TOWARDS MAINTAINING A DESIRABLE BALANCE BETWEEN SOCIETAL SECURITY AND CIVIL LIBERTIES IN THE ADMINISTRATION OF CRIMINAL JUSTICE*

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I. INTRODUCTION

I want to start out with what I consider to be an insightful and thought-provoking quotation from a learned jurist as an appropriate introduction to this presentation. U.S. Supreme Court Chief Justice Warren Burger gave the following short remarks on the importance of criminal justice:

> The methods we employ in the enforcement of our criminal law have aptly been called *the true measures by which the quality of our civilization may rightly be judged.*

When I made that quotation, I had in mind not only the medieval and barbaric penalties still being imposed in other parts of the world, such as the horrifying chopping off of heads or of limbs and the much publicized caning for vandalism of that American teen-ager, but even more importantly, the *fairness of the process* by which a person accused of a crime is found guilty thereof. Is it fair, for instance, for the Malaysian police to round up a thousand Filipino domestic helpers merely on suspicion of having entered their country illegally and finding only a handful guilty? In *Guazon v. de Villa,*[1] our Supreme Court rightly condemned and enjoined such "community searches" or police saturation drives that contravene the constitutional presumption of innocence.

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[1] 181 SCRA 623 (1990).

Indeed it has been observed that what essentially differentiates a democracy from a police state is not their forms of government as republican, presidential or parliamentary, or the existence of a constitution, or the formal title of the State. It is the existence of *a bill of rights that is recognized, effectively enforced and eventually respected by the police and other law enforcement agencies.*

My sister-in-law marvelled at police efficiency in a foreign city. Within 24 hours after reporting the loss of some valuables in her hotel room, the police had recovered and returned them to her. Glossed over is the fact that dozens of suspects had been rounded up and given the dreaded third degree treatment.

Here in Manila, it is reported that the police in many cases: (1) no longer bother to arrest suspected felons but instead "*salvage*" them in what has been euphemistically termed as "*extra-legal executions*", as what seems to have been done to the dozen or so tattooed bodies of men who have been fished out from the Pasig River, all suspected drug pushers, or, (2) once arrested, no longer bother to charge the suspect or to bring him to trial, as what also seems to be indicated in the suspicious killing of the suspected rapist of 8 year old Angel Alquiza, while manacled and in the custody of the police - a case where Mayor Alfredo Lim was reported to have condoled with the family of the victim with the cryptic statement that "justice has been done".[2]

If these reports are true, there is indeed cause for strong alarm. For in these situations, the proud democratic value that it is better to let 10 guilty men go free than to have one innocent person suffer, would have been proved an empty rhetoric.

All efforts must therefore be exerted to prevent *"vigilante justice"*, whether openly by mobs or covertly by the police themselves, from further pulling our civilization based on the rule of law on a downward spiral to a brutish level. *Extra legal executions or salvaging are condemnable arrogations by the police of what should be the separate functions of the prosecutor, judge and executioner.* The danger of such official lawlessness was foretold by Justice Brandeis, arguing for the application of the

[2]Phil. Daily Inquirer, Aug. 14, 1994, at 1.

exclusionary rule in *Olmstead v. United States,*[3] in the following eloquently stirring words:

> Decency, security and liberty alike demand that government officials shall be subjected to the same rules of conduct that are commands to the citizen. In a government of laws, existence of the government will be imperilled if it fails to observe the law scrupulously. *Our government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its example. Crime is contagious. If the government becomes a lawbreaker, it breeds contempt for the law; it invites every man to become a law unto himself; it invites anarchy.* To declare that in the administration of criminal law, the end justifies the means - to declare that the government may commit crimes in order to secure the conviction of a private individual - would bring terrible retribution. Against that pernicious practice, this court should resolutely set its face.

Such official lawlessness undermines the public trust and confidence that are the essential mainstay of any legal system. There is today a visible weakening of this foundation. There is therefore an urgent need to stress that *the creation of order in society through effective law enforcement must be done within the framework of law.* This is effectively conveyed in the coupling and sequencing of the phrase "LAW AND ORDER" and not merely "peace and order". Unless checked by effective reforms, the anarchy that is now so apparent in our increasingly horrendous traffic problem, may spread dangerously and lead to the collapse of the entire legal system.

While thus conceding the importance of respect for individual rights, there is a need to balance this consideration with a recognition of the equal importance of efficient and effective law enforcement. The most apparent situation dramatizing this need is the disgustingly chaotic and even anarchic traffic problem in Metro Manila.

I am certain of little or even no opposition when I say that much of the traffic problem is caused by the lack of discipline displayed by drivers of private cars, jeepneys, buses, cargo trucks and other motor vehicles.

Discipline, in this context, is nothing more than adherence to rules designed for societal benefit. Since such a rule demands the sacrifice of some personal convenience, it requires an appropriate sanction to enforce it. Consistent enforcement of a rule over time, it is hoped, may lead to its

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[3]277 U.S. 438 (1928).

internalization and compliance by force of conscience, thereby dispensing with the need for police enforcement. This illustrates the observation that *law does not only reflect current morality but generates new morality as well.*

On the other hand, barbaric methods of law enforcement seem to indicate understandable impatience not only at the exceedingly slow pace of the judicial process in our country but also resistance to what is perceived to be the unwarranted concern for the civil liberties of those accused of crimes at the expense of their victims' quest for a speedy vindication of their rights and the prompt imposition of punishment upon conviction.

The purpose of this paper then is to analyze relevant rules of procedure and cases with a view to eliciting discussions on the proposed recommendations that will be made towards achieving a healthy balance between an efficient and effective law enforcement that will promote societal security on the one hand, and respect for the principles of fairness, decency and the inherent dignity of human beings that are protected by our Bill of Rights on the other. Only by achieving such a balance can we truly say that we are a civilized democratic society.

The presentation will follow the natural sequence of development in the way in which a person may be drawn into or involved in the criminal process. At its earliest stage, this would start with the police investigation of a crime for the purpose of establishing the identity of the suspect and gathering evidence against him.

II. THE ADVERSERIAL SYSTEM OR DUE PROCESS MODEL OF ADMINISTERING CRIMINAL JUSTICE

The system that we have adopted for administering our criminal justice is based on the adversarial concept. This simply means that no person may be drawn into the criminal process and proceeded against unless there is sufficient evidence of his guilt in the commission of a crime. Such evidence must be gathered by government through its own efforts independent of any assistance from the accused. The sufficiency of such evidence may be challenged by the suspect at every stage of the proceedings, from a momentary detention in a stop and frisk situation, to arrest, arraignment, trial and conviction.

