WHEN SHOULD MIRANDA WARNINGS BE ADMINISTERED?

*Pacifico A. Agabin**

I. RATIONALE FOR MIRANDA WARNINGS

In answering the question, "When should Miranda warnings be administered?", it is best to start with the reason for administering Miranda warnings. The Miranda warnings, it must be recalled, are warnings given to a person under investigation that he has a right (1) to remain silent, (2) that anything that he says can be used against in a court of law; (3) that he has the right to the presence of counsel; and (4) and that if he cannot afford one an attorney will be appointed for him prior to any questioning if he so desires.[1] Until and unless such warnings or waiver thereof are demonstrated by the prosecution at the trial, no evidence obtained as a result of interrogation can be used against him.[2]

Now, what is the rationale for the Miranda warnings? This is to preclude compelled confessions and admissions, as aptly stated by our Supreme Court:

> After a person is arrested and his custodial investigation begins, a confrontation arises which at best may be termed unequal. The detainee is brought to an army camp or police headquarters and there questioned and cross-examined not only by one but as many investigators as may be necessary to break down his morale. He finds himself in strange and unfamiliar surroundings and every person he meets he considers hostile to him. The investigators are well-trained and seasoned in their work. They employ all the methods and means that experience and study have taught them to extract the truth, or what may pass for it, out of the detainee. Most detainees are unlettered and are not aware of their constitutional rights, and even if they were, the intimidating and coercive presence of the officers of the law in such an atmosphere overwhelm them into silence.[3]

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[1]People v. Duero, 104 SCRA 379 (1989).

[2]*Ibid.*

[3]People v. Ayson, 175 SCRA 218 (1989), citing Morales v. Enrile, 121 SCRA 538, 553-554 (1983).

We have learned lessons from our history. We now know, from jurisprudence, that there is a close connection between the privilege against self-incrimination and custodial investigation. So today, under our Bill of Rights, we have mandated, as early as 1972, that "any person under investigation for the commission of an offense shall have the right 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".[4] The same article also provides that any confession obtained in violation of said rights would be inadmissible in evidence in any proceeding against him.

II. WHO IS A 'PERSON UNDER INVESTIGATION

Unfortunately, the above-quoted provision of our Constitution does not define the concept of a 'person under investigation' which marks the outer limits for administering the Miranda warnings. But the 1971 Constitutional Convention defined "investigation" as one "conducted by the police authorities which will include investigations conducted by the municipal police, the PC and the NBI and such other agencies in our government".[5] According to a constitutional scholar, Fr. J. Bernas, what the Convention was referring to were "custodial investigations" in the sense of *Escobedo v. Illinois*,[6] *i.e.*, when the investigation is no longer a general inquiry into an unsolved crime but has begun to focus on a particular suspect, the suspect has been taken into police custody, and the police carry out a process of interrogations that lends itself to eliciting incriminating statements."[7]

This requirement of "custodial investigation" as defined by the 1971 Constitutional Convention now needs to be re-defined in the light of the deliberations of the 1986 Constitutional Commission.

It is not necessary, under the provision of our Bill of Rights, that the person under investigation be 'in custody' before he could invoke the right to remain silent and to have independent counsel. If the debates in the 1986

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[4]Sec. 12(1), Art III.
[5]Bernas, The Constitution (1988) pp. 343-344.
[6]378 U.S. 478 (1964).
[7]Bernas, *ibid.*

Constitutional Commission are to be any guide, a person under investigation need not be in police custody to be accorded Miranda warnings. As declared by the sponsoring delegate, Commissioner Colayco:

> *MR. COLAYCO.* Section 21 is, we might say, an expansion of the provision in the 1973 Constitution which concerns the so-called custodial examination, which was the result precisely of a complaint of Commissioner Garcia that it has been the practice of military investigators to prohibit the assistance of counsel to persons suspected of being subversives on the ground that custodial interrogation is different from tactical interrogation. So the Vice-Chairman assigned us, Commissioners Sarmiento, Garcia and myself, to further study the problem, and we have come up with this.
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> We will notice that under the old rule, the mantle of protection where the suspect or accused under investigation could only claim the right against self-incrimination and the right to be informed of his right to have counsel and to remain silent was apparently limited to that portion of the investigation when he was already under the technical custody of the investigator. That is why it was referred to as custodial investigation.
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> We went further by extending the mantle of protection to the time immediately after the commission of any offense, whether the policeman or the person making the investigation has any suspect under custody. Thus, it is stated in Section 21 that it would be the duty of the investigating officer, when making preliminary investigation on the spot, on the place of the crime or elsewhere, to remind any person or suspect that he is entitled to remain silent, to have counsel and that if he does not have any, he could demand the service of one.
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> So in effect, the custodial theory was extended, and we will notice we did not use the word "custodial" anymore, so that the military investigators could not go around the provisions by saying that tactical interrogation was different from custodial interrogation; in other words, to avoid other interpretations.
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> *MS. AQUINO.* No. What I was contemplating is a situation which is not properly covered by appropriate warrants, but which may fall under the practice of tactical interrogation. So it will be a situation of temporary detention incidental to preliminary interrogation. Does this Section 21 likewise proscribe that kind of a practice?
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> *MR. COLAYCO.* Yes, because as I explained earlier, the wording does not make use anymore of the adjective "custodial."[8]

