THE BILL OF RIGHTS OF ACCUSED PERSONS*

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Our Bill of Rights is for the most part a bill of rights of suspects and of persons accused in criminal cases. Its purpose is to preserve the balance between the state and the individual. For nowhere is the contest of rights between the state and individual more dramatically illustrated than in the prosecution of crimes. In discussing the rights of accused persons under the Constitution, therefore, it will be useful to follow the steps involved in the criminal process.

I. CONSTITUTIONAL REQUIREMENTS OF FAIR PROCEDURE

A. The Right to Due Process

Justice Frankfurter said in *McNabb v. United States:*[1] "The history of liberty has largely been the history of observance of procedural safegruards." That sums up the purpose of the Due Process provisions in Art. III, Secs. 1 and 14 (1) of our Constitution. It is hardly necessary to recall that these provisions have come down to us from the English Magna Carta of 1225, which referred to due process as "by the law of the land" (*per legem terrae*), through the extension to our country of the American Bill of Rights.

I shall not attempt a comprehensive definition of due process -- that is not possible. The Supreme Court said in a case that "It is responsiveness to the supremacy of reason, obedience to the dictates of justice. Negatively put, arbitrariness is ruled out and unfairness avoided."[2] With respect to the procedural aspects of due process, it would perhaps suffice to say that its purpose is to insure that the individual is adequately heard before the power of organized society is applied to him. In any event, instead of defining what is indefinable, it

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[1] 318 U.S. 332, 347 (1943).

[2] Ermita-Malate Hotel & Motel Operators Ass'n v. City Mayor of Manila, 20 SCRA 849 (1967).

will be more meaningful to discuss specific requirements of procedural fairness.

B. The Right Against Unreasonable Searches and Seizures

Art. III provides:

> Sec. 2. The right of the people to be secure in their persons, houses papers and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.
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> Sec. 3. (1) The privacy of communication and correspondence shall be inviolable except upon lawful order of the court, or when public safety or order requires otherwise as prescribed by law.
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> (2) Any evidence obtained in violation of this or the preceding section shall be inadmissible for any purpose in any proceding.

The Determination of Probable Cause

The gist of these provisions is that no person shall be arrested or subjected to any search unless there is probable cause to believe that he has committed a crime. In criminal cases, but not in other contexts, such as deportation proceedings, the existence of probable cause is to be determined by a judge and by no other person. The provisions of the 1973 Constitution, allowing the issuance of search warrants or warrants of arrest by "other responsible officers authorized by law," has been deleted in the present Constitution.

With respect to search warrants, the judge is required to determine probable cause by personally examining the complainant and/or his witnesses. (Rule 126, Sec. 4) He cannot delegate this task to anyone, such as the clerk of court.[3] The complainant and his witnesses must have personal knowledge of the facts upon which they testify.[4]

On the other hand, with respect to warrants of arrest, the judge issuing the warrant need not conduct the examination of the complainant and/or his witnesses. He may simply rely on the certification of the

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[3]Bache & Co. (Phil.), Inc. v. Ruiz, 37 SCRA 823 (1971).

[4]Burgos v. Chief of Staff, AFP, 133 SCRA 800 (1984); Rodriguez v. Villamiel, 65 Phil. 230 (1937); Alvarez v. Court of First Instance, 64 Phil. 33 (1937).

prosecutor that he had personally examined the complainant and his witnesses and that there is reasonable ground to believe that a crime has been committed and the accused is probably guilty thereof.[5] Otherwise, to require judges to make the examination themselves would unduly burden them with the preliminary investigation of criminal complaints and leave them little time for the hearing of cases.[6]

Indeed, what the Constitution imposes on the judge is the duty of determining for himself the existence of probable cause. The requirement that in the discharge of this duty he must personally examine the complainant and the witnesses is a requirement for the issuance of a search warrant and is imposed by the Rules on Criminal Procedure,[7] which contains no similar requirement with regard to the issuance of a warrant of arrest, the duty to examine personally the complainant and witnesses being imposed instead on those who conduct the preliminary investigation.[8]

Sufficiency of Search Warrants.

The Constitution requires that the warrant must describe "the place to be searched and the persons or the things to be seized." It thus outlaws general warrants. The description must be as specific as the circumstances will allow. Where, by the nature of the goods to be seized, their description must be rather general, it is not required that a technical description be given. Thus, in a prosecution under the internal revenue laws the description "fraudulent books, invoices and records" was held to be sufficient.[9]

But the desription "subversive documents, pamphlets, leaflets, books and other publications" is not sufficient. A warrant which contains such a description is a general warrant and, therefore, is invalid.[10] The reason for this is that when the books, documents and papers are seized in prosecution for rebellion, sedition or subversion, they are seized for the ideas they contain and not for their own sake. Were they seized because they are the things embezzled or stolen, a general description would suffice. Accordingly, the constitutional

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[5]Amarga v. Abbas, 98 Phil. 739 (1956); Placer v. Villanueva, 126 SCRA 463 (1983).

[6]Soliven v. Makasiar, G.R. No. 82582; Beltran v. Makasiar, G.R. No. 82827, Nov. 14, 1988.

[7]Rule 126, Sec. 4.

[8]Rule 112, Secs. 4 and 6 (b).

[9]People v. Rubio, 57 Phil. 384 (1932).

