# TOWARDS A MORE EFFECTIVE PRE-TRIAL PROCEDURE AND SETTLEMENT CONFERENCES: THE PHILIPPINE MODEL

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## HISTORICAL BACKDROP

### *Common Law Roots*

The roots of pre-trial are traceable to the ancient *viva voce* pleading used in common law courts.[1] Nims recounted the origin of pre-trial in this wise:[2]

> 'In Smith's 'Elementary View of the Proceedings in an Action at Law,' the author refers to the writ of summons which directed the defendant to appear in court and then says at p. 31: 'As soon as the defendant has appeared the pleadings commence. These are the *altercations* which take place between plaintiff and defendant for the purpose of ascertaining the nature of the complaint, the grounds of defense and the points in controversy between the parties. These pleadings were, in early stages of the common law, delivered *viva voce* by counsel. The writ by which the action was commenced used to be brought into court with the sheriff's return on it, and the plaintiff's counsel, after it had been read, proceeded to expand the charge contained in it, in a connected story, by adding time, place and other circumstances.

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[1] NIMS, PRE-TRIAL 6-7 (1950 ed.)

[2] *Id.*

> Thus, if the writ mentioned the cause of action to be trespass, the plaintiff's counsel stated where, when and how the trespass was committed and what special damage had resulted from it .... This statement was called the *count* from the French *conte*, a tale or story. The defendant's counsel, on his part, stated the defense with similar precision, and this was called the *plea*. The plaintiff's counsel replied; the defendant's, if necessary, rejoined; and so on until they had come to a contradiction either in law or fact. If either conceived that the last pleading on the opposite side was untrue in fact, he positively denied it, and then was said 'to take issue with it' .... Thus was an issue produced either of fact or law. If of law, it was decided by the court; if of fact, tried, in most cases, by a jury.
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> While the proceedings were going on, the officer of the Court sat at the feet of the judges, entering them on a parchment roll of record. When the pleadings were only in the process of being entered on it, it was called 'the *plea roll*'; when the issue had been joined and entered on it, it was called 'the *issue roll*'; and when the judgment had been recorded on it, it was called 'the *judgment roll*'....

As expected, viva voce or oral pleadings was superseded by *written pleadings*. For as observed by the 1930 London Chamber of Commerce Report,[3] "the procedure for settlement of disputes can no more remain static than any other branch of the life of the community but must be adapted or altered from time to time to meet changing conditions."

### *From England to the United States*

The use of written pleadings in England and then in the United States did not bring about the desideratum of attaining speedy and inexpensive litigation. Observed Nims:[4]

> Early common law courts required a series of formal *written pleading* aimed at reducing the dispute to one or at least as few as possible issues to be tried.

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[3] *Id.*, at 1.
[4] *Id.*, at 1-2.

> Presumably this system was intended to simplify the processes of decisions. The results were just the opposite. It became cumbersome and excessively technical for the lawyers, and expensive, time-consuming and completely mysterious to the litigants and the public.
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> Then followed an era in which the rules governing *pleadings were liberalized.* The parties were allowed to plead rather informally, and with these changes, the rules of evidence became less strict so that some of the formality of the common law trial disappeared.
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> But these changes did not produce the service which the public had a right to expect, and laymen continued to wait patiently for the courts and the bar to find a solution.
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> In more recent years, we seem to have entered into a *third phase* of this problem, in which procedures are used, the objects of which are to cause the parties to civil actions to disclose to their opponents, before the trial, all or some of the facts on which they intend to rely. The purpose of these rules is to end what Professor Edson R. Sunderland has called the trial of cases *'from ambush.'* Where such procedures have been used, each party enters the courtroom in possession of some, at least, of the facts involved; but there is no certainty even then that both sides know the basic issue that are to be tried and each party may be suddenly faced in the trial with an issue of fact or law which he had not expected and for which he is not prepared.
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> Here again the hope for *relief has not come.* Litigants still contend with undue and unnecessary delay and expense, for which there seems to be no remedy in sight which promises relief and which has been tested by practical experience.

For a long time, the problem stared at the authorities and its multiplying dimensions mocked them. The breakthrough to the problem came in Detroit, Michigan. Again, Nims relates:[5]

> In 1929, Chief Judge Ira W. Wayne and his associate judges of the Circuit Court, Third Judicial Circuit of Michigan, in Detroit, began to hold such *conferences,* as a routine matter, in cases awaiting trial in their court. In these conferences, the

[5] *Id.*, at 3.

> judge did not act as a judge usually acts in the trial of a lawsuit, but as a friend of the lawyers and the litigants, his purpose being to help them to find ways to simplify the coming trial of the case and so reduce the time and expense involved in disposing it.
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> This step was taken without legislation. It was an instance of effective use by the court of its inherent power to control and handle its own work.
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> *The experiment proved to be a definite success.* Calendars were reduced, trials simplified, many cases ended in the *pre-trial conferences.* Time and expense were saved. Litigants and lawyers soon came to appreciate the usefulness of *pre-trial* as the procedure quickly came to be known. Judges from other states came to Detroit and went away satisfied that here was an effective method to facilitate the disposition of court business.

Judge Ira Wayne's successful experiment reached the Advisory Committee created by the Us Supreme Court to draft the Federal Rules of Civil Procedure. After study and reflection. it drew up Rule 16 providing for pre-trial procedures. The Rules were approved by the US Congress and made effective on Septtember 16, 1993. The other States took the cue and promulgated their own pre-trial procedure with modifications to suit local conditions.[6]

After years of experimentation in the United States, the effectiveness of pre-trial procedure in simplifying and shortening is no longer in doubt. In Oregon, it is reported that "currently, over 95 percent of all civil cases terminate at the pre-trial stage."[7] Its 1990 statistics reveal that 95.3% of civil cases terminated in the federal district courts. "Of the 173,834 cases terminated, 46,628 (26.8%) were disposed of without active judicial involvement, 119,048 (68.4%) were disposed of before trial with judicial intervention, and 8,158 (4.7%) were disposed of following a trial."[8] Other States have near or similar statistics.

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[6] Adams in 72 ORE. L. REV. , No.2 (Summer 1993) states that at least thirty (30) states as well as the District of Columbia and Puerto Rico have adopted rules similar to the federal rules.

[7] *Id.*, at 429.

[8] *Id.*

## *From the United States to the Philippines*

### *Pre-trial in Civil Cases*

As a former colony of the United States, the development of the Philippine legal system was influenced by American law and procedure. When pre-trial started to take seed in the United States, so it did in the Philippines. As noted by Justice Bellosillo of the Philippine Supreme Court, *viz:*[9]

> In the Philippines, pre-trial was first introduced by *Rule 25* of the Old Rules of Court, which took effect on July 1, 1940. It was lifted from *Rule 16* of the Federal Rules of Civil Procedure except for the addition of subparagraph (a) on the possibility of an amicable settlement. Even the nature of pre-trial as *discretionary* under Rule 16 of the Federal Rules of Civil Procedure was also adopted in our old Rule 25. Since pre-trial was discretionary under the old Rule, which means, the court may or may not call a case for pre-trial, there had been few instances of pre-trial proceedings that reached the Supreme Court and/or the Court of Appeals from the time of pre-trial was introduced in our country in 1940 to the end of 1963. Considering the insignificant number of cases that availed of the pre-trial device despite its demonstrated usefulness, without of course discounting the possibility of a number of cases that were actually pre-tried and winding up in a settlement or disposal, or in a summary judgment or judgment on the pleadings, the newly acquired judicial tool designed for early disposal of cases was made *mandatory* in the Courts of First Instance on January 1, 1964, with the promulgation of Revised Rules of Court. Thereafter, the use of pre-trial became widespread throughout the country, although there are still those who are passive in its observance and implementation, such that we came across today pre-trial orders to the effect that since the parties cannot agree to settle their differences the pre-trial is deemed terminated and the case is set for trial on the merits.
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> To further underscore the importance of pre-trial effective device in the unclogging of court dockets, the procedure has been made mandatory in all trial court dockets, the procedure has been made mandatory in all trial courts when Executive Order No. 864 was promulgated on January 17, 1983, declaring the

[9] J. BELLOSILLO, EFFECTIVE PRE-TRIAL TECHNIQUE 22 (1990).

