

"An Overview To Cuban Criminal Law and Procedure"  
Published in the International Legal Journal  
by: F.J. Raucii on comments by Dr. Ramon de la Cruz Ochoa  
December 10, 2002  
Havana, Cuba

I. INTRODUCTION:

Dr. de la Cruz Ochoa was introduced by Dr. Dorys Quintana who gave a brief overview of the speaker's career. His professional experiences include former Attorney General of Cuba and President of the Judiciary Commission of the National Assembly. He is currently President of the Cuba Society of Penal Science and a practicing attorney.

Following this introduction, Professor Gerald Uelman, Delegation Leader, welcomed Dr. de la Cruz Ochoa on behalf of the California Criminal Justice Leaders and explained the background and interests of the group which included experienced practitioners in criminal law, both in California and other states. Professor Uelman also emphasized the desire of the delegation to improve the respective criminal justice systems.

Dr. Sonia Bush-Basquet also welcomed him, on behalf of the Juvenile Justice delegation.

Dr. de la Cruz Ochoa thanked the leaders of the delegations for their kind words and stated his respect and appreciation for the professional background of the delegates. He felt that the time constraints on the program did not allow for an in-depth discussion and comparison of the two systems - Cuban and U.S. However, based on his admiration of certain aspects of the U.S. criminal justice system, a future seminar that compares and contrasts the two systems would be appropriate. Specifically small groups of not more than thirty participants from each country could make presentations on discrete parts of the respective criminal justice institutions.

With that introduction he then gave an overview, basis and specifics of Cuban criminal justice including source, procedure and substantive law.

II. SOURCE OF LAW:

Cuban penal law is more similar to the laws of most countries of the world than it is to the laws of the United States. It derives its procedures from the Civil Law generally and Spanish law particularly rather than Anglo-Saxon-American legal precedent.

Historically it is based on the latter development of Spanish law which, in turn, was in reaction to the abuses of the Catholic Church and the Inquisition. In that regard Cuba was ahead of the other Latin American countries which accepted Spanish law prior to these reforms.

The reforms of Spanish law and hence the Cuban form of that law were contrary to the negative aspects of Church laws: the judge as investigator and sentencor; the use of

confessions as the primary source of evidence and the like. The reforms in Spain were thus available to Cuba at this later date.

### **III. CRIMINAL PROCEDURE:**

#### **A. Basis:**

The several stages of the criminal procedure process lend themselves in the aggregate to a mixed procedure -- influences from Spanish colonial period and from the brief period following the war between Spain and the United States when American influence prevailed. That period, between 1899 and 1902 saw the introduction of the Writ of Habeas Corpus.

At the outset of this review he pointed out the several fundamental distinctions between the Cuban system and that of the United States: There is no plea bargaining; there is a period of pre-trial confinement of investigative purposes where the accused is not entitled to counsel or bail; there is no right to counsel until the investigation is complete.

As an aside he indicated that the Revolution introduced some other changes but the process was essentially the same as before those events.

#### **B. Process:**

##### 1. Complaint:

The criminal justice process begins with the filing of a complaint alleging a wrong. A person or persons usually make the complaint but the police can also make it. It alleges a wrong and the initial facts that describe the wrong.

##### 2. Research:

Upon the filing of the complaint it is investigated by the police by a procedure known as "research". The "researcher" operates under the supervision of a prosecutor who reviews the report presented by the researcher. The prosecutor then determines whether the case should go forward and, if it does, whether bail or confinement is appropriate. He must respect the rights of the accused throughout this process.

In the meantime there is a form of pretrial confinement of no less than eight days during which the investigation and interrogation of the accused can be conducted. After the eighth day the attorney for the accused can become involved. At this point counsel is entitled to read the investigative files and respond accordingly.

In this regard there is no hearing rather all the findings and rebuttals before the trial is in writing. These include the complaint, research report and the rebuttal of counsel. As an aside the speaker is working with the Society to change this aspect to allow a hearing before trial.

### 3. Pretrial:

The file as defined above is then turned over to the prosecutor who determines what additional investigation or information is necessary. He does this with the advice of an "instructor" which is a police functionary. Assuming the report is complete the prosecutor issues provisional conclusions. These conclusions include the complexity of the case; the interpretations and emphasis of the facts; definition of the type of crime, i.e. the substantive law(s) involved; and the recommendation of sentence.

These conclusions are forwarded to the court where a judge or judges are nominated to make an initial review of the file. From there it is referred to the accused, now defendant's, counsel or defendant if there is no counsel.

In the former instance the lawyer has ten days to file a rebuttal; in the latter instance the defendant has five days to obtain counsel or the court will appoint one for him or her.