[8]Proceedings of the 1987 Constitutional Commission, July 17, 1986, pp. 682-684.

Indeed, the implementing law, RA 7438, provides that -

(a) Any person arrested, detained or under custodial investigation shall at all times be assisted by counsel.

(b) Any public officer or employee, or anyone acting under his order or in his place, who arrests, detains or investigates any person for the commission of an offense shall inform the latter, in a language known to and understood by him, of his right to remain silent and to have competent and independent counsel, preferably of his own choice, who shall at all times be allowed to confer in private with the person arrested, detained, or under custodial investigation. If such person cannot afford the services of his own counsel, he must be provided with a competent and independent counsel by the investigating officer.[9]

The use of the words, "arrested, detained, or under custodial investigation" shows the intent of RA 7438 to cover not only situations of arrest but also of simple detention, like detaining a person to ask questions about the offense. This covers a broader ground than that carved out by the US Supreme Court in Miranda that for a person in police custody, "in-custody interrogation" is regarded as the commencement of an adversary proceeding against the suspect, when the "focus" of the investigation is on the detainee, and that it is at this point that his rights to counsel and to remain silent must be accorded him by the arresting officer. Unfortunately, however, our Supreme Court has been indiscriminately importing American precedents on custodial interrogation rights, thus negating the innovation under the Constitution and RA 7438.

This can be seen in a 1992 decision of our Supreme Court which defined "person under investigation" in terms of Escobedo.

In *People v. Logronio*,[10] at about midnight of December 26, 1986, the Manito, Albay police station received a report about a robbery-homicide case. Two policemen and CHDF members went to the premises to investigate and one of the neighbors of the victim told a policeman that the accused was seen loitering in the premises at the time the crime was committed. The policemen were able to locate the accused and a companion in the mountains of Manito, and when they asked his companion who was responsible for the

[9]Sec. 1.
[10]214 SCRA 519 (1992)

crime, the latter pointed to the accused. When the policemen asked the accused, he at first tried to deny, but he ultimately admitted being the one who robbed and killed the victim. He was then asked where he hid his loot, and he told them where he buried these, and when they went to the location indicated by the accused, the proceeds of the crime were recovered. The accused was later brought to the police station where he signed a confession in the presence of his lawyer.

One of the issues the accused raised on appeal was that he was not informed of his rights to remain silent and to have a counsel when he was first investigated in the mountains of Manito, which he considered a "custodial investigation". The Supreme Court, however, rejected his position, stating that neither the accused nor his companion were "persons under investigation for the commission of an offense" within the meaning of Sec. 12(1) of Article III. "There was at that time nothing to connect the accused nor his companion to the robbery with homicide," observed the Court. The Court relied on its earlier definition of "custodial investigation" as "questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in a significant way".[11]

This reasoning is reminiscent of Escobedo v. Illinois decided in the United States by the US Supreme Court way back in 1964,[12] where it was held that 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 taken into custody, and the police carries out a process of interrogation that lends itself to eliciting incriminating statements, that the Miranda warnings begin to operate.

III. 'STOP-AND-FRISK' CASES

A term like "detain", which is so clear to the layman's mind, is so muddled up in the law that it has provided a mine field for constitutional and criminal litigation. This might as well be the case, because if we take the plain and literal meaning of the word, that would mean that every detention for the commission of an offense would call for Miranda warnings and every person stopped by government agents would insist on his right to call for a counsel. This would paralyze traffic enforcement operations,

[11]Citing People v. Caguioa, 95 SCRA 2 (1980), citing the Miranda case as authority.
[12]378 U.S. 473 (1964).

annual audit of income tax returns at the BIR, customs and immigration searches at the airport, conduct of checkpoints in various parts of the city, saturation drives of the police, or "zona", processing of police and NBI clearances, all of which involve a form of detention and investigation for some kind of offense or other.

