

THE MEXICAN CRIMINAL JURY

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Many Anglo-American lawyers believe that trial by jury in criminal cases is a monopoly possessed by those nations following the English system. However, it has been noted elsewhere that various forms of lay juries for criminal cases are in use in France¹ and Sweden² (among other countries), and that they were utilized for a time in Spain under the Republican Government.³

Mexico has provided for a rather limited use of the jury system in its Federal Constitution,⁴ its Federal Code of Penal Procedure,⁵ which governs the procedures for federal crimes (e.g., robbing of the mails, crimes against the railroads, etc.) and its Code of Penal Procedures for the Federal District (Mexico City) and the Federal Territories.⁶ In addition, some of the States of the Republic have provided for jury trials in a manner which is very similar to the federal model.⁷ It is the purpose of this article to discuss the constitutional sources for

* Associate Professor of Law, University of Miami School of Law. This article was prepared by the author for the Comparative Study of the Administration of Justice, established under the terms of a grant from the Ford Foundation to Loyola University School of Law (Chicago) and is published here with the consent of the Study. All rights are reserved by the Study.

The author would like to express his appreciation to *Lic. Miguel Campos Somellera*, Guadalupe, Jalisco, Mexico, for placing his office at my disposal and for his courteous treatment and for the courteous treatment of his staff of attorneys. Appreciation is also due to *Lic. Carlos Cortes F.* of Mexico City. Finally, the author is indebted to *Dr. Eduardo Le-Riverend*, formerly of the University of Havana now Adjunct Professor of Law, University of Miami, for his constructive criticisms and suggestions of the author's translation of the code of procedure. Any sins of omission or commission in this article are to be assessed against the author.

¹ Pompe, *Proof in (Civil Law) Criminal Procedure*, 43 NEB. L. REV. 51, 68 (1963); Pugh, *Administration of Criminal Justice in France: An Introductory Analysis*, 23 LA. L. REV. 1, 11 (1962).

² Ginsburg, *The Jury and the Nämnd: Some Observations on Judicial Control of Lay Triers in Civil Proceedings in the United States and Sweden*, 48 CORNELL L. Q. 253, 268 (1963).

³ Murray, *A Survey of Criminal Procedure in Spain and Some Comparisons with Criminal Procedure in the United States (Part II)*, 40 N.D.L. REV. 131, 136 (1964).

⁴ CONST. OF MEXICO arts. 20, 111.

⁵ CODIGO FEDERAL DE PROCEDIMIENTOS PENALES arts. 308-350 (1934).

⁶ CODIGO DE PROCEDIMIENTOS PENALES PARA EL DISTRITO Y TERRITORIOS FEDERALES arts. 332-388, 645-659 (1931). The latter articles are reproduced virtually verbatim in Articles 123-138 of the LEY ORGANICA DE LOS TRIBUNALES DEL DISTRITO Y TERRITORIOS (1932).

⁷ E.g., CODIGO DE PROCEDIMIENTOS PENALES PARA EL ESTADO DE JALISCO arts. 609-658 (1934). This code provides for a jury of five jurors, while the two federal codes provide for a jury of seven jurors. In most other respects the two federal codes and the code of the State of Jalisco are quite similar in the provisions dealing with the jury.

the Mexican jury, and the procedure before this jury as delineated in the Code of Penal Procedure for the Federal District and Federal Territories as being representative of the Mexican system.

The remainder of this article will show that the Mexican law provides for a system whereby a number of factual questions are answered by the jury in the form of a special verdict which is somewhat reminiscent of the form of special verdicts advocated by leading authors for use in the United States for civil trials.⁸ In addition, some novel ideas are presented dealing with the problem of the juror who refuses to vote one way or the other.