[10]Burgos v. Chief of Staff, AFP, 133 SCRA 800 (1984); Nolasco v. Cruz Paño, 139 SCRA 152 (1985).

requirement must be accorded the "most scrupulous exactitude," to preclude those enforcing the warrant from using their own notion of what is and is not subversive.[11]

Warrantless Searches

Under Rule 126, Sec. 12, a search without a warrant may be made as an incident of a lawful arrest. But the search must be only for "dangerous weapons or anything which may be used as proof of the commission of an offense." As held in *Chimel v. California,*[12] it is reasonable to search a person arrested to remove any weapon and to seize any evidence on the arrestee's person and in the area "within his immediate control," that is to say, the area from which he might gain possession of a weapon or destructible evidence. Accordingly, in *Nolasco v. Cruz Paño,*[13] the Supreme Court reconsidered an earlier ruling and hald that the search of petitioner's residence, located several blocks away from where she had been arrested and more than thirty minutes after her arrest, was illegal. In a separate concurring opinion, Chief Justice Teehankee explained that a contrary ruling would allow the military or the police to search the dwelling of a person arrested simply on the strength of a warrant of arrest.

The Validity of Checkpoints

In a recent decision, the Supreme Court upheld the establishment in a designated area in Valenzuela, Bulacan of military checkpoints. The Court said they are a "part of the price we pay for an orderly society and a peaceful community," even as it dismissed the petitioner's claim that because of the checkpoints residents were worried of their safety being placed at the arbitrary disposition of those manning the checkpoints.[14] Justices Cruz and Sarmiento dissented in separate opinions. Justice Cruz wrote: "What is worse is that the searches and seizures are peremptorily pronounced to be reasonable even without proof of probable cause and much less the required warrant." Justice Sarmiento argued that "the absence alone of a search warrant. . . makes checkpoint searches unreasonable" and that "the burden is the State's to demonstrate the reasonableness of the search."

There have been criticisms -- some vitriolic and intemperate -- against the decision in this case. It is perhaps well to note that the

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[11]*See* Marcus v. Search Warrant, 367 U.S. 717 (1961); A Quantity of Books v. Kansas, 378 U.S. 205 (1964).

[12]395 U.S. 752 (1969).

[13]147 SCRA 509 (1987).

[14]Valmonte v. De Villa, G.R. No. 83988, Sept. 29, 1989.

Court did not sustain the constitutionality of checkpoints in general but only particular ones in certain areas. The fact is that there was no concrete case before the Court and so its decision in this case was little more than an academic discussion on the right against unreasonable searches *vis-a-vis* the right of the State to maintain order. The checkpoints were established pursuant to an order of the Armed Forces for the purpose of "territorial defense . . . peace and order . . . and social, economic, and political development," and no evidence was presented to controvert this factual basis. Nor was any specific instance of abuse proven.

Had the family of the supposed victim who was allegedly killed by the military for refusing to stop at a checkpoint sued, for example, for damages for violation of a constitutional right, the Court would have been presented with a concrete controversy that alone can sharpen the presentation of issues upon which courts largely depend for illumination of difficult constitutional questions. For me, then, the lesson of this case is that there is wisdom in insisting that the power of judicial review be not brought into play when there is no actual case or controversy. It is unfortunate that in the eagerness to settle burning issues abstract constitutional cases are sometimes brought to the courts for decision.

Other Cases of Warrantless Searches

Under Sec. 2211 of the Tariff and Customs Code, customs agents can examine imported goods whenever they have reasonable cause to suspect the presence of dutiable articles introduced into the Philippines. For this purpose they can stop, search and inspect moving vehicles suspected of conveying such articles.[15] In *People v. Court of First Instance*,[16] the court upheld the search and seizure of wrist watches from the case of an American serviceman whom custom agents apprehended after a chase on the expressway. The agents acted on the basis of tip received by them from an informant.

Wire Tapping

Republic Act No. 1400 makes it a crime for any person, "not being authorized by all the parties to any private conversation or spoken word, to tap any wire or cable or by using any other device or arrangement, to secretly overhear, intercept or record such communication or spoken word by using a device commonly known as dictaphone or dictagraph or detectaphone or walkie-talkie or tape

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[15]Papa v. Mago, 22 SCRA 857 (1968). *See* also Roldan v. Arca, 65 SCRA 336 (1975).

[16] 101 SCRA 86 (1980).

recorder, or however otherwise described." However, in national security offenses, a court may authorize the government to tap telephones upon proof of the commission of the offense.

In one case, it was held that a person who listens to a telephone conversation through the use of an extension line does not violate Republic Act No. 1400, otherwise, it was pointed out, a caller, by merely using a telephone, can force the listener to secrecy no matter how obscene, criminal or annoying the call may be. It was pointed out that it is the use of the devices mentioned in the law for the purpose of intercepting messages that is strictly prohibited.[17]

The Exclusionary Rule

A violation of the right to the security of persons, papers and effects against unreasonable searches and seizures as well as the privacy of communication and correspondence renders the evidence obtained inadmissible. This is the exclusionary rule which embodies the ruling in *Stonehill v. Diokno.*[18] The rule before 1967 was that the admissibility of evidence was not affected by the illegality of the means used to obtain it. The victim of unreasonable searches and seizures was relegated to the remedy of criminal, civil and administrative actions against the erring officers.[19] As Judge Cardozo put it, the criminal must not be allowed to go scot-free simply because the constable has blundered.[20] But in *Stonehill v. Diokno,* the Supreme Court, under the impetus of the newer doctrine in America, particularly the decision in *Mapp v. Ohio*[21] adopted the exclusionary rule as the only practical way to enforce the constitutional injunction against unreasonable searches and seizures.