Thus, even in non-arrest or non custody investigations, we have to draw a fine line when to give and when not to give the Miranda rights to suspects.

Let us take a situation familiar to all of us -- the conduct of police checkpoints which our Supreme Court has not found, at least in theory, to be contrary to the search and seizure clause.[13] Doubtless, operating a checkpoint involves "detention" of motorists to certain extent, even if only briefly, so that the police could take a look at the glove compartments or luggage trunks of automobiles or the inside of vans and containers. Would this operation call for Miranda rights for each and every motorist stopped by the police? Even if we go by American legal standards, the answer to this question would be in the negative, considering the exigencies of the situation. In a similar case in the US involving sobriety checkpoints, the Supreme Court held that the initial stop of each motorist and the associated questioning and observation by checkpoint officers constitute "reasonable seizures", and which obviously do not call for Miranda rights.[14]

Let us take another favorite operation of the police, the so-called "saturation drive" or "zona". This is described in *Guazon v. Villa*[15] as follows:

1. Heavily-armed police and military units, in the dead of night or in the early morning, cordon off an area of more than one residence and sometimes whole barangays. The raiders rouse residents from their sleep by banging walls and windows, shouting, kicking doors open or firing volleys upward, and by ordering all residents to come out of their respective residence.

2. The residents are herded to one area, and the men are ordered to strip to their briefs. They are examined for tattoo and other marks.

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[13]Valmonte v. de Villa, 185 SCRA 665 (1990).
[14]Michigan State Police v. Sitz, 496 US 444 (1990).
[15]G.R. 80508, January 30, 1990.

3. While the examination of the bodies of men are being conducted, some members of the raiding team force their way into each house and conduct searches.

4. A hooded informer sometimes points to suspects in some recent crimes. Some men and women are taken into custody and hauled off to waiting vehicles that take them to detention centers where they are interrogated.

Now there is no doubt that in most cases this would be violative of the residents' right against unreasonable searches and seizures. But in the case of *Umil v. Ramos*,[16] arrests without warrant may be legally justified where the suspect is arrested for a continuing crime. We shall not dwell on this related question for now, but the one relevant to us would be, would these residents, as they are herded into an enclosed area, be entitled to their Miranda rights to silence and to have a counsel of choice?

Even if no arrest has yet been made and there is yet no interrogation of suspects, in view of the coercive environment of the police-dominated atmosphere, there should be no doubt that the poor residents even as they are being herded like cows to the enclosed examination area, should be entitled to the Miranda rights. They are subjected to restraints equivalent to an arrest, and their freedom of movement is curtailed most significantly. Yet the Supreme Court has held, in a line of cases, that where there is yet no investigation and the suspect is just lined up for identification purposes, the latter is not entitled to counsel, for there are no adversarial proceedings in a police line-up.[17]

A `saturation drive' or `zona' is certainly different from a `stop-and-frisk' situation contemplated in *Terry v. Ohio*,[18] where a policeman on the beat, suspecting three suspicious looking characters to be casing a store, decided to investigate by stopping them and frisking them for weapons. He found revolvers from two of the suspects, which the US Supreme Court held to be admissible evidence, considering that there was probable cause for the policeman to stop and frisk the suspects.

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[16]G.R. 81567, July 9, 1990.
[17]*See* People v. Hatton, 210 SCRA 1 (1992) and cases cited.
[18]392 U.S. 1 (1968).

The applicable case should be *Florida v. Royer*,[19] where the US Supreme Court distinguished this case from *Terry v. Ohio*.[20] The Court held that a detention to fall within the Terry doctrine, must be temporary and last no longer than is necessary to effectuate the purpose of the stop. "The investigative methods employed should be the least intrusive means reasonably available to verify or dispel the officer's suspicion in a short period of time," said the Court. In this case, it was noted that detention became indistinguishable from an arrest because of the intrusive nature of the investigative means employed. Royer's detention became an arrest, not because he was detained for a long period, but because he was forcibly moved to a private police interrogation room and because the object of the detention – to confirm the suspicion that he was carrying drugs in his luggage, was not pursued in the most expeditious way.