CONSTITUTIONAL SOURCES

The Mexican Constitution provides that an accused shall be adjudged in a public trial by a judge or a jury of citizens who are literate and who are residents of the place and district in which the crime was committed, provided that the particular crime is punishable with a penalty of more than one year in prison. The accused shall be adjudged by a jury in all cases involving crimes committed by means of the press against the public order or the exterior or interior security of the nation.⁹ The Constitution further provides that the Congress of the Union shall issue with the greatest brevity a law of responsibility for all of the officials and employees of the Federation and of the Federal Territories resolving as public crimes or faults all acts or omissions which may rebound in harm to the public interest, and of good "official office" (*despacho*) even when the acts did not have a criminal nature before the fact. These crimes or faults shall always be judged by a "Popular Jury" (*Jurado Popular*) in the terms which are established in Article 20 for the crimes committed by the use of the press.¹⁰

THE SELECTION OF THE VENIRE

The jury has the mission to resolve, by means of a verdict, the questions of fact which are submitted to it by the president of the "debates" (in the sense of the courts) in accordance with the aforesaid provisions of the constitution.¹¹

The jury shall be formed of seven individuals chosen by lot in the form and terms which are established by the Code.¹² All male

⁸ E.g., Green, *The Submission of Special Verdicts in Negligence Cases — A Critique of the Bug Bite Case*, 17 U. MIAMI L. REV. 469 (1963); Sunderland, *Verdicts, General and Special*, 29 YALE L. J. 253 (1920).

⁹ CONST. OF MEXICO art. 20, § 6. The author has been informed that the fourth estate is singularly free from prosecution under this provision.

¹⁰ CONST. OF MEXICO art. 111. The author has been informed that in practice, prosecution for official crimes and wrongs seems to be limited to postmen who are accused of stealing from the mails.

¹¹ CODIGO DE PROCEDIMIENTOS PENALES PARA EL DISTRITO Y TERRITORIOS FEDERALES art. 645 (1931). All references hereafter will be to this code unless otherwise noted.

¹² Art. 646.

residents in the judicial district of Mexico (the Federal District which includes Mexico City) or in the foreign districts of the Federal District and Federal Territories who have the requisites which the law demands have the obligation of discharging the duty of a juror.¹³ In order for a person to be a juror he is required:

1. To be more than twenty-one years of age;
2. To be in full enjoyment of his civil rights, have an honest mode of living and good antecedents of morality;
3. To have a profession, employment or industry which affords him at least a daily income or rent of five *pesos* [approximately forty cents];
4. To know how to speak, read and write the national language sufficiently;
5. To be a Mexican and to have at least five years of residence in the jurisdictional territory where he must discharge his functions;
6. Not to have been condemned for any penal sanction for a crime;
7. Not to be "indicted" [*procesdado*] for a non-political crime;
8. Not to be blind, deaf nor dumb; and
9. Not to be a minister of any religion [*culto*] nor to have the "incompatibilities" which are designated by the law.¹⁴

The position of a juror is incompatible with any other position or employment of the Federation, of the Federal District and Federal Territories and of the municipalities. "Professors of primary instruction in employment" (in the sense of primary school teachers), or persons sixty years of age, or those who within the preceding three years have served as jurors also may not perform this duty.¹⁵

The Department of Social Subsistence (*Departamento de Prevención Social*) shall each year form a list of the individuals who have the indispensable requisites for discharging the duty of jurors and shall order that it be published on the first day of November.¹⁶ The individuals included in the list who lack the requisites designated in Article 648 are obligated to manifest thusly to the Department of Social Subsistence. This manifestation must be personally presented in writing and supported by written proof which, in the absence of other legal proof, may consist of the declarations of two witnesses who are residents of probity and of fixed roots in the place where the person resides. The declarations may be rendered before the political authority of the witnesses' locality. These manifestations must be presented

¹³ Art. 647.

¹⁴ Art. 648.

¹⁵ Art. 649.

¹⁶ Art. 650.

within the first twenty days of November.¹⁷ The persons included in the lists have the right to present before the Department of Social Subsistence the manifestations which are referred to above, as well as the excuses which they have for not serving as jurors within this period.¹⁸

The President of the Supreme Court of Justice, the Chief of the Department of Social Subsistence and the Solicitor of the Federal District and Federal Territories shall gather together no later than the twenty-fifth of November in order to resolve, without any recourse (in the sense that there can be no appeal from their decision), about the manifestations and petitions which may have been presented. After the first list has been thus corrected, the definitive list shall be published by the Department of Social Subsistence.¹⁹

The list shall be divided into four sections. The individuals listed in the first three sections shall discharge their duties during one of the respective thirds of the year. The individuals listed in the fourth section shall be integrated with the first three sections whenever these first three are incomplete for any reason. These lists shall contain an alphabetical list, by surnames, of the jurors and a designation of their domiciles. When a judicial district is composed of two or more municipalities or delegations, a separate list of jurors shall be formed for each locality by making, in each list, the corresponding division into four sections.²⁰

