

THE SILENT WITNESS AGAINST TORTURE: MAKING THE CASE FOR RECORDED INTERROGATIONS*

Joan De Venecia**
Najha Katrina Estrella***

"Confession. A voluntary statement made by a person charged with the commission of a crime or misdemeanor... Confessions are admissible in evidence if given voluntarily."

—Black's Law Dictionary, 6th Ed. (1991)

"Experience teaches us to be most on our guard to protect liberty when the government's purpose is beneficent. Men born to freedom are naturally alert to repel invasion of their liberty by evil-minded rulers. The greatest dangers to liberty lurk in insidious encroachment by men of zeal, well-meaning but without

understanding."

—Louis Dembitz Brandeis (1856-1941)

I. INTRODUCTION

The gap between first world and third world countries extends beyond the value of their currencies and their influence over the United Nations Security Council. In the United States, when courts, commentators, law enforcers and other agents of the criminal justice system speak of the questionable methods that police officers use today in extracting extrajudicial confessions from crime suspects during interrogation, they usually refer not to the use of brute force but merely to the psychological methods employed by the police, such as trickery and deception.¹ In fact,

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** LL. B, *cum laude*, University of the Philippines College of Law (2005), class valedictorian; Ranked no. 1 in the Bar Examinations administered by the Supreme Court that same year; *Junior Associate*, SyCip Salazar Hernandez & Gatmaitan Law Offices.

*** LL. B, University of the Philippines College of Law (2005); Passed the Bar Examinations that were administered by the Supreme Court that same year; *Junior Associate*, Puyat Jacinto & Santos (PJS) Law.

¹ Laura Hoffman Roppe, *True Blue? Whether Police Should Be Allowed to Use Trickery and Deception to Extract Confessions*, 31 SAN DIEGO L. REV. 729 (1994) at 731 [hereinafter Roppe]; For an example, See Gail Johnson, *False Confessions and Fundamental Fairness: The Need for Electronic Recording of Custodial Interrogations*, 6 B.U. PUB. INT. L.J. 719 (1997) at 719-20 [hereinafter Johnson] citing an excerpt from the four-hour, tape-recorded interrogation of one Johnny Lee Wilson, from a visual display used in a speech by Michael Atchinson, Wilson's attorney, in CONVICTING THE INNOCENT: THE STORY OF A MURDER, A FALSE CONFESSION, AND

several advocates in the United States have been urging State courts to dispense with the *corpus delicti* rule² in connection with extrajudicial confessions principally because it is of "declining utility". This is mainly because first, under modern police procedures, confessions are seldom obtained by torture or "third degree methods" of interrogation, and second, the law now requires that the police alert a suspect to his or her rights to silence and to counsel.³

In the Philippines, however, such sophistication can hardly be attributed to law enforcers. Questions as to the methods used in extracting extrajudicial confessions in the Philippines do not conjure images of psychological torture employed behind the closed doors of an interrogation room. The torture techniques to which criminal suspects in the Philippines are subjected to are physical -- electro-shocks, the use of plastic bags to asphyxiate, burning with the use of cigarettes.

Still, a confession is very persuasive as evidence in proving guilt in most any court,⁴ and the odds are stacked high against an accused person who cries that his confession was extracted by means of torture vis-à-vis the law enforcer who enjoys the presumption of regularity in the conduct of his duty. The solution is not in doing away with the admissibility of extrajudicial confessions (as some might suggest) but in finding a safeguard to ensure that these confessions are truly confessions, i.e., voluntary.

THE STRUGGLE TO FREE A "WRONG MAN," (Donald S. Connery ed., 1986) at 120-21[hereinafter CONVICTING THE INNOCENT]:

Officer: What besides a rope was around her ankles? Something else. This is another test. I know and you know. Just think. Come on, John.

Johnny Lee Wilson: I'm thinking.

Officer: What are some things that could be used?

Wilson: Handcuffs, I think.

Officer: No, no. Wrong guess. What are some things you could tie somebody up with? A rope is all that he had, but that tells me something, John. That tells me something. That tells me something. I told you it's important that you are straight with me. You took the tape up there.

Wilson: Huh?

Officer: You took the tape up there, didn't you?

Wilson: I didn't have anything with me. I didn't have tape or anything. I think Chris had the tape.

² The principle behind the *corpus delicti* rule can be stated thus: A prisoner might admit or confess, for reasons of mistake, delusion, or coercion, to a crime no one committed, and to guard against punishing the innocent, evidence beyond an inculpatory extrajudicial statement is needed to establish that someone did commit a crime *cited in* Note, *Proof of the Corpus Delicti Aliunde the Defendant's Confession*, 103 U.P.A. L.REV. 638, 643 (1955); *Cambron v. State* (1975), 262 Ind. 660, 665, 322 N.E.2d 712, 715.

³ *People v. Jones*, 17 Cal.4th 279, 70 Cal.Rptr.2d 793, Jan 29, 1998 at 323; *Willoughby v. State*, 552 N.E.2d 462, April 10, 1990 at 466; "That the rule has in fact any substantial necessity in justice, we are much inclined to doubt..."--Judge Learned Hand *cited in* MCCORMICK ON EVIDENCE, (E. Cleary 3d ed. 1984), § 145 at 370-71.

⁴ *People v. Espiritu*, G.R. No. 128287, February 2, 1999; *People v. Montiero*, 246 SCRA 786, 793, July 31, 1995; *People v. Remollo*, 227 SCRA 375, 386, October 22, 1993; *People v. Alvarez*, 201 SCRA 364, September 5, 1991; *People v. Pamon*, 217 SCRA 501, January 25, 1993; *People v. Gaddi*, 170 SCRA 649, 657-658, February 27, 1989.

This paper aims to illustrate the problem of torture in the Philippines specifically when used for the purpose of extracting extrajudicial confessions from crime suspects; the need to install a safeguard to ensure the voluntariness of such confessions specifically as a protection against the use of torture techniques; and the benefit that may accrue to both the accused and the State, and ultimately the public at large, were such a safeguard be put in place. Chapter One situates torture and extrajudicial confessions in the Philippine context, outlining the legal significance of torture in the Philippines and the existence of a void in the law, a void that may very well have contributed to the fact of continued use of torture as a method of extracting extrajudicial confessions. Chapter Two illustrates the test laid in Philippine jurisprudence for determining the credibility and value of allegations that torture was used in extracting an extrajudicial confession. Chapter Three demonstrates the need for a reliable means of proving the voluntariness of an extrajudicial confession and presents the argument that mandatory electronic recording of custodial interrogations should necessarily be a *sine qua non* for any such confession obtained thereby to be admissible in evidence.

II. TORTURE AND EXTRAJUDICIAL CONFESSIONS IN THE PHILIPPINE CONTEXT

A. THE PHILIPPINES: AN ADVOCATE AGAINST TORTURE

Not much more can be demanded of the Philippines in terms of how it has voiced advocacy against torture. On paper, many of the critical elements necessary for the prevention of torture and other grave human rights violations are already installed, and provision has likewise been made in order that incriminating evidence obtained using such prohibited acts be rendered worthless for any purpose.

B. THE EXCLUSIONARY RULE

The 1987 Constitution guarantees that no person shall be held to answer for a criminal offense without due process of law. Specifically, Article III Section 12(3) embodies the exclusionary rule which provides that any confession or admission made by a person is inadmissible in evidence against him if it was obtained in violation of the constitutional prohibition against the use of torture, force, violence, threat, intimidation, or any other

means which vitiate the free will,⁵ and such confession or admission is likewise excluded if obtained in violation of the prohibition against secret detention places, solitary, incommunicado, or other similar forms of detention.⁶ Tasked with protecting human rights and ensuring greater public accountability, the Philippine Commission on Human Rights,⁷ the Law Enforcement Board⁸ and the Office of the Ombudsman⁹ were established, able to receive and investigate complaints of human rights violations committed by public officers and recommend criminal prosecutions therefore.