In the case of the "zona", there is no doubt that the forcible detention in the dead of night, the compelled stripping of the residents for examination of their bodies, the herding of the people into an examination area, the use of hooded informers all create an atmosphere of fear and misgiving that would taint any admission or confession obtained from any of them with coercion. It is under this situation that the rationale for the Miranda warnings should come to apply. This is given by CJ Warren of the US Supreme Court:

> We stress that the modern practice of in-custody interrogation is psychologically rather than physically oriented. Since Chambers v. State of Florida, this Court has recognized that coercion can be mental rather than physical, and that the blood of the accused is not the only hallmark of an unconstitutional inquisition. Interrogation still takes place in privacy. Privacy results in secrecy and this results in a gap as to what in fact goes on in the interrogation rooms.
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> An individual swept from familiar surroundings into police custody, surrounded by antagonistic forces, and subjected to the techniques of persuasion described above cannot be otherwise than under compulsion to speak. As a practical matter, the compulsion to speak in the isolated setting of the police station may well be greater than in courts or other official

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[19]460 U.S. 491 (1983).
[20]*Supra.*

> investigations, where there are often impartial observers to guard against intimidation or trickery.[21]

Even if a person has not been formally arrested, he would still be entitled to the constitutional protections of right to silence and to counsel where he has been deprived of free movement in a significant way. Thus, in *Orozco v. Texas*,[22] where the accused was detained by four policemen in his own bedroom in the early hours of the morning, the US Supreme Court ruled that he was entitled to the Miranda warnings. The Court pointed out that the warnings were required when the person being interrogated was "in custody at the station or otherwise deprived of his freedom of action in any significant way".[23] Note that Orozco was not free to go where he pleased and was technically under arrest.

This definition was quoted by our Supreme Court in *People v. Ayson*[24] where it said that the Miranda warnings exist only in "custodial interrogations" or "in-custody interrogation of accused persons". And by "custodial interrogation", according to the Court, is meant "questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way".[25] Thus, "interview" conducted by a police investigator after the accused had already been picked up and turned over for investigation cannot be considered merely as a general inquiry but rather a custodial investigation, ruled our Supreme Court in *People v. de Jesus*.[26] Here our Court adopted the Escobedo definition of "custodial investigation" as the stage where the police investigation is no longer a general inquiry into an unsolved crime but has begun to focus on a particular suspect who has been taken into custody by the police who carry out a process of interrogation that lauds itself to eliciting incriminating statements.[27]

Similarly, our Supreme Court held in *People v. Bolanos*[28] that an admission made by the suspect in response to a question from the police while on board a police vehicle on their way to the police station was one

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[21]Miranda v. Arizona, 384 US 436 (1966).
[22]394 U.S. 324 (1969).
[23]*Id.* at 327.
[24]175 SCRA 218 (1989).
[25]*Ibid.*
[26]213 SCRA 345 (1992).
[27]*Id.*, at 351.
[28]211 SCRA 262 (1992).

made while the suspect was under custodial investigation, which would be inadmissible in evidence because he was not given the Miranda warnings.

Compare Orozco with the case of *Oregon v. Mathiason*,[29] where the interrogation occurred at the police station, but the U.S. Court held that the accused was not in custody because no proof had been offered that the questioning took place in a context where the respondent's freedom to depart was restricted in any way. So, even if the accused was a suspect in the crime and he was already a "focus" of the investigation, he was not in custody.

IV. CONCEPT OF `CUSTODY'

Two decisions of the U.S. Supreme Court, *California v. Beheler* and *Berkemer v. McCarty*, explained the relationship between the concept of custody defined in Miranda and the concept of arrest prohibited by the search and seizure clause. In these cases the U.S. Court held that a person is not in custody so as to be entitled to the Miranda warnings unless there is a formal arrest and/or there is considerable restraint on freedom of movement. Mere detention, in other words, especially "stop and frisk detentions" do not call for Miranda warnings in US jurisdiction.

The case of *California v. Beheler*,[30] shows that after respondent called the police to report a homicide in which he was involved, he voluntarily accompanied them to the station house, having been told that he was not under arrest. At the station house, the police did not advise respondent of his rights under *Miranda v. Arizona*,[31] and after an interview that lasted less than 30 minutes he was allowed to leave. He was arrested five days later and, after receiving Miranda warnings, gave a second confession during which he admitted that his earlier interview had been given voluntarily. Subsequently, respondent was convicted in a California state court for aiding and abetting first-degree murder, the court having admitted into evidence respondent's statements at both interviews. The California Court of Appeal reversed, holding that the first police interview constituted custodial interrogation, which activated the need for Miranda warnings.

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[29]429 U.S. 492 (1977).
[30]463 U.S. 1121 (1983).
[31]384 U.S. 436 (1966).