"Fruit of the Poisonous Tree" Doctrine

The exclusionary rule applies not only to the use of evidence illegally seized but also to leads furnished by such evidence. In *Silverthorne Lumber Co. v. United States,*[22] books and documents illegally seized by federal agents were ordered returned by the court, but the petitioners were later required to produce them before a grand jury. As petitioners refused to comply with the order, they were punished for contempt. The U.S. Supreme Court, by Justice Holmes, reversed the

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17 Gaanan v. IAC, 145 SCRA 112 (1986).
18 20 SCRA 383 (1967).
19 Moncado v. People's Court, 80 Phil. 1 (1948).
20 People v. Defore, 140 N.E. 585 (1926).
21 367 U.S. 643 (1961).
22 251 U.S. 385 (1920).

conviction, rejecting the government's claim that it may "use knowledge that it has gained" from the illegal seizure "to call upon the owners in a more regular form to produce them. The essence of the rule forbidding the acquisition of evidence in a certain way is that not merely evidence so acquired shall not be used before the court but that it shall not be used at all."

Warrants of Arrest

As already stated, while the determination of probable cause for the issuance of a warrant of arrest is the responsibility of a judge, the examination of the complainant and the witnesses need not be undertaken by him personally. Under Rule 112, Sec. 4 and Sec. 6 (b), this duty devolves upon prosecutors and municipal trial judges conducting the preliminary investigation of cases which are cognizable by the Regional Trial Courts. The judge of the latter court may simply rely on the fiscal's certification. In the case of municipal trial courts, the judges thereof have the power to issue warrants of arrest if they find that probable cause exists and there is necessity of placing the respondent under immediate custody "in order not to frustrate the ends of justice." Otherwise, they have no duty, as under the 1940 and 1964 Rules, of issuing such warrants because under Rule 112, Sec. 6(a), that is for the judge of the Regional Trial Court, after the fiscal has filed the case, to issue.[23]

It must be pointed out, however, that while the issuance of a warrant of arrest by the municipal trial judge who conducted the preliminary investigation is discretionary, depending on whether the ends of justice so require, the issuance of a warrant of arrest by the judge of the Regional Trial Court after the filing of a case is required, otherwise he would not acquire jurisdiction over the person of the accused. The judge may not rely on the fiscal's certification as to the existence of probable cause. The judge may find it necessary to examine the record of preliminary investigation. But in the end he must, if he finds probable cause, issue a warrant of arrest as the only means of acquiring jurisdiction over the accused.

Warrantless Arrests

Rule 113, Sec. 5 authorizes the arrest of any person without judicial warrant in the following cases:

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[23] Samulde v. Salvani, 165 SCRA 134 (1988).

> (a) when, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;
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> (b) when an offense has in fact just been committed, and he has personal knowledge of facts indicating that the person to be arrested has committed it;
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> (c) when the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgment or temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another.

Such person must, however, be charged in court within six, nine or eighteen hours, as the case may be, otherwise he must be released from custody.[24]

Immunity From Arrest

It should finally be noted that members of Congress are privileged from arrest for offenses punishable by imprisonment of not more than six years, while Congress is in session. This changes the rule in the 1935 Constitution, under which it was held that members of Congress did not really enjoy parliamentary immunity from arrests.[25]

C. Rights of Persons under Custodial Interrogation

Art. III, Sec. 12 provides:

> (1) Any person under investigation for the commission of an offense shall have the right to be informed of his rights to remain silent and to have competent and independent counsel preferably of his own choice. If the person cannot afford the services of counsel, he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel.
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> (2) No torture, force, violence, threat, intimidation, or any other means which vitiate the free will shall be used against him. Secret detention places, solitary, incommunicado, or other similar forms of detention are prohibited.
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> (3) Any confession or admission in violation of this or section 17 hereof shall be inadmissible in evidence against him.
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> (4) The law shall provide for penal and civil sanctions for violations of this section as well as compensation to and rehabilitation of victims of torture or similar practices, and their families.

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[24] *See* REV. PEN. CODE, Art. 125.

[25] Martinez v. Morfe, 44 SCRA 22 (1972).

The essence of this provision is the giving of warnings, called Miranda warnings after the case[26] from which they were adopted, to suspects under custodial interrogation. Although separated from the Self-Incrimination Clause of Sec. 17 in the present Constitution, the purpose of the Miranda warnings remains the same, namely, to secure the privilege against self-incrimination.

The following warnings are required to be given to the suspects:

First, the person in custody must be informed in clear and unequivocal terms that he has a right to remain silent. The purpose is to apprise him of his privilege not to be compelled to incriminate himself, to overcome the inherent pressures of the interrogation atmosphere, and to assure the individual that his interrogators are prepared to recognize his privilege should he choose to exercise it.