C. INTERNATIONAL ADVOCACY

Party to many a convention, the Philippines proudly and loudly declares to the international community that it joins in outcry against torture and finds it repugnant to basic considerations of human rights. Through membership in these conventions, it agrees that positive steps should be taken towards the extinction of torture. The Philippines is a party to major international human rights treaties, including the Convention against Torture¹⁰(hereinafter CAT) and the International Covenant on Civil and Political Rights¹¹(hereinafter ICCPR). For purposes of the CAT, torture is defined as an “extreme form of cruel and unusual punishment committed under the color of law.”¹² By ratifying said Convention, the Philippines has agreed to be legally bound by its provisions and to take effective legislative, administrative, judicial and other measures to prevent torture in any territory under its jurisdiction.¹³ The CAT allows for no circumstances or

⁵ CONST. art. III, § 12(2)

⁶ § 12(2)

⁷ CONST. art. XIII, § 17

⁸ Philippine National Police Reform and Reorganization Act of 1998, REP. ACT NO. 8551, § 66 (1998).

⁹ CONST. art. XI, § 5

¹⁰ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. res. 39/46, [annex, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1984)], entered into force June 26, 1987 [hereinafter CAT].

¹¹ International Covenant on Civil and Political Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force Mar. 23, 1976 [hereinafter ICCPR].

¹² CAT, *supra* note 10, Art. 1(1): “the term “torture” means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions”; Michael John Garcia, *The U.N. Convention Against Torture: Overview of U.S. Implementation Policy Concerning the Removal of Aliens*, March 11, 2004, <http://www.au.af.mil/au/awc/awcgate/crs/r132276.pdf>, (last visited on 12 February 2005).

¹³ CAT, *supra* note 10, art. 2(1)

emergencies where torture could be permitted.¹⁴ The ICCPR likewise imposes an affirmative duty on State parties to undertake the necessary steps to adopt such legislative or other measures as may be necessary to give effect to the rights recognized therein,¹⁵ among which is the non-derogable right¹⁶ to be free from torture.¹⁷

On the level of implementation, a Memorandum of Understanding (hereinafter MOU) on the CAT was entered on 03 October 2002 by the Commission on Human Rights (hereinafter CHR), the Department of Justice (hereinafter DOJ), the Department of Health (hereinafter DOH), the Department of Interior and Local Government (hereinafter DILG), the Integrated Bar of the Philippines (hereinafter IBP), the Medical Action Group (hereinafter MAG) and the British Embassy Manila (BEM). Stress must be made, however, that said MOU hardly imposes any obligation on the aforesated bodies necessary for the proper observation of the obligations under the CAT. They are merely directed to encourage local government units to mandate medico-legal officers to be responsible in complete documentation and endorsement of medico-legal reports to the CHR.¹⁸ Indeed, the obligation expressed by the MOU on the bodies party to it is simply to render support and extend cooperation to each other in the implementation of the project, that is, in conducting workshops regarding torture (e.g. education sessions for inmates, training for documentation and reporting of cases of torture).¹⁹ At best, it is a handshake among the parties to observe the principles of the CAT and, on the whole, hardly makes an impression in favor of the campaign against torture.

¹⁴ CAT, *supra* note 10, art. 2(2)

¹⁵ ICCPR, *supra* note 11, art. 2(2)

¹⁶ ICCPR, *supra* note 11, art. 4

¹⁷ ICCPR, *supra* note 11, art. 7

¹⁸ Memorandum of Understanding on the Convention Against Torture dated 3 October 2002 [hereinafter MOU].

¹⁹ MOU *supra* note 18; See also the Commission on Human Rights of the Philippines Accomplishment Report 2003 at 5 [hereinafter Report] (The Commission on Human Rights in cooperation with the British Embassy and the Medical Action Group conducted a series of workshops to produce a manual on the Recognition, Documentation and Reporting of Torture. These workshops were held because of the continuing use of torture by agents of the state in their work against criminality and revolutionary forces battling the government. The workshops were attended by a total of 216 medical officers, jail officers and personnel, human rights investigators and workers. The participants come from government and non-government agencies.)

D. REMAINING IN THE DARK AGES

"Inhuman physical torture is the easiest means of obtaining "evidence" from helpless civilians when police investigators are neither sufficiently trained for detective work, nor adequately equipped, with the scientific tools of criminal investigation. An end should be put to such police brutality."

*—Justice Carolina Griño-Aquino, ponente,
People v. Manliguez, 206 SCRA 812 (1992)*

In spite of the prohibitions against torture and the rule of exclusion of confessions obtained thereby, the use of third degree methods by policemen during interrogations continues to be a technique commonly resorted to by law enforcers for extracting confessions. In the explanatory note of one anti-torture bill pending before the Thirteenth Congress (House Bill 3021²⁰ introduced by the Bayan Muna Party-List), recognized is the reality that in the Philippines today, persons arrested for or merely suspected of committing various offenses are routinely subjected to indignities, humiliation, degrading or inhuman treatment by agents of police, military and other law enforcement agencies. The use of torture in fact has become so customary as to raise questions if it is officially sanctioned policy.²¹

1. Committing a crime to catch a criminal: police overreaching and misconduct in extracting confession

The doctrine of voluntariness governs the admissibility of confessions;²² thus, as crystallized in the exclusionary rule, confessions that are extracted from a suspect involuntarily are not allowed use in court. Under the proper circumstances, confessions serve a useful social purpose. Because many criminal cases lack the facility of witnesses or physical evidence, law enforcers are often hard put in collecting enough evidence to punish the culprit. As such, the premium attached to the wrongdoer's confession lies not only in its persuasive character, but also because it may turn out to be the only significant evidence the police can produce for the offender's conviction.

²⁰ An Act Declaring Torture A Crime And Prescribing Penalties For Commission Of Acts Of Torture, or "Anti-Torture Act of 2004." [hereinafter H. No. 3021]

²¹ H. No. 3021, *supra* note 20, Explanatory Note.

²² *People v. Satorre*, G.R. No. 133858, August 12, 2003; *See also* OCGA § 24-3-50, GEORGIA CODE OF 1863, The "Hope Of Benefit, Fear Of Injury" Statute: "To make a confession admissible, it must have been made voluntarily, without being induced by another by the slightest hope of benefit or remotest fear of injury," http://www.law.uga.edu/academics/profiles/dwilkes_more/34admissibility.html, (last visited on 10 September 2008)

The potential for conflict arises because criminals, normally, do not readily declare unprompted, spontaneous confessions. The burden of the law enforcer in many cases, therefore, is to find a way to be able to elicit a confession from a less than willing suspect. In fact, the early confession cases in the United States such as *Brown v. Mississippi*,²³ *Chambers v. Florida*²⁴ and *Reck v. Pate*²⁵ established that police overreaching was the crucial element of involuntariness.²⁶

The main purpose of torture committed by the police forces, in the context of a crack down on crime policy, is the extraction of confessions and information.²⁷ Those most at risk of being tortured are alleged members of armed and unarmed political opposition groups, ordinary criminal suspects, and among them often persons with low social standing such as street children, drug users and members of poor or marginalized communities.²⁸ Those who are suspected of being terrorists have also become victims of torture.²⁹

Since 1995, in affidavits and in interviews with both ordinary criminal suspects and those arrested in the context of anti-insurgency operations, techniques of physical and mental torture recorded by Amnesty International and Philippine human rights groups (such as Task Force Detainees of the Philippines, Karapatan, doctors from the Medical Action Group, Free Legal Assistance Group and other non-governmental organizations and legal groups) reveal that third degree torture methods are predominantly used.³⁰ A common procedure of arrest described by

²³ 297 U.S. 278 (1936).