However, the Supreme Court held that Miranda warnings were not required at respondent's first interrogation with the police. For Miranda purposes, "custodial interrogation" means questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way. Respondent was neither taken into custody for the first interview nor significantly deprived of his freedom of action. Although the circumstances of each case must influence a determination of whether a suspect is "in custody," the ultimate inquiry is merely whether there is a formal arrest or restraint on freedom of movement of the degree associated with a formal arrest. Miranda warnings are not required simply because the questioning takes place in a coercive environment in the station house or because the questioned person is one whom the police suspect.[32]

Likewise, it was found in *Berkemer v. McCarty*[33] that after observing respondent's car weaving in and out of a highway lane, an officer of the Ohio State Highway Patrol forced respondent to stop and asked him to get out of the car. Upon noticing that respondent was having difficulty standing, the officer concluded that respondent would be charged with a traffic offense and would not be allowed to leave the scene, but respondent was not told that he would be taken into custody. When respondent could not perform a field sobriety test without falling, the officer asked him if he had been using intoxicants, and he replied that he consumed two beers and had smoked marijuana a short time before. The officer then formally arrested respondent and drove him to a county jail where a blood test failed to detect any alcohol in respondent's blood. Questioning was then resumed, and respondent again made incriminating statements, including an admission that he was "barely" under the influence of alcohol. At no point during this sequence was respondent given the warnings prescribed by *Miranda v. Arizona*.[34] Respondent was charged with the misdemeanor under Ohio law of operating a motor vehicle while under the influence of alcohol and/or drugs, and when the state court denied his motion to exclude the various incriminating statements on the asserted ground that their admission into evidence would violate the Fifth Amendment because respondent had not been informed of his constitutional rights prior to his interrogation, he pleaded "no contest" and was convicted.

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[32]Cf. Oregon v. Mathiason, 429 U.S. 492 (1977).
[33]468 U.S. 420 (1984).
[34]384 U.S. 436, 16 L Ed 2d 694, 86 Ct 1602, 10 ALR3d 974 (1966).

The Court ruled that a person subjected to custodial interrogation is entitled to the benefit of the procedural safeguards enunciated in Miranda, regardless of the nature or severity of the offense of which he is suspected or for which he was arrested. Thus, respondent's statements made at the station house were inadmissible since he was "in custody" at least as of the moment he was formally arrested and instructed to get into the police car, and since he was not informed of his constitutional rights at that time.

However, it was also stated that the roadside questioning of a motorist detained pursuant to a routine traffic stop does not constitute "custodial interrogation" for the purposes of the Miranda rule. Although an ordinary traffic stop curtails the "freedom of action" of the detained motorist and imposes some pressures on the detainee to answer questions, such pressures do not sufficiently impair the detainee's exercise of his privilege against self-incrimination to require that he be warned of his constitutional rights. A traffic stop is usually brief, and the motorist expects that, while he may be given a citation, in the end he most likely will be allowed to continue on his way. Moreover, the typical traffic stop is conducted in public, and the atmosphere surrounding it is substantially less "police dominated" than that surrounding the kinds of interrogation at issue in Miranda and subsequent cases in which Miranda has been applied. However, if a motorist who has been detained pursuant to a traffic stop thereafter is subjected to treatment that renders him "in custody" for practical purposes, he is entitled to the full panoply of protections prescribed by Miranda. In this case, the initial stop of respondent's car, by itself, did not render him "in custody," and respondent has failed to demonstrate that, at any time between the stop and the arrest, he was subjected to restraints comparable to those associated with a formal arrest. Although the arresting officer apparently decided as soon as respondent stepped out of his car that he would be taken into custody and charged with a traffic offense, the officer never communicated his intention to respondent. A policeman's unarticulated plan has no bearing on the question whether a suspect was "in custody" at a particular time; the only relevant inquiry is how a reasonable man in the suspect's position would have understood his situation. Since respondent was not taken into custody for the purposes of Miranda until he was formally arrested, his statements made prior to that point were admitted against him.

In the two cases you can see how the Supreme Court equated the concept of "custody" as defined in Miranda with the concept of arrest under

the search and seizure clause. Compare this with the usual definition of "arrest".