Second, the person in custody must be warned that anything he will say can and *will* be used in court against him. This warning is intended to make him aware not only of the privilege but also of the consequences of foregoing it. For this reason, the previous practice of warning the individual under custody that anything he will say *may* be used against him in court no longer suffices.

Third, since the circumstances surrounding in-custody interrogations can operate very quickly to overbear the will of one merely made aware of his privilege by his interrogators, it is indispensable that he has the assistance of counsel.

The right to be given these warnings can not be waived. It is the right to remain silent and the right to counsel, after the suspect has been given the warnings, which can be waived. Even then the waiver is required to be in writing and in the presence of counsel.

Before the 1987 Constitution, the Supreme Court followed a case-to-case approach to the question of voluntariness of the waiver of rights to silence and to counsel, looking to the totality of the circumstances under which the person under custody was informed of his rights, to determine whether the waiver was "voluntary, knowing and intelligent." It would seem now, in addition, that to be valid, a waiver must be in writing and it must be made in the presence of counsel.

Custodial Phase of Interrogation

At what stage of the police interrogation must the warnings be

26 Miranda v. Arizona, 384 U.S. 436 (1966).

given? To be sure, the Constitution does not state at what stage of the interrogation process they must be made. It simply says that "any person under investigation for the commission of an offense" must be given the warnings. But in *Miranda,* from which we derived our constitutional provision, the Court specified that it is only at the custodial phase of the interrogation -- the stage after a person is taken into custody or otherwise deprived of freedom of action in a significant way -- that its ruling applied. As the Court indicated in the earlier case of *Escobedo v. Illinois,*[27] it is only after the investigation ceases to be a general inquiry into an unsolved crime and begins to focus on a particular suspect, the suspect is taken into custody, and the police carries out a process of interrogation that lends itself to eliciting incriminating statements that the rule begins to operate.

In *Gamboa v. Cruz,*[28] it was held that a police lineup is not part of custodial interrogation and, therefore, the suspect is not entitled to counsel.

Exclusionary Rule

Like violations of the right to security of persons and the privacy of correspondence, violations of Miranda rights are sanctioned by an exclusionary rule which renders any confession of the suspect inadmissible. In American constitutional law, two exceptions to the exclusionary rule have been recognized. First, it has been held that uncounselled statements, while not admissible as evidence in chief, may be used for impeachment purposes. "The shield provided by Miranda cannot be perverted into a license to use perjury by way of defense, free from the risk of confrontation with prior inconsistent utterance."[29] Second, it has been held that where the giving of warnings might deter suspects from answering questions, and the social cost is higher than are necessary to avert an immediate threat to public safety, the police may interrogate the suspects without complying with the requirement of this provision.[30]

D. The Right to Bail

Art. III, Sec. 13 states:

> All persons, except those charged with offenses punishable by *reclusion perpetua* when evidence of guilt is strong, shall be bailable by

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27 378 U.S. 473 (1964).

28 162 SCRA 642 (1988).

29 Harris v. United States, 401 U.S. 222 (1971)

30 Quarles v. New York, 104 S. Ct. 2626 (1984).

> sufficient sureties, or be released on recognizance as may be provided by law. The right to bail shall not be impaired even when the privilege of the writ of *habeas corpus* is suspended. Excessive bail shall not be required.

The right to bail arises from the moment an individual is arrested and detained, even though no formal complaint or information has been filed against him,[31] and lasts until he is convicted by final judgement.[32] The only exception is when the charge against him is for an offense punishable by *reclusion perpetua* and the evidence of guilt is strong. This may be shown either in the hearing for bail or as a result of conviction by the trial court.

In cases where there is no right to bail, courts nevertheless have the discretion to grant bail for humanitarian reasons, as when continued detention would be injurious to the health of the detainee or endanger his life.[33]

The long standing controversy, whether the suspension of the privilege of the writ of *habeas corpus* carries with it the suspension of the right to bail,[34] was finally settled in the present Constitution which provides that the right to bail shall not be impaired even though the privilege of the writ of *habeas corpus* is suspended.

Does the right to bail include the right to travel abroad? In *Manotok v. Court of Appeals*,[35] the Supreme Court said no, because the condition of the bail is that he will make himself available whenever the court requires his presence. If he is allowed to leave the country, he may place himself beyond the reach of the court.

E. Rights at the Trial

Art. III states:

> Sec. 14. (1) No person shall be held to anwser for a criminal offense without due process of law.
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> (2) In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial and public trial,

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31 Herras Teehankee v. Rovira, 75 Phil. 634 (1945).

32 Rule 114, Sec. 3.

33 Ymalay v. Santiago, CA-G.R. No. 15192, Nov. 7, 1988.

34 *Compare* Nava v. Gatmaitan, 90 Phil. 172 (1951) *with* Garcia-Padilla v. Ponce Enrile, 121 SCRA 472 (1983).

35 142 SCRA 149 (1986).

> to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. However, after arraignment, trial may proceed notwithstanding the absence of the accused provided that he has been duly notified and his failure to appear is unjustifiable.
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> Sec. 16. All persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial or administrative bodies.
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> Sec. 17. No person shall be compelled to be a witness against himself.