> reorganization of the judiciary and implementing Batas Pambansa Blg. 129, otherwise known as the *Judiciary Reorganization Act of 1981*, and the *en banc* Resolution of the Supreme Court dated January 11, 1983, making the procedure in the Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts uniform with that of the Regional Trial Courts, thereby expressly repealing *Rule 5* and *Rule 123* of the Rules of Court. It follows, without specifically providing for it, that pre-trial in civil cases is now mandatory in all trial courts, including inferior courts. In fact, pre-trial is now conducted even in the Court of Appeals when sitting as a trial court, as in annulment of judgments of Regional Trial Courts.

*Pre-trial in Criminal Cases*

Pre-trial in criminal cases in the Philippines is a relatively new concept. Its *progenitor* is the rule on pre-trial inquest adopted by the *Sandiganbayan* court on January 10, 1979.[10] The *Sandiganbayan* is a special court with jurisdiction over graft cases committed by public officials. Section 6 of said rule states:

> Section 6. *Pre-trial Inquest* - After the arraignment of an accused who pleads not guilty, the division concerned shall, without prejudice to the invocation by the accused of his constitutional rights, direct the prosecutor and the accused and his counsel to appear before any of the justices thereof for a conference to consider:
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> (a) Admissions of facts about which there can be no dispute;
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> (b) Marking for identification of documentary or real evidence of the parties;
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> (c) Waiver of objections to admissibility of evidence;
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> (d) Procedure on objections where there are multiple counsel;
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> (e) Order of presentation of evidence and arguments where there are multiple accused;

[10] 2 F. REGALADO, REMEDIAL LAW COMPENDIUM 342 (6th ed., 1989).

> (f) Order of cross-examination where there are multiple accused; and
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> (g) Such other matters as will promote a fair and expeditious termination of the trial.
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> After the pre-trial inquest, a pre-trial order shall be issued by the Associate Justice presiding over the conference reciting the actions and/or proceedings taken thereat, the admission of facts made, the documents and real evidence marked, and the agreements entered into by the parties as to any of the matters taken up therein. Such order shall limit the issues for trial to those not disposed of by the admissions or agreements of the parties and when entered shall bind the parties and control the course of the action during the trial, on appeal, and in post-conviction proceedings, unless modified by the division concerned before trial to prevent manifest injustice.

In 1983, the Supreme Court deemed it wise to provide pre-trial procedure in petty criminal cases. These cases involved : (1) violations of traffic laws, rules and regulations; (2) violations of rental law; (3) violations of municipal or city ordinances; and (4) all other criminal cases where the penalty prescribed by law for the offense charged does not exceed six (6) months imprisonment, or a fine of P1,000.00 or both.

The procedure was contained in the Rules on Summary Procedure in Special Cases Before Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts. These are the lowest courts in Philippine judicial hierarchy. They try petty civil and criminal cases. Section 13 of the Rules more specifically provides:

> Section 13. *Preliminary Conference* - Before conducting the trial, the court may call the parties to a preliminary conference during which stipulation of facts may be entered into, or the propriety of allowing the defendant to enter a plea of guilty to a lesser offense may be considered, or such other matters may be taken up to clarify the issues and to ensure a speedy disposition of the case. However, no admission shall be used against the defendant unless reduced to writing and signed by the defendant and counsel. A refusal or failure to stipulate shall not prejudice the defendant.

In 1985, the High Court took the big leap. It updated the Rules on Criminal Procedure. One radical feature of the new Rules is the institution of pre-trial in all criminal cases, regardless of their nature and seriousness.

## THE LEGAL FRAMEWORK

### *Constitution*

The speedy and inexpensive determination of litigations is one of the polestars of our Constitution. Section 16 of Article III (Bill of Rights) provides that "all persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial or administrative bodies." Sub-paragraph (2), section 14 of the same Article guarantees to an accused the right "xxx to have a speedy, impartial and public trial." Section 1, Rule 115 of our Rules of Court reiterates the guaranty of a right to a speedy, impartial and public trial to an accused. In the case of *Andres v. Cacdac,* the Court defined "the right to speedy trial to mean that the accused is free from vexatious, capricious and oppressive delays, its salutary objective being to assure that an innocent person may be free from anxiety and expense of a court litigation or, of otherwise of having his guilt determined within the shortest possible time compatible with the presentation and consideration of whatever legitimate defense he may interpose." The pre-trial procedure in civil and criminal cases give flesh and blood to this desideratum of speedy and inexpensive litigation.

### *The Rules of Court*

#### *Pre-trial Rules in Civil Cases*

The pre-trial rules in civil cases are spelled out in Rule 20 of the Rules of Court. Rule 20 has only five (5) brief provisions.

Section 1 provides that pre-trial is mandatory. It also spells out the subject matter of the preliminary conference, viz:

> Section 1. *Pre-trial mandatory* - In any action, after the last pleading has been filed the court shall direct the parties and their attorneys to appear before it for a conference to consider:
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> a. The possibility of an amicable settlement or of a submission to arbitration;
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> b. The simplification of issues;
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> c. The necessity or desirability of amendments to the pleadings;
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> d. The possibility of obtaining stipulations or admissions of facts and of documents to avoid unnecessary proof;
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> e. The limitations of the number of witnesses;
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> f. The advisability of a preliminary reference;
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> g. Such other matters as may aid in the prompt disposition of the action.

Sanctions are in place for violation of pre-trial procedure. Thus, Section 2 of Rule 20 states:

> Section 2. *Failure to appear at pre-trial conference* - A party who fails to appear at a pre-trial conference may be *non-suited* or considered as in *default*. [emphasis added].

The rules also allow the courts to render judgment on the pleadings and summary judgment at pre-trial. Section 3 provides:

> Section 3. *Judgment on the pleadings and summary judgment at pre-trial* - If at the pre-trial, the court finds that facts exist upon which a judgment on the pleadings or a summary judgment may be made, it may render judgment on the pleadings or a summary judgment as justice may require.

The pre-trial result will necessarily shape the course of the trial. Consequently, the rules provide that there shall be a *record* of pre-trial results, thus:

> "Section 4. *Record of pre-trial results.* - After the pre-trial, the court shall make an order which recites the action taken at the conference, the amendments allowed to the pleadings, and the agreements made by the parties as any of the matters considered. Such order shall limit the issues for trial to those not disposed of by admissions or agreements of counsel and when entered controls the subsequent course of the action, unless modified before trial to prevent *manifest injustice.*" [emphasis supplied].

Since pre-trial is mandatory, the Rules also require the clerk of court to prepare a pre-trial calendar, thus:

> "Section 5. *Pre-trial calendar* - The Court shall cause to be prepared a pre-trial calendar of cases for consideration as above provided. Upon the submission of the last pleading in a particular case, it shall be the duty of the clerk of court to place such case in the pre-trial calendar."

*Pre-trial Rules in Criminal Cases*

The pre-trial rules in criminal cases are shorter, less comprehensive and less compelling. Indeed, the rules provide *for discretionary pre-trial in criminal cases,* unlike in civil cases where it is mandatory. The reason for these non too intrusive, discretionary pre-trial rules in criminal cases lies on an extreme concern for the many constitutionally protected rights of an accused, This discretionary nature is contained in Rule 118, section 1 which provides:

> "Section 1. Pre-trial; when proper - To expedite the trial, *where the accused and counsel agree,* the court shall conduct a pre-trial conference on the matters enumerated in Section 2 hereof, without impairing the rights of the accused."[emphasis supplied].

Section 2 enumerates the proper *subjects* of pre-trial, thus:

> "Section 2. *Pre-trial conference; subjects* - The pre-trial conference shall consider the following:
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> a. Plea bargaining;
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> b. Stipulation of facts

c. Marking for identification of evidence of the parties;

d. Waiver of objections to admissibility of evidence; and

e. Such other matters as will promote a fair and expeditious trial."