²⁴ 309 U.S. 227 (1940).

²⁵ 367 U.S. 433 (1961).

²⁶ See Roppe, *supra* note 1, at 740.

²⁷ *Reparation for Torture: The Philippines*, <http://www.Redress.Org/Studies/Philippines.Pdf> (last visited on 13 February 2005) [hereinafter Redress].

²⁸ See S. No. 350, 13th Congress, "Anti-Torture Act of 2004," introduced by Sen. Sergio R. Osmeña III.

²⁹ *Id.*

³⁰ AI Index: ASA 35/001/2003, 24 January 2003, <http://web.amnesty.org/library/Index/ENGASA350032003?open&of=ENG-PHL>, (last visited on 10 September 2008): "The methods of torture that have been recorded include: (1) Placing a plastic bag over the head of the detainee and holding it tightly at the back to induce suffocation (known as "dry submarine" or "sinupot"); (2) Electro-shocks either directly onto the skin, or with water poured over the body and bare electric wires touched against the genitals, lips, ears, arms or legs; (3) Suspects forced to put their feet in pails of water while an electric current is passed through the water; (4) Tying a cloth over the face of the detainee and pouring or dripping water over the cloth to create gradual suffocation (known as "water cure") while interrogators stood or placed weight on the stomach to intensify suffocation; (5) Water poured directly into the nostrils or mouth; (6) Being beaten with rifle-butts or batons, often concentrated on the stomach area because it tends not to leave as visible a bruising as elsewhere on the body; (7) Burning the skin (including the lips, nipples and ears) with cigarettes; (8) Repeatedly hitting the detainee's fingers and toes with metal pipes or

detainees involves the suspects being accosted by unidentified men in plain-clothes without warrants. The suspects are then quickly handcuffed, punched, kicked and forced into waiting vehicles. It is extremely rare for suspects to be informed of the reasons for their arrest or of their rights at this stage. Often they are blindfolded with masking tape or cloths before being taken to police headquarters, local police precincts, or, in some instances, to secret places of detention.³¹

It is not very surprising for Filipino law enforcers to feel frustration over the difficulty in gathering evidence to prove the commission of a crime. There is little hope in relying on forensic evidence when the reality is that local law enforcers hardly have either the training or equipment; neither can the police rely on witnesses to get over their fear and voluntarily come forward to account testimony of a crime, for this fear is reasonable in a country that equates the word "salvage" to summary execution. A confession, on the other hand, involves minimal cost and does not require logistics; at the same time, a confession carries a persuasive power that can practically stand alone. It is thus not only unscrupulous policemen who employ torture techniques in extracting extrajudicial confessions. Indeed, it does not seem outrageous that a well-meaning law enforcer feels justified in employing torture techniques in his zealous endeavor of prosecuting criminals.

2. There is no statute penalizing torture in the Philippines: the aliases of torture

At least on a superficial level, the Philippines appears to be a strong advocate against torture, its commitment enshrined in the fundamental law of the land. Such paper advocacy, however, simply renders stark the void that persists in the Philippine legal system – the absence of a specific penal statute criminalizing torture. Anti-torture bills have been introduced in both Houses, the first one tabled in the Tenth Congress (1998), yet legislators remain gun shy in enacting an anti-torture law. At present, any law enforcer sought to be suffered under the law for acts of torture and ill-treatment have to be brought on charges of a garden variety of existing penal offenses, save for the narrow exception introduced by the Human Security Act of 2007,³²

gun barrels; (9) Placing chili peppers on the suspect's eyes or genitals; (10) Inserting the detainee's penis into bottles containing gasoline mixed with chili." [hereinafter Amnesty International].

³¹ See Redress, *supra* note 27.

³² REP. ACT NO. 9372, § 25:

Penalty for Threat, Intimidation, Coercion, or Torture in the Investigation and Interrogation of a Detained Person. — Any person or persons who use threat, intimidation, or coercion, or who inflict physical

which penalizes a person who tortures a charged or suspected person under investigation and interrogation for the crime of terrorism or the crime of conspiracy to commit terrorism. Unfortunately, the definitions of these crimes fall short of the definition of torture present in the CAT, and the existing crimes embodied in the Revised Penal Code are subject to a statute of limitations.

Those liable for acts of torture are sought punished under other offenses such as maltreatment of prisoners, which carries merely a punishment of over two months to two years and four months imprisonment. If the purpose of the maltreatment is to extort a confession, or to obtain some information from the prisoner, the offender is punishable by up to six years imprisonment, with a temporary special disqualification from public service and a fine, in addition to liability for the physical injuries or damage caused.³³ Other criminal offenses are mutilation,³⁴ inflicting serious physical injuries,³⁵ administering injurious substances or beverages,³⁶ inflicting less serious physical injuries,³⁷ inflicting slight physical injuries and maltreatment³⁸ and threats and coercion,³⁹ which carry penalties ranging from a fine to thirty years imprisonment. Homicide⁴⁰ and murder⁴¹ are punishable by over twelve years to twenty years imprisonment or the death penalty.

Rape carries a punishment of thirty years imprisonment and, under aggravating circumstances, can include the death penalty.⁴² This penalty will be imposed if the victim is under the custody of the police or military authorities or any law enforcement or penal institution. It will also be

pain or torment, or mental, moral, or psychological pressure, which shall vitiate the free-will of a charged or suspected person under investigation and interrogation for the crime of terrorism or the crime of conspiracy to commit terrorism shall be guilty of an offense and shall suffer the penalty of twelve (12) years and one day to twenty (20) years of imprisonment.

When death or serious permanent disability of said detained person occurs as a consequence of the use of such threat, intimidation, or coercion, or as a consequence of the infliction on him of such physical pain or torment, or as a consequence of the infliction on him of such mental, moral, or psychological pressure, the penalty shall be twelve (12) years and one day to twenty (20) years of imprisonment.

³³ REV. PEN. CODE, art. 235, ¶2

³⁴ art. 262

³⁵ art. 263

³⁶ art. 26

³⁷ art. 265

³⁸ art. 266

³⁹ arts. 282-286

⁴⁰ art. 249

⁴¹ art. 248

⁴² art. 266 A) and B), as amended by REP. ACT NO. 8353, known as "The Anti-Rape Law of 1997"

imposed if the rape is committed by any member of the Armed Forces or paramilitary units, the Philippine National Police or any law enforcement agency or penal institution, when the offender took advantage of his position to facilitate the commission of the crime.⁴³ Taking advantage of a public position constitutes an aggravating circumstance for any crime.⁴⁴ Principals, accomplices and accessories are also criminally liable.⁴⁵ Criminal offenses are subject to statutes of limitation. Maltreatment prescribes after ten years, serious physical injuries and mutilation after fifteen years, and rape and murder after twenty years.