Right to Counsel

The right to counsel at the stage of trial serves a different purpose from the right to counsel at the stage of custodial interrogation. As earlier noted, the right to counsel in police interrogations secures the privilege against self incrimination. For indeed, if a suspect, who has no counsel, gives a statement to the police, the ensuing trial is little more than an appeal from interrogation. One can imagine a cynical prosecutor saying: "Let him have the most illustrious counsel, now. There is nothing that counsel can do for him at trial."[36]

In the event that the suspect is charged in court, he will still need the guiding hand of counsel. He may lack both the skill and knowledge adequate to prepare his defense. Without the assistance of counsel, he faces the danger of conviction not because he is guilty but because he does not know how to establish his innocence.[37] The role of counsel during trial is thus crucial in securing the right of the accused to be heard in his defense.

The Right to be Present and Trial in Absentia

The right to be present at all stages of the criminal trial is included in the right to be heard and the right to confront the witnesses against one's self. The converse is true: the right to be present includes the right not to be present. Under the 1985 Rules on Criminal Procedure, the only instances when the presence of the accused in court is required are : (1) upon arraignment and in entering a plea;[38] (2) during trial when his presence is necessary for the purpose of identification;[39] and (3) upon the promulgation of sentence, unless it is for a light offense, in which

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36 Mendoza,*The Right to Counsel in Custodial Interrogations*, 61 PHIL. L. J. 409 (1986).

37 Powell v. Alabama, 287 U.S. 45 (1932); People v. Holgado, 85 Phil. 752 (1950).

38 Rule 116, Sec. 1(b).

39 Aquino v. Military Commission No. 2, 63 SCRA 546 (1975).

case the accused may simply appear by counsel or a representative.[40] In all other instances, he may elect not to be present. This is the assumption in trials in absentia. It is, therefore, error for a court to suspend the trial of a case in the event the accused jumps bail, to await his rearrest. Provided he has been arraigned and duly notified of the trial, his absence without any excuse is a waiver not only of his right to confront the witnesses against him but also of his right to present his evidence. Under the circumstances the duty of the court is to proceed with the trial and afterward render judgment on the basis of the prosecution evidence.[41] Meanwhile, the accused must be arrested.[42]

The Privilege Against Self-Incrimination

The privilege is limited to compulsory testimonial self-incrimination. Accordingly, evidence that the left foot of the accused matched the size of the foot print on the floor of the room where murder had been committed was admitted in *United States v. Zara.*[43] In *People v. Otadura,*[44] it was held that a person may be ordered to put on a pair of trousers to see whether it fits him. Since the prohibition is against testimonial compulsion by oral examination, the morphine which the accused was forced to discharge from his mouth was held admissible in *United States v. Ong Siu Hong.*[45] In another case, the accused, who was charged with adultery, was ordered to submit to a physical examination to determine if she was pregnant and was punished for contempt for refusing and jailed until she agreed to the examination.[46]

But an individual cannot be made to take a dictation to determine if it is he who wrote certain documents which are falsified. Writing is not purely mechanical but involves the mental process.[47]

Where Privilege May be Asserted

The privilege against self-incrimination may be invoked not only in criminal but also in civil proceedings, in congressional investigations and in administrative hearings. The reason for this is that an inability to protect the right at one stage of the proceedings may render its

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40 Rule 120, Sec. 6.

41 Gimenez v. Nazareno, 160 SCRA 1 (1988).

42 People v. Prieto, 84 SCRA 198 (1978).

43 42 Phil. 308 (1921).

44 86 Phil. 244 (1950).

45 36 Phil. 735 (1917).

46 Villaflor v. Summers, 41 Phil. 62 (1920).

47 Beltran v. Samson, 53 Phil. 570 (1929); Bermudez v. Castillo, 64 Phil. 483 (1937).

invocation useless at a later stage.[48]

"Use Immunity" and "Transactional Immunity"

Immunity statutes are enacted to provide a substitute for the privilege against self-incrimination. In the United States, following *Counselman v. Hitchcock,*[49] which held that to justify compulsion to testify, the witness must be given immunity coextensive with the privilege, the U.S. Congress enacted a law granting "transactional immunity," exempting the witness from prosecution. But, possibly through a misreading of a later ruling,[50] Congress subsequently replaced "transactional immunity" with "use and fruit immunity," which merely exempts a witness from the use of his testimony but not from prosecution in respect of the transaction or matter concerning which he is compelled to testify. A later case[51] found "use and fruit immunity" adequate to supplant the privilege.

In the Philippines, Republic Act No. 1379, which took effect on July 18, 1955, grants "transactional immunity" to witnesses in proceedings for the forfeiture of unexplained wealth. Obviously, it was patterned after the American law at that time. Later, PD 1886, which created a fact-finding board to investigate the Aquino-Galman murder case, provided for the grant of limited "use and fruit immunity," doubtless as a result of developments abroad. However, when the present Constitution was drafted in 1986, the grant of "transactional immunity" from prosecution to any person, whose testimony is necessary or convenient in the investigation of violation of human rights, was authorized.[52] Thus, we do not seem to have a consistent policy regarding the type of immunity we are willing to trade for the privilege against self-incrimination.

Effect of Denial of the Privilege

As already noted, any statement obtained in violation of the Miranda rule, as well as the self-incrimination clause, is rendered inadmissible in evidence. But where the violation is committed by a court during trial, as where the accused is ordered, over his objection, to

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48 People v. Jimenez, 71 SCRA 186 (1976); Suarez v. Tengco, 111 Phil. 1100 (1961); Pascual v. Board of Medical Examiners, 28 SCRA 344 (1969); Galman v. Pamaran, 138 SCRA 274 (1986).