The rules similarly require the court to issue a pre-trial order after the conference, thus:

> "Section 3. *Pre-trial order* - After the pre-trial conference, the court shall issue an order reciting the actions taken, the facts stipulated, and evidence marked. Such order shall bind the parties, limit the trial to the matters not disposed of and control the course of the action during the trial, unless modified by the court to prevent manifest injustice."

Again, the due regard to the rights of the accused serves as the rationale for the rule that pre-trial agreements must be signed; thus,

> "Section 4. *Pre-trial agreements must be signed* - No agreement or admission made or entered during the pre-trial conference shall be used in evidence against the accused unless reduced to writing and signed by him *and* his counsel."[emphasis supplied].

### *Case Law*

At this juncture, it behooves to look into, albeit cursorily, the controversies that developed among litigants while pre-trying cases and how the High Court resolved them. These decisions demonstrate the Supreme Court's unyielding commitment to the use and values of pre-trial. Also, they show a commitment that yielded good dividends. Statistics from the Office of the Court Administrator demonstrate that in the year 1994, Regional trial courts in Metro Manila alone disposed of about 11,000 civil and criminal cases after pre-trial. This figure is still climbing up as our trial judges continue to hone their judicial and extra-judicial skills in the more effective conduct of pre-trial proceedings.

***Pre-trial in Civil Cases***

*On the Mandatory Character of Pre-trial*

As aforediscussed, we used to operate under a regime of discretionary pre-trial in civil cases. The experience shows that given discretion, the trial judges, the parties, and their counsel, chose, more often than not, to waive pre-trial proceedings. A lot of judges then did not look with favor in exerting exta efforts at pre-trial. The path of least resistance was too alluring to them. Parties and their counsel, on the other hand, consider litigations as combats where the only way not to lose face was to win and win at any cost. Settlements were treated with a ten foot pole, as indeed, litigants would not even lock eyes inside the court room, lest the smile in their eyes be interpreted as a sign of submission. When all evidence showed that this discretion constituted the deadly weight that prevented pre-trial from flying high, the High Court revised the rules and made pre-trial mandatory.

Consequently, the first hard stance taken by the Court in its decisions is that pre-trial in civil cases is mandatory, no if's and but's about it. The case of *Home Insurance Co. vs. US Lines Co., et al.*[11] demonstrates the Court's unbending stance. The facts show that the plaintiff insured the shipment of 200 cartons of carbonized adding machine rolls. When the cartons arrived in Manila, several were damaged. Plaintiff sued the carrier, the United Lines Company and the Bureau of Customs. On the date of pre-trial, only the counsel for plaintiff appeared. Asked whether he has authority to compromise the case, counsel for the plaintiff answered that he had verbal authority. The trial court dismissed the complaint for failure of the plaintiff to appear. Plaintiff appealed to the Supreme Court. Its appeal was dismissed and the Court underscored the mandatory nature of pre-trial where attendance of parties is compelled. It held:

> 'Section 1, Rule 20 of the Revised Rules of Court, making pre-trial *mandatory* partly provides: 'xxx in any action, after the last pleading has been filed, the court shall direct *the parties and*

[11] G.R. No. 25593, November 15, 1967, 21 S.C.R.A. 863 (1967).

> *their attorneys* to appear before it for a conference' (italics supplied). This is different from Section 1 of Rule 25 of the old Rules of Court which provided that 'the court may in its discretion direct *the attorneys for the parties* to appear before it for conference xxx' (italics supplied). Section 2, Rule 20 of the new Rules of Court says that 'a party who fails to appear at a pre-trial conference may be non-suited or considered as in default.' This shows the purpose of the Rules to compel the parties to appear personally before the court to reach, if possible, a compromise. Accordingly, the court is given the discretion to dismiss the case should plaintiff not appear at the pre-trial.
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> Taking into consideration said purpose and spirit of the new Rules as well as the facts in the present case, We find no reversible error committed by the court a quo in dismissing the action for the reason that only plaintiff's counsel appeared at the pre-trial (and not plaintiffs official representative also).

The *Home Insurance* case was vintage 1967. In due time, the hard line stance of the High Court sank into the consciousness of litigants and their counsel. Pre-trial became to them an indispensable phase of litigation whose rules should be stringently followed and whose violations are visited with severe penalties. After delivering this message, The High Court, relaxed its rigid stance in exceptional cases, where no prejudice can be claimed by any of the litigants. A good illustrative case is *Martinez, et al. vs. Honorable Judge Eufrocinio de la Merced, et al.*,[12] decided in 1989. In this case, petitioners filed an unlawful detainer complaint against the private respondents. They sought to recover a piece of land leased to private respondents on the ground that their contract of lease had expired and its terms had been violated. Answer was seasonably filed. The judge did not set the case for pre-trial conference but instead required the parties to submit the affidavits of their witnesses with supporting documents and position papers in accordance with the Rules on Summary Procedure. The records show that the parties submitted their position papers and thereafter, the trial court ruled in favor of petitioners as it ordered the ejectment of private respondents. The decision was appealed to the Regional Trial Court. The Regional Trial Court voided the decision on the ground "that a preliminary

[12] G.R. No. 82039, June 20, 1989, 174 S.C.R.A. 182 (1989).

conference under the Rules on Summary Procedure is a jurisdictional requirement, the non-observance of which constitutes reversible error." This decision was in turn challenged in the Court of Appeals. The Court of Appeals affirmed the decision as it likewise held that the preliminary conference is mandatory and jurisdictional. Petitioners persevered and elevated the case to the Supreme Court. Calling the issue novel, the High Court reversed the Court of Appeals essentially for the reason that the omission to hold a preliminary conference did not cause substantial prejudice. The High Court ruled:

> While the Court of Appeals is correct in its view that Section 6 of the Rules on Summary Procedure is made mandatory by the use of the auxiliary verbs 'shall' and 'must' instead of the permissive 'may,' it does not, however, logically follow that the absence of a preliminary conference would necessarily render nugatory the proceedings had in the court below.
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> While termed a 'preliminary conference,' a closer look thereat would reveal that the provision is akin and similar to the provision on 'pre-trial' under Rule 20 of the Revised Rules of Court. Both provisions are essentially designed to promote amicable statement or to avoid or simplify the trial.
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> An analysis of existing jurisprudence on the matter reveals that proceedings undertaken without first conducting a pre-trial or with legally defective pre-trials is voided because either of the parties thereto suffered substantial prejudice thereby or they were denied their right to due process. Be that as it may, petitioners cite as exceptions to the foregoing rule *Santamaria vs. Court of Appeals; Insurance Company of North America vs. Republic*; and *Trocio vs. Labayo*. Notable in these cases is the fact that the issue of pre-trial did not affect the trial court's jurisdiction because no injury was caused to any party therein. Additionally, facts and circumstances dictate that to conduct another pre-trial would only be superfluity, its purpose of expediting the proceedings having been attained otherwise.
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> Thus, unless there is a showing of substantial prejudice caused to a party, the trial court's inadvertent failure to calendar the case for a pre-trial or a preliminary conference cannot render the proceedings illegal or void *ab initio*. A party's failure to object to the absence of a pre-trial is deemed a waiver of his right thereto. This observation holds with more reason in the case at

> hand where private respondents have already submitted to the jurisdiction of the trial court.
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> As pointed out by petitioners, private respondents had at least three opportunities to raise the question of lack of preliminary conference. xxx And yet, in none of these instances was the issue of lack of preliminary conference raised or even hinted at by private respondents. In fine, these are acts amounting to a waiver of the irregularity of the proceedings. For it has been consistently held by this Court that while lack of jurisdiction may be assailed at any stage, a party's active participation in the proceedings before a court without jurisdiction will estop such party from assailing such lack of jurisdiction.
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> x x x
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> Nevertheless, while we hold in this case that the right to a preliminary conference under the Rules on Summary Procedure is deemed waived by a party's failure to invoke the same before the trial court, this is not in the least to suggest that the trial courts may dispense with such preliminary conference. Courts should make full use of the pre-trial proceedings primarily so that all issues necessary to the proper disposition of a case are properly determined and to explore all avenues towards a compromise or settlement of the case.