The adversarial system is derived from and based upon the constitutional presumption of innocence, the privilege against self-incrimination and the rights to due process and fair trial that are guaranteed to all persons. Stated otherwise, this means that every person is presumed to be innocent of any wrongdoing; government is prohibited: (1) from extracting any confession or incriminating statements from the suspect; and (2) from formally charging him without informing him of the cause and evidence against him; and that trial can only be conducted and sentence imposed upon an accused by a neutral, impartial, detached and objective judge.

III. THE CRIME CONTROL OR ADMINISTRATIVE MODEL OF CRIMINAL JUSTICE

Viewed from another perspective, the due process model has been criticized by Judge Henry Friendly as having unjustifiably converted the Bill of Rights into a code of criminal procedure.[4] Professor Herbert Packer of the Northwestern University School of Law analogizes the adversarial model as an "*obstacle course*".[5]

The competing value choice discussed by Professor Packer is the administrative and managerial model of criminal justice administration that is similar to an assembly line in the manufacturing process. Administrative processing seems to be well suited in the administration of traffic rules and regulations. Its central value is the efficient, expeditious and reliable screening and disposition of persons suspected of having committed a crime. The farther he travels in the process, the more the presumption of innocence is weakened and the presumption of guilt is strengthened.[6]

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[4]H. Friendly, *The Bill of Rights as a Code of Criminal Procedure*, in MODERN CRIMINAL PROCEDURE: CASES, COMMENTS AND QUESTIONS 49. (Livingston et al, eds, 1969.) [hereinafter MODERN CRIMINAL PROCEDURE.]

[5]H. Packer, *The Courts, the Police, and the Rest of Us*, in MODERN CRIMINAL PROCEDURE, supra note 4 at 193.

[6]*Ibid.*

IV. JUDICIAL ASSUMPTION OF EXECUTIVE POWER TO CONTROL POLICE CONDUCT THROUGH THE RULES OF COURT

A. Questionable procedural rule governing warrantless arrests

The first Rules of Court was adopted in 1940. Its prefatory paragraph expressly states that it was promulgated "pursuant to the provisions of section 13 of Article VIII of the (1935) Constitution" to govern "pleading, practice and procedure in all courts of the Philippines and the admission to the practice of law therein".

It cannot be disputed that the provision of the then Section 6, Rule 109 covering what the court regards as a lawful warrantless arrest is surely not concerned with "pleading, practice and procedure "in the courts and therefore arguably beyond the rule-making power of the Supreme Court. Moran says that this provision was "taken from sections 21 and 22 of the American Law Institute (ALI) and Rule 27 of the Provisional Law for the Application of the Penal Code."[7] It must be noted that the ALI is a private organization that merely proposes laws or rules for enactment or adoption by the appropriate authority. In the United States, warrantless arrrests are governed by substantive law although cases involving this matter are decided as a constitutional issue.

Nevertheless, there has been unquestioning acceptance of this *judicial assumption of an executive power to control undesirable police conduct.* And on the whole, it has generally proved to be beneficial. It is thus significant to point out that the standard of probable cause to make a warrantless arrest under Section 5, Rule 113 has deliberately been made more stringent by requiring (1) that a crime must first be established as a matter of fact and further, (2) that it had just been committed. Taken together with the presumption of unreasonableness that attaches to a warrantless search and seizure, *this stricter standard is intended to induce the police to first seek judicial authorization of an intended arrest or search* of a suspected felon, if only for their own individual protection from liabiity. The declaration of illegality of the arrest would subject the police officer to appropriate civil, criminal or administrative sanctions, including

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[7] M. Moran, COMMENTS ON THE RULES OF COURT 685 (1957).

the exclusion of evidence that were seized during said arrest. More effective protection to civil liberties is thereby afforded.

B. Desirable change from "about to commit" to "attempting to commit" an offense as ground for a lawful warrantless arrest

Both the 1940[8] and the 1964[9] Rules recognize as lawful the warrantless arrest of a person "about to commit a crime". I had long criticized this particular provision for its danger to civil liberties. "*About to commit*" could easily give rise to abuses based on a subjective perception of the arresting officer. It authorizes an *arrest for mere intention* which is not based on an objective standard or for acts of preparation which are equivocal in nature, being equally susceptible to interpretation of guilt or innocence.

Fortunately, the 1985 Rules had changed this questionable authority in Section 5 (a), Rule 113 to cases where the person to be arrested is "*attempting to commit* an offense." An attempt requires the commission of an "*overt act*" which jurisprudence defines as an external act, a physical activity or deed indicating the intention to commit a particular crime, and not a mere planning or preparation, which if carried to its complete termination following its natural course, without being frustrated by external obstacles or by the voluntary desistance of the perpetrator, will logically and necessarily ripen into a concrete offense.[10] Undoubtedly, this change provides an additional safeguard to our civil liberties.

C. Questionable elimination of reasonable ground as basis for a lawful warrantless arrest.

Both the 1940 and 1964 Rules of Court recognize the lawfulness of a warrantless arrest "when an offense has in fact been committed and he (the arresting officer) has *reasonable ground to believe* that the person to be arrested has committed it". For forty-five (45) years, this was the recognized rule. In 1985, however, the rule was changed to the more stringent rule authorizing warrantless arrests only for "crimes that have in fact just been committed" and only when the arresting officer "has *personal*

[8]RULES OF COURT (1940), Rule 109, Sec. 6, par. (a).
[9]RULES OF COURT (1960), Rule 113, sec. 6, par. (a).
[10]People v. Lamahang, 61 Phil. 703, 706 (1935).

knowledge of facts indicating that the person to be arrested has committed it "[11] There is no publication of the reasons for making these changes.

1. Strict requirements hamper police efficiency

Two modifications were introduced which have far reaching significance to the efficient and effective law enforcement that provides society its desired security. The *first* requires that the crime has *in fact just been committed.* And *secondly,* the arresting officer must have personal knowledge of facts indicating that the person to be arrested has committed the crime for which he is authorized to be arrested. These requisites would seem to confine this arrest only to the *"smoking gun" or "bloody knife"* situations. Thus, arrests made six days after commission[12] or even one day thereafter[13] have been held not to satisfy this first requisite. In the *Rolito Go* case, the arrest of Go on the basis of good police work that led to the indentification of the suspect's car, was also held as not satisfying the second requisite of personal knowledge. Considerable delay ensued from the challenge posed and the resolution of this issue that was raised all the way to the Supreme Court.