As defined in our Rules of Court, "arrest" is the taking of a person into custody in order that he may be forthcoming to answer for the commission of an offense.[35] It is made by an actual restraint of the person to be arrested or by his submission to the custody of the person making arrest.[36] Under the definition, there are four distinct elements of an arrest:

> 1. Purpose or intention to effect arrest under real or pretending authority;
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> 2. Actual or constructive seizure or detention of person to be arrested by one having power to control him;
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> 3. Communication by the arresting officer of his intention or purpose then and there to make the arrest; and
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> 4. Understanding by the arrestee that such is the intention of the arresting officer.[7]

This definition is much more technical than the ordinary meaning of the word, which, according to Webster, is "the taking or detaining in custody by authority of law".

If we follow, therefore, the reasoning of the US Court, the logical conclusion is that a person under "arrest" is one "under custody" for Miranda purposes. Conversely, a person who has been detained temporarily, or stopped and frisked, is not in custody for Miranda warnings, until and unless he has been formally arrested.

Temporary detention, stop and frisk, or routine stops do not therefore call for Miranda warnings, since the constitutional predicate of Miranda, i.e., compelled self-incrimination, is absent. Of course, these forms of "seizure" require "probable cause" as mandated by the Bill of rights, but this is a different constitutional precondition. Note, however, that the confessions obtained during the period of unlawful detention, *i.e.*, without probable cause, would still be inadmissible even if the confession is otherwise voluntary.

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[35]Sec. 1, Rule 113.
[36]Sec. 2, Rule 113.

The point is that we have to make a distinction between "arrest" or "custody' and a "stop-and-frisk" situation described in *Terry v. Ohio.*[37] Under the Terry ruling, the police may forcibly detain a suspected felon and his possessions if there is "reasonable suspicion" that some criminal act is about to happen or has just happened, and the police may pursue various methods of investigation without giving the Miranda warnings.

However, in *Florida and Royer,*[38] the U.S. Court held that "the scope of the intrusion permitted will vary to some extent with the particular facts and circumstances of the case. The detention must be temporary and last no longer than necessary to effectuate the purpose of the stop. "The investigative methods employed must be the least intrusive means reasonably available to verify or dispel the officers suspicion in a short period of time," stated the Court. Here the accused's detention became indistinguishable from an arrest, not because he was detained for an unreasonable period, but because he was forcibly moved to a private police interrogation room, and because the object of the detention -- to confirm the suspicion that the accused was carrying drugs in his luggage, was not pursued in the most expeditious way.

V. UNDER CUSTODY BUT WITHOUT INTERROGATION

But even if a suspect is under custody if he is not under interrogation, he is not entitled to Miranda warnings, and if he voluntarily admits his guilt, this is admissible in evidence. Thus, where the accused makes a confession spontaneously before Miranda warnings, this is admissible. according to *Aballe v. People.*[39] Here the accused, upon being picked up for murder as he was coming out of the bathroom wearing T-shirt covered with bloodstains, suddenly broke down and knelt before the policeman arresting him and confessed to the crime. When he later sought to exclude his admission, the Supreme Court rejected the contention that, because he was not administered the Miranda warnings, the confession should be excluded.

Likewise, where an accused submitted to an interview in a police precinct by a newsman after his arrest, wherein he admitted his participation in a crime for which he was being booked, the Supreme Court

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[37]392 U.S. 1 (1968).
[38]460 U.S. 491 (1983).
[39]183 SCRA 196 (1990).

ruled that his admission made to the newsman was admissible. "The interview conducted by the newsman was not part of the formal investigation of the accused, hence it is not within the proscription against extrajudicial confessions extracted without the assistance of counsel," declared the Court in the case of *People v. Espejo.*[40]

In *Rhode Island v. Innis,*[41] respondent was arrested on the street by a patrolman who recognized him from a picture identified by a taxi driver-victim as the robber. When other police officers arrived at the arrest scene, respondent was advised of his Miranda rights, and he said he wanted to speak to a lawyer. Respondent was then placed in a police car en route to the police station and, along the way, the two police officers engaged in a conversation regarding the missing shotgun used in the robbery. One of the officers said there were a lot of handicapped children in the area, and "God forbid one of them might find the weapon with shells and they might hurt themselves." Respondent interrupted the conversation, and asked the officers to turn the car around so he could show them where the gun was located. He then led the police to the shotgun.

The State Court ruled that respondent was entitled to a new trial since respondent had invoked his right to counsel and that, in the absence of counsel, all custodial interrogation should have ceased. But the US Supreme Court reversed this ruling, saying that respondent was not "interrogated" in violation of his rights under Miranda to remain silent until he had consulted a lawyer. "Here there was no express questioning of respondent," declared the Court, "the conversation between the two officers was, at least in form, nothing more than a dialogue between them to which no response from respondent was invited."