The lists shall be published not later than the thirtieth of November in one or more newspapers of the District and Territories (if there be any) and, in any case, in the "customary places" (*lugares de costumbre* — in the sense of the places for posting legal notices). Copies of these lists are also remitted to the Solicitor of Justice of the Federal District and to each one of the penal judges of the Federal District and Federal Territories.²¹ At the beginning of each third of a year, the Chief of the Department of Social Subsistence and his delegates in the Territories shall publish in the chief city of each judicial district the list of the jurors who must function during this period and shall communicate the appointments to the persons listed by remitting a pamphlet containing the articles of the Code relative to the performance of the functions of a juror.²²

When the manifestations or the declarations of witnesses (which are referred to in Article 651) turn out to be false, the declarants and the witnesses shall be consigned to the Public Ministry (the prosecuting

¹⁷ Art. 651.

¹⁸ Art. 652.

¹⁹ Art. 653.

²⁰ Art. 654.

²¹ Art. 655.

²² Art. 656.

authority) as the authors of the crime defined in Article 247 of the Penal Code.²³

The presidents of debates (*i.e.*, presidents of the trial courts) of the City of Mexico shall have a section of shorthand reporters under their command for the service of the jury composed of a first shorthand reporter, a second reporter and two assistants.²⁴ When a jury is effectuated in any other judicial district of the Federal District or of a Territory, the tribunal shall arrange the manner of taking care of the shorthand service for the jury.²⁵

PROCEDURE BEFORE THE POPULAR JURY

The judge presiding over the debates shall have a period of fifteen days to study each one of the causes he will have to present to a jury. Said term is computed from the date of the reception of the cause, which shall be made known to the parties.²⁶ The act of drawing of the jurors by lot shall be made in public and in the presence of the judge presiding over the debates, his secretary or "witnesses of assistance," the Public Ministry (the prosecutor) who must intervene, the accused and his defender.²⁷ On the day designated for the drawing of the names, the judge shall put into a vase the names of at least one hundred jurors (who have been placed on the list for the appropriate one-third of the year) and he shall draw therefrom thirty names. As he draws out each name, the judge shall read it aloud. The Public Ministry and the accused, or his defender, may then recuse, without the expression of any cause, the name drawn by chance. These recusations may continue until five jurors have been recused by the Public Ministry and a like number by each accused. Those jurors who are recused shall be immediately substituted for in the same drawing. The judge shall order, at the conclusion of the drawing, that the jurors who were not recused be cited.²⁸ The citation shall be made on the same day by the deputy who is at the service of the judge presiding over the debates, or by the police (in accordance with what the judge determines), and it shall contain:

1. The place in which the citation was issued, the day, the month and the year;
2. The object of the citation by designating the names and surnames of the accused [or accuseds] and specifying the crimes for which he must be judged and against whom the crimes were committed;

²³ Art. 657.

²⁴ Art. 658.

²⁵ Art. 659.

²⁶ Art. 332.

²⁷ Art. 333. The "witnesses of assistance" were persons requested by the judge to attend trials and to assist in clerical functions prior to the present use of permanently employed secretaries.

²⁸ Art. 334.

3. The place, year, month, day and hour of the "meeting" [reunion]; and

4. A threat to the juror that if he does not attend he shall pay a penalty of from twenty to one hundred pesos, or that he shall be consigned to the Public Ministry for disobedience to the legitimate commands of the judicial authority.²⁹

The deputies of the judge presiding over the debates shall enter into the records an account of the results of the citations which they have been ordered to deliver before the hour of the trial. A failure to comply with this requirement will be punished by the presiding judge with a penalty of up to fifty pesos (approximately four dollars), without any recourse.³⁰ The presence of the following persons is indispensable during the jury trial: the judge presiding over the debates, his secretary, the representative of the Public Ministry who must sustain the accusation, the accused, his defender and the jurors who were chosen. If any of them fail to appear without justifiable reason, the judge or his "superior in hierarchy" (*superior jerarquico*) may impose a penalty of up to one-hundred pesos (approximately eight dollars) against the defaulter.³¹

Whenever the defender fails to attend the trial (if he is not a public defender named by the court), the judge shall inform the accused of this fact and shall present him with a list of public defenders in order for him to choose the defender or defenders who are suitable to him.³² If the accused refuses to choose a new defender, the judge shall name one of the public defenders.³³

