

FOR WHOM THE GAVEL FALLS:
A COMPARISON AND ANALYSIS
OF THE PHILIPPINE AND US JUSTICE SYSTEM

HAZEL L. ALCONGA*

I. INTRODUCTION

"Justice delayed is justice denied" is a time-honored precept that we often hear with regard to our judicial system. Delay in the resolution of cases is one of the major problems that beleaguer the system.

Public office is a public trust. The public's dissatisfaction on how justice is administered in our country poses a grave threat to our judicial system. This diminishing confidence in the system is slowly eroding its very foundation.

The judiciary as one of the fundamental branches of the government by which it exercises its authority could not stand on shaky grounds. Only the public's faith will sustain it; otherwise, it will collapse and chaos will ensue. The same fate is likely to happen with the present condition of our justice system in this country. The people cry of injustice, airing their grievances on the streets—begging for justice held by the few—the judges.

This should not be the scenario in a democratic country like ours. The true essence of democracy is a government by the people and for the people.

Justice means more than putting the culprit behind bars or compelling the offender to pay for damages. On the other side of the spectrum, justice

* '06 LI. B., cand., University of Santo Tomas Faculty of Civil Law; Business Manager, LJST Law Review

also means a speedy and expeditious public trial for the accused. Just as letting a criminal go scot-free is not the only manifestation of injustice, excessive delay in the resolution of the cases is also a form of oppression.

Then several questions arise regarding this inefficiency in the administration of justice. Why were these cases not resolved in an expeditious manner as guaranteed by the Constitution?¹

Why is this timetable hardly followed in reality? Where does the problem lie? Is it in our justice system? If this is so, then what system best suits us? Many advocate that we should change our justice system and adopt the US jury system. By changing our system, would this assure us of an efficient delivery of justice? Would this lessen if not totally eliminate injustice that is prevalent in our country?

Our Constitution² guarantees to every accused person the right to a speedy trial. This provision guarantees that justice would be served not only for the protection of the accused's rights³ but also for the redress of the violation of plaintiff's rights.⁴

Our Constitution has been substantially adopted from the US Constitution. However, it is interesting to note that the jury system that is embodied in the Fifth Amendment⁵ was not among those which were incorporated in our Bill of Rights. Did our forefathers think such system is not viable in our country, with our culture? Instead, we have adopted a completely different justice system.

With the attempt to find the answers to all these questions, we shall look at the brief history of the US jury system and Philippine judge system on how they had existed and evolved to what they are now.

¹ CONST, art VO, § 15 (1) provides: that "All cases or matters filed after the effectivity of this Constitution must be decided or resolved...within three months for all lower courts."

² CONST, art HI, § 6.

³ RULES OF COURT, rule 115, § 1.

⁴ CONST, art HI, §1-10.

⁵ US CONST. Fifth Amendment provides: "No person shall be held to answer for a capital or infamous crime, unless on a presentment or indictment of a grand jury xxx."

II. BRIEF HISTORY OF THE US JURY SYSTEM

The grand jury system developed from an early Anglo-Saxon institution in England which acted as the watchdog on local government and identified wrongdoers.⁶ It was recognized in the Magna Carta, the first English Constitutional document, which King John granted in 1215 upon the demand of his subjects. The first English grand jury consisted of twelve men selected from the knights or other freemen, who were summoned to inquire into crimes alleged to have been committed in their local community.⁷

Over the years, the hallmarks of the US grand jury developed in England. Among these are the proceedings of the grand jury which became secret and independent of the crown. As a result, a grand jury is able to vote an indictment or refuse to do so, as it deems proper, without regard to the recommendations of the judge, the prosecutor, or any other person. This independence from the will of the government was achieved only after a long hard fight. It can be best illustrated by two celebrated English cases. In 1681, a bill of indictment for high treason against Stephen Colledge⁸ was submitted to a grand jury of the City of London. Lord Chief Justice North compelled the grand jury to hear the evidence in open court. The grand jury demanded that the witnesses be sent to them that they might examine them privately and apart, which the court permitted to be done. After considering the matter for several hours, the grand jury ignored the bill. Upon being asked by the Lord Chief Justice whether they would give a reason for this verdict, they replied that they had given their verdict according to their conscience and would stand by it.

In the same year, an attempt was made to indict the Earl of Shaftsbury for high treason.⁹ The grand jury desired to hear the evidence in private, but the King's Counsel insisted that evidence be heard in open court. Lord Chief Justice Pemberton assented. After hearing the evidence, the grand jury desired that they might examine the witnesses apart in their chamber and the court

⁶ John Rosenberg, A Year on the Grand Jury <<http://www.clevermag.com/essays2/grandjury.htm>>

⁷ *Id.*

⁸ 8 How.St.Tr 549, *as cited in* The Grand Jury: Part I its Origin, History and Development <[www.constitution.org/gje/gj_01 .htm](http://www.constitution.org/gje/gj_01.htm)> '8How.St.Tr.775,id.

granted the request. After again hearing the witnesses and considering their verdict, they returned the bill "ignoramus".

When the English colonists came to America, they brought with them many of the institutions of the English legal system, including the grand jury. Thus, the English tradition of the grand jury was well established in the American colonies long before the American Revolution. The colonies used it as a platform from which to assert their independence from the pressures of the Colonial Governors. In 1735, the Colonial Governor of New York demanded that a grand jury indict for libel John Zenger, editor of the newspaper called "The Weekly Journal" because he had held up to scorn certain acts of the Royal Governor. The grand jury flatly refused.¹⁰

The grand jury as an institution was so firmly established in the traditions of their forebears that they included it in the Bill of Rights. The Fifth Amendment in the Constitution of the US provides in part " that no person shall be held to answer for a capital or otherwise infamous crime,¹¹ unless on a presentment or indictment of a grand jury.

III. BRIEF HISTORY OF THE PHILIPPINE JUDGE SYSTEM

A. Pre-Spanish Era

The Filipinos, even before the arrival of the Spaniards, already had a working legal system. The barangays of the pre-colonial times were enforcing both written and unwritten laws. Historians have uncovered both the Maragtas Code (1250 A.D.) and the Kalantiaw Code (1433 A.D.) as proof of the existence of the justice system among the ancient Filipinos.¹²

¹⁰ The Grand Jury: Part I its Origin, History and Development <www.constitution.org/gje/gj_01.htm>

¹¹ Green vs. US, 356 U.S. 165 (1958) where the US Supreme Court held that infamous crime is one that is punished by imprisonment for over one year. Since this is essentially the definition of a felony, infamous crimes translate as felonies, <<http://www.udayton.edu/~graridjur/feedback/feedba10.htm>>

¹² A Brief History <<http://www.supremecourt.gov.ph/history/history-a.htm#introduction>>

During that time, the chief of the village or barangay held the judicial power either singly or together with the public and the two parties were both heard. The chief heard the case and gave the verdict. At times, other persons from within or from without the village, but always of good standing in the community, were asked to be present to help the chief decide the case. The system has some similarity to the jury trial used in the present days.¹³

If the case in question affected only the persons of one barangay, the jury was taken from the persons in the same barangay. However, if the case was between two barangays or two or more persons from different barangays, usually persons living in a neutral barangay were invited to be the judges.¹⁴

B. Spanish Regime

During the Spanish regime, the justice system operated through the superior courts consisting of the *Audencia Territorial de Manila*, the *Audencia de lo Criminal de Cebu* and the *Audencia de lo Criminal de Ugan*, as well as the inferior courts consisting of the Courts of First Instance and the Justice of the Peace Courts. The highest judicial body during this regime was the Supreme Court of Spain, which exercised appellate jurisdiction over the decisions of the *Audencia*.¹⁵

C. American Military Government

When the Philippines came under the control and administration of the US in 1898, then US President William McKinley appointed the Schurman Commission to visit the Philippines and make recommendations on what can be done in order to ameliorate the conditions of the people and improve public order. When the Schurman Commission made its recommendations as to the steps that should be taken to improve the administration of justice in the Philippines, it did in fact recommend that trial by jury be instituted in "due time." However, this recommendation was never implemented.¹⁶

¹³ E. M. ALIP, PHILIPPINE CIVILIZATION: BEFORE THE SPANISH CONQUEST (1936). *Id.*

¹⁴ A Brief History <<http://www.supremecourt.gov.ph/history/history-a.htm#introduction>>

¹⁵ George W Pugh, Aspects of the Administration of Justice in the Philippines, 40 Phil. L.J. (1965).

The reasons for the initial rejection of the jury system as recommended by the Schurman Commission included the following:

1. Filipinos had no experience with juries;
2. General educational level was low; and
3. There was no single common language which could be understood by witnesses and jurors throughout the country.