Such stringent requirements are understandably viewed by the police and the prosecutors as obstacles to the efficient discharge of their duties. Some examples should provoke a re-examination. For instance, bank robbers or kidnappers fleeing in a getaway car that is described in an APB radio dispatch, could not be legally stopped by a distant police patrol car who receives the message far from the scene of the crime. A police officer to whom an informer reports that he had just bought shabu or marijuana, could not under this provision immediately proceed to arrest the "pusher". In both cases, the arresting officer could be held as not having the required personal knowledge of facts indicating that the suspect committed the crime.

2. Proposed reform - restore provision on arrest based on reasonable ground

But given the importance of acting swiftly in such type of cases where there is a high incidence of successful escapes, I believe that sufficient cause has been shown for a return to the original provision allowing arrests on probable cause. There is not much sacrifice of personal

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[11] 1985 RULES ON CRIMINAL PROCEDURE, Rule 113, sec.5, par. (b).
[12] Go v. CA, 206 SCRA 138 (1992).
[13] Umil v. Ramos, 187 SCRA 311 (1990).

convenience in the interest of promoting police efficiency. This proposal is not intended to supplant the questioned provision of paragraph (b), Section 5, Rule 113, but to add as paragraph (c) the original provision as a separate ground for a lawful warrantless arrest.

D. Need for "stop and frisk" provision

Another reform worthy of serious consideration in the interest of promoting efficient police investigation of crime is a provision recognizing the police practice of "stop and frisk" and providing for guidelines to prevent or minimize the danger of abuse.

The 1968 federal case of *Terry v. Ohio,*[14] gave judicial recognition to the police practice of making investigative stops. This was the first case that bifurcated the constitutional right to privacy into two, namely, the unreasonable search and seizure clause and the warrants clause. A warrantless arrest and search is to be tested by its reasonableness under the particular circumstances of each case. On the other hand, a judicial search or arrest warrant must be tested by the higher evidentiary standard of probable cause.

It must be stressed that societal security is promoted not only by the punishment of those who have already committed crimes, but also by preventing their commission. The newly implemented policy of having a "police on the block" promotes the *crime prevention strategy. Such governmental interest in "effective crime prevention and detection... underlies the (US High Court's) recognition that a police officer may in appropriate circumstances and in appropriate manner approach a person for purposes of investigating possibly criminal behavior even though there is no probable cause to make an arest."* [15]

If in the course of such justified police investigation, the officer has reasonable ground to believe that the person he has stopped is armed and presently dangerous to him, "it would appear to be clearly unreasonable to deny the officer the power to take necessary measures to determine whether the person is in fact carrying a weapon and to neutralize the threat of physical harm."

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[14]392 U.S. 1 (1968).
[15]*Id.*, at 22.

The foregoing holdings were clearly present in the case of *Anonuevo v. Ramos*.[16] In this case, the house of Renato Constantino was under military surveillance following a search under judicial warrant which yielded assorted firearms, ammunition and communication equipment. Under interrogation, Constantino gave the information that other members of his Communist group would be coming to visit his place. True enough, within twenty four hours, petitioners Anonuevo and Casiple arrrived. They were thereupon stopped. Noticing that their waistlines were bulging with objects tucked underneath, they were frisked. Discovered were loaded guns for which petitioners could not produce any permit to carry , resulting in their seizure.

Petitioners questioned the legality of their arrest and detention by a petition for habeas corpus. The Supreme Court denied the petition by upholding the validity of the warrantless arrest.

From my point of view, the warrantless arrest of petitioners may be open to question since it does not seem to fit squarely under either paragraphs (a) or (b), section 5, Rule 113. They were not committing a crime in the presence of the surveilling team when they arrived in Constantino's home. Neither is there any indication that a crime has in fact just been committed. However, within the meaning of *Terry*, the police had "reasonable articulable suspicion that crime was afoot" and *stopping the petitioners was the appropriate response under the circumstances.*

A separate section following section 5, Rule 113, governing investigatory stops would provide useful guides to the police in particular and to the bench and bar in general, in legitimizing and regulating such police practice. Societal security would undoubtedly be promoted.

V. THE CONSTITUTIONAL RIGHT TO PRIVACY SECURED BY THE GUARRANTY AGAINST UNREASONABLE SEARCH AND SEIZURE

Let me now focus our attention on the other side of the weighing scale - the interest of individual rights and liberties.

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[16]187 SCRA 311 (1990).

I ask myself and I am certain that it would be useful for all of us to ask the same question: "What civil or political right guaranteed by the Constitution do I personally place the most value on?" Free speech, right to assembly, due process, suffrage, or some other right? After much thought, I concluded that the right I cherish the most is the right to privacy in my person and my home, as protected by the right against unreasonable search and seizure.

I am greatly disturbed by the thought of a police officer knocking on the door of my home as a prelude to the arrest and detention of any member of my family. The constitutional guarrantee reassures me that a neutral judge stands between me and the police as an effective shield to protect me from unwarranted police action.

A. Right to privacy made effective by the general rule requiring that all arrests and searches must be authorized by a judicial warrant

Our right to privacy is thus safegauarded by requiring that all arrests and searches can only be made under the authority of a judicial warrant. While the rule admits of certain exceptions in the interest of effective law enforcement, the Supreme Court has declared that such exceptions recognized under Section 5, Rule 113 of the Rules of Court must be *strictly construed against the government "for being in derogation of fundamental rights*."[17] The corollary principle is that a warrantless search and seizure is presumed to be unreasonable and therefore invalid. The burden of proving that the challenged seizure falls within a recognized exception must accordingly be borne by the prosecution.

There are two significant parts of the constitutional guarrantee that I would like to focus on, namely, (1) the concept of a neutral judge and (2) the evidentiary standard of probable cause.

1. The concept of a neutral judge

a. Freedom from bias, interest or relationship with either party

The concept of neutrality is generally taken to mean indifference to the interests of the particular contending parties before the judge.

[17]People v. Burgos, 144 SCRA 2 (1986).

