmits his or her conclusions by issuing a series of judicial orders, rulings or resolutions that confirm or overrule actions taken by the Public Ministry; these become part of the legal file (*expediente*).¹⁰

- **Instruction (*Instrucción*):** First-Level Judge directs actions to the Defense Team for the purpose of investigating the circumstances under which the crime—now duly classified—might have been committed, the characteristics of the Accused, and the responsibility or non-responsibility of the Accused in it. Stated differently, the Judge *instructs* the Defense Team to submit exculpatory evidence refuting the legal definition of the crime and the Accused’s behavior in relation to that definition. It is important to point out that during these first three phases, the Judge is explicitly engaged in the process of—to piggyback the RAE definition—*putting in order a formal legal file (expediente) that complies with the rules, laws, contained in the Federal Code of Criminal Procedures*.
It is equally important to keep in mind that the Judge alone decides the case, which brings us to the last phase.
- **Final Resolution of First-Level Court (*Resolución de la primera instancia*):** Public Ministry makes its case for conviction, and the Defense Lawyer rebuts the Public Ministry’s case on behalf of the Accused. In response, the First-Level Court Judge assesses the evidence and issues the Final Resolution (*Sentencia Definitiva*).

Another way to think about the logic of this judicial procedure—so alien to those steeped in the Common Law tradition—is that, in essence, the First-Level Court Judge functions like a hinge; i.e., the Judge:

- Receives from the Public Ministry its ‘determination’ from the Preliminary Investigation, with the accompanying legal file (*expediente*), then reviews actions taken by the Public Ministry in order to classify them by matching the determination (i.e., description of the criminal event) to the applicable criminal law as defined in the Federal Criminal Code.¹¹
- Instructs the Defense Team to provide additional information about the Accused, including (*mitigating*) circumstances under which the crime might have been committed and to present documents and other exculpatory evidence.

¹⁰ The Validation (*Preinstrucción*) phase is an academic term devised by theorists to elucidate the judicial logic on which the process rests. Although the *Preinstrucción* phase is listed in Article I of the Federal Code of Criminal Procedures, no subsequent article is dedicated to explaining its workings. More on this later.

¹¹ The operant legal principle is “the use of analogy is not allowed”; the principle has two practical consequences: (1) Description of the criminal act submitted in the legal file must match, *to the letter*, the legal definition of the crime in the Federal Criminal Code; and (2) All evidence submitted either to convict or acquit must similarly match, *to the letter*, the Judge’s classification of the criminal act. This classification—contained in a series of orders, rulings and resolutions—thus becomes the *legal definition* (i.e., “hinge”) against which the Defense Team argues and presents exculpatory evidence.

In short, the Judge directs a process of assembling evidentiary data—initially from the Public Ministry, subsequently from the Defense Team—needed to decide the case. For this reason, the phase of Instruction—broadly understood as encompassing the first three phases—is also known among legal scholars as the evidentiary period, *periodo probatorio*, characterized as a process.¹²

Preliminary Investigation (Averiguación previa)

The goal of the Preliminary Investigation (Articles [113](#) to [122](#)) is to determine whether events made known to the authority do or do not constitute a crime; hence, 'Preliminary Investigation' refers to the group of unilateral procedural actions undertaken by the Public Ministry; namely, to:

- Investigate the constitutive criminal events;
- Undertake prosecution of the crime; and
- Collect evidence (i.e., probable cause) necessary to substantiate, or not, the body of the crime, assign probable responsibility and take the appropriate criminal action.

Mexico's Constitution authorizes the Public Ministry to detain a Suspect prior to being formally charged for up to 48 hours—or up to 96 hours in cases involving organized crime—before the Suspect must be presented to a Judge. If this is not adequate time to obtain probable cause, the Public Ministry can, for certain crimes, petition the Court to detain the Suspect under *arraigo*, i.e., continued detention without charge for 40 days. If more time is still required, the Court may order an additional 40 days of detention under *arraigo* ([Deaton and Rodríguez](#), 2015).

Evidence is presented in documents that must meticulously conform *to the letter* the crime's legal classification. The Preliminary Investigation involves four steps:

- **Initiation** (*Iniciación*): Investigative process is triggered when a report or complaint of criminal activity is taken;
- **Integration** (*Integración*): Process of compiling documentary evidence, including exhibits, photos, etc., in the legal case file (*expediente*) in preparation for determining whether the events do or do not constitute a crime;
- **Determination** (*Determinación*): Decision whether the evidence compiled provides, or fails to provide, proof of a crime;
- **Consignment** (*Consignación*): Legal action by which case is passed to the Judiciary [*i.e., presented to the Judge*] for legal processing.

¹² Before moving on to the formal Criminal Justice Procedure, it is appropriate to explain the change of prose style, how it developed and why it has been kept. The chronology and logic intrinsic to procedural phases was initially established by flowcharting the process in Spanish. The narrative was crafted by translating both the Spanish and the flow diagrams into English text. The resulting barebones prose style, similar to outline format, has been retained to highlight the legal logic on which the *juicio*, or judicial proceeding, rests.