The non-availability of jury trial, even for American citizens in the Philippines, was upheld by the US Supreme Court.¹⁷

On May 29, 1899, a General Order was issued by the military Governor re-establishing the *Audencia Tribunal de Manila* or Supreme Court of Manila with the jurisdiction, which it possessed prior to August 13, 1898, except insofar as it may be modified by authority of the US. This was followed by the re-establishment of the Court of First Instance and the Justice of the Peace courts on June 5, 1899.

A civil government was established by President William McKinley's Instructions to the Second Philippine Commission on April 7, 1900. The Commission, pursuant to these instructions enacted on June 11, 1901, Act 136, otherwise known as the Judiciary Law. Under its provisions, the judicial power of the Government of the Philippines was vested in the Supreme Court, Courts of First Instance, Justice of Peace courts and such other courts as may thereafter be established by law. Later, the US Congress enacted the Philippine Bill of 1902, which ratified the jurisdiction previously exercised by the courts under Act 136.

The Philippine Bill of 1902 provided that the Supreme Court of the US shall have jurisdiction on appeal or writ of error to review, reverse, modify or affirm the final judgments and decrees of the SC of the Philippine Islands in all actions, cases, causes, and proceedings with which the Constitution or any statute, treaty, title, right or privilege of the US is involved, or in causes in which the value of the property in controversy exceeds \$25,000.00.

Although headed by a Filipino, since its organization was under the American rule, the high court had a predominant American membership until the advent of the Commonwealth. From 1901-1925, only 11 Filipino

¹⁷ *US v. Dorr*, 2 Phil 269,284 (1903).

Justices were appointed as against 20 Americans. This is not to denigrate the Americans as eight American Presidents from Pres. William McKinley to Pres. Franklin Roosevelt saw to it that only career American lawyers and jurists were sent to the Philippine Supreme Court.¹⁸

D. Filipinization of the System

In 1935, with the Constitution requiring Filipino citizenship for membership in the court, four sitting American justices resigned from the Supreme Court. One hundred seventeen men and four women have been appointed to the Supreme Court since the establishment of the civil government by the Americans in 1901. Seventeen justices have presided over its affairs.¹⁹

The succeeding discussions shall delve into how these two systems work.

IV. The US Jury System

A. The Grand Jury System

The US utilizes two different juries in its justice system. One is the grand jury and the other is the trial jury or tine, petit juryTM No other country in the world except the US uses the grand jury system. This grand jury system is the unique feature in the American justice system which sets it apart from other countries that employ only a trial jury.

1. Constitutional Basis

The grand jury system is guaranteed by the US Constitution. The Fifth Amendment provides in part: "No person shall be held to answer for a capital or otherwise infamous crime, unless *on a presentment or indictment of a grand jury xxx*". (*emphasis supplied*.)

18 A Brief History <<http://www.supremecourt.gov.ph/history/history-a.htm#introduction>>

19 *Id.*

20 Pronounced as pet-it jury.

2. Powers and Functions of the Grand Jury

A grand jury is made up of 23 people who receive and hear evidence to determine whether probable cause exists to charge someone with a crime.²¹

The grand jury does not determine guilt or innocence, but only whether there is probable cause to believe that a crime was committed and that a specific person committed it. If the grand jury finds probable cause to exist, then it will return a written statement of the charge called an "indictment." After that, the accused will go to trial.

The grand jury hears only the evidence presented by an attorney for the government (government prosecutor), which tends to show the commission of a crime. The grand jury must determine from this evidence, and usually without hearing evidence for the defense, whether a person should be tried for a serious federal crime, referred to in the Bill of Rights as an infamous crime.²²

A person may, however, waive grand jury proceedings and agree to be prosecuted by a written charge of a crime called information.²³

After the grand jury has received evidence against a person, it must decide whether the evidence presented justifies an indictment, or "true bill" which is a formal criminal charge returned by the grand jury. When the indictment is filed in court, the person accused must either plead guilty or *nolo contendere*, or stand trial.

If the evidence does not persuade the grand jury that there is probable cause to believe the person committed a crime, the grand jury will vote a "No Bill" or "not a true bill." When this occurs, the person is not required to plead to a criminal charge, and no trial is required.

The grand jury is not completely free to compel a trial upon anyone it chooses. The US attorney must sign the indictment before anyone may be

²¹ Handbook for Federal Grand Jurors <<http://members.tripod.com/~jctMac/fgj.html>>

²² Id.

²³ Information vs. Indictment

Information is a charging document a prosecutor files without using a grand jury and Indictment is a charging document returned by a grand jury, <<http://www.udayton.edu/-grandjury/feedback/feedba10.htm>>

prosecuted. If the prosecutor unjustifiably refuses to sign the indictment, the grand jury may hold the US attorney and the sheriff in contempt.²⁴

The grand jury can consider hearsay evidence. They can offer immunity (transactional or use)²⁵ in return for testimony of witnesses who do not normally want to cooperate or have something to hide themselves. If a person's testimony at a grand jury hearing is different from his testimony later at trial, the witness can be impeached.²⁶

3. Selecting the Members of the Grand Jury

Federal laws require that a grand jury be selected at random from lists of registered voters or lists of actual voters or other sources when necessary, under procedures designed to ensure that all groups in the community will have a fair chance to serve. Those persons whose names have been drawn and who are not exempt or excused from service are summoned to appear for duty as grand jurors. When these persons appear before the court, the presiding judge may consider any further requests to be excused.²⁷

²⁴ Handbook for Federal Grand Jurors <<http://members.tripod.com/~jctMac/fgj.html>>

²⁵ Use immunity prohibits witness' compelled testimony and its fruits from being used in any manner in connection with criminal prosecution of the witness. Transactional immunity affords immunity to the witness from prosecution for offenses to which his compelled testimony relates (Black Law Dictionary 6* ed. (1991)).

²⁶ Jury Duties, Selection and Charges <<http://faculty.ncwc.edu/toconnor/325/325lect08.htm>>

²⁷ Under the Jury Act the following persons are disqualified from service:

1. if they are not a citizen of the US, 18 years old, who has resided for a period of 1 year within the judicial district;
2. if they are unable to read, write and understand the English language with a degree of proficiency necessary to fill out a qualification form;
3. if they are unable to speak the English language;
4. if they are incapable by reason of mental or physical infirmity to render jury service; or
5. if they have felony charges pending against them or they have been convicted of a felony and their civil rights have not been restored.

In addition, the Jury Act lists three groups that are exempt from federal jury service:

1. members of the armed forces on active duty;
2. members of professional fire and police departments;
3. public officers of federal, state or local governments, who are actively engaged in the performance of public duties.

The judge will then direct the selection of 23 qualified persons to become the members of the grand jury.²⁸

4. Organization, Oath and Officer of the Grand Jury

After the proper number of persons have been qualified as grand jurors, the court will appoint one of them to be the foreperson or presiding officer of the grand jury. A deputy foreperson will also be appointed, so that he/she can act as presiding officer in the foreperson's absence.

The foreperson, the deputy foreperson, and the remaining members of the grand jury are sworn in by the Clerk of Court. Those persons who do not wish to swear may affirm.

After the grand jurors have been sworn in, the presiding judge advises the grand jury of its obligation and how best to perform its duties. This is called the charge of the grand jury.

After the grand jury has been charged, it is taken to the grand jury room, where it will hear testimony and consider documentary evidence in the case brought to its attention by the US Attorney or the Asst. US Attorney.²⁹

5. Quorum

Sixteen of the 23 members of the grand jury constitute a quorum for the transaction of business. If fewer than this number is present, even for a moment, the proceedings of the grand jury must be stopped. This shows how important it is that each grand juror consistently attends the meetings.³⁰

6. Evidence before the Grand Jury

Much of the grand jury's time is spent hearing testimony of the witnesses and examining documentary or other evidence in order to determine whether such evidence justifies an indictment.