*Sanctions*

Corollary with its hard line stance that pre-trial is mandatory in character, the High Court has been unflinching in imposing appropriate sanctions in instances where pre-trial rules are violated without any justification. But again, the Supreme Court has taken care that sanctions are imposed only in accordance with the postulate that technical rules of procedure should be used to promote and not to defeat the primary objectives of justice.

Section 2 of Rule 20 specifies the sanctions against a party who fails to appear at a pre-trial conference. In the case of the plaintiff, he can be non-suited; in the case of the defendant, he can be

considered as in default.[13] Under our rules on civil procedure, such dismissals have the effect of an adjudication on the merits unless otherwise decreed by the courts.[14] Whether or not a sanction should be imposed rests on the wise exercise of discretion of the trial court.[15] The rule clearly states that a party who fails to appear at a pre-trial conference may be non-suited or considered as in default. The use of the word "may" shows that the rule does not necessarily compel a trial judge to penalize a party who does not appear at a pre-trial conference. As the High Tribunal explained in *Tejero vs. Rosete*,[16] the rule on pre-trial was not meant to be an implacable bludgeon to smite every party guilty of an infraction of the rules but as a tool to assist the trial courts in the orderly and expeditious conduct of trials. In Development bank of the *Philippines vs. Court of Appeals, et al.*,[17] it also reminded lower courts that pre-trial rules "should hence be liberally construed to the end that there may be not merely a speedy, but more importantly, a just determination of the merits of every action."[emphasis supplied].

This liberal orientation has dictated the direction of the many decisions of the High Court. The first is that of *Continental Leaf Tobacco (Phil.) Inc. vs Intermediate Appellate Court.*[18] The facts show that petitioner was sued for a sum of money by private respondent. On the pre-trial date, neither petitioner nor its counsel appeared. Petitioner was declared as in default and private respondent was allowed to present its evidence *ex parte*. The next day, the trial court handed down a decision in favor of the private respondent. Counsel for petitioner moved to lift the order of default and to set aside the decision. He justified his failure to appear during the pre-trial as having been caused by flu and a respiratory tract infection. He submitted a medical certificate showing that a doctor advised him to

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[13] Province of Pangasinan v. Palisoc, G.R. No. 16519, October 30, 1962, 6 S.C.R.A. 299 (1962); International Harvester vs. Co. Banling and Sons, G.R. No. 26863, October 26, 1968, 25 S.C.R.A. 612 (1968).

[14] RULES OF COURT, Rule 17, sec. 3; Geralde, et al. vs. Sabido, et al., G.R. No. 35440, August 19, 1982, 115 S.C.R.A. 839 (1982).

[15] Fountainhead International Philippines, Inc., et al. vs. Court of Appeals, et al., G.R. No. 86505, February 11, 1991, 194 S.C.R.A. 12 (1991).

[16] G.R. No. 55102, June 19, 1985, 137 S.C.R.A. 69,74 (1985).

[17] G.R. No. 49410, January 26, 1989, 169 S.C.R.A. 417 (1989).

[18] G.R. No. 69243, November 22, 1985, 140 S.C.R.A. 274 (1985).

take a three (3) to five (5) days rest. His motion was denied by the trial court. The Court of Appeals affirmed the denial. The High Court, however reversed these rulings. It held that the lower courts should not have declared in default the petitioner for the non-appearance of its counsel during the pre-trial. The Court ruled:

> Since a judgment of default presupposes proceedings where the defendant is absent and cannot possibly present any evidence in his behalf, a court should use it with thoughtful hesitation only as a last expedient to induce the defendant to join issue upon the allegation tendered by the plaintiff. As early as 1913, the Supreme Court made this clear in *Coombs vs. Santos* (24 Phil. 466) because such a judgment cannot pretend to be based on the merits of the case.
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> The records must be free from even the slightest suspicion that the trial court seized upon an opportunity either to free itself from the usual burdens of presiding over full-blown court battle, or worse, to give undue advantage or favor to one of the litigants. As pointed out in *Heirs of Fuentes v. Macandog* (83 SCRA 648) default is not a mechanical gadget for the acceleration of judicial litigation. An intent to terminate a case promptly is no excuse to cut corners and avoid the rules established to safeguard due process rights of litigants.
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> In this case, the petitioner was declared in default on June 4, 1984 even as, it was later proved, its counsel was suffering from an illness which kept him from appearing in court.'

In another case, *Sarmiento vs. Juan*,[19] the High Court excused the non-appearance of counsel at pre-trial even when his alleged sickness was not supported by medical certificate, thus:

> 'The petitioner also has valid reason to complain about the apparent over anxiousness of the trial court to finish the case in summary fashion. The petitioner had manifested to the Court that his inability to appear before the pre-trial was due to a sudden ailment that befell him while he was preparing to go to Court. While it is true that the motion for postponement was not accompanied by a medical certificate, it must be considered that not every ailment is attended to by a physician, or if so, a medical

[19] G.R. No. 56605, January 28, 1983, 120 S.C.R.A. 409 (1983).

> certificate under oath as required by the Rules could be secured within the limited time available. There has been no refutation of the cause of the non-appearance of the petitioner as claimed by the latter. Said cause had been reiterated under oath in the petitioner's motion for reconsideration to which the trial court turned a deaf ear. Any suspicion that the petitioner was merely suing for delay is readily dispelled by the fact that the pre-trial was being set for the first time, and that the petitioner took immediate steps against the refusal of the trial court to set aside the default declaration and to pursue remedies steadfastly against the same in the higher tribunals.

*Stipulations on facts/issues; remedy*

Taking a glance at the High Court's decisions on the parties duty to stipulate on facts and issues during pre-trial, it can be said at the outset that, for a long time, the unspoken predicate in our system of revolving conflicts was the "sporting theory" of justice. The "sporting theory" of justice is one of the many "hand- me -down" legacies left by our American colonizer. The theory "stresses the lawsuit as a game with the judge as an umpire awarding the prize to the more skillful."[20] The theory has long lost its seductive appeal, both in the United States and in the Philippines. The reigning juridical view is that a lawsuit is a means to achieve justice and equity under law. The judge has metamorphosed from a mere "referee" to "governor" of the trial. The judge is now a key player, active and in control of the proceedings, and not a mere spectator, or a passive umpire who allows events to be shaped by the litigants themselves.[21]

We have joined the mainstream of thought adhering to the school that the function of litigation is to discover truth for truth is the only bedrock of justice. Our High Court has installed pre-trial in rules, because of its faith that pre-trial procedure will "take the trial of cases out of the realm of surprise and maneuvering" for a lawsuit should not be considered as a game of technicalities to be decided by

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[20] Yankwich, *Crystallization of Issues by Pre-trial: A Judge View*, 58 COL. L. REV. No. 4, p. 470, April 1958, citing *In re Barnett*, 124 F. 2d 1005, 1010 (2d Cir. 1942), Simon v. United States 123 F2d 80, 83 (4th Cir. 1941).

[21] *Id.*, citing Quercia v. United States, 289 U.S. 466, 469 (1933); Herron v. Southern Pac. Co., 283 US 91, 95 (1931).

wit and wile regardless of the consequence to truth.[22] Thus, in *Permanent Concrete Products Inc. vs. Teodoro, et al.*,[23] our High Court explicitly laid down the doctrine that pre-trial is primarily intended to make certain that all issues necessary to the disposition of a cause are properly raised. To obviate the element of surprise, parties are expected to disclose at a pre-trial conference all issues of law and fact which they tend to raise at trial, except such as may involve privilege or impeaching matter."