Initiation: In accordance with the Constitution ([Article 16](#)), the Preliminary Investigation begins with a report or complaint:

- The complaint (*denuncia*) is the act by which any person, whether or not affected by the crime, informs the Public Ministry of the commission of acts that may constitute an offense that is prosecuted *de oficio* (by reason of the office) without the will of the complainant having any legal relevance for suspending or terminating the proceedings initiated or for promoting the process. Ten crimes are prosecuted *de oficio*: Robbery with Violence; Robbery Inside a House; Kidnapping; Homicide; Organized Crime; Cattle Rustling; Plunder; Deprivation of Liberty (*Privación de la Libertad*); Real Estate Crimes (by real estate agents); Corruption of Minors.
- The grievance (*querrela*) is the act by which the Public Ministry is informed of the commission of acts that may constitute criminal offense, with the distinctive characteristic that the complaint can only be submitted by the person affected by the crime and must contain the will of that person to punish those responsible; conversely, victim's pardon of defendant extinguishes the punitive action. Depending on each state's laws (*State Jurisdiction*), some actions can be prosecuted by complaint of the injured party, including: Breach of Trust; Fraud; Family Abandonment; Adultery; Minor Damages; Domestic Abuse, unless victims are minors or incompetents ([PGR-Ministerio Público de la Federación](#)).

Integration: Agent [*prosecutor*] in the Public Ministry who took the report (*denuncia*) or complaint (*querrela*) initiates Preliminary Investigation by directing the activities of investigative police and experts. As a result of these investigative activities, evidentiary documents (described later) are generated and collected in the legal case file (*expediente*). Referring back to Miguel Sarre's description, cited earlier, it is at this step that the Public Ministry "seeks, clears and assesses the means of evidence". At a minimum, Integration means that the:

- Criminal act is confirmed by three Witness statements; *and*
- Evidence or proof assembled by the Public Ministry's investigation is presented to the court in documents; *and*
- Expert proof ordered by the Public Ministry is presented to the court in documents.

The Public Ministry is obligated to proceed *de oficio* in the investigation of a crime in all instances, except when the Preliminary Investigation is not "integrated"; that is,

- When documentary evidence for prosecution of a crime is non-existent or has not been compiled into the legal file; or
- When a case involves a criminal complaint [*querrela*], and "... victim's pardon of defendant" extinguishes the punitive action.

The Preliminary Investigation concludes with one of two types of resolution: exercise or non-exercise of further legal action, i.e., presentation of charges. This decision is made at the next step: Determination.

Determination (*Determinación*): At this point, the Public Ministry decides whether, based on testimonies and the Preliminary Investigation, the evidence is sufficient to support a decision to take criminal action; i.e., to “consign” the case by sending it to the Judge. The Determination is the legal act by which the Public Ministry issues an order or decree determining the legal road to be followed:

- **Present Formal Charges:** Requirements of Constitution ([Article 16](#)) for taking criminal action have been met such that the case is Integrated (described above):
 - **Formal Charges *with* Detention;**
 - **Formal Charges *without* Detention.**
- **Do Not Present Charges:** Public Ministry must refrain from criminal action either because there is insufficient evidence to satisfy the Constitution ([Article 16](#)), or because events and/or facts uncovered during the Preliminary Investigation do not constitute a crime;
- **No Jurisdiction:** Case is transferred to another jurisdiction.

Consignment (*Consignación*): Legal act by which the Public Ministry initiates criminal action by putting the Accused at the Judge's disposition so the case can be heard and decided. The Public Ministry refers the Accused to a First-Level Judge (District Court in federal cases) when the criminal punishment merits a fine and prison term.

Without Detention: The Public Ministry consigns the case without detention when, despite the fact that the Accused is not currently in custody, the Constitutional requirements for exercising criminal action have nonetheless been met and are reflected in documents compiled in the case file (*expediente*) during the Preliminary Investigation.

With Detention: Public Ministry can decide that the Accused currently in custody be formally detained¹³ under two conditions:

- Accused was discovered in flagrante delicto (caught in the act); or
- Crime is an Urgent Case (*Caso urgente*); that is, Public Ministry confirms Suspect's detention due to risk that the Accused will flee the country; in this instance, the Judge is obligated to give the Public Ministry an Arrest Warrant (*Orden de aprensión*).

The act of Consignment of the case thus brings the Preliminary Investigation to a close.

¹³ In March of 2014, National Human Rights Commission Third Inspector, Guillermo Andrés Aguirre Aguilar, attended a presentation by James L. Cavallaro, Inter-American Human Rights Commission for Persons Deprived of Liberty, who was discussing the results of a study of 'preventive detention' throughout the Americas. While essentially agreeing with Cavallaro's findings, Aguirre Aguilar emphasized that human rights violations continue to take place in the country's prisons: "There are ... 389 penitentiary centers and 246,334 inmates, of whom about 40 percent [98,533] have not been convicted [*i.e., they are stuck in legal limbo*]" (cited in [Ballinas](#), 2014).