²⁸ Jury duties, selection and charges, <<http://faculty.ncwc.edu/toconnor/325/325lect08.htm>>

²⁹ *Id.*

Each federal court district has a US Attorney whose duty is to represent the US in federal matters within the district and to prosecute those accused of the federal crimes. In the usual case, the US Attorney or one of the Assistant US Attorneys will present the evidence of alleged violations of the law to the grand jury. These Attorneys also advise grand jurors as to what witnesses should be called and what documentary evidence should be produced for examination of the grand jury. The grand jury may ask that additional witnesses be called if it believes this to be necessary. The US Attorney will also prepare the formal written indictments that the grand jury wishes to present. But neither the US Attorney nor the Assistant US Attorney may remain in the room while the grand jury deliberates and votes on an indictment.³¹

7. Testimony of the Witnesses

Witnesses are called to testify one after another. Upon appearing to give testimony, each witness will be sworn in by the grand jury's foreperson or in the foreperson's absence, the deputy foreperson. Ordinarily, the Attorney for the government questions the witness first, followed next by the foreperson of the grand jury, then the other members of the grand jury. All questions asked of each witness must be relevant and proper or relating only to the case under investigation. If doubt should arise as to whether a question is appropriate, the advice of the US Attorney may be sought. If necessary, a ruling may be obtained from the court.³²

The law forbids anyone other than authorized persons from being present in the jury room while evidence is being presented. This means that only the grand jury, the US Attorney or the Assistant US Attorney, the witness under examination, the court reporter, and the interpreter (if required) may be present. If an indictment should ultimately be voted, the presence of unauthorized persons in the grand jury room could invalidate it.³³

Occasionally, prior to answering, a witness may ask to leave the grand jury room to consult with his/her attorney. Every witness has the right to confer with counsel even though counsel may not be present in the grand

³¹ *L.*

³² *Id.*

³³ *Id.*

*jury room. In fact, a witness may confer with counsel after each question as long as he/she does not make a mockery of the proceedings or does not, by such, make an attempt to impede the orderly progress of the grand jury investigation. A witness may invoke the Fifth Amendment privilege against self-incrimination and refuse to answer a question. The grand jury may grant witness immunity from prosecution in exchange for the witness' testimony.*³⁴

8. Testimony of the Accused

*Normally, neither the person under investigation, nor any witness on the accused's behalf will testify before the grand jury.*³⁵ *A suspected offender has no right to be notified of a grand jury proceeding against him because this body is not a court. The basic function of the grand juries is to assist complaining witnesses or crime victims in filing their criminal complaints in court. It has no duty to assist the suspect because it is not a court of law. A suspect can seek protection for his due process rights only before a court of law.*³⁶

*But upon a written request, an accused may be given the opportunity by the grand jury to appear before it. An accused who does so appear cannot be forced to testify because of the constitutional privilege against self-incrimination. If the jury attempts to force the accused to testify, an indictment returned against that person may be nullified.*³⁷

*The appearance of the accused before the grand jury may raise complicated problems. Thus, it requires the grand jury that desires to request or to permit the accused to appear before it to consult with the US Attorney and if necessary, the court before proceeding.*³⁸

*An accused who is willing to testify should first be warned of the right not to testify. He/she may be required to sign a formal waiver of his/her right*³⁹

34 Id.

35 Id.

36 How the Independence of Jurors are Preserved
<<http://philippinegovantigrift.homestead.com/SolutionBASics2.htm>>

37 Jury Duties, Selection and Charges, <<http://faculty.ncwc.edu/toconnor/325/325lect08.htm>>

38 Id.

39 Id.

9. Deliberation

When the grand jury has received all the evidence on a given charge, all persons other than the members of the grand jury must leave the room so that the grand jury may begin its deliberations. The presence of any other person in the grand jury room while the grand jury deliberates or votes may nullify an indictment returned on the accusation.⁴⁰

During the deliberation, the foreperson will ask the grand jury members to discuss and vote upon the question of whether the evidence persuades the grand jury that the person accused has probably committed the crime and that an indictment should be returned.⁴¹

Every grand juror has the right to express his/her view of the matter under consideration, and grand jurors should listen to the comments of all their fellow jurors before making up their minds. At least 16 jurors must be present and 12 members must vote in favor of the indictment before it may be returned. The foreperson of the grand jury must keep a record of the number of jurors concurring in the finding of every indictment and file the record with the Clerk of Court. If an indictment is found, the grand jury will report it to the judge or a magistrate in open court. It would likewise report any "not true bills" or decisions not to indict. A decision not to indict should immediately be reported to the court in writing by the foreperson so that the accused may promptly be released or freed from bail.⁴²

10. Secrecy of Grand Jury Proceeding

The law imposes upon each grand juror a strict obligation of secrecy. This obligation is emphasized in the oath each grand juror takes and in the charge given to the grand jury by the judge.⁴³

The secrecy of the grand jury proceeding protects the grand jurors from being subjected to pressure by persons who may be subjects of investigation by the grand jury or associates of such person. It prevents the escape of those against whom an indictment is being considered. It also prevents the

40 Id.

41 Id.

42 Id.

43 Id.

destruction of evidence either by the accused or by the victim. It encourages witnesses before the grand jury to give full and truthful information as to the commission of a crime and minimizes the possibility of tampering with or intimidation of such witnesses before they testify at trial. It likewise prevents the disclosure of investigations that result in no action by the grand jury, thus avoiding the stigma the public might attach to one who is the subject of a mere investigation by the grand jury.⁴⁴

Even Attorneys for the government may not be informed of what took place during the grand jury's deliberations and voting. Only upon the order of the court in the interest of justice may matters occurring before the grand jury be disclosed to anyone. Disclosure of such matters must never be made to a grand juror's friends or family, including a grand juror's spouse.⁴⁵

The kw gives members of a grand jury broad immunity for actions taken by them within the scope of their authority as grand jurors. The secrecy imposed upon grand jurors is a major source of protection for them.^{46*}

B. Petit Jury

Once the grand jury has found probable cause and an indictment has already been filed in court, the judge will issue a warrant of arrest. Upon the accused's arrest, he will stand before a trial jury or the so-called "petit jury." In this instance, the role of the petit jury comes to play.

1. Constitutional Basis

The Seventh Amendment of the US Constitution provides for the trial by jury system. It states in part: "In suits at common law, where the value in controversy shall exceed twenty dollars, *the right of trial by jury shall be preserved, xxx*" (*emphasis supplied*)

But in all criminal prosecutions, the Sixth Amendment imposes the necessity of a trial by jury. It provides: "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, *by an impartial jury*

"Id.

"Id.

⁴⁶*Id.*

of the State and district wherein the crime shall have been committed, xxx"
(emphasis supplied)

2. Functions of a Petit Jury

A petit jury is generally made up of 12 individuals (the number may vary in different States) for criminal trials and six for civil trials. It listens to the evidence offered by the prosecution and the defense during a criminal trial and returns a verdict of guilty or not guilty. It is in this proceeding that the rules of evidence and the rights of the accused are strictly observed and protected.⁷⁷

If the judge so instructs, the jury may find the defendant guilty of a lesser offense than the one charged.⁴⁸

3. Selecting the members of Petit Jurors

The first step in jury selection is compiling a master jury list. This list is then culled down to something called the venire⁴⁹, which is supposed to be a cross section of the community, from which fair-minded people are selected by "luck of the draw."⁵⁰

The next step in jury selection is the voir dire⁵¹ which involves a preliminary examination of each prospective juror by the Attorney and or the judge. There are two kinds of questions asked of a prospective juror (1) challenges for a cause; and (2) peremptory⁵² challenges. A challenge for a cause by either the prosecution or the defense is when a question reveals that the juror cannot think fairly on some trial-related issue or is prejudiced in some way. Each side

⁴⁷ Handbook for Federal Grand Jurors <<http://members.tripod.com/~jctMac/fgj.html>>

⁴⁸ Petit Jury <<http://courts.state.de.us/Jury%20services/Pjurorpetit.htm>>

⁴⁹ Venire or array means the jury panel from which the jury is chosen. Pronounced as "vah-nye-ree", Francis J. Carney, Outline of Civil Jury Service in Utah <http://www.uditsee.org/htmloutline_of_civil_jury_selectio.html>

⁵⁰ Jury Duties, Selection and Charges <<http://faculty.ncwc.edu/toconnor/325/325lect08.htm>>

⁵¹ Voir dire is the process of questioning the jury panel to arrive at a petit jury. Pronounced as "vwah-deer."

⁵² Pronounced as "per-emptory."

has an unlimited number of challenges for cause, but the presiding judge usually puts an end to abuses of it. Peremptory challenges are limited to six on each side, and involve the Attorney's subjective opinion, insight, whim or pseudoscience that a juror would not be fair or favorable to their side. Attorneys generally wait until there are only about two or three jurors left to pick, and then each side uses up its peremptory challenges at once in a race to see who gets the final juror. In capital cases, some jurisdictions require that jurors must be at least willing to consider death penalty ("death-qualified jurors").⁵³

Alternates are often needed to replace jurors who must be excused during the trial.⁵⁴

4. Size and Verdict of Jury

The size of the jury varies in different States. According to Constitutional interpretation, the size of the jury must be less than six members because it would inhibit group deliberation. Thirty-three states allow juries of less than 12, and juries of six are common in the federal system. Jury verdicts do not have to be unanimous. The general rule is that the smaller the jury, the closer you have to conform to unanimity⁵⁵ or about a 75% split. After die juror has been selected, he/she shall be sworn in.⁵⁶

The jury proceeding may last for as short as two weeks but may extend to several months depending on the complexity of a case.

