Covering Crime in Mexico and Latin America



**National Association of Hispanic Journalists Convention – June 2007** 

## **WARNING:**

# Some of the contents of this presentation are graphic.

Covering crime stories in Mexico and Latin America is a very different experience from doing so in the United States.



Although reporters are reluctant to cover drug trafficking cases, they are not shy when it comes to accidents, crimes of passion and bizarre cases.



#### The Mexican Justice System

Apart from the danger and adventure, American reporters often find that criminal judicial systems in Mexico and Latin America are similar but also quite different from those in the United States.

- In the United States, criminal suspects are subjected to English Common Law where they are considered, "Innocent, Until Proven Guilty".
- In Mexico and many parts of Latin America, criminal suspects are subjected to Napoleonic Law where they are considered, "Guilty, Until Proven Innocent".
- The path from arrest to sentencing or acquittal is shorter but also more bureaucratic.
- A second language barrier of legal terms is present.

#### Advantages and Disadvantages for Crime Reporters in Mexico

#### **Advantages:**

- More Access to Suspects and Victims
- More Access to Crime Scenes and Morgues
- Investigators Are More Candid
- Hospital and Jail Interviews
- The Whole Process Moves Quicker

#### **Disadvantages:**

- Dangerous
- Reluctant Witnesses
- Access to Records and Statistics Not Always Reliable
- Book Knowledge Will Only Get Reporters So Far
- Sometimes, The Process Moves Too Quickly

#### **Step 1) Identify The Proper Authorities**

In Mexico, different crimes are handled by different authorities within their legal and geographic jurisdictions.

Federal (SSPF/PFP/AFI/SEDENA/INAMI/SAT/Grupo Beta)

Drug Trafficking Weapons Smuggling

Illegal Immigration Crimes on Federal Property

Customs Crimes Against Federal Agents

State (Policía Ministerial/Policía Judicial/SSPE/PEP)

Murders Fatal Accidents

Manslaughter Unexplained Deaths
Suicides Kidnappings/Extortion

Auto Theft Etc.

Local (Policía Preventiva/Transito)

Assaults Public Intoxication

Robberies Burglaries
Theft Prostitution

Minor Accidents Etc.

#### Step 2) Know The Law

Title I, Article 14 of the Mexican Constitution guarantees civil rights with regard to the timing and application of criminal charges, the right to hearings and guarantees property and rights.

Title I, Article 16 of the Mexican Constitution states a person cannot be arrest without probable cause outlining several different examples.

Title I, Article 20 of the Mexican Constitution guarantees 10 basic rights for **all criminal suspects** arrests in Mexico.

Title I, Article 20 of the Mexican Constitution guarantees the six basic rights for **all victims of crime** in Mexico.

Each state has its own Codigo Penal and Codigo de Procedimientos Penales that outlines charges, penalties and legal procedures.

#### Step 2) Know The Law

Title I, Article 20 of the Mexican Constitution guarantees the following 10 basic rights for **all criminal suspects** arrests in Mexico:

- Right to bond in non-serious cases
- Right to remain silent
- Right to find out accuser/nature and accusation within 48 hours
- Right to face accuser in front of a judge
- Right to gather evidence or testimony in defense
- Right to public trial before judge or jury of literate citizens (> 1 years)
- Right to receive all case information for defense
- Right to trial within four months (< 2 years) or one year (> 2 years)
- Right to know rights and to an attorney (Defensor de Oficio)
- Cannot be held in prison past sentence for legal debts

#### Step 2) Know The Law

Title I, Article 20 of the Mexican Constitution guarantees the following six basic rights for **all victims of crime** in Mexico:

- Right to be advised of the constitution and criminal law
- Right to assist investigators with case
- Right to receive medical and psychological care from moment of crime
- Right to ask for and receive reparations
- Minors do not have to face suspects
- Right to request appropriate safety measures

#### Step 2) Know The Law

#### A few facts:

- No death penalty in Mexico
- A person cannot be arrested without an order, unless caught in the act
- No bond for serious crimes…ever! (murder, manslaughter, rape, etc.)
- Fatal accident suspects can sometimes be freed if they pay for damages
- Criminal proceedings are reliant on written statements and motions
- Inmates can buy beer, food and other items in prison
- Everyone takes lunch at 3 p.m. and sometimes they come back
- Mexico has an extradition agreement with the United States
- Foreign nationals have the right to contact their embassy or consulate

## **Step 3) Understand The Process**

Although the terms can be different in each state, the process is basically the same. Most criminal cases in Mexico follow the following order:

- Crimen Cometido
- Denuncia/Queja/Querella
- Averiguación Previa
- Consignación
- Pre-Instrucción
- Auto de Formal Prisión/Sujección a Proceso/Auto de Libertad
- Instrucción
- Juicio
- Sentencia Condenatoria
- Apelación.