SUMMARY

As the legal action by which control of the legal process passes from the Public Ministry to the Judiciary, Consignment is a critical transitional moment. If, for example, the Public Ministry decides not to investigate a given case thoroughly, then the predictable result is that evidence compiled is insufficient for the case to be consigned to the Judge. If, in fact, the Suspect is guilty, then the net result is criminal impunity, which is widely recognized as a serious weakness of the current criminal justice system. Using government statistics for the years 2011-2012, impunity has been estimated to be as high as 96.4% (Pantin, 2014). Paraphrasing Miguel Sarre (2013), under the traditional Criminal Justice System, the Public Ministry enjoys procedural advantages such that they are able to condition or determine the direction of the judicial procedure before it even starts.

Validation (*Preinstrucción*)

Consignment of the case to the Judiciary is a pivotal moment:

- Control of the legal process passes to the Examining or Presiding Judge; and
- Accused must make the Initial Statement (*Declaración preparatoria*) within 48 hours of consignment of the case.
- The Judge exercises judicial control by means of a series of Judicial Orders, beginning with:
 - **Order of Jurisdiction** (*Auto de Radicación*): Judge's initial resolution in which jurisdiction over the case is accepted, which is closely followed by the
 - **Order to Open the Legal Process** (*Auto cabeza de proceso*): Judge's resolution opens the Validation phase of the legal proceeding.

During Validation, the Judge analyzes the legal file (*expediente*) submitted by the Public Ministry. The purpose of the Judge's analysis is to confirm that the Public Ministry has documented both the body of the crime and probable responsibility in conformity with the Constitution ([Article 16](#)).

The Validation phase will conclude with the Judge's determination of whether or not the case is to be prosecuted. In the interim, however, the Judge opens the Validation phase by issuing:

Order of Constitutional Deadline (*Auto de término constitucional*), thus establishing the 72-hour constitutional deadline within which the Judge must issue the resolution defining the subsequent legal procedure. At request of the Accused (or Defense Attorney on Accused's behalf), the 72-hour period may be extended for an additional 72 hours to allow more time for the Defense Team to present exculpatory evidence.

Depending on whether the Public Ministry has consigned the case with or without detention, the Validation phase proceeds differently:

Without Detention (Suspect not in custody): Judge's analysis determines whether documents compiled and submitted by the Public Ministry in the case file conform to Constitutional

requirements for exercising criminal action. If they do, Judge is obligated to give the Public Ministry an Arrest Warrant (*Orden de aprensión*).

With Detention: Judge's analysis determines if confirmation of the detention is appropriate in light of requirements laid out in the Constitution ([Article 16](#)). If Judge rules that ratification of detention is appropriate, he or she requests:

- **Preliminary Statement (*Declaración preparatoria*):** Action by which Accused learns *who, how, when, and why* he or she is being charged; in response to the charges, Accused makes a formal, legal statement presenting his or her version of the event. When Defendant is placed at Judge's disposition (i.e., when case is consigned), the countdown of the legally mandated 48-hour deadline begins during which time Accused is obligated to make a Preliminary Statement. In the event that Accused refuses to make the required statement, i.e., to remain silent, the Accused is assumed to be guilty.

If Accused appears voluntarily:

- Competent Defense Counsel will make sure that Accused arrives with *amparo*, which protects the Accused while the legality of the judicial decision is assessed; unless the case involves charges of trafficking in arms, persons or drugs, the *amparo* will be granted, usually within two (2) days; and
- Public Ministry is obligated to receive Accused's Preliminary Statement immediately.

Judge reviews Accused's Preliminary Statement in light of documents submitted by the Public Ministry in the legal file to determine whether or not to submit Accused to legal proceedings (*someter a proceso*). Three outcomes are possible:

Outcome 1: Judge decides that the body of the crime (*corpus delicti*) and/or probable responsibility are not established; thus, he or she issues

- **Order to Release for Lack of Sufficient Evidence to Proceed (*Auto de libertad por falta de elementos para procesar*).**

Outcome 2: Judge decides that both the body of the crime (*corpus delicti*) and probable responsibility are established; thus, he or she sets the objective of the criminal proceeding by issuing either:

- **Order Subject to Process (*Auto de sujeción a proceso*):** When crime does not involve a prison sentence, Accused faces the judicial procedure while at liberty;
- **Order of Formal Prison (*Auto de formal prisión*):** When sentence for crime involves a prison term; i.e., crime is 'grave' (felony) and/or suspect was caught in the act, this detention order results in the Accused facing the entire judicial proceeding from inside prison.

Instruction and Judgment Phases (Instrucción y Resolución de primera instancia)

The Federal Code of Criminal Procedures provides two tracks for carrying out the Instruction and Judgment phases. For practical reasons, they are discussed together. The two tracks are: Customary (*Ordinario*) and Fast-Track (*Sumario*).