5. Jury Instruction

Events in a trial usually happen in a particular order, though the judge may change it.

Juries are given instructions at the beginning, middle, and end of a trial. The instructions at the start serve to orient the jury on the nature of the trial

⁵³ Jury Duties, Selection and Charges <<http://faculty.ncwc.edu/toconnor/325/325lect08.htm>>

⁵⁴ Petit Jury <<http://courts.state.de.us/Jury%20services/Pjurorpetit.htm>>

⁵⁵ Number of votes in order to get a verdict in varied number of juries: 12=7:5 verdict; 11=6:5 verdict; 10=6:4 verdict; 9=5:4 verdict; 8=6:2 verdict; 7=6:1 verdict; 6=6:0 verdict

⁵⁶ Jury Duties, Selection and Charges <<http://faculty.ncwc.edu/toconnor/325/325lect08.htm>>

to come, remind them of their duty, and explain some of the ground rules and issues to be decided.⁵⁷

Another point where the jury is instructed is when the charge is read in open court. The jury is reminded of the presumption of innocence. At these preliminary stages, the judge does not go into full detail on the statutory elements of the crime. In other words, he/she does not try to educate the jurors about the finer points of criminal laws. The judge is allowed to express complex elements in plain, ordinary language.⁵⁸

More typically, emphasis is given on instructing the jury about the different kinds of evidence. Sometimes the judge will instruct the jury on the credibility of the witnesses. Several courts do not allow jurors to request playbacks or to have access to the transcripts. It is the judge's prerogative to allow note taking.⁵⁹

In the middle of the trial, the judge gives jury instructions and they are generally referred to as cautionary instructions. An example of which is when the judge says:

You are about to take your first recess, and as I told you earlier, you are not to discuss this case with anyone—your fellow jurors, members of the family, or anyone else, nor are you allowed to permit others to talk to you about the case. Do not listen to any news reports. If any of these things happen, let me know about it immediately by sending a signed note to the bailiff. Again, keep an open mind until all evidence has been received.⁶⁰

At the end of the trial, the judge issues final instructions (after the closing arguments) that are intended to both remind the jurors of their duties and educate them about the law, particularly with regard to the burden of proof and reasonable doubt standards.⁶¹

The judge will not directly or indirectly comment on the weight of the evidence because the jurors are the sole judges of the facts. However, jurors

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.*

must follow the law as stated by the judges regardless of any personal opinion they might have of what the law is or ought to be.⁶²

The judge has the duty to give some instructions even if both sides request no instructions. Jurors may ask the judge to clarify the instructions.⁶³

6. Opening Statements

The opening statements are made at the beginning of the trial and outline the facts expected to be presented to the jury.⁶⁴ The attorneys of each side will explain the nature of the case, the evidence they will present, and the issues for the jury to decide.⁶⁵

7. Presentation of Evidence

The evidence consists of testimony of witnesses and the exhibits received in evidence. Most witnesses may only testify to facts observed by them. However, expert witnesses who are qualified by special knowledge in some field may offer opinions within their field of expertise.⁶⁶

The presentation of the case begins with the plaintiff or district attorney's direct examination of the witness. Direct examination discloses points important to the case. Next the defendant's attorney may cross-examine the witness to disclose facts favoring the defendant; the defendant's attorney may demonstrate that there is a reason to doubt the testimony given by the witness on direct examination. Upon completion of the cross-examination, the plaintiff's attorney or district attorney may on redirect examination, clarify statements previously made by the witness.⁶⁷

After the defendant's case, the plaintiff or State may present rebuttal witnesses or evidence designed to disprove the testimony and evidence presented by the defendant⁶⁸

⁶² Id.

⁶³ Id.

⁶⁴ Sequence of Trial Events <<http://www.madisoncountycircuitclerk.org/jury.htm>>

⁶⁵ Petit Jury <<http://courts.state.de.us/Jury%20ser7ices/?jurorpetithtm>>

⁶⁶ Id.

⁶⁷ Id.

⁶⁸ Sequence of Trial Events <<http://www.madisoncountycircuitclerk.org/jury.htm>>

The judge may be asked to decide questions of law during the trial. These questions often involve objections to evidence. Jurors should not hold the making of objection against a lawyer or the lawyer's client because it is the lawyer's duty to represent the client in this way. Arguments on such questions must ordinarily be made outside the presence of the jury.⁶⁹

Occasionally, the judge may ask the jurors to leave the courtroom while the lawyers make their legal arguments. What evidence is proper for the jury to consider is governed by the rules of evidence.⁷⁰

A ruling by the judge does not indicate that the judge is taking sides or commenting on the weight of the evidence. Jurors may give whatever weight they may consider appropriate, but they must base their verdict solely on the evidence that the judge rules admissible.⁷¹

Jurors should keep an open mind throughout the trial. They should not take notes without requesting permission from the presiding judge. Although note taking should normally be necessary, upon giving the appropriate instruction, the judge will usually grant such a request.⁷²

Jurors should use their common sense and general experiences but may not rely upon special knowledge of the subjects in dispute. Any such knowledge should be disclosed to the court.⁷³

While the trial on the case is going on, there are certain acts that are prohibited⁷⁴ of the juror in order not to influence his/her judgment.

⁶⁹ Id.

⁷⁰ Id.

⁷¹ Id.

⁷² Id.

⁷³ Id.

⁷⁴ Jurors Don'ts

1. Jurors should not inspect the scene of the accident or of any event in the case. If any inspection is necessary, the judge will have the jury view the scene as a group.

2. Jurors should not linger in the corridors or areas of the courthouse where they might have awkward or embarrassing contact with people interested in the case, and should not have any conversation at all with any party, witness or person interested in the case. Such contact or conversation, however innocent has an appearance of impropriety.

3. Jurors should not hear any comments about the case by anyone not on the jury including their family and friend, and should not read, hear or see any report about the case in the news. The jury's verdict may not be influenced by any such comment

Sequence of Trial Events <<http://www.madisoncountycircuitclerk.org/jury.htm>>

8. Closing Arguments

After the evidence is completed, the lawyers have the opportunity to sum up the evidence in their closing arguments. The attorneys will try to persuade the jury to accept their client's view of the case. After hearing the lawyers advocate their client's claims and contentions, the jury is better able to determine the true facts.⁷⁵

9. Jury Deliberations

Jurors should be free from outside influences and to assure this, they may be sequestered⁷⁴ until the verdict is reached. This happens rarely, and, when it does, food and lodging are provided and jurors are given the necessary personal arrangements.

Jurors should cease all conversation about the case when a recess is declared in jury deliberations for lunch or overnight and may not resume until all jurors have returned to the jury room. All discussion must take place in the jury room with all jurors present⁷⁷

Jurors should give full and fair consideration to the case. All jurors should have an opportunity to participate in the jury's deliberations. They should discuss the issues and freely exchange views with their fellow jurors before committing themselves to a particular position. They should not hesitate to change their minds when convinced by points made by other jurors.⁷⁸

Jury deliberations generally conclude when a unanimous⁷⁹ verdict has been reached. If the jury is unable to agree upon a verdict after lengthy deliberations, the foreperson must notify the judge. If the jury cannot reach a verdict, it is referred to as a deadlock; the judge will declare a mistrial and discharge the jury as a hung jury. Then a new jury would be impaneled to try the case all over again.⁸⁰

⁷⁶ Sequestration is the process whenever the jurors are left alone to deliberate. It is more commonly used to describe when a jury is put up at a hotel to be kept insulated from trial publicity.

⁷⁷ Id.

⁷⁸ Sequence of Trial Events <<http://www.madisoncountycircuitclerk.org/jury.htm>>

⁷⁹ Some States do not require a unanimous verdict but only require a certain number of votes in order to reach a verdict,

⁸⁰ Sequence of Trial Events <<http://www.madisoncountycircuitclerk.org/jury.htm>>

10. Announcement of the Verdict

Verdict means "true declaration." The verdict is based solely on the evidence presented by the parties and the rules laid down by the judge. The jury's verdict is usually final.⁸¹

When all jurors have agreed to a verdict, the foreperson notifies the bailiff, who assembles the parties presented in the courtroom for the announcement of the verdict. The clerk will inquire whether the jury has agreed upon the verdict and ask the foreperson to rise and deliver the verdict. Upon the request of a party to poll the jury, each juror is asked to confirm agreement to the verdict as announced by the foreperson.⁸²

Jurors are not required to explain their verdicts. The verdict of the jury does not require any written judgment. The verdict is briefly stated either as "Guilty" or "Not Guilty."⁸³

The judge's role in the trial jury is to oversee the selection of jurors. He decides which disputed facts or evidence may be presented to the jury. The judge also tells the jury in "jury instructions" what the applicable law is. He also decides the issues of law in the case.⁸⁴

V. THE PHILIPPINE JUDGE SYSTEM

Under the Philippine Constitution,⁸⁵ judicial power shall be vested in one Supreme Court and such lower courts as may be established by law.