On the day designated for the trial and "a half-hour after the hour designated" (there being present the judge, the secretary or witnesses of assistance and the representative of the Public Ministry), the deputies of the court or the police shall give an account of their serving of the citations upon the jurors and a roll call of the jurors who were cited will be made. The court shall proceed to the drawing of the jurors who are to serve, if at least twelve of the cited jurors are present, and, in a necessary case, the court shall order the police to bring in those jurors who were cited, but who are absent, until twelve have been assembled. If an hour passes and the required twelve jurors have not been gathered, the meeting shall be dissolved and another day shall be designated for the drawing of the jurors and the hearing of the case.³⁴

The judge shall immediately impose (*de plano*) the threatened sanction upon all the jurors who have not attended after having been

²⁹ Art. 335.

³⁰ Art. 336.

³¹ Art. 337.

³² Art. 338.

³³ Art. 339.

³⁴ Art. 340.

cited, which shall be made effective without any recourse, unless the defaulters prove the impediment which made it impossible for them to attend. The fact that a juror was absent because he was not cited because of a change of his domicile shall not be considered as an impediment if he has failed to give the corresponding notice of his change in domicile to the court. The jurors who appear during the drawing of the names will be publicly admonished by the judge for their lack of punctuality.³⁵

If at least twelve jurors assemble, their names will be put in a vase and the judge shall draw out seven names for proprietary (*propietarios*) jurors and a number of supernumeraries, as he deems convenient, in such a manner that the total number of the names drawn does not equal the number of jurors present.³⁶ The seven jurors who have been drawn as proprietaries shall hear the case. The supernumeraries shall take the place of absent proprietary jurors in the order in which their names have been drawn.³⁷

After having performed the drawing, the judge shall order that the following parts of Article 522 of the Code (which deal with the recusation of jurors) be read to the jurors:

1. That he has a direct interest in the matter, or his spouse, relatives by consanguinity in a direct line without limitation of degree, or his collaterals by consanguinity or affinity within the fourth degree have a direct interest in the matter;

2. He or his relatives [as defined above] have pending a proceeding similar to the one being heard;

3. He has an intimate friendship with the accused;

4. At the beginning of the proceedings he was a creditor, debtor, partner, lessor or lessee, employee or employer [*principal*] of the accused;

5. He is or has been a guardian or curator of the accused or has administrated his property for any cause;

6. He is a presumed or constituted [*instituido*] heir, legatee or donee of the accused;

7. He has a wife or children who were creditors, debtors or guarantors of the accused at the beginning of the proceedings;

8. He has been a magistrate or judge in another "instance," juror, witness, "solicitor" [*procurador*] or attorney in the instant case or has discharged the duty of defender of the accused.

The jurors will then be asked if any of them have any of the "causes of impediment" as above stated. Any allegation of such cause shall be heard by the Public Ministry and the alleged cause shall be admitted

³⁵ Art. 341.

³⁶ Art. 342.

³⁷ Art. 343.

or denied by the judge. Article 515³⁸ provides for excuses which exempt certain occupations and professions from jury duty, but such "simple excuses" may not be admitted in these proceedings.³⁹

When a juror in answering the above questions does not manifest an impediment which he believes he has and the same appears during the trial or later, he will be consigned to a competent judge in order that he may impose the sanction designated in Article 247 of the Penal Code. The same consignment to a judge shall be made if the juror alleges any impediment and afterwards it appears that it is not true.⁴⁰ If the cause of impediment is admitted, a new juror will be drawn as a substitute, and he will be warned as provided in Article 344.⁴¹ The parties may request the exclusion of any juror who has an impediment and who has not alleged it.⁴² The jurors who have not been selected by lot will retire from the room at the conclusion of the drawing.⁴³

The judge will then take the following "protest" (*protesta*) from the jurors: "Do you protest to discharge the functions of juror, without hatred or fear, and to decide, according to the appreciation of your conscience and in your intimate conviction, the charges and the means of defense, acting in all with impartiality and firmness?" Each member of the jury, upon his name being individually called by the judge, shall answer in a clear and intelligible voice: "Yes, I protest."⁴⁴