III. TORTURE, EXTRAJUDICIAL CONFESSION, AND PHILIPPINE JURISPRUDENCE

A. THE SUPREME COURT'S CRITERIA FOR PROVING THE USE OF TORTURE IN EXTRACTING EXTRAJUDICIAL CONFESSIONS

If there exists a mere nominal number of extrajudicial confessions held inadmissible in court on account of allegations of torture employed in their extraction, it is not due to a shortage of allegations of involuntary confessions obtained through torture. It is precisely due to the numerous allegations of torture in custodial interrogations that the Supreme Court was constrained to lay down, and consistently use as a barometer for the veracity of the allegation, strict criteria that an accused must satisfy in order to afford credence to his claim that his extrajudicial confession should be excluded as evidence by virtue of it being obtained from him through the use of torture. Stated otherwise, courts give premium to an extrajudicial confession given by the accused during interrogation over the same accused's recantation of the confession unless said accused satisfies the criteria laid by judicial fiat. Only then does the exclusionary rule come into play. The burden is on the accused to prove that he is a victim, his voluntariness in giving the confession being ordinarily presumed.⁴⁶

⁴³ art. 266, B) (2) and (7)

⁴⁴ art. 14 (1)

⁴⁵ arts. 16-19

⁴⁶ *People v. Magdamit*, G.R. No. 118130, September 24, 1997 *citing* *People v. Luvendino*, G.R. No. 69971, July 3, 1992, 211 SCRA 36; *People v. Nirmo, et al.*, G.R. No. 92533, October 5, 1993, 227 SCRA 69; *People v. Ruelan*, G.R. No. 106152, April 19, 1994, 231 SCRA 650.

B. PROOF OF TORTURE: THE FOUR-PRONGED TEST

The Supreme Court has invariably held that bare assertions of maltreatment by police authorities in extracting confessions from the accused are not sufficient. There has been a standing rule set in jurisprudence that where the defendants did not present evidence of compulsion, or duress nor violence on their persons; where they failed to complain to the officer who administered their oaths; where they did not institute any criminal or administrative action against their alleged intimidators for maltreatment; where there appeared to be no marks of violence on their bodies; and where they did not have themselves examined by a reputable physician to buttress their claim, the Court has considered these circumstances to indicate voluntariness.⁴⁷

When an extrajudicial statement satisfies the requirements of the Constitution, it constitutes evidence of a high order because of the strong presumption that no person of normal mind would deliberately and knowingly confess to a crime unless prompted by truth and conscience. The defense has the burden of proving that it was extracted by means of force, duress, promise or reward.⁴⁸ The four-pronged test established by Supreme Court requires that, in order to lend credence to allegations of involuntariness of a confession by virtue of it being extracted by means of torture, the accused-victim (accused of the crime, victim of torture) must have either:

(1) Complained to the officer who administered his oath (or to the authorities or his counsel) about the involuntary nature of the statement to which he was swearing or swore to;

(2) Complained to other people such as friends or family;

(3) Instituted criminal or administrative action against the alleged perpetrators; or

⁴⁷ See *People v. Pia, et. al.*, G.R. No. L-59604, November 14, 1986; *People v. Villanueva*, 128 SCRA 488; *People v. Urgel*, 134 SCRA 483; *People v. Toledo*, 140 SCRA 259; *People v. Bagnate*, G.R. Nos. 33685-86, May 20, 2004; *People v. Mojello*, G.R. No. 145566, March 9, 2004; *People v. Ladao, et. al.*, G.R. Nos. 100940-41, November 27, 2001; *People v. Porio*, G.R. Nos. 144086-87, February 6, 2002; *People v. Tablon*, G.R. No. 137280, March 14, 2002; *People v. Dumalahay*, G.R. Nos. 131837-38, April 2, 2002; *People v. Vallejo*, G.R. No. 144656, May 9, 2002; *People v. Ranis, et. al.*, G.R. No. 129113, September 17, 2002; *People v. Alvarez*, G.R. No. 152221, August 25, 2003; *People v. Mojello*, G.R. No. 145566, March 9, 2004.

⁴⁸ *People v. Base*, G.R. No. 109773, March 30, 2000.

(4) Underwent a medical exam by a reputable physician to show that violence has been committed on him, or other such evidence of compulsion, duress or violence on his person.

Accused-victims often attribute their failure to meet the abovementioned criteria set by the four-pronged test as a result of their fear of their interrogators. The Supreme Court, however, has interpreted that this failure to speak up and disclose the incident at the earliest opportunity subjects to serious doubt the reality and substance of that supposed fear. The Court likewise stands suspicious of unsupported claims of physical abuse in the hands of interrogators in the absence of other proof to corroborate them.⁴⁹

Even in cases where the accused-victim claims that he complained of the incident to authorities, the Supreme Court demanded the clearest proof to support such allegation. In *People v. Pedroso*⁵⁰, the accused-victim claimed that he was only forced by the police to admit to the crime, who mauled and tortured him while he was under detention. He claimed that when he reported his ordeal at the hands of the police to the inquest fiscal, the latter ignored his complaint. The Court, however, discounted his assertion because he did not present any medical certificate to prove his claim of torture.

In *People v. Obrero*⁵¹, it was held that voluntariness of a confession may be inferred from its being replete with details which could possibly be supplied only by the accused, reflecting spontaneity and coherence which cannot be said of a mind on which violence and torture have been applied. When the details narrated in an extrajudicial confession are such that they could not have been concocted by one who did not take part in the acts narrated, where the claim of maltreatment in the extraction of the confession is unsubstantiated and where abundant evidence exists showing that the statement was voluntarily executed, the confession is admissible against the declarant.

In *People v. Continente, et. al.*⁵², the Court held that the failure to complain to the swearing officer or to file charges against the persons who allegedly maltreated him, although he had all the chances to do so, manifests

⁴⁹ *People v. Base*, *supra* note 48; *See also* *Tecson v. CA* and *People*, G.R. No. 113218, November 22, 2001.

⁵⁰ G.R. No. 125128, July 19, 2000.

⁵¹ G.R. No. 122142, May 17, 2000.

⁵² G.R. Nos. 100801-02, August 25, 2000.

voluntariness in the execution of his confessions. To hold otherwise would be to facilitate the retraction of his solemnly made statements at the mere allegation of torture, without any proof whatsoever. The Court also noted that the written confessions were replete with details, reflecting spontaneity and coherence which psychologically cannot be associated with a mind to which violence and torture have been applied.⁵³

The Constitution contemplates two kinds of confessions: (1) those which are the product of third degree methods such as torture, force, violence, threat, intimidation, which are dealt with in Article III section 12(2), and (2) those which are given without the benefit of Miranda warnings, which are the subject of Article III section 12(1).⁵⁴ While most of the confessions sought to be excluded on the ground of involuntariness are based on the first category (that of being a product of third degree methods), the Court has been more ready, if ready at all, to exclude confessions based on the second category (that of being given without the benefit of the Miranda warning,⁵⁵ specifically, that of uncounselled confessions).

To illustrate, in the case of *People v. Patunga, et. al.*⁵⁶, we find one of the rare instances wherein the Court excluded the confession of the accused for having been made involuntarily. There, the accused alleged that during interrogation, he was blindfolded with his hands tied behind him and was electrocuted by the police investigators while he was either sitting on a steel bar or had a piece of wet cloth placed on his feet to compel him to admit commission of the crime charged. The accused claimed that it was only after he verbally confessed at the police precinct without the assistance of

⁵³ See also *People v. Maneng*, G.R. No. 123147, October 13, 2000; *Ramirez v. Sandiganbayan* and *People*, G.R. Nos. 71523-25, December 8, 2000.

⁵⁴ *People vs. Obrero*, *supra* note 51.