#### Las Etapas de Crimen Cometida, Denuncia y Averiguación Previa

- A victim of crime (el ofendido) can file a denuncia, querella or queja with the appropriate authorities.
- In murder, manslaughter and other cases designated by law, the Policía Ministerial can investigate *ex oficio* or without a victim or family member filing a *denuncia*.
- Once investigators are assigned, the case enters a stage known as the averiguación previa.
- Investigators must prepare a document known as the Parte Informativo before arrest for review by the appropriate prosecutor (un agente) from the Ministerio Público.
- A prosecutor will decide if there is enough evidence for arrest or if the case should be dismissed or placed on hold pending further investigation.
- Authorities have 48 hours following an arrest to advise a suspect (el reo or el inculpado) of the charges against them.

#### La Etapa de Pre-Instrucción

- A prosecutor must prepare an *Informe de Autoridad* or a *Declaración Preparatoria* for review by a judge.
- The case then enters a stage known as cosignación, where it is assigned to a judge randomly selected by oficiales de partes comunes.
- In most instances, a case must be assigned to a judge within 48 hours of arrest.
- The suspect is transferred to prison (*CERESO*) and the judge has 72 hours to determine if there is enough evidence for the case to proceed or not.
- If there is enough evidence, the judge will order an *Auto de Formal Prisión* or *Sujección a Proceso* hearing within those 72 hours to advise a suspect of formal charges, the maximum sentence and if they are eligible for bond.
- An Auto de Libertad can be issued if there is no merits or proof for the charges. (Prosecutors can appeal that decision.)

#### Las Etapas de Instrucción, Juicio y Sentencia

- Following an Auto de Formal Prisión, the case enters a stage known and the La Etapa de Instrucción where witnesses and experts submit evidence on both sides of the case.
- Although recent congressional reforms allow for more oral agruments, almost all statements and requests must be filed in written mociones and declaraciones before the judge.
- A judge will issue an Auto de Apertura where he or she orders the opening of the evidentiary period and lists the objective of the trial based on the accusation and evidence at hand.
- A trial date and sentencing date depends on the crime:
   (Within four months for crimes with sentences under two years & within one year for crimes with sentences above two year)
- A sentencing can be appealed through a queja, revocación, revisión or apelación.

#### **Step 4) Finding People**

#### Hospitals/Jails:

- IMSS/Hospital General/Clinicas Privadas
- La Cárcel/La Barandilla
- El Ministerio Público
- CERESO (Centro de Re-adaptación Social)
- CEFERESO (Centro Federal de Re-adaptación Social)
- Reclusorios Estatales o Federales

#### **Courts**

- Juez de Paz
- Juez de Primera Instancia (state crimes)
- Juez de Distrito (federal crimes)
- Tribual Superior de Justicia
- Etc.

#### The Elmer Reyes Case: American Soldier Charged With Manslaughter







matólogo y de un cardiólogo. resultado de los examenes médicos

#### El agente primero del NADA ANORMAL HUBO: Ministerio Piblico, consignó el caso JUEZ

al Jungado Tercero de lo Penal, El juez tercero de lo penal. al Jugado Tercero de lo Pensi, El Juez tercero de lo pensi, quadando José Elmer Reyes Bernal Santiago Espisson Camacho, al ser a su disposición en las ceidas de la entravadado negó que se bubiera Policia Preventiva, en donde per- incurrido en alguna anomalia por manació hasta el viernes, fecha en no letterner al responsable del triple maria. que fue internado en el hospital homicidio en el Cereso Dos, pues general, pues el médico legista dijo que a petición del Consulado de Florentino Pérez Charles, aetaló los Estados Unidos, se le internó en que requeria la valoración de varios el Hospital General, pues estabanespecialistas, entre ellos un neuról-solicitando la valoración médica de ogo, un cardiólogo, de un trau- varios especialistas.

Una ver que los especialistas Fue hasta oyer que se emitió un examinaron al detenido y dictumi-

l'ercero de lo penal, al aparecer omo responsable de los delitos de homicidio y lesiones con motivo de tráfico de vehículos.

El juez dijo que se dictó un auto de formal prisión contra José Elmer Reyes Bernal, quien al ser notifica do de la resolución se nego a fir

Dijo que el detenido se inconformó con el auto de formal prisión.

El impurtidor de Justicia negó que se le hubiera dado un trato privflegiado al deterrido, pues dijo que el martes 10 de mayo, junto con otros detenidos se le iba a internar en el Cereso, pero como los reos se encontraban amotinados, se la

triple homicidio y lesiones. internó de nueva cuenta en las celdos de la Policio Preventiva.

SE LE OLVIDO

tombés a José Elmer.