Every municipality in the Philippines has its own Municipal Trial Court. If it covers two or more municipalities, it is called Municipal Circuit Trial Court. Those in the towns and cities in the Metropolitan Manila areas are referred to as Metropolitan Trial Courts. Municipal trial courts in cities outside Metropolitan Manila are referred to as Municipal Trial Courts in the Cities.

Regional Trial Courts were established in the 13 regions in the Philippines.⁸⁶

⁸¹Petit Jury <<http://courts.state.de.us/Jury%20services/Pjurorpetit.htm>>

⁸²Id.

⁸³U.

⁸⁴The Judicial Process in the US <<http://www.andersonandersonkill.com/titanic/process.htm>>

⁸⁵CONST, art VIII, §1.

⁸⁶B.P. 129, § 11 as amended by Executive Order No. 33 Sec 13 (1986).

A. Qualifications of a Judge

The first general qualification to be appointed to a post in the judiciary is that: the applicant must be a natural-born citizen of the Philippines.⁸⁷ He must be a member of the Philippine Bar⁸⁸ and a person of proven competence, integrity, probity, and independence.⁸⁹

There are additional requirements for the appointment of judges in the Regional Trial Courts and Municipal Courts.

In the Regional Trial Courts, the appointed judge must be at least 35 years of age and, for at least 10 years, has been engaged in the practice of law in the Philippines or has held a public office in the Philippines requiring admission to the practice of law as an indispensable requisite.⁹⁰

In the Municipal Trial Courts, the appointed judge must be at least 30 years of age and, for at least five years, has been engaged in the practice of law in the Philippines or has held a public office in the Philippines requiring admission to the practice of law as an indispensable requisite.⁹¹

B. Appointment of Judges

Under the Constitution⁹² the authority to nominate appointees to the Judiciary is vested in the Judicial and Bar Council. This council shall have the principal function of recommending appointees to the judiciary.⁹³ Then it is the President who shall appoint the Judges in the RTC and MTC from at least three nominees prepared by the Judicial and Bar Council for every vacancy. Such appointments need no confirmation.⁹⁴

C. Disqualification for Appointment

The Judicial and Bar Council Rules⁹⁵ provide the list of those who are disqualified from being nominated for appointment to any judicial post, to

⁸⁷ CONST. art. VIII, § 7 (2).

⁸⁸ CONST. art VIII, §7(2).

⁸⁹ CONST. art VIII, §7(3).

⁹⁰ B.P. 129, § 15.

⁹¹ *Id.*, § 26.

⁹² CONST. art VIII, § 8(1).

⁹³ *Id.*, §8(5).

⁹⁴ *Id.*, §9.

⁹⁵ RULES OF COURT, rule 4, § 5.

wit: those with pending criminal or regular administrative cases; those with pending criminal cases in foreign courts or tribunals; those who have been convicted in any criminal case, or in an administrative case, where the penalty imposed is at least a fine of more than PI 0,000, unless he has been granted judicial clemency. Section 6 also provide for other instances of disqualification.⁹⁶

D. Tenure of Office

Regional Trial Court and Municipal Trial Court judges shall hold office during good behavior until they reach the age of 70 years or become incapacitated to discharge the duties of their office.⁹⁷

E. Court Jurisdiction

Section 19 of Batas Pambansa Big. 129 provides for the original and exclusive jurisdiction of the Regional Trial Court in civil actions, to wit: if the subject of the litigation is incapable of pecuniary estimation; those which involve the title to, or possession of, real property, or any interest therein, where the assessed value exceeds P20,000 or in Metro Manila P50,000, except forcible entry and unlawful detainer; actions in admiralty and maritime jurisdiction where the demand or claim exceeds P200,000 or in Metro Manila P400,000; matters of probate, testate, or intestate, where the gross value exceeds P200,000 or in Metro Manila P400,000; actions involving marital relations; cases not within the exclusive jurisdiction of any court, tribunal, person or body exercising judicial or quasi-judicial function; actions and special proceedings falling within the exclusive original jurisdiction of the Juvenile and Domestic Relations Court and of the Court of Agrarian Relations; and all other cases where demand, exclusive of interest, damages, attorney's fees, litigation expenses and costs, or value of property in controversy exceeds P200,000 or in Metro Manila P400,000.

⁹⁶*Id.*, § 6. *Id.*, Other instances of disqualification. - Incumbent judges, officials or personnel of the Judiciary who are facing administrative complaints under informal preliminary investigation (IPI) by the Office of the Court Administrator may likewise be disqualified from being nominated if, in the determination of the Council, the charges are serious or grave as to affect the fitness of the applicant for nomination.

⁹⁷CONST, art. VIII, §11.

Section 20 provides that the Regional Trial Court shall exercise exclusive original jurisdiction in all criminal cases not within the exclusive jurisdiction of any court, tribunal, or body.⁹⁸

These include criminal cases where the penalty provided by law exceeds six years imprisonment irrespective of the fine." These also include criminal cases not falling within the exclusive original jurisdiction of the Sandiganbayan where none of the accused are occupying positions corresponding to salary grade "27" and higher.¹⁰⁰

On the other hand, Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts exercise exclusive original jurisdiction over actions involving personal property valued at not more than P200,000 or in Metro Manila P400,000; demand for sums of money not exceeding P200,000 or in Metro Manila, P400,000 in both cases, exclusive of interest, damages, attorneys fees, litigation expenses and costs; actions involving tide or possession of real property where the assessed value does not exceed P20,000 or in Metro Manila P50,000; forcible entry and unlawful detainer, with jurisdiction to resolve the issue of ownership to determine the issue of possession. They also have exclusive jurisdiction over all violations of city and municipal ordinances committed within their respective territorial jurisdiction and all offenses punishable with imprisonment of not more than six years irrespective of the fine. These include offenses committed not falling within the exclusive original jurisdiction of the Sandiganbayan where none of the accused are occupying positions corresponding to salary grade "27" and higher.¹⁰¹

F. Duration of the Trial

The Constitution provides that all cases must be decided or resolved within three months.¹⁰² However, if a case is not resolved within the period provided by law, Sec. 3 Art. VHI of the Constitution provides an allowance for the judges. A certification signed by the presiding judge shall be issued

⁹⁸B.P. 129 as amended by KA. 7691.

⁹⁹RA. 7691.

¹⁰⁰R.A. 7975 and 8249.

¹⁰¹B. P. 129, §32.

¹⁰²CONST, art VIII, §15 (3).

stating why a decision or resolution has not been rendered or issued within said period. A copy thereof shall be attached to the record of the case or matter and served upon the parties.

G. Function of the Prosecutor

Before a charge can be filed against an accused, probable cause shall be determined first by the prosecutor. A criminal action shall be commenced by filing a complaint or information.¹⁰³ All criminal actions shall be prosecuted under the direction and control of the prosecutor or by a private prosecutor as authorized by the Chief Prosecutor Office or the Regional State Prosecution in case of heavy work schedule of the Public Prosecutor or in the event of lack of Public Prosecutor.¹⁰⁴

H. Institution of Criminal Action

1. Filing of a Charge

In instituting a criminal action, the charges may be filed in the form of a complaint or information which is filed in the prosecutor's office or with the court.¹⁰⁵

2. Preliminary Investigation

There are offenses which require a preliminary investigation before a criminal action may be instituted and other offenses which do not. For such purpose, the offenses can be divided into two groups:

1. Those requiring preliminary investigation. These refer to offenses punishable by a penalty of at least four years, two months and one day of imprisonment; and
2. Those which do not require preliminary investigation. These refer to offenses punishable by a lesser penalty.

Offenses which do not require preliminary investigation shall be instituted by filing a complaint or information directly with the Municipal Trial Court, Municipal Circuit Trial Court or Office of the Prosecutor.¹⁰⁶

¹⁰³ RULES OF COURT, rule 10, § 3 & 4.

¹⁰⁴ W., § 5.

¹⁰⁵ *Id.*, § 3 & 4.

¹⁰⁶ E. L. PINEDA, RULES ON CRIMINAL PROCEDURE, rule 3 (1st ed. 2003).