⁵⁵ See Mount, Steve, THE U.S. CONSTITUTION ONLINE: MIRANDA WARNING, <http://www.usconstitution.net/miranda.html>, 13 June 2003, (last visited on 10 September 2008): In 1963, Ernesto Miranda was accused of kidnapping and raping an 18-year-old, mildly retarded woman. He was brought in for questioning, and confessed to the crime. He was not told that he did not have to speak or that he could have a lawyer present. At trial, Miranda's lawyer tried to get the confession thrown out, but the motion was denied. In 1966, the United States Supreme Court ruled that the statements made to the police could not be used as evidence, since Miranda had not been advised of his rights. Since then, before any pertinent questioning of a suspect is done, the police have been required to recite the Miranda warning. The Miranda warning, as outlined in the case of *Miranda v Arizona*, 384 U.S. 436 (1966) is stated thus:

You have the right to remain silent. Anything you say can and will be used against you in a court of law. You have the right to speak to an attorney, and to have an attorney present during any questioning. If you cannot afford a lawyer, one will be provided for you at government expense.

⁵⁶ G.R. No. 138045, March 14, 2001.

counsel that he was brought to the IBP office for the actual transcription of his confession in writing in the presence of a lawyer.

The Court observed that whatever statement the accused gave to the police for transcription in the presence of counsel was the product of two and a half days of coercive and uncounselled custodial investigation. The Court took notice of the fact that by the time the accused was brought to the IBP office, his body and his will were in no position to raise any objection much less to complain to the IBP lawyer about what he has gone through. Worse, the counsel who was supposed to assist him at the taking of the extrajudicial confession admitted that he was working on an appeal in another case two to three meters away from the police investigator who was taking the statement. Counsel stated that he was "not totally concentrated on the appealed case because he could still hear the investigation being conducted then." The mere presence of a lawyer is not sufficient compliance with the constitutional requirement of assistance of counsel. Assistance of counsel must be effective, vigilant and independent. In this case, the Court admonished:

Let this be a stern lesson to the police authorities and to the prosecution to perform their sworn tasks with utmost regard to the mandates of the Constitution. Criminals cannot be apprehended, prosecuted and punished under the law by resorting to non-legal means.

Citing the case of *People vs. So*⁵⁷, the Court explained:

We are not unmindful of the anomalous practices of some law enforcers in drug-related cases such as planting evidence, physical torture and extortion to extract information from suspected drug dealers or even to harass civilians. Thus, the Court calls for vigilance and caution in trying drug-related cases lest an innocent person be made to suffer the unusually severe penalties for drug offenses. Trial courts are admonished to always require precise and convincing testimony in cases involving buy-bust operations. Competent and effective handling of a case by the prosecution is particularly urgent in drug-related offenses. The prosecution is required to adduce adequate evidence to prove the guilt of the accused beyond a shadow of doubt and not simply rely on the presumption of regularity. The presumption of regularity does not, by itself, constitute proof of guilt beyond reasonable doubt. It cannot, by itself, support a judgment of conviction. Under our Constitution, an accused, no matter how despicable the crime for which he may have been charged, still enjoys

⁵⁷ G.R. No. 133861, November 22, 2001.

the presumption of innocence. And this presumption prevails over the presumption of regularity of the performance of official duty.

Still, the Court did not exclude the subject confession based on a finding that such was a product of third degree methods, the first category. Instead, the confession was excluded for being given without the benefits under the Miranda warning, the second category. The Court held:

For the reasons above stated, We find that the extra-judicial confession of appellant Elmerto Pulga is inadmissible in evidence for having been obtained without effective assistance of counsel.

C. THE SUPREME COURT'S WHITE ELEPHANT: THE PRACTICAL IMPOSSIBILITY OF SATISFYING THE FOUR-PRONGED TEST AND THE NEED TO FIND AN ALTERNATIVE WAY TO PROVE TORTURE

It cannot be gainsaid that the Supreme Court's adoption of the four-pronged test is impelled to a great extent by the lack of other credible means of proving that an accused was indeed tortured at the hands of the police for the purpose of extracting a confession. The exclusion of confession on the mere say-so of an accused --- unaccompanied by any shred of evidence to prove that he was tortured into admitting the crime charged, where the alleged act of torture invariably occurs in a room with no witnesses, and where the human instinct for survival gives rise to the inference that any claim of torture is concocted and self-serving --- can easily lead to abuse. At the course of trial and with the presentation of damning evidence against the accused, no doubt aided by the extrajudicial confession-cum-fishing expedition, it becomes easy to justify the higher threshold of evidence required to prove that a man who admitted in an extrajudicial confession to have raped his step-daughter was tortured into confessing commission of the crime as opposed to, say, a minor victim's allegation that her step-father raped her.

It is an oft-repeated rule in rape cases that:

When a woman, more so if she is a minor, says that she has been raped, she says, in effect, all that is necessary to show that rape was committed. And so long as her testimony meets the test of credibility and unless the same is controverted by competent physical and

testimonial evidence, the accused may be convicted on the basis thereof.⁵⁸

In stark contrast to a minor rape victim, and at the other end of the spectrum, an accused who earlier admitted to committing a dastardly crime and later on cries torture cannot possibly convince a trial judge that his allegation of torture, bereft of any corroborating evidence, deserves to be accorded the same weight of credibility. An accused who earlier confessed to doing a criminal act is viewed as that – a criminal, who took a desperate shot to save his neck by fabricating a torture charge.

The rationale behind the four-pronged test notwithstanding, one must question the reasonableness of the burden that the Court imposes on the accused who alleges that his confession was extracted by means of torture. Such a situation involves not simply an accused but a possible accused-victim, and to prove the fact of his being a victim, he must have complained to the authorities or his counsel about the involuntary nature of the statement to which he was swearing or swore to; complained to other people such as friends or family; instituted criminal or administrative action against the alleged perpetrators; or underwent a medical exam by a reputable physician to show that violence has been committed on him, or other such evidence of compulsion, duress or violence on his person.

One cannot but doubt the likelihood that a person who was in fact tortured – beaten to confession – would go to the same police officers who inflicted the torture precisely to complain about it. For the same reason, it is unlikely that an accused would report the torture to other men in uniform, given the perception of the *esprit de corps* amongst these policemen. Further, a torture victim invariably comes from the indigent sector and cannot afford to hire his own counsel. Even with the presence of an assigned counsel at the time of taking of his confession, in itself highly doubtful in many instances, the very fact that it was the police who handed him over to his counsel does little to dispel his fear of reprisal.

This well-founded fear of retaliation, compounded by the victim's lack of financial resources, severely limits if not completely serves as a deterrent to his actually filing an administrative or criminal action against the perpetrators of the torture. From the foregoing, it is clear that the torture

⁵⁸ *People v. Banela*, G.R. No. 124973, 18 January 1999, *citing* *People vs. Adora*, 275 SCRA 441 [1997]; *People vs. Ching*, 240 SCRA 267 [1995]; *People vs. Sanchez*, 250 SCRA 14 [1995]; *People vs. Tabao*, 240 SCRA 758 [1995]; *People vs. Segundo*, 228 SCRA 691 [1993].

victims likewise cannot expect to have on hand the medical or forensic evidence necessary to prove the fact of torture in court.

