May A Defendant Be Compelled To Give A Specimen Of His Handwriting?

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THE question under consideration involves the constitutional guarantee against self-incrimination. The constitutional safeguard against self-incrimination developed as a revolt against the oppressive and inquisitorial methods of ancient ecclesiastical courts which compelled a witness to stand by his oath and produce evidence which would serve as the very instruments for his own conviction and punishment. (Wigmore on Evidence, Vol. IV, Sec. 2252). It came about as a realization that it is very revolting to the finer sensibilities of man that one should bear witness against himself. As a result, most of the present-day constitutions recognize and provide for the right against self-incrimination.

The Philippine Constitution, which also recognizes and protects the privilege, states in its Bill of Rights, Art. III, Sec. 1, paragraph 18:

"(18) No person shall be compelled to be a witness against himself."

This constitutional proviso is further supplemented by Rule III, Sec. 1, par. (d) of our New Rules of Court which reads:

"Sec. 1. Rights of the defendant at the trial.—In all criminal prosecutions the defendant shall be entitled:

(d) To be exempt from being a witness against himself."

The guarantee extends to all manner of proceedings in which testimony is taken, whether litigious or not and whether "ex parte" or otherwise. It applies in all kinds of courts including juvenile courts when constituted as criminal courts, but not when constituted as a court with chancery powers, as in Illinois. It applies in all methods of interrogation before a court, a grand jury or a legislative body. (Wigmore on Evidence Vol. IV sec. 2252, par. b). The Philippine Constitution makes no qualification as to the kind of court, or the nature of the proceedings where the privilege may be availed of. It is submitted, therefore, that, in our jurisdiction, the privilege applies with equal cogency and effect to all kinds of court proceedings where testimony is adduced —to investigations by the National Assembly, its constitutional commissions and committees, to hearings by the newly created Commission on Elections, to investigations by quasi-judicial bodies like the Court of Industrial Relations and the Public Service Commission and even to hearings by special police investigators and other temporary investigating bodies, be they judicial, legislative or administrative. It applies as well to hearings conducted by provincial or city fiscals. (Beltran vs. Samson, 53 Phil. 570). It applies to all methods of inter-

rogation, be they by actual examination on the witness stand, by depositions and discovery as provided in Rule 18 of the New Rules of Court, or by written interrogatories as allowed under Rule 20, or by discovery by means of subpoena duces tecum.

Having known the historical antecedents of the privilege and the proceedings where the same can be availed of, it is well to inquire as to what kind of facts are protected from disclosure. As a general proposition, it may be stated that only facts tending to criminate the accused and thereby subject him to criminal liability are protected from disclosure. And a fact tending to criminate, according to Chief Justice Marshall "is that which forms a necessary and essential part of a crime." (1 Burr's Trial, p. 244). Facts therefore which tends to give rise to civil liability only are not within the protection of the privilege.

What is prohibited under the guarantee against self-incrimination is testimonial compulsion. And testimonial compulsion is that which "compels the accused to at least say something about a certain particular fact." It implies an act which involves the use of the mental faculties. Mere mechanical acts are not embraced within the privilege. Thus an ocular inspection of the body of a woman to determine pregnancy is permissible and was held not to trench upon the privilege. (Villaflor v. Sumners, 41 Phil. 62). The taking of a substance from the body of the accused to determine whether he is suffering from a venereal disease is also valid. (U. S. v. Tan Teng, 23 Phil. 145). Also, compelling the accused to place his foot over bloody footprints was held not to transgress the privilege (U. S. vs. Salas, 25 Phil. 337). In a Pennsylvania Case it was held that requiring the accused to speak for purposes of identification of the voice only was held not to violate the privilege. (Johnson vs. Commonwealth of Pennsylvania, 115 PA. 369).

May the defendant be compelled to give a specimen of his handwriting? More specifically, may he be compelled to write his name? The question is admittedly not free from difficulties. The answer hinges upon whether writing one's name involves the use of the mental faculties or not. If it does, then a defendant may not be compelled to write his name or in any manner give a specimen of his handwriting if such an act will tend to incriminate him, for then there is testimonial compulsion. If writing is purely a mechanical act, then a defendant can be so compelled. Prof. Wigmore is of the belief that a defendant can be compelled to give a specimen of his handwriting because as he says: "Requiring him to make specimen of his handwriting is no more than requiring him to move his body." In effect he considers the act of giving a specimen of handwriting as a purely mechanical act. The opposite view holds that writing requires the use of the mental faculties and hence is within the protection of the privilege. We are more inclined to follow the latter view because it is more in consonance with reason and with the practical realities of everyday life. We believe that writing one's name requires the use of the mental faculties. How to spell the name itself requires the exercise of the mental faculties. To those who have gone thru the intricacies of higher education, writ-

ing may be an easy job. But to those who have not, it is a task which requires mental and physical exertion. The privilege here in question was held applicable in the case of Beltran vs. Samson (53 Phil. 570), where the defendant in an investigation for a certain offense made before the fiscal was made to give a specimen of his handwriting. The court there decided that the defendant could not be so compelled because it amounted to making him a witness against himself.

In the case of State vs. McKowen (126 La. 1075), defendant refused to write the word "incorrigible" as a test of his spelling. The judge compelled him and on appeal the appellate court refused to consider the action of the lower court as reversible error because there was a waiver of the privilege when the defendant took the stand as a witness in his own behalf. From the decision, it may be inferred that if there was no waiver by voluntarily taking the stand, the defendant might not have been compelled to write. Again, in the case of Sprouse vs. Commonwealth (81 Va. 374), the defendant wrote his name at the judge's request without threat or compulsion. The court held that there was no compulsion because the defendant wrote his name voluntarily. Here again there was a waiver of the privilege.

In conclusion, it is submitted that a defendant may not be compelled to give a specimen of his handwriting, or more specifically, he may not be compelled to write his name for that would amount to testimonial compulsion. But the rule should not be taken as absolute because the privilege, being purely personal, may be waived. And a waiver is implied the moment the defendant takes the witness stand as witness in his own behalf, in which event he may be cross-examined as any other witness.