Customary (Ordinario) Procedure

[Article 211](#) of the Federal Code of Criminal Procedures [*Código Federal de Procedimientos Penales*] specifies that the Customary Procedure be followed for federal crimes, including urgent cases (*Casos urgentes*, i.e., cases where suspect is considered a flight risk). Regardless of whether the crimes are Federal or State Jurisdiction, the two-phase procedure is the same:

1. **Presentation of Evidence** (*Instrucción*): Under Judge's direction, the Defense Attorney presents information about the Accused and documents, including exhibits, etc., representing exculpatory evidence;
2. **Period of Judgment of First Instance** (*Resolución de la primera instancia*):
 - a. Hearing (*Audiencia*);
 - b. Conclusions (*Conclusiones*);
 - c. Final Resolution and Sentencing (*Resolución definitiva y sentencia*).

Instruction: The Judge's order setting the course of the Judicial Procedure simultaneously initiates the Instruction, or Evidentiary, phase.

As discussed earlier, the Judge has already received from the Public Ministry the legal file providing the documentary and expert evidence (maps, diagrams, photos, etc.) substantiating the charges, i.e., supporting conviction of the Accused.

During the Instruction phase, the Judge now seeks and receives from the Defense Lawyer documentary evidence representing exculpatory evidence, i.e., in support of acquittal. The Judge accepts such basic information as (Federal Code of Criminal Procedures [*Código Federal de Procedimientos Penales*], 1986, [Article 146](#)):

- Age, educational level and sophistication; customs and past conduct;
- Motive for committing the crime, including economic and special conditions when the crime was committed;
- Membership in an ethnic or indigenous group, including the practices and characteristics that a member of that group might have; other personal history that might be investigated; and other relationships based on kinship, friendship or birth;
- Nature of the injured parties and the circumstances of time, place, manner and occasion [*when crime took place*], which taken together demonstrate the seriousness of the offense and the perpetrator's degree of responsibility.

The Defense Lawyer may use this information as the basis for arguing for a lesser sentence based on mitigating circumstances. Similarly, the Public Ministry may use this information in presenting its Conclusions.

The legal file sent to the Judge by the Public Ministry includes a written list of evidence presented as a result of the Preliminary Investigation. The traditional Federal Code of Criminal Procedures recognizes the following means of proof:

- Anything may be presented as proof, when and always, in the judgment of the official performing the investigation, it is relevant and admissible and not prohibited by law ([Article 206](#));
- Confession, which may be received at any time; i.e., from start of the Preliminary Investigation until just before sentence is handed down ([Article 207](#));

- Inspections, may include drawings, photos, and reenactments ([Article 208](#));
- Expert Statements ([Article 288](#));
- Witness Statements ([Article 289](#));
- Public (Articles [270](#) and [271](#)) and Private Documents (Articles [272](#) to [278](#)).

At this point, the Defense Attorney also delivers to the Judge a written list of evidence to be presented. This list defines what the Judge will accept throughout the Instruction phase. Should new evidence be uncovered at a later date, *it is not legally acceptable unless it conforms to the list initially provided.*

The process of Instruction (sometimes referred to as the *trial*) is comprised of the following sequence of steps:

- In separate meetings presided over by the Secretary of Agreements (*Secretario de acuerdos*) on the Judge's staff, Witnesses make their respective statements, which are taken down by a court stenographer; each witness signs his or her own statement;
- Defense Attorney is then given access to Witness statements in order to formulate *written* questions delivered in a sealed envelope to the Judge;
- Judge reviews questions submitted by Defense in order to determine—based on the formal classification of the crime in the Penal Code—those the Witness can answer;
- Witness has meeting with Defense Attorney to answer questions posed by the Defense and approved by the Judge; the Secretary of Agreements presides over the meeting and a court stenographer records the Witness's responses.

At this meeting, a Witness may change his or her testimony (e.g., "I might have been mistaken; I was a block away, and it was dark; I cannot be absolutely certain that it was the Accused that I saw"). If Witness changes testimony such that the Public Ministry no longer has three Witnesses, then the case will be dismissed "for lack of sufficient evidence to prosecute."

- **Order of Careo:** In the event of a major difference between Witness testimony and the account provided by the Accused, each party can request an Order of *Careo*, i.e., a confrontational meeting attended by the Secretary of Agreements, Victim or Victim's Personal Attorney, Accused, Defense Attorney and Eyewitness. If Witness fails to attend this confrontation meeting, the absence is taken as proof of Accused's innocence.

The Instruction phase concludes with the Judge's order declaring it closed.

First-Level Judgment (*Resolución de primera instancia*): Throughout the legal proceeding, the Court has been receiving documentary evidence submitted to it by the parties. As new evidence was added to the case file, the Judge established the legal reasoning by means of judicial orders.

Hearing (*Audiencia*): The Judge makes available to Public Ministry and Defense Lawyer the complete case file, which—notably—has been kept secret and withheld (Boucher cited in [Mergier](#)) from both the Public Ministry and Defense Team. At the Hearing, Judge asks if there is additional evidence still to be added. If the response is:

- **Yes:** Judge allows two (2) more days for its presentation;

- **No:** Judge makes *complete* case file available for the Public Ministry and Defense Attorney to consult inside judicial facilities; alternatively, attorneys willing to pay for them can obtain certified copies.