The aforestated position is bolstered by the findings of Redress, a non-governmental organization based in London, whose thrust is mainly to seek reparations for torture survivors, thus:

No statistics as to the overall number of complaints relating to torture are available but various sources demonstrate that a considerable number of torture survivors or relatives of victims have lodged complaints with the authorities or human rights bodies. However, it is in particular, detainees, who appear to refrain from complaining. Under the Inquest Procedure, it can take several weeks or months before a suspect appears before a judge, giving him or her for the first time the chance to effectively complain about torture, request a medical examination and have testimonies recorded. At this stage, detainees have often been intimidated and threatened with adverse repercussions, including renewed torture, and may therefore be afraid to complain to the judge in the absence of adequate safeguards and protection. Besides detainees, women who have been raped in custody have in several cases not lodged any complaints because of fear and the stigma attached to rape.

...

There are indications that the prosecution has been reluctant to vigorously investigate torture allegations against the military. *Moreover, investigations against the police are often confronted with a closed and protective police culture. Against this background, investigations are often closed for lack of evidence, especially medical evidence, in spite of the right of detainees to have access to a doctor. Several factors have been identified as contributing to this situation, such as the failure to assert such rights, the carrying out of medical examinations before (and not after) interrogations take place, superficial and insufficient examinations, delays in allowing detainees access to doctors until torture marks have disappeared and the use of torture methods that leave minimal physical traces.* The Commission on Human Rights has, in numerous cases, carried out investigations, rendered forensic services and filed cases in courts with prosecution offices and administrative agencies. However, most of these cases have not resulted in a trial let alone conviction of the perpetrators. The Commission has, on the other hand, been criticised for its investigation methods and the burden it places on torture victims. As a result, in the absence of a recommendation by the Commission to the Department of Justice or to the Office of the Ombudsman to prosecute the alleged

perpetrators, a number of cases where torture has been alleged, ended at the stage of the Commission.⁵⁹(emphasis ours)

As regards the second badge of torture, i.e. complaint to friends or family, the reality is that many of these torture victims are uprooted from their families and are kept *incommunicado*.⁶⁰ It is therefore difficult, if not impossible, for a torture victim to inform his family about his agony. In an interview with Dr. Cruel of the Commission on Human Rights, he stated that while the CHR can investigate allegations of torture *motu proprio*, as in the case of heavily-publicized incidents thereof, most CHR investigations are prompted by families and friends of torture victims' complaints. However, only a few torture cases are in fact reported to the CHR [22 complaints from January to December 2003] precisely because most of the victims are incommunicado and have no way of informing the CHR of the ordeal they went through in the hands of the authorities.

IV. PROPOSING A BEACON IN THE DARK AGES: THE NEED FOR MANDATORY ELECTRONIC RECORDING OF CUSTODIAL INTERROGATIONS TO PROVE OR DISPROVE TORTURE

Because confessions are such powerful forms of evidence, the recognition that certain law enforcement strategies can create false confessions should translate into a duty on the part of police to preserve a record of what transpired behind the closed door of the interrogation room.⁶¹

A. BEHIND CLOSED DOORS: THE SECRECY OF CUSTODIAL INTERROGATIONS CREATES AN INSURMOUNTABLE GAP BETWEEN ALLEGATIONS OF TORTURE AND THE AVAILABILITY OF EVIDENCE TO PROVE IT

Though secret places of detention are specifically prohibited in the Constitution,⁶² suspects continue to report being taken to unauthorized places of detention including motel rooms, unidentified 'offices', which may or may not be within major police or military camps, and other secret

⁵⁹ Redress, *supra* note 27.

⁶⁰ In this connection, see Report on torture and other cruel, inhuman or degrading treatment or punishment, submitted by Sir Nigel Rodley, Special Rapporteur of the Commission on Human Rights, in accordance with United Nations General Assembly Resolution No. 53/139, para. 42, A/54/426, 1 October 1999.

⁶¹ Johnson, *supra* note 1, at 743.

⁶² CONST. art III, §12(2).

locations known as "safe-houses".⁶³ The use of force and intimidation by law enforcement officials often means that unofficial requests (called "invitations") for questioning are actually warrantless arrests. Law enforcement officers appear to prefer this method of arrest because the procedures which follow warrantless arrest remove the impediment of judicial scrutiny at a critical period of the criminal investigation, and permit the conditions by which the suspect can be coerced to provide information.⁶⁴

Proponents of police interrogation say it is a vital crime-solving tool, especially since a suspect's confession is likely to be the only evidence available against a criminal offender owing to the fact that many crimes lack witnesses, physical evidence or both. Despite the obviously vital importance that a suspect's confession bears on effective law enforcement, our accusatorial justice system (as opposed to an inquisitorial system) requires that limitations are imposed on the tactics that law enforcers may use to extract confessions. An accusatorial system contemplates a point when the degree of infringement on a defendant's constitutional rights during interrogation becomes too high a price to pay for the resulting confession.⁶⁵

Scholars have long argued that confessions given in secret are too likely to lack the requisite voluntariness and reliability to be admissible in court.⁶⁶ The secrecy surrounding police interrogation results in a gap in our knowledge as to what in fact goes on in the interrogation rooms.

The earliest advocates for recording interrogations saw secrecy as the context in which third-degree tactics were allowed to flourish. Because third-degree tactics increased the chances of false confessions, requiring that interrogations be recorded was seen as a safeguard against false confessions.⁶⁷

⁶³ Amnesty International, *supra* note 30.

⁶⁴ Amnesty International, *supra* note 30.

⁶⁵ Roppe, *supra* note 1, at 730-731.

⁶⁶ Steve A. Drizin & Matissa Reich. *Heeding the Lessons of History: The Need for Mandatory Recording of Police Interrogations to Accurately Assess the Reliability and Voluntariness of Confessions*, 52 DRAKE L. REV. 619 at 622 (2004) [hereinafter Drizin].

⁶⁷ Drizin, *supra* note 61, at 633.

**B. SWEARING CONTEST: THE WORD OF A POLICE OFFICER VS.
ALLEGATIONS OF THE ACCUSED-VICTIM**

"It is hard to believe that a man is telling the truth when you know that you would lie if you were in his place."

—H. L. Mencken

Defense lawyers are more likely to encourage a client to waive his or her constitutional right to a trial by pleading guilty when the client has given the police a confession. All parties involved in a criminal case, such as the police, prosecutors, defense attorneys, judges, jurors, family and friends of the accused and the victim, and the public, find it difficult to believe that someone who has confessed is truly innocent.⁶⁸

Corollary to that, law enforcement authorities involved in these cases find it difficult to admit that they or their colleagues have made a mistake. Police and prosecutors, though duty-bound to seek justice over a conviction, naturally become personally invested in the narrative they construct in the interrogation room and the trial court.⁶⁹

Disputed testimony is inevitable in cases involving confessions made during interrogations, whether caused by the untruthful witnesses or the inherent tendency for people to have different recollections or interpretations of the events which transpired.⁷⁰ Judges do not have the facility of a record of the interrogations leading to confessions given by criminal suspects. When disagreement arises between allegations of what transpired during these interrogations, it inevitably boils down to the testimony of a police officer vis-à-vis that of a criminal defendant's.

Compounding the usual built-in disparity of credibility in this "swearing contest" is the particularly thorny Catch-22 that a defense attorney faces when disputing an allegedly false confession: on the one hand, he must show that the defendant is unreliable enough to have signed a false confession; at the same time, he must also display that the defendant is reliable enough that his version of what happened during the questioning should be believed over that of a police officer.⁷¹

⁶⁸ Johnson, *supra* note 1, at 741.

⁶⁹ Johnson, *supra* note 1, at 741.

⁷⁰ Drizin, *supra* note 61, at 626.