V. ADMINISTRATIVE AND OTHER INVESTIGATIONS

Investigations of an administrative character, lacking the compulsive atmosphere of a police dominated environment, do not generally call for Miranda warnings. These are usually situations where the respondent, even if he becomes the 'focus' of an investigation, would not feel coerced into making incriminating admissions. Neither physical nor mental torture is apprehended by the individual respondent in an administrative setting, except possibly in our remote rural areas where the unlettered

[40]186 SCRA 627 (1990).
[41]446 U.S. 291 (1980).

peasant may tremble in the presence of a petty bureaucrat. This rule seems to hold true even in formal administrative investigations, unless these take on the character of criminal proceedings.

Statements made by petitioner taxpayer to Internal Revenue agents during the course of a noncustodial interview in a criminal tax investigation was held admissible against him in the ensuing criminal tax fraud prosecution even though he was not given warnings required by *Miranda v. Arizona* in *Beckwith v. United States*.[42] Although the "focus" of the investigation may have been on petitioner when he was interviewed, in the sense that his tax liability was under scrutiny that is not equivalent of "focus" for Miranda purposes, which involves "questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way."[43]

After the effectivity of the 1987 Constitution but applying a provision of the 1973 Constitution similar to that of the 1987, where "custodial" does not also modify "investigation", our Supreme Court held, in *People v. Ayson*,[44] that where an accused PAL ticket agent, during an administrative investigation conducted by the PAL manager prior to the filing of the estafa case against him, signed a virtual confession admitting his participation in irregularities in the sale of tickets and offering to pay, this was not done while he was under custodial interrogation as defined in the Miranda rule, and the admission that he signed may not be excluded as evidence, notwithstanding the provision of the 1973 Constitution that guaranteed his rights to counsel and to silence when he is "under investigation for the commission of an offense".[45] In administrative investigations, according to the Court,

> the employee may, of course, refuse to submit any statement of the investigation, that is his privilege. But if he should opt to do so, in his defense to the accusation against him, it would be absurd to reject his statements, whether at the administrative investigation, or at a subsequent criminal action against him, because he had not been accorded, prior to his making and presenting them, his "Miranda rights" (to silence and to counsel and to be informed thereof, etc.) which, to repeat, are relevant only in custodial investigations."[46]

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[42]425 US 341, 48 L Ed 2d 1, 96 S Ct 1612 (1976).
[43]*Id.*, at 444 (emphasis supplied).
[44]175 SCRA 219 (1989).
[45]Sec. 20, Art. IV, 1973 Const.
[46]176 SCRA at 236 (1989).

The Supreme Court partly relied here on an earlier case not covered by the 1973 Constitution, *People v. Taylaran*[47] where the Court refused to exclude the statement made by the accused, upon surrendering to the police, that he killed the deceased because the latter was threatening to kill the accused by witchcraft. The Court in the *Taylaran* case agreed with the observation of the Solicitor General that if the accused voluntarily admits the killing, the constitutional safeguards to be informed of his rights to silence and to counsel may not be involved.

By way of footnote, the Court in *Ayson* also quoted with approval American constitutional authorities that "when investigating crimes, an officer may inquire of persons not under restraint, and such general on-the-scene questions are not thought to be accusatory because they lack the compelling atmosphere inherent in the process of in-custody interrogation".[48] As stated above, it is doubtful if this kind of reasoning would hold water in the light of the deliberations in the Constitutional Commission tending to show that any person "under investigation" for the commission of an offense enjoys the right to counsel and the right to silence under the Bill of Rights. Yet the trend of Supreme Court decisions in cases decided even after the effectivity of the 1987 Constitution show adherence to American jurisprudence drawing the line between general inquiry and custodial interrogation.

VI. PRE-INVESTIGATION PROCEDURES

In *People v. Dimaano*,[49] the court held that identification of the accused at the police line-up is not the start of an investigation, i.e. when the investigating officer starts to ask questions to elicit information or admissions from the accused. Therefore, the police could not have violated their rights to counsel as the confrontation between the state and the accused has not yet begun.

To the same effect, the Court, in *People v. Hatton*[50] said that where the accused was brought to the police station only to be identified, he was not yet under custodial interrogation, and therefore he was not entitled to

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[47]108 SCRA 373 (1981).
[48]175 SCRA 231 (1989).
[49]209 SCRA 819 (1992).
[50]210 SCRA 1 (1992).

counsel. Citing Gamboa v. Cruz,[51] the Court held that the right to counsel attaches only upon the start of an investigation. The police line-up is not part of the custodial inquest, according to the Court.