Neutrality is, therefore, compromised in situations where the judge is related to either party within the sixth degree of consanguinity or affinity, or to either counsel within the fourth degree; or is pecuniarily interested in the outcome of a case; or is biased or prejudiced against one of the parties. The judge in said situations may therefore be disqualified from hearing and acting on the case, on the natural presumption that he would not be sufficiently impartial to render an objective decision.[18]

The problem with applying the principle of neutrality in criminal cases is that we often lose sight of the basic principle that the complainant or offended party is not the party plaintiff. It is the People of the Philippines represented by the Public Prosecutor. Despite this theoretical framework, however, it is a reality that the effective control of the actual prosecution of a criminal charge, more often rests on the private prosecutor. Relationship as a ground to disqualify a judge must therefore be made to equally apply to the public as well as the private prosecution in a criminal action.

b. Executive official cannot be neutral judge and therefore warrant issued by him is void

The concept of neutrality has been significantly expanded to include a prohibition against the issuance of search and seizure warrants by officials belonging to the Executive Branch of the Government. The reason underlying such expanded meaning is that law enforcement or what has been called the "often competitive enterprise of ferreting out crime", cannot properly be regarded as neutral. The police, the prosecutors and other executive officials belong to this division working together as a team to enforce the law. *The mere fact of their belonging to that division deprives them of the neutrality, objectivity and detachment that is required to make effective the constitutional protection to the people against unreasonable search and seizure.*

Following this persuasive line of reasoning, the Supreme Court has held that warrants of arrest or seizure issued by the following officials are void as being violative of the constitutional guarantee: (1) a Municipal Mayor;[19] (2) the Secretary of Labor through his POEA Administrator;[20] or

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[18]RULES OF COURT, Rule 137, sec. 1.
[19]Ponsica v. Ignalga, 15 SCRA 647 (1987).
[20]Salazar v. Achacoso, 183 SCRA 145 (1990).

(3) an agency exercising functions that are principally prosecutorial.[21] *These executive officials are presumed to be biased in favor of effective law enforcement to the detriment of the constitutional guarrantee of security.*

Tribute must be paid to the lawyers who had questioned the legality of the warrants issued in the foregoing cases. They were not intimidated by the fact that the issuance of the questioned warrants were under the authority of an otherwise valid law or. in the case of the Municipal Mayor, had long been recognized by historical practice even antedating the Commonwealth period in the 1930s. They were true to the proud claim of the profession that *the essence of lawyering is to provide effective challenges to questionable assertions of authority.*

The evidentiary standard of probable cause

The second significant aspect of the constitutional guarantee against unreasonable search and seizure, the first being that a warrant can only be issued by a neutral judge, is the further requirement that the warrant can be issued only upon his own personal determination that the evidence of guilt passes the standard of probable cause.

a. Probable cause to issue an arrest warrant

As defined by Section 1, Rule 112 of the Rules of Court, probable cause refers to evidence that will "engender a well-founded belief that a crime . . . has been committed and that the respondent (suspected felon) is probably guilty thereof and should be held for trial." Section 4 of the same rule requires the investigating fiscal to certify under oath that "there is reasonable ground to believe that a crime has been committed and that the accused is probably guilty thereof".

Stated otherwise, the evidence must show that the accused is more probably guilty than innocent of the crime charged. On a scale of 1 to 100, where 50 would mean that a person may equally be guilty or innocent, an evaluation of 51 in the evidentiary scale will establish preponderance of evidence; perhaps 65 - 70 would establish probable cause; 90 and higher would establish guilt beyond reasonable doubt.

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[21]Presidential Anti-Dollar Salting Task Force v. CA, 171 SCRA 348 (1989).

b. Questionable retention of "intended to be used" for committing a crime

As applied to searches, probable cause means the existence of facts and circumstances as would convince a reasonably prudent person of two things, namely, (1) that a *particular crime* was comitted; and (2) that the subject matter, proceeds or instruments thereof are in the *particular place* sought to be searched.[22]

Section 2, Rule 126 authorizes the search and seizure of personal property that were "used or *intended to be used* as the means of committing an offense." This is a consistent phraseolgy starting from the 1940 Rules and carried over to the 1964 and the 1985 Revisions. The original source was Section 96 of General Order No. 58 authorizing the seizure of personal property "when it was used or *when the intent exists to use it as the means of committing a felony".*

The same objection of danger to civil liberty based on the same reasoning exists against this provision as with the provision authorizing arrest of a person "about to commit" a crime. A search of one's home for weapons or materials on the pretext that the police believes that they will be used to commit a crime that is still merely being considered or planned, is surely offensive to the right to privacy. *For how can probable cause be established to show what is in the mind of the suspect? Its very definition as "probable cause to believe that a crime has been committed" shows that it is impossible to apply the concept to an intended crime.*

The omission to amend this provision along with the warrantless arrest provision noted above, could only be attributed to oversight. My suggestion is for the provision to read: *property used in attempting to commit a crime.* This will harmonize with the amendment on warrantless arrest.

c. Need for rules to govern warrantless searches

It is clear from the foregoing discussion that there is a need to provide a separate section in Rule 126 to govern the different situations where a warrantless search will be considered valid and, therefore, evidence seized on the occasion thereof, will be admissible in evidence.

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[22]Burgos v. Chief of Staff, 133 SCRA 800 (1984).

Among them will be checkpoint searches. *Valmonte v. de Villa*,[23] holds that such search is valid only under certain conditions, namely, 1) the checkpoint is at a fixed location and not a roving patrol stop; 2) the location of said checkpoint was decided upon not by officers in the field but by their superiors; 3) there is grave peril to the government or to the life and safety of individuals; and 4) that only a visual search of the car and its occupants is allowed.

Another rule could clarify when a warrantless search would be considered valid because of consent. May the owner of a house give consent to the search of a room that is being leased to another? Article 128 of the Revised Penal Code may perhaps exempt the searching officer from criminal liability for "violation of domicile" in this situation. However, the admissibility of evidence seized from the tenant's room is another matter.

The consent to a search of a car borrowed from another is a similar situation that could be governed by the same rule. A search consented to on a deceitful assurance that the officer has a search warrant but in fact has none, or consent in the face of overwhelming force, could beneficially be provided for . This will provide a counterpart provision to section 5, Rule 113 on warrantless arrests and should incorporate recent jurisprudence on the subject.

3. *Procedure for Issuing Warrants*

a. *Different modes of Instituting Criminal Actions in Metro Manila and in Provincial Areas*

A warrant of arrest presupposes that a criminal action has been commenced by the filing of a complaint or information in court. Outside Metro Manila or other chartered cities, an offended party is afforded the option of filing his criminal complaint for an offense falling under the jurisdiction of Municipal Trial Courts *directly* with said courts or with the Provincial Public Prosecutor. *That right of choice is not given to an offended party in Metro Manila or in other chartered cities.* He can only file his complaint with the Fiscal.[24]

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[23]185 SCRA 665 (1990).

[24]*See* 1985 RULES ON CRIMINAL PROCEDURE, Rule 110, sec. 1, par. (a) and (b).