49 142 U.S. 547 (1892).

50 Murphy v. Waterfront Commission, 378 U.S. 52 (1964).

51 Kastigar v. United States, 406 U.S. 446 (1972); Zicarelli v. New Jersey State Commission of Investigation, 406 U.S. 472 (1972).

52 Art. XIII, Sec. 18 (8).

testify, the violation of his constitutional right will result in the nullification of the entire proceedings, including the judgment that may have been rendered against him.[53]

An Unbiased Judge

A fair trial requires an impartial and an unbiased judge. The cases put it that the accused is entitled "to no less than the cold neutrality of an impartial judge."[54] But why cold neutrality? Why not the warm, sensitive and sympathetic understanding of an otherwise disinterested and wise judge? I prefer instead Professor Freund's credo for judges: that they must deeply immerse themselves in the facts of the case, but not allow themselves to be bemused, enter sympathetically into the experience of the parties and then withdraw.[55] For though we want our judges to be neutral, we do not want them to be cold and insensitive. We want them to be imbued with a sense of justice.

The Trial of Civilians By Military Courts

In *Olaguer v. Military Commission No. 34*,[56] it was held that military tribunals can not try civilians even when martial rule is imposed, so long as the civil courts are open and functioning. The Supreme Court quoted the following from *Toth v. Quarles*::[57] "The presiding officer at a court-martial is not a judge whose objectivity and independence are protected by tenure and undiminished salary and nurtured by the judicial tradition, but is a military officer . . . [T]he suggestion of the possibility of influence on the actions of the court-martial by the officer who convenes it, selects its members and the counsel on both sides, and who usually has the direct command and authority over its members is a pervasive one in military law, despite strenuous efforts to eliminate the danger."

It is now provided in the Constitution that "a state of martial law does not authorize the conferment of jurisdiction on military courts and agencies over civilians where civil courts are able to function."[58]

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53 Chavez v. Court of Appeals, 24 SCRA 663 (1968).

54 Gutierrez v. Santos, 2 SCRA 249 (1961); Mateo v. Villaluz, 50 SCRA 18 (1973).

55 P. A. FREUND, ON LAW AND JUSTICE 250 (1968).

56 150 SCRA 406 (1986).

57 350 U.S. 5 (1955).

58 Art. VII, Sec. 18.

Bill of Attainder as Legislative Adjudication of Guilt

The adjudication of guilt is then a judicial function. Accordingly, the Constitution prohibits the enactment of bills of attainder,[59] which are legislative enactments inflicting punishments without trial. They constitute a substitution of legislative for a judicial determination of guilt.[60] The Anti-Subversion Law, which declares the Communist Party to be a subversive organization and punishes any person who joins it, has been declared not to be a bill of attainder. Its focus is not on individuals but on conduct.[61]

The Right to Speedy Trial and the Speedy Disposition of Cases

Not only is the accused entitled to a speedy trial. Since delay may result from the decision of a case after it is submitted to the court, he is also entitled to the speedy disposition of his case. The Constitution sets a period of twenty four months for the Supreme Court, twelve months (unless otherwise provided by the Supreme Court) for lower collegiate courts, and three months for trial courts, within which to decide cases. These periods are counted from the time the cases are submitted for decision or resolution upon the filing of the last pleading, brief, or memorandum required by the Rules of Court or by the court itself. Compliance with this provision is mandatory.[62] In cases involving challenges to the validity of the suspension or the extension of the suspension of the privilege of the writ of habeas corpus, the Supreme Court is required to render a decision within thirty days from the time of the commencement of the action.[63]

II. CONSTITUTIONAL SAFEGUARDS OF SUBSTANTIVE RIGHTS

A. Substantive Due Process

What makes it quite difficult to frame an adequate definition of due process are the variety and complexity of inconsistent interests that must be resolved in the balance. The resolution of such conflicts transcends not only the procedural problems just discussed but also matters of substance. In other words, problems of due process comprehend not only the *how*, but also the *what*, of governmental power. In either case, the problem is that of avoiding a decision that leaves the arbiter

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59 Art. III, Sec. 22.
60 People v. Ferrer, 48 SCRA 382 (1972).
61 *Id.*
62 Art.VIII, Sec. 15 (4).
63 Art. VII, Sec. 17.

-- whether judge or policy maker who must choose among inconsistent human aspirations -- with a "sense of injustice."[64]

Beyond this generalization, the Constitution contains some relatively specific prescriptions for substantive due process. It provides what conduct can not be made crimes, what punishments can not be imposed, what positive action the government must take to give meaning and substance to the rights of the individual. It is to these provisions that I should now like to turn.