But this is not true of a 're-enactment' of a crime, according to People v. Luvendino,[52] since this is an admission of guilt. So, where it is not clear from the record that before the re-enactment was staged by the accused he had been informed of his Miranda rights, evidence of the re-enactment would not be admissible.

The same reason holds true for receipts of prohibited drugs seized from a suspect. Where the accused in a drug buy-bust operation signed a "Receipt for Property," for the marijuana allegedly seized from him, which is much like an extrajudicial confession, this would not make such signature admissible against him where the prosecution did not prove that the constitutional law requisites for admission of an extrajudicial confession had been complied with.[53]

This ruling follows that of *People v. de la Peña*[54] where the Court also held that a receipt which a suspect was asked to sign when he was arrested without the presence of counsel is inadmissible as evidence.

The receipt for property seized is a declaration against interest and a tacit admission of the crime charged, and asking a suspect to sign it without according the Miranda rights is tantamount to an uncounselled extrajudicial confession outlawed by the Bill of Rights, declared the Supreme Court in *People v. Bandin*.[55] Here, as in the *de la Peña* case, the suspect was asked to sign the receipt for a bag of marijuana seized in a 'buy-bust' operation. The Supreme Court ruled that this was inadmissible evidence as it was found that the receipt was signed by the accused without the assistance of his counsel.

But see *People v. Linsangan*[56] where the accused was asked to sign a marked bill which was used to buy marijuana. The Supreme Court held that his right against self-incrimination was not violated for his possession of

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[51]162 SCRA 642 (1988).
[52]211 SCRA 36 (1992).
[53]People v. Deocariza, 219 SCRA 488 (1993).
[54]1991 SCRA 28 (1991).
[55]226 SCRA 299 (1993).
[56]195 SCRA 794 (1991).

the marked bills did not constitute a crime; the subject of the prosecution was his act of selling marijuana.

VI. CONCLUSION

From the above discussion, let me draw a few conclusions and see if I can contribute to clearing up the confusion:

1. In the Miranda case, while both the concepts of `custody' and `interrogation' should concur to trigger the Miranda warnings, in the Philippines, `custody' should not be a necessary prerequisite. Mere investigation, even without custody, would protect the suspect in criminal proceedings with the constitutional guarantees of the right to silence and right to counsel, as long as the investigation is focused on the suspect who has been deprived of his freedom of movement in a significant way.

2. Under the Bolanos and Orozco rulings, a criminal suspect may be deemed `in custody' even if he is questioned outside a police station, as long as he has been deprived by the police of his freedom of movement.

3. `Investigation' as used in Sec. 12(1), Art. III, of the Constitution should be equivalent to `interrogation', *i.e.*, not only express questioning, but also any words or actions on the part of the police (other than those normally attendant to arrest and custody) that the police should know are reasonably likely to elicit an incriminating response from the suspect. The emphasis in this definition is on the perceptions of the suspect rather than on the intent of the police.[57]

4. In non-arrest detentions, i.e., routine stops, `stop-and-frisk', and temporary seizures conducted by police in public places, Miranda warnings are not necessary, since the element of compulsion inherent in a police-dominated atmosphere is absent in these situations. Furthermore, these are not really `investigations' involving express questioning designed to elicit an incriminating response from the person stopped or detained. Thus, we should draw a distinction between `stops' and `arrests', and for purposes of Miranda, the criterion should be whether the `stop' exerts upon the detained person pressures that sufficiently impair his free exercise of his privilege against

[57]Rhode Island v. Innis, 446 U.S. 291 (1980).

self-incrimination. The relevant inquiry is how a reasonable man in the suspect's position would have understood his situation.[58]

5. But a non-arrest detention can "qualitatively and quantitatively be so intrusive with respect to a suspect's freedom of movement and privacy interests as to trigger full protection" of the Bill of Rights.[59] When the line between reasonable and unreasonable seizures is crossed, as when the police, without probable cause or warrant, forcibly remove a person from his house and transport him to the police station, where he is detained, although briefly, for purposes of investigation, this becomes a de facto arrest that calls for constitutional protection. This is true most specially in the Philippines where temporary detentions require, generally, the Miranda protections.

6. The Miranda warnings need not be given in administrative investigations where, even if the investigation is focussed on a suspect, the environment is not so conducive to psychological coercion as to compel the person investigated to incriminate himself.

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[58]Berkemer v. McCarty, *supra.*

[59] Hayes v. Florida, 470 U.S. 811 (1985).