But again, this judicial philosophy has not prevented our High Court from bending back in exceptional cases to give justice to deserving litigants. This is illustrated in the case of *Filoil Marketing Corporation vs. Dy Pac and Co., Inc.*[24] In his Answer, Dy Pac alleged payment and prescription. Plaintiff won in the City Court and the defendant appealed to the Court of First Instance. The case was set for pre-trial and during the pre-trial, the parties marked their respective evidence. A pre-trial order was then issued, the relevant portion of which states:

> The Court finds that this is just a matter of adjustment of accounts by *the plaintiff and the defendant, who are hereby ordered to prepare a stipulation* of facts based on their exhibits already marked and submit the same to the Court within thirty (30) days from today. It is also ordered that in the stipulation of facts, the parties define the issues to be resolved by the Court and if they are submitting the case for decision on the basis of their exhibits. *The parties are warned that if they cannot submit the stipulation of facts, the Court will dismiss the appeal.*" (Emphasis supplied).

The parties failed to submit the required stipulation of facts and true to its warning, the court dismissed the appeal. Dy Pac contended in our High Court that he was denied due process when the lower court dismissed his appeal for failure of the parties to stipulate on the facts of the case. He was sustained. The High Court held:

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[22] Permanent Concrete Products, Inc. vs. Teodoro, et al., G.R. No. 29766, November 29, 1968, 26 S.C.R.A. 332.

[23] *Id.*

[24] G.R. No. 40307, April 15, 1988, 160 S.C.R.A. 133 (1988).

> "There is no law which compulsorily requires litigants to stipulate at pre-trial on the facts and issues that may possibly crop up in a particular case, upon pain of dismissal of such case. The process of securing admissions whether of facts or evidence is essentially voluntary, since stipulations of facts, like contracts, bind the parties thereto who are not allowed to controvert statements made therein. The trial court may, of course, advise and indeed urge the parties during the pre-trial conference to try to arrive at a stipulation of facts principally for their own convenience and to simplify subsequent proceedings by identifying those facts which are not really controverted and do not need to be proved. Courts, however, cannot compel the parties to enter into an agreement upon the facts. Where the parties are unable to arrive at a stipulation of agreed facts and do not reach an amicable settlement of their controversy, the court must close the pre-trial proceedings and go forward with the trial of the case.

The same attitude of relaxing technical procedural rules in order not to sacrifice substantive justice has been taken by the High Court in situations where the parties' stipulation of issues appears to be overly constricted. An illustrative case is *Philippine Commercial and Industrial Bank v. Court of Appeals*.[25] The facts show that the Bank sued, among others, the Alpha Insurance Co., for the sum of ₱150,000.00. The insurance company was included as defendant for issuing the surety bond of P50,000.00. Alpha alleged as defense that the ₱150,000.00 promissory note evidencing the loan of its other co-defendants had a date later than its surety bond and that its surety bond was less than the debt. Alpha also alleged that the obligation has already been paid because its co-defendants had already assigned some of their receivables in favor of the bank. Despite these different defenses, the pre-trial order written by the judge defined only one issue -- whether the defendants have already paid their obligation by virtue of their assignment of receivables. The Bank won in the trial court. On appeal by Alpha Insurance, the Court of Appeals reversed on the ground that "it was not shown that the surety bond bears any

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[25] G.R. No. 34959, March 18, 1988, 159 S.C.R.A. 24 (1988). But see Caltex (Phil.) Inc. vs. Court of Appeals, G.R. No. 97753, August 10, 1992, 212 S.C.R.A. 448 (1992), holding that the determination of issues at a pre-trial conference bars the consideration of other question on appeal.

relation to the promissory note." The case reached the High Court. The Bank contended that the Court of Appeals decided the case on the basis of an issue not spelled out in the pre-trial order. It argued that it was too late for Alpha Insurance to raise the defense that the bond had no relation to the promissory note. The High Court sustained the Court of Appeals, ruling:

> "The pertinent provision of the Rules of Court provides:
>
> > Section 4. *Record of pre-trial results.* - After the pre-trial the court shall make an order which recites the action taken at the conference, the amendments allowed to the pleadings, and the agreements made by the parties as to any of the matters considered. *Such order shall limit the issues for trial to those not disposed of by admissions or agreements of counsel* and when entered controls the subsequent course of action, unless modified before trial to prevent manifest injustice. (Emphasis supplied).
>
> While the rule provides that the pre-trial order of the court 'controls the subsequent course of action,' it is categorical that the issues for trial must be limited to 'those not disposed of by admissions or agreements of counsel.' In other words, the court has no discretion to exclude from trial issues not resolved by voluntary agreement between the parties.
>
> The pre-trial order clearly states that ALPHA claimed that 'it is not bound by the surety bond for the reason that it was issued for less than the amount of the plaintiff's claim and that the same was issued prior to the execution of the promissory note.' This particular issue not having been disposed of by admissions or agreements during the pre-trial, it remained a proper subject of litigation."

The last two decisions, having veered away from settled doctrine, can be subject of a healthy debate. These decisions do not subscribe to the school of thought that in pre-trial, the judge has the power to define unilaterally the issues for trial even without

agreement of counsel. This extreme school thought has justified the unilateral power of the judge as follows:[26]

> "The power of the pre-trial judge to define the triable issues may be found in the court's broad, inherent power over its own process, which can be invoked at any time on the court's own motion. This inherent judicial power 'to prevent abuses, oppression and injustice' has been exercised in various ways, including the dismissal of frivolous, sham claims, and the pre-trial consolidation of actions and appointment of general counsel to manage the consolidated actions. In view of the expense and delay to a party forced to litigate false, uncontroverted issues, this inherent power may support a court's unilateral particularization of issues at the pre-trial conference. However, resort to inherent judicial power seems unnecessary, since specific support for Judge Edelstein's position, although not in Rule 16, may be found elsewhere in the Federal Rules. The conclusion that the judge may simplify issues for trial, absent agreement of counsel, is strengthened under certain circumstances, by Rule 12(f), which allows the court, upon its own initiative at any time, to 'order striking from any pleading any insufficient defense or any redundant, immaterial, impertinent or scandalous matter.' There is little reason why the freedom given the judge under Rule 12(f) to pare such matter from the pleadings should not be available to define the triable issues at the pre-trial conference. For the resultant pre-trial order is essentially an elaboration on the pleadings. The pleadings pass out of the picture, and the pre-trial order assumes the role otherwise played by the pleadings. Of course, if the pre-trial order is brief, it may not fully supersede the pleadings, making resort to them still necessary. But even in that situation, the pleadings and pre-trial order still can be viewed as an extension of the pleadings. Thus, Rule 12(f) should be authority for unilateral action by the judge where the matter involved would have been amenable to a motion to strike under Rule 12(f)."

As earlier stated, these decisions of the High Court can provoke dissenting thoughts. Be that as it may, it must be emphasized that pre-trial rules are not cast in concrete for their language is elastic precisely to take care of extreme cases which cannot be resolved with

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[26] *See, The Role of the Court in Simplifying the Triable Issues at Pre-Trial Conference,* 72 YALE L.J. 383 (1962 - 1963).

justice and equity unless the rules are bent without breaking them. Flexibility has been the signature mark of the High Court for it pays full fealty to the demands of due process. This is exemplified in the case of *Sese v. Intermediate Appellate Court, et al.*[27] The litigation between plaintiff and defendant involved ownership of a piece of land. Defendant was declared owner by the trial court. On appeal to the appellate court, the decision was reversed. The appellate court held that the land belonged to the plaintiff. In ruling for the plaintiff, the appellate court pointed to the admission of defendant with respect to the identity of the land. The High Court set aside the decision of the appellate court holding that the admission of the defendant on the issue of identity of the land was erroneous and non-binding. The Court held:

> "The rule may be that admissions made by the parties during a pre-trial conference and incorporated in pre-trial order are binding but this rule is not without exceptions. If, in order to prevent manifest injustice, the admissions made by the parties during the pre-trial were disregarded by the lower court, as in this case, we will not hold otherwise. For indeed, it would be contrary to the objective of the law if we were constrained to rule that the land subject of this controversy were the same land being occupied by the petitioner if the evidence negates such claim. To so hold would unduly prejudice the substantial rights of the petitioner who stands to lose his property if only because of mere technicality, inaccuracy of language, or plain carelessness."