If any of the jurors refuses to "protest," the judge shall immediately (*de plano*) impose the sanction in accordance with what is provided in Article 182 of the Penal Code without any recourse (in the sense that there can be no appeal from this sanction) and the juror's place will be taken by the corresponding supernumerary.⁴⁵ If the defender

³⁸ Art. 515:

Jurors may ask to be excused in the following cases:

1. When they are heads of public offices;
2. When they are employees of the railroads or telegraph service;
3. When they are ministers of any religion [*culto*];
4. When they are students matriculating in the national schools or university institutions;
5. When they are impeded by an infirmity which does not permit them to work;
6. When they are directors of instructional or charitable establishments either public or private;
7. When they live out of the City of Mexico;
8. When they are more than seventy years of age;
9. When they have discharged the duty of a juror during a quarter of the prior year, without any disciplinary correction having been applied against them for a lack of attendance.

These excuses shall be alleged in the terms of Articles 542 *et. seq.*, by observing (in proper case) that which is provided in fraction 9 of Article 648 and Article 649.

³⁹ Art. 344.

⁴⁰ Art. 345.

⁴¹ Art. 346.

⁴² Art. 347.

⁴³ Art. 348.

⁴⁴ Art. 349.

⁴⁵ Art. 350.

is not present at this time the steps provided for in Article 338 will be taken.⁴⁶ After the jury has been "installed," the presiding judge shall order the secretary to read aloud those parts of the records which the judge deems necessary or which are requested by the parties.⁴⁷ After the reading, the presiding judge shall question the accused about the facts.

The jurors may personally or through the judge interrogate the accused and ask him as many questions as they believe conducent "in order to illustrate their conscience, but they must carefully avoid any disclosure of their opinions."⁴⁸

After the examination of the accused has been concluded, examinations (in the sense of questions and answers) of the witnesses and experts will be made. Confrontations of the witnesses with one another and with the accused will be performed and the evidence will be received. The Public Ministry shall then raise his conclusions orally. His allegations shall be reduced to a clear and methodic exposition of the facts (and their elements) imputed against the accused and of the proof rendered with the analysis which he believes it is fitting to make. He may manifest to the jury the value of the circumstances alleged by him or by the defense, but without referring to the legal rules about the evidence or making any allusion to the sanction which may be imposed upon the accused. He may not cite laws, decrees, doctrines or opinions of writers of any kind. The judge shall call the infractor of this rule to order and shall threaten him with a penalty of from fifty to two hundred *pesos* if he repeats it.⁴⁹

The conclusions of the prosecution which are sustained shall be the same as were formulated in the proceedings (the beginning of the case), and the prosecution is not permitted to withdraw, modify or allege new conclusions except for a sufficient supervening cause. In this latter case, the Public Ministry, before speaking to sustain said conclusions, shall verbally explain the basic reasons for the withdrawals, modifications or additions to the conclusions.⁵⁰ The defender shall make his defense after the Public Ministry and he shall be subject to the same rules of manner of presentation as the Public Ministry.⁵¹ Whenever the Public Ministry or the defender cites or makes reference to any "record" of the proceedings which is not in existence, or is not as indicated by him, the judge shall take note of this in order to make the proper rectification of the speaker's conclusion.⁵²

⁴⁶ Art. 351.

⁴⁷ Art. 352.

⁴⁸ Art. 353.

⁴⁹ Art. 354.

⁵⁰ Art. 355.

⁵¹ Art. 356.

⁵² Art. 357.

The defender may freely withdraw his conclusions. If he wishes to change the conclusions previously established in the proceedings, or to sustain new conclusions, he may do so only in the case and in the form which is established for the Public Ministry in Article 355.⁵³ The Public Ministry may reply as many times as he wishes and only in this case may the defense answer, but in any circumstance the defense shall be permitted to speak last.⁵⁴ The victim shall speak personally or through his attorney (*apoderado*) after the Public Ministry, and the defense has the right to reply in any case. In their discourses, the victim or his defender (*patrono*) must observe the same rules as are established for the Public Ministry in Article 354.⁵⁵

When the parties finish speaking, the judge shall ask the accused (if he is present) if he wishes to speak, and permission will be given to him if he wishes to do so. The accused may speak freely except that he may not attack the law, morality or the authorities, or injure any person. The accused who oversteps (*extralimitare*) himself shall be called to order by the judge. If he persists he shall be denied the right to speak, and he even may be made to leave the room (*salon*) in order to continue the trial.⁵⁶ The judge shall declare the debates closed at the conclusion of the accused's speech.⁵⁷