Public Ministry and Defense Lawyer each have five (5) days to submit their respective Conclusions. If case file exceeds fifty (50) pages, the prescribed period is increased by one (1) day for every thirty (30) pages, or fraction thereof, in excess of fifty (50) pages.

Conclusions (*Conclusiones*): After studying the documentary evidence presented by the Public Ministry and challenged by the Defense Lawyer, the Public Ministry and Defense Lawyer formulate their respective Conclusions.

Directed to the Judge, Conclusions are a detailed, concise, concrete written analysis specific to each and every one of the facts and pieces of evidence in the case; for each, the respective lawyers emphasize their interpretations of the facts and applicable law. The final summary section cites the substantive criminal law applicable to their respective interests, i.e., conviction or acquittal.

Public Ministry's Conclusions contain the following elements:

- Short description of the events, facts and circumstances of the crime;
- Legal issues presented by the case;
- Citation of enforceable laws and applicable doctrines;
- Conclusions making the argument for whether or not there is a case for conviction.

Defense Attorney's Conclusions boil down to undermining the Prosecutor's case. If Defense Team fails to submit Conclusions within the legally mandated timeframe, then the assumption is made that the Defense insists on Accused's innocence. However, by declining to submit Conclusions, the Defense also forfeits the opportunity to rebut the Public Ministry's charges.

Once the Judge receives the Public Ministry's Accusatory Conclusions and Defense Attorney's Exculpatory Conclusions, he or she declares the Hearing phase (*Audiencia*) closed and issues an order setting the date and time for the Judgment (Final Resolution and Sentence), which must take place within fifteen (15) days unless the case file exceeds five hundred (500) pages; then, for every fifty (50) pages in excess of five hundred pages, the deadline is extended one (1) additional day.

Judgment: Final Resolution and Sentence (*Resolución definitiva y sentencia*): The most significant action in the criminal procedure is the Final Resolution, which applies the law to the case at hand. This judicial ruling establishes whether or not the behavior or event conforms to one or more determined legal precepts, such that through analysis (*concurso*) of *historical truth* (i.e., case file compiled by Public Ministry) and examination of the Accused's characteristics (i.e., exculpatory evidence provided by Defense Team), the Judge issues a Final Resolution regarding Accused's:

- Conviction (*Sentencia Acusatoria*) and nature of the punishment (prison sentence, payment of bond and/or fine); or, *alternatively*,
- Acquittal (*Sentencia Non-Acusatoria*):
 - Documentary evidence of crime is lacking; or

- Even if Accused committed the crime, *documents fail to demonstrate guilt*; e.g., documents state that one of three required Eyewitnesses was somewhere other than at crime scene.

When the Final Resolution is available, the Officer of the Court on the Judge's staff notifies both Victim and Accused of its availability. From this notification, a Court messenger hand-delivers the Sentence to the Public Ministry and Defense Attorney, who immediately sign it. Each attorney then has five (5) days to:

- File a petition of Appeal; and/or
- File a petition of *Amparo* against implementation of the Sentence; if *Amparo* is not granted, the Sentence must be served.

Notably and significantly, once the Judge rules on a case, the Judge's Sentence becomes the *legal truth*, i.e., legal reality; that is, *evidence cannot be revisited in light of subsequent findings*.

Fast-Track Procedure (Proceso sumario)

With reforms passed in 1994, the Fast-Track Procedure ([Article 152](#)) was incorporated into the Federal Code of Criminal Procedures. According to the law, the Fast-Track Procedure is followed when it can be established that Accused was:

- Caught in the act (*in flagrante delicto*); and
- Confessed formally; i.e., before judicial authority; and
- Average applicable prison sentence does not exceed five (5) years.

The Fast-Track Procedure is also followed in cases where either an Order of Formal Prison or Order of Subject to Process has been issued, provided that both the Public Ministry (acting on behalf of Victim) and Defense Lawyer (acting on behalf of Accused) agree to it within three (3) days of notification and have no additional documentary evidence to offer, other than documents leading to application of the sentence or payment of the restitution.

The Fast-Track Procedure begins when the Judge declares it open. Only fifteen (15) business days are recognized for **Presentation of Evidence** (*Instrucción*).

Once **Evidentiary Documents** are received, the Public Ministry and Defense Attorney formulate their **Conclusions** during a non-extendable period of three (3) days each. If case file exceeds fifty (50) pages, one (1) day is added for each additional thirty (30) pages, or fraction thereof.

Once **Conclusions** are received from the Public Ministry and Defense Lawyer, the Judge sets the date for the **Hearing** (*Audiencia*), which is to be held within three (3) days. The Public Ministry and Defense Attorney must each confirm that they will attend. After the Hearing, the Judge has five (5) days within which to hand down the **Judgment: Final Ruling and Sentence** (*Juicio: Resolución definitiva y sentencia*).