The operative words are "manifest injustice." The phrase is used in our pre-trial rules and justifies the courts in setting aside stipulations even when already reduced in a pre-trial order if they would bring about "manifest injustice."

### *Pre-Trial in Criminal Cases*

The High Court has yet to decide a good number of cases interpreting our pre-trial rules in criminal cases. Two reasons account for this dearth of cases: first, the rules are of recent vintage; and second, they are discretionary and not compulsory in character. To

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[27] G.R. No. 66186, July 31, 1987, 152 S.C.R.A. 585 (1987).

date, a lot of persons accused of crimes in our jurisdiction still look at pre-trial with disfavor. Our Constitution, as well as our laws, are heavily tilted in favor of the accused. They are presumed innocent. The evidence of the prosecution must prove their guilt beyond reasonable doubt. When the evidence of the prosecution fails this standard, the accused gets a mandatory acquittal. He does not have to go through the rigors of proving his innocence. In light of these built-in advantages, an accused in our jurisdiction would prefer to play his cards close to his chest rather than participate in a pre-trial where he has to show his cards, up front and face up.

In the few cases resolved by the High Court regarding pre-trial in criminal cases, one can immediately perceive its tip toe approach on problem areas. Bound by tradition, the High Court is extra solicitous of the constitutionally protected rights of the accused. The case of *Fule v. Court of Appeals*,[28] is instructive. The records reveal that Fule was accused of issuing a bouncing check. The prosecution and the defense agreed to a pre-trial. They entered into a stipulation of facts. The stipulation of facts, however, was not signed by the accused and his counsel. During the hearing, the prosecution marked some evidence. The accused did not present additional evidence. Instead, his counsel submitted a Memorandum confirming the parties' stipulation of facts. The trial court convicted the accused. His conviction was affirmed by the Court of Appeals. He elevated his conviction to the High Court contending he could not be convicted on the basis of a stipulation of facts he did not sign. The High Court acquitted the accused. It ruled:

> "The 1985 Rules on Criminal Procedure, which became effective on January 1, 1985, applicable to this case since the pre-trial was held on August 8, 1985, provides:
>
> > "Section 4. *Pre-trial agreements must be signed. No agreement or admission made* or entered during the pre-trial conference shall be used in evidence *against the accused unless reduced to writing and signed by him and his counsel.*' (Rule 118) [Emphasis supplied]
>
> By its very language, the Rule is mandatory. Under the rule of statutory construction, negative words and phrases are to be

[28] G.R. No. 79094, June 22, 1988, 162 S.C.R.A. 446 (1988).

> regarded as mandatory while those in the affirmative are merely directory (*McGee vs. Republic*, 94 Phil. 820 [1954]). The use of the term 'shall' further emphasize its mandatory character and means that it is imperative, operating to impose a duty which may be enforced (*Bersabal vs. Salvador*, 84 SCRA 176 [1978]). And more importantly, penal statutes whether substantive and remedial or procedural are, by consecrated rule, to be strictly applied against the government and liberally in favor of the accused (*People vs. Terrado*, 125 SCRA 648 [1983]).
>
> The conclusion is inevitable, therefore, that the omission of the signature of the accused and his counsel, as mandatorily required by the Rules, renders the Stipulation of Facts inadmissible in evidence. The fact that the lawyer of the accused, in his memorandum, confirmed the Stipulation of Facts does not cure the defect because Rule 118 requires *both* the accused and his counsel to sign the Stipulation of Facts. What the prosecution should have done, upon discovering that the accused did not sign the Stipulation of Facts as required by Rule 118, was to submit evidence to establish the elements of the crime, instead of relying solely on the supposed admission of the accused in the Stipulation of Facts. Without said evidence independent of the admission, the guilt of the accused cannot be deemed established beyond reasonable doubt.
>
> Consequently, under the circumstances obtaining in this case, the ends of justice require that evidence be presented to determine the culpability of the accused. When a judgment has been entered by consent of an attorney without special authority, it will sometimes be set aside or reopened (*Natividad vs. Natividad*, 51 Phil. 613 [1928])."

The High Court had also an occasion to strike down a decision acquitting an accused on the basis of incomplete stipulation of facts and without giving the prosecution full opportunity to prove its case via a trial on the merits. The case is *People v. Santiago*,[29] a prosecution for illegal squatting and constructing a structure within the campus of the University of the Philippines, a state university. During the pre-trial conference, the accused informed the judge she has a title over the land, a building permit and survey plan covering the subject land. The judge then issued the following order--

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[29] G.R. No. 80778, June 20, 1989, 174 S.C.R.A. 143 (1989).

> "Considering that the accused has a title, building permit and a survey plan on the subject land, the Court instructs both parties to submit their respective proffer of documentary exhibits together with their positions as to whether this case will be heard or dismissed."

The prosecution presented its position paper including the title of the university over the lot and showing that the title of the accused covered a different land. The accused submitted a proffer of exhibits consisting of her land title, building permit, and relocation plan. Upon their basis, the trial court acquitted the accused. The prosecution went directly to the High Court to annul the acquittal of the accused. It claimed that State was denied due process for the accused was acquitted without trial on the merits. The High Court set aside the acquittal of the accused. It held:

> "(I)t is clear that in criminal cases a pre-trial may be held by the trial court only where the accused and his counsel agree. Such pre-trial shall cover plea bargaining, stipulation of facts, marking for identification of evidence of the parties, waiver of objections to admissibility of evidence and such other matters as may promote a fair and expeditious trial. After the pre-trial, the trial court shall issue an order reciting the actions taken, the facts stipulated, and evidence marked, and thereafter the trial on the merits shall proceed which shall be limited to matters not disposed of during the pre-trial.
>
> In this case, a pre-trial was held wherein the accused alleged that she has a title covering the property in question. the respondent judge thus required the parties to submit their proffer of documentary exhibits and their position paper as to whether or not the case would be heard or dismissed. Under the aforestated provisions of the Rules on Criminal Procedure, particularly Section 2 thereof, what is specified is the marking for identification of evidence for the parties and the waiver of objections to admissibility of evidence. A proffer of exhibits or evidence is not among those enumerated. Such proffer of evidence or more specifically an offer of evidence is generally made at the time a party closes the presentation of his evidence in which case the adverse party is given the opportunity to object thereto and the court rules on the same. When evidence proposed to be presented is rejected by the court a proffer of evidence is usually made stating its nature and purpose had it been admitted.

> Assuming that such proffer of evidence, as directed by the respondent judge, may be made at the pre-trial in a criminal case, the prosecution should be given the opportunity to object to the admissibility of the same and a ruling should be made by the court on its admissibility.
>
> xxx
>
> This Court finds that the respondent judge committed a grave abuse of discretion in rendering the aforestated decision without affording the prosecution the opportunity to have its day in court. The issue before the Court is whether or not the accused built the structure on the land belonging to U.P. . .This issue cannot be determined by a mere examination of the titles and documents submitted by the parties. A trial on the merits should be undertaken to determine once and for all whether the place where the structure was built by the accused belongs to U.P. or to the accused. The conclusion of the trial court that the accused did not build her structure illegally as she has a title to the property in question is without any factual or legal basis x x x No doubt the acquittal of the accused is a nullity for want of due process. The prosecution was not given the opportunity to present its evidence or even to rebut the representations of the accused. The prosecution is as much entitled to due process as the accused in a criminal case."

In instances, however, where an accused makes a valid admission of fact during the pre-trial and gets convicted on the strength of such admission, the High Court does not hesitate affirming the conviction. Such was the 1992 case of *People vs. Abelita*,[30] a prosecution for selling marijuana, an illegal drug. During the pre-trial, the accused admitted the due execution and genuineness of the forensic report of the Forensic chemist confirming that the three sticks confiscated from him were marijuana. After trial, accused was given a life sentence. He appealed to the High Court that the prosecution did not present the Forensic Chemist as witness, hence, it failed to prove that what was confiscated from him was marijuana. The High Court rejected him argument, thus:

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[30] G.R. No. 96318, June 26, 1992, 210 S.C.R.A. 497 (1992).