The judge shall then proceed to formulate an interrogatory which must be submitted to the deliberation of the jury in accordance with the following rules:

1. If any contradictions are encountered in the conclusions formulated by the Public Ministry, the judge shall declare thusly; if notwithstanding this declaration the Public Ministry does not withdraw any of them in order to make the contradictions disappear, none of these contradictions shall be put in the interrogatory;

2. If contradictions exist in the conclusions of the defense, the court shall proceed in the same manner as is provided for the contradictions of the Public Ministry;

3. If the Public Ministry withdraws all of the accusation, the judge shall declare the jury dissolved and shall discontinue the proceedings;

4. If the defense in its conclusions thinks that the facts considered by the Public Ministry constitute a different crime, another interrogatory shall be formulated and the circumstances alleged by the Public Ministry will be added to the same when they are not incompatible;

5. The facts alleged in the conclusions of the Public Ministry and the defense which do not constitute a circumstance

⁵³ Art. 358.

⁵⁴ Art. 359.

⁵⁵ Art. 360.

⁵⁶ Art. 361.

⁵⁷ Art. 362.

determined by the law, or which due to the lack of any of the elements which the law requires may not be considered in the sentence, shall not be included in the interrogatory;

6. When the conclusions of the Public Ministry and of the defense are contradictory, the judge shall place the necessary notations in the interrogatory in order that the jury does not "incur" [*incurra* — in the sense of fall into] the contradictions;

7. When the facts contained in the conclusions of the Public Ministry or of the defense are complex, they shall be divided into as many questions as are necessary in order that each question contains one single fact;

8. If the conclusions of any of the parties employ a technical term which legally contains various facts or elements, the court shall proceed as in number seven above. A common [*vulgar*] term shall substitute for a technical term whenever it is possible if this only signifies a fact. If this is not possible, the court shall make a notation in the interrogatory explaining the significance of the term;

9. Questions about the age or sex of the accused or of the victim or about the facts which must be made certain by special proceedings of scientific experts shall not be included in the interrogatory. Neither shall there be included questions relative to steps or records which are exclusively of legal procedure.

10. Neither shall be included in the interrogatory questions which involve the denial of a fact; questions can only be submitted to the jury when the Public Ministry or the defense affirms the existence of a fact;

11. The first question of the interrogatory shall be formulated in the following terms: "To the accused N.N. there is imputable . . . [here state the fact or facts which constitute the material elements of the imputed crime, without giving them legal denomination and by paying attention to what is provided in number 7 above]." In succession there shall be stated the questions about the modificative circumstances by observing what is provided in numbers 7 and 8 above;

12. In a column of the interrogatory designated for this purpose there shall be placed in front of each question the words "essential fact" or "modificatory circumstance," according to the nature of the question.⁵⁸

In the case of section four above (*i.e.*, when the prosecution and the defense disagree on the nature of the crime alleged by the prosecution), the jury shall first submit to a vote which of the two interrogatories (the interrogatory of the prosecution or of the defense) shall be voted upon, and this will be decided by a majority vote. At the end (*calce* — literally "the bottom of") of the chosen interrogatory and before the signatures, the jurors shall state the reason for the vote by

⁵⁸ Art. 363.

expressing the number of votes which have formed the majority.⁵⁹ The facts which are referred to in section 10 above shall be adjudged by the judge in his sentence subject to the rules of legal proof, provided that they have been matters acknowledged by any of the parties.⁶⁰

"Whenever, according to the law, the non-existence of a fact is necessary in order to take a given situation into consideration, such fact will be assumed as non-existent if the jury did not affirm its existence either because the point was not submitted to it, or because the jury decided negatively after the point was submitted to it in accordance with section 10 of Article 363."⁶¹ In short, there is a negative presumption when the non-existence of a fact is needed in order to decide another question.