If it is filed directly with the public prosecutor and it involves an offense punishable by imprisonment of less than four years, two months, and one day, the latter shall resolve the complaint on the basis of the affidavits and other supporting documents submitted by the complainant.¹⁰⁷ If the case is filed with the MTC or MCTC, the judge has the following duties:¹⁰⁸

1. If he finds no probable cause after personally evaluating the evidence and after examining in writing and under oath the complainant and his witnesses, he shall dismiss the complaint. This must be done within 10 days after filing of the complaint.
2. If he finds probable cause, he shall issue a warrant of arrest against the accused to hold him for trial. If in the exercise of his sound discretion, the judge is satisfied that there is no necessity for the accused to be placed under custody, he may just issue summons requiring him to answer the complaint. He shall not, under these circumstances, issue a warrant of arrest

3. Warrant of Arrest

The following steps must be followed in the issuance of a warrant of arrest by a judge—

1. If the judge determines the existence of probable cause, he may issue a warrant of arrest.¹⁰⁹
2. If the judge finds no probable cause, he may disregard the prosecutor's report and require the submission of supporting affidavits of the witnesses to aid him in arriving at a conclusion as to the existence of probable cause.¹¹⁰

4. Bail

When the accused is arrested, he may post a bail¹¹¹ for his provisional liberty or release. Bail may normally be availed of as a matter of right,¹¹² though in certain cases it is dependent upon the discretion of the judge.¹¹³

¹⁰⁷ RULES OF COURT, rule 112, § 9 (a).

¹⁰⁸ *W*, §9(b).

¹⁰⁹ PINEDA, *supra* note 83, at 149.

¹¹⁰ *Abundo vs. Mania, Jr.*, 312 SCRA 1 as cited in PINEDA, *supra* note 106, at 149

¹¹¹ RULES OF COURT, rule 114, § 1.

¹¹² *Id.*, §4.

¹¹³ *Id.*, § 5.

5. Arraignment and Plea

This is the stage of the criminal proceeding where the complaint or information is read to the accused in open court in a language or dialect known to him and furnishing him a copy thereof. When the accused is informed of the nature of the charge against him, he is required to enter a plea. A plea is the formal reaction or response required of the accused after the complaint or information has been read to him.¹¹⁴

Motion to Quash

The accused before entering his plea may move to quash the complaint or information¹¹⁵ on any of the grounds provided by law.¹¹⁶

6. Pre-Trial

Before proceeding to the trial proper, the law¹¹⁷ mandates that there should be a pre-trial conference wherein matters regarding plea bargaining, stipulation of facts, marking for identification of evidence of the parties, waiver of objections to admissibility of evidence, modification of the pre-trial order if accused admits the charge but interposes a lawful defense, and other matters that will promote a fair and expeditious trial of the criminal and civil aspects of the case shall be considered.

¹¹⁴PINEDA, *supra* note 106, at 295.

¹¹⁵RULES OF COURT, rule 117, § 1.

¹¹⁶*Id.*, § 3 The accused may move to quash the complaints or information on any of the following grounds:

- a) That the facts charge do not constitute an offense;
 - b) That the court trying the case has no jurisdiction over the offense charged;
 - c) That the court trying the case has no jurisdiction over the person of the accused;
 - d) That the officer who filed the information had no authority to do so;
 - e) That it does not conform substantially to the prescribed form;
 - f) That more than one offense is charged except when a single punishment for various offenses is prescribed bylaw;
 - g) That the criminal action or liability has been extinguished;
 - h) That it contains averments which, if true, would constitute a legal excuse or justification;
- and
- i) That the accused has been previously convicted or acquitted of the offense charged, or the case against him was dismissed or otherwise terminated without his express consent.

¹¹⁷*Id.* rule 118, §1.

If at the pre-trial conference, the counsel for the accused, the private or public prosecutor fail to appear without any justifiable reason, proper sanctions or penalties may be imposed upon him.¹¹⁸ Thus the court may cite him for contempt for such non-appearance. The court is not precluded from imposing administrative sanctions against the lawyers like suspension from the practice of law for a period of not more than 30 days.¹¹⁹

7. Trial

The trial of the case shall commence within 30 days from receipt of the pre-trial order.¹²⁰ The law provides that there should be a continuous trial until the case is terminated.¹²¹ It should continue from day to day as far as practicable. Speedy trial is the rule.¹²²

Under the Constitution, trial courts must render their decisions within three months from the submission of the cases for resolution.¹²³

8. Presentation of Evidence

It is the prosecution that presents evidence first. After the prosecution has finished presenting its evidence in chief, it is the turn of the defense to present its evidence. After this, the prosecution may, if it finds necessary, present rebuttal evidence. The defense may present sur-rebuttal evidence after the prosecution has presented its rebuttal evidence. The court may allow a party to present additional evidence in furtherance of justice.¹²⁴

When all the evidence of the parties is admitted, the case shall be deemed submitted for decision. In the interest of justice, a judge may be disqualified from rendering judgment in certain cases. Rule 137 Sec. I¹²⁵ enumerates the grounds for disqualification of judges. The first portion refers to the grounds which constitute mandatory disqualification of judges. The second portion which is referred to as inhibition is discretionary.¹²⁶

¹¹⁸Id. rule 118, §3.

¹¹⁹PINEDA, supra note 106, at 408.

¹²⁰Id., rule 119, §1.

¹²¹Id., rule 119, §2.

¹²²PINEDA, supra note 106, at 413.

¹²³CONST, art. VIII, §15(1).

¹²⁴RULES OF COURT, rule 119, § 11.

¹²⁵RULES OF COURT, rule 137, § 1 Disqualification of Judges.—No judge or judicial officer shall sit in any case in which he, or his wife or child, is pecuniarily interested as heir,

9. Judgment

After all the trial proceedings, the judge is required to render a decision or resolution regarding the case. The law¹²⁷ provides that judgment must be written in the official language which could either be in English or Filipino, personally and directly prepared by the judge and signed by him. The judgment should contain dearly and distinctly the statement of the facts and the law upon which it is based.

The contents of the decision may vary depending on whether the decision is one of conviction or acquittal. If the judgment is one of conviction, it must state the legal qualification of the offense constituted by the acts committed, the aggravating and qualifying circumstances alleged and established which attended the commission of the offense, the participation of the accused in the offense, that is, whether as principal, accomplice or accessory, and the civil liability or damages, if any, arising from the wrongful act/s or omission/s to be recovered from the accused by the offended party, unless there has been a reservation for the pursuit thereof in a separated civil action, or if there is a waiver thereof.

If the judgment is one of acquittal, it shall state whether the prosecution has absolutely failed to prove the guilt of the accused, or the prosecution merely failed to prove the guilt of the accused beyond reasonable doubt.¹²⁸

/ . Institution of a Civil Action

Just like in the institution of a criminal action, similar stages also occur in the filing of a civil action, although there are some remedies which apply only to criminal actions. The following is just a brief outline of the process.

legatee, creditor or otherwise, or in which he is related to either party within the sixth degree of consanguinity or affinity to counsel within the fourth degree, computed according to the rules of the civil law, or in which he has been executor, administrator, guardian, trustee, or counsel, or in which he has presided in any inferior court when his ruling or decision is the subject of review, without the written consent of all parties in interest, signed by them and entered upon the record.

A judge may, in the exercise of his sound discretion, disqualify himself from sitting in a case, for just or valid reasons other than those mentioned above.

¹²⁶ PINEDA, *supra* note 106, at 457.

¹²⁷ RULES OF COURT, rule 120, § 1.

¹²⁸ *Id.*, rule 120, §2.

1. Issue Formulation Stage

During this stage, the plaintiff shall file a complaint, which contains a statement of the ultimate facts on which he relies for his claim. On the other hand, the defendant shall file his answer to the complaint within 15 days after service of summons, unless a different period is fixed by the court¹²⁹

2. Pre-trial

Just like in criminal procedure, pre-trial is also mandatory in civil actions. The matters that will be taken in consideration are the possibility of an amicable settlement or of a submission to alternative modes of dispute resolution; necessity or desirability of amendments to the pleadings; possibility of obtaining stipulations or admissions of facts and of documents to avoid unnecessary proof; limitations on the number of witnesses; advisability of preliminary reference of issues to a commissioner; the propriety of rendering judgment on the pleadings; suspension of proceedings; and other matters as may aid prompt disposition of the action.¹³⁰

3. Trial

The rule provides that there should be a continuous trial as possible. The whole proceeding shall be terminated and ready for judgment within 90 days from the date of the initial hearing, unless for meritorious reasons, an extension is allowed.

4. Judgment

A judgment or final order determining the merits of the case shall be in writing personally and directly prepared by the judge, stating clearly and distinctly the facts and the law on which it is based, signed by him, and filed with the clerk of court.¹³¹

¹²⁹ RULES OF COURT, rule 11, § 1.