"The failure of prosecution to present the forensic expert who prepared the NBI report to establish the *corpus delicti* of the crime is not fatal. The records show that the accused and his counsel admitted the due execution and genuineness of the evidence submitted by the prosecution witness Forensic Chemist Felicisima M. Francisco during the pre-trial conference. Thereafter, the trial court issued an Order dated April 11, 1990 which embodied the manifestation of the prosecution that since the accused and his counsel admitted the genuineness and due execution of the forensic chemist report, it is dispensing with the testimony of the forensic expert. The trial court's Order dated April 11, 1990 is hereunder quoted as follows, to wit:

'Order

xxx

At the pre-trial today, the accused and his counsel admitted the due execution and genuineness of the evidence submitted by the prosecution witness Forensic Chemist Felicisima M. Francisco, to wit:

Exh. :A: - Letter request dated February 16, 1990
Exh "B" - Report No. DDM90-265
Exh. "C" - Three sticks of marijuana wrapped on a white paper
Exh. "D" - Empty Bona Milk can
Exh. "D-1" - Thirty seven (37) sticks of marijuana cigarettes

In view thereof, the prosecution manifested that it is dispensing with the testimony of F.M. Francisco and it is presenting two (2) witnesses. The defense counsel manifested, he will present two (2) witnesses. (p. 26, Record) (Brief for the Plaintiff-Appellee, p. 6)'

We agree with the position of the Solicitor General that if the matters taken up and embodied in the pre-trial order were not in accordance with what was really stipulated upon, then accused-appellant should have interposed his objections earlier or as soon as the pre-trial order was issued. Hence, it is clear that upon the accused-appellant's failure to interpose objections, the facts stipulated during a pre-trial conference and embodied in a pre-trial order bind the parties."

## WHAT LIES AHEAD?

Still and all, the biggest problem of the Philippine judiciary is its heavy backlog of cases. The causes of this stubborn backlog are well dissected and we will not tarry with their reiteration. Suffice to state that the High Court continues to engage this problem with all its might and one of the most effective weapons it has unsheathed to diminish its impact is the sword of pre-trial both in civil and criminal cases. Statistics show that with the held of judges who have artfully and skillfully used pre-trial rules, we have eliminated cases that unnecessarily clogged the arteries of our judicial system.

In light of the modest success of the pre-trial rules, it is not a prophesy to state that the high Court, if not the legislature, will continue fine tuning these rules to meet the changing contours of dispute resolutions. The lead legal engineering work is being undertaken by the High Court in the exercise of its power to promulgate rules of pleading, and more importantly, in the exercise of its judicial power explicitly granted and guaranteed by the Constitution.

In the ongoing revision of the rules on civil procedure, the Court is guided by the philosophy that litigation is a quest for truth. In its quest for the elusive truth, one prong of its efforts is to eliminate technical rules that clever litigants manipulate to derail the wheels of justice. A second prong is to induce parties to reveal relevant and material evidence in their hands in order to prevent surprises and ambushes. Towards this end, the Court is now giving pre-trial rules another hard look to improve their effectiveness as truth seeking instruments. Thus, one innovation suggested is to compel litigants to submit a no non-sense pre-trial brief before the pre-trial conference. As conceived, the pre-trial brief shall contain:

> "(a) A STATEMENT OF THEIR WILLINGNESS TO ENTER INTO AMICABLE SETTLEMENT OR ALTERNATIVE MODES OF DISPUTE RESOLUTION, INDICATING THE DESIRED TERMS THEREOF;
>
> (b) A SUMMARY OF ADMITTED FACTS AND PROPOSED STIPULATION OF FACTS;
>
> (c) THE ISSUES TO BE TRIED OR RESOLVED;

(d) THE DOCUMENTS OR EXHIBITS TO BE PRESENTED, STATING THE PURPOSE THEREOF;

(e) A MANIFESTATION OF THEIR HAVING AVAILED OR THEIR INTENTION TO AVAIL THEMSELVES OF DISCOVERY PROCEDURES OR REFERRED TO COMMISSIONERS; AND

(f) THE NUMBER AND NAMES OF THEIR WITNESSES, AND THE SUBSTANCE OF THEIR RESPECTIVE TESTIMONIES."

The proposed rule carries a stiff sanction--failure to file the pre-trial brief shall have the same effect as failure to appear at the trial. The rule is designed to overturn a 1979 court decision that a party cannot be declared as in default for failure to file a pre-trial brief.[31] In a parallel move, the High Court is also re-examine the rules on discovery proceedings in civil cases. These existing rules were crafted in the decade of the sixties and have not kept pace with the progress of the time. It is axiomatic that discovery rules must complement pre-trial rules to facilitate the emergence of truth in litigations. It is expected that next year, the High Court will come up with broader and more liberal rules on discovery in civil cases and with sanctions to penalize their violations.

At this point, it will not be amiss to discuss a new wrinkle in our pre-trial rules in criminal cases. The wrinkle was not wrought by an amendment of the pre-trial rules but by a ruling of the High Court, in the celebrated case of *Hubert Webb vs. Honorable Raul de Leon, et al.*[32] decided last August 23, 1995. The media consider this case as our *O.J. Simpson* case. *Webb* involves the rape and killing of the Vizconde family, the mother Estrellita, and her two daughters, Carmela aged nineteen (19) and Anne Marie aged seven (7). It shocked a nation already numbed by the continuing recurrence of heinous crimes. The police arrested and charged a first set of suspects who after trial were

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[31] Dimayacyac, et al. vs. Court of Appeals, G.R. No. 50907, September 27, 1979, 93 S.C.R.A. 265 (1979).

[32] G.R. No. 121234, August 23, 1995, 247 S.C.R.A. 652 (1995).

all acquitted. After several years, the National Bureau of Investigation announced in a press conference that the gruesome crime has been finally solved. It identified the perpetrators of the crime as scions of highly respected and wealthy families. The suspects were led by Hubert Webb, son of Senator Freddie Webb. As expected, the case became a battle royale. The suspects gathered a battery of high caliber lawyers, described by the press as a dream defense team. The preliminary investigation was handled by a special panel of prosecutors led by no less than an Assistant Chief State Prosecutor. After a tumultuous preliminary investigation, the Panel filed with the Regional Trial Court an Information charging all the accused with the crime of rape with homicide which carries the penalty of life imprisonment. The judge of the trial court also found probable cause and issued warrants of arrest against the accused. Forthwith, the accused repaired to the High Court to quash the warrants of arrest. The centerpiece of their contention is that the prosecutors and the judge gravely abused their discretion in finding a probable cause that they committed the crime of rape with homicide. They presented a lot of sophisticated arguments in favor of their stance and the High Court struck all of them down except one. Their sole argument sustained is their right to compel the NBI to reveal and furnish them the first affidavit of star witness Jessica Alfaro as early as the preliminary investigation stage of the criminal proceedings. Miss Alfaro is the only eyewitness to the crime and she has executed two affidavits which the accused claimed suffered from material contradictions. The NBI hemmed and hawed from producing Miss Alfaro's first affidavit. When it did, it gave the accused a mere xerox copy alleging the original has been lost. The right of an accused to resort to discovery proceedings before trial is a novel issue in our jurisdiction. Its resolution can alter the balance of advantage between the prosecution and the defense. It also carries significant implications on what facts and issues can be stipulated at the pre-trial stage of the case. The High Court resolved the issue in favor of the accused. It held that the prosecution cannot withhold the affidavit of Miss Alfaro as it has the duty to reveal exculpatory evidence to the accused. Quoting the Court in extenso, it ruled:

> "Further, petitioners charge the NBI with violating their right to discovery proceedings during their preliminary investigation by suppressing the April 28, 1995 original copy of the sworn statement of Alfaro and the FBI Report. The argument

is novel in this jurisdiction and as it urges an expansive reading of the rights of persons under preliminary investigation it deserves serious consideration. To start with, our Rules on Criminal Procedure do not expressly provide for discovery proceedings during the preliminary investigation stage of a criminal proceeding. Sections 10 and 11 of Rule 117 do provide an accused the right to move for a bill of particulars and for production or inspection of material evidence in possession of the prosecution. But these provisions apply *after* filing of the Complaint or Information in court and the rights are accorded to the accused to assist them to make an intelligent plea at arraignment and to prepare for trial.