Formally, Fast-Track is a conditional procedure; that is, if at any time it appears that the case fails to meet any one of the previously cited criteria, then the Judge must halt the Fast-Track process and reassign the case to the Customary Procedure. As a practical matter, however, the conditionality is not invoked, since the Accused is seeking a speedy resolution of the legal proceeding.

SUMMARY

Legal practitioners have observed that if all the procedural rules regarding deadlines were strictly followed without postponements or delays, then every criminal case could be resolved in six months. As a practical matter, however, given the essentially formal documentary focus of the traditional Criminal Justice Procedure, delays are numerous. It is widely recognized that the processing of a criminal case is normally a lengthy, drawn-out undertaking.

Post-Judgment Process: Second-Level Courts

We began this paper by describing the fundamental structure of Mexico's legal system, constitutionally divided into two tracks: *dogmatic* and *organic*. In short, the:

- *Dogmatic* track assembles individual rights, i.e., guarantees granted to individuals that must be respected by the State; the
- *Organic* track organizes public authorities to prevent abuse of power.

Actions of legal recourse against orders, rulings or resolutions issued by a First-Level Judge may be pursued on those two tracks:

- **Dogmatic track:** A petition for *amparo*,¹⁴ protection, can be filed based on a challenge to the *constitutionality* of any order, ruling or resolution; i.e., on the alleged violation of a guarantee or right enshrined in Mexico's Federal Constitution (Vargas, 2008, [IV](#)).
- **Organic track:** An *appeal* can be filed based on a challenge to the *legality* of any order, ruling or resolution issued in the course of the Judicial Procedure; i.e., on the alleged violation of the Federal Code of Criminal Procedures.

The procedures for seeking recourse to judicial rulings are different depending on the type of judicial action. Intermediate Judicial Orders, Rulings and Resolutions (*Sentencias interlocutorias*)—i.e., those issued in the course of the judicial procedure—are distinguished from the Judge's Final Resolution (*Sentencia definitiva*) for conviction or

¹⁴ Literally protection or shelter, *amparo* has no exact equivalent in the tradition of Common Law. Notably, *amparo* is an original Mexican legal concept that encompasses elements of several legal actions in the common law tradition: writ of habeas corpus, injunction, error, mandamus and certiorari (Avalos, 1992, p. 12]. Petitions of *amparo* (*Juicio de amparo*) constitute one of the most important types of cases heard by Federal courts in Mexico. The types of *amparo* suits that may be brought in connection with criminal cases are (Vargas, 2008, [IV.3](#)):

- Defense of *individual rights* such as life, liberty, and personal dignity;
- Against *laws*, i.e., defending the individual against unconstitutional laws;
- Judicial matters, i.e., assessing the *legality of judicial decisions* taken against the Federal Code of Criminal Procedures (*Código Federal de Procedimientos Penales*);
- Administrative enactments, i.e., providing protection against *government actions* adversely affecting the individual.

acquittal. Each has its own process for contesting the judicial action. These are discussed in turn.

Federal Cases (Federal Jurisdiction):

In the following discussion, it is important to keep firmly in mind the structure of the Judiciary, discussed earlier (Table I: "Federal Judiciary: Structure and Functions", p. 14):

- District Courts are at the First Level;
- Collegiate and Single Circuit Courts constitute the Second Level (*Amparo* and Appellate).

Special *Amparo* Courts at both the District and Circuit (First and Second) Levels are dedicated to hearing *Amparo* petitions. The Supreme Court of Justice may vote to attract (*atraer*) any case deemed sufficiently important to warrant review by the country's highest court.

Intermediate Judicial Orders, Rulings, Resolutions

The Constitutionality of any Order, Ruling or Resolution issued by District Court Judge may be contested:

- **Defense Attorney Asks:** Does Order, Ruling, Resolution observe due process and human rights?
 - **Yes:** No recourse available.
 - **No:** Defense Attorney may file Petition for Indirect *Amparo*.
- **District *Amparo* Court Judge** reviews and rules on *Amparo* Petition.
 - ***Amparo* Petition Granted:** Rights violated are reinstated, up to and including Defendant's release from prison.
 - **Not Granted:** Defense may file for '*Amparo* in Review'; i.e., petition is filed with Second-Level Collegiate Circuit *Amparo* Court to review ruling handed down by District *Amparo* Court Judge.
- **Collegiate Circuit *Amparo* Court** reviews and rules on Constitutionality of *Amparo* Ruling handed down by First-Level District *Amparo* Court Judge.
 - **Petition Granted:** Reinstatement of violated rights, up to and including Defendant's release from prison.
 - **Not Granted:** All avenues of recourse are exhausted.

Final Resolution

As a practical matter, Judges use common sense in arriving at the Final Resolution of a case, basing their decisions on legal analysis of documentary evidence (including testimonies, exhibits, etc.) of the crime presented by the Public Ministry and exculpatory arguments submitted in documents, testimonies, etc., by the Defense Attorney. Depending on the outcome (Guilty or Non-Guilty), avenues of recourse are available to both the Defense Attorney and the Public Ministry-Prosecutor for contesting the Final Resolution.