⁷¹ Johnson, *supra* note 1, at 720, citing Alex Wood, WITHOUT TAPE, CONVICTING THE INNOCENT, *supra* note 1.

Because most interrogations are not recorded, judges must rely on credibility contests between police officers and the suspects for information about the totality of the circumstances.⁷² In practice, this means that judges almost always side with the police. The net result is that the police have largely been able to define the totality of the circumstances by controlling the historical facts that are used by courts to determine if a confession is voluntary.⁷³

C. ELECTRONICALLY RECORDED INTERROGATIONS ARE ACCURATE AND RELIABLE

Recording interrogations and confessions is a potentially invaluable tool for assessing the veracity of a suspect's confession. It provides an objective means of distinguishing the suspect's actual level of knowledge about the crime from the details suggested to him by the police.⁷⁴ As early as the 1930s, legal luminaries such as Edwin Borchard and Roscoe Pound voiced skepticism of police conduct in interrogation rooms and believed that a method must be established to take down the evidence so as to guaranty accuracy, which would then allow the court to understand what occurred during the interrogation.⁷⁵ Borchard, in *Convicting the Innocent* (1932), addressed how electronic records of interrogations ensured voluntariness and reliability. A contemporaneously-made electronic record would provide fact finders with an understanding of the circumstances under which the confession was made, ensuring that the defendant's rights had been respected.⁷⁶

At present, at least three States in the United States, namely, Alaska, Minnesota, and Texas, require the mandatory recording of interrogation of suspects. England has required recorded interrogations since 1984.

In 1985, the Alaska Supreme Court held in *Stephan v. State*⁷⁷ that recording interrogations was necessary as a due process right under the

⁷² Drizin, *supra* note 61, at 638, citing Richard A. Leo & Richard J. Ofshe, *The Consequences of False Confessions: Deprivations of Liberty and Miscarriages of Justice in the Age of Psychological Interrogation*, 88 J. CRIM. L. & CRIMINOLOGY 429, at 495 (1998).

⁷³ Drizin, *supra* note 61, at 638.

⁷⁴ Johnson, *supra* note 1, at 735.

⁷⁵ See Roscoe Pound, *Legal Interrogations of Persons Accused or Suspected of Crime*, 24 J. CRIM. L., CRIMINOLOGY & POLICE SCI. 1014 (1934), cited in Drizin, *supra* note 60, at 623.

⁷⁶ Drizin, *supra* note 60, at 623.

⁷⁷ 711 P.2d 1156.

Alaska Constitution. The Alaska Court held that confessions would be excluded unless police recorded the interrogations which had preceded them. A confession is generally such conclusive evidence of guilt that a rule of exclusion is justified. Such a record allows the suspect to present a more complete defense by providing an objective means for him to corroborate his testimony concerning the circumstances of the confession. The rule also allows courts to avoid the frustration of relying on human memory which is always incomplete and subjective. In 1994, the Minnesota Supreme Court pronounced in *State v. Scales*⁷⁸ that this type of accurate and objective record was the only way for the defendant to sufficiently challenge misleading or false testimony.⁷⁹ While many State courts still refuse to follow Alaska's lead, they nonetheless expressed, in dicta, their approbation for the practice of recording interrogations.⁸⁰

In the Philippines, a similar pronouncement was recently given by the Supreme Court, which we quote hereunder:

To be sure, a confession is not required to be in any particular form. It may be oral or written, formal or informal in character. It may be recorded on video tape, sound motion pictures, or tape. *However, while not required to be in writing to be admissible in evidence, it is advisable, if not otherwise recorded by video tape or other means, to reduce the confession to writing. This adds weight to the confession and helps convince the court that it was freely and voluntarily made.* If possible the confession, after being reduced to writing, should be read to the defendant, have it read by defendant, have him sign it, and have it attested by witnesses.⁸¹ (emphasis ours)

⁷⁸ 518 N.W.2d 587

⁷⁹ Drizin, *supra* note 60, at 628, citing *State v. Scales*, *supra* note 72, at 591.

⁸⁰ Johnson, *supra* note 1, at 746, citing *State v. James*, 678 A.2d 1338, 1360 (Conn. 1996) ("We agree with the defendant that the recording of confessions and interrogations generally might be a desirable investigative practice, which is to be encouraged"); *State v. Kekona*, 886 P.2d 740, 746 (Haw. 1994) ("[W]e nevertheless stress the importance of utilizing tape recordings during custodial interrogations when feasible"); *State v. Kilmer*, 439 S.E.2d 881, 893 (W. Va. 1993) ("It would be the wiser course for law enforcement officers to record . . . the interrogation of a suspect where feasible and where such equipment is available, since such recording would be beneficial not only to law enforcement, but to the suspect and the court when determining the admissibility of a confession"); *Commonwealth v. Fryer*, 610 N.E.2d 903, 910 (Mass. 1993) (describing electronic recording as a "helpful tool" and noting that a rule requiring it "would have much to recommend it"); *State v. Buzzell*, 617 A.2d 1016, 1018 (Me. 1992) (referring to "the obvious benefits to be realized when statements are recorded"); *Williams v. State*, 522 So. 2d 201, 208 (Miss. 1988) ("We accept that whether or not a statement is electronically preserved is important in many contexts"); and *State v. James*, 858 P.2d 1012, 1018 (Utah App. 1993) (recognizing that recording interrogations has the potential to prevent "[a]ctual coercive tactics by the police.").

⁸¹ *People v. Satorre*, G.R. No. 133858, August 12, 2003.

**D. BALANCING THE NEED FOR EFFECTIVE LAW ENFORCEMENT AND
CRIME PREVENTION VIS-À-VIS THE NEED TO PROTECT THE ACCUSED
FROM POLICE MISCONDUCT AND THE PREVENTION OF AND REDRESS
AGAINST TORTURE**

Recorded interrogations can protect both suspects and police officers. The suspect is provided with a tool with which he can corroborate his claims of abuse inflicted on him during interrogation which vitiate the voluntariness of his confession. Correspondingly, police officers are provided means by which they can parry accusations of abuse or misconduct.

1. No chilling effect

The customary practice of taking down notes during custodial interrogations undeniably disrupts the flow of the interview process. Unless the person transcribing the interview is a trained stenographer (a rarity in the police force), the resulting transcription is bound to be incomplete, both as to the actual words uttered during the interview and the nuances employed by the speaker both in the words articulated and his actions. Employing the use of stenographers, on the other hand, necessarily intrudes on the privacy of the interrogation. In contrast, electronic recording of interrogations, whether through audio or videotape, captures everything that was said without chilling the suspect's decision to confess.⁸² It is the most accurate means of documenting an interrogation and the least intrusive witness to a guilty man's confession.

2. Discourages recanted confessions

After extensive questioning, suspects' elaborate alibis and excuses tend to change. Confronting the suspect with an earlier recording containing inconsistencies and contradictions usually brings the suspect to voluntarily confess and appreciate the futility of deception. Corollarily, accomplices are often induced to confess after actually hearing their co-conspirators implicate them.⁸³

⁸² Drizin, *supra* note 61, at 625, citing Charles O'Hara, FUNDAMENTALS OF CRIMINAL INVESTIGATION (4th ed. 1976) at 152-53 [hereinafter O'Hara].

⁸³ Drizin, *supra* note 61, at 625, citing O'Hara, *supra* note 77, at 155.