A separate interrogatory shall be formed for each accused in accordance with the rules established in Article 363.⁶² Both the Public Ministry and the defense may object to the wording of the interrogatory, and the judge shall resolve the objection without any recourse (in the sense of no appeal from his decision).⁶³

The judge will then direct the following instruction to the jury:

The law does not take into account the means by which jurors form their conviction; nor does it fix any rule upon which depends full and sufficient proof; it only demands that you question yourselves and examine with the sincerity of your conscience the impressions produced on you by the evidence rendered in favor of or against the accused. The law limits itself to ask this question which summarizes all your duties: Do you have the intimate conviction that the accused committed the act which is imputed against him? Jurors fail in their principal duty if they take into account the fate which, by virtue of their decision, must fall upon the accused by that which is provided in the penal laws.⁶⁴

The judge shall then deliver the records and the interrogatories to the oldest juror who shall be president of the jury, and the youngest juror shall function as the secretary. The judge shall suspend the trial and shall send the jurors to the "room of deliberations" (*sala de deliberaciones*), and they may neither leave the room nor have any communication with persons outside until the verdict is signed. The supernumerary jurors who have not been substituted (*supliendo*) for any "proprietary juror" (*propietario*) shall remain in the court room (*sala de audiencias*) so that they will be able to fill any absence which may occur.⁶⁵

During the deliberations no one may enter the room except by

⁵⁹ Art. 364.

⁶⁰ Art. 365.

⁶¹ Art. 366. See also Art. 363.

⁶² Art. 367.

⁶³ Art. 368.

⁶⁴ Art. 369.

⁶⁵ Art. 370.

order of the judge and for the material service of the jurors. Not even the judge shall be permitted to enter the room of deliberations, except when the jurors need clarification about the sense of any question and in the cases stated in Articles 374 and 376. In these latter cases the judge shall go into the room with the secretary and, in the presence of the Public Ministry and the defender (if they have not withdrawn), he shall make the necessary explanations which shall be inserted in the record if any of the parties request it.⁶⁶

The president of the jury shall submit the questions of the interrogatory one by one to the jury by permitting them and even exhorting them to discuss the questions, and only when the discussion has been exhausted shall they proceed to a vote.⁶⁷ For the voting the secretary shall deliver to each one of the jurors two "counters" (*fichas*), one of which will contain the word "yes" and the other the word "no," and he then presents a vase for them to deposit the counter which contains their vote. After gathering all of the votes in the vase, it is delivered to the president of the jury and he shall present another vase to the jurors in which they will deposit the surplus counters. The president of the jury shall draw the votes from the vase one by one, read aloud the word written thereon, and the secretary of the jury shall compute the votes. After this reading, the president of the jury shall order the secretary to record the result in the respective column of the interrogatory. If at this moment any of the jurors protest that there was error or mistake in the emitting of their vote, the voting shall be repeated. Once the result of the voting of a question has been written, the voting may not be repeated.⁶⁸

When any juror refuses to vote, the president of the jury shall call the judge who shall exhort the juror to vote "by making him see" the sanctions which he incurs by his refusal. If he insists in his refusal, the judge shall flatly order a penalty (without any recourse) of from fifty to two hundred *pesos*, or the corresponding imprisonment, "and shall order this juror's vote added to the majority or to the side most favorable to the accused, if there have been as many votes in favor of the accused as there were against him."⁶⁹

After the questions have been voted upon, the secretary shall collect the signatures of all the jurors and certify by his signature that they were made by the jurors.⁷⁰ If any juror refuses to sign, the same procedure will be followed as when a juror refuses to vote. If any juror does not sign because of physical impossibility, the secretary shall certify to this fact and this certification shall take the place of the

⁶⁶ Art. 371.

⁶⁷ Art. 372.

⁶⁸ Art. 373.

⁶⁹ Art. 374.

⁷⁰ Art. 375.

signature of the juror.⁷¹

After the verdict has been signed, the jurors shall return to the court room and the president of the jury shall deliver the verdict to the presiding judge who shall read it aloud. If, in the judgment of the judge, the jury has failed to vote on any question or has made contradictions in its voting, he shall order that the jurors return to the room of deliberations to vote on the omitted questions or upon what may be necessary in order to undo the contradictions. The secretary of the jury shall record the reason for this new voting and shall collect the signatures of the jurors and certify them.⁷²

If there has been no necessity to proceed as stated above and the verdict has been absolving or condemning, the judge shall manifest to the jurors that having concluded their mission they may retire. The judge will then open the "trial of law" (*audiencia de derecho*).⁷³ Upon opening the "trial of law," the judge will give the floor to the Public Ministry and to the victim of the crime. They will request what is fitting by basing their petitions on the laws, decisions and doctrines which they deem conducent. The defense will then be heard, and it will be able also to allege the laws, decisions and doctrines which it judges fitting in support of its claims.⁷⁴