Such differential modes of instituting criminal actions significantly affect the procedure for determining probable cause as a requisite for the issuance of arrest warrants.

b. Consequences of differential modes

In a criminal complaint filed directly with the Municipal Trial Court (MTC) in a provincial area for an offense that falls within his exclusive jurisdiction or for an offense cognizable by the Regional Trial Court (RTC), the MTC judge may issue a warrant of arrest immediately upon his personal determination of probable cause in a preliminary examination that he usually conducts *ex parte*. Under this system, a person who has had no prior knowledge that he has been charged, may be truly shocked by the service of an arrest warrant upon him. And he may be even more shocked to find out that, thereafter, the Municipal Judge may proceed to arraign and to try him for the offense charged that is within his exclusive jurisdiction.

In contrast, a person charged of the same offense in Metro Manila or other cities, faces no such sudden peril of surprise arrest and trial. The offended party, or the police, is mandated to course the criminal complaint through the Fiscal. It is the investigating fiscal, not the judge, who conducts the preliminary examination to determine probable cause to issue a warrant of arrest. A negative finding will result in a dismissal of the charge. An affirmative determination, however, will not result in the issuance of an arrest warrant since the fiscal is not vested with that power. Although not required by the Rules, the Fiscal may in his discretion conduct a regular preliminary investigation. The fiscal is required to file the information charging the proper offense with the Municipal Trial Court.

I presume that the reason for providing different modes of initiating criminal actions is the supposed heavier workload of courts in urban areas. The prohibition against direct filing of complaints with said courts is to save them from the additional work of conducting preliminary examinations and thereby be enabled to devote more time to their true judicial function of adjudicating controversies or disputes.[25] If the assumption is based on correct data, it is a commendable part of a continuing effort to solve the problem of court docket congestion and judicial delay.

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[25]Collector of Customs v. Villaluz, 71 SCRA 356 (1976); Mateo v. Villaluz, 50 SCRA 18 (1973).

c. Proceedings before the Municipal Trial Court

When a criminal action is instituted, the municipal judge shall proceed to determine whether the crime charged falls within its own trial jurisdiction or that of the Regional Trial Court. In the former case, the judge must also determine whether the action falls within the Rules on Summary Procedure., *i.e..*, traffic violations, violations of municipal ordinance, the rental law, or where the offense carries a penalty not exceeding six months or P1,000.00 pesos fine. (Section 1 B (1) to (4) and Section 2, Summary Procedure)

Even if probable cause has been determined, the Municipal Judge may not issue a warrant of arrest if the charge is for an offense within its summary jurisdiction. Instead, he shall merely issue an order requiring the defendant to file his counter-affidvit within ten days from service thereof.

Whether the case is for preliminary investigation of a crime within the jurisdiciton of the RTC, or falls within its trial jurisdiction, the MTC Judge is required to *personally examine* the complainant and his witnesses by asking them searching questions relative to the commision of the crime charged and the participation of the acused therein. This is a duty imposed by the Constitution and implemented by Section 6 (b), Rule 112 of the 1985 Rules on Criminal Procedure.

Determination of probable cause, however, need not necessarily cause the issuance of an arrest warrant. The municipal judge must go on to make a *second determination of another fact*, that is, "that there is a *necesity of placing the respondent under immediate custody in order not to frustrate the end of justice*". What this lengthy phrase simply means is that there is danger of flight. The Supreme Court has held that the municipal judge may not be compelled by mandamus to issue a warant of arrest where, in the exercise of his discretion, he has determined that the accused is not likely to abscond. [26]

It is important to stress that the power to withhold the issuance of arrest warrants by the MTC judge is not confined to offenses falling within his limited jurisdiction. The incontrovertible fact is that said power is expressly vested in him during the preliminary investigation which

[26]Samuelde v. Salvani, 165 SCRA 734 (1988).

assumes that the crime charged may entail the heaviest penalty, including capital punishment.

d. Proceedings before the Regional Trial Court

The Rules prohibit an information from being filed with the Regional Trial Court unless probable cause has been determined from the preliminary investigation that has been conducted (Section 3, Rule 112). The investigating fiscal must certify under oath "that the accused was informed of the complaint and of the evidence submitted against him and that he was given an opportunity to submit controverting evidence." (Section 4, *ibid*).

Go v. Court of Appeals,[27] made a highly significant recognition that the right to preliminary investigation is part of the right to due process. In particular, this refers to Section 14(1),Article III of the Constitution which provides that "No person shall be held to answer for a criminal offense without due process of law". Said the Supreme Court, *"To deny petitioner's claim to a preliminary investigation would be to deprive him of the full measure of his right to due process."*

How does the constitutional requirement that probable cause be determined personally by the judge relate to the fact that probable cause is required to be found by the investigating fiscal? *Lim v. (Judge) Felix*,[28] gives the answer. The personal determination to be made by the *RTC judge* is satisfied by his examination of the resolution on preliminary investigation together with the affidavits and other supporting documents behind the Prosecutor's certification of probable cause. If no such examination is made, as for instance when said papers are not part of the court records, the issuance of the warrant of arrest is invalid for violation of the constitutional requirement. In that situation, the determination was made by the fiscal alone and not by the judge. His issuance of the arrest warrant is a grave abuse of discretion.

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[27] *Supra*, note 12 at 153.
[28] 194 SCRA 292 (1991).

4. Proposed Reforms on Preliminary Investigation

a. Restore former rule requiring transmittal of records of preliminary investigation to the clerk of RTC

Lim, in effect, modifies the provision of Section 12, Rule 112 that "the record of preliminary investigation, whether conducted by a judge or a fiscal, shall not form part of the record of the case in the Regional Trial Court." The former provision, Section 12 of the 1940 Rules, requiring transmission of the record of preliminary investigation immediately upon the conclusion, would thus seem to have been restored. It is in this light that the Secretary of Justice has issued a memorandum circular to all public prosecutors reqiring them to make such transmission to the Clerk of Court of the Regional Trial Court having jurisdiction of the offense charged.

In the interest of clarity and avoiding confusion, an amendment is now in order and a circular to all judges should be issued informing them of said amendment.

b. Delineate class of offenses requring preliminary investigation

The next proposal for reform in the area of preliminary investigation centers on the need to delineate the cut-off point between what should be considered a felony or a graver offense from a misdemeanor which does not require preliminary investigation.

b.1. Historical development of laws on MTC jurisdiction

R.A. No. 7691, approved 25 March 1994, is only the latest in a series of laws that have been expanding the trial jurisdiction of Municipal Trial Courts since achieving Philippine Independence in 1946. Under the old Judiciary Law (Chapter 9, Title 4, Book I of the Revised Administrative Code), Justice of the Peace courts were not even mentioned. It was only under the 1935 Constitution that the Justices of the Peace were required to have "been admitted to the practice of law in the Philippines" (Sec. 8, Article VIII, Constitution of the Philippines). Before 1935, Justices of the Peace were not required to be lawyers.