Notably, all appeals (of legality) and *amparo* petitions for review in connection with a Final Resolution are heard and decided by Second-Level Circuit Courts, either Single or Collegiate.

If Final Resolution is:

Not-Guilty: Public Ministry-Prosecutor may contest it on the grounds that it violates *Legality*:

- **Public Ministry-Prosecutor** may file Appeal contesting the *Legality* of Final Resolution; i.e., on the grounds that it violates Federal Code of Criminal Procedure:
 - **Final Resolution-Not Guilty Overturned:** Public Ministry-Prosecutor retires in victory.
 - **Final Resolution-not Guilty Upheld:** No other avenues of recourse are available to Public Ministry-Prosecutor, which are not permitted to file petitions for *amparo*.

Guilty: Defense Attorney may contest the Final Resolution on *Legal* and *Constitutional* grounds:

- **Defense Files Appeal** contesting *Legality* of the Final Resolution; i.e., on grounds of violation of Federal Code of Criminal Procedure.
- **Single Circuit (Appellate) Court Judge** reviews and rules on Appeal:
 - **Final Resolution-Guilty Overturned:** Defense retires in victory (Accused released).
 - **Final Resolution-Guilty Upheld:** Defense may file petition for **Direct Amparo** contesting *Constitutionality* of Final Resolution.
- **Collegiate Amparo Circuit Court** reviews and rules on *Direct Amparo*:
 - **Petition Granted (Against Constitutional Violation):** Defense retires in victory (Accused released).
 - **Petition Not Granted:** Defense Files Petition for *Indirect Amparo* contesting *Constitutionality* of Appeal Process.
- **Single Amparo Circuit Court Judge** reviews and rules on *Indirect Amparo*; i.e., *Constitutionality* of Appeal Process:
 - **Petition Granted (Against Constitutional Violation):** Defense retires in victory (Accused released).
 - **Petition Not Granted:** Defense Files Petition for '*Amparo* in Review'; i.e., *Constitutionality* of Amparo ruling issued by Single Amparo Circuit Court Judge.
- **Collegiate Amparo Circuit Court** reviews and rules on '*Amparo* in Review'; i.e., *Constitutionality* of Amparo ruling issued by Single Amparo Circuit Court Judge:
 - **Petition Granted (Against Constitutional Violation):** Defense retires in victory (Accused released).
 - **Petition Not Granted:** No further judicial recourse. All avenues have been exhausted.

A petition for *amparo* may be filed before the Supreme Court of the Nation regarding any judicial order issued in connection with a federal case. The Supreme Court then votes on whether or not to review the *amparo* petition.

State Cases (State Jurisdiction)

At the state level, actions of legal recourse against orders, rulings or resolutions issued by the First-Level Judge (*Juzgado de primera instancia*) may also be pursued on two tracks:

- **Dogmatic track:** A petition for *amparo*, protection, can be filed based on a challenge to the *constitutionality* of any order, ruling or resolution; i.e., on the alleged violation of a guarantee or right enshrined in Mexico's Federal Constitution.
- **Organic track:** An *appeal* can be filed based on a challenge to the *legality* of any order, ruling or resolution issued in the course of the Judicial Procedure; i.e., on the alleged violation of the state's Code of Criminal Procedure.

Amparo petitions arising from a criminal justice proceeding at the state level, challenging the constitutionality of an order, ruling or resolution, follow exactly the same process as for federal cases (previous section), since in both instances the petitions arise from alleged violations of the Federal Constitution, which must be heard and decided in federal courts.

Appeals contesting the *legality* of any order, ruling or resolution issued in the course of a criminal justice proceeding at the state level are filed with the State's Superior Court. Similarly, subsequent petitions for *amparo* protection follow precisely same process described for federal cases; they are heard and decided by federal judges.

CONCLUDING REFLECTIONS

The goal of this paper is to introduce to Anglophone readers the legal logic underpinning Mexico's traditional 'mixed inquisitorial' Criminal Justice System in the tradition of Civil Law. Hence, the discussion began by describing the salient characteristics of the Civil Law tradition at the international level and contrasting them with traits of Common Law. Three fundamental features particularly alien to the Common Law tradition were identified: the system's essentially authoritarian nature, its reliance on a deductive process anchored in both a Penal Code and a Code of Criminal Procedures, and a formal documentary practice. Mexico's traditional Criminal Justice System was then examined against this broad framework.

In closing, then, it is fitting to take a step back and reflect on key components of Mexico's traditional Criminal Justice System from an international perspective. Quite naturally, each country following the tradition of Civil Law develops its Penal Code and Code of Criminal Procedure in keeping with its own history and legal traditions. Mexico is no exception. For that reason, it is relevant to view Mexico's system in light of other criminal justice systems that have also emerged from this tradition.