### 4. Trial:

The trial process may most resemble proceedings in the United States' courts. The sequence of the trial is as follows:

- a. The reports from both sides are read into the record;
- b. The first witness following the reading of the reports is the defendant who can refuse to testify. Like the United States, innocence is presumed until proven otherwise.
- c. Witnesses are then called and examined by the judge and respective counsel.
- d. If appropriate, experts are called and examined in the same manner.
- e. Closing statements are made by counsel and the defendant is given the right to make a statement.
- f. The court has ten days to make a decision in writing. The decision contains the reasons for the decision and is provided to the attorneys.

### 5. Appeal:

The appeal process proceeds in a manner not unlike that in the United States, in that the court considers only legal issues, not facts.

There can, under certain circumstances, be a "revision" of the case based on new circumstances or events. This usually affects the sentence but can also result in a new trial.

#### IV. PENAL CODE:

The Penal Code applies to the entire country and contains both procedural law and substantive law. It defines crimes, the conduct of judges, the jurisdiction of the courts, exceptions to criminal liability and penalties.

Penalties can include death, life in prison, term of years, work farms, community service, fines and limitation on movements - a form of house or community arrest.

The Code also contains the establishment and maintenance of the prison systems, which are supervised by the Chief Prosecutor as well as parole standards, which are supervised by the trial judge.

Lastly it contains a "Special Part" which deals with crimes against the state.

#### V. PERSONAL OBSERVATIONS:

In closing, Dr. de la Cruz Ochoa shared his thoughts about the present state of criminal jurisprudence in Cuba. He stated these were personal opinions and reflect the differences between the ideal and the practice. Specifically these are areas that need to be addressed:

1. There needs to be more opportunities for people to be represented by counsel;
2. There needs to be less crimes defined in the Penal Code;
3. Society needs to have a less repressive vision about crime

In that regard Cuba has made strides but there is no simple answer on how to accomplish or why progress is being made. Perhaps it is the social system, prevention, police and penal systems being more efficient. Whatever it is, crime is declining and there is a notable absence of gang-related crime.

Finally the speaker indicated that his knowledge of the legal system in the United States is a work in progress. He needs to know much more and is acquiring that knowledge by reading and participating in programs such as this and at San Juan University in Puerto Rico where he is a visiting professor.

The program was then opened to questions from the delegates, which follow.

#### **APPENDIX TO PRESENTATION OF DR. LA DE CRUZ OCHOA**

##### **QUESTIONS AND ANSWERS:**

***Q1. What are the penalties for drug use and trafficking?***

A. There are very strong sanctions against drug traffic. The degree of penalty depends on whether Cuba is being used as a conduit for drugs or for domestic distribution. In that

regard Cuba is starting to have a drug problem. The Penal Code makes no distinction between hard or soft drugs.

***Q2. How long can a person be held prior to trial?***

A. The period of what you would call pre-trial confinement and what we call the Investigative stage lasts for not less than eight days. Beyond that time it is a decision by the prosecutor.

***Q3. What is the percentage of convictions?***

A. For minor crimes about thirty percent to forty percent (30%-40%), probably because of the summary nature of the report; for major crimes about eighty five percent to ninety percent (85%-90%) because of the more detailed investigations .

***Q4. Are trials public?***

A. Yes

***Q5. What is the method of execution?***

A. Firing squad however, women are exempt from capital punishment.

***Q6. What are the procedures for juveniles?***

A. There is no criminal responsibility for those under 16 years and those between 16 and 18 years are not sent to prison. Rather the approach is education rather than punishment. However, the education can be enforcement by confinement.

***Q7. Are the police criminally liable for the violation of a defendant's rights?***

A. Yes, the police are liable and can be prosecuted for these violations.

***Q8. What inference is drawn from a defendant's refusal to testify?***

There are no legal sanctions but the court draws a negative inference. Defendants rarely refuse to testify ... about fifteen percent (15%) refuse.

***Q9. Who determines who is called as a witness and what is the numerical basis of a decision?***

A. The trial court decides who are witnesses, including experts and decisions are made by a majority of the judges.

***Q10. Is insanity a defense to a crime?***

A. Mental illness and mental retardation are considered medical problems which are decided by experts. If there is a mental disease or retardation there is no criminal responsibility.

***Q11. What tests are used for drunken driving?***

A. There are no scientific tests such as blood alcohol. It is based on observation and conduct rather than a fixed percentage of alcohol in the blood or urine.

***Q12. What use is made of precedent in trials, especially as to evidence?***

A. The trial court can use precedents but is not required to.

***Q13. What is the relationship between defendant and attorney?***

A. The lawyer's duty is only to the client, subject to professional ethics. There is no obligation to the state. Confidentiality exists between the lawyer and the client and eavesdropping is illegal and the lawyer needs to be aware if it exists and work around it.

***Q14. What rules govern conduct during interrogations?***

A. The rules are governed by the Penal Code. There is no restraint on the police as to length of questioning, only conduct. The defendant may have a lawyer present and the police can so advise but are not required to do so.