Under Section 87 of R.A. No. 296, the Judiciary Act of 1948, Justices of the Peace and Municipal Courts of chartered cities were vested with jurisdiction in criminal cases over all offenses in which the penalty

provided by law is imprisonment for not more than *6 months* or a fine of not more than P200.00, or both such fine and imprisonment. They were then only required to render duty for "four hours on each business day" and "may, after office hours, with the permission of the district judge concerned, pursue any other vocation or hold any other office or position" (Sec. 77). For said service, the Justice of the Peace was given a salary ranging from P100.00 to P150.00 a month depending on the class of his municipality (Sec. 82). Their warrants of arrest could only be served in the province where their municipality is located unless "the district judge, or in his absence the provincial fiscal, shall certify that in his opinion the interest of justice requires such service" outside his province (par. 2, Section 79).

Full-time service was subsequently required, salaries raised, and the status elevated to a court of record. A corresponding increase in jurisdiction was given on 22 June 1963 of up to *three years of imprisonment and P3,000.00 fine*. The latest law on this matter, R.A. No. 7691, now gives criminal jurisdiction over "all offenses punishable with imprisonment not exceeding *six (6) years irrespective of the amount of fine*, and regardless of other imposable accessory or other penalties, including the civil liability arising from such offenses or predicated thereon" (Sec. 2, amending sec. 32 of B.P. 129).

b.2 History of procedural rules on preliminary investigation

On 23 April 1900, the U.S. Military Governor promulgated General Order No. 58 as "the law in criminal matter in the Philippine Islands from and after the 15th of May, 1900". Section 13 thereof provides only for an *ex parte* preliminary examination for all offenses without distinction, as a pre-requisite to the issuance of an arrest warrant. It does not provide for preliminary investigation where the accused is given the right to be present and contest the charge against him. Paragraph 2 further provides that where the complaint charges an offense punishable by "imprisonment for not over one month or a fine of not more than two hundred pesos or both, the magistrate shall not issue any order for the arrest of the accused but shall order the latter to appear on the day and hour fixed in the order to answer to the complaint or information."

Following the ratification of the 1935 Constitution, the Supreme Court promulgated the *Rules of Court in 1940* "pursuant to the provision of section 3 of Article VIII" thereof. *For the first time, a provision on preliminary investigation of a complaint "imputing the commission of an*

offense cognizable by the Court of First Instance" was adopted. At that time, the cut-off point of jurisdiction was 6 months imprisonment. Section 1 of Rule 108 provides for a preliminary examination to determine "whether there is reasonable ground to believe that an offense has been committed and the defendant is probably guilty thereof, so as to issue a warrant of arrest". Section 11 provides for the preliminary investigation proper "after the arrest of the defendant and his delivery to the court" wherein, after having been informed of the complaint and the evidence against him, he is allowed to testify or present evidence to refute the charge. The purpose is to determine whether sufficient evidence exists to bind the defendant over for trial on the merits.

On*01 January 1964, the Revised Rules of Court was made effective.* The 2-stage preliminary investigation under the 1940 Rules was retained. However, a new pagragraph was added to Section 10, Rule 112 that "In cases triable in the Justice of the Peace or municipal courts, the accused shall not be entitled as a matter of right to a preliminary investigation under this section" on the second stage thereof. *At this point in time, cut-off jurisdictional point was 3 years of imprisonment.*

The Rules on Criminal Procedure was *revised in 1985* with additional amendments that became effective on 01 October 1988. At the time of this last revision, *B.P. 129 had increased the jurisdiction of the Municipal Trial Courts to the medium period of prision correccional, or up to 4 years and 2 months of imprisonment.*

The above-quoted paragraph of the 1964 Rules that preliminary investigation shall not be accorded to the accused as a matter of right in cases triable by the inferior courts was completely omitted in the 1985 revision. However, the provision on preliminary examination for said cases was retained. At the present time, the practice in Quezon City is that preliminary investigation for crimes under the jurisdiction of the inferior courts is or is not conducted depending on who the fiscal is or, perhaps depending on his mood or disposition at a particular moment.

b.3. Necessity of distinguishing misdemeanors from felonies as the cut-off point for the right to preliminary investigation

The foregoing comparative survey of the historical antecedents of the laws granting jurisdiction to Justice of the Peace and now Municipal Courts, in relation to the procedural rules denying or granting the right to

preliminary investigation, is intended to show that the connecting link between the two was the long-time confinement or restriction of criminal jurisdiction of MTCs to petty crimes or misdemeanors.

Unlike the 1964 Rules, it does not seem that the 1985 revision committee deliberately made a decision as to the cut-off point where preliminary investigation shall not be accorded to an accused. The denial of preliminary investigation for crimes triable by municipal courts was merely a carry-over from the 1940 Rules *based upon the presumed assumption that the jurisdiction of inferior courts in criminal cases was restricted to petty crimes or misdemeanors.* That assumption is obviously no longer true. For it surely must be absurd to classify an offense punishable by up to six (6) years of imprisonment as a petty offense or a misdemeanor.

The time has now become appropriate, therefore, to question the continued linkage of preliminary investigation only to "crimes cognizable by the Regional Trial Court". The greatly expanded jurisdiction of MTCs raises the issues of equal protection and due process. So many more crimes originally triable by the RTCs where preliminary invesitgation was duly accorded as a right to an accused, have now been transferred to the jurisdiction of the MTCs where the accused is now deprived of said right. This re-examination becomes urgent in light of the recent recognition by the Supreme Court that the right to preliminary investigation is a substantive right that is part of the right to due process. [29]

b.4. One (1) year cut off is recommended

My recommendation is to return to the original link that connects the right to preliminary investigation to the more serious crimes as contrasted to petty offenses. This would be a more stable and enduring linkage than to the present connection with court jurisdiction which, as above shown, is continually expanding.

What would then be the point at which a crime may be considered a minor offense for which a probable cause determination in preliminary investigation may be too costly to bear in relation to the benefits that may accrue? My suggestion would be on a one-year penalty of imprisonment. This is taken from the Katarungang Pambarangay Law (Chapter 7, Local Government Code) which makes offenses punishable by that penalty conciliable (Section 408) and impliedly extinguishes criminal liability upon

[29] *Supra*, note 27.

a successful compromise settlement of the dispute. The penalty of one year is also used by Act No. 3326 in classifying offenses that prescribe in 4 years. That is also a customary cut-off point distinguishing misdemeanors from felonies in the United States.