B. What Can not Be Criminalized

The following acts or omissions can not be made criminal:

First, mere beliefs and aspirations. The Constitution contains a new statement of an old doctrine: "No person shall be detained solely by reason of his political beliefs and aspirations."[65] As Justice, later Chief Justice, Concepcion aptly stated, dissent should not be equated with dissidence.[66]

Second, mere civil obligations. "No person shall be imprisoned for debt or nonpayment of a poll tax."[67] The law punishing the issuance of "bouncing" checks does not offend this constitutional guarantee for it is the deceit employed and not the incidental civil obligation that is contracted which is punished.[68]

Third, acts which when done were innocent. This is the herein of the prohibition in Art. III, Sec. 22 against *ex post facto* laws. The Supreme Court has described such a laws as one "(1) which makes criminal an act done before the passage of the law and which was innocent when done, and punishes such an act; (2) aggravates a crime or makes it greater than it was when committed; (3) changes the punishment and inflicts greater penalty than the law annexed to the crime when committed; (4) alters the legal rules of evidence and authorizes conviction upon less or different testimony than the law required at the time of the commission of the offense; (5) assuming to regulate civil rights and remedies only, in effect imposes a penalty or deprivation of a right for something which when done was lawful; and (6) deprives a person accused of a crime of some lawful protection to

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64 P. FREUND, A. SUTHERLAND, M. HOWE & E. BROWN, CONSTITUTIONAL LAW: CASES AND PROBLEMS 993-994 (1977).

65 Art. III, Sec. 18(1).

66 People v. Hernandez, 99 Phil. 515 (1956).

67 Art. III, Sec. 20.

68 Lozano v. Martinez, 146 SCRA 323 (1986).

which he has become entitled, such as the protection of a former conviction or acquittal or a proclamation of amnesty."[69]

C. *What Punishments Cannot be Imposed*

Even with respect to conduct that by consensus of the community is deemed reprehensible, civilized standards of punishment must be observed.

First, involuntary servitude (not necessarily peonage) can not be imposed except on those convicted of a crime, in cases provided by law.[70]

Second, nor may excessive fines be imposed, so that in this area courts have used their discretion in fixing the penalties to be meted out in specific cases.[71]

Third, nor can cruel or degrading or inhuman punishments be provided by the legislature. The use of physical, psychological or degrading punishments against prisoners or detainees or of substandard or inadequate penal facilities under subhuman conditions is prohibited.[72] So are secret detention places, solitary, *incommunicado* and other forms of detentions specifically proscribed.[73]

In *People v. Borja*,[74] the Supreme Court, while affirming the conviction of the accused for murder and frustrated murder, reduced the death sentences meted out on them by the trial court after, finding that they had been detained for the past twenty years, under deplorable prison conditions, during which the shadow of death hanged on them like the proverbial sword of Damocles.

The death penalty as provided in the Revised Penal Code, while not technically abrogated, is prohibited from being imposed and, in those cases where it may have been imposed by the courts before the effectivity of the Constitution, the penalty is reduced to *reclusion perpetua*. The Court in *People v. Muñoz*,[75] refused to adjust the scale of penalties as a result of the constitutional ban with the result that those

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69 *Re* Kay Villegas Kami, 35 SCRA 429 (1970); Mekin v. Wolfe, 2 Phil. 74 (1903).

70 Art. III, Sec. 18(2).

71 People v. De la Cruz, 92 Phil. 906 (1953); People v. Dacuycuy, G.R. No. 45127, May 5, 1989.

72 Art. III, Sec. 19 (1).

73 Art. III, Sec. 12 (2).

74 91 SCRA 340 (1979).

75 G.R. Nos. 38968-704, Feb. 9, 1989.

found guilty of murder without any attending circumstance and those who committed the crime with an aggravating circumstance receive the same sentence. The court said that is a matter for Congress to legislate upon. Nonetheless, the death penalty may still be imposed by courts if Congress should provide with respect to "heinous crimes."[76]

D. The Protection Against Double Jeopardy

Article III, Sec. 21 provides:

> No person shall be twice put in jeopardy of punishment for the same offense. If an act is punished by a law and an ordinance, conviction or acquittal under either shall constitute a bar to another prosecution for the same act.

Two Situations Covered

The first sentence of Sec. 21 sets forth the general rule: the constitutional protection against double jeopardy is not available where the second prosecution is for an offense that is different from the offense charged in the first or prior prosecution, although the first and second offenses may be based upon the same act or set of acts. The second sentence embodies an exception to the general proposition: the protection against double jeopardy is available although the prior offense charged under an ordinance be different from the offense charged subsequently under a national statute, such as the Revised Penal Code, provided both offenses spring from the same act or set of acts. Put differently, where the offenses charged are penalized by different provisions of a statute or by different statutes, the question is whether there is an *identity of offenses.* The protection against double jeopardy is available only where such identity exists. In contrast, where one offense is charged under a municipal ordinance, while the other is penalized by a statute, the question is whether there is an *identity of acts.* The protection against double jeopardy is available so long as the acts, which constitute or have given rise to the first offense under the ordinance, are the same acts which constitute or have given rise to the offense charged under a statute.[77]

Hence, an accused who had been acquitted under a municipal ordinance which prohibited the installation of electrical devices in buildings without a permit from the city government could not subsequently be prosecuted for theft of electricity based on the same act

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76 Art. III, Sec. 19 (1).