In the courtroom, just as recorded interrogations can protect suspects, they can also protect officers; a recording is integral for when a suspect recants his confession, refuses to formally confess at all, or falsely claims he was subjected to torture.⁸⁴ If a suspect later refuses to make a formal confession or changes his "story," the recording can serve as evidence.⁸⁵

3. Deters police misbehavior and abuse

Bernard Weisberg argues that it is secrecy, not privacy, which accounts for the absence of a reliable record of interrogation proceedings.⁸⁶ Secrecy creates the risk of abuse, makes the rules about coercion vague and difficult to apply, and inhibits the development of clear rules to govern police interrogation and contributes to public distrust of the police.⁸⁷ By requiring the police to record the entire interrogation, privacy is maintained but the secrecy eliminated.

The police must obey the law while enforcing the law. Allowing tape recorders and cameras to be used in police stations would force the police to keep their behavior in check. This would guard against both the "obvious abuses" and the well-intentioned officer, not any more brutal than the rest of us, who finds that his natural indignation at crimes of violence, his position of relative sophistication and control over the prisoner, the absence of disinterested observation and, above all, the frustration of suspended judgment, all lead him to justify the use of means which would be rejected if exposed to public scrutiny.⁸⁸

E. SILENT WITNESS DISPENSES WITH THE NEED FOR THE FOUR-PRONGED TEST

The four-pronged test laid down by the Supreme Court installs a high standard of proof in cases where extrajudicial confessions are alleged by the confessants to have been given involuntarily. Indeed, it is the accused who must present evidence to convince the court that his confession need

⁸⁴ Drizin, *supra* note 61, at 625.

⁸⁵ Drizin, *supra* note 61, *citing* O'Hara, *supra* note 77, at 155.

⁸⁶ Drizin, *supra* note 61, at 630, *citing* Bernard Weisberg, *Police Interrogation of Arrested Persons: A Skeptical View*, 52 J. CRIM. L., CRIMINOLOGY & POLICE SCI. 21 at 44 (1961) [hereinafter Weisberg].

⁸⁷ Drizin, *supra* note 61, at 630, *citing* Weisberg, *supra* note 81, at 44.

⁸⁸ Drizin, *supra* note 61, at 628, *citing* Weisberg, *supra* note 81, at 45.

be excluded on grounds of being given involuntarily. Bare assertions will not suffice. As held in the case of *People vs. Ranis Jr., et. al.*⁸⁹:

A confession of the accused constitutes evidence of a high order since it is supported by a strong presumption that no person of normal mind would deliberately and knowingly confess to a crime unless prompted by truth and his conscience. Once the prosecution has shown that there was compliance with the constitutional requirement on pre-interrogation advisories, a confession is presumed to be voluntary, and the burden is on the accused to destroy this presumption. The declarant bears the burden of proving that his confession is involuntary and untrue. A confession is admissible until the accused successfully proves that it was given as a result of violence, intimidation, threat, or promise of reward or leniency.

The problem of proof is directly, and more effectively, addressed by the requirement of recording interrogations. Except for the test requiring a medical examination, the four-pronged test continues to deal with mere allegations, and the premium it gives to the allegations required under the four-pronged test (viz., complaints to either his counsel, law enforcers, family, friends, the courts or disciplinary bodies) is rooted in the rationale that a person who suffers under torture in relation to his confession will naturally seek help or complain about his ordeal at the soonest possible time and opportunity.

These allegations, however, do not stand as direct proof of torture. Even the test which requires a medical exam is not an adequate measure of proving (or disproving) the occurrence of torture because many third degree methods employed by law enforcers in extracting confessions do not leave visible or enduring marks on the body, and even if they do, torture victims do not have ready access to physicians to record the rapidly disappearing signs of torture. In contrast, the recording of interrogations affords the parties concerned with direct proof of what occurred during the interrogation and the circumstances leading up to the confession.

The Court will be able to use the facility of this silent witness to get a full view of what transpired during interrogations -- an objective observer which does not suffer from a frail memory or fear of reprisal and was there throughout the whole proceeding. The Court need not make assumptions regarding the veracity of allegations of torture based merely on the time

⁸⁹ G.R. No. 129113, September 17, 2002.

when the accused complained, concluding that when it comes to allegations of torture, the later you complain the less likely your allegation is true. Indeed, the Court can do away with the four-pronged test altogether because the recorded interrogation is a far more accurate and reliable piece of evidence in proving (or disproving) allegations of torture. The badges of torture flagged by the four-pronged test stand to be relegated to that of secondary value because compared to a recorded interrogation, the proof it offers is not as direct, comprehensive and reliable.

The accused, on the other hand, is spared from the burden of hurdling the practical difficulties needed to satisfy the four-pronged test. Without doing anything, he is armed with cogent proof to attest to whatever it is he wants to show as having transpired during the interrogation leading to his confession. Conversely, it dissuades him from putting forth any allegations of torture when the same should be readily apparent from the recorded interrogation. It can be said that to the accused, the facility of the recorded interrogation can either be a boon or a bane, depending on the veracity of his allegation of torture.

F. PROMOTES TRANSPARENCY OF POLICE METHODS

By showing the public what occurs inside the interrogation room, the community can demand that higher standards be met. Transparency would greatly improve interrogation techniques by making courts and legislatures aware of the methods that police actually use during these secret interviews. There becomes an opportunity to clarify and develop more specific rules about proper police behavior.⁹⁰ Public trust of the police will increase because the public would know that police are no longer scared to expose their actions.⁹¹

V. CONCLUSION AND RECOMMENDATION

The Philippine criminal justice system has been the biggest victim of the government's helplessness in balancing two basic tenets of justice and fair play. On the one hand, the primacy of the dignity of the human person, non-derogable in all circumstances and the backbone of every civilized nation, needs no justification for its absolute protection. On the other, the State's need to protect its own citizens from criminal elements and to effectively implement a system by which wrongdoings are meted the

⁹⁰ Drizin, *supra* note 61, at 628, *citing* Weisberg, *supra* note 81, at 46.

⁹¹ Drizin, *supra* note 61, at 628, *citing* Weisberg, *supra* note 81, at 45.

appropriate punishment is so fundamental to the very concepts of statehood and an orderly society that it can even be accepted as a truism.

It cannot be seriously disputed that the continuing pervasiveness of third-degree methods in the realm of law enforcement is a serious assault to these fundamental principles. Justice can never be attained by committing an injustice. In the Philippine context, there is an urgent need to explore workable and feasible solutions to the whole range of problems that arise out of the extraction of extrajudicial confessions through illegal means.

While we recognize the importance, even the indispensability of extrajudicial confessions in criminal cases, particularly where it is the only way by which a criminal can be brought to justice, every measure must be undertaken to ensure that these confessions bear all the indicia of voluntariness, accuracy and reliability. We cannot countenance the use of torture in any circumstance – a confession extracted through torture cannot be accorded any value – regardless of whether the confessant spoke the truth or not.

It is submitted that institutionalizing the practice of recording interrogations of suspects in our statute books is a reasonable and necessary safeguard against police abuse. This silent witness, free from human error, unassailable in its accuracy and least intrusive in its presence, not only deters the indiscriminate claim of torture to exclude voluntary confessions and consequently shields the police from wrongful accusations, it more importantly secures the right of individuals to be free from torture and other forms of abuse in the hands of the very same authorities who pledge to uphold the law. The tape recording saves the judge from the Solomonic burden of having to decide a dispute involving a swearing contest between the police and the alleged torture victim.

Ultimately, the use of taped interrogations as evidence of the voluntariness and accuracy of extrajudicial confessions augurs well for the efficient and just administration of our criminal justice system, and is a concrete way by which the Philippines can unequivocally demonstrate its commitment to the cause of human rights.