A second alternative cut-off point in penalty would be three years. This was then the jurisdiction of Municipal Courts in 1964 when paragraph 2, Section 10, Rule. 112 adopted the new provision that preliminary investigation shall not be accorded to an accused as a matter of right for crimes triable by municipal courts. This provision was in effect for 16 years, from 1964 up to 1980 when B.P. 129 was passed increasing the jurisdiction of up to 4 years and 2 months. For the next 15 years up to 1985, the denial of preliminary investigation for crimes punishable by the increased penalty was in effect.

C. *Disqualify judge conducting conducting preliminary investigation from trying the same case*

The adoption of the foregoing recommendation would pose a problem involving the right to fair trial unless addressed. Since an MTC judge would be mandated to conduct a preliminary investigation of a crime punishable by more than one year of imprisonment, an accused could reasonably question his impartiality in going on to try him upon his own prior determination of probable cause. Indeed, the right to fair trial may be compromised by the same judge conducting a preliminary investigation and proceeding to trial. His advance conclusion of guilt, despite its temporary character, could subconsciously affect his judgment.

To address the foregoing problem, a simple provision could be added that an MTC judge finding probable cause shall have the case re-raffled for trial on the merits. His resolution on preliminary investigation should further not be forwarded to the trial judge. The latter should be shielded from being influenced by the reasoning and conclusion reached by a colleague in the same judicial level. *Lim v. Felix*,[30] would not apply since the investigating judge would have issued an arrest warrant after personally having conducted a preliminary examination of the complainant and his witnesses.

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[30]*Supra*, note 28.

D. Adopt substitute service of summons in civil procedure for subpoena of respondent in preliminary investigation

Requiring that a complaint for an offense cognizable by the Regional Trial Court must be filed with the Fiscal for preliminary investigation does not always assure that the respondent will not be taken by surprise. There are still a few remaining doors open for unfair surprise to the respondent.

When an investigating fiscal finds that there is sufficient "ground to continue with the inquiry", he shall "issue a subpoena to the respondent, attaching thereto a copy of the complaint, affidavits and other supporting documents" (Section 3 (b), Rule 112, 1985 Rules on Criminal Procedure).

Issuing a subpoena, however, is different from service thereof. From my many years of handling legal aid cases, I know that if the respondent is poor, the police are less than zealous in serving said subpoena upon him. The return of subpoena that the police submits to the Fiscal frequently states that the respondent is always out when he is attempted to be served. Such return is deplorably admitted by the Fiscal as a sufficient compliance with the provision of Section 3 (d) of Rule 112 that "*if the respondent cannot be subpoenaed*. . . (he) shall base his resolution on the evidence presented by the complainant".

Invariably, such *ex parte* investigation favors the complainant, resulting in the filing of the information and the issuance of an arrest warrant against the accused. The outrage that a surprised accused feels at being arrested without any prior notice does not help him any. But it surely does much to erode the people's trust and reliance on the fairness of the system for administering our criminal laws.

My proposal for reform to this deplorable situation is to adopt the provision of Section 4, Rule 14 in civil actions. Said section provides that if the defendant cannot be personally served within a reasonable time, service may be effected by leaving a copy of the summons either at defendant's (a) dwelling or (b) place of work, with some person of suitable age and discretion then residing with him or with some competent person in charge of the office. Such a provision is surely a distinct improvement over the vague phrase "cannot be subpoenaed".

4.5 *Resolution finding probable cause should be furnished defense counsel before criminal information is filed*

In my law practice I have found that even a respondent represented by counsel may still be subjected to a surprise arrest. There are several reasons for this. One is that some investigating fiscals send their resolution finding probable cause directly to the respondent and not to his counsel despite formal appearance of counsel in said proceedings. Such prosecutorial practice is supported by a Department of Justice (DOJ) circular[31] stating that the period for appeal from such a resolution is computed from the date of its receipt by the party or by his counsel. Despite protests that a confused or less than literate respondent would not know what to do with said resolution, aside from erroneously assuming that his counsel was furnished a copy thereof, no official action has been taken to correct such practice.

Further, investigating fiscals file their resolution finding probable cause simultaneously with the criminal information for official approval by the chief state prosecutor as required by Section 4, paragraph 3, Rule 112. Both papers are frequently approved on the same day by the provincial, city or state prosecutor and the Information is forthwith filed in court. The issuance and service of the arrest warrant would again take the accused by surprise.

Section 4, Rule 112, entitled *"Duty of investigating fiscal"*, does not expressly impose an official obligation upon said fiscal to furnish a copy of his resolution to the parties concerned or their respective counsel. This omission is plainly noticeable from the fact that although a motion for reconsideration by the aggrieved party is contemplated and an appeal to the Secretary of Justice is expressly provided for, no period to do so is provided for and accordingly no date for computing the running of the period.

I propose, therefore, the formulation of the following rules:

1. Require the investigating fiscal to furnish a copy of his resolution on preliminary investigation to both parties simultaneously with his duty of forwarding it to the provincial, city or state prosecutor;

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[31]DOJ Circular No. 223, June 30, 1993.

2. The "appropriate action" required to be taken by the provincial, city or state prosecutor shall not be done by him earlier than ten (10) days from receipt thereof by the aggrieved party.

3. Said period of ten days shall be the time given for a motion for reconsideration to be filed with the provincial, city or state prosecutor and a similar period given for an appeal to the Secretary of Justice computed from receipt of counsel of the order denying reconsideration.

4. Issuance of arrest warrants shall be suspended upon filing a motion for reconsideration or an appeal to the Secretary of Justice similar to the practice before the Sandiganbayan.

VI. PROPOSED REFORMS ON PLEAS AND TRIAL PROCEEDINGS

Among the most severely criticized aspects of Philippine criminal justice administration is the lengthy protraction of trial proceedings. I do not have sufficient time to go into the many causes of delay which have been the subject of other studies and proposals. For our purpose, I only wish to propose some simple reforms which I believe will do much to considerably shorten our notoriously lengthy criminal trials.

A. Implement reverse order of trial

There is a new provision in Rule 119 of the 1985 Rules on Criminal Procedure that, despite its great potential for significantly shortening lengthy trials of criminal cases, is hardly known, much less implemented. Said provision is as follows:

> Sec. 3. *Order of trial.*- The trial shall proceed in the following order:
> xxx
>
> (e) However, when the accused admits the act or omisssion charged in the complaint or information but interposes a lawful defense, the order of trial may be modified accordingly.