This failure to provide discovery proceeding during preliminary investigation does not, however, negate its use by a person under investigation when indispensable to protect his constitutional right to life, liberty, and property. Preliminary investigation is not too early a stage to guard against any significant erosion of the constitutional right to due process of a potential accused. As aforediscussed, the object of a preliminary investigation is to determine the probability that the suspect committed a crime. We hold that the finding of a probable cause by itself subjects the suspect's life, liberty, and property to real risk of loss or diminution. In the case at bar, the risk to the liberty of petitioners cannot be understated for they are charged with the crime of rape with homicide, a non-bailable offense when the evidence of guilt is strong.

Attuned to the times, our Rules have discarded the pure inquisitorial system of preliminary investigation. Instead, Rule 112 installed a quasi-judicial type of preliminary investigation conducted by one whose high duty is to be fair and impartial. As this Court emphasized in *Rolito Go vs. Court of Appeals*, 'the right to have a preliminary investigation conducted before being bound over for trial for a criminal offense, and hence formally at risk of incarceration or some other penalty, is not a mere formal or technical right; it is a substantive right.' A preliminary investigation should therefore be scrupulously conducted so that the constitutional right to liberty of a potential accused can be protected from any material damage. We uphold the legal basis of the right of petitioners to demand from their prosecutor, the NBI, the original copy of the April 28, 1995 sworn statement of Alfaro and the FBI Report during their preliminary investigation considering their exculpatory character, and hence, unquestionable materiality of the issue of their probable guilt. The right is rooted on the constitutional protection of due process

> which we rule to be operational even during the preliminary investigation of a potential accused. It is also implicit in section (3) (a) of Rule 112 which requires during the preliminary investigation the filing of a sworn complaint which all 'x x x state the known address of the respondent and be accompanied by affidavits of the complainant and his witnesses as well as other supporting documents. . . .'
>
> The rationale is well put by Justice Brennan in *Brady* – 'society wins not only when the guilty are convicted but when criminal trials are fair.' Indeed, prosecutors should not treat litigation like a game of poker where surprises can be sprung and where gain by guile is not punished."

The High Court ruling in the Webb case will radically affect discovery procedure and will give greater momentum to the use of pre-trial in criminal cases.

The ruling is also expected to spark furious debate on how far we should liberalize our discovery procedure in criminal cases in favor of the defense. Those who champion the cause of liberal defense discovery rules in criminal cases contend that it will make the trial "less a game of blind man's bluff and more a fair contest with the basic issues and facts disclosed to the fullest practicable extent."[33] Those against liberalized rules iterate the line of argument that criminal discovery is different from civil discovery. They cite factors which make expansive criminal discovery far less desirable. These factors are: (1) the defendant's privilege against self-incrimination, which would not permit the fully reciprocal discovery found in civil practice; (2) the greater likelihood that defense discovery in criminal cases would be used to facilitate successful perjury; and (3) the greater likelihood that criminal defense discovery would lead to the intimidation of witnesses.[34] They stress that to grant the defense another advantage would make the task of prosecuting crimes almost insurmountable. Both contending schools of thought parley unending arguments and counter-arguments which lock them in a Mexican stand-off.

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[33] LA FAVE & ISRAEL, CRMINAL PROCEDURE 837 (1992 ed.).

[34] *Id.* at 838.

When the dust of debate settles down, either the Congress or the High Court has to make the hard decision whether to lay down broader and more liberal rules governing our discovery proceedings which will have far reaching effects on pre-trial rules in criminal cases. In deciding whether to allow the defense greater access to prosecution evidence, either of two approaches can be adopted as has been done in other jurisdictions with similar systems of law: (1) require the prosecution to disclose evidence it intends to introduce at trial; or (2) require the prosecution to reveal evidence that the defense might find helpful in the preparation of its case.[35] Needless to stress, the reach of the first approach is broader than the reach of the second approach. It is difficult to predict which approach will be adopted by our policy makers. One influence that may be decisive is the Constitution which is tilted in favor of the defense, drawn as it was under the influence of human rights leaders who played a major role in toppling down the authoritarian rule of the Marcos government. But there is a countervailing influence that may not look with favor if the laws and rules further tilt the balance of advantage to the defense. This is the growing feeling among our people that the law enforcers should be equipped with more effective legal weapons to check criminality in our society. Not unreasonably, some observers of our criminal justice system claim that we give too much due process to accused to the detriment of peace and order. The result of the interaction of these influences is difficult to predict.

This problem is only one side of the coin. The other side is more tricky and refers to the corollary right of the prosecution to compel discovery of defense evidence. The problem is well focused by Professors LaFave and Israel, viz:[36]

> "Few courts or legislatures would disagree with the general policy that, consistent with restraints imposed by constitutional limitations, discovery should be a 'two way street' that accords neither party and 'unfair advantage' and seeks to promote the determination of the truth. The difficulty arises in determining precisely what this policy should produce in the way of prosecution discovery from the defense. As suggested in the

[35] *Id.* at 841.
[36] *Id.* at 871-872.

preceding section, there may readily be disagreement over the extent to which the defendant's constitutional rights preclude granting the prosecution full reciprocity in discovery. Disagreements are even more likely to arise as to how much reciprocity is needed to provide an adversarial balance that does not given an unfair advantage to the prosecution. Some argue that, even where the defense receives exceptionally broad discovery, the prosecution need be given very little discovery since it already has an 'advantage over the accused through its use of the subpoena power, the grand jury, and the right to make reasonable searches and seizures for discovery purposes and through the use of the police as an investigative resource to obtain statements.' Others disagree both with this conclusion and with the suggestion that an unfair advantage exists unless each party can precisely match the other in its investigative authority. They note that the government, even with all of its investigative resources, cannot be expected to uncover everything relevant that that defendant might learn from his special resources, so the prosecution is placed at a disadvantage where the defense gains discovery of everything relevant learned by the prosecution. Moreover, they argue, even if the prosecution ordinarily can learn a great deal on its own, it does not thereby follow that there is no need for discovery as a safety net for those cases in which the prosecution has failed through its own resources to identify the evidence the defense is likely to use. The aim is to determine the truth--not to test the skills of the two sides in the use of their investigatory resources--and this can be achieved only by complete disclosure to both sides that will avoid a battle by surprise.

As might be expected, the divisions of these issues has led to considerable variation in the treatment of prosecution discovery, sparked initially by judicial decisions but also reflected in the court rules and statutes governing discovery. Perhaps the greatest diversity in the treatment of prosecution discovery is found among those jurisdictions that do not have discovery legislation, but rely solely on the common law authority of the courts to regulate discovery. In one such jurisdiction, California, the state Supreme Court has gone so far as to rule that, because of the complexity of the constitutional issues presented, trial courts may not order reciprocal defense disclosure to prosecutors in the absence of enabling legislation. Other common law jurisdictions, in contrast, hold that trial courts have discretionary authority to allow prosecution discovery roughly as broad as that granted to the defense."

Just as authorities in other jurisdictions have split opinions on the issue, we expect a diversity of views as to how our policy makers will shape the rules on the right of prosecution to discover defense evidence. The debate in the academic circle has just started and it will certainly be carried on in the chamber of the High Court and the halls of the legislature. To be sure, too, policy makers will cast a watchful eye not only on human rights arguments but also on the new socio-economic demands of the nation, a nation fast tracking its schedule to keep itself within a respectable distance of its more progressive neighboring countries. Only time will tell where the policy makers will strike the delicate balance.

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