77 People v. Relova, 148 SCRA 292 (1987).

under the Revised Penal Code.[78] On the other hand, one who pleads guilty to a charge of violating Republic Act No. 3060, which prohibits the showing of any film without prior permit from the Board of Censors and is sentenced accordingly, can not move for the dismissal of a prosecution for showing an indecent and immoral picture under Article 201 (3) of the Penal Code on the same act.[79]

The Doctrine of Supervening Fact

Rule 117, Sec. 7 provides exceptions to the first part of the constitutional provision:

> [T]he conviction of the accused shall not be a bar to another prosecution for an offense which necessarily includes the offense charged in the former complaint or information under any of the following instances:
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> (a) the graver offense developed due to supervening facts arising from the same act or omission constituting the former charge;
>
> (b) the facts constituting the graver charge became known or were discovered only after the filing of the former complaint or information; or
>
> (c) the plea of guilty to the lesser offense was made without the consent of the fiscal and of the offended party.
>
> In any of the foregoing cases, where the accused satisfies or serves in whole or in part the judgement, he shall be credited with the same in the event of conviction for the graver offense.

The first exception is taken from the decision in *Melo v. People,* [80] where it was held that one found guilty of frustrated homicide could again be prosecuted for homicide if the victim dies.

The second exception was intended to remedy the situation in *People v. City Court,*[81] where the accused pleaded guilty to the charge of serious physical injuries through reckless imprudence when the fact was that the victim had already died but it was nonetheless held that he could no longer be prosecuted for homicide.

It would be a different matter, however, where the existence of the graver offense was not discovered because of incompetent medical examination of the victim, as when the injuries are so serious to warrant

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78 *Id.*

79 People v. City Court, 154 SCRA 175 (1987).

80 85 Phil. 776 (1950).

81 121 SCRA 637 (1983).

the filing of a charge of frustrated murder but the accused is only charged with slight physical injuries.[82]

E. The Privilege of the Writ of Habeas Corpus

The Constitution provides in Article III, Sec. 15:

> The privilege of the writ of *habeas corpus* shall not be suspended except in cases of invasion or rebellion when the public safety requires it.

Function of the Writ

The writ is known as the Great Writ of Liberty because it is the most efficacious means of inquiring into all manners of illegal detention. Little is known of its function as a post-conviction remedy. After all remedies have been exhausted and even when the accused has been convicted and is already serving sentence, his release may still be obtained by means of this writ if it is shown that his detention is illegal either because the convict was denied due process by being compelled to testify against himself[83] or he is entitled to the benefit of a new ruling,[84] or the tribunal which sentenced him had no jurisdiction.[85]

Writ of Habeas Corpus Distinguished From Its Privilege

Note that it is the privilege of the writ and not the writ itself which may be suspended. The writ is the show-cause order to produce before the court the person alleged to be illegally detained. The privilege is the further proceeding for his release in case the allegation is found to be true.[86]

Suspension of the Privilege

Pursuant to Art. VII, Sec. 18, the suspension of the priviledge of the writ can not be for more than sixty days and is subject to the power of Congress to revoke by the vote of a majority of its members. The suspension may be extended upon the authority of Congress if the invasion or rebellion which impelled such suspension should persist. Any citizen may challenge in the Supreme Court the constitutionality not only of the suspension but also its extension as to the sufficiency of

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82 People v. Yorac, 42 SCRA 230 (1971).
83 Chavez v. Court of Appeals, 24 SCRA 663 (1968).
84 Gumabon v. Director of Prisons, 37 SCRA 420 (1971).
85 Cruz v. Ponce Enrile, 160 SCRA 702 (1988).
86 *Ex Parte* Milligan, 4 Wall. 2 (1866).

the factual basis of the suspension.

Persons arrested or detained without warrants of arrest must be charged in court within three days, otherwise they should be released. In effect therefore, there is added to the periods provided in Art. 125 of the Revised Penal Code, a fourth category of offenses, namely, rebellion or offenses connected with the invasion, for which a period of three days, or seventy two hours, is allowed during which they may be held without court order.

F. Other Constitutional Provisions

Finally, the Consitution makes positive provisions for the following:

(1) Free access to the courts and quasi-judicial bodies and free legal assistance.[87]

(2) Promulgation of rules by the Supreme Court for the protection and enforcement of constitutional rights.[88]

(3) The protection of human rights by the Commission on Human Rights.[89]

(4) Compensation for, and rehabilitation of victims of torture and similar practices.[90]

Obviously, provisions for decent jail facilities, for free access to the courts and free legal aid especially to indigent litigants, and for compensation and rehabilitation of victims of torture and other human rights violations are matters which can not be obtained from the courts but must be sought for in the legislature. Their significance lies in the fact that while traditional civil and political rights constitute restraints on the exercise of governmental power, these affirmative rights are a safeguard against governmental neglect. In truth no longer are governments judged solely by how freely an individual is able to enjoy his rights under them but also by the amount of material benefits they bring to his aid. Today, under the concept of welfare state, in addition to civil and political rights, there must be guaranteed to the individual, economic, social and cultural rights.

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87 Art. III, Sec. 11.
88 Art. VIII, Sec. 5 (5).
89 Art. XIII, Sec. 18(3); Art. III, Sec. 12 (4).
90 Art. III, Sec. 12(4).

To sum up, the rights of accused persons are no more than those which civilized standards of justice require must be accorded even to those charged with the most heinous offenses. These rights have taken centuries to achieve and have cost much sweat and blood to purchase them. They are, therefore, truly the crowning glories of our civilization and to violate them is, in a profound sense, to commit a desecration.