Al dia signiente, las otras per-

responsables de diversos delitos,

sonas que estaban detenidas como fos especialistas. También solicitaren mur al on internadas en el Cereso Dos,

Fue hasta el viernes que se per- que fueran especialistas de ese lugar cató de este "elvido" y también quienes efectuaran la valoración. cuando el Consulado de los Estados Santiago Espinoza: Camad Santiago Espinoza Camache Unidos pidió la atención de que dijo que se actas apegado a derecho José Einer fuera valorado por var- y nego que se le hubiera dado un

trato privilegiado al triple homicida. Sin embargo, le común para los detenido se le valorara en una citai- detenidos de escasos recursos, es al controlorse la situación dentro en perticular, sefalando el just que que sum internados en el Cara del penal, argamentando el juez esta petición no fue aceptada, pues Dos una vez que se les puso a disous penas, organisemento et para esta penasen no me aceptana, puese tots una vez que se les piaso a dis-Sontilago Espinoses que debido a la ri el Consulado ai los familiares posición de un Jasz y en este caso carpa de trabajo que fieran, se la tentan recursos para sobrentar los pasó más de um sercano para que obido, codence que se internam gastos, por lo que se opto por el triple homisida puellera ser intermurlo en el Hospital General y mado en el penal de Santa Adelaida

Normalmente, las personas tenidas por algún delito son nsignafdas ante el Ministerio blico, por lo que deben ser isladas a los separos de la licía Ministerial del Estado y ando éste las consigna ante un ez, son internadas de inmediaen el CERESO Dos, aunque se iora por qué causas José Elmer n permanece en las celdas

#### The Elmer Reyes Case: American Soldier Charged With Manslaughter

- Elmer Reyes, a 22-year-old Operation Iraqi Freedom veteran, received leave and went home to the Rio Grande Valley. He parted with cousins and friends in Matamoros, Mexico.
- At 7 a.m. on Sunday, May 8, 2005, Reyes lost control of his Ford F-150 extended cab truck on an overpass causing the vehicle to plummet several stories killing two women and sending himself and five other passengers to the hospital.
- Local Transito police officers were the first law enforcement officials to respond and took over the following investigation because it occurred on a city street.
- Jose Cristobal Mireles Arriaga, Agente Primero del Ministerio Público de Tamaulipas was immediately assigned the case and arrived on the scene.
- Reyes was charged with two counts of homicidio (manslaughter) for the deaths of the two women. He was charged with a third count after one of his cousins died in the hospital on Tuesday, May 10, 2005.

## The Elmer Reyes Case: American Soldier Charged With Manslaughter

- Reyes was released from the Hospital General Alfredo Pumarejo on Wednesday, May 10, 2005 (Mexican Mother's Day) but was arrested and kept at the city's municipal jail (la barandilla) where reporters were allowed interviews and photo opportunities while officials took statements and prepared their case.
- The office of Santiago Espinoza Camacho, Juez Tercero de Primera Instancia de lo Penal, received the case at 3 a.m. on Thursday, May 12, 2005 starting a 72-hour judicial clock to decide the outcome of the case.
- Reyes was taken back to the hospital to see various specialists on Friday, May 13, 2005 based on medical complaints and at the request of the U.S. Consulate of Matamoros.
- Espinoza decided to issue an Auto de Formal Prisión against Reyes during the early morning hours of Sunday, May 15 based on hospital lab results that showed he had alcohol in his system at the time of the accident.

#### The Elmer Reyes Case: American Soldier Charged With Manslaughter

- Reyes was not eligible for bond and was transferred to the CERESO state prison outside Matamoros on Monday, May 16, 2005 where he awaited trial, which under Tamaulipas state law was supposed to take place within four months.
- Espinoza sentenced Reyes to 10 years in prison. He is serving his sentencing the CERESO No. 2 in the Ejido Santa Elaida outside Matamoros.

## **Resources for Reporters Covering Crime in Mexico**

Constitución Política de los Estados Unidos de México <a href="http://constitucion.gob.mx">http://constitucion.gob.mx</a>

Subsecretaria de Asuntos Juridicos y Derechos Humanos de México <a href="http://www.ordenjuridico.gob.mx">http://www.ordenjuridico.gob.mx</a>

Seguridad Ciudadana <a href="http://www.seguridad-ciudadana.org">http://www.seguridad-ciudadana.org</a>

Your Local Mexican Consulate
<a href="http://www.mexonline.com/consulate.htm">http://www.mexonline.com/consulate.htm</a>

U.S. Embassy to Mexico – Directory of American Consulates <a href="http://mexico.usembassy.gov/mexico/edirectory.html">http://mexico.usembassy.gov/mexico/edirectory.html</a>

U.S. State Department – Country Reports on Human Rights Practices <a href="http://www.state.gov/g/drl/hr/">http://www.state.gov/g/drl/hr/</a>

Notas Rojas Presentation

http://www.sergiochapa.com