Once again, we turn to expert opinion. In the late 1990's, William Van Caenegem served as a consultant in the area of comparative criminal procedure for the Western Australia Law Reform Commission. At that time, the Commission was looking into the value of replacing its adversarial system with the inquisitorial system. This was the context for Van Caenegem to undertake an exhaustive investigation of the "Advantages and Disadvantages of the Adversarial System in Criminal Proceedings" with specific "reference

to the most well-known (and closely affiliated) alternative, the so-called inquisitorial system prevalent in continental Europe and a large number of other nations" (1999, p. 69)—including, of course, Mexico, Central and South America. For his analysis, Van Caenegem relied on the inquisitorial systems in France, Belgium, Italy, The Netherlands and Germany.

In the Introduction, Van Caenegem (p. 69) wastes no time in addressing head-on the difference between the adversarial and inquisitorial approaches:

"Although the adversarial system is *contrasted* [*emphasis in original*] with the inquisitorial system, the latter in fact also enshrines in law the right of the accused to oppose the evidence of the prosecution and introduce evidence to prove innocence; it is thus '*contradictoire*' (to use the French term) or adversarial in that sense. *It is rather the structure and organization of the forensic process or investigative method, than the adversarial nature of the proceedings, that distinguishes the two proceedings* [*emphasis added*]. "In an adversarial system, the parties, acting independently and in a partisan fashion, are responsible for uncovering and presenting evidence before a passive and neutral trial judge or jury. In an inquisitorial system, the *ultimate responsibility for finding the truth lies with an official body that acts with judicial authority, and gathers evidence both for and against the accused* [*emphasis added*]. Whereas the actors in an adversarial system are equal and opposing parties, in an inquisitorial system the accused is not a party to the proceedings to the same extent."

In few words, Van Caenegem thus touches on the essentially authoritarian nature of the inquisitorial system and the gist of its investigative method. Moving on, he addresses what he terms 'theoretical' considerations, explaining that:

"...the *theory* (i.e., the formal, codified structures) of the law of criminal procedure is very different from its *practice* in inquisitorial systems. In other words, there is a *normative* model of the criminal process and a quite distinct *practice* of the criminal process. ... "The normative/practice divide in inquisitorial systems results, in part, from *codification* based, as it is, in theoretically conceived constructs" (p. 72).

These constructs are, of course, incorporated in the Penal and Procedural Codes that constitute the 'first principles' or 'set of premises' fundamental to the deductive method. Exploration of the presentation of evidence in documentary form follows naturally. In this regard, Van Caenegem (pp. 72-73) observes:

"The codified inquisitorial system is based on a *mandatory sequence of formally documented steps* [*mandated in the procedural code*] (*emphasis added*). In theory, each decision *en route* from offence to conviction is circumscribed by legal rules (the principle of "legality" ...). By law judicial police officers [*investigative police*] have the power to investigate offences. They draw up documents ... with a formal legal status concerning notification of offence, and concerning each investigative measure. These documents are gradually added to the file, or *dossier* [*expediente, in Spanish*] ... (p.72). "Once the file or *dossier* is complete, the case may proceed to trial [*Instruction*]. The trial judge will largely base his or her decision upon the contents of the *dossier*." ... (p. 73)"

"Most often the case is largely determined by written proofs in the *dossier*" ... (p. 74).

What Van Caenegem terms 'forensic process or investigative method' constitutes the essential core of his analysis. It is a theme he pursues consistently through to the final phase of the judicial proceeding:

"In the inquisitorial system the focus is on *outcomes*, in the common law systems on *process*. The process-focused, mechanistic common law principle may be defined as follows: the result of two parties vigorously defending their version of the facts from legally equal positions and before a neutral and unprejudiced arbiter will be that the truth comes out.

"The *inquisitorial* attitude is that a search for truth by an impartial officer of the state is the best method. It is important in that system that the officer, be it judge or prosecutor, is indifferent as to whether a conviction results or not. Thus a prosecutor in a civil law system demands little more than the *application of the law*; in the common law system the prosecutor demands a *conviction*" (p. 79). [Emphasis added.]

Though tempting, it is nonetheless outside the scope of this paper to compare the advantages and disadvantages of these two distinctly different traditions: Civil Law and Common Law. But were we to do so, we would likely establish the context by citing Professor Van Caenegem:

"Both adversarial and inquisitorial systems have advantages and disadvantages. Discussions as to which is better than the other invariably focus on one single aspect of each system rather than on a balanced appraisal of the system as a whole, and are therefore misleading and unhelpful. Nonetheless, on a detailed analysis, most of the advantages and disadvantages of each are readily identifiable. The overall effect of those disadvantages and advantages on the quality of justice though, is less easy to identify or assess.

"The fact that despite important differences in the way that justice is administered, authorities in inquisitorial and adversarial jurisdictions struggle with similar problems, supports the point just made" (p. 71).

Van Caenegem furnishes an important, and timely, reminder that establishing and maintaining viable judicial institutions is not an easy task anywhere, under any conditions. Mindful of this reality and this paper's stated goal of presenting the underlying logic and operational components of Mexico's traditional Criminal Justice System in easily accessible language, we have focused attention on the primary process constituting the major stages of Mexico's traditional 'mixed inquisitorial' Criminal Justice System.

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