After the conclusion of the debate, the judge with his secretary or "witnesses of assistance" shall go to the room of deliberations in order to dictate a sentence about all of the crimes declared by the jury. The sentence shall contain only the resolute part.⁷⁵ Upon the return of the judge to the courtroom, the secretary shall read the sentence while all the audience is standing and the "public force" (the judicial police) is presenting arms.⁷⁶ If the sentence be an absolving one and none of the parties appeal at the moment of the notification of the sentence, the accused shall be placed in absolute liberty if he is not being detained for another reason. If the Public Ministry appeals, the accused shall be placed at liberty under a "protest" (in the sense of a solemn judicial promise) of presenting himself to the judge whenever he is cited and of giving notice when he changes his domicile.⁷⁷

The reading of the sentence in the hearing provides the effects of legal notification as to those parties who attended the trial even when they were not present at the moment the sentence was read, provided that their absence was voluntary. Those who did not attend the trial shall be notified of the final judgment (*fallo*) within twenty-

⁷¹ Art. 376.

⁷² Art. 377.

⁷³ Art. 378.

⁷⁴ Art. 379.

⁷⁵ Art. 380.

⁷⁶ Art. 381.

⁷⁷ Art. 382.

four hours.⁷⁸

Within three days following the day of the termination of the trial, the secretary of the judge shall draw up a record of this trial which must contain:

1. The place, day, month and the year of its "celebration";
2. The names and surnames of the judge and of the jurors who have tried the matter, and of the representative of the Public Ministry, of the parties who have attended, as well as the defenders, lawyers and attorneys [*apoderados*];
3. The names and surnames of the jurors who have alleged impediments by expressing if they were admitted or denied, as well as what was alleged;
4. The variations which the Public Ministry or the defense have made in their conclusions, by minutely recording the reasons alleged to this effect;
5. That which the parties expressly request be made of record;
6. The incidents which have occurred during the debate and the resolutions which the judge dictated about them;
7. The record of the presence of the parties who attended the trial, when the sentence was dictated, and that the judge stated the time granted by law for an appeal. This record shall be signed by the judge and by the secretary or witnesses of assistance.⁷⁹

Within five days after the conclusion of the trial, the judge shall write (*engrosará*) his sentence which shall contain:

1. The place, day, month and year in which it was pronounced;
2. The name and surname of the accused, his nickname, if he has one, the place of his birth, his age, residence or domicile and profession;
3. The facts declared by the jury which shall be placed in numerical order under the word "Result" [*Resultado*];
4. The legal bases [*fundamentos legales*] of the sentence, which shall be placed in numerical order under the word "Considered" [*Considerando*];
5. The condemnation or absolution of the accused; and
6. The signature of the judge and of the secretary or of the witnesses of assistance.

The parties shall be notified of this sentence within the following twenty-four hours.⁸⁰ "The provisions of Articles 371 and 376 shall be affixed in the room of deliberations in clear writing and in a very visible place,"⁸¹ i.e., public notice of what transpired will be posted on a public bulletin board.

⁷⁸ Art. 383.

⁷⁹ Art. 384.

⁸⁰ Art. 385.

⁸¹ Art. 386.

All those who do not officially intervene in the proceedings (whatsoever may be their category) shall occupy the places in the courtroom assigned to the public. Only the judge, his secretary, or "witnesses of assistance," the representative of the Public Ministry, the defenders and the necessary employees of the judge may be on the platform assigned for the jurors. All those who infringe this requirement shall be admonished by the judge, and if they repeat their wrongdoing, they will be made to leave the courtroom.⁸² The conducent requirements of the Code relative to the policing of the rest of the hearing shall be observed.⁸³

⁸² Art. 387.

⁸³ Art. 388:

In the trials before juries, order in the courtroom shall be in charge of the president of the debates whose orders shall be executed punctually. When the president is out of the courtroom [*sala de audiencias*], order shall remain in charge of the Public Ministry who will have in these moments the same powers as the president. When the Public Ministry is also out of the courtroom, order shall remain in charge of the chief of the "public force" which conducts the accused. The chief of the public force shall determine what is necessary to keep all in good order, and he shall give an account to the president if there is disobedience.

See also Art. 68.