Said provision gives rise to many questions that do not find a ready answer. Among them are: What is the meaning of "admits the act or omission charged"? Does a modified order of trial mean that the defense is required to prove his defense without the prosecution having to adduce evidence of the accused's guilt? At what stage of the proceedings did the accused make such admission? Would the admission made by him in his

counter-affidavit submitted during the preliminary investigation suffice for ordering a reverse order of trial.? What about verbal admission made by the accused during the pre-trial? How would this relate to the provision of Section 4, Rule 118 that "no admission made during the pre-trial conference shall be used in evidence against the accused unless reduced to writing and signed by him and his counsel" ? May the court order a reverse order of trial on its own initiative? Or must it be in the form of a litigated motion? If granted, when should the prosecution make its formal offer of documentary evidence, or of evidence of civil liability?

Illustrative case

A criminal case for estafa by misappropriation that I prosecuted on behalf of the private complainant gives a good illustration. At the initial hearing, I moved for a reverse order of trial on the ground that the counter-affidavit submitted by the accused admitted that they had received the money entrusted by the complainant for the purpose of depositing it with the Prudential Bank which gives a higher rate of interest; that contrary to said instructions, they put the money in a money market placement the certificate of which turned out to be a forgery; that their act was done only in a sincere desire to earn a higher income for the complainant whose loss of money was only due to their error of judgment. I argued that said affidavit constitute an admission of all the essential elements of estafa and, therefore, shifts the burden of evidence upon the accused to prove their defense of good faith, in effect, lack of criminal intent.

The accused argued that their admitting having received complainant's money and making the false placement are not sufficient for a reverse order of trial. The admission required for such reversal, they added, must be on the misappropriation which their affidavit does not admit. I countered that the fact that the accused had taken out the certificate of placement in their own name is already evidence of misappropriation. The judge agreed and ordered the accused to present evidence of their defense. After failing in their efforts to have said order nulified by the Court of Appeals, the accused waived their right to present evidence. I thereupon adduced evidence of civil liability and followed this with a formal offer of the accused's counter-affidavit. The accused objected to admission on the ground that the criminal stage had already terminated and only evidence of civil liability could be adduced. The judge admitted the affidavit as a public document to evidence the fact which gave rise to its execution and the date thereof.

The accused were acquitted on the ground that the court could not consider the affidavit of the accused as evidence since it was not formally offered in evidence. The judge disregarded my argument that under the new rules on evidence, the proper time to make such a formal offer of documentary evidence is "after the presentation of a party's testimonial evidence" (Section 35, par. 2, Rule 132). This could not be done during the hearing of my motion for a reverse order of trial since no witness had testified at that time.

I have filed a petition for certiorari with the Supreme Court on the ground that the refusal of the court to consider the affidavit of the accused under the circumstances of this case, violates the prosecution's constitutional right to due process of law. This has the effect of ousting the court of its jurisdiction to render the questioned decision and therefore, the void acquittal did not terminate the first jeopardy. This prevents the constitutional guaranty against double jeopardy from being raised.

I do not know whether the Supreme Court can be persuaded to at least give due course to the petition if only to elucidate and give guidance on the proper application of the rule on a modified order of trial as already provided for in the rules on criminal procedure.

B. Require accused to state his defense upon pleading not guilty

Without waiting for a resolution of the foregoing case, there is a more simple way of implementing the provision on a reverse order of trial, and that is to require an accused who pleads not guilty to the offense charged against him, to specify the nature of his defense as to negative or affirmative defense. A negative defense would not require any modification of present procedure requiring the prosecution to prove the guilt of the accused. An affirmative defense, however, requires the accused to further specify the particular justifying or exempting circumstance that the accused is relying on to exempt him from criminal liability. Thus, the accused could plead, "not guilty by reason of insanity" , or of self-defense, or of minority.

1 Fiscal should not resolve plea of self-defense during preliminary investigation

The newspapers of 08 November 1994, carrying a report of a police general (Chief Superintendent Viduya) who shot a fellow police officer over a parking slot, both being alumni of the Philippine Military Academy,

states that counsel for the accused had moved to reconsider the resolution on preliminary investigation finding a prima facie case of murder against him. Viduya insists that his theory of self-defense was not properly appreciated by the investigating fiscal.[32]

A policy question must be addressed in this situation where the accused admits having shot the victim to death but interposes self-defense as a justification. Should it be the province of the investigating fiscal or the trial court to resolve the issue of the validity of the defense interposed by an accused? I know that as a question of strategy, defense counsel would not want his client to be charged of a capital offense which is generally not bailable. On the other hand, a reverse order of trial could expeditiously result in an acquittal that, because of double jeopardy, would afford permanent protection, in contrast to a dismissal on preliminary investigation which is temporary and does not prevent a re-filing of the charge. I believe that the better procedure is for the investigating fiscal to terminate preliminary investigation when the case calls for a reverse order of trial. He should file the corresponding information and forthwith move for a reverse order of trial.

On the matter of bail, perhaps, a compromise solution could be to charge the accused of murder but allow him bail as for homicide in cases where a reverse order of trial is granted.

C. *Defer immediate sentencing upon a guilty plea to allow offended party to adduce evidence of civil liability and aggravating circumstances and for accused to adduce rebuttal evidence.*

Multiplicity of suits unjustifiably adds to the backlog. It arises partly because of the failure to resolve all incidents of a case. When a judge immediately sentences an accused upon his guilty plea without allowing the offended party to adduce evidence of civil liability, he in effect compels him to incur unnecessary expenses in the filing of a separate civil action to recover such liability.

In *Veloso v. Carmona,* [33] the Supreme Court admonished judges to set the case for hearing on the civil liability of the accused immediately upon entry of his plea of guilty, unless, of course, the complainant had expressly reserved the filing of a separate civil action, had waived it or had already

[32]Philippine Daily Inquirer, Nov. 8, 1994, p.13, col. 2.
[33]77 SCRA 450 (1977).

filed it. It only remains for the Supreme Court to provide additional sections in Rule 116 to cover this situation where there is a joinder of civil and criminal actions.

On the matter of adducing evidence of aggravating or mitigating circumstances, there is already an existing provision on this matter, namely, Section 4, Rule 116, which allows, in the discretion of the judge, reception of evidence "to determine the penalty to be imposed" where the charge is non-capital. As in the case of a reverse order of trial, there is a need to elaborate this very brief provision to erase all doubts that may arise.

VII. CONCLUSION

The foregoing proposals for reform are by no means an exhaustive list in the never ending desire to attain the ideal of a fair, expeditious and inexpensive administration of criminal justice. By its very definition, an ideal is something that may never be fully attained. But that is surely no excuse for not making an effort to narrow the gap between the presently low level of reality and the highest standards of ideality. It is in this light that these proposals are made in honor of that great man, Don Quintin Paredes.