¹³⁰ *Id.*, rule 18 § 2.

VI. ANALYZING THE JURY SYSTEM

A. *Advocates*

The following are just a few of the advantages enumerated by advocates of the jury system who want to adopt such system in their country and those who uphold the integrity of their own jury system:

1. The legal system is more open because members of the public are involved and the whole process is public.¹³²
2. The secrecy of the jury deliberation in the jury room protects the jury from pressure and outside influences when deciding a verdict.¹³³ As humans, we are prone to pressures.
3. The right to be tried by one's peers is a bastion of liberty against the State.¹³⁴
4. No one knows who is in the jury until trial begins, and for that reason both sides are often anxious to settle the case (on terms acceptable to both sides, refers to civil cases) to avoid going before a jury which can be so unpredictable.¹³⁵ This speeds up case resolution and thus, court dockets will not be clogged. This also encourages people to settle amicably so that it would be unnecessary for them to go to court, thereby saving time, effort, and, money.
5. The qualification of the common people to serve as jurors is based on their status as masters and inherent sovereign authorship of justice powers under their Constitution, and is not necessarily based on their technical expertise of the kw. Their justice power is not delegated from prosecutors or judges. They are not agents of the government and they are not agents of public officials either. Thus no public official—not even the President—has the power to approve or disapprove their appointments as jurors.¹³⁶

¹³¹ *Id.*, rule 36, §1.

¹³² English Legal System Page <[http:// www.kwteacher.net/ELS/Lay%20People/Juries%202.htm](http://www.kwteacher.net/ELS/Lay%20People/Juries%202.htm)>

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ C. E. Person, The Judicial Process in the US <<http://www.andersonkill.com/titanic/process.htm>>

¹³⁶ How the Independence of Jurors is Preserved <[http:// philippinegovantigrift.hoestead.com/SolutionBasics2.htm](http://philippinegovantigrift.hoestead.com/SolutionBasics2.htm)>

6. Long delay in jury trials is rare as each jury is given only one case. Hearings are from 11 am to 4 pm for only one case and mostly the next date is the next day.¹³⁷
7. The jury renders a verdict either of guilty or not guilty. They need not explain their judgment. Trial judges' time is not wasted in writing lengthy decisions.¹³⁸
8. Jurors are impartial since they are randomly selected representing a cross-section of the society.¹³⁹

B. Critics

Meanwhile critics of the jury system spell out various defects in the system.

1. The jurors are 12 strangers who have no legal knowledge or training.¹⁴⁰
2. Juries deliberate in private and no one can inquire into what happened in the jury room.¹⁴¹
3. The amount of damages to be awarded is unpredictable.¹⁴²
4. The juries give no reasons for the amount of damages awarded.¹⁴³
5. Grand juries often degenerate into a rubber stamp wielded by the prosecutor.¹⁴⁴
6. Jurors are rarely allowed to take notes. In a long trial it becomes a challenge to recall testimony that may have been delivered months ago.¹⁴⁵

¹³⁷ <http://www.rahulmehta.com/theory/rn_why.htm>

¹³⁸ *Id.*

¹³⁹ English Legal System Page <<http://www.kwteacher.net/ELS/Lay%20People/Juries%202.htm>>

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² *Id.*

¹⁴³ *Id.*

¹⁴⁴ Article by Duff and Harrison as cited by Ed Nash <<http://www.lib.niu.edu/ipo/ii780222.html>>

¹⁴⁵ Jeffrey N. Herman and Scott L. Herman, Justice Gone Awry: Getting the US Jury System on Track

<<http://www.mmc.com/views/96fall.herman.shtml>>

7. The power of an appeal court to overturn a jury verdict on questions of fact is severely limited. Most appeals from jury trials are concerned merely with legal issues. Because the reasoning of the jury is unknown, so the verdict on the facts is almost unassailable.¹⁴⁶
8. A jury is incompetent to determine many of the issues that come before about it. They are men and women taken from everyday life, unfamiliar with courtroom procedure and courtroom language. They are misled by the judge's instruction, misunderstand the law, and give unfair or prejudicial decisions.¹⁴⁷

The US jury system as guaranteed by their Constitution gives back to the citizens this right to be involved in the administration of justice, they being the true holder of the sovereign power.

This unique twin jury system gives every citizen the opportunity to have a hand in the judicial process. For one, the indictment of a person charged rests on the 23-member panel, otherwise called the grand jury. Thus, the determination of probable cause lies in the hands of 23 disinterested persons. The jury's composition cannot be questioned by anyone, not even by the President. The highlight of the grand jury is the secrecy of its proceedings. This gives wide latitude for jurors to do extensive investigation, i.e. calling more witnesses and receiving further evidence, in order to reach a fair decision—to indict or not to indict the person accused of a crime. The secrecy of the proceedings prevents the accused from escaping since normally, the accused has no knowledge that he is under investigation, thus preventing him from destroying evidence. Moreover, it allows and encourages the witnesses as to freely testify on whatever knowledge they have about the cases without fear for their lives, since they are faced alone with the grand jurors minus the accused person. It also assures the citizens that the jury decision is free from the influence of public opinion and political persons. This closes the door to any attempt to pressure the jurors.

¹⁴⁶ Ian Turnbull, A Suggested Alternative to Australia's Jury System
<<http://www.onlineopinion.com.au/view.asp?article=1273>>

¹⁴⁷ Bertel M. Sparks citing the common criticism on trial by jury in his article "Trial by Jury vs. Trial by Judge"
<http://www.libertyhaven.com/politicsand_currents_events/constitutionscourtsand_law/trialjudge.shtml>

On the other hand, the trial or petit-jury is likewise participated in by citizens. This 12-member panel shares the responsibility to determine the guilt of the accused. As the saying goes, “two heads are better than one.” In the same manner as the grand jury is selected, the trial jury is also randomly chosen, regardless of the jurors political beliefs and affiliations. Its composition is not subjected to the approval of any administrative officers, not even the President. Thus, no political figure has his hands on the selection of the jury, so no one can exert pressure on them.

The system doses its doors against corruption and bribery. Further, this guarantees speedy resolution of cases and gives assurance to the public that the judgment reached by the jury is not influenced by public and political squabbles over the case. Hence, the independence of the judiciary is preserved.

The system makes the public feel how important their roles are in the pursuit of justice, peace, and order in the country.

The flaws of the system as pointed out earlier all boils down to the lack of legal knowledge of the jurors and their incapacity to comprehend the complexities of the procedures. To remedy this setback would mean training and educating the jurors on the legal jargons, technicalities, and the necessary laws to be applied. The jurors need not know all the things that a lawyer knows. What they should be equipped with is the essential information needed in the trial of the case.

VII. ANALYZING THE JUDGE SYSTEM

Corollary to the enumeration of the positive and negative factors of the jury system, the advantages and disadvantages of the judge system may be culled therefrom.

A. Advantages

1. The judge who presides over the proceedings is knowledgeable of the law to be applied and has the necessary training to weigh and consider evidence.

2. The judgment is written by the judge personally, and it presents the law applied and the rationale of such judgment. It does not leave the parties in the dark.
3. In awarding the amount of damages, the court has a table of amounts which serves as basis. In certain cases, like in exemplary damages and moral damages, it is discretionary upon the judge what amount he shall award, as he deems proper.
4. Both findings of fact and conclusions of law may be appealed.

B. Disadvantages:

1. The judge is susceptible to corruption; it is much easier to bribe a single person than a panel of jurors.
2. Judges' decisions may be influenced by politicians, since the latter have the hand in recommending those judges to their posts.
3. The system is conducive for the growth of the "compadre" system which is already deeply rooted in our culture.
4. Judges are required to write lengthy decisions which are a waste of time.

As discussed in the earlier sections, the best feature of the judge system is that the case is heard and tried by a person who is knowledgeable of the law and has the necessary training. A judge may be considered an expert in the field of trying and weighing evidence. It is also the judge who writes the decision. The rigid requirements needed to qualify as a judge is given high regard. On the other hand, the prosecutor is likewise educated and trained in the field of law.

The selection and appointment of judges, however, is scourged with controversies. The president appoints; thus, political favors are forthcoming.

Further, one of the major setbacks of our system is that there is only one judge to hear the trial and weigh the evidence, thus, resulting to long delays in the disposition of cases. The responsibility rests solely on the judge

who practically has tens of thousands of cases in his sala. Justice would not be served efficiently since all the work is concentrated on the judge. The judge or the prosecutor determines probable cause and it is solely for the judge to hear the case and decide on its merit.

Truly, a judge has all the technical knowledge about law and the proper procedures to be followed. However, justice is not merely confined in its strict and legal definition as given by textbooks and legal dictionaries. Absolutism has no place in the real world. Justice should be applied based on how it should work best in real life—practical justice. Not all that is supposed to be done in dispensing justice is learned in the academe. People from all walks of life have their own sense of justice that is not necessarily learned or obtained by studying law. The public is likely to give impartial judgment knowing that they too may be judged by their own peers.

VII. COMPARING THE JURY SYSTEM AND JUDGE SYSTEM

With the foregoing discussion on the merits of both systems, let us now compare them with each other and see which outweighs the other. This would answer the question “Which system best suits our country?”

Before adopting an apt justice system, one must take into consideration the political culture and climate of the country since it is not easy to uproot something which the people have grown accustomed to.

Looking into our present condition, it is undeniable that the public is losing faith in our justice system it. This could be attributed to several factors which will be addressed one by one.

A. Bribery

Bribery is one of the evils that beset our system. Each party in a litigation has an interest to protect or pursue. Every tactic is employed in order to obtain a favorable judgment. This may include bribing the judge, and usually the bribe is too enticing to refuse. Considering human frailties, some judges give in.

Our present system is a very conducive ground for bribery to flourish. In the system, judgment is in the hands of only one person—the judge. It is much easier to bribe one person than a group of 12 jurors in order to gain favorable judgment. Whereas in the jury system, where the verdict lies in the

hands of the 12 jurors—thus, it is safeguarded against bribery. One feature of the system is the deliberation of the jurors in order to reach a verdict. If the jurors cannot agree on a verdict, the judge will declare a mistrial or a hang jury, so another jury will be constituted. Each juror shall be each other's look out against any corrupt act done by the other. On the other hand, in the judge system, no one is behind the judge to guard his actions. He alone has to deliberate, weigh, and determine the outcome of the case.

1. Compadre System

One of the factors that feed on bribing is our culture of compadre system, which has been handed down by our ancestors. It is difficult to uproot since it is deeply embedded in our way of life. This is so prevalent that even in our daily undertakings we employ this padrino system. It extends to almost all dealings, even penetrating all the way to our justice system. The common adage "the truth will set you free," does not apply. It is rather "whom you know will set you free." This compadre system is brought about by the fact that there are only few judges in our trial courts (not to mention the unfilled vacancies up to now), so that oftentimes a lawyer may appear before the same judge in several cases that he handles. This gives the lawyer the opportunity to build a nexus between him and the judge. This connection may be used by the lawyer when appearing before the same judge in order to delay a case, if not directly to get an acquittal. This scenario is unlikely to happen in a jury system, since in every case only one set of jurors is constituted. Thus, there would be different people sitting as jurors in each case and building a nexus among all jurors of each case is highly improbable. Further, a citizen can only serve once a year. This is one of the safeguards of the jury system.

2. Meager Compensation

Another factor that nurtures and encourages bribery is the meager compensation that judges receive. It is undeniable that the workload of a judge is too much for a mere mortal to handle and their salaries are not enough to compensate for such a Herculean job. Thus, the bribe money serves as their additional income and it lessens their work since the judge already knows beforehand what shall be the outcome of the case. This speeds up the disposition of the cases in the negative way.

On the other hand, the jury system spreads the responsibility to the 12-man jury. A citizen who is chosen to do jury work may not be chosen to render such service again in the same year. Thus the member would not feel the weight of such responsibility since he is only allowed to hear only one case in a year.

B. Delays in the Resolution of Cases

Long delays in the resolution of cases are often decried of. Day after day, case dockets clog up every court in the country.

1. Heavy Workload

One of the factors which cause the snail pace of our justice system is the hundreds, if not thousands of cases assigned to only one judge.

Considering the few judges in the lower court, not to mention the unfilled positions up to now, it is impossible for one judge to finish all the cases within 90 days, as provided by law. A judge doing practically all the work is unlikely to hear and try all cases scheduled for a certain day, thus postponement of the hearings of the other cases is likely to happen. In most cases, the next hearing would be scheduled at least three months after the first hearing. The amount of work given to the judge in our system is an overkill.

On the other hand, long delays are rare, in the jury trial, since one jury is given one case and the next hearing would be held the next day. Passing a part of the work to the citizen lightens the judge's work. The jury hears, weighs, and decides the cases, while the judge merely facilitates since only one case is assigned to one jury. This speeds up the disposition of the cases.

2. Unpopular Post

Another thing that adds up to the inefficiency of the judge system in the country is the lack of competent judges to fill up vacant offices. The judicial post is supposed to be a prestigious status that every lawyer aims to be appointed to. Unfortunately, in fact, the position is not as attractive as it seems to be. Many brilliant lawyers would opt to pursue private practice than to apply for the position of judgeship.

While it is true that judgeship is a noble undertaking, nonetheless, there are other factors to be considered aside from personal qualifications before one would decide to apply for the position. One of these is the economic

aspect. As discussed earlier, with the amount of work that is pcked in the hands of the judge, it is undeniable that most brilliant lawyers availing of all the luxurious perks offered by their private firms, shy away from the calling of judgeship. Private practitioners would rather stay as such with much lesser workload and a handsome salary.

With the jury system, the judge's work is not as burdensome as what we have in the Philippines. And as discussed earlier, the administration of justice is divided between the judge and the jury, thus not just passing down the entire responsibility to one judge.

C. Appointment of Judges

In our system, judges are appointed by the President through the recommendation of the Integrated Bar of the Philippines, not to mention the lobbying of high-ranking officials for their preferred man among the nominees.

In theory, the judicial branch is an independent body, it seems that this does not appear as it should be. A judge's decision may be influenced by politics, especially when controversies involve high-ranking officials or prominent figures in politics. In many instances, public official involved in high profile cases are often acquitted or if not, they are given special accommodation in the penal institution. Favors may come from different political figures who are instrumental to the judge's appointment and declining their request would be an act of ingratitude.

Decisions of the jury are unlikely to be influenced by political figures. Jurors are not recommended and appointed by any public official. Neither the President has any say on the composition of the jury. No politician can put pressure on the jury since the members did not owe their designation as jurors to any political figure. Jury service is an exercise of a citizen's sovereign authority as vested by the supreme law of the land.

IX. CONCLUSION AND RECOMMENDATION

Ideally, both systems were created for the effective administration of justice. They are meant to equally protect the aggrieved and the accused. Their creators had only one goal in mind—that justice must prevail over

abuses, corruption, and other forms of injustice in the society. Yet this vision can only exist in theory. Any system cannot function perfectly in the real world, wherein the main players are imperfect people.

Thus it cannot be gainsaid that each system has its own merits and demerits when applied in the real world. But, we cannot just go on with these chains of corruption just because we cannot live in a perfect society. Something must be done to lessen if not immediately eradicate the instances of injustices our society. Though, change would not take place overnight, it is best to start now.

With the present condition of the public's eroding faith in our justice system, is high time that we change the system into one that could efficiently dispense justice and thus gain back the public's confidence.

At present, voting is the only significant participation of a citizen in the exercise of his sovereign authority. But in the judicial process, the citizenry has no participation at all. The public should also have an active role in the administration of justice, just like in the electoral process. In a democratic country like ours, the people should be allowed to take a direct participation in administering justice and not stand as mere spectators in the judicial drama.

The Constitutional provision vesting sovereign authority in the people of the Philippines must be fully enforced. The adoption of the jury system will give the people a hand in the administration of justice in our country, thus giving life to the true essence of the Constitutional mandate.

The adoption of the jury system will eradicate the evils that plagued our present system. As stated earlier, this will take time, yet this is the best step to start rebuilding our misshapen justice system.

Now the question of whether this system is feasible in our country arises. Are Filipinos ready for it? As mentioned earlier in the brief history of the Philippine judge system, our adoption of the jury system was rejected by the American government because of certain factors. However, the reasons given no longer hold true in the present time.

For one, the general education level in the country has greatly improved over the years. Now, we are among those who have the highest literacy rate in Asia. Second, as provided in Sec. 7 Art. XIV of the 1987 Constitution, we now have two official languages—English and Filipino. Thus, the language

barrier has been overcome. Third, the inexperience of Filipinos regarding the jury system is no longer true today. At the time the American government granted independence to the Filipinos, trial by assessors which is considered a species of a jury trial was already incorporated in several laws. Even up to now, in certain instances, trial by assessors is still employed.

Thus, there is no longer any reason not to adopt the jury system in our country. The Filipino nation is ready to take the active participation in the judicial process. This trial by jury would assure the community that justice would be properly dispensed with, because an individual who serves as a juror would be critical and fair to judge his neighbor as he would himself wanted to be judged.